



#### ANALYSIS

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1980, No. 85

### An Act to amend the Crimes Act 1961

[13 January 1981]

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 and commencement**—(1) This Act may be cited as the Crimes Amendment Act (No. 2) 1980, and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of May 1981.

**2. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “Is liable”, the following definition:

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

(2) Section 2 (1) of the principal Act is hereby further amended by omitting the definition of the term “Registrar”, and substituting the following definition:

“‘Registrar’ means any Registrar of the High Court or of a District Court, as the case may require; and includes any Deputy Registrar.”

**3. Meaning of “convicted on indictment”**—Section 3 (d) of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by omitting the words “to the High Court”.

**4. Arrest of absconder**—Section 320 of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended—

(a) By omitting the words “High Court, any Judge”, and substituting the words “High Court or a District Court, a Judge or District Court Judge (as the case may require)”:

(b) By inserting, after the words “a Judge”, the words “or a District Court Judge (as the case may require)”.

**5. Persons committed for trial may plead guilty before trial**—(1) Section 321 (1) of the principal Act (as amended by section 18 (2) of the District Courts Amendment Act 1979 and by section 12 of the Judicature Amendment Act 1979) is hereby amended by omitting the words “by a District Court to the High Court”.

(2) Section 321 (2) of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by omitting the word “High”.

**6. Changing venue or sitting**—(1) Section 322 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Where any person is committed for any crime to appear at any sitting of the High Court or of a District Court (hereinafter referred to as the Court of committal), and it appears to a Judge or a District Court Judge (as the case may require) that it is expedient for the ends of justice that the person should be tried for that crime—

“(a) Where the High Court is the Court of committal, at some place or at some sitting other than the place or sitting for trial to which he was committed, or at which he would in the ordinary course of law be tried; or

“(b) Where a District Court is the Court of committal, at some District Court or at some sitting of the Court of committal other than the Court or sitting to which he was committed, or at which he would in the ordinary course of law be tried,—

the Judge, either of his own motion, or on application made by or on behalf of the prosecutor or the person charged, may by order, either before or after an indictment is presented, direct that the person shall be tried at such place and sitting of the Court, or (as the case may require) by such Court and at such sitting of that Court (hereinafter referred to as the substituted Court), as he thinks fit.”

(2) Section 322 of the principal Act is hereby further amended by adding the following subsection:

“(8) Where any person is committed to the High Court for trial (otherwise than pursuant to an order for the transfer of the proceedings made under section 28J of the District Courts Act 1947), and before he is given in charge to the jury a Judge of that Court is satisfied that every charge that is contained or that might lawfully be contained in the indictment discloses an offence within the jurisdiction of a District Court presided over by a Judge, he may make an order under this section directing that the person be tried at such sitting of a District Court (hereinafter referred to as the substituted Court) as he thinks fit; and the provisions of this section and of sections 323 to 327 of this Act shall apply accordingly.”

(3) Section 322 (8) of the principal Act (as added by subsection (2) of this section) shall not apply where the accused person was committed for trial before the 1st day of May 1981.

**7. Trial in substituted Court**—Section 326 (2) of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by omitting the words “of the High Court”.

**8. Presenting indictment**—Section 345 (1) of the principal Act (as substituted by section 3 of the Crimes Amendment Act 1963 and amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by inserting, after the words “the High Court”, the words “or in a District Court (as the case may require)”.

**9. Bench warrant**—Section 350 (2) of the principal Act is hereby amended by omitting the words “in session”, and substituting the word “sitting”.

**10. Failure of witness to attend**—Section 351 (2) of the principal Act (as amended by section 7 of the Decimal Currency Act 1964) is hereby amended by omitting the expression “\$100”, and substituting the expression “\$500”.

**11. Evidence of former trial**—(1) Section 360 (1) of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by omitting the words “in the High Court”, and substituting the words “on indictment in the High Court or in a District Court”.

(2) Section 360 (2) of the principal Act is hereby amended by inserting, after the word “conviction”, the words “following a summary hearing”.

**12. Correction of erroneous sentence**—Section 372 (4) of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by omitting the words “by the High Court”, and substituting the words “under section 380 of this Act”.

**13. Discharge of jury**—(1) The principal Act is hereby amended by repealing section 374, and substituting the following section:

“374. (1) Subject to the provisions of this section, the Court may in its discretion, in the case of any emergency or casualty rendering it, in the opinion of the Court, highly expedient for the ends of justice to do so, discharge the jury without their giving a verdict.

“(2) Without limiting subsection (1) of this section, where a jury has remained in deliberation for such period as the Judge thinks reasonable, being not less than 4 hours, and does not agree on the verdict to be given, the Judge may discharge the jury without their giving a verdict.

“(3) If, at any time before the verdict of the jury is taken, any juror becomes in the opinion of the Court incapable of continuing to perform his 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 is ill or has died, the Court may in its discretion—

“(a) Discharge the jury without their giving a verdict; or

“(b) Proceed with the remaining jurors and take their verdict.

“(4) Notwithstanding subsection (3) (b) of this section, the Court shall not proceed with less than 11 jurors unless the prosecutor and the accused consent.

“(5) Where under subsection (3) (b) of this section the Court proceeds with less than 12 jurors, their verdict shall have the same effect as the verdict of the whole number.

“(6) Where the Court discharges a jury under this section, it shall either direct that a new jury be empanelled during the sitting of the Court, or postpone the trial on such terms as justice requires.

“(7) If the presiding Judge becomes incapable of trying the case or directing that the jury be discharged, the Registrar shall discharge the jury.

“(8) No Court may review the exercise of any discretion under this section.”

(2) The following enactments are hereby repealed:

(a) Sections 152 to 154 of the Juries Act 1908:

(b) Section 3 of the Crimes Amendment Act (No. 2) 1979.

**14. Stay of proceedings**—Section 378 of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by omitting the words “to the High Court”.

**15. Right of appeal in certain cases**—Section 379A of the principal Act (as inserted by section 8 (1) of the Crimes Amendment Act 1966 and amended by section 12 of the Judicature Amendment Act 1979) is hereby amended—

- (a) By omitting from subsection (1) (a) the words “the refusal of a Judge of the High Court”, and substituting the words “a refusal”:
- (b) By omitting from subsection (1) (b), and also from subsection (1) (c), the words “the refusal of the High Court”, and substituting in each case the words “a refusal”:
- (c) By omitting from subsection (1) (d) the words “the refusal of the High Court or a Judge thereof”, and substituting the words “a refusal”:
- (d) By omitting from subsection (2) (b) the words “the refusal of the High Court”, and substituting the words “a refusal”:
- (e) By omitting from subsection (3), and also from subsection (4), the words “High Court or the Judge thereof”, and substituting in each case the words “Court or Judge”.

**16. Right of appeal against sentence or conviction for contempt of Court**—Section 384 of the principal Act is hereby amended by adding the following subsection:

“(3) Where any person is found guilty in a District Court of a criminal contempt of that Court, being a contempt committed in the face of the Court during any proceedings on indictment, and the District Court imposes any sentence in respect of that contempt, that person may appeal to the Court of Appeal against the sentence as if he had been convicted on indictment, and the provisions of this Part of this Act shall apply accordingly as if the finding were a conviction:

“Provided that no appeal shall lie against any order of the Court, or of any District Court Judge, that any person shall be detained in custody until the rising of the Court.”

**17. Duties of Registrar with respect to notices of appeal, etc.**—Section 392 (3) of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by omitting the word “High”.

**18. Power to forbid report of proceedings, etc.**—Section 396 of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by omitting the words “High Court”, and substituting the words “Court below”.

**19. Granting of bail to appellant, and custody pending appeal**—Section 397 of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by omitting from subsection (2), and also from subsection (3), the words “High Court”, and substituting in each case the words “Court below”.

**20. Intermediate effects of appeal**—Section 399 (6) of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by inserting, after the words “Judge of the High Court”, the words “or a District Court Judge (as the case may require)”.

**21. Contempt of Court**—Section 401 (2) of the principal Act (as amended by section 7 of the Decimal Currency Act 1964) is hereby amended by omitting the expression “\$200”, and substituting the expression “\$1,000”.

**22. Prerogative of mercy**—Section 406 (a) of the principal Act (as amended by section 18 (2) of the District Courts Amendment Act 1979) is hereby amended by inserting, after the words “District Court”, the words “acting in its summary jurisdiction or under section 28F (2) of the District Courts Act 1947”.

**23. Rules of Court**—(1) Section 409 (1) of the principal Act is hereby amended by inserting, after the words “this Act”, the words “in the High Court and in District Courts”.

(2) Section 409 (2) of the principal Act is hereby amended—

(a) By omitting the words “in New Zealand”, and substituting the words “of the High Court”;

(b) By adding the words “, and shall be followed by all District Courts in proceedings on indictment”.

**24. Consequential amendments**—Section 411 (3) of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by inserting, after the words “High Court”, the words “or in a District Court (as the case may require)”.

**25. Forms**—(1) Form 3 in the Second Schedule to the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended—

- (a) By omitting from the heading the word "High":
- (b) By inserting in the body of the form, after the words "the High Court" where they first occur, the words "[or to a District Court at .....]":
- (c) By omitting from the body of the form the words "the High Court" where they secondly occur, and substituting the words "that Court".

(2) Form 4 in the Second Schedule to the principal Act (as amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by inserting, after the words "High Court", the words "[or District Court]".

(3) Form 5 in the Second Schedule to the principal Act is hereby amended by omitting the words "of the District of" in both places where they occur, and substituting in each case the word "at".

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This Act is administered in the Department of Justice.

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