



## ANALYSIS

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1979, No. 127

**An Act to amend the Crimes Act 1961**

[14 December 1979]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title**—This Act may be cited as the Crimes Amendment Act (No. 2) 1979, and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as the principal Act).

**2. New sections inserted**—(1) The principal Act is hereby amended by inserting, after section 361, the following sections:

**“361A. Trial before a Judge with a jury general rule**—Subject to sections 361B and 361C of this Act, every accused person shall be tried before a Judge with a jury.

**“361B. Accused may apply for trial before a Judge without a jury**—(1) Subject to the succeeding provisions of this section, where any accused person is committed to the Supreme Court for trial for any offence other than one

referred to in subsection (5) of this section, he may, within 28 days after the date on which he is so committed, give written notice to the Registrar of the Supreme Court at the place to which he is so committed of his wish to be tried before a Judge of that Court without a jury.

“(2) Where a Registrar receives such a notice under subsection (1) of this section, he shall forthwith give a copy of the notice to the prosecutor.

“(3) Where the accused, within the period prescribed by subsection (1) of this section, gives notice in accordance with that subsection of his desire to be tried before a Judge without a jury, the Registrar shall refer the matter to a Judge of the Court (who may or may not be the Judge before whom the trial is to be held).

“(4) The Judge to whom any matter is referred under subsection (3) of this section shall order that the accused be tried before a Judge without a jury unless, having regard to the interests of justice, the Judge considers that the accused should be tried before a Judge with a jury, in which case he shall order accordingly.

“(5) No one shall be entitled to apply to be tried by a Judge without a jury if he is charged with an offence for which the maximum penalty is death or imprisonment for life or imprisonment for a term of 14 years or more.

“(6) Where 2 or more persons are to be tried together, they shall be tried before a Judge with a jury unless each of them applies to be tried by a Judge without a jury.

“(7) Any notice purporting to be given under this section on behalf of the accused by his counsel or solicitor shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

“(8) Notwithstanding anything in subsection (1) of this section, an accused person may give notice under that subsection during or at the end of the preliminary hearing before the Magistrate’s Court.

**“361c. Judge may order trial without a jury in certain cases—**(1) Without limiting anything in section 361B of this Act but subject to the succeeding provisions of this section, where any person is committed for trial for any offence other than one referred to in section 361B (5) of this Act, he may, at any time before he is given in charge to the jury, with leave of the Judge apply to the Judge for an order that he be tried before the Judge without a jury.

“(2) The Judge shall not grant leave under subsection (1) of this section unless he is satisfied—

“(a) That the accused was not given notice, in accordance with section 168B of the Summary Proceedings Act 1957, of his right to apply under section 361B of this Act to be tried before a Judge without a jury; or

“(b) That there were good and sufficient reasons why the accused did not exercise that right in accordance with the said section 361B; or

“(c) That it is in the interests of justice that leave be granted.

“(3) No such leave shall be granted in any case where a Judge has, pursuant to section 361B (4) of this Act, ordered that the accused shall be tried before a Judge with a jury.

“(4) Where 2 or more persons are to be tried together, no leave shall be granted under subsection (1) of this section unless each of them seeks such leave.

“(5) Where the Judge grants leave, he shall order that the accused be tried before the Judge without a jury unless, having regard to the interests of justice, the Judge considers that the accused should be tried before the Judge with a jury, in which case he shall order accordingly.”

(2) Sections 361B and 361c of the principal Act (as inserted by subsection (1) of this section) shall not apply in respect of any accused person who has been committed for trial before the commencement of this Act if the trial of the accused has commenced before the commencement of this Act; but, in respect of any accused person who has been committed for trial, and whose trial has not commenced before the commencement of this Act, the said provisions shall apply as if for the words “on which he is so committed” in subsection (1) of the said section 361B there were substituted the words “of the commencement of the Crimes Amendment Act (No. 2) 1979”.

**3. Verdict of reduced jury**—Section 374 (3) of the principal Act is hereby amended—

(a) By omitting the words “before the jury retire to consider their verdict”, and substituting the words “at any time before the verdict of the jury is taken”:

- (b) By omitting the words “duty, or it becomes known to the Court that he is disqualified or that his wife or a member of his family”, and substituting the words “or her duty, or it becomes known to the Court that the juror is disqualified or that the juror’s spouse or a member of the juror’s family or a member of the family of the juror’s spouse”.

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This Act is administered in the Department of Justice.

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