Q+A - Objectionable Publications and Indecency Legislation Bill

What does the Bill do?

The Government is sending a strong message that the exploitation and abuse of children will not be tolerated.

Sentences for child sexual exploitation offences should reflect the seriousness of the offending. So, we are increasing penalties for production, possession, and distribution of material showing child sexual abuse online.

The new Bill:

- increases the maximum penalties for possession, import or export, distribution and making objectionable publications
- creates a presumption of imprisonment so that any person convicted of a child sexual exploitation offence for a second time will be sentenced to a term of imprisonment
- amends the Films, Videos, and Publications Classification Act 1993 (the Classification Act) so that enforcement agencies will no longer need to obtain leave from the Attorney-General to prosecute objectionable publication offences under that Act
- amends the Classification Act to make it clear that possession of an objectionable publication includes intentionally viewing an electronic publication without consciously downloading or saving it, and
- creates a new offence of indecent communication with a child (anyone under the age of 16).

Which offences will attract higher penalties, and by how much are they increasing?

The maximum penalty for:

- possession of an objectionable publication (Classification Act) will increase from 5 years’ imprisonment to 10 years.
- import or export of an objectionable publication (Customs and Excise Act) will increase from 5 years’ imprisonment to 10 years.
- distribution of an objectionable publication (Classification Act) will increase from 10 years’ imprisonment to 14 years
- making an objectionable publication (Classification Act) will increase from 10 years’ imprisonment to 14 years.

Why are the maximum penalties being increased?

Child sexual abuse material is a record of terrible abuse suffered by children. Children are often re-victimised by the knowledge that images of their abuse is
available on the internet. Possession of this material encourages its creation and
distribution.
Advances in technology now allow offenders to amass large collections of child
sexual abuse which can be distributed at the click of a button. These advances in
technology allow child sexual exploitation offenders to be complicit in the abuse of
thousands of children.

In 2009, a United Nations report estimated that internationally 200 new images were
put into circulation every day.

There is also evidence that the content of the publications is getting worse and that
the children victims are getting younger.

In 2007, the United Kingdom’s Internet Watch Foundation identified a trend towards
websites depicting the most extreme and brutal forms of abuse.

This trend is supported by observations made by the New Zealand Chief Censor and
Deputy Chief Censor as well as New Zealand enforcement agencies.

**How will the changes improve the current regime?**

Sentences for child sexual exploitation convictions may not always reflect the
seriousness of the offending.

Increasing the maximum penalties will signal that these offences are to be
considered very serious. Given the harm that child sexual abuse online has on
victims the increases in maximum penalties are appropriate.

The changes also aim to future-proof the legislation against unforeseeable advances
in technology by clarifying the law relating to possession of electronic objectionable
material. This will remove the risk that offenders with particular technical expertise
will be able to view objectionable publications without committing an offence against
the Act.

**Would a computer user who accidentally clicks on an offensive link be guilty
of possession?**

No. The change to the Classification Act will make it clear that possession relates to
intentional viewing of electronic objectionable material.

If a person accidentally or unintentionally clicks on a link to offensive material, they
will not be committing an offence. Forensic analysis of a person’s computer will
enable enforcement agencies to distinguish between accidental (or unintentional)
and deliberate viewing of objectionable publications.
Why is a presumption of imprisonment for repeat child sexual exploitation offenders necessary?

A sentence of imprisonment is a strong deterrent and will help reduce recidivism.

Under the Bill, a repeat child sexual exploitation offender must be sentenced to a term of imprisonment unless the court considers the offender should not be so sentenced, having regard to:

   a) the particular circumstances of the repeat offence; and
   b) the particular circumstances of the offender (including, without limitation, his or her age if he or she is under 20 years of age).

The presumption of imprisonment provision will not apply to other forms of objectionable publications.

Why is the requirement to obtain the Attorney-General’s leave to prosecute being removed?

The current requirement to obtain the Attorney-General’s leave was originally included in the Classification Act as a safe-guard against inappropriate prosecution.

Enforcement agencies are now very experienced in bringing these kinds of prosecutions and the requirement to obtain the Attorney-General's leave is no longer serving a useful purpose.

The requirement to seek leave will remain for private prosecutions and when there are extraterritorial jurisdiction issues (i.e. where the offending occurred outside New Zealand).

Why is a new offence of indecent communication with a child necessary? What will be the maximum penalty for this offence?

Indecent or sexualised communication with children is totally unacceptable and this new offence makes that clear.

Indecent communication with a child can occur via a variety of mediums, including text or picture messaging, internet chat and telephone. The communication is damaging to the child regardless of the medium. Therefore, it should be an offence to communicate in this way with a child regardless of the medium used.

The new offence will be punishable by a maximum penalty of 3 years' imprisonment.
How many people might be prosecuted under the new indecent communications offence?

As this would be a new offence, it is difficult to predict the number of new prosecutions that will be brought.

However, the state of Queensland has a similar offence, and Queensland police receive an average of 60 complaints each year related to it.

Given that the proposed offence of indecent communication with a child is broader than the Queensland offence, it is likely that 60 or more cases would be dealt with by New Zealand police per year.

What else is the Government doing to fight child sexual abuse online?

Thanks to the commitment and efforts of skilled and caring professionals in the public and private sectors, various measures to combat child sexual abuse online have been put in place. These include efforts to dismantle child sexual exploitation networks, block internet sites, seize harmful material and raise public awareness.

The Bill also reflects the Government’s commitment to international efforts to fight child sexual abuse online.

Last year, New Zealand was one of 48 countries to sign up to the Global Alliance against child sexual abuse online. The Global Alliance will strengthen our resources to identify more victims of child sexual abuse, and ensure that they receive our help and support. It aims to eliminate legal loopholes exploited by the distributors of child abuse material, strengthen efforts to grow the Interpol international database of child abuse material, and make it easier to initiate joint cross-border police investigations.

What is an objectionable publication?

Under the Classification Act, a publication (which can include images and movies) is considered objectionable if it describes, depicts, expresses or otherwise deals with matters such as sex, horror, crime, cruelty or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

The Classification Act makes it an offence to possess, distribute or make an objectionable publication.

Child sexual abuse material is effectively a subset of objectionable publications under the Classification Act.

What is child sexual exploitation?

Under the Classification Act, a publication may be considered objectionable if it:
• promotes or supports, or tends to promote or support, the exploitation of children or young persons (or both) for sexual purposes; or
• describes, depicts or otherwise deals with sexual conduct with or by children or young persons (or both); or
• exploits the nudity of children or young persons (or both).

How many people are convicted of child sexual exploitation offences in New Zealand and what sentences do they receive?

Child sexual abuse online is a priority for enforcement agencies and the vast majority of objectionable publication convictions are for child sexual abuse online.

Between 2004 and 2011, nearly 400 people were convicted of an objectionable publication offence under the Classification Act. Thirty-three percent received a prison sentence.

Who makes decisions on what is considered objectionable?

The Office of Film and Literature Classification (the Classification Office) makes decisions on what is objectionable.

The Classification Office is an independent Crown entity. Its board consists of the Chief Censor and Deputy Chief Censor who are appointed by the Governor-General.

Classification Office decisions can be reviewed by the Film and Literature Board of Review.