

DRAFT FOR CONSULTATION

Crimes (Offence of Failing to Report Child Harm) Amendment Bill

Member's Bill

Explanatory note

General policy statement

This Bill addresses the loophole in the law that is the denial of justice for victims of child abuse because of their families' or others' failure to disclose information to police. It does this by criminalising the non-disclosure of child abuse with a maximum penalty of imprisonment of three years.

This requires anyone who knows, or ought to know, that abuse against a child has taken place to report this to police. A person will know, or ought to know, abuse has occurred where someone sees abuse occur, sees physical signs of abuse, or is told by a child that they or someone they know has been abused. This is balanced by a 'reasonable excuse' defence which applies in cases where someone fears for their or another person's safety, or believes that the information has already been disclosed by another person.

The Bill is modelled on the Australian state of Victoria's 'failure to disclose offence' which was introduced in 2014 to criminalise the non-disclosure of child sex abuse in response to a recommendation by the Victorian government in its 2013 Betrayal of Trust report. It recommended that "failure to report or concealment of an offence is more appropriately dealt with under the criminal law than under the welfare/child protection regime".

Clause by clause analysis

Clause 1 is the title clause.

Clause 2 is the commencement clause, which provides for the Bill to come into force on the day after it receives the Royal assent.

Clause 3 identifies the Crimes Act 1961 as the Act being amended by the Bill.

Clause 4 inserts a *new section 195B* to make it an offence, punishable by up to 3 years in prison, to know that a child has been, or is likely to be, assaulted (whether physically or sexually) and not inform Police.

Clause 5 makes a consequential amendment to the Oranga Tamariki Act 1989 to require the Chief Executive who receives a report of concerns regarding child abuse under section 15 of that Act to report that information to a constable as soon as practicable.

Hon Andrew Bayly

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Crimes (Offence of Failing to Report Child Harm) Amendment Act **2024**.

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.

4 New section 195B inserted (Failure to report assault on child)

After section 195A, insert:

195B Failure to report assault on child

- (1) Every person is liable to imprisonment for a term not exceeding 3 years who—
 - (a) knows or ought to know that a child has been, or is likely to be, assaulted (whether physically or sexually); and
 - (b) fails, without reasonable excuse, to inform a constable as soon as possible.
- (2) A person does not commit an offence under **subsection (1)** if—
 - (a) the person has made a report under section 15 of the Oranga Tamariki Act 1989; or
 - (b) the person's knowledge comes from the victim of the alleged assault, whether directly or indirectly, and—
 - (i) the victim was aged 16 years or older at the time of providing that information to any person; and
 - (ii) the victim requested that the information not be disclosed; or
 - (c) the person was aged 18 years or younger at the time of the failure to inform a constable; or
 - (d) the person's knowledge comes from information that would be privileged by virtue of—
 - (i) any provision of subpart 8 of Part 2 of the Evidence Act 2006; or
 - (ii) any rule of law governing legal professional privilege.
- (3) In any prosecution for an offence against **subsection (1)**, it is not necessary for the prosecution to prove that the child was assaulted.
- (4) No civil, criminal, or disciplinary proceedings lie against any person in respect of information provided to a constable for the purposes of this section, unless the information was provided in bad faith.
- (5) In this section, a **reasonable excuse** may include—
 - (a) that the person fears, on reasonable grounds, for their safety, or the safety of another person were the person to disclose the information and the failure to disclose the information to police is a reasonable response in the circumstances:
 - (b) that the person believes on reasonable grounds that the information has already been disclosed to a constable by another person:
 - (c) that the person believes on reasonable grounds that the assault is so inconsequential that there is no public interest in informing a constable.

5 Consequential amendment to Oranga Tamariki Act 1989

- (1) This section amends the Oranga Tamariki Act 1989.
- (2) In section 15, insert as subsection (2):

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- (2) If the Chief Executive receives a report that contains information to which **section 195B** of the Crimes Act 1961 relates, the Chief Executive must report the information to a constable as soon as practicable after receiving the report.