

# **Regulatory Impact Statement: Review of Part 8 of the Crimes Act 1961**

## **EXECUTIVE SUMMARY**

The offences in Part 8 of the Crimes Act 1961 (offences against the person) are affected by unnecessary duplication, archaic language, and lack of clarity as to scope and application. The offences in Part 8 do not adequately address violent offending against children.

The Law Commission has recommended that Part 8 of the Crimes Act 1961 (dealing with offences against the person) be amended.

Amendment of Part 8 will rationalise and simplify offences against the person, and strengthen the offences in Part 8 to address violence against children.

## **ADEQUACY STATEMENT**

The Ministry of Justice has reviewed this regulatory impact statement and considers that it fulfils the adequacy criteria.

## **STATUS QUO AND PROBLEM**

Part 8 of the Crimes Act deals with offences against the person, including assaults, injury and homicide. The offences in this Part are affected by unnecessary duplication, archaic language, and lack of clarity as to scope and application. These issues mean that the law is unclear and inaccessible to the public, and can lead to practical difficulties in applying the offences to particular fact circumstances (eg, where there are overlaps in the coverage of the offences or the scope of the offence is unclear). The assault and injury offences in particular (sections 188 to 193) have no clear organising principle, and do not consistently address culpability and consequence. Further, the current offences in Part 8 do not adequately address violence against children.

## **OBJECTIVES**

The objective of this proposal is twofold:

- to rationalise and simplify offences against the person, by eliminating archaic language and unnecessary duplication; and
- to ensure that children are adequately protected by the criminal law.

## **ALTERNATIVE OPTIONS**

Non-legislative options are not suitable to address the problems associated with Part 8, as these problems have arisen through piecemeal amendment to the Part.

Maintaining the status quo will not address the problems with Part 8 identified by the Law Commission. It would also fail to meet the policy objective of a rationalised and simplified Part 8.

## PREFERRED OPTION

### Amendment to the Crimes Act 1961

The preferred option is to introduce a Bill to amend Part 8 of the Crimes Act. The Bill would make changes to Part 8 in four areas:

- Assault, injury and serious injury: introduce a new “matrix” of assault/injury offences that consistently address both culpability and consequence;
- Specific offences: rationalise and update offences with a specific (usually aggravating) feature (eg, assault on a child, setting traps, impeding rescue);
- Offending against children: introduce a new offence of failing to protect a child (or vulnerable adult), and reform other offences dealing with offending against children; and
- Endangering, negligent injury and culpable homicide: introduce a hierarchy of offences that address the range of outcomes arising from grossly negligent behaviour, whether death, injury, or risk of injury results.

## COSTS

Government: There will be a cost to Government associated with the legislative process to amend the Crimes Act 1961. There will be costs associated with the need for Police, Crown Prosecutors and the Judiciary to become familiar with the new offences, and some costs and court time associated with appeals to clarify the interpretation of new provisions. For Police, there will be costs associated with training staff, preparing training materials, and amending the Police Manual. Defence counsel will also need to become familiar with the new offences.

### *Impact on Department of Corrections*

Preliminary analysis suggests that the changes to Part 8 may affect sentences administered by the Department of Corrections. The majority of charges involving offences against the person are unaffected by the reorganisation and reclassification of offences proposed, and there is no reason to think the sentences given for these charges will change. Analysis has therefore looked at those offences which will be reassigned to a new section. Three changes – assault with intent to injure (for which the penalty will increase from 3 to 5 years), the widening in scope of the offence of cruelty to a child, and the introduction of the new offence of ‘failing to protect’ – are likely to have an impact as follows:

- **Assault with intent to injure:** The tariff increases from 3 years to 5 years, principally to recognise the increased culpability related to intent, and to accommodate the sentences from section 202C. Judges are known to sentence not merely on the basis of the tariff, but also with reference to other assault offences, the tariffs for which are not changing. The current average imposed sentence for section 193 is just short of a year, which also suggests that the tariff is not an important consideration. Nonetheless, some of the more serious section 193 offences do attract sentences close to the tariff, and the emphasis on culpability may persuade judges to increase sentences for these. To estimate the impact of the increased tariff the top 25% of sentences imposed for this offence in 2008 were assumed to increase by 66%. Nearly all these sentences would be greater than 2 years, so we used 66% as the estimate of proportion served when estimating the additional beds. Under these assumptions there would be about **32 additional beds**

required. However, it is important to note that this analysis is based on assumptions about judicial behaviour that are designed to explore the upper bounds of any impacts; there is no reason to expect that judicial behaviour will follow these patterns.

- **Section 195 – Cruelty to a child:** This offence is redrafted, introducing an objective ‘gross negligence’ test, the tariff is doubled from 5 to 10 years, and the scope of the offence widened to include victims up to the age of 17 and other vulnerable adults. The number of cases per year is small. We can make a worst-case assumption that doubling the tariff will lead to a doubling of the current average imposed sentence (about 22 months). The new ‘gross negligence’ test will mean that more cases will be prosecuted, and some cases that were unsuccessful under the current provisions would now result in a conviction. The numbers of such cases are not large, and we have assumed that the same number of beds would be required as a result of this amendment. As a result of the doubling of the tariff and the introduction of a ‘gross negligence’ test, **8 additional beds will be required.**
- **New offence of failing to protect:** The creation of a new offence of ‘failing to protect’ could mean some additional prosecutions. It is always difficult to predict the impact of a change such as this, but it is unlikely to be large, given that there are only a small number of cases per year under the current section 195. For the purposes of this analysis we have assumed that while there might be a reasonable number of additional prosecutions, they are unlikely to attract sentences as long as those for cruelty (in fact, many of the sentences may be for non-custodial sentences). A conservative, upper, limit has been used to estimate the number of beds required. **10 additional beds will be required.**

The above analysis therefore suggests 10-50 extra beds as a result of these changes. This estimate does rely on judges becoming more severe in response to changes designed only to be reclassifications – it is quite likely that the numbers would not reach that level.

In terms of the prison forecast, the change would be a ‘one-off’ change, adding the extra beds from about a year or so after the new legislation became effective. Given the potential length of some of the section 195 sentences, it might take a couple of years for the full impact to be felt. The scale of expected change is small and of the order of the weekly cyclic muster variation. In percentage terms, the very worst case estimate of 50 beds is one half of one percent of the total prison population.

#### *Impact on community sentences*

The changes proposed in the legislation focus on custodial sentences. For most offences we would not expect any change to the number or length of community sentences.

There is however some possibility of the section 195 changes affecting home detention numbers. Although only 4 people received home detention for a section 195 offence in 2008, the average sentence was 10 months. If judges consider a more serious penalty should also apply to home detention, there is the possibility a few of these could tip over into prison terms. Widening the scope of the offence may particularly affect partners who might be more likely to receive home detention. However, given the very small numbers involved and the lack of firm information to inform these assumptions, we consider any impact on either the prison numbers or home detention would not be significant.

Costings for the prison service are based on the additional numbers of beds. We have calculated costings for the probation service based on two components.

- Where additional prosecutions occur, there will be a need for probation reports;
- We have also allowed for a small number (about 20) of additional community sentences being imposed as a result of the new offence.

#### *Timing of impact*

The impact on the prison population will not be immediate. It is anticipated that the new legislation would be in force from July 2011, and only offences occurring, investigated and charged after that date would be affected.

The impact from the assault offences would be felt relatively quickly as most of the associated sentences are less than a year. It would be reasonable to assume that this impact (estimated as a maximum of 32 beds, but expected to be less) would be felt by June 2012.

The changes to the offences against children typically involve longer sentences. In addition, these cases are also known to be lengthy in terms of investigation and prosecution. It is not likely, therefore, that the first convictions under the new legislation will occur much before July 2012, and any impact on the prison population would not start to be felt for another year. The impact of 18 beds would phase in through the financial year 2013-14.

The full impact of 50 beds would therefore not be felt until June 2014.

The potential impact on the probation service would occur from July 2013, when the first convictions under the new legislation are expected to occur.

#### *Costings*

We estimate that the combination of the widening of scope and the reduction in the standard of proof for cruelty to a child (s195) may result in an extra 69 cases being heard each year in the courts. This is a conservative, upper, limit. A preliminary estimate of the cost of hearing these extra 69 cases, including the 30% of them which go to jury trial, is \$900k.

We do not expect any increase in numbers of cases from the other provisions.

Corrections costs have been estimated on the basis of additional prison beds, including the community corrections component for parole and pre-sentence reports. A small increase in community sentences has also been allowed for on the basis of additional people who may be prosecuted under s195.

In total we estimate \$4,875k for the additional 50 prison beds and \$173k for additional community sentences such as home detention and supervision.

The overall total (allowing for rounding) is \$5,948k. This expenditure would also phase in, with Courts incurring \$900k p.a. from the date of implementation, Corrections subsequently incurring \$3,120k p.a. (for 32 beds) from 2011-12, \$173k p.a. (for community sentences) from 2012-13, and \$1,755k p.a. (the remaining beds) from 2013-14.

Department	Year			
	2010-11	2011-2012	2012-2013	2013-2014
Ministry of Justice (Courts)	\$0	\$900k	\$900k	\$900k
Corrections – Community Sentences	\$0	\$0	\$173k	\$173k
Corrections – Prison	\$0	\$3,120k	\$3,120k	\$4,875k
Total	\$0	\$4,020k	\$4,193k	\$5,948k

## **BENEFITS**

Government as investigator and prosecutor of crime: Simplifying and updating the law will have benefits for Police and Crown prosecutors. Removing elements of duplication from the law will provide greater clarity and certainty for Police (in deciding what offence to charge) and for prosecutors (in prosecuting those offences).

All of society benefits when the law is clear and certain. The proposal to amend Part 8 will make the criminal law more accessible to the public, and will result in greater certainty for defendants and defence counsel, as well as other participants in the court process.

## **IMPLEMENTATION AND REVIEW**

The Ministry of Justice will monitor general feedback from the public, practitioners and judiciary as and when received after the Crimes Act is amended. Formal evaluation of the legislation is not planned at this stage.

## **CONSULTATION**

The following agencies were consulted in the development of the Cabinet paper and Regulatory Impact Statement: Ministry of Women's Affairs, New Zealand Police, Department of Corrections, Department of Labour, Treasury, Ministry of Social Development, Ministry of Health, and Te Puni Kōkiri. Crown Law Office and Department of Prime Minister and Cabinet have been informed.

The following agencies were consulted by the Law Commission in the development of their report: the Ministry of Justice, New Zealand Police, Crown Law, the Ministry of Health, Parliamentary Counsel Office, the Ministry of Social Development and the Department of Labour.