



Crimes Amendment Act (No 3) 2011

Public Act 2011 No 79
Date of assent 19 September 2011
Commencement see section 2

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal Act amended	2

Part 1

Amendments to principal Act

4	Interpretation	2
5	Meeting young person under 16 following sexual grooming, etc	3
6	New sections 150A to 152 substituted	3
	150A Standard of care applicable to persons under legal duties or performing unlawful acts	3
	151 Duty to provide necessities and protect from injury	3
	152 Duty of parent or guardian to provide necessities and protect from injury	4
7	New sections 195 and 195A substituted	4
	195 Ill-treatment or neglect of child or vulnerable adult	4
	195A Failure to protect child or vulnerable adult	4
8	Possession of offensive weapons or disabling substances	5

Part 2
Amendments to other enactments and transitional provision

9	Amendment to Bail Act 2000	6
10	Amendment to Summary Offences Act 1981	6
11	Amendment to Summary Proceedings Act 1957	6
12	Transitional provision	6

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Crimes Amendment Act (No 3) 2011.
- 2 Commencement**
This Act comes into force 6 months after the date on which it receives the Royal assent.
- 3 Principal Act amended**
This Act amends the Crimes Act 1961.

Part 1
Amendments to principal Act

- 4 Interpretation**
 - (1) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
“**unlawful act** means a breach of any Act, regulation, rule, or bylaw
“**vulnerable adult**, for the purposes of sections 151, 195, and 195A, means a person unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw himself or herself from the care or charge of another person”.
 - (2) The definition of **claim of right** in section 2(1) is amended by omitting “that the act is lawful” and substituting “at the time of the act in a proprietary or possessory right in property in relation to which the offence is alleged to have been committed”.

5 Meeting young person under 16 following sexual grooming, etc

- (1) The heading to section 131B is amended by omitting “**under 16**”.
- (2) Section 131B is amended by inserting the following subsection after subsection (1):

“(1A) A reference in this section to a young person under the age of 16 years or the young person includes a reference to a constable who pretends to be a young person under the age of 16 years (the **fictional young person**) if the offender, when taking any of the actions described in subsection (1), believed that the fictional young person was a young person under the age of 16 years.”

6 New sections 150A to 152 substituted

Sections 150A to 152 are repealed and the following sections substituted:

“150A Standard of care applicable to persons under legal duties or performing unlawful acts

- “(1) This section applies in respect of—
 - “(a) the legal duties specified in any of sections 151, 152, 153, 155, 156, and 157; and
 - “(b) an unlawful act referred to in section 160 where the unlawful act relied on requires proof of negligence or is a strict or absolute liability offence.
- “(2) For the purposes of this Part, a person is criminally responsible for omitting to discharge or perform a legal duty, or performing an unlawful act, to which this section applies only if, in the circumstances, the omission or unlawful act is a major departure from the standard of care expected of a reasonable person to whom that legal duty applies or who performs that unlawful act.

“151 Duty to provide necessaries and protect from injury

Every one who has actual care or charge of a person who is a vulnerable adult and who is unable to provide himself or herself with necessaries is under a legal duty—

- “(a) to provide that person with necessaries; and

“(b) to take reasonable steps to protect that person from injury.

“152 Duty of parent or guardian to provide necessaries and protect from injury

Every one who is a parent, or is a person in place of a parent, who has actual care or charge of a child under the age of 18 years is under a legal duty—

“(a) to provide that child with necessaries; and

“(b) to take reasonable steps to protect that child from injury.”

7 New sections 195 and 195A substituted

Section 195 is repealed and the following sections are substituted:

“195 Ill-treatment or neglect of child or vulnerable adult

“(1) Every one is liable to imprisonment for a term not exceeding 10 years who, being a person described in subsection (2), intentionally engages in conduct that, or omits to discharge or perform any legal duty the omission of which, is likely to cause suffering, injury, adverse effects to health, or any mental disorder or disability to a child or vulnerable adult (the **victim**) if the conduct engaged in, or the omission to perform the legal duty, is a major departure from the standard of care to be expected of a reasonable person.

“(2) The persons are—

“(a) a person who has actual care or charge of the victim; or

“(b) a person who is a staff member of any hospital, institution, or residence where the victim resides.

“(3) For the purposes of this section and section 195A, a **child** is a person under the age of 18 years.

“195A Failure to protect child or vulnerable adult

“(1) Every one is liable to imprisonment for a term not exceeding 10 years who, being a person described in subsection (2), has frequent contact with a child or vulnerable adult (the **victim**) and—

- “(a) knows that the victim is at risk of death, grievous bodily harm, or sexual assault as the result of—
 - “(i) an unlawful act by another person; or
 - “(ii) an omission by another person to discharge or perform a legal duty if, in the circumstances, that omission is a major departure from the standard of care expected of a reasonable person to whom that legal duty applies; and
 - “(b) fails to take reasonable steps to protect the victim from that risk.
- “(2) The persons are—
- “(a) a member of the same household as the victim; or
 - “(b) a person who is a staff member of any hospital, institution, or residence where the victim resides.
- “(3) A person may not be charged with an offence under this section if he or she was under the age of 18 at the time of the act or omission.
- “(4) For the purposes of this section,—
- “(a) a person is to be regarded as a member of a particular household, even if he or she does not live in that household, if that person is so closely connected with the household that it is reasonable, in the circumstances, to regard him or her as a member of the household:
 - “(b) where the victim lives in different households at different times, **the same household** refers to the household in which the victim was living at the time of the act or omission giving rise to the risk of death, grievous bodily harm, or sexual assault.
- “(5) In determining whether a person is so closely connected with a particular household as to be regarded as a member of that household, regard must be had to the frequency and duration of visits to the household and whether the person has a familial relationship with the victim and any other matters that may be relevant in the circumstances.”

- 8 Possession of offensive weapons or disabling substances**
Section 202A(4) is amended by omitting “2 years” and substituting “3 years”.

Part 2

Amendments to other enactments and transitional provision

9 Amendment to Bail Act 2000

- (1) This section amends the Bail Act 2000.
- (2) Section 7(3)(b) and (c) are repealed and the following paragraphs substituted:
 - “(b) section 151 (duty to provide necessities and protect from injury):
 - “(c) section 152 (duty of parent or guardian to provide necessities and protect from injury):”.

10 Amendment to Summary Offences Act 1981

- (1) This section amends the Summary Offences Act 1981.
- (2) Section 10A is repealed.

11 Amendment to Summary Proceedings Act 1957

- (1) This section amends the Summary Proceedings Act 1957.
- (2) Part 1 of Schedule 1 is amended by omitting the item relating to sections 151, 152, and 153 and substituting the following item:

“153 Duty of employers to provide necessities”.
- (3) Part 1 of Schedule 1 is amended by omitting the item relating to section 195 and substituting the following items:

“195 Ill-treatment or neglect of child or vulnerable adult
“195A Failure to protect child or vulnerable adult”.

12 Transitional provision

- (1) The amendments and repeals made by this Act do not apply to any offence committed or alleged to have been committed (in whole or in part) before the commencement of this Act and the principal Act as in force before the commencement of this Act continues to apply to any such offence.
- (2) Section 414 of the principal Act has effect (with any necessary modifications) if the date on which the offence was committed cannot be established with sufficient certainty.

Legislative history

12 April 2011	Introduction (Bill 284–1)
10 May 2011	First reading and referral to Social Services Committee
18 August 2011	Reported from Social Services Committee (Bill 284–2)
13 September 2011	Second reading
14 September 2011	Committee of the whole House
15 September 2011	Third reading
19 September 2011	Royal assent

This Act is administered by the Ministry of Justice.
