Reprint
as at 8 December 2009

Crimes Act 1961

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

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

This Act is administered by the Ministry of Justice.

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An Act to consolidate and amend the Crimes Act 1908 and certain other enactments of the Parliament of New Zealand relating to crimes and other offences

Title: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

1 Short Title, commencement, etc

(1) This Act may be cited as the Crimes Act 1961.

(2) This Act shall come into force on 1 January 1962.

(3) This Act is divided into Parts, as follows:

Part 1—Jurisdiction (sections 5 to 12)

Part 2—Punishments (sections 13 to 19F)

Part 3—Matters of justification or excuse (sections 20 to 65)

Part 4—Parties to the commission of offences (sections 66 to 72)

Part 5—Crimes against public order (sections 73 to 98F)

Part 6—Crimes affecting the administration of law and justice (sections 99 to 122)

Part 7—Crimes against religion, morality, and public welfare (sections 123 to 150)

Part 8—Crimes against the person (sections 150A to 210A)

Part 9—Crimes against reputation (sections 211 to 216)

Part 9A—Crimes against personal privacy (sections 216A to 216N)

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Part 10—Crimes against rights of property (sections 217 to 305)

Part 11—Threatening, conspiring, and attempting to commit offences (sections 306 to 312)

Part 11A—Obtaining evidence by listening devices (sections 312A to 312Q)

Part 12—Procedure (sections 313 to 378F)

Part 13—Appeals (sections 379 to 399)

Part 14—Miscellaneous provisions (sections 400 to 415)

2 Interpretation

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

aerodrome has the same meaning as in the Civil Aviation Act 1990

aircraft has the same meaning as in the Civil Aviation Act 1990; and includes any aircraft for the time being used as an aircraft of any of the armed forces of any country other than New Zealand

assault means the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly, or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other to believe on reasonable grounds that he has, present ability to effect his purpose; and **to assault** has a corresponding meaning

claim of right, in relation to any act, means a belief that the act is lawful, although that belief may be based on ignorance or mistake of fact or of any matter of law other than the enactment against which the offence is alleged to have been committed

Commonwealth country means a country that is a member of the Commonwealth of Nations; and includes every territory for whose international relations the government of any such country is responsible

Commonwealth ship means a ship registered or required to be registered in any Commonwealth country, or recognised by the law of any Commonwealth country as a ship belonging to

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that country; and includes any ship for the time being used as a ship of any of the armed forces of any Commonwealth country

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

crime means an offence for which the offender may be proceeded against by indictment

crime involving dishonesty means any crime described in Part 10 except the crimes described in sections 267 to 272

criminally responsible means liable to punishment for an offence

day, or **daytime**, means the interval between 6 o'clock in the morning of any day and 9 o'clock at night of the same day

depositions includes written statements admitted in evidence at the standard committal or the committal hearing under section 162 of the Summary Proceedings Act 1957, and statements made under section 164 of that Act and admitted in evidence at the standard committal or read in evidence at the committal hearing

firearm has the same meaning as in the Arms Act 1983

for a material benefit, in relation to doing a thing, means—

(a) after having obtained a material benefit for doing the thing; or

(b) intending to obtain a material benefit for doing the thing

foreign ship means a ship that is not a Commonwealth ship

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

is liable means is liable on conviction on indictment

Judge, in relation to a District Court, or **District Court Judge** means a Judge who holds a warrant under section 28B of the District Courts Act 1947 to conduct trials on indictment; and in section 399 of this Act includes any other District Court Judge

justified, in relation to any person, means not guilty of an offence and not liable to any civil proceeding

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New

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Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

New Zealand includes all waters within the outer limits of the territorial sea of New Zealand (as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977)

New Zealand aircraft means any aircraft that is registered or required to be registered in New Zealand under the Civil Aviation Act 1990; and includes any aircraft for the time being used as an aircraft of the New Zealand forces

New Zealand forces means the New Zealand Naval Forces, the New Zealand Army, and the Royal New Zealand Air Force

New Zealand ship means a ship registered in New Zealand, or recognised by the law of New Zealand as a ship belonging to New Zealand; and includes any ship for the time being used as a ship of the New Zealand forces

night, or **night-time**, means the interval between 9 o'clock at night and 6 o'clock in the following morning

obtain a material benefit, in relation to doing a thing, means obtain, directly or indirectly, any goods, money, pecuniary advantage, privilege, property, or other valuable consideration of any kind for doing the thing (or taking an action that forms part of doing the thing)

offence means any act or omission for which any one can be punished under this Act or under any other enactment, whether on conviction on indictment or on summary conviction

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

person, **owner**, and other words and expressions of the like kind, include the Crown and any public body or local authority, and any board, society, or company, and any other body of persons, whether incorporated or not, and the inhabitants of the district of any local authority, in relation to such acts and things as it or they are capable of doing or owning

prison manager means the manager of a prison

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property includes real and personal property, and any estate or interest in any real or personal property, money, electricity, and any debt, and any thing in action, and any other right or interest

prosecutor means—

(a) a Crown Solicitor:

(b) in relation to a Crown prosecution, the Attorney-General:

(c) in relation to a private prosecution, the private prosecutor

protected from criminal responsibility means not liable to any proceedings except a civil proceeding

Registrar—

(a) for the purposes of Part 12, means any Registrar of the trial court; and includes any Deputy Registrar of that court:

(b) for any other purpose, means any Registrar of the High Court or of a District Court, as the case may require; and includes any Deputy Registrar

sexual connection means—

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

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

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

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

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

ship means every description of vessel used in navigation, however propelled; and includes any barge, lighter, dinghy, raft, or like vessel; and also includes any ship belonging to or used as a ship of the armed forces of any country

Supreme Court means the Supreme Court of New Zealand established by section 6 of the Supreme Court Act 2003

territorial waters, in relation to any country other than New Zealand, means such part of the sea adjacent to the coast of that

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country as is within the territorial sovereignty of that country; and includes ports, harbours, rivers, and other places in which at the commencement of this Act the Admiralty of England has jurisdiction (whether exclusive or not) in respect of offences of any kind committed on board Commonwealth ships

to injure means to cause actual bodily harm

Trial Judge means,—

(a) if the accused has been committed to the High Court for trial and the case has not been transferred to the District Court for trial under section 184Q of the Summary Proceedings Act 1957, a High Court Judge:

(b) if the accused has been committed to the District Court for trial or the case has been transferred to that court for trial under section 184Q of the Summary Proceedings Act 1957, and the court has jurisdiction in the matter under section 28A of the District Courts Act 1947, a District Court Judge.

(1A) For the purposes of paragraph (a) of the definition in subsection (1) of sexual connection, introduction to the slightest degree is enough to effect a connection.

(1B) For the purposes of this Act, one person does an indecent act on another person whether he or she—

(a) does an indecent act with or on the other person; or

(b) induces or permits the other person to do an indecent act with or on him or her.

(2) When it is provided in this Act that any one is liable to any punishment for doing or omitting any act, every person doing or omitting that act is, subject to the provisions of this Act, guilty of a crime.

Compare: 1908 No 32 ss 2, 4A(1), 207, 237; 1948 No 77 s 8; 1950 No 83 s 2; 1953 No 120 s 2(1); 1954 No 29 s 2

Section 2(1) **aerodrome**: amended, on 1 September 1990, pursuant to section 101(1) of the Civil Aviation Act 1990 (1990 No 98).

Section 2(1) **aircraft**: amended, on 1 September 1990, pursuant to section 101(1) of the Civil Aviation Act 1990 (1990 No 98).

Section 2(1) **claim of right**: inserted, on 1 October 2003, by section 4(1) of the Crimes Amendment Act 2003 (2003 No 39).

Section 2(1) **colour of right**: repealed, on 1 October 2003, by section 4(1) of the Crimes Amendment Act 2003 (2003 No 39).

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

Section 2(1) **crime involving dishonesty**: substituted, on 1 October 2003, by section 4(2) of the Crimes Amendment Act 2003 (2003 No 39).

Section 2(1) **depositions**: substituted, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 2(1) **firearm**: inserted, on 28 October 1986, by section 2 of the Crimes Amendment Act (No 2) 1986 (1986 No 71).

Section 2(1) **for a material benefit**: inserted, on 20 May 2005, by section 3(1) of the Crimes Amendment Act 2005 (2005 No 41).

Section 2(1) **genitalia**: inserted, on 20 May 2005, by section 3(1) of the Crimes Amendment Act 2005 (2005 No 41).

Section 2(1) **Judge**: inserted, on 1 May 1981, by section 2(1) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 2(1) **medical practitioner**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **New Zealand**: substituted, on 1 January 1966, by section 11 of the Territorial Sea and Fishing Zone Act 1965 (1965 No 11).

Section 2(1) **New Zealand**: amended, on 1 August 1996, pursuant to section 5(4) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74).

Section 2(1) **New Zealand**: amended, on 1 October 1977, by section 33(1) of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 (1977 No 28).

Section 2(1) **New Zealand aircraft**: amended, on 1 September 1990, pursuant to section 101(1) of the Civil Aviation Act 1990 (1990 No 98).

Section 2(1) **obtain a material benefit**: inserted, on 18 June 2002, by section 3 of the Crimes Amendment Act 2002 (2002 No 20).

Section 2(1) **penis**: inserted, on 20 May 2005, by section 3(1) of the Crimes Amendment Act 2005 (2005 No 41).

Section 2(1) **prison manager**: inserted, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(1) **property**: amended, on 1 October 2003, by section 4(3) of the Crimes Amendment Act 2003 (2003 No 39).

Section 2(1) **prosecutor**: inserted, on 1 March 1996, by section 2(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 2(1) **Registrar**: substituted, on 1 March 1996, by section 2(2) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 2(1) **sexual connection**: inserted, on 20 May 2005, by section 3(1) of the Crimes Amendment Act 2005 (2005 No 41).

Section 2(1) **Superintendent**: repealed, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(1) **Supreme Court**: inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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Section 2(1) **territorial waters**: amended, on 1 January 1966, by section 11 of the Territorial Sea and Fishing Zone Act 1965 (1965 No 11).

Section 2(1) **Trial Judge**: inserted, on 1 March 1996, by section 2(3) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 2(1) **Trial Judge** paragraph (a): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 2(1) **Trial Judge** paragraph (b): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 2(1) **Trial Judge** paragraph (b): amended, on 22 November 1997, by section 3 of the Crimes Amendment Act 1997 (1997 No 88).

Section 2(1) **valuable security**: repealed, on 1 October 2003, by section 4(4) of the Crimes Amendment Act 2003 (2003 No 39).

Section 2(1A): inserted, on 20 May 2005, by section 3(2) of the Crimes Amendment Act 2005 (2005 No 41).

Section 2(1B): inserted, on 20 May 2005, by section 3(2) of the Crimes Amendment Act 2005 (2005 No 41).

3 Meaning of convicted on indictment

For the purposes of this Act, a person shall be deemed to be **convicted on indictment** if—

(a) he pleads guilty on indictment; or

(b) he is found guilty on indictment; or

(c) he is committed to the High Court for sentence under section 44 or section 160 or 184J of the Summary Proceedings Act 1957; or

(d) after having been committed for trial, he pleads guilty under section 321.

Compare: 1945 No 23 s 2(2)

Section 3(c): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 3(c): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 3(c): amended, on 1 May 1977, by section 15(1) of the Judicature Amendment Act 1977 (1977 No 32).

Section 3(d): amended, on 1 May 1981, by section 3 of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

4 Meaning of ordinarily resident in New Zealand

For the purposes of this Act, a person shall be deemed to be **ordinarily resident in New Zealand** if—

(a) his home is in New Zealand; or

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(b) he is residing in New Zealand with the intention of residing therein indefinitely; or

(c) having resided in New Zealand with the intention of establishing his home therein, or with the intention of residing in New Zealand indefinitely, he is outside New Zealand but has an intention to return to establish his home therein or to reside in New Zealand indefinitely.

Part 1
Jurisdiction

5 Application of Act

(1) This Act applies to all offences for which the offender may be proceeded against and tried in New Zealand.

(2) This Act applies to all acts done or omitted in New Zealand.

Compare: 1908 No 32 s 3

6 Persons not to be tried in respect of things done outside New Zealand

Subject to the provisions of section 7, no act done or omitted outside New Zealand is an offence, unless it is an offence by virtue of any provision of this Act or of any other enactment.

7 Place of commission of offence

For the purpose of jurisdiction, where any act or omission forming part of any offence, or any event necessary to the completion of any offence, occurs in New Zealand, the offence shall be deemed to be committed in New Zealand, whether the person charged with the offence was in New Zealand or not at the time of the act, omission, or event.

Compare: 1908 No 32 s 4

7A Extraterritorial jurisdiction in respect of certain offences with transnational aspects

(1) Even if the acts or omissions alleged to constitute the offence occurred wholly outside New Zealand, proceedings may be brought for any offence against this Act committed in the course of carrying out a terrorist act (as defined in section 5(1) of the Terrorism Suppression Act 2002) or an offence against

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section 98AA, section 98A, section 98C, section 98D, any of sections 100 to 104, section 105(2), section 116, section 117, section 243, section 298A, or section 298B—

(a) if the person to be charged—
  (i) is a New Zealand citizen; or
  (ii) is ordinarily resident in New Zealand; or
  (iii) has been found in New Zealand and has not been extradited; or
  (iv) is a body corporate, or a corporation sole, incorporated under the law of New Zealand; or

(b) if any of the acts or omissions is alleged to have occurred—
  (i) on board a ship registered or required to be registered under the Ship Registration Act 1992; or
  (ii) on board a ship used as a ship of the New Zealand Defence Force; or
  (iii) on board a New Zealand aircraft; or
  (iv) on board an aircraft that is leased to a lessee whose principal place of business is in New Zealand, or who is a New Zealand citizen or a person ordinarily resident in New Zealand; or

(c) if a person in respect of whom the offence is alleged to have been committed—
  (i) is a New Zealand citizen; or
  (ii) is ordinarily resident in New Zealand; or

(d) in the case of an offence against section 98A, if the group of people with or in which the person to be charged is alleged to have participated are alleged to have as their objective or one of their objectives the obtaining of material benefits by the commission in New Zealand of offences or conduct referred to in paragraph (a) or paragraph (b) of section 98A(2).

(2) Even if the acts or omissions alleged to constitute the offence occurred wholly outside New Zealand, proceedings may be brought for an offence against section 98C or section 98D,—

(a) in the case of an offence against section 98C(1) or section 98D, if the act or omission is alleged to relate to the entry of a person into New Zealand; or

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(b) in the case of an offence against section 98C(2), if the act or omission is alleged to relate to arranging the bringing of a person to New Zealand.

(2A) Even if some or all of the acts alleged to constitute the offence occurred wholly outside New Zealand, proceedings may be brought for an offence against section 131B—

(a) if the person to be charged—

(i) is a New Zealand citizen; or

(ii) is ordinarily resident in New Zealand; or

(iii) has been found in New Zealand and has not been extradited; or

(b) if any of the acts is alleged to have occurred—

(i) on board a ship registered or required to be registered under the Ship Registration Act 1992; or

(ii) on board a ship used as a ship of the New Zealand Defence Force; or

(iii) on board a New Zealand aircraft; or

(iv) on board an aircraft that is leased to a lessee whose principal place of business is in New Zealand, or who is a New Zealand citizen or a person ordinarily resident in New Zealand; or

(c) if a person in respect of whom the offence is alleged to have been committed—

(i) is a New Zealand citizen; or

(ii) is ordinarily resident in New Zealand.

(3) Neither section 8 nor section 400 applies to an offence referred to in subsection (1).

(4) Nothing in subsections (1) to (3) limits or affects—

(a) the application of section 7 to the occurrence in New Zealand of—

(i) an act or omission forming part of an offence; or

(ii) an event necessary to the completion of an offence; or

(b) the application of section 8A.

Section 7A: inserted, on 18 June 2002, by section 4 of the Crimes Amendment Act 2002 (2002 No 20).

Section 7A(1): amended, on 20 May 2005, by section 4(1)(a) of the Crimes Amendment Act 2005 (2005 No 41).

Section 7A(1): amended, on 20 May 2005, by section 4(1)(b) of the Crimes Amendment Act 2005 (2005 No 41).

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Section 7A(1): amended, on 17 November 2003, by section 3(a) of the Crimes Amendment Act (No 2) 2003 (2003 No 105).

Section 7A(1): amended, on 17 November 2003, by section 3(b) of the Crimes Amendment Act (No 2) 2003 (2003 No 105).

Section 7A(1)(d): amended, on 1 December 2009, by section 4 of the Crimes Amendment Act 2009 (2009 No 47).

Section 7A(2A): inserted, on 20 May 2005, by section 4(2) of the Crimes Amendment Act 2005 (2005 No 41).

7B Attorney-General's consent required where jurisdiction claimed under section 7A

(1) Proceedings for an offence against section 98AA, section 98A, section 116, section 117, section 243, section 298A, or section 298B cannot be brought in a New Zealand court against a person without the Attorney-General's consent, if jurisdiction over the person is claimed by virtue of section 7A.

(2) A person over whom jurisdiction is claimed by virtue of section 7A may be arrested for an offence against section 98AA, section 98A, section 116, section 117, or section 243, or a warrant for the person's arrest for the offence may be issued and executed, and the person may be remanded in custody or on bail, even though the Attorney-General's consent to the bringing of proceedings against the person has not been obtained.

(3) Proceedings for an offence against this Act committed in the course of carrying out a terrorist act (as defined in section 5(1) of the Terrorism Suppression Act 2002) cannot be brought in a New Zealand court against a person without the Attorney-General's consent, if jurisdiction over the person is claimed solely by virtue of section 7A.

Section 7B: inserted, on 18 June 2002, by section 4 of the Crimes Amendment Act 2002 (2002 No 20).

Section 7B(1): amended, on 20 May 2005, by section 5(a) of the Crimes Amendment Act 2005 (2005 No 41).

Section 7B(1): amended, on 20 May 2005, by section 5(b) of the Crimes Amendment Act 2005 (2005 No 41).

Section 7B(1): amended, on 17 November 2003, by section 4(1) of the Crimes Amendment Act (No 2) 2003 (2003 No 105).

Section 7B(2): amended, on 20 May 2005, by section 5(a) of the Crimes Amendment Act 2005 (2005 No 41).

Section 7B(2): amended, on 20 May 2005, by section 5(b) of the Crimes Amendment Act 2005 (2005 No 41).

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Section 7B(3): added, on 17 November 2003, by section 4(2) of the Crimes Amendment Act (No 2) 2003 (2003 No 105).

8 Jurisdiction in respect of crimes on ships or aircraft beyond New Zealand

(1) This section applies to any act done or omitted beyond New Zealand by any person—

(a) on board any Commonwealth ship; or

(b) on board any New Zealand aircraft; or

(c) on board any ship or aircraft, if that person arrives in New Zealand on that ship or aircraft in the course or at the end of a journey during which the act was done or omitted; or

(d) being a British subject, on board any foreign ship (not being a ship to which he belongs) on the high seas, or on board any such ship within the territorial waters of any Commonwealth country; or

(e) being a New Zealand citizen or a person ordinarily resident in New Zealand, on board any aircraft:

provided that paragraph (c) shall not apply where the act was done or omitted by a person, not being a British subject, on any ship or aircraft for the time being used as a ship or aircraft of any of the armed forces of a country that is not a Commonwealth country.

(2) Where any person does or omits any act to which this section applies, and that act or omission would, if it occurred within New Zealand, be a crime under this Act or under any other enactment (whether that enactment was passed before or after the commencement of this Act), then, subject to the provisions of this Act and of that other enactment, he shall be liable on conviction on indictment or, in the case of a crime to which Part 1 of the Summary Proceedings Act 1957 applies, either on conviction on indictment or on summary conviction under that Part, as if the act or omission had occurred in New Zealand:

provided that where any proceedings are taken by virtue of the jurisdiction conferred by this section it shall be a defence to prove that the act or omission would not have been an offence under the law of the country of which

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the person charged was a national or citizen at the time of the act or omission, if it had occurred in that country.

(3) Where at any place beyond New Zealand any person who belongs, or within 3 months previously has belonged, to any Commonwealth ship does or omits any act, whether on shore or afloat, not being an act or omission to which subsection (1) applies, and that act or omission would, if it occurred within New Zealand, be a crime, then this section shall apply in respect of that act or omission in the same manner in all respects as if it had occurred on board a Commonwealth ship.

(4) The provisions of this section shall have the same operation in relation to the Republic of Ireland and to the citizens thereof, and to ships registered therein or belonging thereto, and to persons who belong or have belonged to those ships, and to all other persons on board those ships, as if the Republic of Ireland were a Commonwealth country and as if the citizens thereof were British subjects.

(5) This section shall be read subject to the provisions of section 400.

(6) In this section, the expression **British subject** includes a British protected person within the meaning of the British Nationality and Citizenship Act 1948.

(7) Nothing in this section shall apply with respect to any crime against the Maritime Transport Act 1994 or Part 5A of the Civil Aviation Act 1990.

Compare: 1908 No 32 s 4A(2); 1948 No 77 s 8; 1953 No 120 ss 2, 3, 4, 6; Criminal Code (1954, as amended 1959) s 5A (Canada)

Section 8(7): amended, on 1 June 2004, by section 41(3) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 8(7): amended, on 1 February 1995, pursuant to section 202(1) of the Maritime Transport Act 1994 (1994 No 104).

8A Jurisdiction in respect of certain persons with diplomatic or consular immunity

(1) This section applies to every person who is—

(a) a head of mission or head of post within the meaning of the Foreign Affairs Act 1988; or

(b) a person who is on overseas service pursuant to section 6 of the Foreign Affairs Act 1988; or

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(c) a New Zealand citizen ordinarily resident in New Zealand and who is—

(i) a member of the family of a person described in paragraph (a) or paragraph (b); or

(ii) a member of the staff of a New Zealand overseas post or a New Zealand overseas mission, whether or not an officer or employee of the Ministry of Foreign Affairs and Trade or a person employed under section 10 of the Foreign Affairs Act 1988; or

(iii) an officer or employee of the State services (as defined in section 2(1) of the State Sector Act 1988), or of New Zealand Trade and Enterprise (as established by the New Zealand Trade and Enterprise Act 2003), who is serving in a New Zealand overseas post or a New Zealand overseas mission.

(2) Where—

(a) any person to whom this section applies does, or omits to do, any act outside New Zealand (whether or not the act or omission concerned constitutes an offence under the laws in force in the place where it took place) that, if done or omitted within New Zealand would constitute an offence punishable by imprisonment for 1 year or more; and

(b) that person has immunity from criminal jurisdiction in the place where that act or omission took place; and

(c) that immunity has not been waived (otherwise than to any extent necessary to enable the extradition of that person),—

that act or omission shall be deemed to have taken place within New Zealand.

(3) No information shall be laid against any person over whom jurisdiction is claimed by virtue of subsection (2) without the leave of the Attorney-General.

(4) Subsection (5) applies to any offence to the laying of an information in respect of which the consent of the Attorney-General is required by subsection (3).

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(5) Where any person is alleged to have committed an offence to which this subsection applies,—

(a) he may be arrested; or

(b) a warrant for his arrest may be issued and executed,—

and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General has not been obtained to the laying of an information in respect of that offence; but no further proceedings shall be taken until that consent has been obtained.

Section 8A: inserted, on 16 December 1983, by section 30 of the Foreign Affairs Act 1983 (1983 No 128).

Section 8A(1): substituted, on 1 December 1988, by section 14(1) of the Foreign Affairs Act 1988 (1988 No 159).

Section 8A(1)(a): amended, on 1 July 1993, pursuant to section 2(3) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

Section 8A(1)(b): amended, on 1 July 1993, pursuant to section 2(3) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

Section 8A(1)(c)(ii): amended, on 1 July 1993, pursuant to section 2(3) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

Section 8A(1)(c)(ii): amended, on 1 July 1993, by section 6(1) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

Section 8A(1)(c)(iii): amended, on 1 July 2003, by section 84 of the New Zealand Trade and Enterprise Act 2003 (2003 No 27).

9 Offences not to be punishable except under New Zealand Acts

No one shall be convicted of any offence at common law, or of any offence against any Act of the Parliament of England or the Parliament of Great Britain or the Parliament of the United Kingdom:

provided that—

(a) nothing in this section shall limit or affect the power or authority of the House of Representatives or of any court to punish for contempt:

(b) nothing in this section shall limit or affect the jurisdiction or powers of the Court Martial, or of any officer in any of the New Zealand forces.

Compare: 1908 No 32 s 5; Criminal Code (1954) s 8 (Canada)

Section 9 proviso paragraph (b): amended, on 1 July 2009, by section 87 of the Court Martial Act 2007 (2007 No 101).

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10 Offence under more than 1 enactment

(1) Where an act or omission constitutes an offence under this Act and under any other Act, the offender may be prosecuted and punished either under this Act or under that other Act.

(2) Where an act or omission constitutes an offence under 2 or more Acts other than this Act, the offender may be prosecuted and punished under any one of those Acts.

(3) Where an act or omission constitutes an offence under 2 or more provisions of this Act or of any other Act, the offender may be prosecuted and punished under any one of those provisions.

(4) No one shall be liable, whether on conviction on indictment or on summary conviction, to be punished twice in respect of the same offence.

Compare: 1908 No 32 s 6; 1924 No 11 s 25(i)

10A Criminal enactments not to have retrospective effect

Notwithstanding any other enactment or rule of law to the contrary, no person shall be liable in any criminal proceedings in respect of an act or omission by him if, at the time of the act or omission, the act or omission by him did not constitute an offence.

Compare: 1954 No 50 s 43B; 1980 No 21 s 22

Section 10A: inserted, on 1 October 1985, by section 2 of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

10B Period of limitation

(1) Except with the prior consent of the Attorney-General, no proceedings in respect of an offence to which this section applies, or, where such proceedings have been commenced, no further steps in the proceedings (other than steps subsequent to the trial or hearing) shall be taken after the expiration of 10 years from the date of the commission of the offence.

(2) This section shall apply to the following offences:

(a) an offence punishable by a fine only, where the maximum fine that may be imposed in respect of that offence is less than $2,000:

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(b) an offence punishable by imprisonment, where the maximum term of imprisonment that may be imposed in respect of that offence is less than 3 years.

(3) This section shall apply with respect to offences committed before or after the commencement of this section, and, in the case of an offence committed before the commencement of this section, whether or not proceedings in respect of the offence have been commenced before the commencement of this section or are in progress at the commencement of this section.

(4) Nothing in this section shall derogate from the provisions of any other Act fixing a period of limitation of less than 10 years for the commencement of proceedings in respect of an offence.

Compare: 1954 No 50 s 40A; 1966 No 99 s 5

Section 10B: inserted, on 1 October 1985, by section 2 of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

11 Construction of other Acts

(1) Every Act shall be read and construed as if any offence therein mentioned for which the offender may be prosecuted by indictment (however the offence may be therein described or referred to) were described or referred to as a crime; and all provisions of this Act relating to crimes generally shall apply to every such offence.

(2) Every commission, Proclamation, warrant, or other document relating to criminal procedure in which offences that are crimes as defined by this Act are described or referred to by any names whatever shall be read and construed as if those offences were therein described and referred to as crimes.

Compare: 1908 No 32 s 357

12 Summary jurisdiction

Nothing in this Act shall be construed to limit or affect in any way any provision made by any other Act for the trial and punishment of indictable offences in a summary way.

Compare: 1908 No 32 s 7(5)

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Part 2
Punishments

13 Powers of courts under other Acts not affected

Nothing in this Act shall be construed to limit or affect in any way any provision of any other Act conferring on any court any power to pass a sentence or impose a punishment or make an order in addition to or instead of a sentence or punishment prescribed by this Act, or otherwise to deal with any offender.

Death
[Repealed]

Heading: repealed, on 26 December 1989, pursuant to section 3(1)(a) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

14 Form of sentence in capital cases

[Repealed]

Section 14: repealed, on 26 December 1989, by section 3(1)(a) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

15 Sentence of death not to be passed on pregnant woman

[Repealed]

Section 15: repealed, on 26 December 1989, by section 3(1)(a) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

16 Sentence of death not to be passed on person under 18 years of age

[Repealed]

Section 16: repealed, on 26 December 1989, by section 3(1)(a) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

Imprisonment

17 No sentence of solitary confinement to be passed

(1) No offender shall be sentenced to solitary confinement.

(2) Every reference in any enactment to solitary confinement, or to imprisonment in solitary confinement, shall hereafter be construed as a reference to imprisonment.

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(3) Nothing in this section shall be construed to limit or affect any of the provisions of the Corrections Act 2004, or of any regulations thereunder, in respect of offences against discipline.

Compare: 1908 No 32 s 24(2)

Section 17(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Penalties for certain offences involving home invasion
[Repealed]

Heading: repealed, on 30 June 2002, pursuant to section 164(a) of the Sentencing Act 2002 (2002 No 9).

17A Interpretation

[Repealed]

Section 17A: repealed, on 30 June 2002, by section 164(a) of the Sentencing Act 2002 (2002 No 9).

17B Maximum terms of imprisonment for offences involving home invasion: offences otherwise carrying maximum term of 5, 7, or 10 years imprisonment

[Repealed]

Section 17B: repealed, on 30 June 2002, by section 164(a) of the Sentencing Act 2002 (2002 No 9).

17C Maximum terms of imprisonment for offences involving home invasion: offences otherwise carrying maximum term of 14 or 20 years imprisonment

[Repealed]

Section 17C: repealed, on 30 June 2002, by section 164(a) of the Sentencing Act 2002 (2002 No 9).

17D Parties, attempts, and accessories

[Repealed]

Section 17D: repealed, on 30 June 2002, by section 164(a) of the Sentencing Act 2002 (2002 No 9).

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17E Maximum penalties for offences involving home invasion do not affect jurisdiction of trial court

[Repealed]

Section 17E: repealed, on 30 June 2002, by section 164(a) of the Sentencing Act 2002 (2002 No 9).

Putting under bond

[Repealed]

Heading: repealed, on 1 October 1985, by section 3 of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

18 Putting under bond

[Repealed]

Section 18: repealed, on 1 October 1985, by section 3 of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

Fine

19 Payment of fine, etc

(1) Where the court sentences an offender on conviction on indictment to pay a fine, or orders him to pay any other sum of money, it may do all or any of the following things—

(a) allow time for payment:

(b) direct payment to be made by instalments:

(c) direct payment to be made to such person or persons and in such place or places as the court may specify.

(2) Where a sum is directed to be paid by instalments and default is made in the payment of any 1 instalment, the same proceedings may be taken as if default had been made in the payment of all instalments then remaining unpaid.

Section 19: substituted, on 1 January 1967, by section 2 of the Crimes Amendment Act 1966 (1966 No 98).

19A Supervision of offender when time for payment is allowed

[Repealed]

Section 19A: repealed, on 1 October 1985, by section 4 of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

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19B Immediate execution

If the court which sentences an offender to pay a fine or which orders an offender to pay any other sum of money is of opinion—

(a) that the offender has sufficient means to pay the fine or other sum of money forthwith; or

(b) that the offender has no fixed place of residence; or

(c) that for any other reason, having reference to the gravity of the offence, the character of the offender, or other special circumstances, execution should issue without delay—

the court may direct that a writ of sale be issued against the personal property of an offender, without waiting for the expiration of the period mentioned in the rules of court made under this Act, or it may impose on the offender a period of imprisonment in default of payment of the fine or other sum of money (not exceeding the appropriate maximum period prescribed in section 19E).

Section 19B: inserted, on 1 January 1967, by section 2 of the Crimes Amendment Act 1966 (1966 No 98).

19C Warrant to collect fine or other sum of money ordered to be paid

(1) Where any fine imposed on conviction on indictment or any other sum of money which an offender has been ordered to pay is not paid within 14 days thereafter, or within such further time as may be allowed or fixed for the payment thereof, any Registrar may issue a warrant in the form prescribed in the rules of court made under this Act to collect the sum or so much of it as remains unpaid.

(2) Where a warrant has been issued under this section, the constable or bailiff executing it shall demand payment from the offender if he can be found and shall, unless the fine or other sum of money, or so much of it as remains unpaid, and the fee for the issue of the warrant are sooner paid, make a report as to the means of the offender so far as he has been able to ascertain them, or, as the case may be, a report that after reasonable inquiry the offender could not be found.

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(3) In this section and section 19D, **bailiff** means a bailiff of a District Court; and includes any deputy bailiff and any person acting as bailiff under section 15 of the District Courts Act 1947.

Section 19C: inserted, on 1 January 1967, by section 2 of the Crimes Amendment Act 1966 (1966 No 98).

Section 19C(2): amended, on 10 April 2006, by section 4(1) of the Crimes Amendment Act 2006 (2006 No 6).

Section 19C(3): added, on 10 April 2006, by section 4(2) of the Crimes Amendment Act 2006 (2006 No 6).

19D Execution

Where a constable or bailiff makes a report as mentioned in section 19C, the Judge who sentenced the offender to pay the fine or who ordered the offender to pay the other sum of money or, if that Judge is not available, any other Judge, shall consider the report and may make such order as he thinks fit including an order for the remission of either the whole or part of the fine or other sum of money, an order for the issue of a writ of sale or an order for the immediate imprisonment of the offender, or an order allowing time for payment or allowing payment by instalments.

Section 19D: inserted, on 1 January 1967, by section 2 of the Crimes Amendment Act 1966 (1966 No 98).

Section 19D: amended, on 10 April 2006, by section 5 of the Crimes Amendment Act 2006 (2006 No 6).

19DA Community work, community detention, and home detention for non-payment of fine

(1) In any case where, under section 19D, an order may be made for the imprisonment of any person in respect of the non-payment of any fine or other sum of money, the Judge may issue a summons to that person, or, whether or not a summons has been issued or served, may issue a warrant to arrest that person and bring him before the High Court.

(2) On the appearance of that person before the court, the court may, in its discretion, after considering the report referred to in section 19D, and after taking into account any other fines and any amount of reparation owing by that person, sentence that person to community work, community detention, or home

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detention in accordance with the relevant provisions of Part 2 of the Sentencing Act 2002.

(3) A sentence of community work, community detention, or home detention may be imposed under this section, even though none of the offences in respect of which the fines were imposed was punishable by imprisonment.

(4) If any person is sentenced to community work, community detention, or home detention under this section for the non-payment of the whole or any part of a fine or other sum of money, that fine or part of a fine or other sum of money is deemed to be remitted.

(5) If the court sentences any person to community work, community detention, or home detention under this section, that person has the same right of appeal to the Court of Appeal against the sentence as the person would have had if the sentence had been imposed by the High Court after his or her conviction in the High Court.

(6) If the Court of Appeal quashes the sentence of community work, community detention, or home detention on appeal, it must, at the same time, direct that the case be remitted to the High Court to be dealt with under section 19D.

(7) If, on appeal from the Court of Appeal, the Supreme Court quashes the sentence of community work, community detention, or home detention, it must, at the same time, direct that the case be remitted to the High Court to be dealt with under section 19D.

Section 19DA: inserted, on 1 October 1985, by section 5 of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

Section 19DA heading: amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 19DA heading: amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 19DA(2): substituted, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 19DA(2): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 19DA(3): substituted, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 19DA(3): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

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Section 19DA(4): substituted, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 19DA(4): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 19DA(5): substituted, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 19DA(5): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 19DA(6): substituted, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 19DA(6): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 19DA(7): added, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 19DA(7): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

19E Period of imprisonment for non-payment of money

(1) The period of imprisonment imposed under this Act in respect of the non-payment of any fine or other sum of money shall not exceed the maximum term of imprisonment to which the offender was liable on the conviction or 2 years, whichever is the less.

(2) Where a person is imprisoned for non-payment of any fine or other sum of money, he may pay or cause to be paid to the prison manager of the prison in which he is imprisoned the sum payable and the prison manager shall thereupon discharge that person, unless he is in custody for some other matter.

(3) Where any person who is imprisoned for non-payment of any fine or other sum of money pays or causes to be paid to any person authorised or entitled to receive the same any sum in partial satisfaction of the total amount (including costs and charges) for which he is liable, the term of his imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which he has been committed as the sum so paid bears to the total amount (including costs and charges) for which he is liable, and the prison manager of the prison in which he is imprisoned shall, upon the expiration of the term so reduced, discharge that person unless he is in custody for some other matter.

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Section 19E: inserted, on 1 January 1967, by section 2 of the Crimes Amendment Act 1966 (1966 No 98).

Section 19E(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 19E(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

19F Stay of execution on appeal

The court may at any time, in the case of any appeal or application for leave to appeal, or in any case if it thinks fit, suspend any order made under sections 19, 19A, 19B, or 19D or any warrant issued under section 19C.

Section 19F: inserted, on 1 January 1967, by section 2 of the Crimes Amendment Act 1966 (1966 No 98).

Part 3
Matters of justification or excuse

20 General rule as to justifications

(1) All rules and principles of the common law which render any circumstances a justification or excuse for any act or omission, or a defence to any charge, shall remain in force and apply in respect of a charge of any offence, whether under this Act or under any other enactment, except so far as they are altered by or are inconsistent with this Act or any other enactment.

(2) The matters provided for in this Part are hereby declared to be justifications or excuses in the case of all charges to which they are applicable.

Compare: 1908 No 32 s 40

Infancy

21 Children under 10

(1) No person shall be convicted of an offence by reason of any act done or omitted by him when under the age of 10 years.

(2) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

Compare: 1908 No 32 s 41

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22 Children between 10 and 14

(1) No person shall be convicted of an offence by reason of any act done or omitted by him when of the age of 10 but under the age of 14 years, unless he knew either that the act or omission was wrong or that it was contrary to law.

(2) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

Compare: 1908 No 32 s 42

Insanity

23 Insanity

(1) Every one shall be presumed to be sane at the time of doing or omitting any act until the contrary is proved.

(2) No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility or disease of the mind to such an extent as to render him incapable—

(a) of understanding the nature and quality of the act or omission; or

(b) of knowing that the act or omission was morally wrong, having regard to the commonly accepted standards of right and wrong.

(3) Insanity before or after the time when he did or omitted the act, and insane delusions, though only partial, may be evidence that the offender was, at the time when he did or omitted the act, in such a condition of mind as to render him irresponsible for the act or omission.

(4) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

Compare: 1908 No 32 s 43

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Compulsion

24 Compulsion

(1) Subject to the provisions of this section, a person who commits an offence under compulsion by threats of immediate death or grievous bodily harm from a person who is present when the offence is committed is protected from criminal responsibility if he believes that the threats will be carried out and if he is not a party to any association or conspiracy whereby he is subject to compulsion.

(2) Nothing in subsection (1) shall apply where the offence committed is an offence specified in any of the following provisions of this Act, namely:

(a) section 73 (treason) or section 78 (communicating secrets):

(b) section 79 (sabotage):

(c) section 92 (piracy):

(d) section 93 (piratical acts):

(e) section 167 and 168 (murder):

(f) section 173 (attempt to murder):

(g) section 188 (wounding with intent):

(h) subsection (1) of section 189 (injuring with intent to cause grievous bodily harm):

(i) section 208 (abduction):

(j) section 209 (kidnapping):

(k) section 234 (robbery):

(ka) *[Repealed]*

(l) section 235 (aggravated robbery):

(m) section 267 (arson).

(3) Where a woman who is married or in a civil union commits an offence, the fact that her husband or civil union partner was present at the commission of the offence does not of itself raise a presumption of compulsion.

Compare: 1908 No 32 s 44

Section 24(2): amended, on 1 February 1986, by section 7(1) of the Crimes Amendment Act (No 3) 1985 (1985 No 160).

Section 24(2)(k): substituted, on 1 October 2003, by section 5 of the Crimes Amendment Act 2003 (2003 No 39).

Section 24(2)(ka): repealed, on 1 October 2003, by section 5 of the Crimes Amendment Act 2003 (2003 No 39).

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Section 24(2)(l): substituted, on 1 October 2003, by section 5 of the Crimes Amendment Act 2003 (2003 No 39).

Section 24(2)(m): added, on 1 October 2003, by section 5 of the Crimes Amendment Act 2003 (2003 No 39).

Section 24(3): substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Ignorance of law

25 Ignorance of law

The fact that an offender is ignorant of the law is not an excuse for any offence committed by him.

Compare: 1908 No 32 s 45

Sentence or process

26 Execution of sentence, process, or warrant

(1) Every ministerial officer of any court authorised to execute a lawful sentence, and every prison manager of any prison, and every person lawfully assisting any such ministerial officer or prison manager, is justified in executing the sentence.

(2) Every ministerial officer of any court duly authorised to execute any lawful process of the court, whether of a civil or a criminal nature, and every person lawfully assisting him, is justified in executing it; and every prison manager required under the process to receive and detain any person is justified in receiving and detaining him.

(3) Every one duly authorised to execute a lawful warrant issued by any court or Justice or Community Magistrate or other person having jurisdiction to issue the warrant, and every person lawfully assisting him, is justified in executing the warrant; and every prison manager required under the warrant to receive and detain any person is justified in receiving and detaining him.

Compare: 1908 No 32 s 46

Section 26(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 26(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 26(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

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Section 26(3): amended, on 30 June 1998, by section 2 of the Crimes Amendment Act (No 2) 1998 (1998 No 79).

27 Execution of erroneous sentence or process

If a sentence is passed or a process is issued by a court having jurisdiction under any circumstances to pass such a sentence or issue such a process, or if a warrant is issued by a court or person having jurisdiction under any circumstances to issue such a warrant, the sentence passed or process or warrant issued shall be sufficient to justify the execution of it by every officer, prison manager, or other person authorised to execute it, and by every person lawfully assisting him, notwithstanding that—

(a) the court passing the sentence or issuing the process had no authority to pass that sentence or issue that process in the particular case; or

(b) the court or other person issuing the warrant had no jurisdiction to issue it, or exceeded its or his jurisdiction in issuing it, in the particular case.

Compare: 1908 No 32 s 47

Section 27: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

28 Sentence or process without jurisdiction

(1) Every officer, prison manager, or person executing any sentence, process, or warrant, and every person lawfully assisting him, shall be protected from criminal responsibility if—

(a) he acts in good faith under the belief that the sentence or process was that of a court having jurisdiction, or, as the case may be, that the warrant was that of a court, Justice, Community Magistrate, or other person having authority to issue warrants; and

(b) it is proved that the person passing the sentence or issuing the process acted as such a court under colour of having some appointment or commission lawfully authorising him to act as such a court, or, as the case may require, that the person issuing the warrant acted as a Justice, Community Magistrate, or other person having authority to do so.

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(2) This section shall apply notwithstanding that, in fact,—
(a) any such appointment or commission as aforesaid did not exist or had expired; or
(b) the court or the person passing the sentence or issuing the process was not the court or the person authorised by the appointment or commission to act; or
(c) the person issuing the warrant was not duly authorised to issue it.

Compare: 1908 No 32 s 48

Section 28(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 28(1)(a): amended, on 30 June 1998, by section 3(a) of the Crimes Amendment Act (No 2) 1998 (1998 No 79).

Section 28(1)(b): amended, on 30 June 1998, by section 3(b) of the Crimes Amendment Act (No 2) 1998 (1998 No 79).

29 Irregular warrant or process

(1) Every one acting under a warrant or process that is bad in law on account of some defect in substance or in form, apparent on the face of it, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the warrant or process were good in law if in good faith and without culpable ignorance or negligence he believed that the warrant or process was good in law; and ignorance of the law shall in this case be an excuse.

(2) It is a question of law whether the facts of which there is evidence do or do not constitute culpable ignorance or negligence in his so believing the warrant or process to be good in law.

Compare: 1908 No 32 s 50

Arrest

30 Arresting the wrong person

(1) Every one duly authorised to execute a warrant to arrest who thereupon arrests a person, believing in good faith and on reasonable and probable grounds that he is the person named in the warrant, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant.

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(2) Every one called on to assist the person making such arrest, and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant is issued, and every prison manager who is required to receive and detain the person arrested, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant.

Compare: 1908 No 32 s 49

Section 30(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

31 Arrest by constable pursuant to statutory powers

Every constable is justified in arresting any person without warrant in accordance with the provisions of section 315 or in accordance with any other enactment conferring on him a power so to arrest.

Compare: 1908 No 32 ss 56, 57(2)

32 Arrest by constable of person believed to have committed offence

Where under any enactment any constable has power to arrest without warrant any person who has committed an offence, the constable is justified in arresting without warrant any person whom he believes, on reasonable and probable grounds, to have committed that offence, whether or not the offence has in fact been committed, and whether or not the arrested person committed it.

Compare: 1908 No 32 s 51

33 Arrest by other officers or persons pursuant to statutory powers

Every officer or other person, not being a constable, who is authorised by any enactment to arrest any person without warrant is justified in so arresting any person in accordance with the provisions of that enactment.

34 Persons assisting constable or officer in arrest

(1) Every one called upon by a constable to assist him in the arrest of any person believed or suspected to have committed any

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offence is justified in assisting unless he knows that there is no reasonable ground for the belief or suspicion.

(2) Where by any enactment it is provided that any officer or person, not being a constable, may call upon any other person to assist him in arresting without warrant any one who has committed or is found committing any offence, every person so called upon is justified in assisting unless he knows that there is no reasonable ground for believing that the person to be arrested has committed the offence.

Compare: 1908 No 32 s 52

35 Arrest of persons found committing certain crimes

Every one is justified in arresting without warrant—

(a) any person whom he finds committing any offence against this Act for which the maximum punishment is not less than 3 years' imprisonment:

(b) any person whom he finds by night committing any offence against this Act.

Compare: 1908 No 32 ss 53, 57(1)

Section 35(a): amended, on 27 March 2008, by section 4 of the Crimes Amendment Act 2008 (2008 No 8).

36 Arrest of person believed to be committing crime by night

Every one is protected from criminal responsibility for arresting without warrant any person whom he finds by night in circumstances affording reasonable and probable grounds for believing that that person is committing an offence against this Act.

Compare: 1908 No 32 s 55

37 Arrest after commission of certain crimes

Where any offence against this Act has been committed, every one who believes, on reasonable and probable grounds, that any person has committed that offence is protected from criminal responsibility for arresting that person without warrant, whether or not that person committed the offence.

Compare: 1908 No 32 s 54

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38 Arrest during flight

(1) Every one is protected from criminal responsibility for arresting without warrant any person whom he believes, on reasonable and probable grounds, to have committed an offence against this Act, and to be escaping from and to be freshly pursued by any one whom he believes, on reasonable and probable grounds, to have lawful authority to arrest that person for the offence.

(2) This section shall apply whether or not the offence has in fact been committed, and whether or not the arrested person committed it.

Compare: 1908 No 32 s 58

Use of force

39 Force used in executing process or in arrest

Where any person is justified, or protected from criminal responsibility, in executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest, that justification or protection shall extend and apply to the use by him of such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner:

provided that, except in the case of a constable or a person called upon by a constable to assist him, this section shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

Compare: 1908 No 32 s 60

40 Preventing escape or rescue

(1) Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification, or protection, as the case may be, shall extend and apply to the use of such force as may be necessary—

(a) to prevent the escape of that other person if he takes to flight in order to avoid arrest; or

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(b) to prevent the escape or rescue of that other person after his arrest—

unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner:

provided that, except in the case of a constable or a person called upon by a constable to assist him, this subsection shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

(2) Where any prisoner of a prison is attempting to escape from lawful custody, or is fleeing after having escaped therefrom, every constable, and every person called upon by a constable to assist him, is justified in using such force as may be necessary to prevent the escape of or to recapture the prisoner, unless in any such case the escape can be prevented or the recapture effected by reasonable means in a less violent manner.

Compare: 1908 No 32 ss 62, 63, 64, 65

Section 40(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

41 Prevention of suicide or certain offences

Every one is justified in using such force as may be reasonably necessary in order to prevent the commission of suicide, or the commission of an offence which would be likely to cause immediate and serious injury to the person or property of any one, or in order to prevent any act being done which he believes, on reasonable grounds, would, if committed, amount to suicide or to any such offence.

Compare: 1908 No 32 s 72

Breach of the peace

42 Preventing breach of the peace

(1) Every one who witnesses a breach of the peace is justified in interfering to prevent its continuance or renewal, and may detain any person committing it, in order to give him into the custody of a constable:

provided that the person interfering shall use no more force than is reasonably necessary for preventing the continuance or renewal of the breach of the peace, or

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than is reasonably proportionate to the danger to be apprehended from its continuance or renewal.

(2) Every constable who witnesses a breach of the peace, and every person lawfully assisting him, is justified in arresting any one whom he finds committing it.

(3) Every constable is justified in receiving into custody any person given into his charge, as having been a party to a breach of the peace, by one who has witnessed it or whom the constable believes on reasonable and probable grounds to have witnessed it.

Compare: 1908 No 32 s 66

43 Suppression of riot

Every one is justified in using such force as is necessary to suppress a riot, if the force used is not disproportionate to the danger to be apprehended from the continuance of the riot.

Compare: 1908 No 32 s 67

44 Suppression of riot by Police

The senior constable for the time being acting at the place of any riot is justified in using and ordering to be used, and every constable is justified in using, such force as he believes, in good faith and on reasonable and probable grounds, to be necessary to suppress the riot, not being disproportionate to the danger which he believes, on reasonable and probable grounds, is to be apprehended from the continuance of the riot.

Compare: 1908 No 32 s 68

Section 44: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

45 Suppression of riot by persons acting under lawful orders

(1) Every one, whether a member of the New Zealand forces or not, acting in good faith in obedience to orders for the suppression of any riot given by the senior constable for the time being acting at the place of the riot is justified in obeying the orders so given, unless those orders are manifestly unlawful; and is protected from criminal responsibility for using such force as

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he believes, on reasonable and probable grounds, to be necessary for carrying those orders into effect.

(2) It is a question of law whether any particular order is manifestly unlawful or not.

Compare: 1908 No 32 s 69

Section 45(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

46 Suppression of riot by persons without orders

Every one, whether a member of the New Zealand forces or not, who believes, in good faith and on reasonable and probable grounds, that serious mischief will arise from the riot before there is time to procure the intervention of the Police, is justified in using such force as he believes, in good faith and on reasonable and probable grounds, to be necessary to suppress the riot, not being disproportionate to the danger which he believes, on reasonable grounds, is to be apprehended from the continuance of the riot.

Compare: 1908 No 32 s 70

47 Protection of members of New Zealand forces

(1) Every one bound as a member of the New Zealand forces to obey the lawful command of his superior officer is justified in obeying any command given him by any such officer for the suppression of a riot, unless the command is manifestly unlawful.

(2) It is a question of law whether any particular command is manifestly unlawful or not.

Compare: 1908 No 32 s 71

Defence against assault

48 Self-defence and defence of another

Every one is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.

Section 48: substituted, on 1 January 1981, by section 2(1) of the Crimes Amendment Act 1980 (1980 No 63).

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49 Self-defence against provoked assault

[Repealed]

Section 49: repealed, on 1 January 1981, by section 2(1) of the Crimes Amendment Act 1980 (1980 No 63).

50 Provocation defined

[Repealed]

Section 50: repealed, on 1 January 1981, by section 2(1) of the Crimes Amendment Act 1980 (1980 No 63).

51 Defence of person under protection

[Repealed]

Section 51: repealed, on 1 January 1981, by section 2(1) of the Crimes Amendment Act 1980 (1980 No 63).

Defence of property

52 Defence of movable property against trespasser

(1) Every one in peaceable possession of any movable thing, and every one lawfully assisting him, is justified in using reasonable force to resist the taking of the thing by any trespasser or to retake it from any trespasser, if in either case he does not strike or do bodily harm to the trespasser.

(2) *[Repealed]*

Compare: 1908 No 32 s 77

Section 52(2): repealed, on 1 January 1981, by section 2(2) of the Crimes Amendment Act 1980 (1980 No 63).

53 Defence of movable property with claim of right

(1) Every one in peaceable possession of any movable thing under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending his possession by the use of reasonable force, even against a person entitled by law to possession, if he does not strike or do bodily harm to the other person.

(2) *[Repealed]*

Compare: 1908 No 32 s 78

Section 53(2): repealed, on 1 January 1981, by section 2(2) of the Crimes Amendment Act 1980 (1980 No 63).

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54 Defence of movable property without claim of right

(1) Every one in peaceable possession of any movable thing, but neither claiming right thereto nor acting under the authority of a person claiming right thereto, is neither justified in nor protected from criminal responsibility for defending his possession against a person entitled by law to possession.

(2) *[Repealed]*

Compare: 1908 No 32 s 79

Section 54(2): repealed, on 1 January 1981, by section 2(2) of the Crimes Amendment Act 1980 (1980 No 63).

55 Defence of dwellinghouse

Every one in peaceable possession of a dwellinghouse, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of the dwellinghouse by any person if he believes, on reasonable and probable grounds, that there is no lawful justification for the breaking and entering.

Compare: 1908 No 32 ss 80, 81; Criminal Code (1954) s 40 (Canada)

56 Defence of land or building

(1) Every one in peaceable possession of any land or building, and every one lawfully assisting him or acting by his authority, is justified in using reasonable force to prevent any person from trespassing on the land or building or to remove him therefrom, if he does not strike or do bodily harm to that person.

(2) *[Repealed]*

Compare: 1908 No 32 s 82

Section 56(2): repealed, on 1 January 1981, by section 2(2) of the Crimes Amendment Act 1980 (1980 No 63).

Peaceable entry

57 Assertion of right to land or building

(1) Every one is justified in peaceably entering in the daytime on any land or building to the possession of which he, or some person under whose authority he acts, is lawfully entitled, for the purpose of taking possession thereof.

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(2) *[Repealed]*

(3) *[Repealed]*

Compare: 1908 No 32 s 83

Section 57(2): repealed, on 1 January 1981, by section 2(2) of the Crimes Amendment Act 1980 (1980 No 63).

Section 57(3): repealed, on 1 January 1981, by section 2(2) of the Crimes Amendment Act 1980 (1980 No 63).

58 Exercise of right of way, etc

Every one lawfully entitled to enter on any land for the exercise of any right of way or other easement or profit is justified in peaceably entering on the land for the purpose of exercising that right of way, easement, or profit:

provided that if any one so entering has notice that his right to use that way or easement, or to take that profit, is disputed by the person in possession of the land, an assault committed by that person, or by any person acting under his authority, for the purpose of making the person entering desist from entry, shall be deemed to be provoked by the person entering.

Compare: 1908 No 32 s 84

Powers of discipline

59 Parental control

(1) Every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of—

(a) preventing or minimising harm to the child or another person; or

(b) preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or

(c) preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or

(d) performing the normal daily tasks that are incidental to good care and parenting.

(2) Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction.

(3) Subsection (2) prevails over subsection (1).

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(4) To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.

Section 59: substituted, on 21 June 2007, by section 5 of the Crimes (Substituted Section 59) Amendment Act 2007 (2007 No 18).

60 Discipline on ship or aircraft

(1) The master or officer in command of a ship on a voyage or the pilot in command of an aircraft on a flight is justified in using and ordering the use of force for the purpose of maintaining good order and discipline on board his ship or aircraft if he believes on reasonable grounds that the use of force is necessary, and if the force used is reasonable in the circumstances.

(2) Every one acting in good faith is justified in using force in obedience to any order given by the master or officer or pilot in command for the purpose aforesaid, if the force used is reasonable in the circumstances.

(3) The reasonableness of the grounds of which the use of force was believed to be necessary, and the reasonableness of the force used, are questions of fact.

Compare: 1908 No 32 s 85(2), (3)

Surgical operations

61 Surgical operations

Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person for his benefit, if the performance of the operation was reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

Compare: 1908 No 32 s 86(1)

61A Further provisions relating to surgical operations

(1) Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person if the operation is performed with the consent

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of that person, or of any person lawfully entitled to consent on his behalf to the operation, and for a lawful purpose.

(2) Without limiting the term **lawful purpose** in subsection (1), a surgical operation that is performed for the purpose of rendering the patient sterile is performed for a lawful purpose.

Section 61A: inserted, on 16 December 1977, by section 2 of the Crimes Amendment Act 1977 (1977 No 113).

General provisions

62 Excess of force

Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess.

Compare: 1908 No 32 s 86(2)

63 Consent to death

No one has a right to consent to the infliction of death upon himself; and, if any person is killed, the fact that he gave any such consent shall not affect the criminal responsibility of any person who is a party to the killing.

Compare: 1908 No 32 s 87

64 Obedience to de facto law

Every one is protected from criminal responsibility for any act done in obedience to the laws for the time being made and enforced by those in possession de facto of the sovereign power in and over the place where the act is done.

Compare: 1908 No 32 s 88

65 Other enactments not affected

Nothing in this Act shall take away or diminish any authority given by any other enactment to arrest, detain, or put any restraint on any person.

Compare: 1908 No 32 s 59

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Part 4
Parties to the commission of offences

66 Parties to offences

(1) Every one is a party to and guilty of an offence who—
- (a) actually commits the offence; or
- (b) does or omits an act for the purpose of aiding any person to commit the offence; or
- (c) abets any person in the commission of the offence; or
- (d) incites, counsels, or procures any person to commit the offence.

(2) Where 2 or more persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was known to be a probable consequence of the prosecution of the common purpose.

Compare: 1908 No 32 s 90

67 Conspiracy between spouses or civil union partners

A person is capable of conspiring with his or her spouse or civil union partner or with his or her spouse or civil union partner and any other person.

Section 67: substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

68 Party to murder outside New Zealand

(1) Except as hereinafter provided, every one is liable to imprisonment for a term not exceeding 14 years who, in New Zealand, aids, incites, counsels, or procures the doing or omission of an act outside New Zealand which, if done or omitted in New Zealand, would be murder.

(2) Every one is liable to imprisonment for a term not exceeding 10 years who, in New Zealand, incites, counsels, or attempts to procure the doing or omission of an act outside New Zealand which, if done or omitted in New Zealand, would be murder, when no such act is in fact done or omitted.

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(3) It is a defence to a charge under this section to prove that the doing or omission of the act was not an offence under the law of the place where it was, or was to be, done or omitted.

(4) Nothing in this section limits or affects sections 9 to 11 of the International Crimes and International Criminal Court Act 2000.

Compare: 1908 No 32 s 189(b)

Section 68(4): added, on 1 October 2000, by section 181(1) of the International Crimes and International Criminal Court Act 2000 (2000 No 26).

69 Party to any other crime outside New Zealand

(1) Every one is liable to imprisonment for a term not exceeding 14 years who, in New Zealand, aids, incites, counsels, or procures the doing or omission outside New Zealand, by any person not owing allegiance to Her Majesty the Queen in right of New Zealand, of any act which, if done or omitted outside New Zealand by a person owing such allegiance, would be any of the crimes of treason, inciting to mutiny, or espionage, as specified in sections 73, 77, and 78.

(2) Every one is liable to imprisonment for a term not exceeding 10 years who, in New Zealand, incites, counsels, or attempts to procure the doing or omission outside New Zealand of any act which, if done or omitted in New Zealand, would be any such crime as aforesaid, when that act is not in fact done or omitted.

(3) Every one who, in New Zealand, aids, incites, counsels, or procures the doing or omission outside New Zealand of any act (not being an act to which the foregoing provisions of this section apply) which, if done or omitted in New Zealand, would be a crime other than murder, is liable to imprisonment for a term not exceeding that prescribed for the crime, or 7 years, whichever is the less:

> provided that it shall be a defence to a charge under this subsection to prove that the doing or omission of the act to which the charge relates was not an offence under the law of the place where it was, or was to be, done or omitted.

(4) Except as otherwise provided in this Act, no one shall be convicted of inciting, counselling, or attempting to procure in New

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Zealand the doing or omission of an act outside New Zealand when that act is not in fact done or omitted.

(5) Nothing in this section limits or affects sections 9 to 11 of the International Crimes and International Criminal Court Act 2000.

Section 69(1): amended, on 1 July 1983, by section 2(2) of the Crimes Amendment Act (No 2) 1982 (1982 No 157).

Section 69(5): added, on 1 October 2000, by section 181(2) of the International Crimes and International Criminal Court Act 2000 (2000 No 26).

70 Offence committed other than offence intended

(1) Every one who incites, counsels, or procures another to be a party to an offence of which that other is afterwards guilty is a party to that offence, although it may be committed in a way different from that which was incited, counselled, or suggested.

(2) Every one who incites, counsels, or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such inciting, counselling, or procuring, and which the first-mentioned person knew to be likely to be committed in consequence thereof.

Compare: 1908 No 32 s 91

71 Accessory after the fact

(1) An accessory after the fact to an offence is one who, knowing any person to have been a party to the offence, receives, comforts, or assists that person or tampers with or actively suppresses any evidence against him, in order to enable him to escape after arrest or to avoid arrest or conviction.

(2) No person whose spouse or civil union partner has been a party to an offence becomes an accessory after the fact to that offence by doing any act to which this section applies in order to enable the spouse or civil union partner, or the spouse, civil union partner, and any other person who has been a party to the offence, to escape after arrest or to avoid arrest or conviction.

Compare: 1908 No 32 s 92; Criminal Code (1954) s 23 (Canada)

Section 71(2): substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

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72 Attempts

(1) Every one who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object, is guilty of an attempt to commit the offence intended, whether in the circumstances it was possible to commit the offence or not.

(2) The question whether an act done or omitted with intent to commit an offence is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law.

(3) An act done or omitted with intent to commit an offence may constitute an attempt if it is immediately or proximately connected with the intended offence, whether or not there was any act unequivocally showing the intent to commit that offence.

Compare: 1908 No 32 s 93

Part 5
Crimes against public order

Treason and other crimes against the Queen and the State

73 Treason

Every one owing allegiance to Her Majesty the Queen in right of New Zealand commits treason who, within or outside New Zealand,—

(a) kills or wounds or does grievous bodily harm to Her Majesty the Queen, or imprisons or restrains her; or

(b) levies war against New Zealand; or

(c) assists an enemy at war with New Zealand, or any armed forces against which New Zealand forces are engaged in hostilities, whether or not a state of war exists between New Zealand and any other country; or

(d) incites or assists any person with force to invade New Zealand; or

(e) uses force for the purpose of overthrowing the Government of New Zealand; or

(f) conspires with any person to do anything mentioned in this section.

Compare: 1908 No 32 s 94; Criminal Code (1954) s 46 (Canada)

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74 Punishment for treason or attempted treason

(1) Except as otherwise provided in this Act, every one who commits treason within the meaning of any of the provisions of paragraphs (a) to (e) of section 73 shall upon conviction be sentenced to imprisonment for life.

(2) Every one is liable to imprisonment for a term not exceeding 14 years who commits treason within the meaning of paragraph (f) of the said section 73.

(3) Every one is liable to imprisonment for a term not exceeding 14 years who, owing allegiance to Her Majesty the Queen in right of New Zealand, attempts to commit treason within or outside New Zealand.

Compare: 1908 No 32 ss 95, 99

Section 74(1): amended, on 26 December 1989, by section 3(2) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

75 Evidence of treason

(1) No one shall be convicted of treason on the evidence of 1 witness only, unless the evidence of that witness is corroborated in some material particular by evidence implicating the accused.

(2) Nothing in subsection (1) shall apply to treason within the meaning of paragraph (a) of section 73.

Compare: 1908 No 32 s 96(1); Criminal Code (1954) s 47(2) (Canada)

76 Punishment for being party to treason

Every one is liable to imprisonment for a term not exceeding 7 years who—

(a) becomes an accessory after the fact to treason; or

(b) knowing that a person is about to commit treason, fails without reasonable excuse to inform a constable as soon as possible or to use other reasonable efforts to prevent its commission.

Compare: 1908 No 32 s 98

77 Inciting to mutiny

Every one owing allegiance to Her Majesty the Queen in right of New Zealand is liable to imprisonment for a term not exceeding 10 years who, within or outside New Zealand, for any traitorous or mutinous purpose,—

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(a) endeavours at any time to seduce any person serving in the New Zealand forces from his duty; or

(b) during any war or state of hostilities in which New Zealand forces are engaged, endeavours to seduce any person serving in any allied armed force, whether a Commonwealth force or not, from his duty.

Compare: 1908 No 32 s 100; 1954 No 29 s 3

78 Espionage

Every one is liable to imprisonment for a term not exceeding 14 years who, being a person who owes allegiance to the Queen in right of New Zealand, within or outside New Zealand,—

(a) with intent to prejudice the security or defence of New Zealand, communicates information or delivers any object to a country or organisation outside New Zealand or to a person acting on behalf of any such country or organisation; or

(b) with intent to prejudice the security or defence of New Zealand and with the intention of communicating information or delivering any object to a country or organisation outside New Zealand or to a person acting on behalf of any such country or organisation,—

(i) collects or records any information; or

(ii) copies any document; or

(iii) obtains any object; or

(iv) makes any sketch, plan, model, or note; or

(v) takes any photograph; or

(vi) records any sound or image; or

(vii) delivers any object to any person,—

if the communication or delivery or intended communication or intended delivery under paragraph (a) or paragraph (b) is likely to prejudice the security or defence of New Zealand.

Section 78: substituted, on 1 July 1983, by section 2(1) of the Crimes Amendment Act (No 2) 1982 (1982 No 157).

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78A Wrongful communication, retention, or copying of official information

(1) Every one is liable to imprisonment for a term not exceeding 3 years who, being a person who owes allegiance to the Queen in right of New Zealand, within or outside New Zealand,—

(a) knowingly or recklessly, and with knowledge that he is acting without proper authority, communicates any official information or delivers any object to any other person knowing that such communication or delivery is likely to prejudice the security or defence of New Zealand; or

(b) with intent to prejudice the security or defence of New Zealand, retains or copies any official document—

(i) which he knows he does not have proper authority to retain or copy; and

(ii) which he knows relates to the security or defence of New Zealand; and

(iii) which would, by its unauthorised disclosure, be likely to prejudice the security or defence of New Zealand; or

(c) knowingly fails to comply with any directions issued by a lawful authority for the return of an official document—

(i) which is in his possession or under his control; and

(ii) which he knows relates to the security or defence of New Zealand; and

(iii) which would, by its unauthorised disclosure, be likely to prejudice seriously the security or defence of New Zealand.

(2) In this section,—

department means a government department named in Part 1 of Schedule 1 of the Ombudsmen Act 1975

object means any object which—

(a) a department; or

(b) a Minister of the Crown in his official capacity; or

(c) an organisation; or

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(d) an officer or employee of any department or organisation in his capacity as such an officer or employee or in his capacity as a statutory officer; or

(e) an independent contractor engaged by any department or Minister of the Crown or organisation in his capacity as such contractor; or

(f) a branch or post, outside New Zealand, of a department or organisation; or

(g) an unincorporated body (being a board, council, committee, subcommittee, or other body)—

(i) which is established for the purpose of assisting or advising, or performing functions connected with, any department or Minister of the Crown or organisation; and

(ii) which is so established in accordance with the provisions of any enactment or by any department or Minister of the Crown or organisation,—

is entitled to have in its or his possession by virtue of its or his rights as the owner, hirer, lessee, bailee, or custodian of that object

official information—

(a) means any information held by—

(i) a department; or

(ii) a Minister of the Crown in his official capacity; or

(iii) an organisation; or

(iv) an officer or employee of any department or organisation in his capacity as such an officer or employee or in his capacity as a statutory officer; or

(v) an independent contractor engaged by any department or Minister of the Crown or organisation in his capacity as such contractor; and

(b) includes any information held outside New Zealand by any branch or post of—

(i) a department; or

(ii) an organisation; and

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(c) includes any information held by an unincorporated body (being a board, council, committee, subcommittee, or other body)—

(i) which is established for the purpose of assisting or advising, or performing functions connected with, any department or Minister of the Crown or organisation; and

(ii) which is so established in accordance with the provisions of any enactment or by any department or Minister of the Crown or organisation

organisation means—

(a) an organisation named in Part 2 of Schedule 1 of the Ombudsmen Act 1975:

(b) an organisation named in Schedule 1 of the Official Information Act 1982

statutory officer means a person—

(a) holding or performing the duties of an office established by an enactment; or

(b) performing duties expressly conferred on him by virtue of his office by an enactment.

Section 78A: inserted, on 1 July 1983, by section 2(1) of the Crimes Amendment Act (No 2) 1982 (1982 No 157).

78B Consent of Attorney-General to proceedings in relation to espionage or wrongful communication, retention, or copying of official information

(1) No information shall be laid against any person for—

(a) an offence against section 78 or section 78A(1); or

(b) the offence of conspiring to commit an offence against section 78 or section 78A(1); or

(c) the offence of attempting to commit an offence against section 78 or section 78A(1),—

except with the consent of the Attorney-General:

provided that a person alleged to have committed any offence mentioned in this subsection may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the laying of an information for the offence has

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not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

(2) The Attorney-General may, before deciding whether or not to give his consent under subsection (1), make such inquiries as he thinks fit.

Section 78B: inserted, on 1 July 1983, by section 2(1) of the Crimes Amendment Act (No 2) 1982 (1982 No 157).

78C Questions of law in relation to espionage or wrongful communication of information

(1) It is a question of law, in the case of—

(a) an offence against section 78 or section 78A(1)(a); or

(b) the offence of conspiring to commit an offence against section 78 or section 78A(1)(a); or

(c) the offence of attempting to commit an offence against section 78 or section 78A(1)(a),—

whether the communication or delivery or intended communication or intended delivery was or would have been, at the time of the alleged offence, likely to have prejudiced the security or defence of New Zealand.

(2) It is a question of law, in the case of,—

(a) an offence against section 78A(1)(b) or (c); or

(b) the offence of conspiring to commit an offence against section 78A(1)(b) or (c); or

(c) the offence of attempting to commit an offence against section 78A(1)(b) or (c),—

whether the document would, by its unauthorised disclosure at the time of the alleged offence, have been likely to have prejudiced or to have prejudiced seriously, as the case may require, the security or defence of New Zealand.

(3) Where the decision on any question of law to which this section applies depends on any questions of fact, the prosecutor or the accused may adduce, and the Judge may hear, in addition to the evidence heard by the jury, any evidence relevant to those questions of fact.

Section 78C: inserted, on 1 July 1983, by section 2(1) of the Crimes Amendment Act (No 2) 1982 (1982 No 157).

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78D Search without warrant

(1) Where a constable who is of or above the level of position of inspector is satisfied that there is reasonable ground for believing—

(a) that there is in any building, aircraft, ship, hovercraft, carriage, vehicle, box, receptacle, premises, or place—

(i) any thing upon or in respect of which an offence against section 78 has been or is suspected of having been committed; or

(ii) any thing which there is reasonable ground to believe will be evidence as to the commission of any such offence; or

(iii) any thing which there is reasonable ground to believe is intended to be used for the purpose of committing any such offence; and

(b) that the case is one of great emergency and that immediate action is necessary,—

he may by a written order signed by him give to any constable the like authority that may be given by a search warrant issued under section 198 of the Summary Proceedings Act 1957, and the provisions of that section shall apply accordingly with all necessary modifications.

(2) Every constable exercising the authority conferred by an order made under subsection (1) shall identify himself to any person in or on the building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place who questions his right to enter and search it, and shall also tell such person that the search is being made pursuant to that subsection. He shall also, if not in uniform and if so required, produce evidence that he is a constable.

(3) Any constable who is of or above the level of position of inspector who exercises the power conferred by subsection (1) shall, within 3 days after the day on which he exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

Section 78D: inserted, on 1 July 1983, by section 2(1) of the Crimes Amendment Act (No 2) 1982 (1982 No 157).

Section 78D(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

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Section 78D(1): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 78D(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 78D(3): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

79 Sabotage

(1) Every one is liable to imprisonment for a term not exceeding 10 years who, with intent to prejudice the safety, security, or defence of New Zealand or the safety or security of the armed forces of any other country, lawfully present in New Zealand,—

(a) impairs the efficiency or impedes the working of any ship, vehicle, aircraft, arms, munitions, equipment, machinery, apparatus, or atomic or nuclear plant; or

(b) damages or destroys any property which it is necessary to keep intact for the safety or health of the public.

(2) No person shall be convicted of an offence against this section by reason only of the fact that he takes part in any strike or lockout.

Compare: Criminal Code (1954) s 52 (Canada)

Offence of oath to commit offence

Heading: substituted, on 1 January 2008, by section 4 of the Crimes (Repeal of Seditious Offences) Amendment Act 2007 (2007 No 96).

80 Oath to commit offence

(1) Every one is liable to imprisonment for a term not exceeding 5 years who—

(a) administers or is present at and consenting to the administration of any oath or engagement purporting to bind the person taking the same to commit any offence; or

(b) attempts to induce or compel any person to take any such oath or engagement; or

(c) takes any such oath or engagement.

(2) No one who has been acquitted or convicted of any offence against this section is liable to be afterwards tried for treason,

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or for being accessory after the fact to treason, in respect of the same matter.

Compare: 1908 No 32 ss 115, 116

81 Seditious offences defined

[Repealed]

Section 81: repealed, on 1 January 2008, by section 5 of the Crimes (Repeal of Seditious Offences) Amendment Act 2007 (2007 No 96).

82 Seditious conspiracy

[Repealed]

Section 82: repealed, on 1 January 2008, by section 5 of the Crimes (Repeal of Seditious Offences) Amendment Act 2007 (2007 No 96).

83 Seditious statements

[Repealed]

Section 83: repealed, on 1 January 2008, by section 5 of the Crimes (Repeal of Seditious Offences) Amendment Act 2007 (2007 No 96).

84 Publication of seditious documents

[Repealed]

Section 84: repealed, on 1 January 2008, by section 5 of the Crimes (Repeal of Seditious Offences) Amendment Act 2007 (2007 No 96).

85 Use of apparatus for making seditious documents or statements

[Repealed]

Section 85: repealed, on 1 January 2008, by section 5 of the Crimes (Repeal of Seditious Offences) Amendment Act 2007 (2007 No 96).

Unlawful assemblies, riots, and breaches of the peace

86 Unlawful assembly

(1) An unlawful assembly is an assembly of 3 or more persons who, with intent to carry out any common purpose, assemble in such a manner, or so conduct themselves when assembled, as to cause persons in the neighbourhood of the assembly to fear, on reasonable grounds, that the persons so assembled—

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(a) will use violence against persons or property in that neighbourhood or elsewhere; or

(b) will, by that assembly, needlessly and without reasonable cause provoke other persons to use violence against persons or property in that neighbourhood:

provided that no one shall be deemed to provoke other persons needlessly and without reasonable cause by doing or saying anything that he is lawfully entitled to do or say.

(2) Persons lawfully assembled may become an unlawful assembly if, with a common purpose, they conduct themselves in such a manner that their assembling would have been unlawful if they had assembled in that manner for that purpose.

(3) An assembly of 3 or more persons for the purpose of protecting the house of any one of their number against persons threatening to break and enter that house in order to commit a crime therein is not unlawful.

(4) Every member of an unlawful assembly is liable to imprisonment for a term not exceeding 1 year.

Compare: 1908 No 32 s 101

Section 86(1): substituted, on 1 January 1974, by section 3 of the Crimes Amendment Act 1973 (1973 No 118).

87 Riot

(1) A riot is a group of 6 or more persons who, acting together, are using violence against persons or property to the alarm of persons in the neighbourhood of that group.

(2) Every member of a riot is liable to imprisonment for a term not exceeding 2 years.

Section 87: substituted, on 12 March 1987, by section 2 of the Crimes Amendment Act 1987 (1987 No 1).

88 Reading the Riot Act

[Repealed]

Section 88: repealed, on 12 March 1987, by section 3 of the Crimes Amendment Act 1987 (1987 No 1).

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89 Failure of rioters to disperse

[Repealed]

Section 89: repealed, on 12 March 1987, by section 3 of the Crimes Amendment Act 1987 (1987 No 1).

90 Riotous damage

Every one is liable to imprisonment for a term not exceeding 7 years who, being a member of a riot, unlawfully damages any property.

Section 90: substituted, on 12 March 1987, by section 4 of the Crimes Amendment Act 1987 (1987 No 1).

91 Forcible entry and detainer

(1) Every one commits forcible entry when, by force or in a manner that causes or is likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, he enters on land that is in the actual and peaceable possession of another for the purpose of taking possession, whether or not he is entitled to enter.

(2) Every one commits forcible detainer when, being in actual possession of land without claim of right, he detains it, in a manner that causes or is likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against another who is entitled by law to possession of the land.

(3) Whether there was actual possession, or claim of right, is a question of fact.

(4) Every one who commits forcible entry or forcible detainer is liable to imprisonment for a term not exceeding 1 year.

Compare: 1908 No 32 s 111

Section 91(2): amended, on 1 October 2003, by section 6 of the Crimes Amendment Act 2003 (2003 No 39).

Section 91(3): amended, on 1 October 2003, by section 6 of the Crimes Amendment Act 2003 (2003 No 39).

Piracy

92 Piracy

(1) Every one who does any act amounting to piracy by the law of nations, whether that act is done within or outside New Zealand,—

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(a) shall upon conviction thereof be sentenced to imprisonment for life if, in committing piracy, he murders, attempts to murder, or does any act likely to endanger the life of any person:

(b) is liable to imprisonment for a term not exceeding 14 years in any other case.

(2) Any act that by the law of nations would amount to piracy if it had been done on the high seas on board or in relation to a ship shall be piracy for the purposes of this section if it is done on board or in relation to an aircraft, whether the aircraft is on or above the sea or is on or above the land.

Compare: 1908 No 32 s 121

93 Piratical acts

(1) Every one commits a piratical act who—

(a) within New Zealand, or, being a New Zealand citizen or a person ordinarily resident in New Zealand, outside New Zealand, under pretence of any commission from any State other than New Zealand (whether or not that State is at war with New Zealand) or under pretence of authority from any person whatever, commits an act of hostility or robbery:

(b) within or outside New Zealand, enters into any New Zealand ship and throws overboard or destroys any goods on board the ship:

(c) within or outside New Zealand, on board any New Zealand ship—

(i) turns enemy or rebel and piratically runs away with the ship or any boat, weapons, ammunition, or goods; or

(ii) voluntarily yields up the ship or any boat, weapons, ammunition, or goods to any pirate; or

(iii) counsels or procures any person to yield up or run away with any ship, goods, or merchandise, or to turn pirate or go over to pirates; or

(iv) assaults the master or commander of any ship in order to prevent him from fighting in defence of his ship and goods; or

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(v) imprisons or restrains the master or commander of any ship; or

(vi) makes or endeavours to make a revolt in the ship.

(2) Subsection (1) shall extend and apply to aircraft as it applies to ships; and for the purposes of this subsection any reference in subsection (1) to the master or commander of any ship shall be read as a reference to the pilot in command of an aircraft.

Compare: 1908 No 32 s 122

94 Punishment of piratical acts

Every one who commits any piratical act—

(a) shall upon conviction thereof be sentenced to imprisonment for life if, in committing that act, he murders, attempts to murder, or does any act likely to endanger the life of any person:

(b) is liable to imprisonment for a term not exceeding 14 years in any other case.

Compare: 1908 No 32 ss 122, 123

95 Attempts to commit piracy

Every one is liable to imprisonment for a term not exceeding 14 years who, within or outside New Zealand, attempts to do any act amounting to piracy by the law of nations.

96 Conspiring to commit piracy

Every one is liable to imprisonment for a term not exceeding 10 years who, within or outside New Zealand, conspires with any other person to do any act amounting to piracy by the law of nations.

97 Accessory after the fact to piracy

Every one is liable to imprisonment for a term not exceeding 7 years who, within or outside New Zealand, is accessory after the fact to any act amounting to piracy by the law of nations.

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Slave dealing

98 Dealing in slaves

(1) Every one is liable to imprisonment for a term not exceeding 14 years who, within or outside New Zealand,—

(a) sells, purchases, transfers, barters, lets, hires, or in any way whatsoever deals with any person as a slave; or

(b) employs or uses any person as a slave, or permits any person to be so employed or used; or

(c) detains, confines, imprisons, carries away, removes, receives, transports, imports, or brings into any place whatsoever any person as a slave or to be dealt with as a slave; or

(d) induces any person to sell, let, or give himself, or any other person dependent on him or in his charge, as a slave; or

(e) in any case not covered by paragraph (d), induces any person to sell, let, or give any other person into debt-bondage or serfdom; or

(f) builds, fits out, sells, purchases, transfers, lets, hires, uses, provides with personnel, navigates, or serves on board any ship or aircraft for any of the purposes in paragraphs (a) to (e); or

(g) for gain or reward gives in marriage or transfers any woman to another person without her consent; or

(h) is a party to the inheritance by any person of a woman on the death of her husband; or

(i) being a parent or guardian of any child under the age of 18 years, delivers that child to another person with intent that the child or his labour shall be exploited; or

(j) agrees or offers to do any of the acts mentioned in this subsection.

(2) For the purposes of this section—

debt-bondage means the status or condition arising from a pledge by a debtor of his personal services, or of the personal services of any person under his control, as security for a debt, if the value of those services, as reasonably assessed, is not applied towards the liquidation of the debt or if the length and nature of those services are not limited and defined

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serfdom means the status or condition of a tenant who is by any law, custom, or agreement bound to live and labour on land belonging to another person and to render some determinate service to that other person, whether for reward or not, and who is not free to change that status or condition

slave includes, without limitation, a person subject to debt-bondage or serfdom.

Compare: Slave Trade Act 1824 ss 2, 3, 10 (UK); Slave Trade Act 1843 s 1 (UK)

Section 98(1)(e): substituted, on 4 April 2001, by section 3(1) of the Crimes Amendment Act 2001 (2001 No 9).

Section 98(1)(f): substituted, on 4 April 2001, by section 3(1) of the Crimes Amendment Act 2001 (2001 No 9).

Section 98(2) **slave**: added, on 4 April 2001, by section 3(2) of the Crimes Amendment Act 2001 (2001 No 9).

98AA Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour

(1) Every one is liable to imprisonment for a term not exceeding 14 years who—

(a) sells, buys, transfers, barters, rents, hires, or in any other way enters into a dealing involving a person under the age of 18 years for the purpose of—

(i) the sexual exploitation of the person; or

(ii) the removal of body parts from the person; or

(iii) the engagement of the person in forced labour; or

(b) engages a person under the age of 18 years in forced labour; or

(c) permits a person under the age of 18 years to be engaged in forced labour; or

(d) detains, confines, imprisons, or carries away a person under the age of 18 years for the purpose of—

(i) the sexual exploitation of the person; or

(ii) the removal of body parts from the person; or

(iii) the engagement of the person in forced labour; or

(e) removes, receives, transports, imports, or brings into any place a person under the age of 18 years for the purpose of—

(i) the sexual exploitation of the person; or

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(ii) the removal of body parts from the person for a material benefit; or

(iii) the engagement of the person in forced labour; or

(f) induces a person under the age of 18 years to sell, rent, or give himself or herself for the purpose of—

(i) the sexual exploitation of the person; or

(ii) the removal of body parts from the person for a material benefit; or

(iii) the engagement of the person in forced labour; or

(g) induces a person to sell, rent, or give another person (being a person who is under the age of 18 years and who is dependent on him or her or in his or her charge) for the purpose of—

(i) the sexual exploitation of the other person; or

(ii) the removal of body parts from the other person; or

(iii) the engagement of the other person in forced labour; or

(h) builds, fits out, sells, buys, transfers, rents, hires, uses, provides with personnel, navigates, or serves on board a ship, aircraft, or other vehicle for the purpose of doing an act stated in any of paragraphs (a) to (g); or

(i) agrees or offers to do an act stated in any of paragraphs (a) to (h).

(2) It is a defence to a charge under this section if the person charged proves that he or she believed on reasonable grounds that the person under the age of 18 years concerned was of or over the age of 18 years.

(3) For the purposes of subsection (1), **sexual exploitation**, in relation to a person, includes the following acts:

(a) the taking by any means, or transmission by any means, of still or moving images of the person engaged in explicit sexual activities (whether real or simulated):

(b) the taking by any means or transmission by any means, for a material benefit, of still or moving images of the person's genitalia, anus, or breasts (not being an act described in subsection (4) or subsection (5)):

(c) the person's participation in a performance or display (not being an act described in subsection (4)) that—

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(i) is undertaken for a material benefit; and
(ii) involves the exposure of the person's genitalia, anus, or breasts:

(d) the person's undertaking of an activity (for example, employment in a restaurant) that—
(i) is undertaken for a material benefit; and
(ii) involves the exposure of the person's genitalia, anus, or breasts.

(4) For the purposes of paragraphs (b) and (c) of subsection (3), **sexual exploitation**, in relation to a person, does not include the recording or transmission of an artistic or cultural performance or display honestly undertaken primarily for purposes other than the exposure of body parts for the sexual gratification of viewers.

(5) For the purposes of subsection (3)(b), **sexual exploitation**, in relation to a person, does not include the taking or transmission of images of the person's genitalia, anus, or breasts for the purpose of depicting a medical condition, or a surgical or medical technique, for the instruction or information of health professionals.

(6) For the purposes of subsection (3)(b), **sexual exploitation**, in relation to a person, does not include the taking or transmission of images of the person's genitalia, anus, or breasts if the images are honestly intended—
(a) to provide medical or health education; or
(b) to provide information relating to medical or health matters; or
(c) to advertise a product, instrument, or service intended to be used for medical or health purposes.

(7) The person under the age of 18 years in respect of whom an offence against this section was committed cannot be charged as a party to the offence.

(8) This section does not limit or affect the generality of section 98.

Section 98AA: inserted, on 14 June 2006, by section 6 of the Crimes Amendment Act 2005 (2005 No 41).

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Participation in criminal gang

Heading: inserted, on 1 January 1998, by section 2 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

98A Participation in organised criminal group

(1) Every person commits an offence and is liable to imprisonment for a term not exceeding 10 years who participates in an organised criminal group—

(a) knowing that 3 or more people share any 1 or more of the objectives (the **particular objective or particular objectives**) described in paragraphs (a) to (d) of subsection (2) (whether or not the person himself or herself shares the particular objective or particular objectives); and

(b) either knowing that his or her conduct contributes, or being reckless as to whether his or her conduct may contribute, to the occurrence of any criminal activity; and

(c) either knowing that the criminal activity contributes, or being reckless as to whether the criminal activity may contribute, to achieving the particular objective or particular objectives of the organised criminal group.

(2) For the purposes of this Act, a group is an organised criminal group if it is a group of 3 or more people who have as their objective or one of their objectives—

(a) obtaining material benefits from the commission of offences that are punishable by imprisonment for a term of 4 years or more; or

(b) obtaining material benefits from conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of offences that are punishable by imprisonment for a term of 4 years or more; or

(c) the commission of serious violent offences (within the meaning of section 312A(1)); or

(d) conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of serious violent offences (within the meaning of section 312A(1)).

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(3) A group of people is capable of being an organised criminal group for the purposes of this Act whether or not—

(a) some of them are subordinates or employees of others; or

(b) only some of the people involved in it at a particular time are involved in the planning, arrangement, or execution at that time of any particular action, activity, or transaction; or

(c) its membership changes from time to time.

Section 98A: substituted, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

Section 98A(1): substituted, on 1 December 2009, by section 5(1) of the Crimes Amendment Act 2009 (2009 No 47).

Section 98A(2)(c): amended, on 1 December 2009, by section 5(2) of the Crimes Amendment Act 2009 (2009 No 47).

Section 98A(2)(d): amended, on 1 December 2009, by section 5(2) of the Crimes Amendment Act 2009 (2009 No 47).

Smuggling and trafficking in people

Heading: inserted, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

98B Terms used in sections 98C to 98F

In sections 98C to 98F, unless the context otherwise requires,—

act of coercion against the person includes—

(a) abducting the person:

(b) using force in respect of the person:

(c) harming the person:

(d) threatening the person (expressly or by implication) with the use of force in respect of, or the harming of, the person or some other person

act of deception includes fraudulent action

arranges for an unauthorised migrant to be brought to a State includes—

(a) organises or procures the bringing to a State:

(b) recruits for bringing to a State:

(c) carries to a State

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arranges for an unauthorised migrant to enter a State includes—

(a) organises or procures the entry into a State:

(b) recruits for entry into a State:

(c) carries into a State

document includes a thing that is or is intended to be—

(a) attached to a document; or

(b) stamped or otherwise signified on a document

harming of a person means causing harm of any kind to the person; and (in particular) includes—

(a) causing physical, psychological, or financial harm to the person:

(b) sexually mistreating the person:

(c) causing harm to the person's reputation, status, or prospects

unauthorised migrant, in relation to a State, means a person who is neither a citizen of the State nor in possession of all the documents required by or under the law of the State for the person's lawful entry into the State.

Section 98B: inserted, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

Section 98B **for a material benefit**: repealed, on 20 May 2005, by section 3(3) of the Crimes Amendment Act 2005 (2005 No 41).

98C Smuggling migrants

(1) Every one is liable to the penalty stated in subsection (3) who arranges for an unauthorised migrant to enter New Zealand or any other State, if he or she—

(a) does so for a material benefit; and

(b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant.

(2) Every one is liable to the penalty stated in subsection (3) who arranges for an unauthorised migrant to be brought to New Zealand or any other State, if he or she—

(a) does so for a material benefit; and

(b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant; and

(c) either—

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(i) knows that the person intends to try to enter the State; or

(ii) is reckless as to whether the person intends to try to enter the State.

(3) The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding $500,000, or both.

(4) Proceedings may be brought under subsection (1) even if the unauthorised migrant did not in fact enter the State concerned.

(5) Proceedings may be brought under subsection (2) even if the unauthorised migrant was not in fact brought to the State concerned.

Section 98C: inserted, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

98D Trafficking in people by means of coercion or deception

(1) Every one is liable to the penalty stated in subsection (2) who—

(a) arranges the entry of a person into New Zealand or any other State by 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both; or

(b) arranges, organises, or procures the reception, concealment, or harbouring in New Zealand or any other State of a person, knowing that the person's entry into New Zealand or that State was arranged by 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both.

(2) The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding $500,000, or both.

(3) Proceedings may be brought under this section even if the person coerced or deceived—

(a) did not in fact enter the State concerned; or (as the case may be)

(b) was not in fact received, concealed, or harboured in the State concerned.

(4) Proceedings may be brought under this section even if parts of the process by which the person coerced or deceived was brought or came to or towards the State concerned were accomplished without an act of coercion or deception.

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Section 98D: inserted, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

98E Aggravating factors

(1) When determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 98C or section 98D, a court must take into account—

(a) whether bodily harm or death (whether to or of a person in respect of whom the offence was committed or some other person) occurred during the commission of the offence:

(b) whether the offence was committed for the benefit of, at the direction of, or in association with, an organised criminal group (within the meaning of section 98A(2)):

(c) whether a person in respect of whom the offence was committed was subjected to inhuman or degrading treatment as a result of the commission of the offence:

(d) if during the proceedings concerned the person was convicted of the same offence in respect of 2 or more people, the number of people in respect of whom the offence was committed.

(2) When determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 98D, a court must also take into account—

(a) whether a person in respect of whom the offence was committed was subjected to exploitation (for example, sexual exploitation, a requirement to undertake forced labour, or the removal of organs) as a result of the commission of the offence:

(b) the age of the person in respect of whom the offence was committed and, in particular, whether the person was under the age of 18 years:

(c) whether the person convicted committed the offence, or took actions that were part of it, for a material benefit.

(3) The examples in paragraph (a) of subsection (2) do not limit the generality of that paragraph.

(4) This section does not limit the matters that a court may take into account when determining the sentence to be imposed on,

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or other way of dealing with, a person convicted of an offence against section 98C or section 98D.

Section 98E: inserted, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

98F Attorney-General's consent to prosecutions required

(1) Proceedings for an offence against section 98C or section 98D cannot be brought in a New Zealand court without the Attorney-General's consent.

(2) A person alleged to have committed an offence against section 98C or section 98D may be arrested, or a warrant for the person's arrest may be issued and executed, and the person be remanded in custody or on bail, even though the Attorney-General's consent to the bringing of proceedings against the person has not been obtained.

Section 98F: inserted, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

Part 6
Crimes affecting the administration of law and justice

Bribery and corruption

99 Interpretation

In this Part, unless the context otherwise requires,—

bribe means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect

judicial officer means a Judge of any court, or a District Court Judge, Coroner, Justice of the Peace, or Community Magistrate, or any other person holding any judicial office, or any person who is a member of any tribunal authorised by law to take evidence on oath

law enforcement officer means any constable, or any person employed in the detection or prosecution or punishment of offenders

official means any person in the service of Her Majesty in right of New Zealand (whether that service is honorary or not, and whether it is within or outside New Zealand), or any member or employee of any local authority or public body, or any per-

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son employed in the education service within the meaning of the State Sector Act 1988.

Compare: 1908 No 32 ss 126, 127

Section 99 **judicial officer**: amended, on 30 June 1998, by section 4 of the Crimes Amendment Act (No 2) 1998 (1998 No 79).

Section 99 **judicial officer**: amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

Section 99 **official**: amended, on 3 May 1997, by section 4 of the State Sector Amendment Act 1997 (1997 No 8).

100 Judicial corruption

(1) Every judicial officer is liable to imprisonment for a term not exceeding 14 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his judicial capacity.

(2) Every judicial officer, and every Registrar or Deputy Registrar of any court, is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity, not being an act or omission to which subsection (1) applies.

Compare: 1908 No 32 ss 126(a), 127(a)

101 Bribery of judicial officer, etc

(1) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer in respect of any act or omission by him in his judicial capacity.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer or any Registrar or Deputy Registrar of any court in respect of any act or omission by him in his official capacity, not being an act or omission to which subsection (1) applies.

Compare: 1908 No 32 ss 126(b), 127(b)

Section 101(2): amended, on 3 May 2001, by section 4 of the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No 28).

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102 Corruption and bribery of Minister of the Crown

(1) Every Minister of the Crown or member of the Executive Council is liable to imprisonment for a term not exceeding 14 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his capacity as a Minister or member of the Executive Council.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any Minister of the Crown or member of the Executive Council in respect of any act or omission by him in his capacity as a Minister or member of the Executive Council.

(3) No one shall be prosecuted for an offence against this section without the leave of a Judge of the High Court. Notice of the intention to apply for such leave shall be given to the person whom it is intended to prosecute, and he shall have an opportunity of being heard against the application.

Compare: 1908 No 32 ss 128, 362; Criminal Code (1954) s 100 (Canada)

Section 102(3): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

103 Corruption and bribery of member of Parliament

(1) Every member of Parliament is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his capacity as a member of Parliament.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any member of Parliament in respect of any act or omission by him in his capacity as a member of Parliament.

(3) No one shall be prosecuted for an offence against this section without the leave of a Judge of the High Court. Notice of the intention to apply for such leave shall be given to the person

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whom it is intended to prosecute, and he shall have an opportunity of being heard against the application.

Compare: 1908 No 32 ss 128, 362; Criminal Code (1954) s 100 (Canada)

Section 103(2): amended, on 3 May 2001, by section 5 of the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No 28).

Section 103(3): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

104 Corruption and bribery of law enforcement officer

(1) Every law enforcement officer is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any law enforcement officer in respect of any act or omission by him in his official capacity.

Compare: 1908 No 32 s 127

Section 104(2): amended, on 3 May 2001, by section 6 of the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No 28).

105 Corruption and bribery of official

(1) Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by him in his official capacity.

Compare: Criminal Code (1954) s 102 (Canada)

Section 105(2): amended, on 3 May 2001, by section 7 of the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No 28).

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105A Corrupt use of official information

Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly uses or discloses any information, acquired by him in his official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or any other person.

Section 105A: inserted, on 1 July 1983, by section 3(1) of the Crimes Amendment Act (No 2) 1982 (1982 No 157).

Section 105A: amended, on 1 July 1993, by section 2 of the Crimes Amendment Act 1993 (1993 No 33).

105B Use or disclosure of personal information disclosed in breach of section 105A

(1) Every person is liable to imprisonment for a term not exceeding 7 years who,—

(a) having received personal information (being information that comes into that person's possession as a result of the commission of an offence against section 105A); and

(b) knowing that the information has been disclosed in contravention of that section,—

uses or discloses that information to obtain, directly or indirectly, an advantage or pecuniary gain for that person or any other person.

(2) It is a defence to a charge under this section if the person charged proves that the person was legally authorised to use or disclose the information.

(3) In this section, the term **personal information** means any information about an identifiable natural person, including a deceased natural person.

Section 105B: inserted, on 1 July 1993, by section 3(1) of the Crimes Amendment Act 1993 (1993 No 33).

105C Bribery of foreign public official

(1) In this section and in sections 105D and 105E,—

benefit means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect

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foreign country includes—

(a) a territory for whose international relations the government of a foreign country is responsible; and

(b) an organised foreign area or entity including an autonomous territory or a separate customs territory

foreign government includes all levels and subdivisions of government, such as local, regional, and national government

foreign public agency means any person or body, wherever situated, that carries out a public function under the laws of a foreign country

foreign public enterprise means—

(a) a company, wherever incorporated, that—

(i) a foreign government is able to control or dominate (whether by reason of its ownership of shares in the company, its voting powers in the company, or its ability to appoint 1 or more directors (however described), or by reason that the directors (however described) are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and

(ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (b)(i) apply; or

(b) a person or body (other than a company), wherever situated, that—

(i) a foreign government is able to control or dominate (whether by reason of its ability to appoint the person or 1 or more members of the body, or by reason that the person or members of the body are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and

(ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (a)(i) apply

foreign public official includes any of the following:

(a) a member or officer of the executive, judiciary, or legislature of a foreign country:

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(b) a person who is employed by a foreign government, foreign public agency, foreign public enterprise, or public international organisation:

(c) a person, while acting in the service of or purporting to act in the service of a foreign government, foreign public agency, foreign public enterprise, or public international organisation

public international organisation means any of the following organisations, wherever situated:

(a) an organisation of which 2 or more countries or 2 or more governments are members, or represented on the organisation:

(b) an organisation constituted by an organisation to which paragraph (a) applies or by persons representing 2 or more such organisations:

(c) an organisation constituted by persons representing 2 or more countries or 2 or more governments:

(d) an organisation that is part of an organisation referred to in any of paragraphs (a) to (c)

routine government action, in relation to the performance of any action by a foreign public official, does not include—

(a) any decision about—

(i) whether to award new business; or

(ii) whether to continue existing business with any particular person or body; or

(iii) the terms of new business or existing business; or

(b) any action that is outside the scope of the ordinary duties of that official.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give a bribe to a person with intent to influence a foreign public official in respect of any act or omission by that official in his or her official capacity (whether or not the act or omission is within the scope of the official's authority) in order to—

(a) obtain or retain business; or

(b) obtain any improper advantage in the conduct of business.

(3) This section does not apply if—

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(a) the act that is alleged to constitute the offence was committed for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action; and
(b) the value of the benefit is small.

(4) This section is subject to section 105E.

Section 105C: inserted, on 3 May 2001, by section 8 of the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No 28).

105D Bribery outside New Zealand of foreign public official

(1) Every one commits an offence who, being a person described in subsection (2), does, outside New Zealand, any act that would, if done in New Zealand, constitute an offence against section 105C.

(2) Subsection (1) applies to a person who is—
(a) a New Zealand citizen; or
(b) ordinarily resident in New Zealand; or
(c) a body corporate incorporated in New Zealand; or
(d) a corporation sole incorporated in New Zealand.

(3) Every one who commits an offence against this section is liable to the same penalty to which the person would have been liable if the person had been convicted of an offence against section 105C.

(4) This section is subject to section 105E.

Section 105D: inserted, on 3 May 2001, by section 8 of the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No 28).

105E Exception for acts lawful in country of foreign public official

(1) Sections 105C and 105D do not apply if the act that is alleged to constitute an offence under either of those sections—
(a) was done outside New Zealand; and
(b) was not, at the time of its commission, an offence under the laws of the foreign country in which the principal office of the person, organisation, or other body for whom the foreign public official is employed or otherwise provides services, is situated.

(2) If a person is charged with an offence under section 105C or section 105D, it is to be presumed, unless the person charged

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puts the matter at issue, that the act was an offence under the laws of the foreign country referred to in subsection (1)(b).

Section 105E: inserted, on 3 May 2001, by section 8 of the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No 28).

106 Restrictions on prosecution

(1) No one shall be prosecuted for an offence against any of the provisions of sections 100, 101, 104, 105, 105A, 105B, 105C, and 105D without the leave of the Attorney-General, who before giving leave may make such inquiries as he thinks fit.

(2) No Judge who holds his office subject to a power of removal by Her Majesty on an address of the House of Representatives shall be prosecuted for any such offence except by the Attorney-General in pursuance of a resolution of that House.

Compare: 1908 No 32 s 361

Section 106(1): amended, on 3 May 2001, by section 9 of the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No 28).

Section 106(1): amended, on 1 July 1993, by section 3(2) of the Crimes Amendment Act 1993 (1993 No 33).

Section 106(1): amended, on 1 July 1983, by section 3(2) of the Crimes Amendment Act (No 2) 1982 (1982 No 157).

Contravention of statute

107 Contravention of statute

(1) Every one is liable to imprisonment for a term not exceeding 1 year who, without lawful excuse, contravenes any enactment by wilfully doing any act which it forbids, or by wilfully omitting to do any act which it requires to be done, unless—

(a) some penalty or punishment is expressly provided by law in respect of such contravention as aforesaid; or

(b) in the case of any such contravention in respect of which no penalty or punishment is so provided, the act forbidden or required to be done is solely of an administrative or a ministerial or procedural nature, or it is otherwise inconsistent with the intent and object of the enactment, or with its context, that the contravention should be regarded as an offence.

(2) Nothing in subsection (1) applies to any contravention of any Imperial enactment or Imperial subordinate legislation that is

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part of the laws of New Zealand, or to any omission to do any act which any such Imperial enactment or Imperial subordinate legislation requires to be done.

(3) In subsection (2), the terms **Imperial enactment** and **Imperial subordinate legislation** have the meanings given to them by section 2 of the Imperial Laws Application Act 1988.

Compare: 1908 No 32 s 129

Section 107(2): added, on 1 January 1989, by section 2 of the Crimes Amendment Act 1988 (1988 No 114).

Section 107(3): added, on 1 January 1989, by section 2 of the Crimes Amendment Act 1988 (1988 No 114).

Misleading justice

108 Perjury defined

(1) Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of his evidence on oath, whether the evidence is given in open court or by affidavit or otherwise, that assertion being known to the witness to be false and being intended by him to mislead the tribunal holding the proceeding.

(2) In this section the term **oath** includes an affirmation, and also includes a declaration made under section 13 of the Oaths and Declarations Act 1957.

(3) Every person is a witness within the meaning of this section who actually gives evidence, whether he is competent to be a witness or not, and whether his evidence is admissible or not.

(4) Every proceeding is judicial within the meaning of this section if it is held before any of the following tribunals, namely:

(a) any court of justice:

(b) the House of Representatives or any Committee of that House:

(c) any arbitrator or umpire, or any person or body of persons authorised by law to make an inquiry and take evidence therein upon oath:

(d) any legal tribunal by which any legal right or liability can be established:

(e) any person acting as a court or tribunal having power to hold a judicial proceeding:

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(f) a disciplinary officer, the Summary Appeal Court of New Zealand, or the Court Martial of New Zealand acting under the Armed Forces Discipline Act 1971.

(5) Every such proceeding is judicial within the meaning of this section whether the tribunal was duly constituted or appointed or not, and whether the proceeding was duly instituted or not, and whether the proceeding was invalid or not.

Compare: 1908 No 32 s 130

Section 108(4)(f): substituted, on 1 July 2009, by section 81 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

109 Punishment of perjury

(1) Except as provided in subsection (2), every one is liable to imprisonment for a term not exceeding 7 years who commits perjury.

(2) If perjury is committed in order to procure the conviction of a person for any offence for which the maximum punishment is not less than 3 years' imprisonment, the punishment may be imprisonment for a term not exceeding 14 years.

Compare: 1908 No 32 s 131

Section 109(2): amended, on 26 December 1989, by section 3(3) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

110 False oaths

Every one is liable to imprisonment for a term not exceeding 5 years who, being required or authorised by law to make any statement on oath or affirmation, thereupon makes a statement that would amount to perjury if made in a judicial proceeding.

Compare: 1908 No 32 s 132

111 False statements or declarations

Every one is liable to imprisonment for a term not exceeding 3 years who, on any occasion on which he is required or permitted by law to make any statement or declaration before any officer or person authorised by law to take or receive it, or before any notary public to be certified by him as such notary, makes a statement or declaration that would amount to perjury if made on oath in a judicial proceeding.

Compare: 1908 No 32 s 133

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112 Evidence of perjury, false oath, or false statement

No one shall be convicted of perjury, or of any offence against section 110 or section 111, on the evidence of 1 witness only, unless the evidence of that witness is corroborated in some material particular by evidence implicating the accused.

Compare: 1908 No 32 s 134; Criminal Code (1954) s 115 (Canada)

113 Fabricating evidence

Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to mislead any tribunal holding any judicial proceeding to which section 108 applies, fabricates evidence by any means other than perjury.

Compare: 1908 No 32 s 135

114 Use of purported affidavit or declaration

Every one is liable to imprisonment for a term not exceeding 3 years who—

(a) signs a writing that purports to be an affidavit sworn before him or a statutory declaration taken by him, when the writing was not so sworn or taken, or when he knows that he has no authority to administer that oath or take that declaration; or

(b) uses or offers for use any writing purporting to be an affidavit or statutory declaration that he knows was not sworn or made, as the case may be, by the deponent or before a person authorised to administer that oath or take that declaration.

Compare: Criminal Code (1954) s 118 (Canada)

115 Conspiring to bring false accusation

Every one who conspires to prosecute any person for any alleged offence, knowing that person to be innocent thereof, is liable—

(a) to imprisonment for a term not exceeding 14 years if that person might, on conviction of the alleged offence, be sentenced to preventive detention, or to imprisonment for a term of 3 years or more:

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(b) to imprisonment for a term not exceeding 7 years if that person might, on conviction of the alleged offence, be sentenced to imprisonment for a term less than 3 years.

Compare: 1908 No 32 s 136

Section 115(a): amended, on 26 December 1989, by section 3(4) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

116 Conspiring to defeat justice

Every one is liable to imprisonment for a term not exceeding 7 years who conspires to obstruct, prevent, pervert, or defeat the course of justice in New Zealand or the course of justice in an overseas jurisdiction.

Compare: 1908 No 32 s 137

Section 116: amended, on 18 June 2002, by section 6(1) of the Crimes Amendment Act 2002 (2002 No 20).

117 Corrupting juries and witnesses

Every one is liable to imprisonment for a term not exceeding 7 years who—

(a) dissuades or attempts to dissuade a person, by threats, bribes, or other corrupt means, from giving evidence in any cause or matter (whether civil or criminal, and whether tried or to be tried in New Zealand or in an overseas jurisdiction); or

(b) influences or attempts to influence, by threats or bribes or other corrupt means, a member of a jury in his or her conduct as such (whether in a cause or matter tried or to be tried in New Zealand or in an overseas jurisdiction, and whether the member has been sworn as a member of a particular jury or not); or

(c) accepts any bribe or other corrupt consideration to abstain from giving evidence (whether in a cause or matter tried or to be tried in New Zealand or in an overseas jurisdiction); or

(d) accepts any bribe or other corrupt consideration on account of his or her conduct as a member of a jury (whether in a cause or matter tried or to be tried in New Zealand or in an overseas jurisdiction, and whether the member has been sworn as a member of a particular jury or not); or

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(e) wilfully attempts in any other way to obstruct, prevent, pervert, or defeat the course of justice in New Zealand or the course of justice in an overseas jurisdiction.

Section 117: substituted, on 18 June 2002, by section 7(1) of the Crimes Amendment Act 2002 (2002 No 20).

Escapes and rescues

118 Assisting escape of prisoners of war or internees

Every one is liable to imprisonment for a term not exceeding 7 years who knowingly and wilfully—

(a) assists any prisoner of war detained in New Zealand, or any person interned in New Zealand, to escape from any place in which he is for the time being detained; or

(b) assists any such prisoner or person as aforesaid, suffered to be at large on his parole in New Zealand, to escape from the place where he is at large on his parole.

Compare: 1908 No 32 s 140

119 Breaking prison

Every one is liable to imprisonment for a term not exceeding 7 years who by force or violence breaks any prison, with intent to set at liberty himself or any other person detained therein.

Compare: 1908 No 32 s 141; 1954 No 51 Schedule 1

Section 119 heading: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 119: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

120 Escape from lawful custody

(1) Every one is liable to imprisonment for a term not exceeding 5 years who,—

(a) having been convicted of an offence, escapes from any lawful custody in which he may be under the conviction; or

(b) whether convicted or not, escapes from any prison in which he is lawfully detained; or

(ba) being subject to an order or direction made under any of sections 38, 42, and 44 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 or section 184T(3) of

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the Summary Proceedings Act 1957, escapes from the place in which he or she is required to stay under the order; or

(c) being in lawful custody otherwise than aforesaid, escapes from such custody.

(2) For the purposes of this section, custody under an illegal warrant or other irregular process shall be deemed to be lawful.

Compare: 1908 No 32 ss 142, 143, 147(2); 1954 No 51 Schedule 1

Section 120(1)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 120(1)(ba): substituted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 120(1)(ba): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

121 Assisting escape from lawful custody

(1) Every one is liable to imprisonment for a term not exceeding 7 years who—

(a) rescues any person from lawful custody, whether in a prison or not; or

(b) assists any person in escaping or attempting to escape from lawful custody, whether in a prison or not; or

(c) with intent to facilitate the escape of any person lawfully detained in a prison, conveys or causes to be conveyed into any prison any thing whatever.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who—

(a) being a constable who has any person in his lawful custody, voluntarily and intentionally permits that person to escape from such custody:

(aa) being a security officer (within the meaning of section 3(1) of the Corrections Act 2004) in whose custody any person is lawfully detained, voluntarily and intentionally permits that person to escape from such custody:

(b) being an officer of a prison in which any person is lawfully detained, voluntarily and intentionally permits that person to escape from the prison.

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(3) Every one is liable to imprisonment for a term not exceeding 1 year who, by failing to perform any legal duty, permits any person in his lawful custody to escape.

(4) For the purposes of this section, custody under an irregular warrant or other irregular process shall be deemed to be lawful.

Compare: 1908 No 32 ss 144, 145, 146, 147, 149; 1954 No 51 Schedule 1

Section 121(1)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 121(1)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 121(1)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 121(2)(aa): inserted, on 1 March 1995, by section 27(1) of the Penal Institutions Amendment Act 1994 (1994 No 120).

Section 121(2)(aa): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 121(2)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

122 Assisting escape of mentally impaired person detained for offence

Every one is liable to imprisonment for a term not exceeding 5 years who—

(a) rescues any person who is ordered to be detained as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or as a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 while that person is being taken to or from a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or a secure facility within the meaning of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, or any other place; or

(b) being a constable, an officer of a prison, a security officer within the meaning of section 3(1) of the Corrections Act 2004, or an officer of or employee in any hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or a secure facility within the meaning of the Intellectual

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Disability (Compulsory Care and Rehabilitation) Act 2003, and who has in his or her custody any person lawfully detained as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or as a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, voluntarily and intentionally permits that person to escape from custody, whether while the person is being taken to or from any of the places specified in paragraph (a) or otherwise.

Section 122: substituted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 122(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Part 7
Crimes against religion, morality, and public welfare

Crime against religion

123 Blasphemous libel

(1) Every one is liable to imprisonment for a term not exceeding 1 year who publishes any blasphemous libel.

(2) Whether any particular published matter is or is not a blasphemous libel is a question of fact.

(3) It is not an offence against this section to express in good faith and in decent language, or to attempt to establish by arguments used in good faith and conveyed in decent language, any opinion whatever on any religious subject.

(4) No one shall be prosecuted for an offence against this section without the leave of the Attorney-General, who before giving leave may make such inquiries as he thinks fit.

Compare: 1908 No 32 s 150

Crimes against morality and decency

124 Distribution or exhibition of indecent matter

(1) Every one is liable to imprisonment for a term not exceeding 2 years who, without lawful justification or excuse,—

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(a) sells, exposes for sale, or otherwise distributes to the public any indecent model or object; or

(b) exhibits or presents in or within view of any place to which the public have or are permitted to have access any indecent object or indecent show or performance; or

(c) exhibits or presents in the presence of any person in consideration or expectation of any payment or otherwise for gain, any indecent show or performance.

(2) It is a defence to a charge under this section to prove that the public good was served by the acts alleged to have been done.

(3) It is a question of law whether the sale, exposure for sale, distribution, exhibition, or presentation might in the circumstances serve the public good, and whether there is evidence of excess beyond what the public good requires; but it is a question of fact whether or not the acts complained of did so serve the public good and whether or not there was such excess.

(4) It is no defence that the person charged did not know that the model, object, show, or performance to which the charge relates was indecent, unless that person also satisfies the court—

(a) that he had no reasonable opportunity of knowing it; and

(b) that in the circumstances his ignorance was excusable.

(5) No one shall be prosecuted for an offence against this section without the leave of the Attorney-General, who before giving leave may make such inquiries as he thinks fit.

(6) Nothing in this section shall apply to any publication within the meaning of the Films, Videos, and Publications Classification Act 1993, whether the publication is objectionable within the meaning of that Act or not.

(7) *[Repealed]*

Compare: 1908 No 32 s 157

Section 124(1)(b): amended, on 1 January 1967, by section 3(2) of the Crimes Amendment Act 1966 (1966 No 98).

Section 124(1)(c): added, on 1 January 1967, by section 3(1) of the Crimes Amendment Act 1966 (1966 No 98).

Section 124(6): substituted, on 1 October 1994, by section 150(1) of the Films, Videos, and Publications Classification Act 1993 (1993 No 94).

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Section 124(7): repealed, on 1 October 1994, by section 150(1) of the Films, Videos, and Publications Classification Act 1993 (1993 No 94).

125 Indecent act in public place

(1) Every one is liable to imprisonment for a term not exceeding 2 years who wilfully does any indecent act in any place to which the public have or are permitted to have access, or within view of any such place.

(2) It is a defence to a charge under this section if the person charged proves that he had reasonable grounds for believing that he would not be observed.

(3) For the purposes of this section, the term **place** includes any railway carriage, and also includes any ship, aircraft, or vehicle used for the carriage of passengers for hire or reward.

Compare: 1908 No 32 s 156(a)

126 Indecent act with intent to insult or offend

Every one is liable to imprisonment for a term not exceeding 2 years who with intent to insult or offend any person does any indecent act in any place.

Compare: 1908 No 32 s 156(b)

Sexual crimes

127 No presumption because of age

There is no presumption of law that a person is incapable of sexual connection because of his or her age.

Section 127: substituted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

128 Sexual violation defined

(1) Sexual violation is the act of a person who—

(a) rapes another person; or

(b) has unlawful sexual connection with another person.

(2) Person A rapes person B if person A has sexual connection with person B, effected by the penetration of person B's genitalia by person A's penis,—

(a) without person B's consent to the connection; and

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(b) without believing on reasonable grounds that person B consents to the connection.

(3) Person A has unlawful sexual connection with person B if person A has sexual connection with person B—

(a) without person B's consent to the connection; and

(b) without believing on reasonable grounds that person B consents to the connection.

(4) One person may be convicted of the sexual violation of another person at a time when they were married to each other.

Section 128: substituted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

128A Allowing sexual activity does not amount to consent in some circumstances

(1) A person does not consent to sexual activity just because he or she does not protest or offer physical resistance to the activity.

(2) A person does not consent to sexual activity if he or she allows the activity because of—

(a) force applied to him or her or some other person; or

(b) the threat (express or implied) of the application of force to him or her or some other person; or

(c) the fear of the application of force to him or her or some other person.

(3) A person does not consent to sexual activity if the activity occurs while he or she is asleep or unconscious.

(4) A person does not consent to sexual activity if the activity occurs while he or she is so affected by alcohol or some other drug that he or she cannot consent or refuse to consent to the activity.

(5) A person does not consent to sexual activity if the activity occurs while he or she is affected by an intellectual, mental, or physical condition or impairment of such a nature and degree that he or she cannot consent or refuse to consent to the activity.

(6) One person does not consent to sexual activity with another person if he or she allows the sexual activity because he or she is mistaken about who the other person is.

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(7) A person does not consent to an act of sexual activity if he or she allows the act because he or she is mistaken about its nature and quality.

(8) This section does not limit the circumstances in which a person does not consent to sexual activity.

(9) For the purposes of this section,—

allows includes acquiesces in, submits to, participates in, and undertakes

sexual activity, in relation to a person, means—

(a) sexual connection with the person; or

(b) the doing on the person of an indecent act that, without the person's consent, would be an indecent assault of the person.

Section 128A: substituted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

128B Sexual violation

(1) Every one who commits sexual violation is liable to imprisonment for a term not exceeding 20 years.

(2) A person convicted of sexual violation must be sentenced to imprisonment unless, having regard to the matters stated in subsection (3), the court thinks that the person should not be sentenced to imprisonment.

(3) The matters are—

(a) the particular circumstances of the person convicted; and

(b) the particular circumstances of the offence, including the nature of the conduct constituting it.

Section 128B: substituted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

129 Attempted sexual violation and assault with intent to commit sexual violation

(1) Every one who attempts to commit sexual violation is liable to imprisonment for a term not exceeding 10 years.

(2) Every one who assaults another person with intent to commit sexual violation of the other person is liable to imprisonment for a term not exceeding 10 years.

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Section 129: substituted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

129A Sexual conduct with consent induced by certain threats

(1) Every one who has sexual connection with another person knowing that the other person has been induced to consent to the connection by threat is liable to imprisonment for a term not exceeding 14 years.

(2) Every one who does an indecent act on another person knowing that the other person has been induced to consent to the act by threat is liable to imprisonment for a term not exceeding 5 years.

(3) For the purposes of subsection (1), a person who has sexual connection with another person knows that the other person has been induced to consent to the sexual connection by threat if (and only if) he or she knows that the other person has been induced to consent to the sexual connection by an express or implied threat of a kind described in subsection (5).

(4) For the purposes of subsection (2),—

(a) a person who does an indecent act on another person knows that the other person has been induced to consent to the act by threat if (and only if) he or she knows that the other person has been induced to consent to the act by an express or implied threat of a kind described in subsection (5); and

(b) a person is induced to consent to an indecent act whether—

(i) he or she is induced to consent to the doing of an indecent act with or on him or her; or

(ii) he or she is induced to consent to do an indecent act himself or herself.

(5) The kinds of threat referred to in subsections (3) and (4)(a) are—

(a) a threat that the person making the threat or some other person will commit an offence that—

(i) is punishable by imprisonment; but

(ii) does not involve the actual or threatened application of force to any person; and

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(b) a threat that the person making the threat or some other person will make an accusation or disclosure (whether true or false) about misconduct by any person (whether living or dead) that is likely to damage seriously the reputation of the person against or about whom the accusation or disclosure is made; and

(c) a threat that the person making the threat will make improper use, to the detriment of the person consenting, of a power or authority arising out of—

(i) an occupational or vocational position held by the person making the threat; or

(ii) a commercial relationship existing between the person making the threat and the person consenting.

Section 129A: substituted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

130 Incest

(1) Sexual connection is incest if—

(a) it is between 2 people whose relationship is that of parent and child, siblings, half-siblings, or grandparent and grandchild; and

(b) the person charged knows of the relationship.

(2) Every one of or over the age of 16 years who commits incest is liable to imprisonment for a term not exceeding 10 years.

Section 130: substituted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

131 Sexual conduct with dependent family member

(1) Every one is liable to imprisonment for a term not exceeding 7 years who has sexual connection with a dependent family member under the age of 18 years.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who attempts to have sexual connection with a dependent family member under the age of 18 years.

(3) Every one is liable to imprisonment for a term not exceeding 3 years who does an indecent act on a dependent family member under the age of 18 years.

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(4) The dependent family member cannot be charged as a party to the offence.

(5) It is not a defence to a charge under this section that the dependent family member consented.

Section 131: substituted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

131A Dependent family member defined

(1) For the purposes of section 131, one person is a **dependent family member** of another person—

(a) if the other person has power or authority over him or her, and is—

(i) his or her parent, step-parent, foster parent, guardian, uncle, or aunt; or

(ii) a parent, step-parent, or foster parent of a person described in subparagraph (i); or

(iii) a child of his or her parent or step-parent; or

(iv) the spouse or de facto partner of a person described in subparagraph (i) or subparagraph (ii) or subparagraph (iii); or

(b) if they are members of the same family, whanau, or other culturally recognised family group, and the other person—

(i) is not a person referred to in paragraph (a); but

(ii) has a responsibility for, or significant role in, his or her care or upbringing; or

(c) if he or she is living with the other person as a member of the other person's family, and the other person is not a person referred to in paragraph (a), but has—

(i) power or authority over him or her; and

(ii) a responsibility for, or significant role in, his or her care or upbringing.

(2) In subsection (1),—

aunt, in relation to a person, includes a half-sister of one of the person's parents

foster parent includes a former foster parent

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guardian—

(a) means guardian by virtue of the Guardianship Act 1968 or the Children, Young Persons, and Their Families Act 1989; and

(b) includes a former guardian

step-parent includes a former step-parent

uncle, in relation to a person, includes a half-brother of one of the person's parents.

Section 131A: inserted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

131B Meeting young person under 16 following sexual grooming, etc

(1) Every person is liable to imprisonment for a term not exceeding 7 years if,—

(a) having met or communicated with a person under the age of 16 years (the **young person**) on an earlier occasion, he or she takes one of the following actions:

(i) intentionally meets the young person:

(ii) travels with the intention of meeting the young person:

(iii) arranges for or persuades the young person to travel with the intention of meeting him or her; and

(b) at the time of taking the action, he or she intends—

(i) to take in respect of the young person an action that, if taken in New Zealand, would be an offence against this Part, or against any of paragraphs (a)(i), (d)(i), (e)(i), (f)(i), of section 98AA(1); or

(ii) that the young person should do on him or her an act the doing of which would, if he or she permitted it to be done in New Zealand, be an offence against this Part on his or her part.

(2) It is a defence to a charge under subsection (1) if the person charged proves that,—

(a) before the time he or she took the action concerned, he or she had taken reasonable steps to find out whether the young person was of or over the age of 16 years; and

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(b) at the time he or she took the action concerned, he or she believed on reasonable grounds that the young person was of or over the age of 16 years.

Section 131B: inserted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

132 Sexual conduct with child under 12

(1) Every one who has sexual connection with a child is liable to imprisonment for a term not exceeding 14 years.

(2) Every one who attempts to have sexual connection with a child is liable to imprisonment for a term not exceeding 10 years.

(3) Every one who does an indecent act on a child is liable to imprisonment for a term not exceeding 10 years.

(4) It is not a defence to a charge under this section that the person charged believed that the child was of or over the age of 12 years.

(5) It is not a defence to a charge under this section that the child consented.

(6) In this section,—

(a) **child** means a person under the age of 12 years; and

(b) **doing an indecent act on a child** includes indecently assaulting the child.

Section 132: substituted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

133 Indecency with girl under 12

[Repealed]

Section 133: repealed, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

134 Sexual conduct with young person under 16

(1) Every one who has sexual connection with a young person is liable to imprisonment for a term not exceeding 10 years.

(2) Every one who attempts to have sexual connection with a young person is liable to imprisonment for a term not exceeding 10 years.

(3) Every one who does an indecent act on a young person is liable to imprisonment for a term not exceeding 7 years.

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(4) No person can be convicted of a charge under this section if he or she was married to the young person concerned at the time of the sexual connection or indecent act concerned.

(5) The young person in respect of whom an offence against this section was committed cannot be charged as a party to the offence if the person who committed the offence was of or over the age of 16 years when the offence was committed.

(6) In this section,—

(a) **young person** means a person under the age of 16 years; and

(b) **doing an indecent act on a young person** includes indecently assaulting the young person.

Section 134: substituted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

134A Defence to charge under section 134

(1) It is a defence to a charge under section 134 if the person charged proves that,—

(a) before the time of the act concerned, he or she had taken reasonable steps to find out whether the young person concerned was of or over the age of 16 years; and

(b) at the time of the act concerned, he or she believed on reasonable grounds that the young person was of or over the age of 16 years; and

(c) the young person consented.

(2) Except to the extent provided in subsection (1),—

(a) it is not a defence to a charge under section 134 that the young person concerned consented; and

(b) it is not a defence to a charge under section 134 that the person charged believed that the young person concerned was of or over the age of 16 years.

Section 134A: inserted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

135 Indecent assault

Every one is liable to imprisonment for a term not exceeding 7 years who indecently assaults another person.

Section 135: substituted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

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136 Conspiracy to induce sexual intercourse
[Repealed]

Section 136: repealed, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

137 Inducing sexual intercourse under pretence of marriage
[Repealed]

Section 137: repealed, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

138 Sexual exploitation of person with significant impairment

(1) Every one is liable to imprisonment for a term not exceeding 10 years who has exploitative sexual connection with a person with a significant impairment.

(2) Every one is liable to imprisonment for a term not exceeding 10 years who attempts to have exploitative sexual connection with a person with a significant impairment.

(3) For the purposes of subsections (1) and (2), a person has exploitative sexual connection with a person with a significant impairment (the **impaired person**) if he or she—

(a) has sexual connection with the impaired person knowing that the impaired person is a person with a significant impairment; and

(b) has obtained the impaired person's acquiescence in, submission to, participation in, or undertaking of the connection by taking advantage of the impairment.

(4) Every one is liable to imprisonment for a term not exceeding 5 years who exploitatively does an indecent act on a person with a significant impairment.

(5) For the purposes of subsection (4), a person exploitatively does an indecent act on a person with a significant impairment (the **impaired person**) if he or she—

(a) does an indecent act on the impaired person knowing that the impaired person is a person with a significant impairment; and

(b) has obtained the impaired person's acquiescence in, submission to, participation in, or undertaking of the doing of the act by taking advantage of the impairment.

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(6) For the purposes of this section, a **significant impairment** is an intellectual, mental, or physical condition or impairment (or a combination of 2 or more intellectual, mental, or physical conditions or impairments) that affects a person to such an extent that it significantly impairs the person's capacity—

(a) to understand the nature of sexual conduct; or

(b) to understand the nature of decisions about sexual conduct; or

(c) to foresee the consequences of decisions about sexual conduct; or

(d) to communicate decisions about sexual conduct.

Section 138: substituted, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

139 Indecent act between woman and girl

[Repealed]

Section 139: repealed, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

140 Indecency with boy under 12

[Repealed]

Section 140: repealed, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

140A Indecency with boy between 12 and 16

[Repealed]

Section 140A: repealed, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

141 Indecent assault on man or boy

[Repealed]

Section 141: repealed, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

142 Anal intercourse

[Repealed]

Section 142: repealed, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

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142A Compelling indecent act with animal

(1) Every one is liable to imprisonment for a term not exceeding 14 years who compels any other person, by the actual or threatened application of force to that other person or some other person, to perform, or to submit to or acquiesce in, any act of indecency with an animal, whether or not involving penetration.

(2) *[Repealed]*

Section 142A: inserted, on 1 February 1986, by section 3 of the Crimes Amendment Act (No 3) 1985 (1985 No 160).

Section 142A(2): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

143 Bestiality

(1) Every one is liable to imprisonment for a term not exceeding 7 years who commits bestiality.

(2) This offence is complete upon penetration.

Compare: 1908 No 32 s 153; 1941 No 10 Schedule

144 Indecency with animal

Every one is liable to imprisonment for a term not exceeding 3 years who commits any act of indecency with an animal.

Sexual offences outside New Zealand

Heading: inserted, on 1 September 1995, by section 2 of the Crimes Amendment Act 1995 (1995 No 49).

144A Sexual conduct with children and young people outside New Zealand

(1) Every one commits an offence who, being a New Zealand citizen or ordinarily resident in New Zealand,—

(a) does outside New Zealand, with or on a child under the age of 12 years, an act to which subsection (2) applies; or

(b) does outside New Zealand, with or on a person under the age of 16 years, an act to which subsection (3) applies; or

(c) does outside New Zealand, with or on a person under the age of 18 years, an act to which subsection (4) applies.

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(2) This subsection applies to an act that, if done in New Zealand, would be an offence against—
  (a) section 132(1) (sexual connection with a child under 12); or
  (b) section 132(2) (attempted sexual connection with a child under 12); or
  (c) section 132(3) (doing an indecent act on a child under 12).

(3) This subsection applies to an act that, if done in New Zealand, would be an offence against—
  (a) section 134(1) (sexual connection with a young person); or
  (b) section 134(2) (attempted sexual connection with a young person); or
  (c) section 134(3) (doing an indecent act on a young person).

(4) This subsection applies to an act that, if done in New Zealand, would be an offence against section 23(1) of the Prostitution Reform Act 2003 (breach of prohibitions on use in prostitution of persons under 18 years).

(5) A person who commits an offence against this section in respect of a provision specified in any of subsections (2) to (4) is liable to the penalty to which he or she would be liable if convicted of an offence against the provision.

(6) Every limiting provision that applied to a provision specified in any of subsections (2) to (4) when an offence against this section in respect of the provision specified is alleged to have been committed applies also to—
  (a) the commencement of proceedings for the offence; and
  (b) a charge under this section in respect of the provision specified.

(7) In this section, **limiting provision**, in relation to a provision specified in any of subsections (2) to (4), means a provision of this Act or the Prostitution Reform Act 2003 that states (in relation to the provision specified only, or more generally)—
  (a) circumstances that constitute a defence to a charge under the provision specified; or
  (b) circumstances that do not constitute a defence to a charge under the provision specified; or

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(c) circumstances in which the person on or with whom an offence against the provision specified is committed may not be charged with an offence against that provision.

Section 144A: substituted, on 14 June 2006, by section 8 of the Crimes Amendment Act 2005 (2005 No 41).

144B Consent of Attorney-General required

(1) No information shall be laid for an offence against section 144A except with the consent of the Attorney-General.

(2) A person who is alleged to have committed such an offence may be arrested, or a warrant for the arrest of the person may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the laying of an information for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

(3) The Attorney-General may, before deciding whether or not to give his or her consent under subsection (1), make such inquiries as he or she thinks fit.

Section 144B: inserted, on 1 September 1995, by section 2 of the Crimes Amendment Act 1995 (1995 No 49).

144C Organising or promoting child sex tours

(1) Every one is liable to imprisonment for a term not exceeding 7 years who—

(a) makes or organises any travel arrangements for or on behalf of any other person with the intention of facilitating the commission by that other person of an offence against section 144A, whether or not such an offence is actually committed by that other person; or

(b) transports any other person to a place outside New Zealand with the intention of facilitating the commission by that other person of an offence against section 144A, whether or not such an offence is actually committed by that other person; or

(c) prints or publishes any information that is intended to promote conduct that would constitute an offence

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against section 144A, or to assist any other person to engage in such conduct.

(2) For the purposes of this section,—

(a) the **making or organising of travel arrangements** includes, but is not limited to,—

(i) the purchase or reservation of tickets for travel to a country outside New Zealand:

(ii) the purchase or reservation of accommodation in a country outside New Zealand:

(b) the **publication of information** means publication of information by any means, whether by written, electronic, or other form of communication; and includes the distribution of information.

Section 144C: inserted, on 1 September 1995, by section 2 of the Crimes Amendment Act 1995 (1995 No 49).

Crimes against public welfare

145 Criminal nuisance

(1) Every one commits criminal nuisance who does any unlawful act or omits to discharge any legal duty, such act or omission being one which he knew would endanger the lives, safety, or health of the public, or the life, safety, or health of any individual.

(2) Every one who commits criminal nuisance is liable to imprisonment for a term not exceeding 1 year.

Compare: 1908 No 32 ss 158, 159

146 Keeping place of resort for homosexual acts

[Repealed]

Section 146: repealed, on 8 August 1986, by section 6(1) of the Homosexual Law Reform Act 1986 (1986 No 33).

147 Brothel-keeping

[Repealed]

Section 147: repealed, on 28 June 2003, by section 48(1)(a) of the Prostitution Reform Act 2003 (2003 No 28).

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148 Living on earnings of prostitution

[Repealed]

Section 148: repealed, on 28 June 2003, by section 48(1)(a) of the Prostitution Reform Act 2003 (2003 No 28).

149 Procuring for prostitution

[Repealed]

Section 149: repealed, on 28 June 2003, by section 48(1)(a) of the Prostitution Reform Act 2003 (2003 No 28).

149A Being client in act of prostitution by person under 18 years of age

[Repealed]

Section 149A: repealed, on 28 June 2003, by section 48(1)(a) of the Prostitution Reform Act 2003 (2003 No 28).

150 Misconduct in respect of human remains

Every one is liable to imprisonment for a term not exceeding 2 years who—

(a) neglects to perform any duty imposed on him by law or undertaken by him with reference to the burial or cremation of any dead human body or human remains; or

(b) improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not.

Compare: 1908 No 32 s 165

Part 8
Crimes against the person

Duties tending to the preservation of life

150A Standard of care required of persons under legal duties

(1) This section applies in respect of the legal duties specified in any of sections 151, 152, 153, 155, 156, and 157.

(2) For the purposes of this Part, a person is criminally responsible for—

(a) omitting to discharge or perform a legal duty to which this section applies; or

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(b) neglecting a legal duty to which this section applies—

only if, in the circumstances of the particular case, the omission or neglect is a major departure from the standard of care expected of a reasonable person to whom that legal duty applies in those circumstances.

Section 150A: inserted, on 22 November 1997, by section 2(1) of the Crimes Amendment Act 1997 (1997 No 88).

151 Duty to provide the necessaries of life

(1) Every one who has charge of any other person unable, by reason of detention, age, sickness, insanity, or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessaries of life, is (whether such charge is undertaken by him under any contract or is imposed upon him by law or by reason of his unlawful act or otherwise howsoever) under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting without lawful excuse to perform such duty if the death of that person is caused, or if his life is endangered or his health permanently injured, by such omission.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who, without lawful excuse, neglects the duty specified in this section so that the life of the person under his charge is endangered or his health permanently injured by such neglect.

Compare: 1908 No 32 s 166

152 Duty of parent or guardian to provide necessaries

(1) Every one who as a parent or person in place of a parent is under a legal duty to provide necessaries for any child under the age of 16 years, being a child in his actual custody, is criminally responsible for omitting without lawful excuse to do so, whether the child is helpless or not, if the death of the child is caused, or if his life is endangered or his health permanently injured, by such omission.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who, without lawful excuse, neglects the duty specified in this section so that the life of the child is endangered or his health permanently injured by such neglect.

Compare: 1908 No 32 s 167

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153 Duty of employers to provide necessaries

(1) Every one who as employer has contracted to provide necessary food, clothing, or lodging for any servant or apprentice under the age of 16 years is under a legal duty to provide the same, and is criminally responsible for omitting without lawful excuse to perform such duty if the death of that servant or apprentice is caused, or if his life is endangered or his health permanently injured, by such omission.

(2) Every one is liable to imprisonment for a term not exceeding 5 years who, without lawful excuse, neglects the duty specified in this section so that the life of the servant or apprentice is endangered or his health permanently injured by such neglect.

Compare: 1908 No 32 s 168

154 Abandoning child under 6

Every one is liable to imprisonment for a term not exceeding 7 years who unlawfully abandons or exposes any child under the age of 6 years.

Compare: 1908 No 32 s 169

155 Duty of persons doing dangerous acts

Every one who undertakes (except in case of necessity) to administer surgical or medical treatment, or to do any other lawful act the doing of which is or may be dangerous to life, is under a legal duty to have and to use reasonable knowledge, skill, and care in doing any such act, and is criminally responsible for the consequences of omitting without lawful excuse to discharge that duty.

Compare: 1908 No 32 s 170

156 Duty of persons in charge of dangerous things

Every one who has in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes, operates, or maintains anything whatever, which, in the absence of precaution or care, may endanger human life is under a legal duty to take reasonable precautions against and to use reasonable care to avoid such danger, and is criminally

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responsible for the consequences of omitting without lawful excuse to discharge that duty.

Compare: 1908 No 32 s 171

157 Duty to avoid omissions dangerous to life

Every one who undertakes to do any act the omission to do which is or may be dangerous to life is under a legal duty to do that act, and is criminally responsible for the consequences of omitting without lawful excuse to discharge that duty.

Compare: 1908 No 32 s 172

Homicide

158 Homicide defined

Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever.

Compare: 1908 No 32 s 173

159 Killing of a child

(1) A child becomes a human being within the meaning of this Act when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not.

(2) The killing of such child is homicide if it dies in consequence of injuries received before, during, or after birth.

Compare: 1908 No 32 s 174

160 Culpable homicide

(1) Homicide may be either culpable or not culpable.

(2) Homicide is culpable when it consists in the killing of any person—

(a) by an unlawful act; or

(b) by an omission without lawful excuse to perform or observe any legal duty; or

(c) by both combined; or

(d) by causing that person by threats or fear of violence, or by deception, to do an act which causes his death; or

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(e) by wilfully frightening a child under the age of 16 years or a sick person.

(3) Except as provided in section 178, culpable homicide is either murder or manslaughter.

(4) Homicide that is not culpable is not an offence.

Compare: 1908 No 32 s 175

161 Procuring death by false evidence

[Repealed]

Section 161: repealed, on 26 December 1989, by section 3(1)(a) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

162 Death must be within a year and a day

(1) No one is criminally responsible for the killing of another unless the death takes place within a year and a day after the cause of death.

(2) The period of a year and a day shall be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place.

(3) Where the cause of death is an omission to fulfil a legal duty, the period shall be reckoned inclusive of the day on which such omission ceased.

(4) Where death is in part caused by an unlawful act and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened last.

Compare: 1908 No 32 s 177

163 Killing by influence on the mind

No one is criminally responsible for the killing of another by any influence on the mind alone, except by wilfully frightening a child under the age of 16 years or a sick person, nor for the killing of another by any disorder or disease arising from such influence, except by wilfully frightening any such child as aforesaid or a sick person.

Compare: 1908 No 32 s 178

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164 Acceleration of death

Every one who by any act or omission causes the death of another person kills that person, although the effect of the bodily injury caused to that person was merely to hasten his death while labouring under some disorder or disease arising from some other cause.

Compare: 1908 No 32 s 179

165 Causing death that might have been prevented

Every one who by any act or omission causes the death of another person kills that person, although death from that cause might have been prevented by resorting to proper means.

Compare: 1908 No 32 s 180

166 Causing injury the treatment of which causes death

Every one who causes to another person any bodily injury, in itself of a dangerous nature, from which death results, kills that person, although the immediate cause of death be treatment, proper or improper, applied in good faith.

Compare: 1908 No 32 s 181

Murder, manslaughter, etc

167 Murder defined

Culpable homicide is murder in each of the following cases:

(a) if the offender means to cause the death of the person killed:

(b) if the offender means to cause to the person killed any bodily injury that is known to the offender to be likely to cause death, and is reckless whether death ensues or not:

(c) if the offender means to cause death, or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed:

(d) if the offender for any unlawful object does an act that he knows to be likely to cause death, and thereby kills

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any person, though he may have desired that his object should be effected without hurting any one.

Compare: 1908 No 32 s 182

168 Further definition of murder

(1) Culpable homicide is also murder in each of the following cases, whether the offender means or does not mean death to ensue, or knows or does not know that death is likely to ensue:

(a) if he means to cause grievous bodily injury for the purpose of facilitating the commission of any of the offences mentioned in subsection (2), or facilitating the flight or avoiding the detection of the offender upon the commission or attempted commission thereof, or for the purpose of resisting lawful apprehension in respect of any offence whatsoever, and death ensues from such injury:

(b) if he administers any stupefying or overpowering thing for any of the purposes aforesaid, and death ensues from the effects thereof:

(c) if he by any means wilfully stops the breath of any person for any of the purposes aforesaid, and death ensues from such stopping of breath.

(2) The offences referred to in subsection (1) are those specified in the following provisions of this Act, namely:

(a) section 73 (treason) or section 78 (communicating secrets):

(b) section 79 (sabotage):

(c) section 92 (piracy):

(d) section 93 (piratical acts):

(e) section 119 to 122 (escape or rescue from prison or lawful custody or detention):

(f) section 128 (sexual violation):

(g) section 167 (murder):

(h) section 208 (abduction):

(i) section 209 (kidnapping):

(j) section 231 (burglary):

(k) section 234 (robbery):

(l) section 267 (arson).

Compare: 1908 No 32 s 183

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Section 168(2)(e): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 168(2)(f): substituted, on 1 October 2003, by section 7(1) of the Crimes Amendment Act 2003 (2003 No 39).

Section 168(2)(j): substituted, on 1 October 2003, by section 7(2) of the Crimes Amendment Act 2003 (2003 No 39).

Section 168(2)(k): substituted, on 1 October 2003, by section 7(2) of the Crimes Amendment Act 2003 (2003 No 39).

Section 168(2)(l): substituted, on 1 October 2003, by section 7(2) of the Crimes Amendment Act 2003 (2003 No 39).

169 Provocation

[Repealed]

Section 169: repealed, on 8 December 2009, by section 4 of the Crimes (Provocation Repeal) Amendment Act 2009 (2009 No 64).

170 Illegal arrest may be evidence of provocation

[Repealed]

Section 170: repealed, on 8 December 2009, by section 4 of the Crimes (Provocation Repeal) Amendment Act 2009 (2009 No 64).

171 Manslaughter

Except as provided in section 178, culpable homicide not amounting to murder is manslaughter.

Compare: 1908 No 32 s 186

172 Punishment of murder

(1) Every one who commits murder is liable to imprisonment for life.

(2) Subsection (1) is subject to section 102 of the Sentencing Act 2002.

Section 172: substituted, on 30 June 2002, by section 165 of the Sentencing Act 2002 (2002 No 9).

173 Attempt to murder

(1) Every one who attempts to commit murder is liable to imprisonment for a term not exceeding 14 years.

(2) *[Repealed]*

Compare: 1908 No 32 s 188

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Section 173(2): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

174 Counselling or attempting to procure murder

Every one is liable to imprisonment for a term not exceeding 10 years who incites, counsels, or attempts to procure any person to murder any other person in New Zealand, when that murder is not in fact committed.

Compare: 1908 No 32 s 189(b)

175 Conspiracy to murder

(1) Every one is liable to imprisonment for a term not exceeding 10 years who conspires or agrees with any person to murder any other person, whether the murder is to take place in New Zealand or elsewhere.

(2) For the purposes of this section, the expression **to murder** includes to cause the death of another person out of New Zealand in circumstances that would amount to murder if the act were committed in New Zealand.

Compare: 1908 No 32 s 189(a)

176 Accessory after the fact to murder

Every one is liable to imprisonment for a term not exceeding 7 years who is an accessory after the fact to murder.

Compare: 1908 No 32 s 190

177 Punishment of manslaughter

(1) Every one who commits manslaughter is liable to imprisonment for life.

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

Compare: 1908 No 32 s 191

Section 177(2): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

Section 177(3): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

Section 177(4): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

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178 Infanticide

(1) Where a woman causes the death of any child of hers under the age of 10 years in a manner that amounts to culpable homicide, and where at the time of the offence the balance of her mind was disturbed, by reason of her not having fully recovered from the effect of giving birth to that or any other child, or by reason of the effect of lactation, or by reason of any disorder consequent upon childbirth or lactation, to such an extent that she should not be held fully responsible, she is guilty of infanticide, and not of murder or manslaughter, and is liable to imprisonment for a term not exceeding 3 years.

(2) Where upon the trial of a woman for the murder or manslaughter of any child of hers under the age of 10 years there is evidence that would support a verdict of infanticide, the jury may return such a verdict instead of a verdict of murder or manslaughter, and the accused shall be liable accordingly. Subsection (2) of section 339 shall be read subject to the provisions of this subsection, but nothing in this subsection shall affect the power of the jury under that section to return a verdict of manslaughter.

(3) Where upon the trial of a woman for infanticide, or for the murder or manslaughter of any child of hers under the age of 10 years, the jury are of opinion that at the time of the alleged offence the balance of her mind was disturbed, by reason of her not having fully recovered from the effect of giving birth to that or any other child, or by reason of the effect of lactation, or by reason of any disorder consequent upon childbirth or lactation, to such an extent that she was insane, the jury shall return a special verdict of acquittal on account of insanity caused by childbirth.

(4) If the jury returns a special verdict under subsection (3), the Judge must order that the woman be examined by 2 medical practitioners and the following provisions apply:

(a) pending the receipt by the Judge of certificates from the medical practitioners, the woman must be detained in a place that the Judge thinks appropriate, and that place must be one of the following:

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(i) a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992:

(ii) a facility within the meaning of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:

(iii) a prison:

(b) if each of the medical practitioners certifies that the woman is no longer insane and that she is in no need of care and treatment in a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or in a facility within the meaning of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, the Judge must order that the woman be discharged from custody immediately:

(c) unless each of the medical practitioners certifies in accordance with paragraph (b), sections 23 to 29 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 apply, so far as they are applicable, as if the references in those sections to the court were references to the Judge.

(5) If, under subsection (4)(c), the Judge makes an order that the woman be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or as a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, section 33 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 applies.

(6) *[Repealed]*

(7) Nothing in this section shall affect the power of the jury, upon the trial of any woman for infanticide or for murder or manslaughter, to return a verdict, otherwise than under this section, of acquittal on account of insanity; and where any such verdict is returned the provisions of the Criminal Procedure (Mentally Impaired Persons) Act 2003 shall apply accordingly.

(8) The fact that by virtue of this section any woman has not been or is not liable to be convicted of murder or manslaughter, whether or not she has been or is liable to be convicted of

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infanticide, shall not affect the question whether the homicide amounted to murder or manslaughter in the case of any other party to it.

Compare: Infanticide Act 1938 s 1 (UK)

Section 178(4): substituted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 178(4)(a)(iii): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 178(5): substituted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 178(6): repealed, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 178(7): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

179 Aiding and abetting suicide

Every one is liable to imprisonment for a term not exceeding 14 years who—

(a) incites, counsels, or procures any person to commit suicide, if that person commits or attempts to commit suicide in consequence thereof; or

(b) aids or abets any person in the commission of suicide.

Compare: 1908 No 32 s 192

180 Suicide pact

(1) Every one who in pursuance of a suicide pact kills any other person is guilty of manslaughter and not of murder, and is liable accordingly.

(2) Where 2 or more persons enter into a suicide pact, and in pursuance of it 1 or more of them kills himself, any survivor is guilty of being a party to a death under a suicide pact contrary to this subsection and is liable to imprisonment for a term not exceeding 5 years; but he shall not be convicted of an offence against section 179.

(3) For the purposes of this section the term **suicide pact** means a common agreement between 2 or more persons having for its object the death of all of them, whether or not each is to take his own life; but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of

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the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

(4) It shall be for the person charged to prove that by virtue of subsection (1) he is not liable to be convicted of murder, or that by virtue of subsection (2) he is not liable to be convicted of an offence against section 179.

(5) The fact that by virtue of this section any person who in pursuance of a suicide pact has killed another person has not been or is not liable to be convicted of murder shall not affect the question whether the homicide amounted to murder in the case of a third person who is a party to the homicide and is not a party to the suicide pact.

Compare: Homicide Act 1957 s 4 (UK)

181 Concealing dead body of child

Every one is liable to imprisonment for a term not exceeding 2 years who disposes of the dead body of any child in any manner with intent to conceal the fact of its birth, whether the child died before, or during, or after birth.

Compare: 1908 No 32 s 194

Abortion

182 Killing unborn child

(1) Every one is liable to imprisonment for a term not exceeding 14 years who causes the death of any child that has not become a human being in such a manner that he would have been guilty of murder if the child had become a human being.

(2) No one is guilty of any crime who before or during the birth of any child causes its death by means employed in good faith for the preservation of the life of the mother.

Compare: 1908 No 32 s 220

182A Miscarriage defined

For the purposes of sections 183 to 187 the term **miscarriage** means—

(a) the destruction or death of an embryo or fetus after implantation; or

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(b) the premature expulsion or removal of an embryo or fetus after implantation, otherwise than for the purpose of inducing the birth of a fetus believed to be viable or removing a fetus that has died.

Section 182A: inserted, on 16 December 1977, by section 3 of the Crimes Amendment Act 1977 (1977 No 113).

183 Procuring abortion by any means

(1) Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to procure the miscarriage of any woman or girl, whether she is pregnant or not,—

(a) unlawfully administers to or causes to be taken by her any poison or any drug or any noxious thing; or

(b) unlawfully uses on her any instrument; or

(c) unlawfully uses on her any means other than any means referred to in paragraph (a) or paragraph (b).

(2) The woman or girl shall not be charged as a party to an offence against this section.

Section 183: substituted, on 16 December 1977, by section 4 of the Crimes Amendment Act 1977 (1977 No 113).

184 Procuring abortion by other means

[Repealed]

Section 184: repealed, on 16 December 1977, by section 4 of the Crimes Amendment Act 1977 (1977 No 113).

185 Female procuring her own miscarriage

[Repealed]

Section 185: repealed, on 16 December 1977, by section 5 of the Crimes Amendment Act 1977 (1977 No 113).

186 Supplying means of procuring abortion

Every one is liable to imprisonment for a term not exceeding 7 years who unlawfully supplies or procures any poison or any drug or any noxious thing, or any instrument or other thing, whether of a like nature or not, believing that it is intended to be unlawfully used to procure miscarriage.

Compare: 1908 No 32 s 223

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187 Effectiveness of means used immaterial

The provisions of section 183 to 186 shall apply whether or not the poison, drug, thing, instrument, or means administered, taken, used, supplied, or procured was in fact capable of procuring miscarriage.

187A Meaning of unlawfully

(1) For the purposes of sections 183 and 186, any act specified in either of those sections is done unlawfully unless, in the case of a pregnancy of not more than 20 weeks' gestation, the person doing the act believes—

(a) that the continuance of the pregnancy would result in serious danger (not being danger normally attendant upon childbirth) to the life, or to the physical or mental health, of the woman or girl; or

(aa) that there is a substantial risk that the child, if born, would be so physically or mentally abnormal as to be seriously handicapped; or

(b) that the pregnancy is the result of sexual intercourse between—

(i) a parent and child; or

(ii) a brother and sister, whether of the whole blood or of the half blood; or

(iii) a grandparent and grandchild; or

(c) that the pregnancy is the result of sexual intercourse that constitutes an offence against section 131(1); or

(d) that the woman or girl is severely subnormal within the meaning of section 138(2).

(2) The following matters, while not in themselves grounds for any act specified in section 183 or section 186, may be taken into account in determining for the purposes of subsection (1)(a), whether the continuance of the pregnancy would result in serious danger to her life or to her physical or mental health:

(a) the age of the woman or girl concerned is near the beginning or the end of the usual child-bearing years:

(b) the fact (where such is the case) that there are reasonable grounds for believing that the pregnancy is the result of sexual violation.

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(3) For the purposes of sections 183 and 186, any act specified in either of those sections is done unlawfully unless, in the case of a pregnancy of more than 20 weeks' gestation, the person doing the act believes that the miscarriage is necessary to save the life of the woman or girl or to prevent serious permanent injury to her physical or mental health.

(4) Where a medical practitioner, in pursuance of a certificate issued by 2 certifying consultants under section 33 of the Contraception, Sterilisation, and Abortion Act 1977, does any act specified in section 183 or section 186 of this Act, the doing of that act shall not be unlawful for the purposes of the section applicable unless it is proved that, at the time when he did that act, he did not believe it to be lawful in terms of subsection (1) or subsection (3), as the case may require.

Section 187A: inserted, on 16 December 1977, by section 6 of the Crimes Amendment Act 1977 (1977 No 113).

Section 187A(1)(a): amended, on 10 July 1978, by section 2(1) of the Crimes Amendment Act 1978 (1978 No 6).

Section 187A(1)(aa): inserted, on 10 July 1978, by section 2(2) of the Crimes Amendment Act 1978 (1978 No 6).

Section 178A(2)(b): amended, on 1 February 1986, by section 7(2) of the Crimes Amendment Act (No 3) 1985 (1985 No 160).

Section 178A(4): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Assaults and injuries to the person

188 Wounding with intent

(1) Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to cause grievous bodily harm to any one, wounds, maims, disfigures, or causes grievous bodily harm to any person.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to injure anyone, or with reckless disregard for the safety of others, wounds, maims, disfigures, or causes grievous bodily harm to any person.

(3) *[Repealed]*

Compare: 1908 No 32 s 197(a); 1941 No 10 Schedule

Section 188(3): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

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189 Injuring with intent

(1) Every one is liable to imprisonment for a term not exceeding 10 years who, with intent to cause grievous bodily harm to any one, injures any person.

(2) Every one is liable to imprisonment for a term not exceeding 5 years who, with intent to injure any one, or with reckless disregard for the safety of others, injures any person.

(3) *[Repealed]*

Compare: 1908 No 32 s 204

Section 189(3): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

190 Injuring by unlawful act

Every one is liable to imprisonment for a term not exceeding 3 years who injures any other person in such circumstances that if death had been caused he would have been guilty of manslaughter.

Compare: 1908 No 32 s 206

191 Aggravated wounding or injury

(1) Every one is liable to imprisonment for a term not exceeding 14 years who with intent—

(a) to commit or facilitate the commission of any crime; or

(b) to avoid the detection of himself or of any other person in the commission of any crime; or

(c) to avoid the arrest or facilitate the flight of himself or of any other person upon the commission or attempted commission of any crime—

wounds, maims, disfigures, or causes grievous bodily harm to any person, or stupefies or renders unconscious any person, or by any violent means renders any person incapable of resistance.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who, with any such intent as aforesaid, injures any person.

(3) *[Repealed]*

Compare: 1908 No 32 ss 195, 196; 1941 No 10 Schedule

Section 191(3): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

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192 Aggravated assault

(1) Every one is liable to imprisonment for a term not exceeding 3 years who assaults any other person with intent—

(a) to commit or facilitate the commission of any crime; or

(b) to avoid the detection of himself or of any other person in the commission of any crime; or

(c) to avoid the arrest or facilitate the flight of himself or of any other person upon the commission or attempted commission of any crime.

(2) Every one is liable to imprisonment for a term not exceeding 3 years who assaults any constable or any person acting in aid of any constable, or any person in the lawful execution of any process, with intent to obstruct the person so assaulted in the execution of his duty.

Compare: 1908 No 32 s 209

193 Assault with intent to injure

Every one is liable to imprisonment for a term not exceeding 3 years who, with intent to injure any one, assaults any person.

194 Assault on a child, or by a male on a female

Every one is liable to imprisonment for a term not exceeding 2 years who—

(a) assaults any child under the age of 14 years; or

(b) being a male, assaults any female.

Compare: 1952 No 43 s 5

195 Cruelty to a child

Every one is liable to imprisonment for a term not exceeding 5 years who, having the custody, control, or charge of any child under the age of 16 years, wilfully ill-treats or neglects the child, or wilfully causes or permits the child to be ill-treated, in a manner likely to cause him unnecessary suffering, actual bodily harm, injury to health, or any mental disorder or disability.

Compare: Children and Young Persons Act 1933 s 1 (UK)

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196 Common assault

Every one is liable to imprisonment for a term not exceeding 1 year who assaults any other person.

Compare: 1908 No 32 s 210

197 Disabling

(1) Every one is liable to imprisonment for a term not exceeding 5 years who, wilfully and without lawful justification or excuse, stupefies or renders unconscious any other person.

(2) *[Repealed]*

Section 197(2): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

198 Discharging firearm or doing dangerous act with intent

(1) Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to do grievous bodily harm,—

(a) discharges any firearm, airgun, or other similar weapon at any person; or

(b) sends or delivers to any person, or puts in any place, any explosive or injurious substance or device; or

(c) sets fire to any property.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to injure, or with reckless disregard for the safety of others, does any of the acts referred to in subsection (1).

(3) *[Repealed]*

Compare: 1908 No 32 ss 197(b), (c), (d), 198; 1941 No 10 Schedule

Section 198(3): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

198A Using any firearm against law enforcement officer, etc

(1) Every one is liable to imprisonment for a term not exceeding 14 years who uses any firearm in any manner whatever against any constable, or any traffic officer, or any prison officer, acting in the course of his or her duty knowing that, or being reckless whether or not, that person is a constable or a traffic officer or a prison officer so acting.

(2) Every one is liable to imprisonment for a term not exceeding 10 years who uses any firearm in any manner whatever with

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intent to resist the lawful arrest or detention of himself or herself or of any other person.

Section 198A: inserted, on 28 October 1986, by section 3 of the Crimes Amendment Act (No 2) 1986 (1986 No 71).

Section 198A(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

198B Commission of crime with firearm

(1) Every one is liable to imprisonment for a term not exceeding 10 years who,—

(a) in committing any crime, uses any firearm; or

(b) while committing any crime, has any firearm with him or her in circumstances that prima facie show an intention to use it in connection with that crime.

(2) *[Repealed]*

Section 198B: inserted, on 28 October 1986, by section 3 of the Crimes Amendment Act (No 2) 1986 (1986 No 71).

Section 198B(2): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

199 Acid throwing

(1) Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to injure or disfigure any one, throws at or applies to any person any corrosive or injurious substance.

(2) *[Repealed]*

Compare: 1908 No 32 s 197(d)

Section 199(2): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

200 Poisoning with intent

(1) Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to cause grievous bodily harm to any one, administers to or causes to be taken by any person any poison or other noxious substance.

(2) Every one is liable to imprisonment for a term not exceeding 3 years who, with intent to cause inconvenience or annoyance to any one, or for any unlawful purpose, administers to, or causes to be taken by, any person any poison or other noxious substance.

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(3) *[Repealed]*

Compare: 1908 No 32 s 203; Criminal Code (1954) s 217 (Canada)

Section 200(3): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

201 Infecting with disease

(1) Every one is liable to imprisonment for a term not exceeding 14 years who, wilfully and without lawful justification or excuse, causes or produces in any other person any disease or sickness.

(2) *[Repealed]*

Section 201(2): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

202 Setting traps, etc

(1) Every one is liable to imprisonment for a term not exceeding 5 years who, with intent to injure, or with reckless disregard for the safety of others, sets or places or causes to be set or placed any trap or device that is likely to injure any person.

(2) Every one is liable to imprisonment for a term not exceeding 3 years who, being in occupation or possession of any place where any such trap or device has been set or placed, knowingly and wilfully permits it to remain there in such a condition that any person is likely to be injured by it.

(3) *[Repealed]*

Compare: 1908 No 32 s 205

Section 202(3): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

202A Possession of offensive weapons or disabling substances

(1) In subsection (4)(a) **offensive weapon** means any article made or altered for use for causing bodily injury, or intended by the person having it with him for such use.

(2) In subsection (4)(b) **offensive weapon** means any article capable of being used for causing bodily injury.

(3) In this section **disabling substance** means any anaesthetising or other substance produced for use for disabling persons, or intended by any person having it with him for such use.

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(4) Every one is liable to imprisonment for a term not exceeding 2 years—

(a) who, without lawful authority or reasonable excuse, has with him in any public place any knife or offensive weapon or disabling substance; or

(b) who has in his possession in any place any offensive weapon or disabling substance in circumstances that prima facie show an intention to use it to commit an offence involving bodily injury or the threat or fear of violence.

(5) It is a defence to a charge under subsection (4)(b) if the person charged proves that he did not intend to use the offensive weapon or disabling substance to commit an offence involving bodily injury or the threat or fear of violence.

Compare: 1927 No 35 s 53A(1), (2), (8)–(10); 1976 No 157 s4(1)

Section 202A: inserted, on 1 February 1982, by section 48(1) of the Summary Offences Act 1981 (1981 No 113).

Section 202A(4): amended, on 28 October 1986, by section 4 of the Crimes Amendment Act (No 2) 1986 (1986 No 71).

Section 202A(4)(a): amended, on 1 August 1987, by section 2(1) of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

202B Powers in respect of crime against section 202A

(1) Where any constable has reasonable grounds for believing that any person is committing an offence against section 202A(4)(a) he may—

(a) stop and search that person and any package or receptacle he has with him that the constable has reasonable grounds for believing contains any knife, offensive weapon, or disabling substance, and may detain that person for as long as is reasonably necessary to conduct that search:

(b) stop and search any vehicle in which that person is travelling or from which he has alighted if the constable has reasonable grounds for believing that the vehicle contains any knife, offensive weapon, or disabling substance, and may detain that vehicle for as long as is reasonably necessary to conduct that search;—

and in any such case the constable may take possession of any knife, offensive weapon, or disabling substance found.

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(2) Every constable exercising the powers conferred by subsection (1) shall identify himself to every person searched, tell him that the search is being made under this section, and, if not in uniform and if so required, produce evidence that he is a constable.

(2A) If it is necessary for any constable to stop a vehicle for the purpose of exercising the power conferred by subsection (1)(a) to search a person who is in the vehicle, sections 314B to 314D apply with any necessary modifications as if references in those sections to a statutory search power are references to subsection (1)(a).

(2B) Despite section 314A, sections 314B to 314D apply to the exercise of the power to stop a vehicle conferred by subsection (1)(b).

(3) Where any person is convicted of a crime against section 202A, the court may make an order for the forfeiture or disposal of any knife, offensive weapon, or substance in respect of which the crime was committed.

Compare: 1927 No 35 s 53A(3)–(6); 1976 No 157 s 4(1); 1979 No 133 s 2

Section 202B: inserted, on 1 February 1982, by section 48(1) of the Summary Offences Act 1981 (1981 No 113).

Section 202B(1): amended, on 1 August 1987, by section 2(2)(c) of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 202B(1)(a): amended, on 1 August 1987, by section 2(2)(a) of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 202B(1)(b): amended, on 1 August 1987, by section 2(2)(c) of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 202B(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 202B(2A): inserted, on 1 January 1998, by section 3 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 202B(2B): inserted, on 1 January 1998, by section 3 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 202B(3): amended, on 1 August 1987, by section 2(2)(d) of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

202BA Sentencing for second crime against section 202A(4)

Where—

(a) any person is convicted of a crime against paragraph (a) or paragraph (b) of section 202A(4); and

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(b) that person has previously been convicted on at least 1 occasion within the preceding 2 years of a crime against either of those paragraphs,—

the court shall impose a sentence of imprisonment (within the meaning of section 4(1) of the Sentencing Act 2002) on the offender unless the court is satisfied that, because of the special circumstances of the offence or of the offender, the offender should not be so sentenced.

Section 202BA: inserted, on 1 August 1987, by section 3 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 202BA: amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

202C Assault with weapon

(1) Every one is liable to imprisonment for a term not exceeding 5 years who,—

(a) in assaulting any person, uses any thing as a weapon; or

(b) while assaulting any person, has any thing with him or her in circumstances that prima facie show an intention to use it as a weapon.

(2) *[Repealed]*

Section 202C: inserted, on 28 October 1986, by section 5 of the Crimes Amendment Act (No 2) 1986 (1986 No 71).

Section 202C(2): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

203 Endangering transport

[Repealed]

Section 203: repealed, on 1 October 2003, by section 8 of the Crimes Amendment Act 2003 (2003 No 39).

204 Impeding rescue

(1) Every one is liable to imprisonment for a term not exceeding 10 years who, without lawful justification or excuse, prevents or impedes or attempts to prevent or impede any person who is attempting to save his own life or the life of any other person.

(2) No one is guilty of an offence against this section who does any such act as aforesaid in the course of saving his own life or the life of any other person.

Compare: 1908 No 32 s 201; Criminal Code (1954) s 227 (Canada)

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Female genital mutilation

Heading: inserted, on 1 January 1996, by section 3 of the Crimes Amendment Act 1995 (1995 No 49).

204A Female genital mutilation

(1) For the purposes of this section,—

female genital mutilation means the excision, infibulation, or mutilation of the whole or part of the labia majora, labia minora, or clitoris of any person

midwife means a health practitioner who is, or is deemed to be, registered with the Midwifery Council established by section 114(3) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of midwifery

sexual reassignment procedure means any surgical procedure that is performed for the purposes of altering (whether wholly or partly) the genital appearance of a person to the genital appearance of a person of the opposite sex

trainee health professional means any person who is receiving training or gaining experience under the supervision of—

(a) a medical practitioner for the purpose of gaining registration as a medical practitioner; or

(b) a midwife for the purpose of gaining registration as a midwife.

(2) Subject to subsection (3), every one is liable to imprisonment for a term not exceeding 7 years who performs, or causes to be performed, on any other person, any act involving female genital mutilation.

(3) Nothing in subsection (2) applies in respect of—

(a) any medical or surgical procedure (including a sexual reassignment procedure) that is performed on any person—

(i) for the benefit of that person's physical or mental health; and

(ii) by a medical practitioner:

(b) any medical or surgical procedure that is performed on any person—

(i) while that person is in labour or immediately after that person gives birth; and

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(ii) for the benefit of that person's health or the health of the child; and

(iii) by a medical practitioner or a midwife or a trainee health professional, or by any other person in any case where the case is urgent and no medical practitioner or midwife or trainee health professional is available.

(4) In determining, for the purposes of subsection (3), whether or not any medical or surgical procedure is performed on any person for the benefit of that person's physical or mental health, no account shall be taken of the effect on that person of any belief on the part of that person or any other person that the procedure is necessary or desirable as, or as part of, a cultural, religious, or other custom or practice.

(5) Nothing in subsection (3) limits or affects any enactment or rule of law relating to consent to any medical or surgical procedure or treatment.

(6) It is no defence to a charge under this section that the person on whom the act involving female genital mutilation was performed consented to that act, or that the person charged believed that such consent had been given.

(7) No person shall be charged as a party to an offence committed upon her against this section.

Section 204A: inserted, on 1 January 1996, by section 3 of the Crimes Amendment Act 1995 (1995 No 49).

Section 204A(1) **midwife**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 204A(1) **registered midwife**: repealed, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 204A(1) **trainee health professional** paragraph (b): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 204A(3)(b)(iii): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

204B Further offences relating to female genital mutilation

(1) Every one is liable to imprisonment for a term not exceeding 7 years who, with intent that there be done, outside New Zealand, to or in relation to any child under the age of 17

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years (being a child who is a New Zealand citizen or is ordinarily resident in New Zealand), any act which, if done in New Zealand, would be an offence against section 204A,—

(a) causes that child to be sent or taken out of New Zealand; or

(b) makes any arrangements for the purposes of causing that child to be sent or taken out of New Zealand.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who, in New Zealand, aids, incites, counsels, or procures the doing, outside New Zealand, in relation to any person who is a New Zealand citizen or is ordinarily resident in New Zealand, of any act which, if done in New Zealand, would be an offence against section 204A, whether or not the act is in fact done.

(3) Every one is liable to imprisonment for a term not exceeding 7 years who, in New Zealand, incites, counsels, procures, or induces any person who is a New Zealand citizen or is ordinarily resident in New Zealand—

(a) to submit, outside New Zealand, to any act which, if done in New Zealand, would be an offence against section 204A; or

(b) to acquiesce in the doing, outside New Zealand, on that person, of any such act; or

(c) to permit any such act to be done, outside New Zealand, on that person,—

whether or not, in any case, the act is in fact done.

(4) It is no defence to a charge under subsection (2) or subsection (3) that the person on whom the act was done consented to that act, or that the person charged believed that such consent had been given.

(5) No person shall be charged as a party to an offence committed in relation to her against subsection (2) or subsection (3).

Section 204B: inserted, on 1 January 1996, by section 3 of the Crimes Amendment Act 1995 (1995 No 49).

Bigamy, feigned marriage

205 Bigamy defined

(1) Bigamy is—

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(a) the act of a person who, being married, goes through form of marriage or civil union in New Zealand with a third person; or

(b) the act of a person who goes through a form of marriage in New Zealand with any other person whom he or she knows to be married or in a civil union; or

(c) the act of a New Zealand citizen, or a person ordinarily resident in New Zealand, who, being married or in a civil union, goes through a form of marriage with a third person anywhere outside New Zealand; or

(d) the act of a New Zealand citizen, or a person ordinarily resident in New Zealand, who goes through a form of marriage anywhere outside New Zealand with any other person whom he or she knows to be married or in a civil union; or

(e) the act of a person who, being in a civil union, goes through a form of civil union or marriage with a third person; or

(f) the act of a person who goes through a form of civil union with a person whom he or she knows to be in a civil union or to be married.

(2) For the purposes of this section,—

(a) a form of marriage is any form of marriage recognised by the law of New Zealand, or by the law of the place where it is solemnised, as a valid form of marriage:

(b) a form of civil union is any form of civil union recognised under the Civil Union Act 2004 as a valid form of civil union under that Act:

(c) no form of marriage or civil union may be held to be an invalid form of marriage or civil union by reason of any act or omission of the person charged with bigamy, if it is otherwise a valid form.

(3) It shall not be a defence to a charge of bigamy to prove that if the parties were unmarried or not in a civil union they would have been incompetent to contract marriage or enter into a civil union.

(4) No person commits bigamy by going through a form of marriage or entering into a civil union if that person—

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(a) has been continuously absent from his or her spouse or civil union partner (as the case may be) for 7 years then last past; and

(b) is not proved to have known that his or her spouse or civil union partner (as the case may be) was alive at any time during those 7 years.

Compare: 1908 No 32 s 224

Section 205(1)(a): amended, on 26 April 2005, by section 41(1)(a) of the Civil Union Act 2004 (2004 No 102).

Section 205(1)(b): amended, on 26 April 2005, by section 41(1)(b) of the Civil Union Act 2004 (2004 No 102).

Section 205(1)(c): amended, on 26 April 2005, by section 41(1)(c) of the Civil Union Act 2004 (2004 No 102).

Section 205(1)(d): amended, on 26 April 2005, by section 41(1)(d) of the Civil Union Act 2004 (2004 No 102).

Section 205(1)(e): added, on 26 April 2005, by section 41(2) of the Civil Union Act 2004 (2004 No 102).

Section 205(1)(f): added, on 26 April 2005, by section 41(2) of the Civil Union Act 2004 (2004 No 102).

Section 205(2)(b): substituted, on 26 April 2005, by section 41(3) of the Civil Union Act 2004 (2004 No 102).

Section 205(2)(c): added, on 26 April 2005, by section 41(3) of the Civil Union Act 2004 (2004 No 102).

Section 205(3): amended, on 26 April 2005, by section 41(4) of the Civil Union Act 2004 (2004 No 102).

Section 205(4): amended, on 26 April 2005, by section 41(5)(a) of the Civil Union Act 2004 (2004 No 102).

Section 205(4)(a): amended, on 26 April 2005, by section 41(5)(b) of the Civil Union Act 2004 (2004 No 102).

Section 205(4)(b): amended, on 26 April 2005, by section 41(5)(b) of the Civil Union Act 2004 (2004 No 102).

206 Punishment of bigamy

Every one who commits bigamy is liable to imprisonment for a term not exceeding 7 years:

provided that if the Judge is satisfied that the person with whom the offender went through the form of marriage or with whom the offender entered into a civil union, knew, at the time when the offence was committed, that the marriage or civil union would be void, the offender is liable to imprisonment for a term not exceeding 2 years.

Compare: 1908 No 32 s 225

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Section 206 proviso: amended, on 26 April 2005, by section 42(a) of the Civil Union Act 2004 (2004 No 102).

Section 206 proviso: amended, on 26 April 2005, by section 42(b) of the Civil Union Act 2004 (2004 No 102).

207 Feigned marriage or feigned civil union

(1) Everyone is liable to imprisonment for a term not exceeding 7 years who goes through a form of marriage or civil union with any other person, knowing that the marriage or civil union will be void for any reason other than that one of the parties is already married or in a civil union.

(2) Provided that if the Judge is satisfied that that other person knew, at the time when the offence was committed, that the marriage or civil union would be void, the offender is liable to imprisonment for a term not exceeding 2 years.

Section 207: substituted, on 26 April 2005, by section 43 of the Civil Union Act 2004 (2004 No 102).

Abduction, kidnapping

208 Abduction for purposes of marriage or sexual connection

Every one is liable to imprisonment for a term not exceeding 14 years who unlawfully takes away or detains a person without his or her consent or with his or her consent obtained by fraud or duress,—

(a) with intent to marry him or her; or

(b) with intent to have sexual connection with him or her; or

(c) with intent to cause him or her to be married to or to have sexual connection with some other person.

Compare: 1908 No 32 s 226

Section 208: substituted, on 20 May 2005, by section 9 of the Crimes Amendment Act 2005 (2005 No 41).

209 Kidnapping

Every one is liable to imprisonment for a term not exceeding 14 years who unlawfully takes away or detains a person without his or her consent or with his or her consent obtained by fraud or duress,—

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(a) with intent to hold him or her for ransom or to service; or

(b) with intent to cause him or her to be confined or imprisoned; or

(c) with intent to cause him or her to be sent or taken out of New Zealand.

Compare: Criminal Code (1954) s 233 (Canada)

Section 209: substituted, on 20 May 2005, by section 9 of the Crimes Amendment Act 2005 (2005 No 41).

209A Young person under 16 cannot consent to being taken away or detained

For the purposes of sections 208 and 209, a person under the age of 16 years cannot consent to being taken away or detained.

Section 209A: inserted, on 20 May 2005, by section 9 of the Crimes Amendment Act 2005 (2005 No 41).

210 Abduction of young person under 16

(1) Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to deprive a parent or guardian or other person having the lawful care or charge of a young person of the possession of the young person, unlawfully takes or entices away or detains the young person.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who receives a young person, knowing that he or she has been unlawfully taken or enticed away or detained with intent to deprive a parent or guardian or other person having the lawful care or charge of him or her of the possession of him or her.

(3) For the purposes of subsections (1) and (2),—

(a) it is immaterial whether the young person consents, or is taken or goes or is received at his or her own suggestion; and

(b) it is immaterial whether the offender believes the young person to be of or over the age of 16.

(4) In this section **young person** means a person under the age of 16 years.

Compare: 1908 No 32 ss 229, 230; 1941 No 10 part Schedule; 1952 No 42 s 3

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Section 210: substituted, on 20 May 2005, by section 9 of the Crimes Amendment Act 2005 (2005 No 41).

210A People claiming in good faith right to possession of young person under 16

A person who claims in good faith a right to the possession of a young person under the age of 16 years cannot be convicted of an offence against section 209 or section 210 because he or she gets possession of the young person.

Section 210A: inserted, on 20 May 2005, by section 9 of the Crimes Amendment Act 2005 (2005 No 41).

Part 9
Crimes against reputation

[Repealed]

Part 9: repealed, on 1 February 1993, by section 56(2) of the Defamation Act 1992 (1992 No 105).

211 Criminal libel and publishing defined

[Repealed]

Section 211: repealed, on 1 February 1993, by section 56(2) of the Defamation Act 1992 (1992 No 105).

212 Publishing upon invitation

[Repealed]

Section 212: repealed, on 1 February 1993, by section 56(2) of the Defamation Act 1992 (1992 No 105).

213 No prosecution without leave of Judge

[Repealed]

Section 213: repealed, on 1 February 1993, by section 56(2) of the Defamation Act 1992 (1992 No 105).

214 Plea of justification

[Repealed]

Section 214: repealed, on 1 February 1993, by section 56(2) of the Defamation Act 1992 (1992 No 105).

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215 Punishment of criminal libel

[Repealed]

Section 215: repealed, on 1 February 1993, by section 56(2) of the Defamation Act 1992 (1992 No 105).

216 Criminal slander

[Repealed]

Section 216: repealed, on 1 February 1993, by section 56(2) of the Defamation Act 1992 (1992 No 105).

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Part 9A
Crimes against personal privacy

Part 9A: inserted, on 6 August 1979, by section 2 of the Crimes Amendment Act 1979 (1979 No 5).

216A Interpretation

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

intercept, in relation to a private communication, includes hear, listen to, record, monitor, acquire, or receive the communication either—

(a) while it is taking place; or

(b) while it is in transit

interception device—

(a) means any electronic, mechanical, electromagnetic, optical, or electro-optical instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept a private communication; but

(b) does not include—

(i) a hearing aid or similar device used to correct subnormal hearing of the user to no better than normal hearing; or

(ii) a device exempted from the provisions of this Part by the Governor-General by Order in Council, either generally or in such places or circumstances or subject to such other conditions as may be specified in the order

private communication—

(a) means a communication (whether in oral or written form or otherwise) made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but

(b) does not include such a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so.

(2) Any Order in Council exempting a device from the provisions of this Part expires 2 years after it is made.

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(2) A reference in this Part to a party to a private communication is a reference to—
  (a) any originator of the communication and any person intended by the originator to receive it; and
  (b) a person who, with the express or implied consent of any originator of the communication or any person intended by the originator to receive it, intercepts the communication.

Section 216A: inserted, on 6 August 1979, by section 2 of the Crimes Amendment Act 1979 (1979 No 5).

Section 216A(1): substituted, on 1 October 2003, by section 9 of the Crimes Amendment Act 2003 (2003 No 39).

Section 216A first subsection (2): inserted, on 1 October 2003, by section 9 of the Crimes Amendment Act 2003 (2003 No 39).

216B Prohibition on use of interception devices

(1) Subject to subsections (2) to (5), every one is liable to imprisonment for a term not exceeding 2 years who intentionally intercepts any private communication by means of an interception device.

(2) Subsection (1) does not apply where the person intercepting the private communication—
  (a) is a party to that private communication; or
  (b) does so pursuant to, and in accordance with the terms of, any authority conferred on him or her by or under—
    (i) Part 11A; or
    (ii) *[Repealed]*
    (iii) the New Zealand Security Intelligence Service Act 1969; or
    (iiia) the Government Communications Security Bureau Act 2003; or
    (iv) the Misuse of Drugs Amendment Act 1978; or
    (v) the International Terrorism (Emergency Powers) Act 1987.

(3) Subsection (1) does not apply to the interception by any constable of a private communication by means of an interception device where—
  (a) an emergency has arisen in which there are reasonable grounds for believing that any person (in this section referred to as the suspect) is threatening the life of, or

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serious injury to, any other person in his presence or in the immediate vicinity; and

(b) the use of the interception device by that constable is authorised by a constable who is of or above the level of position of inspector who believes on reasonable grounds that the use of the interception device to intercept any private communication to which the suspect is a party during the emergency will facilitate the protection of any person who is threatened by the suspect.

(4) Subsection (1) does not apply to any monitoring of a prisoner call under section 113 of the Corrections Act 2004 or any interception of a private communication if the interception is authorised under section 189B of that Act.

(5) Subsection (1) does not apply to the interception of private communications by any interception device operated by a person engaged in providing an Internet or other communication service to the public if—

(a) the interception is carried out by an employee of the person providing that Internet or other communication service to the public in the course of that person's duties; and

(b) the interception is carried out for the purpose of maintaining that Internet or other communication service; and

(c) the interception is necessary for the purpose of maintaining the Internet or other communication service; and

(d) the interception is only used for the purpose of maintaining the Internet or other communication service.

(6) Information obtained under subsection (5) must be destroyed immediately if it is no longer needed for the purpose of maintaining the Internet or other communication service.

(7) Any information held by any person that was obtained while assisting with the execution of an interception warrant must, upon expiry of the warrant, be—

(a) destroyed immediately; or

(b) given to the agency executing the warrant.

Section 216B: inserted, on 6 August 1979, by section 2 of the Crimes Amendment Act 1979 (1979 No 5).

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Section 216B heading: amended, on 1 October 2003, by section 10(1) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216B(1): amended, on 1 October 2003, by section 10(2) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216B(1): amended, on 1 October 2003, by section 10(3) of the Crimes Amendment Act 2003 (2003 No 39)

Section 216B(1): amended, on 14 October 1999, by section 10(1) of the Penal Institutions Amendment Act 1999 (1999 No 114).

Section 216B(2): substituted, on 1 February 1998, by section 4(1) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 216B(2)(b)(ii): repealed, on 1 October 2003, by section 10(4) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216B(2)(b)(iiia): inserted, on 2 April 2003, by section 26(1) of the Government Communications Security Bureau Act 2003 (2003 No 9).

Section 216B(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 216B(3): amended, on 1 October 2003, by section 10(3) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216B(3): amended, on 1 February 1998, by section 4(2)(a) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 216B(3)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 216B(3)(b): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 216B(3)(b): amended, on 1 October 2003, by section 10(5) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216B(3)(b): amended, on 1 February 1998, by section 4(2)(b) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 216B(4): added, on 14 October 1999, by section 10(2) of the Penal Institutions Amendment Act 1999 (1999 No 114).

Section 216B(4): amended, on 3 April 2009, by section 35(2)(a) of the Corrections Amendment Act 2009 (2009 No 3).

Section 216B(4): amended, on 3 April 2009, by section 35(2)(b) of the Corrections Amendment Act 2009 (2009 No 3).

Section 216B(4): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 216B(5): added, on 1 October 2003, by section 10(6) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216B(6): added, on 1 October 2003, by section 10(6) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216B(7): added, on 1 October 2003, by section 10(6) of the Crimes Amendment Act 2003 (2003 No 39).

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216C Prohibition on disclosure of private communications unlawfully intercepted

(1) Subject to subsection (2), where a private communication has been intercepted in contravention of section 216B, every one is liable to imprisonment for a term not exceeding 2 years who intentionally—

(a) discloses the private communication, or the substance, meaning, or purport of the communication, or any part of it; or

(b) discloses the existence of the private communication,—

if he knows that it has come to his knowledge as a direct or indirect result of a contravention of section 216B.

(2) Subsection (1) does not apply where the disclosure is made—

(a) to a party to the communication or with the express or implied consent of such a party; or

(b) in the course, or for the purpose, of—

(i) an investigation by the Police into an alleged offence against this section or section 216B; or

(ii) giving evidence in any civil or criminal proceedings relating to the unlawful interception of a private communication by means of an interception device or the unlawful disclosure of a private communication unlawfully intercepted by that means; or

(iii) giving evidence in any other civil or criminal proceeding where that evidence is not rendered inadmissible by the Evidence Act 2006 or section 25 of the Misuse of Drugs Amendment Act 1978 or any other enactment or rule of law; or

(iv) determining whether the disclosure is admissible in any civil or criminal proceedings.

Section 216C: inserted, on 6 August 1979, by section 2 of the Crimes Amendment Act 1979 (1979 No 5).

Section 216C(2)(b)(ii): amended, on 1 October 2003, by section 11 of the Crimes Amendment Act 2003 (2003 No 39).

Section 216C(2)(b)(iii): amended, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

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216D Prohibition on dealing, etc, with interception devices

(1) Every one is liable to imprisonment for a term not exceeding 2 years who—

(a) invites any other person to acquire from him; or

(b) offers or exposes for sale or supply to any other person; or

(c) agrees to sell or supply or sells or supplies to any other person; or

(d) has in his possession for the purpose of sale or supply to any other person,—

any interception device—

(i) the sole or principal purpose of which he knows to be the surreptitious interception of private communications; or

(ii) that he holds out as being useful for the surreptitious interception of private communications (whether or not he also holds it out as being useful for any other purpose).

(2) It is a defence to a charge under this section if the person charged proves either—

(a) that at the time he did any act referred to in any of paragraphs (a) to (d) of subsection (1) he believed that the other person referred to in the relevant paragraph was a constable, or an officer of the New Zealand Security Intelligence Service or the Government Communications Security Bureau, acting in the course of his official duties; or

(b) where the charge relates to the supply of an interception device otherwise than for valuable consideration, that—

(i) he supplied the interception device to the other person referred to in paragraph (c) or paragraph (d) of subsection (1) for the purpose of any proceeding or of any investigation or examination preliminary or incidental to any proceeding; or

(ii) being a constable or an officer of the New Zealand Security Intelligence Service or the Government Communications Security Bureau, he supplied the interception device in the course of his official duties to the other person referred

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to in the said paragraph (c) or the said paragraph (d) for any lawful purpose.

Section 216D: inserted, on 6 August 1979, by section 2 of the Crimes Amendment Act 1979 (1979 No 5).

Section 216D heading: amended, on 1 October 2003, by section 12(a) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216D(1): amended, on 1 October 2003, by section 12(b) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216D(2)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 216D(2)(a): amended, on 2 April 2003, by section 26(2) of the Government Communications Security Bureau Act 2003 (2003 No 9).

Section 216D(2)(b): amended, on 1 October 2003, by section 12(c) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216D(2)(b)(i): amended, on 1 October 2003, by section 12(d) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216B(2)(b)(ii): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 216D(2)(b)(ii): amended, on 1 October 2003, by section 12(d) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216D(2)(b)(ii): amended, on 2 April 2003, by section 26(2) of the Government Communications Security Bureau Act 2003 (2003 No 9).

216E Forfeiture

Where any person is convicted of a crime against section 216B or section 216D in respect of any interception devices the sole or principal purpose of which is the surreptitious interception of private communications, the court may, as part of the sentence, order that the interception devices shall be forfeited; and, in such a case, the interception devices shall thereupon become forfeited to the Crown accordingly, and may be disposed of in such manner as the Commissioner of Police directs.

Section 216E: inserted, on 6 August 1979, by section 2 of the Crimes Amendment Act 1979 (1979 No 5).

Section 216E: amended, on 1 October 2003, by section 13 of the Crimes Amendment Act 2003 (2003 No 39).

216F Unlawful disclosure

(1) An unlawful disclosure is—

(a) the intentional and unauthorised disclosure of the existence of an interception warrant to be exercised by a

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constable if the disclosure would, or is likely to, prejudice an investigation; or

(b) the intentional and unauthorised disclosure of—

(i) any information gained when undertaking maintenance of a communication service; or

(ii) any information gained when assisting with the execution of an interception warrant other than to the agency executing the warrant.

(2) Despite anything in subsection (1)(b)(i), a person may disclose information to any constable if the information appears to relate to the commission of a crime that has caused or could cause serious harm to any person.

(3) Every person who makes an unlawful disclosure is liable to imprisonment for a term not exceeding 2 years.

Section 216F: inserted, on 1 October 2003, by section 14 of the Crimes Amendment Act 2003 (2003 No 39).

Section 216F(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 216F(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Intimate visual recordings

Heading: inserted, on 5 December 2006, by section 4 of the Crimes (Intimate Covert Filming) Amendment Act 2006 (2006 No 75).

216G Intimate visual recording defined

(1) In sections 216H to 216N, **intimate visual recording** means a visual recording (for example, a photograph, videotape, or digital image) that is made in any medium using any device without the knowledge or consent of the person who is the subject of the recording, and the recording is of—

(a) a person who is in a place which, in the circumstances, would reasonably be expected to provide privacy, and that person is—

(i) naked or has his or her genitals, pubic area, buttocks, or female breasts exposed, partially exposed, or clad solely in undergarments; or

(ii) engaged in an intimate sexual activity; or

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(iii) engaged in showering, toileting, or other personal bodily activity that involves dressing or undressing; or

(b) a person's naked or undergarment-clad genitals, pubic area, buttocks, or female breasts which is made—

(i) from beneath or under a person's clothing; or

(ii) through a person's outer clothing in circumstances where it is unreasonable to do so.

(2) In section 216H, intimate visual recording includes an intimate visual recording that is made and transmitted in real time without retention or storage in—

(a) a physical form; or

(b) an electronic form from which the recording is capable of being reproduced with or without the aid of any device or thing.

Section 216G: inserted, on 5 December 2006, by section 4 of the Crimes (Intimate Covert Filming) Amendment Act 2006 (2006 No 75).

216H Prohibition on making intimate visual recording

Everyone is liable to imprisonment for a term not exceeding 3 years who intentionally or recklessly makes an intimate visual recording of another person.

Section 216H: inserted, on 5 December 2006, by section 4 of the Crimes (Intimate Covert Filming) Amendment Act 2006 (2006 No 75).

216I Prohibition on possessing intimate visual recording in certain circumstances

(1) Everyone is liable to imprisonment for a term not exceeding 3 years who has in his or her possession an intimate visual recording—

(a) for the purpose of publishing, exporting or selling the intimate visual recording; and

(b) knowing it to be an intimate visual recording, or being reckless as to whether it is an intimate visual recording.

(2) Everyone is liable to imprisonment for a term not exceeding 1 year who, without reasonable excuse, has in his or her possession an intimate visual recording knowing it to be an intimate visual recording.

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Section 216I: inserted, on 5 December 2006, by section 4 of the Crimes (Intimate Covert Filming) Amendment Act 2006 (2006 No 75).

216J Prohibition on publishing, importing, exporting, or selling intimate visual recording

(1) Everyone is liable to imprisonment for a term not exceeding 3 years who, knowing that a visual recording is an intimate visual recording, or being reckless as to whether a visual recording is an intimate visual recording,—
- (a) publishes in New Zealand the intimate visual recording:
- (b) imports into New Zealand the intimate visual recording:
- (c) exports from New Zealand the intimate visual recording:
- (d) sells the intimate visual recording.

(2) In this section, unless the context otherwise requires,—

publishes means any of the following:
- (a) displays by any means:
- (b) sends to any person by any means:
- (c) distributes by any means:
- (d) conveys by electronic medium:
- (e) stores electronically in a way that is accessible by any other person or persons

sells means sells in a physical form or by electronic medium, and includes—
- (a) offers for sale:
- (b) agrees to sell.

Section 216J: inserted, on 5 December 2006, by section 4 of the Crimes (Intimate Covert Filming) Amendment Act 2006 (2006 No 75).

216K Exceptions to prohibition in section 216J

(1) Nothing in section 216J(1)(a), (b), or (c) applies to anything done by any person in the course of, or in connection with, exercising or performing any powers, duties, or functions under any enactment.

(2) Nothing in section 216J(1)(a) applies to any person by reason only of that person publishing an intimate visual recording to a person referred to in section 216N(1).

(3) Nothing in section 216J applies to any person who, not knowing or suspecting that a visual recording is an intimate visual

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recording, facilitates access to that recording by reason only of providing some or all of the means necessary for—

(a) delivery of the recording in physical form (for example, by a postal operator or courier); or

(b) transmission (other than by broadcasting) of the recording (for example, by a network operator or service provider providing only a network or facility through which a recording is transmitted); or

(c) storage of the recording electronically in a way that is accessible by any other person or persons.

(4) In subsection (3), unless the context otherwise requires,—

courier means a person carrying on business as a courier

network operator has the same meaning as in section 3(1) of the Telecommunications (Interception Capability) Act 2004

postal operator has the same meaning as in section 2(1) of the Postal Services Act 1998

public data network has the same meaning as in section 5 of the Telecommunications Act 2001

service provider—

(a) means a person providing Internet access, email access, or both of those facilities, by means of a public data network; but

(b) does not include a network operator.

Section 216K: inserted, on 5 December 2006, by section 4 of the Crimes (Intimate Covert Filming) Amendment Act 2006 (2006 No 75).

216L Disposal and forfeiture

(1) Where any person is convicted of an offence against section 216H or section 216I or section 216J, the court may, in addition to or instead of passing any other sentence or making any other order in respect of the offence, order that the intimate visual recording be destroyed within 10 working days from the making of the order, and that the recording in the meantime be impounded.

(2) Where any person is convicted of an offence against section 216H or section 216I or section 216J, the court may, in addition to or instead of passing any other sentence or making any other order in respect of the offence, order that any equipment,

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goods, or other thing used in respect of the commission of the offence be forfeited to the Crown; and anything so forfeited must be sold, destroyed, or otherwise disposed of as the Minister of Justice directs.

(3) Before making an order under subsection (1) or subsection (2), the court must give the following persons an opportunity to be heard:

(a) the person convicted; and

(b) any other person who, in the opinion of the court, would be directly affected by the making of the order.

(4) If the court is satisfied that the intimate visual recording that was the subject of the prosecution, or any equipment, goods, or other thing used in respect of the commission of the offence, should be delivered to a person other than the person convicted, it may so order.

Section 216L: inserted, on 5 December 2006, by section 4 of the Crimes (Intimate Covert Filming) Amendment Act 2006 (2006 No 75).

216M Effect of appeal on order made under section 216L

(1) If any person is convicted of an offence against section 216H or section 216I or section 216J, and any order is made under section 216L, the operation of the order is suspended,—

(a) in any case, until the expiration of the time prescribed in the Summary Proceedings Act 1957 or this Act for the filing of a notice of appeal or an application for leave to appeal; and

(b) if a notice of appeal is filed within the time so prescribed, until the determination of the appeal; and

(c) if the application for leave to appeal is filed within the time so prescribed, until the application is determined, and, if leave to appeal is granted, until the determination of the appeal.

(2) If the operation of any order is suspended until the determination of the appeal, the court determining the appeal may, by order, cancel or vary the order.

Section 216M: inserted, on 5 December 2006, by section 4 of the Crimes (Intimate Covert Filming) Amendment Act 2006 (2006 No 75).

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216N Protection from liability

(1) This section applies to the following persons:
- (a) any constable; and
- (b) any Customs officer; and
- (c) any officer or employee of the New Zealand Security Intelligence Service; and
- (d) any employee of the Department of Corrections and any other employee exercising powers or functions under the Corrections Act 2004; and
- (e) any lawyer or agent—
  - (i) giving legal advice in relation to an intimate visual recording; or
  - (ii) giving legal advice, or making representations, in relation to any civil or criminal proceedings; and
- (f) any other person or member of a class of persons prescribed in regulations made under this Act; and
- (g) the person who is the subject of an intimate visual recording.

(2) No person referred to in subsection (1)(g) commits an offence against section 216I or section 216J by possessing or publishing the intimate visual recording.

(3) No other person to whom this section applies commits an offence against section 216H or section 216I or section 216J(1)(a) or (b) or (c) by making, possessing, or publishing any intimate visual recording for the purpose of, or in the course of, carrying out the functions set out in subsection (5).

(4) Subsection (3) does not apply in respect of anything done in bad faith or without reasonable cause.

(5) The functions referred to in subsection (3) are functions relating to—
- (a) the prevention, detection, investigation, prosecution, or punishment of offences:
- (b) the conduct of proceedings in any court or tribunal:
- (c) security or safety.

(6) Subsections (1) to (3) apply despite the fact that, but for this section, the act would have otherwise constituted an offence.

(7) Where a person to whom subsection (1)(a) to (f) applies has in his or her possession an intimate visual recording, the record-

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ing must not be kept longer than is required for the purpose of carrying out the functions referred to in subsection (5), and must then either be—

(a) made available to the person who is the subject of the recording, if that person requests; or

(b) immediately destroyed if the person who is the subject of the recording makes no request under paragraph (a).

Section 216N: inserted, on 5 December 2006, by section 4 of the Crimes (Intimate Covert Filming) Amendment Act 2006 (2006 No 75).

Section 216N(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Part 10
Crimes against rights of property

Part 10: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Interpretation

Heading: inserted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

217 Interpretation

In this Part, unless the context otherwise requires,—

dishonestly, in relation to an act or omission, means done or omitted without a belief that there was express or implied consent to, or authority for, the act or omission from a person entitled to give such consent or authority

document means a document, or part of a document, in any form; and includes, without limitation,—

(a) any paper or other material used for writing or printing that is marked with matter capable of being read; or

(b) any photograph, or any photographic negative, plate, slide, film, or microfilm, or any photostatic negative; or

(c) any disc, tape, wire, sound track, card, or other material or device in or on which information, sounds, or other data are recorded, stored (whether temporarily or permanently), or embodied so as to be capable, with or

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without the aid of some other equipment, of being reproduced; or

(d) any material by means of which information is supplied, whether directly or by means of any equipment, to any device used for recording or storing or processing information; or

(e) any material derived, whether directly or by means of any equipment, from information recorded or stored or processed by any device used for recording or storing or processing information

obtain, in relation to any person, means obtain or retain for himself or herself or for any other person.

Compare: 1961 No 43 ss 217, 218, 263

Section 217: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Unlawful taking

Heading: inserted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

218 Matters of ownership

(1) For the purposes of this Part, a person is to be regarded as the owner of any property that is stolen if, at the time of the theft, that person has—

(a) possession or control of the property; or

(b) any interest in the property; or

(c) the right to take possession or control of the property.

(2) An owner of any property may be guilty of theft against another owner of that property.

(3) All living creatures wild by nature, such as are not commonly found in a condition of natural liberty in New Zealand, are, if kept in a state of confinement, capable of being stolen, not only while so confined, but after they have escaped from confinement.

(4) All other living creatures wild by nature are, if kept in a state of confinement, capable of being stolen so long as they remain in confinement, or are being pursued upon escaping from confinement.

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(5) A wild living creature is in a state of confinement so long as it is in an enclosure designed to prevent escape, or otherwise secured, and to allow its owner to take possession of it when he or she pleases.

(6) Shellfish of all types are capable of being stolen when in oyster beds, marine farms, layings, and fisheries that are the property of any person and that are sufficiently marked out or shown as such property.

Compare: 1961 No 43 ss 219, 225

Section 218: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

219 Theft or stealing

(1) Theft or stealing is the act of,—

(a) dishonestly and without claim of right, taking any property with intent to deprive any owner permanently of that property or of any interest in that property; or

(b) dishonestly and without claim of right, using or dealing with any property with intent to deprive any owner permanently of that property or of any interest in that property after obtaining possession of, or control over, the property in whatever manner.

(2) An intent to deprive any owner permanently of property includes an intent to deal with property in such a manner that—

(a) the property cannot be returned to any owner in the same condition; or

(b) any owner is likely to be permanently deprived of the property or of any interest in the property.

(3) In this section, **taking** does not include obtaining ownership or possession of, or control over, any property with the consent of the person from whom it is obtained, whether or not consent is obtained by deception.

(4) For tangible property, theft is committed by a taking when the offender moves the property or causes it to be moved.

Compare: 1961 No 43 s 220(1), (2), (5)

Section 219: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

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220 Theft by person in special relationship

(1) This section applies to any person who has received or is in possession of, or has control over, any property on terms or in circumstances that the person knows require the person—

(a) to account to any other person for the property, or for any proceeds arising from the property; or

(b) to deal with the property, or any proceeds arising from the property, in accordance with the requirements of any other person.

(2) Every one to whom subsection (1) applies commits theft who intentionally fails to account to the other person as so required or intentionally deals with the property, or any proceeds of the property, otherwise than in accordance with those requirements.

(3) This section applies whether or not the person was required to deliver over the identical property received or in the person's possession or control.

(4) For the purposes of subsection (1), it is a question of law whether the circumstances required any person to account or to act in accordance with any requirements.

Compare: 1961 No 43 ss 222, 223, 224

Section 220: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

221 Theft of animals

Every one commits theft if he or she kills any animal that is the property of any other person with intent to steal the carcass, skin, or plumage, or any other part, of the animal.

Compare: 1961 No 43 s 221

Section 221: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

222 Theft by spouse or partner

A person may be convicted of theft of another person's property even though those persons were married to, or in a civil union or a de facto relationship with, each other at the time of the theft.

Compare: 1961 No 43 s 226

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Section 222: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 222 heading: amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 222: amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

223 Punishment of theft

Every one who commits theft is liable as follows:

(a) in the case of any offence against section 220, to imprisonment for a term not exceeding 7 years; or

(b) if the value of the property stolen exceeds $1,000, to imprisonment for a term not exceeding 7 years; or

(c) if the value of the property stolen exceeds $500 but does not exceed $1,000, to imprisonment for a term not exceeding 1 year; or

(d) if the value of the property stolen does not exceed $500, to imprisonment for a term not exceeding 3 months.

Compare: 1961 No 43 s 227

Section 223: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

224 Power of search for goods stolen or unlawfully obtained in transit

(1) This section applies if—

(a) any constable has reasonable grounds for believing that any property that has been stolen or unlawfully obtained is—

(i) in the possession of any person; or

(ii) in any container, package, or receptacle; or

(iii) in or on any aircraft, hovercraft, or ship or ferry or other vessel, train, or vehicle; and

(b) the person, container, package, receptacle, aircraft, hovercraft, or ship or ferry or other vessel, train, or vehicle is—

(i) in any airport or in or on any port or harbour or waterway; or

(ii) in or on any railway or railway line or railway station or in any depot, terminus, or yard; or

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(iii) in or on any other place used between trips by vehicles engaged in the carriage of goods for reward.

(2) In the circumstances specified in subsection (1), the constable may, without warrant, search and detain for the purpose of searching the person, container, package, receptacle, aircraft, hovercraft, or ship or ferry or other vessel, train, or vehicle, and may take possession of any property described in subsection (1)(a) found during the search.

(3) If it is necessary for any constable to stop a vehicle for the purpose of exercising the power conferred by subsection (2) to search a person who is in the vehicle, sections 314A to 314D apply with any necessary modifications as if references in those sections to a statutory search power were references to the power to search a person under subsection (2).

(4) Subsection (3) does not limit the application of sections 314A to 314D in respect of the stopping of any vehicle for the purpose of exercising the power to search the vehicle under subsection (2).

(5) Any constable conducting a search under subsection (2) may use reasonable force, if necessary,—

(a) to break open any container, package, or receptacle:

(b) to effect entry to any aircraft, hovercraft, or ship or ferry or other vessel, train, or vehicle.

Compare: 1961 No 43 s 227A

Section 224: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 224(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 224(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 224(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 224(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

225 Power to search vehicles for goods stolen or obtained by crimes involving dishonesty

(1) Any constable who has reasonable grounds for believing that any property that is stolen or obtained by a crime involving

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dishonesty is in or on any vehicle may, without warrant, search that vehicle for the purpose of locating that property.

(2) Any constable conducting a search under subsection (1) may use reasonable force, if necessary, to effect entry to the vehicle.

(3) During a search under subsection (1), any constable may seize any property that is—
- (a) stolen or obtained by a crime involving dishonesty; and
- (b) found in or on the vehicle.

(4) Every constable must, before conducting a search under subsection (1),—
- (a) identify himself or herself to any person in or on the vehicle; and
- (b) if the constable is not in uniform and if so required, produce evidence that the constable is a constable; and
- (c) tell any person in or on the vehicle that the search is being conducted under this section.

Compare: 1961 No 43 s 227B

Section 225: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 225(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 225(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 225(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 225(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 225(4)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

226 Conversion of vehicle or other conveyance

(1) Every one is liable to imprisonment for a term not exceeding 7 years who, dishonestly and without claim of right, but not so as to be guilty of theft, takes or uses for his or her own purposes or another person's purposes—
- (a) any vehicle, ship, or aircraft; or
- (b) any part of any vehicle, ship, or aircraft; or
- (c) any horse.

(2) Every one is liable to imprisonment for a term not exceeding 2 years who attempts to commit the offence in subsection (1)

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or who, dishonestly and without claim of right, interferes with, or gets into or upon, any vehicle, ship, or aircraft.

Compare: 1961 No 43 s 228

Section 226: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

227 Being in possession of instrument for conversion

Every one is liable to imprisonment for a term not exceeding 1 year who, without lawful authority or excuse, has in his or her possession any instrument capable of being used for taking or converting any vehicle, ship, or aircraft with intent to use it for such a purpose.

Compare: 1961 No 43 s 229

Section 227: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

227A Power of search for goods stolen or unlawfully obtained in transit

[Repealed]

Section 227A: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

227B Power to search vehicles for goods stolen or obtained by crimes involving dishonesty

[Repealed]

Section 227B: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

228 Dishonestly taking or using document

Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to obtain any property, service, pecuniary advantage, or valuable consideration,—

(a) dishonestly and without claim of right, takes or obtains any document; or

(b) dishonestly and without claim of right, uses or attempts to use any document.

Compare: 1961 No 43 s 229A

Section 228: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

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229 Criminal breach of trust

(1) Every one is guilty of a criminal breach of trust who, as a trustee of any trust, dishonestly and contrary to the terms of that trust, converts anything to any use not authorised by the trust.

(2) Every trustee who commits a criminal breach of trust is liable to imprisonment for a term not exceeding 7 years.

Compare: 1961 No 43 s 230

Section 229: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

229A Taking or dealing with certain documents with intent to defraud

[Repealed]

Section 229A: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

230 Taking, obtaining, or copying trade secrets

(1) Every one is liable to imprisonment for a term not exceeding 5 years who, with intent to obtain any pecuniary advantage or to cause loss to any other person,—

(a) dishonestly and without claim of right, takes, obtains, or copies any document or any model or other depiction of any thing or process containing or embodying any trade secret, knowing that it contains or embodies a trade secret; or

(b) dishonestly and without claim of right, takes or obtains any copy of any document or any model or other depiction of any thing or process containing or embodying any trade secret, knowing that it contains or embodies a trade secret.

(2) For the purposes of this section, **trade secret** means any information that—

(a) is, or has the potential to be, used industrially or commercially; and

(b) is not generally available in industrial or commercial use; and

(c) has economic value or potential economic value to the possessor of the information; and

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(d) is the subject of all reasonable efforts to preserve its secrecy.

Section 230: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Burglary

Heading: inserted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

231 Burglary

(1) Every one commits burglary and is liable to imprisonment for a term not exceeding 10 years who—

(a) enters any building or ship, or part of a building or ship, without authority and with intent to commit a crime in the building or ship; or

(b) having entered any building or ship, remains in it without authority and with intent to commit a crime in the building or ship.

(2) In this section and in section 232, **building** means any building or structure of any description, whether permanent or temporary; and includes a tent, caravan, or houseboat; and also includes any enclosed yard or any closed cave or closed tunnel.

(3) For the purposes of this section and section 232,—

(a) entrance into a building or ship is made as soon as any part of the body of the person making the entrance, or any part of any instrument used by that person, is within the building or ship; and

(b) every one who gains entrance to a building or ship by any threat or artifice used for that purpose is to be treated as having entered without authority.

Compare: 161 No 43 ss 240, 241, 242

Section 231: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

232 Aggravated burglary

(1) Every one is liable to imprisonment for a term not exceeding 14 years who,—

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(a) while committing burglary, has a weapon with him or her or uses any thing as a weapon; or

(b) having committed burglary, has a weapon with him or her, or uses any thing as a weapon, while still in the building or ship.

(2) Every one is liable to imprisonment for a term not exceeding 5 years who is armed with a weapon with intent to commit burglary.

Compare: 1961 No 43 ss 240A, 243

Section 232: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

233 Being disguised or in possession of instrument for burglary

(1) Every one is liable to imprisonment for a term not exceeding 3 years who, without lawful authority or excuse,—

(a) has in his or her possession any instrument capable of being used for burglary with intent to use it for such a purpose; or

(b) has his or her face covered or is otherwise disguised with intent to commit any crime.

(2) If any person is convicted of being in possession of an instrument for burglary, the court may, if it thinks fit, order the instrument to be forfeited to the Crown or disposed of as the court directs at the expense of the convicted person, and may order the person to pay any reasonable cost incurred by the Commissioner of Police in retaining the instrument.

Compare: 1961 No 43 s 244; 1999 No 93 s 97(d)

Section 233: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Robbery and blackmail

Heading: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

234 Robbery

(1) Robbery is theft accompanied by violence or threats of violence, to any person or property, used to extort the property stolen or to prevent or overcome resistance to its being stolen.

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(2) Every one who commits robbery is liable to imprisonment for a term not exceeding 10 years.

Compare: 1961 No 43 s 234

Section 234: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

235 Aggravated robbery

Every one is liable to imprisonment for a term not exceeding 14 years who—

(a) robs any person and, at the time of, or immediately before or immediately after, the robbery, causes grievous bodily harm to any person; or

(b) being together with any other person or persons, robs any person; or

(c) being armed with any offensive weapon or instrument, or any thing appearing to be such a weapon or instrument, robs any other person.

Compare: 1961 No 43 s 235

Section 235: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

236 Assault with intent to rob

(1) Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to rob any person,—

(a) causes grievous bodily harm to that person or any other person; or

(b) being armed with any offensive weapon or instrument, or any thing appearing to be such a weapon or instrument, assaults that person or any other person; or

(c) being together with any other person or persons, assaults that person or any other person.

(2) Every one who assaults any person with intent to rob that person or any other person is liable to imprisonment for a term not exceeding 7 years.

Compare: 1961 No 43 ss 235(1), 237

Section 236: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

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237 Blackmail

(1) Every one commits blackmail who threatens, expressly or by implication, to make any accusation against any person (whether living or dead), to disclose something about any person (whether living or dead), or to cause serious damage to property or endanger the safety of any person with intent—

(a) to cause the person to whom the threat is made to act in accordance with the will of the person making the threat; and

(b) to obtain any benefit or to cause loss to any other person.

(2) Every one who acts in the manner described in subsection (1) is guilty of blackmail, even though that person believes that he or she is entitled to the benefit or to cause the loss, unless the making of the threat is, in the circumstances, a reasonable and proper means for effecting his or her purpose.

(3) In this section and in section 239, **benefit** means any benefit, pecuniary advantage, privilege, property, service, or valuable consideration.

Compare: 1961 No 43 s 238

Section 237: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

238 Punishment of blackmail

Every one who commits blackmail is liable to imprisonment for a term not exceeding 14 years.

Compare: 1961 No 43 s 238(1)

Section 238: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

239 Demanding with intent to steal, etc

(1) Every one is liable to imprisonment for a term not exceeding 14 years who, without claim of right, by force or with any threat, compels any person to execute, make, accept, endorse, alter, or destroy any document capable of conferring a pecuniary advantage with intent to obtain any benefit.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who, with menaces or by any threat, demands any property from any persons with intent to steal it.

Compare: 1961 No 43 ss 236, 239

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Section 239: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Crimes involving deceit

Heading: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

240 Obtaining by deception or causing loss by deception

(1) Every one is guilty of obtaining by deception or causing loss by deception who, by any deception and without claim of right,—

(a) obtains ownership or possession of, or control over, any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly; or

(b) in incurring any debt or liability, obtains credit; or

(c) induces or causes any other person to deliver over, execute, make, accept, endorse, destroy, or alter any document or thing capable of being used to derive a pecuniary advantage; or

(d) causes loss to any other person.

(2) In this section, **deception** means—

(a) a false representation, whether oral, documentary, or by conduct, where the person making the representation intends to deceive any other person and—

(i) knows that it is false in a material particular; or

(ii) is reckless as to whether it is false in a material particular; or

(b) an omission to disclose a material particular, with intent to deceive any person, in circumstances where there is a duty to disclose it; or

(c) a fraudulent device, trick, or stratagem used with intent to deceive any person.

Compare: 1961 No 43 ss 246, 247, 270

Section 240: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

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240A Aggravated burglary

[Repealed]

Section 240A: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

241 Punishment of obtaining by deception or causing loss by deception

Every one who is guilty of obtaining by deception or causing loss by deception is liable as follows:

(a) if the loss caused or the value of what is obtained or sought to be obtained exceeds $1,000, to imprisonment for a term not exceeding 7 years:

(b) if the loss caused or the value of what is obtained or sought to be obtained exceeds $500 but does not exceed $1,000, to imprisonment for a term not exceeding 1 year:

(c) if the loss caused or the value of what is obtained or sought to be obtained does not exceed $500, to imprisonment for a term not exceeding 3 months.

Compare: 1961 No 43 s 246(2)

Section 241: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

242 False statement by promoter, etc

(1) Every one is liable to imprisonment for a term not exceeding 10 years who, in respect of any body, whether incorporated or unincorporated and whether formed or intended to be formed, makes or concurs in making or publishes any false statement, whether in any prospectus, account, or otherwise, with intent—

(a) to induce any person, whether ascertained or not, to subscribe to any security within the meaning of the Securities Act 1978; or

(b) to deceive or cause loss to any person, whether ascertained or not; or

(c) to induce any person, whether ascertained or not, to entrust or advance any property to any other person.

(2) In this section, **false statement** means any statement in respect of which the person making or publishing the statement—

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(a) knows the statement is false in a material particular; or
(b) is reckless as to the whether the statement is false in a material particular.

Compare: 1961 No 43 s 250

Section 242: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Money laundering

Heading: inserted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

243 Money laundering

(1) For the purposes of this section and sections 244 and 245,—

conceal, in relation to property, means to conceal or disguise the property; and includes, without limitation,—
(a) to convert the property from one form to another:
(b) to conceal or disguise the nature, source, location, disposition, or ownership of the property or of any interest in the property

deal with, in relation to property, means to deal with the property in any manner and by any means; and includes, without limitation,—
(a) to dispose of the property, whether by way of sale, purchase, gift, or otherwise:
(b) to transfer possession of the property:
(c) to bring the property into New Zealand:
(d) to remove the property from New Zealand

interest, in relation to property, means—
(a) a legal or equitable estate or interest in the property; or
(b) a right, power, or privilege in connection with the property

proceeds, in relation to a serious offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence

property means real or personal property of any description, whether situated in New Zealand or elsewhere and whether tangible or intangible; and includes an interest in any such real or personal property

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serious offence means an offence punishable by imprisonment for a term of 5 years or more; and includes any act, wherever committed, that, if committed in New Zealand, would constitute an offence punishable by imprisonment for a term of 5 years or more.

(2) Subject to sections 244 and 245, every one is liable to imprisonment for a term not exceeding 7 years who, in respect of any property that is the proceeds of a serious offence, engages in a money laundering transaction, knowing or believing that all or part of the property is the proceeds of a serious offence, or being reckless as to whether or not the property is the proceeds of a serious offence.

(3) Subject to sections 244 and 245, every one is liable to imprisonment for a term not exceeding 5 years who obtains or has in his or her possession any property (being property that is the proceeds of a serious offence committed by another person)—

(a) with intent to engage in a money laundering transaction in respect of that property; and

(b) knowing or believing that all or part of the property is the proceeds of a serious offence, or being reckless as to whether or not the property is the proceeds of a serious offence.

(4) For the purposes of this section, a person engages in a money laundering transaction if, for the purpose of concealing any property or enabling another person to conceal any property, that person—

(a) deals with that property; or

(b) assists any other person, whether directly or indirectly, to deal with that property.

(5) In any prosecution for an offence against subsection (2) or subsection (3),—

(a) it is not necessary for the prosecution to prove that the accused knew or believed that the property was the proceeds of a particular serious offence or a particular class of serious offence:

(b) it is no defence that the accused believed any property to be the proceeds of a particular serious offence when in fact the property was the proceeds of another serious offence.

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(6) Nothing in this section or in sections 244 or 245 limits or restricts the operation of any other provision of this Act or any other enactment.

Compare: 1961 No 43 ss 233, 257A(1)–(5)

Section 243: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

244 Defence of enforcement of enactment

It is a defence to a charge under section 243 if the person charged proves that the act to which the charge relates was done by that person, in good faith, for the purpose of, or in connection with,—

(a) the enforcement or intended enforcement of this section, any other provision of this Act, or any other enactment relating to a serious offence; or

(b) the enforcement or intended enforcement of the Criminal Proceeds (Recovery) Act 2009; or

(ba) the enforcement or intended enforcement of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; or

(c) the enforcement or intended enforcement of the Financial Transactions Reporting Act 1996.

Compare: 1961 No 43 s 257A(6)

Section 244: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 244(b): amended, on 1 December 2009, by section 176 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Section 244(ba): inserted, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

245 Section 243 not to apply to certain acts committed outside New Zealand

(1) Subject to subsection (2), section 243 does not apply if—

(a) any property is alleged to be the proceeds of a serious offence; and

(b) the act that is alleged to constitute that serious offence was committed outside New Zealand; and

(c) the act was not, at the time of its commission, an offence under the law of the place where the act was done.

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(2) If a person is charged with an offence under this section and the act that is alleged to constitute the serious offence resulting in the proceeds was committed outside New Zealand, it is to be presumed, unless the person charged puts the matter at issue, that the act was an offence under the law of the place where the act was done.

Compare: 1961 No 43 s 257A(6A), (6B)

Section 245: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Receiving

Heading: inserted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

246 Receiving

(1) Every one is guilty of receiving who receives any property stolen or obtained by any other crime, knowing that property to have been stolen or so obtained, or being reckless as to whether or not the property had been stolen or so obtained.

(2) For the purposes of this section, property that was obtained by any act committed outside New Zealand that, if it had been committed in New Zealand, would have constituted a crime is, subject to subsection (5), to be regarded as having been obtained by a crime.

(3) The act of receiving any property stolen or obtained by any other crime is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of, or control over, the property or helps in concealing or disposing of the property.

(4) If—

(a) any property stolen or obtained by any other crime has been returned to the owner; or

(b) legal title to any such property has been acquired by any person,—

a subsequent receiving of it is not an offence, even though the receiver may know that the property had previously been stolen or obtained by any other crime.

(5) If a person is charged with an offence under this section and the property was obtained by an act committed outside New

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Zealand, it is to be presumed, unless the person charged puts the matter at issue, that the doing of the act by which the property was obtained was an offence under the law of the place where the act was done.

Compare: 1961 No 43 ss 258(1), 260, 261

Section 246: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

247 Punishment of receiving

Every person who is guilty of receiving is liable as follows:

(a) if the value of the property received exceeds $1,000, to imprisonment for a term not exceeding 7 years:

(b) if the value of the property received exceeds $500 but does not exceed the sum of $1,000, to imprisonment for a term not exceeding 1 year:

(c) if the value of the property received does not exceed $500, to imprisonment for a term not exceeding 3 months.

Compare: 1961 No 43 s 258(1)

Section 247: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Crimes involving computers

Heading: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

248 Interpretation

For the purposes of this section and sections 249 and 250,—

access, in relation to any computer system, means instruct, communicate with, store data in, receive data from, or otherwise make use of any of the resources of the computer system

computer system—

(a) means—

(i) a computer; or

(ii) 2 or more interconnected computers; or

(iii) any communication links between computers or to remote terminals or another device; or

(iv) 2 or more interconnected computers combined with any communication links between comput-

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ers or to remote terminals or any other device; and

(b) includes any part of the items described in paragraph (a) and all related input, output, processing, storage, software, or communication facilities, and stored data.

Section 248: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

249 Accessing computer system for dishonest purpose

(1) Every one is liable to imprisonment for a term not exceeding 7 years who, directly or indirectly, accesses any computer system and thereby, dishonestly or by deception, and without claim of right,—

(a) obtains any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or

(b) causes loss to any other person.

(2) Every one is liable to imprisonment for a term not exceeding 5 years who, directly or indirectly, accesses any computer system with intent, dishonestly or by deception, and without claim of right,—

(a) to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or

(b) to cause loss to any other person.

(3) In this section, **deception** has the same meaning as in section 240(2).

Section 249: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

250 Damaging or interfering with computer system

(1) Every one is liable to imprisonment for a term not exceeding 10 years who intentionally or recklessly destroys, damages, or alters any computer system if he or she knows or ought to know that danger to life is likely to result.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who intentionally or recklessly, and without authorisation, knowing that he or she is not authorised, or being reckless as to whether or not he or she is authorised,—

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(a) damages, deletes, modifies, or otherwise interferes with or impairs any data or software in any computer system; or

(b) causes any data or software in any computer system to be damaged, deleted, modified, or otherwise interfered with or impaired; or

(c) causes any computer system to—

(i) fail; or

(ii) deny service to any authorised users.

Section 250: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

251 Making, selling, or distributing or possessing software for committing crime

(1) Every one is liable to imprisonment for a term not exceeding 2 years who invites any other person to acquire from him or her, or offers or exposes for sale or supply to any other person, or agrees to sell or supply or sells or supplies to any other person, or has in his or her possession for the purpose of sale or supply to any other person, any software or other information that would enable another person to access a computer system without authorisation—

(a) the sole or principal use of which he or she knows to be the commission of a crime; or

(b) that he or she promotes as being useful for the commission of a crime (whether or not he or she also promotes it as being useful for any other purpose), knowing or being reckless as to whether it will be used for the commission of a crime.

(2) Every one is liable to imprisonment for a term not exceeding 2 years who—

(a) has in his or her possession any software or other information that would enable him or her to access a computer system without authorisation; and

(b) intends to use that software or other information to commit a crime.

Compare: 1961 No 43 ss 216D(1), 229, 244

Section 251: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

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252 Accessing computer system without authorisation

(1) Every one is liable to imprisonment for a term not exceeding 2 years who intentionally accesses, directly or indirectly, any computer system without authorisation, knowing that he or she is not authorised to access that computer system, or being reckless as to whether or not he or she is authorised to access that computer system.

(2) To avoid doubt, subsection (1) does not apply if a person who is authorised to access a computer system accesses that computer system for a purpose other than the one for which that person was given access.

(3) To avoid doubt, subsection (1) does not apply if access to a computer system is gained by a law enforcement agency—

(a) under the execution of an interception warrant or search warrant; or

(b) under the authority of any Act or rule of the common law.

Section 252: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

253 Qualified exemption to access without authorisation offence for New Zealand Security Intelligence Service

Section 252 does not apply if—

(a) the person accessing a computer system is—

(i) the person specified in an interception warrant issued under the New Zealand Security Intelligence Service Act 1969; or

(ii) a person, or member of a class of persons, requested to give any assistance that is specified in that warrant; and

(b) the person accessing a computer system is doing so for the purpose of intercepting or seizing any communication, document, or thing of the kind specified in that warrant.

Section 253: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

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254 Qualified exemption to access without authorisation offence for Government Communications Security Bureau

Section 252 does not apply if the person that accesses a computer system—

(a) is authorised to access that computer system under the Government Communications Security Bureau Act 2003; and

(b) accesses that computer system in accordance with that authorisation.

Section 254: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Forgery and counterfeiting

Heading: inserted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

255 Interpretation

For the purposes of this section and sections 256 and 263,—

bank note means any negotiable instrument used or intended for use as currency and issued by the Reserve Bank of New Zealand, or by any bank in any country other than New Zealand, or by the government of any such country, or by any other authority authorised by law to issue notes

false document means a document—

(a) of which the whole or any material part purports to be made by any person who did not make it, or by a fictitious person; or

(b) of which the whole or any material part purports to be made by or on behalf of any person who did not authorise its making, or on behalf of a fictitious person; or

(c) of which the whole or any material part has been altered, whether by addition, insertion, deletion, obliteration, erasure, removal, or otherwise, and that purports to have been altered by or on behalf of a person who did not alter it or authorise its alteration, or by or on behalf of a fictitious person; or

(d) that is, in whole or in part, a reproduction of any other document, and that purports to have been made by or

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on behalf of a person who did not make it or authorise its making, or by or on behalf of a fictitious person; or

(e) that is made in the name of a person, either by that person or by that person's authority, with the intention that it should pass as being made by some other person who did not make it, or by a fictitious person.

Compare: 1961 No 43 s 263

Section 255: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

256 Forgery

(1) Every one is liable to imprisonment for a term not exceeding 10 years who makes a false document with the intention of using it to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration.

(2) Every one is liable to imprisonment for a term not exceeding 3 years who makes a false document, knowing it to be false, with the intent that it in any way be used or acted upon, whether in New Zealand or elsewhere, as genuine.

(3) Forgery is complete as soon as the document is made with the intent described in subsection (1) or with the knowledge and intent described in subsection (2).

(4) Forgery is complete even though the false document may be incomplete, or may not purport to be such a document as would be binding or sufficient in law, if it is so made and is such as to indicate that it was intended to be acted upon as genuine.

Compare: 1961 No 43 ss 264, 265

Section 256: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

257 Using forged documents

(1) Every one is liable to imprisonment for a term not exceeding 10 years who, knowing a document to be forged,—

(a) uses the document to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or

(b) uses, deals with, or acts upon the document as if it were genuine; or

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(c) causes any other person to use, deal with, or act upon it as if it were genuine.

(2) For the purposes of this section, a document made or altered outside New Zealand in a manner that would have amounted to forgery if the making or alteration had been done in New Zealand is to be regarded as a forged document.

Compare: 1961 No 43 s 266

Section 257: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

257A Money laundering

[Repealed]

Section 257A: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

257B Immunity from liability for disclosure of information

[Repealed]

Section 257B: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

258 Altering, concealing, destroying, or reproducing documents with intent to deceive

(1) Every one is liable to imprisonment for a term not exceeding 10 years who, with intent to obtain by deception any property, privilege, service, pecuniary advantage, benefit, or valuable consideration, or to cause loss to any other person,—

(a) alters, conceals, or destroys any document, or causes any document to be altered, concealed, or destroyed; or

(b) makes a document or causes a document to be made that is, in whole or in part, a reproduction of any other document.

(2) An offence against subsection (1) is complete as soon as the alteration or document is made with the intent referred to in that subsection, although the offender may not have intended that any particular person should—

(a) use or act upon the document altered or made; or

(b) act on the basis of the absence of the document concealed or destroyed; or

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(c) be induced to do or refrain from doing anything.

Compare: 1961 No 43 ss 231, 256, 266A

Section 258: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

259 Using altered or reproduced document with intent to deceive

(1) Every one is liable to imprisonment for a term not exceeding 10 years who, knowing any document to have been made or altered in the manner and with the intent referred to in section 258, with intent to obtain by deception any property, privilege, service, pecuniary advantage, benefit, or valuable consideration, or to cause loss to any other person,—

(a) uses, or deals with, or acts upon, the document; or

(b) causes any person to use or deal with, or act upon, the document.

(2) For the purposes of this section, it does not matter that the document was altered or made outside New Zealand.

Compare: 1961 No 43 s 266B

Section 259: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

260 False accounting

Every one is liable to imprisonment for a term not exceeding 10 years who, with intent to obtain by deception any property, privilege, service, pecuniary advantage, benefit, or valuable consideration, or to deceive or cause loss to any other person,—

(a) makes or causes to be made, or concurs in the making of, any false entry in any book or account or other document required or used for accounting purposes; or

(b) omits or causes to be omitted, or concurs in the omission of, any material particular from any such book or account or other document; or

(c) makes any transfer of any interest in a stock, debenture, or debt in the name of any person other than the owner of that interest.

Compare: 1961 No 43 ss 251–254

Section 260: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

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261 Counterfeiting public seals

Every one is liable to imprisonment for a term not exceeding 10 years who—

(a) unlawfully makes or counterfeits—

(i) any public seal in use at any time in New Zealand or any other country; or

(ii) any seal or stamp used in New Zealand or any other country by any court, local authority, public body, or public officer; or

(iii) the impression of any such seal or stamp; or

(b) uses any such seal, stamp, or impression, knowing it to be counterfeit.

Compare: 1961 No 43 s 267

Section 261: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

262 Counterfeiting corporate seals

Every one is liable to imprisonment for a term not exceeding 5 years who—

(a) unlawfully makes or counterfeits—

(i) any seal or stamp used in New Zealand or any other country by any company or other corporate body (not being a body to which section 261 applies), or by any other person; or

(ii) the impression of any such seal or stamp; or

(b) uses any such seal, stamp, or impression, knowing it to be counterfeit.

Compare: 1961 No 43 s 268

Section 262: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

263 Possessing forged bank notes

Every one is liable to imprisonment for a term not exceeding 7 years who, without lawful authority or excuse (the proof of the lawful authority or excuse lying on him or her), purchases or receives from any person, or has in his or her possession or under his or her control, any forged bank note, whether complete or not, knowing it to be forged.

Compare: 1961 No 43 s 271

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Section 263: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

264 Paper or implements for forgery

Every one is liable to imprisonment for a term not exceeding 10 years who, without lawful authority or excuse, has in his or her possession or under his or her control anything capable of being used to forge any document with intent to use it for such a purpose.

Compare: 1961 No 43 s 274

Section 264: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

265 Imitating authorised or customary marks

(1) Every one is liable to imprisonment for a term not exceeding 5 years who dishonestly counterfeits or imitates any mark, word, or description that is—

(a) impressed or otherwise made, or written upon, or affixed to, any chattel, or upon or to any thing containing or connected with any chattel; and

(b) a mark, word, or description that is by recognised practice understood to denote that the thing upon or to which it is impressed, made, written, or affixed has been examined and certified to be of a particular quality by any particular officer or other person.

(2) Subsection (1) applies whether the officer or other person referred to in subsection (1)(b) is or is not expressly authorised by law to so certify.

Compare: 1961 No 43 ss 280, 281

Section 265: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Coinage

Heading: inserted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

266 Offences involving coinage

(1) For the purposes of this section,—

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counterfeit coin includes any coin that has been altered in any manner so as to resemble any other coin

current coin means coin of any substance lawfully current in New Zealand or in any other country.

(2) For the purposes of this section,—

(a) a thing is treated as being in the possession of any person if that person has it in his or her personal custody or possession, or if that person knowingly has it in the actual custody or possession of any other person, or in some place (whether or not that person occupies the place), for the use or benefit of himself or herself or any other person:

(b) a coin is deemed to be made or counterfeited even though the making or counterfeiting has not been finished or perfected.

(3) Every one is liable to imprisonment for a term not exceeding 10 years who—

(a) makes or counterfeits any coin resembling any current coin with the intention that it be acted upon as genuine; or

(b) without lawful authority or excuse, has in his or her possession or under his or her control any thing intended to be used to make or counterfeit any coin resembling any current coin, with intent to use it for such a purpose.

(4) Every one is liable to imprisonment for a term not exceeding 7 years who, without lawful authority or excuse,—

(a) buys, sells, or receives, or offers to buy, sell, or receive, any counterfeit coin resembling any current coin at or for a lower rate or value than the counterfeit coin purports to be; or

(b) imports or receives into New Zealand any counterfeit coin resembling any current coin, knowing it to be counterfeit; or

(c) exports from New Zealand, or puts on board any ship or aircraft for the purpose of being exported, any counterfeit coin resembling any current coin, knowing it to be counterfeit.

(5) Every one is liable to imprisonment for a term not exceeding 3 years who—

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(a) passes or attempts to pass any counterfeit coin knowing it to be counterfeit; or

(b) passes or attempts to pass as current coin any coin that is not current coin or any piece of metal or other substance, knowing that it is not current coin.

(6) Every one is liable to imprisonment for a term not exceeding 1 year who has in his or her possession or under his or her control any counterfeit coin, knowing it to be counterfeit and intending to pass it as genuine.

Compare: 1961 No 43 ss 282–286, 289–292

Section 266: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

266A Altering or reproducing document with intent to defraud

[Repealed]

Section 266A: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

266B Using altered or reproduced document with intent to defraud

[Repealed]

Section 266B: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Arson, damage, and waste

Heading: inserted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

267 Arson

(1) Every one commits arson and is liable to imprisonment for a term not exceeding 14 years who—

(a) intentionally or recklessly damages by fire or by means of any explosive any property if he or she knows or ought to know that danger to life is likely to ensue; or

(b) intentionally or recklessly, and without claim of right, damages by fire or by means of any explosive any immovable property, or any vehicle, ship, or aircraft, in which that person has no interest; or

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(c) intentionally damages by fire or by means of any explosive any immovable property, or any vehicle, ship or aircraft, with intent to obtain any benefit, or to cause loss to any other person.

(2) Every one commits arson and is liable to imprisonment for a term not exceeding 7 years who—

(a) intentionally or recklessly, and without claim of right, damages by fire or by means of any explosive any property in which that person has no interest (other than property referred to in subsection (1)); or

(b) intentionally or recklessly damages by fire or by means of any explosive any property (other than property referred to in subsection (1)) with intent to obtain any benefit, or with intent to cause loss to any other person.

(3) Every one is liable to imprisonment for a term not exceeding 5 years who intentionally damages by fire or by means of any explosive any property with reckless disregard for the safety of any other property.

(4) In this section and in section 269, **benefit** means any benefit, pecuniary advantage, privilege, property, service, or valuable consideration.

Compare: 1961 No 43 ss 294, 296

Section 267: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

268 Attempted arson

Every one is liable to imprisonment for a term not exceeding 10 years who attempts to commit arson in respect of any immovable property or any vehicle, ship, or aircraft.

Compare: 1961 No 43 s 295

Section 268: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

269 Intentional damage

(1) Every one is liable to imprisonment for a term not exceeding 10 years who intentionally or recklessly destroys or damages any property if he or she knows or ought to know that danger to life is likely to result.

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(2) Every one is liable to imprisonment for a term not exceeding 7 years who—
   (a) intentionally or recklessly, and without claim of right, destroys or damages any property in which that person has no interest; or
   (b) intentionally or recklessly, and without claim of right, destroys or damages any property with intent to obtain any benefit, or with intent to cause loss to any other person.

(3) Every one is liable to imprisonment for a term not exceeding 7 years who intentionally destroys or damages any property with reckless disregard for the safety of any other property.

Compare: 1961 No 43 s 298

Section 269: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

270 Endangering transport

(1) Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to cause danger to persons or property or with reckless disregard for the safety of persons or property,—
   (a) interferes with any transport facility; or
   (b) does anything to any transport facility that is likely to cause danger to persons or property.

(2) For the purposes of this section, **transport facility** means any vehicle, ship, or aircraft, and any property used in connection with the transportation of persons or goods; and includes equipment of any kind used in navigation or for the guidance of any vehicle, ship, or aircraft.

Compare: 1961 No 43 ss 203, 300–303

Section 270: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

271 Waste or diversion of electricity, gas, or water

Every one is liable to imprisonment for a term not exceeding 5 years who, without claim of right and with intent to cause loss or harm to any person, wastes or diverts any electricity, gas, or water, or causes it to be wasted or diverted.

Compare: 1961 No 43 s 299

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Section 271: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

272 Providing explosive to commit crime

Every one is liable to imprisonment for a term not exceeding 2 years who knowingly has in his or her possession or makes any explosive substance, or any dangerous engine, instrument, or thing, with intent to use or enable another person to use the substance, dangerous engine, instrument, or thing, to commit a crime.

Compare: 1961 No 43 s 305

Section 272: substituted, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

273 Using probate obtained by forgery or perjury

[Repealed]

Section 273: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

274 Paper or implements for forgery

[Repealed]

Section 274: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

275 Counterfeiting stamps

[Repealed]

Section 275: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

276 Falsifying registers

[Repealed]

Section 276: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

277 Falsifying extracts from registers

[Repealed]

Section 277: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

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278 Uttering false certificates

[Repealed]

Section 278: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

279 Forging certificates

[Repealed]

Section 279: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

280 Imitating authorised marks

[Repealed]

Section 280: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

281 Imitating customary marks

[Repealed]

Section 281: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

282 Interpretation

[Repealed]

Section 282: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

283 Preparations for coining

[Repealed]

Section 283: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

284 Counterfeiting coin

[Repealed]

Section 284: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

285 Altering coin

[Repealed]

Section 285: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

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286 Impairing coin

[Repealed]

Section 286: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

287 Defacing coin

[Repealed]

Section 287: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

288 Melting coin

[Repealed]

Section 288: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

289 Possessing counterfeit coin

[Repealed]

Section 289: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

290 Uttering counterfeit coin

[Repealed]

Section 290: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

291 Buying and selling counterfeit coin

[Repealed]

Section 291: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

292 Importing and exporting counterfeit coin

[Repealed]

Section 292: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

293 What constitutes criminal damage

[Repealed]

Section 293: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

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294 Arson

[Repealed]

Section 294: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

295 Attempted arson

[Repealed]

Section 295: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

296 Damage to other property by fire or explosive

[Repealed]

Section 296: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

297 Attempt to damage property by fire or explosive

[Repealed]

Section 297: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

298 Wilful damage

[Repealed]

Section 298: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

298A Causing disease or sickness in animals

(1) Every one is liable to imprisonment for a term not exceeding 10 years who, without lawful justification or reasonable excuse, directly or indirectly causes or produces in an animal a disease or sickness that causes a situation of a kind described in subsection (2) to occur, either—

(a) intending a situation of that kind to occur; or

(b) being reckless as to whether a situation of that kind occurs.

(2) A situation of a kind referred to in subsection (1) is a situation that—

(a) constitutes a serious risk to the health or safety of an animal population; and

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(b) is likely, directly or indirectly, to cause major damage to the national economy of New Zealand.

Section 298A: inserted, on 17 November 2003, by section 5 of the Crimes Amendment Act (No 2) 2003 (2003 No 105).

298B Contaminating food, crops, water, or other products

Every one is liable to imprisonment for a term not exceeding 10 years who contaminates food, crops, water, or any other products, without lawful justification or reasonable excuse, and either knowing or being reckless as to whether the food, crops, water, or products are intended for human consumption, and—

(a) intending to harm a person or reckless as to whether any person is harmed; or

(b) intending to cause major economic loss to a person or reckless as to whether major economic loss is caused to any person; or

(c) intending to cause major damage to the national economy of New Zealand or reckless as to whether major damage is caused to the national economy of New Zealand.

Section 298B: inserted, on 17 November 2003, by section 5 of the Crimes Amendment Act (No 2) 2003 (2003 No 105).

299 Wilful waste or diversion of water, gas, or electricity

[Repealed]

Section 299: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

300 Interfering with means of transport

[Repealed]

Section 300: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

301 Wrecking

[Repealed]

Section 301: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

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302 Attempting to wreck

[Repealed]

Section 302: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

303 Interfering with signals, etc

[Repealed]

Section 303: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

304 Interfering with mines

[Repealed]

Section 304: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

305 Providing explosive to commit crime

[Repealed]

Section 305: repealed, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Part 11
Threatening, conspiring, and attempting to commit offences

306 Threatening to kill or do grievous bodily harm

(1) Every one is liable to imprisonment for a term not exceeding 7 years who—

(a) threatens to kill or do grievous bodily harm to any person; or

(b) sends or causes to be received, knowing the contents thereof, any letter or writing containing any threat to kill or do grievous bodily harm to any person.

(2) *[Repealed]*

Compare: 1908 No 32 s 342; 1941 No 10 Schedule

Section 306(2): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

307 Threatening to destroy property

(1) Every one is liable to imprisonment for a term not exceeding 3 years who sends or causes to be received, knowing the con-

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tents thereof, any letter or writing threatening to destroy or damage any property, or to destroy or injure any animal.

(2) Nothing shall be an offence against subsection (1) unless it is done without lawful justification or excuse, and without claim of right.

Compare: 1908 No 32 s 343; 1941 No 10 Schedule

Section 307(2): amended, on 1 October 2003, by section 16 of the Crimes Amendment Act 2003 (2003 No 39).

307A Threats of harm to people or property

(1) Every one is liable to imprisonment for a term not exceeding 7 years if, without lawful justification or reasonable excuse, and intending to achieve the effect stated in subsection (2), he or she—

(a) threatens to do an act likely to have 1 or more of the results described in subsection (3); or

(b) communicates information—

(i) that purports to be about an act likely to have 1 or more of the results described in subsection (3); and

(ii) that he or she believes to be false.

(2) The effect is causing a significant disruption of 1 or more of the following things:

(a) the activities of the civilian population of New Zealand:

(b) something that is or forms part of an infrastructure facility in New Zealand:

(c) civil administration in New Zealand (whether administration undertaken by the Government of New Zealand or by institutions such as local authorities, District Health Boards, or boards of trustees of schools):

(d) commercial activity in New Zealand (whether commercial activity in general or commercial activity of a particular kind).

(3) The results are—

(a) creating a risk to the health of 1 or more people:

(b) causing major property damage:

(c) causing major economic loss to 1 or more persons:

(d) causing major damage to the national economy of New Zealand.

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(4) To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that a person has committed an offence against subsection (1).

Section 307A: inserted, on 17 November 2003, by section 6 of the Crimes Amendment Act (No 2) 2003 (2003 No 105).

308 Threatening acts

Every one is liable to imprisonment for a term not exceeding 3 years who, with intent to intimidate or annoy any person,—

(a) breaks or damages or threatens to break or damage any dwellinghouse; or

(b) by the discharge of firearms or otherwise, alarms or attempts to alarm any person in any dwellinghouse.

Compare: 1908 No 32 ss 344, 345

309 Conspiring to prevent collection of rates or taxes

Every one is liable to imprisonment for a term not exceeding 2 years who conspires with any other person by force or intimidation to prevent the collection of any rates or taxes the levying and collection of which is authorised by law.

Compare: 1908 No 32 s 346

310 Conspiring to commit offence

(1) Subject to the provisions of subsection (2), every one who conspires with any person to commit any offence, or to do or omit, in any part of the world, anything of which the doing or omission in New Zealand would be an offence, is liable to imprisonment for a term not exceeding 7 years if the maximum punishment for that offence exceeds 7 years' imprisonment, and in any other case is liable to the same punishment as if he had committed that offence.

(2) This section shall not apply where a punishment for the conspiracy is otherwise expressly prescribed by this Act or by some other enactment.

(3) Where under this section any one is charged with conspiring to do or omit anything anywhere outside New Zealand, it is a defence to prove that the doing or omission of the act to which

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the conspiracy relates was not an offence under the law of the place where it was, or was to be, done or omitted.

Compare: 1908 No 32 ss 347, 348

311 Attempt to commit or procure commission of offence

(1) Every one who attempts to commit any offence in respect of which no punishment for the attempt is expressly prescribed by this Act or by some other enactment is liable to imprisonment for a term not exceeding 10 years if the maximum punishment for that offence is imprisonment for life, and in any other case is liable to not more than half the maximum punishment to which he would have been liable if he had committed that offence.

(2) Every one who incites, counsels, or attempts to procure any person to commit any offence, when that offence is not in fact committed, is liable to the same punishment as if he had attempted to commit that offence, unless in respect of any such case a punishment is otherwise expressly provided by this Act or by some other enactment.

Compare: 1908 No 32 ss 349, 350, 351; 1922 No 35 s 3

312 Accessory after the fact to crime

Every one who is accessory after the fact to any crime punishable by imprisonment, being a crime in respect of which no express provision is made by this Act or by some other enactment for the punishment of an accessory after the fact, is liable to imprisonment for a term not exceeding 7 years if the maximum punishment for that crime is imprisonment for life, and not exceeding 5 years if such maximum punishment is imprisonment for 10 or more years; and in any other case is liable to not more than half the maximum punishment to which he would have been liable if he had committed the crime.

Compare: 1908 No 32 ss 352, 353

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Part 11A
Obtaining evidence by interception devices

Part 11A: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Part 11A heading: amended, on 1 October 2003, by section 17 of the Crimes Amendment Act 2003 (2003 No 39).

Interpretation

Heading: inserted, on 1 February 1998, by section 7 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

312A Interpretation

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

facility means an electronic address, phone number, or similar facility that enables private communications to—

(a) take place between individuals; or

(b) be sent to or from an identified individual

intercept, in relation to a private communication, includes hear, listen to, record, monitor, acquire, or receive the communication either—

(a) while it is taking place; or

(b) while it is in transit

interception device—

(a) means any electronic, mechanical, or electromagnetic instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept a private communication; but

(b) does not include a hearing aid or similar device used to correct subnormal hearing of the user to no better than normal hearing

organised criminal enterprise means a continuing association of 3 or more persons having as its object or as one of its objects the acquisition of substantial income or assets by means of a continuing course of criminal conduct

private communication—

(a) means a communication (whether in oral or written form or otherwise) made under circumstances that may reasonably be taken to indicate that any party to the

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communication desires it to be confined to the parties to the communication; but

(b) does not include such a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so

serious violent offence means any offence—

(a) that is punishable by a period of imprisonment for a term of 7 years or more; and

(b) where the conduct constituting the offence involves—

(i) loss of a person's life or serious risk of loss of a person's life; or

(ii) serious injury to a person or serious risk of serious injury to a person; or

(iii) serious damage to property in circumstances endangering the physical safety of any person; or

(iv) perverting the course of justice, where the purpose of the conduct is to prevent, seriously hinder, or seriously obstruct the detection, investigation, or prosecution of any offence—

(A) that is punishable by a period of imprisonment for a term of 7 years or more; and

(B) that involved, involves, or would involve conduct of the kind referred to in any of subparagraphs (i) to (iii)

specified offence means any of the following offences:

(a) an offence punishable by a period of imprisonment for a term of 7 years or more:

(b) an offence against section 243(3) (which relates to certain money laundering offences):

(c) an offence punishable under section 247(b) or (c) (which relate to certain offences in respect of receiving property dishonestly obtained)

(d) *[Repealed]*

(e) *[Repealed]*

(f) *[Repealed]*

terrorist offence means an offence against any of sections 6A to 13E of the Terrorism Suppression Act 2002.

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(2) A reference in this Part to a party to a private communication is a reference to—

(a) any originator of the communication and any person intended by the originator to receive it; and

(b) a person who, with the express or implied consent of any originator of the communication or any person intended by the originator to receive it, intercepts the communication.

Section 312A: substituted, on 1 February 1998, by section 7 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 312A(1) **facility**: inserted, on 1 October 2003, by section 18(3) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312A(1) **intercept**: substituted, on 1 October 2003, by section 18(1) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312A(1) **interception device**: inserted, on 1 October 2003, by section 18(3) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312A(1) **listening device**: repealed, on 1 October 2003, by section 18(2) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312A(1) **private communication**: substituted, on 1 October 2003, by section 18(1) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312A(1) **specified offence** paragraph (a): amended, on 1 December 2009, by section 6(1) of the Crimes Amendment Act 2009 (2009 No 47).

Section 312A(1) **specified offence** paragraph (b): substituted, on 1 December 2009, by section 6(2) of the Crimes Amendment Act 2009 (2009 No 47).

Section 312A(1) **specified offence** paragraph (c): substituted, on 1 December 2009, by section 6(2) of the Crimes Amendment Act 2009 (2009 No 47).

Section 312A(1) **specified offence** paragraph (d): repealed, on 1 December 2009, by section 6(2) of the Crimes Amendment Act 2009 (2009 No 47).

Section 312A(1) **specified offence** paragraph (e): repealed, on 1 December 2009, by section 6(2) of the Crimes Amendment Act 2009 (2009 No 47).

Section 312A(1) **specified offence** paragraph (f): repealed, on 1 December 2009, by section 6(2) of the Crimes Amendment Act 2009 (2009 No 47).

Section 312A(1) **terrorist offence**: added, on 31 October 2003, by section 7 of the Crimes Amendment Act (No 2) 2003 (2003 No 105).

Section 312A(1) **terrorist offence**: amended, on 20 November 2007, by section 47(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Applications for interception warrants in relation to organised criminal enterprises

Heading: inserted, on 1 February 1998, by section 8 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

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312B Application by Police for warrant to intercept private communications

(1) An application may be made in accordance with this section to a Judge of the High Court for a warrant for any Police employee to intercept a private communication by means of an interception device in any case where there are reasonable grounds for believing—

(a) either that—

(i) a person has committed, or is committing, an offence under section 98A(1); or

(ii) a member of an organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least 1 is a specified offence, as part of a continuing course of criminal conduct planned, organised, or undertaken by members of the enterprise; and

(b) it is unlikely that the Police investigation of the case could be brought to a successful conclusion without the grant of the warrant.

(2) Every application under subsection (1) shall be made by a constable who is of or above the level of position of inspector, in writing, and on oath, and shall set out the following particulars:

(a) the facts relied upon to show that there are reasonable grounds for believing either—

(i) that a person has committed, or is committing, an offence under section 98A(1); or

(ii) that—

(A) there is an organised criminal enterprise; and

(B) a member of the organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least 1 is a specified offence, as part of a continuing course of criminal conduct planned, organised, or undertaken by members of the enterprise; and

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(b) a description of the manner in which it is proposed to intercept private communications; and

(c) the name and address, if known, of the suspect whose private communications there are reasonable grounds for believing will assist the Police investigation of the case, or, if the name and address of the suspect are not known, a general description of the premises, place, thing, or type of facility in respect of which it is proposed to intercept private communications, being premises or a place, thing, or type of facility believed to be used for any purpose by any member of the organised criminal enterprise or by the person who is believed to have committed, or be committing, an offence under section 98A(1) (as the case may be); and

(d) the period for which a warrant is requested; and

(e) whichever of the following is applicable:

(i) the other investigative procedures and techniques that have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case, and the reasons why they have failed in that respect; or

(ii) the reasons why it appears that other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; or

(iii) the reasons why it is considered that the case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications.

Section 312B: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 312B(1): substituted, on 1 December 2009, by section 7(1) of the Crimes Amendment Act 2009 (2009 No 47).

Section 312B(2): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 312B(2)(a): substituted, on 1 December 2009, by section 7(2) of the Crimes Amendment Act 2009 (2009 No 47).

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Section 312B(2)(c): substituted, on 1 October 2003, by section 19(2) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312B(2)(c): amended, on 1 December 2009, by section 7(3) of the Crimes Amendment Act 2009 (2009 No 47).

312C Matters on which Judge must be satisfied in respect of applications

(1) On an application made in accordance with section 312B, the Judge may grant an interception warrant if the Judge is satisfied that it would be in the best interests of the administration of justice to do so, and that—

(a) there are reasonable grounds for believing either—

(i) that a person has committed, or is committing, an offence under section 98A(1); or

(ii) that—

(A) there is an organised criminal enterprise; and

(B) a member of the organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least 1 is a specified offence, as part of a continuing course of criminal conduct planned, organised, or undertaken by members of the enterprise; and

(b) there are reasonable grounds for believing that evidence relevant to the investigation of the case will be obtained through the use of an interception device to intercept private communications; and

(c) whichever of the following is applicable:

(i) other investigative procedures and techniques have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case; or

(ii) other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; or

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(iii) the case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications; and

(d) the private communications to be intercepted are not likely to be privileged in proceedings in a court of law by virtue of any of the provisions of Part 3 of the Evidence Amendment Act (No 2) 1980 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client.

(2) Without limiting subsection (1), in determining whether or not to issue an interception warrant under this section, the Judge must consider the extent to which the privacy of any person or persons would be likely to be interfered with by the interception, under the warrant, of private communications.

Section 312C: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 312C(1)(a): substituted, on 1 December 2009, by section 8 of the Crimes Amendment Act 2009 (2009 No 47).

Section 312C(1)(b): amended, on 1 October 2003, by section 20 of the Crimes Amendment Act 2003 (2003 No 39).

Section 312C(2): added, on 1 February 1998, by section 10(2) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Applications for interception warrants in relation to serious violent offences

Heading: inserted, on 1 February 1998, by section 11 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

312CA Application by Police for warrant to intercept private communications in relation to serious violent offences

(1) An application may be made in accordance with this section to a Judge of the High Court for a warrant for any constable to intercept a private communication by means of an interception device in any case where there are reasonable grounds for believing that,—

(a) a serious violent offence has been committed, or is being committed, or is about to be committed; and

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(b) where that serious violent offence has yet to be committed, the use of an interception device to intercept private communications is likely to prevent the commission of the offence; and

(c) it is unlikely that the Police investigation of the case could be brought to a successful conclusion or, as the case may be, the commission of the serious violent offence prevented, without the granting of such a warrant.

(2) Every application under subsection (1) must be made by a constable who is of or above the level of position of inspector, in writing, and on oath, and must set out the following particulars:

(a) the facts relied on to show that there are reasonable grounds for believing that,—

(i) a serious violent offence has been committed, or is being committed, or is about to be committed; and

(ii) where that serious violent offence has yet to be committed, the use of an interception device to intercept private communications is likely to prevent the commission of the offence; and

(b) a description of the manner in which it is proposed to intercept private communications; and

(c) either,—

(i) the name and address, if known, of the suspect the interception of whose private communications there are reasonable grounds for believing will assist the Police investigation of the case or, as the case may be, prevent the commission of a serious violent offence; or

(ii) if the name and address of the suspect are not known, a general description of the premises, place, thing, or type of facility in respect of which it is proposed to intercept private communications, being premises or a place, thing, or type of facility believed to be used for any purpose by any person—

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(A) whom it is believed has committed or is committing or is about to commit a serious violent offence; or

(B) whom it is believed was involved or is involved or will be involved in the commission of a serious violent offence; and

(d) the period for which a warrant is requested; and

(e) whichever of the following is applicable:

(i) the other investigative procedures and techniques that have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case or, as the case may be, to provide assistance in preventing the commission of a serious violent offence, and the reasons why they have failed in that respect; or

(ii) the reasons why it appears that other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case or, as the case may be, prevent the commission of a serious violent offence, or are likely to be too dangerous to adopt in the particular case; or

(iii) the reasons why it is considered that the case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications.

Section 312CA: inserted, on 1 February 1998, by section 11 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 312CA(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 312CA(1): amended, on 1 October 2003, by section 21(1) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312CA(1)(b): amended, on 1 October 2003, by section 21(1) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312CA(2): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 312CA(2)(a)(ii): amended, on 1 October 2003, by section 21(1) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312CA(2)(c)(ii): substituted, on 1 October 2003, by section 21(2) of the Crimes Amendment Act 2003 (2003 No 39).

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312CB Matters on which Judge must be satisfied in respect of applications relating to serious violent offences

(1) On an application made in accordance with section 312CA, the Judge may grant an interception warrant if the Judge is satisfied that it would be in the best interests of the administration of justice to do so, and that—

(a) there are reasonable grounds for believing that,—

(i) a serious violent offence has been committed, or is being committed, or is about to be committed; and

(ii) where that serious violent offence has yet to be committed, the use of an interception device to intercept private communications is likely to prevent the commission of the offence; and

(b) there are reasonable grounds for believing that,—

(i) evidence relevant to the investigation of the case will be obtained through the use of an interception device to intercept private communications; or

(ii) where the serious violent offence has yet to be committed, evidence relevant to the prevention of that offence will be obtained through the use of an interception device to intercept private communications; and

(c) whichever of the following is applicable:

(i) other investigative procedures and techniques have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case or, as the case may be, to provide assistance in preventing the commission of a serious violent offence; or

(ii) other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case or, as the case may be, prevent the commission of a serious violent offence, or are likely to be too dangerous to adopt in the particular case; or

(iii) the case is so urgent that it would be impractical to carry out the Police investigation using only

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investigative procedures and techniques other than the interception of private communications; and

(d) the private communications to be intercepted are not likely to be privileged in proceedings in a court of law by virtue of any of the provisions of Part 3 of the Evidence Amendment Act (No 2) 1980 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client.

(2) Without limiting subsection (1), in determining whether or not to issue an interception warrant under this section, the Judge must consider the extent to which the privacy of any person or persons would be likely to be interfered with by the interception, under the warrant, of private communications.

Section 312CB: inserted, on 1 February 1998, by section 11 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 312CB(1)(a)(ii): amended, on 1 October 2003, by section 22 of the Crimes Amendment Act 2003 (2003 No 39).

Section 312CB(1)(b)(i): amended, on 1 October 2003, by section 22 of the Crimes Amendment Act 2003 (2003 No 39).

Section 312CB(1)(b)(ii): amended, on 1 October 2003, by section 22 of the Crimes Amendment Act 2003 (2003 No 39).

312CC Application by Police for warrant to intercept private communications relating to terrorist offences

(1) An application may be made to a Judge of the High Court for a warrant for any constable to intercept a private communication by means of an interception device if there are reasonable grounds for believing—

(a) that a terrorist offence has been committed, or is being committed, or is about to be committed; and

(b) if the offence has yet to be committed, that the use of an interception device to intercept private communications is likely to prevent its commission; and

(c) that it is unlikely that without the granting of such a warrant the Police investigation of the case can be brought to a successful conclusion or, as the case may be, the commission of the offence can be prevented.

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(2) The application must be made by a constable who is of or above the level of position of inspector, in writing and on oath, and must set out the following particulars:

(a) a statement of the facts relied on to show that there are reasonable grounds for believing—

(i) that a terrorist offence has been committed, or is being committed, or is about to be committed; and

(ii) if the offence has yet to be committed, that the use of an interception device to intercept private communications is likely to prevent its commission; and

(b) a description of how it is proposed to intercept private communications; and

(c) either,—

(i) if they are known, the name and address of the suspect the interception of whose private communications there are reasonable grounds for believing will assist the Police investigation of the case or (as the case may be) prevent the commission of a terrorist offence; or

(ii) if the name and address of the suspect are not known, a general description of the premises or place in respect of which it is proposed to intercept private communications, being premises or a place believed to be used for any purpose by a person—

(A) who it is believed has committed, or is committing, or is about to commit, a terrorist offence; or

(B) who it is believed was involved, or is involved, or will be involved, in the commission of the offence; and

(d) a statement of the period for which the warrant is requested; and

(e) whichever of the following is applicable:

(i) both—

(A) a general description of the investigative procedures and techniques that have been

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tried, but have failed to enable the Police to conclude their investigation of the case successfully or (as the case may be) failed to help prevent the commission of the offence; and

(B) a statement of why those procedures and techniques have failed:

(ii) a statement of why it appears that investigative procedures and techniques other than the interception of private communications—

(A) are unlikely to enable the Police to conclude their investigation of the case successfully or (as the case may be) to help prevent the commission of the offence; or

(B) are likely to be too dangerous to adopt in the particular case:

(iii) a statement of why the case is considered so urgent that it would be impracticable for the Police to carry out their investigation using only investigative procedures and techniques other than the interception of private communications.

Section 312CC: inserted, on 31 October 2003, by section 8 of the Crimes Amendment Act (No 2) 2003 (2003 No 105).

Section 312CC(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 312CC(2): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

312CD Matters of which Judge must be satisfied in respect of applications relating to terrorist offences

(1) A Judge may grant an interception warrant on an application under section 312CC if satisfied that it is in the best interests of the administration of justice to do so, and—

(a) that there are reasonable grounds for believing,—

(i) that a terrorist offence has been committed, or is being committed, or is about to be committed; and

(ii) if the offence has yet to be committed, that the use of an interception device to intercept private

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communications is likely to prevent its commission; and

(b) that there are reasonable grounds for believing—

(i) that evidence relevant to the investigation of the case will be obtained through the use of an interception device to intercept private communications; or

(ii) if the offence has yet to be committed, that evidence relevant to the prevention of the offence will be obtained through the use of an interception device to intercept private communications; and

(c) whichever of the following is applicable:

(i) that investigative procedures and techniques other than the interception of private communications have been tried, but have failed to enable the Police to conclude their investigation of the case successfully or (as the case may be) failed to help prevent the commission of the offence; and

(ii) that investigative procedures and techniques other than the interception of private communications—

(A) are unlikely to enable the Police to conclude their investigation of the case successfully or (as the case may be) to help prevent the commission of the offence, or

(B) are likely to be too dangerous to adopt in the particular case:

(iii) that the case is so urgent that it would be impracticable for the Police to carry out their investigation using only investigative procedures and techniques other than the interception of private communications; and

(d) that the private communications proposed to be intercepted are not likely to be privileged in proceedings in a court of law by virtue of Part 3 of the Evidence Amendment Act (No 2) 1980 or of any rule of law that confers

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privilege on communications of a professional character between a barrister or solicitor and a client.

(2) In determining whether or not the granting of an interception warrant under subsection (1) is in the best interests of the administration of justice, the Judge must consider the extent to which the privacy of any person or persons would be likely to be interfered with by the interception of private communications under it.

(3) Subsection (2) does not limit subsection (1).

Section 312CD: inserted, on 31 October 2003, by section 8 of the Crimes Amendment Act (No 2) 2003 (2003 No 105).

General provisions

Heading: inserted, on 1 February 1998, by section 12 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

312D Contents and term of warrant

(1) Every interception warrant shall be issued in the prescribed form, and shall—

(a) state the offence or offences in respect of which the warrant is granted; and

(b) state,—

(i) in the case of a warrant granted under section 312C, the name and address of the suspect, if known, whose private communications may be intercepted or, if the suspect's name and address are not known, the premises, place, thing, or type of facility believed to be used for any purpose by any member of the organised criminal enterprise or by the person who is believed to have committed, or be committing, an offence under section 98A(1) (as the case may be); or

(ii) in the case of a warrant granted under section 312CB, the name and address of the suspect, if known, whose private communications may be intercepted or, if the suspect's name and address are not known, the premises, place, thing, or type of facility in respect of which private communications may be intercepted, being premises or a

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place, thing, or type of facility believed to be used for any purpose by any person—

(A) whom it is believed has committed or is committing or is about to commit a serious violent offence; or

(B) whom it is believed was involved or is involved or will be involved in the commission of a serious violent offence; and

(c) specify the constable who is of or above the level of position of inspector who (with any other constable for the time being assisting the constable who is of or above the level of position of inspector) may intercept the private communications; and

(d) where the Judge considers it necessary, contain express authority to enter (with force, where necessary) any aircraft, ship, hovercraft, carriage, vehicle, or premises for the purpose of placing, servicing, or retrieving an interception device; and

(e) contain such additional terms and conditions as the Judge considers advisable in the public interest.

(2) Without limiting subsection (1), where it is proposed to place an interception device in the residential or business premises of a person who is a barrister or solicitor, or a clergyman, or a medical practitioner, the Judge shall prescribe such conditions (if any) as the Judge considers desirable to avoid so far as practicable the interception of communications of a professional character to which the barrister or solicitor or clergyman or medical practitioner is a party.

(3) Every interception warrant shall be valid for such period, not exceeding 30 days, as the Judge shall specify in the warrant.

Section 312D: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 312D(1): amended, on 1 February 1998, by section 13(1) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 312D(1)(b): substituted, on 1 October 2003, by section 23(2) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312D(1)(b)(i): amended, on 1 December 2009, by section 9 of the Crimes Amendment Act 2009 (2009 No 47).

Section 312D(1)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

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Section 312D(1)(c): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 312D(1)(d): amended, on 1 October 2003, by section 23(1) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312D(2): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 312D(2): amended, on 1 October 2003, by section 23(1) of the Crimes Amendment Act 2003 (2003 No 39).

312E Effect of warrant

Every interception warrant shall have effect, according to its terms, to authorise the interception of private communications by means of an interception device.

Section 312E: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 312E: amended, on 1 October 2003, by section 24 of the Crimes Amendment Act 2003 (2003 No 39).

312F Renewal of warrants

(1) Any Judge of the High Court may from time to time grant a renewal of an interception warrant upon application made at any time before the warrant (or any current renewal of the warrant) has expired.

(2) Every application for the renewal of an interception warrant shall be made in the manner provided by section 312B or, as the case requires, section 312CA, and shall give—

(a) the reason and period for which the renewal is required; and

(b) full particulars, together with times and dates, of any interceptions made or attempted under the warrant, and an indication of the nature of the information that has been obtained by every such interception.

(3) Every such application shall be supported by such other information as the Judge may require.

(4) A renewal of an interception warrant may be granted under this section if the Judge is satisfied that the circumstances described in section 312C or, as the case requires, section 312CB still obtain.

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(5) Every renewal of an interception warrant shall be valid for such period, not exceeding 30 days, as the Judge shall specify in the renewal.

(6) A renewal of an interception warrant may be granted upon an application made within the time prescribed by subsection (1) notwithstanding that the warrant (or any renewal of the warrant) has expired before the application is determined.

(7) Nothing in this section shall prevent a Judge from granting a second or subsequent renewal of an interception warrant upon an application duly made.

Section 312F: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 312F(2): amended, on 1 February 1998, by section 14(a) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 312F(4): amended, on 1 February 1998, by section 14(b) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

312G Emergency permits

(1) In any case where a Judge is satisfied that circumstances exist that would justify the grant of an interception warrant under section 312C or, as the case requires, section 312CB, but the urgency of the situation requires that the interception should begin before a warrant could with all practicable diligence be obtained, the Judge may, orally or in writing, grant an emergency permit for the interception of private communications in respect of particular premises or a particular place or a particular thing or a particular type of facility and in a particular manner.

(2) *[Repealed]*

(3) Any application for an emergency permit may be made orally, but otherwise every such application shall comply with the requirements of section 312B or, as the case requires, section 312CA.

(4) Where the Judge grants the application for an emergency permit, the Judge shall forthwith make a note in writing of the particulars of the application. The note shall be filed in the High Court Registry nearest to where the application is made, and shall, for the purposes of section 312H(1), be deemed to

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be a document relating to the application for the permit. The Judge shall also make a note of the terms of the permit.

(5) The provisions of section 312D, so far as they are applicable and with the necessary modifications, shall apply to emergency permits in the same manner as they apply to interception warrants.

(6) Every emergency permit shall remain valid for 48 hours from the time when it is given, and shall then expire.

(7) On filing the report required by section 312P, the constable who applied for the emergency permit (or, if that constable is not the constable filing the report, then the constable who is filing the report) may apply to the Judge who granted the permit (or, if that Judge is not the Judge receiving the report, then the Judge who is receiving the report) for a certificate confirming the permit pursuant to subsection (9).

(8) Where the Police, within the period of 48 hours during which the emergency permit is valid, apply for an interception warrant in place of the permit, the constable applying for the warrant may also apply for a certificate confirming the permit pursuant to subsection (9).

(9) The Judge to whom an application is made pursuant to subsection (7) or subsection (8) shall issue a certificate confirming the permit if the Judge is satisfied, having regard to the requirements of section 312C or, as the case requires, section 312CB, that if the original application for the emergency permit had been an application for an interception warrant, the Judge would have granted a warrant.

(10) For the purposes of section 312M, an interception of a private communication pursuant to an emergency permit shall be deemed to have been made unlawfully unless the Judge to whom an application is made in accordance with subsection (7) or subsection (8) issues a certificate confirming the permit pursuant to subsection (9).

Section 312G: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 312G(1): amended, on 1 October 2003, by section 25 of the Crimes Amendment Act 2003 (2003 No 39).

Section 312G(1): amended, on 1 February 1998, by section 15(a) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

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Section 312G(2): repealed, on 1 February 1998, by section 15(b) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 312G(3): amended, on 1 February 1998, by section 15(c) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 312G(7): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 312G(8): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 312G(9): amended, on 1 February 1998, by section 15(d) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

312H Security of applications

(1) As soon as an application for an interception warrant or for a renewal of an interception warrant or for an emergency permit or for a certificate confirming an emergency permit has been determined by the Judge, the Registrar shall place all documents relating to the application (except the warrant or renewal or permit or certificate itself) in a packet, seal the packet, and thereafter keep it in safe custody, subject to the succeeding provisions of this section.

(2) Notwithstanding any enactment or rule of law or rules of court entitling any party to any proceedings to demand the production of any documents, no such party shall be entitled to demand the production of any documents held in safe custody pursuant to subsection (1), except in accordance with the succeeding provisions of this section.

(3) Every such party who requires the production of any document held in safe custody pursuant to subsection (1) shall, except in a case to which subsection (9) or subsection (10) applies, apply in writing to the Registrar, who shall forthwith notify the senior constable in the district.

(4) If, within 3 days after notice is given to the senior constable in the district under subsection (3), that constable gives written notice to the Registrar that that constable intends to oppose the production of the documents, the Registrar shall refer the matter to a Judge.

(5) Where the senior constable in the district does not give such written notice to the Registrar, the Registrar shall produce the documents to the party applying for production.

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(6) Where a matter is referred to a Judge pursuant to subsection (4), both the person requesting production of the documents and the constable opposing production shall be given an opportunity to be heard.

(7) If the Judge is satisfied that information in any document the production of which is in dispute identifies or is likely to lead to the identification of a person who gave information to the Police, or of any constable whose identity was concealed for the purpose of any relevant investigation and has not been subsequently revealed, the Judge may, if the Judge believes it in the public interest to do so, order that the whole or any specified part of the document be not produced.

(8) Subject to the provisions of subsection (7), the Judge shall order the production of the documents to the party requesting it.

(9) Where a request for the production of any document kept in safe custody pursuant to subsection (1) is made in the course of any proceedings presided over by a Judge and the request is opposed, the Judge shall adjudicate upon the matter as if it had been referred to the Judge pursuant to subsection (4).

(10) Where such a request is made in the course of any other proceedings, the presiding judicial officer shall forthwith refer the matter to a Judge for adjudication.

(11) Notwithstanding anything in this section, every Judge who is presiding over any proceedings in which the issue of an interception warrant or emergency permit is in issue shall be entitled to inspect any relevant document held under subsection (1).

Section 312H: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 312H(3): amended, on 1 October 2008, pursuant to section 116(a)(iv) of the Policing Act 2008 (2008 No 72).

Section 312H(4): amended, on 1 October 2008, pursuant to section 116(a)(iv) of the Policing Act 2008 (2008 No 72).

Section 312H(5): amended, on 1 October 2008, pursuant to section 116(a)(iv) of the Policing Act 2008 (2008 No 72).

Section 312H(6): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 312H(7): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

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312I Destruction of irrelevant records made by use of interception device

(1) Every person who intercepts a private communication in pursuance of an interception warrant or any emergency permit must, as soon as practicable after it has been made, destroy any record, whether written or otherwise, of the information obtained by that interception if none of the information directly or indirectly relates to—

(a) the commission of a specified offence or a conspiracy to commit such an offence; or

(b) the commission of a serious violent offence or a conspiracy to commit such an offence; or

(c) a drug dealing offence or a prescribed cannabis offence (as those terms are defined in section 10 of the Misuse of Drugs Amendment Act 1978).

(2) Every person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding $500.

Section 312I: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 312I heading: amended, on 1 October 2003, by section 26 of the Crimes Amendment Act 2003 (2003 No 39).

Section 312I(1): substituted, on 1 February 1998, by section 16 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

312J Destruction of relevant records made by use of interception device

(1) The Commissioner of Police must ensure that every record, whether written or otherwise, of the information obtained by the Police from the interception of a private communication in pursuance of an interception warrant or an emergency permit, being information that relates wholly or partly and directly or indirectly to—

(a) the commission of a specified offence or a conspiracy to commit such an offence; or

(b) the commission of a serious violent offence or a conspiracy to commit such an offence; or

(c) a drug dealing offence or a prescribed cannabis offence (as those terms are defined in section 10 of the Misuse of Drugs Amendment Act 1978),—

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is destroyed as soon as it appears that no proceedings, or no further proceedings, will be taken in which the information would be likely to be required to be produced in evidence.

(1A) In subsection (1), **proceedings** includes proceedings under sections 142A to 142Q of the Sentencing Act 2002 and any proceedings under the Criminal Proceeds (Recovery) Act 2009.

(2) Nothing in subsection (1) shall apply to—

(a) any record of any information adduced in proceedings in any court, or (in any case where the defendant pleads guilty) of any record of any information that, in the opinion of the Judge to whom the report referred to in subsection (3) is made, would have been adduced had the matter come to trial:

(b) any record of any information contained in any transcript or written statement given to any person in accordance with section 312L(a).

(3) Every report made to a Judge in accordance with section 312P shall state whether or not subsection (1) has yet been complied with, and, if it has not, the Judge shall give such directions relating to the eventual destruction of the record as the Judge thinks necessary to ensure compliance with that subsection, including a requirement that the Judge be advised when the record has been destroyed.

Section 312J: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 312J heading: amended, on 1 October 2003, by section 27 of the Crimes Amendment Act 2003 (2003 No 39).

Section 312J(1): substituted, on 1 February 1998, by section 17 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 312J(1A): inserted, on 1 December 2009, by section 177 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

312K Prohibition on disclosure of private communications lawfully intercepted

(1) No person who—

(a) intercepts or assists in the interception of a private communication in pursuance of an interception warrant or emergency permit; or

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(b) acquires knowledge of a private communication as a direct or indirect result of that interception—

shall knowingly disclose the substance, meaning, or purport of that communication, or any part of that communication, otherwise than in the performance of that person's duty.

(2) Every person who acts in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding $500.

Section 312K: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

312L Notice to be given of intention to produce evidence of private communication

Particulars of a private communication intercepted pursuant to an interception warrant or an emergency permit shall not be received in evidence by any court against any person unless the party intending to adduce it has given to that person reasonable notice of that person's intention to do so, together with—

(a) a transcript of the private communication where that person intends to adduce it in the form of a recording, or a written statement setting forth the full particulars of the private communication where that person intends to adduce oral evidence of it; and

(b) a statement of the time, place (if known), and date of the private communication, and of the names and addresses of the parties to the communication, if they are known.

Section 312L: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 312L(b): amended, on 1 October 2003, by section 28 of the Crimes Amendment Act 2003 (2003 No 39).

312M Inadmissibility of evidence of private communications unlawfully intercepted

(1) Subject to subsections (2) to (4), where a private communication intercepted by means of an interception device otherwise than in pursuance of an interception warrant or emergency permit issued under this Part or of any authority conferred by or under any other enactment has come to the knowledge of a person as a direct or indirect result of that interception or its disclosure, no evidence so acquired of that communication, or

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of its substance, meaning, or purport, and no other evidence obtained as a direct or indirect result of the interception or disclosure of that communication, shall be given against any person, except in proceedings relating to the unlawful interception of a private communication by means of an interception device or the unlawful disclosure of a private communication unlawfully intercepted in that manner.

(2) Even though certain evidence is inadmissible in criminal proceedings by virtue of subsection (1), a court may admit that evidence if the following conditions are satisfied:

(a) the proceedings are for—

(i) a specified offence, or a conspiracy to commit a specified offence; or

(ii) a serious violent offence, or a conspiracy to commit such an offence; and

(b) the evidence is relevant; and

(c) the evidence is inadmissible by virtue of subsection (1) merely because of a defect in form, or an irregularity in procedure, in—

(i) the application for or the granting of the interception warrant or emergency permit; or

(ii) the manner in which the evidence was obtained; and

(d) the defect in form or irregularity in procedure—

(i) was not substantive; and

(ii) was not the result of bad faith.

(3) Subsection (1) shall not render inadmissible against any party to a private communication evidence of that communication that has, in the manner referred to in that subsection, come to the knowledge of the person called to give evidence, if all the parties to the communication consent to that person giving the evidence.

(4) Subsection (1) shall not render inadmissible evidence of a private communication by any person who intercepted that communication by means of an interception device with the prior consent of any party to the communication.

Section 312M: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

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Section 312M(1): amended, on 1 October 2003, by section 29 of the Crimes Amendment Act 2003 (2003 No 39).

Section 312M(2): substituted, on 1 February 1998, by section 18 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 312M(4): amended, on 1 October 2003, by section 29 of the Crimes Amendment Act 2003 (2003 No 39).

312N Restriction on admissibility of evidence of private communications lawfully intercepted

Even if the communication was intercepted under an interception warrant or an emergency permit, evidence of a private communication intercepted by means of an interception device, or of its substance, meaning, or purport, may not be given in any court unless the evidence relates to—

(a) a specified offence; or

(b) a conspiracy to commit a specified offence; or

(c) a terrorist offence; or

(d) a conspiracy to commit a terrorist offence; or

(e) a serious violent offence; or

(f) a conspiracy to commit a serious violent offence; or

(g) a drug dealing offence (as that term is defined in section 10 of the Misuse of Drugs Amendment Act 1978); or

(h) a prescribed cannabis offence (as that term is defined in section 10 of the Misuse of Drugs Amendment Act 1978); or

(i) offences of 2 or more of those kinds specified in paragraphs (a) to (h); or

(j) an offence specified in paragraphs (a) to (h) and the evidence is relevant to a proceeding under the Criminal Proceeds (Recovery) Act 2009 or a proceeding under sections 142A to 142Q of the Sentencing Act 2002.

Section 312N: substituted, on 31 October 2003, by section 9 of the Crimes Amendment Act (No 2) 2003 (2003 No 105).

Section 312N(i): substituted, on 1 December 2009, by section 178 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Section 312N(j): added, on 1 December 2009, by section 178 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

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312O Privileged evidence

Where evidence obtained by the interception of a private communication would, but for the interception, have been privileged by virtue of—

(a) any of the provisions of Part 3 of the Evidence Amendment Act (No 2) 1980; or

(b) any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client,—

such evidence shall remain privileged and shall not be given in any court, except with the consent of the person entitled to waive that privilege.

Section 312O: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

312P Report to be made to Judge on use of warrant or permit

(1) As soon as practicable after an interception warrant or an emergency permit has expired, the constable who applied for it, or (if that constable is unable to act) another constable who is of or above the level of position of inspector, shall make a written report to the Judge who granted the warrant or permit, or (if that Judge is unable to act) to another Judge, on the manner in which the power conferred by the warrant or permit has been exercised and the results obtained by the exercise of that power.

(2) Notwithstanding anything in section 312H, the Judge who receives a report under subsection (1) of this section shall be entitled to inspect any relevant document held under subsection (1) of that section.

(3) Without limiting the generality of subsection (1), every report made for the purposes of that subsection shall contain the following information:

(a) where the interception device was placed:

(b) the number of interceptions made by means of the interception device:

(c) whether any relevant evidence was obtained by means of the interception device:

(d) whether any relevant evidence has been, or is intended to be, used in any criminal proceedings:

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(e) whether any records of a private communication intercepted pursuant to the warrant or permit have been destroyed in accordance with section 312I or section 312J, and, if not, why they have not been destroyed:

(f) whether the interception device has been retrieved, and, if not, why it has not been retrieved.

(4) On receiving a report under this section, the Judge may require such further information relating to the matter as the Judge thinks fit, and (in addition to any directions the Judge gives for the purposes of section 312J(3)) the Judge may give such directions as the Judge thinks desirable, whether relating to the retrieval of the interception device, or otherwise.

Section 312P: inserted, on 1 August 1987, by section 4 of the Crimes Amendment Act (No 2) 1987 (1987 No 167).

Section 319P(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 319P(1): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 312P(3)(a): amended, on 1 October 2003, by section 30 of the Crimes Amendment Act 2003 (2003 No 39).

Section 312P(3)(b): amended, on 1 October 2003, by section 30 of the Crimes Amendment Act 2003 (2003 No 39).

Section 312P(3)(c): amended, on 1 October 2003, by section 30 of the Crimes Amendment Act 2003 (2003 No 39).

Section 312P(3)(f): amended, on 1 October 2003, by section 30 of the Crimes Amendment Act 2003 (2003 No 39).

Section 312P(4): amended, on 1 October 2003, by section 30 of the Crimes Amendment Act 2003 (2003 No 39).

312Q Commissioner of Police to give information to Parliament

The Commissioner of Police must include in every annual report prepared by the Commissioner for the purposes of section 101 of the Policing Act 2008 the following information in respect of the period under review:

(a) the number of applications for warrants made under section 312B; and

(b) the number of applications for warrants made under section 312CA; and

(c) the number of applications for renewals of warrants made under section 312F; and

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(d) the number of applications for emergency permits made under section 312G; and

(e) the number of applications referred to in each of paragraphs (a) to (d) that were granted, and the number that were refused; and

(f) in relation to each of the types of warrant referred to in paragraphs (a) and (b) that were issued,—

(i) the number of warrants that authorised the use of an interception device to intercept the private communications of a named individual:

(ii) the number of warrants that authorised the use of an interception device to intercept private communications at specified premises or a specified place:

(iii) the number of warrants that authorised entry onto private premises; and

(g) the number of occasions on which telephonic communications were intercepted under an emergency permit granted under section 312G; and

(ga) the number of occasions on which the Police used an interception device in reliance on section 216B(3)(b):

(h) the average duration of warrants (including renewals); and

(i) the number of prosecutions that have been instituted in which evidence obtained directly or indirectly from an interception carried out pursuant to a warrant or permit has been adduced, and the result of those prosecutions; and

(j) the number of prosecutions that have been instituted against constables (including former constables where the prosecution relates to behaviour occurring while they were constables) for—

(i) offences against section 216C (prohibition on disclosure of private communications unlawfully intercepted):

(ii) offences against section 312K (prohibition on disclosure of private communications lawfully intercepted).

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(k) in relation to the emergency powers granted under section 216B(3),—
  (i) whether or not the powers have been used:
  (ii) the number of times the powers have been used:
  (iii) the circumstances in which the powers were used:
  (iv) the results of using the powers; and

(ka) in relation to road blocks authorised under section 317B,—
  (i) the number of road blocks authorised; and
  (ii) the reason for each authorisation; and
  (iii) the number of persons (if any) arrested as a result of that authorisation; and

(l) the number of warrants that did not result in any charges being laid within 90 days of the date on which the warrant expired.

Section 312Q: substituted, on 1 February 1998, by section 20 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 312Q: amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 312Q(f)(i): amended, on 1 October 2003, by section 31(1) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312Q(f)(ii): amended, on 1 October 2003, by section 31(1) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312Q(ga): inserted, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 312Q(j): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 312Q(k): added, on 1 October 2003, by section 31(2) of the Crimes Amendment Act 2003 (2003 No 39).

Section 312Q(ka): inserted, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 312Q(l): added, on 1 October 2003, by section 31(2) of the Crimes Amendment Act 2003 (2003 No 39).

Part 12
Procedure

313 General provisions as to procedure

(1) This Part shall be read subject to any special provisions of this Act or of any other enactment relating to the procedure in any particular case.

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(2) Subject as aforesaid, the procedure, from information to committal for trial or sentence, shall be as prescribed by the Summary Proceedings Act 1957.

(3) Except as otherwise provided in this Act, there shall be 1 uniform procedure in respect of all offences for which the offender is proceeded against by indictment.

Compare: 1908 No 32 ss 356, 364

314 Procedure where prior consent to prosecution required

Where any one is charged with any offence in respect of which the leave or consent or certificate of a Judge or of the Attorney-General or of any other person to the laying of an information is required, the leave or consent or certificate may be endorsed on the information or set out in a memorandum, and the endorsement or memorandum shall be accepted by the court as proof that the leave or consent or certificate has been given.

Compare: 1953 No 120 s 5(2)

Section 314: amended, on 1 January 1981, by section 4(2) of the Crimes Amendment Act 1980 (1980 No 63).

General power to stop vehicles to exercise statutory search powers

Heading: inserted, on 1 January 1998, by section 21 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

314A Statutory search power

(1) For the purposes of sections 314B and 314C, a **statutory search power** means any power conferred by statute that expressly authorises any constable to search a vehicle, but does not include a power that itself authorises any constable to stop a vehicle.

(2) A power conferred by statute described in subsection (1) is a statutory search power for the purposes of sections 314B and 314C whether or not the power conferred by statute—

(a) involves the issue of a warrant:

(b) authorises any other person to exercise that power.

(3) For the purposes of this section and sections 314B and 314C, the term **vehicle** does not include any aircraft, hovercraft, ship or ferry or other vessel, train, or carriage.

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Section 314A: inserted, on 1 January 1998, by section 21 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 314A(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

314B General power to stop vehicles

(1) Any constable may stop a vehicle for the purpose of conducting a search under a statutory search power if the constable is satisfied that,—

(a) in respect of a statutory search power to search without a warrant, the ground or grounds, as the case may be, for exercising that statutory search power, as set out in the applicable statute, exist; or

(b) in respect of a statutory search power to search with a warrant, the warrant has been issued and is in force.

(2) Any constable who stops a vehicle under subsection (1) must—

(a) be wearing a uniform or distinctive cap, hat, or helmet with a badge of authority affixed to that cap, hat, or helmet; or

(b) be following immediately behind the vehicle in a motor vehicle displaying flashing blue lights, or flashing blue and red lights, and sounding a siren.

(3) A person driving a vehicle must stop the vehicle as soon as is practicable on being required to do so by a constable exercising the stopping power conferred by subsection (1).

(4) Every constable exercising the stopping power conferred by subsection (1) must, immediately after the vehicle has stopped,—

(a) identify himself or herself to the driver of the vehicle; and

(b) tell the driver that the stopping power is being exercised under this section for the purpose of exercising a statutory search power; and

(c) tell the driver the statutory search power in respect of which the stopping power is being exercised; and

(d) if not in uniform and if so required, produce evidence that he or she is a constable.

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(5) Subsection (4) does not limit any other duties that a constable must carry out when exercising the applicable statutory search power.

(6) Despite subsection (5), a constable need not carry out any duty that is contained in the applicable statutory search power if that duty is exactly the same as a duty contained in subsection (4).

(7) This section does not limit or affect the powers of any person other than a constable under any power of search conferred by statute.

Section 314B: inserted, on 1 January 1998, by section 21 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 314B(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 314B(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 314B(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 314B(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 314B(4)(d): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 314B(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 314B(6): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 314B(7): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

314C Powers incidental to stopping vehicles under section 314B

(1) This section applies whenever a vehicle is stopped under section 314B.

(2) Any constable may do either or both of the following:

(a) require any person in or on the vehicle to state his or her name, address, and date of birth, or such of those particulars as the constable may specify:

(b) require that the vehicle remain stopped for as long as is reasonably necessary to enable a statutory search power to be exercised.

(3) This section does not limit or affect the exercise of any other power, whether express or implied, that is incidental to the applicable statutory search power.

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Section 314C: inserted, on 1 January 1998, by section 21 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 314C(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 314C(2)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

314D Offences relating to stopping vehicles under section 314B

(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding $1,000 who, without reasonable excuse,—

(a) fails to stop as soon as is practicable when required to do so by a constable exercising the power conferred by section 314B(1); or

(b) fails to comply with a requirement made by a constable under paragraph (a) or paragraph (b) of section 314C(2).

(2) Any constable may arrest without warrant any person whom the constable has good cause to suspect has committed an offence against subsection (1).

Section 314D: inserted, on 1 January 1998, by section 21 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 314D(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 314D(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 314D(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Arrest

315 Arrest without warrant

(1) No one shall be arrested without warrant except pursuant to the provisions of—

(a) this Act; or

(b) some other enactment expressly giving power to arrest without warrant.

(2) Any constable, and all persons whom he calls to his assistance, may arrest and take into custody without a warrant—

(a) any person whom he finds disturbing the public peace or committing any offence punishable by imprisonment:

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(b) any person whom he has good cause to suspect of having committed a breach of the peace or any offence punishable by imprisonment:

(c) *[Repealed]*

(d) *[Repealed]*

(e) *[Repealed]*

(3) The foregoing provisions of this section shall be read subject to the express provisions of any enactment imposing any limitations, restrictions, or conditions on the exercise of any power to arrest without warrant conferred on any constable by that enactment in respect of any specified offence or class of offences.

(4) Where under any enactment other than this Act any officer or person, not being a constable, has power to arrest any other person without warrant, any constable may exercise that power in the same cases and in the same manner as that officer or person.

(5) Nothing in this section shall limit or affect any of the provisions of Part 3 (which relates to matters of justification or excuse).

Compare: 1908 No 32 ss 358, 359, 360; 1927 No 35 ss 3D(2), 73; 1952 No 42 s 11; 1958 No 87 s 2(2); 1960 No 119 s 2(1)

Section 315(2)(a): amended, on 26 December 1989, by section 3(5) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

Section 315(2)(b): amended, on 26 December 1989, by section 3(5) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

Section 315(2)(c): repealed, on 1 February 1982, by section 51(1) of the Summary Offences Act 1981 (1981 No 113).

Section 315(2)(d): repealed, on 1 February 1982, by section 51(1) of the Summary Offences Act 1981 (1981 No 113).

Section 315(2)(e): repealed, on 1 February 1982, by section 51(1) of the Summary Offences Act 1981 (1981 No 113).

316 Duty of persons arresting

(1) It is the duty of every one arresting any other person to inform the person he is arresting, at the time of the arrest, of the act or omission for which the person is being arrested, unless it is impracticable to do so, or unless the reason for the arrest is obvious in the circumstances. The act or omission need not be stated in technical or precise language, and may be stated

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in any words sufficient to give that person notice of the true reason for his arrest.

(2) It is the duty of every one who arrests any other person pursuant to any process or warrant—

(a) if he has the process or warrant in his possession at the time of the arrest, to produce it if required by that person to do so:

(b) if he does not have the process or warrant in his possession at the time of the arrest, to show it to the arrested person as soon as practicable after the arrest, if that person so requires.

(3) Where under any enactment any person other than a constable has, by virtue of his office, a power of arrest without warrant, he shall, whenever he arrests any other person pursuant to that power,—

(a) if he has evidence of his appointment to that office in his possession at the time of the arrest, produce it if required by that person to do so:

(b) if he does not have evidence of his appointment in his possession at the time of the arrest, show it to the arrested person as soon as practicable after the arrest, if that person so requires.

(4) A failure to fulfil any of the duties mentioned in the foregoing provisions of this section shall not of itself deprive the person arresting, or his assistants, of protection from criminal responsibility, but shall be relevant to the inquiry whether the arrest might not have been effected, or the process or warrant executed, by reasonable means in a less violent manner.

(5) Every person who is arrested on a charge of any offence shall be brought before a court, as soon as possible, to be dealt with according to law.

(6) Nothing in this section shall limit or affect the express provisions of any enactment whereby—

(a) the burden of proving the absence of reasonable or probable cause, or the absence of justification, for any arrest is on any person:

(b) any person having, by virtue of his office, a power of arrest without warrant is entitled, in any specified circumstances, to exercise that power without the produc-

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tion of evidence of his appointment to that office, or is required, in exercising the power, to comply with any specified conditions or restrictions in addition to or instead of producing evidence of his appointment.

Compare: 1908 No 32 s 61

317 Power to enter premises to arrest offender or prevent offence

(1) Where any constable is authorised by this Act or by any other enactment to arrest any person without warrant, that constable, and all persons whom he calls to his assistance, may enter on any premises, by force if necessary, to arrest that person if the constable—

(a) has found that person committing any offence punishable by imprisonment and is freshly pursuing that person; or

(b) has good cause to suspect that that person has committed any such offence on those premises.

(2) Any constable, and all persons whom he calls to his assistance, may enter on any premises, by force if necessary, to prevent the commission of any offence that would be likely to cause immediate and serious injury to any person or property, if he believes, on reasonable and probable grounds, that any such offence is about to be committed.

(3) If, in any case to which this section applies, the constable is not in uniform and any person in actual occupation of the premises requires him to produce evidence of his authority, he shall before entering on the premises produce his badge or other evidence that he is a constable.

(4) Nothing in this section shall affect in any way the power of any constable to enter any premises pursuant to a warrant.

Section 317(1)(a): amended, on 26 December 1989, by section 3(6) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

317A Power to stop vehicles for purpose of arrest

(1) Any constable who—

(a) has reasonable grounds to suspect that there is in or on any vehicle any person who either—

(i) is unlawfully at large; or

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(ii) has committed an offence punishable by imprisonment; and

(b) either—

(i) is wearing a uniform or a distinctive cap, hat, or helmet with a badge of authority affixed thereto; or

(ii) is following immediately behind the vehicle in a motor vehicle displaying flashing blue lights, or flashing blue and red lights, and sounding a siren—

may stop the vehicle for the purpose of arresting that person.

(2) A person driving a vehicle must stop the vehicle as soon as is practicable on being required to do so by a constable exercising the power conferred by subsection (1).

(3) Every constable exercising any power conferred by subsection (1) must, immediately after the vehicle has stopped,—

(a) identify himself or herself to the driver of the vehicle; and

(b) tell the driver that the power is being exercised under this section; and

(c) if not in uniform and if so required, produce evidence that he or she is a constable.

(4) Where a vehicle fails to stop at a road block established under section 317B, subsection (1) applies and any constable may, in relation to that vehicle and any person in or on it, exercise all or any of the powers conferred by this section and sections 317AA and 317AB.

(5) For the purposes of this section, the term **unlawfully at large**, in relation to any person, includes (but is not limited to) any case where a warrant for the arrest of that person is for the time being in force.

Compare: 1961 No 43 s 202B; 1981 No 113 s 48(1); Road Traffic Act 1988 s 163 (UK)

Section 317A: substituted, on 1 January 1998, by section 22 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 317A(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317A(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

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Section 317A(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317A(3)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317A(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

317AA Powers incidental to stopping vehicles under section 317A

(1) Subject to section 317A(3), where any vehicle is stopped pursuant to section 317A, any constable may do all or any of the following:

(a) require any person in or on any such vehicle to state his or her name, address, and date of birth, or such of those particulars as the constable may specify:

(b) search the vehicle for the purpose of—

(i) locating a person referred to in section 317A(1)(a); or

(ii) locating property that is evidence of the commission of the offence in respect of which the vehicle is stopped pursuant to section 317A(1)(a)(ii),—

if the constable or any other constable believes on reasonable grounds that such a person, or such property, is in or on the vehicle:

(c) use reasonable force to enter a vehicle for the purpose of conducting a search pursuant to paragraph (b):

(d) require that the vehicle remain stopped for as long as is reasonably necessary to enable a constable to exercise any powers conferred by this subsection, regardless of whether such powers are exercised in respect of—

(i) the vehicle; or

(ii) the occupants of the vehicle; or

(iii) the property in or on the vehicle.

(2) Every constable exercising any power conferred by subsection (1)(b) must, before conducting the search, tell the driver the object of the proposed search.

Section 317AA: inserted, on 1 January 1998, by section 22 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 317AA(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

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Section 317AA(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317AA(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317AA(1)(d): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317AA(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

317AB Offences relating to stopping vehicles under section 317A

(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding $1,000 who, without reasonable excuse,—

(a) fails to stop as soon as is practicable when required to do so by a constable exercising the power conferred by section 317A(1); or

(b) fails to comply with a requirement made by a constable under paragraph (a) or paragraph (d) of section 317AA(1).

(2) Any constable may arrest without warrant any person whom the constable has good cause to suspect has committed an offence against subsection (1).

Compare: 1962 No 135 s 66(5)

Section 317AB: inserted, on 1 January 1998, by section 22 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 317AB(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317AB(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317AB(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

317B Road blocks

(1) Where any senior constable (holding a level of position not lower than sergeant) has reasonable grounds to suspect that there is in or on any vehicle any person who—

(a) has committed an offence punishable by a term of imprisonment of 7 years or more; or

(b) is unlawfully at large,—

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that senior constable may authorise the establishment of a road block for the purpose of arresting that person if he or she—

(c) has reasonable grounds to suspect that the vehicle may travel past the place where it is proposed that the road block be established; and

(d) is satisfied that as far as is reasonably practicable the safety of all road users will be ensured in the area in which the road block is established.

(2) An authorisation under this section—

(a) shall operate for an initial period not exceeding 24 hours, specified by the person giving the authorisation:

(b) may be renewed from time to time by a District Court Judge for such further period not exceeding 24 hours as the Judge may specify in writing.

(3) An authorisation may be granted under this section orally or in writing, but in every case the person giving the authorisation shall keep or cause to be kept a written record of the following matters:

(a) the place at which the establishment of a road block was authorised:

(b) the period or periods for which the authorisation was granted or renewed:

(c) the grounds on which the authorisation was granted or renewed.

(4) Subject to subsection (5), where a road block is authorised under this section, any constable may do all or any of the following:

(a) establish a road block at the place or places specified in the authorisation:

(b) stop vehicles at or in the vicinity of the road block:

(c) require any person in or on any such vehicle to state his or her name, address, and date of birth, or such of those particulars as the constable may specify:

(d) search the vehicle for the purpose of locating a person referred to in paragraph (a) or paragraph (b) of subsection (1), if the constable or any other constable believes on reasonable grounds that the person is in or on the vehicle:

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(e) use reasonable force to enter a vehicle for the purpose of locating a person referred to in paragraph (a) or paragraph (b) of subsection (1), if the constable or any other constable believes on reasonable grounds that such a person is in the vehicle:

(f) require that the vehicle remain stopped for as long as is reasonably necessary to enable a constable to exercise any powers conferred by this subsection, regardless of whether such powers are exercised in respect of—

(i) the vehicle; or

(ii) the occupants of the vehicle.

(5) Every constable exercising the power conferred by any of paragraphs (b) to (f) of subsection (4) shall identify himself or herself to the driver of the vehicle, tell the driver that the power is being exercised under this section, and, if not in uniform and if so required, produce evidence that he or she is a constable.

(6) *[Repealed]*

(7) Every person commits an offence and is liable on summary conviction to a fine not exceeding $1,000 who, without reasonable excuse,—

(a) fails to stop, as soon as is practicable, when required to do so by a constable exercising the power conferred by subsection (4)(b); or

(b) fails to comply with a requirement made by a constable under paragraph (c) or paragraph (f) of subsection (4).

(7A) Any constable may arrest without warrant any person whom the constable has good cause to suspect has committed an offence against subsection (7).

(8) For the purposes of this section, **road block** means any form of barrier or obstruction preventing or limiting the passage of vehicles.

(9) For the purposes of this section, a person is not unlawfully at large by reason only of the fact that a warrant for the arrest of that person is for the time being in force.

Compare: Police and Criminal Evidence Act 1984 s 4 (UK)

Section 317B: inserted, on 1 September 1993, by section 3 of the Crimes Amendment Act (No 2) 1993 (1993 No 46).

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Section 317B(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317B(1): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 317B(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317B(4): amended, on 1 January 1998, by section 23(1) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 317B(4)(c): substituted, on 1 January 1998, by section 23(2) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 317B(4)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317B(4)(d): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317B(4)(e): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317B(4)(f): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317B(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317B(6): repealed, on 1 January 1998, by section 23(3) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 317B(7): amended, on 1 January 1998, by section 23(4) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 317B(7)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317B(7)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 317B(7A): inserted, on 1 January 1998, by section 23(5) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 317B(7A): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Bail
[Repealed]

Heading: repealed, on 1 January 2001, pursuant to section 74(2) of the Bail Act 2000 (2000 No 38).

318 When bail not allowable
[Repealed]

Section 318: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

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319 Rules as to granting bail

[Repealed]

Section 319: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

319A Detention while bail bond prepared and signed

[Repealed]

Section 319A: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

319B Variation of conditions of bail

[Repealed]

Section 319B: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

320 Arrest of absconder

[Repealed]

Section 320: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

320A Person on bail may be arrested without warrant in certain circumstances

[Repealed]

Section 320A: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

320B Failure to answer bail

[Repealed]

Section 320B: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

320C Non-performance of condition of bail bond to be certified by Judge

[Repealed]

Section 320C: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

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Plea of guilty after committal for trial

321 Person committed for trial may plead guilty before trial

(1) Where any person charged with any crime has been committed for trial, and, at any time before the commencement of the sittings to which he is committed for trial, desires to plead guilty to the crime, he shall sign a request in that behalf in form 3 of Schedule 2.

(2) The request shall be sent to the Registrar of the court in the place to which the accused was committed for trial, and he shall as soon as practicable be brought before a Judge sitting in open court to be dealt with under this section.

(3) If the accused is not in custody, notice shall be given to him of the time and place for attendance before the Judge.

(4) On his attendance the accused shall be called upon to plead either guilty or not guilty to the crime for which he was committed for trial or, if the Judge so directs, to any other crime for which an indictment could have been filed against him following his committal for trial.

(5) Before the accused is called upon to plead, the charge to which he is required to plead shall be read over to him.

(6) If the accused then pleads guilty, the Judge shall have the same powers of sentencing or otherwise dealing with him, and of finally disposing of the charge to which the accused has pleaded guilty and of all incidental matters, as the Judge would have had if the accused on arraignment at any criminal sittings of the court had pleaded guilty to the charge on an indictment duly presented.

(7) If the accused does not plead guilty as aforesaid, or if he does not attend in accordance with the notice given under subsection (3), or if it is not practicable for him to be dealt with by a Judge under this section before the commencement of the sittings to which he was committed for trial, he shall be treated in all respects as if he had not made any request to plead guilty in accordance with this section, and no comment shall be made at his trial for the crime charged on the fact that such a request has been made, nor shall the request be admissible in evidence against him.

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(8) Any bail bond entered into by any person in respect of the crime for which the accused was committed for trial shall cease to have effect when the accused, after pleading guilty, has been sentenced or otherwise dealt with under this section.

Compare: 1936 No 58 s 41; 1954 No 50 s 56

Section 321 heading: amended, on 1 May 1981, by section 5 of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 321(1): amended, on 1 May 1981, by section 5(1) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 321(2): amended, on 1 May 1981, by section 5(2) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 321(4): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Change of venue

322 Changing venue or sitting

(1) Where any person is committed for any crime to appear at any sitting of the High Court or of a District Court (hereinafter referred to as the **court of committal**), and it appears to a Judge or a District Court Judge (as the case may require) that it is expedient for the ends of justice that the person should be tried for that crime—

(a) where the High Court is the court of committal, at some place or at some sitting other than the place or sitting for trial to which he was committed, or at which he would in the ordinary course of law be tried; or

(b) where a District Court is the court of committal, at some District Court or at some sitting of the court of committal other than the court or sitting to which he was committed, or at which he would in the ordinary course of law be tried,—

the Judge, either of his own motion, or on application made by or on behalf of the prosecutor or the person charged, may by order, either before or after an indictment is filed, direct that the person shall be tried at such place and sitting of the court, or (as the case may require) by such court and at such sitting of that court (hereinafter referred to as the **substituted court**), as he thinks fit.

(2) Any application for an order as aforesaid may be made to a Judge when sitting in court or in Chambers; and it shall not

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be necessary for the person charged to be brought or appear in person before the Judge, either upon the making or the determination of the application, or to plead to any such indictment in the court of committal.

(3) The Judge may make any such order subject to such conditions concerning bail and the payment of the costs of the prosecutor and witnesses, and of the removal of the indictment, and of the removal of the person charged, and concerning the publication of any report or account of the proceedings in connection with the making of the order, and concerning any other matter or thing whatsoever, as the Judge in his discretion thinks fit.

(4) After any such order has been made, no indictment shall be filed to or at the court of committal against that person for the crime.

(5) If the indictment has not been filed when the order is made, the indictment may be filed at the substituted court.

(6) If the indictment has been filed when the order is made, the Registrar of the court of committal shall forthwith transmit to the Registrar of the substituted court the indictment and any bail bond, depositions, examinations, informations, or other documents relating to the alleged crime.

(7) On the making of an order under subsection (1), the Registrar shall forthwith give notice of the order to the prison manager of any prison in which the person charged is then held.

(8) Where any person is committed to the High Court for trial (otherwise than pursuant to an order for the transfer of the proceedings made under section 28J of the District Courts Act 1947), and before he is given in charge to the jury a Judge of that court is satisfied that every charge that is contained or that might lawfully be contained in the indictment discloses an offence within the jurisdiction of a District Court presided over by a Judge, he may make an order under this section directing that the person be tried at such sitting of a District Court (hereinafter referred to as the **substituted court**) as he thinks fit; and the provisions of this section and of sections 323 to 327 shall apply accordingly.

Compare: 1908 No 32 s 370

Section 322 heading: amended, on 1 May 1981, by section 6 of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

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Section 322(1): substituted, on 1 May 1981, by section 6(1) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 322(1): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 322(4): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 322(5): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 322(6): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 322(7): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 322(8): added, on 1 May 1981, by section 6(2) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

323 Powers of court of committal as to custody or bail of accused

[Repealed]

Section 323: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

324 Attendance of witnesses at substituted court

Where any witness has been summoned to give evidence at the trial, or has been served with a notice to attend under section 184V of the Summary Proceedings Act 1957, the Registrar of the court of committal may give notice in writing to that witness of the change in the place of trial; and service of that notice on the witness shall have the same effect as if it were a summons to give evidence at the substituted court.

Compare: 1908 No 32 s 372

Section 324: amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

325 Powers of substituted court to compel attendance

(1) For the purposes of the trial before the substituted court, the Judge of that court may issue any process for apprehending the person to be tried, and may compel the attendance of witnesses, or of the person to be tried, in the same manner as if the indictment were originally filed at the substituted court.

(2) The Judge of the substituted court shall also have in respect of the person charged the same powers as the Judge of the court

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of committal has under section 323, and the provisions of that section shall apply accordingly, with all necessary modifications.

Compare: 1908 No 32 ss 373, 375

Section 325(1): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

326 Trial in substituted court

(1) Where an indictment is transmitted or removed to, or filed at, a substituted court, the charge may be dealt with, tried, and determined, and a verdict and judgment given, by and before that court in all respects as if the person charged had been originally committed for trial or the indictment had been filed at that court.

(2) Except as provided in section 379A, it shall not be lawful for any person, by himself or by his counsel, to take any objection either in the court of committal or in the substituted court, or in the Court of Appeal, to any order of a Judge, or to any other proceeding under which an indictment is transmitted or removed to, or a trial ordered to be had at, the substituted court, or to any matter or thing set out or appearing on the face of the record, except to the indictment alone.

(3) It shall not be necessary for any purpose to prove that an indictment has been duly transmitted or removed to the substituted court, but every such indictment shall be presumed to have been duly removed and transmitted upon production of it in the substituted court by the Registrar, and no evidence or proof to the contrary shall be admitted.

Compare: 1908 No 32 ss 370(5), (6), 380, 381, 382

Section 326(1): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 326(2): amended, on 1 May 1981, by section 7 of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 326(2): amended, on 1 January 1967, by section 8(2) of the Crimes Amendment Act 1966 (1966 No 98).

327 Witnesses' expenses where indictment removed at instance of the Crown

Where on the application of the prosecutor an order is made for the trial of any person at a substituted court, any Judge

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may issue a certificate, upon the production of which there may be paid, out of money appropriated by Parliament for the payment of witnesses, such sum as the Minister of the Crown who is responsible for the Ministry of Justice may approve to enable that person to defray the expenses of the attendance of his witnesses.

Compare: 1908 No 32 s 383

Section 327: amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 327: amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Indictments

328 Form of indictment

(1) Every indictment shall be in form 4 of Schedule 2, or to the like effect.

(2) Any mistake in the heading shall upon being discovered be forthwith amended, and whether amended or not shall be immaterial.

Compare: 1908 No 32 s 386

329 Contents of counts

(1) Every count of an indictment shall contain and shall be sufficient if it contains in substance a statement that the accused has committed either some crime therein specified or, except where the indictment contains a count specifying a crime for which an offender may be proceeded against only by indictment, some offence therein specified that is punishable by imprisonment for a term exceeding 3 months; and for the purposes of this section and of sections 330 to 344 the term **crime** shall be deemed to include any such offence as aforesaid.

(2) The statement may be made in popular language, without any technical averments or any allegations of matter not essential to be proved.

(3) The statement may be in the words of the enactment describing the crime or declaring the matter charged to be a crime, or in any words sufficient to give the accused notice of the crime with which he is charged.

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(4) Every count shall contain so much detail of the circumstances of the alleged crime as is sufficient to give the accused reasonable information concerning the act or omission to be proved against him, and to identify the transaction referred to; but the absence or insufficiency of such details shall not vitiate the count.

(5) A count may refer to any section or subsection of any enactment creating the crime charged therein, and in estimating the sufficiency of any such count the court shall have regard to such reference.

(6) Every count shall in general apply only to a single transaction.

Compare: 1908 No 32 s 387

Section 329(1): amended, on 23 October 1963, by section 2 of the Crimes Amendment Act 1963 (1963 No 120).

330 Crimes may be charged in the alternative

(1) A count shall not be deemed objectionable on the ground that it charges in the alternative several different matters, acts, or omissions which are stated in the alternative in the enactment describing any crime, or declaring the matters, acts, or omissions charged to be a crime, or on the ground that it is double or multiple.

(2) The accused may at any stage of the trial apply to the court to amend or divide any such count on the ground that it is so framed as to embarrass him in his defence.

(3) The court, if satisfied that the ends of justice require it, may order any count to be amended, or divided into 2 or more counts; and on the order being made that count shall be so divided or amended, and thereupon a formal commencement may be inserted before each of the counts into which it is divided.

Compare: 1908 No 32 s 388

331 Certain objections not to vitiate counts

No count shall be deemed objectionable or insufficient on the ground—

(a) that it does not contain the name of any person injuriously affected; or

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(b) that it does not state who is the owner of any property therein mentioned; or

(c) that it charges an intent to defraud, without naming or describing the person whom it was intended to defraud; or

(d) that it does not set out any document which may be the subject of the charge; or

(e) that it does not set out the words used, where words used are the subject of the charge; or

(f) that it does not specify the means by which the crime was committed; or

(g) that it does not name or describe with precision any person or thing:

provided that the court may, if satisfied that it is necessary for a fair trial, order that further particulars in writing of any such document, words, means, person, or thing be furnished by the prosecutor.

Compare: 1908 No 32 s 389

332 Indictment for perjury or fraud

(1) No count charging perjury, the making of a false oath or of a false statement, or the fabrication of evidence, or procuring the commission of any of those crimes, shall be deemed insufficient on the ground that it does not state the nature or the authority of the tribunal before which the oath or statement was taken or made, or the subject of the inquiry, or the words used, or the evidence fabricated, or that it does not expressly negative the truth of the words used; but the court may order that the prosecutor shall furnish further particulars in writing of what is relied on in support of the charge.

(2) No count charging any false pretence, or any fraud, or any attempt or conspiracy by fraudulent means, shall be deemed insufficient because it does not set out in detail in what the false pretence, or the fraud, or the fraudulent means consisted; but the court may order that the prosecutor shall furnish further particulars in writing of those matters, or any of them.

Compare: 1908 No 32 s 390(1), (2)

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333 General provisions as to counts not affected

None of the foregoing provisions of this Act as to matters that are not to render any count objectionable or insufficient shall be construed as restricting or limiting in any way the general provisions of this Part relating to the form and contents of counts.

Compare: 1908 No 32 s 390(3)

334 Further particulars

(1) When any further particulars are delivered pursuant to the foregoing provisions of this Act, a copy shall be given without charge to the accused or his solicitor.

(2) The further particulars shall be entered in or attached to the Crown Book; and the trial shall proceed in all respects as if the indictment had originally contained the further particulars.

(3) In determining whether further particulars are required or not, and whether a defect in the indictment is material to the substantial justice of the case or not, the court may have regard to the depositions.

Compare: 1908 No 32 s 391

335 Variance and amendment

(1) If on the trial of an indictment there appears to be a variance between the proof and the charge in any count of the indictment either as filed or as amended, or as it would have been if amended in conformity with any such further particulars, the court before which the case is tried, or the Court of Appeal, may amend the indictment, or any count in it, so as to make it conformable with the proof.

(2) If the court is of opinion that the accused has not been misled or prejudiced in his defence by such variance it shall make the amendment.

(3) If it appears that the indictment has been filed under some other enactment instead of under this Act, or under this Act instead of under some other enactment, or that there is in the indictment or in any count in it an omission to state or a defective statement of anything requisite to constitute the crime, or an omission to negative any exception that ought to be negatived,

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but that the matter omitted is proved by the evidence, the court before which the trial takes place, or the Court of Appeal, if of opinion that the accused has not been misled or prejudiced in his defence by the error or omission, shall amend the indictment or count as may be necessary.

(4) In any such case the trial or the appeal may then proceed in all respects as if the indictment or count had been originally framed as amended.

(5) If the court is of opinion that the accused has been misled or prejudiced in his defence by any such variance, error, omission, or defective statement as aforesaid, but that the effect of his being misled or prejudiced might be removed by adjourning or postponing the trial, the court may in its discretion make the amendment and adjourn the trial to a future day in the same sittings, or discharge the jury and postpone the trial to the next sittings of the court, on such terms as it thinks just.

(6) Where an amendment of any indictment or count is made under this section by the Court of Appeal, that court may in its discretion, in making the amendment, either affirm the sentence or direct a new trial.

(7) In determining whether the accused has been misled or prejudiced in his defence, the court that has to determine the question shall consider the contents of the depositions, as well as the other circumstances of the case.

(8) The propriety of making or refusing to make any such amendment shall be deemed a question for the court, and the decision of the court upon it may be reserved for the Court of Appeal, or may be brought on appeal before the Court of Appeal, in the same manner as any other decision on a point of law.

Compare: 1908 No 32 s 392

Section 335(1): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 335(3): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

336 Indictment for treason

(1) Every indictment for treason must state overt acts, and no evidence shall be admitted of any overt act not stated unless it is otherwise relevant as tending to prove some overt act stated.

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(2) The power of the court to amend an indictment under section 335 shall not extend to authorise the court to add to the overt acts stated in the indictment.

(3) Nothing in subsection (2) limits anything in section 345C.

Compare: 1908 No 32 s 393

Section 336(2): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 336(3): added, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

337 Attempt proved when crime is charged

Where the commission of the crime charged is not proved, but the evidence establishes an attempt to commit the crime, the accused may be convicted of the attempt.

Compare: 1908 No 32 s 394

338 Crime proved when attempt is charged

(1) Where an attempt to commit a crime is charged, but the evidence establishes the commission of the full crime, the accused may be convicted of the attempt.

(2) After a conviction for that attempt the accused shall not be liable to be tried again for the crime which he was charged with attempting to commit.

Compare: 1908 No 32 s 395

339 Part of charge proved

(1) Every count shall be deemed divisible; and if the commission of the crime charged, as described in the enactment creating the crime or as charged in the count, includes the commission of any other crime, the person accused may be convicted of any crime so included which is proved, although the whole crime charged is not proved; or he may be convicted of an attempt to commit any crime so included.

(2) On a count charging murder, the jury may—

(a) in accordance with section 337, find the accused guilty of an attempt to commit murder; or

(b) if the evidence proves manslaughter but does not prove murder, find the accused guilty of manslaughter—

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but shall not on that count, except in accordance with subsection (2) of section 178 (which relates to infanticide) find the accused guilty of any other offence.

(3) *[Repealed]*

Compare: 1908 No 32 s 396

Section 339(2): substituted, on 1 January 1974, by section 8 of the Crimes Amendment Act 1973 (1973 No 118).

Section 339(3): repealed, on 1 February 1986, by section 4 of the Crimes Amendment Act (No 3) 1985 (1985 No 160).

340 Joinder of counts

(1) Any number of counts for any crimes whatever may be joined in the same indictment, and shall be distinguished in the manner shown in form 4 of Schedule 2, or to the like effect.

(2) Where there are more counts than 1 in an indictment each count may be treated as a separate indictment.

(3) If the court thinks it conducive to the ends of justice to do so it may order that the accused shall be tried upon any 1 or more of such counts separately.

(4) Any such order may be made either before or in the course of the trial, and if it is made in the course of the trial the jury shall be discharged from giving a verdict on the counts on which the trial is not to proceed.

(5) The counts in the indictment which are not then tried shall be proceeded upon in all respects as if they had been filed in a separate indictment.

(6) Unless there are special reasons, no order shall be made preventing the trial at the same time of any number of crimes involving dishonesty not exceeding 5, alleged to have been committed within 6 months from the first to the last of such crimes, whether committed against the same person or not.

(7) If 1 sentence is passed upon any verdict of guilty on more counts than 1 the sentence shall be good if any of those counts would have justified the sentence.

Compare: 1908 No 32 s 397

Section 340(1) proviso: repealed, on 1 January 1974, by section 9 of the Crimes Amendment Act 1973 (1973 No 118).

Section 340(5): amended, on 1 March 1995, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

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341 Charge of previous conviction

(1) Where any count contains an allegation that the accused has been previously convicted, the following provisions shall apply:

(a) he shall not at the time of his arraignment be required to plead to that allegation, unless he pleads guilty to the rest of that count and to the rest of the indictment:

(b) if he pleads not guilty to the rest of that count, or to any other count in the indictment, the allegation shall not be mentioned to the jury when he is given in charge to them:

(c) if he pleads guilty to or is convicted on any count, then, before he is called upon to say why sentence should not be passed upon him, he shall be asked whether or not he has been previously convicted as alleged, and if he says that he has not, or does not say that he has been so convicted, the jury shall be charged to inquire into the matter, as in other cases.

(2) Notwithstanding anything in subsection (1), where at the trial of the accused evidence of his good character is given on the part of the accused, the prosecutor, in answer to that evidence, may prove the previous conviction.

Compare: 1908 No 32 s 398

342 Objections to indictment

(1) No objection to an indictment shall be taken by way of demurrer, but if an indictment does not state in substance a crime the prosecutor or the accused may move the court to amend it, or the accused may move the court to quash it or in arrest of judgment, as provided in this section.

(2) If the motion is made before the accused pleads, the court shall in its discretion either quash the indictment or amend it.

(3) If the defect in the indictment appears to the court during the trial the court may if it thinks fit amend it, or may in its discretion quash the indictment or leave the objection to be taken in arrest of judgment.

Compare: 1908 No 32 s 399

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343 Indictment of parties

Every one who is a party to any crime may be convicted either upon a count charging him with having committed that crime, where the nature of the crime charged will admit of such course, or upon a count alleging how he became a party to it.

Compare: 1908 No 32 s 400

344 Accessories after the fact, and receivers

(1) Every one charged with being an accessory after the fact to any crime, or with receiving property knowing it to have been dishonestly obtained, may be indicted, whether the principal offender or other party to the crime or the person by whom the property was so obtained has or has not been indicted or convicted, or is or is not amenable to justice; and the accessory may be indicted either alone, as for a substantive crime, or jointly with the principal or other offender or person by whom the property was dishonestly obtained.

(2) Where any property has been dishonestly obtained, any number of receivers at different times of that property, or of any part or parts thereof, may be charged with substantive crimes, and may be tried together, whether the person by whom the property was so obtained is or is not indicted with them, or is or is not in custody or amenable to justice.

Compare: 1908 No 32 s 401

344AA Money launderers

(1) Every one charged with an offence (in this section referred to as a **money laundering offence**) against subsection (2) or subsection (3) of section 243 or subsection (2) or subsection (3) of section 12B of the Misuse of Drugs Act 1975 (which sections relate to money laundering and laundering the proceeds of offences) in respect of any property that is the proceeds of a serious offence—

(a) may be indicted whether or not the person who committed that serious offence has been indicted or convicted or is amenable to justice; and

(b) either—

(i) may be indicted alone in respect of that money laundering offence; or

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(ii) may be charged jointly with that other person in 1 indictment in which each is charged in a separate count with the respective offence alleged to have been committed by that person, in which case those persons may be tried together.

(2) Where any property is the proceeds of a serious offence, any number of persons who are alleged to have committed, at different times, a money laundering offence in respect of that property, or any part or parts of that property,—

(a) may be charged jointly in 1 indictment in which each is charged in a separate count with the respective offence alleged to have been committed by that person; and

(b) may be tried together.

(3) For the purposes of this section, the terms **proceeds**, **property**, and **serious offence** have the same meanings as they have in section 243 of this Act and in section 12B of the Misuse of Drugs Act 1975, respectively.

Section 344AA: inserted, on 1 September 1995, by section 6 of the Crimes Amendment Act 1995 (1995 No 49).

Section 344AA(1): amended, on 1 October 2003, by section 32 of the Crimes Amendment Act 2003 (2003 No 39).

Section 344AA(1): amended, on 12 May 1998, by section 13 of the Misuse of Drugs Amendment Act 1998 (1998 No 14).

Section 344AA(3): amended, on 1 October 2003, by section 32 of the Crimes Amendment Act 2003 (2003 No 39).

Section 344AA(3): amended, on 12 May 1998, by section 13 of the Misuse of Drugs Amendment Act 1998 (1998 No 14).

Evidence

Heading: inserted, on 1 January 1981, by section 3(1) of the Crimes Amendment Act 1980 (1980 No 63).

344A Interlocutory order relating to admissibility of evidence

(1) Where any person is committed for trial and—

(a) the prosecutor or the accused wishes to adduce any particular evidence at the trial; and

(b) he believes that the admissibility of that evidence may be challenged,—

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he may at any time before the trial apply to a Judge of the court by or before which the indictment is to be tried for an order to the effect that the evidence is admissible.

(2) The Judge shall give each party an opportunity to be heard in respect of the application before deciding whether or not to make the order.

(3) The Judge may make an order under this section on such terms and subject to such conditions as he thinks fit.

(4) Nothing in this section nor in any order made under this section shall affect the right of the prosecutor or the accused to seek to adduce evidence that he claims is admissible during the trial, nor the discretion of the Trial Judge to allow or exclude any evidence in accordance with any rule of law.

Section 344A: inserted, on 1 January 1981, by section 3(1) of the Crimes Amendment Act 1980 (1980 No 63).

Identification evidence

Heading: inserted, on 11 December 1982, by section 2 of the Crimes Amendment Act 1982 (1982 No 46).

344B Attendance at identification parade voluntary

(1) No person charged with an offence shall be compelled to attend an identification parade.

(2) If any person charged with an offence does attend an identification parade, he shall be entitled to have his solicitor present.

(3) Where a person charged with an offence has refused to attend an identification parade, no comment adverse to the person charged shall be made thereon.

Section 344B: inserted, on 11 December 1982, by section 2 of the Crimes Amendment Act 1982 (1982 No 46).

344C Information relating to identification witness 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 shall, on request by or on behalf of that person, supply to that person—

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(a) the name and 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 him.

(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 he is satisfied that such an order is necessary to protect the identification witness or any other person.

Section 344C: inserted, on 11 December 1982, by section 2 of the Crimes Amendment Act 1982 (1982 No 46).

344D Jury to be warned where principal evidence relates to identification

[Repealed]

Section 344D: repealed, on 1 August 2007, by section 215 of the Evidence Act 2006 (2006 No 69).

Filing indictment

Heading: amended, on 1 March 1996, by section 4(3) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

345 Presenting indictment

(1) Where any person is committed for trial, or any 2 or more persons are so committed, whether jointly or severally, an indictment may be filed in the High Court or in a District Court (as the case may require) for any charge or charges founded on the evidence disclosed in any depositions taken against such person or persons.

(2) An indictment under subsection (1) may be filed by the Attorney-General or a Crown Solicitor in any case, or by the informant in the case of a private prosecution.

(3) Notwithstanding anything in subsection (1), the Attorney-General, or any one with the written consent of a Judge

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of the High Court or of the Attorney-General, may file an indictment for any offence.

(4) It shall not be necessary to specify any such consent as aforesaid in the indictment; and any objection to an indictment for want of such consent shall be taken by motion to quash the indictment before the accused is given in charge to the jury.

(5) Except where an indictment is filed under subsection (3), the accused may, at any time before he is given in charge to the jury, apply to the court to quash any count in the indictment, on the ground that it is not founded on the evidence disclosed in the depositions; and the court shall quash that count if satisfied that it is not so founded.

(6) If at any time during the trial it appears to the court that any count is not so founded, and that injustice has been or is likely to be done to the accused in consequence of that count remaining in the indictment, the court may quash that count and discharge the jury from finding any verdict on it; but the court shall not do so unless it is satisfied that justice requires it.

(7) No indictment shall be filed except as hereinbefore provided.

Compare: 1908 No 32 s 407

Section 345(1): substituted, on 23 October 1963, by section 3 of the Crimes Amendment Act 1963 (1963 No 120).

Section 345(1): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 345(1): amended, on 1 May 1981, by section 8 of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 345(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 345(2): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 345(3): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 345(3): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 345(5): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 345(7): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

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345A Time for filing indictment

(1) Unless an extension is obtained under section 345B, an indictment shall be filed not later than 42 days after the date on which the accused is committed for trial.

(2) In reckoning the period referred to in subsection (1), the period commencing on 24 December and ending with the close of 15 January shall be disregarded.

(3) If the time for filing an indictment expires on any day on which the office of the court is closed and it is not possible for the indictment to be filed on that day by reason of that closure, the indictment shall be filed on the next day on which that office is open if it has not already been filed.

(4) If an indictment is filed, the prosecutor shall forthwith forward a copy of the indictment,—

(a) if the accused is known by the prosecutor to be represented by counsel or a solicitor, to that counsel or solicitor; or

(b) in any other case, to the accused at his or her last known address.

(5) The accused is entitled to uplift a copy of the indictment from the Registrar at any time after it has been filed.

Section 345A: inserted, on 1 March 1996, by section 3 of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

345B Extension of time for filing indictment

(1) If, upon application, it appears to a Trial Judge that it is in the interests of justice to extend the 42-day period referred to in section 345A for filing an indictment, he or she may order that the time be extended for such further period or periods as he or she thinks fit.

(2) Without limiting the generality of subsection (1), in considering an application under this section, the Trial Judge may have regard to the following matters:

(a) the number of offences which will or may be counts in the indictment:

(b) the nature of the offence or offences which will or may be counts in the indictment:

(c) the complexity of the issues likely to arise in the proceedings:

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(d) whether the accused is charged jointly with any other person:

(e) whether further or ongoing inquiries are being conducted by or for the prosecution in relation to the subject-matter of the trial.

(3) An application under this section may be made before or on or after the expiration of the period allowed for filing the indictment, and any period extended under this section may, in like manner, be further extended.

(4) An application under this section shall, unless a Trial Judge otherwise directs,—

(a) be in writing; and

(b) include a statement of the reasons for seeking an extension; and

(c) specify the period for which the extension is sought; and

(d) give notice of intention (if any) to apply for an order under section 345C(1).

(5) An application under this section shall, unless a Trial Judge otherwise directs, be served by the prosecutor on the accused at least 4 working days before the date fixed for the hearing of the application,—

(a) if the accused was represented by counsel at the committal proceedings for of the charge or charges, or is known by the prosecutor to be represented by counsel or a solicitor, by leaving a copy of the application at the office of the counsel or solicitor or sending a registered letter addressed to the counsel or solicitor at his or her office:

(b) in any other case, by delivering a copy of the application personally to the accused or in such other manner as a Trial Judge may direct.

(6) Any application under this section may be made to a Trial Judge when sitting in court or in Chambers, and if the accused is represented by counsel, it is not necessary for the accused to be brought or appear before the Trial Judge on the hearing of the application.

(7) A Registrar may exercise the power conferred by subsection (1) if—

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(a) the period of extension sought does not exceed 1 month; and

(b) the accused has consented to the extension, whether personally or by his or her counsel or solicitor.

Section 345B: inserted, on 1 March 1996, by section 3 of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 345B(5)(a): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

345C Trial Judge may excuse disclosure of information relating to Police investigations

(1) A Trial Judge may, upon application, order that the prosecution be excused from disclosing to the accused any details relating to the nature or the purpose of investigations referred to in the application.

(2) An order shall not be made under this section in any case unless—

(a) an application has been made under section 345B in relation to the same case; and

(b) the reason for that application is that further or continuing investigations in respect of the subject-matter of the trial in that case or any other matter that may affect the trial are being or are to be made by or for the prosecutor; and

(c) the disclosure of the information will or may prejudice the investigations referred to in the application under this section; and

(d) it is not contrary to the interests of justice to withhold the information.

(3) At the hearing of an application under this section, any evidence to be adduced by the prosecutor shall be tendered to the Trial Judge in affidavit form and shall not be disclosed to the accused or to his or her counsel or solicitor unless the Trial Judge otherwise directs after considering the evidence and hearing from the prosecutor.

(4) If an order is made under subsection (1), the Registrar shall, at the conclusion of the hearing, hold all evidence adduced by the prosecutor secure against search until the order is discharged by the court.

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(5) A Trial Judge may, at any time after an order under subsection (1) has been made, either of his or her own motion or upon application by the accused or the prosecutor, discharge the order if the Trial Judge is satisfied, after hearing from the prosecutor, that—

(a) the investigations which were the subject of the order have been completed; or

(b) disclosure of the information referred to in the order is necessary in the interests of justice.

Section 345C: inserted, on 1 March 1996, by section 3 of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

345D Leave to file amended indictments

(1) A Trial Judge may, at any time before the commencement of the trial, upon application by the prosecutor, grant leave to allow the prosecutor to file an amended indictment if it appears to the Trial Judge that the filing of an amended indictment would be conducive to the ends of justice.

(2) Without limiting the generality of subsection (1), leave may be granted under that subsection to allow the filed indictment to be amended by—

(a) amending any particulars; or

(b) removing or adding or substituting charges; or

(c) adding or removing the name of any accused.

(3) An application under this section shall, unless a Trial Judge otherwise directs,—

(a) be in writing; and

(b) include a statement of the reasons why an amendment to the filed indictment is necessary or be accompanied by a copy of the amended indictment in respect of which leave is sought.

(4) An application under this section shall, unless a Trial Judge otherwise directs, be served by the prosecutor on the accused at least 4 working days before the date fixed for the hearing of the application,—

(a) if the accused was represented by counsel at the committal proceedings for the charge or charges, or is known by the prosecutor to be represented by counsel or a solicitor, by leaving a copy of the application at the

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office of the counsel or solicitor or sending a registered letter addressed to the counsel or solicitor at his or her office:

(b) in any other case, by delivering a copy of the application personally to the accused or in such other manner as a Trial Judge may direct.

(5) Any application under this section may be made to a Trial Judge when sitting in court or in Chambers, and if the accused is represented by counsel, it is not necessary for the accused to be brought or appear before the Trial Judge on the hearing of the application.

(6) A Registrar may exercise the power conferred by subsection (1) if the accused has consented to the filing of an amended indictment, whether personally or by his or her counsel or solicitor.

Section 345D: inserted, on 1 March 1996, by section 3 of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 345D(4)(a): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

346 Failure of prosecutor to file indictment

(1) If the prosecutor does not file an indictment within the 42-day period referred to in section 345A or within such further time as may be allowed under section 345B, the court may direct that the accused be discharged.

(2) A discharge under this section shall be deemed to be an acquittal.

(3) In such a case involving a private prosecution, the court may order the prosecution to pay the costs of the accused.

Section 346: substituted, on 1 March 1996, by section 3 of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

347 Power to discharge accused

(1) Where any person is committed for trial, the Judge may, in his discretion,—

(a) of his own motion or on the application of the prosecutor or the accused; and

(b) after giving both the prosecutor and the accused reasonable opportunity to be heard on the matter; and

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(c) after perusal of the depositions and consideration of such other evidence and other matters as are submitted for his consideration by the prosecutor or the accused—

direct that no indictment shall be filed, or, if an indictment has been filed, direct that the accused shall not be arraigned thereon; and in either case direct that the accused be discharged.

(2) Where an indictment is filed by the Attorney-General, or by any one with the consent of the Attorney-General, under subsection (3) of section 345, the Judge may in his discretion, after perusal of the statements of the witnesses for the prosecution, or after hearing those witnesses, direct that the accused shall not be arraigned on the indictment, and direct that he be discharged.

(3) The Judge may in his discretion, at any stage of any trial, whether before or after verdict, direct that the accused be discharged.

(3A) Every direction under this section shall be given in open court.

(4) A discharge under this section shall be deemed to be an acquittal.

(5) The provisions of section 106(3) of the Sentencing Act 2002 shall extend and apply to a discharge under this section.

(6) Nothing in this section shall affect the power of the court to convict and discharge any person.

Compare: 1954 No 50 s 42(3), (4), (6); 1960 No 116 s 10

Section 347(1): substituted, on 17 December 1976, by section 19(1) of the Summary Proceedings Amendment Act 1976 (1976 No 169).

Section 347(1): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 347(2): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 347(3A): inserted, on 17 December 1976, by section 19(2) of the Summary Proceedings Amendment Act 1976 (1976 No 169).

Section 347(5): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

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348 Copy of indictment

After the indictment is filed, every one charged therein shall be entitled to have a copy thereof, free of charge, from the Registrar.

Compare: 1908 No 32 s 410

Section 348: amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

349 Special provisions in case of treason

[Repealed]

Section 349: repealed, on 26 December 1989, by section 3(1)(a) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

Trial and sentence

350 Bench warrant

[Repealed]

Section 350: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

351 Failure of witness to attend

(1) If any witness who has been summoned to give evidence at any trial, or who has been served with a notice to attend under section 184V of the Summary Proceedings Act 1957, fails to attend at the time and place appointed, the court may issue a warrant to arrest him and bring him before the court, and may adjourn the trial.

(2) The court may impose on any such witness who fails to attend as aforesaid a fine not exceeding $500.

Section 351(1): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 351(2): amended, on 1 May 1981, by section 10 of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

352 Refusal of witness to give evidence

(1) If any witness, 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 put to him, the court may order that, unless he sooner consents to give evidence or to be sworn or to answer

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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 for his arrest and detention in accordance with the order.

(2) If the person so detained, on being brought up again at the trial, 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 that the witness 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.

(3) Nothing in this section limits or affects any power or authority of the court to punish any witness for contempt of court.

Section 352(3): substituted, on 3 June 1998, by section 4 of the Crimes Amendment Act 1998 (1998 No 35).

353 Record of proceedings

(1) It shall not in any case be necessary to draw up any formal record of the proceedings on a trial for a crime; but the Registrar of the court before which the trial takes place shall cause to be preserved all indictments and all depositions transmitted to him. He shall keep a book to be called the Crown Book, which shall be the property of the court and shall be deemed a record thereof, and its contents shall be provable by a certified copy or extract without production of the original.

(2) The Registrar shall cause to be entered in the Crown Book a statement of the following particulars:

(a) the name or names of the committing District Court Judge or Justices or Community Magistrate or Community Magistrates, and the charge on which the accused was committed, or, if the accused was not committed, the name of the prosecutor:

(b) if the indictment is filed by leave, the name of the court or other authority granting such leave:

provided that the absence of such a statement, or any mistake therein, shall not be a ground of objection to the proceedings; but the court to which the Crown Book belongs may, and shall on the application at any time of either the prosecutor or the accused, order a statement of

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those particulars to be entered, or amend the statement where it is erroneous or defective.

(3) In the Crown Book there shall also be entered the name of the Judge of the court, and a memorandum of the substance of all proceedings at every trial and of the result of every trial.

(4) Such entries, or a certified copy thereof or of so much thereof as is material, may be referred to in any proceeding by way of appeal.

(5) A certificate of any indictment, trial, conviction, or acquittal, or of the substance thereof, made up from the memorandum in the Crown Book, shall be received in evidence for the same purpose and to the same extent as certificates of records, or the substantial parts thereof, are receivable.

(6) Any erroneous or defective entry in the Crown Book may at any time be amended by the Judge who presided at the trial or, if that Judge is not available, by any Judge.

(7) If the trial takes place before any court other than that to which the accused was committed for trial, or before which the indictment was filed, a statement shall be made in the Crown Book of the order under which the trial is held, and by whom or where it was made.

(8) Nothing in this section shall dispense with the taking of notes by the Judge presiding at the trial.

Compare: 1908 No 32 s 414

Section 353(2)(a): amended, on 30 June 1998, by section 6 of the Crimes Amendment Act (No 2) 1998 (1998 No 79).

Section 353(2)(a): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

Section 353(2)(b): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 353(7): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

354 Right to be defended

Every person accused of any crime may make his full defence thereto by himself or by counsel.

Compare: 1908 No 32 s 415

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355 Arraignment

Every accused person shall, upon being called upon to plead, be entitled to have the indictment on which he is to be tried read over to him, if he so requires.

Compare: 1908 No 32 s 417

356 Plea

(1) When the accused is called upon to plead he may plead either guilty or not guilty, or such special pleas as are hereinafter provided for.

(2) If the accused wilfully refuses to plead, or will not answer directly, the court may, if it thinks fit, order the Registrar to enter a plea of not guilty.

(3) If the accused pleads not guilty, or specially pleads, or if the court has ordered the entry of a plea of not guilty, the accused may, if he expressly declares his desire to do so, alter his plea to one of guilty, notwithstanding that he may have been given in charge to the jury; and if he does so the court shall discharge the jury from giving a verdict.

(4) If pursuant to subsection (3) the accused pleads guilty, the Judge shall have the same powers of sentencing or otherwise dealing with him, and of finally disposing of the charge to which the accused has pleaded guilty and of all incidental matters, as the Judge would have had if on arraignment the accused had pleaded guilty to the charge.

Compare: 1908 No 32 s 419

Section 356(3): added, on 1 January 1974, by section 10 of the Crimes Amendment Act 1973 (1973 No 118).

Section 356(4): added, on 1 January 1974, by section 10 of the Crimes Amendment Act 1973 (1973 No 118).

357 Special pleas

(1) The following special pleas, and no others, may be pleaded according to the provisions hereinafter contained—that is to say, a plea of previous acquittal, a plea of previous conviction, and a plea of pardon.

(2) All other grounds of defence may be relied on under the plea of not guilty.

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(3) The pleas of previous acquittal, or previous conviction, and pardon may be pleaded together, and if pleaded shall be disposed of by the Judge, without a jury, before the accused is called on to plead further; and, if every such plea is disposed of against the accused, he shall be allowed to plead not guilty.

(4) In any plea of previous acquittal or previous conviction it shall be sufficient for the accused to state that he has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count or counts to which that plea is pleaded.

(5) *[Repealed]*

Compare: 1908 No 32 s 402; Criminal Code (1954) s 516(3) (Canada)

Section 357(5): repealed, on 1 February 1993, by section 56(2) of the Defamation Act 1992 (1992 No 105).

358 Pleas of previous acquittal and conviction

(1) On the trial of an issue on a plea of previous acquittal or conviction to any count, if it appears that the matter on which the accused was formerly charged is the same in whole or in part as that on which it is proposed to give him in charge, and that he might on the former trial, if all proper amendments had been made that might then have been made, have been convicted of all the offences of which he may be convicted on any count to which that plea is pleaded, the court shall give judgment that he be discharged from that count.

(2) If it appears that the accused might on the former trial have been convicted of any offence of which he might be convicted on the count to which that plea is pleaded, but that he may be convicted on that count of some offence of which he could not have been convicted on the former trial, the court shall direct that he shall not be convicted on that count of any offence of which he might have been convicted on the former trial, but that he shall plead over as to any other offence charged.

Compare: 1908 No 32 s 403

359 Second accusation

(1) Where an indictment charges substantially the same offence as that with which the accused was formerly charged, but adds a statement of intention or circumstances of aggravation tending

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if proved to increase the punishment, the previous acquittal or conviction shall be a bar to the indictment.

(2) A previous conviction or acquittal on an indictment for murder or manslaughter or infanticide shall be a bar to a second indictment for the same homicide charging it as any one of those crimes.

(3) If on the trial of an issue on a plea of previous acquittal or conviction to an indictment for murder or manslaughter or infanticide it appears that the former trial was for an offence against the person alleged to have been now killed, and that the death of that person is now alleged to have been caused by the offence previously charged, but that the death happened after the trial on which the accused was acquitted or convicted, as the case may be, then, if it appears that on the former trial the accused might if convicted have been sentenced to imprisonment for 3 years or upwards, the court shall direct that the accused be discharged from the indictment before it. If it does not so appear the court shall direct that he plead over.

Compare: 1908 No 32 s 404

360 Evidence of former trial

(1) On the trial of an issue on a plea of previous acquittal or conviction on indictment in the High Court or in a District Court, the depositions transmitted to the court on the former trial, together with a copy of the Judge's notes, if available, certified by the Registrar, and the depositions transmitted to the court on the subsequent charge, shall be admissible in evidence to prove or disprove the identity of the charges.

(2) On the trial of an issue on a plea of previous acquittal or conviction following a summary hearing in a District Court, a copy of the entry in the Criminal Record Book, and a copy of the information or charge sheet, and a copy of any notes made by the District Court Judge or Justices or Community Magistrate or Community Magistrates, if available, certified by the Registrar of the District Court, shall be admissible in evidence to prove or disprove the identity of the charges.

Compare: 1908 No 32 s 405

Section 360(1): amended, on 1 May 1981, by section 11(1) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

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Section 360(2): amended, on 30 June 1998, by section 7 of the Crimes Amendment Act (No 2) 1998 (1998 No 79).

Section 360(2): amended, on 1 May 1981, by section 11(2) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 360(2): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

361 Plea on behalf of corporation

(1) Where an indictment is filed against a corporation in respect of any indictable offence the corporation may, on arraignment, enter a plea in writing by its representative.

(2) If the corporation either does not appear by a representative or, though it does so appear, fails to enter any plea as aforesaid, the court shall order a plea of not guilty to be entered, and the trial shall proceed as if the corporation had duly entered a plea of not guilty.

(3) In this section, the term **representative** means a person duly appointed by the corporation to represent it for the purposes of this section; 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.

(4) A representative for the purposes of this section 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 he is 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 section shall be admissible without further proof as prima facie evidence that that person has been so appointed.

Compare: 1936 No 58 s 42(3), (6), (7)

Section 361(1): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

361A Trial before a Judge with a jury general rule

(1) Every accused person shall be tried before a Judge with a jury.

(2) Subsection (1) is subject to sections 361B to 361E.

Section 361A: inserted, on 14 December 1979, by section 2(1) of the Crimes Amendment Act (No 2) 1979 (1979 No 127).

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Section 361A(1): amended, on 25 December 2008, by section 4(2) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Section 361A(2): added, on 25 December 2008, by section 4(3) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

361B Accused may apply for trial before a Judge without a jury

(1) Subject to the succeeding provisions of this section, where any accused person is committed to the High Court or to a District Court Judge exercising jurisdiction under section 28A of the District Courts Act 1947 for trial for any offence other than one referred to in subsection (5), he may, within 28 days after the date on which he is so committed, give written notice to the Registrar of the High Court or of the District Court, as the case may require, at the place to which he is so committed of his wish to be tried before a Judge of that court without a jury.

(2) Where a Registrar receives such a notice under subsection (1), he shall forthwith give a copy of the notice to the prosecutor.

(3) Where the accused, within the period prescribed by subsection (1), gives notice in accordance with that subsection of his desire to be tried before a Judge without a jury, the Registrar shall refer the matter to a Judge of the court (who may or may not be the Judge before whom the trial is to be held).

(4) The Judge to whom any matter is referred under subsection (3) shall order that the accused be tried before a Judge without a jury unless, having regard to the interests of justice, the Judge considers that the accused should be tried before a Judge with a jury, in which case he shall order accordingly.

(5) No one shall be entitled to apply to be tried by a Judge without a jury if he is charged with an offence for which the maximum penalty is imprisonment for life or imprisonment for a term of 14 years or more.

(6) Where 2 or more persons are to be tried together, they shall be tried before a Judge with a jury unless each of them applies to be tried by a Judge without a jury.

(7) Any notice purporting to be given under this section on behalf of the accused by his counsel or solicitor shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

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(8) Notwithstanding anything in subsection (1), an accused person may give notice under that subsection before or immediately after the person is committed for trial.

Section 361B: inserted, on 14 December 1979, by section 2(1) of the Crimes Amendment Act (No 2) 1979 (1979 No 127).

Section 361B(1): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 361B(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 361B(5): amended, on 26 December 1989, by section 3(7) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

Section 361B(8): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

361C Judge may order trial without a jury in certain cases

(1) Without limiting anything in section 361B but subject to the succeeding provisions of this section, where any person is committed for trial for any offence other than one referred to in section 361B(5), he may, at any time before he is given in charge to the jury, with leave of the Judge apply to the Judge for an order that he be tried before the Judge without a jury.

(2) The Judge shall not grant leave under subsection (1) unless he is satisfied—

(a) that the accused was not given notice, in accordance with section 184S of the Summary Proceedings Act 1957, of his right to apply under section 361B of this Act to be tried before a Judge without a jury; or

(b) that there were good and sufficient reasons why the accused did not exercise that right in accordance with the said section 361B; or

(c) that it is in the interests of justice that leave be granted.

(3) No such leave shall be granted in any case where a Judge has, pursuant to section 361B(4), ordered that the accused shall be tried before a Judge with a jury.

(4) Where 2 or more persons are to be tried together, no leave shall be granted under subsection (1) unless each of them seeks such leave.

(5) Where the Judge grants leave, he shall order that the accused be tried before the Judge without a jury unless, having regard to the interests of justice, the Judge considers that the accused

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should be tried before the Judge with a jury, in which case he shall order accordingly.

Section 361C: inserted, on 14 December 1979, by section 2(1) of the Crimes Amendment Act (No 2) 1979 (1979 No 127).

Section 361C(2)(a): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

361D Judge may order trial without jury in certain cases that are likely to be long and complex

(1) This section applies only to a person (the **accused person**) who is committed for trial for an offence that is not—

(a) an offence for which the maximum penalty is imprisonment for life or imprisonment for 14 years or more; or

(b) an offence of attempting or conspiring to commit, or of being a party to the commission of, or of being an accessory after the fact to, an offence referred to in paragraph (a).

(2) The Judge may, on a written application for the purpose made by the prosecutor to the Judge and served on the accused person before the accused person is given in charge to the jury, order that the accused person be tried for the offence before the Judge without a jury.

(3) However, the Judge may make an order under subsection (2) only if the prosecution and the accused person have been given an opportunity to be heard in relation to the application, and following such hearing, the Judge is satisfied—

(a) that all reasonable procedural orders (if any), and all other reasonable arrangements (if any), to facilitate the shortening of the trial, have been made, but the duration of the trial still seems likely to exceed 20 days; and

(b) that, in the circumstances of the case, the accused person's right to trial by jury is outweighed by the likelihood that potential jurors will not be able to perform their duties effectively.

(4) In considering, for the purposes of subsection (3)(b), the circumstances of the case, the Judge must take into account the following matters:

(a) the number and nature of the offences with which the accused person is charged:

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(b) the nature of the issues likely to be involved:
(c) the volume of evidence likely to be presented:
(d) the imposition on potential jurors of sitting for the likely duration of the trial:
(e) any other matters the Judge considers relevant.

(5) If the accused person is one of 2 or more persons to be tried together, all of them must be tried before a Judge with a jury unless an order under subsection (2) for all of them to be tried by a Judge without a jury is applied for and made.

(6) This section does not limit section 361B or 361C or 361E.

Section 361D: inserted, on 25 December 2008, by section 4(1) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

361E Judge may order trial without jury in cases involving intimidation of juror or jurors

(1) The Judge may, on a written application for the purpose made by the prosecutor before an accused person is given in charge to the jury, order that the accused person be tried for the offence before the Judge without a jury.

(2) However, the Judge may make an order under subsection (1) only if satisfied that there are reasonable grounds to believe—
(a) that intimidation of any person or persons who may be selected as a juror or jurors has occurred, is occurring, or may occur; and
(b) that the effects of that intimidation can be avoided effectively only by making an order under subsection (1).

(3) If the accused person is one of 2 or more persons to be tried together, all of them must be tried before a Judge with a jury unless an order under subsection (1) for all of them to be tried by a Judge without a jury is applied for and made.

(4) This section does not limit sections 361B to 361D.

Section 361E: inserted, on 25 December 2008, by section 4(1) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

362 Challenging the array

[Repealed]

Section 362: repealed, on 1 May 1982, by section 37(1) of the Juries Act 1981 (1981 No 23).

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363 Challenges and directions to stand by

[Repealed]

Section 363: repealed, on 1 May 1982, by section 37(1) of the Juries Act 1981 (1981 No 23).

364 Caution to accused when undefended

Where on arraignment any accused person who is not defended by counsel pleads not guilty, the court shall cause to be handed to him, before the evidence for the prosecution is heard, a written statement in the following words, or in words to the like effect, that is to say:

"When the evidence against you has been heard, you will be asked whether you wish to give evidence yourself or to call witnesses. You are not obliged to give or call evidence but, if you do, that evidence may be used against you. You should consider in particular whether evidence which you can give is relevant and will assist you in your defence. If you do not give evidence no person other than the Judge and yourself may comment on that fact."

Compare: 1908 No 32 s 422

Section 364: amended, on 1 January 1967, by section 4(2) of the Crimes Amendment Act 1966 (1966 No 98).

365 Question to accused when undefended

Where any accused person is not defended by counsel, then, on the completion of the examination of the witnesses on the part of the prosecution, the following question, or words to the like effect, shall be addressed to him by or under the direction of the court, that is to say:

"Do you wish to give or call evidence?"

Compare: 1908 No 32 s 422

366 Comment on failure to give evidence

(1) *[Repealed]*

(2) Where a person charged with an offence refrains from calling his wife or her husband, as the case may be, as a witness, no comment adverse to the person charged shall be made thereon.

Section 366: substituted, on 1 January 1967, by section 4(1) of the Crimes Amendment Act 1966 (1966 No 98).

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Section 366(1): repealed, on 1 August 2007, by section 215 of the Evidence Act 2006 (2006 No 69).

366A Unsworn statement prohibited

(1) No accused person shall be entitled to make an unsworn statement of fact at his trial.

(2) Nothing in this section shall limit the provisions of section 369.

Section 366A: inserted, on 1 January 1967, by section 5(1) of the Crimes Amendment Act 1966 (1966 No 98).

367 Evidence and addresses

(1) Upon the trial of any accused person, counsel for the prosecution may open his case and after such opening (if any) shall be entitled to call such witnesses as he thinks fit; and the accused person, whether he is defended by counsel or not, shall be allowed at the end of the case for the prosecution, if he thinks fit, to open his case, and after such opening (if any) shall be entitled to call such witnesses as he thinks fit.

(1A) Without limiting subsection (1), the court may give an accused person leave to make an opening statement, after any opening by the prosecution and before any evidence is adduced, for the purposes only of identifying the issue or issues at the trial.

(1B) Nothing in an opening statement made under subsection (1A) limits the rights of an accused person to raise any other issue or issues at the trial.

(1C) The court may give an accused person (whether defended by counsel or not) leave to call 1 or more expert witnesses immediately after counsel for the prosecution has called 1 or more expert witnesses.

(1D) Leave under subsection (1C) overrides subsection (1), but does not affect the calling of expert or other witnesses who are not the subject of the leave, or prevent cross-examination or re-examination of any expert witness.

(2) When all the evidence (including any evidence given on cross-examination, re-examination, or in rebuttal) is concluded, counsel for the prosecution may make a closing address to the jury.

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(3) After the closing address (if any) on behalf of the prosecution the accused or his counsel may make a closing address to the jury and the prosecution shall have no right of reply in any case.

Section 367: substituted, on 1 January 1967, by section 6 of the Crimes Amendment Act 1966 (1966 No 98).

Section 367(1): amended, on 26 June 2008, by section 5(1) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Section 367(1A): inserted, on 15 November 2000, by section 3 of the Crimes Amendment Act 2000 (2000 No 57).

Section 367(1B): inserted, on 15 November 2000, by section 3 of the Crimes Amendment Act 2000 (2000 No 57).

Section 367(1C): inserted, on 26 June 2008, by section 5(2) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Section 367(1D): inserted, on 26 June 2008, by section 5(2) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

367A Notice of alibi

(1) *[Repealed]*

(2) *[Repealed]*

(3) *[Repealed]*

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time when it is to be given, be given before or after evidence is given in support of the alibi.

(5) *[Repealed]*

(6) *[Repealed]*

(7) *[Repealed]*

(8) In this section, the expression **evidence in support of an alibi** means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he 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.

Compare: Criminal Justice Act 1967 s 11 (UK)

Section 367A: inserted, on 1 January 1974, by section 11(1) of the Crimes Amendment Act 1973 (1973 No 118).

Section 367A(1): repealed, on 29 June 2009, by section 40(1) of the Criminal Disclosure Act 2008 (2008 No 38).

Section 367A(2): repealed, on 29 June 2009, by section 40(1) of the Criminal Disclosure Act 2008 (2008 No 38).

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Section 367A(3): repealed, on 29 June 2009, by section 40(1) of the Criminal Disclosure Act 2008 (2008 No 38).

Section 367A(5): repealed, on 29 June 2009, by section 40(1) of the Criminal Disclosure Act 2008 (2008 No 38).

Section 367A(6): repealed, on 29 June 2009, by section 40(1) of the Criminal Disclosure Act 2008 (2008 No 38).

Section 367A(7): repealed, on 29 June 2009, by section 40(1) of the Criminal Disclosure Act 2008 (2008 No 38).

368 Adjourning trial for witnesses

(1) If the court is of opinion that the accused is taken by surprise, in a manner likely to be prejudicial to his defence, by the production on behalf of the prosecutor of a witness who has not made any deposition, and of the intention to produce whom the accused has not had sufficient notice, the court may, on the application of the accused, either adjourn the further hearing of the case or discharge the jury from giving a verdict, and postpone the trial.

(2) If the court is of opinion that any witness who is not called for the prosecution ought to be so called, it may require the prosecutor to call him, and, if the witness is not in attendance, make an order that his attendance shall be procured; and the court may, if it thinks proper, adjourn the further hearing of the case to some other time during the sittings until that witness attends.

(3) If in such case the court is of opinion that it would be conducive to the ends of justice to do so, it may, on the application of the accused, discharge the jury and postpone the trial.

Compare: 1908 No 32 s 425

369 Admissions

[Repealed]

Section 369: repealed, on 1 August 2007, by section 215 of the Evidence Act 2006 (2006 No 69).

369A Prosecution may withdraw in certain cases

(1) Where, on an application under section 109(1)(d) of the Evidence Act 2006, leave is granted to the accused to put any question relating to the identity of a witness called by the prosecutor, the prosecutor may forthwith inform the Judge that the

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prosecution does not intend to proceed with the indictment, or with any particular count in the indictment.

(2) In such a case the court shall give judgment that the accused be discharged from the indictment or from that count, and every such judgment shall be deemed to be an acquittal.

Section 369A: inserted, on 30 September 1986, by section 2 of the Crimes Amendment Act (No 3) 1986 (1986 No 75).

Section 369A(1): amended, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

370 Jury retiring to consider verdict

[Repealed]

Section 370: repealed, on 29 June 2009, by section 19(2) of the Juries Amendment Act 2008 (2008 No 40).

371 Motion in arrest of judgment. Sentence

(1) If the jury find the accused guilty, or if the accused pleads guilty, it shall be the duty of the Registrar to ask him whether he has anything to say why sentence should not be passed upon him according to law; but the omission so to ask shall have no effect on the validity of the proceedings.

(2) The accused may, at any time before sentence, move in arrest of judgment on the ground that the indictment does not (after any amendment has been made therein that the court is willing and has power to make) state any crime.

(3) The court may in its discretion either hear and determine the matter during the same sitting, or reserve the matter for the Court of Appeal.

(4) If the court decides in favour of the accused he shall be discharged from that indictment.

(5) If no such motion is made, or if the court decides against the accused on any such motion, the court may, during the sitting of the court, sentence the accused or deal with him in any other manner authorised by law.

(6) If the accused is not sentenced or dealt with during the sitting, section 65 of the Bail Act 2000 applies.

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(7) In any such case, any Judge of the court may, at a subsequent sitting, sentence the accused or deal with the accused in any other manner authorised by law.

Compare: 1908 No 32 s 428; 1954 No 50 s 54(2)

Section 371(6): substituted, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 371(7): added, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

372 Correction of erroneous sentence

(1) If any sentence is one that could not by law be passed, or if the Judge does not pass a sentence that is required by law to be passed, either party may apply to the Judge to pass a proper sentence.

(2) If the Judge who passed the sentence is not available, an application under this section may be made to any other Judge.

(3) If the Judge considers that the sentence is one that could not by law be passed, or that a sentence required by law to be passed has not been passed, he may pass such sentence as ought to have been passed.

(4) Any Judge to whom an application is made under this section may by order remove the application into the Court of Appeal, which may deal with it as if it were an appeal on a question of law reserved under section 380.

(5) If the Judge to whom an application is made under this section passes a new sentence, the time for appeal against conviction or sentence or both shall run from the date of the new sentence.

(6) In this section, the term **sentence** includes an order, and references to the **passing of a sentence** include references to the making of an order.

Compare: 1908 No 32 s 443(6); 1920 No 15 s 3

Section 372(4): amended, on 1 May 1981, by section 12 of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

373 Discretion to keep jury together

(1) From the time when the accused is given in charge to the jury the trial shall proceed continuously, subject to the power of the court to adjourn it.

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(2) Upon every such adjournment the court may, if it thinks fit, direct that during the adjournment the jury shall be kept together, and that proper provision be made for preventing the jury from holding communication with any one on the subject of the trial, but, if no such direction is given, the jury shall be permitted to separate.

(3) *[Repealed]*

(4) *[Repealed]*

Compare: 1908 No 32 s 430

Section 373 heading: substituted, on 1 January 1967, by section 7 of the Crimes Amendment Act 1966 (1966 No 98).

Section 373(2): amended, on 1 January 1967, by section 7(2) of the Crimes Amendment Act 1966 (1966 No 98).

Section 373(3): repealed, on 1 January 1967, by section 7(1) of the Crimes Amendment Act 1966 (1966 No 98).

Section 373(4): repealed, on 1 January 1967, by section 7(1) of the Crimes Amendment Act 1966 (1966 No 98).

374 Discharge of juror or jury

Nothing in this Act affects the powers of a court or Judge or Registrar to discharge a juror or jury for a criminal case under section 22 or 22C of the Juries Act 1981.

Section 374: substituted, on 25 December 2008, by section 16(1) of the Juries Amendment Act 2008 (2008 No 40).

375 Power to clear court and forbid report of proceedings

[Repealed]

Section 375: repealed, on 1 October 1985, by section 11(1) of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

375A Special provisions in cases of sexual nature

(1) For the purposes of this section, **case of a sexual nature** means proceedings in which a person is charged with, or is to be sentenced for, any of the following offences:

(a) any offence against any of the provisions of sections 128 to 142A:

(aa) any offence against section 144A:

(b) any other offence against the person of a sexual nature:

(c) being a party to the commission of any offence referred to in paragraph (a) or paragraph (aa) or paragraph (b):

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(d) conspiring with any person to commit any such offence.

(2) While the complainant in a case of a sexual nature is giving oral evidence (whether in chief or under cross-examination or on re-examination), no person shall be present in the courtroom except the following:

(a) the Judge and jury:

(b) the accused and any person who is for the time being acting as custodian of the accused:

(c) any barrister or solicitor engaged in the proceedings:

(d) any officer of the court:

(e) any person who is for the time being responsible for recording the proceedings:

(f) the constable in charge of the case:

(g) any accredited news media reporter:

(h) any person whose presence is requested by the complainant:

(i) any person expressly permitted by the Judge to be present.

(3) Before the complainant in a case of a sexual nature commences to give evidence, the Judge shall—

(a) ensure that no person other than one 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 paragraph (h) of that subsection.

(4) Where in a case of a sexual nature the court is of the opinion that the interests of the complainant so require, it may make an order forbidding 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 or to consent to or acquiesce in.

(5) The breach of any order made under subsection (4), or any evasion or attempted evasion of it, may be dealt with as contempt of court.

(6) Nothing in this section shall limit or affect the powers of the court to exclude any person or forbid any report or account of any evidence under section 138 of the Criminal Justice Act 1985 or section 401 of this Act or any other enactment.

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Section 375A: inserted, on 1 February 1986, by section 5 of the Crimes Amendment Act (No 3) 1985 (1985 No 160).

Section 375A heading: substituted, on 1 January 1990, by section 2 of the Crimes Amendment Act (No 2) 1989 (1989 No 103).

Section 375A(1): substituted, on 1 January 1990, by section 2(1) of the Crimes Amendment Act (No 2) 1989 (1989 No 103).

Section 375A(1)(aa): inserted, on 1 September 1995, by section 7(1) of the Crimes Amendment Act 1995 (1995 No 49).

Section 375A(1)(c): amended, on 1 September 1995, by section 7(2) of the Crimes Amendment Act 1995 (1995 No 49).

Section 375A(2): amended, on 1 January 1990, by section 2(2) of the Crimes Amendment Act (No 2) 1989 (1989 No 103).

Section 375A(2)(f): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 375A(3): amended, on 1 January 1990, by section 2(2) of the Crimes Amendment Act (No 2) 1989 (1989 No 103).

Section 375A(4): amended, on 1 January 1990, by section 2(2) of the Crimes Amendment Act (No 2) 1989 (1989 No 103).

376 Presence of the accused

(1) Every accused person shall be entitled to be present in court during the whole of his trial, unless he misconducts himself by so interrupting the proceedings as to render their continuance in his presence impracticable.

(2) The court may permit the accused to be out of court during the whole or any part of any trial on such terms as it thinks proper.

Compare: 1908 No 32 s 433

377 Proceedings on Sunday

The taking of the verdict of the jury or other proceeding of the court shall not be invalid by reason of its happening on Sunday.

Compare: 1908 No 32 s 434

378 Stay of proceedings

The Attorney-General may at any time after any person has been committed for trial or for sentence, or after an indictment has been filed against any person for any crime, and before judgment is given, direct that an entry be made in the Crown Book that the proceedings are stayed by his direction, and on

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that entry being made the proceedings shall be stayed accordingly.

Compare: 1908 No 32 s 435; 1946 No 40 s 20

Section 378: amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 378: amended, on 1 May 1981, by section 14 of the Crimes Amendment (No 2) Act 1980 (1980 No 85).

Retrials of previously acquitted persons

Heading: inserted, on 26 June 2008, by section 6 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

378A Order for retrial may be granted if acquittal tainted

(1) In this section,—

acquittal—

(a) includes—

(i) the dismissal of an information on the merits; and

(ii) a discharge under section 347 or 369A; and

(iii) the setting aside of a conviction on appeal, without an order for a retrial; and

(iv) the quashing of a count under section 345(4) or (5); but

(b) does not include a discharge without conviction

acquitted person means a person who has previously been acquitted of a specified offence, and who has, since that acquittal, been convicted of an administration of justice offence

administration of justice offence means an offence against any of sections 101, 104, 109, 113, 116, and 117

prosecution means—

(a) an informant acting with the prior consent of the Solicitor-General; or

(b) the Solicitor-General

retrial includes, in relation to any summary proceedings that led to an acquittal, a rehearing of those proceedings

specified offence, in relation to an acquitted person,—

(a) means an offence that is punishable by a term of imprisonment and for which the person has previously been acquitted; and

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(b) includes any offence for which the person may not be tried because of that acquittal.

(2) The High Court may, on the application of the prosecution made in accordance with rules of court, order that an acquitted person be retried for a specified offence, if the High Court is satisfied that—

(a) it is more likely than not that the commission of the administration of justice offence was a significant contributing factor in the person's acquittal for the specified offence; and

(b) no appeal or application in relation to the administration of justice offence is pending before any court; and

(c) the retrial is in the interests of justice.

(3) In determining whether the retrial sought by the prosecution is in the interests of justice, the High Court is to have particular regard to the following matters:

(a) the length of time since the acquitted person is alleged to have committed the specified offence:

(b) whether the prosecution acted with reasonable speed since discovering evidence of the administration of justice offence:

(c) the interests of any victim of the specified offence alleged to have been committed:

(d) whether the retrial for which leave is sought can be conducted fairly.

(4) If the prosecution makes an application under this section,—

(a) the prosecution must take all reasonable steps to serve a copy of the application on the acquitted person, and must file in the office of the court notice that the copy has been served or that a copy has not been served but all reasonable steps to do so have been taken:

(b) the defendant is entitled to be heard at the hearing of the application, which must not be held less than 14 days after notice is filed in the office of the court under paragraph (a):

(c) if the application is granted, and the acquitted person is again acquitted at the retrial, the prosecution may not make any further application for an order for the retrial

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of the acquitted person for the specified offence that was the subject of the application.

(5) This section does not apply if the acquitted person was acquitted of the specified offence before the commencement of this section.

Section 378A: inserted, on 26 June 2008, by section 6 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

378B Meaning of terms used in sections 378C and 378D

(1) In sections 378C and 378D,—

acquittal—

(a) includes—

(i) a discharge under section 347 or 369A; and

(ii) the setting aside of a conviction on appeal, without an order for retrial; and

(iii) the quashing of a count under section 345(4) or (5); but

(b) does not include a discharge without conviction

acquitted person means a person who has previously been acquitted of a specified serious offence

specified serious offence, in relation to an acquitted person,—

(a) means an offence that is punishable by a term of imprisonment of 14 years or more and for which the person has previously been acquitted; and

(b) includes any offence for which the person may not be tried because of that acquittal.

(2) For the purposes of sections 378C and 378D, evidence is **new** if—

(a) it was not given in the proceedings that resulted in the acquittal of the acquitted person; and

(b) it could not, with the exercise of reasonable diligence, have been given in those proceedings.

(3) For the purposes of sections 378C and 378D, evidence is **compelling** if—

(a) it is a reliable and substantial addition to the evidence given in the proceedings that resulted in the acquittal of the acquitted person; and

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(b) it implicates the acquitted person with a high degree of probability in the commission of the specified serious offence.

Section 378B: inserted, on 26 June 2008, by section 6 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

378C Consent of Solicitor-General required in certain circumstances for exercise of powers in relation to acquitted person

(1) Subsection (2) applies if a constable has good cause to suspect that information obtained, or likely to be obtained as a result of an investigation, will tend to implicate an acquitted person in the commission of a specified serious offence.

(2) If this subsection applies, a constable may exercise any of the powers referred to in subsection (3) in the course of a further investigation of whether the acquitted person has committed a specified serious offence only if a constable first obtains the consent of the Solicitor-General.

(3) The powers in respect of which subsection (2) applies are the following:

(a) questioning the acquitted person or any other person:

(b) searching the acquitted person or any other person:

(c) searching any premises or vehicles:

(d) seizing any thing:

(e) taking fingerprints or samples:

(f) conducting or commissioning forensic tests or analyses.

(4) The acquitted person does not need to be notified of any proposal to seek the Solicitor-General's consent under subsection (2) or of the fact that the consent is being, or has been, sought.

(5) The Solicitor-General may consent under subsection (2) only if he or she has reasonable grounds to believe that there is, or that a further investigation is likely to reveal, or confirm the existence of, new and compelling evidence to implicate the acquitted person in the commission of the specified serious offence.

(6) This section does not prevent a constable from taking any action if—

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(a) the action is necessary as a matter of urgency to prevent substantial prejudice to an investigation or to the administration of justice; and
(b) it is not reasonably practicable to obtain the consent of the Solicitor-General; and
(c) the Solicitor-General's consent is sought as soon as reasonably practicable after the action is taken.

Section 378C: inserted, on 26 June 2008, by section 6 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Section 378C(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 378C(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 378C(6): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

378D Order for retrial may be granted by Court of Appeal if new and compelling evidence discovered

(1) The Court of Appeal may, on the application of the Solicitor-General made in accordance with rules of court, order that an acquitted person be retried for a specified serious offence, if the Court of Appeal is satisfied that—
(a) there is new and compelling evidence to implicate the acquitted person in the commission of the specified serious offence; and
(b) a further trial of the acquitted person is in the interests of justice.

(2) In determining whether a retrial of the acquitted person is in the interests of justice, the Court of Appeal is to have particular regard to the following matters:
(a) whether before or during the proceedings that led to the acquittal of the acquitted person for the specified serious offence all reasonable efforts were made to obtain and present all relevant evidence then available:
(b) the length of time since the acquitted person is alleged to have committed the specified serious offence:
(c) whether the Police and the Solicitor-General acted with reasonable speed in making the application after obtaining new evidence against the acquitted person:

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(d) the interests of any victim of the specified serious offence alleged to have been committed:

(e) whether the retrial for which leave is sought can be conducted fairly.

(3) The Court of Appeal may, if it thinks it just to do so, exclude from its consideration any evidence against the acquitted person that has been obtained in contravention of section 378C.

(4) The Solicitor-General may apply under this section only if satisfied of the matters stated in subsection (1)(a) and (b).

(5) If the Solicitor-General makes an application under this section,—

(a) the Solicitor-General must take all reasonable steps to serve a copy of the application on the acquitted person, and must file in the office of the court notice that the copy has been served or that a copy has not been served but all reasonable steps to do so have been taken:

(b) the defendant is entitled to be heard at the hearing of the application, which must not be held less than 14 days after notice is filed in the office of the court under paragraph (a):

(c) if the application is granted, and the acquitted person is again acquitted, the Solicitor-General may not make any further application for an order for the retrial of the person for the specified serious offence that was the subject of the application.

(6) This section does not apply if the acquitted person was acquitted of the specified serious offence before the commencement of this section.

Section 378D: inserted, on 26 June 2008, by section 6 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

378E Orders to safeguard fairness of retrial

(1) An order for a retrial under section 378A or 378D may be granted subject to—

(a) any conditions that the court considers are required to safeguard the fairness of the retrial:

(b) any other directions as to the conduct of the retrial.

(2) A court may, if it considers that the interests of justice so require, exclude any person from the hearing of an application

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under section 378A or 378D, or forbid any report or account of any evidence given or referred to at such a hearing or prohibit the publication of the name of the acquitted person or of any other person connected with a retrial for which leave is sought or has been granted.

(3) For the purposes of subsection (2), sections 138 and 140 of the Criminal Justice Act 1985, so far as they are applicable, apply with all necessary modifications.

Section 378E: inserted, on 26 June 2008, by section 6 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

378F Effect of order for retrial

(1) If an order for a retrial is granted under section 378A or 378D,—

(a) the order of the court must be certified by the Judge or, as the case requires, the presiding Judge to the Registrar of the court before which the person was tried, and the order must be carried into effect:

(b) the acquitted person may be arrested or summoned to appear before a court:

(c) the retrial must be conducted in the same manner as a retrial ordered following a successful appeal by a defendant against conviction:

(d) the provisions of any enactment that enable a defendant who successfully appeals against conviction but in respect of whom a retrial is ordered, to be arrested, summoned to appear, remanded in custody, or released on bail, pending his or her retrial, apply with any necessary modifications to the acquitted person.

(2) Subsection (1) overrides sections 357 to 359 and any other enactment or rule of law.

(3) In this section, **retrial** includes, in relation to summary proceedings that led to an acquittal, a rehearing of those proceedings.

Section 378F: inserted, on 26 June 2008, by section 6 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

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Part 13
Appeals

379 Interpretation

In this Part, unless the context otherwise requires,—

appellant includes a person who has been convicted and desires to appeal under this Part

Court of Appeal means the Court of Appeal of New Zealand constituted under Part 2 of the Judicature Act 1908

rules of court means rules made under section 409 of this Act and section 51C of the Judicature Act 1908

sentence includes any order of the court made on conviction; and the power of the Court of Appeal to pass a sentence includes a power to make any such order of the court.

Compare: 1945 No 23 s 2(1)

Section 379 **rules of court**: amended, on 10 December 2001, by section 3 of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Appeal on matters arising before trial

Heading: inserted, on 1 January 1967, by section 8(1) of the Crimes Amendment Act 1966 (1966 No 98).

379A Right of appeal in certain cases

(1) At any time before the trial, or as the case may require a later retrial, either the prosecutor or the accused person, with the leave of the court appealed to, may appeal to the Court of Appeal or the Supreme Court against any of the following orders (whether made in relation to the trial or a later retrial of charges), namely,—

(a) against a refusal to make an order under subsection (1) of section 322:

(aa) against the making of an order under section 344A, or against the refusal of a Judge to make such an order:

(b) against the making of an order under subsection (3) of section 330 or under subsection (3) of section 340, or against a refusal to make any such order:

(ba) against the making of an order under paragraph (a) or paragraph (b) of section 138(2) or section 140 of the

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Criminal Justice Act 1985, or the refusal to make any such order:

(c) against the quashing or amendment of the indictment under subsection (2) of section 342, or against a refusal to quash or amend the indictment under that subsection:

(ca) against an order under section 345B extending the period allowed for filing an indictment or refusing to do so:

(cb) against an order under section 345C excusing the prosecution from the obligation to disclose certain information:

(cc) against an order under section 345D granting or refusing leave to file an amended indictment:

(cd) against an order under section 346 discharging or refusing to discharge an accused:

(d) against the making of an order directing separate trials of persons jointly charged, or against a refusal to make such an order:

(da) against the making of an order under section 361D(2) (Judge may order trial without a jury in certain cases that are likely to be long and complex), or against a refusal to make such an order:

(db) against the making of an order under section 361E(1) (Judge may order trial without a jury in cases involving intimidation of jurors), or against a refusal to make such an order:

(e) against the granting of leave on an application under section 109(1)(d) of the Evidence Act 2006 relating to the identity of a witness, or against the refusal of a Judge to grant such leave:

(f) against the making of an anonymity order under sections 112 and 113 of the Evidence Act 2006, or against the refusal of a Judge to make an anonymity order under that section:

(g) against the making of an order under section 44 of the Evidence Act 2006 relating to the cross-examination of a complainant, or against the refusal to make such an order:

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(ga) against the making of an order under section 378A for a person to be retried or against the refusal to make such an order.

(2) At any time before the trial, the accused person, with the leave of the court appealed to, may appeal to the Court of Appeal or the Supreme Court—

(a) against the making of an order under subsection (1) of section 322, or against the imposition by a Judge of any condition under subsection (3) of that section:

(b) against a refusal to make an order under the proviso to section 331.

(3) On an appeal under this section the Court of Appeal or Supreme Court may confirm or vary the decision of the court or Judge (as the case may be), or set the decision aside and make any other order (being an order that could have been made in the first place) that the Court of Appeal or Supreme Court thinks appropriate.

(4) Where a person desires to obtain the leave of the Court of Appeal to appeal to that court under this section, he shall give notice of his application for leave to appeal in such manner as may be directed by rules of court within 10 days after the decision of the court or Judge is given, irrespective of whether reasons for the decision are given at a later date and irrespective of whether any formal steps to sign, enter, or otherwise perfect the decision are necessary or are afterwards taken.

(5) The time within which notice of an application for leave to appeal to the Court of Appeal under this section may be given may be extended at any time by the Court of Appeal.

(6) Notwithstanding that an application for leave to appeal under subsection (1)(aa) has been made, the court may, if it is satisfied that it is in the interests of justice to do so, proceed with the trial without awaiting the determination of the application.

Section 379A: inserted, on 1 January 1967, by section 8(1) of the Crimes Amendment Act 1966 (1966 No 98).

Section 379A(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 379A(1): amended, on 15 November 2000, by section 4(1) of the Crimes Amendment Act 2000 (2000 No 57).

Section 379A(1)(a): amended, on 1 May 1981, by section 15(a) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

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Section 379A(1)(aa): inserted, on 1 January 1981, by section 3(2) of the Crimes Amendment Act 1980 (1980 No 63).

Section 379A(1)(b): amended, on 1 May 1981, by section 15(b) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 379A(1)(ba): inserted, on 1 September 1993, by section 4 of the Crimes Amendment Act (No 2) 1993 (1993 No 46).

Section 379A(1)(c): amended, on 1 May 1981, by section 15(b) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 379A(1)(ca): inserted, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 379A(1)(cb): inserted, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 379A(1)(cc): inserted, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 379A(1)(cd): inserted, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 379A(1)(d): amended, on 1 May 1981, by section 15(c) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 379A(1)(da): inserted, on 25 December 2008, by section 4(4) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Section 379A(1)(db): inserted, on 25 December 2008, by section 4(4) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Section 379A(1)(e): added, on 30 September 1986, by section 3 of the Crimes Amendment Act (No 3) 1986 (1986 No 76).

Section 379A(1)(e): amended, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

Section 379A(1)(f): added, on 11 December 1997, by section 5 of the Evidence (Witness Anonymity) Amendment Act 1997 (1997 No 103).

Section 379A(1)(f): amended, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

Section 379A(1)(g): added, on 14 November 2000, by section 4(2) of the Crimes Amendment Act 2000 (2000 No 57).

Section 379A(1)(g): amended, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

Section 379A(1)(ga): added, on 26 June 2008, by section 7 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Section 379A(2): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 379A(2)(b): amended, on 1 May 1981, by section 15(d) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 379A(3): substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 379A(4): amended, on 1 May 1981, by section 15(e) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

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Section 379A(5): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 379A(6): added, on 1 January 1981, by section 3(3) of the Crimes Amendment Act 1980 (1980 No 63).

379AB Appeal against decision of Court of Appeal on appeal against certain orders

(1) With the leave of the Supreme Court, an accused person may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 379A(1) or (2).

(2) With the leave of the Supreme Court, the Solicitor-General may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 379A(1).

Section 379AB: inserted, on 26 June 2008, by section 8 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Appeal on question of bail

Heading: inserted, on 1 December 1991, by section 9 of the Crimes Amendment Act (No 2) 1991 (1991 No 106).

379B Appeal from decision of High Court relating to bail

[Repealed]

Section 379B: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

379C Procedural provisions relating to appeal on question of bail

[Repealed]

Section 379C: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

379CA Appeal against order in respect of costs

(1) Where before, during, or after any trial the court makes an order for the payment of costs or declines to make an order under the Costs in Criminal Cases Act 1967, any person affected by that decision may appeal against it to the Court of Appeal or, with the leave of the Supreme Court, to the Supreme Court.

(2) The Court of Appeal or the Supreme Court may—

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(a) confirm the decision; or
(b) vary the decision; or
(c) set aside the decision; or
(d) make any other order it considers appropriate.

(3) Subject to subsection (4), where a person seeks leave to appeal to the Court of Appeal under this section, that person's application must be filed as directed by the rules of court within 10 days after the decision has been made, irrespective of whether the formalities associated with that decision have been completed or whether reasons for it have been given.

(4) The Court of Appeal may extend the period specified in subsection (3) within which notice of application for leave to appeal to it may be filed.

Section 379CA: inserted, on 3 June 1998, by section 5 of the Crimes Amendment Act 1998 (1998 No 35).

Section 379CA(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 379CA(2): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 379CA(4): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

379D Execution of decision of Court of Appeal

[Repealed]

Section 379D: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Appeal on question of law

380 Reserving question of law

(1) The court before which any accused person is tried may, either during or after the trial, reserve for the opinion of the Court of Appeal, in manner hereinafter provided, any question of law arising either on the trial or on any of the proceedings preliminary, subsequent, or incidental thereto, or arising out of the direction of the Judge other than a question arising on any of the proceedings preliminary to the trial and already determined by the Court of Appeal under section 379A.

(2) If the decision of the question may in the opinion of the court depend on any questions of fact, the court may in its discretion

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ask the jury questions as to the facts separately, and the court shall make a note of those questions and the findings thereon.

(3) Either the prosecutor or the accused may during the trial apply to the court to reserve any such question as aforesaid, and the court, if it refuses so to reserve it, shall nevertheless take a note of the application, unless it considers the same to be frivolous.

(4) If the result of the trial is acquittal the accused shall be discharged, subject to being again arrested if the Court of Appeal orders a new trial.

(5) If the result of the trial is conviction, the court may in its discretion respite the execution of the sentence or postpone sentence until the question reserved has been decided by the Court of Appeal, and one of the following has happened:

(a) no application for leave to appeal to the Supreme Court against the Court of Appeal's decision has been made within the time required:

(b) the Supreme Court has refused leave to appeal against the Court of Appeal's decision:

(c) the Supreme Court has given leave to appeal against the Court of Appeal's decision, but—

(i) no appeal has been brought within the time required; or

(ii) an appeal has been brought but abandoned:

(d) the Supreme Court has decided an appeal against the Court of Appeal's decision.

(6) If the question is reserved, a case shall be stated for the opinion of the Court of Appeal, to be approved and signed by the Judge who presided at the trial.

Compare: 1908 No 32 s 442

Section 380(1): amended, on 1 January 1967, by section 8(3) of the Crimes Amendment Act 1966 (1966 No 98).

Section 380(5): substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

381 Appeal where no question reserved

(1) If the court refuses to reserve the question the party applying may move the Court of Appeal for leave to appeal against that refusal.

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(2) The Court of Appeal may upon the motion, and upon considering such evidence, if any, as it thinks fit to require, grant or refuse such leave.

(3) If leave to appeal is granted, a case shall be stated for the opinion of the Court of Appeal as if the question had been reserved.

(3A) The decision of the Court of Appeal to refuse to grant leave is final.

(4) If the court has arrested judgment, and refused to pass any sentence, the prosecutor may without leave move the Court of Appeal to pass a proper sentence.

Compare: 1908 No 32 s 443; 1920 No 15 s 3

Section 381(3A): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

381A Question of law arising out of discharge under section 347 or stay of prosecution may be referred to Court of Appeal

(1) A Judge who directs that an accused be discharged under section 347 or for any reason that a prosecution be stayed may, on the application of the prosecutor, refer for the opinion of the Court of Appeal any question of law arising out of that direction.

(2) The prosecutor must apply as soon as reasonably practicable after the Judge gives his or her reasons for the direction, and in no case later than 10 days after the reasons for the direction are given.

(3) When a question is referred to the Court of Appeal, the accused who has been discharged or whose prosecution has been stayed is subject to again being arrested or summoned to appear if the Court of Appeal orders a new trial.

(4) The Judge who refers a question to the Court of Appeal must approve and sign the form of the question.

(5) If the Judge refuses to refer a question to the Court of Appeal, the prosecutor may apply to the Court of Appeal for leave to appeal against that refusal.

(6) The Court of Appeal may, on considering any evidence it requires, grant or refuse leave.

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(7) If leave to appeal is granted, a case must be stated for the opinion of the Court of Appeal as if the question had been referred under subsection (1).

Section 381A: inserted, on 26 June 2008, by section 9 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

382 Powers of Court of Appeal where appeal is on question of law

(1) The Court of Appeal may, in its discretion, send back any case to the court by which it was stated to be amended or restated.

(2) Upon the hearing of any appeal under the foregoing provisions of this Part, other than section 379A, the Court of Appeal may—

(a) confirm the ruling appealed from; or

(b) if of opinion that the ruling was erroneous, and that there has been a mistrial or that the accused has been wrongly discharged or that the prosecution has been wrongly stayed in consequence, direct a new trial; or

(c) if it considers the sentence erroneous or the arrest of judgment erroneous, pass such a sentence as ought to have been passed, or set aside any sentence passed by the court below, and remit the case to the court below with a direction to pass the proper sentence; or

(d) if of opinion, where the accused has been convicted, that the ruling was erroneous, and that the accused ought to have been acquitted, order that the conviction be set aside, which order shall be deemed to be an acquittal; or

(e) in any case, whether the appeal is on behalf of the prosecutor or of the accused, direct a new trial; or

(f) make such other order as justice requires:

provided that no conviction or acquittal shall be set aside, nor any new trial directed, although it appears that some evidence was improperly admitted or rejected, or that something not according to law was done at the trial, or some misdirection given, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage of justice was thereby occasioned on the trial:

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provided also that if the Court of Appeal is of opinion that any challenge was improperly disallowed a new trial shall be granted.

(3) If it appears to the Court of Appeal that such wrong or miscarriage of justice affected some count only of the indictment the court may give separate directions as to each count, and may pass sentence on any count that stands good and unaffected by such wrong or miscarriage of justice, or remit the case to the court below with a direction to pass such sentence as justice requires.

(4) The order or direction of the Court of Appeal shall be certified under the hand of the presiding Judge to the Registrar of the court before which the case was tried, and such order or direction shall be carried into effect.

Compare: 1908 No 32 ss 444(3), 445

Section 382(2): amended, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 382(2): amended, on 1 January 1967, by section 8(4) of the Crimes Amendment Act 1966 (1966 No 98).

Section 382(2)(b): amended, on 26 June 2008, by section 10 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Appeal against conviction or sentence

383 Right of appeal against conviction or sentence

(1) Any person convicted on indictment may appeal to the Court of Appeal or, with the leave of the Supreme Court, to the Supreme Court against—

(a) the conviction; or

(b) the sentence passed on the conviction (unless the sentence is one fixed by law); or

(c) both.

(1A) Any person sentenced under section 28F(4) of the District Courts Act 1947 to a term of imprisonment or to a fine that exceeds the maximum term of imprisonment or the maximum fine that may be imposed by a District Court under section 7 of the Summary Proceedings Act 1957 (which is a term of imprisonment not exceeding 5 years or a fine not exceeding $10,000 or both), may appeal to the Court of Appeal against that sentence.

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(2) The Solicitor-General, with the leave of the court appealed to, may appeal to the Court of Appeal or the Supreme Court against the sentence passed on the conviction of any person on indictment, unless the sentence is one fixed by law.

(2A) The Solicitor-General, with the leave of the Court of Appeal, may appeal to the Court of Appeal 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 exceeds the maximum term of imprisonment or the maximum fine that may be imposed by a District Court under section 7 of the Summary Proceedings Act 1957 (which is a term of imprisonment not exceeding 5 years or a fine not exceeding $10,000 or both).

(3) Every appeal under subsection (2) or (2A) against a sentence of detention which is not heard before the date on which the person convicted has completed serving that sentence shall lapse on that date, and thereupon the appeal shall be deemed to have been dismissed by the court concerned for non-prosecution.

(4) For the purposes of an appeal under subsection (2) or (2A), the term **sentence** shall include any method of disposing of a case following conviction.

Compare: 1945 No 23 s 3

Section 383 heading: substituted, on 15 August 1991, by section 2 of the Crimes Amendment Act 1991 (1991 No 63).

Section 383(1): substituted, on 15 August 1991, by section 2 of the Crimes Amendment Act 1991 (1991 No 63).

Section 383(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 383(1A): inserted, on 26 June 2008, by section 11(1) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Section 383(2): added, on 1 January 1967, by section 9(1) of the Crimes Amendment Act 1966 (1966 No 98).

Section 383(2): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 383(2A): inserted, on 26 June 2008, by section 11(2) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Section 383(3): added, on 1 January 1967, by section 9(1) of the Crimes Amendment Act 1966 (1966 No 98).

Section 383(3): amended, on 26 June 2008, by section 11(3) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

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Section 383(3): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 383(4): added, on 1 January 1967, by section 9(1) of the Crimes Amendment Act 1966 (1966 No 98).

Section 383(4): amended, on 26 June 2008, by section 11(3) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

383A Appeal against decision of Court of Appeal on appeal against conviction or sentence

(1) With the leave of the Supreme Court, a convicted person may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383.

(2) With the leave of the Supreme Court, the Solicitor-General may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383(2).

(3) If an appeal under subsection (1) or subsection (2) against a sentence of detention is not heard before the date on which the convicted person has completed serving the sentence, on that date the appeal lapses, and must be treated as having been dismissed by the Supreme Court for non-prosecution.

(4) For the purposes of subsection (2), **sentence** includes any method of disposing of a case following conviction.

Section 383A: inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

384 Right of appeal against sentence or conviction for contempt of court

(1) This subsection applies to a person—

(a) found guilty in the High Court of a criminal contempt of that court or any other court committed in the face of that court or the other court; or

(b) found guilty in a District Court of a criminal contempt of that court committed in the face of that court during a proceeding on indictment.

(2) A person to whom subsection (1) applies may appeal to the Court of Appeal or, with the leave of the Supreme Court, to the Supreme Court against any sentence imposed (other than an order of the High Court or a Judge of the High Court, or a District Court or a District Court Judge, that he or she be

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detained in custody until the rising of the court) as if he or she had been convicted on indictment.

(3) This subsection applies to a person found guilty in the High Court of a criminal contempt (other than a contempt committed in the face of the court) of that court or any other court.

(4) A person to whom subsection (3) applies may appeal to the Court of Appeal or, with the leave of the Supreme Court, to the Supreme Court against the finding, or any sentence imposed (other than an order of the High Court or a Judge of the High Court that he or she be detained in custody until the rising of the court); and this Part applies as if the finding that he or she is guilty of a criminal contempt of court were a conviction.

(5) With the leave of the Supreme Court, a person convicted of contempt of court may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under this section.

(6) This section 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).

Section 384: substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

384A Jurisdiction in certain cases where appeals lie to different courts

(1) This section applies if—

(a) a person to whom section 383(1) or (1A) applies also has a right of appeal (a **related right of appeal**) to the High Court against conviction or sentence in respect of—

(i) an offence arising from the same incident or series of incidents as the conviction or sentence to which the right of appeal under section 383(1) or (1A) relates; or

(ii) an offence for which the person was sentenced on the same occasion as the imposition of the sentence to which the right of appeal under section 383(1) or (1A) relates:

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(b) the Solicitor-General has a right of appeal under section 383(2) or (2A) against a sentence imposed on a person against whom the informant also has a right of appeal (a **related right of appeal**) to the High Court in respect of the sentence imposed on that person for—

(i) an offence arising from the same incident or series of incidents as the sentence to which the right of appeal under section 383(2) or (2A) relates; or

(ii) an offence for which the person was sentenced on the same occasion as the imposition of the sentence to which the right of appeal under section 383(2) or (2A) relates.

(2) If this section applies, and any person or, as the case may be, the Solicitor-General appeals to the Court of Appeal under section 383 or 384,—

(a) all other appeals by the person or the Solicitor-General arising from the exercise of a related right of appeal must also be heard and determined in the Court of Appeal instead of the High Court, unless 1 or more of those appeals is to the Supreme Court; and

(b) the provisions of this Part apply to those appeals with any necessary modifications.

Section 384A: inserted, on 26 June 2008, by section 12 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

385 Determination of appeals in ordinary cases

(1AA) This subsection applies to—

(a) an appeal to the Supreme Court or the Court of Appeal against conviction:

(b) an appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383 against conviction.

(1) On any appeal to which subsection (1AA) applies, the Court of Appeal or the Supreme Court must allow the appeal if it is of opinion—

(a) that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or

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(b) that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision on any question of law; or

(c) that on any ground there was a miscarriage of justice; or

(d) that the trial was a nullity—

and in any other case shall dismiss the appeal:

provided that the Court of Appeal or the Supreme Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) Subject to the special provisions of this Part, the Court of Appeal or the Supreme Court must, if it allows an appeal to which subsection (1AA) applies, quash the conviction and in its discretion direct a judgment and verdict of acquittal to be entered, or direct a new trial, or make such other order as justice requires.

(2A) This subsection applies to—

(a) an appeal to the Supreme Court or the Court of Appeal against sentence:

(b) an appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383 against sentence.

(3) On any appeal to which subsection (2A) applies, the Court of Appeal or the Supreme Court must—

(a) dismiss the appeal; or

(b) if it thinks that a different sentence should have been passed,—

(i) quash the sentence and replace it with another sentence warranted in law (whether more or less severe) that the court thinks ought to have been passed; or

(ii) vary, within the limits warranted in law, the sentence or any part of it or any condition imposed in it; or

(c) remit the case to the court that imposed the sentence with a direction that such court take an action of the kind described in paragraph (b)(i) or (ii) in accordance

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with any directions given by the Court of Appeal or the Supreme Court as the case may be.

Compare: 1945 No 23 s 4

Section 385(1AA): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 385(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 385(1) proviso: amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 385(2): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 385(2A): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 385(3): substituted, on 26 June 2008, by section 13 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

386 Powers of appellate courts in special cases

(1) If on any appeal under section 383 it appears to the Court of Appeal or the Supreme Court that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the court may either affirm the sentence passed on the appellant or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law by the verdict on the count or part of the indictment on which the court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal or the Supreme Court that the jury must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) Where on the conviction of the appellant the jury has found a special verdict, and the Court of Appeal or the Supreme Court considers that a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the

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effect of that verdict, the Court of Appeal or the Supreme Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to the court to be in law required by the verdict, and pass such sentence in substitution for the sentence passed as may be warranted in law.

(4) If on any such appeal it appears to the Court of Appeal or the Supreme Court that the appellant was insane at the time of the commission of the offence and should have been acquitted on account of his 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, so far as they are applicable, as if he had been so acquitted and as if references in any of those sections to the court were references to the Court of Appeal or the Supreme Court (as the case requires).

Compare: 1945 No 23 s 5

Section 386 heading: amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 386(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 386(2): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 386(3): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 386(4): substituted, on 1 April 1970, by section 5(1) of the Criminal Justice Amendment Act 1969 (1969 No 17).

Section 386(4): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 386(4): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

387 Revesting and restitution of property on conviction

(1) The operation of any order for the restitution of any property to any person made on a conviction on indictment, and the operation, in case of any such conviction, 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 before which the conviction takes place directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended—

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(a) in any case, until the expiration of any period within which an appeal against conviction or sentence may be lodged; and

(b) if an appeal against conviction or sentence is lodged, until the determination of the appeal, unless otherwise ordered by the court,—

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 rules of court 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 Court of Appeal may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

Compare: 1945 No 23 s 6

Section 387(1)(a): substituted, on 10 December 2001, by section 4 of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Section 387(1)(b): substituted, on 10 December 2001, by section 4 of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

388 Time for appealing

(1) Where a person convicted desires to appeal to the Court of Appeal against his conviction or sentence, or to obtain the leave of that court so to appeal, or where the Solicitor-General desires to obtain the leave of the Court of Appeal to appeal against the sentence passed on the conviction of any person on indictment, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within 28 days after the date of conviction or (if the convicted person is not sentenced on the date of conviction) at any time after the conviction, but not later than 28 days after the date of sentence.

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(2) The time within which notice of appeal or notice of an application for leave to appeal may be given may be extended at any time by the Court of Appeal.

Compare: 1945 No 23 s 7

Section 388(1): amended, on 10 December 2001, by section 5(1) of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Section 388(1): amended, on 10 December 2001, by section 5(2) of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Section 388(1): amended, on 1 January 1967, by section 9(2)(a) of the Crimes Amendment Act 1966 (1966 No 98).

Section 388(1): amended, on 1 January 1967, by section 9(2)(b) of the Crimes Amendment Act 1966 (1966 No 98).

389 Supplemental powers of appellate courts

For the purposes of any appeal or application for leave to appeal against conviction or sentence the Court of Appeal or the Supreme Court may, if it thinks it necessary or expedient in the interests of justice,—

(a) order the production of any document, exhibit, or other thing connected with the proceedings the production of which appears to the court to be necessary for the determination of the case:

(b) if it thinks fit, order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court before any Judge of the court or before any officer of the court or District Court Judge or other person appointed by the Court of Appeal or the Supreme Court for the purpose, and allow the admission of any depositions so taken as evidence before the court:

(c) if it thinks fit, receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such application:

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(d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the court conveniently be conducted before the court, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the court, and act upon the report of any such commissioner so far as the court thinks fit to adopt it:

(e) appoint any person with special expert knowledge to act as assessor to the court in any case where it appears to the court that such special knowledge is required for the proper determination of the case—

and exercise in relation to the proceedings of the court any other powers which may for the time being be exercised by the Court of Appeal or the Supreme Court on appeals in civil matters, and issue any warrants necessary for enforcing the orders or sentences of the court:

provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

Compare: 1945 No 23 s 9

Section 389 heading: amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 389: amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 389(b): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 389(b): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

390 Duty of Solicitor-General

(1) It is the duty of the Solicitor-General to—

(a) represent the Crown on every appeal against conviction or sentence; and

(b) appear at every hearing involving oral submissions on an appeal or application for leave to appeal under this Part.

(2) The Solicitor-General's duties under subsection (1)—

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(a) may be performed by any other counsel employed or engaged by the Crown; and

(b) do not apply in the case of a private prosecution.

Section 390: substituted, on 10 December 2001, by section 6 of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

391 Costs of appeal

[Repealed]

Section 391: repealed, on 1 April 1968, by section 14(2) of the Costs in Criminal Cases Act 1967 (1967 No 129).

392 Duties of Registrar with respect to notices of appeal, etc

(1) The Registrar of the Court of Appeal or the Registrar of the Supreme Court shall take all necessary steps for obtaining a hearing of any appeal or application for leave to appeal of which notice is given to him, and shall obtain and lay before the court in proper form all documents, exhibits, and other things connected with the proceedings in the court whose decision is appealed against which appear necessary for the proper determination of the appeal or application.

(1A) For every appeal against conviction or sentence, the Registrar must prepare a preliminary case on appeal comprising—

(a) the trial transcript; and

(b) the Trial Judge's summing up to the jury, if the Registrar considers it relevant to the grounds of appeal; and

(c) any other documents, exhibits, or other things connected with the proceedings that the Registrar considers are relevant to the grounds of appeal and appropriate for inclusion in the preliminary case on appeal.

(1B) A preliminary case on appeal prepared under subsection (1A) must be given to—

(a) the court or Judge deciding the mode of hearing; and

(b) the parties to the appeal; and

(c) the Legal Services Agency, on request by the Agency.

(2) *[Repealed]*

(3) Any documents, exhibits, or other things connected with the proceedings on the trial of any person on indictment who, if convicted, is entitled or may be authorised to appeal against conviction or sentence shall be kept in the custody of the court,

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in accordance with rules of court made for the purpose, for such time as may be provided by the rules, and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits, or things from that custody.

(4) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application as aforesaid to any person who demands them, and to officers of courts, prison managers of prisons, and such other officers or persons as he thinks fit, and the prison manager of every prison shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part, and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

(5) *[Repealed]*

(6) When notifying parties about the decision on the mode of hearing, the Registrar must also advise parties of the procedure and time frames required by the rules of court relating to—

(a) making written submissions on the mode of hearing; and

(b) in the case of a hearing on the papers, making written submissions on the appeal or application, for consideration at the hearing; and

(c) in the case of an oral hearing, providing written material to the court and the other party; and

(d) in all cases, exercising the right of reply.

(7) After an appeal or application is determined by the court, the Registrar must send a copy of the decision to the parties as soon as is reasonably practicable.

Compare: 1945 No 23 s 15

Section 392(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53)

Section 392(1A): inserted, on 10 December 2001, by section 7(1) of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Section 392(1B): inserted, on 10 December 2001, by section 7(1) of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Section 392(2): repealed, on 10 December 2001, by section 7(2) of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Section 392(3): amended, on 1 May 1981, by section 17 of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

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Section 392(4): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 392(5): repealed, on 1 February 2001, by section 128 of the Legal Services Act 2000 (2000 No 42).

Section 392(6): added, on 10 December 2001, by section 7(3) of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Section 392(7): added, on 10 December 2001, by section 7(3) of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

General provisions as to appeals

392A Decision about mode of hearing

(1) An appeal or application for leave to appeal must be dealt with by way of a hearing involving oral submissions unless the Judge or court making the decision on the mode of hearing determines, on the basis of the information contained in the notice of appeal, notice of application, or other written material provided by the parties, that the appeal or application—
  (a) can be fairly dealt with on the papers; and
  (b) either has no realistic prospect of success or clearly should be allowed.

(2) In determining whether an appeal or application can be fairly dealt with on the papers, the Judge or court may consider any matters relevant to the decision on the mode of hearing, including such matters as—
  (a) whether the appellant has been assisted by counsel in preparing the appeal or application:
  (b) whether the appellant has been provided with copies of the relevant trial documentation:
  (c) the gravity of the offence:
  (d) the nature and complexity of the issues raised by the appeal or application:
  (e) whether evidence should be called:
  (f) any relevant cultural or personal factors.

(3) A Judge of the Court of Appeal, acting alone, may make a decision about the mode of hearing a particular appeal or application, but no Judge acting alone may reverse a decision on mode that has been made by the court.

(4) The Court of Appeal may, at any time, either on its own initiative or on the application of any party, change the mode of

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hearing a particular appeal or application to an oral hearing, having regard to any written submissions made by the parties concerning the mode of hearing.

(5) The court or Judge making the decision on the mode of hearing must apply section 392B(2) to (5) (with all necessary modifications) in the same way as the court would apply them in determining an appeal or application for leave to appeal.

(6) Every decision about the mode of hearing an appeal or application must be in writing, be accompanied by reasons (unless the decision is that the hearing will be an oral hearing), and be provided by the Registrar to the parties.

(7) This section does not apply to an application to the Supreme Court for leave to appeal to it.

Section 392A: inserted, on 10 December 2001, by section 8 of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Section 392(7): added, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

392B Hearings on the papers

(1) This section applies to appeals and applications for leave to appeal that are disposed of by the Court of Appeal by way of a hearing on the papers.

(2) The parties to the appeal or application may make written, but not oral, submissions to the court, and may include in their submissions—

(a) additional relevant written material; and

(b) responses to any submissions made by the other party.

(3) Neither the parties nor their representatives may appear before the court.

(4) The appeal or application must be determined by the court on the basis of the written material before it.

(5) Consideration of the written material may be undertaken in whatever manner the court thinks fit.

(6) Paragraphs (b), (c), (d), and (e) of section 389 do not apply.

Section 392B: inserted, on 10 December 2001, by section 8 of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

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393 Certain powers exercisable by 1 Judge

(1) A Judge of the Court of Appeal may exercise, in the same manner as it may be exercised by that court and subject to the same provisions, the power of that court to give leave to appeal against conviction or sentence.

(2) A Judge of the Supreme Court or, as the case may be, of the Court of Appeal may exercise, in the same manner as it may be exercised by that court and subject to the same provisions, any power of that court to—

(a) extend the time within which notice of appeal or of an application for leave to appeal may be given; or

(b) allow the appellant to be present at any proceedings in cases where he or she is not entitled to be present without leave; or

(c) issue a warrant for the detention of the accused pending a new trial; or

(d) grant bail to an appellant.

(3) If on an application by an appellant a Judge refuses to exercise a power referred to in subsection (1) or subsection (2) in favour of the appellant, the appellant may have the application determined by the court concerned.

Section 393: substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

394 Evidence for appellate courts

(1) On any appeal or application for leave to appeal under this Act the court before which the appellant was convicted shall, if it thinks necessary or if the Court of Appeal or the Supreme Court so desires, send to the Court of Appeal or the Supreme Court a copy of the whole or of such part as is material of the notes taken by the Judge presiding at the trial.

(2) The Court of Appeal or the Supreme Court may, if it considers the notes defective, refer to such other evidence of what took place at the trial as it thinks fit.

Compare: 1908 No 32 s 444(1), (2); 1945 No 23 s 8

Section 394 heading: amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 394(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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Section 394(2): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

395 Right of appellant to be represented, and restriction on attendance

(1) At the hearing of an appeal, or an application for leave to appeal, or on any proceedings preliminary or incidental to an appeal or application, the appellant may be represented by counsel.

(1A) If an appellant is in custody, he or she is not entitled to be present at a hearing involving oral submissions unless—

(a) the rules of court provide that he or she has the right to be present; or

(b) the Court of Appeal gives leave for him or her to be present.

(2) The power of the Court of Appeal to pass any sentence under this Act may be exercised, notwithstanding that the appellant is for any reason not present.

(3) Subsections (1A) and (2) do not apply to—

(a) an appeal to the Supreme Court; or

(b) an application for leave to appeal to the Supreme Court.

Compare: 1945 No 23 s 11

Section 395 heading: amended, on 10 December 2001, by section 9(1) of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Section 395(1): substituted, on 10 December 2001, by section 9(2) of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Section 395(1A): inserted, on 10 December 2001, by section 9(2) of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Section 395(3): added, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 395(3): amended, on 26 June 2008, by section 14 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

396 Power to forbid report of proceedings, etc

[Repealed]

Section 396: repealed, on 17 December 1985, by section 2 of the Crimes Amendment Act (No 4) 1985 (1985 No 171).

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397 Granting of bail to appellant, and custody pending appeal

[Repealed]

Section 397: repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

398 Judgment of Court of Appeal

(1) *[Repealed]*

(2) Every judgment of the Court of Appeal on an appeal or application under this Part (other than one relating to a preliminary or incidental matter) must be accompanied by reasons.

Compare: 1945 No 23 s 18

Section 398(1): repealed, on 26 June 2008, by section 15 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Section 398(2): added, on 10 December 2001, by section 10 of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

399 Intermediate effects of appeal

(1) Except as otherwise provided in this Act or in rules of court, no sentence shall be suspended by reason of any appeal under this Part, unless the court expressly so directs.

(2) *[Repealed]*

(3) Where on any conviction to which any appeal relates the court has sentenced the accused to supervision, intensive supervision, community detention, or home detention, the term of the sentence shall cease to run on the day on which notice of appeal or of application for leave to appeal is given.

(4) If in any case to which subsection (3) applies—

(a) the appeal is dismissed or is deemed pursuant to rules of court to be dismissed; or

(b) leave to appeal is refused; or

(c) when the appeal is determined neither the sentence nor the conviction on which it was made is set aside—

the term of the sentence as specified by the High Court or as varied by the Court of Appeal or the Supreme Court, as the case may be, shall be resumed from the date of such dismissal, refusal, or determination.

(4A) If on any conviction to which any appeal relates the court has sentenced the accused to community work, the period during which the community work is to be done ceases to run on the

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day on which notice of appeal or application for leave to appeal is given.

(4B) In any case to which subsection (4A) applies,—

(a) if the appeal is dismissed or is deemed under or in accordance with rules of court to be dismissed, the period during which the work is to be performed resumes running from the date of the dismissal; or

(b) if leave to appeal is refused, the period during which the work is to be performed resumes running from the date of the refusal; or

(c) if, when the appeal is determined neither the sentence of community work nor the conviction on which it was made is set aside, the period during which the work is to be performed resumes running from the date of the determination.

(4C) *[Repealed]*

(4D) *[Repealed]*

(4E) *[Repealed]*

(4F) *[Repealed]*

(4G) Where on any conviction to which any appeal relates the court has made a non-association order in respect of the accused, the period of non-association shall cease to run on the day on which notice of appeal or of application for leave to appeal is given.

(4H) If in any case to which subsection (4G) applies—

(a) the appeal is dismissed or is deemed pursuant to rules of court to be dismissed; or

(b) leave to appeal is refused; or

(c) when the appeal is determined neither the non-association order nor the conviction on which it was passed is set aside—

the period of non-association as specified by the High Court or as varied by the Court of Appeal or the Supreme Court, as the case may be, shall resume from the date of such dismissal, refusal, or determination.

(5) Where any person is fined for contempt of court and has a right of appeal under section 384, nothing in section 20 of the Crown Proceedings Act 1950 shall apply until the time specified in

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this Act for giving notice of appeal or of an application for leave to appeal has expired, or, if any such notice is given, until the appeal has been determined or otherwise disposed of. If on the determination of the appeal the decision appealed against is not set aside and the amount of the fine imposed by the High Court is varied by the Court of Appeal or the Supreme Court, the amount for which final judgment may be signed under the said section 20 shall be varied accordingly.

(6) *[Repealed]*

(7) *[Repealed]*

Compare: 1908 No 32 s 448; 1920 No 15 s 4

Section 399(2): repealed, on 26 December 1989, by section 3(1)(a) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

Section 399(3): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 399(3): amended, on 1 October 1985, by section 14(1) of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

Section 399(4): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 399(4): amended, on 1 October 1985, by section 14(2)(b) of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

Section 399(4): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 399(4)(c): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 399(4)(c): amended, on 1 October 1985, by section 14(2)(a) of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

Section 399(4A): substituted, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 399(4B): substituted, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 399(4C): repealed, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 399(4D): repealed, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 399(4E): repealed, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 399(4F): repealed, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 399(4G): inserted, on 5 June 1989, by section 2 of the Crimes Amendment Act 1989 (1989 No 22).

Section 399(4H): inserted, on 5 June 1989, by section 2 of the Crimes Amendment Act 1989 (1989 No 22).

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Section 399(4H): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 399(5): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 399(5): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 399(6): repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 399(7): repealed, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Part 14
Miscellaneous provisions

400 Consent of Attorney-General to certain prosecutions

(1) No information shall, by virtue only of the provisions of this Act, be laid against any person who—

(a) whether or not he is a New Zealand citizen or a person ordinarily resident in New Zealand, is alleged to have committed beyond New Zealand an offence on board or by means of any ship or aircraft which is not a New Zealand ship or a New Zealand aircraft, or an offence to which subsection (3) of section 8 applies; or

(b) whether or not he is a New Zealand citizen or a person ordinarily resident in New Zealand, is alleged to have committed, anywhere within New Zealand or in the space above New Zealand, an offence on board or by means of any ship or aircraft which belongs to the government of any country other than New Zealand or is held by any person on behalf or for the benefit of that government, whether or not the ship or aircraft is for the time being used as a ship or aircraft of any of the armed forces of that country—

except with the consent of the Attorney-General and on his certificate that it is expedient that the proceedings should be instituted; and where the proceedings would be instituted only by virtue of the jurisdiction conferred by paragraph (c) of subsection (1) of section 8 the Attorney-General shall not give his consent unless he is satisfied that the government of the country to which the ship or aircraft belongs has consented to the institution of the proceedings:

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provided that a person alleged to have committed any such offence may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the laying of an information for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

(2) Nothing in this section shall apply with respect to any offence against the Maritime Transport Act 1994 or Part 5A of the Civil Aviation Act 1990.

Compare: 1953 No 120 s 5(1)

Section 400 heading: substituted, on 1 January 1981, by section 4 of the Crimes Amendment Act 1980 (1980 No 63).

Section 400(1): amended, on 1 January 1981, by section 4(1)(a) of the Crimes Amendment Act 1980 (1980 No 63).

Section 400(1): amended, on 1 January 1981, by section 4(1)(c) of the Crimes Amendment Act 1980 (1980 No 63).

Section 400(1)(a): amended, on 1 January 1981, by section 4(1)(b) of the Crimes Amendment Act 1980 (1980 No 63).

Section 400(1)(b): amended, on 1 January 1981, by section 4(1)(b) of the Crimes Amendment Act 1980 (1980 No 63).

Section 400(1) proviso: amended, on 1 January 1981, by section 4(1)(d) of the Crimes Amendment Act 1980 (1980 No 63).

Section 400(1) proviso: amended, on 1 January 1981, by section 4(1)(e) of the Crimes Amendment Act 1980 (1980 No 63).

Section 400(2): amended, on 1 June 2004, by section 41(3) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 400(2): amended, on 1 February 1995, pursuant to section 202(1) of the Maritime Transport Act 1994 (1994 No 104).

401 Contempt of court

(1) If any person—

(a) assaults, threatens, intimidates, or wilfully insults a Judge, or any Registrar, or any officer of the court, or any juror, or any witness, during his sitting or attendance in court, or in going to or returning from the court; or

(b) wilfully interrupts or obstructs the proceedings of the court or otherwise misbehaves in court; or

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(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 Judge, take the offender into custody and detain him until the rising of the court.

(2) In any such case as aforesaid, the Judge, if he thinks fit, may sentence the offender to imprisonment for any period not exceeding 3 months, or sentence him to pay a fine not exceeding $1,000 for every such offence; and in default of payment of any such fine may direct that the offender be imprisoned for any period not exceeding 3 months, unless the fine is sooner paid.

(3) Nothing in this section shall limit or affect any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.

Section 401(2): amended, on 1 May 1981, by section 21 of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

402 Costs

[Repealed]

Section 402: repealed, on 1 April 1968, by section 14(2) of the Costs in Criminal Cases Act 1967 (1967 No 129).

403 Compensation for loss of property

[Repealed]

Section 403: repealed, on 1 October 1985, by section 15(1) of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

404 Restitution of property

(1) Where any one is convicted of any offence, any property found in his possession, or in the possession of any other person for him, may be ordered by the court to be delivered to the person who appears to the court to be entitled thereto.

(2) Where an order is made under subsection (1), and it appears to the court that a purchaser has bought the property in good faith and without knowledge that it was dishonestly obtained, the court may order that on the restitution of the property the

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offender shall pay to the purchaser a sum not exceeding the amount paid by him.

(2A) Where, on the arrest of the offender, any money was taken from him, the court may in its discretion order the whole or any part of the money to be applied to any such payment.

(2B) An order for payment under subsection (2) may be enforced in the same manner as a fine.

(2C) An order for payment under subsection (2) shall not affect the right of any person to recover by civil proceedings any sum in excess of the amount recovered under the order.

(3) Where any one is convicted of having stolen or dishonestly obtained any property, and it appears to the court that the property has been pawned to a pawnbroker, the court may order the pawnbroker to deliver it to the person appearing to the court to be entitled to it, either on payment or without payment to the pawnbroker of the amount of the loan or any part thereof, as the court in all the circumstances of the case deems just:

provided that before an order is made for the delivery of the property without payment to the pawnbroker, he shall be given an opportunity to be heard.

(4) If the person in whose favour any order under subsection (3) is made thereby obtains the property, he shall not afterwards question the validity of the pawn.

(5) Except as provided in subsection (4), no order made under this section shall have any further effect than to change the possession, and no such order shall prejudice any right of property, or any right of action in respect of any property, existing or acquired in the goods either before or after the offence was committed.

Compare: 1908 No 32 s 451; 1952 No 42 s 13

Section 404(2): amended, on 1 October 1985, by section 16(1) of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

Section 404(2A): inserted, on 1 October 1985, by section 16(2) of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

Section 404(2B): inserted, on 1 October 1985, by section 16(2) of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

Section 404(2C): inserted, on 1 October 1985, by section 16(2) of the Crimes Amendment Act (No 2) 1985 (1985 No 121).

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405 Civil remedy not suspended

No civil remedy for any act or omission shall be suspended by reason that such act or omission amounts to an offence.

Compare: 1908 No 32 s 355

406 Prerogative of mercy

Nothing in this Act shall affect the prerogative of mercy, but the Governor-General in Council, on the consideration of any application for the exercise of the mercy of the Crown having reference to the conviction of any person by any court or to the sentence (other than a sentence fixed by law) passed on any person, may at any time if he thinks fit, whether or not that person has appealed or had the right to appeal against the conviction or sentence, either—

(a) refer the question of the conviction or sentence to the Court of Appeal or, where the person was convicted or sentenced by a District Court acting in its summary jurisdiction or under section 28F(4) of the District Courts Act 1947, to the High Court, and the question so referred shall then be heard and determined by the court to which it is referred as in the case of an appeal by that person against conviction or sentence or both, as the case may require; or

(b) if he desires the assistance of the Court of Appeal on any point arising in the case with a view to the determination of the application, refer that point to the Court of Appeal for its opinion thereon, and the court shall consider the point so referred and furnish the Governor-General with its opinion thereon accordingly.

Compare: 1945 No 23 s 17

Section 406(a): amended, on 26 June 2008, by section 16 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Section 406(a): amended, on 1 May 1981, by section 22 of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 406(a): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

Section 406(a): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

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406A Appeals against decisions made on references

(1) With the leave of the court appealed to, a party to proceedings in which the High Court heard and determined a question referred to it under section 406(a) may appeal to the Court of Appeal or the Supreme Court against the High Court's determination of the question.

(2) With the leave of the Supreme Court, a party to proceedings in which the Court of Appeal heard and determined a question referred to it under section 380 or section 406(a) may appeal to the Supreme Court against the Court of Appeal's opinion on or determination of the question.

(3) With the leave of the Supreme Court, a party to an appeal to the Court of Appeal under subsection (1) may appeal to the Supreme Court against the Court of Appeal's determination of the appeal.

(4) 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).

Section 406A: inserted, on 1 January 2004, by section 47 of the Supreme Court Act 2003 (2003 No 53).

407 Effect of free pardon

Where any person convicted of any offence is granted a free pardon by Her Majesty, or by the Governor-General in the exercise of any powers vested in him in that behalf, that person shall be deemed never to have committed that offence:

provided that the granting of a free pardon shall not affect anything lawfully done or the consequences of anything unlawfully done before it is granted.

Compare: 1908 No 32 s 452; Criminal Code (1954) s 655(3) (Canada)

408 Act to bind the Crown

This Act shall bind the Crown.

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409 Rules of court

(1) There may be made under the Judicature Act 1908 rules of court regulating the practice and procedure in proceedings under this Act in the Supreme Court, the Court of Appeal, the High Court, and District Courts, or any of them.

(2) Until such rules are made, and so far as they do not extend, the existing practice and procedure of the High Court and the Court of Appeal remain and are in force in those courts as far as they are not altered by or inconsistent with the provisions of this Act.

(3) The practice and procedure of the High Court must be followed by all District Courts in proceedings on indictment.

Compare: 1908 No 32 s 354; 1936 No 58 s 42(4)

Section 409(1): substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 409(2): substituted, on 10 December 2001, by section 11(2) of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

Section 409(3): added, on 10 December 2001, by section 11(2) of the Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92).

410 Regulations

(1) The Governor-General may from time to time, by Order in Council, make all such 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.

(2) Without limiting the general power to make regulations conferred by this section, regulations may be made under this section—

(a) prescribing forms to be used in respect of any proceedings to which this Act applies:

(b) prescribing fees to be paid in respect of any proceedings 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 costs and charges payable by parties in proceedings to which this Act applies:

(e) providing for any other matters in respect of which regulations are contemplated under this Act.

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(3) *[Repealed]*

Compare: 1908 No 32 s 385

Section 410(3): repealed, on 19 December 1989, by section 11 of the Regulations (Disallowance) Act 1989 (1989 No 143).

411 Consequential amendments

(1) The enactments specified in Schedule 3 are hereby amended in the manner indicated in that schedule.

(2) Every reference in any other enactment—

(a) to a crime involving dishonesty, or an offence involving dishonesty, within the meaning of Part 9 of the Crimes Act 1908, or within the meaning of section 237 of that Act; or

(b) to a conviction of any such crime or offence as aforesaid—

shall, unless the context otherwise requires, be read as a reference to a crime involving dishonesty within the meaning of section 2, and, in the case of a reference to a conviction as aforesaid, to a conviction of any such crime, whether on indictment or on summary prosecution.

(3) Every reference in any enactment to a bill of indictment, or to the preferring or filing of a bill of indictment before the grand jury, or to the filing or finding of an indictment by the grand jury, or to an indictment found, or any other similar expression, shall be read as a reference to an indictment or, as the case may require, to the filing of an indictment in the High Court or in a District Court (as the case may require), or to an indictment filed.

Section 411(3): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 411(3): amended, on 1 May 1981, by section 24 of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Section 411(3): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

412 Repeals and savings

(1) As from the commencement of this Act the enactments specified in Schedule 4 shall cease to have effect as part of the law of New Zealand.

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(2) The enactments specified in Schedule 5 are hereby repealed.

413 Enactment creating offence is repealed and replaced or consolidated

Section 414 applies if—

(a) an enactment that forms a part of this Act and that creates an offence is repealed and is replaced by, or is consolidated in, a new enactment, whether in the same or a different form; and

(i) proceedings are commenced for an offence contrary to the repealed enactment in reliance on section 19 of the Interpretation Act 1999; or

(ii) proceedings are commenced for an offence contrary to the new enactment; or

(iii) proceedings are commenced for an offence contrary to the repealed enactment in reliance on section 19 of the Interpretation Act 1999 and, in the alternative, for an offence contrary to the new enactment; and

(b) the date of the act or omission by the defendant constituting the alleged offence cannot be established with sufficient certainty to determine whether it occurred before the repeal of the repealed enactment or after the commencement of the new enactment.

Section 413: added, on 26 June 2008, by section 17 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

414 Repealed enactment continues to have effect

(1) The repealed enactment referred to in section 413(a) continues to have effect for the purposes of the proceedings.

(2) The defendant may be found guilty or convicted of the offence created by the repealed enactment if the defendant's act or omission—

(a) would have constituted an offence under both the repealed enactment and the new enactment referred to in section 413(a); and

(b) occurred on a date that cannot be established with certainty but that is established to have occurred either after the commencement of the repealed enactment and be-

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fore its repeal or after the commencement of the new enactment and before its repeal.

(3) If subsection (1) applies, the defendant is entitled to raise any defence to the repealed enactment that the defendant would be entitled to raise under the new enactment, if that defence is relevant to the repealed enactment.

(4) A defendant found guilty or convicted, in accordance with this section, of an offence created by the repealed enactment is liable to a maximum penalty which is the lesser of that prescribed for the offence of which the defendant is found guilty or convicted and that prescribed for the corresponding offence created under the new enactment.

Section 414: added, on 26 June 2008, by section 17 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

415 Inconsistency with other enactment or rule of law

If sections 413 and 414 are inconsistent with any other enactment or rule of law, sections 413 and 414 prevail over that enactment or rule of law.

Section 415: added, on 26 June 2008, by section 17 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

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Schedule 1

s 14(4)

Carrying out of sentence of death

[Repealed]

Schedule 1: repealed, on 26 December 1989, by section 3(1)(b) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

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Schedule 2
Forms

Form 1

Schedule 1 cl 4

Certificate of execution of sentence of death

[Repealed]

Schedule 2 form 1: repealed, on 26 December 1989, by section 3(1)(b) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

Form 2

Schedule 1 cl 5

Declaration of execution of sentence of death

[Repealed]

Schedule 2 form 2: repealed, on 26 December 1989, by section 3(1)(b) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

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Form 3

s 321

Request by accused person to be brought before the court for sentence

I, AB, having been committed to the High Court [*or* to a District Court at .....] for trial on a charge of ....., now desire, of my own free will, to plead guilty to that charge, and hereby request that I be brought before that court as soon as practicable in order that I may plead guilty to that charge and be sentenced accordingly.

My full address [*if not in custody*] is .....

AB

The above written request was signed before me, after having been read over by me to the accused person this ..... day of ....., 19..... at .....

JS, Justice of the Peace, Community Magistrate, [*or* Registrar of District Court (not being a constable)].

Schedule 2 form 3 heading: amended, on 1 May 1981, by section 25(1)(a) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Schedule 2 form 3: amended, on 30 June 1998, by section 8 of the Crimes Amendment Act (No 2) 1998 (1998 No 79).

Schedule 2 form 3: amended, on 1 May 1981, by section 25(1)(b) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Schedule 2 form 3: amended, on 1 May 1981, by section 25(1)(c) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Schedule 2 form 3: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

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Form 4 ss 328, 340
Indictment

[*Heading*]

In the High Court [*or* District Court] at [*name of place where indictment is filed*].

The Attorney-General [*or* The Solicitor-General *or* The Crown Solicitor at ..... *or* The informant AB] charges that .....

[*Where there are more counts than 1, add at the beginning of each count:*

The said ..... further charges that .....]

Charge

Examples of the manner of stating offences

(a) A murdered B at ....., on .....

(b) A stole a sack of flour from a ship called the "....." , at ..... on .....

(c) A obtained by false pretences from B a motorcar, at ..... , on .....

(d) A committed perjury with intent to procure the conviction of B for an offence punishable with imprisonment for 3 years or upwards, namely, robbery, by swearing on the trial of B for the robbery of C at the sittings of the ..... Court held at ..... on the ..... day of ..... 19..... :

First, that he, A, saw B at ..... on the ..... day of .....; secondly, that B asked A to lend B money on a watch belonging to C; thirdly, etc.

Or,

(e) A committed perjury on the trial of B at a sitting of the ..... Court held at ..... on ..... , for an assault alleged to have been committed by B on C at ..... on the ..... day of ..... by swearing to the effect that B could not have been at ..... at the time of the alleged assault, inasmuch as A, had seen him at that time in .....

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Form 4—*continued*

(f) A, with intent to cause grievous bodily harm to B, [*or* with intent to avoid the arrest of A, *or* C], injured [*or* caused grievous bodily harm to] B [*or* D].

(g) A, with intent to injure or endanger the safety of persons on a railway, did an unlawful act in respect of an engine, a tender, and certain carriages on the railway at ..... , on ..... , by [*describe with so much detail as is sufficient to give the accused reasonable information as to the acts or omissions relied on against him, and to identify the transaction*].

Schedule 2 form 4: amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Schedule 2 form 4: amended, on 1 May 1981, by section 25(2) of the Crimes Amendment Act (No 2) 1980 (1980 No 85).

Schedule 2 form 4: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

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Form 5

s 362(2)

Challenge to array

[Repealed]

Schedule 2 form 5: repealed, on 1 May 1982, by section 37(1) of the Juries Act 1981 (1981 No 23).

Form 6

s 363(3)

Challenge for cause

[Repealed]

Schedule 2 form 6: repealed, on 1 May 1982, by section 37(1) of the Juries Act 1981 (1981 No 23).

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Schedule 3

s 411(1)

Enactments amended

Companies Act 1955 (1955 No 63) (1957 Reprint, Vol 2, p 394)
Amendment(s) incorporated in the Act(s).

Criminal Justice Act 1954 (1954 No 50) (1957 Reprint, Vol 3, p 455)
Amendment(s) incorporated in the Act(s).

Defamation Act 1954 (1954 No 46) (1957 Reprint, Vol 3, p 868)
Amendment(s) incorporated in the Act(s).

Divorce and Matrimonial Causes Act 1928 (1928 No 16) (1957 Reprint, Vol 4, p 240)
Amendment(s) incorporated in the Act(s).

Evidence Act 1908 (1908 No 56) (1957 Reprint, Vol 4, p 693)
Amendment(s) incorporated in the Act(s).

Juries Act 1908 (1908 No 90) (1957 Reprint, Vol 6, p 745)
Amendment(s) incorporated in the Act(s).

Law Practitioners Act 1955 (1955 No 101) (1957 Reprint, Vol 7, p 768)
Amendment(s) incorporated in the Act(s).

Married Women's Property Act 1952 (1952 No 53) (1957 Reprint, Vol 9, p 399)
Amendment(s) incorporated in the Act(s).

Master and Apprentice Act 1908 (1908 No 115) (1957 Reprint, Vol 9, p 415)
Amendment(s) incorporated in the Act(s).

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Motor-Vehicle Dealers Act 1958 (1958 No 112)
Amendment(s) incorporated in the Act(s).

Naval and Victualling Stores Act 1908 (1908 No 127) (1957 Reprint, Vol 10, p 892)
Amendment(s) incorporated in the Act(s).

New Zealand Army Act 1950 (1950 No 39) (1957 Reprint, Vol 11, p 1)
Amendment(s) incorporated in the Act(s).

New Zealand Society of Accountants Act 1958 (1958 No 42)
Amendment(s) incorporated in the Act(s).

Patents Act 1953 (1953 No 64)
Amendment(s) incorporated in the Act(s).

Police Act 1958 (1958 No 109)
Amendment(s) incorporated in the Act(s).

Police Offences Act 1927 (1927 No 35) (1957 Reprint, Vol 12, p 1)
Amendment(s) incorporated in the Act(s).

Police Offences Amendment Act (No 2) 1952 (1952 No 43) (1957 Reprint, Vol 12, p 52)
Amendment(s) incorporated in the Act(s).

Royal New Zealand Air Force Act 1950 (1950 No 40) (1957 Reprint, Vol 13, p 455)
Amendment(s) incorporated in the Act(s).

Shipping and Seamen Act 1952 (1952 No 49) (1957 Reprint, Vol 14, p 313)
Amendment(s) incorporated in the Act(s).

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Summary Proceedings Act 1957 (1957 No 87)

Amendment(s) incorporated in the Act(s).

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Schedule 4

s 412(1)

United Kingdom enactments ceasing to have effect in New Zealand

Against maintenance and embracery, etc, 32 Hen 8, c 9

Amendment of 13 Rich 2, stat 2, c 1, 16 Rich 2, c 6

An Act concerning the trial of treasons committed out of the King's Majesty's Dominions, 35 Hen 8, c 2

An Act for due process to be had in high treason, etc, 33 Hen 8, c 20

An Act for suppressing of lotteries, 10 Will 3, c 23

An Act for the better apprehending, prosecuting, and punishing of felons that commit burglary, housebreaking, or robbery, etc, 10 Will 3, c 12

An Act for the better regulating of trials in cases of high treason under the statute of 25 Edw 3, 5 Geo 3, c 21

An Act for the ease of the subject concerning the informations upon penal statutes, 21 Jas 1, c 4

An Act for the more effectual suppression of piracy, 11 Will 3, c 7

An Act repealing certain treasons, felonies, and praemunire, 1 Mar, Sess 1, c 1

An Act that no person going with the King to the wars shall be attaint of treason, 11 Hen 7, c 1

An Act to redress disorders in common informers upon penal laws, 18 Eliz 1, c 5

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An Act whereby certain offences be made treasons; etc, 1 & 2 Phil & Mar, c 10

An Act whereby offences be made high treason, 26 Hen 8, c 13

An ordinance concerning conspirators (1305), 33 Edw 1

Champerty by the King's officers, 3 Edw 1, c 25

Champerty prohibited, 28 Edw 1, c 11

Civil Rights of Convicts Act 1828, 9 Geo 4, c 32

Coinage Act 1870, 33 & 34 Vict, c 10
Section 5.

Coinage (Colonial Offences) Act 1853, 16 & 17 Vict, c 48

Colonial Prisoners Removal Act 1884, 47 & 48 Vict, c 31
Subsection (2) of section 9.

Commissions to inquire of riot, etc, 2 Hen 5, stat 1, c 8

Corruption of Blood Act 1814, 54 Geo 3, c 145

Criminal Law Act 1827, 7 & 8 Geo 4, c 28

Deceits by pleaders, 3 Edw 1, c 29

Diplomatic Privileges Act 1708, 7 Anne, c 12
Section 4.

Elopement with adulterer. Taking away of a nun, 13 Edw 1, c 34

Extortion by the King's officers, 3 Edw 1, c 26

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Fines and forfeitures to the Crown, 22 & 23 Chas 2, c 22

Forcible Entry Act 1381, 5 Rich 2, stat 1, c 7

Forcible Entry Act 1429, 8 Hen 6, c 9

Forcible Entry Act 1588, 31 Eliz 1, c 11

Forcible Entry Act 1623, 21 Jas 1, c 15

Foreign Enlistment Act 1870, 33 & 34 Vict, c 90

Foreign Jurisdiction Act 1890, 53 & 54 Vict, c 37
Section 6.

Judgment of Death Act 1823, 4 Geo 4, c 48

Juries Act 1825, 6 Geo 4, c 50
Section 21.

Justices of Peace and sheriffs shall arrest all rioters, etc, 13 Hen 4, c 7

Lotteries Act 1710, 9 Anne, c 6

Lotteries Act 1721, 8 Geo 1, c 2

Lotteries Act 1722, 9 Geo 1, c 19

Lotteries Act 1732, 6 Geo 2, c 35

Lotteries Act 1806, 46 Geo 3, c 148

Lotteries Act 1823, 4 Geo 4, c 60

Lotteries Act 1836, 6 & 7 Will 4, c 66

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Maintenance by officers of Courts, 3 Edw 1, c 28

Murders Abroad Act 1817, 57 Geo 3, c 53

No pardon for murder, etc, unless offence specified, 13 Rich 2, stat 2, c 1

Of the chattels of felons, Date uncertain

Pacific Islanders Protection Act 1872, 35 & 36 Vict, c 19

Pacific Islanders Protection Amendment Act 1875, 38 & 39 Vict, c 51

Pardon of felony, 27 Edw 3, stat 1, c 2

Penalties for maintenance, 1 Rich 2, c 4

Pillory Abolition Act 1816, 56 Geo 3, c 138

Piracy Act 1744, 18 Geo 2, c 30

Piracy Act 1850, 13 & 14 Vict, c 26
Section 6.

Previous Convictions Act 1836, 6 & 7 Will 4, c 111

Prison (Escape) Act 1742, 16 Geo 2, c 31

Prisoners of War (Escape) Act 1812, 52 Geo 3, c 156

Profane Oaths Act 1745, 19 Geo 2, c 21

Punishment of him that taketh away a ward, 13 Edw 1, c 35

Punishment of Offences Act 1837, 7 Will 4 & 1 Vict, c 91

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Purchasing title of lands in suit, 13 Edw 1, c 49

Riding or going armed in affray of the peace, 2 Edw 3, c 3

Riots prohibited and sheriffs required to suppress them, 17 Rich 2, c 8

Sale of Offices Act 1551, 5 & 6 Edw 6, c 16

Sale of Offices Act 1809, 49 Geo 3, c 126
Sections 3 to 8.

Seizure of lands on surmise of treason in dead persons, 34 Edw 3, c 12

Servants' Characters Act 1792, 32 Geo 3, c 56

Slave Trade Act 1824, 5 Geo 4, c 113

Slave Trade Act 1843, 6 & 7 Vict, c 98

Slave Trade Act 1873, 36 & 37 Vict, c 88
Sections 22 and 26.

Statute concerning conspirators, Date uncertain

Statutes against maintenance and embracery confirmed, 7 Rich 2, c 15

Statutes concerning forcible entries and riots confirmed, 15 Rich 2, c 2

Succession to the Crown, 28 Hen 8, c 7

Succession to the Crown Act 1707, 6 Anne, c 41
Sections 1 and 3.

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Transportation Act 1825, 6 Geo 4, c 69

Treason Act 1351, 25 Edw 3, stat 5, c 2

Treason Act 1702, 1 Anne, stat 2, c 21

Treason Act 1708, 7 Anne, c 21

Treason Act 1766, 6 Geo 3, c 53

Treason Act 1790, 30 Geo 3, c 48

Treason Act 1842, 5 & 6 Vict, c 51

Treason Felony Act 1848, 11 & 12 Vict, c 12

Trials for Felony Act 1836, 6 & 7 Will 4, c 114

Unlawful Drilling Act 1819, 60 Geo 3 & 1 Geo 4, c 1

Whipping Act 1820, 1 Geo 4, c 57

Witchcraft Act 1735, 9 Geo 2, c 5

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Schedule 5

s 412(2)

New Zealand enactments repealed

Acts Interpretation Act 1924 (1924 No 11) (1957 Reprint, Vol 1, p 18)
Amendment(s) incorporated in the Act(s).

Capital Punishment Act 1950 (1950 No 81) (1957 Reprint, Vol 3, p 450)

Crimes Act 1908 (1908 No 32) (1957 Reprint, Vol 3, p 249)

Crimes Amendment Act 1920 (1920 No 15) (1957 Reprint, Vol 3, p 436)

Crimes Amendment Act 1922 (1922 No 35) (1957 Reprint, Vol 3, p 436)

Crimes Amendment Act 1941 (1941 No 10) (1957 Reprint, Vol 3, p 438)

Crimes Amendment Act 1950 (1950 No 83) (1957 Reprint, Vol 3, p 451)

Crimes Amendment Act 1952 (1952 No 42) (1957 Reprint, Vol 3, p 452)

Crimes Amendment Act 1954 (1954 No 29) (1957 Reprint, Vol 3, p 454)

Criminal Appeal Act 1945 (1945 No 23) (1957 Reprint, Vol 3, p 439)

Criminal Justice Act 1954 (1954 No 50) (1957 Reprint, Vol 3, p 455)
Amendment(s) incorporated in the Act(s).

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Criminal Justice Amendment Act 1955 (1955 No 68) (1957 Reprint, Vol 3, p 495)
Amendment(s) incorporated in the Act(s).

Indecent Publications Act 1910 (1910 No 19) (1957 Reprint, Vol 6, p 382)
Amendment(s) incorporated in the Act(s).

Infants Act 1908 (1908 No 86) (1957 Reprint, Vol 6, p 598)
Amendment(s) incorporated in the Act(s).

Juries Act 1908 (1908 No 90) (1957 Reprint, Vol 6, p 745)
Amendment(s) incorporated in the Act(s).

Offences at Sea Act 1953 (1953 No 120) (1957 Reprint, Vol 3, p 453)

Penal Institutions Act 1954 (1954 No 51) (1957 Reprint, Vol 11, p 690)
Amendment(s) incorporated in the Act(s).

Police Offences Act 1927 (1927 No 35) (1957 Reprint, Vol 12, p 1)
Amendment(s) incorporated in the Act(s).

Police Offences Amendment Act (No 2) 1952 (1952 No 43) (1957 Reprint, Vol 12, pp 51, 54, 80)
Amendment(s) incorporated in the Act(s).

Police Offences Amendment Act 1956 (1956 No 57) (1957 Reprint, Vol 12, p 82)
Amendment(s) incorporated in the Act(s).

Police Offences Amendment Act 1958 (1958 No 87)
Amendment(s) incorporated in the Act(s).

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Statutes Amendment Act 1936 (1936 No 58) (1957 Reprint, Vol 2, pp 27, 46; Vol 3, pp 414, 415, 435, 437)
Amendment(s) incorporated in the Act(s).

Statutes Amendment Act 1937 (1937 No 38) (1957 Reprint, Vol 3, pp 412, 438)
Amendment(s) incorporated in the Act(s).

Statutes Amendment Act 1945 (1945 No 40) (1957 Reprint, Vol 6, pp 762, 799)
Amendment(s) incorporated in the Act(s).

Statutes Amendment Act 1946 (1946 No 40) (1957 Reprint, Vol 3, p 449)
Amendment(s) incorporated in the Act(s).

Statutes Amendment Act 1948 (1948 No 77) (1957 Reprint, Vol 3, p 450)
Amendment(s) incorporated in the Act(s).

Summary Proceedings Act 1957 (1957 No 87) (1957 Reprint, Vol 15, p 406)
Amendment(s) incorporated in the Act(s).

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Schedule 6

s 312D(1)

Interception warrant

[Repealed]

Schedule 6: repealed, on 1 February 1998, by section 24(1) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

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Crimes Amendment Act (No 2) 1979

Public Act 1979 No 127
Date of assent 14 December 1979
Commencement 14 December 1979

1 Short Title

This Act may be cited as the Crimes Amendment Act (No 2) 1979, and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as "the principal Act").

2 New sections inserted

(1) *Amendment(s) incorporated in the Act(s).*

(2) Sections 361B and 361C of the principal Act (as inserted by subsection (1)) shall not apply in respect of any accused person who has been committed for trial before the commencement of this Act if the trial of the accused has commenced before the commencement of this Act; but, in respect of any accused person who has been committed for trial, and whose trial has not commenced before the commencement of this Act, the said provisions shall apply as if for the words "in which he is so committed" in subsection (1) of the said section 361B there were substituted the words "of the commencement of the Crimes Amendment Act (No 2) 1979".

PURL: https://www.legal-tools.org/doc/d66c12/

Crimes Amendment Act (No 3) 1985

Public Act 1985 No 160
Date of assent 12 December 1985
Commencement see section 1(2)

1 Short Title and commencement

(1) This Act may be cited as the Crimes Amendment Act (No 3) 1985, and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as "the principal Act").

(2) This Act shall come into force on 1 February 1986.

6 Transitional provisions

(1) No person shall be convicted of—
- (a) sexual violation; or
- (b) attempted sexual violation; or
- (c) assault with intent to commit sexual violation; or
- (d) an offence against section 129A of the principal Act (inducing sexual connection by coercion); or
- (e) an offence against section 142A of that Act (compelling indecent act with animal); or
- (f) being a party to the commission of any offence referred to in paragraphs (a) to (e); or
- (g) conspiring with any person to commit any such offence,—

in respect of any act done before 1 February 1986.

(2) Every person who, but for the passing of this Act, could have been charged with any offence specified in subsection (3) in respect of any act done before 1 February 1986 may be charged with and convicted of such offence, and the relevant provisions of the principal Act shall continue to apply, as if sections 2 and 4 had not been passed.

(3) Subsection (2) applies to the following offences:
- (a) rape:
- (b) attempted rape:
- (c) assault with intent to commit rape:

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(d) being a party to the commission of any offence referred to in paragraphs (a) to (c):

(e) conspiring with any person to commit any such offence.

(4) Notwithstanding anything in section 1(2) or in subsection (2), where the trial of any person for an offence specified in subsection (3) commences on or after the 28th day after the date on which this Act receives the Governor-General's assent, the provisions of section 375A of the principal Act (as inserted by section 5) shall apply with all necessary modifications.

PURL: https://www.legal-tools.org/doc/d66c12/

Homosexual Law Reform Act 1986

Public Act 1986 No 33
Date of assent 11 July 1986
Commencement see section 1(2)

1 Short Title and commencement

(1) This Act may be cited as the Homosexual Law Reform Act 1986.

(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

Amendments of Crimes Act 1961

2 Act to be read with Crimes Act 1961

This Act shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as "the principal Act").

7 Past offences

(1) No person shall be liable to be convicted of an offence against any of sections 140, 141, or 142 of the principal Act committed before the commencement of this Act if the act that constituted the offence does not constitute an offence after the commencement of this Act.

(2) Subject to subsection (1), where, before the commencement of this Act, any person has been charged with any offence against section 140 or section 141 or section 142 of the principal Act, the proceedings in respect of the charge shall continue as if this Act had not been passed, except that—

(a) where the person is charged with an offence against section 141 of the principal Act and the charge relates to a boy of or over the age of 12 years and under the age of 16 years, he shall be entitled to raise any defence that he would have been entitled to raise if the charge had been brought under section 140A of the principal Act (as substituted by section 3 of this Act); and

(b) where the person is charged with an offence against section 142 of the principal Act, he shall be entitled to raise any defence that he would have been entitled to raise if

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the charge had been brought under section 142 of the principal Act (as substituted by section 5 of this Act).

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Crimes Amendment Act (No 2) 1989

Public Act 1989 No 103
Date of assent 13 November 1989
Commencement see section 1(2)

1 Short Title and commencement

(1) This Act may be cited as the Crimes Amendment Act (No 2) 1989, and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as "the principal Act").

(2) This Act shall come into force on 1 January 1990.

3 Transitional provision

Section 2 shall not apply in respect of any hearing or trial that has commenced before the commencement of this Act; and in respect of any such trial, section 375A of the principal Act (as originally enacted) shall continue to apply as if section 2 had not been enacted.

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Crimes Amendment Act (No 2) 1995

Public Act 1995 No 68
Date of assent 12 December 1995
Commencement see section 1(2)

1 Short Title and commencement

(1) This Act may be cited as the Crimes Amendment Act (No 2) 1995, and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as "the principal Act").

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

Section 1(2): Crimes Amendment Act (No 2) 1995 brought into force, on 1 March 1996, by the Crimes Amendment Act Commencement Order 1996 (SR 1996/1).

5 Savings provision relating to indictments

Nothing in section 3 applies to any indictment in respect of an accused committed for trial before the commencement of that section.

6 Transitional and savings provisions relating to power of District Court to order trial by Trial Judge alone

(1) Nothing effected by section 4 of this Act in relation to section 28D(1) of the District Courts Act 1947 or section 168C of the Summary Proceedings Act 1957 or section 361B(1) or section 361C(2)(a) of the Crimes Act 1961 applies in relation to any accused committed for trial before the date of commencement of that section if the trial of the accused has commenced before that date.

(2) Where the accused has been committed for trial before the date of commencement of section 4 of this Act, but the trial of the accused has not commenced before that date, section 361B(1) of the Crimes Act 1961 (as amended by section 4) shall, so far as it is applicable, apply as if for the words "date on which he is so committed" there were substituted the words

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"commencement of section 4 of the Crimes Amendment Act (No 2) 1995".

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Crimes (Bribery of Foreign Public Officials) Amendment Act 2001

Public Act 2001 No 28
Date of assent 2 May 2001
Commencement see section 2

1 Title

(1) This Act may be cited as the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001.

(2) In this Act, the Crimes Act 1961 is called "the principal Act".

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Extradition of offenders

10 Crimes against sections 105C and 105D deemed to be included in extradition treaties

(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act, the crimes described in sections 105C and 105D are deemed to be offences described in any extradition treaty concluded before the commencement of this section and for the time being in force between New Zealand and any foreign country that is a party to the Bribery Convention.

(2) If subsection (1) deems a crime to be an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act 1999 in respect of an act that amounts to that crime is liable to be surrendered in accordance with the provisions of that Act, whether the act occurred before or after the date on which the crime was deemed to be an offence described in the extradition treaty.

(3) This section does not apply in respect of an act that, had it occurred within the jurisdiction of New Zealand, would not at that time have constituted an offence under New Zealand law.

(4) A certificate given under the hand of the Minister of Foreign Affairs and Trade that any foreign country is a party to the

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Bribery Convention is, in the absence of proof to the contrary, sufficient evidence of that fact.

(5) For the purposes of this section,—

Bribery Convention means the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, done at Paris on 17 December 1997

foreign country includes any territory for whose international relations the government of a foreign country is responsible and to which the extradition treaty and the Bribery Convention extends.

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Crimes (Criminal Appeals) Amendment Act 2001

Public Act 2001 No 92
Date of assent 13 November 2001
Commencement see section 2

1 Title

(1) This Act is the Crimes (Criminal Appeals) Amendment Act 2001.

(2) In this Act, the Crimes Act 1961 is called "the principal Act".

2 Commencement

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

Section 2: Crimes (Criminal Appeals) Amendment Act 2001 brought into force, on 10 December 2001, by the Crimes (Criminal Appeals) Amendment Act Commencement Order 2001 (SR 2001/370).

Part 1
Amendments to principal Act

12 Transitional provisions

(1) If, before the commencement of this Act, a fixture for a hearing involving oral submissions has been set down for an appeal or application, then the principal Act and the Court of Appeal (Criminal) Rules 1997 (as the Act and those rules read immediately before the commencement of this Act) continue to apply to the appeal or application.

(2) Any other appeal or application made before the commencement of this Act must be dealt with as if it had been made after the commencement of this Act, and the principal Act and the Court of Appeal (Criminal) Rules 1997 (as the Act and those rules (or any replacement of them) read immediately after the commencement of this Act) apply to the appeal or application.

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Part 2
Validation of determinations

13 Validation of determinations made before Act commences

(1) No determination of an appeal or application for leave to appeal that was made under Part 13 of the principal Act before the date on which this Act commences is invalid by reason only of any 1 or more of the following:

(a) a failure to comply with Part 13 of the principal Act or the Court of Appeal (Criminal) Rules 1997 (as the Act and Rules were at any time before the commencement of this Act):

(b) a failure to comply with the Criminal Appeal Rules 1946:

(c) a failure to give reasons for the determination or judgment.

(2) Subsection (1) does not apply to any determination of the Court of Appeal that is the subject, as at 6 November 2000, of either of the following proceedings:

(a) *Fa'afete Taito v The Queen* (petition for special leave to appeal, CA 4/96):

(b) *James McLeod Bennett and 11 Others v Attorney-General and 2 Others* (CP 108/00).

(3) Nothing in this section affects the right of any person to apply for the exercise of the prerogative of mercy.

14 Application for leave for rehearing

(1) This section applies to any person—

(a) who appealed, or applied for leave to appeal, under Part 13 of the principal Act before the date of commencement of this section; and

(b) who applied for legal aid in respect of the appeal or application, but was not granted legal aid in respect of it; and

(c) whose appeal or application was determined without oral submissions being heard; and

(d) whose appeal or application was dismissed.

(2) An applicant to whom this section applies may, at any time before the closing date set by Order in Council made under

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subsection (4), apply to the Court of Appeal for leave to have his or her original appeal or application reheard under section 16.

(3) An application for a rehearing must—
(a) identify a failure of the sort described in any of paragraphs (a), (b), or (c) of section 13(1) that occurred in relation to the original appeal or application; and
(b) set out the grounds on which the applicant claims that a miscarriage of justice has occurred.

(4) The Governor-General may, by Order in Council, set the closing date by which applications for leave for a rehearing must be received by the Court of Appeal. The Order in Council may not be made until at least 1 year after the date on which the following cases before the Judicial Committee of the Privy Council are finally determined:
(a) *Fa'afete Taito v The Queen*:
(b) *James McLeod Bennett and 11 Others v The Queen*.

15 Decision on application for leave for rehearing

(1) The decision on an application for leave for a rehearing must be made by a Judge of the Court of Appeal, acting alone, on the basis of—
(a) written material provided by the applicant in his or her application; and
(b) any written submissions made by the respondent; and
(c) any written submissions provided by the applicant in response to written submissions made by the respondent; and
(d) any documents that form part of the court record that the Judge considers necessary for the proper determination of the application.

(2) Neither the parties nor their representatives may appear before a Judge on an application for leave for a rehearing.

(3) The Registrar must, upon request, supply an applicant or prospective applicant with any documents that form part of the court record that the Registrar considers necessary for the proper determination of the application.

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(4) The Judge must grant leave for a rehearing if he or she is satisfied that—

(a) a failure of the sort described in any of paragraphs (a), (b), or (c) of section 13(1) occurred in relation to the original appeal or application; and

(b) there is an arguable case that a miscarriage of justice has occurred.

16 Rehearing of appeals and applications

(1) The Court of Appeal may rehear any appeal, or application for leave to appeal, for which leave has been granted under section 15.

(2) The rehearing of an appeal or application for leave to appeal must be conducted as if it were an original appeal or application, and Part 13 of the principal Act and the rules of court apply accordingly.

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Prostitution Reform Act 2003

Public Act 2003 No 28
Date of assent 27 June 2003
Commencement see section 2

1 Title

This Act is the Prostitution Reform Act 2003.

Part 1
Preliminary provisions

2 Commencement

(1) This Act (other than the provisions referred to in subsection (2)) comes into force on the day after the date on which it receives the Royal assent.

(2) Part 3 and sections 49 and 50(2) come into force 6 months after the date on which this Act receives the Royal assent.

Part 4
Miscellaneous provisions

Repeals, amendments, and transitional provisions

51 Transitional provisions for past offences

(1) No person may be convicted of an offence against any of the enactments repealed by section 48 (other than an offence against section 149A of the Crimes Act 1961) on or after the commencement of this Act if the offence was committed before the commencement of this Act.

(2) The repeal of section 149A of the Crimes Act 1961 does not affect a liability to conviction or to a penalty for an offence committed against that section before the commencement of this Act, and that section continues to have effect as if it had not been repealed for the purposes of—

(a) investigating the offence:

(b) commencing or completing proceedings for the offence:

(c) imposing a penalty for the offence.

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Crimes Amendment Act 2005

Public Act 2005 No 41
Date of assent 20 April 2005
Commencement see section 2

1 Title

(1) This Act is the Crimes Amendment Act 2005.

(2) In this Act, the Crimes Act 1961 is called "the principal Act".

2 Commencement

(1) Sections 6 and 8 come into force on a date appointed by the Governor-General by Order in Council.

(2) So much of Schedule 1 as relates to the Extradition Act 1999 or the Mutual Assistance in Criminal Matters Act 1992 comes into force on a date appointed by the Governor-General by Order in Council.

(3) The rest of this Act comes into force on the 30th day after the date on which it receives the Royal assent.

Section 2(1): sections 6 and 8 brought into force, on 14 June 2006, by the Crimes Amendment Act Commencement Order 2006 (SR 2006/121).

Part 2
Amendments, repeals, and transitional matters

12 Acts done before commencement of amending provisions

(1) Every provision of the principal Act amended or repealed by a section of this Act applies to an act or omission occurring before the commencement of the section as if the section had not been enacted.

(2) Every enactment amended or repealed by section 10 or section 11 applies to an act or omission occurring before the commencement of those sections as if those sections had not been enacted.

(3) Subsections (1) and (2) are subject to section 13, the District Courts Amendment Act (No 2) 2008, and the Summary Proceedings Amendment Act (No 2) 2008.

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Section 12(3): amended, on 26 June 2008, by section 18(2) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

13 Availability of new defences

To the extent (if any) that, with or without modification, a provision of the principal Act substituted by a section of this Act replaces or corresponds to a provision of the principal Act repealed by that section, there are available to a person charged after the commencement of that section with an offence against the repealed provision, so far as they are applicable,—

(a) all defences available to a person charged with an offence against the repealed provision; and

(b) with any necessary modifications, all defences available to a person charged with an offence against the substituted provision.

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Crimes (Substituted Section 59) Amendment Act 2007

Public Act 2007 No 18
Date of assent 21 May 2007
Commencement see section 2

1 Title

This Act is the Crimes (Substituted Section 59) Amendment Act 2007.

2 Commencement

This Act comes into force one month after the date on which it receives the Royal assent.

7 Chief executive to monitor effects of this Act

(1) The chief executive must, in accordance with this section, monitor, and advise the Minister on, the effects of this Act, including the extent to which this Act is achieving its purpose as set out in section 4, and of any additional impacts.

(2) As soon as practicable after the expiry of the period of 2 years after the date of the commencement of this Act, the chief executive must—

(a) review the available data and any trends indicated by that data about the matters referred to in subsection (1); and

(b) report the chief executive's findings to the Minister.

(3) As soon as practicable after receiving the report under subsection (2), the Minister must present a copy of that report to the House of Representatives.

(4) In this section, **chief executive** and **Minister** have the same meanings as in section 2(1) of the Children, Young Persons, and Their Families Act 1989.

PURL: https://www.legal-tools.org/doc/d66c12/

Crimes Amendment Act (No 2) 2008

Public Act 2008 No 37
Date of assent 25 June 2008
Commencement see section 2

1 Title

This Act is the Crimes Amendment Act (No 2) 2008.

2 Commencement

(1) Section 4 comes into force on the day that is 6 months after the date on which this Act receives the Royal assent.

(2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.

4 New sections 361D and 361E inserted

(1)–(5) *Amendment(s) incorporated in the Act(s).*

(6) This section applies in respect of an accused person only if—

(a) the accused person is committed for trial on or after the date on which this section comes into force; or

(b) the accused person is committed for trial before the date on which this section comes into force and the trial has not commenced before that date.

5 Evidence and addresses

(1), (2) *Amendment(s) incorporated in the Act(s).*

(3) This section applies in respect of an accused person only if—

(a) the accused person is committed for trial on or after the date on which this section comes into force; or

(b) the accused person is committed for trial before the date on which this section comes into force and the trial has not commenced before that date.

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Amendment to Crimes Amendment Act 2005

19 Transitional provision

Despite section 384A of the Crimes Act 1961, every appeal filed before the commencement of that section must be heard and determined as if section 384A had not been enacted.

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Contents

1 General
2 Status of reprints
3 How reprints are prepared
4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
5 List of amendments incorporated in this reprint (most recent first)

Notes

1 General

This is a reprint of the Crimes Act 1961. The reprint incorporates all the amendments to the Act as at 8 December 2009, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted.

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For a detailed list of the editorial conventions, *see* http://www.pco.parliament.govt.nz/editorial-conventions/ or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as "of this section" and "of this Act")
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as "the 1st day of January 1999" is now expressed as "1 January 1999")

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- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 List of amendments incorporated in this reprint (most recent first)

Crimes (Provocation Repeal) Amendment Act 2009 (2009 No 64)

Crimes Amendment Act 2009 (2009 No 47)

Criminal Proceeds (Recovery) Act 2009 (2009 No 8): sections 176–178

Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35): section 161(2)

Corrections Amendment Act 2009 (2009 No 3): section 35

Policing Act 2008 (2008 No 72): sections 116(a)(ii), (iv), (b), 130(1)

Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41): section 18

Juries Amendment Act 2008 (2008 No 40): sections 16(1), 19(2)

Criminal Disclosure Act 2008 (2008 No 38): section 40(1)

Crimes Amendment Act (No 2) 2008 (2008 No 37)

Crimes Amendment Act 2008 (2008 No 8)

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Terrorism Suppression Amendment Act 2007 (2007 No 102): section 47

Court Martial Act 2007 (2007 No 101): section 87

Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98): section 81

Crimes (Repeal of Seditious Offences) Amendment Act 2007 (2007 No 96)

Sentencing Amendment Act 2007 (2007 No 27): section 58

Crimes (Substituted Section 59) Amendment Act 2007 (2007 No 18)

Crimes (Intimate Covert Filming) Amendment Act 2006 (2006 No 75)

Evidence Act 2006 (2006 No 69): sections 215, 216

Crimes Amendment Act Commencement Order 2006 (SR 2006/121)

Crimes Amendment Act 2006 (2006 No 6)

Crimes Amendment Act 2005 (2005 No 41)

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

Civil Union Act 2004 (2004 No 102): sections 41, 42, 43

Corrections Act 2004 (2004 No 50): section 206

Civil Aviation Amendment Act 2004 (2004 No 8): section 41(3)

Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115): section 51

Crimes Amendment Act (No 2) 2003 (2003 No 105)

Supreme Court Act 2003 (2003 No 53): sections 47, 48(1)

Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)

State Sector Amendment Act 2003 (2003 No 41): section 14(1)

Crimes Amendment Act 2003 (2003 No 39)

Prostitution Reform Act 2003 (2003 No 28): section 48(1)(a)

New Zealand Trade and Enterprise Act 2003 (2003 No 27): section 84

Government Communications Security Bureau Act 2003 (2003 No 9): section 26

Crimes Amendment Act 2002 (2002 No 20)

Sentencing Act 2002 (2002 No 9): sections 164, 165, 186

Crimes (Criminal Appeals) Amendment Commencement Order 2001 (SR 2001/370)

Crimes (Criminal Appeals) Amendment Act 2001 (2001 No 92)

Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No 28)

Crimes Amendment Act 2001 (2001 No 9)

Crimes Amendment Act 2000 (2000 No 57)

Legal Services Act 2000 (2000 No 42): section 128

Bail Act 2000 (2000 No 38): section 74(2)

International Crimes and International Criminal Court Act 2000 (2000 No 26): section 181

Penal Institutions Amendment Act 1999 (1999 No 114): section 10

Crimes Amendment Act (No 2) 1998 (1998 No 79)

Crimes Amendment Act 1998 (1998 No 35)

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Misuse of Drugs Amendment Act 1998 (1998 No 14): section 13

Evidence (Witness Anonymity) Amendment Act 1997 (1997 No 103): section 5

Crimes Amendment Act (No 2) 1997 (1997 No 93)

Crimes Amendment Act 1997 (1997 No 88)

State Sector Amendment Act 1997 (1997 No 8): section 4

Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74): section 5(4)

Crimes Amendment Act Commencement Order 1996 (SR 1996/1)

Crimes Amendment Act (No 2) 1995 (1995 No 68)

Crimes Amendment Act 1995 (1995 No 49)

Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(1)

Penal Institutions Amendment Act 1994 (1994 No 120): section 27(1)

Maritime Transport Act 1994 (1994 No 104): section 202(1)

Films, Videos, and Publications Classification Act 1993 (1993 No 94): section 150(1)

Foreign Affairs Amendment Act 1993 (1993 No 48): sections 2(3), 6(1)

Crimes Amendment Act (No 2) 1993 (1993 No 46)

Crimes Amendment Act 1993 (1993 No 33)

Defamation Act 1992 (1992 No 105): section 56(2)

Crimes Amendment Act (No 2) 1991 (1991 No 106)

Crimes Amendment Act 1991 (1991 No 63)

Civil Aviation Act 1990 (1990 No 98): section 101(1)

Regulations (Disallowance) Act 1989 (1989 No 143): section 11

Abolition of the Death Penalty Act 1989 (1989 No 119): section 3

Crimes Amendment Act (No 2) 1989 (1989 No 103)

Crimes Amendment Act 1989 (1989 No 22)

Foreign Affairs Act 1988 (1988 No 159): section 14(1)

Crimes Amendment Act 1988 (1988 No 114)

Crimes Amendment Act (No 2) 1987 (1987 No 167)

Crimes Amendment Act 1987 (1987 No 1)

Constitution Act 1986 (1986 No 114): section 29(2)

Crimes Amendment Act (No 3) 1986 (1986 No 75)

Crimes Amendment Act (No 2) 1986 (1986 No 71)

Homosexual Law Reform Act 1986 (1986 No 33): section 6(1)

Crimes Amendment Act (No 4) 1985 (1985 No 171)

Crimes Amendment Act (No 3) 1985 (1985 No 160)

Crimes Amendment Act (No 2) 1985 (1985 No 121)

Foreign Affairs Act 1983 (1983 No 128): section 30

Crimes Amendment Act (No 2) 1982 (1982 No 157)

Crimes Amendment Act 1982 (1982 No 46)

Summary Offences Act 1981 (1981 No 113): sections 48(1), 51(1)

Juries Act 1981 (1981 No 23): section 37(1)

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Crimes Amendment Act (No 2) 1980 (1980 No 85)

Crimes Amendment Act 1980 (1980 No 63)

Crimes Amendment Act (No 2) 1979 (1979 No 127)

District Courts Amendment Act 1979 (1979 No 125): section 18(2)

Judicature Amendment Act 1979 (1979 No 124): section 12

Crimes Amendment Act 1979 (1979 No 5)

Crimes Amendment Act 1978 (1978 No 6)

Crimes Amendment Act 1977 (1977 No 113)

Judicature Amendment Act 1977 (1977 No 32): section 15(1)

Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 (1977 No 28): section 33(1)

Summary Proceedings Amendment Act 1976 (1976 No 169): sections 19(1), (2), 20(2)

Crimes Amendment Act 1973 (1973 No 118)

Armed Forces Discipline Act 1971 (1971 No 53): section 208(1)

Criminal Justice Amendment Act 1969 (1969 No 17): section 5(1)

Costs in Criminal Cases Act 1967 (1967 No 129): section 14(2)

Crimes Amendment Act 1966 (1966 No 98)

Territorial Sea and Fishing Zone Act 1965 (1965 No 11): section 11

Crimes Amendment Act 1963 (1963 No 120)

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