

Reprint
as at 1 December 2020



Criminal Disclosure Act 2008

Public Act 2008 No 38
Date of assent 25 June 2008
Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Criminal Disclosure Act 2008.

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

Section 2: Criminal Disclosure Act 2008 brought into force, on 29 June 2009, by clause 2 of the Criminal Disclosure Act Commencement Order 2009 (SR 2009/130).

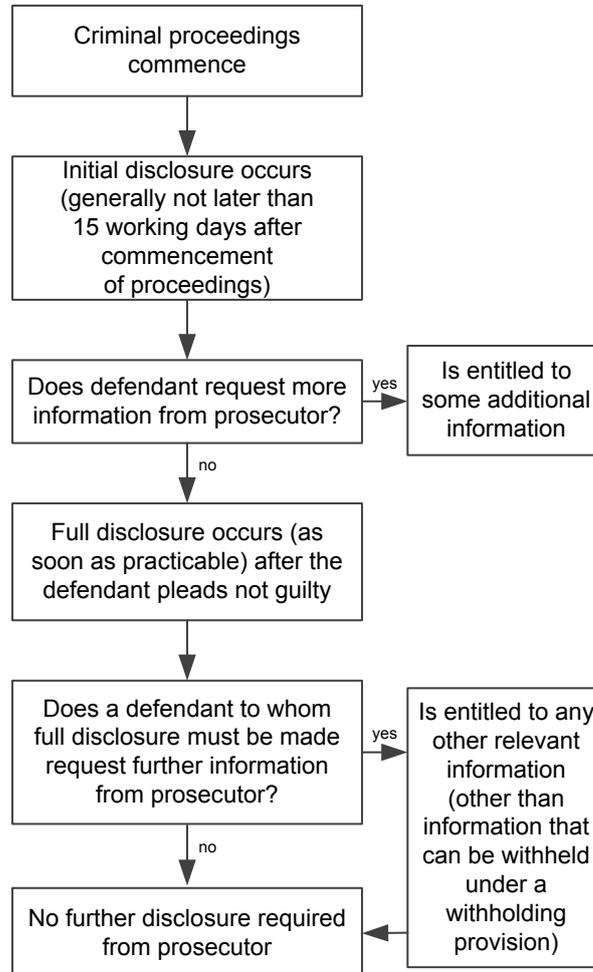
Preliminary provisions

3 Purpose and overview

- (1) The purpose of this Act is to promote fair, effective, and efficient disclosure of relevant information between the prosecution and the defence, and by non-parties, for the purposes of criminal proceedings.
- (2) A general overview of the disclosure regime set out in this Act is set out in diagrammatic form below.

General Overview of Disclosure

Disclosure by prosecutor to defendant



Disclosure by defendant to prosecutor

Particulars of an alibi and any expert evidence called on behalf of the defendant must be disclosed to the prosecutor

Disclosure by non-parties to the defendant

Defendant may apply to Court for order requiring a non-party to make disclosure

(An application may be made at any time after defendant pleads not guilty)

Court decides whether to join other non-parties to the application

Court determines application and makes order for non-party disclosure or declines to make order for non-party disclosure

Note: This general overview of disclosure is by way of indication only. Detailed rules in the Act determine how the disclosure regime operates.

Section 3(2) flowchart: amended, on 14 November 2018, by section 110 of the Courts Matters Act 2018 (2018 No 50).

Section 3(2) flowchart: amended, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

4 Application of Act

- (1) This Act applies to all criminal proceedings that are commenced on or after the date on which this Act comes into force.
- (2) This section is subject to section 41.

5 Act binds the Crown

This Act binds the Crown.

Interpretation provisions

6 Interpretation

- (1) In this Act, unless the context otherwise requires,—

brief of evidence means—

- (a) a written statement, whether signed or unsigned, made by a witness that is intended to be used by the prosecutor or the defendant for the purpose of a hearing or trial; and
- (b) a document prepared by the prosecutor or the defendant from a statement or statements made by a witness and that is intended to be used by the prosecutor or the defendant as the basis for eliciting the testimony of the witness at a hearing or trial

child means a child as defined in section 2(1) of the Oranga Tamariki Act 1989

counsel means a barrister and solicitor as those terms are defined in section 2(1) of the Law Practitioners Act 1982

court has the meaning given to it in section 7

criminal proceedings—

- (a) means—
 - (i) proceedings for an offence for which a conviction may be entered, or for an infringement offence; and
 - (ii) proceedings before the Youth Court where a child or young person is charged with an offence; and
- (b) includes any appeal against conviction or sentence; but
- (c) does not include—
 - (i) any matter ancillary to proceedings (for example, an application for bail or an application for name suppression or an application under section 79 or 101 of the Criminal Procedure Act 2011); or
 - (ii) any proceedings under the Armed Forces Discipline Act 1971 or any other enactment for any other offence under military law

evidence in support of an alibi means evidence tending to show that, by reason of the presence of the defendant at a particular place or in a particular area at a particular time, the defendant was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission

exhibit means an article or object of any kind that is capable of being produced as evidence on behalf of either the prosecutor or the defendant

expert witness includes a person who will give opinion evidence of a medical, scientific, or technical nature

informant means a person who provides verbal or written information (whether or not in recorded form) to a law enforcement officer

international organisation means any organisation of States or Governments of States or any organisation or agency of any such organisation, and includes the Commonwealth Secretariat

Judge has the meaning given to it in section 7

prosecutor means the person who is for the time being in charge of the file or files relating to a criminal proceeding; and includes—

- (a) any other employee of the person or agency by whom the prosecutor is employed who has responsibilities for any matter directly connected with the proceedings; and
- (b) any counsel representing the person who filed the charging document in the proceedings; and
- (c) in the case of a private prosecution, the person who filed the charging document and any counsel representing that person

publicly available information means information that is contained in a publicly available publication

publicly available publication means a publication (including a register, list, or roll of data) in printed or electronic form that is, or will be, generally available to members of the public free of charge or on payment of a fee

Registrar—

- (a) means the Registrar of the court concerned; and
- (b) includes any Deputy Registrar of that court

relevant has the meaning given to it in section 8

working day has the same meaning as in section 5 of the Criminal Procedure Act 2011

young person means a young person as defined in section 2(1) of the Oranga Tamariki Act 1989.

- (2) In this Act, a reference to **information** means any recorded information—
 - (a) in whatever form it is contained, for example, in a report, statement, list, or interview; and
 - (b) in whatever medium it is recorded, for example, in hard copy, electronic form, or as a sound or visual recording.
- (3) To avoid doubt, and without limiting section 13(7), in this Act a reference to a defendant who has pleaded not guilty to an offence includes any defendant in respect of whom a plea of not guilty has been entered by the court on behalf of the defendant or a defendant to whom section 41 of the Criminal Procedure Act 2011 applies.

Section 6(1) **child**: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 6(1) **criminal proceedings** paragraph (a)(ii): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 6(1) **criminal proceedings** paragraph (c)(i): amended, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 6(1) **defendant**: repealed, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 6(1) **prosecutor** paragraph (b): amended, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 6(1) **prosecutor** paragraph (c): amended, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 6(1) **publicly available publication**: replaced, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 6(1) **working day**: inserted, on 1 July 2013, by section 4 of the Criminal Disclosure Amendment Act 2013 (2013 No 28).

Section 6(1) **young person**: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 6(3): amended, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

7 **Meaning of court and Judge**

In this Act, unless the context otherwise requires,—

court means the court before which the proceedings are being conducted at a given time

Judge means a Judge of the court before which the proceedings are being conducted at a given time.

Section 7: replaced, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

8 **Meaning of relevant**

In this Act, **relevant**, in relation to information or an exhibit, means information or an exhibit, as the case may be, that tends to support or rebut, or has a material bearing on, the case against the defendant.

9 **Time of commencement of criminal proceedings**

For the purposes of this Act, criminal proceedings are commenced at the earliest of—

- (a) the service of a summons:
- (b) the first appearance of the defendant in court following his or her arrest, or in response to the filing of a charging document:
- (c) the date on which the defendant is granted bail under section 21 of the Bail Act 2000:
- (d) the filing of a notice of hearing under, or in accordance with, section 21(8) of the Summary Proceedings Act 1957.

Section 9: replaced, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

General provisions about disclosure of information

10 Service

- (1) Information required to be disclosed to, and any notice or application required to be given to or served on, any person under this Act may be given to or served on the person—
 - (a) by personal delivery to that person or, if the person refuses to accept the document or notice, by bringing the document or notice to that person's attention; or
 - (b) by post addressed to that person, or by electronic means, at an address nominated by the person or, if no such address has been nominated, at the person's last known postal address or place of residence or business.
- (2) Information required to be disclosed to, and any notice or application required to be given to or served on, a defendant under this Act may, if the defendant is represented by counsel, be given by any of the methods described in subsection (1) to the defendant's counsel.
- (3) Unless a person proves that, otherwise than through fault on the person's part, it was not received, if information, a notice, or an application is sent—
 - (a) by post, it will be treated as having been received by the person 5 working days after the day it is posted:
 - (b) electronically, to a valid address,—
 - (i) on a working day on or before 5 pm, it will be treated as having been received on that working day:
 - (ii) after 5 pm on a working day or at any time on a non-working day, it will be treated as having been received on the next working day.
- (4) Information required to be disclosed under this Act may be disclosed in whatever form (including electronically) that the person disclosing the information holds it in at the time the obligation to disclose arises and that is readily accessible to the defendant.

Section 10(1)(b): amended, on 14 November 2018, by section 111(1) of the Courts Matters Act 2018 (2018 No 50).

Section 10(3): replaced, on 14 November 2018, by section 111(2) of the Courts Matters Act 2018 (2018 No 50).

11 Exercise of defendant's rights and duties by defendant's counsel

- (1) A right or duty conferred on a defendant by this Act may be exercised or performed by counsel representing the defendant.
- (2) A notice or report purporting to be given under this Act on behalf of the defendant by his or her counsel is, unless the contrary is proved, deemed to be given with the authority of the defendant.

*Disclosure by prosecutor***12 Initial disclosure**

- (1) At the commencement of criminal proceedings, or as soon as practicable after that time, and in any event not later than the applicable date, the prosecutor must disclose the following information to the defendant:
 - (aa) a copy of the charging document; and
 - (a) a summary that is sufficient to fairly inform the defendant of the facts on which it is alleged that an offence has been committed and the facts alleged against the defendant; and
 - (b) a summary of the defendant's right to apply for further information under subsection (2); and
 - (c) the maximum penalty, and the minimum penalty (if one is provided for), for the offence; and
 - (d) a list of the defendant's previous convictions that are known to the prosecutor; and
 - (e) a list of any previous offences proved to have been committed by the defendant and of a kind to which section 284(1)(g) of the Oranga Tamariki Act 1989 applies, that are known to the prosecutor.
- (2) At any time after criminal proceedings are commenced or, in the case of a child or young person who appears in the Youth Court in relation to the commission or possible commission of an offence, at any time after that person's first appearance in the Youth Court, the prosecutor must, if requested by the defendant in writing, as soon as is reasonably practicable disclose the following information to the defendant:
 - (a) the names of any witnesses whom the prosecutor intends to call at the hearing or trial; and
 - (b) a list of the exhibits that are proposed to be produced on behalf of the prosecution at the hearing or trial; and
 - (c) a copy of all records of interviews with the defendant; and
 - (d) a copy of all records of interviews of prosecution witnesses by a law enforcement officer that contain relevant information; and
 - (e) a copy of job sheets and other notes of evidence completed or taken by a law enforcement officer that contain relevant information; and
 - (f) a copy of any records of evidence produced by a testing device that contain relevant information; and
 - (g) a copy of any diagrams and photographs made or taken by a law enforcement officer that contain relevant information and are intended to be introduced as evidence as part of the case for the prosecution; and
 - (h) a video copy of any video interview with the defendant; and

- (i) a copy of relevant records concerning compliance with the New Zealand Bill of Rights Act 1990; and
 - (j) a copy of any statement made by, or record of an interview with, a co-defendant in any case where the defendants are to be proceeded against together for the same offence; and
 - (k) a list of any information described in paragraphs (a) to (j) that the prosecutor refuses under section 15, 16, 17, or 18 to disclose to the defendant, together with—
 - (i) the reason for the refusal; and
 - (ii) if the defendant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 16, 17, or 18 and (in the case of the interests protected by section 18) there is no overriding public interest.
- (3) This section does not apply to a defendant who is charged with an infringement offence as defined in section 2(1) of the Summary Proceedings Act 1957.
- (4) In this section, **applicable date** means—
- (a) the date that is 15 working days after the commencement of criminal proceedings;
 - (b) in the case of a child or young person who is required to appear in the Youth Court in relation to the commission or possible commission of an offence, the date on which that person first appears in that court;
 - (c) any later date that the court or Registrar allows, on application by the prosecutor, for the purposes of disclosure under this section.

Section 12(1)(aa): inserted, on 1 July 2013, by section 4 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 12(1)(b): amended, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 12(1)(e): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 12(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 12(3): amended, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 12(4)(a): amended, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 12(4)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

13 Full disclosure

- (1) The prosecutor must disclose to the defendant the information described in subsection (2) as soon as is reasonably practicable after a defendant has pleaded not guilty.
- (2) The information referred to in subsection (1) is—

- (a) any relevant information, including, without limitation, the information (**standard information**) described in subsection (3); and
 - (b) a list of any relevant information that the prosecutor refuses under section 15, 16, 17, or 18 to disclose to the defendant together with—
 - (i) the reason for the refusal; and
 - (ii) if the defendant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 16, 17, or 18 and (in the case of the interests protected by section 18) there is no overriding public interest.
- (3) The standard information referred to in subsection (2)(a) is—
- (a) a copy of any statement made by a prosecution witness; and
 - (b) a copy of any brief of evidence that has been prepared in relation to a prosecution witness; and
 - (c) the name and, if disclosure is authorised under section 17, the address of any person interviewed by the prosecutor who gave relevant information and whom the prosecutor does not intend to call as a witness; and—
 - (i) any written account of the interview, whether signed or unsigned, and any other record of the interview; and
 - (ii) any statement made to the prosecutor by the person; and
 - (d) any convictions of a prosecution witness that are known to the prosecutor and that may affect the credibility of that witness; and
 - (e) a list of all exhibits that the prosecutor proposes to have introduced as evidence as part of the case for the prosecution; and
 - (f) a list of all relevant exhibits in the possession of the prosecutor that the prosecutor does not propose to have introduced as evidence; and
 - (g) a copy of any information supplied to the prosecutor in connection with the case by any person or persons whom the prosecutor proposes to call to give evidence as an expert witness or witnesses; and
 - (h) a copy of any relevant information supplied to the prosecutor by a person or persons whom the prosecutor considered calling to give evidence as an expert witness or witnesses, but elected not to do so.
- (4) The obligation to disclose information to the defendant under this section as soon as is reasonably practicable is subject to any order made under section 30 or 32.
- (5) If information referred to in subsection (2) comes into the possession or control of the prosecutor, or is prepared in recorded form, after the prosecutor has disclosed information in accordance with subsection (1) and before the hearing or trial is completed, the prosecutor must disclose the information to the defendant as soon as is reasonably practicable.

- (6) The entitlement of a defendant to information under this section continues while the criminal proceedings are in progress (including any appeal against conviction) and during the period from the conviction until the expiry of the time for lodging an appeal against conviction.
- (7) To avoid doubt, a reference in subsection (1) to pleading not guilty includes—
 - (a) *[Repealed]*
 - (b) requesting a hearing in accordance with section 21(6) of the Summary Proceedings Act 1957 (unless the request is accompanied by an admission of liability); or
 - (c) denying the charge during any appearance before the Youth Court under Part 4 of the Oranga Tamariki Act 1989.

Section 13(1): replaced, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 13(7)(a): repealed, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 13(7)(b): amended, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 13(7)(c): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

14 Request for additional disclosure

- (1) At any time after the duty to make full disclosure has arisen under section 13, the defendant may request that the prosecutor disclose any particular information, identified by the defendant with as much particularity as possible.
- (2) The prosecutor must disclose information requested by the defendant under subsection (1) unless—
 - (a) the information is not relevant; or
 - (b) the information may be withheld under section 15, 16, 17, or 18; or
 - (c) the request appears to be frivolous or vexatious.
- (3) If a request under subsection (1) is declined by the prosecutor under subsection (2), the prosecutor must, as soon as is reasonably practicable after making the decision to decline the request, inform the defendant of that decision, together with—
 - (a) the reason for the decision; and
 - (b) if the defendant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 15, 16, 17, or 18 and (in the case of the interests protected by section 18) there is no overriding public interest.
- (4) Nothing in this section limits the duty to disclose information under section 13.

14A Information relating to identification witnesses to be supplied to defendant

- (1) In this section, **identification witness**, in relation to the trial of a person accused of any offence, means a person who claims to have seen the offender in the circumstances of the offence.
- (2) Subject to subsection (3), at any time after a person has been charged with an offence, the prosecutor must, on request by or on behalf of that person, supply to that person—
 - (a) the name and, if disclosure is authorised under section 17, the address of each identification witness known to the prosecutor, whether or not the prosecutor intends to call that witness to give evidence at the trial; and
 - (b) a statement of any description of the offender given by each such witness to the Police or the prosecutor; and
 - (c) a copy of any identikit picture or other drawing made by any such witness or from information supplied by that witness.
- (3) A Judge may, on the application of the prosecutor, make an order excusing the prosecutor from disclosing to the defendant any information referred to in subsection (2)(a), if the Judge is satisfied that the order is necessary to protect the identification witness or any other person.

Compare: 1961 No 43 s 344C

Section 14A: inserted, on 1 July 2013, by section 5 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

15 Prosecutor not required to record information or to obtain information for sole purpose of disclosure

- (1) Nothing in this Act requires a prosecutor to disclose information if, at the time a disclosure obligation would, but for this section, arise or at the time a request for disclosure is made, as the case may be,—
 - (a) the prosecutor is not in possession or control of that information; or
 - (b) the prosecutor does not hold the information in recorded form.
- (2) Nothing in this section limits section 13(5).

16 Reasons for withholding information

- (1) A prosecutor may withhold any information to which the defendant would otherwise be entitled under this Act if—
 - (a) disclosure of the information is likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences; or
 - (b) disclosure of the information is likely to endanger the safety of any person; or
 - (c) the information is—

- (i) material that is prepared by or for the prosecutor to assist the conduct of the hearing or trial; or
- (ii) a communication dealing with matters relating to the conduct of the prosecution and is between—
 - (A) the prosecutor and another person employed by the same person or agency that employs the prosecutor; or
 - (B) the prosecutor and any adviser to the prosecutor; or
- (iii) analytical or evaluative material prepared, in connection with an investigation that led to the defendant being charged, by a person employed by a person or agency for another person employed by that person or agency or for the prosecutor; or
- (d) the information is subject to sections 108 and 109 of the Evidence Act 2006 (which relates to information about undercover police officers); or
- (e) the information is subject to a pre-trial witness anonymity order under section 110 of the Evidence Act 2006 or a witness anonymity order under section 112 of the Evidence Act 2006; or
- (f) the information is subject to section 16 of the Victims Rights Act 2002 (which relates to information about witnesses' addresses); or
- (g) the disclosure of the information would be likely to prejudice—
 - (i) the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (ii) the entrusting of information to the Government of New Zealand on a basis of confidence by the government of any other country or any agency of such a government or any international organisation; or
- (h) disclosure of the information would be likely to facilitate the commission of another offence; or
- (i) disclosure of the information would constitute contempt of court or contempt of the House of Representatives; or
- (j) the information could be withheld under any privilege applicable under the rules of evidence; or
- (k) disclosure of the information would be contrary to the provisions of any other enactment; or
- (l) the information is publicly available and it is reasonably practicable for the defendant to obtain the information from another source; or
- (m) the information has previously been made available to the defendant; or
- (n) the information does not exist or cannot be found; or
- (o) the information—

- (i) reflects on the credibility of a witness who is not to be called by the prosecutor to give evidence but who may be called by the defendant to give evidence; and
 - (ii) is not for any other reason relevant.
- (2) If part only of the information may be withheld, the prosecutor must make the remainder of the information available if it is possible to protect the withheld information by deletion, summary, or otherwise.
- (3) If the prosecutor becomes aware that there has ceased to be any justification for withholding all or part of any information that has been withheld under this Act, the prosecutor must, if the criminal proceedings have not yet been completed, disclose that information to the defendant as soon as reasonably practicable.

17 Restriction on disclosing address of witness or informant

- (1) This section applies to information that identifies, or that may lead to the identification of, the address of the place where a witness or informant lives (for example, his or her postal address, residential address, email address, fax number, or phone number).
- (2) The information may be disclosed to the defendant only with the leave of the court.
- (3) The court—
 - (a) must not grant leave unless it is satisfied that the disclosure of the information is necessary in the interests of justice and outweighs any prejudice to the witness's or informant's interests, or any harm to the witness or informant, that is likely to be caused by the disclosure of the information; and
 - (b) may, if it grants leave, impose conditions in relation to the disclosure of the information.
- (4) This section applies to an informant regardless of whether the prosecutor intends to call the informant as a witness.
- (5) Nothing in subsection (2) applies if it is necessary to disclose the information in the charge in order to ensure that the defendant is fully and fairly informed of the charge.

Section 17(2): amended, on 1 July 2013, by section 6(1) of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 17(5): inserted, on 1 July 2013, by section 6(2) of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

18 Trade secrets may be withheld

- (1) The prosecutor may withhold any information to which the defendant would otherwise be entitled under this Act if disclosing the information—
 - (a) would disclose a trade secret; or

- (b) would be likely to unreasonably prejudice the commercial position of the person who supplied, or who is the subject of, the information.
- (2) Despite subsection (1), information must not be withheld under this section if, in the circumstances of the particular case, the interests in subsection (1) protected by the withholding of that information are outweighed by other considerations that make it desirable in the public interest to disclose the information.
- (3) In this section, **trade secret** has the same meaning as in section 230(2) of the Crimes Act 1961.

19 Inspection of exhibit by defendant

- (1) The prosecutor must, on request by the defendant,—
 - (a) allow the defendant to inspect any exhibit in the possession or control of the prosecutor that is specified by the defendant and is referred to in a list of exhibits supplied under section 13(3)(e) or (f), unless subsection (3) applies; and
 - (b) if that exhibit is reasonably capable of reproduction, disclose a copy of it to the defendant.
- (2) The inspection by the defendant under subsection (1) is subject to—
 - (a) any conditions that the prosecutor considers necessary for the purpose of—
 - (i) ensuring the security and integrity of the exhibit or otherwise maintaining its evidential value; and
 - (ii) in the case of an exhibit needed for use on an ongoing basis for law enforcement purposes, ensuring that the exhibit can continue to be used on an ongoing basis for law enforcement purposes:
 - (b) any conditions imposed by the court under section 31.
- (3) The prosecutor may refuse to allow the defendant to inspect an exhibit if—
 - (a) that exhibit is needed for use on an ongoing basis for enforcement purposes; and
 - (b) the imposition of conditions under subsection (2)(a) would not enable the inspection to take place without prejudicing ongoing law enforcement.

Disclosure by defendant

20 Notice to defendant of disclosure requirements in sections 22 and 23

The court or the Registrar must give written notice of the requirements of sections 22 and 23 to a defendant—

- (a) if the defendant pleads not guilty; or
- (b) when the defendant, if he or she is a child or young person, makes a first appearance in the Youth Court.

Section 20: replaced, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 20(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

21 Notice to defendant of disclosure requirement in section 176 of Summary Proceedings Act 1957

[Repealed]

Section 21: repealed, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

22 Notice of alibi

- (1) If a defendant intends to adduce evidence in support of an alibi, the defendant must give written notice to the prosecutor of the particulars of the alibi.
- (2) The notice under subsection (1) must be given within 10 working days after the defendant is given notice under section 20.
- (3) Without limiting subsection (1),—
 - (a) the notice under subsection (1) must include the name and address of the witness or, if the name and address is not known to the defendant when the notice is given, any matter known by the defendant that might be of material assistance in finding that witness; or
 - (b) if the name or the address is not included in the notice, the defendant must have, before giving the notice, taken all reasonable steps, and after giving the notice continue to take all reasonable steps, to ensure that the name and address is ascertained; or
 - (c) if the name or the address is not included in the notice, but the defendant subsequently discovers the name or address or becomes aware of any other matter that might be of material assistance in finding the witness, the defendant must as soon as practicable give written notice of the name, address, or other information, as the case may require; or
 - (d) if the defendant is notified by the prosecutor that the witness has not been traced by the name or at the address given, the defendant must as soon as practicable give written notice of any other matter known to the defendant that might be of material assistance in finding that witness or, on subsequently becoming aware of any such matter, give written notice of it as soon as practicable.

(4) *[Repealed]*

Section 22(2): replaced, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 22(4): repealed, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

23 Disclosure by defendant of evidence to be given by expert witness

- (1) If a defendant proposes to call a person as an expert witness, the defendant must, at least 10 working days before the date fixed for the defendant's trial or within any further time that the court may allow, disclose to the prosecutor—
 - (a) any brief of evidence to be given, or any report provided by that witness; or
 - (b) if that brief or any such report is not then available, a summary of the evidence to be given and the conclusions of any report to be provided.
- (2) Where the defendant, under subsection (1)(b), provides only a summary of evidence to be given or conclusions of any report to be presented, the defendant must disclose to the prosecutor the brief of evidence to be given or the report provided by that witness as soon as possible after it becomes available.

Section 23(1): amended, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Disclosure by non-parties

24 Application for non-party disclosure hearing

- (1) This section applies at any time after the defendant has—
 - (a) pleaded not guilty; or
 - (b) in the case of a child or young person, made a first appearance in the Youth Court.
- (2) The defendant may apply to the court for an order granting a hearing to determine whether information that is held by a person or agency other than the prosecutor should be disclosed to the defendant.
- (3) The application must—
 - (a) describe with as much particularity as possible the information that the defendant seeks to have disclosed, and state the name of the person or agency that the defendant alleges holds the information; and
 - (b) set out the grounds on which the defendant relies to establish that the information is relevant; and
 - (c) contain written evidence indicating that the defendant has made reasonable efforts to obtain the information from the person or agency that the defendant alleges holds the information.
- (4) The defendant must give a copy of the application to the prosecutor, and the prosecutor must be allowed a reasonable time to make written submissions to the court concerning the application.
- (5) The court may seek and consider written submissions from the person or agency that the defendant alleges holds the information or any other person or agency that the court believes would have knowledge of the existence of the information, its whereabouts, and its likely relevance to the proceedings.

Section 24(1): replaced, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 24(1)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

25 Determination of application for non-party disclosure hearing

If a defendant makes an application in accordance with section 24, the court may grant the application if—

- (a) it is satisfied that all or part of the information that the defendant seeks—
 - (i) is likely to be held by the person or agency that the defendant alleges holds the information; or
 - (ii) is likely to be held by another person or agency; and
- (b) all or part of the information appears to the court to be relevant.

26 Service of application and summons if application for hearing granted

- (1) If an application for a non-party disclosure hearing is granted under section 25, the court or the Registrar must, at least 5 working days before the hearing under section 27,—
 - (a) serve on the person or agency referred to in the application under section 24 (being the person or agency who the defendant alleges holds the information) and on any other person or agency who the court or the Registrar is satisfied is likely to hold the information—
 - (i) a copy of the application; and
 - (ii) a summons under section 160 of the Criminal Procedure Act 2011; and
 - (iii) a copy of the order made by the court under section 25; and
 - (b) serve the application on the prosecutor and on any other person to whom, to the knowledge of the defendant or the Registrar, the information relates.
- (2) The Judge who granted the application under section 25 or the Judge who will preside over the non-party disclosure hearing under section 27 may at any time before or during the non-party disclosure hearing order that the application be served on any person or agency whom the Judge considers is likely to hold the information or any other person to whom the Judge considers the information may relate.
- (3) The summons referred to in subsection (1)(a)(ii) must—
 - (a) require the attendance of the person, or a representative of the agency, that allegedly holds or may hold the information at a particular court at a particular time; and

- (b) describe the relevant material with as much particularity as possible, and require the person to bring the material to the court.

Section 26(1): amended, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 26(1)(a)(ii): replaced, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

27 Non-party disclosure hearing

- (1) The following persons may call evidence or make submissions in any non-party disclosure hearing:
 - (a) the prosecutor:
 - (b) the defendant:
 - (c) the person or agency who the defendant alleges holds the information sought by the defendant:
 - (d) any person or agency who has been served with a copy of the application under section 26(1) or (2):
 - (e) with the leave of the court, any other person who may be affected by, or have an interest in, any order that the court may make under section 29.
- (2) The Judge may, if he or she considers it appropriate to do so, examine the information in the possession of—
 - (a) the person or agency from whom the information is sought; or
 - (b) any other person or agency who holds the information sought, or part of it.
- (3) The Judge may, if he or she considers that there are special circumstances that warrant it, and on such conditions as he or she directs, permit the prosecutor and, if appropriate, the defendant to view the information—
 - (a) for the purpose of arguing the application; and
 - (b) in order to assist the court in determining whether the information should be disclosed.
- (4) The following persons are not compellable as witnesses at the hearing, and no order for costs may be made against any of them:
 - (a) the person, or any representative of the agency, from whom information is sought:
 - (b) any other person who may be affected by any order that the court may make under section 29.
- (5) The hearing conducted under this section must not be open to the public.

28 Procedure if Judge subsequently satisfied that another person holds information sought

- (1) If a non-party disclosure hearing is granted under section 25(a)(i) but at any time before or during the non-party disclosure hearing the Judge is satisfied that all or part of the information sought by the defendant is likely to be held by a person or agency other than the person or agency alleged by the defendant, the Judge may—
 - (a) order that a copy of the application be served on that person or agency; and
 - (b) adjourn the proceedings for that purpose.
- (2) If the Judge makes an order under subsection (1), sections 26(3), 27, and 29 apply with any necessary modifications.

29 Determination of court following non-party disclosure hearing

- (1) After the hearing under section 27, the Judge may order the person or agency who holds the information to disclose it, or part of it, to the defendant, subject to any conditions imposed under subsection (4), if the Judge is satisfied that—
 - (a) the information or part of it is relevant; and
 - (b) the disclosure of the information or part of it is necessary in the public interest.
- (2) The Judge may refuse to order disclosure of the information, or part of it, if the Judge is satisfied that—
 - (a) any of the reasons described in section 16 or 18 for which information could be withheld apply to the information; or
 - (b) the application of section 17 requires that the information not be disclosed.
- (3) In addition to subsections (1) and (2), in determining whether to order the disclosure of the information or part of the information to the defendant, the Judge must take into account—
 - (a) the extent to which the information will assist the defendant to properly defend the charge; and
 - (b) the probative value of the information; and
 - (c) the nature and extent of any reasonable expectation of privacy with respect to the information, including any expectation of the person to whom the information relates; and
 - (d) the effect of the determination on the fairness of the trial or hearing process.
- (4) If the Judge orders the disclosure of the information or part of the information to the defendant, the Judge may impose conditions on the disclosure to protect the public interest and, to the greatest extent possible, any privacy interests of

any person to whom the information relates, including, for example, any of the following conditions:

- (a) that the information be edited as directed by the Judge;
 - (b) that a copy of the information, rather than the original, be disclosed;
 - (c) that the defendant not disclose the information to any other person, except with the approval of the court;
 - (d) that the information be disclosed only to counsel for the defendant and not to the defendant himself or herself;
 - (e) that no copies of the information be made, or that restrictions be imposed on the number of copies of the information that may be made;
 - (f) that details relating to any named person in the information, such as the person's address, telephone number, or place of employment, not be disclosed.
- (5) If any information is disclosed under this section to the defendant's counsel and, before the proceedings are determined, that counsel ceases to act for the defendant, the counsel must return the information and any copies of it in the possession of the defendant or the defendant's counsel to the court or Registrar, together with a declaration that those copies have been returned.
- (6) If any person fails to comply with subsection (5) without reasonable excuse the court may, on its own motion or on the application of the prosecutor, deal with the failure under subpart 4 of Part 2 of the Contempt of Court Act 2019 as a breach of a court order.

Section 29(6): amended, on 26 August 2020, by section 29 of the Contempt of Court Act 2019 (2019 No 44).

General powers of courts in relation to disclosure

30 Court order for disclosure of information

- (1) The defendant may apply to the court for an order that a particular item of information or type of information in the possession or control of the prosecutor be disclosed on the grounds that—
- (a) the defendant is entitled to the information under section 12, 13, or 14, as the case may be, and—
 - (i) the prosecutor failed to disclose the information; or
 - (ii) the prosecutor refused under section 14, 16, 17, or 18 to disclose the information, and—
 - (A) none of the reasons described in section 16, 17, or 18 for which information could be withheld applies to the information; or
 - (B) in the case of a refusal under section 17, the information ought to have been disclosed under section 17(3); or

- (C) in the case of a refusal under section 18, the information ought to have been disclosed under section 18(2); or
 - (b) even though the information may be withheld under this Act, the interests protected by the withholding of that information are outweighed by other considerations that make it desirable, in the public interest, to disclose the information.
- (2) If the court is satisfied, on an application made under this section, that the defendant is entitled to the disclosure of any particular item of information or type of information, or that any particular item of information or type of information should be disclosed to the defendant under subsection (1)(b), the court may order that the item or type of information be disclosed to the defendant.
 - (3) An order made under this section may be made subject to any conditions that the court considers appropriate.

31 Court order setting conditions for inspection of exhibit

- (1) The prosecutor or the defendant may apply to the court or the Registrar for an order as to—
 - (a) whether a particular exhibit or exhibits may be inspected by a defendant under this Act or in accordance with an order under this Act;
 - (b) the conditions that will apply to the inspection of a particular exhibit or exhibits by the defendant under this Act or in accordance with an order made under this Act.
- (2) In determining whether to permit inspection or in determining the conditions of inspection, the court or the Registrar must have regard to—
 - (a) the public interest; and
 - (b) ensuring the security and integrity of the exhibit and otherwise maintaining its evidential value; and
 - (c) in the case of an exhibit needed for use on an ongoing basis for law enforcement purposes, ensuring that the exhibit can continue to be used on an ongoing basis for law enforcement purposes.

General provisions

32 Court may make orders setting out timetable for disclosure

- (1) At any time after the duty to provide full disclosure of information has arisen under section 13, the court or the Registrar may, on the court's or the Registrar's own motion or on the application of the prosecutor or the defendant, give directions regarding the timing of disclosure under that section.
- (2) If a non-party disclosure order has been made under section 29, the court may, on the court's or the Registrar's own motion or on the application of the prosecutor or the defendant or the non-party, give directions regarding the timing of disclosure.

- (3) If the defendant or the prosecutor or a non-party fails to comply with directions given under this section, the court or the Registrar may, on the court's or the Registrar's own motion or on the application by the prosecutor or the defendant,—
- (a) give further directions; or
 - (b) if the court is satisfied that there is no reasonable excuse for the failure to comply, deal with the failure under subpart 4 of Part 2 of the Contempt of Court Act 2019 as a breach of a court order.
- (4) Subsection (3) does not limit the powers of a court under any other enactment or rule of law to deal with any failure by a prosecutor or defendant or a non-party to comply with the directions of the court under this section.

Section 32(3)(b): amended, on 26 August 2020, by section 29 of the Contempt of Court Act 2019 (2019 No 44).

33 Appeals

- (1) The prosecutor or the defendant may appeal against a decision of a court under section 30 or 31.
- (2) The defendant or the prosecutor or a non-party may appeal against a decision of a court under section 29.
- (3) An appeal under this section—
- (a) may be made to the Court of Appeal with the leave of that court, or to the Supreme Court with the leave of that court, if the order was made by—
 - (i) the High Court; or
 - (ii) the District Court in a proceeding for a category 3 offence after the defendant elected a jury trial:
 - (b) may, in any other case, be made to the High Court with the leave of that court.
- (3A) For the purposes of subsection (3), if a defendant elected a jury trial but subsequently withdrew his or her election before trial,—
- (a) the defendant must be treated as if he or she had not elected a jury trial; but
 - (b) any appeal commenced before the date on which the defendant withdrew his or her election must be determined by the appeal court that had jurisdiction to determine the appeal at the time it was commenced.
- (4) Subpart 2 of Part 6 of the Criminal Procedure Act 2011 applies to an appeal under this section with any necessary modifications.
- (5) Despite subpart 2 of Part 6 of the Criminal Procedure Act 2011,—

- (a) a notice of application for leave to appeal to the High Court must be filed within 3 working days after the date of the decision to which the appeal relates:
- (b) a notice of application for leave to appeal to the Court of Appeal or the Supreme Court must be filed within 10 working days after the date of the decision to which the appeal relates.

Section 33(3): replaced, on 1 July 2013, by section 5(1) of the Criminal Disclosure Amendment Act 2013 (2013 No 28).

Section 33(3)(a)(ii): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 33(3A): inserted, on 14 November 2018, by section 112 of the Courts Matters Act 2018 (2018 No 50).

Section 33(4): replaced, on 1 July 2013, by section 5(2) of the Criminal Disclosure Amendment Act 2013 (2013 No 28).

Section 33(5): replaced, on 1 July 2013, by section 5(2) of the Criminal Disclosure Amendment Act 2013 (2013 No 28).

34 Undisclosed information

- (1) This section applies if, at the hearing or trial of a defendant, the court is satisfied that—
 - (a) evidence sought to be adduced by a party is, or is based on, information that should have been disclosed to the other party under this Act; and
 - (b) that information was not disclosed.
- (2) The court may—
 - (a) exclude the evidence; or
 - (b) with or without requiring the evidence to be disclosed, adjourn the hearing or trial; or
 - (c) admit the evidence if it is in the interests of justice to do so.
- (3) The court—
 - (a) must not order the exclusion of evidence sought to be adduced by the defendant (whether of an alibi, as expert evidence, or otherwise) if it appears to the court that the defendant was not given notice in accordance with this Act of the requirements of this Act; but
 - (b) if paragraph (a) applies, must adjourn the hearing if the prosecution requests an adjournment.
- (4) Subject to subsection (3), subsection (2) does not limit the powers of a court under any other enactment or rule of law to deal with any failure by a party to comply with the directions of the court under this Act.

34A Information disclosed late by defendant

The court may adjourn the trial if it is satisfied that evidence sought to be adduced by the defendant is, or is based on,—

- (a) information of a kind to which section 22 applies that was disclosed but not until after the time required by section 22(2); or
- (b) information of a kind to which section 23 applies that was disclosed but not within the time required by section 23(1) (including any further time allowed by the court under section 23(1)).

Section 34A: inserted, on 1 July 2013, by section 7 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Section 34A(a): amended, on 1 July 2013, by section 6 of the Criminal Disclosure Amendment Act 2013 (2013 No 28).

Miscellaneous provisions

35 Certain applications must be on notice

- (1) A copy of an application made by the prosecutor under section 31 or 32 must be served on the defendant by the court or Registrar before the application is considered and determined.
- (2) A copy of an application made by the defendant under section 30 or 31 or 32 must be served on the prosecutor before the application is considered and determined.

36 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing the procedure for the service of notices and other documents for the purposes of this Act;
- (b) prescribing forms for the purposes of this Act;
- (c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Amendments to other enactments

37 Amendment to Local Government Official Information and Meetings Act 1987

Section 17 of the Local Government Official Information and Meetings Act 1987 is amended by inserting the following paragraph after paragraph (d):

- (da) that the request is made by a defendant or person acting on behalf of a defendant and is—
 - (i) for information that could be sought by the defendant under the Criminal Disclosure Act 2008; or
 - (ii) for information that could be sought by the defendant under that Act and that has been disclosed to, or withheld from, the defendant under that Act:

38 Amendment to Official Information Act 1982

Section 18 of the Official Information Act 1982 is amended by inserting the following paragraph after paragraph (d):

- (da) that the request is made by a defendant or a person acting on behalf of a defendant and is—
 - (i) for information that could be sought by the defendant under the Criminal Disclosure Act 2008; or
 - (ii) for information that could be sought by the defendant under that Act and that has been disclosed to, or withheld from, the defendant under that Act:

39 Amendments to Privacy Act 1993

- (1) Section 29(1) of the Privacy Act 1993 is amended by inserting the following paragraph after paragraph (i):

- (ia) the request is made by a defendant or a defendant's agent and is—
 - (i) for information that could be sought by the defendant under the Criminal Disclosure Act 2008; or
 - (ii) for information that could be sought by the defendant under that Act and that has been disclosed to, or withheld from, the defendant under that Act; or

- (2) Section 31 of the Privacy Act 1993 is repealed.

40 Other amendments and repeals

- (1) The enactments specified in Schedule 1 are amended in the manner indicated in that schedule.
- (2) The enactments specified in Schedule 2 are repealed.

Transitional and savings provisions

41 Transitional provision

- (1) Criminal proceedings commenced before the date on which this Act comes into force continue as if this Act had not been enacted.
- (2) Despite subsection (1), if the prosecutor and the defendant agree, by notice in writing lodged with the court, criminal proceedings commenced before the date on which this Act comes into force continue subject to the requirements of this Act and the enactments specified in Schedules 1 and 2 (as amended by those schedules).
- (3) If there is an agreement under subsection (2), any obligation under this Act that would (had the proceedings been conducted subject to the requirements of this Act from its commencement) already have fallen due before the date of the

agreement, falls due at the date of the agreement (if that obligation has not already been complied with).

- (4) Until the commencement of sections 108 and 109 of the Evidence Act 2006, section 16(1)(d) must be read as if for “sections 108 and 109 of the Evidence Act 2006” there were substituted “section 13A of the Evidence Act 1908”.
- (5) Until the commencement of sections 110 and 112 of the Evidence Act 2006, section 16(1)(e) must be read as if for “section 110 of the Evidence Act 2006 or a witness anonymity order under section 112 of the Evidence Act 2006” there were substituted “section 13B of the Evidence Act 1908 or a witness anonymity order under section 13C of the Evidence Act 1908”.

42 This Act not to limit or affect other enactments relating to availability of information

- (1) Except as expressly provided in this or any other enactment, nothing in this Act limits or affects any provision in any other enactment that—
 - (a) authorises or requires any information to be made available; or
 - (b) imposes a prohibition or restriction in relation to the availability of any information; or
 - (c) regulates the manner in which any information may be obtained or made available.
- (2) Without limiting subsection (1), nothing in this Act applies in respect of any video record made under the Evidence Regulations 2007 or any copy or transcript of such a video record.

Section 42(2): replaced, on 1 July 2013, by section 8 of the Criminal Disclosure Amendment Act 2011 (2011 No 86).

Schedule 1

Enactments amended

s 40(1)

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

Heading to section 321: omit “**and Summary Proceedings Act 1957**” and substitute “**Summary Proceedings Act 1957, Bail Act 2000, and Criminal Disclosure Act 2008**”.

Schedule 1: add:

4 The Criminal Disclosure Act 2008

Crimes Act 1961 (1961 No 43)

Section 367A(1) to (3) and (5) to (7): repeal.

Summary Proceedings Act 1957 (1957 No 87)

Section 20: insert after subsection (1):

(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.

Section 116(1A): insert “or section 33 of the Criminal Disclosure Act 2008” after “of this Act”.

Schedule 2
Enactments repealed

s 40(2)

Crimes Amendment Act 1973 (1973 No 118)
Sections 11 and 12(1).

Reprints notes

1 *General*

This is a reprint of the Criminal Disclosure Act 2008 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Privacy Act 2020 (2020 No 31): section 217

Contempt of Court Act 2019 (2019 No 44): section 29

Courts Matters Act 2018 (2018 No 50): Part 4 subpart 4

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

District Court Act 2016 (2016 No 49): section 261

Criminal Disclosure Amendment Act 2013 (2013 No 28)

Criminal Disclosure Amendment Act 2011 (2011 No 86)

Criminal Disclosure Act Commencement Order 2009 (SR 2009/130)