

CRIMES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Crimes Act 1961.

Clause 1 relates to the Short Title and commencement of the Bill, which is to come into force on 1 January 1974.

Clause 2: Section 24 (1) of the principal Act provides that a person who commits an offence (except an offence specified in subsection (2)) under compulsion by threats of immediate death or grievous bodily harm from a person present when the offence is committed is protected from criminal responsibility if he believes that the threats will be carried out and if he is not a party to an association or conspiracy whereby he is subject to compulsion.

Section 24 (2) specifies a number of serious offences to which the above-mentioned protection from criminal responsibility does not apply. One of these specified offences is robbery (section 234).

It was held by the Court of Appeal in *R v. Joyce* [1968] NZLR 1070 that the exclusion of robbery did not exclude the offence of aggravated robbery (section 235).

This clause amends section 24 (2) by adding aggravated robbery to the list of offences to which the defence of compulsion does not apply.

Clause 3 gives effect to a recommendation of the Criminal Law Reform Committee.

At present, the fraudulent taking of such documents as airline tickets and credit cards, which can have a high potential value, may be theft under section 220 of the principal Act; but because the actual value of the document stolen is usually less than \$10 the maximum punishment, under section 227 (d), is 3 months' imprisonment.

This clause inserts in the principal Act a new section 229A, which makes it an offence punishable by imprisonment for up to 7 years for anyone, with intent to defraud, (a) to take a document capable of being used to obtain any privilege, benefit, pecuniary advantage, or valuable consideration, or (b) to use or attempt to use such a document for the purpose of obtaining, for himself or for any other person, any privilege, benefit, pecuniary advantage, or valuable consideration.

The penalty prescribed by the new section is the same as that fixed by section 227 (a) and (b) for the more serious kinds of theft.

Clauses 4, 5, and 6 also make amendments recommended by the Criminal Law Reform Committee. The 3 clauses are related to each other.

Clause 4: Section 263 of the principal Act defines the terms “document” and “false document” for the purposes of sections 264 to 279 of the principal Act, which relate to forgery and uttering and similar offences. For these purposes, “document” is defined as any paper, parchment, or other material used for writing or printing, marked with matter capable of being read; but it does not include a trade mark on any goods, or any inscription on stone or metal or other like material.

This clause substitutes a new definition of “document” which covers not only (a) paper or other material marked with matter capable of being read, but also (b) a photograph or film, (c) a disc, tape, wire, sound track, card, or other material or device in which information, sounds, or other data are embodied so as to be capable of being reproduced, (d) material by means of which information is supplied to any device used for recording or storing or processing information, and (e) material derived from information so recorded or stored or processed.

The present exclusion of trade marks on goods or inscriptions on stone or metal or other like material is not re-enacted in the clause.

The new definition will apply not only for the purposes of the present forgery sections but also for the purposes of the new sections proposed to be inserted by *clauses 5 and 6*.

Clause 5 inserts in the principal Act a new section 266A, which makes it an offence punishable by imprisonment for up to 10 years for anyone, with intent to defraud, (a) to alter a document, whether by addition, insertion, deletion, obliteration, erasure, removal, or otherwise, or (b) by any means, to make a document that is a reproduction of the whole or any part or parts of another document or of 2 or more documents, or of any combination of any of those things.

The penalty prescribed by the new section is the same as that fixed by section 265 for forgery.

Clause 6 inserts in the principal Act a new section 266B, which makes it an offence punishable by imprisonment for up to 10 years for anyone, with intent to defraud, knowing a document to have been altered or made in the manner, and with the intent, referred to in section 266A (*clause 5*), to (a) use, deal with, or act upon it, or (b) cause a person to use, deal with, or act upon it.

The penalty prescribed by the new section is the same as that fixed by section 266 for the uttering of forged documents.

Clause 7: Under section 337 of the principal Act, where the commission of the crime charged is not proved, but the evidence establishes an attempt to commit the crime, the accused may be convicted of the attempt.

Section 339 (2), however, provides that on a charge of murder, if the evidence proves manslaughter but does not prove murder, the jury may find the accused guilty of manslaughter, but shall not on that charge (except in the case of infanticide under section 178) find the accused guilty of any other offence. Attempted murder is a separate offence under section 173; and section 339 (2) appears to negate section 337, thereby preventing a conviction of attempted murder on a murder charge. This is not the law in the United Kingdom; *R v. White* [1910] 2 K.B. 124.

This clause rewrites section 339 (2) of the principal Act. The effect of paragraph (a) is that on a charge of murder the accused can be found guilty of attempted murder (under section 337) if murder is not proved but the attempt is. In other respects the new subsection re-enacts the existing law as to verdicts of manslaughter or infanticide.

Clause 8: Under section 340 (1) of the principal Act, any number of counts may be joined in the same indictment; but there is a proviso that, to a count charging murder, no count charging any offence other than murder shall be joined. That proviso embodied an earlier rule of practice of the United Kingdom. Since the decision of the House of Lords in *Connelly v. D.P.P.* [1964] A.C. 1254; [1964] 2 All E.R. 401, that earlier rule has ceased to be in force in the United Kingdom; and the Court of Criminal Appeal there has given a direction to that effect; [1964] 3 All E.R. 509.

This clause repeals the proviso to section 340 (1). The result is that the general rule as to joinder of counts will apply to murder charges as well as to others. The interests of the accused will still be safeguarded by the power of the Court under section 340 (3) and (4) to sever the counts and direct that the accused be tried on any one or more of them separately.

Clause 9: Under section 356 of the principal Act the accused is called upon to plead, and may plead guilty or not guilty, or may enter the special pleas referred to in section 357. If he wilfully refuses to plead, or will not answer directly, the Court may order the Registrar to enter a plea of not guilty.

This clause adds to section 356 two new subsections under which, if a plea of not guilty or a special plea is made or entered, the accused may, if he expressly declares his desire to do so, alter his plea to one of guilty, notwithstanding that he may have been given in charge to the jury. The jury will then be discharged and the Judge may sentence the accused.

Clause 10: Subclause (1) inserts in the principal Act a new section 367A, under which an accused who has been committed by a Magistrate's Court to the Supreme Court for trial may not, without the leave of the Court, adduce evidence in support of an alibi unless, before the expiry of 7 days after the date of his committal for trial, he has given notice of particulars of the alibi.

In particular, under subsection (2) of the new section, he may not without leave call a witness to give evidence in support of an alibi unless—

- (a) The notice under subsection (1) includes the name and address of the witness or, if that is not known, any information he has that might enable the finding of the witness:
- (b) If the name or address is not included in the notice, the Court is satisfied that before giving the notice the accused took all reasonable steps to ensure its discovery, and continued thereafter to do so:
- (c) If the name or address is not so included, but it, or information that might lead to the finding of the witness, is subsequently discovered, the accused forthwith gives notice of that fact:
- (d) If the prosecution notifies the accused that the witness has not been traced by the name or at the address given, he forthwith gives notice of such information as he then has or subsequently receives.

Under subsection (3), the Court is not to refuse leave to the accused to adduce evidence in support of an alibi if it appears to the Court that he was not notified of the requirements of this section.

Under subsection (4), evidence tendered to disprove an alibi may, subject to the Court's directions, be given before or after the evidence in support of it.

Subsections (5) to (7) deal with the time and method of giving any notice under the new section.

Subsection (8) defines the expression "evidence in support of an alibi".

The new section is in similar terms to those of section 11 of the Criminal Justice Act 1967 (U.K.). The drafting alterations are of a minor nature, for the purpose of adapting that section to New Zealand practice.

Subclause (2) provides that the new section will not apply to a person committed for trial before the commencement of the Bill.

Clause 11 is consequential on *clause 10*. *Subclause (1)* amends the Summary Proceedings Act 1957 to ensure that an accused who is committed for trial is given written notice of the requirements of the new section set out in *clause 10*.

Subclause (2) amends section 182 of the Summary Proceedings Act 1957 by requiring the Registrar of the Magistrate's Court to send to the Supreme Court with the depositions a record of any particulars of alibi given by the accused to the Magistrate's Court.

Clause 12 amends the Summary Proceedings Act 1957 so as to confer on Magistrates summary jurisdiction in respect of the new crimes set out in *clauses 3, 5, and 6* of this Bill.

Hon. Dr Finlay

CRIMES AMENDMENT

ANALYSIS

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2. Compulsion	7. Attempted murder proved on charge of murder
3. Taking or dealing with certain documents with intent to defraud	8. Joinder of counts
4. Interpretation of "document" for purposes of forgery, etc.	9. Plea
5. Altering or reproducing document with intent to defraud	10. Notice of alibi
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A BILL INTITULED

An Act to amend the Crimes Act 1961

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title and commencement—(1) This Act may be cited as the Crimes Amendment Act 1973, and shall be read together with and deemed part of the Crimes Act 1961* (hereinafter referred to as the principal Act).

10 (2) This Act shall come into force on the 1st day of January 1974.

2. Compulsion—Section 24 of the principal Act is hereby amended by inserting in subsection (2), after paragraph (k), the following paragraph:

15 "(ka) Section 235 (aggravated robbery):".

*1961, No. 43

Amendments: 1963, No. 120; 1966, No. 98; 1969, No. 73

3. Taking or dealing with certain documents with intent to defraud—The principal Act is hereby amended by inserting, after section 229, the following section:

“229A. Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to defraud,—

“(a) Takes or obtains any document that is capable of being used to obtain any privilege, benefit, pecuniary advantage, or valuable consideration; or

“(b) Uses or attempts to use any such document for the purpose of obtaining, for himself or for any other person, any privilege, benefit, pecuniary advantage, or valuable consideration.”

4. Interpretation of “document” for purposes of forgery, etc.—Section 263 of the principal Act is hereby amended by repealing the definition of the term “document”, in subsection (1), and substituting the following definition:

“‘Document’ means—

“(a) Any paper, parchment, or other material used for writing or printing, marked with matter capable of being read; or

“(b) Any photograph, or any photographic negative, plate, slide, film, or microfilm, or any photostatic negative; or

“(c) Any disc, tape, wire, sound track, card, or other material or device in or on which information, sounds, or other data are recorded, stored, or embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom; or

“(d) Any material by means of which information is supplied, whether directly or by means of any equipment, to any device used for recording or storing or processing information; or

“(e) Any material derived, whether directly or by means of any equipment, from information recorded or stored or processed by any device used for recording or storing or processing information:”.

5. Altering or reproducing document with intent to defraud—The principal Act is hereby further amended by inserting, after section 266, the following section:

“266A.(1) Every one is liable to imprisonment for a term not exceeding 10 years who, with intent to defraud,—

“(a) Makes any alteration in any document, whether by addition, insertion, deletion, obliteration, erasure, removal, or otherwise; or

5 “(b) By any means, makes a document that is a reproduction of the whole or any part or parts of another document, or of the whole or any parts of 2 or more documents, or of any combination of any of those things.

10 “(2) An offence against subsection (1) of this section is complete as soon as the alteration or document is made with such intent as aforesaid, although the offender may not have intended that any particular person should use or act upon
15 the document so altered or made, or should be induced by it to do or refrain from doing anything.”

6. Using altered or reproduced document with intent to defraud—The principal Act is hereby further amended by inserting, after section 266A (as inserted by section 5 of this
20 Act), the following section:

“266B. (1) Every one is liable to imprisonment for a term not exceeding 10 years who with intent to defraud, knowing a document to have been altered or made in a manner, and with the intent, referred to in subsection (1) of section 266A
25 of this Act,—

“ (a) Uses, deals with, or acts upon it; or

“ (b) Causes any person to use, deal with, or act upon it.

“ (2) For the purposes of this section, it is immaterial that the document was altered or made outside New Zealand.”

7. Attempted murder proved on charge of murder—Section 339 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“ (2) On a count charging murder, the jury may—

35 “ (a) In accordance with section 337 of this Act, find the accused guilty of an attempt to commit murder; or

“ (b) If the evidence proves manslaughter but does not prove murder, find the accused guilty of manslaughter—

40 but shall not on that count, except in accordance with subsection (2) of section 178 of this Act (which relates to infanticide) find the accused guilty of any other offence.”

8. Joinder of counts—Section 340 of the principal Act is hereby amended by repealing the proviso to subsection (1).

9. Plea—Section 356 of the principal Act is hereby amended by adding the following subsections:

“(3) If the accused pleads not guilty, or specially pleads, or if the Court has ordered the entry of a plea of not guilty, the accused may, if he expressly declares his desire to do so, alter his plea to one of guilty, notwithstanding that he may have been given in charge to the jury; and if he does so the Court shall discharge the jury from giving a verdict.

“(4) If pursuant to subsection (3) of this section the accused pleads guilty, the Judge shall have the same powers of sentencing or otherwise dealing with him, and of finally disposing of the charge to which the accused has pleaded guilty and of all incidental matters, as the Judge would have had if on arraignment the accused had pleaded guilty to the charge.”

10. Notice of alibi—(1) The principal Act is hereby further amended by inserting, after section 367 (as substituted by section 6 of the Crimes Amendment Act 1966), the following section:

“367A. (1) On the trial of any accused person who has been committed for trial, he shall not without the leave of the Court adduce evidence in support of an alibi unless, before the expiry of 7 days after the date on which he is so committed, he has given notice of particulars of the alibi.

“(2) Without prejudice to subsection (1) of this section, the accused shall not without the leave of the Court call any other person to give evidence in support of an alibi unless—

“(a) The notice under that subsection includes the name and address of the witness or, if the name or address is not known to the accused when he gives the notice, any information in his possession that might be of material assistance in finding the witness:

“(b) If the name or the address is not included in the notice, the Court is satisfied that before giving the notice the accused took all reasonable steps to ensure that the name or address would be ascertained, and that after giving the notice he continued to take all such steps:

5 “(c) If the name or the address is not included in the notice, but the accused subsequently discovers the name or address or receives other information that might be of material assistance in finding the witness, he forthwith gives notice of the name, address, or other information, as the case may require:

10 “(d) If the accused is notified by or on behalf of the prosecutor that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information which is in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

15 “(3) The Court shall not refuse leave under this section if it appears to the Court that the accused was not given notice, in accordance with section 168A of the Summary Proceedings Act 1957, of the requirements of this section.

20 “(4) Any evidence tendered to disprove an alibi may, subject to any directions by the Court as to the time when it is to be given, be given before or after evidence is given in support of the alibi.

25 “(5) Any notice purporting to be given under this section on behalf of the accused by his counsel or solicitor shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

30 “(6) A notice under subsection (1) of this section shall either be given in Court during or at the end of the preliminary hearing before the Magistrate’s Court or be given in writing to the prosecutor; and a notice under paragraph (c) or paragraph (d) of subsection (2) of this section shall be given in writing to the prosecutor.

“(7) A notice to the prosecutor under this section shall be given—

35 “(a) In the case of a prosecution on behalf of the Crown, by delivering it to a Crown solicitor, or by leaving it at his office, or by sending it by registered letter addressed to him at his office:

40 “(b) In the case of a private prosecutor represented by counsel, by delivering it to such counsel, or by leaving it at his office, or by sending it by registered letter addressed to him at his office:

“(c) In the case of a private prosecutor not represented by counsel, by delivering it to him, or by leaving it for him at his place of residence with a member of his family living with him and appearing to be of or over the age of 18 years, or by sending it by registered letter addressed to him at his last known or usual place of residence or at his place of business. 5

“(8) In this section, the expression ‘evidence in support of an alibi’ means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.” 10

(2) Section 367A of the principal Act (as inserted by subsection (1) of this section) shall not apply in respect of any accused person who has been committed for trial before the commencement of this Act. 15

Cf. Criminal Justice Act 1967, s. 11 (U.K.)

11. Defendant to be warned as to law relating to notice of alibi—(1) The Summary Proceedings Act 1957 is hereby amended by inserting, after section 168, the following section: 20

“168A. If the Court commits the defendant for trial, the Registrar shall give or cause to be given to the defendant’s counsel or solicitor, or to the defendant if he is not represented, a written notice, in the prescribed form, of the requirements of section 367A of the Crimes Act 1961 relating to the giving of notice of particulars of alibi. The fact that the written notice was so given to the defendant’s counsel or solicitor, or to the defendant, shall be recorded on the form of committal of the defendant for trial.” 25 30

(2) Section 182 of the Summary Proceedings Act 1957 is hereby amended by adding the following as subsection (2):

“(2) The Registrar of the Magistrate’s Court shall also send with the documents referred to in subsection (1) of this section a record of any particulars of alibi given by the defendant to the Magistrate’s Court under section 367A of the Crimes Act 1961.” 35

12. Summary jurisdiction—Part I of the First Schedule to the Summary Proceedings Act 1957 is hereby amended by inserting, in their appropriate numerical order, the following items:

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| 5 | "229A | Taking or dealing with certain documents with intent to defraud |
| | "266A | Altering or reproducing document with intent to defraud |
| 10 | "266B | Using altered or reproduced document with intent to defraud". |