

Reprint
as at 1 July 2011

Summary Proceedings Act 1957

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Ministry of Justice and the Department for Courts.

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An Act to consolidate and amend certain enactments of the General Assembly relating to summary criminal proceedings in District Courts

In the Long Title the word “summary” was inserted by section 2 Summary Proceedings Amendment Act 1980 (1980 No 84).

1 Short Title and commencement

- (1) This Act may be cited as the Summary Proceedings Act 1957.
- (2) This Act shall come into force on 1 April 1958.

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—
adjudged includes ordered
bank—
(a) means—

- (i) a person carrying on in New Zealand the business of banking; and
- (ii) a credit union within the meaning of the Friendly Societies and Credit Unions Act 1982; and
- (iii) a building society within the meaning of the Building Societies Act 1965; but
- (b) does not include the Reserve Bank of New Zealand established under the Reserve Bank of New Zealand Act 1989 (except in relation to an account maintained by that bank for an employee of the bank)

Bank: this definition was inserted, as from 1 November 1998, by section 2 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

benefit—

- (a) means a benefit within the meaning of Part 1 of the Social Security Act 1964; but
- (b) does not include—
 - (i) an orphan's benefit payable under section 28 of the Social Security Act 1964; or
 - (ii) an unsupported child's benefit payable under section 29 of that Act; or
 - (iii) a child disability allowance payable under section 39A of that Act; or
 - (iv) temporary additional support under section 61G of that Act or a special benefit continued under section 23 of the Social Security (Working for Families) Amendment Act 2004; or
 - (v) a disability allowance payable under section 69C of that Act

Benefit: this definition was inserted, as from 1 November 1998, by section 2 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Benefit: paragraph (b)(iv) was substituted, as from 1 April 2006, by section 21 Social Security (Working for Families) Amendment Act 2004 (2004 No 51). See sections 23 to 25 of that Act as to the transitional provisions.

committal for trial means committal to the High Court or a District Court under section 184N

constable has the meaning given in section 4 of the Policing Act 2008

conviction includes an order; and **convicted** has a corresponding meaning

Court means a District Court constituted under the District Courts Act 1947

Court nearest to the committing Court or any similar expression, includes, in relation to a District Court, any such Court presided over by a trial Judge sitting at the same place as the committing Court

Court nearest to the committing Court: this definition was inserted, as from 1 May 1981, by section 3(1) and (2) Summary Proceedings Amendment Act 1980 (1980 No 84).

Crown organisation has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002

Crown organisation: this definition was inserted, as from 18 October 2002, by section 29(1) Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

defendant means any person charged with an offence; and includes—

- (a) any person against whom an order is sought in proceedings commenced by way of complaint; and
- (b) any person on whom a notice of prosecution has been served pursuant to section 20A; and
- (c) in relation to an infringement offence for which an infringement notice has been issued, any person served with a reminder notice in respect of the offence, or any person who gives notice requesting a hearing in respect of the offence, pursuant to section 21; and
- (d) a Crown organisation, if proceedings are brought against that organisation for an offence referred to in section 6 of the Crown Organisations (Criminal Liability) Act 2002

Defendant: this definition was substituted, as from 1 November 1980, by section 15(1) Transport Amendment Act 1980 (1980 No 96).

Defendant: paragraph (c) of this definition was substituted, as from 1 November 1987, by section 2(1) Summary Proceedings Amendment Act 1987 (1987 No 165).

Defendant: paragraph (c) of this definition was amended, as from 18 October 2002, by section 29(2) Crown Organisations (Criminal Liability) Act 2002 (2002 No 37) by inserting the expression “; and”.

Defendant: paragraph (d) of this definition was inserted, as from 18 October 2002, by section 29(2) Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

indictable offence means any offence for which the defendant may be proceeded against by indictment:

provided that an offence shall not be deemed to be an indictable offence solely because under section 66 the defendant could elect to be tried by a jury

informant means the person by whom an information is laid; and includes—

- (a) in respect of any charge where an information has not been laid, the person responsible for bringing the charge; and
- (b) a person who files a notice of prosecution pursuant to section 20A(2); and
- (c) in relation to an infringement offence for which an infringement notice has been issued, the Department, local body, or other authority in or by which the officer or employee who issued the notice was employed

Informant: this definition was substituted, as from 1 November 1980, by section 15(1) Transport Amendment Act 1980 (1980 No 96). See section 1(2) of that Act and SR 1981/294.

Informant: paragraph (c) was substituted, as from 1 November 1987, by section 2(1) Summary Proceedings Amendment Act 1987 (1987 No 165).

Informant: paragraph (c) was amended, as from 1 July 1991, by section 21 Weights and Measures Amendment Act 1991 (1991 No 9) by adding the words “or employee”.

infringement fee, in relation to an infringement offence, means the amount fixed as the infringement fee for the offence by or under the Act under which the offence is created

Infringement fee: this definition was inserted, as from 1 November 1987, by section 2(3) Summary Proceedings Amendment Act 1987 (1987 No 165).

infringement notice means a notice issued under—

- (a) *[Repealed]*
- (b) section 14 of the Litter Act 1979; or
- (ba) section 41B of the Financial Reporting Act 1993; or
- (c) section 32A of the Weights and Measures Act 1987; or
- (ca) section 57C of the Gas Act 1992; or
- (d) section 58 of the Civil Aviation Act 1990; or
- (da) section 129 of the Plumbers, Gasfitters, and Drainlayers Act 2006; or
- (e) section 159 or section 159A of the Biosecurity Act 1993; or
- (f) section 66 of the Dog Control Act 1996; or
- (fa) section 165B of the Electricity Act 1992; or

- (g) section 139 of the Land Transport Act 1998; or
- (h) section 260A of the Fisheries Act 1996; or
- (i) section 162 of the Animal Welfare Act 1999; or
- (j) section 357 of the Gambling Act 2003; or
- (k) any provision of any other Act providing for the use of the infringement notice procedure under section 21

infringement offence means any offence under any Act in respect of which a person may be issued with an infringement notice

infringement offence: this definition was inserted, as from 1 November 1987, by section 2(3) Summary Proceedings Amendment Act 1987 (1987 No 165).

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

medical practitioner: this definition was inserted, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48). *See* sections 178 to 227 of that Act as to the transitional provisions.

minor traffic offence *[Repealed]*

Minor traffic offence: this definition was inserted, as from 1 November 1980, by section 15(2) Transport Amendment Act 1980 (1980 No 96).

Minor traffic offence: this definition was amended, as from 30 April 1986, by section 52 Transport (Vehicle and Driver Registration and Licensing) Act 1986 (1986 No 6) by substituting the words “Part 4 or Part 5 of the Transport Act 1962 or against any regulation or bylaw made under that Act, the Transport (Vehicle and Driver Registration and Licensing) Act 1986 or any regulation made under that Act” for the words “Parts 2 to 5 of the Transport Act 1962 or against any regulation or bylaw made under that Act”.

Minor traffic offence: this definition was repealed, as from 1 November 1987, by section 2(4) Summary Proceedings Amendment Act 1987 (1987 No 165).

[Repealed]

Registrar means the Registrar of a Court; and includes any Deputy Registrar

representative, in relation to a corporation, means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this Act authorised to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before the Court for any other purpose

sentenced to detention includes sentenced to imprisonment or borstal training or detention in a detention centre; and **sentence of detention** has a corresponding meaning

Sentenced to detention: this definition was amended by section 2 Summary Proceedings Amendment Act 1973 (1973 No 117) by omitting the words “or corrective training”.

summary offence means any offence for which the defendant may not, except pursuant to an election made under section 66, be proceeded against by indictment; and, where the enactment creating an offence expressly provides that it may be dealt with either summarily or on indictment, includes such an offence that is dealt with summarily

trial Judge, in relation to a District Court, means a Judge who holds a warrant under section 28B of the District Courts Act 1947 to conduct trials on indictment.

Trial Judge: this definition was inserted, as from 1 May 1981, by section 3(3) Summary Proceedings Amendment Act 1980 (1980 No 84).

- (2) A representative of a corporation need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this Act shall be admissible without further proof as *prima facie* evidence that that person has been so appointed.

Compare: 1936 No 58 s 42(6), (7)

Section 2(1) **committal for trial**: inserted, on 1 May 1981, by section 3 of the Summary Proceedings Amendment Act 1980 (1980 No 84).

Section 2(1) **committal for trial**: amended, on 29 June 2009, by section 15 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 2(1) **constable**: substituted, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Infringement notice: this definition was substituted, as from 1 July 1996, by section 79 Dog Control Act 1996 (1996 No 13).

Section 2(1) **infringement notice** paragraph (a): repealed, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

Infringement notice: paragraph (ba) of this definition was inserted, as from 18 June 2007, by section 22(2) Financial Reporting Amendment Act 2006 (2006 No 64). See section 23(3) and (4) of that Act regarding the accounting periods

to which amendments apply. *See* clause 2(1) Financial Reporting Amendment Act 2006 Commencement Order 2007 (SR 2007/110).

Section 2(1) **infringement notice** paragraph (ca): inserted, on 4 May 2010, by section 18 of the Gas Amendment Act 2006 (2006 No 71).

Section 2(1) **infringement notice** paragraph (da): inserted, on 1 April 2010, by section 185 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74).

Infringement notice: paragraph (e) of this definition was substituted, as from 7 May 1999, by section 6 Biosecurity Amendment Act 1999 (1999 No 29).

Infringement notice: paragraph (f) of this definition was substituted, as from 9 October 2006, by section 4 Summary Proceedings Amendment Act 2006 (2006 No 13).

Section 2(1) **infringement notice** paragraph (fa): inserted, on 1 April 2010, by section 43 of the Electricity Amendment Act 2006 (2006 No 70).

Infringement notice: paragraph (fa) of this definition was inserted, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110).

Infringement notice: a second paragraph (fa) of this definition was inserted, as from 9 September 1999, by section 87(1) Fisheries Act 1996 Amendment Act 1999 (1999 No 101).

Infringement notice: a third paragraph (fa) of this definition was inserted, as from 1 January 2000, by section 194 Animal Welfare Act (1999 No 142).

Infringement notice: the three paragraphs (fa) of this definition were repealed, as from 9 October 2006, by section 4 Summary Proceedings Amendment Act 2006 (2006 No 13).

Infringement notice: paragraph (fb) of this definition was inserted, as from 1 July 2004, by section 374 Gambling Act 2003 (2003 No 51). *See* sections 376 and 377 of that Act for the savings and transitional provisions. *See* clause 2(3) Gambling Act Commencement Order 2003 (SR 2003/384).

Infringement notice: paragraph (fb) of this definition was repealed, as from 9 October 2006, by section 4 Summary Proceedings Amendment Act 2006 (2006 No 13).

Infringement notice: paragraph (g) of this definition was substituted, as from 9 October 2006, by section 4 Summary Proceedings Amendment Act 2006 (2006 No 13).

Infringement notice: paragraphs (h) to (k) of this definition were inserted, as from 9 October 2006, by section 4 Summary Proceedings Amendment Act 2006 (2006 No 13).

3 Application of certain provisions of Crimes Act 1961

(1) The following provisions of the Crimes Act 1961, as far as they are applicable and with the necessary modifications, shall apply to summary proceedings under this Act (whether in respect of summary offences or in respect of indictable offences dealt with summarily), namely:

(a) Part 1 (which relates to jurisdiction), except section 8:

- (b) section 13 (which preserves the powers of Courts under other Acts):
 - (c) section 17 (which prohibits a sentence of solitary confinement):
 - (d) Part 3 (which relates to matters of justification or excuse):
 - (e) Part 4 (which relates to parties to the commission of offences), except sections 68 and 69:
 - (f) section 314 (which prescribes the procedure where prior consent to a prosecution is required):
 - (g) sections 315 and 316 (which relate to arrests):
 - (h) section 317 (which relates to entry on premises):
 - (i) *[Repealed]*
 - (j) sections 357 to 360 (which relate to the special pleas of previous acquittal, previous conviction, and pardon):
 - (jj) section 366A (which contains a prohibition on the making of unsworn statements of fact by accused persons):
 - (k) *[Repealed]*
 - (l) section 376 (which relates to the presence of an accused person):
 - (m) section 400 (which relates to the consent of the Attorney-General in certain proceedings):
 - (n) section 403 (which relates to the power of the Court to order payment of compensation):
 - (o) section 404 (which relates to restitution of property):
 - (p) section 405 (which relates to the preservation of civil remedies):
 - (q) section 406 (which relates to the prerogative of mercy):
 - (r) section 407 (which defines the effect of a free pardon).
- (2) In addition to the provisions specified in subsection (1), the following provisions of the Crimes Act 1961, as far as they are applicable and with the necessary modifications, shall apply to the summary trial of indictable offences under this Act, namely:
- (a) sections 2 and 4 (interpretation):
 - (b) section 8 (which relates to jurisdiction in respect of crimes on ships and aircraft beyond New Zealand):
 - (c) section 69 (which relates to parties to certain crimes outside New Zealand):

- (d) such of the provisions of Parts 5 to 8 and Parts 10 and 11 as relate to any of the indictable offences in respect of which a District Court Judge has jurisdiction under section 6:
- (e) sections 337 and 338 (which relate to the proof of an attempt when a crime is charged and the proof of a crime when an attempt is charged):
- (f) section 344 (which relates to accessories after the fact and receivers).

Section 3 was substituted by section 2 Summary Proceedings Amendment Act 1961 (1961 No 44).

Subsection (1)(i) was repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

Subsection (1)(jj) was inserted by section 3(1) Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsection (1)(k) was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Part 1

Criminal jurisdiction of District Court

4 Summary criminal jurisdiction of Court

The summary criminal jurisdiction of a District Court must be exercised in accordance with this Act—

- (a) by a District Court Judge; or
- (b) by 1 or more Justices; or
- (c) by 1 or more Community Magistrates.

Section 4 was substituted, as from 1 May 1981, by section 4 Summary Proceedings Amendment Act 1980 (1980 No 84).

Sections 4 and 5 were substituted, as from 30 June 1998, by section 2(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

5 Jurisdiction in relation to committal for indictable offences

- (1) A Court presided over by a District Court Judge or by 2 or more Justices or by 1 or more Community Magistrates has jurisdiction to conduct the committal proceedings (including a standard committal, a committal hearing (if required), and proceedings under section 158, 180, or 181) for an indictable offence.

- (2) Unless the proceedings are in the Youth Court, a Court presided over by a District Court Registrar has jurisdiction to conduct a standard committal for an indictable offence.
- (3) Subsections (1) and (2) are subject to section 185B.

Section 5: substituted, on 29 June 2009, by section 15 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

6 Summary jurisdiction in respect of indictable offences

- (1) A Court presided over by a District Court Judge shall have summary jurisdiction in respect of the indictable offences described in the enactments specified in Schedule 1, and proceedings in respect of any such offence may accordingly be taken in a summary way in accordance with this Act.
- (2) A Court presided over by a District Court Judge shall have summary jurisdiction in respect of the following indictable offences, and proceedings in respect of any such offence may accordingly be taken in a summary way in accordance with this Act, namely—
 - (a) conspiring to commit any indictable offence to which subsection (1) applies (being a conspiracy to which section 310 of the Crimes Act 1961 applies):
 - (aa) conspiring to commit any summary offence (being a conspiracy to which section 310 of the Crimes Act 1961 applies):
 - (b) attempting to commit any indictable offence to which subsection (1) applies, or inciting, counselling, or attempting to procure any person to commit any such offence which is not committed (being any case to which section 311 of the Crimes Act 1961 applies):
 - (bb) attempting to commit any summary offence, or inciting, counselling, or attempting to procure the commission of a summary offence which is not committed (being any case to which section 311 of the Crimes Act 1961 applies):
 - (c) being accessory after the fact to any indictable offence to which subsection (1) applies (being any case to which section 312 of the Crimes Act 1961 applies).

- (3) Despite this section, a Court does not have summary jurisdiction in respect of a stage-3 offence (within the meaning of section 86A of the Sentencing Act 2002).

Compare: 1952 No 41 s 2

Subsection (2) was substituted by section 3(1) Summary Proceedings Amendment Act 1961 (1961 No 44).

Subsection (2)(aa) and (bb) were inserted respectively by section 4(1) and (2) Summary Proceedings Amendment Act 1973 (1973 No 117).

Section 6(3): added, on 1 June 2010, by section 13 of the Sentencing and Parole Reform Act 2010 (2010 No 33).

7 Maximum penalty on summary conviction for indictable offence

- (1) Subject to subsection (2), where any person is summarily convicted of an offence mentioned in section 6, the Court may sentence that person—
- (a) to imprisonment for a term not exceeding 5 years; or
 - (b) to a fine not exceeding,—
 - (i) the maximum amount prescribed by law; or
 - (ii) if no maximum amount is so prescribed, \$10,000,—or to both.
- (2) No person shall be sentenced pursuant to subsection (1) in respect of an indictable offence—
- (a) to a term of imprisonment exceeding the maximum term of imprisonment that could have been imposed if the person had been convicted of the same offence on indictment; or
 - (b) to pay a fine exceeding in amount the maximum fine that could have been imposed if the person had been convicted of the same offence on indictment; or
 - (c) to a term of imprisonment if on conviction of the same offence on indictment the person could not have been sentenced to imprisonment.

The original section 7 was amended by section 2(1) Summary Proceedings Amendment Act 1969 (1969 No 43) by substituting the words “not exceeding \$1,000” for the words “not exceeding \$400”. These words were further substituted, as from 1 May 1981, by the words “not exceeding \$4,000” by section 5(1) Summary Proceedings Amendment Act 1980 (1980 No 84).

Section 7 was substituted, as from 2 September 1996, by section 2 Summary Proceedings Amendment Act (No 2) 1996 (1996 No 146).

8 Other jurisdictions and powers not affected

- (1) Nothing in this Part shall limit in any way—
- (a) the right to proceed against any person under Part 5 or under subsection (3) of section 345 of the Crimes Act 1961;
 - (b) the jurisdiction and powers of any District Court under Part 5 where any charge is made against any person under that Part;
 - (c) the jurisdiction and powers of the High Court or a District Court in relation to any indictable offence or in relation to any offence in respect of which the accused elects to be tried by a jury or in relation to an offence that a District Court declines to deal with summarily under Part 2;
 - (d) the jurisdiction and powers of any District Court in respect of any indictable offence for which the offender may be tried in a summary way independently of this Part;
 - (e) the jurisdiction and powers of any Youth Court established under section 433 of the Children, Young Persons, and Their Families Act 1989:
- provided that no person shall be liable to be punished twice for the same offence.

- (2) Where any person—
- (a) is acquitted or convicted on a prosecution under section 6, and is subsequently prosecuted under any other enactment in respect of the same matter; or
 - (b) is acquitted or convicted on a prosecution under any other enactment and is subsequently prosecuted under section 6 in respect of the same matter,—
- the plea of previous acquittal or, as the case may be, previous conviction, shall be available to that person to the same extent and in the same manner as if both prosecutions were under the Crimes Act 1961, and the provisions of sections 357 to 359 of that Act shall, with the necessary modifications, apply accordingly.

Compare: 1952 No 41 ss 12, 13

Subsection (1)(a) was amended by section 4(1)(a) Summary Proceedings Amendment Act 1961 (1961 No 44) by substituting the words “subsection

(3) of section 345 of the Crimes Act 1961” for the words “section 369 or subsection (2) of section 407 of the Crimes Act 1908”.

Subsection (1)(c) was substituted, as from 1 May 1981, by section 6 Summary Proceedings Amendment Act 1980 (1980 No 84).

Subsection (1)(e) was amended, as from 1 April 1975, by section 110(3) Children and Young Persons Act 1974 (1974 No 72), by substituting the words “Children and Young Persons Court established under section 20 of the Children and Young Persons Act 1974” for the words “Children’s Court under the Child Welfare Act 1925”.

Subsection (1)(e) was substituted, as from 1 November 1989, by section 449 Children, Young Persons, and Their Families Act 1989 (1989 No 24).

Subsection (2) was amended by section 4(1)(b) Summary Proceedings Amendment Act 1961 (1961 No 44) by substituting the words “the Crimes Act 1961, and the provisions of sections 357 to 359” for the words “the Crimes Act 1908, and the provisions of sections 402 to 404”.

9 Jurisdiction of District Court Judges in respect of summary offences

- (1) A Court presided over by a District Court Judge has jurisdiction in respect of every summary offence.
- (2) A Court presided over by a District Court Judge has summary jurisdiction in respect of every offence that by any Act is punishable by a fine, penalty, or forfeiture if no other form of procedure is prescribed by that Act for the recovery of the same.

Subsection (3)(b) of the original section 9 was substituted, as from 1 November 1987, by section 3 Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 9 was substituted, and sections 9A to 9G were inserted, as from 30 June 1998, by section 3(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

9A Jurisdiction of Justices in respect of summary offences

- (1) A Court presided over by 2 or more Justices has jurisdiction in respect of a summary offence in the following cases, and in no other case, namely:
 - (a) in any case where the enactment creating the offence expressly provides that jurisdiction may be exercised by a Court presided over by a Justice or Justices:
 - (b) in any case where by any enactment jurisdiction is expressly given to a Justice or Justices:
 - (c) in any case where the offence is an infringement offence.

- (2) A Court presided over by 1 Justice has jurisdiction in respect of a summary offence in the following cases, and in no other case, namely:
- (a) in any case where the enactment creating the offence expressly provides that jurisdiction may be exercised by a Court presided over by 1 Justice; or
 - (b) in any case where by any enactment jurisdiction is expressly given to 1 Justice.

Section 9 was substituted, and sections 9A to 9G were inserted, as from 30 June 1998, by section 3(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

9B Jurisdiction of Community Magistrates in respect of summary offences

- (1) A Court presided over by 1 Community Magistrate has jurisdiction in respect of a summary offence in the following cases, and (except as provided in section 9C) in no other case, namely:
- (a) in any case where, under section 9A(1), a Court presided over by 2 or more Justices has jurisdiction in respect of the summary offence:
 - (b) in any case where, under section 9A(2), a Court presided over by any 1 Justice has jurisdiction in respect of the summary offence:
 - (c) in any case where the enactment creating the offence expressly provides that jurisdiction may be exercised by a Court presided over by 1 Community Magistrate or by 1 or more Community Magistrates:
 - (d) in any case where by any enactment jurisdiction is expressly given to 1 Community Magistrate or 1 or more Community Magistrates.
- (2) A Court presided over by 2 or more Community Magistrates has the same jurisdiction in respect of a summary offence as a Court presided over by 1 Community Magistrate.
- (3) Nothing in subsection (1) or subsection (2) confers on a Court presided over by 1 Community Magistrate or by 2 or more Community Magistrates jurisdiction in respect of any summary offence that is a continuing offence.

Section 9 was substituted, and sections 9A to 9G were inserted, as from 30 June 1998, by section 3(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

9C Jurisdiction of Community Magistrates to impose sentences in respect of certain summary offences

- (1) This section applies to any summary offence (not being a continuing offence) in respect of which—
 - (a) the maximum term of imprisonment (if any) that can be imposed does not exceed 3 months; and
 - (b) the maximum fine that can be imposed does not exceed \$7,500.
- (2) If a person who is charged with an offence to which this section applies is found guilty of that offence by a court presided over by a District Court Judge or pleads guilty to that offence, a court presided over by 1 or more Community Magistrates may, in accordance with the Sentencing Act 2002, do 1 or more of the following acts:
 - (a) discharge the offender without conviction under section 106 of that Act and, if the court thinks fit, make an order under subsection (3) of that section:
 - (b) discharge the offender under section 108 of that Act and, if the court thinks fit, make an order under subsection (2) of that section:
 - (c) make, under section 110 of that Act, an order requiring the offender to appear for sentence if called upon to do so within a period, not exceeding 1 year commencing with the date of conviction, that the court may specify in the order:
 - (d) on making an order under section 110(1) of that Act, also make an order under section 110(3) of that Act:
 - (e) impose, under section 32 of that Act, a sentence of reparation on the offender:
 - (f) subject to sections 39(4) and 40(3) of that Act, sentence the offender to pay a fine:
 - (g) make, under section 112 of that Act, a non-association order in respect of the offender:
 - (h) impose, under section 55 of that Act, a sentence of community work on the offender:

- (i) impose, under section 45 of that Act, a sentence of supervision on the offender:
 - (ia) impose under section 54B of that Act, a sentence of intensive supervision on the offender:
 - (ib) impose under section 69B of that Act a sentence of community detention on the offender:
 - (j) make, under section 124 of that Act, an order that disqualifies the offender from holding or obtaining a driver licence:
 - (k) make, under section 128 or section 129 of that Act, a confiscation order in respect of a motor vehicle:
 - (l) make, under section 131(2)(a) of that Act, an order that prohibits the offender from acquiring any interest in any motor vehicle within 12 months after the date of the order:
 - (m) make, under section 131(3)(a) of that Act, an order that sets aside the disposition by the offender of a motor vehicle or of an interest in a motor vehicle.
- (3) No Court presided over by 1 or more Community Magistrates may impose on any person for any offence a sentence of imprisonment (within the meaning of section 4(1) of the Sentencing Act 2002).

Sections 9A to 9G were inserted, as from 30 June 1998, by section 3(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

Subsection (2) was substituted, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Section 9C(2)(ia): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 9C(2)(ib): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (3) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting the words “a sentence of imprisonment (within the meaning of section 4(1) of the Sentencing Act 2002)” for the words “a full-time custodial sentence (within the meaning of section 2(1) of the Criminal Justice Act 1985)”. *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

9D Power to impose penalties provided for in Land Transport Act 1998

- (1) Where a person who is charged with any summary offence to which section 9C applies is found guilty of that offence by a Court presided over by a District Court Judge or pleads guilty to that offence, a Court presided over by 1 or more Community Magistrates—
 - (a) may, if that offence is an offence to which section 80 of the Land Transport Act 1998 applies, make, under that section, an order disqualifying the person from holding or obtaining a driver licence for such period as the Court thinks fit, whether or not the Court imposes any other penalty for the offence:
 - (b) must, if that offence is a first or second offence to which section 32 of the Land Transport Act 1998 applies, make, in addition to any other penalties it may impose but subject to sections 81 and 94 of that Act an order under section 32 of that Act disqualifying the person from holding or obtaining a driver licence for 6 months or more, unless the Court for special reasons relating to the offence thinks fit to order otherwise:
 - (c) must, if that offence is an offence to which section 35 or section 38 of the Land Transport Act 1998 applies, make, in addition to any other penalties it may impose but subject to sections 81 and 94 of that Act, an order under section 35 or section 38 of that Act disqualifying the person from holding or obtaining a driver licence for 6 months or more, unless the Court for special reasons relating to the offence thinks fit to order otherwise:
 - (d) must, if that offence is a first or second offence to which section 56 or section 58 or section 60 of the Land Transport Act 1998 applies, make, in addition to any other penalties it may impose but subject to sections 81 and 94 of that Act, an order under section 56 or section 58 or section 60 of that Act disqualifying the person from holding or obtaining a driver licence for 6 months or more, unless the Court for special reasons relating to the offence thinks fit to order otherwise:

- (e) must, if that offence is an offence to which section 57 of the Land Transport Act 1998 applies, make, in addition to any other penalties it may impose but subject to sections 81 and 94 of that Act, an order under section 57 of that Act disqualifying the person from holding or obtaining a driver licence for 3 months or more, unless the Court for special reasons relating to the offence thinks fit to order otherwise:
 - (f) may, if that offence is an offence to which section 59 of the Land Transport Act 1998 applies, make an order under that section disqualifying the person from holding or obtaining a driver licence for such period as the Court thinks fit, whether or not the Court imposes any other penalty for the offence:
 - (g) must, if the offence is one to which section 65 of the Land Transport Act 1998 applies, make, subject to subsection (3) of that section, an order under that section requiring the person to attend an Assessment Centre and disqualifying the person from holding or obtaining a driver licence until the Director makes an order under section 100 of that Act removing that disqualification:
 - (h) must, if the offence is one to which section 63 of the Land Transport Act 1998 applies, make, in addition to any other penalty the Court may impose, and notwithstanding section 94 of that Act, an order under section 63 of that Act disqualifying the person from driving any vehicle being used in a transport service (other than a rental service) for such period exceeding 1 year but not exceeding 10 years as the Court thinks fit.
- (2) Nothing in this section restricts section 9C or any other duty or power of a Court presided over by 1 or more Community Magistrates—
- (a) to disqualify any person from holding or obtaining a driver licence; or
 - (b) to impose any other penalty.

Section 9 was substituted, and sections 9A to 9G were inserted, as from 30 June 1998, by section 3(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

Sections 9D and 9E were substituted, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110).

9E Ancillary powers under Criminal Justice Act 1985, Sentencing Act 2002, and Land Transport Act 1998

A Court presided over by 1 or more Community Magistrates has, in exercising any power conferred on it by section 9C or section 9D,—

- (a) power to make, under section 138 of the Criminal Justice Act 1985 (which relates to the power to clear the Court and to forbid reports of proceedings), orders of any kind described in subsection (2) of that section:
- (b) power to make orders under section 140 of the Criminal Justice Act 1985 (which relates to the power to prohibit the publication of names and other particulars):
- (c) all the powers and processes that a court has under the Criminal Justice Act 1985, the Sentencing Act 2002, or the Land Transport Act 1998 for the purpose of perfecting, or giving full effect to, any sentence imposed or order made under any of the provisions of those Acts referred to in section 9C or section 9D.

Sections 9A to 9G were inserted, as from 30 June 1998, by section 3(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

Sections 9D and 9E were substituted, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110).

The heading to section 9E was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by inserting the expression “, Sentencing Act 2002,” after the expression “Criminal Justice Act 1985”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Paragraph (c) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by inserting the expression “, the Sentencing Act 2002,” after the expression “Criminal Justice Act 1985”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

9F Power of Community Magistrates to decline jurisdiction

- (1) A Court presided over by 1 or more Community Magistrates may decline jurisdiction in respect of a summary offence and may refer the case to a Court presided over by a District Court Judge.
- (2) Where, under subsection (1), a Court declines jurisdiction in respect of a summary offence, that Court must forthwith ad-

journal the hearing of the charge to a time and place then appointed.

- (2A) A Court to which a matter is referred under subsection (1) may complete or otherwise deal with the matter as if it had been brought before that Court in the first instance.
- (3) Sections 45 to 49, so far as applicable and with the necessary modifications, apply to any adjournment under subsection (2).

Sections 9A to 9G were inserted, as from 30 June 1998, by section 3(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

Subsection (2A) was inserted, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

9G Power to transfer matter to Court presided over by District Court Judge

- (1) A District Court Judge may, in any case in which the District Court Judge considers it appropriate, order that any matter before a Court presided over by 1 or more Community Magistrates be transferred to a Court presided over by a District Court Judge.
- (2) A Court to which a matter is transferred under subsection (1) may complete or otherwise deal with the matter as if it had been brought before that Court in the first instance.

Section 9 was substituted, and sections 9A to 9G were inserted, as from 30 June 1998, by section 3(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

10 Jurisdiction in respect of fugitive offenders

[Repealed]

Compare: 1947 No 16 s 25

Section 10 was repealed, as from 1 September 1999, by section 111 Extradition Act 1999 (1999 No 55).

Part 2

Procedure where defendant proceeded against summarily

11 Application of this Part

This Part shall apply to all proceedings where the defendant is proceeded against summarily.

12 Commencement of proceedings

- (1) Except where the defendant has been arrested without warrant, all proceedings brought under this Part shall, subject to sections 20A and 21, be commenced by the laying of an information or the making of a complaint.
- (2) Where a defendant has been arrested on any charge and no information has been laid, particulars of the charge against him shall be set out in a charge sheet.
- (3) The provisions of this Act shall apply with respect to every entry in a charge sheet as if that entry were an information.

Subsection (1) was amended by section 7(2) Summary Proceedings Amendment Act 1973 (1973 No 117) by inserting the words “, subject to section 20A of this Act,”, which were in turn substituted by section 17(1) Transport Amendment Act 1980 (1980 No 96) by the words “, subject to sections 20A and 21 of this Act,”.

Information

13 Any person may lay an information

Except where it is expressly otherwise provided by any Act, any person may lay an information for an offence.

Compare: 1927 No 37 s 51

14 Time for laying information

Except where some other period of limitation is provided by the Act creating the offence or by any other Act, every information for an offence (other than an offence which may be dealt with summarily under section 6) shall be laid within 6 months from the time when the matter of the information arose.

Compare: 1927 No 37 s 50; 1952 No 41 s 10

15 Information to be in prescribed form and upon oath

- (1) Every information to which this Part applies shall be form 1 in Schedule 2, and shall be substantiated on oath before a District Court Judge or Justice or before a Registrar (not being a constable).
- (2) Without limiting any other provision of this Act or any other enactment, no information shall be invalid by reason only that it does not contain the date of birth of the defendant or does not correctly describe the defendant's date of birth, and no amendment shall be required to remedy that omission or error before the hearing of the information.

Compare: 1927 No 37 ss 49, 55

Subsection (2) was inserted, as from 15 December 1994, by section 2 Summary Proceedings Amendment Act 1994 (1994 No 161).

16 Information to be for 1 offence only

- (1) Except where it is otherwise provided by any Act, every information shall be for 1 offence only:
provided that an information may charge in the alternative several different matters, acts, or omissions if these are stated in the alternative in the enactment under which the charge is brought.
- (2) The defendant may, at any time during the hearing of any information which is framed in the alternative, apply to the Court to amend the information on the grounds that it is so framed as to embarrass him in his defence.
- (3) The Court may, if satisfied that the defendant will be so embarrassed in his defence, direct the informant to elect between the alternatives charged in the information, and the information shall thereupon be amended accordingly, and the hearing shall proceed as if the information had been originally framed in the amended form.
- (4) Where on any such alternative information the defendant is convicted, the Court may, and shall if so requested by the defendant, limit the conviction to 1 of the alternatives charged.

Compare: 1909 No 13 s 13; 1927 No 37 s 52

17 Information to contain sufficient particulars

Every information shall contain such particulars as will fairly inform the defendant of the substance of the offence with which he is charged.

Compare: 1927 No 37 s 53

17A Certain informations to disclose range of penalties

- (1) If a defendant is charged with an offence to which this section applies, the information must disclose the range of penalties available on conviction for that offence.
- (2) This section applies to offences that carry—
 - (a) a maximum penalty on first conviction of more than 3 months' imprisonment; and
 - (b) a higher maximum penalty on conviction for that offence if the defendant has a specified number of previous convictions for that or any other specified offence.
- (3) An information may not be dismissed solely on the grounds that it does not comply with subsection (1).
- (4) If an information that is required by subsection (1) to disclose the range of penalties available on conviction for that offence does not do so,—
 - (a) the information may be amended before or during the hearing, in accordance with this Act; and
 - (b) if the information is not amended, and the defendant is convicted, then the maximum penalty for which the defendant is liable is the penalty to which he or she would be liable if he or she did not have previous convictions for the same or any other specified offence.
- (5) This section does not limit or affect—
 - (a) the right of the Court, when sentencing the defendant, to take previous convictions into account; or
 - (b) section 341 of the Crimes Act 1961.

Section 17A was inserted, as from 1 April 1999, by section 2(1) Summary Proceedings Amendment Act 1999 (1999 No 7). See section 2(2) of that Act as to this Act applying to proceedings commenced before 1 April 1999, as if this section had not been inserted.

18 Information to be filed in nearest Court

- (1) As soon as practicable after an information is laid, it shall be filed by the informant in the office of the Court appointed for the exercise of criminal jurisdiction which is nearest by the most practicable route to the place where the offence was alleged to have been committed or where the informant believes that the defendant may be found:
Provided that, if all the parties to the proceedings agree, the information may be filed in the office of another Court:
Provided also that failure to comply with the provisions of this section shall not be deemed to invalidate any proceedings.
- (2) Notwithstanding anything in subsection (1), where 2 or more informations to which this Part applies are laid against the same defendant, it shall be a sufficient compliance with the provisions of this section if the informations are filed in an office of the Court in which any one of the informations could be filed or has already been filed.
- (3) Nothing in this section shall apply in any case where there is a statutory provision to the contrary.

Compare: 1947 No 16 s 26

*Summons and warrant***19 Issue of summons to or warrant to arrest defendant**

- (1) When an information has been laid,—
- (a) any District Court Judge or Justice or Community Magistrate or any Registrar (not being a constable) may issue a summons to the defendant, in the prescribed form:
- (b) a warrant, in the prescribed form, to arrest the defendant and bring him before a Court may be issued by any Justice or any Community Magistrate or any Registrar (not being a constable), whether or not a summons has been issued or served, if the defendant is liable on conviction to a sentence of imprisonment, and if—
- (i) in the opinion of the Justice or Community Magistrate or Registrar a warrant is necessary to compel the attendance of the defendant; or
- (ii) having regard to the gravity of the alleged offence and the circumstances of the case, the Justice or

Community Magistrate or Registrar is of opinion that a warrant should be issued:

- (c) in any case, a District Court Judge may, if he thinks fit, and whether or not a summons has been issued or served, issue a warrant, in the prescribed form, to arrest the defendant and bring him before a Court.
- (2) Where service of a summons to a defendant is to be effected in accordance with paragraph (c) of subsection (1) of section 24 the day on which the defendant is summoned to appear shall not be less than 21 days after the day on which the registered letter is posted.

Compare: 1927 No 37 ss 55-57; 1952 No 44 s 17

Subsection (1)(a) was amended, as from 30 June 1998, by section 4(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Subsection (1)(b) was amended, as from 30 June 1998, by section 4(2)(a) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or any Community Magistrate”.

Subsection (1)(b)(i) and (ii) were amended, as from 30 June 1998, by section 4(2)(b) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Subsection (2) was inserted by section 2(1) Summary Proceedings Amendment Act 1968 (1968 No 108).

19A Summons following arrest

- (1) Where any person, who has been arrested without warrant and who is charged with a summary offence or an indictable offence that may be dealt with summarily, cannot practicably be brought immediately before a Court, any constable may, if he deems it prudent to do so, release the defendant without bail to appear on summons to answer the charge.
- (2) Every constable who releases a defendant under this section shall, at the time of the release of the defendant, sign and serve on the defendant a summons in a form prescribed for the purposes of this section. Every such summons shall require the defendant to appear on a day not later than 2 months after the date thereof at the Court where the information required by subsection (3) is to be filed.
- (3) An information under this Part in respect of the offence with which the defendant is charged shall be laid and filed by a con-

stable as soon as practicable after the release of the defendant, and in any event not later than 7 days after the day on which the defendant is released.

- (4) It shall be the duty of every constable who releases a defendant under this section to ensure that the information required by subsection (3) is laid and filed.
- (5) A copy of the summons served under subsection (2) shall be filed with the information. That copy shall bear an endorsement showing the fact, time, and mode of service and that endorsement shall be signed by the constable who released the defendant.

Section 19A was inserted by section 5 Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsection (1) was substituted by section 2 Summary Proceedings Amendment Act 1976 (1976 No 169).

19B Summons following evidential breath test

- (1) If a person undergoes an evidential breath test under section 69 of the Land Transport Act 1998 and the test is positive, but the person who underwent the test does not advise an enforcement officer within 10 minutes of being advised of the matters specified in section 77(3)(a) of the Land Transport Act 1998 that the person wishes to undergo a blood test, an enforcement officer may sign and serve on the person a summons in a form prescribed for the purposes of this section.
- (2) Every such summons shall require the person to appear on a day not later than 2 months after the date of the summons at the Court where the information required by subsection (3) is to be filed.
- (3) An information under this Part in respect of the offence with which the person is charged shall be laid and filed by an enforcement officer as soon as practicable after the evidential breath test was administered, and in any event not later than 7 days after the day the test was administered.
- (4) It is the duty of every enforcement officer who issues a summons under this section to ensure that the information required by subsection (3) is laid and filed.
- (5) A copy of a summons served under this section shall be filed with the information, and the copy shall bear an endorsement,

signed by the enforcement officer who issued the summons, showing the fact, time, and mode of service.

- (6) In this section, the term **enforcement officer** has the same meaning as it has in section 2(1) of the Land Transport Act 1998.

Section 19B was inserted, as from 7 January 1989, by section 18(1) Transport Amendment Act (No 2) 1988 (1988 No 170).

Subsection (1) was amended, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110) by inserting the words “or section 69 of the Land Transport Act 1998”.

Subsection (1)(a) was amended, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110) by substituting the words “the Transport Act 1962 or section 77(3)(a) of the Land Transport Act 1998” for the words “that Act”.

Subsection (1)(b) was amended, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110) by substituting the words “the Transport Act 1962 or section 2(1) of the Land Transport Act 1998,” for the words “that Act”.

Subsection (1) was substituted, as from 29 December 2001, by section 14(1) Land Transport (Road Safety Enforcement) Amendment Act 2001 (2001 No 104).

Subsection (6) was amended, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110) by substituting the words “has the same meaning as it has in section 2(1) of the Land Transport Act 1998” for the words “means a traffic officer or a constable”.

20 Issue of summons or warrant for attendance of witness

- (1) Either the informant or the defendant may at any time obtain from any District Court Judge or Justice or Community Magistrate or the Registrar a summons in the prescribed form calling on any person to appear as a witness at the hearing.
- (1A) If an application for a non-party disclosure hearing is granted under section 25 of the Criminal Disclosure Act 2008, the defendant may apply to a District Court Judge or Justice or Community Magistrate or the Registrar for the issue of a summons in the prescribed form calling on any person to appear at that hearing.
- (2) Any summons issued under subsection (1) may require the person summoned to bring with him and produce at the hearing such books, deeds, papers, writings, and photographs as may be mentioned in the summons.
- (3) No person who is required under a summons issued under subsection (1) to travel more than 15 kilometres to attend the hear-

ing shall be bound to attend, unless expenses in accordance with the scale prescribed by regulations made under this Act are tendered to him.

- (4) If any District Court Judge or Registrar is satisfied that any person whose evidence at the hearing is required by either the informant or the defendant will not attend to give evidence without being compelled to do so, then, whether or not a summons has been issued or served, he may, if he thinks fit, issue a warrant in the prescribed form for the attendance of that person at the hearing.
- (4A) Any person who is arrested pursuant to a warrant issued under subsection (4) shall be brought as soon as possible before a District Court Judge, who may—
- (a) by warrant in the prescribed form order that the person be committed to a prison to be detained until the hearing; or
 - (b) grant the person bail.
- (4B) Any person committed to prison pursuant to subsection (4A) shall be treated in the same way as a prisoner awaiting trial.
- (4C) Where any person who is arrested pursuant to subsection (4) is committed to prison pursuant to subsection (4A), that person shall, if he or she so requests, be brought before a District Court Judge for the purpose of making an application for bail, and the Judge may grant or refuse to grant bail on that application.
- (4D) If a person is granted bail under subsection (4A) or subsection (4C), sections 29, 30(3), and sections 31 to 38 of the Bail Act 2000, as far as they are applicable and with any necessary modifications, apply as if—
- (a) that person were a defendant remanded in custody who had been granted bail; and
 - (b) for the words “for the period of the adjournment” in section 29 of the Bail Act 2000 there were substituted the words “until the date of the hearing”; and
 - (c) there were inserted in section 31(1)(b) of the Bail Act 2000, after the words “time to time be adjourned”, the words “unless that person is released by the Court from further attendance”; and

- (d) for the words “evading justice” in section 35(1)(a) of the Bail Act 2000 there were substituted the words “avoiding giving evidence”.
- (5) Every person commits an offence who, having been served with a summons under this section calling upon him to appear as a witness at the hearing, refuses or neglects, without sufficient cause, to appear or to produce any books, deeds, papers, writings, or photographs required by the summons to be produced, and is liable on summary conviction to a fine not exceeding \$300.

Compare: 1927 No 37 ss 58-60; 1948 No 20 s 4

Subsection (1) was amended, as from 30 June 1998, by section 5 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Section 20(1A): inserted, on 29 June 2009, by section 40(1) of the Criminal Disclosure Act 2008 (2008 No 38).

Subsection (3) was amended, as from 20 May 1981, by section 7 Summary Proceedings Amendment Act 1980 (1980 No 84) by substituting the expression “15 kilometres” for the expression “10 miles”.

Subsection (4) was amended, as from 1 September 1993, by section 3 Summary Proceedings Amendment Act 1993 (1993 No 47) by inserting the words “or Registrar”.

Subsections (4A) and (4B) were inserted, as from 23 November 1973, by section 6(1) Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsections (4A) and (4B) were substituted, as from 1 August 1987, by section 8(2) Summary Proceedings Amendment Act 1987 (1987 No 172).

Subsection (4B) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the words “a prisoner” for the words “an inmate”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsections (4C) and (4D) were inserted, as from 23 November 1973, by section 6(1) Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsections (4C) and (4D) were substituted, as from 1 August 1987, by section 8(2) Summary Proceedings Amendment Act 1987 (1987 No 172).

Subsection (4D)(d) was amended by section 2 Summary Proceedings Amendment Act 1991 (1991 No 105) by inserting the words “appearance or”.

Subsection (4D) was substituted, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

Subsection (5) was inserted by section 5 Summary Proceedings Amendment Act 1961 (1961 No 44), and was amended, as from 20 May 1981, by section 24 Summary Proceedings Amendment Act 1980 (1980 No 84) by substituting the expression “\$300” for the expression “\$40”.

20A Summary procedure for minor offences

- (1) Where a charge is brought by any informant of the kind described in subsection (10) against any person for any minor offence (as defined in subsection (12)) a summons to the defendant shall not be issued in the first instance, unless the informant satisfies the Registrar that for special reasons a summons should be issued or a District Court Judge or Community Magistrate so directs.
- (2) Unless a summons is to be so issued, all proceedings brought under this Part in respect of a minor offence shall be commenced by the informant filing a notice of prosecution in the prescribed form specifying the date and nature of the alleged offence and a summary of the facts on which the informant bases his allegation that an offence has been committed, and any other matters (not being previous convictions) which the informant considers are relevant to the imposition of a penalty. The summary of the facts shall be sufficient to fully and fairly inform the defendant of the allegations against him.
- (3) In addition the notice shall—
 - (a) specify the maximum penalty for the offence;
 - (b) specify the minimum penalty for the offence if such a penalty is expressly provided for;
 - (c) show whether conviction for the offence would or could result—
 - (i) in the defendant being disqualified from holding or obtaining a driver's licence or any other licence or privilege or the forfeiture of any property; or
 - (ii) in demerit points being recorded under the Land Transport Act 1998 in respect of the defendant;
 - (d) inform the defendant of his or her rights under subsections (5) to (8) and of the right that the Court has under section 106 of the Sentencing Act 2002 to discharge a person without conviction;
 - (e) be accompanied by particulars of any previous conviction of the defendant if the informant wishes the Court to take that conviction into account in the event of the defendant being found guilty:

- (f) contain such other information or advice as may be required by or pursuant to this Act:
 - (g) set out the full name of the informant and, for the purposes of subsection (10), the capacity in which he is acting in filing the notice:
 - (h) be signed by the informant who shall certify that he believes that he has just cause for his allegation and that, to the best of his knowledge and belief, his summary of the facts and the other particulars relating to the offence or to the defendant are true and correct.
- (4) The Registrar shall cause a copy of the notice to be served on the defendant.
- (5) If the defendant wishes to deny the charge or to appear before the Court for that or any other purpose he must send written advice to that effect to the Registrar by a date specified in the notice, being a date not earlier than 28 days after the date of the notice. Any such advice shall be sufficient for the purposes of this section if, however expressed, it indicates the defendant's wishes.
- (6) The defendant may plead guilty in accordance with section 41 and may, in the notice required by that section,—
- (a) state matters which he wishes the Court to take into consideration:
 - (b) make submissions with regard to the appropriate penalty:
 - (c) put forward reasons why he should be discharged without conviction under section 106 of the Sentencing Act 2002.
- (7) If the defendant pleads guilty in accordance with section 41 or if, in any case, the defendant does not, by the date specified in the notice referred to in subsection (2), give written advice to the Registrar in accordance with subsection (5), a District Court Judge or Community Magistrate may, on the basis of the summary of the facts contained in the notice referred to in subsection (2), deal with the defendant as if he had appeared before a Court and pleaded guilty. Where particulars of any previous conviction of the defendant have accompanied that notice, the District Court Judge or Community Magistrate may

- take that conviction into account in deciding whether or not to impose a penalty and, if one is imposed, its amount.
- (8) If the defendant indicates in accordance with subsection (5) that the defendant wishes to deny the charge or to appear before the Court for that or any other purpose or if in any case a District Court Judge or Community Magistrate so directs, a summons, in the prescribed form, must be issued to the defendant by a District Court Judge, Justice, Community Magistrate, or Registrar (not being a constable) and subsequent proceedings must be had on that summons as if the notice under subsection (2) were an information.
- (9) Sections 14, 16, 17, 18, 34, 36, 71, 75, 204, 205, and 208, Part 4, and the Costs in Criminal Cases Act 1967 shall apply, with such modifications as are necessary, to every notice of prosecution filed under subsection (2) as if it were an information.
- (10) A notice under subsection (2) may be filed only by—
- (a) a member of the Police:
 - (b) an enforcement officer under the Land Transport Act 1998:
 - (c) a person acting in the course of his official duties as an officer or employee of any of the State Services, a local authority, a public body, or a statutory Board:
 - (d) any other class of person approved for the time being for the purposes of this section by the Minister of Justice by notice in the *Gazette*. Any such approval may be conditional or may apply only in respect of specified offences or classes of offences.
- (11) Every certificate given by an informant under paragraph (h) of subsection (3) shall be deemed to be a statement for the purposes of section 111 of the Crimes Act 1961 (which relates to false statements) notwithstanding that it is not required to be made before any person.
- (12) For the purposes of this section, the term **minor offence** means,—
- (a) in the case of a summary offence under the Land Transport Act 1998, a summary offence under that Act for which the defendant is not liable on conviction to a sentence of imprisonment or to a fine exceeding \$2,000:

- (b) in any other case, means any summary offence for which the defendant is not liable on conviction to a sentence of imprisonment or to a fine exceeding \$500.
- (13) This section shall not apply where the defendant, or, where 2 or more persons are jointly charged, at least 1 of the defendants, is under the age of 17 years, unless the charge is for a traffic offence (as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989) which is not punishable by imprisonment.
- (14) Subject to the provisions of any other enactment, where a conviction is entered following proceedings under this section the entry in the Criminal Records kept pursuant to section 71 relating to that conviction and the summary of the facts contained in the notice filed under subsection (2) shall be open to inspection by the public.
- (15) Any 2 or more Justices may exercise the powers conferred on a District Court Judge by this section in any case where the minor offence with which the defendant is charged is one in respect of which a Court presided over by a Justice or by 2 or more Justices would have jurisdiction if a summons to the defendant were issued in the first instance.

Section 20A was substituted by section 7(1) Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsection (1) was amended, as from 30 June 1998, by section 6(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Subsection (3)(c)(ii) was amended, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110), by substituting the words “the Land Transport Act 1998” for the words “the Transport Act 1962”.

Subsection (3)(d) was amended by section 150(1) Criminal Justice Act 1985 (1985 No 120) by substituting the words “section 19 of the Criminal Justice Act 1985” for the words “section 42 of the Criminal Justice Act 1954”.

Subsection (3)(d) was substituted, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (6)(c) was amended by section 150(1) Criminal Justice Act 1985 (1985 No 120) by substituting the words “section 19 of the Criminal Justice Act 1985” for the words “section 42 of the Criminal Justice Act 1954”.

Subsection (6)(c) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting the words “section 106 of the Sentencing Act 2002” for the words “section 19 of the Criminal Justice Act 1985”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the sav-

ings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (7) was amended by section 2 Summary Proceedings Amendment Act 1975 (1975 No 105) by substituting the words in the first set of double square brackets for the words “Unless, before the date specified in the notice referred to in subsection (2) of this section, the defendant indicates in accordance with subsection (5) of this section that he wishes to deny the charge or to appear before the Court for that or any other purpose or pleads guilty in writing in accordance with section 41 of this Act”.

Subsection (7) was amended, as from 30 June 1998, by section 6(2) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Subsection (8) was substituted, as from 30 June 1998, by section 6(3) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

Subsection (9) was amended, as from 1 July 1993, by section 129(1) Privacy Act 1993 (1993 No 28) by omitting the words “, and the Wanganui Computer Centre Act 1976” (as inserted by section 17(2)(a) Transport Amendment Act 1980 (1980 No 96): *See* section 1(2) of the Act and SR 1981/294.

Subsection (10)(b) was substituted, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110).

Subsection (12) was amended by section 17(2)(b) Transport Amendment Act 1980 (1980 No 96) by inserting the words “; but does not include a minor traffic offence”, which were omitted, as from 1 November 1987, by section 4 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (12) was substituted, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110).

Section 20A(12)(a): amended, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

Subsection (13) was substituted, as from 1 November 1989, by section 449 Children, Young Persons, and Their Families Act 1989.

Subsection (14) was amended by section 71(5) of this Act by substituting the reference to the “Criminal Records kept pursuant to s 71 of this Act”, for a reference to the Criminal Record Book.

21 Summary procedure for infringement offences

- (1) Proceedings in respect of an infringement offence may be commenced—
- (a) with the leave of a District Court Judge or a Registrar, by laying an information under this Act, or by filing a notice of prosecution under section 20A; or
 - (b) where an infringement notice has been issued in respect of the offence, by providing particulars of a reminder notice in accordance with subsections (4) and (4A), or by filing a notice of hearing in a Court, under this section.

- (2) Where—
- (a) an infringement notice has been issued in respect of an infringement offence; and
 - (b) on the expiration of 28 days from the date of service of the notice, or a copy of the notice,—
 - (i) the infringement fee for the offence has not been paid to the informant at the address specified in the notice; and
 - (ii) the informant has not received at that address a notice requesting a hearing in respect of the offence,—
- the informant may serve on the person or one of the persons served with the infringement notice, or a copy of the infringement notice, a reminder notice that contains the same or substantially the same particulars as the infringement notice.
- (2AA) The reminder notice referred to in subsection (2) and subsection (3C) must,—
- (a) if a form has been prescribed in any other Act or in regulations made under any other Act for the relevant infringement offence or the relevant class of infringement offences, be in that form; or
 - (b) if no form has been so prescribed, be in the general form prescribed in regulations made under this Act.
- (2A) For the purposes of this section, a reminder notice that is in a form prescribed under any Act or in any regulations made under that Act is to be treated as containing substantially the same particulars as the relevant infringement notice under that Act or those regulations.
- (3) The informant may provide particulars of the reminder notice in accordance with subsections (4) and (4A) if—
- (a) a reminder notice has been served under subsection (2); and
 - (b) on the expiration of 28 days from the date of service of that notice,—
 - (i) the infringement fee for the offence has not been paid to the informant at the address specified in the notice; and

- (ii) the informant has not received at that address a notice requesting a hearing in respect of the offence.
- (3A) If—
 - (a) the informant has not provided particulars of a reminder notice under subsection (3), in accordance with subsections (4) and (4A); and
 - (b) the informant has instituted the necessary management and accounting systems to allow the defendant to pay the infringement fee to the informant by instalments—the informant may, but is not required to, enter into an arrangement allowing the defendant to pay the infringement fee to the informant by instalments.
- (3B) An arrangement under subsection (3A) must—
 - (a) be entered into before the close of the date that is 6 months from the time when the infringement offence is alleged to have been committed; and
 - (b) be completed before the close of the date that is 12 months from the time when the infringement offence is alleged to have been committed.
- (3C) If the informant has entered into an arrangement under subsection (3A), and default is made in the payment of any instalment, the informant may,—
 - (a) despite subsection (3B)(a), enter into another arrangement under subsection (3A) allowing the defendant to pay the infringement fee to the informant by instalments; or
 - (b) serve on the defendant or 1 of the defendants served with the infringement notice, or a copy of the infringement notice, a reminder notice in the prescribed form containing the same or substantially the same particulars as the infringement notice.
- (3D) The informant may provide particulars of the reminder notice in accordance with subsections (4) and (4A) if—
 - (a) a reminder notice has been served under subsection (3C)(b); and
 - (b) on the expiration of 28 days from the date of service of that notice, the infringement fee for the infringement

- offence has not been paid to the informant at the address specified in the notice.
- (4) For the purposes of subsections (1), (3), and (3D) and subsections (4A) to (5A), the **particulars of a reminder notice** are—
- (a) the contents of the reminder notice, or such parts of the reminder notice that are prescribed as the particulars for the purposes of this subsection; and
 - (b) any particulars relating to the service of the infringement notice and reminder notice that may be prescribed; and
 - (c) any other particulars that may be prescribed.
- (4A) The particulars described in subsection (4)—
- (a) must be provided by the informant in electronic form in a manner and by means of an electronic system approved by the chief executive of the Ministry of Justice; and
 - (b) once provided, must, for the purposes of any enactment or rule of law, be treated as information held in a Court in relation to its judicial functions.
- (4B) Particulars of a reminder notice provided under subsection (3) or subsection (3D), and in accordance with subsection (4A), must be verified by the Ministry of Justice to ensure they contain the particulars described in subsection (4)(a) and (b), in accordance with a procedure approved by the chief executive of the Ministry of Justice.
- (4C) When particulars of a reminder notice provided under subsection (3) or subsection (3D) are verified under subsection (4B) as containing the particulars described in subsection (4)(a) and (b), the reminder notice is deemed to have been filed in the Court appointed for the exercise of the criminal jurisdiction which is the nearest by the most practicable route to the place where the offence was alleged to have been committed.
- (5) If, following the verification under subsection (4B) of particulars of a reminder notice provided under subsection (3), a reminder notice is deemed to have been filed in a Court within 6 months from the time when the offence is alleged to have been committed, an order is deemed to have been made in that Court (as if on the determination of an information in respect of the offence) that the defendant pay a fine equal to the amount of

the infringement fee for the offence together with costs of the prescribed amount.

- (5A) If, following the verification under subsection (4B) of particulars of a reminder notice provided under subsection (3D), a reminder notice is deemed to have been filed in a Court within 12 months from the time when the infringement offence is alleged to have been committed, an order is deemed to have been made in that Court (as if on the determination of an information in respect of the offence) that the defendant pay a fine equal to the amount of the infringement fee then remaining unpaid for the offence together with costs of the prescribed amount.
- (5AB) An order under subsection (5) or subsection (5A) is deemed to have been made on the date that the relevant reminder notice is deemed to have been filed under subsection (4C).
- (5B) If the informant has entered into an arrangement under subsection (3A) or subsection (3C)(a), no defendant may give notice requesting a hearing in respect of the infringement offence to which the arrangement applies.
- (6) A notice requesting a hearing in respect of an infringement offence must—
- (a) be in writing signed by the person or one of the persons served with the infringement notice in respect of the offence, or a copy of the infringement notice; and
 - (b) be delivered to the informant at the address specified in the infringement notice before or within 28 days after service of a reminder notice in respect of the offence, or within such further time as the informant may allow.
- (7) A person giving notice requesting a hearing in respect of an infringement offence may, if the person thinks fit, in that notice—
- (a) admit liability in respect of the offence; and
 - (b) make any submissions as to penalty or otherwise that the defendant would wish to be considered by a Court hearing proceedings in respect of the offence.
- (8) Where a notice requesting a hearing in respect of an infringement offence is given in accordance with this section, the following provisions shall apply:

- (a) the informant shall, if it is proposed that proceedings be commenced in respect of the offence, file in a Court a notice of hearing in the prescribed form:
 - (b) where the defendant does not, in the notice requesting a hearing, admit liability in respect of the offence, the informant shall serve on the defendant a copy of the notice of hearing filed pursuant to paragraph (a):
 - (c) where the defendant does, in the notice requesting a hearing, admit liability in respect of the offence, the informant shall file that notice in the Court in which the notice of hearing is filed:
 - (d) where a notice of hearing is filed in a Court within 6 months from the time when the offence is alleged to have been committed, the provisions of this Act and the Costs in Criminal Cases Act 1967 shall apply, with such modifications as are necessary,—
 - (i) in relation to the notice of hearing, as if it were an information:
 - (ii) in relation to a copy of the notice served on the defendant pursuant to paragraph (b), as if it were a summons to the defendant:
 - (iii) in relation to a notice of the defendant filed in the Court pursuant to paragraph (c), as if it were a notice of the defendant pleading guilty to the offence pursuant to section 41.
- (9) Where a defendant is found guilty of, or pleads guilty to, an infringement offence for which an infringement notice has been issued, the Court shall order the defendant to pay costs of the prescribed amount in addition to the fine (if any) and other costs (if any) ordered by the Court.
- (10) In any proceedings for an infringement offence for which an infringement notice has been issued—
- (a) it shall be a defence if the defendant proves that the infringement fee for the offence has been paid to the informant at the address specified in the notice before or within 28 days after service on the defendant of a reminder notice in respect of the offence:

- (b) it shall not be a defence that the infringement fee for the offence has been paid otherwise than as referred to in paragraph (a).
- (11) Where an infringement fee is paid to the informant at the address specified in the infringement notice but not within the time referred to in subsection (10)(a), the amount paid may be held and applied towards any fine or costs that the defendant may become liable to pay in respect of the offence.
- (12) In any proceedings for an infringement offence for which an infringement notice has been issued it shall be presumed, unless the contrary is proved, that—
- (a) the infringement notice in respect of the offence has been duly issued, and the notice, or a copy of the notice, has been served on the defendant:
- (b) any reminder notice or copy of a notice of hearing required to have been served on the defendant has been duly served:
- (c) the infringement fee for the offence has not been paid as required under this section.
- (13) If the informant has entered into an arrangement under subsection (3A) or subsection (3C)(a), and default is made in the payment of any instalment, proceedings may be taken as if default had been made in the payment of all instalments then remaining unpaid.

Section 21 was repealed, as from 17 December 1976, by section 4(1) Summary Proceedings Amendment Act 1976 (1976 No 169).

Section 21 was inserted, as from 1 November 1981, by section 16 Transport Amendment Act 1980 (1980 No 84).

Subsections (2) and (3) were substituted, as from 1 April 1985, by section 2(1) Summary Proceedings Amendment Act 1985 (1985 No 51).

Subsection (5) was amended, as from 1 April 1985, by section 2(2) Summary Proceedings Amendment Act 1985 (1985 No 51) by substituting “14 days” for “35 days”.

Subsections (5A) and (5B) were inserted, as from 1 November 1998, by section 3(2) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Section 21 was substituted, as from 1 November 1987, by section 5 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (1)(b) was amended, as from 1 March 2007, by section 6(1) Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting “providing particulars of a reminder notice in accordance with subsections (4) and (4A), or by filing a notice of hearing in a Court” for “filing in a Court a copy

of a reminder notice, or a notice of hearing”. *See* section 39 of that Act for the transitional provision relating to filing of reminder notices.

Subsection (2) was amended, as from 9 October 2006, by section 5(1) Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting “that contains” for “in the prescribed form containing”.

Subsection (2AA) was inserted, as from 9 October 2006, by section 5(2) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (2A) was inserted, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110).

Subsection (2A) was amended, as from 9 October 2006, by section 5(3) Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting “any Act or in any regulations made under that Act is to be treated as containing substantially the same particulars as the relevant infringement notice under that Act or those regulations” for “the Land Transport Act 1998 is to be treated as containing substantially the same particulars as the relevant infringement notice under that Act”.

Subsection (3) was amended, as from 9 October 2006, by section 5(4) Summary Proceedings Amendment Act 2006 (2006 No 13) by adding “and the full address at which the reminder notice was served”.

Subsection (3) was substituted, as from 1 March 2007, by section 6(2) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 39 of that Act for the transitional provision relating to filing of reminder notices.

Subsection (3A) was inserted, as from 1 November 1998, by section 3(1) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (3A)(a) was amended, as from 1 March 2007, by section 6(3) Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting “provided particulars of a reminder notice under subsection (3), in accordance with subsections (4) and (4A)” for “filed in a Court a copy of a reminder notice under subsection (3)”. *See* section 39 of that Act for the transitional provision relating to filing of reminder notices.

Subsections (3B) to (3D) were inserted, as from 1 November 1998, by section 3(1) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (3D) was amended, as from 9 October 2006, by section 5(5) Summary Proceedings Amendment Act 2006 (2006 No 13) by inserting “and the full address at which the reminder notice was served,” after “service of the reminder notice,”.

Subsection (3D) was substituted, as from 1 March 2007, by section 6(4) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 39 of that Act for the transitional provision relating to filing of reminder notices.

Subsection (4) was substituted, as from 1 March 2007, by section 6(5) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 39 of that Act for the transitional provision relating to filing of reminder notices.

Subsections (4A) to (4D) were inserted, as from 1 March 2007, by section 6(5) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 39 of that Act for the transitional provision relating to filing of reminder notices.

Subsections (5) and (5A) were substituted, as from 1 March 2007, by section 6(5) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 39 of that Act for the transitional provision relating to filing of reminder notices.

Subsection (5AB) was inserted, as from 1 March 2007, by section 6(5) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 39 of that Act for the transitional provision relating to filing of reminder notices.

Subsection (13) was inserted, as from 1 November 1998, by section 3(3) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

21A Evidence of particulars of reminder notice deemed to have been filed in Court by electronic means

In any proceedings, a computer printout of the particulars of a reminder notice deemed to have been filed in a Court under section 21(4C), sealed with the Seal of the Court and purporting to be signed and certified by the Registrar of that Court as a printout that may be used for the purposes of this section, is, in all courts, in the absence of evidence to the contrary, sufficient evidence of—

- (a) those particulars having been provided and verified in accordance with section 21:
- (b) the reminder notice deemed to have been filed in a Court and the order deemed to have been made as a consequence.

Section 21A was inserted, as from 1 March 2007, by section 7 Summary Proceedings Amendment Act 2006 (2006 No 13).

22 To whom warrant to be directed and power of person executing warrant to enter premises

- (1) Every warrant to arrest a defendant or warrant for the appearance of a person required as a witness shall be directed either to any constable by name or generally to every constable. Any such warrant may be executed by any constable.
- (2) For the purposes of executing any warrant referred to in subsection (1), the constable executing it may at any time enter on to any premises, by force if necessary, if he has reasonable cause to believe that the person against whom it is issued is on those premises:
provided that, if the constable executing the warrant is not in uniform and any person in actual occupation of the premises requires him to produce evidence of his authority, he shall be-

fore entering on the premises produce the warrant or his badge or other evidence that he is a constable.

Compare: 1927 No 37 ss 266, 268(1A), (2); 1950 No 91 s 15

23 Withdrawal of warrant

- (1) Any warrant to arrest a defendant or warrant for the appearance of a person required as a witness may, by leave of a District Court Judge or the Justice or Community Magistrate or Registrar who issued it, be withdrawn at any time before it is executed.
- (2) A Registrar may withdraw a warrant to arrest a defendant or a warrant for the appearance of a person required as a witness, whether or not the warrant was issued by the Registrar, if—
 - (a) the warrant has not been executed; and
 - (b) the defendant or person (as the case may be) has appeared before the Court on the matter for which the warrant was issued.

Subsection (1) amended, as from 30 June 1998, by section 7 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Subsection (2) was inserted, as from 1 November 1998, by section 4 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Service of documents

24 Mode of service of documents on defendant

- (1) Every summons to a defendant and every other document which is required to be served on a defendant shall be served on him in 1 of the following ways:
 - (a) by being delivered to him personally or by being brought to his notice if he refuses to accept it; or
 - (b) by being left for him at his place of residence with a member of his family living with him and appearing to be of or over the age of 18 years; or
 - (c) by being sent to him by registered letter addressed to him at his last known or usual place of residence or at his place of business; or
 - (d) in the case of a notice relating to an infringement of fence or a minor offence as defined in section 20A(12), by being sent by letter by ordinary post addressed

to the defendant at the defendant's last known place of residence or business or, in the case of an infringement offence against the Transport (Vehicle and Driver Registration and Licensing) Act 1986, the Land Transport Act 1998, or any regulations or bylaws made under those Acts, by being posted to any address given by or on behalf of the defendant under section 7, section 10, section 15, or section 20 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 or Part 17 of the Land Transport Act 1998.

provided that a District Court Judge or Justice or Community Magistrate or the Registrar may if he thinks fit direct that the summons or other document shall be served in accordance with the provisions of paragraph (a).

- (1A) Despite subsection (1), if a summons or other document required to be served on a defendant is to be served on a defendant who is a Crown organisation, it may be served—
- (a) by delivering it personally to an employee of the organisation at its head office or principal place of business; or
 - (b) by delivering it at the organisation's head office or principal place of business, including by facsimile; or
 - (c) in accordance with a method agreed between the informant and the organisation.
- (2) For the purposes of paragraph (b) of subsection (1) the expression **member of his family** means the defendant's father, mother, wife, husband, civil union partner, de facto partner, child, brother, sister, half brother, or half sister.
- (3) Where service is effected in accordance with paragraph (c) or paragraph (d) of subsection (1), then, unless the contrary is shown, service shall be deemed to have been effected on the person to whom the letter is addressed at the time when the letter would have been delivered in the ordinary course of post, and in proving service it shall be sufficient to prove that the letter was properly addressed and posted.

Compare: 1927 No 37 ss 262, 264

Subsection (1)(c) was amended by section 3(1) Summary Proceedings Amendment Act 1985 (1985 No 51) by inserting the word “; or”, which was repealed, as from 1 November 1987, by section 18 Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 24(1)(d): substituted, on 1 November 1987, by section 6 of the Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 24(1)(d): amended, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

Section 24(1)(d): amended, on 1 May 2011, by section 35(4) of the Land Transport Amendment Act 2009 (2009 No 17).

Subsection (1)(d) was amended, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110) by inserting the words “the Land Transport Act 1998,”.

Subsection (1) proviso was amended, as from 30 June 1998, by section 8 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Subsection (1A) was inserted, as from 18 October 2002, by section 30 Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Subsection (2) was amended, as from 1 January 2002, by section 69 Human Rights Amendment Act 2001 (2001 No 96) by inserting the words “de facto partner of the same or different sex,” after the word “husband”.

Subsection (2) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting the words “civil union partner, de facto partner” for the words “de facto partner of the same or different sex”.

Subsection (3) was substituted by section 2(2) Summary Proceedings Amendment Act 1968 (1968 No 108).

Subsection (3) was amended by section 3(2) Summary Proceedings Amendment Act 1985 (1985 No 51) by inserting the words “or paragraph (d)”.

25 Who may serve documents on defendant

- (1) Except as provided in subsection (2), every summons to a defendant and every other document that is required to be served on a defendant may be served by—
- (a) any sworn or non-sworn member of the Police;
 - (b) an officer of the Court;
 - (c) any person or member of a class of persons authorised by a District Court Judge or Registrar either generally or in respect of a particular case or class of case;
 - (d) in the case of a summons to the defendant or other document required to be served on the defendant in proceedings for an offence against any Act, regulation, or by-law to which section 113(1) of the Land Transport Act 1998 applies, an enforcement officer under the Land Transport Act 1998;
 - (e) in the case of a reminder notice or copy of a notice of hearing relating to an infringement offence, any person

acting in the course of official duties as an officer or employee of the informant.

- (2) Where any such summons or document is to be served by registered or ordinary letter it shall be so served—
- (a) except in the case of a reminder notice or copy of a notice of hearing relating to an infringement offence, by an officer of the Court posting the summons or document to the defendant:
 - (b) in the case of a reminder notice or copy of a notice of hearing relating to an infringement offence, by an officer or employee of the informant posting the notice to the defendant.

The original subsection (1) was amended, as from 27 November 1970, by section 2(1) Summary Proceedings Amendment Act 1970 (1970 No 103) by inserting the words “or, in the case of a summons to the defendant, or any other document which is required to be served on the defendant, in proceedings for an offence against the Transport Act 1962 or any regulations or bylaws under that Act, by any of the aforesaid persons or by a traffic officer within the meaning of that Act”.

The original subsection (2) was amended, as from 1 April 1985, by section 3(3) Summary Proceedings Amendment Act 1985 (1985 No 51) by inserting, after the word “registered”, the words “or ordinary”.

Section 25 was substituted, as from 1 November 1987, by section 7 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (1)(a) was substituted, as from 1 September 1993, by section 4 Summary Proceedings Amendment Act 1993 (1993 No 47).

Subsection (1)(d) was substituted, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110).

Section 25(1)(d): amended, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

26 Mode of service of documents on person other than defendant

Every summons calling on any person to appear as a witness, and every other document which is required to be served on any person other than the defendant, shall be served on that person in accordance with the provisions of section 24 as if references in that section to the defendant were references to the person required to be served.

27 Who may serve documents on person other than defendant

Every summons calling on any person to appear as a witness, and every other document which is required to be served on any person other than the defendant, may be served by a sworn or non-sworn member of the Police or an officer of the Court, by a party or his solicitor, or by any person authorised by a party or his solicitor to serve the summons or other document.

Section 27 was amended, as from 1 September 1993, by section 5 Summary Proceedings Amendment Act 1993 (1993 No 47) by substituting the words “sworn or non-sworn member of the Police” for the word “constable”.

28 Mode of service in particular cases

- (1) Notwithstanding anything in section 24 or section 26, service of any document may be effected in accordance with the provisions of this section in any case to which those provisions apply.
- (2) Where a solicitor represents that he is authorised to accept service of any document on behalf of any person, it shall be sufficient service to deliver the document to him if he signs a memorandum stating that he accepts service of the document on behalf of that person.
- (3) Where any person on whom any document is required to be served is living or serving on board any vessel (including any vessel belonging to any of Her Majesty’s naval forces), it shall be sufficient service to deliver the document to the person on board who at the time of service is apparently in charge of the vessel.
- (4) Where any such person is in any barracks, camp, or station while serving as a member of any of Her Majesty’s naval or military or air forces, it shall be sufficient service to deliver the document at the barracks, camp, or station to the Adjutant or to the officer for the time being in command of the unit or detachment to which the person to be served belongs.
- (5) Where any such person is a prisoner of any prison, it shall be sufficient service to deliver the document to the manager or other officer apparently in charge of the prison.

Subsection (5) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the words “a prisoner” for the words

“an inmate”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (5) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “prison” for the words “penal institution”. For consistency, the word “prison” was editorially substituted for the word “institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (5) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “manager” for the word “Superintendent”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

29 Proof of service

- (1) The service of any document may be proved by affidavit made by the person who served the document, showing the fact and the time and mode of service, or by that person on oath at the hearing, or by an endorsement on the copy of the document showing the fact and the time and mode of service. Any such endorsement shall be signed by the person who served the document or, if the service was effected by registered letter, by any officer of the Court who knows of the service.
- (1A) If, pursuant to subsection (1), any person referred to in paragraph (c) or paragraph (e) of section 25(1) proves service of any document by endorsement on a copy of the document, that person shall, when returning the endorsed copy to the Court, provide proof that he or she is a person referred to in either of those paragraphs.
- (2) Every person who wilfully endorses any false statement of the fact, time, or mode of service on a copy of any document commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$2,000 or to both.

Compare: 1927 No 37 s 263(1), (2); 1955 No 12 s 4(1)

Subsection (1) was amended, as from 27 November 1970, by section 2(2) Summary Proceedings Amendment Act 1970 (1970 No 103) by inserting the words “or a traffic officer within the meaning of the Transport Act 1962”.

Subsection (1) was amended, as from 1 September 1993, by section 6 Summary Proceedings Amendment Act 1993 (1993 No 47) by substituting the words “sworn or non-sworn member of the Police” for the word “constable”.

Subsection (1) was amended, as from 1 April 1996, by section 2(1) Summary Proceedings Amendment Act 1995 (1995 No 64) by substituting the word “, or” for the words “or, where service is effected by an officer of the Court or a sworn or non-sworn member of the Police or a traffic officer within the meaning

of the Transport Act 1962.”. *See* clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

Subsection (1A) was inserted, as from 1 April 1996, by section 2(2) Summary Proceedings Amendment Act 1995 (1995 No 64). *See* clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

Subsection (2) was amended by section 24 Summary Proceedings Amendment Act 1980 (1980 No 84) by substituting the expression “\$2,000” for the expression “\$400”.

30 Translation of documents into Maori language

Where a document is served on any person who is a Maori within the meaning of the Maori Affairs Act 1953, the provisions of the rules for the time being in force under the District Courts Act 1947 relating to translations of documents served on Maoris in civil proceedings shall apply.

Compare: 1927 No 37 s 265; 1952 No 44 s 23

Special provisions for taking evidence

31 Order for taking evidence of defence witness at a distance

- (1) Notwithstanding anything in this Act, any District Court Judge or Registrar on the application of the defendant before the hearing, or the Court on the application of the defendant at the hearing, may make an order for the taking, before any other District Court or before the Registrar thereof (not being a constable), of the evidence of the defendant or of any witness for the defence, if for any reason the District Court Judge or the Registrar or the Court, as the case may be, considers it desirable or expedient that the evidence of the defendant or the witness should be so taken.
- (1A) Notwithstanding anything in this Act, any District Court Judge or Registrar on the application of the informant before the hearing, or the Court on the application of the informant at the hearing, may, with the consent of the defendant, make an order for the taking before any other District Court or before the Registrar thereof (not being a constable), of the evidence of the informant or of any witness for the prosecution, if for any reason the District Court Judge or the Registrar or the Court, as the case may be, considers it desirable or expedient that the evidence of the informant or the witness should be so taken.

- (2) Evidence given in accordance with this section and with any regulations made under this Act may be tendered at the hearing as if it were given in the course thereof; and judicial notice shall be taken of the signature of any examining District Court Judge or Justice or Community Magistrate or Registrar to any deposition made pursuant to an order under this section.
- (3) Where the Court of hearing considers that an application for the taking of the evidence of any defendant or witness under this section has been made for the purpose of delay or for any other improper purpose, or that there is undue delay in the taking of any such evidence, the Court may hear and determine the charge without waiting for the evidence to be so taken.
- (4) Nothing in this section or in any regulations made under this Act shall limit or affect the power of the Court to compel the personal attendance of the defendant or of any witness at the hearing.

Subsection (1) was amended, as from 1 September 1993, by section 7 Summary Proceedings Amendment Act 1993 (1993 No 47) by inserting references to “the Registrar” in both places where they occur.

Subsection (1A) was inserted by section 2 Summary Proceedings Amendment Act 1964 (1964 No 22) and was amended by section 7 Land Transport Act 1993 (1993 No 88) by inserting references to “the Registrar” in both places where they occur.

Subsection (2) was amended, as from 30 June 1998, by section 9 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

32 Order for taking evidence of person about to leave country

- (1) Any District Court Judge or Registrar may, on the application of either the informant or the defendant before the hearing, make an order for the taking, before any District Court or the Registrar thereof (not being a constable), of the evidence of any person, if the District Court Judge or the Registrar is satisfied that that person intends to depart from New Zealand before the hearing and that it is desirable or expedient that his evidence should be so taken.
- (2) Evidence given in accordance with this section and with any regulations under this Act may be tendered at the hearing as if it were given in the course thereof; and judicial notice shall be

taken of the signature of any examining District Court Judge or Justice or Community Magistrate or Registrar to any deposition made pursuant to an order under this section.

Subsection (1) was amended, as from 1 September 1993, by section 8 Summary Proceedings Amendment Act 1993 (1993 No 47) by inserting references to the Registrar in both places where they occur.

Subsection (2) was amended, as from 30 June 1998, by section 10 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

33 Admission in summary proceedings of statement of person dangerously ill taken for purposes of trial of indictable offence

Any statement taken under section 164 (which relates to statements of persons dangerously ill and not likely to recover) may afterwards without further proof be given in evidence either for or against the defendant at the hearing of any charge under this Part, if—

- (a) the offence charged is one to which the statement relates (whether or not the defendant had been charged under Part 5 with that offence at the time the statement was taken) or the defendant is a person to whom the statement relates; and
- (b) pursuant to section 165, the statement could have been given in evidence at a committal hearing under Part 5 of any information against the defendant.

Section 33: amended, on 29 June 2009, by section 15 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 33 was amended as from 1 January 2001, by section 4(1) Summary Proceedings Amendment Act 2000 (2000 No 82), by substituting the word “given” for the word “read” wherever it appeared.

Section 33(b): amended, on 29 June 2009, by section 15 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

General provisions as to hearing

34 Place of hearing of information

- (1) Unless an order is made under the succeeding provisions of this section or under section 4A of the District Courts Act 1947, or unless there is a statutory provision to the contrary,

every charge shall be heard and determined in the Court in the office of which the information is filed.

- (2) Any District Court Judge or Justice or Community Magistrate may order that a charge shall be heard and determined by some other Court.
- (3) The Registrar may, with the consent of each party, order that a charge be heard in some other Court.
- (4) When an order is made under subsection (2) or subsection (3), the Registrar shall forward the information to the Registrar of the Court to which it is ordered to be transferred.

Subsection (1) of the original section 34 was amended, as from 29 June 1974, by section 2(2) Magistrate's Court Amendment Act 1974 (1974 No 20) by inserting the words "or an order is made under section 4A of the District Courts Act 1947".

Section 34 was substituted, as from 15 August 1991, by section 2 Summary Proceedings Amendment Act 1991 (1991 No 62).

Subsection (2) was amended, as from 30 June 1998, by section 11 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words "or Community Magistrate".

35 Power to clear Court and forbid report of proceedings

[Repealed]

Section 35 was repealed, as from 1 October 1985, by section 150(1) Criminal Justice Act 1985 (1985 No 120).

36 Withdrawal of information by informant

- (1) Any information may by leave of the Court be withdrawn by the informant before the defendant has been convicted or the information has been dismissed or, in any case where the defendant has pleaded guilty, before he has been sentenced or otherwise dealt with.
 - (1A) A Registrar may exercise the power conferred by subsection (1) to grant leave if the informant is a sworn or non-sworn member of the Police and has notified the Registrar in writing that the defendant has successfully completed a programme of diversion (being a programme conducted by the Police).
 - (1B) A Registrar may exercise the power conferred by section 140 of the Criminal Justice Act 1985 (which relates to orders prohibiting the publication of names) to make an order that has permanent effect if—

- (a) the Registrar grants leave under subsection (1A); and
 - (b) the informant agrees to the making of that order.
- (2) *[Repealed]*
- (3) The withdrawal of an information shall not operate as a bar to any other proceedings in the same matter.

Compare: 1927 No 37 ss 65-67.

Subsection (1A) was inserted, as from 1 April 1996, by section 3 Summary Proceedings Amendment Act 1995 (1995 No 64). See clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

Subsection (1B) was inserted, as from 1 November 1998, by section 5 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (2) was repealed by section 14(2) Costs in Criminal Cases Act 1967 (1967 No 129).

37 Who may conduct proceedings

- (1) At the hearing of any charge, the informant and the defendant may appear personally or by a barrister or a solicitor of the High Court.
- (2) Except as provided in this section or in any other enactment, no person other than the informant may appear at the hearing of any charge and conduct the proceedings against the defendant.
- (3) Where an information has been laid by a constable, any other constable may appear and conduct the proceedings on the informant's behalf.
- (4) Where an information has been laid by an officer or employee of a Department of State or of a local body, any other officer or employee of that Department or of that local body, as the case may be, may appear and conduct the proceedings on the informant's behalf.
- (5) Where proceedings have been commenced by the filing of a notice of hearing pursuant to section 21, any officer or employee of the Department, local body, or other authority that is the informant may appear and conduct the proceedings on the informant's behalf.

Subsection (4) was amended by section 21 Weights and Measures Amendment Act 1991 (1991 No 9) by inserting in two places the words "or employee".

Subsection (5) was inserted, as from 1 November 1987, by section 8 Summary Proceedings Amendment Act 1987 (1987 No 165) and amended by section 21 Weights and Measures Amendment Act 1991 (1991 No 9) by inserting the words "or employee".

38 Court may issue warrant for appearance of witness

- (1) If at the hearing of any charge any person summoned as a witness under section 20 fails to appear and no just excuse is offered for his failure, the Court, if satisfied that the summons was duly served on him, may issue a warrant in the prescribed form for the appearance of that person.
- (2) Where any person is arrested pursuant to a warrant issued under subsection (1), the provisions of subsections (4A) to (4D) of section 20 shall apply as if he had been arrested pursuant to a warrant issued under subsection (4) of the said section 20.

Compare: 1927 No 37 s 59

Subsection (2) was inserted by section 6(2) Summary Proceedings Amendment Act 1973 (1973 No 117).

39 Witness refusing to give evidence may be imprisoned

- (1) At the hearing of any charge any person present in Court, whether he has been summoned to give evidence or not, may be required to give evidence.
- (2) If any person without offering any just excuse refuses to give evidence when required, or refuses to be sworn, or having been sworn refuses to answer such questions concerning the charge as are then put to him, the Court may order that, unless he sooner consents to give evidence or to be sworn or to answer the questions put to him, as the case may be, he be detained in custody for any period not exceeding 7 days, and may issue a warrant in the prescribed form for his arrest and detention in accordance with the order.
- (3) If the person so detained, on being brought up at the adjourned hearing, again refuses to give evidence or to be sworn or, having been sworn, to answer the questions put to him, the Court, if it thinks fit, may again direct the witness to be detained in custody for the like period, and so again from time to time until he consents to give evidence or to be sworn or to answer as aforesaid.

Compare: 1927 No 37 ss 83, 144, 145

40 Witnesses at the hearing

- (1) The Court may if it thinks fit, of its own motion or at the request of any party at any time during the hearing, order all or any witnesses other than any witness who has given or is giving his evidence to leave the Courtroom and to remain out of hearing but within call until required to give evidence.
- (2) The Court may at any time during the hearing require the parties to state what witnesses they intend to call, and may, if it thinks fit, refuse to allow any witness whose name was not so stated to give evidence.

Compare: 1927 No 37 s 70

41 Right to plead guilty by notice to Registrar

- (1) Any person charged with a summary offence in respect of which he is not liable on conviction to a sentence of imprisonment may in writing addressed to the Registrar give notice that he pleads guilty, and the Court shall then have the same power to deal with him as if he had appeared before it and pleaded guilty:
Provided that nothing in this section shall operate to prevent the issue of a warrant to arrest the defendant.
- (2) As soon as practicable after receiving any such notice from the defendant, the Registrar shall give notice thereof to the informant.

41A Registrar may receive not guilty pleas

- (1) Before a charge under this Part is gone into, a Registrar may receive and record a not guilty plea in respect of any person charged with an offence if—
 - (a) the defendant is represented by a barrister or solicitor, and the barrister or solicitor notifies the Registrar, on the defendant's behalf, that the defendant pleads not guilty to the offence; or
 - (b) the defendant is not represented by a barrister or solicitor, and notifies the Registrar that he or she pleads not guilty to the offence.
- (2) Before a Registrar receives and records a not guilty plea under subsection (1)(b), the Registrar must be satisfied that—

- (a) the defendant has been informed of the substance of the charge; and
- (b) the defendant—
 - (i) has been informed of his or her rights to legal representation, including the right to apply for legal aid under the Legal Services Act 2000; and
 - (ii) has fully understood those rights; and
 - (iii) has had the opportunity to exercise those rights and has refused or failed to exercise those rights, or has engaged a barrister or solicitor to represent him or her and has subsequently terminated the engagement.
- (3) If a Registrar receives and records a not guilty plea under subsection (1), the Court has the same power to deal with the defendant as if he or she had appeared before it and pleaded not guilty.

Section 41A was inserted, as from 1 November 1998, by section 6 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (2)(b)(i) was substituted, as from 1 February 2001, by section 128 Legal Services Act 2000 (2000 No 42).

42 Plea of guilty may be withdrawn by leave of Court

A plea of guilty may, by leave of the Court, be withdrawn at any time before the defendant has been sentenced or otherwise dealt with.

43 Amendment of information where defendant appears

- (1) Subject to the succeeding provisions of this section, where the defendant appears to answer a charge to which this Part applies, the Court may amend the information in any way at any time during the hearing.
- (2) Without limiting the generality of the powers conferred by subsection (1), it is hereby declared that those powers shall include power to amend an information by substituting one offence (whether an indictable offence or a summary offence) for another offence (whether an indictable offence or a summary offence), and shall also include power to amend the information to an information to which Part 5 applies.

- (3) Where under subsection (2) any information is amended by substituting one offence for another, then, subject to the provisions of subsection (4), the following provisions shall apply:
- (a) subject to the provisions of paragraphs (b), (c), and (d), the hearing shall be continued as if the defendant had originally been charged with the substituted offence:
 - (b) if the substituted offence is one to which section 66 applies, the defendant shall, before the hearing is continued, be entitled to elect to be tried by a jury for that offence, and the provisions of that section, with the necessary modifications, shall accordingly apply as if for the words “before the charge is gone into” in subsections (1) and (2) of that section there were substituted in each case the words “before the hearing is continued”:
 - (c) before the hearing is continued, the substance of the charge as amended shall be stated to the defendant and he shall be asked how he pleads; and, if he pleads guilty, the Court may convict him or deal with him in any other manner authorised by law:
 - (d) any evidence already given shall be deemed to have been given in and for the purposes of the hearing of the charge as amended, but either party shall have the right to examine or cross-examine or re-examine any witness whose evidence has already been given in respect of the offence originally charged.
- (4) Where under subsection (2) any information is amended to an information to which Part 5 applies, the case shall be dealt with under that Part in all respects as if the defendant had originally been charged under that Part with the indictable offence stated in the amended information.
- (5) The Court may, at the request of the defendant, if it is of opinion that he would be embarrassed in his defence by reason of an amendment made or proposed to be made under this section, adjourn the hearing of the case.

Compare: 1927 No 37 s 72(7)–(11); 1948 No 20 s 5; 1952 No 44 s 18(1)

43A Amendment of information to correct particulars of defendant

- (1) Without limiting section 43, if at any time during the hearing, and whether or not the defendant appears to answer the charge, the Court is satisfied that the particulars of the defendant as they appear on the information are incorrect, whether—
 - (a) because of any mistake or omission in those particulars; or
 - (b) because the name, address, or any other particulars of the defendant as stated on the information do not correctly identify the person by whom the offence stated in the information is alleged to have been committed, whether because the person identified on the information does not exist or is some other person or for any other reason,—the Court may, subject to subsections (3) to (6), make such amendments to the information as are necessary to correct the mistake or omission or, as the case may be, to ensure that the information correctly identifies that person.
- (2) Without limiting the generality of the powers conferred by subsection (1), it is hereby declared that those powers include the power to amend the information by substituting, for all or any of the particulars of the defendant (including his or her name) as stated on the information, any other particulars.
- (3) No power conferred by subsection (1) shall be exercised after the expiry of the period of 12 months from the date on which the information is laid.
- (4) The Court may, if it is of opinion that any person would be prejudiced by any amendment made or proposed to be made pursuant to this section, and that it would be contrary to the interests of justice to require that person to suffer that prejudice,—
 - (a) refuse to make the amendment; or
 - (b) if the amendment has already been made, dismiss the information, but any such dismissal shall not operate as a bar to any other proceedings in the same matter.
- (5) The Court may, at the request of the defendant, if it is of opinion that the defendant would be embarrassed in the defendant's

defence by reason of an amendment made or proposed to be made pursuant to this section, adjourn the hearing of the case.

- (6) Where the Court amends an information pursuant to this section,—
- (a) the Court may direct that a summons or, as the case requires, a further summons be issued to the defendant:
 - (b) subject to paragraph (a) and to subsection (5), the hearing shall proceed in all respects as if the information had been originally framed as amended.

Section 43A was inserted, as from 15 December 1994, by section 3(1) Summary Proceedings Amendment Act 1994 (1994 No 161).

44 Power of Court to decline summary jurisdiction

- (1) Where any summary prosecution of an indictable offence is commenced, the Court may, at any time before the defendant has been sentenced or otherwise dealt with, decline to deal summarily with the offence, and may endorse on the information a certificate to that effect.
- (2) Where a Court declines under this section to deal summarily with an offence, then—
- (a) if the defendant has been found guilty or has pleaded guilty, the Court shall commit him to the High Court for sentence, and the provisions of sections 169 to 171, as far as they are applicable and with the necessary modifications, shall apply. In such a case the District Court Judge shall cause the information, a statement of the facts of the case, and the bail bond (if any) to be sent to the Registrar of the High Court:
 - (b) in any other case, the Court shall deal with the case in all respects as if the offence were an indictable offence not punishable summarily.

Compare: 1936 No 58 s 42(2); 1952 No 41 ss 5, 14; 1955 No 79 s 2

Subsection (2)(a) was amended, as from 1 April 1996, by section 2(2) Summary Proceedings Amendment Act 1995 (1995 No 64) by substituting the words “found guilty” for the word “convicted”. See clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

44A Power of Court to decline summary jurisdiction in case of certain summary offences

- (1) Whenever the Court commits a defendant to the High Court for sentence in respect of any offence, the Court may also commit the defendant to the High Court for sentence in respect of any other offence—
 - (a) that is related to the first-mentioned offence or arises from the same course of conduct as that offence; and
 - (b) in relation to which the High Court would not, but for this subsection, have jurisdiction to sentence the defendant.
- (2) Except as provided in subsection (3), the sentence that may be imposed by the High Court in any case referred under subsection (1) shall not exceed the sentence that could have been imposed in that case by the District Court.
- (3) Where the High Court is satisfied that the District Court would have declined jurisdiction to sentence the defendant, the High Court may impose any sentence that it could impose in that case if the District Court had declined such jurisdiction.

Section 44A was inserted, as from 1 April 1996, by section 5 Summary Proceedings Amendment Act 1995 (1995 No 64). *See* clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

*Adjournments and bail***45 Power to adjourn**

- (1) The hearing of any charge may from time to time be adjourned by the Court to a time and place then appointed.
- (2) If at any time and place appointed for the hearing of any charge, or when a defendant is brought before a Court on arrest, the Court by reason of its constitution has no jurisdiction to hear the charge, any Justice or Community Magistrate may adjourn the hearing to a time and place then appointed.
- (3) *[Repealed]*

Compare: 1927 No 37 ss 68, 86

Subsection (2) was amended, as from 30 June 1998, by section 12 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Section 45(3): repealed, on 29 June 2009, by section 4 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

45A Power of Registrar to adjourn

- (1) A Registrar may, upon application, adjourn the hearing of any charge to a time and place then appointed if—
 - (a) the defendant is not in custody at the time of the application; and
 - (b) the application is made before the commencement of the hearing.
- (2) Where an adjournment is granted under subsection (1),—
 - (a) the present conditions of bail (if any) shall, subject to section 34 of the Bail Act 2000, continue to the adjourned date of hearing; and
 - (b) any order made under section 140 of the Criminal Justice Act 1985 in relation to the defendant or any other person connected with the proceedings and having effect only for a limited period that would expire before the adjourned date of hearing shall continue to have effect until the close of the adjourned date of hearing.
- (3) Whenever the Registrar grants an adjournment under this section, the Registrar shall notify each party in writing.
- (4) For the avoidance of doubt, it is hereby declared that a Registrar may, upon application, grant an adjournment under subsection (1) if—
 - (a) the defendant has been released on bail under section 21 of the Bail Act 2000; and
 - (b) the application is made before the commencement of the hearing.

Section 45A was inserted by section 3 Summary Proceedings Amendment Act 1991 (1991 No 62).

Subsection (2)(a) was amended, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38) by substituting the words “section 34 of the Bail Act 2000” for the words “section 50A of this Act”. See section 75 of that Act as to the savings provisions.

Subsection (4) was inserted, as from 1 April 1996, by section 6(1) Summary Proceedings Amendment Act 1995 (1995 No 64). See clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

Subsection (4)(a) was amended, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38) by substituting the words “section 21 of the Bail Act 2000” for the words “section 51 of this Act”.

46 Dealing with defendant on adjournment

- (1) Where any hearing is adjourned under section 45, and the defendant is liable on conviction to a sentence of imprisonment or the defendant has been arrested, the Court or Justice or Community Magistrate may—
- (a) allow the defendant to go at large for the period of the adjournment; or
 - (b) grant the defendant bail under the Bail Act 2000 for the period of the adjournment; or
 - (c) remand the defendant in custody for the period of the adjournment.
- (2) A Registrar may exercise the power conferred by subsection (1)(c) to remand a defendant in custody if—
- (a) both the defendant and the informant agree to the remand; and
 - (b) the defendant—
 - (i) is legally represented or has indicated that he or she has received legal advice; or
 - (ii) has declined an opportunity to obtain legal advice.
- (3) If a Registrar remands a person in custody under subsection (1)(c) the defendant must be brought before a court or Justice or Community Magistrate at the earliest opportunity if, at any time during the period of remand, the defendant withdraws his or her agreement under subsection (2)(a) and the Court or Justice or Community Magistrate must declare what action (if any) should be taken under subsection (1) in respect of the defendant.

Section 46 was substituted, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

Section 46(3): substituted, on 29 June 2009, by section 5 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

46A Registrar may prohibit publication of names

- (1) A Registrar may exercise the power conferred by section 140 of the Criminal Justice Act 1985 (which relates to orders prohibiting the publication of names) to make an order that has effect for a limited period if—
- (a) the Registrar either—

- (i) adjourns the hearing of any charge under section 45A; or
 - (ii) grants a defendant bail under section 28 of the Bail Act 2000; or
 - (iii) remands the defendant in custody under section 46(2); and
- (b) either,—
- (i) where the defendant asks for the making of the order, the informant agrees to that order being made; or
 - (ii) where the informant asks for the making of the order, the defendant agrees to that order being made.
- (2) If a Registrar makes an order under section 140 of the Criminal Justice Act 1985, the order may have effect for a limited period of up to 28 days from the date on which the order is made.
- (3) No Registrar may exercise the power under subsection (1) more than once in relation to any particular information.

Section 46A was inserted, as from 1 November 1998, by section 7 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (1)(a)(ii) was amended, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38) by substituting the words “section 28 of the Bail Act 2000” for the expression “section 46(2)”. See section 75 of that Act as to the savings provisions.

Subsection (1)(a)(iii) was amended, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38) by substituting the expression “46(2)” for the expression “46(3)”. See section 75 of that Act as to the savings provisions.

46AB Application of section 45 during epidemic

[Repealed]

Section 46AB: repealed, on 29 June 2009, by section 6 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

46AC Application of section 46 during epidemic

- (1) While an epidemic management notice is in force, section 46 has effect as if the reference in subsection (3) to the earliest opportunity has effect as if it is a reference to the earliest opportunity that is reasonable in the circumstances.
- (2) If the notice applies to only stated parts of New Zealand, subsection (1) applies within those parts only.

- (3) In this section, **epidemic management notice** means a notice under section 8(1) of the Epidemic Preparedness Act 2006 stating that the application of this Act is modified in order to deal with the practical effects of the outbreak of the disease referred to in the notice.

Sections 46AB and 46AC were inserted, as from 19 December 2006, by section 4 Summary Proceedings Amendment Act (No 2) 2006 (2006 No 91).

Section 46AC(1): substituted, on 29 June 2009, by section 7(1) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 46AC(3): added, on 29 June 2009, by section 7(2) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

- 47 Warrant for detention of defendant remanded in custody**
Where the defendant is remanded in custody under section 46, the Court or Justice or Community Magistrate or Registrar must issue a warrant in the prescribed form for the detention of the defendant in custody for the period of the adjournment.

Section 47 was substituted, as from 1 August 1987, by section 2 Summary Proceedings Amendment Act (No 2) 1987 (1987 No 172).

Subsection (1) was amended, as from 1 April 1996, by section 7(3) Summary Proceedings Amendment Act 1995 (1995 No 64) by inserting the words “or Registrar”. See clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

Subsection (2) was amended by section 4 Summary Proceedings Amendment Act (No 2) 1991 (1991 No 105) by substituting the words “, the Court or Justice may, and shall if the defendant is not released within the period specified in section 50(2A)(a) of this Act,” for the words “but is not released immediately, the Court or Justice shall”.

Subsection (2) was amended, as from 1 April 1996, by section 7(3) Summary Proceedings Amendment Act 1995 (1995 No 64) by inserting the words “or Registrar”. See clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

Sections 46 to 51 were substituted, as from 30 June 1998, by section 13(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

Section 47 was substituted, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

- 48 Defendant, if bailable as of right, to be brought before Court on request**

[Repealed]

Sections 48 and 49 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

49 Conditions of bail

[Repealed]

Sections 48 and 49 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

49A Variation of conditions of bail

[Repealed]

Section 49A was repealed, as from 1 August 1987, by section 2 Summary Proceedings Amendment Act (No 2) 1987 (1987 No 172).

50 Release of defendant granted bail

[Repealed]

Sections 50, 50A, 51, 52, 53, 54, 55, 56, and 57 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

50A Variation of conditions of bail

[Repealed]

Sections 50, 50A, 51, 52, 53, 54, 55, 56, and 57 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

51 Defendant may be admitted to bail by constable in certain cases

[Repealed]

Sections 50, 50A, 51, 52, 53, 54, 55, 56, and 57 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

52 Mode of taking bail bond by constable

[Repealed]

Sections 50, 50A, 51, 52, 53, 54, 55, 56, and 57 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

53 Defendant on bail may be arrested without warrant in certain circumstances

[Repealed]

Sections 50, 50A, 51, 52, 53, 54, 55, 56, and 57 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

54 Failure to answer bail*[Repealed]*

Sections 50, 50A, 51, 52, 53, 54, 55, 56, and 57 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

55 Arrest of defendant who does not attend hearing*[Repealed]*

Sections 50, 50A, 51, 52, 53, 54, 55, 56, and 57 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

56 Effect on bond of attendance or non-attendance of person bailed by constable*[Repealed]*

Sections 50, 50A, 51, 52, 53, 54, 55, 56, and 57 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

57 Certification of non-performance of condition of bail bond*[Repealed]*

Sections 50, 50A, 51, 52, 53, 54, 55, 56, and 57 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

58 Estreat of bail bond*[Repealed]*

Section 58 was repealed, as from 1 August 1987, by section 4 Summary Proceedings Amendment Act (No 2) 1987 (1987 No 172).

59 Defendant in custody may be brought up before expiry of period of adjournment

Any defendant who has been remanded in custody on any charge and has not been released on bail may be brought before a Court at any time to be dealt with on that charge, notwithstanding that the period for which he was remanded in custody has not expired.

Compare: 1927 No 37 s 148

Procedure at hearing

60 Evidence to be given on oath

[Repealed]

Section 60 was repealed, as from 1 August 2007, by section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

61 Powers of Court when defendant does not appear

In any case where a summons has been served on the defendant a reasonable time before the hearing, or the defendant has been released on bail to attend personally at the hearing, and at the hearing only the informant appears, the following provisions shall apply:

- (a) if the offence charged is one in respect of which the defendant is entitled to elect to be tried by a jury, the Court may either issue a warrant in the prescribed form to arrest the defendant and bring him before a Court, or may adjourn the hearing to such time and on such conditions as the Court thinks fit. If the defendant does not appear at the time to which the hearing is adjourned, the Court or any Registrar may issue a warrant to arrest the defendant and bring him before a Court:
- (b) if the offence charged is not one in respect of which the defendant is entitled to elect to be tried by a jury, then—
 - (i) if the defendant is liable on conviction to a sentence of imprisonment or if, following his arrest, he has been released on bail to attend personally at the hearing, the Court may proceed with the hearing, or may issue a warrant in the prescribed form to arrest the defendant and bring him before a Court, or may adjourn the hearing to such time and on such conditions as the Court thinks fit:
 - (ii) in any other case the Court may proceed with the hearing or may adjourn the hearing to such time and on such conditions as the Court thinks fit.
- (c) if the offence charged is not one in respect of which the defendant is liable on conviction to a sentence of imprisonment, evidence of a fact or opinion which would

be admissible if given by direct oral evidence, shall also be admissible if given by way of an affidavit.

Compare: 1927 No 37 ss 69(a), (b), 88

Paragraph (a) was amended, as from 1 April 1996, by section 10(2) Summary Proceedings Amendment Act 1995 (1995 No 64) by inserting the words “or any Registrar”. See clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

Paragraph (c) was inserted, as from 1 September 1993, by section 10 Summary Proceedings Amendment Act 1993 (1993 No 47).

61A Powers of Registrar to adjourn hearing or issue warrant to arrest defendant

- (1) If the Registrar has the power to adjourn the hearing of any charge under section 45A, the Registrar may either—
 - (a) adjourn the hearing; or
 - (b) exercise the power conferred by section 61(a) or section 65 or section 66 to issue a warrant to arrest the defendant.
- (2) If the Registrar does not have power to adjourn the hearing of any charge under section 45A, but considers that a warrant to arrest the defendant should be issued under section 61(a) or section 65 or section 66(7), the Registrar shall refer the matter to a District Court Judge who may direct the Registrar to issue a warrant to arrest the defendant.
- (3) Subject to subsection (4), a Registrar may exercise any of the powers referred to in subsection (1)(b) if—
 - (a) the Registrar is satisfied that the defendant was informed of the defendant’s obligation to attend at the specified time and place; and
 - (b) the defendant failed to so attend.
- (4) A Registrar may not exercise any of the powers referred to in subsection (1)(b) if the Registrar is satisfied that the defendant failed to attend at the specified time or place because of a reasonable excuse.

Section 61A was inserted, as from 1 April 1996, by section 10(1) Summary Proceedings Amendment Act 1995 (1995 No 64). See clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

Subsection (3) was substituted, and subsection (4) was inserted, as from 1 November 1998, by section 9 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

62 Powers of Court when informant does not appear

Where at the hearing of any charge only the defendant appears, the following provisions shall apply:

- (a) if the defendant is in custody or has been released on bail and the informant has not had adequate notice of the hearing, the Court shall adjourn the hearing to such time and place and on such conditions as it thinks fit to enable the informant to appear:
- (b) in any other case the Court may dismiss the information for want of prosecution or adjourn the hearing to such time and place and on such conditions as the Court thinks fit.

Compare: 1927 No 37 ss 69(d), 88

63 Powers of Court when neither party appears

Where at the hearing of any charge neither the informant nor the defendant appears, the Court may dismiss the information for want of prosecution or adjourn the hearing to such time and place and on such conditions as the Court thinks fit.

Compare: 1927 No 37 s 88

64 Dismissal for want of prosecution not to operate as bar to other proceedings

The dismissal of an information for want of prosecution shall not operate as a bar to any other proceedings in the same matter.

65 Court to proceed when both parties appear

Where at the hearing of any charge both the informant and the defendant appear, the Court shall proceed with the hearing: provided that, if the defendant is not personally present, the Court may, if it thinks fit, adjourn the hearing to such time and place and on such conditions as it thinks fit to enable him to be present, or, if he is liable on conviction to a sentence of imprisonment, may issue a warrant in the prescribed form to arrest him and bring him before the Court.

Compare: 1927 No 37 s 69(e)

66 Defendant's right to elect trial by jury where offence punishable by more than 3 months' imprisonment

- (1) Any person charged under this Part with an offence which is punishable by imprisonment for a term exceeding 3 months shall be entitled, before the charge is gone into but not afterwards, to elect to be tried by a jury. Before the defendant is called upon to make his election under this subsection, the substance of the charge shall be stated to him.
- (1A) If a Registrar receives and records an election under section 66A(1), the substance of the charge need not be stated to the defendant under subsection (1).
- (2) Except in any case in which subsection (7) or section 66A(1) applies, the Court shall, before the charge is gone into in respect of an offence to which this section applies, inform the defendant of the right conferred on him by subsection (1) by causing him to be addressed to the following effect:
"This case is one where you have a choice of being tried here in this Court or of being tried by a Judge and jury Do you wish to be tried by a jury or by this Court?"
- (3) Where a corporation is charged with an offence in respect of which an individual would be entitled under this section to elect to be tried by a jury, an election to be so tried may be made on behalf of the corporation by its representative; and, where the corporation does not appear by a representative or no such election is made on behalf of the corporation, the Court may, subject to the provisions of this section, deal with the case summarily as if the offence were an offence to which subsection (1) did not apply.
- (4) Where a defendant who is charged under this Part with an indictable offence elects under this section to be tried by a jury, the proceedings shall continue as if he had been charged on an information in form 2 in Schedule 2.
- (5) Where a defendant who is charged with a summary offence elects under this section to be tried by a jury, the proceedings shall continue as if the offence were an indictable offence not punishable summarily, and, if he is committed for trial or for sentence, he may be dealt with accordingly.

- (5A) If a defendant who is an individual is present in Court and deliberately refuses to elect to be tried either by a jury or the Court, or fails to make an election, after being addressed in the manner provided in subsection (2) and being warned, after refusing or failing to make an election, of the consequences of failing to make an election,—
- (a) the Court must, unless it considers that the defendant may be under a disability, order—
 - (i) that the defendant be tried by the Court instead of by a jury; or
 - (ii) if any defendant who is a co-accused is to be tried by a jury, that the defendant be tried by a jury instead of the Court; and
 - (b) an order of the Court under paragraph (a) is to be treated subsequently as an election by the defendant to be tried by the Court or, as the case requires, a jury.
- (5B) Subsection (5A) is subject to subsection (7).
- (6) A defendant who has elected under this section to be tried by a jury may, by leave of the Court at any time before he is committed for trial or for sentence, withdraw his election, and thereupon the Court may, notwithstanding anything in section 160, 161, 184I, 184J, or 184M, deal summarily with the case in all respects as if no such election had been made, and the foregoing provisions of this section shall no longer apply: Provided that where the Court is presided over by 2 or more Justices or 1 or more Community Magistrates or a Registrar and the defendant has pleaded guilty to an offence which the Court does not have jurisdiction to deal with summarily by reason of its constitution, the Court shall record the plea and shall adjourn the proceedings for the defendant to be sentenced or otherwise dealt with by a Court presided over by a District Court Judge.
- (6A) Where a defendant who has elected under this section to be tried by a jury has pleaded guilty under sections 184I and 184J and he is not represented by a barrister or solicitor, the Court, unless it considers that leave should not be granted to the defendant to withdraw his election, shall draw to his attention the provisions of subsection (6).

- (7) Any barrister or solicitor who appears for the defendant may (whether or not the defendant is personally present) inform the Court on his behalf that the defendant does not elect to be tried by a jury, or may (where the defendant is personally present) inform the Court on his behalf that the defendant does elect to be so tried, and thereupon the Court may proceed as if the defendant had personally made the election:
provided that, if it thinks fit, the Court may, if the defendant is not personally present and his counsel or solicitor informs the Court that the defendant does not elect to be tried by a jury, adjourn the hearing to such time and on such conditions as the Court thinks fit to enable the defendant to be present or issue a warrant, in the prescribed form, to arrest him and bring him before the Court.

Compare: 1927 No 37 s 124; 1936 No 58 s 42(2), (2A); 1952 No 41 ss 4, 14; 1952 No 44 s 20

Subsection (1A) was inserted, as from 1 November 1998, by section 10(1) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (2) was substituted by section 10 Summary Proceedings Amendment Act 1973 (1973 No 117), and the words “in the High Court” (as amended by section 12 Judicature Amendment Act 1979) were omitted by section 8(1) Summary Proceedings Amendment Act 1980 (1980 No 84).

Subsection (2) was amended, as from 1 November 1998, by section 10(2) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91) by inserting the words “or section 66A(1)”.

Section 66(5A): inserted, on 26 June 2008, by section 8 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 66(5B): inserted, on 26 June 2008, by section 8 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 66(6): amended, on 29 June 2009, by section 15 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Subsection (6) was amended by section 20(1) Summary Proceedings Amendment Act 1976 (1976 No 169) by inserting the words “section 153A or”.

Subsection (6) was amended, as from 20 May 1981, by section 8(2) Summary Proceedings Amendment Act 1980 (1980 No 84) by omitting the words “to the High Court” (as amended by section 12 Judicature Amendment Act 1979 (1979 No 124)).

The proviso to subsection (6) was inserted, as from 16 October 1964, by section 5(1) Summary Proceedings Amendment Act 1964 (1964 No 22).

Section 66(6) proviso: amended, on 29 June 2009, by section 15 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

The proviso to subsection (6) was amended, as from 30 June 1998, by section 17 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or one or more Community Magistrates”.

Subsection (6A) was inserted, as from 16 October 1964, by section 5(2) Summary Proceedings Amendment Act 1964 (1964 No 22).

Section 66(6A): amended, on 29 June 2009, by section 15 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

66A Registrar may receive elections

- (1) A Registrar may receive and record an election under section 66 to be tried by a jury if—
 - (a) the defendant is represented by a barrister or solicitor, and the barrister or solicitor notifies the Registrar, on the defendant's behalf, of the election; or
 - (b) the defendant is not represented by a barrister or solicitor, and appears before the Registrar and notifies the Registrar of his or her election.
- (2) Before a Registrar receives and records an election under subsection (1)(b), the Registrar must—
 - (a) be satisfied that the defendant has been informed of the substance of the charge; and
 - (b) be satisfied that the defendant—
 - (i) has been informed of his or her rights to legal representation, including the right to apply for legal aid under the Legal Services Act 2000; and
 - (ii) has fully understood those rights; and
 - (iii) has had the opportunity to exercise those rights and has refused or failed to exercise those rights, or has engaged a barrister or solicitor to represent him or her and has subsequently terminated the engagement; and
 - (c) inform the defendant of the right to make an election in the manner set out in section 66(2).
- (3) If a Registrar receives and records an election under subsection (1), the Court has the same power to deal with the defendant as if he or she had appeared before it and made his or her election.

Section 66A was inserted, as from 1 November 1998, by section 11 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (2)(b)(i) was substituted, as from 1 February 2001, by section 128 Legal Services Act 2000 (2000 No 42).

67 Conduct of hearing

- (1) Before any charge is gone into, the substance of the charge shall be stated to the defendant if he appears, and he shall be asked how he pleads
- (1A) If a Registrar receives and records a not guilty plea under section 41A(1), the substance of the charge need not be stated to the defendant under subsection (1).
- (2) If he pleads guilty, the Court may convict him or deal with him in any other manner authorised by law.
- (3) If he does not plead guilty, the hearing shall be conducted in accordance with the succeeding provisions of this section.
- (4) The Court shall first hear the informant and such evidence as he may adduce, and shall then hear the defendant and such evidence as he may adduce. It shall then hear such evidence as the informant may adduce in rebuttal of any evidence given by or on behalf of the defendant.
- (5) Where the defendant refrains from giving evidence, or from calling his wife or her husband, as the case may be, as a witness, no comment adverse to the defendant shall be made thereon by the informant.
- (6) The parties may examine, cross-examine, and re-examine witnesses.
- (7) Unless the Court otherwise directs, neither party may sum up his case or address the Court upon the evidence given by either party:
Provided that the defendant, whether or not he calls evidence, may address the Court at the end of the informant's case.
- (8) Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany the description of the offence in the enactment creating the offence, may be proved by the defendant, but, subject to the provisions of section 17, need not be negatived in the information, and, whether or not it is so negatived, no proof in relation to the matter shall be required on the part of the informant.

Compare: 1927 No 37 s 72(1)–(6)

Subsection (7) proviso was inserted, as from 23 November 1973, by section 11 Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsection (1A) was inserted, as from 1 November 1998, by section 12 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

67A Identification evidence

Where any evidence of identity is given against the defendant and the defendant disputes that evidence, the Court shall bear in mind the need for caution before convicting the defendant in reliance on the correctness of any such identification and, in particular, the possibility that the witness may be mistaken.

Section 67A was inserted by section 2 Summary Proceedings Amendment Act 1982 (1982 No 47).

68 Decision of Court

- (1) The Court, having heard what each party has to say and the evidence adduced by each, shall consider the matter and may convict the defendant or dismiss the information, either on the merits or without prejudice to its again being laid, or deal with the defendant in any other manner authorised by law.
- (2) The Court may, if it thinks fit, reserve its decision, and in that case may give it at any adjourned or subsequent sitting of the Court or, except where a sentence of imprisonment is being imposed, may draw up the decision in writing, sign it, and send it to the Registrar.
- (3) When a written decision is sent to the Registrar as aforesaid, he shall deliver it at a time and place appointed by him.
- (4) Every reserved decision delivered by the Registrar shall be entered in the Criminal Records kept pursuant to section 71 and signed by the Registrar, and shall have the same force and effect as if given by the Court on that date.

Compare: 1927 No 37 s 73

Subsection (4) was amended by section 71(5) of this Act by substituting the reference to “the Criminal Records kept pursuant to s 71 of this Act” for a reference to “the Criminal Record Book”.

69 Procedure where defendant liable to greater penalty because of previous convictions

- (1) This section applies where—
 - (a) a defendant is charged with an offence for which the penalty is greater if the defendant has previously been convicted of that offence or of some other offence; and
 - (b) by reason of that greater penalty, the defendant is entitled, under section 66, to elect to be tried by a jury.

- (2) Where this section applies,—
- (a) the information shall disclose the existence of the previous conviction or convictions which, if proved against the defendant or admitted by him or her, would make the defendant liable to the greater penalty; and
 - (b) subject to subsection (4), where the information discloses such conviction or convictions, the provisions of section 66 shall apply in the ordinary way.
- (3) No information shall be dismissed by reason only that it does not comply with the requirements of subsection (2)(a), but if any such information is not subsequently amended so as to comply with those requirements, then, notwithstanding any other enactment, the defendant shall be liable to the penalty to which he or she would be liable but for any previous convictions.
- (4) Where, pursuant to section 43, an information for an offence is amended to disclose a previous conviction to which subsection (2) applies, then, unless the defendant has already been given the right, under section 66, to elect to be tried by a jury for that offence, the defendant shall then be given that right, and the provisions of section 66, as far as they are applicable and with the necessary modifications, shall apply.
- (5) Nothing in this section shall affect the right of the Court, when sentencing the defendant, to take any previous convictions into account.
- (6) Nothing in this section limits section 341 of the Crimes Act 1961.

Compare: 1927 No 37 s 77

Section 69 was substituted, and section 69AA was inserted, as from 15 December 1994, by section 4(1) Summary Proceedings Amendment Act 1994 (1994 No 161).

69AA Further provisions relating to previous convictions

- (1) For the avoidance of doubt, it is hereby declared that in any case where—
- (a) section 69 applies; and
 - (b) the defendant elects, under section 66, not to be tried by a jury,—

it shall not be necessary for the informant to prove any previous conviction to which section 69(2)(a) applies, where that conviction is not admitted by the defendant, until the issue of penalty for the offence arises.

- (2) Nothing in subsection (1) limits or affects any other enactment or rule of law that prohibits or regulates the admission of evidence relating to the previous convictions of the defendant.
- (3) For the purpose of proving any previous conviction to which section 69(2)(a) applies in any proceedings in which the defendant is dealt with summarily, the production of a certificate containing the substance of the conviction for the offence, purporting to be signed by the Registrar or other officer having the custody of the records of the Court by or before which the offender was convicted, shall—
 - (a) be sufficient evidence of the conviction without proof of the signature or official character of the person appearing to have signed the certificate; and
 - (b) in the absence of evidence to the contrary, if the name of the offender stated in the certificate is the name of the defendant, constitute *prima facie* evidence that the offender so stated is the defendant.
- (4) The mode of proving a previous conviction authorised by this section shall be in addition to, and not in exclusion of, any other mode authorised by law.

Section 69 was substituted, and section 69AA was inserted, as from 15 December 1994, by section 4(1) Summary Proceedings Amendment Act 1994 (1994 No 161).

69A Proof of previous convictions

- (1) Where any person is charged with any summary offence or with any indictable offence that may be dealt with summarily, the informant may serve on the defendant a notice in writing specifying any alleged previous conviction proposed to be brought to the notice of the Court in the event of his conviction of the offence charged.
- (2) Any such notice shall specify—
 - (a) the date of the alleged conviction; and
 - (b) the Court in which the conviction was entered; and
 - (c) the nature of the offence; and

- (d) the sentence of the Court in respect of the conviction (including any order of the Court made on the conviction); and
 - (e) a statement to the effect that the Court may, where the defendant is not present in person before the Court and has not notified the Court in writing that he disputes any such conviction or any material details in connection with the conviction, in the event of the conviction of the defendant take into account any conviction specified in the notice and the particulars concerning it as specified in the notice, as if the defendant had been present in person and admitted it.
- (3) In the event of the conviction of the defendant and upon proof that the notice was served on him not less than 7 clear days previously, the Court may, if the defendant is not present in person before the Court and has not notified the Court in writing that he disputes the conviction or any material details in connection with the conviction, take into account any conviction specified in the notice and the particulars concerning it as specified in the notice, as if the defendant had been present in person and admitted it.

Section 69A was inserted by section 4(1) Summary Proceedings Amendment Act 1969 (1969 No 43).

70 Order for restitution of stolen property or payment of its value

[Repealed]

Section 70 was repealed by section 4(1)(d) Summary Proceedings Amendment Act 1961 (1961 No 44).

71 Criminal Records

- (1) The Registrar of each Court appointed for the exercise of criminal jurisdiction shall keep Criminal Records in the prescribed form, in which shall be entered a minute or memorandum of all proceedings in the Court under its criminal jurisdiction. Every such minute or memorandum shall be signed by the District Court Judge or Justice or Justices or Community Magistrate or Community Magistrates presiding over the Court.

- (1A) A statement of the way in which the requirements of section 30 of the Sentencing Act 2002 have been satisfied shall be entered in the Criminal Records of each Court in respect of all proceedings under its criminal jurisdiction to which that section applies.
- (1B) Subsection (1) does not apply in respect of proceedings commenced in the way described in section 21(3) or (3D).
- (2) If an information is heard at any place other than a Courthouse, a minute or memorandum of the decision shall be endorsed on the information, and the minute or memorandum shall be signed by the District Court Judge or Justice or Justices or Community Magistrate or Community Magistrates presiding over the Court. The information shall be forwarded to the nearest Courthouse there to be kept, and the Registrar shall make and sign an appropriate entry in respect of the case in the Criminal Records kept by him.
- (3) Any entry in the Criminal Records or a copy thereof or extract therefrom, sealed with the Seal of the Court and purporting to be signed and certified by the Registrar as a true copy or correct extract, shall at all times without further proof be admitted in all Courts and places whatsoever as evidence of the entry and proceeding referred to thereby and of the regularity of that proceeding.
- (4) Any such copy of any entry in the Criminal Records or any such extract therefrom may be given to any person who the Registrar is satisfied has a genuine and proper interest in obtaining the copy or extract. In any case of doubt or difficulty the Registrar may refer the matter to a District Court Judge, whose decision shall be final.
- (5) Every reference to a Criminal Record Book in this Act or in any other Act or in any regulation, rule, bylaw, order, or other enactment or in any deed, instrument, notice, or other document whatsoever, shall, unless the context otherwise requires, be read as a reference to the Criminal Records kept pursuant to this section.

Compare: 1927 No 37 s 74; 1947 No 16 s 28

Subsection (1) was amended, as from 17 December 1976, by section 6(1) Summary Proceedings Amendment Act 1976 (1976 No 169) by substituting the words "Criminal Records" for the words "a Criminal Record Book"

Subsection (1) was amended, as from 30 June 1998, by section 18 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate or Community Magistrates”.

Subsection (1A) was inserted by section 18(2) Criminal Justice Amendment Act 1975 (1975 No 47).

Subsection (1A) was amended, as from 17 December 1976, by section 6(2) Summary Proceedings Amendment Act 1976 (1976 No 169) by inserting the words “to which that section 13A applies”.

Subsection (1A) was amended, as from 17 December 1976, by section 6(3) Summary Proceedings Amendment Act 1976 (1976 No 169) by substituting the word “Records” for the words “Record Books”.

Subsection (1A) was substituted, as from 1 October 1985, by section 150(1) Criminal Justice Act 1985 (1985 No 120).

Subsection (1A) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting the words “section 30 of the Sentencing Act 2002” for the words “section 10 of the Criminal Justice Act 1985”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (1B) was inserted, as from 1 March 2007, by section 8 Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (2) was amended, as from 17 December 1976, by section 6(3) Summary Proceedings Amendment Act 1976 (1976 No 169) by substituting the word “Records” for the words “Record Book”.

Subsection (2) was amended, as from 30 June 1998, by section 18 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate or Community Magistrates”.

Subsections (3) and (4) were amended, as from 17 December 1976, by section 6(3) Summary Proceedings Amendment Act 1976 (1976 No 169) by substituting the word “Records” for the words “Record Book”.

Subsection (5) was inserted, as from 17 December 1976, by section 6(4) Summary Proceedings Amendment Act 1976 (1976 No 169).

Costs and witnesses' expenses

72 Costs

[Repealed]

Section 72 was repealed by section 14(2) Costs in Criminal Cases Act 1967 (1967 No 129).

73 Witnesses' expenses

- (1) The Court may order any party at whose instance a witness appears at the Court to pay the costs and expenses of that witness, not exceeding the amount provided for in any scale prescribed by regulations under this Act.

- (2) Any such order may be enforced in the same manner as a fine.
Compare: 1927 No 37 ss 84, 85

Complaints

74 Provisions of this Part to apply to complaints

Subject to the provisions of any other Act, the provisions of this Part, as far as they are applicable and with the necessary modifications, shall apply to proceedings brought by way of complaint as if they were proceedings brought on an information, and as if references in this Part to the informant were references to the complainant, as if references to a charge or to an offence were references to the ground of the complaint, and as if references to a conviction were references to an order.

Compare: 1927 No 37 ss 14(3), (4), 15, 110-113; 1939 No 11 s 20(2)

Rehearings

75 District Court Judge or Justice or Registrar or Community Magistrate may grant a rehearing

- (1) Where on the hearing of any information or complaint the defendant has been convicted or, as the case may be, an order has been made against him, the District Court Judge or Justice or Justices or Community Magistrate or Community Magistrates who presided over the Court before which the information or complaint was heard may, in his or their discretion, grant a rehearing of the information or complaint, either as to the whole matter or only as to the sentence or order, as the case may be, upon such terms as he or they think fit:
provided that, if any such District Court Judge or Justice or Community Magistrate has since the date of the hearing ceased to hold office as such or died or left New Zealand, or if for any other reason it is impracticable that he should be present to hear the application for rehearing, any District Court Judge may grant a rehearing.
- (1AA) If, on the hearing of any information or complaint, the defendant has been convicted or, as the case may be, an order has been made against the defendant, a Registrar may, if the informant does not object, grant a rehearing of the information or complaint, either as to the whole matter or only as to the sen-

tence or order (as the case may be) and on such terms as the Registrar thinks fit.

- (1A) Where a registered or ordinary letter has been used for the service on a defendant of any summons, copy of a notice of prosecution under section 20A, and on the hearing of the matter the defendant has been convicted or, as the case may be, an order has been made against him, in his absence, a District Court Judge or the Registrar (not being a constable) shall, if he is satisfied that the defendant did not receive the summons or notice or copy of the notice:
- (a) grant a rehearing of the matter and set it down for hearing at a later date; and
 - (b) issue another summons, or require another copy of the notice to be served on the defendant, as the case may be; and, in any such case, the summons or copy shall not be served by registered letter.
- (2) When a rehearing has been granted, the conviction or, as the case may be, the sentence only or the order made on the hearing shall immediately cease to have effect.
- (3) A rehearing which has been granted may be proceeded with immediately, or the District Court Judge or Justice or Justices or Registrar or Community Magistrate or Community Magistrates may set it down for hearing at a later date.
- (4) If a rehearing is granted in any case where the defendant on conviction sentenced to a term of detention which has not expired, but the rehearing is not proceeded with immediately, the District Court Judge or Justice or Justices shall, subject to the provisions of section 7 and sections 9 to 12 of the Bail Act 2000 and of section 142 of the Criminal Justice Act 1985, remand the defendant in custody until the date appointed for the rehearing.
- (5) On any rehearing the Court shall have the same powers and shall follow the same procedure as if it were the first hearing; and in particular, on the rehearing as to the whole matter of any information for an offence to which section 66 applies, the defendant shall be entitled to elect to be tried by a jury in accordance with the provisions of that section.

- (6) If the defendant does not appear on the date set down for the rehearing of any information or complaint, the Court may, if it thinks fit, without rehearing the case direct that the original conviction, sentence, or order shall be restored.

Compare: 1927 No 37 ss 122, 123; 1948 No 20 ss 8, 9(2)

Subsection (1) was amended, as from 30 June 1998, by section 19(a) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate or Community Magistrates”.

The proviso to subsection (1) was amended, as from 30 June 1998, by section 19(b) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Subsection (1A) was inserted by section 3 Summary Proceedings Amendment Act 1968 (1968 No 108), and substituted, as from 1 November 1981, by section 17(3) Transport Amendment Act 1980 (1980 No 96) (see section 1(2) of that Act and SR 1981/294).

Subsection (1A) was amended by section 4(2) Summary Proceedings Amendment Act 1985 (1985 No 51) by omitting the words “or copy of a notice of traffic prosecution under section 21 of this Act, or a notice of time and place of hearing has been posted to a defendant under section 21 of this Act”, and by omitting from paragraph (b) the words “or require the copy of the notice of time and place of hearing to be served on the defendant”.

Subsection (1A) was amended, as from 1 November 1987, by section 9 Summary Proceedings Amendment Act 1987 (1987 No 165) by inserting the words “or ordinary”.

Subsection (1AA) was inserted, as from 1 November 1998, by section 13(1) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (3) was amended, as from 30 June 1998, by section 19(a) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate or Community Magistrates”.

Subsection (3) was amended, as from 1 November 1998, by section 13(2) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91) by inserting the words “or Registrar”.

Subsection (4) was amended by section 4(1)(e) Summary Proceedings Amendment Act 1961 (1961 No 44) by substituting the words “section 319 of the Crimes Act 1961” for the words “section 368 of the Crimes Act 1908”.

Subsection (4) was amended, as from 1 October 1985, by section 150(1) Criminal Justice Act 1985 (1985 No 120) by substituting the words “section 142 of the Criminal Justice Act 1985” for the words “section 47 of the Criminal Justice Act 1954”.

Subsection (4) was amended by section 10 Summary Proceedings Amendment Act (No 2) 1991 (1991 No 105) by substituting the expression “sections 318 and 319 of the Crimes Act 1961” for the expression “section 319 of the Crimes Act 1961”.

Subsection (4) was amended, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38), by substituting the words “section 7 and sections 9 to 12 of the Bail Act 2000” for the words “sections 318 and 319 of the Crimes Act 1961”. See section 75 of that Act as to the savings provisions.

*Miscellaneous***76 Proceedings against parties to offences**

Every party to an offence (not being the person who actually committed it) may be proceeded against and convicted for that offence, either together with the person who actually committed it or before or after the conviction of that person.

Compare: 1927 No 37 s 54

77 Power of the Court to amend defective sentences

- (1) If on the conviction of the defendant the Court imposes a sentence or makes an order that is not within the jurisdiction of the Court to impose or make, or does not impose a sentence or make an order that it is required by law to impose or make, then, at any time thereafter, unless proceedings in relation to the conviction are pending in the High Court, the District Court Judge who presided over the Court, or, if that District Court Judge is not available or if the Court was presided over by 1 or more Justices or by 1 or more Community Magistrates, any District Court Judge, may set aside any sentence or order imposed or made and impose a sentence and make an order that is within the jurisdiction of the Court or that the Court is required by law to impose or make, and all necessary alterations shall be made in any warrant or other document and in the Criminal Records kept pursuant to section 71 to give effect thereto.
- (2) The powers conferred by this section may be exercised from time to time in respect of the same conviction.

Subsection (1) was amended by section 7 Summary Proceedings Amendment Act 1961 (1961 No 44) by substituting the words “imposes a sentence or makes an order that is not within the jurisdiction of the Court to impose or make” for the words “imposes a sentence that is not within the jurisdiction of the Court to impose”, and by section 71(5) of this Act by substituting the reference to “the Criminal Records”, etc, for a reference to “the Criminal Record Book”.

Subsection (1) was amended, as from 30 June 1998, by section 20 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or by one or more Community Magistrates”.

77A Stay of proceedings

- (1) The Attorney-General may, at any time after an information has been laid against any person under this Part and before that person has been convicted or otherwise dealt with, direct

that an entry be made in the Criminal Records kept pursuant to section 71 that the proceedings are stayed by his direction, and on that entry being made the proceedings shall be stayed accordingly.

- (2) If an information is laid against the Crown Law Office in respect of an offence referred to in section 6 of the Crown Organisations (Criminal Liability) Act 2002, any decision to issue a direction under subsection (1) in respect of the proceedings to which the information relates must be made by the Attorney-General personally.

Section 77A was inserted by section 2 Summary Proceedings Amendment Act 1967 (1967 No 33).

Subsection (1) was amended by section 71(5) of this Act by substituting the reference to “the Criminal Records kept pursuant to section 71 of this Act” for a reference to “the Criminal Record Book”.

Subsection (2) was inserted, as from 18 October 2002, by section 31 Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

78 Court may state case for opinion of High Court

- (1) On the hearing by a District Court of any information or complaint, the Court may state a case for the opinion of the High Court on any question of law arising in the proceedings.
- (2) The High Court may order the removal into the Court of Appeal of any case stated under this section; and on the removal the Court of Appeal shall have the same power to adjudicate on the proceedings as the High Court had.
- (3) Either party may, with the leave of the High Court or of the Court of Appeal, appeal to the Court of Appeal against any decision of the High Court on any case stated under the provisions of this section, and the provisions of section 144, as far as they are applicable and with the necessary modifications, shall apply with respect to the appeal as if it were an appeal under that section.
- (4) On the removal of any case to the Court of Appeal or on an appeal to the Court of Appeal under this section, the decision of the Court of Appeal shall be final; and the same judgment shall be entered in the High Court, and the same execution and other consequences and proceedings shall follow thereon, as if the decision had been given in the High Court.

Compare: 1946 No 13 ss 4, 5

78A Conviction not to be recorded for infringement offences

- (1) Notwithstanding any other provision of this or any other Act, where in proceedings for an infringement offence (whether being an offence for which an infringement notice has been issued or not) the defendant is found guilty of, or pleads guilty to, the offence and the Court would, but for this subsection, convict the defendant, the Court shall not convict the defendant but may order the defendant to pay such fine and costs and may make such other orders as the Court would be authorised to order or make on convicting the defendant of the offence.
- (2) Every reference in this or any other Act or in any regulation or bylaw to a conviction for an offence shall, in relation to an infringement offence where—
 - (a) an order has been made as referred to in subsection (1) that the defendant pay a fine and costs; or
 - (b) an order is deemed by virtue of section 21(5) to have been made that the defendant pay a fine and costs,—
be deemed to be a reference to the making of that order.

Section 78A was inserted, as from 1 November 1981, by section 18(1) Transport Amendment Act 1980 (1980 No 96), and was substituted, as from 1 November 1987, by section 10 Summary Proceedings Amendment Act 1987 (1987 No 165).

78B Power to correct irregularities in proceedings for infringement offences

- (1) This section applies if a defendant is deemed to have been ordered, or is ordered, to pay a fine or costs or both under section 21 and—
 - (a) a District Court Judge or Registrar, on the application of the defendant, is satisfied, whether on the basis of a statutory declaration or evidence given before the Judge, that—
 - (i) the defendant is not a person to whom the infringement notice was issued or on whom the notice is deemed to have been served; or
 - (ii) the defendant did not in fact receive the reminder notice, or a copy of the notice of hearing, required to have been served on the defendant under section 21; or

- (iii) some other irregularity occurred in the procedures leading up to the order for the fine or costs, or both; or
 - (iv) the defendant believed on reasonable grounds that he or she had requested a hearing under section 21, but this request was not acted on by the informant; or
 - (v) the defendant reasonably believed that he or she had been advised by the informant that action would not be taken under section 21(3); or
 - (vi) the defendant reasonably believed that he or she had been advised by the informant that further time for requesting a hearing would be allowed under section 21(6)(b), but action was taken under section 21(3) before that further time had expired; or
 - (vii) the defendant—
 - (A) had, in writing, requested further relevant information from the informant in relation to the infringement offence; and
 - (B) had made the request within a time that would reasonably enable the informant to respond before the earliest time at which the informant would be entitled to take action under section 21(3); and
 - (C) believed on reasonable grounds that the informant had not refused to provide the requested information and that action would not be taken under section 21(3) before that information had been provided; and
 - (D) was not provided with the information before action was taken under section 21(3); or
 - (b) the informant applies to a District Court Judge or Registrar to withdraw the reminder notice filed or deemed to have been filed under section 21.
- (2) The Judge or, subject to subsections (3) and (4), the Registrar may do 1 or more of the following:

- (a) authorise the informant to serve a reminder notice on a person other than the defendant (being a person to whom the infringement notice was issued or on whom it was deemed to have been served):
 - (b) authorise the informant to serve on the defendant another copy of the reminder notice or the notice of hearing and, for that purpose, require the defendant to specify an address at which personal service, service by post, or service by either method may be effected:
 - (c) grant a hearing or rehearing of the matter, and proceed with the hearing or rehearing immediately or set it down for a later date:
 - (d) set aside or modify the order:
 - (e) make any other order as to costs or otherwise that the Judge or Registrar considers appropriate in the circumstances.
- (3) If a Registrar considering an application under subsection (1)(a) is satisfied that any of subparagraphs (i) or (iv) to (vii) of subsection (1)(a) applies, the Registrar must not exercise the power conferred by subsection (2)(a) or (b) except with the consent of the informant.
- (4) A Registrar may not exercise the power conferred by subsection (2)(d).
- (5) If a Judge or Registrar exercises a power under subsection (2)(a), (b), or (c), the order made or deemed to have been made against the defendant ceases to have effect and the Registrar must take appropriate steps to ensure that the order is not acted on.
- (6) If a defendant granted a hearing or rehearing under this section does not appear, the Court may, if it thinks fit, without hearing or rehearing the matter, direct that the original order be restored.

Section 78B was inserted, as from 1 April 1985, by section 4(1) Summary Proceedings Amendment Act 1985 (1985 No 51), and was substituted, as from 1 November 1987, by section 11 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (2) was amended, as from 1 September 1993, by section 11(1) Summary Proceedings Amendment Act 1993 (1993 No 47) by inserting references to the Registrar in the three places where they occur.

Subsections (3) and (4) were substituted, as from 1 September 1993, by section 11(2) Summary Proceedings Amendment Act 1993 (1993 No 47).

Section 78B was substituted, as from 9 October 2006, by section 9 Summary Proceedings Amendment Act 2006 (2006 No 13).

Part 3 Enforcement of fines

The original Part 3 (sections 79 to 105) and the previous heading “ENFORCEMENT OF PENALTIES”, was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

79 Interpretation

In this Part, unless the context otherwise requires,—

employer includes, in relation to payments of the kind referred to in this section in the definition of the term **salary or wages**, the person or body making the payments

fine includes—

- (a) any sum of money adjudged or ordered to be paid by a conviction or order, whether described as a fine, or as costs, expenses, fees, or otherwise:
- (b) any prescribed costs, expenses, or fees payable in respect of the enforcement of any fine as defined in paragraph (a)

salary or wages includes—

- (a) a retiring allowance or pension or other payment of a similar nature:
- (b) all payments of weekly compensation made by the Accident Compensation Corporation under the Injury Prevention, Rehabilitation, and Compensation Act 2001:
- (c) a bonus or an incentive payment:
- (d) a payment of commission:
- (e) a payment in consideration of work performed under a contract for services:
- (f) a benefit.

Salary or wages: paragraph (b) was amended, as from 1 April 1996, by section 11 Summary Proceedings Amendment Act 1995 (1995 No 64) by inserting

the words “or the Accident Rehabilitation and Compensation Insurance Act 1992”. *See* clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

Salary or wages: paragraphs (c) to (f) of this definition were inserted, as from 1 November 1998, by section 14 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Salary or wages: paragraph (b) of this definition was substituted, as from 1 July 1999, by section 415(1) Accident Insurance Act 1998 (SR 1998/114)

Salary or wages: paragraph (b) was substituted, as from 1 April 2002, by section 337(1) Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49). *See* Part 10 of that Act for provisions relating to transition from competitive provision of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

80 Fines generally payable within 28 days

Except as otherwise provided in this Act, every fine shall be paid within 28 days after the day on which it is imposed.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Section 80 (as substituted by section 12 Summary Proceedings Amendment Act 1973) was amended, as from 17 December 1976, by section 7 Summary Proceedings Amendment Act 1976 (1976 No 169) by substituting the words “issued under this Part of this Act” for the words “(whether issued under this Part of this Act or otherwise)”.

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

81 Time to pay or payment by instalments

- (1) Where a fine is payable, the Court may make an order doing either or both of the following:
 - (a) allowing a greater time than 28 days for payment:
 - (b) allowing payment to be made by instalments.
- (1A) Where a levy is payable under section 105B of the Sentencing Act 2002, an order made under subsection (1)—
 - (a) must require payment of the levy; and

- (b) must not result in amounts owed by an offender being paid in a different order of priority to that set out in section 105C of the Sentencing Act 2002.
- (2) Where a fine may be paid by instalments and default is made in the payment of any instalment, proceedings may be taken as if default had been made in the payment of all instalments then remaining unpaid.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 81(1A): inserted, on 1 July 2010, by section 10 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

82 Statement of means

- (1) Where a Court, on the determination of a complaint, proposes to order that the defendant pay a fine, the Court shall, unless satisfied on the basis of information before the Court that the defendant has the financial ability to pay the fine or fines or that any document held in the Court contains a sufficiently accurate statement of the defendant's means, order that the defendant supply a statement of means before imposing the fine.
- (2) The Court may require such statement of means to be given orally or completed in writing.
- (3) For the purpose of having any statement of means given or completed, as the case may require, a Court may direct that a person be detained in the custody of the Court for such time, not exceeding 2 hours, as may be necessary to complete the statement of means.
- (4) The failure of any Court to make an order under subsection (1) shall not affect the validity of any other order of the Court.
- (5) The provisions of this section shall not prevent a Court making an order that the defendant pay a fine where—
 - (a) the defendant is not present in Court; or
 - (b) the fee or fine payable is fixed by law.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 82 was substituted, as from 1 September 1993, by section 12 Summary Proceedings Amendment Act 1993 (1993 No 47).

Subsection (1) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting the word “a” for the words “an information or”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176)

83 Order for immediate payment of fine

- (1) Where a fine is to be paid and—
 - (a) the Court is satisfied that the defendant has sufficient means to pay the fine immediately; and
 - (b) either—
 - (i) the defendant has no fixed place of residence; or
 - (ii) the Court is satisfied that, by reason of the gravity of the offence, the character of the defendant, or other special circumstances, the fine should be paid immediately,—the Court may order the defendant to pay the fine immediately.
- (1A) Where a levy is payable under section 105B of the Sentencing Act 2002, an order made under subsection (1) must require payment of the levy at the same time as any other amount payable under the order.
- (2) Where any order under subsection (1) is not complied with, the Court may—
 - (a) direct that a warrant to seize property be issued in the prescribed form; or
 - (b) subject to subsection (3A), direct that a warrant of commitment be issued in the prescribed form for the imprisonment of the defendant for a period not exceeding the maximum prescribed by section 90; or
 - (c) direct that the Registrar issue a deduction notice requiring a bank to deduct the amount due from a sum payable or to become payable to the defendant.
- (3) Any warrant of commitment directed to be issued under subsection (2)(b) may be issued by any District Court Judge and may be withdrawn at any time by any District Court Judge.

- (3A) A District Court Judge shall not issue a warrant of commitment under this section unless—
- (a) the defendant has had the same opportunity for legal representation as is available to a defendant who is liable to a sentence of imprisonment under section 30 of the Sentencing Act 2002; and
 - (b) the defendant is before a District Court Judge.
- (4) Where a Court makes an order under subsection (1), or gives a direction under subsection (2), a record of the order or direction and the grounds on which it was made or given shall be entered in the Criminal Records required to be kept under section 71.

The original Part 3 (comprising sections 79 to 105) was substituted, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (comprising sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (1) was substituted, as from 1 September 1993, by section 13(1) Summary Proceedings Amendment Act 1993 (1993 No 47).

Subsection (1)(b) was amended, as from 1 November 1998, by section 15 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91) by inserting the expression “; or”.

Subsection (1)(c) was inserted, as from 1 November 1998, by section 15 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Section 83(1A): inserted, on 1 July 2010, by section 10 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

Subsection (2)(b) was amended, as from 1 September 1993, by section 13(2) Summary Proceedings Amendment Act 1993 (1993 No 47) by substituting the words “Subject to subsection (3A) of this section, direct” for the word “Direct”.

Subsection (2)(b) was amended, as from 1 November 1998, by section 15 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91), by adding the expression “; or”.

Subsection (2)(c) was inserted, as from 1 November 1998, by section 15 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (3A) was inserted, as from 1 September 1993, by section 13(3) Summary Proceedings Amendment Act 1993 (1993 No 47).

Subsection (3A)(a) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting the words “sentence of imprisonment under section 30 of the Sentencing Act 2002” for the words “full-time custodial sentence under section 10 of the Criminal Justice Act 1985”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176)

84 Notice of fine

- (1) Where, on the determination of an information or complaint, the defendant is ordered to pay or becomes liable to pay a fine and no order is made under section 83(1) for immediate payment, the Registrar shall, as soon as practicable, deliver to the defendant or send to the defendant by ordinary post addressed to the defendant's last known place of residence or business, a notice of the fine.
- (2) Every notice given under subsection (1) shall set out—
 - (a) the amount of the fine;
 - (b) the date on or before which payment of the fine is to be made;
 - (c) the times and places at which payment of the fine may be made;
 - (d) the defendant's rights of appeal;
 - (e) that a Registrar or bailiff may enter into an arrangement with the defendant for an extension of time to pay, whether by instalments or otherwise;
 - (f) a general description of the action that may be taken if the fine is not paid.
- (3) Failure to comply with this section shall not of itself invalidate any subsequent proceeding.
- (4) Notwithstanding the requirements of this section, it shall be the responsibility of the defendant to take all necessary steps to find out the decision of the Court, the defendant's obligations under that decision, and the defendant's rights in relation to that decision.
- (5) It shall not be necessary to comply with the requirements of this section in any case where a fine is paid in full before the notice is delivered or sent.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (2)(e) was substituted, as from 1 November 1998, by section 16 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

85 Final notice of fine

- (1) Where—

- (a) a defendant is liable to pay a fine; and
 - (b) no order has been made under section 81 or section 83; and
 - (c) no arrangement has been entered into under section 86 or section 86A; and
 - (d) the fine remains unpaid on the expiry of a period of 21 days beginning with the day on which it was imposed—
the Registrar shall deliver to the defendant or send to the defendant by ordinary post addressed to the defendant's last known place of residence or business, a final notice of the fine.
- (2) The notice given under subsection (1) shall—
- (a) set out the matters specified in section 84(2);
 - (b) notify the defendant that if the fine is not paid within 28 days after the day on which it was imposed, and no arrangement has been entered into under section 86 or section 86A, enforcement action may then be commenced by—
 - (i) an order to seize property; or
 - (ii) an attachment order; or
 - (iii) a deduction notice,—
and must set out in general terms the meaning and effects of those orders and that notice:
 - (c) notify the defendant that, instead of commencing enforcement action as described in paragraph (b), the Registrar may issue a warrant to arrest the defendant and have the defendant brought before a District Court Judge with a view to having a substitute sentence imposed.
- (3) Failure to comply with this section shall not of itself invalidate any subsequent proceeding.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsection (1) of section 85 (as substituted by section 12 (1973 No 117)) was amended, as from 1 November 1981, by section 18(2) Summary Proceedings Amendment Act 1980 (1980 No 96) by substituting the words "Subject to section 101(2) of this Act, if the Court" for the words "If the Court".

Subsection (1) of section 85 (as substituted by section 12 (1973 No 117)) was amended, as from 1 November 1981, by section 18(2) Transport Amendment Act 1980 (1980 No 96) by substituting the words "Subject to section 101(2) of this Act, if the Court" for the words "If the Court".

The words “the Criminal Records kept pursuant to section 71 of this Act”, in subsection (2) of section 85 (as substituted by section 12 (1973 No 117)), were substituted, as from 17 December 1976, for the words “the Criminal Record Book” pursuant to section 71(5) of this Act.

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

The heading to section 85 was amended, as from 9 October 2006, by section 10(1) Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting the word “Final” for the word “Further”.

Subsection (1) was amended, as from 9 October 2006, by section 10(2) Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting the word “final” for the word “further”.

Subsection (1)(b) was amended, as from 1 November 1998, by section 17(1) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91) by omitting the words “or section 86”.

Subsection (1)(c) was substituted, as from 1 November 1998, by section 17(2) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (2)(b) was substituted, as from 1 November 1998, by section 17(3) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

86 Extension of time to pay

- (1) If a fine is payable and is not subject to an order for immediate payment, the Registrar may enter into an arrangement with a defendant providing for either or both of the following:
 - (a) allowing a greater time for payment:
 - (b) allowing payment to be made by instalments.
- (2) If the Registrar enters into an arrangement under subsection (1), the period for which the fine remains unpaid must not exceed 5 years after the date on which the arrangement is entered into.
- (3) Before the Registrar enters into an arrangement under subsection (1), the Registrar may consider any information received from any source about the defendant’s financial position.
- (4) If a fine may be paid by instalments and default is made in the payment of any instalment, proceedings may be taken as if default had been made in the payment of all instalments then remaining unpaid.

Part 3 (sections 79 to 106A) was substituted for the original Part 3 (comprising sections 79 to 105), as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted for the previous Part 3 (comprising sections 79 to 106A), as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 86 was substituted, as from 1 November 1998, by section 18 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (2) was amended, as from 30 June 2002, by section 183 Sentencing Act 2002 (2002 No 9), by substituting the words “5 years” for the words “18 months”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

86A Bailiff may arrange extension of time to pay

- (1) If a fine is payable and is not subject to an order for immediate payment, a bailiff may enter into an arrangement with a defendant providing for either or both of the following:
 - (a) allowing a greater time for payment;
 - (b) allowing payment to be made by instalments.
- (2) If a bailiff enters into an arrangement under subsection (1),—
 - (a) the period for which the fine remains unpaid must not exceed 5 years after the date on which the arrangement is entered into; and
 - (b) the bailiff must, as soon as practicable, notify the Registrar of that arrangement.
- (3) When the Registrar is notified of an arrangement, the Registrar may, after taking into account any information received from any source about the defendant’s financial position, cancel the arrangement within 7 days after being notified of that arrangement.
- (4) If a Registrar does not cancel an arrangement,—
 - (a) the arrangement comes into force 8 days after the Registrar was notified of that arrangement; and
 - (b) the defendant may make payments under the arrangement.
- (5) Subsection (4)(b) does not prevent the defendant from making payments in respect of a fine if those payments are not part of the arrangement entered into under subsection (1).
- (6) If a fine may be paid by instalments and default is made in the payment of any instalment, proceedings may be taken as if default had been made in the payment of all instalments then remaining unpaid.

Section 86A was inserted, as from 1 November 1998, by section 19 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (2)(a) was amended, as from 30 June 2002, by section 184 Sentencing Act 2002 (2002 No 9), by substituting the words “5 years” for the words “18 months”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

86B Registrar may vary, suspend, or cancel arrangement for extension of time to pay fine or attachment order

- (1) A Registrar may vary, suspend, or cancel an arrangement extending the time to pay a fine, or an attachment order, if the Registrar has reason to believe that—
 - (a) the defendant has, for the purpose of entering into the arrangement, or in connection with the making of the attachment order, supplied false or misleading information about the defendant’s financial position; or
 - (b) the defendant’s financial position has changed significantly since the date on which—
 - (i) the arrangement was entered into; or
 - (ii) the attachment order was made.
- (2) A Registrar may vary, suspend, or cancel an arrangement extending the time to pay a fine if another fine that is not subject to the arrangement is imposed on the defendant and—
 - (a) the defendant agrees in writing to the variation, suspension, or cancellation proposed by the Registrar; or
 - (b) the defendant defaults in the payment of the subsequent fine, and—
 - (i) the Registrar is unable to contact the defendant; or
 - (ii) the Registrar contacts the defendant but is unable to reach any agreement with the defendant as to how the subsequent fine is to be paid.
- (3) A Registrar may vary, suspend, or cancel an attachment order, if another fine that is not subject to the attachment order is imposed on the defendant and the defendant defaults in the payment of the subsequent fine, and—
 - (a) the Registrar is unable to contact the defendant; or
 - (b) the Registrar contacts the defendant, but is unable to reach any agreement with the defendant as to how the subsequent fine is to be paid.

- (4) Before exercising the power in subsection (1) on the ground that subsection (1)(b) applies, the Registrar must consult with the chief executive of any appropriate government department or other government body that the Registrar has reasonable grounds to believe has information that is relevant to the defendant's financial position.
- (5) If subsection (1), (2)(b)(ii), or (3)(b) applies, before varying, suspending, or cancelling an arrangement extending the time to pay or the attachment order, as the case may be, the Registrar must—
 - (a) serve on the defendant a written notice—
 - (i) setting out the action that the Registrar proposes to take and the reasons for the action; and
 - (ii) indicating that the defendant may make a written submission to the Registrar as to why the Registrar should not take the proposed action and that this submission must be received by the Registrar within 10 working days after the date of the notice; and
 - (b) consider any written submissions received from the defendant within the 10-working day period referred to in paragraph (a)(ii).
- (6) A notice under subsection (5) is sufficiently served if—
 - (a) it is delivered to the defendant; or
 - (b) it is sent to the defendant by ordinary post to the defendant's last known place of residence or business.
- (7) The variation, suspension, or cancellation of an arrangement extending the time to pay takes effect,—
 - (a) where subsections (1) or (2)(b)(ii) apply,—
 - (i) if no written submissions are received by the Registrar within the 10-working day period referred to in subsection (5)(b), on the expiry of that period; or
 - (ii) if written submissions are received by the Registrar within the 10-working day period referred to in subsection (5)(b) and the Registrar decides to proceed with the proposed action, on a date specified by the Registrar in a further written notice served on the defendant; or

- (b) where subsection (2)(a) applies, on the date that the Registrar receives the written agreement of the defendant under that subsection; or
 - (c) where subsection (2)(b)(i) applies, on a date specified by the Registrar.
- (8) If the Registrar suspends or cancels an attachment order in accordance with this section,—
- (a) the Registrar must serve a notice of the suspension or cancellation on the employer to whom it relates; and the provisions relating to service in subsections (1) and (2) of section 104 apply with any necessary modifications; and
 - (b) the suspension or cancellation takes effect when the notice is served on the employer in accordance with this subsection.
- (9) If the Registrar varies an attachment order under this section, the Registrar must issue a new attachment order under section 87 in place of the existing order.
- (10) In this section and sections 87 and 87AA, **arrangement extending the time to pay a fine** means an arrangement that—
- (a) provides for either or both of the following:
 - (i) allowing a defendant a greater time to pay a fine;
 - (ii) allowing a defendant to pay a fine by instalments; and
 - (b) is entered into by—
 - (i) a Registrar under section 86; or
 - (ii) a bailiff under section 86A (in which case the arrangement must have come into force in accordance with that section).

Section 86B was inserted, as from 9 October 2006, by section 11 Summary Proceedings Amendment Act 2006 (2006 No 13).

87 Action where fine not paid or where arrangement or attachment order cancelled

- (1) If the defendant defaults in the payment of any fine or a Registrar cancels an arrangement extending the time to pay a fine, or an attachment order, in accordance with section 86B, the Registrar may—
- (a) issue a warrant to seize property; or

- (b) make an attachment order attaching any salary or wages payable or to become payable to the defendant; or
 - (c) issue a deduction notice requiring a bank to deduct the amount due from a sum payable or to become payable to the defendant.
- (2) Enforcement procedures commenced under this section must cease on payment of the unpaid amount of the fine.
- (3) The powers conferred by this section may not be exercised by a Registrar who is a constable.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (1)(b) was amended by inserting the expression “; or”, and subsection (1)(c) was inserted, as from 1 November 1998, by section 20 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Section 87 was substituted, as from 9 October 2006, by section 12 Summary Proceedings Amendment Act 2006 (2006 No 13).

87AA Power to obtain information in respect of beneficiaries

- (1) If—
- (a) the Registrar is—
 - (i) considering whether to make an attachment order under section 87(1)(b) in respect of salary or wages payable or to become payable to a defendant; or
 - (ia) considering whether to vary, suspend, or cancel an arrangement extending the time to pay a fine or an attachment order under section 86B; or
 - (ii) assessing the amount of the protected earnings rate referred to in section 105(3); and
 - (b) the salary or wages of the defendant includes a benefit; and
 - (c) the Registrar wishes to verify information supplied by the defendant in respect of that benefit, or obtain information relating to the defendant in respect of that benefit, or obtain and verify that information,—
- the Registrar may, by notice in writing, require the chief executive of the department for the time being responsible for

the administration of the Social Security Act 1964 (**the chief executive**) to provide the Registrar with the information specified in subsection (2) that is known to the chief executive.

- (2) The information referred to in subsection (1) is—
- (a) the amount of any benefit that is paid to the defendant;
 - (b) the amount of any attachment order or deduction notice that applies to the defendant and is made or given or issued under any of the following Acts:
 - (i) the Social Security Act 1964;
 - (ii) the Family Proceedings Act 1980;
 - (iii) the Child Support Act 1991;
 - (iv) the Tax Administration Act 1994;
 - (c) any amount that is being recovered from the defendant under section 86 of the Social Security Act 1964;
 - (d) the composition of the defendant's family, including the number of family members who are dependent on the defendant.
 - (e) the residential address and residential telephone number of the defendant;
 - (f) the type of any benefit that is paid to the defendant;
 - (g) the unique number assigned to any benefit that is paid to the defendant.
- (3) The chief executive must comply with any request under subsection (1)—
- (a) within a reasonable period; and
 - (b) in the manner specified in the notice; and
 - (c) without imposing a charge.
- (3A) If the defendant has died and the chief executive is aware of that fact, the chief executive must advise the Registrar accordingly on receipt of a notice under subsection (1).
- (4) This section does not apply if the Registrar is directed under section 88(3)(a) to issue a warrant to seize property or to make an attachment order or to issue a deduction notice.

Section 87AA (as amended by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96)) was inserted, as from 1 November 1998, by section 21 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (1)(a)(ia) was inserted, as from 9 October 2006, by section 13(1) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (2)(e) to (g) was inserted, as from 9 October 2006, by section 13(2) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (3A) was inserted, as from 9 October 2006, by section 13(3) Summary Proceedings Amendment Act 2006 (2006 No 13).

87A Publication of name of fines defaulter

- (1) This section applies if—
 - (a) a defendant has been ordered by a Court (other than a Youth Court) to pay any fine; and
 - (b) the defendant has not made any payment in respect of the fine for at least 3 months before the date on which the Registrar proposes to arrange the publication of a notice under subsection (2) relating to the defendant; and
 - (c) the defendant owes not less than \$500 in unpaid fines; and
 - (d) either the fine is not subject to any arrangement under section 81 or section 86 or section 86A allowing payment of the fine over a specified period or the fine is subject to such an arrangement but the defendant is not for the time being observing the terms of the arrangement; and
 - (e) no name suppression order was made in respect of the defendant in the proceedings in which the fine was imposed; and
 - (f) the Registrar has been unable to locate the defendant after using reasonably available sources of information; and
 - (g) the Registrar has confirmed the identity of the defendant by checking information held in relation to the defendant on any database accessible to the Registrar; and
 - (h) the Registrar has no reason to suspect that the defendant has died.
- (2) If this section applies, the Registrar may cause notice of the fines defaulter to be published in any newspaper and the notice may include 1 or more of the following details:
 - (a) the name of the defendant:
 - (b) the defendant's current or last known address:
 - (c) the defendant's age (in years).

- (3) A Registrar who causes the publication under subsection (2) of any particulars relating to a defendant shall take all reasonable steps to ensure that the particulars published are accurate and current.

Section 87A was inserted, as from 1 April 1996, by section 12 Summary Proceedings Amendment Act 1995 (1995 No 64). *See* clause 2 Summary Proceedings Amendment Act Commencement Order (SR 1996/27).

Subsection (1)(d) was amended, as from 1 November 1998, by section 22 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91) by inserting the expression “or section 86A”.

Subsection (2) was amended, as from 9 October 2006, by section 14 Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting the words “any newspaper” for the words “a newspaper circulating in the area where the Court is located”.

87B Deduction of fines

- (1) If—
- (a) a fine is payable by a defendant and the defendant is, by virtue of an order made under section 81(1) or section 83(1) or an arrangement made under section 86 or section 86A or a direction given under section 88(3)(fb), ordered to pay the fine immediately or allowed a greater time for payment or allowed to make payment by instalments; and
 - (b) the defendant either—
 - (i) fails to comply with the order or arrangement or direction; or
 - (ii) refuses, without reasonable excuse, to enter into such an arrangement,—the Registrar may issue, in writing, a deduction notice requiring a bank to deduct the amount due from a sum that is payable or becomes payable to the defendant, until the deduction notice is revoked in accordance with section 87C or discharged under section 87H.
- (2) The Registrar must specify in the deduction notice—
- (a) whether the deduction is to be made as a lump sum or by instalments; and
 - (b) the time or times by which the bank must pay the amounts deducted; and
 - (ba) that the amounts deducted must be paid to a person, or into a trust account, in accordance with section 208; and

- (c) the date on which the deduction notice takes effect, which date is not earlier than the date on which it was issued.
- (2A) The deduction notice issued by the Registrar must specify that if on any occasion the amount of a deduction required to be made is greater than the amount that is payable or becomes payable to the defendant, the amount to be deducted on that occasion is the amount that is payable or becomes payable to the defendant.
- (3) The Registrar must issue a copy of the deduction notice to the defendant at his or her usual or last known place of residence or business.
- (4) Every bank to which a deduction notice is issued must, on request, issue to the defendant a statement in writing of any amount deducted, and of the purpose for which the deduction was made.
- (5) If any question arises in any case as to the priority to be accorded to deduction notices issued under this section, the following have priority over those deduction notices:
 - (a) 1 or more attachment orders or deduction notices made or given or issued under any of the following Acts:
 - (i) the Social Security Act 1964:
 - (ii) the Family Proceedings Act 1980:
 - (iii) the Child Support Act 1991:
 - (iv) the Tax Administration Act 1994:
 - (b) the recovery of payments under section 86 of the Social Security Act 1964.
- (6) Every deduction notice is subject to section 87I.

Sections 87B to 87J were inserted, as from 1 November 1998, by section 23 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (2)(b) was substituted, as from 9 October 2006, by section 15(1) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (2)(ba) was inserted, as from 9 October 2006, by section 15(1) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (2A) was inserted, as from 9 October 2006, by section 15(2) Summary Proceedings Amendment Act 2006 (2006 No 13).

87C Revocation of deduction notices

- (1) The Registrar may revoke a deduction notice at any time by giving notice in writing to the bank to which the deduction notice was issued, or by issuing a new deduction notice.
- (2) At the request of the defendant, the Registrar must, in the manner specified in subsection (1), revoke the deduction notice if the Registrar is satisfied that the total amount due has been paid.
- (3) *[Repealed]*
- (4) *[Repealed]*

Sections 87B to 87J were inserted, as from 1 November 1998, by section 23 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsections (3) and (4) were repealed, as from 9 October 2006, by section 16 Summary Proceedings Amendment Act 2006 (2006 No 13).

87D Fine to be treated as being paid

- (1) All amounts deducted in accordance with a deduction notice are to be treated as having been paid by the defendant in satisfaction of the defendant's liability to pay the fine.
- (2) If any amounts are deducted in accordance with a deduction notice, the defendant's liability to pay the fine is not satisfied until the total amount due has been paid.

Sections 87B to 87J were inserted, as from 1 November 1998, by section 23 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

87E Deduction notices issued on banks

- (1) When a deduction notice is issued to a bank, money held by the bank to the credit of the defendant is subject to the provisions of section 87B(1).
- (2) If a bank makes a deduction required by a deduction notice, neither the defendant nor any other person concerned has any claim against that bank, or the Crown, in respect of that deduction.

Sections 87B to 87J were inserted, as from 1 November 1998, by section 23 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

87F Meaning of certain terms relating to banks

- (1) For the purposes of sections 87C and 87E, money held by the bank to the credit of the defendant includes interest on any

money that is on deposit or deposited with a bank to the credit of the defendant, whether or not—

- (a) the deposit or depositing is on current account:
 - (b) the money is to be at interest at a fixed term or without limitation of time:
 - (c) the defendant has made an application to withdraw or uplift the money.
- (2) For the purposes of subsection (1), money on deposit or deposited with a bank to the credit of the defendant includes money—
- (a) that is held in a joint bank account in the name of the defendant and 1 or more other persons; and
 - (b) that can be withdrawn from the account by or on behalf of the defendant without a signature being required at the time of that withdrawal from, or on behalf of, the other person or persons.

Sections 87B to 87J were inserted, as from 1 November 1998, by section 23 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

87G Offences in relation to deduction notices

A person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who, without reasonable excuse,—

- (a) fails to make any deduction required by a deduction notice; or
- (b) fails, after making a deduction, to pay the amount deducted to the Registrar within the time specified in the notice.

Sections 87B to 87J were inserted, as from 1 November 1998, by section 23 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

87H Variation or discharge of deduction notices

- (1) If a bank to which a deduction notice is issued or a defendant considers that a deduction notice has been issued in error, or contains an error, the bank or defendant may bring the matter to the attention of the Registrar specified in the notice.
- (2) If the matter is not rectified to the satisfaction of that bank or defendant (as the case may be) within 5 working days after the date on which that bank or defendant brings the matter to the

attention of that Registrar, the bank or defendant may apply *ex parte* to the Court for the variation or discharge of the notice.

- (3) If the Court is satisfied that an error has been made and that the notice ought to be varied or discharged, the Court may vary or discharge the notice, and make any other orders that it considers just in the circumstances.
- (4) The variation or discharge takes effect when notice of it is served on the bank or defendant (as the case may be) in accordance with section 87J.

Sections 87B to 87J were inserted, as from 1 November 1998, by section 23 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

87I Penalty for late deductions

- (1) If a bank to which a deduction notice is issued fails, without reasonable excuse, to—
 - (a) deduct the full amount or part of the amount required by the notice; or
 - (b) pay the full amount or part of the amount required by the notice to the Registrar by the time specified in the notice,—the bank is liable to pay to the Registrar a penalty calculated in accordance with subsection (2).
- (2) The penalty referred to in subsection (1) must be calculated as follows:
 - (a) on the amount in default, the greater of 10% of that amount or \$5;
 - (b) for each additional month or part of a month during which the amount in default or any part of that amount has not been deducted or has not been paid to the Registrar, a further penalty of the greater of 2% of that amount or part of that amount or \$1.
- (3) If a penalty is payable by a bank under subsection (1), the Registrar, in his or her discretion, may remit the whole or part of that penalty if he or she is satisfied that—
 - (a) the failure to make the deduction or make the payment was due to circumstances reasonably beyond the bank's control; or
 - (b) in all the circumstances, the imposition of that penalty would be inequitable.

- (4) If the Registrar decides to remit the whole or part of any penalty and any amount of the penalty has been paid under this section, the Registrar may refund any excess.
- (5) Any amount payable to the Registrar under subsection (1) is a debt due to the Crown and may be recovered from the bank by the Crown in any Court of competent jurisdiction.

Sections 87B to 87J were inserted, as from 1 November 1998, by section 23 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

87J Giving of notices

- (1) A notice given to a person under any of sections 87B to 87I must be given by delivering it to that person—
 - (a) personally; or
 - (b) by leaving it at that person's usual or last known place of residence or business; or
 - (c) by posting it in an envelope addressed to that person at that place of residence or business.
- (2) If the notice is sent to the person by post, then, in the absence of evidence to the contrary,—
 - (a) the notice must be treated as having been received by that person on the fourth day after the date on which it is posted; and
 - (b) in proving the delivery of that notice, it is sufficient to prove the envelope was properly addressed and posted.

Sections 87B to 87J were inserted, as from 1 November 1998, by section 23 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

88 Action where fine remains unpaid

- (1) This section applies if—
 - (a) the Registrar has taken enforcement action under section 87 but the fine remains unpaid; or
 - (b) the Registrar is satisfied that the defendant does not have the means to pay the fine; or
 - (c) the Registrar is satisfied that—
 - (i) reasonable steps have been taken to locate the defendant but the defendant has not been located and therefore enforcement action would be unlikely to be effective; or

- (ii) for any other reason enforcement action would be unlikely to be effective.
- (1A) *[Repealed]*
- (1B) *[Repealed]*
- (2) The Registrar may—
 - (a) order that the defendant be brought before the Registrar; or
 - (b) refer the matter to a District Court Judge or Community Magistrate with a report on the circumstances of the case.
- (2A) If the Registrar refers a matter to a District Court Judge or a Community Magistrate, the Registrar may order that the defendant be brought before the Judge or Community Magistrate.
- (2B) For the purposes of subsection (2)(a) or subsection (2A) the Registrar may, if necessary, issue a warrant for the defendant's arrest.
- (2C) Without limiting any other provision of this Act, a warrant for the defendant's arrest under subsection (2B) may be in the form of a computer printout of information entered by a Registrar into a computer system accessible to the police or a bailiff, and the following provisions apply in relation to every such warrant:
 - (a) information about a defendant that is so entered by the Registrar may be printed out by a sworn member of the police or a bailiff, and for all purposes constitutes a warrant for the arrest of the defendant;
 - (b) the absence of any signature on the printout does not affect its validity as a warrant;
 - (c) the warrant is valid for a period of 7 days beginning on the date of its printing, and the warrant then lapses;
 - (d) at any time and from time to time after a warrant lapses under paragraph (c),—
 - (i) the Registrar may re-enter the particulars into the same computer system or enter the particulars into any other computer system available to the police or a bailiff;

- (ii) a sworn member of the police or a bailiff may obtain a further printout of the original information entered by the Registrar or obtain a printout of the re-entered information or of the information entered into the other computer system, and every such printout constitutes a fresh warrant for the arrest of the defendant.
- (2D) A warrant issued under this section may be executed by a sworn member of the police or by a bailiff.
- (2E) If a defendant is arrested under a warrant issued for the purpose of subsection (2)(a), the following provisions apply:
 - (a) the defendant must be brought before the Registrar:
 - (b) the defendant is bailable as of right:
 - (c) section 46 and Part 3 of the Bail Act 2000 apply with any necessary modifications as if the appearance before the Registrar constituted part of the hearing of a charge:
 - (d) for the purpose of any bail application by the defendant, if the defendant cannot practicably be brought immediately before the Registrar, a District Court Judge or a Community Magistrate, any member of the police or a bailiff may take the bail bond of the defendant and Parts 1 to 3 of the Bail Act 2000 apply with necessary modifications as if the bail bond were taken by a member of the police under section 21(1) of the Bail Act 2000.
- (2F) If a defendant is arrested under a warrant issued for the purpose of subsection (2A), the following provisions apply:
 - (a) the defendant must be brought before a District Court Judge or a Community Magistrate or, if neither a District Court Judge nor a Community Magistrate is available, the Registrar:
 - (b) where the defendant is brought before the Registrar, the Registrar must appoint a time and place for the defendant to appear before a District Court Judge or a Community Magistrate:
 - (c) the defendant is bailable as of right:
 - (d) section 46 of this Act and Part 3 of the Bail Act 2000 apply with necessary modifications as if the appearance before the Registrar or a District Court Judge or a Com-

- munity Magistrate constituted part of the hearing of a charge:
- (e) if the defendant cannot practicably be brought immediately before a District Court Judge or a Community Magistrate or the Registrar, any member of the police or a bailiff may take the bail bond of the defendant and Parts 1 to 3 of the Bail Act 2000 apply with necessary modifications as if the bail bond were taken by a member of the police under section 21(1) of the Bail Act 2000.
- (2G) If a defendant is brought before a Registrar under subsection (2)(a), the Registrar may examine the defendant as to his or her financial position and may—
- (a) invoke 1 or more of the enforcement actions in section 87; or
 - (b) enter into an arrangement with the defendant under section 86; or
 - (c) if the Registrar is satisfied that neither of the actions described in paragraphs (a) or (b) will be effective, refer the defendant to a District Court Judge or a Community Magistrate with a report on the case, in which case subsections (2A) to (2D) and subsection (2F) apply.
- (3) Subject to subsection (3AA), the District Court Judge or Community Magistrate may, after considering the report of the Registrar, and the financial position of the defendant (whether determined from any financial statement prepared by the defendant or from other sources)—
- (a) refer the matter to the Registrar with a direction that 1 or more of the enforcement procedures referred to in section 87(1), as specified in the direction, be invoked; or
 - (b) subject to section 106E, direct that a warrant of commitment in the prescribed form be issued; or
 - (ba) subject to sections 80A to 80ZM of the Sentencing Act 2002 and section 106E of this Act, sentence the defendant to a sentence of home detention; or
 - (bb) subject to sections 69B to 69M and sections 70 to 80 of the Sentencing Act 2002 and section 106E of this

- Act, sentence the defendant to a sentence of community detention; or
- (c) subject to sections 55 to 80 of the Sentencing Act 2002 and section 106E of this Act, sentence the defendant to community work; or
 - (d) *[Repealed]*
 - (e) *[Repealed]*
 - (f) direct that action be taken under paragraph (a) or paragraph (b) in respect of a lesser amount than the fine due; or
 - (fa) if the amount that the defendant owes in respect of 1 unpaid fine, or in total in respect of more than 1 unpaid fine, is \$5,000 or more, refer the matter to the Registrar with a direction that action be taken under section 96A of the District Courts Act 1947 in relation to 1 or all of the fines making up the total owing by the defendant as if the fine or fines were an order for the payment of money and as if the Registrar had obtained the order; or
 - (fb) direct that a greater time for payment of the fine be allowed subject to such conditions as may be directed by the Judge or Community Magistrate; or
 - (g) direct that no further enforcement proceedings be taken in respect of the fine for such period or subject to such conditions as may be directed by the Judge or Community Magistrate; or
 - (h) remit the fine or a part of the fine.
- (3AAA) No Community Magistrate may direct, under subsection (3)(b), the issue of a warrant of commitment; but, in any case where a Community Magistrate considers the issue of such a warrant to be appropriate, the Community Magistrate must refer the matter to a District Court Judge, in which case sections 45 to 59, so far as they are applicable and with the necessary modifications, apply.
- (3AAB) No Community Magistrate may sentence a defendant to a sentence of home detention under subsection (3)(ba); but in any case where a Community Magistrate considers such a sentence to be appropriate, the Community Magistrate must refer the matter to a District Court Judge, in which case sections

45 to 59, so far as they are applicable and with the necessary modifications, apply.

- (3AA) Notwithstanding anything in subsection (3), where—
- (a) the fine was imposed in respect of a traffic offence (as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989) not punishable by imprisonment; and
 - (b) at the date of the commission of the offence, the defendant was a young person within the meaning of that Act,—
- a period of imprisonment or sentence of home detention must not be imposed under subsection (3) on the defendant in respect of the fine.
- (3A) Where a District Court Judge or Community Magistrate exercises any power conferred by subsection (3) and considers it appropriate to do so, he or she may also make an order under subsection (9) for the return of the defendant.
- (4) *[Repealed]*
- (5) A warrant of commitment, or a sentence of community work, community detention, or home detention, may be issued or imposed under this section notwithstanding that the defendant was not liable to be imprisoned on the determination of the information or complaint in respect of which the fine was imposed.
- (6) Any warrant of commitment directed to be issued under this section may be issued by any District Court Judge and may be withdrawn at any time by any District Court Judge.
- (7) Where any direction is given under subsection (3)(f), the difference between the amount due under the fine and the amount in respect of which action is directed to be taken under that provision shall cease to be payable and no proceedings shall be taken or continued for its recovery.
- (8) Where a District Court Judge or Community Magistrate makes any order (other than a direction for the issue of a warrant of commitment) under this section, the Judge or Community Magistrate may postpone the issue or defer the operation of the order for such period and subject to such conditions as he or she may direct.

- (9) Where a District Court Judge or Community Magistrate makes any order (other than an order that directs the issue of a warrant of commitment) under this section, and considers it appropriate to do so, he or she may also issue an order for the return of the defendant; but the order shall not be executed until such time as the defendant ceases to comply with any of the conditions of the order, including (without limitation) the making of periodic payments due under an attachment order.
- (10) An order for the return of the defendant issued under subsection (9) may be executed by a bailiff.
- (11) Where a fine is being paid by attachment order, no order issued under subsection (9) for the return of a defendant shall be executed until such time as the Registrar has confirmed with the employer that no periodic payments or payments have been made and the reason why no such payment or payments have been made.
- (12) Where a defendant is detained pursuant to an order issued under subsection (9), the provisions of subsection (2) shall apply.

The original Part 3 (comprising sections 79 to 105) was substituted, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsection (4)(b) was amended, as from 17 December 1976, by section 8 Summary Proceedings Amendment Act 1976 (1976 No 169) by substituting “make” for “apply for”.

Part 3 (comprising sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (1) was substituted, as from 9 October 2006, by section 17(1) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 40 of that Act for the transitional provisions.

Subsection (1)(c) and (d) were amended, as from 30 June 1998, by section 21(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting “or Community Magistrate”.

Subsection (1A) was substituted, as from 1 November 1998, by section 24(1) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (1A) was repealed, as from 9 October 2006, by section 17(1) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 40 of that Act for the transitional provisions.

Subsection (1B) was inserted, as from 1 November 1998, by section 24(1) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (1B) was repealed, as from 9 October 2006, by section 17(1) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 40 of that Act for the transitional provisions.

Subsection (2)(a) was substituted, as from 30 June 1998, by section 21(2) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

Subsection (2)(b) to (e) were amended, as from 30 June 1998, by section 21(3) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting “or a Community Magistrate”.

Subsection (2)(d) and (e) were substituted, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

Subsection (2) was substituted, as from 9 October 2006, by section 17(1) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 40 of that Act for the transitional provisions.

Subsections (2A) to (2G) were inserted, as from 9 October 2006, by section 17(1) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 40 of that Act for the transitional provisions.

Subsection (3) was amended, as from 8 January 1995, by section 47(1) Children, Young Persons, and their Families Amendment Act 1994 (1994 No 121) by inserting the words “Subject to subsection (3AA) of this section,”. *See* section 47(3) and (4) of that Act.

Subsection (3) was amended, as from 30 June 1998, by section 21(4) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting “or Community Magistrate”.

Subsection (3)(a) was amended, as from 1 November 1998, by section 24(2) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91) by substituting “more” for “both”.

Section 88(3)(ba): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 88(3)(bb): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (3)(c) was substituted, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (3)(c) was amended, as from 9 October 2006, by section 17(2) Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting “55 to 80” for “56 to 77”. *See* section 40 of that Act for the transitional provisions.

Subsection (3)(d) and (e) were repealed, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (3)(fa) and (fb) were inserted, as from 1 November 1998, by section 24(3) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (3)(fa) was substituted, as from 9 October 2006, by section 17(3) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 40 of that Act for the transitional provisions.

Subsection (3)(fb) was amended, as from 9 October 2006, by section 17(4) Summary Proceedings Amendment Act 2006 (2006 No 13) by inserting “or Community Magistrate” after “Judge”. *See* section 40 of that Act for the transitional provisions.

Subsection (3AAA) was inserted, as from 30 June 1998, by section 21(5) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

Subsection (3AAA) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by omitting “or impose, under subsection (3)(e), a sentence of corrective training”. *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (3AAA) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by omitting the words “or the imposition of such a sentence”. *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Section 88(3AAB): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 88(3AA): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (3AA) was inserted, as from 8 January 1995, by section 47(2) Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121). *See* section 47(3) and (4) of that Act.

Subsection (3AA) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting “a period of imprisonment must not” for “neither a period of imprisonment nor a sentence of corrective training shall”. *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (3A) was inserted, as from 1 September 1993, by section 14 Summary Proceedings Amendment Act 1993 (1993 No 47).

Subsection (3A) was amended, as from 30 June 1998, by section 21(6) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting “or Community Magistrate”.

Subsection (4) was repealed, as from 1 November 1998, by section 24(4) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Section 88(5): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (5) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting “or a sentence of community work” for “or a sentence of community service, periodic detention, or corrective training”. *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (8) was substituted, as from 1 September 1993, by section 14 Summary Proceedings Amendment Act 1993 (1993 No 47).

Subsections (9) to (12) were inserted, as from 1 September 1993, by section 14 Summary Proceedings Amendment Act 1993 (1993 No 47).

Subsections (8) and (9) were amended, as from 30 June 1998, by section 21(7) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting “or Community Magistrate”.

88A Charging orders

- (1) If, under section 88(3)(fa), a District Court Judge refers a matter to the Registrar with a direction that action be taken under section 96A of the District Courts Act 1947, then, in respect of any proceedings commenced by the Registrar under that direction,—
 - (a) section 66 of the District Courts Act 1947 and rules 586 to 608 of the District Courts Rules 1992 apply so far as practicable to those proceedings; and
 - (b) in so far as it is not practicable for any provision of section 66 or those rules to be applied to those proceedings, the Registrar may apply to a District Court Judge for directions; and
 - (c) the District Court Judge may give such directions as he or she thinks best calculated to promote the ends of justice.
- (2) If the matter is removed into the High Court, the High Court Rules apply so far as practicable to those proceedings.

Sections 88A and 88B were inserted, as from 1 November 1998, by section 25 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

88B Remission of fine

- (1) The Registrar may make an order remitting any fine if—
 - (a) the amount outstanding is \$25 or less; and
 - (b) the fine was imposed at least 3 years before the date on which the Registrar makes the order remitting the fine; and
 - (c) in the case of a fine that includes reparation or compensation to another person, the Registrar has—
 - (i) obtained the consent of the other person to remit the fine; or
 - (ii) made reasonable efforts to find the other person and obtain his or her consent, and has not been

able to find that person and obtain his or her consent.

- (2) The Registrar may make an order remitting any fine imposed by, or resulting from the enforcement of, an order deemed to have been made, or made, under section 21(5), (5A), or (9) if the Registrar is satisfied that the defendant is dead and that the fine cannot be recovered from the defendant's estate.

Sections 88A and 88B were inserted, as from 1 November 1998, by section 25 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (2) was inserted, as from 9 October 2006, by section 18 Summary Proceedings Amendment Act 2006 (2006 No 13).

89 Rights of representation and appeal

- (1) Every defendant attending before a District Court Judge or Community Magistrate pursuant to any provision of section 88 is entitled to be represented by a barrister or solicitor.
- (2) Where a defendant is sentenced to community work, community detention, or home detention under section 88(3) or is imprisoned pursuant to a warrant of commitment issued under that provision,—
- (a) the defendant has, if sentenced by a District Court Judge, the same right to appeal under section 115 as if the defendant had been convicted on an information or complaint; and
- (b) the defendant has, if sentenced by a Community Magistrate, a right of appeal under section 114A.
- (3) On any such appeal under section 115 by a defendant sentenced by a District Court Judge, the High Court may, in addition to its powers under section 121, remit the matter to a District Court Judge to be dealt with as that Judge thinks fit under section 88(3), except that that Judge must not impose a sentence the same as that appealed against.

The original Part 3 (comprising sections 79 to 105) was substituted, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsection (6) was amended, as from 1 May 1981, by section 9 Summary Proceedings Amendment Act 1980 (1980 No 84) by substituting "15 kilometres" for "10 miles".

Subsection (12) was amended, as from 1 May 1981, by section 24 Summary Proceedings Amendment Act 1980 (1980 No 84) by substituting "\$500" for the words "\$200" for "\$200".

Part 3 (comprising sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 89(2): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (2) was amended, as from 1 September 1993, by section 15 Summary Proceedings Amendment Act 1993 (1993 No 47), by inserting “or is imprisoned pursuant to a warrant of commitment issued under that provision”.

Section 89 was substituted, as from 30 June 1998, by section 22(1) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

Subsection (2) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting “community work” for “community service, periodic detention, or corrective training”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

90 Scale of imprisonment for non-payment of fine

The period of imprisonment imposed under this Act in respect of the non-payment of any fine or where the sale of any property under any process does not produce sufficient proceeds to pay the fine, shall be such period as in the opinion of the Court or District Court Judge fixing the period will satisfy the justice of the case, not exceeding,—

- (a) in the case of an offence that was punishable by imprisonment, the maximum term of imprisonment to which the defendant was liable on the conviction, or a period of 1 year, whichever is the lesser:
- (b) in any other case, a period of 3 months.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

91 Defendant on substituted sentence to be discharged on payment of fine

- (1) Where a defendant is, on the non-payment of a fine, imprisoned on a warrant of commitment and the manager of the prison in which the defendant is imprisoned receives written notice from a Registrar that the fine in respect of which the warrant was issued has been paid, the manager shall discharge

the defendant from the prison unless the defendant is also in custody for some other reason.

(2) *[Repealed]*

(3) If a defendant is, on the non-payment of a fine, subject to a sentence of community work, community detention, or home detention and a probation officer receives written notice from a Registrar that the fine in respect of which the sentence was imposed has been paid, the probation officer must direct that the defendant is no longer subject to that sentence in respect of the fine.

(4) *[Repealed]*

(5) On completion of a term of imprisonment or any sentence referred to in any of subsections (1) to (4), the fine in respect of which the term of imprisonment or the sentence was imposed shall be deemed to be remitted.

The original Part 3 (comprising sections 79 to 105) was substituted, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsection (1) was amended, as from 17 December 1976, by section 9 Summary Proceedings Amendment Act 1976 (1976 No 169) by substituting “Where it appears to the Registrar of a Court in which a” for “Where default is made in the payment of a sum adjudged to be paid by a conviction and it appears to the Registrar of the Court in which the”.

Part 3 (comprising sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (1) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution” in both places it appeared. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (1) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “manager” for “Superintendent” in both places it appeared. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (2) was repealed, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Section 91(3): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (3) was substituted, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (4) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting “sentence of community work and a probation officer” for “community service order and the probation officer supervising the sentence”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (4) was repealed, as from 9 October 2006, by section 19 Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (5) was inserted, as from 1 September 1993, by section 16 Summary Proceedings Amendment Act 1993 (1993 No 47).

92 Effect of warrant of commitment

A warrant of commitment issued under section 83(2)(b) or section 88(3)(b) shall require that the defendant be imprisoned in some prison for such time as the District Court Judge considers appropriate (not exceeding the appropriate maximum period specified in section 90) unless the fine or any lesser amount directed by the Judge under section 88(3)(f) is sooner paid.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 92 was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “prison” for the words “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

93 Warrant to seize property

- (1) Where any warrant to seize property is issued under section 83(2)(a), section 87(1)(a), or section 88(3)(a), the warrant shall apply so as to authorise the seizure of any property apparently property of the defendant.
- (2) Every warrant to seize property shall contain full details of the fine and the amount remaining unpaid in respect of the fine.
- (3) Without limiting any other provision of this Act, a warrant to seize property referred to in subsection (1) may be in the form of a computer printout of information entered by a Registrar into a computer system accessible to the police or a bailiff, and the following provisions apply in relation to every such warrant:

- (a) information about a defendant that is so entered by the Registrar may be printed out by a sworn member of the police or a bailiff, and for all purposes constitutes a warrant to seize property:
- (b) the absence of any signature on the printout does not affect its validity as a warrant:
- (c) the warrant is valid for a period of 28 days beginning on the date of its printing, and the warrant then lapses:
- (d) at any time and from time to time after a warrant lapses under paragraph (c),—
 - (i) the Registrar may re-enter the particulars into the same computer system or enter the particulars into any other computer system available to the police or a bailiff:
 - (ii) a sworn member of the police or a bailiff may obtain a further printout of the original information entered by the Registrar or obtain a printout of the re-entered information or of the information entered into the other computer system, and every such printout constitutes a fresh warrant to seize property.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (3) was inserted, as from 9 October 2006, by section 20(1) Summary Proceedings Amendment Act 2006 (2006 No 13). *See* section 41 of that Act for the transitional provisions.

93A Seizure and disposal of motor vehicles: application of sections 100A to 100Y instead of sections 94 to 100

Sections 94 to 100 do not apply to any property that is a motor vehicle; sections 100A to 100Y apply instead.

Section 93A: inserted, on 1 December 2009, by section 5 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

94 Seizure and delivery of property

- (1) For the purpose of executing any warrant to seize property any bailiff or constable may, after producing the warrant to

any person in apparent charge of the premises, enter on any premises occupied by or under the control of the defendant, by force if necessary, if that bailiff or constable has reasonable cause to believe that property in respect of which the warrant is issued is on the premises.

- (2) Where the fine is paid on the production of a warrant to seize property, the payment shall be recorded on the warrant and the warrant shall be of no further effect.
- (3) *[Repealed]*
- (4) Where property is seized under a warrant to seize property, the bailiff or constable shall forthwith deliver to the defendant, or leave for the defendant in a conspicuous place at the premises from which the property is seized, a notice in the prescribed form—
 - (a) listing all of the property seized; and
 - (b) directing the defendant to notify the Registrar, within 7 days after the date of the seizure, whether the property listed is property of the defendant and the name and address of any other person who has an interest in the property as owner or otherwise.
- (5) All property seized under a warrant to seize property shall be delivered by the bailiff or constable to the Registrar or to any person or place specified for the purpose by the Registrar, and the Registrar must ensure that the property is retained until the fine is paid, or the property is sold, or a District Court Judge determines otherwise upon the hearing of a claim in respect of the property.

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 94(3): repealed, on 1 December 2009, by section 6 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

Subsection (5) was amended, as from 9 October 2006, by section 21 Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting the words “or to any person or place specified for the purpose by the Registrar, and the Registrar must ensure that the property is retained” for the words “who shall retain the property”.

94A Personal property securities register to be checked

[Repealed]

Section 94A: repealed, on 1 December 2009, by section 7 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

94B Immobilisation of motor vehicles

[Repealed]

Section 94B: repealed, on 1 December 2009, by section 7 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

95 Sale of property seized

Any property seized under a warrant to seize property may, after the expiration of 7 days from the date of seizure, if the fine remains unpaid and no claim has been made by a person other than the defendant in respect of the property, be sold at public auction or in such other manner as may be directed by a District Court Judge or the Registrar, and the purchaser of any property so sold shall, by virtue of this section, obtain good title to the property notwithstanding the interests of the owner or any other person in the property prior to the sale.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Section 95 (as substituted by section 12 (1973 No 117)) was substituted, as from 1 October 1981, by section 189(1) Family Proceedings Act 1980 (1980 No 94).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 95 was amended, as from 1 September 1993, by section 19 Summary Proceedings Amendment Act 1993 (1993 No 47) by substituting the words “or in such other manner as may be directed by” for the words “on the orders of”.

96 Claims to property seized

- (1) Where a claim is made by a person other than the defendant in respect of property seized under a warrant to seize property, the claimant may—
- (a) deposit with the Registrar the amount determined by the Registrar as being the value of the property claimed; or
 - (b) give the Registrar such security as the Registrar may require for the value of the property claimed,—
- pending the decision of a District Court Judge upon the claim.

- (2) Where a claimant fails to comply with paragraph (a) or paragraph (b) of subsection (1), the property may be sold as if no such claim had been made and the proceeds of the sale shall be held to abide the decision of a District Court Judge upon the claim.
- (3) Where a person other than the defendant has made a claim in respect of property seized under a warrant to seize property, or in respect of the value of the property or the proceeds of its sale, the Registrar shall issue a summons calling the defendant and the claimant before a District Court Judge and, in that event, any action brought in respect of the claim shall be stayed.
- (4) On the hearing of the summons, the District Court Judge shall adjudicate upon the claim and shall make such order in respect of the claim and the costs of the proceedings as the Judge thinks fit.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

97 Procedure where property seized subject to hire purchase agreement, bill of sale, etc

- (1) Notwithstanding the other provisions of this Act, where any property is seized under a warrant to seize property and, before the sale of the property under section 95, any person (other than the defendant) claims an interest in the property,—
 - (a) as owner under a hire purchase agreement; or
 - (b) under a bill of sale or otherwise as a security for a debt,—a District Court Judge may order the sale of all or part of the property in such manner and on such terms as the Judge thinks fit, and may direct the application of the proceeds of the sale in such manner and on such terms as the Judge thinks fit.
- (2) Where any property is sold under section 95 and a claim of the kind referred to in subsection (1) is made before the proceeds of the sale are fully applied or distributed, a District Court Judge may direct the application of the proceeds of the sale in

such manner and on such terms as the Judge thinks fit where the Judge is satisfied that it would have been appropriate to have made an order under subsection (1) before the sale.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsections (3), (6) and (9) of the previous section 97 were amended, as from 17 December 1976, by section 10 Summary Proceedings Amendment Act 1976 (1976 No 169) by inserting the words “or constable”.

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

98 Application of proceeds of sale

Except as provided in any order made by a District Court Judge under section 97, any surplus from the sale of any property under section 95 after payment of the fine shall be paid to the defendant.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

99 Compensation to third party with interest in property sold

(1) Where—

- (a) a person (other than the defendant) suffers loss through the sale under section 95 of property in which the person had an interest; and
- (b) the defendant had not before the sale notified the Registrar of the person’s interest in the property,—

a Court may, on the application of that person, order the defendant to pay to the person compensation in respect of the loss.

(2) Subsection (1) shall not limit or affect any other remedy that a person may have in respect of loss referred to in that subsection.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

100 Return of property on payment of fine

Where any property is seized under a warrant to seize property and not sold, it shall, on payment of the fine, be returned to the person from whom it was seized or to the person apparently lawfully entitled to it.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsection (3)(c) of the previous section 100 was substituted, as from 1 February 1981, by section 30(1) Criminal Justice Amendment Act 1980 (1980 No 21).

Subsection (3)(c) of the previous section 100 was amended, as from 1 April 1981, by section 11(1) Criminal Justice Amendment Act (No 2) 1980 (1980 No 76) by omitting the words “for a term of 3 months”.

Subsection (3)(f) of the previous section 100 was amended, as from 17 December 1976, by section 11(1) Summary Proceedings Amendment Act 1976 (1976 No 169) by inserting the words “or part thereof”.

Subsection (5) of the previous section 100 was amended, as from 17 December 1976, by section 11(2) Summary Proceedings Amendment Act 1976 (1976 No 169) by inserting the words “or part thereof”.

Subsection (5) of the previous section 100 was substituted, as from 1 February 1981, by section 30(2) Criminal Justice Amendment Act 1980 (1980 No 21).

Subsections (5) and (6) of the previous section 100 were substituted, as from 1 October 1985, by section 150(1) Criminal Justice Amendment Act 1985 (1985 No 120).

Subsection (8) of the previous section 100 was amended, as from 1 February 1981, by section 30(3) Criminal Justice Amendment Act 1980 (1980 No 21) by substituting the words “to community service” for the words “releases the defendant on probation”.

Subsection (8) was amended, as from 1 April 1981, by section 8(1) Criminal Justice Amendment Act 1975 (1975 No 47) by substituting the words “corrective training for a term of 3 months” for the words “detention in a detention centre”.

Subsection (8) of the previous section 100 was amended, as from 1 April 1981, by section 11(2) Criminal Justice Amendment Act (No 2) 1980 (1980 No 76) by substituting the words “corrective training” for the words “corrective training for a term of 3 months”.

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Seizure, release, and sale of motor vehicles

Heading: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100A Interpretation

(1) In this section and in sections 100C to 100Y, unless the context otherwise requires,—

encumbrance, in relation to a motor vehicle, includes—

- (a) a hire purchase agreement:
- (b) a leasing agreement:
- (c) any other agreement entered into between the defendant and another party under which the other party obtains or retains any interest in the motor vehicle

hire purchase agreement means a hire purchase agreement within the meaning of section YA 1 of the Income Tax Act 2007

impoundment costs, in relation to a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, means the fees and charges for towage and storage that are prescribed or assessed in the manner specified by regulations made under section 167 of that Act, and, where those fees and charges have already been paid by the chief executive of the Ministry of Justice, means the amount required to reimburse the chief executive for that payment

interest means any proprietary interest, whether legal or equitable, and whether vested or contingent

leasing agreement does not include any agreement entered into between the defendant and the holder of a rental service licence under the Land Transport Act 1998

person who is registered, in relation to a motor vehicle, means the person who is registered under the Land Transport Act 1998 in respect of the vehicle, and where several persons are so registered, means any one of those persons

traffic offence means—

- (a) any offence against the Transport Act 1962, the Road User Charges Act 1977, the Transport (Vehicle and Driver Registration and Licensing) Act 1986, the Land Transport Act 1998, or the Land Transport Management Act 2003, or against any regulation or bylaw made under any of those Acts:

- (b) any offence against any regulation or bylaw made under any other Act if the offence relates to the use of motor vehicles or parking places or transport stations
- use**, in relation to a motor vehicle, includes driving, drawing, towing, or propelling by means of another vehicle, and permitting to be on any road
- written caution** means a caution issued under section 100C.
- (2) For the purposes of sections 100C to 100Y, a person is, in relation to a defendant, a **substitute for the defendant** or a **substitute** if—
- (a) the person is served with a written caution, under section 100C, about the defendant's default in paying a fine for a traffic offence; and
- (b) within 4 years after the date of service of that written caution, the defendant defaults, and continues to be in default, on a further fine for a traffic offence committed while using a motor vehicle that, at the time of the commission of that offence, the person owned or had an interest in.
- (3) For the purposes of sections 100C to 100Y, a motor vehicle is owned by a person whether the person owns it solely or as a joint tenant or tenant in common with any other person.
- (4) For the purposes of the exercise of any power, or the performance of any duty or function, under this Part, the person who is registered in respect of a motor vehicle is taken to be the owner of the motor vehicle unless the person exercising the power or performing the duty or function is satisfied that the person who is registered is not the owner of that motor vehicle.
- (5) A reference in sections 100C to 100Y to a person holding a motor vehicle as nominee for a defendant or for a substitute for the defendant is a reference to a person who purports to be the owner or who is the person who is registered in respect of the motor vehicle but whose purported ownership or registration is subject to an understanding or arrangement that the person—
- (a) is not to acquire any rights, or only limited rights, in the motor vehicle; and
- (b) will, in relation to the motor vehicle, act on behalf of the defendant or the substitute for the defendant.

Section 100A: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100B Purpose of sections 100C to 100Y

The purpose of sections 100C to 100Y is—

- (a) to enable fines in default to be collected more effectively through the seizure of motor vehicles; and
- (b) in cases where the fines in default relate to traffic offending, to reduce opportunities for offending of that kind.

Section 100B: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100C Written caution to person holding interest in motor vehicle

- (1) If a defendant defaults in paying any fine for a traffic offence committed while using a motor vehicle in which the defendant does not appear to have an interest, the Registrar may order that a written caution be served on any person who appears to own or to have an interest in the motor vehicle.
- (2) Despite subsection (1), a written caution is not to be served—
 - (a) on anyone if the Registrar is satisfied that the motor vehicle—
 - (i) was stolen or converted at the material time; or
 - (ii) was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998;
 - (b) on a person who the Registrar is satisfied is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the offender.
- (3) The written caution must state that any motor vehicle in which the person has an interest is liable to be seized if the defendant defaults in paying a fine for any further traffic offence committed—
 - (a) while using a motor vehicle in which the person has an interest as owner or otherwise; and
 - (b) within 4 years after the date on which the written caution is served on the person.
- (4) A written caution must provide the following information:
 - (a) the name and identifying details of the defendant:

- (b) the relevant traffic fine that the defendant has defaulted in paying:
 - (c) the identifying details of the motor vehicle in which the relevant traffic offence or traffic offences were committed:
 - (d) that the recipient is believed to have owned or to have had an interest in the motor vehicle at the material time and that none of the reasons stated in subsection (2) has been established to the satisfaction of the Registrar:
 - (e) the recipient's right to seek a review of the Registrar's decision to order the service of the written caution on the recipient.
- (5) A written caution ordered to be served on a person must be served on the person in one of the following ways:
- (a) by being delivered to the person personally or by being brought to the person's notice if the person refuses to accept it:
 - (b) by being left for the person at the person's place of residence with another person (other than the defendant) who appears to be of or over the age of 14 years.
- (6) A written caution may be served by one of the following persons:
- (a) a Police employee:
 - (b) an officer of the court:
 - (c) any person who is authorised to serve the written caution under a general or particular authority given by a District Court Judge or Registrar:
 - (d) any officer or employee of a corporation that is authorised by the Secretary for Justice to serve the written caution.
- (7) An endorsement on a copy of a written caution stating the fact, the date, and the time of service and purporting to be signed by a person of the kind described in subsection (6) is, in the absence of evidence to the contrary, sufficient proof of service of the written caution in accordance with this section.

Section 100C: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100D Review of written caution

- (1) A person served with a written caution under section 100C may, within 20 working days after the date of service, apply to the court for a review by a District Court Judge of the decision to serve the person, on 1 or more of the following grounds:
 - (a) the motor vehicle was stolen or converted at the material time:
 - (b) the person did not own or have an interest in the motor vehicle at the material time:
 - (c) the person is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the defendant:
 - (d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998.
- (2) Every application must include a statutory declaration that specifies a ground stated in subsection (1) and why that ground applies.
- (3) The Judge must conduct the review on the papers unless the Judge considers that a hearing is necessary.
- (4) If satisfied that a ground stated in subsection (1) applies, the following provisions apply:
 - (a) the court must cancel the written caution served on the applicant:
 - (b) if the ground for cancelling the applicant's written caution is that stated in subsection (1)(a) or (d), the court must also cancel the written caution served on any other person under the same order that required service of the written caution on the applicant:
 - (c) the Registrar must advise, by ordinary post, facsimile, email, or other electronic means, every person (including the applicant) whose written caution is cancelled of that outcome:
 - (d) if a written caution served on a person is cancelled, the written caution is deemed not to have been served on the person.

Section 100D: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100E Written caution of no effect if fine quashed or set aside

- (1) If the fine in respect of which a written caution has been served on a person is quashed or set aside, the written caution ceases to have effect and is deemed not to have been served.
- (2) If a written caution ceases to have effect under subsection (1), the Registrar must send, by ordinary post, facsimile, email, or other electronic means, a notice advising every person served with the written caution of that outcome.

Section 100E: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100F Seizure of motor vehicles

- (1) In addition to the matters provided for by section 93(1), a warrant to seize property issued under section 83(2)(a), 87(1)(a), or 88(3)(a) also authorises the seizure of any motor vehicle in which the defendant or a substitute for the defendant appears to have an ownership interest or other interest.
- (2) For the purpose of executing any warrant to seize property, the bailiff or constable executing it may enter on any premises, by force if necessary, if that bailiff or constable has reasonable cause to believe that a motor vehicle is on the premises, being a motor vehicle in which the defendant or a substitute for the defendant appears to have an ownership interest or other interest.
- (3) If any person is in actual occupation of the premises, the bailiff or constable must, on entering, produce the warrant to that person.
- (4) Where the fine is paid on the production of a warrant to seize property, the payment must be recorded on the warrant and the warrant is then of no further effect.
- (5) Without limiting anything in section 100J, any bailiff or constable seizing a motor vehicle under a warrant to seize property may, instead of or while seizing the vehicle, immobilise the vehicle by attaching to the vehicle any device designed for that purpose.
- (6) When a motor vehicle is seized, under a warrant to seize property, the bailiff or constable must forthwith give the defendant or the substitute a notice in the prescribed form—
 - (a) identifying the motor vehicle seized; and

- (b) directing the defendant or the substitute for the defendant to notify the Registrar, within 7 days after the date of the seizure, whether the defendant or the substitute owns or has an interest in the motor vehicle and the name and address of any other person who owns or has an interest (including any encumbrance) in the motor vehicle.
- (7) The notice required to be given by subsection (6) must be delivered to the defendant or the substitute, or left for the defendant or the substitute in a conspicuous place at the premises from which the motor vehicle is seized, or sent to the defendant or the substitute by ordinary post, facsimile, email, or other electronic means.

Section 100F: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100G Seizure of motor vehicles impounded under Land Transport Act 1998

- (1) Any motor vehicle in which the defendant or a substitute for the defendant appears to have an ownership interest or other interest may be seized under a warrant to seize property even if it is impounded under section 96 or 96A of the Land Transport Act 1998, as long as it has been impounded under that Act for at least 14 days.
- (2) The power to seize a motor vehicle described in subsection (1) is not limited by any appeal pending under section 102 or 110 of the Land Transport Act 1998.

Section 100G: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100H Seizure not precluded by low value or low interest

Consistent with the purpose stated in section 100B, a motor vehicle may be seized in accordance with this Part even though the value of the vehicle, or the value of the interest that the defendant or any substitute for the defendant has, or appears to have, in the vehicle, is, or is likely to be, less than the fine in default.

Section 100H: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100I Seized motor vehicle to be retained by or for Registrar

- (1) The bailiff or constable executing a warrant to seize property must ensure that a motor vehicle seized under the warrant is—
 - (a) taken to the Registrar; or
 - (b) if the Registrar so directs, taken to, or retained by, any person or at any place specified for the purpose by the Registrar.
- (2) If any motor vehicle that is seized under a warrant to seize property fails to comply in any respect with section 242 of the Land Transport Act 1998, then—
 - (a) the vehicle may, despite that Act or any other enactment, be towed to any place specified by the Registrar; and
 - (b) no person who seizes, retains, or disposes of the vehicle in accordance with this Act is under any criminal or civil liability merely because of the failure of the vehicle to comply with that section.
- (3) The Registrar must ensure the seized motor vehicle is retained until the motor vehicle is sold or released in accordance with a determination of the Registrar or a District Court Judge.

Section 100I: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100J Immobilisation of motor vehicles

- (1) Any bailiff or constable executing a warrant to seize property may, while seizing or instead of seizing any motor vehicle, immobilise the vehicle by attaching to the vehicle any device designed for the purpose, pending the payment of the fine in default.
- (2) No motor vehicle may be immobilised under subsection (1) unless, at the time of its immobilisation, it is—
 - (a) on private property; or
 - (b) in a public place and the bailiff or constable is satisfied that immobilising the vehicle will not cause undue inconvenience to other persons.
- (3) Where any motor vehicle is immobilised under subsection (1), any bailiff or constable—
 - (a) may at any time seize the vehicle;
 - (b) must, on the direction of a Registrar, seize the vehicle.

- (4) When the motor vehicle is seized under subsection (3), section 100I applies accordingly.
- (5) If, 14 days after the date of the immobilisation of any motor vehicle under subsection (1), the fine remains unpaid, the Registrar must direct a bailiff or constable to seize the vehicle.
- (6) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, without reasonable excuse,—
 - (a) tampers with, removes, or attempts to remove a device attached to a motor vehicle under subsection (1); or
 - (b) removes, or attempts to remove,—
 - (i) a motor vehicle to which a device is, or has been, attached; or
 - (ii) any part of that vehicle; or
 - (iii) any other property from that vehicle.

Section 100J: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100K Personal property securities register to be checked

- (1) If a motor vehicle is seized under a warrant to seize property, the Registrar must, on the next working day after the vehicle is seized, check whether a financing statement has been registered in respect of the vehicle on the personal property securities register kept under the Personal Property Securities Act 1999.
- (2) If a financing statement has been registered, the Registrar must forthwith notify the person named as the secured party in the financing statement of the following:
 - (a) that the Registrar may, under section 100M, sell the motor vehicle after the expiration of 7 days from the date of seizure, if the fine remains unpaid and no claim has been made in respect of the vehicle by a person other than—
 - (i) the defendant; or
 - (ii) a substitute for the defendant; or
 - (iii) a nominee for the defendant or the substitute:
 - (b) of the rights that may be available to the person under sections 100N, 100T, and 100U.

Section 100K: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100L Release of vehicles if fine and other costs paid or if certain appeals successful

- (1) A motor vehicle that has been seized and is retained by the Registrar may be returned to the person from whom it was seized or to the person apparently lawfully entitled to it if the following are paid:
 - (a) the fine;
 - (b) if the motor vehicle has been impounded under section 96 or 96A of the Land Transport Act 1998, any impoundment costs;
 - (c) all costs incurred in seizing, towing, and storing the motor vehicle.
- (2) Subsection (1) applies even though claims under any of sections 100Q, 100T, and 100U are pending in respect of the motor vehicle.
- (3) If the motor vehicle has been seized from a substitute for the defendant, the only type of fines required to be paid under subsection (1)(a) are ones imposed in respect of traffic offences committed by the defendant in a motor vehicle that, at the time of the commission of the offence, was owned by the substitute or in which the substitute had an interest.
- (4) If the motor vehicle has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle may not be released under subsection (1) before the day after the close of the 28-day period for which the vehicle would otherwise be required to be impounded under that Act.
- (5) Subsection (4) is subject to section 100U(1)(a) and (2).
- (6) Despite subsection (1), section 100M, and sections 100Q to 100U, if an appeal, under section 102 or 110 of the Land Transport Act 1998, against the impoundment of the motor vehicle is allowed before the expiry of the 28-day period for which the vehicle would otherwise be required to be impounded under section 96 or 96A of the Land Transport Act 1998, the Registrar must release the vehicle to the person who is registered in respect of the vehicle.

- (7) Subsection (6) does not apply if the motor vehicle has already been released to a lessor or creditor under section 100T or 100U(1)(a) or been sold under section 100U(1)(b).

Section 100L: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100M Sale of motor vehicle seized

- (1) If any fine remains unpaid, any motor vehicle seized under a warrant to seize property may, after the expiry of the relevant period specified in subsection (2), be sold at public auction or in any other manner directed by a District Court Judge or the Registrar, and the purchaser of the motor vehicle so sold obtains, by virtue of this section, good title to the motor vehicle despite the interests of the owner or any other person in the motor vehicle before the sale.
- (2) The relevant period referred to in subsection (1) is 7 days after the day on which the motor vehicle was seized or, if the motor vehicle was seized while impounded under section 96 or 96A of the Land Transport Act 1998, the later of—
- (a) the day after the close of the 28-day period for which the motor vehicle would otherwise be required to be impounded under that Act; or
 - (b) the expiry of 8 days after the day on which the motor vehicle was seized.
- (3) A motor vehicle may be sold under this section even though it fails to comply in any respect with section 242 of the Land Transport Act 1998, and the purchaser of that motor vehicle—
- (a) is, despite that Act or any other enactment, entitled to tow the motor vehicle to any appropriate place; and
 - (b) in so towing the vehicle, is under no criminal or civil liability merely because of the failure of the vehicle to comply with that section; and
 - (c) must comply in all respects with that Act as soon as the motor vehicle has been towed to that place.
- (4) If the Registrar considers that a motor vehicle is not roadworthy and that it would be uneconomic to render it roadworthy, the Registrar must, before the motor vehicle is sold under this section, seek to have the registration of the motor vehicle cancelled by taking, so far as practicable, any steps required to be

taken, under the Land Transport Act 1998, for that purpose by the owner of, or by the person who is registered in respect of, the motor vehicle.

- (5) The sale of a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 1998 is not affected by any appeal that is pending after the 28-day period for which the motor vehicle would otherwise be required to be impounded under that Act or by any appeal that is determined after that period.
- (6) In any case where a motor vehicle has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the vehicle may be sold under this section (even if the fine and all costs incurred in seizing, towing, and storing the vehicle have been paid) if any impoundment costs are not paid within—
 - (a) 10 days after the close of the 28-day period for which the vehicle would otherwise be required to be impounded under that Act; or
 - (b) any longer period specified by the Registrar in writing.
- (7) The sale of a motor vehicle by the Registrar is deferred by a pending claim in respect of the motor vehicle only if the costs of storage have been paid under section 100N or a deposit has been paid, or security has been provided, under section 100Q.

Section 100M: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100N Registrar must defer sale if storage costs paid

Any person may pay into court the costs incurred by the court in storing a motor vehicle for at least 8 days and as long as those costs, and any recurring storage costs, are paid, the Registrar must defer the sale of the motor vehicle.

Section 100N: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100O Application of proceeds of sale

- (1) When a motor vehicle is sold under section 100M, the proceeds of the sale must be applied in the following manner and order of priority:

- (a) if the motor vehicle has been impounded under section 96 or 96A of the Land Transport Act 1998, in payment of any impoundment costs:
 - (b) in payment of the costs of the sale (including all costs incurred in seizing, towing, and storing the motor vehicle, and complying with the provisions of this Part preliminary to sale):
 - (c) in satisfaction of any amount owed under any encumbrance established, before the proceeds of the sale are fully applied, to the satisfaction of the Registrar or a District Court Judge:
 - (d) in payment of any sentence or order of reparation payable by the defendant:
 - (e) in payment of any levy payable by the defendant under the Sentencing Act 2002:
 - (f) in payment of the fine specified in the warrant:
 - (g) to the defendant or, as the case requires, to the substitute for the defendant.
- (2) If the proceeds arise out of the sale of a motor vehicle owned by a substitute for the defendant or in which the substitute had an interest, the proceeds must be applied in the manner and order of priority specified in subsection (1), except that the payments described in paragraph (d) or (f) of that subsection are limited to amounts imposed in respect of traffic offences committed by the defendant in a motor vehicle that, at the time of the commission of the offence, was owned by the substitute or in which the substitute had an interest.
- (3) The Judge may, on application or on his or her own initiative, give any directions as to the application of the proceeds of sale under this section.

Section 100O: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100P Remission of fine and costs of sale in certain cases

- (1) This section applies where a sale of a motor vehicle under section 100M (other than a sale ordered under section 100U(1)(a) or (b)) does not result in a reduction of the defendant's fine by more than \$100.
- (2) If this section applies, the Registrar—

- (a) must remit the costs of the sale of the motor vehicle, as described in section 100O(1)(a) and (b); and
- (b) must remit—
 - (i) the entire fine in default, in any case where the amount of that fine is \$100 or smaller:
 - (ii) \$100 less any proceeds of that sale that have been applied towards paying the fine, in any case where the fine in default is greater than \$100.
- (3) The reference to **fine** in subsection (2)(b) does not include any reparation that the defendant is liable to pay, but includes any court costs and other costs that have been added to that reparation.

Section 100P: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100Q Release of motor vehicle to certain owners

- (1) If satisfied that the defendant does not own the seized motor vehicle, the Registrar or a District Court Judge must release the motor vehicle to a person who satisfies the Registrar or the Judge that the person—
 - (a) is the owner of the motor vehicle; and
 - (b) is not a substitute for the defendant; and
 - (c) is not a nominee for the defendant or the substitute.
- (2) If a person other than the defendant claims to own the motor vehicle and the Registrar is not satisfied of the matters specified in subsection (1), the Registrar must issue a summons calling before the court the claimant and the defendant, and, in that event, any action brought in respect of the claim is stayed.
- (3) Where a summons has been, or is to be, issued under subsection (2), the Registrar may release the motor vehicle to the defendant or to the substitute for the defendant if a deposit is paid or security is provided for whichever is the lesser of—
 - (a) the value of the seized motor vehicle; or
 - (b) the fine in default, including the costs incurred in seizing, towing, and storing the motor vehicle, and any impoundment costs.
- (4) If, on the determination of the claim, the claim is dismissed, the amount of the deposit or the amount obtained from the

security may be applied as if it were the proceeds of the sale of the motor vehicle.

- (5) In any case where a motor vehicle has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle—
- (a) may not be released under this section unless—
 - (i) the 28-day period for which the vehicle would otherwise be required to be impounded under that Act has expired; and
 - (ii) any impoundment costs have been paid into court within 10 days after the close of that period or within any longer period specified by the Registrar in writing; and
 - (b) may be sold under section 100M if those costs are not paid in accordance with paragraph (a)(ii).

Section 100Q: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100R Challenge of seizure by persons treated as substitutes

- (1) If a motor vehicle is seized on the basis that the person who owns, or appears to own, it, or has, or appears to have, an interest in it, is a substitute for the defendant, that person may, within 7 days after the date of the seizure, apply to a District Court Judge to challenge the seizure on 1 or more of the following grounds:
- (a) the person did not own or have an interest in the motor vehicle at the material time:
 - (b) the motor vehicle was stolen or converted at the material time:
 - (c) the person took all reasonable steps to prevent the defendant from committing the traffic offence or traffic offences:
 - (d) the person had not, prior to the commission of the relevant traffic offence, been served with a written caution under section 100C in relation to the defendant:
 - (e) the person is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the defendant:

- (f) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998.
- (2) Every application must include a statutory declaration that specifies a ground stated in subsection (1) and why that ground applies.
- (3) The Judge must consider the application on the papers unless the Judge considers that a hearing is necessary.
- (4) The Judge may order the return of the motor vehicle if satisfied that—
 - (a) a ground stated in subsection (1)(b) or (f) applies; or
 - (b) another ground stated in that subsection applies to the applicant and to every other person who is treated as a substitute for the defendant.

Section 100R: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100S Determination of claim by owners

- (1) In determining a claim under section 100Q(3), a District Court Judge may, if the motor vehicle has not yet been sold, release the motor vehicle to the claimant if satisfied that—
 - (a) the defendant does not have an interest in the motor vehicle; and
 - (b) the claimant is not a substitute for the defendant; and
 - (c) the claimant owns the motor vehicle neither as nominee for the defendant nor for the substitute.
- (2) The Judge may, if the motor vehicle has not yet been sold, release the motor vehicle to a person whose motor vehicle was seized because the person was taken to be a substitute for the defendant if satisfied that 1 or more of the following grounds apply:
 - (a) the person did not own or have an interest in the motor vehicle at the material time:
 - (b) the motor vehicle was stolen or converted at the material time:
 - (c) the person is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the defendant:

- (d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998.
- (3) The Judge may ask any claimant to satisfy the Judge that any agreement, transfer, or change in registration or ownership is genuine if the Judge has reason to question whether the claimant is a nominee for the defendant or any substitute for the defendant.
- (4) A person who claims to have acquired a motor vehicle from the defendant after the commission of any offence or after the taking of any enforcement action against the defendant must satisfy the Judge that the transaction on which the acquisition was based was genuine.
- (5) In any case where the motor vehicle has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle—
 - (a) may not be released under this section unless—
 - (i) the 28-day period for which the vehicle would otherwise be required to be impounded under that Act has expired; and
 - (ii) any impoundment costs have been paid into court within 10 days after the close of that period or within any longer period specified by the Registrar in writing; and
 - (b) may be sold under section 100M if those costs are not paid in accordance with paragraph (a)(ii).
- (6) If the claimant succeeds in the claim to the motor vehicle,—
 - (a) any deposit paid or security provided by the claimant must be returned to the claimant; and
 - (b) a District Court Judge may order the defendant to reimburse the claimant for any costs the claimant has paid into court under section 100N.

Section 100S: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100T Lessor under leasing agreement may apply to Registrar

- (1) The lessor (not being the defendant or a substitute for the defendant or a nominee for the defendant or the substitute) under a leasing agreement of a seized motor vehicle may apply to the

court, at any time before the Registrar has sold the motor vehicle, for the release of the motor vehicle to the lessor as if the defendant or the substitute for the defendant or the nominee for the defendant or the substitute had breached the terms of the agreement.

- (2) If subsection (1) applies, the Registrar or a District Court Judge may release the motor vehicle to the lessor.
- (3) A motor vehicle may also be released under subsection (2) if it has been seized while impounded under section 96 or 96A of the Land Transport Act 1998 even though the 28-day period of impoundment for which the motor vehicle would otherwise be required to be impounded under that Act has not yet expired.
- (4) This section is subject to section 100V.

Compare: 2002 No 9 s 140

Section 100T: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100U Claims by creditors

- (1) Where, on an application or on his or her own initiative, the Registrar or a District Court Judge is satisfied that a person (not being the defendant or a substitute for the defendant) is a creditor under an encumbrance (other than a leasing agreement) over the seized motor vehicle, the Registrar or Judge may, if the motor vehicle has not yet been sold,—
 - (a) release the motor vehicle to the creditor and direct the creditor to sell the motor vehicle and account for the proceeds of sale in accordance with section 100W; or
 - (b) order the sale of the motor vehicle under section 100M.
- (2) A motor vehicle may also be released under subsection (1)(a) if it has been seized while impounded under section 96 or 96A of the Land Transport Act even though the 28-day period of impoundment for which the motor vehicle would otherwise be required to be impounded under that Act has not yet expired.
- (3) A purchaser of a motor vehicle that is sold to the purchaser in compliance with a direction under subsection (1)(a) obtains, by virtue of this section, good title to the motor vehicle despite the interests of the owner or any other person in the motor vehicle before the sale.
- (4) This section is subject to section 100V.

Section 100U: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100V Certain payments required before release to lessor or creditor takes effect

- (1) An order for the release of a motor vehicle under section 100T(2) or 100U(1)(a) does not take effect unless the following costs have been paid into court:
 - (a) if the motor vehicle has been impounded under the Land Transport Act 1998, any impoundment costs;
 - (b) any costs incurred in seizing the motor vehicle, towing, and storing the motor vehicle, and complying with the provisions of this Part.
- (2) Any costs required to be paid by subsection (1) must be paid within 10 working days after the day on which the lessor or creditor is notified of the decision to release the vehicle, or within any longer period specified by the Registrar in writing.
- (3) If the costs specified in subsection (1) are not paid in accordance with subsection (2), the motor vehicle may be sold under section 100M.

Section 100V: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100W Application of proceeds of sale by creditor

- (1) Every person to whom a motor vehicle is released under section 100U(1)(a) must, on disposing of the motor vehicle,—
 - (a) account to the Registrar for the proceeds of the sale;
 - (b) pay into court the proceeds of the sale, less any costs paid under section 100V, and—
 - (i) if the encumbrance is a hire purchase agreement and the motor vehicle is used or was acquired for use primarily for personal, domestic, or household purposes, the amount of the costs and expenses of, and incidental to, the sale within the meaning of section 33 of the Credit (Repossession) Act 1997 and the amount required to settle the agreement under section 31 of that Act; or
 - (ii) in any other case, the amount of the costs and expenses of, and incidental to, the sale within the

meaning of section 33 of the Credit (Repossession) Act 1997 and the amount owed by the offender under the encumbrance.

- (2) The Registrar must then apply the balance remaining in accordance with section 100O(1)(d) to (g) with all necessary modifications.

Section 100W: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100X Failure by creditor to sell or account for proceeds

- (1) If the creditor fails to comply with a direction under section 100U(1)(a), the Registrar must issue, in the prescribed form, a warrant to recover property and the motor vehicle may be recovered under that warrant as property of the defendant or the substitute for the defendant, and section 100F applies in respect of the motor vehicle with all necessary modifications.
- (2) As soon as practicable after a motor vehicle is delivered into a Registrar's custody under subsection (1), the Registrar must arrange for the sale of the motor vehicle and apply the proceeds of sale in accordance with section 100O(1) or, as the case requires, in accordance with a direction under section 100O(3).
- (3) A creditor who fails, in whole or in part, to pay into court the money required under section 100W(1) is liable to the Crown for any amount not paid, and that amount may be recovered from the creditor as a debt due to the Crown.

Section 100X: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

100Y Compensation to person with interest in motor vehicle sold

- (1) This section applies if—
 - (a) a person (other than the defendant or a substitute for the defendant or a nominee for the defendant or the substitute) suffers loss through the sale under section 100M of a motor vehicle in which the person had an interest; and
 - (b) the defendant or the substitute had not before the sale notified the Registrar of the person's interest in the property.

- (2) If this section applies, a Judge may, on the application of that person, order the defendant to pay to the person compensation in respect of the loss.
- (3) Subsection (1) does not limit or affect any other remedy that a person may have in respect of loss referred to in that subsection.

Section 100Y: inserted, on 1 December 2009, by section 8 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38).

101 Offence to interfere with or rescue property seized

Every person commits an offence who interferes with, or rescues or attempts to rescue, any property knowing it to be seized under a warrant to seize property and is liable on summary conviction to imprisonment for a period not exceeding 3 months or to a fine not exceeding \$2,000, and may be arrested without warrant by any bailiff or constable.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

The second proviso to the previous section 101 was repealed, as from 19 September 1975, by section 13(4) Criminal Justice Amendment Act 1975 (1975 No 47).

The previous section 101 was amended, as from 1 November 1981, by section 18(3) Transport Amendment Act 1980 (1980 No 96) by inserting the expression “(1)”.

Subsection (2) of the previous section 101 was inserted, as from 1 November 1981, by section 18(3) Transport Amendment Act 1980 (1980 No 96).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

102 Protection of Registrar, Bailiff, etc

No Registrar and no bailiff, constable or other officer shall be personally liable for any act done or omitted in good faith in the performance or purported performance of any power or function under this Act relating to the immobilisation of any vehicle or to the seizure of property or its subsequent disposal.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

The previous section 102 was amended, as from 1 October 1985, by section 150(1) Criminal Justice Act 1985 (1985 No 120) by substituting the words “penal institution” for the word “prison”.

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 102 was amended, as from 15 December 1994, by section 5 Summary Proceedings Amendment Act 1994 (1994 No 161) by inserting the words “the immobilisation of any vehicle or to”.

102A Resisting or obstructing Bailiffs

- (1) If any person, without reasonable excuse, resists or obstructs a bailiff while the bailiff is executing a warrant under section 88, the bailiff or any constable may take that person into custody, with or without a warrant, and bring that person before a Judge.
- (2) The Judge may order the person to pay a fine not exceeding \$300.
- (3) This section does not prevent proceedings being taken against a person under some other Act instead of under this section.

Sections 102A and 102B were inserted, as from 1 November 1998, by section 26 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

102B Proceedings against Bailiffs acting under warrants

- (1) No proceeding may be commenced against a bailiff for anything done under a warrant issued under section 88, unless—
 - (a) a demand for inspection of the warrant and for a copy of the warrant is made or left at the office of the Court by the party intending to bring the proceeding, or by his or her solicitor or agent; and
 - (b) the demand is in writing and is signed by the person making the demand; and
 - (c) the bailiff refuses or neglects to comply with the demand within 6 days after it is made.
- (2) If any proceeding is commenced against a bailiff where a demand referred to in subsection (1) has been made and not complied with, judgment must be given for the bailiff if the warrant is produced or proved at the trial even though there may be a defect of jurisdiction or other irregularity in the warrant.
- (3) The Registrar who issued the warrant may be joined as a defendant in the proceeding and, if the Registrar is joined and judgment is given against the Registrar, the costs to be recovered by the plaintiff against the Registrar must include the costs that the plaintiff is liable to pay to the bailiff.

Sections 102A and 102B were inserted, as from 1 November 1998, by section 26 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

103 Effect of attachment order

(1) An attachment order under section 87(1)(b) or section 88(3)(a) shall be in writing in the prescribed form and shall be dealt with and have effect as provided in sections 104 to 106B.

(2) *[Repealed]*

The original section 103 was substituted, as from 27 November 1970, by section 3 Summary Proceedings Amendment Act 1970 (1970 No 103).

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (2) was repealed, as from 1 April 1996, by section 15 Summary Proceedings Amendment Act 1995 (1995 No 64). See clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

104 Attachment order to be served on employer

(1) Where an attachment order is made, a copy of the order shall be served on the employer to whom it relates, either personally or by leaving it at the employer's place of residence or business, or by sending it by letter addressed to the employer at the employer's place of residence or business.

(2) Where service of an attachment order is effected by letter, then, in the absence of proof to the contrary, the order shall be deemed to have been served when it would have been delivered in the ordinary course of post, and in proving service it shall be sufficient to prove that the letter was properly addressed and posted.

(3) Every attachment order shall take effect when a copy of the order is served on the employer in accordance with this section.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Section 104 was amended, as from 1 October 1985, by section 150(1) Criminal Justice Act 1985 (1985 No 120) by substituting the words "penal institution" for the word "prison".

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

104A Power to obtain information in respect of employers

- (1) This section applies if—
 - (a) an attachment order is being made in respect of a defendant, or the Registrar is considering whether to vary, suspend, or cancel an attachment order made in respect of a defendant; and
 - (b) the name, address, and telephone number of the employer of the defendant, or any of those details, are unknown or require clarification.
- (1A) If this section applies, a Registrar may, by notice in writing, require the Commissioner of Inland Revenue to provide the Registrar with all or any of the following details:
 - (a) the name of the employer of the defendant;
 - (b) the address of the employer of the defendant;
 - (c) the telephone number of the employer of the defendant.
- (2) The Commissioner of Inland Revenue must comply with any request under subsection (1A)—
 - (a) within a reasonable period; and
 - (b) in the manner specified in the notice; and
 - (c) without imposing a charge.
- (3) If the defendant has died and the Commissioner of Inland Revenue is aware of that fact, the Commissioner of Inland Revenue must advise the Registrar accordingly on receipt of a notice under subsection (1A).

Section 104A was inserted, as from 1 November 1998, by section 27 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (1) was substituted, as from 9 October 2006, by section 22(1) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (1A) was inserted, as from 9 October 2006, by section 22(1) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (2) was amended, as from 9 October 2006, by section 22(2) Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting the expression “subsection (1A)” for the expression “subsection (1)”.

Subsection (3) was inserted, as from 9 October 2006, by section 22(3) Summary Proceedings Amendment Act 2006 (2006 No 13).

105 Operation of attachment order

- (1) An attachment order shall direct that the money due and payable under the fine shall, by way of weekly payments of such amount as is specified in the attachment order, be a charge on any salary or wages that from time to time while the attachment order remains in force become due and payable by the employer to the defendant.
- (2) The charge so created—
 - (a) shall accrue from week to week, and on such day of the week as is specified in the attachment order; and
 - (b) shall attach to all salary or wages that become due by the employer to the defendant at any time while the attachment order is in force, whether or not the contract of employment in respect of which the salary or wages so become due existed at the date of the attachment order; and
 - (c) shall prevail over and have priority to any assignment or charge created by the defendant (whether before or after the making of the attachment order against the defendant), and so that the attachment order shall have the same effect as if no such assignment or charge had been made or created.
- (3) Every attachment order shall specify an amount (the **protected earnings rate**) below which the net earnings paid to the defendant shall not be reduced by reason of compliance with the order.
- (4) Every attachment order applies for a fixed period stated in the order, and must not apply for a period of more than 5 years after the date on which the order is made by the Registrar.
- (5) No attachment order made under this Act may operate so that, together with—
 - (a) any attachment order or deduction notice made or given or issued under any of the following Acts, namely:
 - (i) the Social Security Act 1964;
 - (ii) the Family Proceedings Act 1980;
 - (iii) the Child Support Act 1991;
 - (iv) the Tax Administration Act 1994; or
 - (b) The recovery of payments under section 86 of the Social Security Act 1964,—

the net earnings of the defendant are reduced below the protected earnings rate.

- (6) If the net earnings of the defendant were to be reduced below the protected earnings rate under subsection (5), the specified amount to be deducted in an attachment order under this Act must be reduced or cancelled.
- (7) If any question arises in any case as to the priority to be accorded to attachments made under this Act, the following have priority over those attachments:
- (a) 1 or more attachment orders or deduction notices made or given or issued under any of the following Acts:
 - (i) the Social Security Act 1964:
 - (ii) the Family Proceedings Act 1980:
 - (iii) the Child Support Act 1991:
 - (iv) the Tax Administration Act 1994:
 - (b) the recovery of payments under section 86 of the Social Security Act 1964.

The original Part 3 (comprising sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Section 105 was amended, as from 1 October 1985, by section 150(1) Criminal Justice Act 1985 (1985 No 120) by substituting the words “penal institution” for the word “prison”.

Part 3 (comprising sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (3) was amended, as from 1 November 1998, by section 28(1) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91) by inserting the words “(the **protected earnings rate**)”.

Subsection (4) was substituted, as from 1 November 1998, by section 28(2) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (4) was amended, as from 30 June 2002, by section 185 Sentencing Act 2002 (2002 No 9), by substituting the words “5 years” for the words “18 months”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (5) was substituted, as from 1 November 1998, by section 28(2) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsections (6) and (7) were inserted, as from 1 November 1998, by section 28(2) Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

106 Liability of employer

- (1) As long as an attachment order remains in force, the employer to whom it relates shall from time to time, whenever any money becomes due and payable by the employer to the defendant by way of salary or wages—
 - (a) deduct from that money such sum as is sufficient to satisfy the charge on the money so far as the same has accrued before the day on which the salary or wages becomes due and payable; and
 - (b) not later than the 20th day of the month next after the month in which the deduction is made pay the amount so deducted to a person, or into a trust account, in accordance with section 208.
- (2) All sums so deducted are hereby deemed to have been paid by the employer in satisfaction of the salary or wages payable by the employer to the defendant.
- (3) All sums so deducted are hereby deemed to have been paid by the defendant in satisfaction of the defendant's liability to pay the fine.
- (4) Where a defendant in respect of whom an attachment order is in force leaves or is dismissed from the employment of the employer, the employer shall within 7 days notify the Registrar of the Court in which the attachment order was issued.
- (5) Where the employer makes default in the payment of any money in satisfaction of any such charge, that money shall become a debt due by the employer to the Crown, and may be recovered by the Crown by action in any Court of competent jurisdiction.
- (6) Every employer commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who fails without reasonable excuse to comply with paragraph (a) or paragraph (b) of subsection (1).

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (1)(b) was amended, as from 9 October 2006, by section 23 Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting the words

“a person, or into a trust account, in accordance with section 208” for the words
“the Registrar specified in the attachment order”.

106A Wrongful treatment of employee

- (1) Every employer commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who dismisses any employee or alters any employee's position in the employer's business or undertaking to the employee's prejudice by reason of—
 - (a) the employee having been ordered to pay 1 or more fines; or
 - (b) an attachment order having been served on the employer; or
 - (c) the employer becoming aware that an attachment order is being or has been made in respect of the employee.
- (2) In the prosecution for an offence against subsection (1) in which it is proved that the employer, within the period referred to in subsection (3), dismissed the employee or altered the employee's position in the employer's business or undertaking to the employee's prejudice, it shall be deemed to be proved that the action was taken by reason of the circumstances referred to in subsection (1)(a) or (b) or (c) unless the employer proves to the contrary.
- (3) The period is 6 months after, as the case may be,—
 - (a) the employer becomes aware that the employee has been ordered to pay 1 or more fines; or
 - (b) the employer is served with an attachment order in respect of the employee; or
 - (c) the employer becomes aware that an attachment order is being made or has been made in respect of the employee.
- (4) Nothing in this section affects the employer's right to take disciplinary action against the employee for breaching a condition of the employee's employment that relates to—
 - (a) the commission of an offence; or
 - (b) the failure to pay any fine in full before enforcement action is due.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Subsection (1) was substituted, as from 9 October 2006, by section 24(1) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (2) was amended, as from 9 October 2006, by section 24(2)(a) Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting the words “within the period referred to in subsection (3)” for the words “within 6 months after the serving on the employer of an attachment order in respect of any employee”.

Subsection (2) was substituted, as from 9 October 2006, by section 24(2)(b) Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting the words “circumstances referred to in subsection (1)(a) or (b) or (c)” for the words “order having been served on the employer”.

Subsections (3) and (4) were inserted, as from 9 October 2006, by section 24(3) Summary Proceedings Amendment Act 2006 (2006 No 13).

106B Extent to which attachment orders bind the Crown

(1) In this section—

employing department means—

- (a) a department of State in which a person is employed; and
- (b) in relation to a person to whom any retiring allowance or pension or other payment of a similar nature is payable—
 - (i) out of the Government Superannuation Fund, the Government Superannuation Fund Authority;
 - (ii) out of the National Provident Fund, the Board of Trustees of the National Provident Fund

Employing department: this definition was amended, as from 2 October 2001, by section 40 Government Superannuation Fund Amendment Act 2001 (2001 No 47) by substituting the words “the Government Superannuation Fund Authority” for the words “the Superintendent”. See sections 2(3) and 2(4) of that Act for transitional provisions relating to the period between 21 August 2001 (the date the Government Superannuation Fund Amendment Act 2001 was assented) and 2 October 2001. See section 28 Government Superannuation Fund Amendment Act 2001, which allows the minister to enter into transitional agreements. See Part 2 of that Act as to various miscellaneous provisions.

servant of the Crown means a person in the service of Her Majesty in respect of the Government of New Zealand; and includes a person in temporary or casual service but does not include a person in honorary service; and also includes any

person serving in any of the New Zealand Armed Forces; and also includes a person to whom any retiring allowance or pension or other payment of a similar nature is payable out of the Government Superannuation Fund or the National Provident Fund.

- (2) Sections 104 to 106A shall bind the Crown to the extent of and subject to subsection (3).
- (3) Where the defendant liable to pay a fine or related costs is a servant of the Crown, an attachment order may be made against the Crown as employer, and—
 - (a) the employing department shall be named in the order as the employer; and
 - (b) service of the order shall be effected on the permanent head of the employing department, and also on any officer of the Crown (described by the name of the office, the name of the department, and the place where the officer is stationed) specified in the order; and
 - (c) service of the order shall be effected in accordance with section 104, and, where service is effected by post, it shall be sufficient if the letter is addressed to the person to be served by that person's official title or any sufficient description without that person's personal name.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

106C Statement of salary or wages paid

For the purpose of determining the means of any defendant for the purposes of this Part, a statutory declaration given by or on behalf of any person stating that the person paid a stated amount of salary or wages to the defendant or in respect of a stated period as the defendant's employer shall, in the absence of evidence to the contrary, be sufficient evidence of the facts stated in the declaration.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

106D Transfer of enforcement to another District Court

If a fine has been ordered to be paid or an order has been made by a Court or the Registrar of that Court under this Part, that fine or order (as the case may be) is enforceable in another District Court.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 106D was substituted, as from 1 November 1998, by section 29 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

106E Restrictions on alternative sentences

- (1) A District Court Judge or Community Magistrate shall not sentence a defendant to community work under this Part for non-payment of a fine unless—
 - (a) a statement of means has been completed by the defendant; and
 - (b) the Judge or Community Magistrate has considered the statement of means; and
 - (c) the Judge or Community Magistrate is satisfied that all other methods of enforcing the fine, other than a sentence of community detention or home detention, or the issue of a warrant of commitment, have been considered or tried and that they are inappropriate or unsuccessful.
- (1A) A District Court Judge or Community Magistrate must not sentence a defendant to a sentence of community detention under this Part for non-payment of a fine unless—
 - (a) a statement of means has been completed by the defendant; and
 - (b) the Judge or Community Magistrate has considered the statement of means; and
 - (c) the Judge or Community Magistrate is satisfied that all other methods of enforcing the fine, other than a sentence of home detention or the issue of a warrant of

- commitment, have been considered or tried and that they are inappropriate or unsuccessful; and
- (d) a pre-sentence report has been provided in accordance with section 26A of the Sentencing Act 2002; and
 - (e) the Judge or Community Magistrate is satisfied of the matters in section 69C of the Sentencing Act 2002.
- (1B) A District Court Judge must not sentence a defendant to a sentence of home detention under this Part for non-payment of a fine unless—
- (a) a statement of means has been completed by the defendant within the immediately preceding 14 days; and
 - (b) the defendant is before a District Court Judge; and
 - (c) the defendant's last completed statement of means has been considered by the District Court Judge; and
 - (d) a pre-sentence report has been provided in accordance with section 26A of the Sentencing Act 2002; and
 - (e) the Judge is satisfied of the matters in section 80A(2)(a) of the Sentencing Act 2002; and
 - (f) the Judge is satisfied that all other methods of enforcing the fine, other than the issue of a warrant of commitment, have been considered or tried and that they are inappropriate or unsuccessful; and
 - (g) the Judge is satisfied that the defendant has the means to pay the fine.
- (2) Subject to section 83, a District Court Judge shall not direct the issue of a warrant of commitment for the imprisonment of the defendant under this Part for non-payment of a fine unless—
- (a) a statement of means has been completed by the defendant within the immediately preceding 14 days; and
 - (b) the defendant has had the same opportunity for legal representation as is available to a defendant who is liable to a sentence of imprisonment under section 30 of the Sentencing Act 2002; and
 - (c) the defendant is before a District Court Judge; and
 - (d) the defendant's last completed statement of means has been considered by the District Court Judge; and
 - (e) the warrant of commitment can be executed immediately; and

- (f) the Judge is satisfied that all other methods of enforcing the fine have been considered or tried and that they are inappropriate or unsuccessful; and
 - (g) the Judge is satisfied that the defendant has the means to pay the fine.
- (3) Before a District Court Judge imposes a sentence of home detention or directs that a warrant of commitment be issued under section 88(3), he or she may direct that a warrant for the defendant's arrest be issued to have the defendant brought before a District Court Judge to enable the defendant's financial ability to pay the fine to be assessed.
- (4) Where a defendant is arrested pursuant to subsection (3), the provisions of section 88(2F) shall apply.
- (5) In assessing the defendant's financial ability to pay the fine, a District Court Judge or Community Magistrate shall take into account—
- (a) the Court's assessment of the defendant's ability to pay the fine (whether based on the defendant's statement of means or otherwise) when the fine was imposed; and
 - (b) any change of circumstances since that original assessment was made; and
 - (c) the defendant's current financial position.
- (6) If a District Court Judge directs that a warrant for the defendant's arrest be issued pursuant to subsection (3), a Registrar may issue the warrant.
- (7) Nothing in subsections (1), (1A), (1B), or (2) shall apply in the case of a defendant who, at the time of the sentence being imposed, is already undergoing a sentence of detention in a prison.

The original Part 3 (comprising sections 79 to 105) was substituted, was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (comprising sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Section 106E was substituted, as from 1 September 1993, by section 20 Summary Proceedings Amendment Act 1993 (1993 No 47).

Section 106E heading: substituted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (1) was amended, as from 30 June 1998, by section 23(a) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting “or Community Magistrate”.

Subsection (1) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting “community work” for “periodic detention”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Section 106E(1)(c): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 106E(1A): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 106E(1B): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (2)(b) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting “sentence of imprisonment under section 30 of the Sentencing Act 2002” for “full-time custodial sentence under section 10 of the Criminal Justice Act 1985”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions.

Section 106E(3): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (4) was amended, as from 1 April 1996, by section 16 Summary Proceedings Amendment Act 1995 (1995 No 64) by substituting “subsection (3)” for “subsection (2)”. See clause 2 Summary Proceedings Amendment Act Commencement Order 1996 (SR 1996/27).

Subsection (4) was amended, as from 9 October 2006, by section 25 Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting “88(2F)” for “88(2)”.

Subsection (5) was amended, as from 30 June 1998, by section 23(b) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting “or Community Magistrate”.

Section 106E(7): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (7) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

106F Review of Registrar’s decision

- (1) Any defendant or other person affected by any order or decision made by a Registrar under this Part may apply to a District Court Judge for a review of the order or decision.
- (2) On any such review the Judge may confirm, rescind, or vary the Registrar’s order or decision and the order or decision shall have effect, or cease to have effect, accordingly.

The original Part 3 (sections 79 to 105) was substituted, and section 106 was repealed, as from 23 November 1973, by section 12 Summary Proceedings Amendment Act 1973 (1973 No 117).

Part 3 (sections 79 to 106F) was substituted, as from 1 November 1987, by section 14 Summary Proceedings Amendment Act 1987 (1987 No 165).

Part 4

Appeals

Appeals on points of law only by way of case stated

107 Appeal on question of law only by way of case stated

- (1) Where any information or complaint has been determined by a District Court, either party may, if dissatisfied with the determination as being erroneous in point of law, appeal to the High Court by way of case stated for the opinion of that Court on a question of law only.
- (2) An appellant under this section shall, within 14 days after the determination, or, in the case of a determination in the Chatham Islands, within 3 months after the determination, file in the office of the Court whose determination is appealed against a notice in writing of the appeal. The notice shall be in the prescribed form and shall be filed in duplicate, and the Registrar receiving it shall forthwith deliver or post 1 copy of it to the respondent or his solicitor.
- (3) The appellant shall, within 14 days after the filing of the notice of appeal, or within such further time as the District Court Judge or Justice or Justices who constituted the Court or, if he or they are not available, any District Court Judge may in his or their discretion allow, state in writing a case in the prescribed form setting out the facts and the grounds of the determination and specifying the question of law on which the appeal is made, and file it in the office of the Court in which the notice of appeal was filed, and the Registrar shall as soon as practicable submit it to the District Court Judge or Justice or Justices whose determination is appealed against. The appellant shall forthwith deliver or post a copy of the case to the respondent or his solicitor.
- (4) As soon as may be practicable after receiving the case stated, the District Court Judge or Justice or Justices shall, after hear-

ing the parties if he or they consider it necessary to do so, settle the case, sign it, and transmit it to the Registrar. The settling and signing of the case shall be deemed for the purposes of this Part to be the statement of the case by the Court.

- (5) Where the District Court Judge or any Justice whose determination is appealed against has since the date of the determination ceased to hold office as such or died or left New Zealand, or is incapable by reason of sickness or otherwise from acting as such, the case stated may be submitted to any District Court Judge and may be settled and signed by him.
- (6) The Registrar shall send to the High Court Registry nearest to the District Court in which the proceedings were heard the case signed by the District Court Judge or Justice or Justices, together with any bail bond entered into by the appellant. The Registrar shall also make a copy of the case available to each party.
- (7) When the Registrar of the High Court receives the case stated, he shall set it down for hearing on the first practicable sitting day in the most convenient place where sittings of the High Court are held, whether or not that place is in the same judicial district, and shall notify the parties to the appeal of the time and place appointed for the hearing.
- (8) If within 14 days after the filing of the notice of appeal, or within such further time as may be allowed, the appellant does not file a case pursuant to subsection (3), the District Court Judge or Justice or Justices may certify that the appeal has not been prosecuted.
- (9) Where any appeal under this section relates to a conviction, the notice of appeal shall not be filed until after the defendant has been sentenced or otherwise dealt with.

Compare: 1927 No 37 s 303; 1952 No 44 s 2

Subsection (3) was amended by section 6(a) Summary Proceedings Amendment Act 1961 (1961 No 44) by inserting the words “file it in the office of the Court in which the notice of appeal was filed, and the Registrar shall as soon as practicable”.

Subsection (8) was amended by section 6(b) Summary Proceedings Amendment Act 1961 (1961 No 44) by substituting the words “file a case” for the words “submit a case to the Magistrate or Justice or Justices”.

108 No appeal on ground of improper admission or rejection of evidence

No determination shall be appealed against by reason only of the improper admission or rejection of evidence.

Compare: 1927 No 37 s 304

109 District Court Judge or Justice may refuse a case if he thinks appeal frivolous

- (1) If the District Court Judge or Justice or Justices are of the opinion that the appeal is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the applicant for the case, sign and deliver to him a certificate of that refusal.
- (2) Where the District Court Judge or Justice or Justices refuse to state a case, the applicant for the case may apply to the High Court for an order requiring the District Court Judge or Justice or Justices to state a case. A copy of the application shall be served on the District Court Judge or Justice or Justices and on the other party, and the District Court Judge or any such Justice and that other party shall be entitled to appear and be heard.
- (3) The High Court may, if it thinks fit, make an order requiring the District Court Judge or Justice or Justices to state a case, and the District Court Judge or Justice or Justices on being served with the order shall state a case accordingly. Costs may be allowed on the application in accordance with the practice of the High Court, but shall not be allowed against the District Court Judge or any Justice.

Compare: 1927 No 37 ss 307, 308; 1952 No 44 s 13

110 Certiorari not to be required when appeal upon case stated

No writ of certiorari or other writ shall be required for the removal of a determination in relation to which a case is stated under the provisions of this Part for obtaining the opinion of the High Court on the case.

Compare: 1927 No 37 s 314

111 Case may be sent back for amendment

The High Court may, if it thinks fit, cause a case stated to be sent back for amendment, and it shall be the duty of the District Court Judge or Justice or Justices to amend the case accordingly and return it to the High Court.

Compare: 1927 No 37 s 311

112 High Court to determine the questions on the case

The High Court shall hear and determine the question or questions of law arising on any case transmitted to it as aforesaid, and shall thereupon do any 1 or more of the following things:

- (a) reverse, confirm, or amend the determination in respect of which the case has been stated; or
- (b) remit the matter to the District Court with the opinion of the High Court thereon; or
- (c) exercise any power conferred by section 201; or
- (d) make such other order in relation to the matter as it thinks fit.

Compare: 1927 No 37 s 309(1)

113 Appeal on point of law may be removed into Court of Appeal

- (1) The High Court may order the removal into the Court of Appeal of any case transmitted to the High Court under section 107, and on removal the Court of Appeal shall have the same power to adjudicate on the proceedings as the High Court had.
- (2) On the removal of any case to the Court of Appeal under this section the decision of the Court of Appeal shall be final; and the same judgment shall be entered in the High Court, and the same execution and other consequences and proceedings shall follow thereon, as if the decision had been given in the High Court.

Compare: 1946 No 13 s 5

114 Defendant appealing by way of case stated not allowed to appeal otherwise

A defendant who appeals by way of case stated against any determination shall not be entitled to appeal to the High Court against the same determination in accordance with any of the

other provisions of this Part, unless the High Court grants leave to the defendant to withdraw his appeal by way of case stated, and extends the time within which a notice of appeal under those other provisions may be filed.

Compare: 1927 No 37 s 313

114A Appeals from decisions of Community Magistrates

- (1) Either party to any proceedings that are heard by a Court presided over by a Community Magistrate or 2 or more Community Magistrates has, subject to subsection (2), the same rights of appeal under sections 89, 107, 115, 115A, 115B, and 115C as the party would have had if the Court that heard the proceedings had been presided over by a District Court Judge.
- (2) Every appeal brought by a party to proceedings to which subsection (1) applies is to be an appeal to a Court presided over by a District Court Judge.
- (3) For the purposes of an appeal to which subsection (1) applies, this Part applies, subject to the modifications set out in Schedule 2A and to all other necessary modifications.

Section 114A was inserted, as from 30 June 1998, by section 24 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

Subsection (1) was amended, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38) by substituting the expression “and 115C” for the expression “115C, and 115D”. See section 75 of that Act as to the savings provisions.

114B Appeal to High Court on question of law

- (1) Either party to any proceedings to which an appeal under section 114A(1) applies may, with the leave of the District Court, appeal to the High Court against any determination of the District Court on a question of law arising in the appeal to which section 114A(1) applies:
Provided that, if the District Court refuses to grant leave to appeal to the High Court, the High Court may grant special leave to appeal.
- (2) A party desiring to appeal to the High Court under this section must, within 21 days after the determination of the District Court, or within such further time as that Court may allow, give notice of his or her application for leave to appeal in such manner as may be directed by the rules of that Court, and the

District Court may grant leave accordingly if, in the opinion of that Court, the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the High Court for decision.

- (3) Where the District Court refuses leave to any party to appeal to the High Court under this section, that party may, within 21 days after the refusal of the District Court or within such further time as the High Court may allow, apply to the High Court, in such manner as may be directed by the rules of that Court, for special leave to appeal to that Court, and the High Court may grant leave accordingly if in the opinion of that Court the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the High Court for decision.
- (4) On any appeal to the High Court under this section, the High Court has the same power to adjudicate on the proceedings as the District Court had.
- (5) The decision of the High Court on any appeal under this section is final; and the same judgment must be entered in the District Court, and the same execution and other consequences and proceedings must follow thereon, as if the decision of the High Court had been given in the District Court.
- (6) The decision of the High Court on any application to that Court for leave to appeal is to be final.
- (7) Nothing in section 144 applies in relation to a decision of the High Court made under this section.

Section 114B was inserted, as from 30 June 1998, by section 25 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

General appeals

115 Defendant's general right of appeal to High Court

- (1) Except as expressly provided by this Act or by any other enactment, where a District Court determines any information or complaint, and—
 - (a) convicts any defendant; or
 - (b) makes any order, including—
 - (i) an order for the payment for costs; or

- (ii) an order declining an application for the payment for such costs; or
 - (iii) an order for the estreat of a bond,—
the person convicted or against whom the order is made may appeal to the High Court.
- (2) In the case of a conviction, the appeal may be against the conviction and the sentence passed on the conviction, or against the conviction only, or against the sentence only; and, in the case of an order for the payment of money, the appeal may be against the order and the amount of the sum ordered to be paid, or only against the amount of the sum ordered to be paid.
- (2A) A person sentenced under section 28F(4) of the District Courts Act 1947 to a term of imprisonment or to a fine that does not exceed the maximum term of imprisonment or the maximum fine that may be imposed by a District Court under section 7 may appeal to the High Court against the sentence.
- (3) No appeal against conviction shall be brought until the person convicted has been sentenced or otherwise dealt with.
- (4) Every appeal under this section, or under any of sections 115A to 115DA, is a general appeal.

Compare: 1927 No 37 s 315; 1952 No 44 s 6

Subsection (1) was substituted, as from 3 June 1998, by section 2(1) Summary Proceedings Amendment Act 1998 (1998 No 61).

Section 115(2A): inserted, on 26 June 2008, by section 9 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Subsection (4) amended by section 5(2) Summary Proceedings Amendment Act 1969 (1969 No 43) by inserting the words “or under section 115A of this Act”, and by section 12(2) Summary Proceedings Amendment Act 1976 (1976 No 169) by inserting the words “or section 115B”, and by section 2(2) Summary Proceedings Amendment Act 1985 (1985 No 191) by inserting the words “or section 115C”, and, as from 1 August 1987, by section 8(2) Summary Proceedings Amendment Act 1987 (1987 No 172) by inserting the words “or section 115D”.

Subsection (4) was substituted, as from 3 June 1998, by section 2(2) Summary Proceedings Amendment Act 1998 (1998 No 61).

115A Informant’s right of appeal against sentence

- (1) Where on the determination by a District Court of any information the defendant is convicted and sentenced, the informant may appeal to the High Court against the sentence passed on the conviction, unless the sentence is one fixed by law.

- (1A) The informant may appeal to the High Court against a sentence imposed under section 28F(4) of the District Courts Act 1947 if the sentence appealed against is a term of imprisonment or a fine that does not exceed the maximum term of imprisonment or the maximum fine that may be imposed by a District Court under section 7 (which is a term of imprisonment not exceeding 5 years or a fine not exceeding \$10,000, or both).
- (2) No appeal shall be brought under this section unless the consent of the Solicitor-General has first been obtained and is lodged with the notice of appeal:
Provided that any document evidencing the Solicitor-General's consent may be signed on his behalf by a person purporting to be a Crown Counsel.
- (2A) If the defendant is the Crown Law Office,—
- (a) subsection (2) does not apply;
 - (b) no appeal may be brought under this section unless the consent of the Attorney-General has been obtained and is lodged with the notice of appeal;
 - (c) any decision to give consent under paragraph (b) must be made by the Attorney-General personally.
- (3) Every appeal under this section against a sentence of detention which is not heard before the date on which the defendant is released from detention under that sentence, whether that sentence has expired or not, shall lapse on that date and thereupon the appeal shall be deemed to have been dismissed by the High Court for non-prosecution. The manager of any prison from which the defendant is released shall, if he has knowledge of the appeal under this section, notify the Registrar of the High Court that the defendant has been released.
- (4) For the purposes of an appeal under this section, the term **sentence** shall include any method of disposing of a case following conviction.

Section 115A was inserted by section 5(1) Summary Proceedings Amendment Act 1969 (1969 No 43).

Section 115A(1A): inserted, on 26 June 2008, by section 10 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Subsection (2) proviso was inserted by section 13 Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsection (2A) was inserted, as from 18 October 2002, by section 32 Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Subsection (3) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “prison” for the words “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (3) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “manager” for the word “Superintendent”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

115B Right of appeal against sentence for contempt of Court

Any person against whom an order (other than an order to the effect only that a person be taken into custody and detained until the rising of the Court) has been made under section 206 may appeal to the High Court against the order; and the provisions of sections 116 to 144, as far as they are applicable and with the necessary modifications, shall apply to any such appeal as if that person was a defendant who had been convicted on an information and sentenced.

Section 115B was inserted by section 12(1) Summary Proceedings Amendment Act 1976 (1976 No 169).

115C Right of appeal against decisions relating to publication of reports of proceedings or identifying particulars

- (1) The applicant for an order under paragraph (a) or paragraph (b) of section 138(2), or under section 140, of the Criminal Justice Act 1985 forbidding publication of any report of the proceedings or of any identifying particulars, or the informant may appeal to the High Court against the District Court’s decision in respect of the application.
- (2) Where the decision is to refuse to make the order sought, the District Court shall, on being satisfied that an appeal against that decision is to be brought under this section, make an interim order to the effect sought by the applicant; and that interim order shall continue in force—
 - (a) until the expiry of the period prescribed by section 116 for the filing of notice of the appeal; or
 - (b) if notice of the appeal is filed within that prescribed period, until the appeal is finally disposed of, or withdrawn, or abandoned.

- (3) The provisions of sections 116 to 144, as far as they are applicable and with the necessary modifications, shall apply to any such appeal as if the decision of the District Court were an order made on sentence.

Section 115C was inserted by section 2(1) Summary Proceedings Amendment Act 1985 (1985 No 191).

115D Rights of appeal against decisions relating to bail

[Repealed]

Section 115D was repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

115DA Right of appeal against order for costs

An informant may appeal to the High Court against an order for the payment of costs made by a District Court in favour of the defendant.

Section 115DA was inserted, as from 3 June 1998, by section 3 Summary Proceedings Amendment Act 1998 (1998 No 61).

115DB Rights of appeal subject to Crimes Act 1961

Sections 115 to 115DA are subject to section 384A of the Crimes Act 1961.

Section 115DB: inserted, on 26 June 2008, by section 11 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

115E Procedural provisions applying to appeals under section 115D

[Repealed]

Section 115E was repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

116 Notice of appeal

- (1) Subject to subsection (1A), the appellant under any general appeal shall, within 28 days after the defendant has been sentenced or otherwise dealt with or the order has been made, file in the office of the Court whose determination is appealed against a notice in writing of the appeal and of the grounds thereof. The notice shall be in the prescribed form and shall be filed in duplicate.

- (1A) In the case of an appeal under section 115C or section 33 of the Criminal Disclosure Act 2008, the notice of appeal required by subsection (1) shall be filed within 3 days after the date of the decision against which the appeal is brought.
- (2) The Registrar receiving the notice shall forthwith deliver or post 1 copy to the respondent or his solicitor and notify the District Court Judge or Justice or Justices whose determination is appealed against of the appeal and of the grounds thereof.
- (3) In the case of any general appeal in respect of a determination in the Chatham Islands, subsection (1) shall be read as if for the words 28 days there were substituted the words “3 months”, and subsection (1A) shall be read as if for the words 3 days there were substituted the words 10 days.

Compare: 1927 No 37 s 316; 1952 No 44 s 7

Subsection (1) was amended by section 2(3) Summary Proceedings Amendment Act 1985 (1985 No 191) by inserting the words “Subject to subsection (1A) of this section,”, and by section 13(a) Summary Proceedings Amendment Act 1976 (1976 No 169) by substituting the words “28 days after the defendant has been sentenced or otherwise dealt with or the order has been made” for the words “10 days after he has been sentenced or otherwise dealt with or the order has been made or, in the case of an appeal under section 115A of this Act, within 28 days after the person convicted has been sentenced”.

Subsection (1A) was inserted by section 2(4) Summary Proceedings Amendment Act 1985 (1985 No 191), and amended by section 12 Summary Proceedings Amendment Act 1991 (1991 No 105) by omitting the words “or section 115D” (as inserted, as from 1 August 1987, by section 8(2) Summary Proceedings Amendment Act (No 2) 1987 (1987 No 172)).

Section 116(1A): amended, on 29 June 2009, by section 40(1) of the Criminal Disclosure Act 2008 (2008 No 38).

Subsection (3) was amended by section 5(2) of the Summary Proceedings Amendment Act 1969 (1969 No 43) by inserting the words “and also for the words ‘28 days’”, and by section 13(b) Summary Proceedings Amendment Act 1976 (1976 No 169) by omitting the words “for the words ‘10 days’” and the words “and also” (as inserted by section 5(2) Summary Proceedings Amendment Act 1969 (1969 No 43)). Subsection (3) was amended by section 2(5) Summary Proceedings Amendment Act 1985 (1985 No 191) by inserting the words “, and subsection (1A) of this section shall be read as if for the words ‘3 days’ there were substituted the words ‘10 days’”.

117 Transmission of notice of appeal to High Court

- (1) The Registrar of the District Court shall as soon as possible send the notice of appeal to the High Court Registry nearest to that District Court.

- (2) The Registrar shall send to the High Court Registry with the notice of appeal—
- (a) any notice of bail, and any surety bond, relating to the defendant;
 - (b) the information, charge sheet, or complaint;
 - (c) a certified copy of any entry in the Criminal Records kept pursuant to section 71 containing the conviction, sentence, or order;
 - (d) subject to subsection (3), a copy of any note made by the District Court Judge or Justice or Justices of the evidence given at the hearing and of any questions of law raised at the hearing and of any submissions made by either party;
 - (e) where the defendant pleaded guilty, a summary of the facts stated by the informant;
 - (f) a copy of any evidence taken under section 31 (which relates to taking the evidence of a defence witness at a distance) or under section 32 (which relates to taking the evidence of a person about to leave the country), and any statement admitted under section 33 (which relates to the admissibility of a statement made by a person who is seriously ill), and any affidavit filed;
 - (g) subject to subsection (3), a copy of any written judgment which the District Court Judge or Justice or Justices may have delivered;
 - (h) any exhibits remaining in his custody; and
 - (i) any report made by a Probation Officer.
- (3) Where an informant appeals against sentence only, the Registrar shall not be obliged to send to the High Court Registry—
- (a) the documents referred to in subsection (2)(d) (other than the notes on sentencing); or
 - (b) the documents referred to in subsection (2)(g),—
- unless otherwise directed by the presiding High Court Judge; but the Registrar shall, in all such cases, send to the High Court Registry the notes on sentencing.

Compare: 1927 No 37 s 318(1), (2); 1952 No 44 s 9

Subsection (2)(a) was amended, as from 17 December 1976, by section 14 Summary Proceedings Amendment Act 1976 (1976 No 169) by substituting the word “defendant” for the word “appellant”.

Subsection (2)(a) was substituted, as from 1 August 1987, by section 8(2) Summary Proceedings Amendment Act (No 2) 1987 (1987 No 172).

The words “Criminal Records kept pursuant to section 71 of this Act”, in subsection (2)(c), were substituted, as from 17 December 1976, for the words “Criminal Record Book” pursuant to section 71(5) of this Act.

Subsection (2)(d) and (g) was amended and subsection (3) was inserted, as from 1 September 1993, by section 21 Summary Proceedings Amendment Act 1993 (1993 No 47).

118 Setting down appeal for hearing

When the Registrar of the High Court receives the documents referred to in section 117, he shall set the appeal down for hearing on the first practicable sitting day in the most convenient place where sittings of the High Court are held and shall notify or cause to be notified the parties to the appeal of the time and place appointed for the hearing.

Section 118 was amended by section 14 Summary Proceedings Amendment Act 1973 (1973 No 117) by omitting the words “whether or not that place is in the same judicial district”, and amended by section 13 Summary Proceedings Amendment Act (No 2) 1991 (1991 No 105) by inserting the words “or cause to be notified”.

119 Procedure on appeal

- (1) All general appeals shall be by way of rehearing.
- (2) Where any question of fact is involved in any appeal, the evidence taken in the District Court bearing on the question shall, unless the High Court otherwise directs, be brought before the High Court as follows:
 - (a) as to any evidence given orally, by the production of a copy of any note made by the District Court Judge or Justice or Justices or such other materials as the High Court may deem expedient:
 - (b) as to any evidence taken by affidavit and as to any exhibits, by the production of the affidavits and of such of the exhibits as may have been forwarded by the Registrar of the Court appealed from and by the production by the parties to the appeal of such exhibits as are in their custody:
 - (c) as to any evidence taken under section 31 (which relates to taking the evidence of a defence witness at a distance) or under section 32 (which relates to taking

the evidence of a person about to leave the country), or any statement admitted under section 33 (which relates to the admissibility of a statement made by a person who is seriously ill), by the production of a copy of that evidence or statement:

provided that the High Court may in its discretion rehear the whole or any part of the evidence, and shall rehear the evidence of any witness if the Court has reason to believe that any note of the evidence of that witness made by the District Court Judge or Justice or Justices is or may be incomplete in any material particular.

- (3) The High Court shall have the same jurisdiction and authority as the District Court, including powers as to amendment, and shall have full discretionary power to hear and receive further evidence, if that further evidence could not in the circumstances have reasonably been adduced at the hearing, and for that purpose shall have the same jurisdiction and authority to make any order under section 31 or section 32 as the Court from whose decision the appeal is made, or a District Court Judge, had.

Compare: 1927 No 37 s 327

120 Defects in notice of appeal

On the hearing of any general appeal no objection to any defect in the notice of appeal shall be allowed, unless the High Court is of opinion that the respondent has been substantially prejudiced thereby:

Provided that, whether or not any objection is allowed, the Court may direct or allow the notice to be amended on such terms as to costs or otherwise as it thinks fit.

Compare: 1927 No 37 ss 321, 322

121 High Court to hear and determine appeal

- (1) The High Court shall hear and determine every general appeal and make such order in relation to it as the Court thinks fit, and, without limiting the generality of the power conferred by this subsection, may exercise any of the powers referred to in the succeeding provisions of this section.

- (2) In the case of an appeal against conviction, the High Court may—
- (a) confirm the conviction; or
 - (b) set it aside; or
 - (c) amend it and, if the Court thinks fit, quash the sentence imposed and either impose any sentence (whether more or less severe) that the convicting Court could have imposed on the conviction as so amended, or deal with the offender in any other way that the convicting Court could have dealt with him on the conviction as so amended.
- (2A) If in the case of an appeal against conviction it appears to the Court that the appellant was insane at the time of the commission of the offence and that the information should have been dismissed on account of the appellant's insanity, the Court may quash the conviction; and thereupon sections 23 to 26, 28, and 33 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 shall apply, as far as they are applicable, as if the information had been so dismissed.
- (3) In the case of an appeal against sentence, the High Court may—
- (a) confirm the sentence; or
 - (b) if the sentence (either in whole or in part) is one which the Court imposing it had no jurisdiction to impose, or is one which is clearly excessive or inadequate or inappropriate, or if the High Court is satisfied that substantial facts relating to the offence or to the offender's character or personal history were not before the Court imposing sentence, or that those facts were not substantially as placed before or found by that Court, either—
 - (i) quash the sentence and either pass such other sentence warranted in law (whether more or less severe) in substitution therefor as the High Court thinks ought to have been passed or deal with the offender in any other way that the Court imposing sentence could have dealt with him on the conviction; or
 - (ii) quash any invalid part of the sentence that is severable from the residue; or

- (iii) vary, within the limits warranted in law, the sentence or any part of it or any condition imposed in it.
- (4) In the case of an appeal against an order, the High Court may—
- (a) confirm the order; or
 - (b) set it aside; or
 - (c) quash it and make such other order warranted in law (whether more or less severe) in substitution therefor as the Court thinks ought to have been made; or
 - (d) vary, within the limits warranted in law, the order or any part of it or any condition imposed in it.
- (5) In the case of an appeal against the amount of any sum ordered to be paid, the High Court may confirm the amount or increase or reduce it within the limits warranted in law.
- (6) In any case, the High Court may exercise any power that the Court whose decision is appealed against might have exercised.
- (7) Subject to the provisions of section 144, the decision of the High Court on any general appeal shall be final.

Compare: 1927 No 37 ss 325, 326; 1955 No 12 s 5

Subsection (2A) was inserted by section 3 Criminal Justice Amendment Act 1969 (1969 No 17).

Subsection (2A) was amended by section 150(1) Summary Proceedings Amendment Act 1985 (1985 No 120) by substituting the words “sections 115, 117, and 119 of the Criminal Justice Act 1985” for the words “sections 39G, 39I, and 39K of the Criminal Justice Act 1954”.

Subsection (2A) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting the words “sections 23 to 26, 28, and 33 of the Criminal Procedure (Mentally Impaired Persons) Act 2003” for the words “sections 115, 117, and 119 of the Criminal Justice Act 1985”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

122 Power to clear Court and forbid report of proceedings

[Repealed]

Section 122 was repealed, as from 17 December 1985, by section 3 Summary Proceedings Amendment Act (No 5) 1985 (1985 No 191).

Provisions relating to all appeals

123 Powers of Judge of High Court as to extension of time

- (1) Any Judge of the High Court may, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this Part for the filing of any notice or the stating of any case or the doing of any other thing in respect of any appeal or proposed appeal to the High Court.
- (2) Any appellant or intending appellant may at any time apply to a Judge of the High Court to review any decision of a District Court Judge or Justice or Justices refusing an extension of time for the stating of a case under this Part. On any such application a Judge may, in his discretion, confirm the decision, or reverse it and allow such extension of time as he thinks fit.
Compare: 1927 No 37 s 332; 1952 No 44 s 10

124 Provisions as to issue of warrant pending appeal

- (1) Where under any determination in respect of which either party appeals the defendant has been sentenced to detention, the warrant of commitment in execution of the sentence shall be issued, notwithstanding that notice of appeal has been given.
- (2) Where notice of appeal has been given and the defendant is released on bail before the warrant of commitment is executed, the warrant shall be suspended until the appeal has been determined or, as the case may be, until the District Court Judge or Justice or Justices have certified that it has not been prosecuted or the Registrar of the High Court has certified that it has been dismissed for non-prosecution.
- (3) Where under any determination in respect of which either party appeals the Court has sentenced the defendant to supervision, intensive supervision, community detention, or home detention, the term of the sentence specified shall cease to run on the day notice of appeal is filed.
- (3A) Where under any determination in respect of which either party appeals the Court has sentenced the defendant to community work, the sentence ceases to run on the day notice of appeal is filed.

- (3B) *[Repealed]*
- (3C) *[Repealed]*
- (3D) Where under any determination in respect of which either party appeals the Court has made a non-association order in respect of the defendant, the period of non-association shall cease to run on the day the notice of appeal is filed.
- (4) Except as provided in subsection (1) or in any other enactment, no warrant or order shall be issued or take effect in execution of any determination in respect of which a notice of appeal has been filed until the appeal has been determined or, as the case may be, until the District Court Judge or Justice or Justices have certified that it has not been prosecuted, or the Registrar of the High Court has certified that it has been dismissed for non-prosecution.
- (5) Where any warrant to seize is issued before a notice of intention to appeal is filed, then—
- (a) if the warrant has not been executed, it shall be suspended until the appeal has been determined or, as the case may be, until the District Court Judge or Justice or Justices have certified that it has not been prosecuted, or the Registrar of the High Court has certified that it has been dismissed for non-prosecution:
- (b) if the warrant has been executed, any goods that have been seized but not sold shall be returned to the owner.

Compare: 1927 No 37 ss 306, 317; 1952 No 44 ss 3, 8

Subsections (1) and (3) were amended by section 5(2) Summary Proceedings Amendment Act 1969 (1969 No 43) by substituting “either party appeals” for “the defendant appeals”.

Section 124(3): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (3) was amended by section 150(1) Criminal Justice Act 1985 (1985 No 120) by substituting “sentenced the defendant to supervision, the term of the sentence” for “released the defendant on probation, the term of probation”.

Subsection (3A) was inserted by section 15 Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsection (3A) was amended by section 29(1) Criminal Justice Amendment Act 1980 (1980 No 21) by inserting “(including any period of probation ordered as part of the sentence)”.

Subsection (3A) was amended by section 150(1) Criminal Justice Act 1985 (1985 No 120) by omitting “(including any period of probation ordered as part of the sentence)”.

Subsection (3A) was substituted, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (3B) was inserted by section 31(1) Criminal Justice Amendment Act 1980 (1980 No 21).

Subsection (3B) was repealed, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (3C) was inserted by section 150(1) Criminal Justice Act 1985 (1985 No 120).

Subsection (3C) was repealed, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (3D) was inserted by section 3 Summary Proceedings Amendment Act 1989 (1989 No 21).

Subsection (5) was amended, as from 9 October 2006, by section 26 Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting “warrant to seize” for “warrant of distress”.

125 Granting of bail to appellant who is in custody

[Repealed]

Section 125 was repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

126 Arrest of appellant who has absconded or is about to abscond while on bail

[Repealed]

Section 126 was repealed, as from 1 August 1987, by section 8(1) Summary Proceedings Amendment Act (No 2) 1987 (1987 No 172).

127 Custody of appellant pending appeal

[Repealed]

Section 127 was repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

128 Surrender of appellant released on bail and discharge of surety

[Repealed]

Section 128 was repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

129 Abandonment of appeal

An appellant may at any time after he has given notice of appeal, or after he has applied for extension of time for such a notice, abandon his appeal by giving the Registrar of the High Court and the respondent notice to that effect in the prescribed form, and upon the giving of the notice the appeal shall, subject to the right of the respondent to apply for an order as to costs, be deemed to have been dismissed by the High Court for non-prosecution.

130 Presentation of case by party in custody

- (1) Any party to an appeal who is in custody shall be entitled to present his case and his argument in writing instead of by oral argument if he so desires. Any case or argument so presented shall be considered by the High Court.
- (2) On the hearing of any general appeal by the informant against the sentence passed on the conviction or by the person convicted against a conviction and the sentence passed on the conviction or against the conviction only, the person convicted, if he is in custody, whether or not he is represented by counsel, shall be entitled to be present, and the manager of the prison in which the person convicted is detained shall, without further authority than this section, cause him to be taken to the High Court for the hearing.
- (3) On the hearing of any general appeal against sentence only by the person convicted or of any appeal by way of case stated on a question of law only or of any appeal made under section 115D, any party to the appeal who is in custody, whether or not he is represented by counsel, shall not be entitled to be present except with the leave of the High Court, which may be given on the application in writing of that party.
- (4) Where the leave of the High Court is given for a party to an appeal who is in custody to be present at the hearing of the appeal, the Registrar of that Court shall notify the manager of the prison in which that party is detained, and the manager shall, without further authority than this subsection, cause him to be taken to the High Court for the hearing.
- (5) Any party to an appeal who is taken to the High Court pursuant to subsection (2) or subsection (4) shall, unless his release is

ordered by the High Court, and except while he is in the custody of the Court, remain in the custody of the escorting officer until returned to the prison in which he is to be detained.

Compare: 1927 No 37 ss 306B(4), 317; 1952 No 44 ss 5, 8

Subsection (2) was amended by section 5(2) Summary Proceedings Amendment Act 1969 (1969 No 43) by substituting the words “by the informant against the sentence passed on the conviction or by the person convicted against a conviction and the sentence passed on the conviction or against the conviction only, the person convicted,” for the words “against a conviction and the sentence passed on the conviction or against the conviction only, the appellant,” and by section 5(2) of that Act by substituting the words “the person convicted is detained” for the words “the appellant is detained”.

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “manager” for the word “Superintendent”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “prison” for the words “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (3) was amended by section 5(2) Summary Proceedings Amendment Act 1969 (1969 No 43) by inserting the words “by the person convicted”, and was amended, as from 1 September 1993, by section 22 Summary Proceedings Amendment Act 1993 (1993 No 47) by inserting the words “or of any appeal made under section 115D of this Act”.

Subsection (4) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “manager” for the word “Superintendent” in both places it appeared. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsections (4) and (5) were amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “prison” for the words “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

131 Power of High Court to direct rehearing of information or complaint

- (1) On any appeal the High Court may remit the determination appealed against to the District Court with a direction that the information or complaint to which it relates be reheard.
- (2) Where any determination is remitted to the District Court under subsection (1), the Registrar of the High Court shall transmit a certificate to that effect to the Registrar of the District Court whose determination was appealed against, together with in the case of a general appeal the documents referred to in subsection (2) of section 117, and the case shall

be dealt with as if a rehearing as to the whole matter had been granted under section 75, and the provisions of that section, as far as they are applicable and with the necessary modifications, shall apply accordingly.

132 Amendment of conviction by substituting one offence for another

- (1) If on any appeal against a conviction for any offence (whether or not the appeal is against the sentence also) it appears to the High Court that the evidence is insufficient to support a conviction for that offence, but is sufficient to support a conviction for some other offence of a similar character within the jurisdiction of the convicting Court, and that the defendant has not been prejudiced in his defence, the High Court may, on such terms as to costs and otherwise as it thinks fit,—
 - (a) amend the conviction by substituting the last-mentioned offence for the offence mentioned in the conviction, and, if it thinks fit, quash the sentence imposed and either impose any sentence that the convicting Court could have imposed (whether more or less severe), or deal with the defendant in any other way that the convicting Court could have dealt with him, on the conviction as amended; or
 - (b) remit the conviction to the District Court with a direction that it be amended accordingly.
- (2) Where any conviction is remitted to the District Court under paragraph (b) of subsection (1), the Registrar of the High Court shall transmit a certificate to that effect to the Registrar of the District Court whose determination was appealed against, and the District Court shall amend the conviction and, if it thinks fit, quash the sentence imposed, and impose any sentence which it has jurisdiction to impose (whether more or less severe) or deal with the defendant in any other way that it has power to deal with him, in respect of the conviction as amended.

Compare: 1909 No 13 ss 10, 11

133 Dismissal of appeal for non-prosecution

- (1) If an appellant does not appear at the hearing of the appeal and, if he is in custody, he has not presented any case or argument in writing as provided in section 130, or if an appellant, having appeared at the hearing, does not prosecute his appeal, the High Court may, if it thinks fit, dismiss the appeal for non-prosecution.
- (2) Where the High Court dismisses any appeal for non-prosecution, the Registrar of that Court shall transmit a certificate to that effect to the Registrar of the District Court whose determination was appealed against.

Compare: 1927 No 37 ss 333(2), 337; 1952 No 44 s 13

134 Registrar to certify decision on appeal

After the decision of the High Court on any appeal has been given, the Registrar of the High Court, at the place where the decision is given, shall transmit a certificate of the decision to the Registrar of the District Court in which the case was heard, and shall send a copy of the certificate to any party to the appeal who is in custody and was not present when the decision was given.

Compare: 1927 No 37 s 333

135 Execution of decision of High Court

- (1) Where on any appeal the High Court confirms any conviction, sentence, order, or amount of any sum to be paid, or where the appeal is dismissed for non-prosecution, or where a certificate has been given under section 107 that the appeal has not been prosecuted, the decision of the District Court shall be enforced.
- (2) Where on any appeal the High Court sets aside or reverses any conviction, order, or other determination, or amends any conviction or other determination, or quashes or varies any sentence or order, or increases or reduces the amount of any sum ordered to be paid, the Registrar of the District Court shall make in the entry in the Criminal Records kept pursuant to section 71 relating to the decision appealed against a note of the decision of the High Court.
- (3) In any case to which subsection (2) applies, the decision of the High Court or the decision of the District Court as amended or

varied by the High Court, as the case may be, shall take effect as if it were the decision of the District Court:

Provided that, where the High Court imposes a sentence of detention, the warrant to be issued under section 91 of the Sentencing Act 2002 shall be issued out of the High Court and signed by a Judge:

Provided also that, where the High Court varies a sentence of detention imposed by the District Court, it shall not be necessary to issue a warrant of commitment in respect of the sentence as so varied:

(3A) *[Repealed]*

(3B) *[Repealed]*

(4) Where a party to an appeal has paid a fine in accordance with a sentence of the District Court and on the determination of the appeal—

- (a) his conviction is set aside; or
- (b) the sentence is quashed and any other sentence imposed is not for the payment of a fine or is for the payment of a smaller fine; or
- (c) the sentence is varied by a reduction in the amount of the fine imposed,—

that party shall be entitled, subject to the order of the High Court, to a return of the sum paid or part thereof, as the case may be. For the purposes of this subsection the term **fine** includes any costs or other money ordered by the Court to be paid on the conviction of that party.

Compare: 1927 No 37 s 334; 1952 No 44 s 13

The item relating to the modified section 135 was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting the words “section 91 of the Sentencing Act 2002” for the words “section 143 of the Criminal Justice Act 1985”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions.

Subsection (2) was amended by section 71(5) of this Act by substituting the reference to “the Criminal Records kept pursuant to section 71 of this Act” for a reference to “the Criminal Record Book”.

Subsection (3) was amended by section 150(1) Criminal Justice Act 1985 (1985 No 120) by substituting the words “section 143 of the Criminal Justice Act 1985” for the words “section 50 of the Criminal Justice Act 1954”.

Subsection (3) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting the words “section 91 of the Sentencing Act 2002” for the words “section 143 of the Criminal Justice Act 1985”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and tran-

sitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (3) third proviso was inserted by section 15 Summary Proceedings Amendment Act (No 2) 1991 (1991 No 105).

Subsection (3) third proviso was repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

Subsections (3A) and (3B) were inserted by section 15 Summary Proceedings Amendment Act (No 2) 1991 (1991 No 105).

Subsections (3A) and (3B) were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

Subsection (4) was amended by section 5(2) Summary Proceedings Amendment Act 1969 (1969 No 43) by substituting the words “a party to an appeal” and “that party” (in two places) for the words “the appellant”.

136 Custody of person after determination of appeal

- (1) Where the decision of the High Court on any appeal has been given, or where an appeal has been dismissed for non-prosecution or a certificate has been given under section 107 that an appeal has not been prosecuted, any person who is liable under that decision or, as the case may be, under the decision appealed from to serve a sentence of detention or to be detained in custody and who is not in custody may be arrested without warrant by any constable or any officer of a prison.
- (2) Where the High Court in giving any such decision quashes a sentence of detention imposed by the District Court and does not impose another sentence of detention, the Registrar of the High Court at the place where the decision is given shall send to the manager of the prison in which the person sentenced is detained or from which he was released on bail a certificate setting out the result of the appeal, and, if that person is in the custody of the manager and is not in custody for any other matter, he shall be released.
- (3) Where the High Court in giving any such decision varies a sentence of detention imposed by the District Court, or amends the conviction in respect of which a sentence of detention was imposed by the District Court, the Registrar of the High Court at the place where the decision is given shall send to the manager a certificate as aforesaid, and the warrant issued in execution

of the sentence of the District Court shall have effect as if it were amended in accordance with the certificate.

- (4) Where under section 107 a District Court Judge or Justice or Justices have certified that an appeal has not been prosecuted, the Registrar of the District Court shall send that certificate to the manager of the prison at which any party to the appeal is detained. Where an appeal has been dismissed for non-prosecution, the Registrar of the High Court shall send a certificate to that effect to the manager.

Compare: 1927 No 37 s 334A; 1952 No 44 s 11

Subsection (1) was amended, as from 1 December 1991, by section 16 Summary Proceedings Amendment Act (No 2) 1991 (1991 No 105) by inserting the words “or to be detained in custody”.

Subsection (1) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “prison” for the words “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (2) was amended by section 5(2) Summary Proceedings Amendment Act 1969 (1969 No 43) by substituting the words “the person sentenced” and the words “that person” for the words “the appellant”.

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “prison” for the words “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsections (2) and (3) were amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “manager” for the word “Superintendent” wherever it appeared. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (4) was amended by section 5(2) Summary Proceedings Amendment Act 1969 (1969 No 43) by substituting the words “any party to the appeal” for the words “the appellant”.

Subsection (4) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “prison” for the words “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (4) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “manager” for the word “Superintendent” in both places it appeared. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

137 Resumption of sentence or order on determination of appeal

- (1) Where, under any determination in respect of which either party appeals, a District Court has—

- (a) sentenced the defendant to supervision, intensive supervision, community work, community detention, or home detention; or
 - (b) Made a non-association order in respect of the defendant—
and when the appeal is determined neither the sentence nor the order, as the case may be, nor the conviction upon which it was imposed is set aside, the term of the sentence or the order as specified by the District Court or as varied by the High Court, as the case may be, shall be resumed—
 - (c) on the date specified by the Court that determines the appeal; or
 - (d) if the Court fails to specify such a date, as from the date the appeal is determined.
- (2) Where, under any determination in respect of which either party appeals, the District Court has—
- (a) sentenced the defendant to supervision, intensive supervision, community work, community detention, or home detention; or
 - (b) made a non-association order in respect of the defendant—
and the appeal is not prosecuted and a District Court Judge or Justice or Justices certify that it has not been prosecuted, the term of the sentence or the order as specified by the District Court shall be resumed—
 - (c) on the date specified by a District Court Judge to whom the certificate is submitted; or
 - (d) if a District Court Judge fails to specify such a date, as from the date of the certificate.
- (3) Where, under any determination in respect of which either party appeals, a District Court has—
- (a) sentenced the defendant to supervision, intensive supervision, community work, community detention, or home detention; or
 - (b) made a non-association order in respect of the defendant—
and the appeal is dismissed for non-prosecution and the Registrar of the High Court certifies that it has been dismissed for

- non-prosecution, the term of the sentence as specified by the District Court shall be resumed—
- (c) on the date specified by a District Court Judge to whom the certificate is submitted; or
 - (d) if a District Court Judge fails to specify such a date, as from the date of the certificate.
- (4) Where the defendant has been sentenced to community work and subsection (1) or subsection (2) or subsection (3) applies, the Court that determines the appeal or, as the case may require, the District Court Judge to whom the certificate is submitted shall, in addition to specifying the date on which the sentence resumes, specify the date and time at which the defendant is required to report to the community work centre on the first occasion after the resumption of the sentence.
- (5) In any case to which subsection (1) or subsection (2) or subsection (3) or subsection (4) applies, the Registrar shall notify the controlling officer of the probation area in which the sentence is to be served and the defendant, if he or she is not present in Court at the time the appeal is disposed of in accordance with this section, of—
- (a) the date on which the sentence or order is to resume; and
 - (b) in the case of a sentence of community work, the date and time at which the defendant is to report to the community work centre.

The original section 137 (that part before paragraph (a)) was amended, as from 1 January 1970, by section 5(2) Summary Proceedings Amendment Act 1969 by substituting “either party” for “the defendant”.

Section 137 was substituted, as from 1 September 1993, by section 23 Summary Proceedings Amendment Act 1993 (1993 No 47).

Subsection (1)(a) was substituted, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Section 137(1)(a): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (2)(a) was substituted, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Section 137(2)(a): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (3)(a) was substituted, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Section 137(3)(a): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Subsection (4) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting “community work” for “periodic detention”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (4) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting “community work centre” for “periodic detention centre”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (5) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting “controlling officer of the probation area” for “Manager Community Corrections of the district”. See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (5)(b) was substituted, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). See sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

137A Provisions on determination of appeal where defendant sentenced to periodic detention

[Repealed]

Section 137A was repealed, as from 1 September 1993, by section 23 Summary Proceedings Amendment Act 1993 (1993 No 47).

137B Provisions on determination of appeal where defendant sentenced to community service

[Repealed]

Section 137B was repealed, as from 1 September 1993, by section 23 Summary Proceedings Amendment Act 1993 (1993 No 47).

137C Provisions on determination of appeal where defendant sentenced to community care

[Repealed]

Section 137C was repealed, as from 1 September 1993, by section 23 Summary Proceedings Amendment Act 1993 (1993 No 47).

**137D Provisions on determination of appeal where
non-association order made in respect of defendant***[Repealed]*

Section 137D was repealed, as from 1 September 1993, by section 23 Summary Proceedings Amendment Act 1993 (1993 No 47).

138 Revesting and restitution of property on conviction

- (1) The operation of any order for the restitution of any property to any person and the operation, in case of any summary conviction under this Act, of the provisions of subsection (1) of section 26 of the Sale of Goods Act 1908 as to the revesting of the property in stolen goods on conviction, shall (unless the Court by which the order was made or by which the defendant was convicted directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended—

- (a) in any case until the expiration of 14 days after the date of the conviction; and
- (b) in cases where notice of appeal is given within 14 days after the date of conviction, until the determination of the appeal,—

and, in cases where the operation of any such order or the operation of the said provisions is suspended until the determination of the appeal, the order or provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal. Provision may be made by regulations under this Act for securing the safe custody of any property, pending the suspension of the operation of any such order or of the said provisions.

- (2) The High Court may by order annul or vary any order for the restitution of any property to any person, although the conviction is not quashed; and the last-mentioned order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

Subsections (1) and (2) were amended by section 4(1)(f) Summary Proceedings Amendment Act 1961 (1961 No 44) by omitting the words “made under this Act”.

139 Estreat of bail bond where determination appealed against

[Repealed]

Section 139 was repealed, as from 1 August 1987, by section 6 Summary Proceedings Amendment Act (No 2) 1987 (1987 No 172).

140 Orders as to costs

[Repealed]

Sections 140-142 were repealed by section 14(2) Costs in Criminal Cases Act 1967 (1967 No 129).

141 Party giving notice of appeal and not prosecuting same may be ordered to pay costs

[Repealed]

Sections 140-142 were repealed by section 14(2) Costs in Criminal Cases Act 1967 (1967 No 129).

142 Enforcement of order as to costs

[Repealed]

Sections 140-142 were repealed by section 14(2) Costs in Criminal Cases Act 1967 (1967 No 129).

143 No Court fees payable on appeal by person sentenced to detention

Where any party to an appeal has been sentenced to detention under the conviction to which the appeal relates, no Court fees shall be payable in respect of the appeal either in a District Court or in the High Court or in the Court of Appeal.

Compare: 1927 No 37 s 342A; 1952 No 44 s 12

Section 143 was amended by section 5(2) Summary Proceedings Amendment Act 1969 (1969 No 43) by substituting the words “any party to an appeal” for the words “an appellant”, and by substituting the word “the” for the word “his”.

Appeal to Court of Appeal

144 Appeal to Court of Appeal

- (1) Either party may, with the leave of the High Court, appeal to the Court of Appeal against any determination of the High Court on any case stated for the opinion of the High Court

under section 107 or against any determination of the High Court on a question of law arising in any general appeal:

Provided that, if the High Court refuses to grant leave to appeal to the Court of Appeal, the Court of Appeal may grant special leave to appeal.

- (2) A party desiring to appeal to the Court of Appeal under this section shall, within 21 days after the determination of the High Court, or within such further time as that Court may allow, give notice of his application for leave to appeal in such manner as may be directed by the rules of that Court, and the High Court may grant leave accordingly if in the opinion of that Court the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.
- (3) Where the High Court refuses leave to any party to appeal to the Court of Appeal under this section, that party may, within 21 days after the refusal of the High Court or within such further time as the Court of Appeal may allow, apply to the Court of Appeal, in such manner as may be directed by the rules of that Court, for special leave to appeal to that Court, and the Court of Appeal may grant leave accordingly if in the opinion of that Court the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) *[Repealed]*

Compare: 1927 No 37 s 309(2)

Subsections (4) to (6) were repealed, as from 1 January 2004, by section 47 Supreme Court Act 2003 (2003 No 53). See sections 50 to 55 of that Act for the transitional and savings provisions.

144A Appeal to Supreme Court

- (1) With the leave of the Supreme Court, either party may appeal to the Supreme Court against—
 - (a) a determination of the High Court on a case stated for its opinion under section 107; or

- (b) a determination of the High Court (other than a determination made on an interlocutory application (within the meaning of the Supreme Court Act 2003) made in a general appeal; or
 - (c) a decision of the Court of Appeal on an appeal under section 144(1).
- (2) Subsection (1) is subject to section 14 of the Supreme Court Act 2003 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).

Sections 144A and 144B were inserted, as from 1 January 2004, by section 47 Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act for the transitional and savings provisions.

144B Powers of Court of Appeal and Supreme Court on appeal

On an appeal under section 144 or section 144A to the Court of Appeal or the Supreme Court,—

- (a) the court appealed to has the same power to adjudicate on the proceeding that the High Court had; and
- (b) the same judgment must be entered in the High Court, and the same execution and other consequences and proceedings follow, as if the decision of the court appealed to had been given in the High Court.

Sections 144A and 144B were inserted, as from 1 January 2004, by section 47 Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act for the transitional and savings provisions.

Part 5

Committal proceedings for indictable offences

Part 5: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

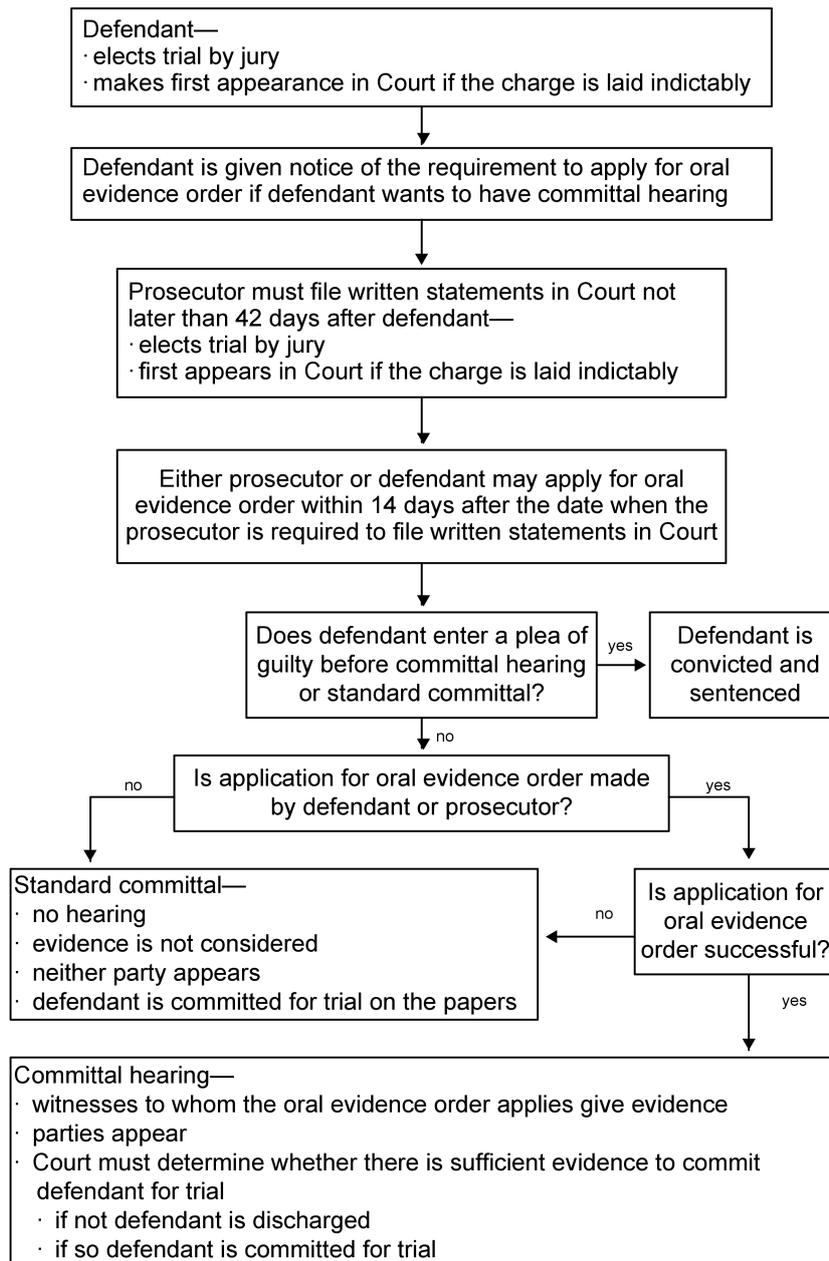
145 Purpose and overview

- (1) The purpose of this Part is to reform the law relating to preliminary hearings in criminal proceedings by replacing preliminary hearings with a standard committal procedure (which does

not involve a hearing or consideration of the evidence), that is followed unless a party has been granted leave to orally examine a witness (in which case a committal hearing is held).

- (2) A general overview of the committal procedures set out in this Part is set out in diagrammatic form as follows:

General overview of committal proceedings for offences to be tried on indictment



Note: This general overview of committal proceedings is by way of indication only. Detailed rules set out in the Act determine how those proceedings are conducted.

Section 145: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

146 Interpretation

In this Part and Part 5A,—

committal hearing means a hearing required under this Part as a consequence of an oral evidence order under section 180 or 181

committal proceedings—

- (a) means the proceedings comprising each and every occasion on which a defendant to whom this Part applies is required to appear in Court, or on which a Court considers his or her case under this Part or Part 5A, pending the committal of the defendant for trial or sentence; and
- (b) includes a standard committal, a committal hearing, and any proceedings under section 160, 180 or 181

prosecutor has the same meaning as it has in section 6 of the Criminal Disclosure Act 2008

standard committal is a committal that takes place if no oral evidence order has been made under section 180 or 181 allowing the oral examination of a witness.

Section 146: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Commencement of proceedings under this Part

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

147 Proceedings under this Part

- (1) This Part applies if the defendant is to be proceeded against by indictment.
- (2) All proceedings to which this Part applies must be commenced by information in form 2 of Schedule 2 and substantiated on oath before a District Court Judge, Justice, Community Magistrate, or any Registrar (not being a member of the police).
- (3) Subsection (2) is subject to sections 44 and 66.
- (4) Without limiting any other provision of this Act or any other enactment, no information is invalid only because it—

- (a) does not contain the date of birth of the defendant; or
 - (b) does not correctly describe the defendant's date of birth.
- (5) No amendment is required to remedy an omission or error of the type described in subsection (4) before the trial.

Compare: 1957 No 87 s 145

Section 147: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Information, summons, and warrant

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

148 Application of provisions of Part 2

- (1) The provisions of Part 2 listed in subsection (2), as far as they are applicable and with the necessary modifications, apply to proceedings to which this Part applies.
- (2) The provisions are—
- (a) section 13 (which permits any person to lay an information):
 - (b) section 16(1) (which requires an information to be for 1 offence only):
 - (c) section 17 (which requires an information to contain sufficient particulars):
 - (d) section 17A (which requires that certain informations disclose the range of penalties available for the offence):
 - (e) section 18 (which specifies the Court in which an information must be filed):
 - (f) section 20 (which relates to the issue of a summons or a warrant for the attendance of a witness):
 - (g) section 22 (which specifies the person to whom a warrant is to be directed and the power of the person executing a warrant to enter premises):
 - (h) section 23 (which relates to the withdrawal of a warrant).

Compare: 1957 No 87 s 146

Section 148: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

149 Notice to defendant

The Registrar must serve on the defendant's counsel or solicitor, or on the defendant if he or she is not represented, a written notice to the defendant to the following effect as soon as practicable after the defendant has—

- (a) elected trial by jury under section 66; or
- (b) if the information was laid indictably, made his or her first appearance in Court in relation to the offence:

“If you wish to have a committal hearing at which you give oral evidence, or call witnesses on your behalf, or cross-examine a prosecution witness, you must apply for an oral evidence order under section 178 of the Summary Proceedings Act 1957.

“You are not obliged to apply for an oral evidence order.

“If no oral evidence order is made, you will be automatically committed for trial on the basis of the prosecution evidence against you without a committal hearing or consideration of that evidence.

“If an application for an oral evidence order is granted, there will be a committal hearing and the oral evidence that is given will be taken down and may be given against you at your trial. If you give oral evidence yourself, you may be cross-examined.

“If you provide written evidence at a committal hearing that evidence may be used against you at your trial.

“You should take no notice of any promise or threat that any person may have made to persuade you to say anything (other than a promise made in discussions between you or your counsel and the prosecution). If you do not apply for an oral evidence order or provide any written evidence at a committal hearing that fact is not allowed to be the subject of any comment at your trial.”

Compare: 1957 No 87 s 163(2)

Section 149: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

150 Issue of summons or warrant

- (1) When an information has been laid, any District Court Judge, Justice, or Community Magistrate, or the Registrar (not being a member of the police),—
 - (a) may issue a summons to the defendant in the prescribed form; or
 - (b) may issue a warrant, in the prescribed form, to arrest the defendant and bring him or her before a Court.
- (2) A warrant under subsection (1)(b) may be issued even if a summons has previously been issued and whether or not that summons has been served.

Compare: 1957 No 87 s 147

Section 150: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

151 Issue of warrant if defendant does not attend

If any person who has been served with a summons issued against him or her in accordance with section 150 does not attend personally at the time and place mentioned in the summons, or at any time and place to which the proceedings are adjourned, the presiding District Court Judge, Justices, Community Magistrate, or Community Magistrates may issue a warrant, in the prescribed form, to arrest that person and bring him or her before a Court.

Compare: 1957 No 87 s 148

Section 151: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

152 Defect in form or variance between charge and evidence

- (1) No objection may be taken or allowed to any information, summons, or warrant to which this Part applies for any alleged defect in substance or in form, for any variance between it and the evidence adduced on the part of the prosecution at the committal hearing, or for the purposes of the standard committal.
- (2) Despite subsection (1), if there is to be a committal hearing and any variance referred to in subsection (1) appears to the Court to have deceived or misled the defendant or to operate

unfairly to the defendant, the Court may, at the defendant's request, adjourn the committal hearing under section 155.

Compare: 1957 No 87 s 149

Section 152: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

152A Power of Registrar to adjourn

[Repealed]

Section 152A: repealed, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Service of documents

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

153 Service of summons on defendant

Every summons to a defendant must be served on him or her by a member of the police, by—

- (a) delivering the summons to the defendant personally; or
- (b) bringing it to the defendant's notice if he or she refuses to accept it.

Compare: 1957 No 87 s 150

Section 153: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

153A Defendant may plead guilty before or during preliminary hearing

[Repealed]

Section 153A: repealed, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

154 Application of provisions of Part 2

The following provisions of Part 2, as far as they are applicable and with the necessary modifications, apply to proceedings to which this Part applies:

- (a) section 26 (which prescribes the mode of service of documents on any person other than the defendant);
- (b) section 27 (which specifies who may serve documents on any person other than the defendant):

- (c) subject to the provisions of section 153, section 28 (which prescribes the mode of service in particular cases):
- (d) section 29 (which prescribes the manner in which service may be proved):
- (e) section 30 (which relates to the translation of documents into the Maori language).

Compare: 1957 No 87 s 151

Section 154: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Adjournments and bail

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

155 Power to adjourn

- (1) The committal proceedings for any information may, from time to time, be adjourned by the Court to a time and place then appointed if it is necessary or desirable to do so for any reasonable cause.
- (2) If only 1 Justice of the Peace is present at the time and place appointed for those proceedings, or when a defendant is brought before a Court on arrest, that Justice may adjourn the committal proceedings for a period that must not be longer than 8 days unless the parties consent, to a time and place then appointed.

Compare: 1957 No 87 s 152

Section 155: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

156 Power of Registrar to adjourn

- (1) A Registrar may, on the application of either party and with the consent of each party, adjourn committal proceedings for any information to a time and place then appointed if—
 - (a) the defendant is not, at the time of the application, in custody (including if the defendant has been released on bail under section 21 of the Bail Act 2000); and
 - (b) it is necessary or desirable to do so for any reasonable cause.
- (2) If an adjournment is granted under subsection (1),—

- (a) the present conditions of bail (if any) continue, subject to section 34 of the Bail Act 2000, to the adjourned date of hearing; and
 - (b) any order made under section 140 of the Criminal Justice Act 1985 in relation to the defendant, or any other person connected with the proceedings, and having effect only for a limited period that would expire before the adjourned date of hearing, continues to have effect until the close of the adjourned date of hearing.
- (3) Whenever the Registrar grants an adjournment under this section, the Registrar must notify each party in writing.

Compare: 1957 No 87 s 152A

Section 156: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

157 Application of section 46

Section 46, with the necessary modifications, applies to proceedings to which this Part applies.

Compare: 1957 No 87 s 153

Section 157: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Withdrawal of information and stay of proceedings

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

158 Withdrawal of information by prosecutor

- (1) Any information may, by leave of the Court, be withdrawn by the prosecutor at any time before the defendant is discharged or is committed for trial or for sentence.
- (2) Despite subsection (1), the prosecutor may withdraw an information without the leave of the Court if—
 - (a) an oral evidence order is made under section 178 allowing the oral examination of a prosecution witness; and
 - (b) leave is granted to the defendant, on an application under section 109(1)(d) of the Evidence Act 2006, to put any question to that witness relating to the identity of that witness or of another prosecution witness.

- (3) The withdrawal of an information is not a bar to any other proceedings in the same matter.

Compare: 1957 No 87 s 157

Section 158: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 158(2)(b): amended, on 7 July 2010, by section 4 of the Summary Proceedings Amendment Act 2010 (2010 No 87).

159 Stay of proceedings

- (1) The Attorney-General may direct that proceedings against any person under this Part be stayed.
- (2) A direction under subsection (1) may be made at any time after an information has been laid against the person and before the person has been committed for trial or for sentence.
- (3) A direction under subsection (1) must be entered into the Criminal Records kept under section 71, and the proceedings are stayed when that entry is made.

Compare: 1957 No 87 s 173

Section 159: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Plea of guilty before committal

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

160 Defendant may plead guilty before committal

- (1) This section applies to a defendant who is—
- (a) represented by a barrister or solicitor; or
 - (b) unrepresented, but in respect of whom the requirements of section 30(2) of the Sentencing Act 2002 have been satisfied.
- (2) A defendant to whom this section applies may, at any time before the defendant is committed for trial, ask to be brought before the Court (or, if the defendant is at that time before the Court, ask to be permitted) to plead guilty to the offence with which he or she is charged.
- (3) As soon as practicable after a request under subsection (2) is made, the defendant must be brought before the Court to be

dealt with (or, if the defendant is before the Court at the time of that request, must be dealt with) under section 161.

- (4) If the defendant is not before the Court at the time of a request under subsection (2) and is not in custody, notice must be given to him or her of the time and place for attendance before the Court for the purpose of being dealt with under section 161.

Compare: 1957 No 87 s 153A

Section 160: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

160A Committal without consideration of evidence

[Repealed]

Section 160A: repealed, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

161 Procedure if defendant makes request under section 160

- (1) When the defendant (or, if the defendant is a corporation, a representative of the defendant) attends before a Court for the purposes of section 160,—
- (a) the charge to which the defendant is required to plead must be read to the defendant; and
 - (b) the defendant must then be called on to plead either guilty or not guilty.
- (2) If the defendant does not plead guilty, or if he or she (or, if the defendant is a corporation, a representative of the defendant) does not personally attend the proceedings,—
- (a) the defendant must be treated in all respects as if he or she had not made any request to plead guilty; and
 - (b) no comment may be made in any subsequent proceedings on the fact that that request was made; and
 - (c) the request is not admissible in evidence against the defendant in any proceedings.
- (3) If the defendant pleads guilty, then, subject to section 66(6), the Court must record the plea and,—
- (a) if—
 - (i) the defendant elected under section 66 to be tried by a jury; or
 - (ii) the offence is an indictable offence under any enactment (other than an offence referred to in

Part 2 of Schedule 1A of the District Courts Act 1947); or

- (iii) the offence is an offence to which section 28A(1)(d), (e), or (f) of the District Courts Act 1947 applies—

the Court must either proceed immediately to sentence the defendant, or adjourn the proceedings for the sentencing of the defendant in accordance with section 28F of the District Courts Act 1947:

- (b) in any other case, commit the defendant to the High Court for sentence.
- (4) Section 47 of this Act and section 50 of the Bail Act 2000 apply to every adjournment under subsection (3)(a).
- (5) If the defendant pleads guilty and is committed to the High Court for sentence under this section, sections 184J(4) and (5), 184K, 184L, and 184T of this Act, and sections 53 and 54 of the Bail Act 2000, as far as they are applicable and with the necessary modifications, apply as if the defendant had pleaded guilty and had been committed to the High Court for sentence after a committal hearing.

Compare: 1957 No 87 s 153A

Section 161: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

161A Application for leave to question undercover police officer's identity to be removed into High Court

[Repealed]

Section 161A: repealed, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Formal written statements for purposes of committal

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

162 Formal written statements

- (1) A formal written statement by any person is admissible as evidence for the purposes of a standard committal or at a com-

mittal hearing to the same extent as oral evidence to the same effect given at a committal hearing by that person.

- (2) A **formal written statement** is either—
- (a) a written statement—
 - (i) that purports to be signed by the person making the statement; and
 - (ii) that contains a statement at the end that everything in the statement is true to the best of that person's knowledge and belief, and that the person made the statement knowing that it might be admitted as evidence for the purposes of the standard committal or at a committal hearing and that he or she could be prosecuted for perjury if the statement is known by him or her to be false and is intended by him or her to mislead; and
 - (iii) that complies with subsections (3) and (4), if applicable; or
 - (b) a written statement that does not meet the requirements set out in paragraph (a) if all parties agree to that written statement being admitted as evidence.
- (3) If a formal written statement under subsection (2)(a) is made by a person aged under 18 years, the statement must specify the age of that person.
- (4) If a formal written statement under subsection (2)(a) is made by a person who cannot read it,—
- (a) the statement must be read to that person before the person signs it; and
 - (b) the reader must attach to the statement a signed statement by that reader to the effect that the statement was read to the person and that the person to whom it was read appeared to understand its contents.
- (5) Any document or object accompanying a formal written statement, and referred to in that statement as an exhibit, must be treated as if it had been identified in Court and produced as an exhibit by the maker of the statement.

Compare: 1957 No 87 s 173A

Section 162: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

163 False statement in formal written statement deemed to be perjury

A formal written statement that is admitted in evidence for the purposes of a standard committal or at a committal hearing is to be treated as evidence on oath given in a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

Section 163: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Special provisions for taking evidence

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

164 Power to take statement of person dangerously ill

- (1) A District Court Judge, Registrar, Justice, or Community Magistrate may take a statement of a person on the oath or affirmation of the person if the District Court Judge, Registrar, Justice, or Community Magistrate is satisfied that,—
 - (a) in the opinion of a registered medical practitioner, the person is dangerously ill; and
 - (b) the person is able and willing to give material information relating to an indictable offence or relating to a person accused of an indictable offence.
- (2) A statement under this section may be taken in writing or by an electronic form of recording (for example, an audio recording or a video recording) or by any other method of making a permanent recording.
- (3) A District Court Judge, Registrar, Justice, or Community Magistrate who takes a statement under this section must prepare, sign, and attach to the statement a certificate stating—
 - (a) whether he or she is satisfied that the statement was taken in accordance with this section; and
 - (b) the day on which the statement was taken; and
 - (c) the place where the statement was taken; and
 - (d) whether any person (other than the dangerously ill person and the District Court Judge, Registrar, Justice, or Community Magistrate) was present at any time while the statement was taken.

- (4) A District Court Judge, Registrar, Justice, or Community Magistrate who takes a statement under this section must,—
- (a) if it relates to an indictable offence for which an accused person is already committed for trial, send it and the attached certificate to the Registrar of the Court in the place to which the accused person has been committed for trial; or
 - (b) if it does not relate to an indictable offence for which an accused person is already committed for trial, send it and the attached certificate to the Registrar of the District Court nearest to the place where the trial would be held if the defendant were committed for trial.
- (5) A Registrar of a District Court to whom a statement under subsection (4)(b) is sent must—
- (a) file a copy of it as part of the Court records; and
 - (b) forward it to a District Court in which—
 - (i) a person to whom it relates is charged with an indictable offence; or
 - (ii) a person is charged with an offence to which it relates.

Compare: 1927 No 37 s 172; 1957 No 87 s 175

Section 164: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

165 Evidence of statement made by person dangerously ill

- (1) If each condition set out in subsection (2) is satisfied, a statement taken under section 164 may, without further proof, be given in evidence either—
- (a) for or against the defendant at the committal hearing of, or against the defendant for the purposes of the standard committal for,—
 - (i) an information for an offence to which the statement relates (whether or not the defendant had been charged with that offence at the time the statement was taken); or
 - (ii) an information charging any person to whom the statement relates; or
 - (b) for or against the accused person on the trial of—

- (i) a person for an offence to which the statement relates (whether or not the accused had been charged with that offence at the time the statement was taken); or
 - (ii) a person to whom the statement relates.
- (2) The conditions are—
- (a) that it is proved by such evidence as the District Court or, as the case may be, the High Court considers sufficient (whether legally admissible or not)—
 - (i) that the person who made the statement is dead; or
 - (ii) that there is no reasonable possibility that the person who made the statement will ever be able to travel or give evidence; and
 - (b) that the statement purports to be signed by the District Court Judge, Registrar, Justice, or Community Magistrate before whom the statement purports to be taken; and
 - (c) that it is proved to the satisfaction of the District Court or, as the case may be, the High Court—
 - (i) that reasonable notice of the intention to take the statement was served upon the party other than the party on whose behalf the statement is proposed to be given; and
 - (ii) that that other party or that other party's counsel or solicitor had, or might have had if that other party or counsel or solicitor had chosen to be present, full opportunity of cross-examining the person who made the statement.

Compare: 1927 No 37 s 173; 1957 No 87 s 176

Section 165: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

166 Provision for person in custody to be present at taking of statement

If a person who is in custody has served or has received a notice of an intention to take a statement as provided in section 164,—

- (a) any District Court Judge or Justice or Community Magistrate may, by an order in writing, direct the manager of the prison in which that person is detained to convey the person to the place mentioned in the notice for the purpose of being present at the taking of the statement (as required by section 165(2)(c)(i); and
- (b) the manager must convey the person accordingly.

Compare: 1927 No 37 s 174; 1957 No 87 s 177

Section 166: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 166(a): amended, on 7 July 2010, by section 5(1) of the Summary Proceedings Amendment Act 2010 (2010 No 87).

Section 166(b): amended, on 7 July 2010, by section 5(2) of the Summary Proceedings Amendment Act 2010 (2010 No 87).

Preliminary provisions applicable to committal

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

167 Place of committal

- (1) Unless an order is made under section 4A of the District Courts Act 1947 or there is a statutory provision to the contrary, the committal proceedings for an information must take place in the Court in the office of which the information is filed.
- (2) Despite subsection (1), any District Court Judge or Justice or Community Magistrate or Registrar may order that any of the following take place in some other Court:
 - (a) the committal proceedings in their entirety;
 - (b) the standard committal;
 - (c) the committal hearing;
 - (d) any other proceedings that form part of the committal proceedings.
- (3) A Registrar must not make an order under subsection (2) without the consent of each party to the proceedings.
- (4) When an order is made under subsection (2), the Registrar must—
 - (a) forward the information to the Registrar of the Court to which the committal proceedings, standard committal,

committal hearing, or other part of the committal hearings is ordered to be transferred; and

- (b) notify each party in writing.

Compare: 1957 No 87 s 155

Section 167: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

168 Obligations of prosecutor to file formal written statements within certain period

- (1) The prosecutor must file in the office of the Court the formal written statements that form all or part of the evidence for the prosecution for the purposes of the standard committal or at the committal hearing, as the case may require, together with the exhibits referred to in those statements, not later than—
- (a) 42 days after—
- (i) the date on which the defendant elects trial by jury under section 66; or
- (ii) if the information is laid indictably, the date on which the defendant first appears in Court in relation to that information:
- (b) such earlier or later date specified for the purposes of this section by a District Court Judge.
- (2) Despite subsection (1), the prosecutor may file a written statement later than the date required by that subsection in any case, with the leave of a District Court Judge.
- (3) When the prosecutor files any written statement or statements under this section, the prosecutor must ensure that notice of that filing is given to the defendant's counsel or solicitor, or to the defendant if the defendant is not represented.

Section 168: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

168A Court to which defendant to be committed

[Repealed]

Section 168A: repealed, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

168AA High Court Judge to determine Court of trial in certain cases

[Repealed]

Section 168AA: repealed, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

168AB Notice of transfer of case to District Court

[Repealed]

Section 168AB: repealed, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

168B Defendant to be warned as to law relating to notice of alibi

[Repealed]

Section 168B: repealed, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

168C Defendant to be advised of his right to apply for trial before a Judge without a jury

[Repealed]

Section 168C: repealed, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

169 Standard committal is not hearing and does not involve prosecutor's or defendant's presence

- (1) A standard committal does not involve any consideration of the evidence or a hearing.
- (2) Neither the prosecutor nor the defendant—
 - (a) may be present during a standard committal:
 - (b) has the right to make oral or written submissions in relation to a standard committal.

Section 169: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

170 Defendant's entitlement to be present during hearings

- (1) The defendant is entitled to be present in Court during any hearing that is part of the committal proceedings.
- (2) Subsection (1) does not apply if the defendant interrupts the proceedings to such an extent that it is impracticable to continue in the defendant's presence.

- (3) The Court may permit the defendant to be out of Court during the whole or any part of the hearing on whatever terms it thinks fit.
- (4) Nothing in this section limits any other enactment or rule of law under which a defendant may appear or be represented in Court by counsel, rather than having to appear in person.

Compare: 1957 No 87 s 158

Section 170: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

171 Charge to be read to defendant in certain circumstances

- (1) If the defendant is present at any hearing that is part of the committal proceedings and requests that the charge be read, or the Court conducting that hearing so directs, the charge must be read to the defendant.
- (2) At any committal hearing, the charge must be read to the defendant before any written evidence is received by the Court and before any witness is called.
- (3) If the information is amended at any hearing that is part of the committal proceedings, the amended charge must be read to the defendant,—
 - (a) in the case of a committal hearing, immediately after all the evidence for the prosecution has been received by the Court:
 - (b) in the case of any other hearing, immediately, or if the defendant is not present, at the next hearing that is part of the committal proceedings at which the defendant is present.

Compare: 1957 No 87 s 160

Section 171: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

172 Amendment of information

- (1) The Court may amend any information to which this Part applies in any way, and at any time, during any hearing that is part of the committal proceedings.
- (2) Despite subsection (1), no information in form 2 of Schedule 2 may be amended to an information in form 1 of that schedule.

- (3) Despite subsection (1), the Court may, at the request of the defendant, adjourn the hearing if it is of the opinion that the defendant would be embarrassed in the conduct of his or her case by reason of an amendment made or proposed to be made under this section.

Compare: 1957 No 87 s 162

Section 172: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

173 Persons who may give evidence under assumed name

- (1) An undercover police officer (within the meaning of section 108 of the Evidence Act 2006)—
- (a) may make a written statement, or give oral evidence, in the name by which the officer was known during the relevant investigation; and
 - (b) may sign that statement, or the record of that evidence, in that name.
- (2) A witness who is the subject of an application for an anonymity order made under section 110 or 112 of the Evidence Act 2006, or who is the subject of an anonymity order made under either of those sections,—
- (a) may make a written statement, or give oral evidence, using the term “witness” followed by an initial or mark; and
 - (b) may sign that statement, or the record of that evidence, in that manner.
- (3) This section overrides any contrary provision in this Part.

Compare: 1957 No 87 s 178A

Section 173: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

173A Written statements

[Repealed]

Section 173A: repealed, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

174 No comment may be made on defendant refraining from answering charge

No comment adverse to the defendant may be made on the fact that the defendant—

- (a) does not provide any evidence in answer to the charge at a committal hearing or any other hearing that is part of the committal proceedings; or
- (b) does not apply for an oral evidence order under section 178.

Compare: 1957 No 87 s 166

Section 174: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

175 When formal written statement or record of oral evidence in other proceedings may be admitted as evidence at committal hearing or for purposes of standard committal

- (1) If a person is charged with more than 1 offence arising out of the same transaction, or set of circumstances, or incident, or series of incidents, and if the conditions in subsection (2) are met, any 1 or more of the following items may, without further proof, be admitted as evidence for the purposes of that person's standard committal or at that person's committal hearing:
 - (a) any formal written statement admitted as evidence for the purposes of that person's standard committal process or at that person's committal hearing, in respect of another offence arising out of the same transaction, or set of circumstances, or incident, or series of incidents:
 - (b) any record of oral evidence given at that person's committal hearing in respect of another offence arising out of the same transaction, or set of circumstances, or incident, or series of incidents.
- (2) A formal written statement or record of oral evidence may be admitted as evidence under subsection (1)—
 - (a) if it is proved, by evidence that the Judge considers sufficient (whether legally admissible or not), that the person who made the statement or who gave the oral evidence is—
 - (i) out of New Zealand; or

- (ii) dead; or
 - (iii) so ill as not to be able to travel; or
- (b) if all parties consent.
- (3) A formal written statement or record of oral evidence must not be admitted as evidence under subsection (1) if it is proved that—
 - (a) the formal written statement was not taken and admitted in evidence in accordance with section 162; or
 - (b) the record of oral evidence was not signed by the District Court Judge or Justices or Community Magistrate or Community Magistrates purporting to sign it; or
 - (c) the record of oral evidence was not taken in accordance with the provisions of this Part.

Compare: 1957 No 87 s 184

Section 175: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

176 Defendant must disclose evidence to be provided at committal hearing

- (1) If an oral evidence order is made under section 180 or 181, the defendant must, no later than 14 days after the date on which that order is made, disclose to the prosecutor any evidence that the defendant intends to provide to the Court at the committal hearing.
- (2) Sections 10 and 11 of the Criminal Disclosure Act 2008 apply to the disclosure of evidence under this section.

Section 176: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Timing and procedure at standard committal

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

177 Timing and procedure at standard committal

- (1) A standard committal must not take place,—
 - (a) in a case where no application is made for an oral evidence order within the period specified in section 178(2), before the earlier of the expiry of 14 days after—

- (i) the date on which the prosecutor is required to file written statements under section 168(1); or
 - (ii) the date on which the Court receives a notice from the defendant that he or she will not apply for an oral evidence order:
 - (b) in a case where an application for an oral evidence order is made within the period specified in section 178(2), before the date on which that application is declined.
- (2) At a standard committal, the Court must, without considering any evidence that has been filed by the prosecution, commit the defendant for trial in accordance with sections 184M and 184N.

Compare: 1957 No 87 s 160A

Section 177: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Oral evidence orders

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

178 Application for oral evidence order

- (1) Either party may apply to a District Court Judge for an order allowing the oral examination, at a committal hearing, of—
- (a) any witness who has provided a formal written statement; or
 - (b) any person who has not provided a formal written statement, whether that person is proposed to be examined as a witness for that party or for the other party; or
 - (c) any person who is to give evidence for that party in relation to the exercise of any power or jurisdiction conferred by any of sections 7 to 14 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (2) An application under subsection (1) must be made no later than 14 days after the date on which the prosecutor is required to file written statements under section 168(1).
- (3) Despite subsection (2), a District Court Judge may grant leave for an application under subsection (1) to be made later than the time specified in subsection (2) if the Judge is satisfied that it is necessary in the circumstances of the case.

Section 178: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

178A Persons who may sign statements by assumed name

[Repealed]

Section 178A: repealed, on 1 August 2007, by section 215 of the Evidence Act 2006 (2006 No 69).

179 Application for leave to question undercover police officer's identity must be removed into High Court

If the defendant wishes to apply, under section 109(1)(d) of the Evidence Act 2006, for leave to put any questions relating to the identity of a witness called by the prosecutor who is an undercover police officer,—

- (a) that application must be made at the same time as the application is made for an oral evidence order allowing the oral examination of the person to whom those questions are proposed to be put; and
- (b) both applications must be removed into the High Court and heard and determined by a Judge of that Court.

Compare: 1957 No 87 s 161A

Section 179: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

180 Determination of application for oral evidence order

(1) Before a District Court Judge makes an oral evidence order on an application under section 178, the Judge must be satisfied,—

- (a) if the proposed order is for the oral examination of a witness who has provided a formal written statement, that—
 - (i) it is necessary to hear the witness in order to determine whether there is sufficient evidence to commit the defendant for trial; or
 - (ii) it is otherwise in the interests of justice to hear the witness; or
- (b) if the proposed order is for the oral examination of a person who has not provided a formal written statement,—

- (i) that the anticipated evidence of that person is relevant to the charge specified in the information; and
 - (ii) either—
 - (A) that the person has been requested to give evidence in the form of a formal written statement but has failed or refused to do so; or
 - (B) that it is otherwise in the interests of justice to hear the witness; or
 - (c) if the proposed order is for the oral examination of a person who is to give evidence in relation to the exercise of any power or jurisdiction conferred by any of sections 7 to 14 of the Criminal Procedure (Mentally Impaired Persons) Act 2003, that the anticipated evidence of that person is relevant to the exercise of such a power or jurisdiction.
- (2) The Judge may refuse an application for an oral evidence order if he or she considers that the application was made—
 - (a) for the purpose of delay; or
 - (b) for any other improper purpose.
- (3) The Judge must determine an application for an oral evidence order on the basis of—
 - (a) the witness's formal written statement (if any); and
 - (b) any other written evidence; and
 - (c) any written submissions; and
 - (d) any oral submissions made in accordance with subsection (4).
- (4) A party who applies for an oral evidence order may make oral submissions to the Judge in support of that application.
- (5) If a party makes oral submissions under subsection (4), the other party may also make oral submissions to the Judge on that application.

Section 180: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

181 Judge may make oral evidence order of own motion

- (1) This section applies if—

- (a) a District Court Judge, in considering an application for an oral evidence order, is satisfied that the conditions described in section 180(1) are satisfied in respect of a person who is not the subject of the application; or
 - (b) the defendant has not been committed for trial at a standard committal and a District Court Judge considers it desirable to hear the evidence of any witness in connection with the exercise of any power or jurisdiction conferred by any of sections 7 to 14 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (2) The Judge may, of his or her own motion, make an order requiring the oral examination of that other person at a committal hearing.

Section 181: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

182 Oral evidence of witness who resides at distance, is ill, or is departing New Zealand may be taken at any Court

- (1) If an oral evidence order is made, that order may permit or require the evidence of a witness to be taken before any District Court or District Court Registrar (not being a member of the police) if it is desirable to do so.
- (2) The provisions of this Part as to the taking of the evidence of witnesses at a committal hearing, as far as they are applicable and with the necessary modifications, apply with respect to any evidence taken under this section.
- (3) The oral evidence of any witness taken under this section —
 - (a) must be forwarded to the Registrar of the Court in which the committal hearing is to take place; and
 - (b) has effect as if it were oral evidence taken at the committal hearing.
- (4) Judicial notice must be taken of the signature of any examining District Court Judge or Registrar to any record of oral evidence taken under this section.
- (5) The Court may proceed with a committal hearing without waiting for evidence to be taken from a witness pursuant to an order under subsection (1) if—

- (a) the oral evidence order allowing the oral examination of the witness was granted on the grounds set out in section 180(1)(b); and
 - (b) the Court considers that—
 - (i) the application for evidence to be taken under subsection (1) was made for the purpose of delay or for any other improper purpose; or
 - (ii) there has been undue delay in the taking of that evidence.
- (6) Nothing in this section or in any regulations made under this Act limits or affects the power of the Court to compel the personal attendance of any witness at a committal hearing.

Compare: 1957 No 87 ss 174, 178

Section 182: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

When committal hearing must be held

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

183 Committal hearing required if oral evidence order applies

- (1) If a District Court Judge or, if section 179 applies, a High Court Judge makes an oral evidence order allowing 1 or more witnesses to be orally examined, a committal hearing must take place.
- (2) To avoid doubt, the District Court Judge who determined the application for an oral evidence order may conduct the committal hearing.

Section 183: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Procedure at committal hearing

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184 Application of provisions of Part 2

- (1) The provisions of Part 2 listed in subsection (2), as far as they are applicable and with the necessary modifications, apply to a committal hearing as if—

- (a) references in those provisions to the hearing were references to that committal hearing; and
 - (b) references in those provisions to the charge were references to the information.
- (2) The sections are—
- (a) section 37(1), (2), and (3) (which relates to the person who may conduct the proceedings):
 - (b) section 38 (which relates to the issue of a warrant for the appearance of a witness):
 - (c) section 39 (which relates to the imprisonment of a witness refusing to give evidence):
 - (d) section 40(1) (which relates to the power to order witnesses to remain outside the Court):
 - (e) *[Repealed]*

Compare: 1957 No 87 s 154

Section 184: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 184(2)(e): repealed, on 7 July 2010, by section 6 of the Summary Proceedings Amendment Act 2010 (2010 No 87).

184A Procedure at committal hearing

- (1) At any committal hearing the prosecutor must—
 - (a) if the Court gives leave, provide to the Court any formal written statements or exhibits that have not already been filed under section 168; and
 - (b) call each prosecution witness who is to give oral evidence under an oral evidence order.
- (2) After all the evidence for the prosecution has been given and any amended charge has been read to the defendant, the defendant must, if the defendant intends to provide evidence,—
 - (a) provide to the Court any formal written statements or exhibits that have not already been provided to the Court; and
 - (b) call any defence witness (including the defendant) who is to give oral evidence for the defence under an oral evidence order.
- (3) Each witness who is called must be examined by the party for whom he or she is giving evidence, and may be cross-examined by the other party and re-examined by the first party.

- (4) Despite subsection (3), a witness may, instead of being examined by the party for whom he or she is giving evidence, read his or her formal written statement (if any) to the Court if—
 - (a) all other parties consent; or
 - (b) the Court so directs.
- (5) If the defendant gives evidence in accordance with an oral evidence order, the defendant may be cross-examined by the prosecutor and, if the defendant is represented, he or she may be re-examined.
- (6) This section is subject to section 184H.

Compare: 1957 No 87 s 161(1)

Section 184A: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184B No oral evidence without order

The Court must not hear the oral evidence of the defendant or of any witness at a committal hearing unless an oral evidence order has been made in relation to that person.

Section 184B: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184C Court may direct that formal written statements be read aloud

At a committal hearing, the Court may direct that a formal written statement provided as evidence be read aloud, or that an oral account be given of so much of the statement as is not read aloud.

Compare: 1957 No 87 s 173A(4)

Section 184C: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184D Oral evidence must be recorded in writing

The evidence of every person who gives oral evidence at a committal hearing, including the defendant if he or she gives oral evidence, must be—

- (a) put into writing; and
- (b) read over to that person; and

- (c) signed by that person and by the presiding District Court Judge or Justices or Community Magistrate or Community Magistrates.

Compare: 1957 No 87 ss 161(2), 163(3), 165(2)

Section 184D: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184E Committal hearing may be completed despite witness's failure to appear or give evidence

If a person fails to appear or to give evidence at a committal hearing, the Court may nevertheless commit the defendant for trial or sentence, or otherwise dispose of the case, if any other evidence received by it is sufficient for that purpose.

Section 184E: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Determination at committal hearing

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184F If evidence insufficient, defendant must be discharged

When all the evidence has been given at a committal hearing, if the Court is of the opinion that the evidence adduced by the prosecutor is not sufficient to put the defendant on trial for any indictable offence, it must discharge the defendant.

Compare: 1957 No 87 s 167

Section 184F: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184G If evidence sufficient, defendant must be committed for trial

When all the evidence has been given at a committal hearing, if the Court is of the opinion that the evidence adduced by the prosecutor is sufficient to put the defendant on trial for an indictable offence, the Court must proceed in accordance with sections 184I to 184N.

Section 184G: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

*Powers of Court if defendant seeks to provide
undisclosed evidence at committal hearing*

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184H Powers of Court if defendant seeks to provide evidence at committal hearing that was not disclosed as required by section 176

- (1) This section applies if, at a committal hearing, the Court is satisfied that evidence sought to be provided by the defendant should have been disclosed to the prosecutor under section 176.
- (2) The Court may—
 - (a) exclude the evidence; or
 - (b) require the evidence to be disclosed to the prosecutor and adjourn the hearing; or
 - (c) admit the evidence if it would not be contrary to the interests of justice to do so.
- (3) The Court—
 - (a) must not order the exclusion of evidence under this section if it is satisfied that the defendant was not given notice in accordance with section 21 of the Criminal Disclosure Act 2008 of the requirements of section 176; but
 - (b) if paragraph (a) applies, must adjourn the hearing if the prosecutor requests an adjournment.

Section 184H: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Committal for trial or sentence

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184I Advice must be given to defendant on committal following committal hearing

If section 184G applies,—

- (a) the defendant must be addressed by, or on behalf of, the Court as follows:

“This Court proposes to commit you for trial, but you may, if you wish, plead guilty to the offence charged”;
and

- (b) unless the Court is presided over by a trial Judge who would himself or herself impose sentence, the Court must also tell the defendant which Court he or she will be committed to for sentence if he or she pleads guilty.

Compare: 1957 No 87 s 168(1)(a), (aa)

Section 184I: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Procedure if defendant pleads guilty

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184J Procedure if defendant pleads guilty

- (1) If, after receiving the advice in section 184I, the defendant pleads guilty, then the Court must record the plea and,—
- (a) if the Court has jurisdiction to sentence the defendant under section 28A of the District Courts Act 1947, either proceed immediately to sentence the defendant, or adjourn the proceedings for the sentencing of the defendant, in accordance with section 28F of that Act; and
- (b) if the Court does not have jurisdiction to sentence the defendant, commit the defendant to the High Court for sentence.
- (2) Subsection (1) is subject to section 66(6) and (6A).
- (3) Section 47 of this Act and section 51 of the Bail Act 2000 apply on an adjournment under subsection (1)(a).
- (4) If the defendant pleads guilty and is committed to the High Court for sentence, the following statement must be endorsed on the information:
“I plead guilty to the offence charged in the within information.
“Dated [*date*]”
- (5) The defendant must sign the statement referred to in subsection (4) (or, if the defendant is unable to sign the statement, the defendant must put his or her mark on it), and the presid-

ing District Court Judge, Justices, Community Magistrate, or Community Magistrates must witness that signature or mark.

Compare: 1957 No 87 s 68(1)(b), (2), (3)

Section 184J: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184K If defendant pleads guilty, no objection may be taken and plea must not be withdrawn without leave

No objection on any ground whatever may be taken to any information to which the defendant has pleaded guilty, and the defendant may not withdraw the plea except with the leave of a Judge of the Court in which the defendant is to be sentenced.

Compare: 1957 No 87 s 169

Section 184K: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184L Defendant committed for sentence must be brought before High Court

- (1) A defendant who is committed to the High Court for sentence must, as soon as practicable, be brought before the High Court for sentence.
- (2) Any Judge of the High Court has the same powers of sentencing or of otherwise dealing with the defendant, and of finally disposing of the charge and of all incidental matters, as he or she would have had if the defendant had pleaded guilty to the offence charged, in the High Court.

Compare: 1957 No 87 s 170

Section 184L: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Procedure if defendant does not plead guilty

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184M Procedure if standard committal occurs or defendant does not plead guilty

- (1) If section 177 (the standard committal) applies, or if, after receiving the advice in section 184I, the defendant does not plead guilty, then the Court must,—

- (a) if the defendant is a natural person, commit the defendant for trial; or
 - (b) if the defendant is a corporation, make an order empowering the filing of an indictment in respect of the offence named in the order.
- (2) If the defendant is a corporation, for the purposes of any enactments referring to committal for trial, an order under subsection (1)(b) is deemed to be a committal for trial.
- (3) This section is subject to section 66(6) of this Act and to section 345 of the Crimes Act 1961.

Compare: 1957 No 87 s 170

Section 184M: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184N Court to which defendant must be committed

- (1) The Court to which a defendant must be committed for trial under section 184M is as follows:
- (a) in respect of any offence that a District Court has jurisdiction to try under section 28A(1)(a), (b), (d), (e), or (f) of the District Courts Act 1947, either—
 - (i) the District Court exercising that jurisdiction that is nearest to the committing Court; or
 - (ii) any other District Court exercising that jurisdiction that is specified in regulations made under this Act as being a Court to which the defendant may be committed for trial (even if not nearest to the committing Court):
 - (b) in respect of any other offence, either—
 - (i) the High Court at the place where sittings of the Court are held that is nearest to the committing Court; or
 - (ii) the High Court at any other place that may be specified in regulations made under this Act as being the place at which sittings of the High Court are conducted and to which the defendant may be committed for trial (even if not nearest to the committing Court).

- (2) Nothing in this section affects section 28J of the District Courts Act 1947.

Compare: 1957 No 87 s 168A(1)

Section 184N: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184O Court to which defendant must be committed if related charge must be heard in High Court

- (1) This section applies if the defendant has been charged (either alone or together with some other person or persons) with offences arising from an incident or series of incidents, or a transaction or set of circumstances, in respect of which he or she must be committed to the High Court on at least 1 charge.
- (2) In each case to which this section applies, despite section 184N(1), the Court to which the defendant must be committed for trial under section 184M must be either—
- (a) the High Court at the place where sittings of the Court are held that is nearest to the committing Court; or
 - (b) the High Court at any other place that is specified in regulations made under this Act as being a place at which sittings of the High Court are conducted and to which the defendant may be committed for trial (even if not nearest to the committing Court).
- (3) A High Court Judge may, under section 184Q(2), direct that an indictable offence that may be tried in a District Court under section 28A of the District Courts Act 1947 be tried in that Court even if the defendant has been committed to the High Court for trial under subsection (1).
- (4) Nothing in this section affects section 28J of the District Courts Act 1947.

Compare: 1957 No 87 s 168A(2)–(4)

Section 184O: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184P Committal to wrong Court

- (1) If a defendant is committed to a Court for trial and the Court to which he or she is committed is not the correct Court, the Court to which the defendant has been committed may transfer the

proceeding to the appropriate Court specified in section 184N or 184O.

- (2) If this section applies, and the Court so directs, the Registrar must ensure that notice is given to the defendant's counsel or solicitor, or to the defendant if the defendant is not represented of the date and time at which the defendant must report to the Court to which the proceedings have been transferred, and—
 - (a) if the defendant has been released on bail, making the necessary variations in the conditions of bail; and
 - (b) if the defendant has been remanded in custody, making the necessary alterations to the warrant of commitment.

Section 184P: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184Q High Court Judge must determine trial Court in certain cases

- (1) This section applies if a defendant is committed to the High Court for trial for any offence referred to in Part 1 of Schedule 1A of the District Courts Act 1947.
- (2) If this section applies, a Judge of the High Court must determine on the papers whether it is more appropriate for the trial to be held in a District Court, and, if the Judge so determines, the Judge may transfer the case to the District Court exercising jurisdiction under Part 2A of the District Courts Act 1947 that is nearest to the committing Court.
- (3) No party is entitled to be heard by, or to make submissions to, the Judge under subsection (2).
- (4) In determining the appropriate Court under subsection (2), the Judge must have regard to the following matters:
 - (a) the gravity of the offence charged; and
 - (b) the complexity of the issues likely to arise in the proceedings; and
 - (c) the desirability of the prompt disposal of trials; and
 - (d) the interests of justice generally.
- (5) Nothing in this section applies to proceedings transferred to the High Court by order made under section 28J of the District Courts Act 1947.

- (6) Nothing in this section applies to a proceeding involving a witness who is the subject of an anonymity order made under section 112 of the Evidence Act 2006.
- (7) Nothing in this section applies to a proceeding where the defendant is charged with a stage-3 offence (within the meaning of section 86A of the Sentencing Act 2002).

Compare: 1957 No 87 s 168AA

Section 184Q: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 184Q(6): amended, on 7 July 2010, by section 7 of the Summary Proceedings Amendment Act 2010 (2010 No 87).

Section 184Q(7): added, on 1 June 2010, by section 13 of the Sentencing and Parole Reform Act 2010 (2010 No 33).

184R Notice of transfer of case to District Court

- (1) If an order transferring a case to a District Court is made under section 184Q, a Registrar of the High Court must give, or cause to be given,—
 - (a) to the defendant's counsel or solicitor, or to the defendant if the defendant is not represented,—
 - (i) a copy of the order; and
 - (ii) a written notice informing the defendant of the date and time at which the defendant must report to the District Court to which the case has been transferred and, if the defendant has been released on bail, making the necessary variations in the conditions of bail; and
 - (b) to each surety of that defendant under any surety bond,—
 - (i) a copy of the order; and
 - (ii) a copy of the written notice given to the defendant under paragraph (a)(ii).
- (2) If subsection (1) is complied with in relation to a defendant and in relation to each surety of that defendant under a surety bond, the terms of that surety bond are deemed to be varied accordingly.

Compare: 1957 No 87 s 168AB

Section 184R: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184S Defendant must be advised of right to apply for trial before Judge without jury

- (1) Subsection (2) applies if the Court commits a defendant for trial for any offence other than one referred to in section 361B(5) of the Crimes Act 1961.
- (2) If this subsection applies, the Registrar must, either on committal or as soon as practicable after committal, give, or cause to be given, to the defendant's counsel or solicitor, or to the defendant if he or she is not represented, a written notice of the defendant's right, under section 361B, to apply to a Judge of the High Court or a trial Judge of the District Court, as the case may require, for an order that the defendant be tried before a Judge without a jury.
- (3) A notice under subsection (2) must be in the prescribed form.
- (4) The fact that the written notice was given to the defendant's counsel or solicitor, or to the defendant, must be recorded on the form of committal of the defendant for trial.

Compare: 1957 No 87 s 168C

Section 184S: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Procedure after committal for trial or sentence

Heading: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184T Dealing with defendant committed for trial or for sentence

- (1) If a defendant is committed for trial at a standard committal, the Court must remand the defendant to appear in the Court to which the defendant is committed for trial, and—
 - (a) if the defendant is in custody at the time of committal, the defendant must be remanded in custody; and
 - (b) if the defendant is on bail at the time of committal, the Court, despite the absence of the defendant, must impose the condition required by section 52(2) of the Bail Act 2000 and that condition and the conditions of bail to which the defendant is subject continue in force until—

- (i) the date on which the defendant is due to appear in the Court to which the defendant is committed for trial; or
 - (ii) any earlier date on which the defendant appears before a Court; and
 - (c) the Registrar must ensure that notice of the defendant's committal and the conditions required by section 52(2) of the Bail Act 2000 are given to the defendant, the defendant's counsel (if any), the prosecutor, and also to the sureties under any surety bond.
- (2) If a defendant committed for trial (whether at a standard committal process or at a committal hearing) or for sentence is remanded in custody, whether or not the defendant is present at the time of committal, the District Court must issue a warrant in the prescribed form for the defendant's detention in a prison—
 - (a) pending and during the defendant's trial; or
 - (b) pending the defendant being brought up for sentence and during his or her sentencing.
- (3) Despite subsection (2), the District Court may, instead of issuing a warrant under that subsection, make an order for the defendant's detention in a hospital or secure facility pending the defendant's trial if the District Court is satisfied of the matters in subsection (4).
- (4) Before making an order under subsection (3), the District Court must be satisfied, on the production of a certificate or certificates by 2 health assessors, that—
 - (a) the defendant is mentally impaired; and
 - (b) the defendant's mental condition requires that, in the defendant's own interest, the defendant should be detained in a hospital or secure facility instead of in a prison.
- (5) In subsections (3) and (4),—
 - (a) **health assessor** has the same meaning as in section 4(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003:
 - (b) **hospital** has the same meaning as in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992:

- (c) **secure facility** has the same meaning as in section 9(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

Section 184T: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 184T(3): amended, on 7 July 2010, by section 8(1) of the Summary Proceedings Amendment Act 2010 (2010 No 87).

Section 184T(4): substituted, on 7 July 2010, by section 8(2) of the Summary Proceedings Amendment Act 2010 (2010 No 87).

Section 184T(5): added, on 7 July 2010, by section 8(2) of the Summary Proceedings Amendment Act 2010 (2010 No 87).

184U Evidence of witness taken after defendant committed for trial

- (1) A District Court Judge may, after a defendant has been committed for trial, make an order that the evidence of a person who did not give evidence (whether by formal written statement or orally) be taken.
- (2) Before making an order under subsection (1), the Judge must be satisfied that—
 - (a) the person is able to give evidence; and
 - (b) it is in the interests of justice that the evidence of that person be taken.
- (3) An order under subsection (1) may be made on an application by the prosecutor or by the defendant.
- (4) An order under subsection (1) must specify whether the evidence of the witness is to be provided by way of formal written statement or taken orally.
- (5) If the Judge orders that the person's evidence be taken orally,—
 - (a) the order must specify the time and place at which the evidence of the witness must be taken; and
 - (b) the party on whose application an order under subsection (1) is made must give notice to the other party, in the prescribed form, of the time and place at which the evidence must be taken.
- (6) The provisions of this Part as to the taking of the evidence of witnesses at a committal hearing, as far as they are applicable and with the necessary modifications, apply with respect to

any evidence taken under this section as if that evidence were taken at a committal hearing.

- (7) The formal written statement provided, or oral evidence taken, under this section—
- (a) must be forwarded to the Registrar of the Court in the place to which the defendant was committed for trial; and
 - (b) has effect as if it were a formal written statement or oral evidence taken at a committal hearing.

Compare: 1957 No 87 s 178

Section 184U: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184V Notice to witnesses to attend at trial Court

- (1) The presiding District Court Judge, Justices, Community Magistrate, Community Magistrates, or Registrar may issue to any person specified in subsection (2) a notice requiring that person, if the defendant is committed for trial, to attend at the High Court or the District Court, as the case may be, in accordance with the terms of the notice, to give evidence.
- (2) The persons to whom a notice under subsection (1) may be issued are—
- (a) any person who made a formal written statement that was provided in evidence for the purposes of the standard committal or at the committal hearing; and
 - (b) any person whose evidence was taken under section 184U; and
 - (c) any person who gave oral evidence at the committal hearing (if there was one).
- (3) A notice under subsection (1)—
- (a) must be in the prescribed form; and
 - (b) has effect as if it were a summons to a witness issued out of the High Court or District Court, as the case may be; and
 - (c) must be served personally, by an officer of the District Court or by any member of the police, on the person to whom it is addressed.
- (4) The service of a notice under subsection (1) may be proved in the High Court or District Court, as the case may be,—

- (a) by an affidavit made by the person who served the notice that shows the fact and the time of service; or
 - (b) by the person who served the notice on oath at the trial; or
 - (c) by an endorsement on a copy of the notice that shows the fact and time of service, and that is signed by the person effecting service.
- (5) Every person who wilfully endorses any false statement of the fact or time of service on a copy of the notice commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$2,000 or to both.
- (6) If, at the conclusion of a committal hearing, the defendant is discharged, every notice given to a witness under subsection (1) is deemed to be cancelled, and the Registrar must cause notice of that cancellation, in the prescribed form, to be given to the witness.
- (7) A notice of cancellation under subsection (6) must be given by delivering it to the witness personally, or by sending it to him or her by registered post addressed to the witness's last known place of residence.

Compare: 1957 No 87 s 181

Section 184V: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184W On committal, documents, etc, must be sent to trial Court or sentencing Court

- (1) If any person is committed for trial or sentence (other than under section 161), the Registrar of the District Court must immediately send to the Registrar of the Court in the place where the trial is to be held or the person is to be sentenced—
- (a) the information; and
 - (b) all formal written statements; and
 - (c) the record of any oral evidence; and
 - (d) any video record of the complainant's evidence provided—
 - (i) for the purposes of the standard committal in accordance with section 185D; or

- (ii) at the committal hearing in accordance with section 185D; and
 - (e) the form of committal and any other documents relating to the committal; and
 - (f) any exhibits in his or her custody; and
 - (g) the notice of bail (if any) and any surety bond; and
 - (h) any certificate filed by the Commissioner of Police under section 108(2) of the Evidence Act 2006 in respect of any witness; and
 - (i) a copy of the notice to attend the Court issued to any witness.
- (2) If any person is committed for sentence under section 161, or under section 28G of the District Courts Act 1947 following a plea of guilty under section 161, the Registrar of the District Court must immediately send to the Registrar of the High Court in the place where the person is to be sentenced—
- (a) the information; and
 - (b) a summary of the facts (which must be provided by the prosecutor to the Registrar); and
 - (c) any evidence upon which that person has pleaded; and
 - (d) the notice of bail (if any) and any surety bond; and
 - (e) any other documents or exhibits relating to the committal.

Compare: 1957 No 87 s 182

Section 184W: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184X Every party entitled to records of oral evidence or summary of facts

- (1) Every party to the proceedings is entitled to a copy of any record of oral evidence to which section 184W(1)(c) applies, without fee.
- (2) Every party to the proceedings is entitled to a copy of any summary of facts and evidence sent to the Registrar of the High Court in accordance with section 184W(2)(b) and (c), without fee.
- (3) If the evidence of the complainant is to be given by way of video record in accordance with section 185D, the defendant is not entitled to a copy of the video record, but is entitled to view

the video record within the Court precincts in the presence of an officer of the Court.

Compare: 1957 No 87 s 183

Section 184X: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

184Y When formal written statement or record of oral evidence may be read in evidence at trial

- (1) If the defendant is committed for trial, any oral evidence that he or she gave at a committal hearing may, without further proof, be given in evidence against him or her at his or her trial.
- (2) If the conditions in subsection (3)(a) or (b) are met, either or both of the following items may, without further proof, be read or given as evidence for any party at the trial of a person who has been committed for trial:
 - (a) any formal written statement admitted as evidence at that person's standard committal or committal hearing;
 - (b) any record of oral evidence given by a witness at that person's committal hearing.
- (3) A formal written statement or record of oral evidence may be read or given as evidence under subsection (2)—
 - (a) if it is proved, by evidence that the Judge considers sufficient (whether legally admissible or not), that the person who made the statement or who gave the oral evidence is—
 - (i) out of New Zealand; or
 - (ii) dead; or
 - (iii) so ill as not to be able to travel; or
 - (b) if all parties consent.
- (4) A formal written statement or record of oral evidence may be read or given as evidence under subsection (2)—
 - (a) for the offence in respect of which that statement was taken or that oral evidence was given; or
 - (b) for any other offence arising out of the same transaction, or set of circumstances, or incident, or series of incidents, as that offence.
- (5) A formal written statement or record of oral evidence must not be read as evidence if it is proved that—

- (a) the formal written statement was not taken and admitted in evidence in accordance with section 162; or
- (b) the record of oral evidence was not signed by the District Court Judge or Justices or Community Magistrate or Community Magistrates purporting to sign it; or
- (c) the record of oral evidence was not taken in accordance with the provisions of this Part.

Compare: 1957 No 87 ss 163(4), 184

Section 184Y: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

185 Witness about to leave New Zealand may be arrested

- (1) If any person is committed for trial, any District Court Judge, Justice, or Community Magistrate who is satisfied, on oath, that any person referred to in subsection (2) is about to leave New Zealand may issue a warrant in the prescribed form for the arrest of that person.
- (2) The persons are—
 - (a) any person who has been summoned to give evidence at the trial; or
 - (b) any person on whom a notice has been served under this Part to attend at the High Court or District Court.
- (3) If any person is arrested under subsection (1), the provisions of section 20(4A) to (4D), so far as they are applicable and with any necessary modifications, apply.

Compare: 1957 No 87 s 185

Section 185: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Part 5A
Special provisions relating to standard
committal process and committal hearings
in cases of sexual nature

Part 5A: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

185A Application

- (1) This Part applies to committal hearings for and, so far as applicable, the standard committal for, any of the following offences:
- (a) any offence against sections 128 to 142A of the Crimes Act 1961:
 - (b) any offence against section 144A of the Crimes Act 1961:
 - (c) any other offence against the person of a sexual nature:
 - (d) being a party to the commission of any offence referred to in paragraph (a), (b), or (c):
 - (e) conspiring with any person to commit any of those offences.
- (2) Subsection (1) is subject to section 185B.

Section 185A: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

185B Certain hearings to be conducted by Judge

Every Court that hears the oral evidence of a complainant at a committal hearing must be presided over by a District Court Judge if the defendant is charged with any of the following offences:

- (a) sexual violation:
- (b) attempted sexual violation:
- (c) assault with intent to commit sexual violation:
- (d) an offence against section 129A of the Crimes Act 1961 (inducing sexual connection by coercion):
- (e) an offence against section 142A of that Act (compelling indecent act with animal):
- (f) being a party to the commission of any offence referred to in paragraphs (a) to (e):
- (g) conspiring with any person to commit any of those offences.

Section 185B: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

185C Evidence of complainant

- (1) Despite anything in Part 5, at any committal hearing to which this Part applies, the complainant's evidence must be given in

- the form of a written statement, and the complainant must not be examined or cross-examined on that statement unless—
- (a) the Court is satisfied that the complainant has been advised of the right to give evidence in the form of a written statement but nevertheless wishes to give evidence orally; or
 - (b) the Court orders, either of its own motion or on the application of the defendant, that the complainant's evidence be given orally on the ground that it is necessary to hear the witness in order to determine whether there is sufficient evidence to commit the defendant for trial.
- (2) At any committal hearing, no person may be present in the courtroom except the following:
- (a) the Judge;
 - (b) the prosecutor;
 - (c) the defendant and any person who is for the time being acting as custodian of the defendant;
 - (d) any barrister or solicitor engaged in the proceedings;
 - (e) any officer of the Court;
 - (f) any person who is for the time being responsible for recording the proceedings;
 - (g) the member of the police in charge of the case;
 - (h) any accredited news media reporter;
 - (i) any person whose presence is requested by the complainant;
 - (j) any person expressly permitted by the Judge to be present.
- (3) Before the complainant commences to give evidence at the committal hearing, the Judge must—
- (a) ensure that no person other than those referred to in subsection (2) is present in the courtroom; and
 - (b) advise the complainant of the complainant's right to request the presence of any person under subsection (2)(i).

Section 185C: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

185CA Child complainant's evidence may be given by videotape*[Repealed]*

Section 185CA: repealed, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

185D Child complainant's evidence may be given by video record

- (1) Despite anything in Part 5 or section 185C, at any standard committal or committal hearing to which this Part applies, the evidence of the complainant may be provided or given, as the case requires, in the form of a video record if,—
 - (a) in the case of a standard committal,—
 - (i) the complainant is under the age of 17 years or in the opinion of the prosecutor the complainant is mentally handicapped; and
 - (ii) the Court is satisfied that the video record has been made, and is identified, in the prescribed manner and form:
 - (b) in the case of a committal hearing an order has been made under section 178 for the complainant to give oral evidence at a committal hearing; and
 - (i) either—
 - (A) the complainant is under the age of 17 years; or
 - (B) it is apparent to the Court from viewing the video record, or from some other admissible evidence, that the complainant is mentally handicapped; and
 - (ii) the Court is satisfied that the video record has been made, and is identified, in the prescribed manner and form.
- (2) If the video record is shown at a committal hearing, only those persons specified in section 185C(2), and any witness involved in, and testifying about, the making of the video record, may be present in the courtroom.
- (3) No report or account of any matters shown in the video record may be published, and every person who publishes a report or account of those matters commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

Section 185D: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 185D(2): amended, on 7 July 2010, by section 9 of the Summary Proceedings Amendment Act 2010 (2010 No 87).

185E Power of Court to prohibit publication of certain details

- (1) If, at the time of the standard committal or in any committal hearing to which this Part applies, the Court is of the opinion that the interests of the complainant so require, it may make an order forbidding the publication of any report or account giving details of the criminal acts alleged to have been performed on the complainant, or of any acts that the complainant is alleged to have been compelled or induced to perform, to consent to, or to acquiesce in.
- (2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who commits a breach of any order made under subsection (1), or who evades, or attempts to evade, that order.

Section 185E: substituted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

185F Other powers of Court preserved

Nothing in section 185C(2) or 185D or 185E limits or affects the powers of the Court to exclude any person or forbid any report or account of any evidence under section 206, or under section 138 of the Criminal Justice Act 1985, or under any other enactment.

Section 185F: inserted, on 29 June 2009, by section 12 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Part 6
Conservation of the peace

Sureties of the peace

186 Application for order for bond to keep the peace

Any person may apply, by complaint, to a Court presided over by a District Court Judge for an order requiring any other person to enter into a bond, either with or without sureties, for keeping the peace, on any of the following grounds:

- (a) that the complainant has cause to fear that the defendant—
 - (i) will do the complainant or his or her wife, husband, civil union partner, or de facto partner or his or her child or any member of his or her household bodily harm; or
 - (ii) will destroy or damage the complainant's house; or
 - (iii) will procure any other person to do any such injury as aforesaid; or
- (b) that the defendant has, to or in the presence of the complainant for the purpose of annoyance and provocation, or to the common annoyance of members of the public,—
 - (i) used provoking or insulting language; or
 - (ii) exhibited any offensive writing or object; or
 - (iii) done any offensive act; or
- (c) that the defendant has threatened to do, or to procure some other person to do, any act which if done would constitute an offence under any of the following provisions of the Crimes Act 1961:
 - (i) subsection (1) of section 188 (which relates to wounding with intent to do grievous bodily harm):
 - (ii) subsection (2) of section 189 (which relates to injuring with intent to injure):
 - (iii) section 196 (which relates to common assault):
 - (iv) section 267 (which relates to arson):
 - (v) section 269 (which relates to intentional damage):
 - (vi) section 270 (which relates to endangering transport):
 - (vii) section 271 (which relates to waste or diversion of electricity, gas, or water).
 - (viii) *[Repealed]*
 - (ix) *[Repealed]*
 - (x) *[Repealed]*
 - (xi) *[Repealed]*

Compare: 1927 No 37 ss 13, 14

Paragraph (a)(i) was substituted, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3).

Paragraph (a)(ii) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting the words “the complainant’s” for the word “his”.

Paragraph (c) was substituted by section 24(1) Summary Proceedings Amendment Act 1973 (1973 No 117).

Paragraph (c)(iv) to (c)(vii) was substituted, as from 1 October 2003, by section 34 Crimes Amendment Act 2003 (2003 No 39).

Paragraph (c)(viii) to (c)(xi) was repealed, as from 1 October 2003, by section 34 Crimes Amendment Act 2003 (2003 No 39).

187 Making of order for bond

- (1) If on the hearing of any such complaint the Court considers that there is good ground to do so, it may order the defendant to enter, with or without a surety or sureties, as the Court thinks fit, into a bond in such sum or sums as the Court thinks sufficient, subject to the condition that the defendant keep the peace towards the complainant and refrain from doing the act feared or from repeating the conduct complained of or from doing the act threatened, as the case may be, for such time, not exceeding 1 year, from the date of the bond as is fixed by the order.
- (2) No order shall be made under this section, unless—
 - (a) in the case of a complaint under paragraph (a) of section 186, the Court is satisfied that the complainant has just cause for his fear; or
 - (b) in the case of a complaint under paragraph (b) of that section, the Court is of opinion that the conduct complained of is likely to be repeated and may tend to provoke a breach of the peace; or
 - (c) in the case of a complaint under paragraph (c) of that section, the Court is satisfied that there is just cause for fear that the defendant will, if not prevented, carry the threats into execution.
- (3) A bond under this section shall be in the prescribed form, and may be entered into by any of the parties to it before any District Court Judge or Justice or Registrar, and it shall not be necessary for all the parties to the bond to be present at the same time or at the same place, and more than 1 form of bond may

be signed. The person before whom any bond is entered into shall give to each of the persons entering into it before him a notice in the prescribed form.

- (4) In any case where a surety or sureties are required, the Court may at any time, if it is satisfied that the defendant is unable to obtain the surety or sureties, order that the surety or, as the case may be, any or all of the sureties be dispensed with.

Compare: 1927 No 37 ss 13, 16, 17; 1948 No 20 s 9(2)

188 Making of order for bond where person charged with offence

Where any person is charged before a Court presided over by a District Court Judge with an offence and the evidence establishes 1 of the grounds which would justify the making of an order for a bond for keeping the peace, then, whether or not the defendant is convicted of the offence and whether or not any penalty is imposed on him in respect of the offence, the Court may make such an order as if an application therefor had been made under section 186.

Compare: 1927 No 37 ss 20, 21

189 Refusal to enter into bond

If a defendant refuses to enter into a bond for keeping the peace when ordered or fails to obtain surety or sureties as required by the order, the Court may order that he be committed to a prison for any period not exceeding 2 months:

Provided that a defendant who has failed to obtain the required surety or sureties shall not be ordered to be committed to a prison if he satisfies the Court that he has taken reasonable steps to obtain them:

Provided further that a defendant who has been committed to a prison shall be immediately released if he enters into the bond, or obtains the required surety or sureties, or before the expiry of the period of his detention satisfies a Court presided over by a District Court Judge that he had taken reasonable steps to obtain the surety or sureties.

Compare: 1927 No 37 s 19

190 Persons imprisoned in default of finding sureties may be released on death of person for whose protection order made

If the person for whose protection a Court has required the defendant to find a surety or sureties of the peace dies, and the defendant is then in a prison in default of finding the surety or sureties, a Court presided over by a District Court Judge may, if it thinks fit, order that the defendant be released from custody without finding the surety or sureties.

Compare: 1927 No 37 s 23

191 Estreat of bond

- (1) Any person who has obtained an order requiring any other person to enter into a bond for keeping the peace may apply to a Court presided over by a District Court Judge for an order for estreat of the bond on the ground that that other person has failed to keep the condition of the bond.
- (2) On the filing of the application the Registrar shall fix a time and place for the hearing of the application, and shall, not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed.
- (3) If on the hearing of any application made under this section it is proved to the satisfaction of the Court that the condition of the bond has not been kept, the Court may make an order in the prescribed form to estreat the bond to such an amount as it thinks fit as to any person bound thereby on whom notice is proved to have been served in accordance with this section. Any penalty payable in accordance with this subsection shall be recoverable as if it were a fine.

Compare: 1927 No 37 ss 31, 32

Special constables

192 Appointment and powers of special constables

[Repealed]

Section 192: repealed, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Part 7

Protection of Justices and Community Magistrates

This heading was substituted for the heading “PROTECTION OF DISTRICT COURT JUDGES AND JUSTICES”, as from 30 June 1998, by section 44 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

This heading was substituted for the heading “Protection of District Court Judges, Justices, and Community Magistrates”, as from 20 May 2004, by section 3 Summary Proceedings Amendment Act 2004 (2004 No 47).

193 No action against Justice unless act in excess of jurisdiction or without jurisdiction

- (1) No action shall be brought against any Justice or Community Magistrate for any act done by him, unless he has exceeded his jurisdiction or has acted without jurisdiction.
- (2) Where a conviction or order is entered or made or by 1 or more Justices or 1 or more Community Magistrates and a warrant to seize or warrant of commitment is granted thereon bona fide by some other Justice or Community Magistrate, no action shall be brought against the Justice who granted the warrant by reason of any defect in the conviction or order or of any want of jurisdiction in the Justice or Justices or Community Magistrate or Community Magistrates who entered or made it.

Compare: 1927 No 37 ss 341, 344, 345, 348

The heading to section 193 was amended, as from 20 May 2004, by section 4(1) Summary Proceedings Amendment Act 2004 (2004 No 47), by omitting the words “District Court Judge or”.

Subsection (1) was amended, as from 30 June 1998, by section 45(a) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Subsection (1) was amended, as from 20 May 2004, by section 4(2) Summary Proceedings Amendment Act 2004 (2004 No 47), by omitting the words “District Court Judge or”.

Subsection (2) was amended by section 21 Summary Proceedings Amendment Act 1980 (1980 No 84) by omitting the words “or a warrant issued under section 87 of this Act”.

Subsection (2) was amended, as from 30 June 1998, by section 45(b)–(d) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or one or more Community Magistrates”, “or Community Magistrate”, and “or Community Magistrate or Community Magistrates”.

Subsection (2) was amended, as from 20 May 2004, by section 4(3)(a) Summary Proceedings Amendment Act 2004 (2004 No 47), by omitting the words “by a District Court Judge or”.

Subsection (2) was amended, as from 20 May 2004, by section 4(3)(b) Summary Proceedings Amendment Act 2004 (2004 No 47), by omitting the words “District Court Judge or”.

Subsection (2) was amended, as from 9 October 2006, by section 27 Summary Proceedings Amendment Act 2006 (2006 No 13) by substituting the words “warrant to seize or warrant” for the words “warrant of distress or”.

194 No action against Justice or Community Magistrate to be brought in District Court

No action against any Justice or Community Magistrate by any person claiming to have been injured by an act done by the Justice or Community Magistrate in excess of jurisdiction or without jurisdiction shall be brought in a District Court.

Compare: 1927 No 37 s 353

The heading to section 195 was amended, as from 20 May 2004, by section 5(1) Summary Proceedings Amendment Act 2004 (2004 No 47), by omitting the words “District Court Judge or”.

Section 194 was amended, as from 30 June 1998, by section 46 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Section 194 was amended, as from 20 May 2004, by section 5(2) Summary Proceedings Amendment Act 2004 (2004 No 47), by omitting the words “District Court Judge or” in both places they appear.

195 Onus of proof

In any action brought against a Justice or Community Magistrate by a person claiming to have been injured by an act done by the Justice or Community Magistrate in excess of jurisdiction or without jurisdiction, the onus of proving the excess or want of jurisdiction shall lie upon the person alleging it.

Compare: 1927 No 37 s 365

Section 195 was amended, as from 30 June 1998, by section 47 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Section 195 was amended, as from 20 May 2004, by section 6 Summary Proceedings Amendment Act 2004 (2004 No 47), by omitting the words “District Court Judge or” in both places they appear.

196 Plaintiff may be ordered to give security for costs

- (1) In any action brought against a Justice or Community Magistrate by a person claiming to have been injured by an act done by the Justice or Community Magistrate in excess of jurisdiction or without jurisdiction, the High Court or any Judge of that Court upon application by the Justice or Community Magistrate at any time before the day fixed for the trial of the action, may, at the discretion of the Court or Judge, order the plaintiff to give security for the costs of the action to the satisfaction of the Registrar of the High Court in a sum not exceeding \$500.
- (2) If security is ordered to be given, the Court or Judge may direct that in the meantime all proceedings shall be stayed.

Compare: 1927 No 37 ss 357, 359.

Subsection (1) was amended by section 22 Summary Proceedings Amendment Act 1980 (1980 No 84) by substituting the expression “\$500” for the expression “\$100”.

Subsection (1) was amended, as from 30 June 1998, by section 48 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Subsection (1) was amended, as from 20 May 2004, by section 7 Summary Proceedings Amendment Act 2004 (2004 No 47), by omitting the words “District Court Judge or” in each place they occur.

196A Indemnity to District Court Judge

[Repealed]

Subsection (1) was repealed, as from 20 May 2004, by section 7 Summary Proceedings Amendment Act 2004 (2004 No 47).

197 Indemnity to Justice or Community Magistrate

- (1) Any Justice or Community Magistrate against whom a judgment has been entered to pay damages or costs to any person injured as a result of any act done by the Justice or Community Magistrate in excess of jurisdiction or without jurisdiction shall, on production by him of a certificate signed by a Judge of the High Court stating that in his opinion the Justice or Community Magistrate acted in good faith under the belief that he had in fact jurisdiction, and further that in the opinion of the Judge in all the circumstances he ought fairly and reasonably to be excused, be indemnified by the Crown to the full amount of the judgment.

- (2) Where a claim against a Justice or Community Magistrate is settled by the payment by him of, or an agreement by him to pay, an agreed amount for damages or costs before action is commenced against him or before or during trial of the action, he shall be indemnified by the Crown to the full amount paid or agreed to be paid by him, on production of a certificate as aforesaid stating that in the opinion of the Judge the amount paid or agreed to be paid was fair and reasonable:
Provided that, if he is not so satisfied, the Judge may issue the certificate in respect of such less sum as in his opinion would have been or would be adequate to settle the plaintiff's claim, and in that case the Justice or Community Magistrate shall be indemnified by the Crown to the amount specified in the certificate.
- (3) Application for such a certificate may be made by the Justice or Community Magistrate at any time to a Judge in Chambers, and the Judge shall have power to grant the certificate after considering such evidence as may be given before him either orally or in the form of affidavits.
- (4) A copy of the application shall be served by the Justice or Community Magistrate on the Attorney-General, who shall be entitled to appear and oppose it.

Subsection (1) in three places, subsection (2) in two places, and subsection (3) and (4) were amended by section 3(2) Summary Proceedings Amendment Act 1979 (1979 No 126) by omitting the words "Magistrate or".

Section 197 was amended, as from 30 June 1998, by section 49 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words "or Community Magistrate".

Part 8

General provisions

Search

198 Search warrants

- (1) Any District Court Judge or Justice or Community Magistrate, or any Registrar (not being a constable), who, on an application in writing made on oath, is satisfied that there is reasonable ground for believing that there is in any building, aircraft, ship, carriage, vehicle, box, receptacle, premises, or place—

- (a) any thing upon or in respect of which any offence punishable by imprisonment has been or is suspected of having been committed; or
 - (b) any thing which there is reasonable ground to believe will be evidence as to the commission of any such offence; or
 - (c) any thing which there is reasonable ground to believe is intended to be used for the purpose of committing any such offence—
may issue a search warrant in the prescribed form.
- (1A) Despite subsection (1), no search warrant may be issued under this section in respect of an offence against a provision of the Films, Videos, and Publications Classification Act 1993.
- (2) Every search warrant shall be directed either to any constable by name or generally to every constable. Any search warrant may be executed by any constable.
- (3) Every search warrant to search any building, aircraft, ship, carriage, vehicle, premises, or place shall authorise any constable at any time or times within 1 month from the date thereof to enter and search the building, aircraft, ship, carriage, vehicle, premises, or place with such assistants as may be necessary, and, if necessary, to use force for making entry, whether by breaking open doors or otherwise; and shall authorise any constable to break open any box or receptacle therein or thereon, by force if necessary.
- (4) Every search warrant to search any box or receptacle shall authorise any constable to break open the box or receptacle, by force if necessary.
- (5) Every search warrant shall authorise any constable to seize any thing referred to in subsection (1).
- (6) In any case where it seems proper to him to do so, the District Court Judge, Justice, Community Magistrate, or Registrar may issue a search warrant on an application made on oath orally, but in that event he shall make a note in writing of the grounds of the application.
- (7) Every search warrant may be executed at any time by day or by night.

- (8) It is the duty of every one executing any search warrant to have it with him and to produce it if required to do so.

Compare: 1908 No 32 ss 61, 365(1), (1A), (2); 1922 No 35 s 4; 1927 No 37 ss 276, 277, 278, 279; 1955 No 67 s 2

Subsection (1) was amended, as from 30 June 1998, by section 50(a) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Subsection (1A) was inserted, as from 22 February 2005, by section 23(5) Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Subsection (6) was amended, as from 30 June 1998, by section 50(b) Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “Community Magistrate,”.

198A Procedure where certain documents seized from solicitors’ offices

- (1) This section applies to books of account and accounting records kept—
- (a) by a practitioner (within the meaning of the Lawyers and Conveyancers Act 2006) or an incorporated firm (within the meaning of that Act) in relation to any trust account money, being money that is subject to section 112 of that Act; or
 - (b) by a nominee company that—
 - (i) is subject to practice rules made by the Council of the New Zealand Law Society pursuant to section 96 of the Lawyers and Conveyancers Act 2006; and
 - (ii) is operated by a barrister and solicitor or an incorporated law firm as a nominee in respect of securities and documents of title held for clients.
- (2) Where, on the execution of any warrant issued under section 198, any document to which this section applies is seized, the following provisions shall apply:
- (a) the member of the Police who is executing the warrant shall, before leaving the premises on which the warrant is executed, prepare an inventory of all such documents so seized;
 - (b) if any solicitor having possession of the documents is present at the time of the execution of the warrant, the member of the Police shall show the inventory of docu-

- ments to the solicitor, and invite him to check the accuracy of the inventory:
- (c) if, in any case to which paragraph (b) applies, the solicitor wishes to dispute the seizure of any document listed on the inventory on the ground that the seizure of that document is outside the authority of the search warrant,—
 - (i) the solicitor shall mark the inventory in such a manner as to indicate his objection to the seizure of that document; and
 - (ii) the member of the Police shall, in the presence of the solicitor, place each document to which such objection is made in an envelope or package, seal the envelope or package, and deliver it as soon as practicable to a District Court Judge, together with a brief statement of the facts of the case:
 - (d) notwithstanding anything in paragraph (c), before removing any document from the premises, the member of the Police shall, on request by the solicitor, give the solicitor a reasonable opportunity to make a copy of the document:
 - (e) if no solicitor having possession of the documents is present at the time of the execution of the warrant, the member of the Police shall leave the inventory or a copy of it at the place at which the documents are seized, together with the address of the Police station to which any objection to the seizure of the documents should be sent under paragraph (f):
 - (f) if, in any case to which paragraph (e) applies, the solicitor wishes to dispute the seizure of any document listed on the inventory on the ground that the seizure of that document is outside the authority of the search warrant,—
 - (i) the solicitor shall, within 7 days after the date of the seizure of that document or within such further time as a District Court Judge may allow, notify the officer in charge of the Police station specified under paragraph (e), in writing, of his objection; and

- (ii) that officer in charge shall cause each document to which such objection is made to be delivered as soon as practicable to a District Court Judge, together with a brief statement of the facts of the case:
- (g) where any document is placed before a District Court Judge under paragraph (c)(ii) or paragraph (f)(ii), the Judge shall, after giving the parties a reasonable opportunity to be heard, determine whether or not the seizure of the document was within the authority of the search warrant:
- (h) if the Judge determines that the seizure of the document was within the authority of the search warrant, he shall direct that the document be returned to the Police; and if he determines that the seizure of the document was outside the authority of the search warrant, he shall direct that the document be returned to the solicitor, and any copy of the document or record of its contents made by the Police be surrendered to the solicitor or destroyed forthwith:
- (i) if the Judge determines that the seizure of the document was within the authority of the search warrant but that it contains any information to which the Police should not have access, he may make such order as he considers appropriate, whether for the excision or concealment of that information, or the extraction or copying of the information to which the Police are entitled to have access, or otherwise:
- (j) notwithstanding any other enactment or rule of law to the contrary, no copy of any document or record of the contents of any document that is ordered to be surrendered or destroyed under paragraph (h), and no evidence of any information to which the Police have been denied access by order of a District Court Judge made under paragraph (i), shall be admissible in any proceedings:
- (k) notwithstanding anything in paragraphs (e) to (h), while any document to which this section applies remains in the possession of the Police, any solicitor who, at the time of the seizure of the document, had possession of

the document shall, on request at any reasonable time, be given a reasonable opportunity to make a copy of the document.

- (3) Except as provided in paragraph (j) of subsection (2), nothing in that subsection shall limit or affect the admissibility of any evidence, or the discretion of any Court to admit or refuse to admit any evidence, in any proceedings.

Section 198A was inserted by section 2 Summary Proceedings Amendment Act (No 2) 1985 (1985 No 55).

Section 198A(1): substituted, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

198B Person with knowledge of computer or computer network to assist access

- (1) A constable executing a search warrant may require a specified person to provide information or assistance that is reasonable and necessary to allow the constable to access data held in, or accessible from, a computer that is on premises named in the warrant.
- (2) A specified person is a person who—
- (a) is the owner or lessee of the computer, or is in possession or control of the computer, or is an employee of any of the above; and
 - (b) has relevant knowledge of—
 - (i) the computer or a computer network of which the computer forms a part; or
 - (ii) measures applied to protect data held in, or accessible from, the computer.
- (3) A person may not be required under subsection (1) to give any information tending to incriminate the person.
- (4) Subsection (3) does not prevent a constable from requiring a person to provide information that—
- (a) is reasonable and necessary to allow the constable to access data held in, or accessible from, a computer that—
 - (i) is on premises named in the warrant concerned; and
 - (ii) contains or may contain information tending to incriminate the person; but
 - (b) does not itself tend to incriminate the person.

- (5) Subsection (3) does not prevent a constable from requiring a person to provide assistance that is reasonable and necessary to allow the constable to access data held in, or accessible from, a computer that—
- (a) is on premises named in the warrant concerned; and
 - (b) contains or may contain information tending to incriminate the person.
- (6) Every person commits an offence and is liable on summary conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding \$2,000 who fails to assist a constable when requested to do so under subsection (1).

Section 198B was inserted, as from 31 October 2003, by section 3 Summary Proceedings Amendment Act 2003 (2003 No 110).

199 Disposal of things seized

- (1) Where any constable seizes any thing under section 198, it shall be retained under the custody of a constable, except while it is being used in evidence or is in the custody of any Court, until it is disposed of under this section.
- (2) If the thing seized is—
- (a) any forged bank note, or any special paper, revenue paper, frame, mould, instrument, plate, wood, stone, material or other thing, of which the possession without lawful excuse is an offence; or
 - (b) any counterfeit coin, or any instrument, machine, tool, or other thing used or intended to be used for the purpose of coining, of which the possession with knowledge of its nature and without lawful excuse is an offence—
- an application shall be made by a constable, or by the prosecutor or informant, to the Court by which any charge relating to that thing is determined, or to a District Court Judge, for an order that it be forfeited, defaced, or destroyed; and on any such application the Court or the District Court Judge may make an order accordingly.
- (3) If the thing seized is a thing to which subsection (2) does not apply, the following provisions shall apply:
- (a) in any proceedings for an offence relating to the thing, the Court may order, either at the trial or hearing or on

- a subsequent application, that the thing be delivered to the person appearing to the Court to be entitled to it, or that it be otherwise disposed of in such manner as the Court thinks fit:
- (b) any constable may at any time, unless an order has been made under paragraph (a), return the thing to the person from whom it was seized, or apply to a District Court Judge for an order as to its disposal; and on any such application the District Court Judge may make any order that a Court may make under paragraph (a):
 - (c) if proceedings for an offence relating to the thing are not brought within a period of 3 months after the date of the seizure, any person claiming to be entitled to the thing may, after the expiration of that period, apply to a District Court Judge for an order that it be delivered to him; and on any such application the District Court Judge may adjourn the application, on such terms as he thinks fit, for proceedings to be brought, or may make any order that a Court may make under paragraph (a).
- (4) Where any person is convicted in any proceedings for an offence relating to any thing to which this section applies, and any order is made under this section, the operation of the order shall be suspended—
- (a) in any case until the expiration of the time prescribed by this Act or, as the case may require, the time prescribed by the Crimes Act 1961 for the filing of notice of appeal or of an application for leave to appeal; and
 - (b) where notice of appeal is filed within the time so prescribed, until the determination of the appeal; and
 - (c) where application for leave to appeal is filed within the time so prescribed, until the application is determined and, where leave to appeal is granted, until the determination of the appeal.
- (5) Where the operation of any such order is suspended until the determination of the appeal, the Court determining the appeal may by order annul or vary the order made under this section; and that order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

(6) In this section the term **Court** includes the High Court.

Compare: 1908 No 32 s 365(3), (4), (5), (6); 1927 No 37 s 280

Subsection (4)(a) was amended by substituting the reference to “the Crimes Act 1961” for a reference to “the Criminal Appeal Act 1945”.

200 Other enactments as to search warrants not affected

Nothing in sections 198 and 199 shall derogate from any special provisions made by any other enactment in respect of searches or search warrants.

Compare: 1908 No 32 s 365(7)

Tracking devices

This heading was inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200A Interpretation

For the purposes of this section and sections 200B to 200P,—

authorised officer means a person who is—

- (a) a member of the police; or
- (b) a Customs officer within the meaning of the Customs and Excise Act 1996

parent agency,—

- (a) in relation to an authorised officer who is a member of the police, means the New Zealand Police; and
- (b) in relation to an authorised officer who is a Customs officer within the meaning of the Customs and Excise Act 1996, means the New Zealand Customs Service

tracking device means a device that, when installed in or on a thing, may be used to help ascertain, by electronic or other means, either or both of the following:

- (a) the location of a thing or person;
- (b) whether a thing has been opened, tampered with, or in some other way dealt with

tracking device warrant means a warrant under section 200C(1).

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200B Application for tracking device warrant

- (1) An authorised officer may apply to a High Court Judge or a District Court Judge for a tracking device warrant.
- (2) The application may not be made unless the officer believes—
 - (a) that there are reasonable grounds to suspect that an offence has been, is being, or will be committed; and
 - (b) that information that is relevant to the commission of the offence (whether or not including the whereabouts of any person) can be obtained through the use of a tracking device; and
 - (c) that it is in the public interest to issue a warrant, taking into account the seriousness of the offence, the degree to which privacy or property rights are likely to be intruded upon, the usefulness of the information likely to be obtained, and whether it is reasonably practicable for the information to be obtained in another way.
- (3) The application must be made in writing and on oath and must set out the following particulars:
 - (a) the facts relied on to show that the requirements in subsection (2) are met; and
 - (b) any information that is necessary so that the Judge may assess the degree to which privacy or property rights are likely to be intruded on; and
 - (c) the period for which a warrant is requested; and
 - (d) the name of the parent agency.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200C Issue of tracking device warrant

- (1) On an application under section 200B, a High Court Judge or a District Court Judge may issue a warrant under this section if he or she is satisfied that the matters specified in section 200B(2)(a) to (c) are met and may impose any terms and conditions that the Judge sees fit.
- (2) The warrant must be directed to an authorised officer by name or generally to every authorised officer of the parent agency concerned, and must—
 - (a) state the offence or offences in respect of which it is issued; and

- (b) state a period (not exceeding 60 days) for which it is valid; and
 - (c) state the terms and conditions (if any) subject to which it is issued; and
 - (d) describe or specify the thing in or on which a tracking device may be installed.
- (3) Further tracking device warrants may be issued in respect of the same thing, or in respect of information relevant to the commission of the same offence.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200D Effect of tracking device warrant

- (1) A tracking device warrant authorises the authorised officer or officers to whom it is directed—
- (a) to install, maintain, or remove a tracking device in or on the thing specified; and
 - (b) to monitor the device or have it monitored.
- (2) If it is necessary to do so to install, maintain, remove, or monitor a tracking device, a tracking device warrant authorises 1 or more authorised officers to do any of the following things at any time, using any necessary force:
- (a) enter on to any premises specified in the warrant;
 - (b) break open or interfere with any thing;
 - (c) temporarily remove anything from anyplace where it is found and to return the thing to that place.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200E Expiry of warrant

- (1) Unless renewed under section 200F, a tracking device warrant expires at the end of the period stated in it.
- (2) If a tracking device remains in place after the expiry of the warrant authorising its installation, the authorised officer concerned must apply to a District Court Judge or a High Court Judge for a warrant under section 200I to remove the device; and the Judge may issue a warrant to remove the device subject to any terms and conditions the Judge sees fit.

- (3) A tracking device that remains in place after the expiry of the warrant authorising its installation must not be monitored; but its remaining in place does not constitute a trespass.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200F Renewal of warrant

- (1) Any authorised officer may apply for the renewal of a tracking device warrant that has not expired.
- (2) The application must be made—
- (a) to a District Court Judge, if the warrant was issued by a District Court Judge; and
 - (b) to a High Court Judge, if the warrant was issued by a High Court Judge.
- (3) The application must be made in writing and on oath.
- (4) A Judge may grant the application and renew the warrant if he or she is satisfied, at the time the application is made, of the matters specified in section 200B(2)(a) to (c).
- (5) The warrant may be renewed under this section for a period of not more than 60 days.
- (6) The period for which the warrant is renewed must be written on the warrant, and (unless renewed again) the warrant expires at the end of that period.
- (7) The warrant may be renewed more than once.
- (8) If (whether initially or on renewal or further renewal) the warrant was directed to an authorised officer by name, the Judge may amend it so that is directed, by name, to some other authorised officer of the parent agency.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200G Use of tracking device without warrant

- (1) An authorised officer may install, monitor, and maintain a tracking device in or on any thing if—
- (a) it is not in all the circumstances reasonably practicable to obtain a tracking device warrant; and
 - (b) the officer believes on reasonable grounds that a Judge would issue a tracking device warrant if time permitted.

- (2) The officer may remove the tracking device within 72 hours of its installation.
- (3) If it is necessary to do so to install, monitor, maintain, or remove the device, the officer concerned may at any time do any of the following things, using any necessary force:
 - (a) enter any premises:
 - (b) break open or interfere with any thing:
 - (c) temporarily remove anything from anyplace where it is found and return the thing to that place.
- (4) A tracking device installed under subsection (1) that remains in place more than 72 hours after being installed must not be monitored; but its remaining in place does not constitute a trespass.
- (5) Subsection (4) does not prevent the monitoring (or the maintenance or removal) of a tracking device if a tracking device warrant for it is in force.
- (6) Unless the device has already been removed, the officer must within 72 hours of installing it—
 - (a) apply for a tracking device warrant for it; or
 - (b) apply to a Judge for a warrant under section 200I to remove it; or
 - (c) if the officer wants to leave it in place without monitoring it, apply to a Judge for directions.
- (7) Within 72 hours of being refused a tracking device warrant, the officer must either—
 - (a) apply to a Judge for a warrant under section 200I to remove the device; or
 - (b) if the officer wants to leave the device in place without monitoring it, apply to a Judge for directions.
- (8) An authorised officer who acts in the exercise or intended exercise of a power conferred by this section is not under any civil or criminal liability in respect of the officer's actions (whether on the ground of lack of jurisdiction or mistake of law or fact, or on any other ground) unless the officer acts in bad faith or without reasonable care.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200H Reports

- (1) There must be lodged with every application under paragraph (b) or paragraph (c) of section 200G(6) or under section 200G(7) a written report on the installation of the tracking device concerned, and the circumstances in which it came to be installed.
- (2) If a tracking device installed under section 200G is removed within 72 hours of being installed, an authorised officer of the parent agency concerned must lodge in a District Court or the High Court a written report on its installation, and the circumstances in which it came to be installed.
- (3) The Registrar of a court in which a report under subsection (1) or subsection (2) is lodged must promptly bring it to the notice of a Judge of the court.
- (4) If the Judge considers that the circumstances warrant it, the Judge may refer a copy of the report to the chief executive of the parent agency of the authorised officer who installed the device, with any recommendations the Judge thinks fit.
- (5) The Judge may also refer a copy of the report to the Minister for the time being responsible for the agency.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200I Warrant for removal of tracking device

- (1) A District Court Judge or High Court Judge may issue a warrant for the removal of a tracking device, subject to any terms and conditions the Judge sees fit.
- (2) A warrant under this section must be directed to an authorised officer by name or generally to every authorised officer of the parent agency concerned.
- (3) A warrant under this section authorises the authorised officer or officers to whom it is directed to remove the tracking device concerned and, in so doing, to do any of the following at any time if necessary, using any necessary force:
 - (a) enter any premises specified in the warrant:
 - (b) break open or interfere with any thing:
 - (c) temporarily remove any thing from any place where it is found and to return the thing to that place.

- (4) A warrant under this section expires on the earlier of the following:
- (a) the date 30 days after the day on which it is issued;
 - (b) a date specified when it is issued by the Judge who issues it.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200J Agencies to give information to Parliament

The Commissioner of Police and the chief executive of the New Zealand Customs Service must include in every annual report relating to that agency that is required by statute to be prepared by that chief executive the following information in respect of the period under review:

- (a) the number of warrants issued under section 200C; and
- (b) the number of renewals of warrants granted under section 200C; and
- (c) the average duration of warrants (including renewals); and
- (d) the number of times a tracking device was used without a warrant under section 200G; and
- (e) the number of warrants under section 200I issued; and
- (f) the number of times a Judge gave authority for a tracking device to remain in place.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200K Security of applications for tracking device warrants

- (1) As soon as a Judge has determined an application for a tracking device warrant, the Registrar of the court concerned must—
- (a) place all documents relating to the application (except any warrant issued) in a packet; and
 - (b) seal the packet; and
 - (c) keep the packet in safe custody.
- (2) Subsection (1)(c) is subject to sections 200L to 200P.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200L Restriction on production of documents relating to application

- (1) No party to any proceedings is entitled to demand the production of any documents held in safe custody under section 200K.
- (2) Subsection (1)—
 - (a) is subject to sections 200M to 200P; but
 - (b) otherwise overrides any enactment or rule of law or any rules of court entitling a party to any proceedings to demand the production of any documents.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200M Application for production of documents

- (1) A party to proceedings who requires the production of a document held in safe custody under section 200K(1) may apply in writing to the Registrar who holds the document for its production.
- (2) Promptly after receiving the application, the Registrar must give written notice of it to—
 - (a) the senior police officer in the district, if the document is or relates to an application for a tracking device warrant sought by a member of the police; or
 - (b) the senior Customs officer in the district, if the document is or relates to an application for a tracking device warrant sought by a Customs officer.
- (3) If within 3 days after the notice was given the officer gives the Registrar written notice that he or she opposes the production of the document, the Registrar must refer the application to a Judge of the court concerned.
- (4) The Registrar must produce the document to the applicant if—
 - (a) the officer does not within 3 days after the notice was given give the Registrar written notice that he or she opposes the production of the document; and
 - (b) but for section 200K(1), the applicant would be entitled to demand the production of the document.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200N Request for production made in course of proceedings

- (1) A District Court Judge or a Judge of the High Court must adjudicate on an opposed request, made in the course of proceedings presided over by the Judge, for the production of a document held in safe custody under section 200K(1) as if it were an application referred under section 200M(3); and section 200O applies accordingly with any necessary modifications.
- (2) If, in the course of any other proceedings, an opposed request for the production of a document held in safe custody under section 200K(1) is made, the presiding judicial officer must promptly refer the matter to a Judge for adjudication under section 200O.
- (3) The Judge to whom the matter must be referred is—
 - (a) a District Court Judge if the document relates to a tracking device warrant issued by a District Court Judge; or
 - (b) a Judge of the High Court if the document relates to a tracking device warrant issued by a Judge of the High Court.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200O Application referred to Judge

- (1) An application for the production of a document held in safe custody under section 200K that is referred to a Judge under section 200M(3) or section 200N(2) must be dealt with in accordance with this section.
- (2) The applicant and the officer opposing production must be given an opportunity to be heard.
- (3) The Judge may order that all or a specified part of the document must not be produced if (and only if) the Judge—
 - (a) is satisfied that information in the document identifies, or is likely to lead to the identification of,—
 - (i) a person who gave information to the police, or to the New Zealand Customs Service; or
 - (ii) a member of the police, or any Customs officer, whose identity was concealed for the purpose of any relevant investigation and has not later been revealed; and

- (b) the Judge believes it in the public interest to do so.
- (4) Subject to any order under subsection (3), the Judge must order the production of the document to the applicant if, but for section 200K(1), the applicant would be entitled to demand the production of the document.

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

200P Judges entitled to inspect relevant documents

A Judge presiding over proceedings in which the issue of a tracking device warrant is in issue may inspect any relevant document held under section 200K(1).

Sections 200A to 200P were inserted, as from 31 October 2003, by section 4 Summary Proceedings Amendment Act 2003 (2003 No 110).

Miscellaneous

201 Amendment of conviction, order, or warrant

- (1) Where in any proceedings any conviction, sentence, order, or warrant of a District Court is brought before the High Court, whether on a motion to quash or otherwise, the High Court may, on such terms as to costs and otherwise as it thinks fit, amend the conviction, order, or warrant in any way or may, on such terms as to costs and otherwise as it thinks fit, instead of amending the conviction or order or warrant, remit it for amendment to the District Court by which it was entered, made, or issued, and may thereafter, if it is duly amended, adjudicate upon it as amended.
- (2) Where in any case referred to in subsection (1) the High Court finds that the conviction was valid but that the sentence (either in whole or in part) was one which the Court imposing it had no jurisdiction to impose, the High Court may quash any invalid part of the sentence that is severable from the residue, or may quash the whole sentence and remit the case to the District Court to enable the defendant to be sentenced or otherwise dealt with according to law.

Compare: 1909 No 13 ss 7, 8, 9, 11

202 Who may take affidavit

An affidavit required for the purposes of this Act may be sworn or affirmed before any District Court Judge or Justice or Community Magistrate or Registrar or before any solicitor of the High Court not engaged in the proceedings.

Compare: 1927 No 37 s 369; 1948 No 20 s 9(1); 1955 No 12 s 4(2)

Section 202 was amended, as from 30 June 1998, by section 51 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

203 Acts not generally to be done on Sunday

- (1) Except as provided in subsection (2), no warrant shall be issued or executed, no summons or other document shall be issued or served, and no other act shall be done or proceedings taken, in respect of any matter to which this Act applies, on a Sunday.
- (2) The following acts may be done and proceedings taken as effectually on a Sunday as on any other day, namely:
 - (a) a warrant to arrest any person charged with any offence may be issued and may be executed:
 - (b) a warrant to arrest, or for the appearance of, any person required to give evidence may be issued and may be executed:
 - (c) a search warrant may be issued and may be executed:
 - (d) any information may be laid or any step taken if it is necessary to enable the issue of any warrant referred to in paragraph (a) or paragraph (b) or paragraph (c):
 - (e) a warrant of commitment (except for non-payment of a sum of money) may be executed:
 - (f) any arrest authorised to be made without warrant may be made, and any person authorised to be taken into custody without warrant may be taken into custody:
 - (g) any person may be granted bail or released on bail:
 - (h) any statement may be taken under section 164:
 - (i) the evidence of any person may be given and his deposition taken in accordance with the provisions of this Act, if that person is dangerously ill and in the opinion of some medical practitioner not likely to recover from that illness:

- (j) any person may be served with a summons and released under section 19A:
 - (k) any person may be served with a summons under section 19B.
 - (l) a Registrar or bailiff or constable may exercise any power, duty, or function conferred on him or her under Part 3, or under any regulations made under this Act as far as they relate to Part 3:
 - (m) any fine or any other money payable on any conviction or order made by a Court may be paid, or may be accepted by any person authorised to accept that payment:
 - (n) any act necessary to give effect to a direction under section 88(3)(fa):
 - (na) an informant may provide particulars of a reminder notice under section 21:
 - (o) any other act specified in regulations made under this Act as an act that can be done on Sunday.
- (3) No act done on a Sunday in breach of the provisions of subsection (1) is invalidated solely on the ground that it was done on a Sunday.

Compare: 1927 No 37 ss 269, 370

Section 203(2)(h): amended, on 29 June 2009, by section 15 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Subsection (2)(i) was amended, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48) by omitting the word “registered”. See sections 178 to 227 of that Act as to the transitional provisions.

Subsection (2)(j) was inserted by section 18 Summary Proceedings Amendment Act 1976 (1976 No 169).

Subsection (2)(k) was inserted by section 17(4) Transport Amendment Act 1980 (1980 No 96), and repealed, as from 1 November 1987, by section 12 Summary Proceedings Amendment Act 1987 (1987 No 165).

A new subsection (2)(k) was inserted, as from 10 December 1988, by section 18(2) Transport Amendment Act (No 2) 1988 (1988 No 170).

Subsection (2)(l) to (n) was inserted, as from 9 October 2006, by section 28(1) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (2)(na) was inserted, as from 1 March 2007, by section 28(2) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (2)(o) was inserted, as from 9 October 2006, by section 28(1) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (3) was amended by section 24 Summary Proceedings Amendment Act 1980 (1980 No 84) by substituting the expression “\$150” for the expression “\$20” (as substituted by section 7 Decimal Currency Act 1964 (1964 No 27)).

Subsection (3) was substituted, as from 9 October 2006, by section 28(3) Summary Proceedings Amendment Act 2006 (2006 No 13).

204 Proceedings not to be questioned for want of form

No information, complaint, summons, conviction, sentence, order, bond, warrant, or other document, and no process or proceeding shall be quashed, set aside, or held invalid by any District Court or by any other Court by reason only of any defect, irregularity, omission, or want of form unless the Court is satisfied that there has been a miscarriage of justice.

Compare: 1909 No 13 ss 4–6; 1927 No 37 ss 79, 373; 1952 No 41 s 11

205 Proceedings not invalid because defendant should have been dealt with in Youth Court

- (1) No conviction or order or other process or proceeding shall be held invalid by reason only that at the time the defendant was convicted the defendant should by reason of his or her age have been dealt with in a Youth Court.
- (2) Where subsection (1) applies, on the application of either party a rehearing of the information may be granted under section 75, and, if at the time appointed for the rehearing the defendant is still a child or young person within the meaning of the Children, Young Persons, and Their Families Act 1989, the Court shall remit the proceedings to a Youth Court to be reheard in that Court.

Section 205 was substituted, as from 1 November 1989, by section 449 Children, Young Persons, and Their Families Act 1989 (1989 No 24).

206 Contempt of Court

If any person—

- (a) wilfully insults a District Court Judge or Justice or Community Magistrate or any witness or any officer of the Court during his sitting or attendance in Court, or in going to or returning from the Court; or
- (b) wilfully interrupts the proceedings of a Court or otherwise misbehaves in Court; or

- (c) wilfully and without lawful excuse disobeys any order or direction of the Court in the course of the hearing of any proceedings,—

any constable or officer of the Court, with or without the assistance of any other person, may, by order of the District Court Judge or Justice or Community Magistrate, take the offender into custody and detain him until the rising of the Court, and the District Court Judge or Justice or Community Magistrate may, if he thinks fit, by warrant under his hand, order that the offender be committed to prison for any period not exceeding 3 months, or order the offender to pay a fine not exceeding \$1,000 for each offence.

Compare: 1927 No 37 ss 71, 376, 377

Section 206 was amended by section 3(a) and (b) Summary Proceedings Amendment Act (No 2) 1982 (1982 No 131) by substituting the expression “3 months” for the expression “10 days”, and by substituting the expression “\$1,000” for the expression “\$150” (as substituted by section 24 Summary Proceedings Amendment Act 1980 (1980 No 84)).

Section 206 was amended, as from 30 June 1998, by section 52 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

207 Payment and recovery of fees

- (1) All fees, except such as may be payable in respect of keeping possession of or for storing or removing or selling goods seized under a warrant, shall be paid in the first instance by the party on whose behalf any proceedings are taken.
- (2) Subject to the provisions of subsection (3), no District Court Judge or Justice or Community Magistrate or officer of the Court shall do any act for which a fee is payable unless the fee is first paid, but no such act if done shall be invalid by reason only of the non-payment of the fee.
- (3) Except as provided in regulations made under this Act, no fee shall be received or demanded from any constable or from any duly appointed officer or employee of the Crown or of any local authority or other statutory public body or Board in respect of proceedings instituted by him in the execution of his duty.

- (4) In default of the payment of any fees by the person by whom they are payable in the first instance, the amount shall be recoverable as a debt due to the Crown.
- (5) A table of all fees payable shall be kept in the office of every Court, and shall be made available for inspection by any person on request.

Compare: 1927 No 37 ss 378(2), 379, 380, 383(2)

Subsection (2) was amended, as from 30 June 1998, by section 53 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “or Community Magistrate”.

Subsection (3) was amended, as from 1 November 1987, by section 13 Summary Proceedings Amendment Act 1987 (1987 No 165) by substituting the words “Except as provided in regulations made under this Act, no” for the word “No”, and by section 21 Weights and Measures Amendment Act 1991 (1991 No 9) by inserting the words “or employee”.

208 Payment of money to department

- (1) This section applies to—
 - (a) all Court fees, fines, reparation, costs, and other money payable on an information or complaint or on any conviction or order made by a Court; and
 - (b) any sum levied by or paid to any member of the police or a bailiff under any warrant.
- (2) A sum referred to in subsection (1) must be paid in the first instance in any of the following ways:
 - (a) to any Registrar; or
 - (b) to any person nominated by the chief executive of the department for the time being responsible for the administration of this Act as a person who may receive payments under this section; or
 - (c) into any trust account administered for the purpose by the department for the time being responsible for the administration of this Act.
- (3) Any sum received under this section by any Registrar or person nominated under subsection (2)(b) must be paid by him or her into a trust account administered by the department for the time being responsible for the administration of this Act, where it may be held until it is paid—

- (a) to any person who is entitled to it under any enactment or by any order of the Court made under an enactment; or
- (b) into another Departmental Bank Account or a Crown Bank Account, in accordance with the Public Finance Act 1989.

Subsection (3) was amended by section 23 Summary Proceedings Amendment Act 1980 (1980 No 84) by omitting the words “or section 105”, and by section 150(1) Criminal Justice Act 1985 (1985 No 120) by substituting the words “penal institution” for the word “prison”.

Subsection (3) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “manager” for the word “Superintendent” in both places it appeared. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (3) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “prison” for the words “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (4)(b) was amended, as from 1 July 1989, by section 86(1) Public Finance Act 1989 (1989 No 44) by substituting the words “a Crown Bank Account or a Departmental Bank Account in accordance with the Public Finance Act 1989” for the words “the Public Account”.

Section 208 was substituted, as from 9 October 2006, by section 29 Summary Proceedings Amendment Act 2006 (2006 No 13).

209 Act not to apply to Youth Court unless provided

Except as expressly provided in the Children, Young Persons, and Their Families Act 1989, nothing in this Act shall apply to proceedings in any Youth Court.

Section 209 was substituted, as from 1 November 1989, by section 449 Children, Young Persons, and Their Families Act 1989 (1989 No 24).

210 Saving of provisions of Customs Act 1913

[Repealed]

Section 210 was repealed by section 311(1) Customs Act 1966 (1966 No 19).

211 Rules for proceedings on appeal

- (1) Rules regulating the practice and procedure in appeals to the High Court under this Act may be made in the manner in which rules of Court are made under the Judicature Act 1908.
- (2) Until such rules are made, and so far as they do not extend, the existing practice and procedure in New Zealand shall remain

and be in force so far as they are not altered by or inconsistent with the provisions of this Act.

Compare: 1927 No 37 s 343

212 Rules and regulations

- (1) The Governor-General may from time to time, by Order in Council, make all such rules or regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof (not being rules regulating the practice and procedure in appeals to the High Court).
- (2) Without limiting the general power to make rules and regulations conferred by this section, rules or regulations may be made under this section—
 - (a) prescribing the forms to be used in respect of any proceedings to which this Act applies:
 - (b) prescribing the Court fees to be paid in respect of any proceedings or any processes to which this Act applies:
 - (c) prescribing the fees, travelling allowances, and expenses payable to interpreters and to persons giving evidence in proceedings to which this Act applies:
 - (d) prescribing the solicitors' fees payable by parties in proceedings to which this Act applies:
 - (da) prescribing requirements or other matters in relation to the provision of particulars of reminder notices in electronic form under section 21, and any matters in relation to the verification or processing of those particulars:
 - (db) regulating the searching of records of 1 or more of the following:
 - (i) particulars of reminder notices provided under section 21:
 - (ii) the results of any verification processes undertaken under section 21:
 - (iii) reminder notices deemed to have been filed and orders deemed to have been made under section 21:
 - (iv) notices of hearings filed under section 21:
 - (v) applications filed under section 78B:
 - (vi) any related matter:

- (e) prescribing the procedure for the taking of the evidence of witnesses under sections 31, 32, and 174, including provisions for requiring the attendance of witnesses, the answering of questions, and the production of documents:
- (ea) prescribing the factors to be taken into account in deciding, for the purposes of Part 3, whether or not a defendant has or has had sufficient means to pay a sum adjudged to be paid by a conviction:
- (eb) providing for information about proceedings under this Act to be transferred between courts, where that information is relevant to proceedings under the Domestic Violence Act 1995 or the Harassment Act 1997, including (without limitation) provision for such information to be transferred between different courts, or between different divisions of the same court, or between courts exercising civil jurisdiction and courts exercising criminal jurisdiction, or between courts exercising original jurisdiction and courts exercising appellate jurisdiction:
- (ec) amending Schedule 1 by adding offences to, or removing offences from, Part 1 or Part 2 of that schedule:
- (ed) prescribing transitional arrangements for the trial and sentencing of persons charged with offences that are added to or removed from Part 1 or Part 2 of Schedule 1
- (f) providing for any other matters in respect of which regulations are contemplated under this Act.

(3) *[Repealed]*

Compare: 1927 No 37 s 378(1); 1948 No 20 ss 2(5), 11

Subsection (2)(b) was amended, as from 9 October 2006, by section 30(1) Summary Proceedings Amendment Act 2006 (2006 No 13) by inserting the words “or any processes” after the words “any proceedings”.

Subsection (2)(da) and (db) was inserted, as from 9 October 2006, by section 30(2) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (2)(ea) was inserted, as from 23 November 1973, by section 25 Summary Proceedings Amendment Act 1973 (1973 No 117).

Subsection (2)(eb) was inserted, as from 1 July 1996, by section 5 Summary Proceedings Amendment Act (No 2) 1995 (1995 No 87). *See* clause 2 Summary Proceedings Amendment Act Commencement Order (No 2) 1996 (SR 1996/147).

Subsection (2)(eb) was amended, as from 1 January 1998, by section 44 Harassment Act 1997 (1997 No 92) by inserting the words “or the Harassment Act 1997”.

Section 212(2)(ec): inserted, on 26 June 2008, by section 13 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 212(2)(ed): inserted, on 26 June 2008, by section 13 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Subsection (3) was repealed, as from 19 December 1989, by section 11 Regulations (Disallowance) Act 1989 (1989 No 143).

213 Consequential amendments

The enactments specified in Schedule 3 are hereby amended in the manner indicated in that Schedule.

214 Repeals and savings

- (1) The enactments specified in Schedule 4 are hereby repealed.
 - (2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.
 - (3) Notwithstanding the repeal of any enactment by this Act, where any notice of appeal has been filed in any office of a Court pursuant to any such enactment before the date of the commencement of this Act, and the appeal is not finally determined before that date, the provisions of that enactment shall continue to apply to that appeal in all respects as if this Act had not been passed.
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Schedule 1
Indictable offences triable summarily by
District Court Judges

s 6

Part 1
Indictable offences under the Crimes Act
1961

Section of Act	Offence
	<i>Part 5—Crimes Against Public Order</i>
78A	Wrongful communication, retention, or copying of official information
86	Unlawful assembly
87	Riot
91	Forcible entry and detainer
98A	Participation in organised criminal group
	<i>Part 6—Crimes Affecting the Administration of Law and Justice</i>
107	Contravention of statute
110, 111	Making false oath or statement or declaration
114	Use of purported affidavit or declaration
118	Assisting escape of prisoners of war or internees
119	Breaking prison
120	Escape from lawful custody
121	Assisting escape from lawful custody
122	Assisting escape of mentally disordered person under detention for offence
	<i>Part 7—Crimes Against Religion, Morality, and Public Welfare</i>
124	Distribution or exhibition of indecent matter
125, 126	Indecent acts
129A(2)	Inducing indecent act by threat
130(2)	Incest
131(1)	Sexual connection with dependent family member
131(2)	Attempted sexual connection with dependent family member
131(3)	Indecent act with dependent family member
131B(1)	Meeting young person under 16 following sexual grooming, etc
134(1)	Sexual connection with young person under 16
134(2)	Attempted sexual connection with young person under 16

Part 1—*continued*

Section of Act	Offence
134(3)	Indecent act on young person under 16
135	Indecent assault
138(1)	Exploitative sexual connection with person with significant impairment
138(2)	Attempted exploitative sexual connection with person with significant impairment
138(4)	Exploitative indecent act with person with significant impairment
144	Indecency with animal
145	Criminal nuisance
146	Keeping place of resort for homosexual acts
147	Repealed
148	Repealed
149	Repealed
149A	Repealed
150	Misconduct in respect of human remains
	<i>Part 8—Crimes Against the Person</i>
151, 152, 153	Neglect to provide necessaries of life
154	Abandoning child under 6
181	Concealing dead body of child
185	Procuring own miscarriage
186	Supplying means of procuring abortion
189	Injuring with intent
190	Injuring by unlawful act
192	Aggravated assault
193	Assault with intent to injure
194	Assault on a child, or by a male on a female
195	Cruelty to a child
196	Common assault
198A(2)	Using any firearm to resist arrest
198B	Commission of Crime with firearm
200(2)	Poisoning with intent to cause inconvenience or annoyance
202	Setting traps, etc
202A	Possession of offensive weapons or disabling substances

Part 1—*continued*

Section of Act	Offence
202C	Assault with weapon.
203(2)	Endangering transport without intent to injure
204A	Female genital mutilation
204B	Further offences relating to female genital mutilation
206	Bigamy
207	Feigned marriage
210	Abduction
	<i>Part 9A—Crimes Against Personal Privacy</i>
216B	Prohibition on use of listening devices
216C	Prohibition on disclosure of private communications unlawfully intercepted
216D	Prohibition on dealing with listening device
216F	Unlawful disclosure
216H	Prohibition on making intimate visual recording
216I	Prohibition on possessing intimate visual recording in certain circumstances
216J	Prohibition on publishing, importing, exporting, or selling intimate visual recording
	<i>Part 10—Crimes against rights of property</i>
219, 223(a) to (d)	Theft or stealing
220, 223(a) to (d)	Theft by person in special relationship
221, 223(a) to (d)	Theft of animals
226	Conversion of vehicle or other conveyance
227	Being in possession of instrument for conversion
228	Dishonestly taking or using document
229	Criminal breach of trust
230	Taking, obtaining, or copying trade secrets
231	Burglary
232(2)	Aggravated burglary
233	Being disguised or in possession of instrument for burglary
234	Robbery

Part 1—*continued*

Section of Act	Offence
236(2)	Assault with intent to rob
239(2)	Demanding with intent to steal, etc
240, 241(a) to (c)	Obtaining by deception
242	False statement by promoter, etc
243	Money laundering
246, 247(a) to (c)	Receiving
249	Accessing computer system for dishonest purpose
250	Damaging or interfering with computer system
251	Making, selling, or distributing, or possessing software for committing crime
252	Accessing computer system without authorisation
256	Forgery
257	Using forged documents
258	Altering, concealing, destroying, or reproducing document with intent to deceive
259	Using altered or reproduced document with intent to deceive
260	False accounting
261	Counterfeiting public seals
262	Counterfeiting corporate seals
263	Possessing forged bank notes
264	Paper or implements for forgery
265	Imitating authorised or customary marks
266	Offences involving coinage
267(2) and (3)	Arson
268	Attempted arson
269(2) and (3)	Intentional damage
271	Waste or diversion of electricity, gas, or water
272	Providing explosive to commit crime
	<i>Part 11—Threatening, Conspiring, and Attempting to Commit Offences</i>
306	Threatening to kill or do grievous bodily harm

Part 1—*continued***Section of
Act****Offence**

307 Threatening to destroy property

308 Threatening acts

309 Conspiring to prevent collection of rates or taxes

Schedule 1 Part 1 section 223: item amended, on 30 October 2010, by section 4(a) of the Summary Proceedings Amendment Act (No 2) 2010 (2010 No 121).

Schedule 1 Part 1 section 241: item amended, on 30 October 2010, by section 4(b) of the Summary Proceedings Amendment Act (No 2) 2010 (2010 No 121).

Schedule 1 Part 1 section 247: item amended, on 30 October 2010, by section 4(c) of the Summary Proceedings Amendment Act (No 2) 2010 (2010 No 121).

Schedule 1 Part 1 section 98A: item inserted, on 26 June 2008, by section 14(1) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 129A(2): item inserted, on 26 June 2008, by section 14(2)(a) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 132(2): item omitted, on 26 June 2008, by section 14(2)(b) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 132(3): item omitted, on 26 June 2008, by section 14(2)(b) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 135: item amended, on 26 June 2008, by section 14(2)(c) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 216F: item inserted, on 26 June 2008, by section 14(3) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 219: item omitted, on 26 June 2008, by section 14(4)(a) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 219, 223(a) to (c): item inserted, on 26 June 2008, by section 14(4)(a) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 220, 223(a) to (c): item inserted, on 26 June 2008, by section 14(4)(a) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 221, 223(a) to (c): item inserted, on 26 June 2008, by section 14(4)(a) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 232(2): item inserted, on 26 June 2008, by section 14(4)(b) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 236(2): item substituted, on 27 March 2008, by section 4(1) of the Summary Proceedings Amendment Act 2008 (2008 No 18).

Schedule 1 Part 1 section 239(2): item amended, on 26 June 2008, by section 14(4)(d) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 240, 241(a) and (b): item amended, on 26 June 2008, by section 14(4)(e) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Part 1—*continued*

Schedule 1 Part 1 section 246, 247(a) and (b): item amended, on 26 June 2008, by section 14(4)(f) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 251: item inserted, on 26 June 2008, by section 14(4)(g) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 252: item inserted, on 26 June 2008, by section 14(4)(g) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 269(2) and (3): item amended, on 26 June 2008, by section 14(4)(h) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 1 section 270: item omitted, on 26 June 2008, by section 14(4)(i) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Part 1 was amended, as from 1 October 2003, by section 34 Crimes Amendment Act 2003 (2003 No 39) by substituting the heading and all the items under the heading relating to Part 10 of the Crimes Act 1961.

Part 1 was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting in the item relating to section 119 of the Crimes Act 1961 the word “prison” for the words “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Part 1 was amended, as from 20 May 2005, by section 10 Crimes Amendment Act 2005 (2005 No 41) by substituting the items relating to sections 130 to 142 of the Crimes Act 1961.

Part 1 was amended, as from 5 December 2006, by section 4 Crimes (Intimate Covert Filming) Amendment Act 2006 (2006 No 75) by inserting the items relating to ss 216H, 216I, and 216J of the Crimes Act 1961.

Part 2

Indictable offences under other enactments

Title of Act	Section of Act	Offence
Animal Welfare Act 1999	28	Wilful ill-treatment of animals
	28A	Reckless ill-treatment of animals
Antarctica (Environmental Protection) Act 1994	Part 2	Mineral resource activities in Antarctica
Arms Act 1983	44(1)	Selling or supplying pistol or restricted weapon to person who does not hold permit to import or to procure

Part 2—*continued*

Title of Act	Section of Act	Offence
	45(1)	Carrying or possession of firearms, airguns, pistols, restricted weapons, or explosives, except for lawful, proper, and sufficient purpose:
	46(1)	Carrying of imitation firearm, except for lawful, proper, and sufficient purpose.
	50(1)	Unlawful possession of pistol or restricted weapon
	51(1)	Unlawful carriage or possession in public place of firearm, airgun, pistol, ammunition, explosive, or restricted weapon
	53(1)	Causing bodily injury or death by careless use of a firearm, airgun, pistol, or restricted weapon
	53(2)	Leaving loaded firearm, airgun, pistol, or restricted weapon in any place in such circumstances as to endanger life
	53(3)	Without reasonable cause, discharging or otherwise dealing with firearm, airgun, pistol, or restricted weapon in a manner likely to injure or endanger the safety of any person or with reckless disregard for the safety of others
	54	Use or attempted use of firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive to resist or prevent an arrest or commit offence

Part 2—*continued*

Title of Act	Section of Act	Offence
	55	Carrying firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive with criminal intent.
Auctioneers Act 1928	38	Misappropriation, or falsifying accounts
Aviation Crimes Act 1972	11	Taking firearms, explosives, etc, on to aircraft
Biosecurity Act 1993	154(f), (g), (h), (i), (j), (k), (l), (m)	Offences relating to dealings with goods in contravention of the Biosecurity Act 1993 and failure to comply with specified provisions of that Act
Births, Deaths, Marriages, and Relationships Registration Act 1995	89(1)(a), (b), (c)	Offences relating to making a false statement or tampering with information under the Births, Deaths, Marriages, and Relationships Registration Act 1995
Building Societies Act 1965	29	Contravention of provisions as to minimum subscription by founding members
	132	Offences in relation to property of building societies
	133	False statements in documents
Burial and Cremation Act 1964	56(3)	Offences as to unlawful cremation
Chateau Companies Act 1977	19	Destroying or altering records
Citizenship Act 1977	27(1), (2)	Offences as to citizenship matters and documents
Civil Union Act 2004	30	Offence to issue licence or solemnise civil union contrary to Act
	31	Offence to purport to solemnise civil union

Part 2—*continued*

Title of Act	Section of Act	Offence
	32	Offences in connection with false statements relating to civil union
Citizens Initiated Referenda Act 1993	43(4)(a)	Making false returns
	43(4)(b)	Illegal practice regarding returns
Climate Change Response Act 2002	133	Evasion or similar offences
Commerce Act 1975	81F	Offences in relation to monopolies, mergers, and takeovers
	81H(4)	Contravention of order restraining proposed transaction or sale of assets
Companies Act 1955	188A	Certain persons prohibited from managing companies
	189A	Certain persons may be prohibited from managing companies by Registrar
	199K(4)	Certain persons prohibited from managing companies
	199L(7)	Power to restrain certain persons from managing companies
	199N(9)	Registrar may prohibit persons from managing companies
	278	Claims by unsecured creditors
	279	Rights and duties of secured creditors
	461	Making false statements
461A	Fraudulent application or destruction of property	
461C	Falsification of records	
461D	Fraudulently carrying on business, obtaining credit, or transferring property.	

Part 2—*continued*

Title of Act	Section of Act	Offence
Companies Act 1993	304(6)	Claims by unsecured creditors
	305(11)	Rights and duties of secured creditors
	380	Carrying on business fraudulently
	382(4)	Persons prohibited from managing companies
	383(6)	Court may disqualify directors
	385(9)	Registrar or Financial Markets Authority may prohibit persons from managing companies.
Companies Special Investigations Act 1958	28	Destroying or altering records
Compulsory Retirement Savings Scheme Referendum Act 1997	54	Voting papers
Copyright Act 1994	131	Offences relating to making or dealing with infringing objects
Corporations (Investigation and Management) Act 1989	9	Information offences
	17	Hindering inspection
	20(1)	Hindering investigation
	20(2)	Information offences
	23	Information offences
	35(1)	Contravening Registrar
	35(2)	Obstruction
	36	Unauthorised disclosure
	43	Unauthorised removal of assets
68	Destroying, altering, or concealing records	
Coroners Act 1988	43(4)	False statement
Credit Contracts and Consumer Finance Act 2003	103(2)	Dealing with land without leave of the High Court

Part 2—*continued*

Title of Act	Section of Act	Offence
Criminal Investigations (Bodily Samples) Act 1995	77(2)	Offences in respect of DNA profile databank
Criminal Proceeds (Recovery) Act 2009	150	Contravention of restraining orders or foreign restraining orders
	151	Contravention of forfeiture orders or foreign forfeiture orders
	152	Failing to comply with orders and search warrants
	154	Offence to disclose existence or operation of search order
	155	Offence of obstruction
Customs and Excise Act 1996	182	Unauthorised access to or improper use of Customs computerised entry processing system
	183	Interference with Customs computerised entry processing system
	205(5)	Offences in relation to records
	209(1A)	Offences relating to importation or exportation of objectionable publications.
Designs Act 1953	42	Offences in respect of designs required to be kept secret
	43	Falsification of register of designs, etc
Distillation Act 1971	86	Stealing spirits from distillery, etc
District Courts Act 1947	116A	False statement of service of documents
Domestic Violence Act 1995	49(2)	Contravening protection order.
Electoral Act 1993	204F	Election advertisement to include promoter statement
	204G	Publication of candidate advertisement promoting candidate

Part 2—*continued*

Title of Act	Section of Act	Offence
	204H	Publication of party advertisement promoting party
	215	Personation
	216	Bribery
	217	Treating
	218	Undue influence
	219	Payments for exhibition of election notices
	220	Providing money for illegal purposes
	221A	Electoral advertisements
	222	Procurement of voting by unqualified voters
Electoral Referendum Act 2010	66(c)	Contravening requirement for referendum advertisement to include promoter statement
Films, Videos, and Publications Classification Act 1993	124(1)	Offences involving knowledge in relation to objectionable publications
	127(4)	Offence of exhibiting or displaying objectionable publication to person under age of 18 years knowing or having reasonable cause to believe that publication is objectionable
	131A(1)	Offences relating to possession of objectionable publications and involving knowledge.
Finance Act 1915	65	Bribing officer of Customs, Officer accepting bribe or conniving at offence
Financial Advisers Act 2008	137E	Contravening banning order
	137J	Breaching orders
Financial Reporting Act 1993	41	False statements.

Part 2—*continued*

Title of Act	Section of Act	Offence
Fisheries Act 1996	231(1) and (2)	Knowingly making a false or misleading statement or using a false document to obtain a benefit
	233(1)	Knowingly receiving or possessing fish for sale or engaging in a commercial activity, otherwise than in accordance with the Act
	296B(5)	Approved service delivery organisation knowingly falsifying information
	296ZC(3)(b) or (c)	Approved service delivery organisation knowingly supplying false or misleading information, or knowingly omitting material particular in information supplied to Minister
Food Act 1981	11AA	Contravention of Act, etc, knowing that will create risk to human health
Friendly Societies Act 1909	75	Wrongful supply of rules of society or branch
Gambling Act 2003	353	Offences involving counterfeit chips
Health Act 1956	69ZZR(1)	Offences against sections in Part 2A
	69ZZT	Offences involving deception
Human Assisted Reproductive Technology Act 2004	8(1)	Taking an action described in Schedule 1
	8(2)	Importing or exporting an in vitro gamete, any kind of in vitro embryo or in vitro foetus, or in vitro being formed by an action described in Schedule 1
	8(3)	Possessing a gamete, any kind of embryo or foetus, or being formed by an action described in Schedule 1

Part 2—*continued*

Title of Act	Section of Act	Offence
Immigration Act 2009	342(1)(b)	Using false or misleading document or information
	343(1)(a)	Assisting person to be or remain unlawfully in New Zealand, or breach visa conditions
	343(1)(b)	Assisting person to unlawfully enter New Zealand
	343(1)(c)	Assisting completion of arrival document in false or misleading manner
	345	Improper use of document relating to another person or forged or fraudulently obtained
	348	Modifying form after completion and signing
Industrial and Provident Societies Act 1908	15(c)(iii)	False declaration
Immigration Advisers Licensing Act 2007	63(1)(a)	Provision of immigration advice unless licensed or exempt
	64(1)	Holding out as immigration adviser unless licensed or exempt
	65(1)	Holding out as licensed immigration adviser
	67(1)(a)	Asking for or receiving fee or reward for immigration advice when neither licensed nor exempt
	68(1)(a)	Employing or contracting unlicensed or non-exempt person as immigration adviser.
Insolvency Act 1967	128A	Offence by undischarged bankrupt
Insolvency Act 2006	419 to 428, 430	Offences by bankrupt
Inspector-General of Intelligence and Security Act 1996	28	Unauthorised making or disclosure of records.

Part 2—*continued*

Title of Act	Section of Act	Offence
Intelligence and Security Committee Act 1996	20	Unauthorised making or disclosure of records
Land Drainage Act 1908	82	Wilful damage to works
Land Transfer Act 1952	225	Fraudulently procuring certificate of title, etc
	226	Forging seal of Registrar, etc
	228A	Fraudulent removal of records
Land Transport Act 1998	32(4)	Driving while disqualified or contrary to limited licence or while licence suspended or revoked
	36(1)	Reckless or dangerous driving causing injury or death, or failing to stop and render assistance after person injured or killed
	36AA	Causing death of another person
	36A(1) (a) and (2)	Operating a motor vehicle in a race or unnecessary exhibition of speed or acceleration in contravention of section 22A(1), and by that act or omission causing an injury to or the death of another person
	36A(1)(c) and (2)	Without reasonable excuse, operating a motor vehicle in a manner that causes it to undergo sustained loss of traction in contravention of section 22A(3), and by that act or omission causing an injury to or the death of another person
	39(1)	Causing injury or death while carelessly using vehicle
	56(4)	Contravening specified breath or blood-alcohol limit

Part 2—*continued*

Title of Act	Section of Act	Offence
	58(3)	Driving while under influence of drink or drug to such an extent as to be incapable of proper control of vehicle
	60(3)	Failing or refusing to allow blood specimen to be taken
	61(1)	Causing bodily injury or death while in charge of a motor vehicle and having breath alcohol exceeding 400 micrograms of alcohol per litre of breath or blood alcohol exceeding 80 milligrams of alcohol per 100 millilitres of blood
	61(2)	Causing bodily injury or death while in charge of a motor vehicle and while under the influence of drink or a drug, or both, to such an extent as to be incapable of having proper control of the vehicle, or with blood containing evidence of the use of a controlled drug specified in Schedule 1 of the Misuse of Drugs Act 1975 (except thalidomide)
	62(1)	Causing bodily injury or death while carelessly driving a motor vehicle (in a manner that is not an offence against section 61) and while under the influence of drink or a drug, or both, or with blood containing evidence of the use of a controlled drug specified in Schedule 1 of the Misuse of Drugs Act 1975 (except thalidomide)

Part 2—*continued*

Title of Act	Section of Act	Offence
	62(1B)	Causing bodily injury or death by driving or attempting to drive with blood containing evidence of use of qualifying drug
	62(1B)	Causing bodily injury or death by driving or attempting to drive with blood containing evidence of use of drugs or prescription medicine
Local Electoral Act 2001	123 and 124	Offences in respect of official documents and voting offences
Local Government Act 2002	232(2)	Wilful or malicious destruction, damage, stopping, obstruction, or interference with works or property vested in, or under the control of, a local authority
Marriage Act 1955	58	Unlawful solemnisation of marriage
	59	Falsely pretending to be marriage celebrant
	60	False statements, etc
Mental Health (Compulsory Assessment and Treatment) Act 1992	114	Neglect or ill-treatment of proposed patients and patients
Merchandise Marks Act 1954	18	Contravention of Act
Misuse of Drugs Act 1975	6	Dealing with controlled drugs, but only where the charge relates to a Class C controlled drug
	9	Cultivation of prohibited plants
	10	Aiding offences against corresponding law of another country, but only in a case to which subsection (2)(b) applies
	11	Theft, etc, of controlled drugs

Part 2—*continued*

Title of Act	Section of Act	Offence
	12	Use of premises or vehicle
	12A	Equipment, material, and substances used in production or cultivation of controlled drugs.
	12AB	Offence to knowingly import or export precursor substances for unlawful use
	12B	Laundering proceeds of drug offences.
Naval and Victualling Stores Act 1908	4	Destroying marks with intent to steal stores
	5(1)	Knowingly receiving or selling marked stores
New Zealand Security Intelligence Service Act 1969	12A	Unauthorised disclosure of Information
Passports Act 1992	29A	Forged and false New Zealand travel documents
	30	Offences relating to passport information and material
	30A	Improper issue of New Zealand travel document
	31(1)	Other offences
	31(2)	Defacing or destroying document
	32	False representations
Patents Act 1953	25(6)	Breach of secrecy as to certain inventions
	26(8)	Unlawful publication of information as to inventions relating to atomic energy
	105	Falsification of register of patents
Prostitution Reform Act 2003	23	Offence to breach prohibitions on use in prostitution of persons under 18 years
Protection of Personal and Property Rights Act 1988	45(3)	False statement

Part 2—*continued*

Title of Act	Section of Act	Offence
Public Service Investment Society Management Act (No 2) 1979	22	Destroying or altering records
Referenda (Postal Voting) Act 2000	68(2)	Voting papers
Reserve Bank of New Zealand Act 1989	29	Making or issuing of other bank notes or coins
	176	Offence against Act
Residential Tenancies Act 1986	106	Giving false evidence
Securities Act 1978	60C	offence of contravening management banning order
	60E	persons automatically banned from management
	60K	offence of contravening order to preserve assets
Securities Markets Act 1988	8F	criminal liability for insider conduct
	11A	criminal liability for false or misleading statement or information
	11D	criminal liability for false or misleading appearance of trading, etc
	39	dealers in futures contracts must be authorised
	43H	offence of contravening management banning order
	43I	persons automatically banned from management
	43M	offence of contravening investment adviser or broker banning order
43N	persons automatically banned from investment adviser or broker activities	
	43T	offence of contravening order to preserve assets
Secret Commissions Act 1910	3	Gifts to agent without consent of principal an offence

Part 2—*continued*

Title of Act	Section of Act	Offence
	4	Acceptance of such gifts by agent an offence
	5	Duty of agent to disclose pecuniary interest in contract
	6	Giving false receipt, invoice, etc, to agent an offence
	7	Delivery of false receipt, etc, to principal an offence
	8	Receiving secret reward for procuring contracts an offence
	9	Aiding and abetting offences
	10	Offences by person acting on behalf of agents
Serious Fraud Office Act 1990	45	Offences as to obstructing investigation, etc
	46	Offence to destroy, alter, or conceal records, etc
Soil Conservation and Rivers Control Act 1941	154	Wilful damage to watercourse or works
Summary Proceedings Act 1957	29(2)	False statement of service
	181(5)	False statement of service
Takeovers Act 1993	44C	criminal liability for false or misleading statement or information
	44H	offence of contravening management banning order
	44J	persons automatically banned from management
	44P	offence of contravening order to preserve assets
Tax Administration Act 1994	143A(1)(d)	Knowledge Offences
	143B(1) and (2)	Evasion or similar offence.
Trade in Endangered Species Act 1989	44(1)(a)	Trading in specimen of endangered species without appropriate permit or certificate

Part 2—*continued*

Title of Act	Section of Act	Offence
	44(1)(b)	Trading in specimen of threatened species without appropriate permit or certificate
	45(1)	Unlawful possession of specimen of endangered or threatened species
Trade Marks Act 2002	120 to 124	Offences relating to counterfeiting or falsely using registered trade marks
Trade Unions Act 1908	29	Circulating false copies of rules, etc
Trustee Companies Management Act 1975	20	Destroying or altering records
Veterinary Surgeons Act 1956	22	Offences as to registration

Schedule 1 Part 2: amended, on 1 July 2011, by section 50 of the Financial Advisers Amendment Act 2010 (2010 No 40).

Schedule 1 Part 2: amended, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

Schedule 1 Part 2: amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Schedule 1 Part 2: amended, on 1 May 2011, by section 35(4) of the Land Transport Amendment Act 2009 (2009 No 17).

Schedule 1 Part 2: amended, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Schedule 1 Part 2: amended, on 1 January 2011, by section 82 of the Electoral Referendum Act 2010 (2010 No 139).

Schedule 1 Part 2: amended, on 1 January 2011, by section 41(2) of the Electoral (Finance Reform and Advance Voting) Amendment Act 2010 (2010 No 137).

Schedule 1 Part 2: amended, on 1 January 2011, by section 41(3) of the Electoral (Finance Reform and Advance Voting) Amendment Act 2010 (2010 No 137).

Schedule 1 Part 2: amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Schedule 1 Part 2: amended, on 7 July 2010, by section 10(1) of the Animal Welfare Amendment Act 2010 (2010 No 93).

Schedule 1 Part 2: amended, on 1 December 2009, by section 214(1) of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Schedule 1 Part 2: amended, on 1 December 2009, by section 214(2) of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Part 2—*continued*

A reference to the Accident Compensation Act 1972 was inserted, as from 1 April 1974, by section 62 Accident Compensation Amendment Act (No 2) 1973.

A reference to the Accident Rehabilitation and Compensation Insurance Act 1992 was inserted by section 2(1)(a) Summary Proceedings Amendment Act 1996 (1996 No 66) with application as from the 1997-98 income year.

References to the Accident Compensation Act 1972 and the Accident Rehabilitation and Compensation Insurance Act 1992 were repealed, as from 1 July 1999, by section 415(1) Accident Insurance Act 1998 (1998 No 114).

The reference to the Animal Welfare Act 1999 was inserted, as from 1 January 2000, by section 194 Animal Welfare Act 1999 (1999 No 142).

The reference to the Animals Act 1967 (1967 No 50) was inserted by section 108(2)(b) of that Act. This reference was impliedly repealed by section 167(1) Biosecurity Act 1993 (1993 No 95).

The reference to the Antarctica (Environmental Protection) Act 1994 was inserted, as from 23 January 1998, by section 56(2) Antarctica (Environmental Protection) Act 1994 (1994 No 119). *See* clause 2 Antarctica (Environmental Protection) Act 1994 (SR 1998/1).

The reference to the Area Health Boards Act 1983 (1983 No 134) was inserted by section 5(2) Area Health Boards Amendment Act 1986 (1986 No 16). This reference was impliedly repealed by section 23(1) Health Reforms (Transitional Provisions) Act 1993 (1993 No 23).

The reference to the Arms Act 1958 was substituted for the previous reference (as inserted by section 10 Arms Amendment Act 1974) by section 18(1) Arms Amendment Act 1976, and substituted by a reference to the Arms Act 1983 (1983 No 44) by section 75 of that Act.

The reference to the Arms Act 1983 was amended, as from 1 August 1987, by section 7 Summary Proceedings Amendment Act (No 2) 1987 (1987 No 172) by inserting references to sections 45(1) and 46(1) Arms Act 1983.

Schedule 1 Part 2 Aviation Crimes Act 1972: inserted, on 26 June 2008, by section 14(5)(a) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

The reference to the Bankruptcy Act 1908 was inserted by section 3(2)(a) Summary Proceedings Amendment Act 1961 (1961 No 44). This reference was repealed by section 170(1) Insolvency Act 1967 (1967 No 54).

The reference to the Biosecurity Act 1993 was inserted, as from 26 November 1997, by section 127(2) Biosecurity Amendment Act 1997 (1997 No 89).

Schedule 1 Part 2 Births and Deaths Registration Act 1951: repealed, on 24 January 2009, by section 47 of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

Schedule 1 Part 2 Births, Deaths, Marriages, and Relationships Registration Act 1995: inserted, on 24 January 2009, by section 47 of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

The reference to the Building Societies Act 1965 (1965 No 22) was inserted by section 134 of that Act, and amended section 41(3) Building Societies Amendment Act 1987 (1987 No 175) by omitting as much as relates to sections 30, 64 and 70.

Part 2—*continued*

The reference to the Burial and Cremation Act 1964 (1964 No 75) was inserted by section 56(4) of that Act.

The reference to the Casino Control Act 1990 (1990 No 62) was inserted by section 119 of that Act.

The reference to the Casino Control Act 1990 (1990 No 62) was repealed, as from 1 July 2004, by section 374 Gambling Act 2003 (2003 No 51). *See* sections 376 and 377 of that Act for the savings and transitional provisions. *See* clause 2(3) Gambling Act Commencement Order 2003 (SR 2003/384).

The reference to the Chateau Companies Act 1977 (1977 No 4) was inserted by section 19(3) of that Act.

The reference to the Chattels Transfer Act 1924 was omitted, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). *See* Part 12 of that Act as to the transitional provisions.

Schedule 1 Part 2 Citizens Initiated Referenda Act 1993: inserted, on 26 June 2008, by section 14(5)(b) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

The item relating to the Citizenship Act 1977 was inserted, as from 21 April 2005, by section 16 Citizenship Amendment Act 2005 (2005 No 43).

The item relating to the Civil Union Act 2004 was inserted, as from 26 April 2005, by section 46 Civil Union Act 2004 (2004 No 102).

Schedule 1 Part 2 Climate Change Response Act 2002: inserted, on 26 September 2008, by section 56(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Schedule 1 Part 2 Climate Change Response Act 2002: amended, on 1 July 2009, by section 11(2)(a) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Schedule 1 Part 2 Climate Change Response Act 2002: amended, on 1 July 2009, by section 11(2)(b) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

The reference to the Commerce Act 1975 was substituted for the previous reference (as inserted by section 133(1) of that Act) by section 23(2) Commerce Amendment Act 1976.

The reference to the Companies Act 1955 was inserted, as from 1 July 1994, by section 64 Companies Amendment Act 1993 (1993 No 108).

The reference to the Companies Act 1955 was amended, as from 3 June 1998, by section 5 Summary Proceedings Amendment Act 1998 (1998 No 61) by inserting items relating to sections 188A and 189A.

The reference to the Companies Act 1993 was inserted, as from 1 July 1994, by section 396 of that Act.

The reference to the Companies Special Investigations Act 1958 was inserted by section 28(3) of that Act.

The reference to the Compulsory Retirement Savings Scheme Referendum Act 1997 was inserted, as from 29 May 1997, by section 64 of that Act.

Part 2—*continued*

The reference to the Copyright Act 1962 was inserted by section 68(3) of that Act. It was omitted, as from 1 January 1995, by section 236(2) Copyright Act 1994 (1994 No 143).

The reference to the Copyright Act 1994 was inserted, as from 20 August 2003, by section 201 Trade Marks Act 2002 (2002 No 49). *See* clause 2 Trade Marks Act 2002 Commencement Order 2003 (SR 2003/188).

The reference to the Cornish Companies Management Act 1974 (1974 No 27) was inserted by section 22(3) of that Act. This reference was impliedly repealed by section 2(1)(a) Cornish Companies Management Repeal Act 1994 (1994 No 25).

Schedule 1 Part 2 Coroners Act 1988: inserted, on 26 June 2008, by section 14(5)(c) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 2 Corporations (Investigation and Management) Act 1989: inserted, on 22 March 1989, pursuant to section 73 of the Corporations (Investigation and Management) Act 1989 (1989 No 11).

Schedule 1 Part 2 Corporations (Investigation and Management) Act 1989: item repealed, on 26 June 2008, by section 14(5)(c) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 2 Corporations (Investigation and Management) Act 1989: items inserted, on 26 June 2008, by section 14(5)(c) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

The reference to the Credit Contracts and Consumer Finance Act 2003 was inserted by section 103(4) Credit Contracts and Consumer Finance Act 2003 (2003 No 52). *See* section 2(2) of that Act as to this amendment coming into force: (a) for the purpose of applying to buy-back transactions, as from 14 October 2003; and (b) for all other purposes, as from 1 April 2005.

The reference to the Criminal Investigations (Blood Samples) Act 1995 was inserted, as from 12 August 1996, by section 82 Criminal Investigations (Blood Samples) Act 1995 (1995 No 55). *See* clause 2 Criminal Investigations (Blood Samples) Act Commencement Order 1996 (SR 1996/189).

The reference to the Criminal Investigations (Blood Samples) Act 1995 was amended, as from 15 April 2004, by section 53 Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113) by substituting the word “Bodily” for the word “Blood”. *See* clause 2 Criminal Investigations (Bodily Samples) Amendment Act 2003 (SR 2004/54).

A reference to sections 238 and 246 of the Customs Act 1966, was substituted for a reference to sections 212 and 217 of the repealed Customs Act 1913.

The reference to the Customs and Excise Act 1996 was substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) for a reference to the Customs Act 1966.

The reference to the Customs and Excise Act 1996 was amended, as from 22 February 2005, by section 46(1) Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2) by inserting the item relating to s 209(1A).

The reference to the Dangerous Drugs Act 1927 was inserted by section 6(2) Dangerous Drugs Amendment Act 1960. This reference was repealed by section 5(7) Narcotics Act 1965.

Part 2—*continued*

The reference to section 86 Distillation Act 1971 was substituted for a reference to section 126 of the repealed Distillation Act 1908. A reference to sections 127 and 128 of the Distillation Act 1908 has been omitted as there are no corresponding provisions in the 1971 Act.

The reference to the District Courts Act 1947 was amended by section 2(3) District Courts Amendment Act 1979 (1979 No 125) by substituting the word “District” for the word “Magistrates”.

The reference to the Domestic Violence Act 1995 was inserted, as from 1 July 1996, by section 6 Summary Proceedings Amendment Act (No 2) 1995 (1995 No 87). *See* clause 2 Summary Proceedings Amendment Act Commencement Order (No 2) 1996 (SR 1996/147).

Schedule 1 Part 2 Domestic Violence Act 1995: amended, on 28 October 2009, by section 7(2) of the Domestic Violence Amendment Act 2009 (2009 No 43).

The reference to the Electoral Act 1956 was substituted, as from 15 November 2000, by section 81 Referenda (Postal Voting) Act 2000 (2000 No 48) for the reference to the Electoral Act 1993.

Schedule 1 Part 2 Electoral Act 1993: items inserted, on 1 March 2009, by section 16 of the Electoral Amendment Act 2009 (2009 No 1).

Schedule 1 Part 2 Electoral Act 1993: items repealed, on 20 December 2007, by section 150 of the Electoral Finance Act 2007 (2007 No 111).

Schedule 1 Part 2 Electoral Finance Act 2007: repealed, on 1 March 2009, by section 16 of the Electoral Amendment Act 2009 (2009 No 1).

Schedule 1 Part 2 Electoral Finance Act 2007: inserted, on 20 December 2007, by section 150 of the Electoral Finance Act 2007 (2007 No 111).

The reference to the Estate and Gift Duties Act 1968 (1968 No 35) was inserted, as from 1 January 1969, by section 95(6) of that Act. This reference was repealed by section 2(1)(b) Summary Proceedings Amendment Act 1996 (1996 No 66) with application as from the 1997-98 income year.

The reference to the Films, Videos, and Publications Classification Act 1993 was inserted, as from 22 February 2005, by section 46(2) Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

The reference to the Financial Reporting Act 1993 was inserted, as from 1 July 1994, by section 46 Financial Reporting Act 1993 (1993 No 106).

The reference to the Fire Services Act 1949 was repealed by section 100(1) Fire Services Act 1972 (1972 No 42).

The reference to the Fisheries Act 1908 was impliedly repealed by section 7 Fisheries Amendment Act 1967.

The reference to the Fisheries Act 1996 was inserted, as from 1 October 2001, by section 316(1) Fisheries Act 1996 (1996 No 88). *See* clause 2(4) Fisheries Act Commencement Order (No 2) 2001.

The reference to the Fisheries Act 1996 was amended, as from 9 September 1999, by section 87(2) Fisheries Act 1996 Amendment Act 1999 (1999 No 101) by inserting references to ss 296B(5) and 296ZC(3)(b) or (c).

Part 2—*continued*

The reference to the Food Act 1981 was inserted, as from 1 July 1996, by section 28 Food Amendment Act 1996 (1996 No 41).

The reference to the Gambling Act 2003 (2003 No 51) was inserted, as from 1 July 2004, by section 374 Gambling Act 2003 (2003 No 51). *See* sections 376 and 377 of that Act for the savings and transitional provisions. *See* clause 2(3) Gambling Act Commencement Order 2003 (SR 2003/384).

Schedule 1 Part 2 Gambling Act 2003: item repealed, on 27 March 2008, by section 4(2) of the Summary Proceedings Amendment Act 2008 (2008 No 18).

The reference to the Harbours Act 1950 was impliedly repealed by section 10 Local Government Amendment Act (No 2) 1999 (1999 No 24).

The reference to the Hauraki Plains Act 1926 was repealed by section 14(15) Reserves and Other Lands Disposal Act 1961 (1961 No 128).

Schedule 1 Part 2 Health Act 1956: inserted, on 1 July 2008, by section 19 of the Health (Drinking Water) Amendment Act 2007 (2007 No 92).

The reference to the Hospitals Act 1957 was inserted by section 4(3) Hospitals Amendment Act 1980 (1980 No 25). This reference was repealed by section 32 Hospitals Amendment Act 1993 (1993 No 26).

The reference to the Human Assisted Reproductive Technology Act 2004 (2004 No 92) was inserted, as from 22 November 2004, by section 87 Human Assisted Reproductive Technology Act 2004 (2004 No 92)

The reference to the Immigration Act 1987 (1987 No 74) was inserted by section 17(2) of the Immigration Amendment Act 2002 (2002 No. 22).

Schedule 1 Part 2 Industrial and Provident Societies Act 1908: inserted, on 26 June 2008, by section 14(5)(e) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Schedule 1 Part 2 Immigration Advisers Licensing Act 2007: inserted, on 4 May 2008, by section 97 of the Immigration Advisers Licensing Act 2007 (2007 No 15).

Schedule 1 Part 2 Insolvency Act 1967: repealed, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Schedule 1 Part 2 Insolvency Act 2006: inserted, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

The reference to the Intelligence and Security Committee Act 1996 was inserted, as from 2 July 1996, by section 20(4) of that Act.

The reference to the Land Agents Act 1953 was impliedly repealed by section 84(1) Real Estate Agents Act 1976 (1976 No 9).

Schedule 1 Part 2 Land Transfer Act 1952: item inserted, on 26 June 2008, by section 14(5)(g) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

The reference to the Land Transport Act 1998 was inserted, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110).

The reference to the Land Transport Act 1998 was amended, as from 2 May 2003, by section 11 Land Transport (Unauthorised Street and Drag Racing) Amendment Act 2003 (2003 No 11) by inserting references to s 36A(1)(a) and (2) and s 36A(1)(c) and (2).

Part 2—*continued*

The reference to the Licensing Act 1908 was repealed by section 301(1) Sale of Liquor Act 1962.

Schedule 1 Part 2 Life Insurance Act 1908: inserted, on 26 June 2008, by section 14(5)(h) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

The reference to section 56(2) and (4) Local Elections and Polls Act 1966 was substituted for a reference to section 53(1) and (2) of the repealed Local Elections and Polls Act 1953.

The reference to sections 56(2) and (4) Local Elections and Polls Act 1976 was substituted, as from 1 July 2001, by section 151 Local Electoral Act 2001 (2001 No 35) for a reference to sections 123 and 124 Local Electoral Act 2001. *See* sections 153 to 157 of that Act as to the transitional provisions. *See* clause 2 Local Electoral Act Commencement Order 2001 (SR 2001/144).

The reference to the Local Government Act 1974 was inserted by section 8(3) Local Government Amendment Act 1979 (1979 No 59).

The reference to the Local Government Act 1974 was repealed by section 30 Local Government Act 2002 Amendment Act 2004 (2004 No 63).

The reference to the Local Government Act 2002 was inserted by section 30 Local Government Act 2002 Amendment Act 2004 (2004 No 63).

The reference to the Magistrates' Courts Act 1947 (now the District Courts Act 1947) has been omitted, the amended entry being inserted in the appropriate alphabetical order.

The reference to the Marriage Act 1955, section 59 was amended by section 2(1) Marriage Amendment Act 1976 (1976 No 8) by substituting the words "officiating minister" for the words "marriage celebrant".

The reference to section 35 Medical Practitioners Act 1968, was substituted, as from 1 April 1969, for a reference to section 27 of the repealed Medical Practitioners Act 1950.

The reference to section 35 of the Medical Practitioners Act 1968 was repealed, as from 1 July 1996, by section 143(1) Medical Practitioners Act 1995 (1995 No 95). *See* clause 2 Medical Practitioners Act Commencement Order 1996 (SR 1996/162).

The reference to the Mental Health Act 1969 was substituted, as from 1 April 1970, for the former reference (as inserted by section 3(2)(b) Summary Proceedings Amendment Act 1961 (1961 No 44)) by section 129(3) Mental Health Act 1969 (1969 No 16).

The reference to the Mental Health Act 1969 was repealed, as from 1 April 2000, by section 77 Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

The reference to the Mental Health (Compulsory Assessment and Treatment) Act 1992 was inserted, as from 1 April 2000, by section 77 Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

The reference to the Misuse of Drugs Act 1975 (1975 No 116) was substituted for the former reference (as inserted by section 28(3) of that Act) by section 25(2) Summary Proceedings Amendment Act 1980 (1980 No 84).

The reference to section 12A Misuse of Drugs Act 1975 was inserted, as from 12 May 1998, by section 13 Misuse of Drugs Amendment Act 1998 (1998 No 14).

The reference to section 12AB Misuse of Drugs Act 1975 was inserted, as from 22 June 2005, by section 23 Misuse of Drugs Amendment Act 2005 (2005 No 81).

Part 2—*continued*

The reference to section 12B Misuse of Drugs Act 1975 was inserted, as from 12 May 1998, by section 13 Misuse of Drugs Amendment Act 1998 (1998 No 14).

The reference to the Moneylenders Act 1908 (as inserted by section 3(2)(c) Summary Proceedings Amendment Act 1961 (1961 No 44)) was repealed by section 48(1)(i) Credit Contracts Act 1981 (1981 No 27).

The reference to the Motor-Vehicle Dealers Act 1958 was inserted by section 24(2) of that Act. This reference was repealed by section 149 Motor Vehicle Dealers Act 1975 (1975 No 127).

The reference to the Municipal Corporations Act 1954 was repealed by section 8(3) Local Government Amendment Act 1979 (1979 No 59).

The reference to the Narcotics Act 1965 was inserted by section 5(7) of that Act. It was substituted by section 4(2) Narcotics Amendment Act 1970 (1970 No 27). This reference was repealed by section 28(3) Misuse of Drugs Act 1975 (1975 No 116).

The reference to the New Zealand Security Intelligence Service Act 1969 (1969 No 24) was inserted by section 7(2) New Zealand Security Intelligence Service Amendment Act 1977 (1977 No 50).

The reference to the Overseas Investment Act 1973 (1973 No 14) was inserted by section 18(2) of that Act.

The reference to the Overseas Investment Act 1973 (1973 No 14) was omitted, as from 25 August 2005, by section 75 of the Overseas Investment Act 2005 (2005 No 82). *See* sections 76 to 79 of that Act as to the transitional provisions. *See* clause 2 Overseas Investment Act Commencement Order 2005 (SR 2005/219).

The reference to the Passports Act 1980 (1980 No 58) was inserted by section 17 of that Act, and substituted by section 39 Passports Act 1992 (1992 No 92).

The reference to the Passports Act 1992 (1992 No 92) was substituted, as from 18 June 2002, by section 12(1) of the Passports Amendment Act 2002 (2002 No 24).

The reference to the Plant Varieties Act 1973 was inserted by section 35(6) of that Act, and repealed by section 37(8) Plant Variety Rights Act 1987 (1987 No 5).

The reference to section 32 Police Offences Act 1927 was impliedly repealed by section 51(2) Summary Offences Act 1981 (1981 No 113).

A reference to the Post Office Act 1959 was inserted, as from 1 January 1960, by section 237(2) of that Act. This reference was repealed, as from 1 April 1998, by section 62(1) Postal Services Act 1998 (1998 No 2). *See* clause 2 Postal Services Act Commencement Order 1998 (SR 1998/49).

The reference to the Proceeds of Crime Act 1991 (1991 No 120) was inserted by section 92 of that Act.

The reference to the Prostitution Reform Act 2003 was inserted, as from 28 August 2003, by section 50(1) Prostitution Reform Act 2003 (2003 No 28). *See* section 51 of that Act as to the transitional provisions for past offences.

Schedule 1 Part 2 Protection of Personal and Property Rights Act 1988: inserted, on 26 June 2008, by section 14(5)(i) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

The reference to the Public Service Investment Society Management Act (No 2) 1979 (1979 No 9) was substituted for the previous reference (as inserted by section 16(3) of

Part 2—*continued*

the Public Service Investment Society Management Act 1979) by section 22(3) of the first-mentioned Act.

Schedule 1 Part 2 Real Estate Agents Act 2008: repealed, on 16 November 2009, by section 173 of the Real Estate Agents Act 2008 (2008 No 66).

The reference to the Referenda (Postal Voting) Act 2000 was inserted, as from 15 November 2000, by section 81 of that Act.

The reference to the Reserve Bank of New Zealand Act 1964 was substituted for the former reference (as inserted by section 52(3) of that Act) by section 4(2) of the Reserve Bank of New Zealand Amendment Act 1968.

The reference to the Reserve Bank of New Zealand Act 1989 was inserted, as from 24 March 1995, by section 14 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

Schedule 1 Part 2 Reserve Bank of New Zealand Act 1989: inserted, on 26 June 2008, by section 14(5)(j) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

The reference to the Reserve Bank of New Zealand Act 1989 was repealed, as from 21 August 2003, by section 48(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

The reference to the Residential Tenancies Act 1986 (1986 No 120) was inserted by section 144(3) of that Act.

The reference to section 68 of the Sales Tax Act 1974 has been substituted for section 46 of the Sales Tax Act 1932-33.

The reference to the Securities Act 1978 was substituted, as from 25 October 2006, by section 25 Securities Amendment Act 2006 (2006 No 46).

Schedule 1 Part 2 Securities Markets Act 1988: inserted, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

Schedule 1 Part 2 Secret Commissions Act 1910: inserted, on 26 June 2008, by section 14(5)(j) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

The reference to the Serious Fraud Office Act 1990 (1990 No 51) was inserted by section 54 of that Act.

The reference to section 195 Shipping and Seamen Act 1952 (1952 No 49), was inserted by section 4(4) Shipping and Seamen Amendment Act 1965, substituted by section 29(2) Shipping and Seamen Amendment Act 1987 (1987 No 184), and parts omitted by (as from 29 October 1992) section 88(3) Ship Registration Act 1992 (1992 No 89).

The reference to the Stock Act 1908 was inserted by section 4(2) Stock Amendment Act 1959. The reference to the 1908 Act and a reference to the Stock Amendment Act 1956 were omitted by section 108(2)(a) Animals Act 1967 (1967 No 50).

The reference to the Syndicates Act 1973 was inserted by section 56(2) of that Act. This reference was repealed by section 75(3) Securities Act 1978 (1978 No 103).

The reference to the Takeovers Act 1993 was substituted, as from 25 October 2006, by section 25 Securities Amendment Act 2006 (2006 No 46).

Part 2—*continued*

The reference to the Tax Administration Act 1994 was inserted by section 2(c) Summary Proceedings Amendment Act 1996 (1996 No 66), with application as from as from the 1997-98 income year.

The reference to the Trade in Endangered Species Act 1989 (1989 No 18) was inserted by section 13 Trade in Endangered Species Amendment Act 1991 (1991 No 100).

The reference to the Trade Marks Act 1953 was omitted, as from 20 August 2003, by section 201 Trade Marks Act 2002 (2002 No 49). *See* clause 2 Trade Marks Act 2002 Commencement Order 2003 (SR 2003/188).

The reference to the Trade Marks Act 2002 was inserted, as from 20 August 2003, by section 201 Trade Marks Act 2002 (2002 No 49). *See* clause 2 Trade Marks Act 2002 Commencement Order 2003 (SR 2003/188).

Schedule 1 Part 2 Trade Unions Act 1908: inserted, on 26 June 2008, by section 14(5)(j) of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

A reference to the Transport Act 1962 (1962 No 135) was substituted for the former reference (as substituted by section 201(10) of the Transport Act 1962) by section 6(2) Transport Amendment Act 1970 (1970 No 136), and the words “breath-alcohol or” were inserted, as from 1 December 1978, in the item relating to section 55(2) by section 8(7) Transport Amendment Act (No 3) 1978 (1978 No 46), and the reference to section 56(1A) was inserted by section 6(5) Transport Amendment Act 1974 (1974 No 61).

A reference to the Transport Act 1962 was repealed, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110).

The reference to the Trustee Companies Management Act 1975 (1975 No 25) was inserted by section 20(3) of that Act.

The reference to the Wanganui Computer Centre Act 1976 (1976 No 19) was inserted by section 29(3) of that Act, and omitted by section 129(1) Privacy Act 1993 (1993 No 28).

The reference to the Water Supply Act 1908 was repealed by section 73(1) Counties Amendment Act 1961.

Schedule 2

Forms of information

Schedule 2 was inserted, as from 15 December 1994, by section 9 Summary Proceedings Amendment Act 1994 (1994 No 161).

Forms 1 and 2 were amended, as from 30 June 1998, by section 54 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77) by inserting the words “Community Magistrate”.

Form 1

S 15

Information or complaint where defendant is to be proceeded against summarily

I, *[full name]*, of *[address, occupation]*, say on oath that (*I have just cause to suspect, and do suspect, that) (*within the previous (6) months, namely) on *[date]*, at *[place]*, *[full name]*, of *[address, occupation]*, *who was born on *[date]*, *[here set out the substance of the offence or matter of complaint]* (*being an offence punishable summarily). *[Here add section and statute applicable.]*

Signature:

(Informant/Complainant*)

Sworn before me at *[place]* this *[date]*

Signature:

District Court Judge/Justice of the Peace/Community Magistrate/
Registrar (not being a constable*)

*Delete if inapplicable.

Form 2 s 145(2)
Information where defendant is to be proceeded
against by indictment

I, *[full name]*, of *[address, occupation]*, say on oath that (*I have just cause to suspect, and do suspect, that at *[place]* on *[full name]*, of *[address, occupation]*, *who was born on *[date]*, *[here set out the nature of the offence]*, being an indictable. *[Here add section and statute applicable.]*

Signature:
(Informant)

Sworn before me at *[place]* this *[date]*

Signature:
District Court Judge/Justice of the Peace/Community Magistrate/
Registrar (not being a constable)*)

*Delete if inapplicable.

Schedule 2A

s 114A(3)

**Modifications of Part 4 where appeal is
from District Court presided over by
Community Magistrate or Community
Magistrates to District Court presided
over by District Court Judge****Section 107**

By omitting subsection (1), and substituting the following subsection:

“(1) Where any information or complaint has been determined by a District Court presided over by a Community Magistrate or 2 or more Community Magistrates, either party may, if dissatisfied with the determination as being erroneous in point of law, appeal to a District Court presided over by a District Court Judge by way of case stated for the opinion of that Court on a question of law only.”

By omitting from subsections (3) and (4) the words “District Court Judge or Justice or Justices” wherever they appear, and substituting in each case the words “Community Magistrate or Community Magistrates”.

By omitting from subsection (5) the words “the District Court Judge or any Justice” and substituting the words “any Community Magistrate”.

By omitting subsections (6) and (7), and substituting the following subsections:

“(6) Where the case has been settled and signed, the Registrar shall make a copy of the case available to each party.

“(7) The Registrar shall set the case down for hearing on the first practicable sitting day and shall notify the parties to the appeal of the time and place appointed for the hearing.”

By omitting from subsection (8) the words “District Court Judge or Justice or Justices”, and substituting the words “Community Magistrate or Community Magistrates”.

Section 109

By omitting this section, and substituting the following section:

“109 Frivolous appeals

- “(1) If the Community Magistrate or Community Magistrates are of the opinion that the appeal is merely frivolous, but not otherwise, the Community Magistrate or Community Magistrates may refuse to state a case, and shall, on the request of the applicant for the case, sign and deliver to the applicant a certificate of that refusal.
- “(2) Where the Community Magistrate or Community Magistrates refuse to state a case, the applicant for the case may apply to a Court presided over by a District Court Judge for an order requiring the Community Magistrate or Community Magistrates to state a case. A copy of the application shall be served on the Community Magistrate or Community Magistrates and on the other party, and any such Community Magistrate and that other party may appear and be heard.
- “(3) The District Court to which an application under subsection (2) is made may, if it thinks fit, make an order requiring the Community Magistrate or Community Magistrates to state a case, and the Community Magistrate or Community Magistrates on being served with the order shall state a case accordingly. Costs may be allowed on the application, but shall not be allowed against any Community Magistrate.”

Section 111

By omitting this section, and substituting the following section:

“111 Case may be sent back for amendment

A District Court presided over by a District Court Judge may, if it thinks fit, cause a case stated to be sent back for amendment, and it shall be the duty of the Community Magistrate or Community Magistrates to amend the case accordingly and return it to the District Court.”

Section 112

By omitting the words “The High Court shall”, and substituting the words “A District Court presided over by a District Court Judge shall”.

Section 112—*continued*

By omitting paragraph (b), and substituting the following paragraph:

- “(b) remit the matter to the Community Magistrate or Community Magistrates with the opinion of the District Court thereon; or”.

Section 113

By omitting this section, and substituting the following section:

“113 Appeal on point of law may be removed into High Court

A District Court presided over by a District Court Judge may order the removal into the High Court of any case transmitted to that District Court under section 107, and on the removal the High Court shall have the same power to adjudicate on the proceedings as that District Court had.”

Section 114

By omitting the words “the High Court against”, and substituting the words “a District Court presided over by a District Court Judge against”.

By omitting the words “the High Court grants”, and substituting the words “such a District Court grants”.

Section 115

By inserting in subsection (1), after the words “District Court”, the words “presided over by a Community Magistrate or Community Magistrates”.

By omitting from subsection (1) the words “the High Court”, and substituting the words “a District Court presided over by a District Court Judge”.

Section 115A (as inserted by section 5(1) of the Summary Proceedings Amendment Act 1969)

By inserting in subsection (1), after the words “a District Court”, the words “presided over by a Community Magistrate or Community Magistrates”.

Section 115A (as inserted by section 5(1) of the Summary Proceedings Amendment Act 1969)—*continued*

By omitting from subsection (1) the words “the High Court”, and substituting the words “a District Court presided over by a District Court Judge”.

By omitting from subsection (3) the words “by the High Court”, and substituting the words “by a District Court presided over by a District Court Judge”.

By omitting the words “of the High Court”, and substituting the words “of the District Court”.

Section 115B (as inserted by section 12(1) of the Summary Proceedings Amendment Act 1976)

By omitting the words “the High Court”, and substituting the words “a District Court presided over by a District Court Judge”.

Section 115C (as inserted by section 2 of the Summary Proceedings Amendment Act (No 5) 1985)

By omitting this section, and substituting the following section:

“115C Rights of appeal against decisions relating to publication of reports of proceedings or identifying particulars

- “(1) Where a District Court presided over by 1 or more Community Magistrates makes a decision on an application for an order under paragraph (a) or paragraph (b) of section 138(2), or under section 140, of the Criminal Justice Act 1985 forbidding publication of any report of the proceedings or of any identifying particulars, the applicant for the order or the informant may appeal to a District Court presided over by a District Court Judge against the decision.
- “(2) Where the decision of the District Court presided over by 1 or more Community Magistrates is to refuse to make the order sought, that District Court must, on being satisfied that an appeal against that decision is to be brought under this section, make an interim order to the effect sought by the applicant; and that interim order continues in force—
- “(a) until the expiry of the period prescribed by section 116 for the filing of notice of the appeal; or

Section 115C (as inserted by section 2 of the Summary Proceedings Amendment Act (No 5) 1985)—*continued*

“(b) if notice of the appeal is filed within that prescribed period, until the appeal is finally disposed of, or withdrawn, or abandoned.

“(3) The provisions of sections 116 to 144, as far as they are applicable and with the necessary modifications, apply to any such appeal as if the decision of the District Court presided over by 1 or more Community Magistrates were an order made on sentence.”

Section 115D

[Repealed]

Section 115E

[Repealed]

Section 116(2)

By omitting the words “District Court Judge or Justice or Justices”, and substituting the words “Community Magistrate or Community Magistrates”.

Section 117

By omitting this section.

Section 118

By omitting this section, and substituting the following section:

“118 Setting down appeal for hearing

The Registrar who receives the notice of appeal—

“(a) must set the appeal down for hearing before a District Court Judge on the first practicable sitting day; and

“(b) must notify, or cause to be notified, the parties to the appeal of the time and place appointed for the hearing.”

Section 119

By omitting this section, and substituting the following section:

“119 Procedure on appeal

- “(1) All general appeals must be by way of rehearing.
- “(2) Where any question of fact is involved in any appeal, the evidence which was taken in the District Court presided over by 1 or more Community Magistrates and which bears on the question must, unless the District Court hearing the appeal otherwise directs, be brought before the District Court hearing the appeal as follows:
- “(a) as to any evidence given orally, by the production of any note made by the Community Magistrate or Community Magistrates or such other materials as the District Court hearing the appeal considers expedient:
 - “(b) as to any evidence taken by affidavit and as to any exhibits, by the production of the affidavits and of such of the exhibits as may have been forwarded by the Registrar of the Court appealed from and by the production by the parties to the appeal of such exhibits as are in their custody:
 - “(c) as to any evidence taken under section 31 (which relates to taking the evidence of a defence witness at a distance) or under section 32 (which relates to taking the evidence of a person about to leave the country), or to any statement admitted under section 33 (which relates to the admissibility of a statement made by a person who is seriously ill), by the production of a copy of that evidence or statement:
- provided that the District Court hearing the appeal may in its discretion rehear the whole or any part of the evidence, and must rehear the evidence of any witness if the Court has reason to believe that any note of the evidence of that witness made by the Community Magistrates or Community Magistrates is or may be incomplete in any material particular.
- “(3) The District Court hearing the appeal has full discretionary power to hear and receive further evidence, if that further evidence could not in the circumstances have reasonably been adduced at the hearing, and for that purpose has the same jurisdiction and authority to make any order under section 31

Section 119—*continued*

or section 32 as the Court from whose decision the appeal is made.”

Section 120

By omitting the words “High Court”, and substituting the words “District Court hearing the appeal”.

Section 121

By omitting from subsection (1) the words “The High Court”, and substituting the words “A District Court presided over by a District Court Judge”.

By omitting from subsections (2) to (7) the words “the High Court” wherever they appear, and substituting in each case the words “a District Court presided over by a District Court Judge”.

Section 123

By omitting this section, and substituting the following section:

“123 Powers of District Court Judge as to extension of time

- “(1) Any District Court Judge may, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this Part for the filing of any notice or the stating of any case or the doing of any other thing in respect of any appeal or proposed appeal to a District Court presided over by a District Court Judge.
- “(2) Any appellant or intending appellant may at any time apply to a District Court Judge to review any decision of a Community Magistrate or Community Magistrates refusing an extension of time for the stating of a case under this Part. On any such application a District Court Judge may, in his or her discretion, confirm the decision, or reverse it and allow such extension of time as he or she thinks fit.”

Section 124

By omitting from subsections (2), (4), and (5) the words “District Court Judge or Justice or Justices have certified that it has not been prosecuted or the Registrar of the High Court” wherever they appear,

Section 124—*continued*

and substituting in each case the words “Community Magistrate or Community Magistrates have certified that it has not been prosecuted or the Registrar”.

Section 125

[Repealed]

Section 128

[Repealed]

Section 129

By omitting the words “High Court” in the first place they appear, and substituting the words “District Court”.

By omitting the words “the High Court” in the second place where they appear, and substituting the words “a District Court presided over by a District Court Judge”.

Section 130

By omitting from subsection (1) the words “the High Court”, and substituting the words “a District Court presided over by a District Court Judge”.

By omitting from subsection (2) the words “the High Court”, and substituting the words “a District Court”.

By omitting from subsection (3) the words “the High Court”, and substituting the words “a District Court presided over by a District Court Judge”.

By omitting from subsection (4) the words “the High Court” in the first place where they appear, and substituting the words “a District Court presided over by a District Court Judge”.

By omitting from subsection (4) the words “the High Court” in the second place where they appear, and substituting the words “a District Court”.

By omitting from subsection (5) the words “the High Court” in the first place where they appear, and substituting the words “a District Court presided over by a District Court Judge”.

Section 130—*continued*

By omitting from subsection (5) the words “the High Court” in the second place where they appear, and substituting the words “a District Court”.

Section 131

By omitting this section.

Section 132

By omitting from subsection (1) the words “the High Court” in the first 2 places where they appear, and substituting in each case the words “a District Court presided over by a District Court Judge”.

By omitting subsections (1)(b) and (2).

Section 133

By omitting the words “the High Court” in both places where they appear, and substituting in each case the words “a District Court presided over by a District Court Judge”.

Section 134

By omitting the words “High Court” in both places where they appear, and substituting in each case the words “District Court”.

Section 135

By omitting this section, and substituting the following section:

“135 Execution of decision on appeal

“(1) Where on any appeal a District Court presided over by a District Court Judge confirms any conviction, sentence, order, or amount of any sum to be paid, or where the appeal is dismissed for non-prosecution, or where a certificate has been given under section 107 that the appeal has been not been prosecuted, the decision appealed against shall be enforced.

“(2) Where on any appeal a District Court presided over by a District Court Judge sets aside or reverses any conviction or other determination, or amends any conviction or other determination, or quashes or varies any sentence or order, or increases or reduces the amount of any sum ordered to be paid, the

Section 135—*continued*

Registrar of the District Court shall make in the entry in the Criminal Record Book kept pursuant to section 71 relating to the decision appealed against a note of the decision on the appeal.

“(3) In any case to which subsection (2) applies, the decision on the appeal or the decision appealed against as amended or varied by the decision on the appeal, as the case may be, takes effect as a decision of the District Court:

“provided that where a District Court presided over by a District Court Judge imposes a sentence of detention, the warrant to be issued under section 91 of the Sentencing Act 2002 must be signed by a District Court Judge.

“(3A) *[Repealed]*

“(4) Where a party to an appeal has paid a fine in accordance with a sentence of a District Court presided over by a Community Magistrate or Community Magistrates and on the determination of the appeal—

“(a) that party’s conviction is set aside; or

“(b) the sentence is quashed and any other sentence imposed is not for the payment of a fine or is for the payment of a smaller fine; or

“(c) the sentence is varied by a reduction in the amount of the fine imposed,—

that party shall be entitled, subject to the order of the District Court that heard the appeal, to a return of the sum paid or part thereof, as the case may be. For the purposes of this subsection the term **fine** includes any costs or other money ordered by the Court to be paid on the conviction of that party.”

Section 136

By omitting subsection (1), and substituting the following subsection:

“(1) Where the decision of a District Court presided over by a District Court Judge on any appeal has been given, or where an appeal has been dismissed for non-prosecution or a certificate has been given under section 107 that an appeal has not been prosecuted, any person who is liable under that decision or, as

Section 136—*continued*

the case may be, under the decision appealed from to be detained in custody and who is not in custody may be arrested without warrant by any constable or any officer of a prison.”

By omitting subsections (2) and (3).

By omitting subsection (4), and substituting the following subsection:

“(4) Where under section 107 a Community Magistrate or Community Magistrates have certified that an appeal has not been prosecuted, the Registrar of the District Court from which the appeal was made must send that certificate to the manager of the prison at which any party to the appeal is detained. Where an appeal has been dismissed for non-prosecution, the Registrar of the District Court to which the appeal was made must send a certificate to that effect to the manager.”

Section 137 (as substituted by section 23(1) of the Summary Proceedings Amendment Act 1993)

By inserting in subsection (1), after the words “a District Court”, the words “presided over by a Community Magistrate or Community Magistrates”.

By omitting from subsection (1) the words “High Court”, and substituting the words “Court that determines the appeal”.

By omitting from subsection (2); the words “the District Court has”, and substituting the words “a District Court presided over by a Community Magistrate or Community Magistrates has”.

By inserting in subsection (2), after the word “Justices”, the words “or Community Magistrate or Community Magistrates”.

By omitting from subsection (3) the words “a District Court has”, and substituting the words “a District Court presided over by a Community Magistrate or Community Magistrates has”.

By omitting from subsection (3) the words “the High Court”, and substituting the words “a District Court”.

Section 138

By omitting from subsection (2) the words “The High Court”, and substituting the words “A District Court presided over by a District Court Judge”.

Section 144

By omitting this section.

Schedule 2A was inserted, as from 30 June 1998, by section 55 Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77).

The items relating to sections 115D, 115E, 125, and 128 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

The item relating to the modified section 135 was amended by omitting the second proviso to subs (3), and subs (3A), as from 1 January 2001, by s 74(2) Bail Act 2000 (2000 No 38). *See* section 75 of that Act as to the savings provisions.

The item relating to the modified section 135 was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9), by substituting the words “section 91 of the Sentencing Act 2002” for the words “section 143 of the Criminal Justice Act 1985”. *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

The item relating to section 136 was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “prison” for the words “penal institution” in both places they appeared. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

The item relating to section 136 was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting the word “manager” for the word “Superintendent” in both places they appeared. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Schedule 3
Enactments amended

s 213

Schedule 4

s 214(1)

Enactments repealed

Atomic Energy Amendment Act 1957 (1957 No 12)

Amendment(s) incorporated in the Act(s).

Child Welfare Act 1925 (1925 No 22) (Reprinted 1931, Vol 3, p 1107)

Amendment(s) incorporated in the Act(s).

Crimes Act 1908 (1908 No 32) (Reprinted 1931 Vol 2, p 81)

Amendment(s) incorporated in the Act(s).

Crimes Amendment Act 1922 (1922 No 35) (Reprinted 1931, Vol 2, p 345)

Amendment(s) incorporated in the Act(s).

Crimes Amendment Act 1955 (1955 No 67)

Criminal Justice Act 1954 (1954 No 50)

Amendment(s) incorporated in the Act(s).

Designs Act 1953 (1953 No 65)

Amendment(s) incorporated in the Act(s).

Electoral Act 1956 (1956 No 107)

Amendment(s) incorporated in the Act(s).

Inferior Courts Procedure Act 1909 (1909 No 13) (Reprinted 1931, Vol 2, p 59)

Amendment(s) incorporated in the Act(s).

Judicature Act 1908 (1908 No 89)

Amendment(s) incorporated in the Act(s).

Justices of the Peace Act 1927 (1927 No 37) (Reprinted 1931, Vol 2, p 351)

Justices of the Peace Amendment Act 1946 (1946 No 13)

Justices of the Peace Amendment Act 1948 (1948 No 20)

Justices of the Peace Amendment Act 1952 (1952 No 44)

Justices of the Peace Amendment Act 1955 (1955 No 12)

Justices of the Peace Amendment Act (No 2) 1955 (1955 No 71)

Land Agents Act 1953 (1953 No 86)

Amendment(s) incorporated in the Act(s).

Land Transfer Act 1952 (1952 No 52)

Amendment(s) incorporated in the Act(s).

Local Elections and Polls Act 1953 (1953 No 16)

Amendment(s) incorporated in the Act(s).

Magistrates' Courts Act 1947 (1947 No 16)

Amendment(s) incorporated in the Act(s).

Marriage Act 1955 (1955 No 92)

Amendment(s) incorporated in the Act(s).

Merchandise Marks Act 1954 (1954 No 43)

Amendment(s) incorporated in the Act(s).

Municipal Corporations Act 1954 (1954 No 76)

Amendment(s) incorporated in the Act(s).

Patents Act 1953 (1953 No 64)

Amendment(s) incorporated in the Act(s).

**Police Offences Act 1927 (1927 No 35) (Reprinted 1955, Vol 2,
p 1744)**

Amendment(s) incorporated in the Act(s).

Shipping and Seamen Act 1952 (1952 No 49)

Amendment(s) incorporated in the Act(s).

Statutes Amendment Act 1936 (1936 No 58)

Amendment(s) incorporated in the Act(s).

Statutes Amendment Act 1938 (1938 No 20)

Amendment(s) incorporated in the Act(s).

Statutes Amendment Act 1950 (1950 No 91)

Amendment(s) incorporated in the Act(s).

Stock Amendment Act 1956 (1956 No 21)

Amendment(s) incorporated in the Act(s).

Summary Jurisdiction Act 1952 (1952 No 41)

Summary Jurisdiction Amendment Act 1955 (1955 No 79)

Summary Penalties Act 1939 (1939 No 11)

Trade Marks Act 1953 (1953 No 66)

Amendment(s) incorporated in the Act(s).

Transport Act 1949 (1949 No 7) (Reprinted 1955, Vol 2, p 1841)

Amendment(s) incorporated in the Act(s).

Veterinary Surgeons Act 1956 (1956 No 22)

Amendment(s) incorporated in the Act(s).

Schedule 4: amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Offenders Legal Aid Act 1954: omitted, as from 1 February 1992, section 159(2) Legal Services Act 1991 (1991 No 71).

Summary Proceedings Amendment Act (No 2) 2008

Public Act 2008 No 41
Date of assent 25 June 2008
Commencement see section 2

1 Title

This Act is the Summary Proceedings Amendment Act (No 2) 2008.

2 Commencement

- (1) This Act (other than this section and sections 3, 8 to 11, 13, and 14) comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) This section and sections 3, 8 to 11, 13, and 14 come into force on the day after the date on which this Act receives the Royal assent.

20 Transitional provision

- (1) If, before the commencement of section 12 of this Act, an information has been laid indictably or a defendant has elected trial by jury under section 66, the preliminary hearing must proceed as if this Act had not been passed.
- (2) Despite subsection (1), proceedings against a defendant who has elected trial by jury under section 66 or in respect of whom an information has been laid indictably, must be conducted in accordance with the principal Act as amended by section 12 of this Act if,—
 - (a) before the preliminary hearing has begun, the defendant named in the information absconds and he or she is not located until more than 1 month after the commencement of this Act; or
 - (b) after the commencement of section 12 of this Act,—
 - (i) the information or one of the informations is withdrawn and another information is substituted; or

- (ii) an additional information, arising from the same transaction, or set of circumstances, or incident, or series of incidents, is laid; or
 - (iii) an information is laid against another person, charging him or her with an offence arising from the same transaction, or set of circumstances, or incident, or series of incidents, specified in the first information, and the prosecutor wishes the charges against both defendants to be heard together.
- (3) No hearing or other proceeding is invalid only because—
- (a) it was conducted in accordance with subsection (1) when it ought to have been conducted in accordance with subsection (2); or
 - (b) it was conducted in accordance with subsection (2) when it ought to have been conducted in accordance with subsection (1).
-

Summary Proceedings (Vehicle Seizure) Amendment Act 2009

Public Act 2009 No 38
Date of assent 27 October 2009
Commencement see section 2

1 Title

This Act is the Summary Proceedings (Vehicle Seizure) Amendment Act 2009.

2 Commencement

This Act comes into force on 1 December 2009.

9 Transitional provisions relating to Transport (Vehicle and Driver Registration and Licensing) Act 1986

In the period commencing on the commencement of this Act and ending immediately before the commencement of section 32(2) of the Land Transport Amendment Act 2009—

- (a) any reference to a person who is registered in respect of a motor vehicle in sections 100A to 100Y of the principal Act (as inserted by this Act) must (despite the definition of that term in section 100A(1) of the principal Act) be read as a reference to a registered owner within the meaning of the Transport (Vehicle and Driver Registration and Licensing) Act 1986:
- (b) the reference in section 100I(2) and 100M(3) of the principal Act (as inserted by this Act) to section 242 of the Land Transport Act 1998 is taken to be a reference to section 5 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986:
- (c) the reference in section 100M(4) of the principal Act (as inserted by this Act) to the Land Transport Act 1998 is taken to be a reference to the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

10 Transitional provisions relating to pre-commencement fines and warrants

- (1) The principal Act as amended by sections 5 to 8 of this Act applies to the enforcement of any fine whether adjudged, ordered, or deemed to be ordered, to be paid before or after the commencement of this Act.
 - (2) Despite subsection (1), any motor vehicle seized under a warrant issued, before the commencement of this Act, under section 83(2)(a), 87(1)(a), or 88(3)(a) of the principal Act must be dealt with as if this Act (other than this subsection) had not been enacted.
-

Summary Proceedings Amendment Act (No 2) 2010

Public Act 2010 No 121
Date of assent 29 October 2010
Commencement see section 2

1 Title

This Act is the Summary Proceedings Amendment Act (No 2) 2010.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

5 Criminal process not to be held null or invalid

- (1) Nothing done in any court at any time on or after 26 June 2008 and before the date on which this Act comes into force in respect of an offence against section 223(d), 241(c), or 247(c) of the Crimes Act 1961 is a nullity or otherwise invalid only because, at the time it was done, section 223(d), 241(c), or 247(c) (as the case may be) was not referred to in Part 1 of Schedule 1 of the Summary Proceedings Act 1957.
- (2) Nothing done in any court at any time on or after 26 June 2008 and before the date on which this Act comes into force in respect of an offence against section 223(d), 241(c), or 247(c) of the Crimes Act 1961 is a nullity or otherwise invalid only because of the operation of section 4 of this Act.

6 Section 5 not to apply to certain legal proceedings

Section 5 does not apply to the following legal proceedings:

- (a) any appeal from the decision in *NZ Police v Selwen* (District Court, Hamilton, CRI 2010-019-003388, 21 June 2010, Marshall DCJ); or
- (b) any other legal proceedings that expressly challenge the validity of a conviction for an offence against section 223(d), 241(c), or 247(c) of the Crimes Act 1961 on the ground that that provision was not referred to in Part 1

of Schedule 1 of the Summary Proceedings Act 1957 at the date of that conviction, if those proceedings were commenced, and contained that ground, before the date on which this Act receives the Royal assent.

Contents

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Notes

1 *General*

This is an eprint of the Summary Proceedings Act 1957. It incorporates all the amendments to the Act as at 1 July 2011. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about eprints and officialisation, please *see* <http://www.pco.parliament.govt.nz/eprints/>.

3 *List of amendments incorporated in this eprint (most recent first)*

Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13): section 100(3)

Financial Markets Authority Act 2011 (2011 No 5): section 82

Electoral Referendum Act 2010 (2010 No 139): section 82

Electoral (Finance Reform and Advance Voting) Amendment Act 2010 (2010 No 137): section 41

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Insurance (Prudential Supervision) Act 2010 (2010 No 111): section 241(2)

Limitation Act 2010 (2010 No 110): section 58

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Summary Proceedings Amendment Act 2010 (2010 No 87)

Financial Advisers Amendment Act 2010 (2010 No 40): section 50

Immigration Act 2009 (2009 No 51): section 406(1)

Sentencing and Parole Reform Act 2010 (2010 No 33): section 13

Domestic Violence Amendment Act 2009 (2009 No 43): section 7(2)
Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42): section 10
Summary Proceedings (Vehicle Seizure) Amendment Act 2009 (2009 No 38)
Land Transport (Enforcement Powers) Amendment Act 2009 (2009 No 36):
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Climate Change Response (Emissions Trading Forestry Sector) Amendment
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