

Objectionable Publications and Indecency Legislation Bill Q & A

What does the Bill do?

The Government's objective is to ensure that sentences for offences that involve child exploitation material reflect the seriousness of the offending and send a strong message that the exploitation and abuse of children will not be tolerated.

The 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 exploitation material 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
- Creates a new offence of indecent communication with a child (anyone under the age of 16).

Which offences are maximum penalties being increased for, and by how much?

The Bill:

- increases the maximum penalty for possession of an objectionable publication (Classification Act) from 5 years' imprisonment to 10 years
- increases the maximum penalty for import or export of an objectionable publication (Customs and Excise Act) from 5 years' imprisonment to 10 years
- increases the maximum penalty for distribution of an objectionable publication (Classification Act) from 10 years' imprisonment to 14 years
- increases the maximum penalty for making an objectionable publication (Classification Act) from 10 years' imprisonment to 14 years.

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.

What is child exploitation material?

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 exploitation material offences in New Zealand and what sentences do they receive?

Overall, between 2004 and 2011, almost 400 people were convicted of an objectionable publication offence (i.e., not just child exploitation material offences) under the Classification Act. Thirty-three percent received a prison sentence.

Online child exploitation material is a priority for enforcement agencies and the vast majority of objectionable publication convictions are for child exploitation material .

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.

Why not create a specific child exploitation material offence?

In New Zealand all publications are dealt with by the Classification Office under a single set of classification criteria and procedures which is operating well.

Why are the maximum penalties being increased?

This Government is committed to increasing the penalties for producing, trading or possessing child exploitation material.

The creation, distribution or possession of child exploitation material is abhorrent. In most instances, child exploitation 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.

Further, the possession of this material encourages its creation and distribution. Advances in technology now allow child exploitation material offenders to amass large collections of child sexual abuse online and to distribute it at the click of a button.

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.

How will the changes improve the current regime?

Increasing the maximum penalties will signal that these offences are to be considered very serious. Given the harm that child exploitation material 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 Classification Act.

Why is a presumption of imprisonment for repeat child exploitation material offenders necessary?

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

Under the Bill, a repeat child exploitation material 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.

What kind of rehabilitation is available for child exploitation material offenders?

Treatment options for child exploitation material offenders are offered in both prisons and the community. The decision to treat a child exploitation material offender is made on an individual basis after assessment and according to the key principles of risk, need and responsiveness.

Child exploitation material offenders incarcerated in prison may be admitted to a special treatment unit inside the prison. These units have been established to treat child sex offenders so that they avoid re-offending. These programmes help

offenders look at the patterns of their offending and identify high risk situations. Offenders may also receive individual intervention through a psychologist.

There are a variety of options available for treatment of these offenders in the community, depending primarily on the offender's risk level. These include community treatment programmes, individual psychologist support and support planning meetings. Treatment programmes run by community providers, and funded by a number of agencies, include the SAFE Network Inc, WellStop Inc, and STOP Trust.

**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 exploitation material 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.

Last year, New Zealand was one of 48 countries to sign up to the Global Alliance against child exploitation material. 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 exploitation material, strengthen efforts to grow the Interpol international database of child exploitation material, and make it easier to initiate joint cross-border police investigations.

Domestically, we are also striving to combat general child abuse. For example:

- Police are working closely with Justice and support agencies (including Social Development, Education, and Health) to develop policies and processes to better protect children.
- Two of our key initiatives are to introduce Child Harm Prevention Orders to protect children from high-risk abusive adults and a mandatory regime for the screening of adults who are working with children.
- Police are also working with other justice sector partners to develop a Sex Offender Register and Management System for adults who pose a risk of sexual offending against children. Legislation is expected to be introduced later this year.
- In partnership with the Department of Corrections, Internal Affairs is trialling a scheme to monitor the Internet access of persons subject to supervision orders.

What are the next steps?

The Objectionable Publications and Indecency Legislation Bill has passed its first reading. The Bill has been referred to the Justice and Electoral Committee for consideration. Members of the public will have an opportunity to make submissions to the Committee.