

Administration of Justice (Reform of Contempt of Court) Bill

Member's Bill

Explanatory note

General policy statement

The law of contempt is a very important area of the law. Some contend it is mainly about protecting Judges from criticism. That is wrong. It is about protecting the justice system and public confidence in the just, speedy and inexpensive administration of that system.

In particular, the law of contempt ensures—

- Court hearings are not disrupted;
- Trials are not prejudiced by publicity;
- Jurors decide cases only on lawfully admitted evidence;
- Judgments and court orders are enforced; and
- The Judiciary is protected as far as possible from false and malicious attacks which undermine public confidence in its independence, integrity and impartiality.

The law of contempt in New Zealand is in an unsatisfactory state. There are some statutory provisions which deal with the subject and there are also a number of relevant court decisions.

In 2009 some preliminary work was undertaken on the desirability of reforming the law of contempt and incorporating all relevant provisions in a single statute. The purpose of such a reform would be to ensure that everyone (including the media, bloggers and other interested persons) all know the relevant rules and what is both acceptable and unacceptable.

The Law Commission was asked to consider the desirability of the reform of the law of contempt of court and whether a modern statute was required. The Commission produced a discussion document to enable relevant submitters and consultees to give

their views then, in May 2017, the Commission reported to the then Minister responsible for the Law Commission and submitted a report under s16 of the Law Commission Act 1985. The Commission concluded that New Zealand should retain the law of contempt of court, but there were three reasons why it was necessary to reform it—

- First the law is not readily accessible. Collecting the law in one single piece of legislation will make it much more accessible.
- The law is not clear or understandable. The Commission commented that the language of contempt was antiquated and inappropriate in modern New Zealand and that even the word ‘contempt’ was odd. The Commission emphasised that modernising the language in this area so far as possible was desirable.
- The law was not working as it should in certain areas. In particular it has simply not kept pace with the digital age which has brought with it the ability of a huge amount of online information and the unrestricted ability of people to communicate their views by way of the internet and social media.

The inherent jurisdiction of the Court is preserved for any issues for contempt not covered by the statute.

A draft bill was annexed to the report and it is that draft which forms this member’s bill.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force on the day after the day the Bill receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 sets out the principal purposes and objectives of the Bill.

Clause 4 sets out the definitions for the Bill.

Clause 5 provides for the transitional and savings provisions in *Schedule 1*.

Clause 6 provides that the Bill binds the Crown.

Part 2

Provisions to promote and facilitate administration of justice

Subpart 1—Limiting publication of trial-related information

Meaning of publication

Clause 7 provides that for the purposes of *subpart 1 of Part 2* of the Bill (which deals with limiting the publication of trial-related information) **publication** is to be inter-

preted as having the same meaning as in section 195 of the Criminal Procedure Act 2011.

Suppression orders

Clause 8 enacts a prohibition on the publication or reporting of an accused person's previous convictions and any serious concurrent charges.

Clause 9 provides for temporary suppression orders to protect fair trial rights.

Clause 10 sets out the duration of suppression orders.

Clause 11 clarifies that the suppression regime established in this *subpart* does not interfere with Police business.

Clause 12 affirms the media's standing to challenge or be heard in relation to suppression orders or take down orders.

Clause 13 creates an offence for failing to comply with automatic suppression under *clause 8* or suppression or take down order under *clause 9*.

Subpart 2—Prohibiting publication of certain criminal trial information

Clause 14 creates an offence for publishing certain criminal trial information.

Clause 15 provides guidance for a court will determine whether a publication creates a real risk of prejudice to a right to a fair jury trial.

Subpart 3—Dealing with disruptive behaviour relating to court proceedings

Subpart 3 makes provision for dealing with disruptive behaviour in court proceedings.

Subpart 4—Provisions relating to juries

Clause 19 sets out an offence for jury member to investigate or research case.

Clause 20 sets out an offence to disclose jury deliberations.

Clause 21 provides an exception to the offence in *clause 20* permitting jurors to disclose information in certain circumstances and to certain people after the jury has been discharged.

Subpart 5—Enforcement of certain court orders

Clause 22 provides a means for enforcing court orders.

Clause 23 provides that non-compliance with court orders should be treated similarly to other offending.

Subpart 6—Prohibiting publication of untrue allegation or accusation against Judges or courts

Subpart 6 makes provisions for dealing with a person who publishes untrue allegations or accusations against a Judge or court.

Part 3

General provisions and consequential amendments

Clause 28 provides that the listed powers in this Bill may be exercised by the court as often as necessary.

Clause 29 clarifies that relationship of contempt with the court's inherent jurisdiction.

Clause 30 provides that only the Solicitor-General may conduct or authorise the conduct of a prosecution for the offence against *clause 24*.

Clause 31 makes the consequential amendments as set out in *Schedule 2*.

Hon Christopher Finlayson

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Member's Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Administration of Justice (Reform of Contempt of Court) Act **2018**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1
Preliminary provisions

- 3 Purpose and objective**
- (1) The principal purposes of this Act are to— 10
- (a) promote and facilitate the administration of justice and uphold the rule of law; and
 - (b) maintain public confidence in the judicial system; and
 - (c) reform the law of contempt of the court.
- (2) To those ends, this Act enables courts to make certain orders and impose certain sanctions in order to achieve the following objectives: 15
- (a) civil and criminal court proceedings are heard and determined fairly by independent and impartial Judges:
 - (b) jury verdicts are based only on facts admitted or proved by properly adduced evidence after free, frank, and confidential jury discussions, and the finality of verdicts will be protected: 20
 - (c) individual cases are heard and determined in a manner that is expeditious, efficient, and consistent with the principles of justice:
 - (d) except in unusual circumstances, proceedings will be open to the public and news media: 25
 - (e) the independence, integrity, and impartiality of the judiciary will be protected.
- (3) In reforming the law of contempt of court in New Zealand, this Act abolishes the common law contempts of contempt in the face of the court, publishing information that interferes with a fair trial, contempt by jurors, disobeying court orders, and scandalising the court, while preserving the inherent jurisdiction of the High Court to punish for contempt of court in circumstances where this Act does not apply. 30
- 4 Interpretation**
- In this Act, unless the context otherwise requires,— 35
- bailiff** has the same meaning as section 4 of the District Court Act 2016

- category 3 offence** and **category 4 offence** have the meanings given to them in section 6 of the Criminal Procedure Act 2011
- charged**, in relation to an offence, means charged with the offence by charging document filed under the Criminal Procedure Act 2011
- constable** has the same meaning as in section 4 of the Policing Act 2008 5
- court** means any of the following courts:
- (a) the District Court:
 - (b) the High Court:
 - (c) the Court of Appeal:
 - (d) the Supreme Court 10
- judicial officer** means—
- (a) a High Court Judge:
 - (b) a District Court Judge:
 - (c) a Community Magistrate:
 - (d) a Justice of the Peace 15
- officer of the court** means—
- (a) a person who holds an office referred to in section 33 of the Senior Courts Act 2016:
 - (b) a person who is an officer of the court as defined in section 4 of the District Court Act 2016: 20
 - (c) a person who is an officer of any other court to which this Act is applied, if the person is an officer of the court within the meaning of the Act that constitutes that court
- online content host**, in relation to any information, means the person who has control over the part of the electronic retrieval system, such as an Internet site or an online application, on which the information is posted and accessible by the user 25
- person**, in relation to a defendant or other party in any proceedings, includes a body corporate
- Police employee** has the same meaning as in section 4 of the Policing Act 2008 30
- public prosecution** has the same meaning as in section 5 of the Criminal Procedure Act 2011
- publish**, except in **subpart 1 of Part 2**, includes—
- (a) insert in any newspaper or other periodical publication printed, published, or distributed in New Zealand; or 35
 - (b) send to any person, by post or otherwise; or
 - (c) deliver to any person or leave upon premises occupied by any person; or

- (d) broadcast within the meaning of the Broadcasting Act 1989; or
 - (e) include in any film or video recording; or
 - (f) disseminate by means of the Internet or any other electronic, digital, or similar medium; or
 - (g) display by way of a sign, a notice, a poster, or other means 5
- triable by a jury** means—
- (a) tried by a jury in accordance with sections 50 and 73 of the Criminal Procedure Act 2011; or
 - (b) tried by a jury in accordance with section 74 of that Act if no order is made under section 102 or 103 of that Act that the person be tried before a Judge without a jury. 10
- 5 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.
- 6 Act binds the Crown** 15
- This Act binds the Crown.

Part 2

Provisions to promote and facilitate administration of justice

Subpart 1—Limiting publication of trial-related information

Meaning of publication 20

7 Interpretation

In this subpart, unless the context otherwise requires, **publication** has the same meaning as in section 195 of the Criminal Procedure Act 2011.

Suppression orders

8 Automatic suppression of details of previous convictions and concurrent charges 25

- (1) If a person (the **arrested person**) is arrested for an offence and may be triable by a jury if charged with that offence (**offence A**), no person may publish details of the following except as permitted by or under this section:
 - (a) any of the arrested person’s previous convictions for any offence: 30
 - (b) any other offence that is a category 3 offence or a category 4 offence, if the arrested person is—
 - (i) already charged with that other offence when arrested for offence A; or

- (ii) charged with that other offence at the same time as the person is charged with offence A; or
- (iii) charged with that other offence at any subsequent time while the person remains charged with offence A.
- (2) A prohibition imposed by **subsection (1)** applies until the start of the trial for offence A, unless a different period applies under **subsection (3)(b)**. 5
- (3) If the arrested person is charged with offence A, the pre-trial court or trial court (as the case may be)—
- (a) must keep the prohibition under review:
- (b) may, by order made on application or on its own initiative,— 10
- (i) lift the prohibition before the trial:
- (ii) extend the prohibition for a period that ends after the start of the trial:
- (iii) vary the effect of the prohibition by permitting the publication of any details as specified in the order. 15
- (4) In addition, the court may order that an online content host take down, or disable public access to, any specific details referred to in **subsection (1)** that the online content host has made accessible to members of the public.
- (5) The prohibition imposed by **subsection (1)** ceases to apply if—
- (a) the court makes an order to that effect under **subsection (3)(b)(i)**; or 20
- (b) the arrested person ceases to be subject to arrest for offence A; or
- (c) the charge against the arrested person for offence A is withdrawn, dismissed, stayed, or otherwise disposed of; or
- (d) the arrested person does not elect trial by jury or the court orders that the trial for offence A is to be a Judge-alone trial. 25
- (6) The prohibition does not prevent the disclosure of any details referred to in subsection (1) if the disclosure is made to or by any of the following persons for the purpose of any proposed proceedings against the arrested person for offence A:
- (a) the Solicitor-General: 30
- (b) a Police employee:
- (c) any person who is conducting or proposing to conduct a public prosecution against the arrested person for offence A:
- (d) a lawyer acting for the arrested person.
- 9 Court may suppress trial-related information temporarily** 35
- (1) If a court is satisfied that it appears to be necessary for avoiding a real risk of prejudice to the administration of justice in any criminal trial, or any part of the trial, the court may order that the publication of any of the following informa-

tion be postponed for any period that the court thinks necessary for that purpose:

- (a) any specific information relating to matters of character of any person who is accused of or charged with an offence:
 - (b) any specific information relating to the previous convictions or matters of character of any person who—
 - (i) may be called as a witness; or
 - (ii) may be a victim of the offence; or
 - (iii) is connected with the person who is accused of or charged with the offence:
 - (c) any other specific information in relation to any trial.
- (2) In addition, the court may order that an online content host take down, or disable public access to, any specific information referred to in **subsection (1)** that the online content host has made accessible to members of the public.
- (3) Despite **subsection (1)**, the court may make an interim order of any kind described in **subsection (1)** or **(2)** if the person arrested for the offence advances an arguable case that publication would be likely to create a real risk of prejudice to a fair trial.
- (4) An interim order under **subsection (3)** may be made or renewed only in the absence of an order under **subsection (1)** or **(2)** and expires at the person's next court appearance for the offence, and may be renewed only if the court is satisfied that publication would be likely to create a real risk of prejudice to a fair trial.
- (5) The court may make an order under this section at any time after the person is arrested for an offence and before the completion of all proceedings relating to the offence.
- (6) If the District Court is presided over by 1 or more Justices, or 1 or more Community Magistrates, the court has the same power to make orders under this section as it has under section 362 of the Criminal Procedure Act 2011 to make suppression orders under subpart 3 of Part 5 of that Act.

10 Duration of suppression order and right to review

- (1) An order under **section 9(1)**—
- (a) may be made for a limited period ending on a date specified in the order; and
 - (b) may be renewed for a further period or periods by the court; and
 - (c) expires at the completion of all proceedings relating to the offence, unless it expires at an earlier time in accordance with an order of the court or by operation of law.
- (2) The order may be reviewed and varied by the court at any time.

- 11 Publication by or at request of Police, etc**
- (1) Nothing in this subpart prevents publication by or at the request of any Police employee of the name, address, or occupation of any person who has escaped from lawful custody or has failed to attend any court when lawfully required to do so if that publication is made for the purpose of facilitating that person's recapture or arrest. 5
- (2) Nothing in this subpart prevents publication of the name, address, or occupation of any person, or any details of the offences charged, to—
- (a) any person assisting with the administration of the sentence imposed on the person or with the rehabilitation of the person; or 10
- (b) any Police employee, or any officer or employee of the Department of Corrections or of the Ministry of Justice, who requires the information for the purposes of his or her official duties; or
- (c) any person who is conducting or proposing to conduct a public prosecution against the person for an offence, and who requires the information for the purposes of— 15
- (i) deciding whether to commence proceedings; or
- (ii) conducting that public prosecution.
- 12 Standing of members of media**
- (1) This section applies to— 20
- (a) a person who is reporting on the proceedings and who is either subject to or employed by an organisation that is subject to—
- (i) a code of ethics; and
- (ii) the complaints procedures of the Broadcasting Standards Authority or the Press Council; and 25
- (b) any other person reporting on the proceedings with the permission of the court.
- (2) A person to whom this section applies has standing to initiate, and be heard in relation to, any application for an order under **section 8** or **9**, and any application to renew, vary, or revoke the order. 30
- 13 Offences relating to breach of this subpart**
- (1) A person commits an offence if the person knowingly or recklessly—
- (a) fails to comply with **section 8(1)**; or
- (b) fails to comply with an order made under **section 8** or **9**.
- (2) A person commits an offence if the person— 35
- (a) fails to comply with **section 8(1)**; or
- (b) fails to comply with an order made under **section 8** or **9**.

- (3) **Subsection (2)** does not apply to a person who hosts material on Internet sites or other electronic retrieval systems that can be accessed by a user unless the specific information has been placed or entered on the site or system by that person.
- (4) A person who commits an offence against **subsection (1)** is liable on conviction,— 5
- (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or a fine not exceeding \$25,000;
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (5) A person who commits an offence against **subsection (2)** is liable on conviction,— 10
- (a) in the case of an individual, to a fine not exceeding \$10,000;
- (b) in the case of a body corporate, to a fine not exceeding \$40,000.
- (6) In a prosecution for an offence against **subsection (2)**, it is not necessary for the prosecution to prove that the defendant intended to commit an offence. 15

Subpart 2—Prohibiting publication of certain criminal trial information

14 Offence to publish certain criminal trial information

- (1) This section applies if a person (the **arrested person**) is arrested for an offence and may be triable by a jury if charged with that offence, and—
- (a) applies until the completion of all proceedings relating to the jury trial (including pre-trial proceedings); and 20
- (b) ceases to apply if the charge is dealt with or disposed of otherwise than by a jury trial.
- (2) A person commits an offence if—
- (a) the person at any time intentionally publishes any information that is relevant to any trial to which this section applies; and 25
- (b) there is a real risk that the publication could prejudice the arrested person’s right to a fair trial.
- (3) A person who commits an offence against **subsection (2)** is liable on conviction,— 30
- (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$25,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (4) A person has a defence in a prosecution for an offence against **subsection (2)** if the person proves that,— 35
- (a) at the time of the publication of the information and after taking all reasonable care, the person was unaware of, and had no reason to be

aware of, the arrested person's arrest, any pre-trial proceedings, or the possibility or existence of the trial; or

- (b) as the online content host or distributor of the publication, after taking all reasonable care, the person did not know and had no reason to suspect that it contained information that created a real risk of prejudicing the arrested person's right to a fair trial; or 5
- (c) the publication was in good faith made as a contribution to, or part of, a discussion of public affairs or matters of general public interest; or
- (d) the publication was a fair and accurate report of court proceedings held in public and published contemporaneously and in good faith. 10

15 How court determines whether publication creates real risk of prejudice to right to fair trial

- (1) In determining whether, for the purpose of **section 14(2)(b)**, a publication creates a real risk of prejudice to an arrested person's right to a fair trial, the court must consider the following: 15
 - (a) the likely effect of the publication as a whole:
 - (b) the persons or groups of persons to whom the publication is likely to be made available:
 - (c) the medium in which the publication is presented and its potential accessibility and durability: 20
 - (d) the character of the publication, including the language and tone used in it:
 - (e) any other relevant circumstances relating to the likely effect of the publication.
- (2) The court may (without limitation) treat the inclusion in a publication of any of the following information as creating a real risk of prejudicing the arrested person's right to a fair trial: 25
 - (a) information indicating that the arrested person is of bad character, including previous misconduct, criminal or gang affiliations, or criticism of the arrested person's personality or previous charges or acquittals: 30
 - (b) information indicating that the arrested person has confessed to the charge, or any component of it, or to conduct that may result in charges being laid against the person:
 - (c) information commenting on the credibility of the arrested person or any witnesses: 35
 - (d) information given at trial in the jury's absence or information that has been ruled inadmissible at trial:

- (e) photographs, pictorial information, or other information that reveals the identity of the arrested person where the identity of the person is, or is likely to be, in issue at trial.

Subpart 3—Dealing with disruptive behaviour relating to court proceedings 5

16 Judicial officer may cite disruptive behaviour

- (1) This section applies if a judicial officer believes that any person is—
 - (a) wilfully disrupting the proceedings of a court; or
 - (b) wilfully and without lawful excuse disobeying any order or direction of the court in the course of the hearing of any proceedings. 10
- (2) The judicial officer may cite the person for disruptive behaviour and order that the person be taken into custody and detained until the court rises for the day.
- (3) Any constable or officer of the court, with or without the assistance of any other person, may take the person into custody in accordance with the order.
- (4) Any person taken into custody under this section must be dealt with in accordance with the procedure in **section 17**, which applies for the purpose of this subpart. 15

17 Procedure for dealing with person cited for disruptive behaviour

- (1) While being held in custody, a person cited for disruptive behaviour must be given a reasonable opportunity to— 20
 - (a) obtain legal representation; and
 - (b) apologise to the court.
- (2) Before the close of the day on which the person is cited and ordered to be detained, a Judge must review the matter and, if the Judge considers that further punishment may be necessary, adjourn any hearing and set the matter down for determination on a later date within the next 7 days. 25
- (3) The Bail Act 2000 applies, with the necessary modifications, as if the person cited were charged with an offence that carries the penalties specified in **subsection (5)(b)**.
- (4) If the Judge sets down the matter for determination, he or she— 30
 - (a) must consider whether there are exceptional circumstances that warrant a different Judge hearing the matter; and
 - (b) must provide a written statement to the person cited that specifies the behaviour that he or she believes may cause the person to have committed disruptive behaviour and to be liable for further punishment; and 35
 - (c) may receive any explanation he or she considers helpful to ensure that the case proceeds on a reliable factual platform.

- (5) On finding a person guilty of doing anything described in **section 16(1)(a)** or **(b)**, a Judge—
- (a) must not convict the person; but
 - (b) may—
 - (i) issue a warrant committing the person to imprisonment for a term not exceeding 3 months; or 5
 - (ii) impose on the person a fine not exceeding \$10,000.

18 Further provision applying for purpose of this subpart

- (1) The Sentencing Act 2002 and subpart 5 of Part 6 of the Criminal Procedure Act 2011 (appeals against finding of or sentence for contempt of court) apply to any action taken under **section 17(5)** as if the finding were a conviction for an offence and any imprisonment or fine were a sentence. 10
- (2) A warrant for the committal of any person to prison under **section 17(5)** must be directed to a bailiff or constable, who may take the person into custody, and every constable has a duty to assist in the execution of the orders or warrants issued under that provision. 15
- (3) Any person committed to prison by any court under **section 17(5)** must be committed to a prison established under or deemed to be established under the Corrections Act 2004, and the prison manager of the prison mentioned in the order or warrant is bound to receive and keep the person until the person is lawfully discharged. 20

Subpart 4—Provisions relating to juries

19 Offence for jury members to investigate or research case

- (1) A person commits an offence if the person is a member of a jury constituted for a case and— 25
- (a) during the trial period the person intentionally investigates or researches information relevant to the case; and
 - (b) does so when the person knows or ought reasonably to know it is or may be information relevant to the case.
- (2) It is not an offence against **subsection (1)** if the investigation or research is undertaken with the permission, or at the direction, of the trial Judge. 30
- (3) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000.
- (4) In this section,— 35
- information to the relevant case** means information about any of the following—
- (a) the defendant:

- (b) any other person involved in the events which are the subject of the case:
- (c) any person involved in the trial, including a witness:
- (d) the events that are the subject of the case:
- (e) the law relating to the case:
- (f) the law of evidence 5

investigate or research includes—

- (a) ask a question or have a discussion (by any means) with a person who is not a jury member or the trial Judge:
- (b) search any information source, including the Internet:
- (c) visit or inspect a place or an object: 10
- (d) conduct an experiment:
- (e) ask another person to perform any of the actions listed above

trial period means the period that—

- (a) begins when a jury has been constituted under section 19 of the Juries Act 1981; and 15
- (b) ends when the jury is discharged or, in the case of an individual jury member who is discharged during the trial, the member is discharged.

20 Offence to disclose jury deliberations

- (1) A person commits an offence if the person intentionally discloses, solicits, or obtains information about statements made, opinions expressed, arguments advanced, or votes cast by members of a jury in the course of their deliberations in proceedings before a court. 20
- (2) It is not an offence against **subsection (1)** if, during a trial, the information—
 - (a) is sought by, or disclosed to, the court in the course of the performance of the jury’s functions; or 25
 - (b) is disclosed to the trial Judge in a complaint or allegation of misconduct by a juror or is disclosed for the purpose of investigating whether an offence has been committed.
- (3) It is not an offence against **subsection (1)** if the information is sought or disclosed— 30
 - (a) by a current or former jury member in discussions with a health practitioner who is treating him or her in relation to issues arising out of his or her jury service; or
 - (b) during or after the trial with the permission of the presiding Judge or the relevant head of bench, including for the purpose of conducting research about juries or jury service. 35
- (4) A person who commits an offence against **subsection (1)** is liable on conviction to,—

- (a) in the case of an individual, imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000:
- (b) in the case of a body corporate, a fine not exceeding \$40,000.
- (5) In this section, **health practitioner** has the same meaning as in section 5 of the Health Practitioners Competence Assurance Act 2003. 5
- 21 Limited disclosure of jury deliberations permitted after jury discharged**
- (1) This section applies in relation to a jury trial if the trial has been completed and the jury discharged.
- (2) A person who has reason to believe that an offence against **section 19** or **20** may have been committed in relation to the jury trial, or that the conduct of any juror in the trial may provide grounds for a direction that a new trial be held or grounds for an appeal, may refer the matter to any person referred to in **subsection (3)**. 10
- (3) The persons concerned are—
- (a) the Solicitor-General: 15
- (b) a Police employee:
- (c) the prosecutor in the completed trial or any person who is conducting or proposing to conduct a public prosecution against a person for the offence:
- (d) a lawyer acting for the offender. 20
- (4) The person who refers the matter may disclose to the recipient information about statements made, opinions expressed, arguments advanced, or votes cast by members of a jury in the course of their deliberations.
- (5) A recipient of information under **subsection (4)** may disclose the information to any other person only so far as is necessary to enable the Police to investigate whether an offence has been committed and to consider whether the offender should be prosecuted. 25

Subpart 5—Enforcement of certain court orders

- 22 Certain court orders and undertakings may be enforced**
- (1) This section applies to— 30
- (a) any interim or final order, decision, decree, direction, or judgment of a court (a **court order**) to do or abstain from doing something, except a court order to pay a sum of money or for the recovery of land:
- (b) any undertaking given to the court if, on the faith of the undertaking, the court has sanctioned a particular course of action or inaction. 35
- (2) A court may enforce the court order or undertaking against a person by taking action provided for in **subsection (3)** on application by the party who sought

the order or undertaking being enforced, or on application by the Solicitor-General.

- (3) The court may—
 - (a) either—
 - (i) issue a warrant committing the person or a director or an officer of the body corporate, as the case may be, to a term of imprisonment not exceeding 6 months; or 5
 - (ii) impose on the person a fine not exceeding \$25,000; and
 - (b) if the court concerned is the High Court, make a sequestration order in accordance with the rules of court. 10
- (4) Before taking action under **subsection (3)**, the court—
 - (a) must be satisfied beyond reasonable doubt that—
 - (i) the court order or undertaking being enforced has been made in clear and unambiguous terms and is clearly binding on the person; and 15
 - (ii) the person has knowledge or proper notice of the terms of the court order or undertaking being enforced; and
 - (iii) the person has, without reasonable excuse, intentionally failed to comply with the court order or undertaking being enforced; and
 - (b) must also be satisfied that other methods of enforcing the court order or undertaking have been considered and are inappropriate or have been tried unsuccessfully. 20

23 Further provisions applying for purpose of section 22

- (1) The Sentencing Act 2002 and subpart 5 of Part 6 of the Criminal Procedure Act 2011 apply to any committal or fine imposed under **section 22(3)** as if the sanction were a conviction for an offence to which that subpart 5 applies and any imprisonment or fine were a sentence. 25
- (2) A warrant for the committal of any person to prison under **section 22(3)** must be directed to a bailiff or constable, who may take the person into custody, and every constable has a duty to assist in the execution of the orders or warrants issued under that provision. 30
- (3) Any person committed to prison by any court under **section 22(3)** must be committed to a prison established under or deemed to be established under the Corrections Act 2004, and the prison manager of the prison mentioned in the order or warrant is bound to receive and keep the person until the person is lawfully discharged. 35
- (4) If at any time it appears to the satisfaction of a Judge of the court that committed the person to prison that the person ought for any reason to be discharged, the Judge may order the person's discharge from prison on any terms (includ-

ing liability to rearrest if the terms are not complied with) that the Judge thinks fit.

- (5) A committal or fine imposed under **section 22(3)** does not operate to extinguish or affect the liability of the person to comply with a court order.

Subpart 6—Prohibiting publication of untrue allegations or accusations against Judges or courts 5

24 Offence to publish untrue allegation or accusation against Judge or court

- (1) A person commits an offence if the person publishes an allegation or accusation made by that person or another person against a Judge or a court, and there is a real risk that the publication could undermine public confidence in the independence, integrity, or impartiality of the judiciary or a court. 10
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment of less than 2 years or a fine not exceeding \$50,000: 15
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (3) A person has a defence in a prosecution for an offence against **subsection (1)** if the person proves on the balance of probabilities that—
- (a) the allegation or accusation was true or not materially different from the truth; or 20
- (b) where the prosecution is based on all or any of the contents of a publication, that publication taken as a whole was in substance true or in substance not materially different from the truth.
- (4) A person has a defence in a prosecution for an offence against **subsection (1)** if the person proves that, as the online content host or distributor of the publication, the person did not know that it contained an allegation or accusation against a Judge or a court that created a real risk of undermining public confidence in the independence, integrity, or impartiality of the judiciary or a court. 25
- (5) In this section,—
- court** means any court, including a court as defined in **section 4** 30
- Judge** means a Judge of any court.

25 Further provisions applying for purpose of section 24

- (1) This section applies if the Solicitor-General has reason to believe that a person may have committed an offence against **section 24(1)**.
- (2) The Solicitor-General may do 1 or more of the following: 35
- (a) request the alleged offender to retract the allegation or accusation or apologise for it, or both:

- (b) request the alleged offender to retract the allegation or accusation pending the hearing of the charge:
 - (c) request an online content host to take down, or disable public access to, any specified information relating to the allegation or accusation that the online content host has made accessible to members of the public: 5
 - (d) apply to the High Court for an order under **section 26**.
 - (3) Nothing in **subsection (2)** obliges the Solicitor-General to take any action described in **paragraphs (a) to (c)** of that subsection or requires that a charge for the alleged offence be filed before he or she may apply for an order under **section 26** . 10
 - (4) A charge for an offence against **section 24(1)** may be brought only by or on behalf of the Solicitor-General, and the prosecutor must be satisfied that there is a sufficient evidential foundation for the charge and that the prosecution is in the public interest.
 - (5) For the purpose of deciding whether to prosecute a person for an offence against **section 24(1)**, the prosecutor may consider whether any complaint about the Judge’s conduct has been made to the Police, or to the Judicial Conduct Commissioner under the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, and consider any explanation provided by the Judge. 15
 - (6) Despite anything in the Criminal Procedure Act 2011 or the Search and Surveillance Act 2012,— 20
 - (a) the Solicitor-General may investigate whether a person has committed an offence against **section 24(1)** or may request the Police to do so:
 - (b) the Solicitor-General and the Police may exchange information for the purpose of an investigation: 25
 - (c) the powers that a constable or any other Police employee may exercise under any enactment in the case of an alleged offence punishable by a term of imprisonment of less than 2 years may be exercised in relation to the alleged offence against **section 24(1)** and, subject to **subsection (4)**, a charge may be filed against the alleged offender. 30
- 26 High Court may make orders**
- (1) On application under **section 25(2)(d)**, the High Court may, if satisfied that there is an arguable case that a person has committed an offence against **section 24(1)**, order the person to do 1 or more of the following:
 - (a) take down, or disable public access to, material: 35
 - (b) retract the allegation or accusation:
 - (c) not encourage any other persons to engage in similar communications:
 - (d) publish a correction:
 - (e) publish an apology.

- (2) The court may—
- (a) make an order on an interim basis, pending the filing of a charging document:
 - (b) vary or discharge any interim order:
 - (c) make an interim order permanent if the interim order is accepted or a person is convicted of the charge. 5
- (3) In addition, the court may order that an online content host take down, or disable public access to, any material related to the suspected offence that the online content host has made accessible to members of the public.
- (4) In making an order that a correction or an apology be published under **subsections (1)(d) or (e)**, the court may include requirements relating to— 10
- (a) the content of the correction or apology:
 - (b) the time of publication of the correction or apology:
 - (c) the prominence to be given to the correction or apology in the particular medium in which it is published. 15
- (5) In doing anything under this section, the court must act consistently with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.
- (6) A person to whom **section 12(1)** applies has standing to be heard in relation to, any application for an order under **subsection (1)(a)**, and any application to renew, vary, or revoke the order. 20
- (7) If an interim order is not made permanent, it lapses.
- 27 Offence to fail to comply with order under section 26**
- (1) A person commits an offence if the person knowingly or recklessly fails to comply with an order made under **section 26**.
- (2) A person commits an offence if the person fails to comply with an order made under **section 26**. 25
- (3) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or a fine not exceeding \$25,000: 30
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (4) A person who commits an offence against **subsection (2)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$10,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$40,000. 35
- (5) In a prosecution for an offence against **subsection (2)**, it is not necessary for the prosecution to prove that the defendant intended to commit an offence.

Part 3

General provisions and consequential amendments

- 28 Judicial powers exercisable as often as necessary to control proceedings**
- (1) This section applies to the following actions under this Act:
- (a) making an order under **section 8, 9, 10, or 26:** 5
 - (b) citing a person under **section 16:**
 - (c) issuing a warrant of committal or imposing a fine under **section 17 or 22.**
- (2) Unless the context otherwise requires, the power of a Judge or judicial officer to make any order or take any action under this Act to which this section applies is exercisable in any proceedings as often as the Judge or judicial officer considers necessary to control the proceedings. 10
- 29 How this Act relates to other authority or power to punish for contempt of court**
- (1) Where this Act confers on a court or Judge any jurisdiction, authority, or power to punish a person for contravening or failing to comply with any provision of this Act, the court or Judge has no inherent jurisdiction or power to punish that conduct. 15
- (2) Nothing in this Act limits or affects any authority or power of a court, including the authority of the High Court under its inherent jurisdiction, to punish any person for contempt of court in any circumstances to which this Act does not apply. 20
- (3) The Supreme Court and the Court of Appeal have the same authority as the High Court to punish any person for contempt of court in any circumstances to which this Act does not apply. 25
- (4) The following contempts are abolished as part of the common law of New Zealand:
- (a) contempt in the face of the court:
 - (b) publishing information that interferes with a fair trial:
 - (c) contempt by jurors: 30
 - (d) disobeying court orders:
 - (e) scandalising the court.
- 30 Prosecution of offence against section 24**
- Only the Solicitor-General may conduct or authorise the conduct of a prosecution against a person for an offence against **section 24** (publishing untrue allegation or accusation against Judge or court). 35

31 Consequential amendments

Amend the enactments specified in **Schedule 2** as set out in that schedule.

Schedule 1
Transitional, savings, and related provisions

s 5

- 1 Contempt of court proceedings begun before commencement of this Act to be completed under former law** 5
- (1) Any contempt of court proceeding at common law that was begun before the commencement of this Act must be continued and completed, or otherwise disposed of, as if this Act had not been passed.
- (2) Any contempt of court proceeding under any Act that was begun before the commencement of this Act must also be continued and completed, or otherwise disposed of, as if this Act had not been passed. 10
- 2 Proceedings under this Act may enforce existing court order or undertaking**
- Section 22** is deemed to apply to any court order or undertaking of a kind described in that section that was made or given before the commencement of this Act and has not been complied with or satisfied. 15

Schedule 2

Consequential amendments to other enactments

s 31

Crimes Act 1961 (1961 No 43)

In section 9(a), delete “or of any court”. 5

In section 9, insert as subsection (2):

- (2) The jurisdiction, authority, or power of a court to punish for contempt is subject to the **Administration of Justice (Reform of Contempt of Court) Act 2018**.

Criminal Procedure Act 2011 (2011 No 81)

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After section 74, insert:

74A Application of Administration of Justice (Reform of Contempt of Court) Act 2018

- (1) Despite sections 71 to 74, the trial court for an offence against **section 24 of the Administration of Justice (Reform of Contempt of Court) Act 2018** (publishing untrue allegation or accusation against Judge or court) is the High Court 15
- (2) Despite sections 71 to 74, the trial court for an offence against any of the following provisions of the **Administration of Justice (Reform of Contempt of Court) Act 2018** is the High Court if the trial is a High Court jury trial: 20
- (a) **section 14** (publishing certain criminal trial information); or
 - (b) **section 19** (jury member investigating or researching case); or
 - (c) **section 20** (disclosing jury deliberations).

Replace section 165(8) with:

- (8) Nothing in this section limits or affects any authority or power of the court under the **Administration of Justice (Reform of Contempt of Court) Act 2018**. 25

In section 282, after “or 205”, insert “, or under **section 8, 9, or 26(1)(a) or (3) of the Administration of Justice (Reform of Contempt of Court) Act 2018**”.

District Court Act 2016 (2016 No 49)

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In section 123, definition of **decision**, delete “, but does not include an order under section 212 (which relates to an order for contempt of court)”.

Repeal section 131(b) and (c).

Repeal sections 134, 135, and 212 and the cross-heading above section 212.

Employment Relations Act 2000 (2000 No 24)

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Replace section 196 with:

Employment Relations Act 2000 (2000 No 24)—*continued*

196 Application of Administration of Justice (Reform of Contempt of Court) Act 2018

Subpart 3 of Part 2 and sections 28(1) and 29(1) and (2) of the Administration of Justice (Reform of Contempt of Court) Act 2018 apply in relation to the Employment Court—

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- (a) as if the court were the District Court; and
- (b) as if a Judge of the court were a District Court Judge; and
- (c) as if a member of the Authority were a judicial officer; and
- (d) with the other necessary modifications.

Family Court Act 1980 (1980 No 161)

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After section 15, insert:

15A Application of Administration of Justice (Reform of Contempt of Court) Act 2018

Subpart 3 and 5 of Part 2 and sections 28 and 29(1) and (2) of the Administration of Justice (Reform of Contempt of Court) Act 2018 apply to the Family Court and Family Court Judges in the same manner and to the same extent as those subparts apply to the District Court and District Court Judges.

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Resource Management Act 1991 (1991 No 69)

Replace section 282 with:

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282 Application of Administration of Justice (Reform of Contempt of Court) Act 2018

Subpart 3 and 5 of Part 2 and section 28 and 29(1) and (2) of the Administration of Justice (Reform of Contempt of Court) Act 2018 apply in relation to the Environment Court—

25

- (a) as if the court were the District Court; and
- (b) as if an Environment Judge or alternate Environment Court Judge of the court were a District Court Judge; and
- (c) as if an Environment Commissioner were a judicial officer; and
- (d) with the other necessary modifications.

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Senior Courts Act 2016 (2016 No 48)

In section 20(2)(b), replace “165” with “166”.

After section 20(2)(h), insert:

(i) Subpart 3 and 5 of Part 2 and section 28 and 29(1) and (2) of the Administration of Justice (Reform of Contempt of Court) Act 2018.

35

Senior Courts Act 2016 (2016 No 48)—*continued*

In section 23, replace “Sections 42, 43, and 165 (which relate to the power to deal with witnesses and contempt)” with “Sections 42 and 43 (which relate to the power to deal with witnesses)”.

Replace section 43(4) with:

- (4) Nothing in this section limits or affects any power or authority of the High Court under the **Administration of Justice (Reform of Contempt of Court) Act 2018** 5

In section 146(5)(b), delete “165”.

Repeal section 165 and the cross-heading above section 165.

Te Ture Whenua Maori Act 1993 (1993 No 4) 10

Replace section 90 with:

- 90 Application of Administration of Justice (Reform of Contempt of Court) Act 2018**
- Subpart 3 and 5 of Part 2 and section 28 and 29(1) and (2) of the Administration of Justice (Reform of Contempt of Court) Act 2018** apply 15
in relation to the court—
- (a) as if the court were the District Court; and
 - (b) as if a Judge of the court were a District Court Judge; and
 - (c) with the other necessary modifications.