

Crimes Amendment Bill

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to bring New Zealand legislation into full compliance with ILO Convention 182 Concerning the Worst Forms of Child Labour. The Government has signalled that it wishes to ratify this ILO Convention, which is intended to raise the standards of protection for children from very grave forms of exploitation. Before ratification can take place New Zealand legislation must comply with the Convention. Currently, there are 3 areas where New Zealand legislation does not fulfil the requirements of the Convention.

The Convention requires the prohibition of the use, by a client, of a child under the age of 18 years for prostitution. There is currently no prohibition in New Zealand on a client using a person under 18 years for prostitution. The Convention also requires that procuring a child under 18 years for prostitution be prohibited. Currently, section 149 of the Crimes Act 1961 only prohibits procuring of females for sexual intercourse with males. The Convention requires that debt-bondage and serfdom involving children under the age of 18 years be prohibited. Section 98 of the Crimes Act only prohibits inducing debt-bondage and serfdom.

This Bill will amend the Crimes Act 1961 to ensure that New Zealand legislation complies with the requirements of the ILO Convention by—

- creating a new domestic offence of engaging in sexual activity with a prostitute under the age of 18 years:

- amending section 149 of the Act (relating to procuring for prostitution) to make it gender neutral and broaden the type of sexual acts to which it applies:
- amending section 98 of the Act to provide a more general ban on debt-bondage and serfdom.

It also makes a consequential amendment to the First Schedule of the Summary Proceedings Act 1957, adding a reference to the new offence of being a client in an act of prostitution by a person under 18 years, in order to give the District Court summary jurisdiction over this new offence.

Together these measures will improve the protection available for children from the worst forms of labour exploitation and will bring New Zealand legislation into compliance with ILO Convention 182 Concerning the Worst Forms of Child Labour.

Clause by clause analysis

Clause 1 sets out the Title of the Bill.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to principal Act

Clause 3 amends section 98 of the principal Act, which relates to dealing in slaves. Section 98 prohibits a wide range of conduct in relation to slaves. For example, it prohibits the selling or purchasing of any person as a slave, employing or using any person as a slave, detaining or confining any person as a slave, and providing or being involved in the transportation of slaves. Section 98 currently also prohibits some conduct in relation to debt-bondage and serfdom (as these terms are defined in section 98(2)). That is, section 98(1)(f) prohibits inducing any person to place himself or any other person in debt-bondage or serfdom. The purpose of the amendments to section 98 is to extend the section to prohibit the range of activity in relation to debt-bondage and serfdom that is currently prohibited in relation to slaves.

Clause 4 substitutes a *new section 149* into the principal Act. The current section 149, which relates to procuring sexual intercourse, prohibits only the procuring of females for males. The new provision is intended to be gender neutral, prohibiting the procuring of

both males and females, and prohibiting procuring for prostitution for either males or females. The further difference between the *new section 149* and the existing provision is that the existing provision prohibits only procuring for sexual intercourse. The common law concept of prostitution includes non-penetrative sexual activity and other acts. The new section is intended to extend the prohibition to include procuring for all acts of prostitution.

Clause 5 inserts a *new section 149A* into the principal Act. The new section provides that every one is liable to imprisonment for a term not exceeding 5 years who is a client in an act of prostitution by a person under the age of 18 years. The new provision does not define prostitution, but relies on the common law meaning of that term.

New section 149A(2) provides a defence if the person charged believed on reasonable grounds that the prostitute was of or over the age of 18 years.

Part 2

Amendment to Summary Proceedings Act 1957

Clause 6 amends the First Schedule of the Summary Proceedings Act 1957 to add a reference to *new section 149A*. The effect of this amendment is that, under section 6 of the Summary Proceedings Act 1957, a District Court presided over by a District Court Judge will have summary jurisdiction in respect of the new offence, and proceedings in respect of it may be taken in a summary way.

Hon Phil Goff

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Crimes Amendment Act **2000**.
(2) In this Act, the Crimes Act 1961¹ is called “the principal Act”.

¹ 1961 No 43

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to principal Act

3 Dealing in slaves

- (1) Section 98(1) of the principal Act is amended by repealing paragraphs (e) and (f), and substituting the following paragraphs:

“(e) in any case not covered by paragraph (d), induces any person to sell, let, or give any other person into debt-bondage or serfdom; or

- “(f) builds, fits out, sells, purchases, transfers, lets, hires, uses, provides with personnel, navigates, or serves on board any ship or aircraft for any of the purposes in **paragraphs (a) to (e)**; or”.
- (2) Section 98(2) of the principal Act is amended by adding the following definition: 5
 “**slave** includes, without limitation, a person subject to debt-bondage or serfdom.”
- 4 New section 149 substituted**
 The principal Act is amended by repealing section 149, and substituting the following section: 10
- “**149 Procuring for prostitution**
 Every one is liable to imprisonment for a term not exceeding 5 years who, for gain or reward, procures or agrees or offers to procure any person for the purposes of prostitution with any other person.” 15
- 5 New section 149A inserted**
 The principal Act is amended by inserting, after section 149, the following section:
- “**149A Being client in act of prostitution by person under 18 years of age** 20
- “(1) Every one is liable to imprisonment for a term not exceeding 5 years who is a client in an act of prostitution by a person under the age of 18 years.
- “(2) It is a defence to a charge under this section if the person charged believed on reasonable grounds that the prostitute was of or over the age of 18 years.” 25

Part 2

Amendment to Summary Proceedings Act 1957

- 6 Amendment to First Schedule of Summary Proceedings Act 1957** 30
 Part I of the First Schedule of the Summary Proceedings Act 1957 is amended by inserting, after the item relating to section 149 of the Crimes Act 1961, the following item:
- “**149A** Being client in act of prostitution by person under 18 years of age”. 35