

Criminal Disclosure Amendment Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Criminal Procedure (Reform and Modernisation) Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- the Criminal Procedure Bill comprising clauses 1 and 2, Parts 1 to 8, the Part 9 heading, clause 416, clause 417, clause 442, and Schedules 1, 1A, and 6
- the Bail Amendment Bill (No 3) comprising clauses 401 to 407A, and Schedule 2
- the Children, Young Persons, and Their Families Amendment Bill (No 3) comprising clauses 407B to 407D, and Schedule 3
- the Corrections Amendment Bill comprising clauses 408 to 410A, and Schedule 3A
- the Crimes Amendment Bill (No 5) comprising clauses 410B to 411B, and Schedule 3B
- this bill comprising clauses 412 to 415B, and Schedule 3C
- the Criminal Procedure (Mentally Impaired Persons) Amendment Bill comprising clauses 417A to 417C, and Schedule 4

- the District Courts Amendment Bill (No 2) comprising clauses 418 to 420A, and Schedule 4A
 - the Evidence Amendment Bill comprising clauses 421 to 423A, and Schedule 4B
 - the Juries Amendment Bill comprising clauses 424 to 427A, and Schedule 4C
 - the Justices of the Peace Amendment Bill comprising clauses 427B to 428
 - the New Zealand Bill of Rights Amendment Bill comprising clauses 428B and 429
 - the Sentencing Amendment Bill (No 6) comprising clauses 430 to 433A, and Schedule 4D
 - the Summary Proceedings Amendment Bill (No 4) comprising clauses 434 to 437B, and Schedule 5
 - the Victims' Rights Amendment Bill comprising clauses 438 to 441B, and Schedule 5A.
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Hon Simon Power

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Criminal Disclosure Amendment Act **2011**.

2 Commencement

This Act comes into force on the day that is 2 years after the 5
date on which this Act receives the Royal assent unless it is
brought into force on an earlier date appointed by the Gov-
ernor-General by Order in Council.

3 Principal Act amended

This Act amends the Criminal Disclosure Act 2008. 10

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413 Initial disclosure

Section 12(1) is amended by inserting the following paragraph
before paragraph (a):

“(aa) a copy of the charging document; and”.

414 New section 14A inserted 15

The following section is inserted after section 14:

**“14A Information relating to identification witnesses to be
supplied to defendant**

“(1) In this section, **identification witness**, in relation to the trial of
a person accused of any offence, means a person who claims 20
to have seen the offender in the circumstances of the offence.

“(2) Subject to **subsection (3)**, at any time after a person has been
charged with an offence, the prosecutor must, on request by or
on behalf of that person, supply to that person—

“(a) the name and, if disclosure is authorised under section 25
17, the address of each identification witness known to
the prosecutor, whether or not the prosecutor intends to
call that witness to give evidence at the trial; and

“(b) a statement of any description of the offender given by
each such witness to the Police or the prosecutor; and 30

“(c) a copy of any identikit picture or other drawing made by any such witness or from information supplied by that witness.

“(3) A Judge may, on the application of the prosecutor, make an order excusing the prosecutor from disclosing to the defendant any information referred to in **subsection (2)(a)**, if the Judge is satisfied that the order is necessary to protect the identification witness or any other person.

“Compare: 1961 No 43 s 344C”.

415 Restriction on disclosing address of witness or informant 10

(1) Section 17(2) is amended by omitting “with the consent of the witness or informant or”.

(2) Section 17 is amended by adding the following subsection:

“(5) Nothing in subsection (2) applies if it is necessary to disclose the information in the charge in order to ensure that the defendant is fully and fairly informed of the charge.” 15

415A New section 34A inserted

The following section is inserted after section 34:

“34A Information disclosed late by defendant

The court may adjourn the trial if it is satisfied that evidence sought to be adduced by the defendant is, or is based on,— 20

“(a) information of a kind to which section 22 applies that was disclosed but not until after the time required by section 22(2); and

“(b) information of a kind to which section 23 applies that was disclosed but not within the time required by section 23(1) (including any further time allowed by the court under section 23(1)).” 25

415B Further amendments to Criminal Disclosure Act 2008

The Criminal Disclosure Act 2008 is amended as set out in **Schedule 3C**. 30



Schedule 3C **s 415B**
Amendments to Criminal Disclosure Act
2008

Section 3(2)

Amend the flowchart by: 5

- (a) in the section relating to disclosure by prosecutor to defendant, omitting the text in the 4th box and substituting:
 “Full disclosure occurs (as soon as practicable) after the defendant pleads not guilty”; and
- (b) at the foot of the section relating to disclosure by prosecutor to defendant, omitting the sentence “*full disclosure is not required if the defendant pleads guilty instead of not guilty to a charge laid summarily.”; and 10
- (c) in the section relating to disclosure by non-parties to the defendant, omitting the text from the 1st box and substituting: 15
 “Defendant may apply to Court for order requiring a non-party to make disclosure
 (An application may be made at any time after defendant pleads not guilty)”.

Section 6 20

Paragraph (c)(i) of the definition of **criminal proceedings** in subsection (1): omit “section 344A of the Crimes Act 1961” and substitute “**section 79 or 101 of the Criminal Procedure (Reform and Modernisation) Act 2010**”.

Definition of **defendant** in subsection (1): repeal. 25

Paragraphs (b) and (c) of the definition of **prosecutor** in subsection (1): omit “laid the information” and substitute “filed the charging document”.

Subsection (3): add “or a defendant to whom **section 36 of the Criminal Procedure (Reform and Modernisation) Act 2010** applies”. 30

Section 7

Repeal and substitute:

“7 Meaning of Court and Judge

In this Act, unless the context otherwise requires,— 35

Section 7—*continued*

“**Court** means the court before which the proceedings are being conducted at a given time

“**Judge** means a Judge of the court before which the proceedings are being conducted at a given time.”

Section 9 5

Repeal and substitute:

“9 Time of commencement of criminal proceedings

For the purposes of this Act, criminal proceedings are commenced at the earliest of—

“(a) the service of a summons: 10

“(b) the first appearance of the defendant in Court following his or her arrest, or in response to the filing of a charging document:

“(c) the date on which the defendant is granted bail under section 21 of the Bail Act 2000: 15

“(d) the filing of a notice of hearing under, or in accordance with, section 21(8) of the Summary Proceedings Act 1957.”

Section 10(3)

Omit “4” and substitute “3 working”. 20

Section 12

Subsection (1)(b): omit “before entering a plea”.

Subsection (3): omit “a minor offence as defined in section 20A(12) of the Summary Proceedings Act 1957 or with”.

Subsection (3): omit “that Act” and substitute “the Summary Proceedings Act 1957”. 25

Subsection (4)(a): omit “21” and substitute “15 working”.

Section 13

Subsection (1): repeal and substitute:

“(1) The prosecutor must disclose to the defendant the information described in subsection (2) as soon as is reasonably practicable after a defendant has pleaded not guilty.” 30

Section 13—*continued*

Subsection (7)(a): repeal.

Subsection (7)(b): omit “that Act” and substitute “the Summary Proceedings Act 1957”.

Section 20

Repeal and substitute: 5

“20 Notice to defendant of disclosure requirements in sections 22 and 23

The Court or the Registrar must give written notice of the requirements of sections 22 and 23 to a defendant—

- “(a) if the defendant pleads not guilty; or 10
- “(b) when the defendant, if he or she is a child or young person, makes a first appearance in a Youth Court.”

Section 21

Repeal.

Section 22

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Subsection (2): repeal and substitute:

“(2) The notice under subsection (1) must be given within 10 working days after the defendant is given notice under **section 20**.”

Subsection (4): repeal.

Section 23(1)

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Omit “14 days before the date fixed for the defendant’s hearing or” and substitute “10 working days before the date fixed for the defendant’s”.

Section 24(1)

Repeal and substitute:

25

“(1) This section applies at any time after the defendant has—

- “(a) pleaded not guilty; or
- “(b) in the case of a child or young person, made a first appearance in a Youth Court.”

Section 26

Subsection (1): omit “7” and substitute “5 working”.

Subsection (1)(a)(ii): repeal and substitute:

“(ii) a summons under **section 165** of the **Criminal Procedure (Reform and Modernisation) Act 2010**; and” 5

Section 33(4) and (5)

Repeal and substitute:

“(4) **Subpart 2 of Part 6** of the **Criminal Procedure (Reform and Modernisation) Act 2010** applies to appeals under this section with any necessary modifications. 10

“(5) Despite **subpart 2 of Part 6** of the **Criminal Procedure (Reform and Modernisation) Act 2010**, a notice of appeal to the High Court must be lodged within 3 working days and an appeal to the Court of Appeal or the Supreme Court must be lodged within 10 working days.” 15

Section 42(2)

Repeal and substitute:

“(2) Without limiting subsection (1), nothing in this Act applies in respect of any video record made under the Evidence Regulations 2007 or any copy or transcript of such a video record.” 20

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Legislative history

29 September 2011

Divided from Criminal Procedure (Reform and Modernisation) Bill (Bill 243–2) by committee of the whole House as Bill 243–3F
