

CRIMES AMENDMENT ACT 2002

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Crimes Amendment Act 2002.
- (2) In this Act, the Crimes Act 1961 is called "the principal Act".

2 Commencement

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

3 Interpretation

Section 2(1) of the principal Act is amended by inserting, before the definition of offence, the following definition:

"obtain a material benefit, in relation to doing a thing, means obtain, directly or indirectly, any goods, money, pecuniary advantage, privilege, property, or other valuable consideration of any kind for doing the thing (or taking an action that forms part of doing the thing)".

4 New sections 7A and 7B inserted

The principal Act is amended by inserting, after section 7, the following sections:

"7A Extraterritorial jurisdiction in respect of certain offences with transnational aspects

"(1) Even if the acts or omissions alleged to constitute the offence occurred wholly outside New Zealand, proceedings may be brought for an offence against section 98A, section 98C, section 98D, any of sections 100 to 104, section 105(2), section 116, section 117, or section 257A---

"(a) if the person to be charged---

"(i) is a New Zealand citizen; or

"(ii) is ordinarily resident in New Zealand; or

"(iii) has been found in New Zealand and has not been extradited; or

"(iv) is a body corporate, or a corporation sole, incorporated under the law of New Zealand; or

"(b) if any of the acts or omissions is alleged to have occurred---

"(i) on board a ship registered or required to be registered under the Ship Registration Act 1992; or

"(ii) on board a ship used as a ship of the New Zealand Defence Force; or

"(iii) on board a New Zealand aircraft; or

"(iv) on board an aircraft that is leased to a lessee whose principal place of business is in New Zealand, or who is a New Zealand citizen or a person ordinarily resident in New Zealand; or

"(c) if a person in respect of whom the offence is alleged to have been committed---

"(i) is a New Zealand citizen; or

"(ii) is ordinarily resident in New Zealand; or

"(d) in the case of an offence against section 98A, if the group of people in which the person to be charged is alleged to have participated are alleged to have as their objective or one of their objectives the obtaining of material benefits by the commission in New Zealand of offences or conduct referred to in paragraph (a) or paragraph (b) of section 98A(2).

"(2) Even if the acts or omissions alleged to constitute the offence occurred wholly outside New Zealand, proceedings may be brought for an offence against section 98C or section 98D,---

"(a) in the case of an offence against section 98C(1) or section 98D, if the act or omission is alleged to relate to the entry of a person into New Zealand; or

"(b) in the case of an offence against section 98C(2), if the act or omission is alleged to relate to arranging the bringing of a person to New Zealand.

"(3) Neither section 8 nor section 400 applies to an offence referred to in subsection (1).

"(4) Nothing in subsections (1) to (3) limits or affects---

"(a) the application of section 7 to the occurrence in New Zealand of---

"(i) an act or omission forming part of an offence; or

"(ii) an event necessary to the completion of an offence; or

"(b) the application of section 8A.

"7B Attorney-General's consent required where jurisdiction claimed under section 7A

"(1) Proceedings for an offence against section 98A, section 116, section 117, or section 257A cannot be brought in a New Zealand court against a person without the Attorney-General's consent, if jurisdiction over the person is claimed by virtue of section 7A.

"(2) A person over whom jurisdiction is claimed by virtue of section 7A may be arrested for an offence against section 98A, section 116, section 117, or section 257A, or a warrant for the

person's arrest for the offence may be issued and executed, and the person may be remanded in custody or on bail, even though the Attorney-General's consent to the bringing of proceedings against the person has not been obtained."

5 New sections 98A to 98F and heading substituted

The principal Act is amended by repealing section 98A, and substituting the following sections and heading:

"98A Participation in organised criminal group

"(1) Every one is liable to imprisonment for a term not exceeding 5 years who participates (whether as a member or an associate member or prospective member) in an organised criminal group, knowing that it is an organised criminal group, and---

"(a) knowing that his or her participation contributes to the occurrence of criminal activity; or

"(b) reckless as to whether his or her participation may contribute to the occurrence of criminal activity.

"(2) For the purposes of this Act, a group is an organised criminal group if it is a group of 3 or more people who have as their objective or one of their objectives---

"(a) obtaining material benefits from the commission of offences that are punishable by imprisonment for a term of 4 years or more; or

"(b) obtaining material benefits from conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of offences that are punishable by imprisonment for a term of 4 years or more; or

"(c) the commission of serious violent offences (within the meaning of section 312A(1)) that are punishable by imprisonment for a term of 10 years or more; or

"(d) conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of serious violent offences (within the meaning of section 312A(1)) that are punishable by imprisonment for a term of 10 years or more.

"(3) A group of people is capable of being an organised criminal group for the purposes of this Act whether or not---

"(a) some of them are subordinates or employees of others; or

"(b) only some of the people involved in it at a particular time are involved in the planning, arrangement, or execution at that time of any particular action, activity, or transaction; or

"(c) its membership changes from time to time.

"Smuggling and trafficking in people

"98B Terms used in sections 98C to 98F, unless the context otherwise requires,

--- act of coercion against the person includes---

"(a) abducting the person:

"(b) using force in respect of the person:

"(c) harming the person:

"(d) threatening the person (expressly or by implication) with the use of force in respect of, or the harming of, the person or some other person

"act of deception includes fraudulent action

"arranges for an unauthorised migrant to be brought to a state includes---

"(a) organises or procures the bringing to a state:

"(b) recruits for bringing to a state:

"(c) carries to a state

"arranges for an unauthorised migrant to enter a state includes---

"(a) organises or procures the entry into a state:

"(b) recruits for entry into a state:

"(c) carries into a state

"document includes a thing that is or is intended to be---

"(a) attached to a document; or

"(b) stamped or otherwise signified on a document

for a material benefit, in relation to doing a thing, means---

"(a) after having obtained a material benefit for doing the thing; or

"(b) intending to obtain a material benefit for doing the thing

"harming of a person means causing harm of any kind to the person; and (in particular) includes---

"(a) causing physical, psychological, or financial harm to the person:

"(b) sexually mistreating the person:

"(c) causing harm to the person's reputation, status, or prospects

"unauthorised migrant, in relation to a state, means a person who is neither a citizen of the state nor in possession of all the documents required by or under the law of the state for the person's lawful entry into the state.

"98C Smuggling migrants

"(1) Every one is liable to the penalty stated in subsection (3) who arranges for an unauthorised migrant to enter New Zealand or any other state, if he or she---

"(a) does so for a material benefit; and

"(b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant.

"(2) Every one is liable to the penalty stated in subsection (3) who arranges for an unauthorised migrant to be brought to New Zealand or any other state, if he or she---

"(a) does so for a material benefit; and

"(b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant; and

"(c) either---

"(i) knows that the person intends to try to enter the state; or

"(ii) is reckless as to whether the person intends to try to enter the state.

"(3) The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both.

"(4) Proceedings may be brought under subsection (1) even if the unauthorised migrant did not in fact enter the state concerned.

"(5) Proceedings may be brought under subsection (2) even if the unauthorised migrant was not in fact brought to the state concerned.

"98D Trafficking in people by means of coercion or deception

"(1) Every one is liable to the penalty stated in subsection (2) who---

"(a) arranges the entry of a person into New Zealand or any other state by one or more acts of coercion against the person, one or more acts of deception of the person, or both; or

"(b) arranges, organises, or procures the reception, concealment, or harbouring in New Zealand or any other state of a person, knowing that the person's entry into New

Zealand or that state was arranged by one or more acts of coercion against the person, one or more acts of deception of the person, or both.

"(2) The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both.

"(3) Proceedings may be brought under this section even if the person coerced or deceived---

"(a) did not in fact enter the state concerned; or (as the case may be)

"(b) was not in fact received, concealed, or harboured in the state concerned.

"(4) Proceedings may be brought under this section even if parts of the process by which the person coerced or deceived was brought or came to or towards the state concerned were accomplished without an act of coercion or deception.

"98E Aggravating factors

"(1) When determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 98C or section 98D, a court must take into account---

"(a) whether bodily harm or death (whether to or of a person in respect of whom the offence was committed or some other person) occurred during the commission of the offence:

"(b) whether the offence was committed for the benefit of, at the direction of, or in association with, an organised criminal group (within the meaning of section 98A(2)):

"(c) whether a person in respect of whom the offence was committed was subjected to inhuman or degrading treatment as a result of the commission of the offence:

"(d) if during the proceedings concerned the person was convicted of the same offence in respect of 2 or more people, the number of people in respect of whom the offence was committed.

"(2) When determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 98D, a court must also take into account---

"(a) whether a person in respect of whom the offence was committed was subjected to exploitation (for example, sexual exploitation, a requirement to undertake forced labour, or the removal of organs) as a result of the commission of the offence:

"(b) the age of the person in respect of whom the offence was committed and, in particular, whether the person was under the age of 18 years:

"(c) whether the person convicted committed the offence, or took actions that were part of it, for a material benefit.

"(3) The examples in paragraph (a) of subsection (2) do not limit the generality of that paragraph.

"(4) This section does not limit the matters that a court may take into account when determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 98C or section 98D.

"98F Attorney-General's consent to prosecutions required

"(1) Proceedings for an offence against section 98C or section 98D cannot be brought in a New Zealand court without the Attorney-General's consent.

"(2) A person alleged to have committed an offence against section 98C or section 98D may be arrested, or a warrant for the person's arrest may be issued and executed, and the person be remanded in custody or on bail, even though the Attorney-General's consent to the bringing of proceedings against the person has not been obtained."

6 Conspiring to defeat justice

(1) Section 116 of the principal Act is amended by adding the words "in New Zealand or the course of justice in an overseas jurisdiction".

(2) Subsection (1) is for the avoidance of doubt.

7 New section 117 substituted

(1) The principal Act is amended by repealing section 117, and substituting the following section:

"117 Corrupting juries and witnesses

Every one is liable to imprisonment for a term not exceeding 7 years who---

"(a) dissuades or attempts to dissuade a person, by threats, bribes, or other corrupt means, from giving evidence in any cause or matter (whether civil or criminal, and whether tried or to be tried in New Zealand or in an overseas jurisdiction); or

"(b) influences or attempts to influence, by threats or bribes or other corrupt means, a member of a jury in his or her conduct as such (whether in a cause or matter tried or to be tried in New Zealand or in an overseas jurisdiction, and whether the member has been sworn as a member of a particular jury or not); or

"(c) accepts any bribe or other corrupt consideration to abstain from giving evidence (whether in a cause or matter tried or to be tried in New Zealand or in an overseas jurisdiction); or

"(d) accepts any bribe or other corrupt consideration on account of his or her conduct as a member of a jury (whether in a cause or matter tried or to be tried in New Zealand or in an overseas jurisdiction, and whether the member has been sworn as a member of a particular jury or not); or

"(e) wilfully attempts in any other way to obstruct, prevent, pervert, or defeat the course of justice in New Zealand or the course of justice in an overseas jurisdiction."

(2) Subsection (1) is for the avoidance of doubt.

8 Consequential amendments to Customs and Excise Act 1996

(1) Section 143 of the Customs and Excise Act 1996 is amended by repealing subsection (1), and substituting the following subsections:

"(1AA) Subsection (1) applies to a customs officer and a craft---

"(a) if the officer has reasonable cause to believe that an offence against this Act has been, is being, or is about to be committed on or in respect of the craft while it was or is within New Zealand; or

"(b) if the craft is within New Zealand, and the officer has reasonable cause to believe that---

"(i) there is on the craft a person who was carried into New Zealand on it; and

"(ii) the carriage of the person into New Zealand on the craft constituted an offence against section 98C(1) of the Crimes Act 1961.

"(1) If subsection (1AA) applies to a Customs officer and a craft, the Customs officer---

"(a) may---

"(i) direct the craft to proceed to the nearest Customs place, or any other place the officer considers appropriate; or

"(ii) direct that the craft remain where it is; and

"(b) in either case, may detain the craft for any time and for any purposes reasonably necessary to carry out an investigation into the commission of the offence concerned."

(2) Section 174 of the Customs and Excise Act 1996 is amended by repealing subsection (2), and substituting the following subsection:

"(2) Notwithstanding subsection (1), a Customs officer may arrest without warrant any person found on a craft if the officer believes on reasonable grounds---

"(a) that the person has committed, is committing, or is attempting to commit, or is otherwise concerned in the commission of, an offence against this Act that is punishable by imprisonment; or

"(b) that---

"(i) the person carried into New Zealand some other person who is on the craft; and

"(ii) the carriage of the other person into New Zealand on the craft constituted an offence against section 98C(1) of the Crimes Act 1961."

Legislative history

11 June 2002 Divided from Transnational Organised Crime Bill (Bill 201-2), third reading