

Crimes Amendment Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Crimes Amendment Bill and recommends that it be passed with the amendment shown.

Introduction

The bill as introduced seeks to repeal three sections of the Crimes Act 1961. Removing the three sections would modernise our law, as they are widely acknowledged to be out of date and not representative of contemporary attitudes in New Zealand society.

If enacted, the bill would repeal section 71(2), relating to immunity for spouses as an accessory after the fact; section 123, which is the offence of blasphemous libel; and section 162, which is the “year and a day rule”. This last change would allow prosecution of an alleged offender for an act or omission that resulted in death more than a year and a day later.

Proposed amendments

We are recommending just one technical amendment to the bill as introduced, regarding the repeal of the year and a day rule.

The bill as introduced contains a transitional provision (in clause 2 of Schedule 1AA, inserted by Schedule 1 of the bill) that clarifies that the repeal of the year and a day rule is not retrospective. That is, the limitation on prosecution would continue to apply to acts or omissions that occurred before the date the bill came into force. While National members of the committee have strong reservations about this transitional provision, we have unanimously agreed to amend it to clarify its drafting, so that it applies only to acts or omissions to which section 162 applies.

We recommend amending the proposed new Schedule 1AA to clarify that the nature of acts and omissions to which the transitional provision applies are the same as those currently specified in section 162.

Issues we considered

We received 42 submissions on the bill. Most submitters commented only on the repeal of the blasphemous libel offence. A slight majority of submitters did not support the bill on this ground alone. A small number of submitters also raised issues about the repeal of the year and a day rule in section 162 and repeal of section 71(2).

Spousal immunity for accessory to a crime after the fact

We do not recommend amendments to clause 4. As introduced, clause 4 would repeal section 71(2) of the principal Act to remove immunity for a spouse or civil union partner from prosecution as an accessory after the fact.

We consider that no justification exists for protecting anyone who interferes with the execution of justice as an accessory after the fact. In our view, being married or in a civil union relationship provides no reason to protect those who intentionally obstruct justice. We note that there is no such immunity from prosecution for others such as those in long-term de facto relationships.

Blasphemous libel

We recommend no changes to clause 5, which would repeal section 123, doing away with the offence of blasphemous libel.

We heard concerns that the repeal would encourage hate speech against God, incite violence, and remove a safeguard for religious freedom. It was suggested that the repeal would disrupt the maintenance of wholesome boundaries in the media, and would insult God and the Christian foundations of New Zealand.

We consider it highly unlikely that the repeal of this little-known provision would result in any of these issues.

Arguments in support of repeal included the idea that the current law is an unwarranted restriction on the right to freedom of expression, and that it does not align with the values of modern New Zealand. It was also suggested that the current law is Christianity-specific and not suited to a secular society. A number of submitters suggested replacing section 123 with another provision to provide protection from anti-religious conduct or to prevent prosecution for expressing an opinion on a religious matter. We do not consider this necessary.

Section 162 – Death must be within a year and a day

Repeal of section 162 would allow the prosecution of an alleged offender for his or her act or omission that resulted in death more than a year after that cause of death.

There would be no statutory period within which death must result from an act or omission for charges to be brought. It would be possible to file charges in respect of a death that occurred many years after the causative act or omission.

We discussed what this would mean for deaths that can be attributed to engineering faults in construction, where there may be a long period between an act that gave rise to a fault and the ensuing structural failure. The repeal could mean, in a future case similar to the CTV building collapse, that there would be no bar to prosecution after a period of, say, 25 years.

Similarly, in other cases such as an assault resulting in death after a person was kept on life-support for a long period, there would be no statutory period within which death must result for the act or omission resulting in death to be prosecuted.

However, we understand that cases involving such scenarios will be rare.

We considered whether there should be some other time limit for prosecution. We decided against this as it would preclude prosecution in cases where the evidence and causative link were still strong, and there was public interest in prosecution.

Timing of year and a day amendment to repeal application

We discussed whether the bill should be amended so that those whose acts or omissions occurred before the repeal date could not benefit from the year and a day rule in any circumstances.

There is a dilemma in the timing of the application of the year and a day repeal as it will apply in future to the failure of engineering structures that were built prior to the passage of the bill. If the bill only applies from the date it is passed, it means that negligent designers of structures prior to the passage of the bill will be able to use the defence of the year and a day rule to avoid prosecution. This is particularly significant for an issue like seismic risk where the design of a building may not be tested for many decades after it is designed. The counter argument is that there is a longstanding legal principle that people are charged only under the law in place at the time of their conduct.

National members view the year and a day rule as a loophole. Having accepted this law as wrong in the past—for example, it was unjust for people in tragedies like Cave Creek, the CTV building and the Pike River mine for prosecution to be limited by this provision—they do not think it is acceptable to apply the provision for any act of negligence that has occurred in the past but may not come to be tested until after the bill is passed. They are concerned that there will be another tragedy in which people will be able to use this loophole to avoid accountability, and believe this is a stronger argument than the more pure legal argument about retrospectivity.

Labour members understand the concerns, and one of the intentions of this bill is to modernise a law which is no longer representative of contemporary attitudes in New Zealand society. However, they consider that it would be constitutionally wrong to retrospectively remove the limitation on prosecution for acts or omissions that occur

before the repeal date. They believe this would be in breach of a fundamental tenet of the criminal law against retrospectivity.

We received strong advice that a limitation on prosecution is an existing right that should not be removed retrospectively.

Reasons for not making the bill retrospective in effect include section 26(1) of the New Zealand Bill of Rights Act 1990. This provides that no one shall be liable to conviction of any offence on account of any act or omission which did not constitute an offence by such person under the law of New Zealand at the time it occurred. This provision is also strengthened by section 10A of the Crimes Act 1961, which explains that criminal enactments are not to have retrospective effect.

Appendix

Committee process

The Crimes Amendment Bill was referred to the committee on 28 March 2018. The closing date for submissions was 10 May 2018. We received and considered 42 submissions from interested groups and individuals. We heard oral evidence from 5 submitters at hearings in Wellington.

We received advice from the Ministry of Justice.

Committee membership

Raymond Huo (Chairperson)

Ginny Andersen

Hon Maggie Barry

Chris Bishop

Hon Mark Mitchell

Greg O'Connor

Priyanca Radhakrishnan (until 15 August 2018)

Hon Dr Nick Smith

Dr Duncan Webb (from 15 August 2018)

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Andrew Little

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Crimes Amendment Act **2018**.

2 Commencement

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

3 Principal Act

This Act amends the Crimes Act 1961 (the **principal Act**).

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Part 1**Substantive amendments to principal Act****4 Section 71 amended (Accessory after the fact)**

Repeal section 71(2).

5 Section 123 repealed (Blasphemous libel)

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Repeal section 123.

6 Section 162 repealed (Death must be within a year and a day)

Repeal section 162.

Part 2**Other amendments to principal Act**

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7 New section 4A inserted (Transitional, savings, and related provisions)

After section 4, insert:

4A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

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8 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

9 Consequential amendments

Amend the principal Act as set out in **Schedule 2**.

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Schedule 1
New Schedule 1AA inserted

s 8

Schedule 1AA
Transitional, savings, and related provisions

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s 4A

Part 1
Provisions relating to Crimes Amendment Act 2018

- 1 Immunity for spouses and civil union partners from prosecution as accessory after the fact** 10
- (1) For the purpose of this clause, **repeal date** means the date on which the Crimes Amendment Act **2018** comes into force.
- (2) The immunity in section 71(2) continues to apply on and after the repeal date if an act to which section 71(1) would otherwise apply was done before the repeal date. 15
- 2 Limitation on prosecution for killing person if period between cause of death and death is more than a year and a day**
- (1) For the purpose of this clause, **repeal date** means the date on which the Crimes Amendment Act **2018** comes into force.
- (2) ~~The limitation on prosecution in section 162 continues to apply on and after the repeal date if an act or omission that is alleged to be a cause of death was done or omitted before the repeal date.~~ 20
- (3) ~~**Subclause (2)** applies whether the alleged resulting death occurred before or after the repeal date.~~
- (2) The limitation on prosecution in section 162 continues to apply on and after the repeal date if an act to which section 162 applies is done, or an omission to which section 162 applies occurs, before the repeal date (irrespective of when the resulting death occurs). 25

Schedule 2
Consequential amendments to principal Act

s 9

Section 1

In section 1(3), after “Part 7—”, replace “Crimes against religion, morality, and public welfare (sections 123 to 150)” with “Crimes against morality and decency, sexual crimes, and crimes against public welfare (sections 124 to 150)”. 5

Part 7 heading

Replace the Part 7 heading with:

Part 7
Crimes against morality and decency, sexual crimes, and crimes
against public welfare

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Cross-heading above section 123

Repeal the cross-heading above section 123.

Legislative history

19 March 2018
28 March 2018

Introduction (Bill 32–1)
First reading and referral to Justice Committee