



District Courts Amendment Act (No 2) 2011

Public Act 2011 No 88
Date of assent 17 October 2011
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the District Courts Amendment Act (No 2) 2011.

2 Commencement

This Act comes into force on the day that is 2 years after the date on which this Act receives the Royal assent unless it is brought into force on an earlier date appointed by the Governor-General by Order in Council.

3 Principal Act amended

This Act amends the District Courts Act 1947.

4 New section 5B inserted

The following section is inserted after section 5A:

“5B Appointment of jury trial Judges

“(1) The Governor-General must, by warrant, appoint sufficient Judges to exercise the criminal jurisdiction of the courts in respect of jury trials under the Criminal Procedure Act 2011.

“(2) The fact that a Judge is appointed under this section does not limit or affect the power of that Judge to exercise any other jurisdiction of the court or the powers of a Judge.

“Compare: 1947 No 16 s 28B”.

5 New sections 11CA to 11CE inserted

The following sections are inserted after section 11C:

“11CA No proceeding against Community Magistrate unless he or she acted without jurisdiction

- “(1) No proceeding may be commenced against any Community Magistrate for any act done by him or her, unless he or she has exceeded his or her jurisdiction or has acted without jurisdiction.
- “(2) If a warrant to seize property or warrant of commitment is granted by a Community Magistrate in good faith in reliance on a conviction or order entered or made by 1 or more Justices or 1 or more Community Magistrates, no proceeding may be commenced against the Community Magistrate who granted the warrant by reason of any defect in the conviction or order, or by reason 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; 1957 No 87 s 193

“11CB No proceeding against Community Magistrate to be commenced in District Court

No proceeding against any Community Magistrate by any person claiming to have been injured by an act done by the Community Magistrate in excess of jurisdiction or without jurisdiction may be commenced in a District Court.

“Compare: 1927 No 37 s 353; 1957 No 87 s 194

“11CC Onus of proof

In any proceeding commenced against a Community Magistrate by a person claiming to have been injured by an act done by the Community Magistrate in excess of jurisdiction or without jurisdiction, the onus of proving the excess or want of jurisdiction lies on the person alleging it.

“Compare: 1927 No 37 s 365; 1957 No 87 s 195

“11CD Plaintiff may be ordered to give security for costs

- “(1) This section applies to any proceeding commenced against a Community Magistrate by a person claiming to have been injured by an act done by the Community Magistrate in excess of jurisdiction or without jurisdiction.

- “(2) The High Court or any Judge of that Court, on application by the Community Magistrate at any time before the day fixed for the trial of the proceeding, may order the plaintiff to give security for the costs of the proceeding to the satisfaction of the Registrar of the High Court in a sum not exceeding \$500.
- “(3) If security is ordered to be given, the Court or Judge may direct that in the meantime all proceedings are stayed.
- “Compare: 1927 No 37 ss 357, 359; 1957 No 87 s 196

“11CE Indemnity to Community Magistrate

- “(1) Subsection (2) applies to any 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 Community Magistrate in excess of jurisdiction or without jurisdiction.
- “(2) The Community Magistrate must be indemnified by the Crown to the full amount of the judgment if he or she produces a certificate signed by a Judge of the High Court stating that, in the Judge’s opinion,—
- “(a) the Community Magistrate acted in good faith under the belief that he or she had in fact jurisdiction; and
- “(b) in all the circumstances the Community Magistrate ought fairly and reasonably to be excused.
- “(3) Subsections (4) and (5) apply if a Community Magistrate settles a claim against him or her by paying or agreeing to pay an agreed amount of damages or costs before proceedings are commenced, or before or during trial of the proceeding.
- “(4) The Community Magistrate must be indemnified by the Crown to the full amount of the amount paid or agreed to be paid if he or she produces a certificate signed by a Judge of the High Court stating that, in the Judge’s opinion,—
- “(a) the Community Magistrate acted in good faith under the belief that he or she had in fact jurisdiction; and
- “(b) in all the circumstances the Community Magistrate ought fairly and reasonably to be excused; and
- “(c) the amount paid or agreed to be paid was fair and reasonable.

- “(5) If the High Court Judge is not satisfied of the matter in subsection (4)(c), the Judge may issue the certificate in respect of any lesser sum that in the Judge’s opinion is adequate to settle the plaintiff’s claim, and in that case the Community Magistrate must be indemnified by the Crown to the amount specified in the certificate.
- “(6) Application for a certificate under any of subsections (2), (4), or (5) may be made by a Community Magistrate at any time to a Judge in Chambers, and the Judge has power to grant the certificate after considering all evidence that is given before him or her either orally or in the form of affidavits.
- “(7) A copy of the application must be served by the Community Magistrate on the Attorney-General, who is entitled to appear and oppose it.
- “Compare: 1957 No 87 s 197”.

6 Principal Act amendments taking into account section 14 of District Courts Amendment Act 2011

- (1) If section 14 of the District Courts Amendment Act 2011 is not in force on the date that this section comes into force,—
- (a) section 84C(2)(c) of the principal Act is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “section 168 of the Criminal Procedure Act 2011”; and
 - (b) new section 84EA(5)(c) as inserted by section 14 of the District Courts Amendment Act 2011 is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “section 168 of the Criminal Procedure Act 2011”; and
 - (c) subsection (2) of this section is repealed.
- (2) If section 14 of the District Courts Amendment Act 2011 is in force on the date that this section comes into force,—
- (a) section 84EA(5)(c) of the principal Act is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “section 168 of the Criminal Procedure Act 2011”; and
 - (b) subsection (1) of this section is repealed.

7 Principal Act amendment further taking into account section 14 of District Courts Amendment Act 2011

- (1) If section 14 of the District Courts Amendment Act 2011 is not in force on the date that this section comes into force,—
- (a) section 84C(2)(d) of the principal Act is amended by omitting “constable” and substituting “Police employee”; and
 - (b) subsection (2) of this section is repealed.
- (2) If section 14 of the District Courts Amendment Act 2011 is in force on the date that this section comes into force, this section is repealed immediately after it has come into force.

8 Amendment to principal Act taking into account section 19 of District Courts Amendment Act 2011

- (1) If section 19 of the District Courts Amendment Act 2011 is not in force on the date that this section comes into force,—
- (a) section 84K(1) of the principal Act is amended by omitting “summary”; and
 - (b) subsection (2) of this section is repealed.
- (2) If section 19 of the District Courts Amendment Act 2011 is in force on the date that this section comes into force,—
- (a) section 84K of the principal Act is amended by omitting “summary”; and
 - (b) subsection (1) of this section is repealed.

9 Principal Act: first amendment taking into account section 23 of District Courts Amendment Act 2011

- (1) If section 23 of the District Courts Amendment Act 2011 is not in force on the date that this section comes into force,—
- (a) section 84O(6)(b) of the principal Act is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “section 168 of the Criminal Procedure Act 2011”; and
 - (b) new section 84OB(3)(d) as inserted by section 23 of the District Courts Amendment Act 2011 is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “section 168 of the Criminal Procedure Act 2011”; and
 - (c) subsection (2) of this section is repealed.

- (2) If section 23 of the District Courts Amendment Act 2011 is in force on the date that this section comes into force,—
- (a) section 84OB(3)(d) of the principal Act is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “section 168 of the Criminal Procedure Act 2011”; and
 - (b) subsection (1) of this section is repealed.

10 Principal Act: second amendment taking into account section 23 of District Courts Amendment Act 2011

- (1) If section 23 of the District Courts Amendment Act 2011 is not in force on the date that this section comes into force,—
- (a) section 84O(6)(c) of the principal Act is amended by omitting “constable” in each place where it appears and substituting in each case “Police employee”; and
 - (b) subsection (2) is repealed.
- (2) If section 23 of the District Courts Amendment Act 2011 is in force on the date that this section comes into force, this section is repealed immediately after it has come into force.

11 Principal Act: third amendment taking into account section 23 of District Courts Amendment Act 2011

- (1) If section 23 of the District Courts Amendment Act 2011 is not in force on the date that this section comes into force,—
- (a) section 84O(7) of the principal Act is amended by omitting “on an information”; and
 - (b) section 84O(8) of the principal Act is amended by omitting “on an information”; and
 - (c) section 23 of the District Courts Amendment Act 2011 is amended by omitting from new section 84O(6) “on an information” and substituting “before a Judge alone in relation to a charge”; and
 - (d) subsection (2) of this section is repealed.
- (2) If section 23 of the District Courts Amendment Act 2011 is in force on the date that this section comes into force,—
- (a) section 84O(6) of the principal Act is amended by omitting “on an information” and substituting “before a Judge alone in relation to a charge”; and
 - (b) subsection (1) of this section is repealed.

12 Further amendments to principal Act

The principal Act is amended as set out in the Schedule.

Schedule

s 12

Amendments to principal Act**Long Title**

Omit “Summary Proceedings Act 1957” and substitute “Criminal Procedure Act 2011”.

Section 2(2)

Omit “Summary Proceedings Act 1957” and substitute “Criminal Procedure Act 2011”.

Section 4

Subsection (2): omit “summary criminal jurisdiction under the Summary Proceedings Act 1957” and substitute “jurisdiction to conduct Judge-alone trials in accordance with the Criminal Procedure Act 2011”.

Subsection (2A): repeal and substitute:

“(2A) The Governor-General may from time to time appoint cities, boroughs, or other places in which courts may be held for the exercise of jurisdiction to conduct jury trials in accordance with the Criminal Procedure Act 2011.”

Section 4A(1)

Omit “summary” and substitute “Judge-alone”.

Section 8(c)

Omit “Summary Proceedings Act 1957” and substitute “Criminal Procedure Act 2011”.

Section 11C(1)

Repeal paragraph (a) and substitute:

“(a) by the Criminal Procedure Act 2011; or”.

Section 19(1)

Omit “in a summary way”.

Section 20(2)

Omit “summary”.

Section 21

Subsection (3): omit “summary” and substitute “Judge-alone”.

Subsection (4): omit “trials on indictment” and substitute “jury trials”.

Part 2A

Repeal.

Section 30(2)

Omit “on indictment or on summary conviction”.

Section 78A

Repeal.

Section 84J(6)

Omit “summary”.

Section 85A(5)

Omit “summary”.

Section 87

Omit “summary”.

Section 114

Omit “summary”.

Section 116A(2)

Omit “on indictment”.

Section 121(1)

Omit “summary”.

Schedule 1A

Repeal.

Legislative history

29 September 2011	Divided from Criminal Procedure (Reform and Modernisation) Bill (Bill 243–2) by committee of the whole House as Bill 243–3H
4 October 2011	Third reading
17 October 2011	Royal assent

This Act is administered by the Ministry of Justice.
