



## ANALYSIS

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1991, No. 62

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

[12 July 1991]

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

**1. Short Title and commencement**—(1) This Act may be cited as the Summary Proceedings Amendment Act 1991, and shall be read together with and deemed part of the Summary Proceedings Act 1957 (hereinafter referred to as the principal Act).

(2) Except as provided in sections 6 (2) and 8 (4) of this Act, this Act shall come into force on the 15th day of August 1991.

**2. Place of hearing of information**—The principal Act is hereby amended by repealing section 34, and substituting the following section:

“34. (1) Unless an order is made under the succeeding provisions of this section or under section 4A of the District Courts Act 1947, or unless there is a statutory provision to the contrary, every charge shall be heard and determined in the Court in the office of which the information is filed.

“(2) Any District Court Judge or Justice may order that a charge shall be heard and determined by some other Court.

“(3) The Registrar may, with the consent of each party, order that a charge be heard in some other Court.

“(4) When an order is made under subsection (2) or subsection (3) of this section, the Registrar shall forward the information to the Registrar of the Court to which it is ordered to be transferred.”

**3. Power of Registrar to adjourn**—The principal Act is hereby amended by inserting, after section 45, the following section:

“45A. (1) A Registrar may, upon application, adjourn the hearing of any charge to a time and place then appointed if—

“(a) The defendant is not in custody at the time of the application; and

“(b) The application is made before the commencement of the hearing.

“(2) Where an adjournment is granted under subsection (1) of this section,—

“(a) The present conditions of bail (if any) shall, subject to section 50A of this Act, continue to the adjourned date of hearing; and

“(b) Any order made under section 140 of the Criminal Justice Act 1985 in relation to the defendant or any other person connected with the proceedings and having effect only for a limited period that would expire before the adjourned date of hearing shall continue to have effect until the close of the adjourned date of hearing.

“(3) Whenever the Registrar grants an adjournment under this section, the Registrar shall notify each party in writing.”

**4. Dealing with defendant on adjournment**—Section 46 of the principal Act (as substituted by section 2 of the Summary Proceedings Amendment Act (No. 2) 1987) is hereby amended by inserting in subsection (1), after the words “any hearing is adjourned”, the words “under section 45 of this Act”.

**5. Power of Registrar to adjourn**—The principal Act is hereby amended by inserting, after section 152, the following section:

“152A. (1) A Registrar may, upon application and with the consent of each party, adjourn the preliminary hearing of any information to a time and place then appointed if—

“(a) The defendant is not in custody at the time of the application; and

“(b) The application is made before the commencement of the preliminary hearing; and

“(c) It is necessary or desirable to do so for any reasonable cause.

“(2) Where an adjournment is granted under subsection (1) of this section,—

“(a) The present conditions of bail (if any) shall, subject to section 50A of this Act, continue to the adjourned date of hearing; and

“(b) Any order made under section 140 of the Criminal Justice Act 1985 in relation to the defendant or any other person connected with the proceedings and having effect only for a limited period that would expire before the adjourned date of hearing shall continue to have effect until the close of the adjourned date of hearing.

“(3) Whenever the Registrar grants an adjournment under this section, the Registrar shall notify each party in writing.”

**6. Defendant may plead guilty before or during preliminary hearing**—(1) Section 153A of the principal Act (as inserted by section 15 (1) of the Summary Proceedings Amendment Act 1976) is hereby amended by inserting in subsection (6) (a) (as enacted by section 10 of the Summary Proceedings Amendment Act 1980), after the words “by a jury”, the words “or where the offence is an indictable offence referred to in Part I of Schedule IA to the District Courts Act 1947”.

(2) This section shall come into force on the 1st day of October 1991.

**7. Place of preliminary hearing**—(1) The principal Act is hereby amended by repealing section 155, and substituting the following section:

“155. (1) Unless an order is made under the succeeding provisions of this section or under section 4A of the District Courts Act 1947, or unless there is a statutory provision to the contrary, the preliminary hearing of an information shall take place in the Court in the office of which it is filed.

“(2) Any District Court Judge or Justice may order that the preliminary hearing of an information shall take place in some other Court.

“(3) The Registrar may, with the consent of each party, order that the preliminary hearing of an information shall take place in some other Court.

“(4) When an order is made under subsection (2) or subsection (3) of this section, the Registrar shall—

“(a) Forward the information to the Registrar of the Court to which it is ordered to be transferred; and

“(b) Notify each party in writing.”

(2) Section 2 (2) of the District Courts Amendment Act 1974 is hereby consequentially repealed.

**8. New sections substituted**—(1) The principal Act is hereby amended by repealing section 168A (as substituted by section 2 (1) of the Summary Proceedings Amendment Act (No. 3) 1985), and substituting the following sections:

“168A. **Court to which defendant to be committed**—

(1) Subject to subsection (2) of this section, the Court to which a defendant shall be committed for trial under section 168 or section 172 of this Act shall be as follows:

“(a) In respect of any offence that a District Court has jurisdiction to try by virtue of any of paragraphs (a) to (d) of section 28A (1) of the District Courts Act 1947, the District Court exercising that jurisdiction nearest to the committing Court:

“(b) In respect of any other offence, the High Court at the place where sittings of that Court are held nearest to the committing Court.

(2) The Court to which a defendant shall be committed for trial under section 168 or section 172 of this Act shall be the High Court nearest to the committing Court in the following circumstances:

“(a) Where the defendant has been charged with some other person or persons in respect of offences arising from the same incident or series of incidents and in respect of at least one of which charges the committal must, by virtue of subsection (1) (b) of this section, be to the High Court; or

“(b) Where the defendant has been charged with offences arising from the same incident or series of incidents and in respect of at least one of which charges the committal must, by virtue of subsection (1) (b) of this section, be to the High Court.

(3) Notwithstanding that a defendant has been committed to the High Court for trial pursuant to subsection (2) of this section, a Judge of the High Court may direct that any indictment that may be tried in a District Court under section 28A of the District Courts Act 1947 be tried in that Court.

(4) Nothing in this section shall affect the provisions of section 28J of the District Courts Act 1947.

**“168AA. High Court Judge to determine Court of trial in certain cases—**(1) This section applies to every case in which a defendant is committed to the High Court for trial for any offence referred to in Part II of Schedule IA to the District Courts Act 1947.

“(2) In each case to which this section applies, a Judge of the High Court shall determine on the papers whether it is more appropriate for the trial to be held in a District Court; and, if the Judge determines that the trial would be more appropriately held in a District Court, the Judge shall, by order, transfer the case to the District Court exercising jurisdiction under Part IIA of the District Courts Act 1947 nearest to the committing Court. No party to the proceedings shall be entitled to be heard by, or to make submissions to, the Judge under this subsection.

“(3) In determining the appropriate Court under subsection (2) of this section in any case, the Judge shall have regard to the following matters:

“(a) The gravity of the offence charged:

“(b) The complexity of the issues likely to arise in the proceedings:

“(c) The desirability of the prompt disposal of trials:

“(d) The interests of justice generally.

“(4) Nothing in this section shall apply to proceedings transferred to the High Court by order made under section 28j of the District Courts Act 1947.

**“168AB. Notice of transfer of case to District Court—**(1) Where an order transferring a case to a District Court is made under section 168AA of this Act, a Registrar of the High Court shall give or cause to be given—

“(a) To the defendant’s counsel or solicitor, or to the defendant if the defendant is not represented,—

“(i) A copy of the order; and

“(ii) A written notice informing the defendant of the date and time at which the defendant must report to the District Court to which the case has been transferred and, where the defendant has been released on bail, making the necessary variations in the conditions of bail; and

“(b) To each surety of that defendant under any surety bond—

“(i) A copy of the order; and

“(ii) A copy of the written notice given to the defendant under paragraph (a) (ii) of this subsection.

“(2) Where subsection (1) of this section is complied with in relation to a defendant and to each surety of that defendant under any such surety bond, the terms of that surety bond shall be deemed to be varied accordingly.”

(2) Section 28J of the District Courts Act 1947 (as inserted by section 9 of the District Courts Amendment Act 1980) is hereby amended by inserting in subsection (1), after the words “to a District Court for trial,”, the words “or where proceedings have been transferred to a District Court for trial by order made under section 168AA of that Act,”.

(3) The Summary Proceedings Amendment Act (No. 3) 1985 is hereby repealed.

(4) This section shall come into force on the 1st day of October 1991.

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This Act is administered in the Department of Justice.

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