



## ANALYSIS

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1976, No. 169

**An Act to amend the Summary Proceedings Act 1957**

*[17 December 1976]*

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 Summary Proceedings Amendment Act 1976, and shall be read together with and deemed part of the Summary Proceedings Act 1957 (hereinafter referred to as the principal Act).

(2) Sections 3, 15 to 17, and 20 of, and the Schedule to, this Act shall come into force on a date to be appointed by

the Governor-General by Order in Council, and different dates may be so appointed for the commencement of any of those sections or that Schedule.

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the day on which it receives the Governor-General's assent.

**2. Summons following arrest**—Section 19A of the principal Act (as inserted by section 5 of the Summary Proceedings Amendment Act 1973) is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Where any person, who has been arrested without warrant and who is charged with a summary offence or an indictable offence that may be dealt with summarily, cannot practicably be brought immediately before a Court, any constable may, if he deems it prudent to do so, release the defendant without bail to appear on summons to answer the charge.”

**3. Summary procedure for minor offences**—(1) Section 20A of the principal Act (as inserted by section 7 (1) of the Summary Proceedings Amendment Act 1973) is hereby amended by repealing subsection (3) (d).

(2) Section 20A of the principal Act (as so inserted) is hereby further amended by repealing subsection (4), and substituting the following subsection:

“(4) The Registrar shall add or attach to the notice of prosecution a statement (in the prescribed form) informing the defendant of his rights under subsections (5) to (8) of this section and, unless a minimum penalty for the offence is expressly provided for, of the right which the Court has under section 42 of the Criminal Justice Act 1954 to discharge a person without convicting him. The Registrar shall sign and date the statement and shall cause a copy of the notice and the statement to be served on the defendant.”

(3) Section 20A of the principal Act (as so inserted) is hereby further amended by omitting from subsection (5) the words “notice, being a date not earlier than 28 days after the date of the notice”, and substituting the words “statement referred to in subsection (4) of this section, being a date not earlier than 28 days after the date the Registrar signed the statement”.

(4) Section 20A of the principal Act (as so inserted) is hereby further amended by omitting from subsection (6) the words “in the notice required by”, and substituting the words “when giving notice in writing in accordance with”.

(5) Section 20A of the principal Act (as so inserted and as amended by section 2 of the Summary Proceedings Amendment Act 1975) is hereby further amended by omitting from subsection (7) the words “in the notice referred to in subsection (2) of this section, give written advice to the Registrar in accordance with subsection (5) of this section”, and substituting the words “pursuant to subsection (5) of this section, give written advice to the Registrar in accordance with that subsection (5)”.

(6) Section 20A of the principal Act (as so inserted) is hereby further amended by omitting from subsection (8) the words “shall be issued in accordance with section 19 of this Act”, and substituting the words “, in the prescribed form, shall be issued to the defendant by a Magistrate, Justice, or Registrar (not being a constable),”.

**4. Repeal of summary procedure for certain traffic offences—**(1) Section 21 of the principal Act is hereby repealed.

(2) Section 3 of the Summary Proceedings Amendment Act 1969 is hereby consequentially repealed.

(3) Notwithstanding subsections (1) and (2) of this section, any offence that is being dealt with in accordance with section 21 of the principal Act on the day preceding the day on which this Act receives the Governor-General’s assent shall continue to be dealt with in accordance with that section as if subsections (1) and (2) of this section had not been enacted.

**5. Power to clear Court and forbid report of proceedings—**

(1) Section 35 (2) of the principal Act is hereby amended by omitting from the proviso the word “newspaper”, and substituting the words “news media”.

(2) Section 156 (1) of the principal Act is hereby amended by omitting from the proviso the word “newspaper”, and substituting the words “news media”.

**6. Criminal Records—**(1) Section 71 (1) of the principal Act is hereby amended by omitting the words “a Criminal Record Book”, and substituting the words “Criminal Records”.

(2) Section 71 (1A) (as inserted by section 18 (2) of the Criminal Justice Amendment Act 1975) is hereby amended by adding the words “to which that section 13A applies”.

(3) Section 71 of the principal Act (as amended by section 18 (2) of the Criminal Justice Amendment Act 1975) is hereby further amended by omitting from subsections (1a), (2), (3), and (4) the words “Record Book”, and substituting in each case the word “Records”.

(4) Section 71 of the principal Act is hereby further amended by adding the following subsection:

“(5) Every reference to a Criminal Record Book in this Act or in any other Act or in any regulation, rule, bylaw, order, or other enactment or in any deed, instrument, notice, or other document whatsoever, shall, unless the context otherwise requires, be read as a reference to the Criminal Records kept pursuant to this section.”

**7. Warrant of commitment under Part III of principal Act may be addressed to any constable or bailiff**—Section 80 of the principal Act (as substituted by section 12 of the Summary Proceedings Amendment Act 1973) is hereby amended by omitting the words “(whether issued under this Part of this Act or otherwise)”, and substituting the words “issued under this Part of this Act”.

**8. Extension of time to pay**—Section 88 of the principal Act (as substituted by section 12 of the Summary Proceedings Amendment Act 1973) is hereby amended by omitting from subsection 4 (b) the words “apply for”, and substituting the word “make”.

**9. Transfer of enforcement to another Court**—Section 91 of the principal Act (as substituted by section 12 of the Summary Proceedings Amendment Act 1973) is hereby amended by omitting from subsection (1) the words “Where default is made in the payment of a sum adjudged to be paid by a conviction and it appears to the Registrar of the Court in which the”, and substituting the words “Where it appears to the Registrar of a Court in which a”.

**10. Execution of warrant of seizure**—Section 97 of the principal Act (as substituted by section 12 of the Summary Proceedings Amendment Act 1973) is hereby amended by inserting in subsections (3), (6), and (9), after the word “bailiff”, the words “or constable”.

**11. Remission of sum adjudged to be paid**—(1) Section 100 of the principal Act (as substituted by section 12 of the Summary Proceedings Amendment Act 1973) is hereby amended by adding to subsection (3) (f) the words “or part thereof”.

(2) Section 100 of the principal Act (as so substituted) is hereby further amended by inserting in subsection (5), after the words “remit the sum”, the words “or part thereof”.

**12. Right of appeal against sentence for contempt of Court**—(1) The principal Act is hereby amended by inserting, after section 115A (as inserted by section 5 (1) of the Summary Proceedings Amendment Act 1969), the following section:

“115B. Any person against whom an order (other than an order to the effect only that a person be taken into custody and detained until the rising of the Court) has been made under section 206 of this Act may appeal to the Supreme Court against the order; and the provisions of sections 116 to 144 of this Act, as far as they are applicable and with the necessary modifications, shall apply to any such appeal as if that person was a defendant who had been convicted on an information and sentenced.”

(2) Section 115 (4) of the principal Act (as amended by section 5 (2) of the Summary Proceedings Amendment Act 1969) is hereby further amended by inserting, after the words “section 115A”, the words “or section 115B”.

**13. Notice of appeal**—Section 116 of the principal Act (as amended by section 5 (2) of the Summary Proceedings Amendment Act 1969) is hereby further amended—

(a) By omitting from subsection (1) the words “10 days after he has been sentenced or otherwise dealt with or the order has been made or, in the case of an appeal under section 115A of this Act, within 28 days after the person convicted has been sentenced”, and substituting the words “28 days after the defendant has been sentenced or otherwise dealt with or the order has been made”:

(b) By omitting from subsection (3) the words “for the words ‘10 days’ and also”.

**14. Transmission of notice of appeal to Supreme Court**—Section 117 (2) (a) of the principal Act is hereby amended by omitting the word “appellant”, and substituting the word “defendant”.

**15. Plea of guilty before or during preliminary hearing—**  
(1) The principal Act is hereby amended by inserting, after section 153, the following heading and section:

*“Plea of Guilty Before or During Preliminary Hearing*

**“153A. Defendant may plead guilty before or during preliminary hearing—**(1) If a defendant is represented by a barrister or solicitor and the offence with which he is charged is not punishable by death, he may, at any time before or during the preliminary hearing of an information, request that he be brought before the Court (or if he is at that time before the Court, that he be permitted) to plead guilty to the offence with which he is charged.

“(2) As soon as practicable after such request (which shall be in writing if made before the commencement of the preliminary hearing), the defendant shall be brought before the Court to be dealt with (or if he is before the Court at the time of such request, shall be dealt with) under this section.

“(3) If the defendant is not before the Court at the time of such request and is not in custody, notice shall be given to him of the time and place for attendance before the Court for the purpose of being dealt with under this section.

“(4) On the defendant’s (or, where the defendant is a corporation, the defendant’s representative’s) attendance before a Court for the purposes of this section, the charge to which he is required to plead shall be read to him and he shall then be called upon to plead either guilty or not guilty.

“(5) If the defendant does not plead guilty, or if he (or, where the defendant is a corporation, a representative of the defendant) does not personally attend the proceedings, he shall be treated in all respects as if he had not made any request to plead guilty, and no comment shall be made at the preliminary hearing or any subsequent proceedings on the fact that such a request has been made, nor shall the request be admissible in evidence against him in any proceedings.

“(6) If the defendant pleads guilty, then, subject to section 66 (6) of this Act and section 39D of the Criminal Justice Act 1954, the Court shall commit him to the Supreme Court for sentence.

“(7) Where the defendant pleads guilty and is committed to the Supreme Court for sentence pursuant to this section, sections 168 (except subsection (1)), 169, 170, and 171

(except subsections (1) and (1A)) of this Act, as far as they are applicable and with the necessary modifications, shall apply as if the defendant had pleaded guilty and been committed to the Supreme Court for sentence at the close of a preliminary hearing.

“(8) Sections 155, 156, and 157 of this Act, as far as they are applicable and with the necessary modifications, shall apply with respect to any proceedings under this section, as if references in those sections to the preliminary hearing were references to proceedings under this section.”

(2) Section 39D of the Criminal Justice Act 1954 (as inserted by section 2 of the Criminal Justice Amendment Act 1969) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) If before or during the preliminary hearing before a Magistrate’s Court of any information the defendant pleads guilty under section 153A of the Summary Proceedings Act 1957, and the Court conducting the proceedings under that section has reason to believe that he may have been insane at the time of the commission of the alleged offence, the Court, if it thinks fit, may direct that a plea of not guilty be recorded instead of a plea of guilty.”

**16. Committal without consideration of evidence**—The principal Act is hereby amended by inserting, after section 160, the following section:

“160A. If at any preliminary hearing—

“(a) All parties advise the Court that all evidence consists of written statements, or exhibits, tendered pursuant to section 173A of this Act; and

“(b) The defendant is represented by a barrister or solicitor; and

“(c) That barrister or solicitor advises the Court that he agrees that it should proceed in the following manner—

the Court may, without considering the evidence, proceed in accordance with section 168 (or, where the defendant is a corporation, section 172) of this Act as if it had considered the evidence and as if the evidence adduced by the informant was, in its opinion, sufficient to put the defendant on his trial for an indictable offence.”

**17. Written statements**—The principal Act is hereby amended by inserting, before section 174, the following section:

“173A. (1) Subject to subsection (2) of this section, at any preliminary hearing a written statement by any person shall be admissible as evidence to the same extent as oral evidence to the like effect given at that hearing by that person.

“(2) A written statement by any person shall not be admissible as evidence at a preliminary hearing unless—

“(a) It purports to be signed by that person; and

“(b) That person states at the end thereof that everything therein is true to the best of his knowledge and belief; and that he made the statement knowing that it might be admitted as evidence at a preliminary hearing and that he could be prosecuted for making a statement that is known by him to be false and intended by him to mislead; and

“(c) The party proposing to tender it as evidence has given to every other party, or the solicitor for that party, a copy thereof; and each such other party, or solicitor, has filed, in the office of the Court at which the hearing is to take place, a signed memorandum to the effect that that party consents to the statement being admitted as evidence at the hearing; and

“(d) If it is made by a person aged under 20 years, the age of that person is stated therein; and

“(e) If it is made by a person who cannot read it, it has been read to him before he signed it and there is attached thereto a signed statement by the reader to the effect that it was so read, and that the person to whom it was read appeared to understand its contents; and

“(f) If it refers to any other document or object as an exhibit, the copy given to every other party or solicitor pursuant to paragraph (c) of this subsection is accompanied by a copy of the exhibit or such information as is necessary to enable that party or solicitor to inspect the exhibit or a copy thereof:

“Provided that, if all parties to the hearing consent to its being so admitted, a written statement that does not comply with any of the foregoing provisions of this subsection shall be admissible as evidence at a preliminary hearing.

“(3) Notwithstanding that a written statement made by any person is admissible as evidence at a preliminary hearing



pursuant to this section, the Court may, of its own motion or on the application of any party, require that person to attend before the Court and give evidence.

“(4) Where any written statement is admitted as evidence at a preliminary hearing pursuant to this section, the Court may direct that the statement be read aloud at the hearing or that an oral account be given of so much of the statement as is not read aloud.

“(5) Any document or object accompanying a written statement tendered in evidence under this section, and referred to therein as an exhibit, shall be treated as if it had been produced as an exhibit and identified in Court by the maker of the statement.

“(6) Everyone who makes, in a written statement that he knows may be admitted in evidence at a preliminary hearing pursuant to this section and that is so admitted, a statement that would amount to perjury if made on oath in a judicial proceeding commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 years.”

**18. Person may be released on summons on Sunday**—Section 203 (2) of the principal Act is hereby amended by adding the following paragraph:

“(j) Any person may be served with a summons and released under section 19A of this Act.”

**19. Amendments to Crimes Act 1961**—(1) Section 347 of the Crimes Act 1961 is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Where any person is committed for trial, the Judge may, in his discretion,—

“(a) Of his own motion or on the application of the prosecutor or the accused; and

“(b) After giving both the prosecutor and the accused reasonable opportunity to be heard on the matter; and

“(c) After perusal of the depositions and consideration of such other evidence and other matters as are submitted for his consideration by the prosecutor or the accused—

direct that no indictment shall be presented, or, if an indictment has been presented, direct that the accused shall not be arraigned thereon; and in either case direct that the accused be discharged.”

(2) The said section 347 is hereby further amended by inserting, after subsection (3), the following subsection:

“(3A) Every direction under this section shall be given in open Court.”

(3) Section 375 (1) of the Crimes Act 1961 is hereby amended by omitting from the proviso the word “newspaper”, and substituting the words “news media”.

**20. Amendments and repeals consequential upon sections 15 to 17 of this Act—**(1) The principal Act is hereby consequentially amended in the manner indicated in the Schedule to this Act.

(2) Section 2 (1) of the Crimes Act 1961 is hereby consequentially amended by inserting, after the definition of the term “day”, the following definition:

“‘Depositions’ includes written statements admitted in evidence at the preliminary hearing pursuant to section 173A of the Summary Proceedings Act 1957, and statements made under section 175 of that Act and read in evidence at the preliminary hearing:”.

(3) The following enactments are hereby consequentially repealed:

(a) The Summary Proceedings Amendment Act 1963:

(b) Section 12 (2) of the Crimes Amendment Act 1973.

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Section 20 (1)

## SCHEDULE

## AMENDMENTS OF PRINCIPAL ACT

Section of Principal Act Amended	Amendment
Section 5	By adding the words "and any proceedings under section 153A of this Act".
Section 66 (6)	By inserting, after the words "notwithstanding anything in", the words "section 153A or".
Section 152 (2)	By repealing this subsection, and substituting the following subsection: "(2) If at any time and place appointed for the preliminary hearing of any information or for proceedings under section 153A of this Act, or when a defendant is brought before a Court on arrest, only one Justice is present, that Justice may adjourn the preliminary hearing or the proceedings to a time and place then appointed."
Section 153	By inserting, after the words "preliminary hearing", the words "or the proceedings under section 153A of this Act, as the case may be".
Section 158	By inserting, after the word "sections", the expression "173A,".
Section 160 (1)	By adding the words ", or any written statement is tendered pursuant to section 173A of this Act, or the Court proceeds pursuant to section 160A of this Act, as the case may be".
Section 161 (1)	By repealing this subsection, and substituting the following subsection: "(1) Unless the Court proceeds pursuant to section 160A of this Act and subject to section 173A of this Act, at any preliminary hearing, after the charge has been read to the defendant, the informant shall call his witnesses, and such witnesses shall be examined by the informant and may be cross-examined by the defendant and re-examined by the informant."
Section 165 (1) (as amended by section 21 (2) (a) of the Summary Proceedings Amendment Act 1973)	By inserting, before the words "the Court shall", the words "Unless the Court proceeds pursuant to section 160A of this Act,".

SCHEDULE—*continued*AMENDMENTS OF PRINCIPAL ACT—*continued*

Section of Principal Act Amended	Amendment
Section 178 (1)	By omitting the words “was not examined as a witness”, and substituting the words “did not give evidence (whether orally, by written statement under section 173A of this Act, or otherwise)”.
Section 180	By repealing this section, and substituting the following section: <b>“180. Depositions and written statements to be filed when defendant not sent for trial—</b> Where a defendant is discharged any depositions of witnesses and any written statements under section 173A of this Act shall be filed by the Registrar.”
Section 181 (1) (as substituted by section 23 (1) of the Summary Proceedings Amendment Act 1973)	By inserting, after the words “completed his evidence”, the words “or where any person makes a written statement that is admitted in evidence at the preliminary hearing under section 173A of this Act”.
Sections 182 to 184 . . .	By repealing these sections, and substituting the following sections: <b>“182. On committal, documents to be sent to Supreme Court—</b> (1) Where any person is committed for trial or sentence (other than pursuant to section 153A of this Act), the Registrar of the Magistrate’s Court shall immediately send to the Registrar of the Supreme Court in the place where the trial is to be held or the person is to be sentenced the information, any depositions, written statements under section 173A of this Act, and other documents relating to the committal, any exhibits in his custody, the bail bond (if any), a record of any particulars of alibi given by the defendant to the Magistrate’s Court under section 367A of the Crimes Act 1961, and a copy of the notice to attend the Supreme Court issued to any witness. <b>“(2)</b> Where any person is committed for sentence pursuant to section 153A of this Act, the Registrar of the Magistrate’s Court shall immediately send to the Registrar of the Supreme Court in the place where the person is to be sentenced

SCHEDULE—*continued*AMENDMENTS OF PRINCIPAL ACT—*continued*

Section of Principal Act Amended	Amendment
Sections 182 to 184— <i>continued</i>	<p>the information, a summary of the facts and any evidence upon which that person has pleaded, the bail bond (if any), and any other documents or exhibits relating to the committal.</p> <p><b>“183. Every party entitled to copy of depositions or summary of facts—</b>  (1) Every party to the preliminary hearing shall be entitled to a copy of any depositions sent to the Registrar of the Supreme Court in accordance with section 182 (1) of this Act, without fee.</p> <p><b>“(2) Both the informant and the defendant, and any other party to the proceedings, shall be entitled to a copy of any summary of facts and evidence sent to the Registrar of the Supreme Court in accordance with section 182 (2) of this Act, without fee.</b></p> <p><b>“184. When deposition or written statement may be read in evidence—</b>  (1) Where any person is committed for trial, any deposition taken under the provisions of this Part of this Act or any written statement admitted as evidence at the preliminary hearing under section 173A of this Act, may, if it is proved by such evidence as the Judge considers sufficient (whether legally admissible or not) that the person making the deposition, or written statement, is out of New Zealand or dead or so ill as not to be able to travel, or if in any case all parties consent, without further proof be read as evidence for any party at the trial of the person so committed, whether for the offence in respect of which the deposition, or written statement, was taken or for any other offence arising out of the same transaction or set of circumstances as that offence, unless it is proved that the deposition was not in fact signed by the Magistrate or Justices purporting to sign it or was not in fact taken in accordance with the provisions of this Part of this Act, or that the written statement was not in fact taken and admitted in evidence in accordance with section 173A of this Act.</p>

SCHEDULE—*continued*AMENDMENTS OF PRINCIPAL ACT—*continued*

Section of Principal Act Amended	Amendment
Sections 182 to 184— <i>continued</i>	“(2) Any deposition taken under the provisions of this Part of this Act, or any written statement admitted as evidence at a preliminary hearing under section 173A of this Act, may, if it is proved by such evidence as the Court considers sufficient (whether legally admissible or not) that the person making the deposition, or written statement, is out of New Zealand or dead or so ill as not to be able to travel, without further proof be read as evidence for any party on the preliminary hearing of any information charging the person who was charged with the offence in respect of which the deposition, or written statement, was taken with any offence arising out of the same transaction or set of circumstances as that offence, unless it is proved that the deposition was not in fact signed by the Magistrate or Justice or Justices purporting to sign it or was not in fact taken in accordance with the provisions of this Part of this Act, or that the written statement was not in fact taken and admitted in evidence in accordance with section 173A of this Act.”

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This Act is administered in the Department of Justice.

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