

[AS REPORTED FROM THE STATUTES REVISION
COMMITTEE]

House of Representatives, 6 June 1973.

The figure struck out by the Committee is shown in *italics* within bold round brackets; the figure inserted is shown in roman underlined with a double rule.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

House of Representatives, 21 November 1973

Words inserted by the Committee are shown with triple rule before first line and after last line.

Hon. Dr Finlay

CRIMES AMENDMENT

ANALYSIS

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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

New

2A. **Unlawful assembly**—Section 86 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner, or so conduct themselves when assembled, as to cause persons in the neighbourhood of the assembly to fear, on reasonable grounds, that the persons so assembled—

“(a) Will use violence against persons or property in that neighbourhood or elsewhere; or

“(b) Will, by that assembly, needlessly and without reasonable cause provoke other persons to use violence against persons or property in that neighbourhood:

“Provided that no one shall be deemed to provoke other persons needlessly and without reasonable cause by doing or saying anything that he is lawfully entitled to do or say.”

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

5 “(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

10 “(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.”

15 **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,—

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

25 “(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.

30 “(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 the document so altered or made, or should be induced by it to do or refrain from doing anything.”

35 **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 Act), the following section:

40 “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 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: 5

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

“(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— 10

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.” 15

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. 20 25

“(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.” 30

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: 35

“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) 14 days after the date on which he is so committed, he has given notice of particulars of the alibi. 40

“(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—

5 “(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:

10 “(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:

15 “(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:

20 “(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.

25 “(3) The Court shall not refuse leave under this section if it appears to the Court that the accused was not given notice, 30 in accordance with section 168A of the Summary Proceedings Act 1957, of the requirements of this section.

“ (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 35 support of the alibi.

“ (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.

40 “ (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 45 given in writing to the prosecutor.

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

“(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: 5

“(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: 10

“(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. 15

“(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.” 20

(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. 25

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: 30

“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.” 35 40

(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 5 of the Crimes Act 1961.”

- 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
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| 10 | items: | |
| | “229A | Taking or dealing with certain documents with intent to defraud |
| | “266A | Altering or reproducing document with intent to defraud |
| 15 | “266B | Using altered or reproduced document with intent to defraud”. |