

District Courts Amendment Bill (No 2)

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Criminal Procedure (Reform and Modernisation) Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- the Criminal Procedure Bill comprising clauses 1 and 2, Parts 1 to 8, the Part 9 heading, clause 416, clause 417, clause 442, and Schedules 1, 1A, and 6
- the Bail Amendment Bill (No 3) comprising clauses 401 to 407A, and Schedule 2
- the Children, Young Persons, and Their Families Amendment Bill (No 3) comprising clauses 407B to 407D, and Schedule 3
- the Corrections Amendment Bill comprising clauses 408 to 410A, and Schedule 3A
- the Crimes Amendment Bill (No 5) comprising clauses 410B to 411B, and Schedule 3B
- the Criminal Disclosure Amendment Bill comprising clauses 412 to 415B, and Schedule 3C
- the Criminal Procedure (Mentally Impaired Persons) Amendment Bill comprising clauses 417A to 417C, and Schedule 4

- this bill comprising clauses 418 to 420A, and Schedule 4A
 - the Evidence Amendment Bill comprising clauses 421 to 423A, and Schedule 4B
 - the Juries Amendment Bill comprising clauses 424 to 427A, and Schedule 4C
 - the Justices of the Peace Amendment Bill comprising clauses 427B to 428
 - the New Zealand Bill of Rights Amendment Bill comprising clauses 428B and 429
 - the Sentencing Amendment Bill (No 6) comprising clauses 430 to 433A, and Schedule 4D
 - the Summary Proceedings Amendment Bill (No 4) comprising clauses 434 to 437B, and Schedule 5
 - the Victims' Rights Amendment Bill comprising clauses 438 to 441B, and Schedule 5A.
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Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

~~text deleted~~

Hon Simon Power

**District Courts Amendment Bill
(No 2)**

Government Bill

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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.

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419 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 re-

spect of jury trials under the **Criminal Procedure (Reform and Modernisation) Act 2010**.

- “(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. 5
“Compare: 1947 No 16 s 28B”.

420 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 10

- “(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. 15
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“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 25

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. 30

“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 with- 35

out 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. 5

“(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. 10

“(3) If security is ordered to be given, the Court or Judge may direct that in the meantime all proceedings are stayed. 15

“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. 20

“(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,— 25

“(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. 30

“(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 35

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”.

420AA District Courts Act 1947 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 District Courts Act 1947 is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “**section 173 of the Criminal Procedure (Reform and Modernisation) Act 2010**”; 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 173 of the Crim-**

inal Procedure (Reform and Modernisation) Act 2010”; 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,—** 5
- (a) **section 84EA(5)(c) of the District Courts Act 1947 is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “**section 173** of the **Criminal Procedure (Reform and Modernisation) Act 2010**”; and** 10
- (b) **subsection (1)** of this section is repealed.

420AB District Courts Act 1947 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,—** 15
- (a) **section 84C(2)(d) of the District Courts Act 1947 is amended by omitting “constable” and substituting “Police employee”; and**
- (b) **subsection (2)** of this section is repealed. 20
- (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.**

420AC Amendment to District Courts Act 1947 taking into account section 19 of District Courts Amendment Act 2011 25

- (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 District Courts Act 1947 is amended by omitting “summary”; and** 30
- (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 District Courts Act 1947 is amended by omitting “summary”; and** 35
- (b) **subsection (1)** of this section is repealed.

420AD District Courts Act 1947: 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,— 5
- (a) section 84O(6)(b) of the District Courts Act 1947 is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “**section 173 of the Criminal Procedure (Reform and Modernisation) Act 2010**”; and 10
- (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 173 of the Criminal Procedure (Reform and Modernisation) Act 2010**”; and 15
- (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 District Courts Act 1947 is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “**section 173 of the Criminal Procedure (Reform and Modernisation) Act 2010**”; and 20
- (b) **subsection (1)** of this section is repealed. 25

420AE District Courts Act 1947: 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,— 30
- (a) section 84O(6)(c) of the District Courts Act 1947 is amended by omitting “constable” in each place where it appears and substituting in each case “Police employee”; and
- (b) **subsection (2)** is repealed. 35
- (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.

420AF District Courts Act 1947: 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,— 5
 - (a) section 84O(7) of the District Courts Act 1947 is amended by omitting “on an information”; and
 - (b) section 84O(8) of the District Courts Act 1947 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 10
 - (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,— 15
 - (a) section 84O(6) of the District Courts Act 1947 is amended by omitting “on an information” and substituting “before a Judge alone in relation to a charge”; and 20
 - (b) **subsection (1)** of this section is repealed.

420A Further amendments to District Courts Act 1947
The District Courts Act 1947 is amended as set out in **Schedule 4A.**

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Schedule 4A **s 420A**
Amendments to District Courts Act 1947

Long Title

Omit “Summary Proceedings Act 1957” and substitute “**Criminal Procedure (Reform and Modernisation) Act 2010**”. 5

Section 2(2)

Omit “Summary Proceedings Act 1957” and substitute “**Criminal Procedure (Reform and Modernisation) Act 2010**”.

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 (Reform and Modernisation) Act 2010**”. 10

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 (Reform and Modernisation) Act 2010**.” 15

Section 4A(1)

Omit “summary” and substitute “Judge-alone”. 20

Section 8(c)

Omit “Summary Proceedings Act 1957” and substitute “**Criminal Procedure (Reform and Modernisation) Act 2010**”.

Section 11C(1)

Repeal paragraph (a) and substitute: 25

“(a) by the **Criminal Procedure (Reform and Modernisation) Act 2010**; or”.

Section 19(1)

Omit “in a summary way”. 30

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”.

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Section 78A

Repeal.

Section 84C(2)

Paragraph (c): omit “section 46 of the Summary Proceedings Act 1957” and substitute “**section 173 of the Criminal Procedure (Reform and Modernisation) Act 2010**”.

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Paragraph (d): omit “member of the police” in each place where it appears and substitute in each case “Police employee”.

Section 84J(6)

Omit “summary”.

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Section 84K(1)

Omit “summary”.

Section 84O

Subsection (6)(b): omit “section 46 of the Summary Proceedings Act 1957” and substitute “**section 173 of the Criminal Procedure (Reform and Modernisation) Act 2010**”.

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Subsection (6)(c): omit “member of the police” in each place where it appears and substitute in each case “Police employee”.

Subsection (7): omit “on an information”.

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Section 84O—*continued*

Subsection (8): omit “on an information”.

Section 85A(5)

Omit “summary”.

Section 87

Omit “summary”.

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Section 114

Omit “summary”.

Section 116A(2)

Omit “on indictment”.

Section 121(1)

Omit “summary”.

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Schedule 1A

Repeal.

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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