



## ANALYSIS

<p>Title</p> <p>1. Short Title and commencement</p> <p>2. Non-association order</p> <p>3. Cumulative orders and sentences</p> <p>4. Commencement of period of non-association</p> <p>5. Effect of subsequent sentences</p> <p>6. Variation or cancellation of order</p>	<p>7. New sections substituted</p> <p>77B. Court may impose conditions of non-association on release on parole or final release date</p> <p>77BA. Variation or discharge of conditions of non-association</p>
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1997, No. 94

**An Act to amend the Criminal Justice Act 1985**

[1 December 1997]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Criminal Justice Amendment Act (No. 2) 1997, and is part of the Criminal Justice Act 1985 (“the principal Act”).

(2) This Act comes into force on 1 January 1998.

**2. Non-association order**—(1) Section 28A of the principal Act (as inserted by section 2 of the Criminal Justice Amendment Act 1989) is amended—

(a) By inserting in subsection (2), after the word “sentence”, the words “(other than a sentence of imprisonment for a term of 12 months or less)”;

(b) By inserting in subsection (3), after the words “custodial sentence”, the words “(other than a sentence of imprisonment for a term of 12 months or less)”.

(2) Section 28A of the principal Act (as so inserted) is amended by inserting, after subsection (3), the following subsection:

“(3A) Subsection (3) does not limit the power of the court to impose a suspended sentence of imprisonment at the same time that the court makes a non-association order.”

**3. Cumulative orders and sentences**—Section 28B of the principal Act (as so inserted) is amended by repealing subsection (1), and substituting the following subsections:

“(1) Subject to subsection (1A), a non-association order may not be cumulative on another non-association order or on a sentence of any kind.

“(1A) Where the court imposes a non-association order on an offender who is already detained under, or who is at the same time sentenced to, a sentence of imprisonment for a term of 12 months or less, the non-association order is cumulative on the other sentence.”

**4. Commencement of period of non-association**—The principal Act is amended by repealing section 28E (as so inserted), and substituting the following section:

“28E. (1) Except as provided in subsection (2), the period of non-association specified by a non-association order commences on the day on which the order is made.

“(2) Where a non-association order is cumulative on a sentence of imprisonment for a term of 12 months or less, the period of non-association specified by the non-association order commences on the day on which the offender is released from the penal institution.”

**5. Effect of subsequent sentences**—(1) The principal Act is amended by repealing section 28G (as so inserted, and as amended by section 10 of the Criminal Justice Amendment Act 1993), and substituting the following section:

“28G. (1) Where an offender who is subject to a non-association order (whether or not that non-association order is cumulative on a sentence of imprisonment and whether or not the period of non-association specified by the order has commenced) is subsequently sentenced for another offence, the following provisions apply:

“(a) Where the offender is subsequently sentenced to corrective training, or to imprisonment for a term of more than 12 months or for life, or to preventive detention, the non-association order is cancelled:

“(b) Where any other sentence is imposed, the court may, unless an application has been made under

section 28H, make an order cancelling the non-association order:

“(c) Where the offender is sentenced to imprisonment for a term of 12 months or less and the court makes no order under paragraph (b),—

“(i) In any case where the non-association order is cumulative on a sentence of imprisonment and the period of non-association specified by the order has not commenced, the period of non-association does not commence until the day on which the offender is released from a penal institution after serving each full-time custodial sentence to which he or she is subject:

“(ii) In any other case, the period of non-association continues to run while the offender is detained and, on the offender’s release, he or she continues to be subject to the non-association order for any unexpired residue of the period of non-association:

“(d) Notwithstanding anything in paragraph (c), where an offender to whom that paragraph applies is released from a penal institution pursuant to section 94, the non-association order terminates on the day of the offender’s release.

“(2) Where an offender who is subject to a non-association order is also subject to a suspended sentence, and a court orders under subsection (4) or subsection (5) (a) of section 21A that the suspended sentence is to take effect, subsection (1) applies, so far as applicable and with any necessary modifications, as if the offender were subsequently sentenced for another offence.”

(2) Section 10 of the Criminal Justice Amendment Act 1993 is consequentially repealed.

**6. Variation or cancellation of order**—The principal Act is amended by repealing section 28I (as so inserted), and substituting the following section:

“28I. (1) Where an offender is subject to a non-association order, and the period of non-association specified by that order has commenced, that offender may, at any time after the expiration of half the period of non-association, apply to the court in accordance with section 28J for the variation or cancellation of the order.

“(2) Where—

“(a) An offender is subject to a non-association order that is cumulative on a sentence of imprisonment; and

“(b) The period of non-association specified by that order has not commenced,—

the offender may, before the period of non-association commences, apply to the court in accordance with section 28j for the variation or cancellation of the order.

“(3) Any probation officer may at any time apply to the court in accordance with section 28j for the variation or cancellation of a non-association order.

“(4) On an application under this section, a court may, having regard to,—

“(a) Any change in circumstances since the non-association order was made; and

“(b) Where the period of non-association specified by the order has commenced, the manner in which the offender has responded to the order,—

make an order varying the particulars of non-association, or cancelling the order.

“(5) Where the court cancels the order,—

“(a) In any case where the period of non-association specified by the order has commenced, the period of non-association expires on such date as the court may specify in that behalf:

“(b) In any other case, the period of non-association expires on the date the order cancelling the non-association order is made.

“(6) Where any application is made under this section by a probation officer, the probation officer may suspend the order until the application has been heard and disposed of.

“(7) Where the court varies or cancels the non-association order, the Registrar must give written notice of the decision to the member of the Police in charge of the Police station nearest to the court.”

**7. New sections substituted—**(1) The principal Act is amended by repealing section 77B (as inserted by section 3 (1) of the Criminal Justice Amendment Act 1989, and amended by section 36 of the Criminal Justice Amendment Act 1993), and substituting the following sections:

**“77B. Court may impose conditions of non-association on release on parole or final release date—**(1) On imposing a sentence of imprisonment for a term of more than 12 months

(other than a sentence of imprisonment for life), a court may impose a condition that the offender must not associate with any specified person, or with persons of any specified class, to which the offender is subject if the offender is released on parole, or is released on the final release date (or on any earlier day determined in relation to that date in accordance with section 93), in respect of the sentence in accordance with Part VI; and every such condition must be taken for the purposes of that Part as having been imposed under that Part.

“(2) Every condition imposed under this section has effect for such period as may be specified by the court; but in no case does that condition have effect for any period after the sentence expiry date.

“**77BA. Variation or discharge of conditions of non-association**—(1) Where an offender is subject to a condition imposed under section 77B, a probation officer, or the offender, may apply at any time for the variation or discharge of the condition.

“(2) On an application made under this section, any probation officer may suspend the condition to which the application relates until the application is determined.

“(3) An application under this section must be made to the Parole Board or a District Prisons Board, as the case may be.

“(4) Subject to subsections (5) and (6), the Chairperson of the Board to which an application is made under this section may determine the application and give such directions as he or she thinks fit or may refer the application to the Board for determination.

“(5) Where an application is determined under this section, the Chairperson of the Board or the Board, as the case may be, has the same powers to determine that application as if he or she or it were determining an application to vary or discharge a standard condition of the kind referred to in section 107B (f).

“(6) Where the offender wishes to appear before the Board and state his or her case in person or by counsel, the appropriate Board must determine the application.

“(7) Where an offender is discharged under this section from the condition to which the application relates, that condition ceases to apply on the date specified in the direction.”

(2) The following enactments are consequentially repealed:

(a) Section 3 of the Criminal Justice Amendment Act 1989:

(b) Section 36 of the Criminal Justice Amendment Act 1993.

(3) Notwithstanding subsection (1), offenders on whom a condition has been imposed under section 77B of the principal

Act before the commencement of this section continue to be subject to that condition on their release as if subsection (1) had not been enacted.

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This Act is administered in the Department for Courts, the Ministry of Justice, and the Department of Corrections.

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