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**An Act to amend the Crimes Act 1969 to—**

- (a) remove and amend some sexual offences and add new sexual offences; and
- (b) make minor and consequential amendments and update language.

**The Parliament of the Cook Islands enacts as follows—**

(18 April 2023)

- 1 Title**  
This Act is the Crimes (Sexual Offences) Amendment Act 2023.
- 2 Commencement**  
This Act comes into force on 1 June 2023.

**3 Principal Act**

This Act amends the Crimes Act 1969.

*Definitions***4 Section 140 replaced (Sexual intercourse defined)**

Replace section 140 with:

**“140 Sexual connection defined**

“(1) For the purposes of this Act,—

“**genitalia** includes a surgically constructed or reconstructed organ analogous to naturally occurring male or female genitalia (whether the person concerned is male, female, or of indeterminate sex)

“**penis** includes a surgically constructed or reconstructed organ analogous to a naturally occurring penis (whether the person concerned is male, female, or of indeterminate sex)

“**sexual connection** means—

“(a) connection effected by the introduction to the slightest degree into the genitalia or anus of one person, otherwise than for genuine medical purposes, of—

“(i) a part of the body of another person; or

“(ii) an object held or manipulated by another person; or

“(b) connection between the mouth or tongue of one person and a part of another person’s genitalia or anus; or

“(c) the continuation of connection of a kind described in paragraph (a) or paragraph (b).

“(2) There is no presumption of law that a person is by reason of their age incapable of sexual connection.

“(3) To avoid doubt, the actions described in **subsection (1)(a) to (c)** amount to sexual connection if—

“(a) they are done by the defendant with or on the other person; or

“(b) the defendant induces or permits the other person to do any of those actions with or on them.

**“140A Circumstances that do not amount to consent**

“(1) For the purposes of **sections 141, 142, 147, and 147A**, **consent** does not include the following:

“(a) apparent consent extorted by fear of bodily harm or by threats of bodily harm to the person or to a third person; or

“(b) apparent consent obtained by personating another person; or

“(c) apparent consent obtained by a false and fraudulent representation as to the nature and quality of the act.

“(2) **Subsection (1)** does not limit the circumstances in which a person does not consent to sexual activity.”

*Sexual crimes***5 Sections 141 to 149 replaced**

Replace sections 141 to 149 with:

**“141 Sexual violation**

- “(1) Sexual violation is the act of a person who—
- “(a) rapes another person; or
  - “(b) has unlawful sexual connection with another person.
- “(2) Person A rapes person B if person A has sexual connection with person B, effected by the penetration to the slightest degree of person B’s genitalia by person A’s penis,—
- “(a) without person B’s consent to the connection; and
  - “(b) without a reasonable belief that B consents to the connection.
- “(3) Person A has unlawful sexual connection with person B if person A has sexual connection with person B—
- “(a) without person B’s consent to the connection; and
  - “(b) without a reasonable belief that B consents to the connection.
- “(4) A person may be convicted of sexual violation of another person at a time when they were married to each other.
- “(5) A person who commits sexual violation is liable to imprisonment for a term not exceeding 14 years.

**“142 Attempted sexual violation and assault with intent to commit sexual violation**

- “(1) A person who attempts to commit sexual violation is liable to imprisonment for a term not exceeding 10 years.
- “(2) A person who assaults another person with intent to commit sexual violation of the other person is liable to imprisonment for a term not exceeding 10 years.

**“143 Incest**

- “(1) Sexual connection is incest if—
- “(a) it is between 2 people whose relationship is that of parent and child, siblings, half-siblings, or grandparent and grandchild; and
  - “(b) the person charged knows of the relationship.
- “(2) A person of or over the age of 16 years who commits incest is liable to imprisonment for a term not exceeding 10 years.
- “(3) In this section—
- “**child** includes an illegitimate child; and
  - “**grandchild** has a corresponding meaning.

**“144 Sexual connection with dependent family member**

- “(1) A person is liable to imprisonment for a term not exceeding 7 years if they have or attempt to have sexual connection with a dependent family member who is under the age of 21 years. (*See section 144A* for the definition of dependant family member.)
- “(2) It is no defence to a charge under this section that the dependent family member consented.
- “(3) The dependent family member cannot be charged as a party to an offence under this section.

**“144A Dependent family member defined**

- “(1) For the purposes of **section 144**, one person (**person A**) is a dependent family member of another person (**person B**),—
- “(a) if person A is living with person B, and person B is—
- “(i) person A’s parent, step-parent, foster parent, guardian, uncle, or aunt; or
  - “(ii) a parent, step-parent, or foster parent of a person described in subparagraph (i); or
  - “(iii) a child of person A’s parent or step-parent; or
  - “(iv) the spouse or de facto partner of a person described in subparagraphs (i) to (iii); or
- “(b) if person A is living with person B as a member of person B’s family, and person B is not a person referred to in paragraph (a), but has a responsibility for, or significant role in, person A’s care or upbringing.
- “(2) In subsection (1),—
- aunt**, in relation to person A, includes a half-sister of one of person A’s parents
- foster parent**, includes a former foster parent
- guardian** includes a former guardian
- step-parent**, includes a former step-parent
- uncle**, in relation to person A, includes a half-brother of one of person A’s parents.

**“145 Sexual connection or attempted sexual connection with child under 12**

- “(1) A person is liable to imprisonment for a term not exceeding 14 years if they have sexual connection with a child under the age of 12 years.
- “(2) A person is liable to imprisonment for a term not exceeding 10 years if they attempt to have sexual connection with a child under the age of 12 years.
- “(3) It is no defence to a charge under this section that the child consented, or that the person charged believed that the child consented and was of or over the age of 12 years.
- “(4) The child cannot be charged as a party to an offence against this section.

**“146 Indecent assault of, or indecency with, child under 12**

- “(1) A person is liable to imprisonment for a term not exceeding 10 years if they—
- “(a) indecently assault a child under the age of 12 years; or
  - “(b) do an indecent act with, or on, a child under the age of 12 years; or
  - “(c) induce or permit a child under the age of 12 years to do an indecent act with or on them.
- “(2) It is no defence to a charge under this section that the child consented, or that the person charged believed that the child consented or was of or over the age of 12 years.
- “(3) The child cannot be charged as a party to an offence against this section.

**“147 Sexual connection or attempted sexual connection with child between 12 and 16**

- “(1) A person is liable to imprisonment for a term not exceeding 7 years if they have or attempt to have sexual connection with a child who is 12 years of age or older but under the age of 16 years.
- “(2) Except as provided in this section, it is no defence to a charge under this section that the child consented or that the person believed that the child consented or was of or over the age of 16 years.
- “(3) It is a defence to a charge under this section if the person charged proves that—
- “(a) the child consented; and
  - “(b) before the time of the act concerned, they had taken reasonable steps to find out whether the child was of or over the age of 16 years; and
  - “(c) at the time of the act concerned, they believed on reasonable grounds both that the child consented and was of or over the age of 16 years.
- “(4) The child cannot be charged as a party to an offence against this section.

**“147A Indecent assault of, or indecency with, child between 12 and 16**

- “(1) A person is liable to imprisonment for a term not exceeding 7 years if they—
- “(a) indecently assault a child who is 12 years of age or older but under the age of 16 years; or
  - “(b) do an indecent act with, or on, a child who is 12 years of age or older but under the age of 16 years; or
  - “(c) induce or permit a child who is 12 years of age or older but under the age of 16 years to do an indecent act with or on them.
- “(2) Except as provided in this section, it is no defence to a charge under this section that the child consented or that the person believed that the child consented or was of or over the age of 16 years.
- “(3) It is a defence to a charge under this section if the person charged proves that—
- “(a) the child consented; and
  - “(b) before the time of the act concerned, they had taken reasonable steps to find out whether the child was of or over the age of 16 years; and
  - “(c) at the time of the act concerned, they believed on reasonable grounds both that the child consented and was of or over the age of 16 years.
- “(4) The child cannot be charged as a party to an offence against this section.

**“148 Indecent assault of, or indecency with, person of or over 16**

- “(1) A person is liable to imprisonment for a term not exceeding 7 years if they—
- “(a) indecently assault another person of or over the age of 16 years; or
  - “(b) do anything indecent to another person of or over the age of 16 years with their consent but the consent was obtained by a false and fraudulent representation as to the nature and quality of the act or in other circumstances where apparent consent was not valid.
- “(2) In this section,—
- “do anything indecent** includes if the defendant—
- “(a) does the thing on or with the other person; or
  - “(b) induces or permits the other person to do the thing on or with the defendant.

**“149 Conspiracy to induce sexual connection**

“A person is liable to imprisonment for a term not exceeding 5 years if they conspire with another person by a false representation or other fraudulent means to induce a person to have sexual connection with anyone.”

**6 Section 150 repealed (Inducing sexual intercourse under pretence of marriage)**  
Repeal section 150.**7 Section 151 replaced (Sexual intercourse with idiot or imbecile woman or girl)**  
Replace section 151 with:**“151 Sexual connection with person with significant intellectual impairment**

“A person is liable to a term of imprisonment not exceeding 7 years if—

“(a) they have or attempt to have sexual connection with another person who has a significant intellectual impairment that means they do not understand the nature and quality of the act or its potential consequences; and

“(b) they knew, or had good reason to believe, that the other person has a significant intellectual impairment.”

**8 Sections 152 to 155 repealed**  
Repeal sections 152 to 155.**9 Section 160 amended (Brothel keeping)**  
In section 160(2), replace “woman” with “person”.**10 Section 162 replaced (Procuring sexual intercourse)**  
Replace section 162 with:**“162 Procuring sexual connection**

“A person is liable to a term of imprisonment not exceeding 5 years if they, for gain or reward, procure or offer to procure another person to have sexual connection with anyone.”

**11 Section 230 replaced (Abduction of woman or girl)**  
Replace section 230 with:**“230 Abduction of person**

“A person is liable to imprisonment for a term not exceeding 14 years if they take away or detain another person without their consent, or with consent obtained by fraud or duress or in other circumstances where apparent consent was not valid, with intent—

“(a) to marry the other person or have sexual connection with them; or

“(b) to cause the other person to be married or to have sexual connection with another person.”

**12 Section 232 amended (Abduction of child under 16)**  
Replace section 232(1) with:

“(1) A person is liable to imprisonment for a term not exceeding 7 years if they, with intent to deprive a parent or guardian or other person having the lawful care or charge of a child under 16 years of age of the possession of that child, or with the intent to have sexual connection with the child—

- “(a) take or entice away or detain the child; or
- “(b) receive the child, knowing that the child has been taken or enticed away or detained.”

*Sexual conduct with children outside Cook Islands*

**13 Section 157A amended (Sexual conduct with children outside the Cook Islands)**

Replace section 157A(1)(a) to (h) with:

- “(a) section 145(1) (sexual connection with child under 12):
- “(b) section 145(2) (attempted sexual connection with child under 12):
- “(c) section 146 (indecent assault of, or indecency with, child under 12):
- “(d) section 147 (sexual connection or attempted sexual connection with child between 12 and 16):
- “(e) section 147A (indecent assault of, or indecency with, child under 16).”

*Repeal of section 159*

**14 Section 159 repealed (Keeping place of resort for homosexual acts)**

Repeal section 159.

*Transitional provision*

**15 New section 419A inserted (Transitional provision relating to Crimes (Sexual Offences) Amendment Act 2023)**

After section 419, insert:

**“419A Transitional provision relating to Crimes (Sexual Offences) Amendment Act 2023**

“(1) This section applies if—

“(a) proceedings are commenced on or after the day the Crimes (Sexual Offences) Amendment Act 2023 (the **amendment Act**) comes into force for—

“(i) an offence under a repealed section in reliance on section 20(h) of the Acts Interpretation Act 1924; or

“(ii) an offence under a repealed section in reliance on section 20(h) of the Acts Interpretation Act 1924 and, in the alternative, for an offence under a replacement section; and

“(b) for—

“(i) subclause (1)(a)(i), the date of the act or omission by the defendant constituting the alleged offence is alleged to have occurred before the amendment Act comes into force;

“(ii) for subclause (1)(a)(ii), the date of the act or omission by the defendant constituting the alleged offence cannot be established with sufficient certainty to determine whether it occurred before or after the amendment Act comes into force.

“(2) A repealed section continues to have effect for the purpose of the proceedings and the defendant is entitled to raise any defence to the offence under the repealed section that would have been available to them immediately before its repeal.

- “(3) Despite **subsections (1) and (2)**, on and from the date the amendment Act comes into force, no prosecution may be taken against a person for an offence under—
- “(a) repealed sections 154 and 155, unless the alleged offending was against a child under 16 years:
- “(b) repealed section 159.
- “(4) In this section,—
- “**repealed section** means any section or part of a section that is repealed or amended by the amendment Act as it read immediately before its repeal or amendment
- “**replacement section** means any section or part of a section that is replaced or amended by the amendment Act as it read after its replacement or amendment.”

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This Act is administered by the Ministry of Justice.  
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