



ANALYSIS

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1994, No. 161

An Act to amend the Summary Proceedings Act 1957

[15 December 1994]

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

1. Short Title—This Act may be cited as the Summary Proceedings Amendment Act 1994, and shall be read together with and deemed part of the Summary Proceedings Act 1957 (hereinafter referred to as the principal Act).

2. Information to be in prescribed form and upon oath—Section 15 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) Without limiting any other provision of this Act or any other enactment, no information shall be invalid by reason only that it does not contain the date of birth of the defendant or does not correctly describe the defendant’s date of birth, and no amendment shall be required to remedy that omission or error before the hearing of the information.”

3. Amendment of information to correct particulars of defendant—(1) The principal Act is hereby amended by inserting, after section 43, the following section:

“43A. (1) Without limiting section 43 of this Act, if at any time during the hearing, and whether or not the defendant

appears to answer the charge, the Court is satisfied that the particulars of the defendant as they appear on the information are incorrect, whether—

“(a) Because of any mistake or omission in those particulars;
or

“(b) Because the name, address, or any other particulars of the defendant as stated on the information do not correctly identify the person by whom the offence stated in the information is alleged to have been committed, whether because the person identified on the information does not exist or is some other person or for any other reason,—

the Court may, subject to subsections (3) to (6) of this section, make such amendments to the information as are necessary to correct the mistake or omission or, as the case may be, to ensure that the information correctly identifies that person.

“(2) Without limiting the generality of the powers conferred by subsection (1) of this section, it is hereby declared that those powers include the power to amend the information by substituting, for all or any of the particulars of the defendant (including his or her name) as stated on the information, any other particulars.

“(3) No power conferred by subsection (1) of this section shall be exercised after the expiry of the period of 12 months from the date on which the information is laid.

“(4) The Court may, if it is of opinion that any person would be prejudiced by any amendment made or proposed to be made pursuant to this section, and that it would be contrary to the interests of justice to require that person to suffer that prejudice,—

“(a) Refuse to make the amendment; or

“(b) If the amendment has already been made, dismiss the information, but any such dismissal shall not operate as a bar to any other proceedings in the same matter.

“(5) The Court may, at the request of the defendant, if it is of opinion that the defendant would be embarrassed in the defendant’s defence by reason of an amendment made or proposed to be made pursuant to this section, adjourn the hearing of the case.

“(6) Where the Court amends an information pursuant to this section,—

“(a) The Court may direct that a summons or, as the case requires, a further summons be issued to the defendant:

“(b) Subject to paragraph (a) of this subsection and to subsection (5) of this section, the hearing shall proceed in all respects as if the information had been originally framed as amended.”

(2) Section 43A of the principal Act (as inserted by subsection (1) of this section) shall apply in respect of any information, whether laid before or after the commencement of this section.

4. New sections substituted—(1) The principal Act is hereby amended by repealing section 69, and substituting the following sections:

“69. Procedure where defendant liable to greater penalty because of previous convictions—(1) This section applies where—

“(a) A defendant is charged with an offence for which the penalty is greater if the defendant has previously been convicted of that offence or of some other offence; and

“(b) By reason of that greater penalty, the defendant is entitled, under section 66 of this Act, to elect to be tried by a jury.

“(2) Where this section applies,—

“(a) The information shall disclose the existence of the previous conviction or convictions which, if proved against the defendant or admitted by him or her, would make the defendant liable to the greater penalty; and

“(b) Subject to subsection (4) of this section, where the information discloses such conviction or convictions, the provisions of section 66 of this Act shall apply in the ordinary way.

“(3) No information shall be dismissed by reason only that it does not comply with the requirements of subsection (2) (a) of this section, but if any such information is not subsequently amended so as to comply with those requirements, then, notwithstanding any other enactment, the defendant shall be liable to the penalty to which he or she would be liable but for any previous convictions.

“(4) Where, pursuant to section 43 of this Act, an information for an offence is amended to disclose a previous conviction to which subsection (2) of this section applies, then, unless the defendant has already been given the right, under section 66 of this Act, to elect to be tried by a jury for that

offence, the defendant shall then be given that right, and the provisions of section 66 of this Act, as far as they are applicable and with the necessary modifications, shall apply.

“(5) Nothing in this section shall affect the right of the Court, when sentencing the defendant, to take any previous convictions into account.

“(6) Nothing in this section limits section 341 of the Crimes Act 1961.

“69AA. **Further provisions relating to previous convictions**—(1) For the avoidance of doubt, it is hereby declared that in any case where—

“(a) Section 69 of this Act applies; and

“(b) The defendant elects, under section 66 of this Act, not to be tried by a jury,—

it shall not be necessary for the informant to prove any previous conviction to which section 69 (2) (a) of this Act applies, where that conviction is not admitted by the defendant, until the issue of penalty for the offence arises.

“(2) Nothing in subsection (1) of this section limits or affects any other enactment or rule of law that prohibits or regulates the admission of evidence relating to the previous convictions of the defendant.

“(3) For the purpose of proving any previous conviction to which section 69 (2) (a) of this Act applies in any proceedings in which the defendant is dealt with summarily, the production of a certificate containing the substance of the conviction for the offence, purporting to be signed by the Registrar or other officer having the custody of the records of the Court by or before which the offender was convicted, shall—

“(a) Be sufficient evidence of the conviction without proof of the signature or official character of the person appearing to have signed the certificate; and

“(b) In the absence of evidence to the contrary, if the name of the offender stated in the certificate is the name of the defendant, constitute prima facie evidence that the offender so stated is the defendant.

“(4) The mode of proving a previous conviction authorised by this section shall be in addition to, and not in exclusion of, any other mode authorised by law.”

(2) The principal Act shall apply, in respect of proceedings commenced before the commencement of this section, as if subsection (1) of this section had not been enacted.

5. Protection of Registrar, Bailiff, etc.—Section 102 of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is hereby amended by inserting, after the words “relating to”, the words “the immobilisation of any vehicle or to”.

6. Procedural provisions applying to appeals under section 115D—Section 115E of the principal Act (as inserted by section 11 of the Summary Proceedings Amendment Act (No. 2) 1991) is hereby amended by adding, as subsection (6), the following subsection:

“(6) Where, in the case of an appeal under section 115D (2) of this Act, the defendant does not appear at the hearing of the appeal, the High Court may, if it thinks fit, issue a warrant for the arrest of the defendant.”

7. Proceedings under Part V—Section 145 of the principal Act is hereby amended by adding, as subsection (3), the following subsection:

“(3) Without limiting any other provision of this Act or any other enactment, no information shall be invalid by reason only that it does not contain the date of birth of the defendant or does not correctly describe the defendant’s date of birth, and no amendment shall be required to remedy that omission or error before the trial.”

8. First Schedule amended—Part I of the First Schedule to the principal Act is hereby amended by repealing the item relating to section 105A of the Crimes Act 1961.

9. New Second Schedule substituted—The principal Act is hereby amended by repealing the Second Schedule, and substituting the Second Schedule set out in the Schedule to this Act.

SCHEDULE

Section 9

NEW SECOND SCHEDULE TO PRINCIPAL ACT

“SECOND SCHEDULE

FORMS OF INFORMATION

Form 1

Section 15

INFORMATION OR COMPLAINT WHERE DEFENDANT IS TO BE PROCEEDED AGAINST SUMMARILY

I, [Full Name], of [Address, occupation], say on oath that (*I have just cause to suspect, and do suspect, that) (*within the previous (6) months, namely) on the day of 19 , at , [Full Name], of [Address, occupation], *who was born on the day of 19 , [Here set out the substance of the offence or matter of complaint] (*being an offence punishable summarily). [Here add section and statute applicable.]

..... [Signature of Informant or Complainant]

Sworn before me at this day of 19

..... District Court Judge, Justice of the Peace, Registrar (not being a constable).

*Delete if inapplicable.

SCHEDULE—continued

NEW SECOND SCHEDULE TO PRINCIPAL ACT—continued

“SECOND SCHEDULE—continued

FORMS OF INFORMATION—continued

Section 145 (2)

Form 2

INFORMATION WHERE DEFENDANT IS TO BE PROCEEDED AGAINST BY
INDICTMENT

I, [Full Name], of [Address, occupation], say on oath that I have just cause to suspect, and do suspect that at on [Full Name], of [Address, occupation], *who was born on the day of 19, [Here set out the nature of the offence], being an indictable offence. [Here add section and statute applicable.]

.....
[Signature of Informant]

Sworn before me at this day of 19

.....
District Court Judge, Justice of the Peace, Registrar (not being a constable).

*Delete if inapplicable.”

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This Act is administered in the Department of Justice.

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