

**Reprint  
as at 28 September 2017**



## **Crimes Act 1961**

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Commencement	see section 1(2)

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#### **Note**

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

**This Act is administered by the Ministry of Justice.**

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*[Repealed]*

*Interpretation*

*[Repealed]*

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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 19)
    - 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)
    - 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 12—Procedure (sections 313 to 378F)
    - Part 13—Appeals (sections 379 to 399)
    - Part 14—Miscellaneous provisions (sections 400 to 415)
- Section 1(3): amended, on 18 April 2012, by section 325(2) of the Search and Surveillance Act 2012 (2012 No 24).
- Section 1(3): amended, on 25 February 2012, by section 4 of the Crimes Amendment Act 2012 (2012 No 8).
- Section 1(3): amended, on 6 August 1979, by section 5 of the Crimes Amendment Act 1979 (1979 No 5).

## 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 or she has, present ability to effect his or her purpose; and **to assault** has a corresponding meaning

**claim of right**, in relation to any act, means a belief at the time of the act in a proprietary or possessory right in property in relation to which the offence is alleged to have been committed, 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 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 involving dishonesty** means any of the crimes or offences described in—

- (a) sections 100 to 105F;
- (b) Part 10, except sections 267 to 272, 298A, and 298B;
- (c) the Secret Commissions Act 1910

**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

**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)

**to injure** means to cause actual bodily harm

**Judge**, in relation to the District Court, or **District Court Judge** means a Judge who holds a warrant under section 14 of the District Court Act 2016 to conduct jury trials

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

**is liable** means is liable on conviction

**medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section

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

**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)

**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

**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 the District Court, as the case may require; and includes any Deputy Registrar

**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)

**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 66 of the Senior Courts Act 2016

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



**unlawful act** means a breach of any Act, regulation, rule, or bylaw

**vulnerable adult**, for the purposes of sections 151, 195, and 195A, means a person unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw himself or herself from the care or charge of another person.

- (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) *[Repealed]*

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) **claim of right**: amended, on 19 March 2012, by section 4(2) of the Crimes Amendment Act (No 3) 2011 (2011 No 79).

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

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

Section 2(1) **crime**: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 2(1) **crime involving dishonesty**: replaced, on 7 November 2015, by section 4 of the Crimes Amendment Act 2015 (2015 No 95).

Section 2(1) **depositions**: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

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**: replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 2(1) **is liable**: amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 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**: replaced, 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) **offence**: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

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

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

Section 2(1) **serious violent offence**: inserted, on 18 April 2012, by section 325(3) of the Search and Surveillance Act 2012 (2012 No 24).

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).

Section 2(1) **Supreme Court**: amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

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**: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 2(1) **unlawful act**: inserted, on 19 March 2012, by section 4(1) of the Crimes Amendment Act (No 3) 2011 (2011 No 79).

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(1) **vulnerable adult**: inserted, on 19 March 2012, by section 4(1) of the Crimes Amendment Act (No 3) 2011 (2011 No 79).

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).

Section 2(2): repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

### **3 Meaning of convicted on indictment**

*[Repealed]*

Section 3: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 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 or her home is in New Zealand; or
- (b) he or she 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 or her home therein, or with the intention of residing in New Zealand indefinitely, he or she is outside New Zealand but has an intention to return to establish his or her 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 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

- (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).

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).

Section 7B(3): inserted, 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 or she 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) If a person does or omits to do any act to which this section applies, and that act or omission would, if it occurred within New Zealand, be an offence, under this Act or any other enactment (whether that enactment was passed before or after the commencement of this Act), punishable by imprisonment for life or by 2 or more years' imprisonment, then, subject to the provisions of this Act and that other enactment, the person is liable on conviction as if the act or omission had occurred in New Zealand.
- (2A) If any proceedings are taken by virtue of the jurisdiction conferred by this section, it is a defence to prove that the act or omission would not have been an offence under the law of the country of which 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 an offence punishable by imprisonment for life or by 2 or more years' imprisonment, 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 offence 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(2): replaced, on 1 July 2013, by section 4(1) of the Crimes Amendment Act 2013 (2013 No 27).

Section 8(2A): inserted, on 1 July 2013, by section 4(1) of the Crimes Amendment Act 2013 (2013 No 27).

Section 8(3): amended, on 1 July 2013, by section 4(2) of the Crimes Amendment Act 2013 (2013 No 27).

Section 8(7): amended, on 1 July 2013, by section 4(3) of the Crimes Amendment Act 2013 (2013 No 27).

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
  - (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 charging document may be filed 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 before a charging document may be filed in respect of which the consent of the Attorney-General is required by subsection (3).
- (5) Where any person is alleged to have committed an offence to which this subsection applies,—
  - (a) he or she may be arrested; or
  - (b) a warrant for his or her arrest may be issued and executed,—

and he or she may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General has not been obtained to the filing of a charging document 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): replaced, 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).

Section 8A(3): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 8A(4): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 8A(5): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

## **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).

## **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 is liable to be punished twice in respect of the same offence.

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

Section 10(4): replaced, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

## **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 or her if, at the time of the act or omission, the act or omission by him or her 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**

*[Repealed]*

Section 10B: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

## **11 Construction of other Acts**

*[Repealed]*

Section 11: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

## **12 Summary jurisdiction**

*[Repealed]*

Section 12: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

## **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.
- (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).

*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 Enforcement of fines by High Court**

- (1) If the High Court imposes 1 or more fines, Part 3 of the Summary Proceedings Act 1957 applies to the fine or fines, subject to any necessary modifications and subject to the modifications in subsections (2) to (5).
- (2) Without limiting the actions that the High Court may take under Part 3 of the Summary Proceedings Act 1957 in relation to the fine or fines, the High Court may make any orders that it thinks fit, including a charging order or sale order in relation to the offender's real property.
- (3) To avoid doubt, section 88A of the Summary Proceedings Act 1957 does not apply if the High Court makes, in accordance with subsection (2), a charging order or sale order in relation to real property.
- (4) If an offender is sentenced by the High Court to community work, community detention, or home detention under section 88AE(1) of the Summary Proceedings Act 1957 or is imprisoned under a warrant of commitment issued under that section,—
  - (a) section 89(2) and (3) of the Summary Proceedings Act 1957 apply with any necessary modifications as if—
    - (i) the references in those subsections to a District Court Judge were references to a High Court Judge; and
    - (ii) the reference to the High Court was a reference to the Court of Appeal; and
  - (b) sections 244 and 250 of the Criminal Procedure Act 2011 and any other relevant provisions of that Act relating to appeals against sentence apply with any necessary modifications.
- (5) Despite section 90 of the Summary Proceedings Act 1957, the period of imprisonment that the High Court may impose on the offender for the non-payment of 1 or more fines must not exceed, for each fine, the lesser of—
  - (a) the maximum term of imprisonment to which the offender was liable on the conviction; or
  - (b) a period of 2 years.

- (6) If the High Court enforces 1 or more fines under this section, the court may, at the same time, enforce any outstanding fine or fines imposed on the offender by the District Court.
- (7) For the purposes of subsection (6), the outstanding fine or fines imposed by the District Court must be treated as if the fine or fines were imposed by the High Court and, in accordance with subsection (1), Part 3 of the Summary Proceedings Act 1957 applies to the fine or fines, subject to—
  - (a) any necessary modifications; and
  - (b) the modifications in subsections (2) and (4), but not the modification in subsection (5), if the outstanding fine or fines were imposed in the District Court.
- (8) A Registrar of the District Court or of the High Court may exercise any jurisdiction and powers conferred on a Registrar of the District Court by Part 3 of the Summary Proceedings Act 1957 in respect of the fine or fines imposed by the High Court to which, under subsection (1), that Part applies.
- (9) A bailiff of the District Court may exercise any jurisdiction and powers conferred on a bailiff of the District Court by Part 3 of the Summary Proceedings Act 1957 in respect of the fine or fines imposed by the High Court to which, under subsection (1), that Part applies.
- (10) The amount of the fee payable if default is made in the payment of 1 or more fines imposed by the High Court to which, under subsection (1), Part 3 of the Summary Proceedings Act 1957 applies is the same as that prescribed by regulations, made under the Summary Proceedings Act 1957, in respect of enforcement action taken under that Act to enforce the fine or fines.
- (11) To avoid doubt, sections 92A to 92I of the Summary Proceedings Act 1957 apply, subject to any necessary modifications, to any fine or fines imposed by the High Court, and accordingly, the chief executive of the Ministry of Justice may, among other things authorised by those sections, disclose information about default balances relating to such fine or fines in accordance with those sections.
- (12) For the purposes of this section, and subject to subsection (4), any reference in Part 3 of the Summary Proceedings Act 1957 to—
  - (a) a court is, unless the context otherwise requires, taken to be a reference to the High Court; and
  - (b) a District Court Judge is, unless the context otherwise requires, taken to be a reference to a High Court Judge; and
  - (c) a Registrar is, unless the context otherwise requires, taken to be a reference to a Registrar of the High Court or of the District Court and includes a Deputy Registrar.
- (13) In this section, **fine** has the meaning given to it in section 79 of the Summary Proceedings Act 1957.

Section 19: replaced, on 13 February 2012, by section 4 of the Crimes Amendment Act (No 2) 2011 (2011 No 34).

Section 19(4)(b): replaced, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 19(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 19(7): replaced, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 19(8): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 19(9): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 19(12)(c): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **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 or her 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

#### **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 or her when of the age of 10 but under the age of 14 years, unless he or she 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 or her when labouring under natural imbecility or disease of the mind to such an extent as to render him or her 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 or she did or omitted the act, and insane delusions, though only partial, may be evidence that the offender was, at the time when he or she did or omitted the act, in such a condition of mind as to render him or her 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

### *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 or she believes that the threats will be carried out and if he or she is not a party to any association or conspiracy whereby he or she 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 (Espionage):
  - (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 spouse 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): replaced, 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).
- Section 24(2)(l): replaced, on 1 October 2003, by section 5 of the Crimes Amendment Act 2003 (2003 No 39).
- Section 24(2)(m): inserted, on 1 October 2003, by section 5 of the Crimes Amendment Act 2003 (2003 No 39).
- Section 24(3): replaced, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).
- Section 24(3): amended, on 19 August 2013, by section 9 of the Marriage (Definition of Marriage) Amendment Act 2013 (2013 No 20).

### *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 or her.

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 or her, 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 or her.
- (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 or her, 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 or her.

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).

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 or her, 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 or her 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 or her, shall be protected from criminal responsibility if—
  - (a) he or she 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 com-

mission lawfully authorising him or her 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.

- (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 or she 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 or her 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 or she 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.
- (2) Every one called on to assist the person making such arrest, and believing that the person in whose arrest he or she 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 respon-

sibility 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 or her 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 or she 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 or her in the arrest of any person believed or suspected to have committed any offence is justified in assisting unless he or she 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 or her 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 or she 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 or she finds committing any offence against this Act for which the maximum punishment is not less than 3 years' imprisonment:

- (b) any person whom he or she 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 or she 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

### **38 Arrest during flight**

- (1) Every one is protected from criminal responsibility for arresting without warrant any person whom he or she 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 or she 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 or her 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 or her, 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 or she takes to flight in order to avoid arrest; or
  - (b) to prevent the escape or rescue of that other person after his or her 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 or her, 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 or her, 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 or she 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 or her 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 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 or her, is justified in arresting any one whom he or she finds committing it.
- (3) Every constable is justified in receiving into custody any person given into his or her 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 or she 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 or she 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 he or she 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 a riot before there is time to procure the intervention of the Police, is justified in using such force as he or she 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 or she 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 or her superior officer is justified in obeying any command given him or her 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 herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.

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

**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 or her, 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 or she 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 or her authority, is protected from criminal responsibility for defending his or her possession by the use of reasonable force, even against a person entitled by law to possession, if he or she 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).

**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 or her 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 her or acting by his or her 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 or she 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 her or acting by his or her authority, is justified in using



reasonable force to prevent any person from trespassing on the land or building or to remove him or her therefrom, if he or she 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 she, or some person under whose authority he or she acts, is lawfully entitled, for the purpose of taking possession thereof.

(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 or her 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 or her 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).
- (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: replaced, 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 or her ship or aircraft if he or she 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 on 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 or her 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 of that person, or of any person lawfully entitled to consent on his or her 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 or herself; and, if any person is killed, the fact that he or she 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

## **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 of—

fence 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: replaced, 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.
- (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): inserted, 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 the Sovereign 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 an offence other than murder punishable by imprisonment for life or by 2 or more years' imprisonment, is liable to imprisonment for a term not exceeding that prescribed for the offence, 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 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(3): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 69(5): inserted, 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 or her, in order to enable him or her 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): replaced, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## **72 Attempts**

- (1) Every one who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his or her 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 Sovereign and the State*

## **73 Treason**

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

- (a) kills or wounds or does grievous bodily harm to the Sovereign, or imprisons or restrains her or him; 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)

## **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 the Sovereign 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 defendant.
- (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)

Section 75(1): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

## **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 the Sovereign 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,—

- (a) endeavours at any time to seduce any person serving in the New Zealand forces from his or her 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 or her 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 Sovereign 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: replaced, on 1 July 1983, by section 2(1) of the Crimes Amendment Act (No 2) 1982 (1982 No 157).

#### **78AA Wrongful communication, retention, or copying of classified information**

- (1) Every person specified in subsection (2) is liable to imprisonment for a term not exceeding 5 years if the person, within or outside New Zealand,—
  - (a) knowingly or recklessly, and with knowledge that he or she is acting without proper authority, communicates any classified information to any other person; or
  - (b) knowing that he or she is acting without proper authority, retains or copies any classified information; or
  - (c) knowingly fails to comply with any directions issued by a lawful authority for the return of any classified information that is in his or her possession or under his or her control.
- (2) Subsection (1) applies to—
  - (a) a person who holds, or has held, a government-sponsored national security clearance to access classified information; or
  - (b) a person to whom classified information has been disclosed in confidence if—
    - (i) the disclosure is authorised; and
    - (ii) the person knows that the disclosure is in respect of classified information.



(3) In this section,—

**classified information** means—

- (a) information that—
  - (i) is, or was, official information; and
  - (ii) is classified under the New Zealand Government Security Classification System as being accessible only to persons who have a national security clearance;
- (b) foreign government information that is—
  - (i) classified in a foreign country; and
  - (ii) accessible only to persons having a government-sponsored national security clearance

**New Zealand Government Security Classification System** means the security classification system applying to official information that is published (and from time to time amended) on an Internet site maintained by or on behalf of the New Zealand Security Intelligence Service

**official information** has the meaning given to it by section 78A(2).

Section 78AA: inserted, on 28 September 2017, by section 254 of the Intelligence and Security Act 2017 (2017 No 10).

#### **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 Sovereign in right of New Zealand, within or outside New Zealand,—
  - (a) knowingly or recklessly, and with knowledge that he or she 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 or she knows he or she does not have proper authority to retain or copy; and
    - (ii) which he or she 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 or her possession or under his or her control; and

- (ii) which he or she 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 or her official capacity; or
- (c) an organisation; or
- (d) an officer or employee of any department or organisation in his or her capacity as such an officer or employee or in his or her capacity as a statutory officer; or
- (e) an independent contractor engaged by any department or Minister of the Crown or organisation in his or her 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 or her possession by virtue of its or his or her 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 or her official capacity; or
  - (iii) an organisation; or
  - (iv) an officer or employee of any department or organisation in his or her capacity as such an officer or employee or in his or her capacity as a statutory officer; or

- (v) an independent contractor engaged by any department or Minister of the Crown or organisation in his or her 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
- (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 or her by virtue of his or her 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 classified information or official information**

- (1) No charging document may be filed against any person for—
  - (a) an offence against section 78, 78AA(1), or 78A(1); or
  - (b) the offence of conspiring to commit an offence against section 78, 78AA(1), or 78A(1); or
  - (c) the offence of attempting to commit an offence against section 78, 78AA(1), or 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 or her 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 filing of a charge for the offence has 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 or her consent under subsection (1), make such inquiries as he or she thinks fit.

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

Section 78B heading: amended, on 28 September 2017, by section 255(1) of the Intelligence and Security Act 2017 (2017 No 10).

Section 78B(1): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 78B(1)(a): amended, on 28 September 2017, by section 255(2) of the Intelligence and Security Act 2017 (2017 No 10).

Section 78B(1)(b): amended, on 28 September 2017, by section 255(2) of the Intelligence and Security Act 2017 (2017 No 10).

Section 78B(1)(c): amended, on 28 September 2017, by section 255(2) of the Intelligence and Security Act 2017 (2017 No 10).

Section 78B(1) proviso: amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

## **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 defendant 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).

Section 78C(3): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

#### **78D Search without warrant**

*[Repealed]*

Section 78D: repealed, on 1 October 2012, by section 325(4) of the Search and Surveillance Act 2012 (2012 No 24).

#### **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 or she takes part in any strike or lockout.

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

#### *Offence of oath to commit offence*

Heading: replaced, 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, 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—
- (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 or she 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 an offence 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): replaced, on 1 January 1974, by section 3 of the Crimes Amendment Act 1973 (1973 No 118).

Section 86(3): amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

## **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: replaced, 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).

## **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: replaced, 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 or she enters on land that is in the actual and peaceable possession of another for the purpose of taking possession, whether or not he or she is entitled to enter.
- (2) Every one commits forcible detainer when, being in actual possession of land without claim of right, he or she 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,—
  - (a) shall upon conviction thereof be sentenced to imprisonment for life if, in committing piracy, he or she 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 or her from fighting in defence of his or her ship and goods; or
    - (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 or she 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 Attempt 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.

*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, barter, 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 herself, or any other person dependent on him or her or in his or her 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 or her 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 or her personal services, or of the personal services of any person under his or her 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

**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): replaced, on 4 April 2001, by section 3(1) of the Crimes Amendment Act 2001 (2001 No 9).

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

Section 98(2) **slave**: inserted, 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, barter, 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
    - (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—
    - (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 sur-

gical 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).

### *Participation in organised criminal group*

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

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

## **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; or
  - (d) conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of serious violent offences.
- (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: replaced, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

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

Section 98A(2)(c): amended, on 18 April 2012, by section 325(5) of the Search and Surveillance Act 2012 (2012 No 24).

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 18 April 2012, by section 325(5) of the Search and Surveillance Act 2012 (2012 No 24).

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

**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—

(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 persons**

- (1) Every person is liable to the penalty stated in subsection (2) who arranges, organises, or procures—
- (a) the entry of a person into, or the exit of a person out of, New Zealand or any other State—
    - (i) for the purpose of exploiting or facilitating the exploitation of the person; or
    - (ii) knowing that the entry or exit of the person involves 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both; or
  - (b) the reception, recruitment, transport, transfer, concealment, or harbouring of a person in New Zealand or any other State—
    - (i) for the purpose of exploiting or facilitating the exploitation of the person; or
    - (ii) knowing that the reception, recruitment, transport, transfer, concealment, or harbouring of the person involves 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—
- (a) parts of the process by which the person was exploited, coerced, or deceived were accomplished without an act of exploitation, coercion, or deception:
  - (b) the person exploited, coerced, or deceived—
    - (i) did not in fact enter or exit the State concerned; or
    - (ii) was not in fact received, recruited, transported, transferred, concealed, or harboured in the State concerned.
- (4) For the purposes of this section, **exploit**, in relation to a person, means to cause, or to have caused, that person, by an act of deception or coercion, to be involved in—
- (a) prostitution or other sexual services:
  - (b) slavery, practices similar to slavery, servitude, forced labour, or other forced services:
  - (c) the removal of organs.



Section 98D: replaced, on 7 November 2015, by section 5 of the Crimes Amendment Act 2015 (2015 No 95).

**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, 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 the Sovereign 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 person 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 herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her 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 herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her 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 or her in his or her 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 or her in his or her 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).

#### **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 herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her 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 or her in his or her 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 or she 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 herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her 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 or her in his or her 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 whom it is intended to prosecute, and he or she 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 herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her 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 or her in his or her 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 herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her 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 or her in his or her 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).

### **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 or her in his or her official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself 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

**business** includes the provision of international aid

**employee**, in relation to a body corporate or corporation sole, means an individual who is an employee, agent, director, or officer of that body corporate or corporation sole

**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;
- (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; or
  - (c) any action that provides—
    - (i) an undue material benefit to a person who makes a payment; or
    - (ii) an undue material disadvantage to any other person.
- (2) Every person commits an offence 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.
- (2A) A body corporate or corporation sole commits an offence against subsection (2) if—
- (a) an employee of the body corporate or corporation sole does an act that would constitute an offence under subsection (2); and
  - (b) the employee does the act, in whole or in part, with the intent to benefit the body corporate or corporation sole; and
  - (c) the employee, in doing the act, is acting within the scope of their authority as an employee of the body corporate or corporation sole.
- (2B) A body corporate or corporation sole does not commit an offence under subsection (2) if it has taken reasonable steps to prevent the offence.

- (2C) If a body corporate or corporation sole is charged with an offence under subsection (2), it is to be presumed, unless the body corporate or corporation sole puts the matter at issue, that it did not take reasonable steps.
- (2D) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding 7 years, or a fine, or both.
- (2E) A fine imposed under subsection (2D) cannot exceed the greater of—
- (a) \$5 million; or
  - (b) if a court is satisfied that an offence occurred in the course of producing a commercial gain, and if the value of that commercial gain can be readily ascertained, 3 times the value of that commercial gain.
- (3) This section does not apply if—
- (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) Subsections (2A), (2B), and (2C)—
- (a) apply only in respect of offences under subsection (2) and section 105D; and
  - (b) do not preclude the liability of a body corporate or corporation sole under any other provision of this Act.

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

Section 105C(1) **business**: inserted, on 7 November 2015, by section 6(1) of the Crimes Amendment Act 2015 (2015 No 95).

Section 105C(1) **employee**: inserted, on 7 November 2015, by section 6(1) of the Crimes Amendment Act 2015 (2015 No 95).

Section 105C(1) **routine government action** paragraph (b): amended, on 7 November 2015, by section 6(2) of the Crimes Amendment Act 2015 (2015 No 95).

Section 105C(1) **routine government action** paragraph (c): inserted, on 7 November 2015, by section 6(3) of the Crimes Amendment Act 2015 (2015 No 95).

Section 105C(2): amended, on 7 November 2015, by section 6(4) of the Crimes Amendment Act 2015 (2015 No 95).

Section 105C(2A): inserted, on 7 November 2015, by section 6(5) of the Crimes Amendment Act 2015 (2015 No 95).

Section 105C(2B): inserted, on 7 November 2015, by section 6(5) of the Crimes Amendment Act 2015 (2015 No 95).

Section 105C(2C): inserted, on 7 November 2015, by section 6(5) of the Crimes Amendment Act 2015 (2015 No 95).

Section 105C(2D): inserted, on 7 November 2015, by section 6(5) of the Crimes Amendment Act 2015 (2015 No 95).

Section 105C(2E): inserted, on 7 November 2015, by section 6(5) of the Crimes Amendment Act 2015 (2015 No 95).



Section 105C(4): replaced, on 7 November 2015, by section 6(6) of the Crimes Amendment Act 2015 (2015 No 95).

### **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) *[Repealed]*

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

Section 105D(4): repealed, on 7 November 2015, by section 7 of the Crimes Amendment Act 2015 (2015 No 95).

### **105E Corruption of foreign public officials**

- (1) Every person specified in subsection (2) who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for that person or another person in respect of any act or omission by an official in the official's official capacity (whether or not the act or omission is within the scope of the official's authority) is liable to imprisonment for a term not exceeding 7 years.
- (2) Subsection (1) applies to—
  - (a) any foreign public official who has committed the offence while in New Zealand;
  - (b) any person employed as a foreign public official who has committed the offence while outside New Zealand if the person is—
    - (i) a New Zealand citizen; or
    - (ii) ordinarily resident in New Zealand; or
    - (iii) a body corporate incorporated in New Zealand; or
    - (iv) a corporation sole incorporated in New Zealand.
- (3) Nothing in this section limits any immunity that a foreign public official or person has under this Act or any other enactment.

Section 105E: replaced, on 7 November 2015, by section 8 of the Crimes Amendment Act 2015 (2015 No 95).

**105F Trading in influence**

Every person 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, a bribe for that person or another person with intent to influence an official in respect of any act or omission by that official in the official's official capacity (whether or not the act or omission is within the scope of the official's authority).

Section 105F: inserted, on 7 November 2015, by section 8 of the Crimes Amendment Act 2015 (2015 No 95).

**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, 105D, 105E, and 105F without the leave of the Attorney-General, who before giving leave may make such inquiries as he or she thinks fit.
- (2) No Judge who holds his or her office subject to a power of removal by the Sovereign 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 7 November 2015, by section 9 of the Crimes Amendment Act 2015 (2015 No 95).

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 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): inserted, on 1 January 1989, by section 2 of the Crimes Amendment Act 1988 (1988 No 114).

Section 107(3): inserted, 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 or her 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 or her 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 or she is competent to be a witness or not, and whether his or her 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:
  - (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): replaced, 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

### **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 defendant.

Compare: 1908 No 32 s 134; Criminal Code (1954) s 115 (Canada)

Section 112: amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

### **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 her or a statutory declaration taken by him or her, when the writing was not so sworn or taken, or when he or she knows that he or she 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 or she 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:
- (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).

isdiction, 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
- (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: replaced, 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 or she is for the time being detained; or
- (b) assists any such prisoner or person as aforesaid, suffered to be at large on his or her parole in New Zealand, to escape from the place where he or she is at large on his or her 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 herself 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 or she may be under the conviction; or
  - (b) whether convicted or not, escapes from any prison in which he or she 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 169 of the Criminal Procedure Act 2011, escapes from the place in which he or she is required to stay under the order; or
  - (bb) being subject to a public protection order made under the Public Safety (Public Protection Orders) Act 2014, escapes from the residence in which he or she is required to stay under that Act; 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): replaced, 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 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 120(1)(bb): inserted, on 12 December 2014, by section 141(2) of the Public Safety (Public Protection Orders) Act 2014 (2014 No 68).

## **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 or her 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.

- (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 or her 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 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: replaced, 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 or she 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,—
  - (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 or she had no reasonable opportunity of knowing it; and
- (b) that in the circumstances his or her ignorance was excusable.
- (5) No private prosecution (as defined in section 5 of the Criminal Procedure Act 2011) for an offence against this section can be commenced without the Attorney-General's consent.
- (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): inserted, on 1 January 1967, by section 3(1) of the Crimes Amendment Act 1966 (1966 No 98).

Section 124(5): replaced, on 7 May 2015, by section 4 of the Crimes (Indecency) Amendment Act 2015 (2015 No 44).

Section 124(6): replaced, on 1 October 1994, by section 150(1) of the Films, Videos, and Publications Classification Act 1993 (1993 No 94).

Section 124(7): repealed, on 1 October 1994, by section 150(1) of the Films, Videos, and Publications Classification Act 1993 (1993 No 94).

#### 124A Indecent communication with young person under 16

- (1) A person of or over the age of 16 years is liable to imprisonment for a term not exceeding 3 years if he or she intentionally exposes a person under the age of 16 years (the **young person**) to indecent material (whether written, spoken, visual, or otherwise, alone or in combination) in communicating in any manner, directly or indirectly, with the young person.
- (2) A reference in subsection (1) to a person under the age of 16 years, or to the young person, includes a reference to a constable (as defined in section 2(1)) who pretends to be a person under the age of 16 years (the **fictitious young person**) if the person charged with an offence against subsection (1), when communicating with the fictitious young person and exposing the fictitious young person to indecent material, believed that the fictitious young person was a person under the age of 16 years.
- (3) It is a defence to a charge under subsection (1) if the person charged proves that,—
  - (a) before communicating with the young person and exposing the young person to the indecent material, the person charged had taken reasonable steps to find out whether the young person was of or over the age of 16 years; and
  - (b) at the time of communicating with the young person and exposing the young person to the indecent material, the person charged believed on

reasonable grounds that the young person was of or over the age of 16 years.

- (4) It is no defence to a charge under subsection (1) that the person charged did not know that the material to which the charge relates was indecent, unless the person charged also proves—
- (a) that the person charged had no reasonable opportunity of knowing it; and
  - (b) that in the circumstances the ignorance of the person charged was excusable.
- (5) No private prosecution (as defined in section 5 of the Criminal Procedure Act 2011) for an offence against this section can be commenced without the Attorney-General's consent.

Compare: Sexual Offences (Scotland) Act 2009, s 24

Section 124A: inserted, on 7 May 2015, by section 5 of the Crimes (Indecency) Amendment Act 2015 (2015 No 44).

#### **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 or she had reasonable grounds for believing that he or she 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: replaced, 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
  - (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: replaced, 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.
- (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: replaced, 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: replaced, 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.

Section 129: replaced, 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
  - (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: replaced, 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: replaced, 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.
- (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: replaced, 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

**guardian**—

- (a) means guardian by virtue of the Guardianship Act 1968 or the Oranga Tamariki 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).

Section 131A(2) **guardian** paragraph (a): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

### 131B Meeting young person 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.

- (1A) A reference in this section to a young person under the age of 16 years or the young person includes a reference to a constable who pretends to be a young person under the age of 16 years (the **fictitious young person**) if the offender, when taking any of the actions described in subsection (1), believed that the fictitious young person was a young person under the age of 16 years.



- (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
  - (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).

Section 131B heading: amended, on 19 March 2012, by section 5(1) of the Crimes Amendment Act (No 3) 2011 (2011 No 79).

Section 131B(1A): inserted, on 19 March 2012, by section 5(2) of the Crimes Amendment Act (No 3) 2011 (2011 No 79).

### **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: replaced, 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.
- (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: replaced, 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: replaced, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41).

**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.
- (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: replaced, 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).

### **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.
- (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
- (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: replaced, on 14 June 2006, by section 8 of the Crimes Amendment Act 2005 (2005 No 41).

**144AB Party or accessory liability for sexual acts with children or young people outside New Zealand done by, or involving, foreigner principal parties**

- (1) A New Zealander is a party under section 66, an accessory after the fact, or both, to a New Zealand sexual offence with a child or young person outside New Zealand if,—

- (a) a sexual act with a child or young person is done or to be done, outside New Zealand, by 1 or more principal parties who are foreigners; and
- (b) the New Zealander does, outside New Zealand, an act with, or in respect of, the act done or to be done by the 1 or more foreigners; and
- (c) had both acts been done in New Zealand, the New Zealander would be a party under section 66, an accessory after the fact, or both, to a sexual offence with a child or young person.

- (2) In this section,—

**accessory after the fact** means an accessory after the fact under sections 71 and 312

**foreigner** means a person who—

- (a) is not a New Zealand citizen; and
- (b) is not a person ordinarily resident in New Zealand

**New Zealand sexual offence with a child or young person outside New Zealand** means an offence against section 144A(1)(a), (b), or (c)

**New Zealander** means a person who—

- (a) is a New Zealand citizen; or
- (b) is a person ordinarily resident in New Zealand

**party under section 66** includes a party under that section as extended by section 70

**sexual act with a child or young person** means an act to which section 144A(2), (3), or (4) applies

**sexual offence with a child or young person** means an offence against a section specified in section 144A(2)(a), (b), or (c), (3)(a), (b), or (c), or (4).

- (3) This section does not limit or affect section 69(3) or 144C (whether used with, or apart from, section 66).

Compare: Criminal Code Act 1995 Division 272 (Aust); Sexual Offences Act 2003 s 72, Schedule 2 (UK)

Section 144AB: inserted, on 7 May 2015, by section 6 of the Crimes (Indecency) Amendment Act 2015 (2015 No 44).

#### **144B Consent of Attorney-General required**

- (1) No charging document may be filed 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 filing of a charging document 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).

Section 144B(1): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 144B(2): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

#### **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 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 or she 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).

#### **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 or her by law or undertaken by him or her 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 applicable to persons under legal duties or performing unlawful acts**

- (1) This section applies in respect of—
  - (a) the legal duties specified in any of sections 151, 152, 153, 155, 156, and 157; and
  - (b) an unlawful act referred to in section 160 where the unlawful act relied on requires proof of negligence or is a strict or absolute liability offence.
- (2) For the purposes of this Part, a person is criminally responsible for omitting to discharge or perform a legal duty, or performing an unlawful act, to which this section applies only if, in the circumstances, the omission or unlawful act is a major departure from the standard of care expected of a reasonable person to whom that legal duty applies or who performs that unlawful act.

Section 150A: replaced, on 19 March 2012, by section 6 of the Crimes Amendment Act (No 3) 2011 (2011 No 79).

**151 Duty to provide necessities and protect from injury**

Every one who has actual care or charge of a person who is a vulnerable adult and who is unable to provide himself or herself with necessities is under a legal duty—

- (a) to provide that person with necessities; and
- (b) to take reasonable steps to protect that person from injury.

Section 151: replaced, on 19 March 2012, by section 6 of the Crimes Amendment Act (No 3) 2011 (2011 No 79).

**152 Duty of parent or guardian to provide necessities and protect from injury**

Every one who is a parent, or is a person in place of a parent, who has actual care or charge of a child under the age of 18 years is under a legal duty—

- (a) to provide that child with necessities; and

- (b) to take reasonable steps to protect that child from injury.

Section 152: replaced, on 19 March 2012, by section 6 of the Crimes Amendment Act (No 3) 2011 (2011 No 79).

### **153 Duty of employers to provide necessities**

- (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 or her life is endangered or his or her 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 or her 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 or her charge or under his or her 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 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 respon-

sible 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 or her death; or
  - (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

**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 or her 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 or she does not mean to hurt the person killed:
- (d) if the offender for any unlawful object does an act that he or she knows to be likely to cause death, and thereby kills any person, though he or she may have desired that his or her 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 or she 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 or she administers any stupefying or overpowering thing for any of the purposes aforesaid, and death ensues from the effects thereof:
  - (c) if he or she 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 (Espionage):
  - (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

Section 168(2)(e): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 168(2)(f): replaced, on 1 October 2003, by section 7(1) of the Crimes Amendment Act 2003 (2003 No 39).

Section 168(2)(j): replaced, on 1 October 2003, by section 7(2) of the Crimes Amendment Act 2003 (2003 No 39).

Section 168(2)(k): replaced, on 1 October 2003, by section 7(2) of the Crimes Amendment Act 2003 (2003 No 39).

Section 168(2)(l): replaced, 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: replaced, 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

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).

**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 defendant 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:
    - (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 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(2): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 178(4): replaced, 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): replaced, 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**

- (1) 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.
- (2) A person commits an offence who incites, counsels, or procures another person to commit suicide, even if that other person does not commit or attempt to commit suicide in consequence of that conduct.
- (3) A person who commits an offence against subsection (2) is liable on conviction to imprisonment for a term not exceeding 3 years.

Compare: 1908 No 32 s 192

Section 179(2): inserted, on 3 July 2015, by section 30 of the Harmful Digital Communications Act 2015 (2015 No 63).

Section 179(3): inserted, on 3 July 2015, by section 30 of the Harmful Digital Communications Act 2015 (2015 No 63).

## **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 or herself, 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 or she 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 or her own life; but nothing done by a person who enters into a suicide pact shall be treated as done by him or her in pursuance of the pact unless it is done while he or she 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 or she is not liable to be convicted of murder, or that by virtue of subsection (2) he or she 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 or she would have been guilty of murder if the child had become a human being.
- (2) No one is guilty of any offence 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

Section 182(2): amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

### **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
- (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: replaced, 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

### **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.
- (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 or she did that act, he or she 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 187A(2)(b): amended, on 1 February 1986, by section 7(2) of the Crimes Amendment Act (No 3) 1985 (1985 No 160).

Section 187A(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).

#### **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 or she 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 imprisonable offence; or

- (b) to avoid the detection of himself or herself or of any other person in the commission of any imprisonable offence; or
- (c) to avoid the arrest or facilitate the flight of himself or herself or of any other person upon the commission or attempted commission of any imprisonable offence—

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(1)(a): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 191(1)(b): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 191(1)(c): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 191(3): repealed, on 30 June 2002, by section 164(b) of the Sentencing Act 2002 (2002 No 9).

## 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 imprisonable offence; or
- (b) to avoid the detection of himself or herself or of any other person in the commission of any imprisonable offence; or
- (c) to avoid the arrest or facilitate the flight of himself or herself or of any other person upon the commission or attempted commission of any imprisonable offence.

- (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 or her duty.

Compare: 1908 No 32 s 209

Section 192(1)(a): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 192(1)(b): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 192(1)(c): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**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 Ill-treatment or neglect of child or vulnerable adult**

- (1) Every one is liable to imprisonment for a term not exceeding 10 years who, being a person described in subsection (2), intentionally engages in conduct that, or omits to discharge or perform any legal duty the omission of which, is likely to cause suffering, injury, adverse effects to health, or any mental disorder or disability to a child or vulnerable adult (the **victim**) if the conduct engaged in, or the omission to perform the legal duty, is a major departure from the standard of care to be expected of a reasonable person.
- (2) The persons are—
  - (a) a person who has actual care or charge of the victim; or
  - (b) a person who is a staff member of any hospital, institution, or residence where the victim resides.
- (3) For the purposes of this section and section 195A, a **child** is a person under the age of 18 years.

Section 195: replaced, on 19 March 2012, by section 7 of the Crimes Amendment Act (No 3) 2011 (2011 No 79).

**195A Failure to protect child or vulnerable adult**

- (1) Every one is liable to imprisonment for a term not exceeding 10 years who, being a person described in subsection (2), has frequent contact with a child or vulnerable adult (the **victim**) and—
  - (a) knows that the victim is at risk of death, grievous bodily harm, or sexual assault as the result of—
    - (i) an unlawful act by another person; or
    - (ii) an omission by another person to discharge or perform a legal duty if, in the circumstances, that omission is a major departure from the standard of care expected of a reasonable person to whom that legal duty applies; and
  - (b) fails to take reasonable steps to protect the victim from that risk.
- (2) The persons are—
  - (a) a member of the same household as the victim; or

- (b) a person who is a staff member of any hospital, institution, or residence where the victim resides.
- (3) A person may not be charged with an offence under this section if he or she was under the age of 18 at the time of the act or omission.
- (4) For the purposes of this section,—
  - (a) a person is to be regarded as a member of a particular household, even if he or she does not live in that household, if that person is so closely connected with the household that it is reasonable, in the circumstances, to regard him or her as a member of the household:
  - (b) where the victim lives in different households at different times, **the same household** refers to the household in which the victim was living at the time of the act or omission giving rise to the risk of death, grievous bodily harm, or sexual assault.
- (5) In determining whether a person is so closely connected with a particular household as to be regarded as a member of that household, regard must be had to the frequency and duration of visits to the household and whether the person has a familial relationship with the victim and any other matters that may be relevant in the circumstances.

Section 195A: inserted, on 19 March 2012, by section 7 of the Crimes Amendment Act (No 3) 2011 (2011 No 79).

## 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 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 imprisonable offence, uses any firearm; or
  - (b) while committing any imprisonable offence, has any firearm with him or her in circumstances that prima facie show an intention to use it in connection with that imprisonable offence.

- (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(1)(a): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 198B(1)(b): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

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.
- (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 or her 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 or her for such use.
- (4) Every one is liable to imprisonment for a term not exceeding 3 years—
  - (a) who, without lawful authority or reasonable excuse, has with him or her in any public place any knife or offensive weapon or disabling substance; or
  - (b) who has in his or her 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 or she 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 19 March 2012, by section 8 of the Crimes Amendment Act (No 3) 2011 (2011 No 79).

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

*[Repealed]*

Section 202B: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

## 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
- (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 or her 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 or her own life or the life of any other person.

Compare: 1908 No 32 s 201; Criminal Code (1954) s 227 (Canada)

*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
    - (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 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—
  - (a) the act of a person who, being married, goes through a 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—
- (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): inserted, on 26 April 2005, by section 41(2) of the Civil Union Act 2004 (2004 No 102).

Section 205(1)(f): inserted, on 26 April 2005, by section 41(2) of the Civil Union Act 2004 (2004 No 102).

Section 205(2)(b): replaced, on 26 April 2005, by section 41(3) of the Civil Union Act 2004 (2004 No 102).

Section 205(2)(c): inserted, 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

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: replaced, 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: replaced, 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,—

- (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: replaced, 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
- Section 210: replaced, 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).

## 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).

# 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.
- (3) 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): replaced, on 1 October 2003, by section 9 of the Crimes Amendment Act 2003 (2003 No 39).

Section 216A(2): inserted, on 1 October 2003, by section 9 of the Crimes Amendment Act 2003 (2003 No 39).

Section 216A(3): renumbered, on 19 August 2013, pursuant to 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) the Search and Surveillance Act 2012; or
    - (ii) Part 4 of the Intelligence and Security Act 2017; or
    - (iii) the International Terrorism (Emergency Powers) Act 1987.
- (3) *[Repealed]*
- (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 a surveillance device warrant issued under the Search and Surveillance Act 2012 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).

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): replaced, on 1 February 1998, by section 4(1) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

Section 216B(2)(b): replaced, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 216B(3): repealed, on 18 April 2012, by section 325(12) of the Search and Surveillance Act 2012 (2012 No 24).

Section 216B(4): inserted, 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): inserted, on 1 October 2003, by section 10(6) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216B(6): inserted, on 1 October 2003, by section 10(6) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216B(7): inserted, on 1 October 2003, by section 10(6) of the Crimes Amendment Act 2003 (2003 No 39).

Section 216B(7): amended, on 18 April 2012, by section 325(13) of the Search and Surveillance Act 2012 (2012 No 24).

**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 or she knows that it has come to his or her 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).

**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 her; 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 or her possession for the purpose of sale or supply to any other person,—  
any interception device—
  - (i) the sole or principal purpose of which he or she knows to be the surreptitious interception of private communications; or
  - (ii) that he or she holds out as being useful for the surreptitious interception of private communications (whether or not he or she 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 or she did any act referred to in any of paragraphs (a) to (d) of subsection (1) he or she believed that the other person referred to in the relevant paragraph was a constable, or an employee of the New Zealand Security Intelligence Service or the Government Communications Security Bureau, acting in the course of his or her official duties; or
  - (b) where the charge relates to the supply of an interception device otherwise than for valuable consideration, that—
    - (i) he or she 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 employee of the New Zealand Security Intelligence Service or the Government Communications Security Bureau, he or she supplied the interception device in the course of his or her official duties to the other person referred 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 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

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 216D(2)(b)(ii): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 216D(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 the intentional and unauthorised disclosure of any information gained when undertaking maintenance of a communication service.
- (2) Despite anything in subsection (1), a person may disclose information to any constable if the information appears to relate to the commission of an offence 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): replaced, on 18 April 2012, by section 325(7) of the Search and Surveillance Act 2012 (2012 No 24).

Section 216F(2): amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

Section 216F(2): amended, on 18 April 2012, by section 325(8) of the Search and Surveillance Act 2012 (2012 No 24).

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
    - (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.

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 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 and Security) Act 2013
- 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).

Section 216K(4) **network operator**: amended, on 11 May 2014, by section 123 of the Telecommunications (Interception Capability and Security) Act 2013 (2013 No 91).

## 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, 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 Criminal Procedure Act 2011 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).

Section 216M(1)(a): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

### **216N Protection from liability**

- (1) This section applies to the following persons:
- (a) any constable; and
  - (b) any Customs officer; and
  - (c) any employee of the New Zealand Security Intelligence Service; and
  - (ca) any employee of the Government Communications Security Bureau; 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 recording 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).

Section 216N(1)(c): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 216N(1)(ca): inserted, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

## Part 10

### Crimes against rights of property

Part 10: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

#### *Interpretation*

Heading: replaced, 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 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: replaced, 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.
- (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: replaced, 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: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

## **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: replaced, 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: replaced, 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

Section 222: replaced, 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: replaced, 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**

*[Repealed]*

Section 224: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

### **225 Power to search vehicles for goods stolen or obtained by crimes involving dishonesty**

*[Repealed]*

Section 225: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

### **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) 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: replaced, 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: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

## **228 Dishonestly taking or using document**

- (1) 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.
- (2) Every person is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document knowing that—
  - (a) the document was, dishonestly and without claim of right, taken, obtained, or used; and
  - (b) the document was dealt with in the manner specified in paragraph (a) with intent to obtain any property, service, pecuniary advantage, or valuable consideration.

Compare: 1961 No 43 s 229A

Section 228: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 228(2): inserted, on 7 November 2015, by section 10 of the Crimes Amendment Act 2015 (2015 No 95).

## **228A Designing, manufacturing, or adapting goods with intent to facilitate commission of crimes involving dishonesty**

Every person is liable to imprisonment for a term not exceeding 3 years who designs, manufactures, or adapts goods with intent to facilitate the commission of a crime involving dishonesty.

Section 228A: inserted, on 7 November 2015, by section 11 of the Crimes Amendment Act 2015 (2015 No 95).

**228B Possessing, selling, or disposing of goods designed, manufactured, or adapted with intent to facilitate commission of crimes involving dishonesty**

Every person is liable to imprisonment for a term not exceeding 3 years who, without lawful authority or excuse, possesses, sells, or disposes of any goods designed, manufactured, or adapted to facilitate the commission of a crime involving dishonesty, with intent to use, or to enable another person to use, the goods to facilitate the commission of a crime involving dishonesty.

Section 228B: inserted, on 7 November 2015, by section 11 of the Crimes Amendment Act 2015 (2015 No 95).

**228C Possessing goods capable of being used to facilitate crimes involving dishonesty with intent to facilitate commission of those offences**

Every person is liable to imprisonment for a term not exceeding 3 years who, without lawful authority or excuse, possesses any goods capable of being used to facilitate the commission of a crime involving dishonesty (other than those specified in sections 227, 233, and 264) with intent to use the goods to facilitate the commission of that offence.

Section 228C: inserted, on 7 November 2015, by section 11 of the Crimes Amendment Act 2015 (2015 No 95).

**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: replaced, 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
- (d) is the subject of all reasonable efforts to preserve its secrecy.

Section 230: replaced, 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 an imprisonable offence in the building or ship; or
  - (b) having entered any building or ship, remains in it without authority and with intent to commit an imprisonable offence 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: 1961 No 43 ss 240, 241, 242

Section 231: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 231(1)(a): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 231(1)(b): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

## **232 Aggravated burglary**

- (1) Every one is liable to imprisonment for a term not exceeding 14 years who,—
  - (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: replaced, 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 imprisonable offence.
- (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: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 233(1)(b): amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

### *Robbery and blackmail*

Heading: replaced, 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.
- (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: replaced, 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: replaced, 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: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

### **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: replaced, 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: replaced, 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

Section 239: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

### *Crimes involving deceit*

Heading: replaced, 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.
- (1A) Every person is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document or thing capable of being used to derive a pecuniary advantage knowing that, by deception and without claim of right, the document or thing was, or was caused to be, delivered, executed, made, accepted, endorsed, or altered.
- (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: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 240(1A): inserted, on 7 November 2015, by section 12 of the Crimes Amendment Act 2015 (2015 No 95).

#### **240A Application of section 240 to match-fixing**

- (1) For the purposes of section 240, **deception** includes any act or omission that is done or omitted with intent to influence a betting outcome of an activity of a kind to which subsection (2) applies by manipulating—
  - (a) the overall result of the activity; or
  - (b) any event within the activity.
- (2) This subsection applies to activities of the following kinds:
  - (a) sporting competitions, games, matches, races, and rallies involving human participants (whether or not they also involve equipment, horses, vehicles, or vessels):
  - (b) dog races.
- (3) This section does not limit or affect the generality of section 240.

Section 240A: inserted, on 15 December 2014, by section 4 of the Crimes (Match-fixing) Amendment Act 2014 (2014 No 67).

#### **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: replaced, 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 with intent—
  - (a) to induce any person, whether ascertained or not, to acquire any financial product within the meaning of the Financial Markets Conduct Act 2013; 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—
  - (a) knows the statement is false in a material particular; or
  - (b) is reckless as to whether the statement is false in a material particular.

Compare: 1961 No 43 s 250

Section 242: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 242(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 242(1)(a): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## *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 243A, 244 and 245,—
  - act** includes an omission
  - 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

**offence** means an offence (or any offence described as a crime) that is punishable under New Zealand law, including any act, wherever committed, that would be an offence in New Zealand if committed in New Zealand

**proceeds**, in relation to an 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.

- (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 an offence, engages in a money laundering transaction, knowing or believing that all or part of the property is the proceeds of an offence, or being reckless as to whether or not the property is the proceeds of an 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 an 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 an offence, or being reckless as to whether or not the property is the proceeds of an offence.
- (4) For the purposes of this section, a person engages in a money laundering transaction if, in concealing any property or by enabling any 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.

- (4A) Despite anything in subsection (4), the prosecution is not required to prove that the defendant had an intent to—
- (a) conceal any property; or
  - (b) enable any person to conceal any 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 defendant knew or believed that the property was the proceeds of a particular offence or a particular class of offence;
  - (b) it is no defence that the defendant believed any property to be the proceeds of a particular offence when in fact the property was the proceeds of another offence.
- (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.
- (7) To avoid doubt, for the purposes of the definition of offence in subsection (1), New Zealand law includes, but is not limited to, the Misuse of Drugs Act 1975.

Compare: 1961 No 43 ss 233, 257A(1)–(5)

Section 243: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 243(1): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 243(1) **act**: inserted, on 7 November 2015, by section 13(1) of the Crimes Amendment Act 2015 (2015 No 95).

Section 243(1) **offence**: inserted, on 7 November 2015, by section 13(1) of the Crimes Amendment Act 2015 (2015 No 95).

Section 243(1) **proceeds**: amended, on 7 November 2015, by section 13(2) of the Crimes Amendment Act 2015 (2015 No 95).

Section 243(1) **serious offence**: repealed, on 7 November 2015, by section 13(3) of the Crimes Amendment Act 2015 (2015 No 95).

Section 243(2): amended, on 7 November 2015, by section 13(4) of the Crimes Amendment Act 2015 (2015 No 95).

Section 243(3): amended, on 7 November 2015, by section 13(4) of the Crimes Amendment Act 2015 (2015 No 95).

Section 243(3)(b): amended, on 7 November 2015, by section 13(4) of the Crimes Amendment Act 2015 (2015 No 95).

Section 243(4): amended, on 7 November 2015, by section 13(5) of the Crimes Amendment Act 2015 (2015 No 95).

Section 243(4A): inserted, on 7 November 2015, by section 13(6) of the Crimes Amendment Act 2015 (2015 No 95).

Section 243(5)(a): amended, on 7 November 2015, by section 13(7) of the Crimes Amendment Act 2015 (2015 No 95).

Section 243(5)(a): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 243(5)(b): amended, on 7 November 2015, by section 13(7) of the Crimes Amendment Act 2015 (2015 No 95).

Section 243(5)(b): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 243(7): inserted, on 7 November 2015, by section 13(8) of the Crimes Amendment Act 2015 (2015 No 95).

### **243A Charges for money laundering**

A person may be charged under section 243(2) or (3) in respect of any property that is the proceeds of an offence to which section 243(2) or (3) applies even though the person who committed the offence—

- (a) has not been charged with that offence; or
- (b) has not been convicted of that offence.

Section 243A: replaced, on 7 November 2015, by section 14 of the Crimes Amendment Act 2015 (2015 No 95).

### **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 section 243; 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: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 244(a): amended, on 7 November 2015, by section 15 of the Crimes Amendment Act 2015 (2015 No 95).

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 Application of section 243 to acts outside New Zealand**

- (1) Section 243 applies to an act that has occurred outside New Zealand and that is alleged to constitute an offence resulting in proceeds only if—
  - (a) the act was an offence under the law of the place where and when it occurred; or
  - (b) it is an act to which section 7 or 7A of this Act applies; or

- (c) an enactment provides that the act is an offence in New Zealand, and no additional requirement exists for the act to be an offence in the place where and when it occurred.
- (2) If a person is charged with an offence under section 243 and subsection (1)(a) applies, it is to be presumed, unless that person puts the matter at issue, that the act was an offence under the law of the place where and when it occurred.

Section 245: replaced, on 7 November 2015, by section 16 of the Crimes Amendment Act 2015 (2015 No 95).

### *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 imprisonable offence, 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 an imprisonable offence is, subject to subsection (5), to be regarded as having been obtained by an imprisonable offence.
- (3) The act of receiving any property stolen or obtained by any other imprisonable offence 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 imprisonable offence 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 imprisonable offence.
- (5) If a person is charged with an offence under this section and the property was obtained by an act committed outside New 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: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 246(1): amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

Section 246(2): amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

Section 246(3): amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

Section 246(4): amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

Section 246(4)(a): amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

## 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: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

### *Crimes involving computers*

Heading: replaced, 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 to 252,—

**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

**authorisation** includes an authorisation conferred on a person by or under an enactment or a rule of law, or by an order of a court or judicial process

**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 computers 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: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 248: amended, on 13 July 2011, by section 4(1) of the Crimes Amendment Act 2011 (2011 No 29).

Section 248 **authorisation**: inserted, on 13 July 2011, by section 4(2) of the Crimes Amendment Act 2011 (2011 No 29).

## **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: replaced, 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,—
  - (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: replaced, 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 an offence; or
  - (b) that he or she promotes as being useful for the commission of an offence (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 an offence.
- (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 an offence.

Compare: 1961 No 43 ss 216D(1), 229, 244

Section 251: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 251(1)(a): amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

Section 251(1)(b): amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

Section 251(2)(b): amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

## **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) *[Repealed]*

Section 252: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).



Section 252(3): repealed, on 13 July 2011, by section 5 of the Crimes Amendment Act 2011 (2011 No 29).

**253 Qualified exemption to access without authorisation offence for New Zealand Security Intelligence Service**

*[Repealed]*

Section 253: repealed, on 13 July 2011, by section 6 of the Crimes Amendment Act 2011 (2011 No 29).

**254 Qualified exemption to access without authorisation offence for Government Communications Security Bureau**

*[Repealed]*

Section 254: repealed, on 13 July 2011, by section 6 of the Crimes Amendment Act 2011 (2011 No 29).

*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 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: replaced, 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.
- (5) Every person is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any false document knowing it to be false and to have been made with the intention that it be used or acted on (in New Zealand or elsewhere) as genuine.

Compare: 1961 No 43 ss 264, 265

Section 256: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 256(5): inserted, on 7 November 2015, by section 17 of the Crimes Amendment Act 2015 (2015 No 95).

## **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
  - (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: replaced, 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
  - (c) be induced to do or refrain from doing anything.
- (3) Every person is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document knowing that—
  - (a) the document was altered, concealed, or made, in whole or in part, as a reproduction of another document; and
  - (b) the document was dealt with in the manner specified in paragraph (a) with intent to—
    - (i) obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or
    - (ii) cause loss to any other person.

Compare: 1961 No 43 ss 231, 256, 266A

Section 258: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 258(3): inserted, on 7 November 2015, by section 18 of the Crimes Amendment Act 2015 (2015 No 95).

**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: replaced, 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: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

## **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: replaced, 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: replaced, 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

Section 263: replaced, 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: replaced, 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: replaced, 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,—
- 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—
- (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: replaced, 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
  - (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: replaced, 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: replaced, 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.
- (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: replaced, 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: replaced, 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

Section 271: replaced, 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 an offence.

Compare: 1961 No 43 s 305

Section 272: replaced, on 1 October 2003, by section 15 of the Crimes Amendment Act 2003 (2003 No 39).

Section 272: amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

**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).

**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).

**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).

**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
  - (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).

**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 contents 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.
- (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 or she 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 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 or she would have been liable if he or she 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 or she 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 imprisonable offence, being an offence 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 offence 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 or she would have been liable if he or she had committed the offence.

Compare: 1908 No 32 ss 352, 353

Section 312: amended, on 1 July 2013, by section 7 of the Crimes Amendment Act 2013 (2013 No 27).

## **Part 11A**

### **Obtaining evidence by interception devices**

*[Repealed]*

Part 11A: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

#### *Interpretation*

*[Repealed]*

Heading: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312A Interpretation**

*[Repealed]*

Section 312A: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).



*Applications for interception warrants in relation to organised criminal enterprises*

*[Repealed]*

Heading: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312B Application by Police for warrant to intercept private communications**

*[Repealed]*

Section 312B: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312C Matters on which Judge must be satisfied in respect of applications**

*[Repealed]*

Section 312C: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

*Applications for interception warrants in relation to serious violent offences*

*[Repealed]*

Heading: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312CA Application by Police for warrant to intercept private communications in relation to serious violent offences**

*[Repealed]*

Section 312CA: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312CB Matters on which Judge must be satisfied in respect of applications relating to serious violent offences**

*[Repealed]*

Section 312CB: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312CC Application by Police for warrant to intercept private communications relating to terrorist offences**

*[Repealed]*

Section 312CC: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312CD Matters of which Judge must be satisfied in respect of applications relating to terrorist offences**

*[Repealed]*

Section 312CD: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

*General provisions**[Repealed]*

Heading: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312D Contents and term of warrant***[Repealed]*

Section 312D: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312E Effect of warrant***[Repealed]*

Section 312E: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312F Renewal of warrants***[Repealed]*

Section 312F: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312G Emergency permits***[Repealed]*

Section 312G: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312H Security of applications***[Repealed]*

Section 312H: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312I Destruction of irrelevant records made by use of interception device***[Repealed]*

Section 312I: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312J Destruction of relevant records made by use of interception device***[Repealed]*

Section 312J: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312K Prohibition on disclosure of private communications lawfully intercepted***[Repealed]*

Section 312K: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312L Notice to be given of intention to produce evidence of private communication**

Section 312L: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312M Inadmissibility of evidence of private communications unlawfully intercepted**

*[Repealed]*

Section 312M: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312N Restriction on admissibility of evidence of private communications lawfully intercepted**

*[Repealed]*

Section 312N: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312O Privileged evidence**

*[Repealed]*

Section 312O: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312P Report to be made to Judge on use of warrant or permit**

*[Repealed]*

Section 312P: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**312Q Commissioner of Police to give information to Parliament**

*[Repealed]*

Section 312Q: repealed, on 18 April 2012, by section 325(9) of the Search and Surveillance Act 2012 (2012 No 24).

**Part 12  
Procedure**

**313 General provisions as to procedure**

*[Repealed]*

Section 313: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**314 Procedure where prior consent to prosecution required**

*[Repealed]*

Section 314: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

*General power to stop vehicles to exercise statutory search powers**[Repealed]*

Heading: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

**314A Statutory search power***[Repealed]*

Section 314A: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

**314B General power to stop vehicles***[Repealed]*

Section 314B: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

**314C Powers incidental to stopping vehicles under section 314B***[Repealed]*

Section 314C: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

**314D Offences relating to stopping vehicles under section 314B***[Repealed]*

Section 314D: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

*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 or she calls to his or her assistance, may arrest and take into custody without a warrant—
  - (a) any person whom he or she finds disturbing the public peace or committing any offence punishable by imprisonment;
  - (b) any person whom he or she 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 condi-

tions 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 or she 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 in any words sufficient to give that person notice of the true reason for his or her arrest.
- (2) It is the duty of every one who arrests any other person pursuant to any process or warrant—
  - (a) if he or she has the process or warrant, or a copy of it, in his or her possession at the time of the arrest, to produce it if required by that person to do so;
  - (b) if he or she does not have the process or warrant, or a copy of it, in his or her 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 or her office, a power of arrest without warrant, he or she shall, whenever he or she arrests any other person pursuant to that power,—
  - (a) if he or she has evidence of his or her appointment to that office in his or her possession at the time of the arrest, produce it if required by that person to do so;

- (b) if he or she does not have evidence of his or her appointment in his or her 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 or her 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.
- (5A) The obligation under subsection (5) ceases if the person is—
  - (a) released following the service of a summons under section 28 of the Criminal Procedure Act 2011 to appear in court to answer the charge; or
  - (b) released on bail under section 21 of the Bail Act 2000; or
  - (c) otherwise released from custody.
- (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 or her office, a power of arrest without warrant is entitled, in any specified circumstances, to exercise that power without the production of evidence of his or her 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 or her appointment.

Compare: 1908 No 32 s 61

Section 316(2)(a): replaced, on 5 March 2012 (applying to the execution of any warrant of arrest on or after that date even if the warrant was issued before that date), by section 4(1) of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 316(2)(b): replaced, on 5 March 2012 (applying to the execution of any warrant of arrest on or after that date even if the warrant was issued before that date), by section 4(1) of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 316(5A): inserted, on 1 July 2013, by section 4(2) of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

### **317 Power to enter premises to arrest offender or prevent offence**

*[Repealed]*

Section 317: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

### **317A Power to stop vehicles for purpose of arrest**

*[Repealed]*

Section 317A: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

### **317AA Powers incidental to stopping vehicles under section 317A**

*[Repealed]*

Section 317AA: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

### **317AB Offences relating to stopping vehicles under section 317A**

*[Repealed]*

Section 317AB: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

### **317B Road blocks**

*[Repealed]*

Section 317B: repealed, on 1 October 2012, by section 325(6) of the Search and Surveillance Act 2012 (2012 No 24).

## *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).

### **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).

*Plea of guilty after committal for trial**[Repealed]*

Heading: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**321 Person committed for trial may plead guilty before trial***[Repealed]*

Section 321: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

*Change of venue**[Repealed]*

Heading: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**322 Changing venue or sitting***[Repealed]*

Section 322: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 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***[Repealed]*

Section 324: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).



**325 Powers of substituted court to compel attendance**

*[Repealed]*

Section 325: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**326 Trial in substituted court**

*[Repealed]*

Section 326: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**327 Witnesses' expenses where indictment removed at instance of the Crown**

*[Repealed]*

Section 327: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

*Indictments*

*[Repealed]*

Heading: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**328 Form of indictment**

*[Repealed]*

Section 328: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**329 Contents of counts**

*[Repealed]*

Section 329: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**330 Crimes may be charged in the alternative**

*[Repealed]*

Section 330: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**331 Certain objections not to vitiate counts**

*[Repealed]*

Section 331: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**332 Indictment for perjury or fraud**

*[Repealed]*

Section 332: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**333 General provisions as to counts not affected***[Repealed]*

Section 333: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**334 Further particulars***[Repealed]*

Section 334: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**335 Variance and amendment***[Repealed]*

Section 335: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**336 Indictment for treason***[Repealed]*

Section 336: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**337 Attempt proved when crime is charged***[Repealed]*

Section 337: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**338 Crime proved when attempt is charged***[Repealed]*

Section 338: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**339 Part of charge proved***[Repealed]*

Section 339: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**340 Joinder of counts***[Repealed]*

Section 340: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**341 Charge of previous conviction***[Repealed]*

Section 341: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**342 Objections to indictment**

*[Repealed]*

Section 342: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**343 Indictment of parties**

*[Repealed]*

Section 343: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**344 Accessories after the fact, and receivers**

*[Repealed]*

Section 344: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**344AA Money launderers**

*[Repealed]*

Section 344AA: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

*Evidence*

*[Repealed]*

Heading: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**344A Interlocutory order relating to admissibility of evidence**

*[Repealed]*

Section 344A: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

*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 or she shall be entitled to have his or her 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***[Repealed]*

Section 344C: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**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**[Repealed]*

Heading: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**345 Filing indictment***[Repealed]*

Section 345: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**345A Time for filing indictment***[Repealed]*

Section 345A: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**345B Extension of time for filing indictment***[Repealed]*

Section 345B: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**345C Trial Judge may excuse disclosure of information relating to Police investigations***[Repealed]*

Section 345C: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**345D Leave to file amended indictments***[Repealed]*

Section 345D: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**346 Failure of prosecutor to file indictment***[Repealed]*

Section 346: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**347 Power to discharge accused**

*[Repealed]*

Section 347: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**348 Copy of indictment**

*[Repealed]*

Section 348: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**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*

*[Repealed]*

Heading: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**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**

*[Repealed]*

Section 351: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**352 Refusal of witness to give evidence**

*[Repealed]*

Section 352: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**353 Record of proceedings**

*[Repealed]*

Section 353: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**354 Right to be defended**

*[Repealed]*

Section 354: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**355 Arraignment***[Repealed]*

Section 355: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**356 Plea***[Repealed]*

Section 356: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**357 Special pleas***[Repealed]*

Section 357: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**358 Pleas of previous acquittal and conviction***[Repealed]*

Section 358: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**359 Second accusation***[Repealed]*

Section 359: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**360 Evidence of former trial***[Repealed]*

Section 360: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**361 Plea on behalf of corporation***[Repealed]*

Section 361: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**361A Trial before a Judge with a jury general rule***[Repealed]*

Section 361A: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**361B Accused may apply for trial before a Judge without a jury***[Repealed]*

Section 361B: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**361C Judge may order trial without a jury in certain cases**

*[Repealed]*

Section 361C: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**361D Judge may order trial without jury in certain cases that are likely to be long and complex**

*[Repealed]*

Section 361D: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**361E Judge may order trial without jury in cases involving intimidation of juror or jurors**

*[Repealed]*

Section 361E: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**362 Challenging the array**

*[Repealed]*

Section 362: repealed, on 1 May 1982, by section 37(1) of the Juries Act 1981 (1981 No 23).

**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**

*[Repealed]*

Section 364: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**365 Question to accused when undefended**

*[Repealed]*

Section 365: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**366 Comment on failure to give evidence**

*[Repealed]*

Section 366: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**366A Unsworn statement prohibited**

*[Repealed]*

Section 366A: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**367 Evidence and addresses**

*[Repealed]*

Section 367: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**367A Notice of alibi**

*[Repealed]*

Section 367A: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**368 Adjourning trial for witnesses**

*[Repealed]*

Section 368: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**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**

*[Repealed]*

Section 369A: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**370 Jury retiring to consider verdict**

*[Repealed]*

Section 370: repealed, on 29 June 2009 (applying only to any trial for which a jury is constituted on or after that date), by section 19(2) of the Juries Amendment Act 2008 (2008 No 40).

**371 Motion in arrest of judgment. Sentence**

*[Repealed]*

Section 371: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**372 Correction of erroneous sentence**

*[Repealed]*

Section 372: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**373 Discretion to keep jury together**

*[Repealed]*

Section 373: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).



**374 Discharge of juror or jury**

*[Repealed]*

Section 374: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**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**

*[Repealed]*

Section 375A: repealed, on 5 March 2012 (applying in relation to a proceeding for an offence that was commenced before that date), by section 393 of the Criminal Procedure Act 2011 (2011 No 81).

**376 Presence of the accused**

*[Repealed]*

Section 376: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**377 Proceedings on Sunday**

*[Repealed]*

Section 377: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**378 Stay of proceedings**

*[Repealed]*

Section 378: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

*Retrials of previously acquitted persons*

*[Repealed]*

Heading: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**378A Order for retrial may be granted if acquittal tainted**

*[Repealed]*

Section 378A: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**378B Meaning of terms used in sections 378C and 378D**

*[Repealed]*

Section 378B: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**378C Consent of Solicitor-General required in certain circumstances for exercise of powers in relation to acquitted person***[Repealed]*

Section 378C: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**378D Order for retrial may be granted by Court of Appeal if new and compelling evidence discovered***[Repealed]*

Section 378D: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**378E Orders to safeguard fairness of retrial***[Repealed]*

Section 378E: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**378F Effect of order for retrial***[Repealed]*

Section 378F: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**Part 13****Appeals***[Repealed]*

Part 13: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**379 Interpretation***[Repealed]*

Section 379: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

*Appeal on matters arising before trial**[Repealed]*

Heading: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**379A Right of appeal in certain cases***[Repealed]*

Section 379A: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**379AB Appeal against decision of Court of Appeal on appeal against certain orders**

*[Repealed]*

Section 379AB: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

*Appeal on question of bail*

*[Repealed]*

Heading: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**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**

*[Repealed]*

Section 379CA: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**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*

*[Repealed]*

Heading: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**380 Reserving question of law**

Section 380: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**381 Appeal where no question reserved**

*[Repealed]*

Section 381: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**381A Question of law arising out of discharge under section 347 or stay of prosecution may be referred to Court of Appeal***[Repealed]*

Section 381A: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**382 Powers of Court of Appeal where appeal is on question of law***[Repealed]*

Section 382: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

*Appeal against conviction or sentence**[Repealed]*

Heading: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**383 Right of appeal against conviction or sentence***[Repealed]*

Section 383: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**383A Appeal against decision of Court of Appeal on appeal against conviction or sentence***[Repealed]*

Section 383A: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**384 Right of appeal against sentence or conviction for contempt of court***[Repealed]*

Section 384: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**384A Jurisdiction in certain cases where appeals lie to different courts***[Repealed]*

Section 384A: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**385 Determination of appeals in ordinary cases***[Repealed]*

Section 385: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**386 Powers of appellate courts in special cases**

*[Repealed]*

Section 386: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**387 Revesting and restitution of property on conviction**

*[Repealed]*

Section 387: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**388 Time for appealing**

*[Repealed]*

Section 388: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**389 Supplemental powers of appellate courts**

*[Repealed]*

Section 389: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**390 Duty of Solicitor-General**

*[Repealed]*

Section 390: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**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**

*[Repealed]*

Section 392: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

*General provisions as to appeals*

*[Repealed]*

Heading: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**392A Decision about mode of hearing**

*[Repealed]*

Section 392A: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**392B Hearings on the papers***[Repealed]*

Section 392B: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**393 Certain powers exercisable by 1 Judge***[Repealed]*

Section 393: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**394 Evidence for appellate courts***[Repealed]*

Section 394: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**395 Right of appellant to be represented, and restriction on attendance***[Repealed]*

Section 395: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**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).

**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***[Repealed]*

Section 398: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**399 Intermediate effects of appeal***[Repealed]*

Section 399: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

## Part 14

### Miscellaneous provisions

#### **400 Consent of Attorney-General to certain prosecutions**

- (1) No charging document shall, by virtue only of the provisions of this Act, be filed against any person who—
- (a) whether or not he or she 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 or she 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 or her 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 or her consent unless he or she is satisfied that the Government of the country to which the ship or aircraft belongs has consented to the institution of the proceedings:

provided that a person alleged to have committed any such offence may be arrested, or a warrant for his or her arrest may be issued and executed, and he or she may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the filing of a charging document 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: replaced, on 1 January 1981, by section 4 of the Crimes Amendment Act 1980 (1980 No 63).

Section 400(1): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

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 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

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(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**

*[Repealed]*

Section 401: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 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**

*[Repealed]*

Section 404: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

#### **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**

- (1) 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 or she 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's right of appeal against conviction under section 229 of the Criminal Procedure Act 2011 was to the District Court or the High Court, 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 or she 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.
- (2) A reference under this section must be published in the *Gazette*.  
Compare: 1945 No 23 s 17  
Section 406(1)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).  
Section 406(1)(a): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).  
Section 406(1)(a): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).  
Section 406(2): inserted, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

#### **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 75 of the Senior Courts Act 2016 (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).  
Section 406A(4): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

**407 Effect of free pardon**

Where any person convicted of any offence is granted a free pardon by the Sovereign, or by the Governor-General in the exercise of any powers vested in him or her 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.

**409 Rules of court**

*[Repealed]*

Section 409: repealed, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

**410 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his or her 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.

- (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) *[Repealed]*
- (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 a charging document or, as the case may require, to the filing of a charging document in the District Court, or to a charging document filed.

Section 411(2): repealed, on 1 July 2013, by section 5 of the Crimes Amendment Act 2013 (2013 No 27).

Section 411(3): amended, on 1 July 2013, by section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

Section 411(3): amended, on 1 March 1996, by section 4(1) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

#### **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.
- (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: inserted, 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 before 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: inserted, 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: inserted, on 26 June 2008, by section 17 of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

**Schedule 1**  
**Carrying out of sentence of death**

*[Repealed]*

s 14(4)

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

**Schedule 2**  
**Forms**

*[Repealed]*

Schedule 2: repealed, on 1 July 2013, pursuant to section 6 of the Crimes Amendment Act (No 4) 2011 (2011 No 85).

### Schedule 3

#### Enactments amended

s 411(1)

**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).***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) (1957 Reprint, Vol 11, p 596)**

*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).*

**Summary Proceedings Act 1957 (1957 No 87) (1957 Reprint, Vol 15, p 375)**

*Amendment(s) incorporated in the Act(s).*

**Schedule 4****United Kingdom enactments ceasing to have effect in New Zealand**

s 412(1)

3 Edw 1, c 25	Champerty by the King's officers
3 Edw 1, c 26	Extortion by the King's officers
3 Edw 1, c 28	Maintenance by officers of Courts
3 Edw 1, c 29	Deceits by pleaders
13 Edw 1, c 34	Elopement with adulterer. Taking away of a nun
13 Edw 1, c 35	Punishment of him that taketh away a ward
13 Edw 1, c 49	Purchasing title of lands in suit
28 Edw 1, c 11	Champerty prohibited
33 Edw 1	An ordinance concerning conspirators (1305)
Date uncertain	Statute concerning conspirators
Date uncertain	Of the chattels of felons
2 Edw 3, c 3	Riding or going armed in affray of the peace
25 Edw 3, stat 5, c 2	Treason Act 1351
27 Edw 3, stat 1, c 2	Pardon of felony
34 Edw 3, c 12	Seizure of lands on surmise of treason in dead persons
1 Rich 2, c 4	Penalties for maintenance
5 Rich 2, stat 1, c 7	Forcible Entry Act 1381
7 Rich 2, c 15	Statutes against maintenance and embrocary confirmed
13 Rich 2, stat 2, c 1	No pardon for murder, etc, unless offence specified
15 Rich 2, c 2	Statutes concerning forcible entries and riots confirmed
16 Rich 2, c 6	Amendment of 13 Rich 2, stat 2, c 1
17 Rich 2, c 8	Riots prohibited and sheriffs required to suppress them
13 Hen 4, c 7	Justices of Peace and sheriffs shall arrest all rioters, etc
2 Hen 5, stat 1, c 8	Commissions to inquire of riot, etc
8 Hen 6, c 9	Forcible Entry Act 1429



11 Hen 7, c 1	An Act that no person going with the King to the wars shall be attaint of treason
26 Hen 8, c 13	An Act whereby offences be made high treason
28 Hen 8, c 7	Succession to the Crown
32 Hen 8, c 9	Against maintenance and embracery, etc
33 Hen 8, c 20	An Act for due process to be had in high treason, etc
35 Hen 8, c 2	An Act concerning the trial of treasons committed out of the King's Majesty's Dominions
5 & 6 Edw 6, c 16	Sale of Offices Act 1551
1 Mar, Sess 1, c 1	An Act repealing certain treasons, felonies, and praemunire
1 & 2 Phil & Mar, c 10	An Act whereby certain offences be made treasons; etc
18 Eliz 1, c 5	Act to redress disorders in common informers upon penal laws
31 Eliz 1, c 11	Forcible Entry Act 1588
21 Jas 1, c 4	An Act for the ease of the subject concerning the informations upon penal statutes
21 Jas 1, c 15	Forcible Entry Act 1623
22 & 23 Chas 2, c 22	Fines and forfeitures to the Crown
10 Will 3, c 12	An Act for the better apprehending, prosecuting, and punishing of felons that commit burglary, housebreaking, or robbery, etc
10 Will 3, c 23	An Act for suppressing of lotteries
11 Will 3, c 7	An Act for the more effectual suppression of piracy
1 Anne, stat 2, c 21	Treason Act 1702
6 Anne, c 41	Succession to the Crown Act 1707: sections 1 and 3
7 Anne, c 12	Diplomatic Privileges Act 1708: section 4
7 Anne, c 21	Treason Act 1708
9 Anne, c 6	Lotteries Act 1710
8 Geo 1, c 2	Lotteries Act 1721
9 Geo 1, c 19	Lotteries Act 1722
6 Geo 2, c 35	Lotteries Act 1732

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9 Geo 2, c 5	Witchcraft Act 1735
16 Geo 2, c 31	Prison (Escape) Act 1742
18 Geo 2, c 30	Piracy Act 1744
19 Geo 2, c 21	Profane Oaths Act 1745
5 Geo 3, c 21	An Act for the better regulating of trials in cases of high treason under the statute of 25 Edw 3
6 Geo 3, c 53	Treason Act 1766
30 Geo 3, c 48	Treason Act 1790
32 Geo 3, c 56	Servants' Characters Act 1792
46 Geo 3, c 148	Lotteries Act 1806
49 Geo 3, c 126	Sale of Offices Act 1809: sections 3 to 8
52 Geo 3, c 156	Prisoners of War (Escape) Act 1812
54 Geo 3, c 145	Corruption of Blood Act 1814
56 Geo 3, c 138	Pillory Abolition Act 1816
57 Geo 3, c 53	Murders Abroad Act 1817
60 Geo 3 & 1 Geo 4, c 1	Unlawful Drilling Act 1819
1 Geo 4, c 57	Whipping Act 1820
4 Geo 4, c 48	Judgment of Death Act 1823
4 Geo 4, c 60	Lotteries Act 1823
5 Geo 4, c 113	Slave Trade Act 1824
6 Geo 4, c 50	Juries Act 1825: section 21
6 Geo 4, c 69	Transportation Act 1825
7 & 8 Geo 4, c 28	Criminal Law Act 1827
9 Geo 4, c 32	Civil Rights of Convicts Act 1828
6 & 7 Will 4, c 66	Lotteries Act 1836
6 & 7 Will 4, c 111	Previous Convictions Act 1836
6 & 7 Will 4, c 114	Trials for Felony Act 1836
7 Will 4 & 1 Vict, c 91	Punishment of Offences Act 1837
5 & 6 Vict, c 51	Treason Act 1842
6 & 7 Vict, c 98	Slave Trade Act 1843
11 & 12 Vict, c 12	Treason Felony Act 1848
13 & 14 Vict, c 26	Piracy Act 1850: section 6
16 & 17 Vict, c 48	Coinage (Colonial Offences) Act 1853
33 & 34 Vict, c 10	Coinage Act 1870: section 5
33 & 34 Vict, c 90	Foreign Enlistment Act 1870
35 & 36 Vict, c 19	Pacific Islanders Protection Act 1872

36 & 37 Vict, c 88

Slave Trade Act 1873: sections 22 and 26

38 & 39 Vict, c 51

Pacific Islanders Protection Amendment  
Act 1875

47 & 48 Vict, c 31

Colonial Prisoners Removal Act 1884:  
subsection (2) of section 9

53 & 54 Vict, c 37

Foreign Jurisdiction Act 1890: section 6

## Schedule 5

### New Zealand enactments repealed

s 412(2)

**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).*

**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).*

**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).*

**Schedule 6**  
**Interception warrant**  
*[Repealed]*

s 312D(1)

Schedule 6: repealed, on 1 February 1998, by section 24(1) of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

## 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 the charge had been brought under section 142 of the principal Act (as substituted by section 5 of this Act).

## **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.

### **3 Purpose**

The purpose of this Act is to implement the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

### *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 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.



## **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.

### **3 Purpose**

The purpose of this Act is to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that—

- (a) safeguards the human rights of sex workers and protects them from exploitation:
- (b) promotes the welfare and occupational health and safety of sex workers:
- (c) is conducive to public health:
- (d) prohibits the use in prostitution of persons under 18 years of age:
- (e) implements certain other related reforms.

## **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

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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.

## 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).

Section 2(2): The provisions of Schedule 1 of this Act that relate to the Extradition Act 1999 and the Mutual Assistance in Criminal Matters Act 1992 brought into force, on 1 June 2017, by clause 2 of the Crimes Amendment Act 2005 Commencement Order 2017 (LI 2017/68).

## 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.

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.

## **Crimes Amendment Act (No 3) 2011**

Public Act	2011 No 79
Date of assent	19 September 2011
Commencement	see section 2

### **1 Title**

This Act is the Crimes Amendment Act (No 3) 2011.

### **2 Commencement**

This Act comes into force 6 months after the date on which it receives the Royal assent.

### **3 Principal Act amended**

This Act amends the Crimes Act 1961.

## **Part 2**

### **Amendments to other enactments and transitional provision**

#### **12 Transitional provision**

- (1) The amendments and repeals made by this Act do not apply to any offence committed or alleged to have been committed (in whole or in part) before the commencement of this Act and the principal Act as in force before the commencement of this Act continues to apply to any such offence.
- (2) Section 414 of the principal Act has effect (with any necessary modifications) if the date on which the offence was committed cannot be established with sufficient certainty.

## Reprints notes

### 1 *General*

This is a reprint of the Crimes Act 1961 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

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

### 3 *Editorial and format changes*

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

### 4 *Amendments incorporated in this reprint*

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

Intelligence and Security Act 2017 (2017 No 10): sections 254, 255, 335

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

Senior Courts Act 2016 (2016 No 48): section 183(b)

Crimes Amendment Act 2015 (2015 No 95)

Harmful Digital Communications Act 2015 (2015 No 63): Part 2 subpart 1

Crimes (Indecency) Amendment Act 2015 (2015 No 44)

Public Safety (Public Protection Orders) Act 2014 (2014 No 68): section 141

Crimes (Match-fixing) Amendment Act 2014 (2014 No 67)

Telecommunications (Interception Capability and Security) Act 2013 (2013 No 91): section 123

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Crimes Amendment Act 2013 (2013 No 27)

Marriage (Definition of Marriage) Amendment Act 2013 (2013 No 20): section 9

Legislation Act 2012 (2012 No 119): section 77(3)

Search and Surveillance Act 2012 (2012 No 24): section 325

Crimes Amendment Act 2012 (2012 No 8)

Crimes Amendment Act (No 4) 2011 (2011 No 85)

Criminal Procedure Act 2011 (2011 No 81): section 393

Crimes Amendment Act (No 3) 2011 (2011 No 79)

Crimes Amendment Act (No 2) 2011 (2011 No 34)

Crimes Amendment Act 2011 (2011 No 29)

Crimes (Provocation Repeal) Amendment Act 2009 (2009 No 64)  
Crimes Amendment Act 2009 (2009 No 47)  
Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35): section 161(2)  
Criminal Proceeds (Recovery) Act 2009 (2009 No 8): section 176  
Corrections Amendment Act 2009 (2009 No 3): section 35  
Policing Act 2008 (2008 No 72): sections 116(a)(ii), 130(1)  
Juries Amendment Act 2008 (2008 No 40): section 19(2)  
Crimes Amendment Act (No 2) 2008 (2008 No 37)  
Crimes Amendment Act 2008 (2008 No 8)  
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)  
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 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)  
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 (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No 28)  
Crimes Amendment Act 2001 (2001 No 9)  
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 (No 2) 1997 (1997 No 93)  
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 (No 2) 1995 (1995 No 68)  
Crimes Amendment Act 1995 (1995 No 49)

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 1993 (1993 No 33)  
Defamation Act 1992 (1992 No 105): section 56(2)  
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  
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 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)  
Crimes Amendment Act 1980 (1980 No 63)  
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)  
Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 (1977 No 28): section 33(1)  
Crimes Amendment Act 1973 (1973 No 118)  
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