

Courts Matters Bill

Government Bill

Explanatory note

General policy statement

The Courts Matters Bill and the Tribunals Powers and Procedures Legislation Bill (the **Tribunals Bill**) form an integrated package of amendments that will contribute towards the goal of a modern, efficient, and effective courts and tribunals system. The Business Committee has agreed to the introduction of those Bills as cognate Bills under Standing Order 269.

The Business Committee has agreed to the introduction of the Courts Matters Bill as an omnibus Bill under Standing Order 263(c).

Independent, fair, and efficient courts and tribunals are a cornerstone of our democracy. People's experiences of courts and tribunals shape their views of justice system integrity.

The Courts Matters Bill and the Tribunals Bill amend courts and tribunals legislation, respectively, to—

- reduce the time it takes to hear and resolve matters and to improve users' experience of the courts and tribunals system:
- enable greater use of modern technology to further improve efficiency, effectiveness, and timeliness:
- simplify and standardise statutory powers and procedures to improve productivity and efficiency:
- provide better consumer protection and redress, and greater access to justice.

The Courts Matters Bill amends—

- the Courts Security Act 1999, to improve users' experience by making courts and tribunals safer and more secure:
- the Criminal Procedure Act 2011, to improve the efficiency, effectiveness, and timeliness of criminal processes:

- the Summary Proceedings Act 1957, to improve the efficiency, effectiveness, and timeliness of fines enforcement:
- 11 other acts to improve the efficiency, effectiveness, and timeliness of the courts.

The major initiatives in the Bill are described below.

Part 1: amendments to Courts Security Act 1999

This Part seeks to improve court users' experience by making courts and tribunals safer and more secure.

It will expand court security officers' (CSOs') powers to enable them to deal with low-level offending and disruptive behaviour in court more effectively.

Giving CSOs more powers to deal with disruptive people

Part 1 authorises CSOs to deny entry to or to remove or to detain people who are intimidating, abusive, or otherwise causing disruption in court. This will include people whose disruptive behaviour is due to the effects of alcohol or other drugs.

The changes reflect best practice drawn from court security legislation in comparable jurisdictions.

Currently, CSOs can only use their powers when there is a credible risk of violence to court users or harm to property. Court security officers cannot use their powers to address relatively low-level disruptive behaviour that is causing distress to other court users or is interfering with the orderly operation of the courts.

Empowering CSOs to detain for wider range of offending

Part 1 will increase CSOs' authority to detain people who they believe have committed or have attempted to commit a wider range of offences in a court. This power is currently limited to a small number of very serious offences. It does not include common offending such as disorderly behaviour and wilful damage. This limits CSOs' ability to provide a safe, secure, and orderly court environment. Court security officers need to be able to respond decisively to all offending.

Part 1 will also expand the range of circumstances in which a CSO can detain a person to include—

- carrying illegal drugs and associated paraphernalia detected by a CSO during a search:
- committing or attempting to commit an offence that a CSO believes on reasonable grounds threatens the safety or security of another person or their property, or may cause serious damage to court premises:
- refusing to give a CSO their full name, address, and date of birth after committing an offence on court premises:
- refusing to leave the court after being required to do so or attempting to re-enter:

- refusing to obey a direction from a CSO to do or not to do anything that is reasonably necessary to protect the safety and security of people being escorted outside the court on court-related business.

Part 1 will also empower CSOs to pursue people who are to be detained, or are in lawful custody, and who flee or otherwise escape from court premises. The power to pursue is authorised while that person is within a short distance of the CSO.

Part 2: amendments to Criminal Procedure Act 2011

Part 2 amends the Criminal Procedure Act 2011 (the **CPA**) to improve the efficiency, effectiveness, and timeliness of criminal powers and procedures. The key changes are described below.

Re-classifying category 2 offences as category 1 offences

Part 2 amends the CPA to re-classify category 2 offences with a maximum penalty of community work as category 1 offences. This will increase efficiencies, as, for example, defendants can plead guilty to category 1 offences by a written notice, whereas defendants in category 2 cases are required to appear in court.

Broadening powers to issue warrants to arrest

Part 2 amends the CPA so that a judicial officer or Registrar can issue a warrant to arrest for a category 2, 3, or 4 offence (**imprisonable offences**), whether or not a summons has been served, in certain circumstances.

The CPA enables the prosecutor, when commencing a prosecution, to seek a warrant to arrest a defendant if reasonable efforts to summons the defendant to court have been unsuccessful. There are a number of situations where service of a summons is an unnecessary or impractical first step. These include, for example, where Police are seeking to extradite a person from overseas for a prosecution commenced in New Zealand or where the Police do not know a defendant's location.

Part 3: amendments to Summary Proceedings Act 1957

Part 3 will improve the efficiency, effectiveness, and timeliness of fines enforcement. The key changes are described below.

Authorising automated decision making for time payment arrangements

The Chief Executive of the Ministry of Justice will be authorised to approve automated decision making for imposing attachment orders to collect overdue fines, approving online offers to voluntarily pay fines, approving a number of time payment arrangements, and adding further overdue fines to existing payment arrangements.

Most fines are paid through a time payment arrangement. These amendments will improve customer service, productivity and the credibility of fines.

Authorising unilateral and immediate cancellation of voluntary time payment arrangements

Court Registrars will be authorised to cancel voluntary time to pay arrangements for fines (including reparation) when they have genuine and reasonable grounds to do so (for example, if the person provided false or misleading financial information). On appeal, a District Court Judge can confirm, change, or reverse the Registrar's decision.

New procedures for placing charges on land and forcibly selling land to pay fines

Procedural amendments are made to the ability to impose statutory land charges and orders for the sale of property where defendants have overdue fines of \$5,000 or \$50,000 respectively.

Part 4: amendments to other Acts

Part 4 amends 11 Acts to improve the efficiency, effectiveness, and timeliness of the courts. The key changes are described below.

Reversing order of inquiries under Criminal Procedure (Mentally Impaired Persons) Act 2003

Subpart 5 reverses the order of the “involvement” and the “fitness” judicial inquiries required by the Criminal Procedure (Mentally Impaired Persons) Act 2003 so that the “fitness” inquiry is held before the “involvement” inquiry. Only defendants who are found to be “unfit” will proceed to an “involvement” inquiry. The criminal trial will resume for defendants who are found “fit” to stand trial. This will reduce the burden on victims and other witnesses, who sometimes have to attend and give evidence at both the “involvement” inquiry and the criminal trial (if the defendant is found fit to stand trial).

Simpler and quicker jury processes under Juries Act 1981

Subpart 7 authorises Registrars to excuse potential jurors who are not confident of their understanding of the English language to provide a simpler and quicker process. In addition, court staff will be able to communicate with jurors electronically. Jurors will receive the information they need sooner and by a more convenient method.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2017&no=285>

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement in May 2016 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the majority of the provisions of the Bill come into force on the day after the date of Royal assent. The rest of the provisions of the Bill come into force by Order in Council with a default commencement date of **1 July 2020** for those provisions not already brought into force by that date. The reason why some of the provisions are coming into force by Order in Council is that administrative arrangements need to be made to practically provide for some of the changes to court security, court procedures, and fines enforcement made by different clauses in the Bill.

Part 1

Amendments to Courts Security Act 1999

Clause 3 provides that this Part amends the Courts Security Act 1999 (the **principal Act**).

Clause 4 amends the Long Title of the principal Act by adding references to tribunals and courts and adding a new purpose, which is the promotion of the orderly operation of courts and tribunals.

Clause 5 amends the interpretation section of the principal Act by adding references to the Chief High Court Judge and the Chief Judge and other Judges of the Employment Court. A new category of Judge is also added, which is a person who presides over, or is a member of, a body designated by the Minister by notice in the *Gazette* to be a court or tribunal for the purposes of the Act. The definition of specified offence is broadened to include offences such as disorderly behaviour, wilful damage, graffiti vandalism, and possession of controlled drugs. This change will give the courts and court security officers jurisdiction to exercise various powers under the Act in respect of persons committing those kinds of offences in courts.

Clause 6 amends and extends the definitions of court and courtroom.

Clause 7 inserts *new section 11A*, which sets out a general statement about the right of the public to enter and remain in areas of the court open to the public. The new section provides that the right of any person to enter and remain in an area of the court

premises that is open to the public is conditional, among other things, on that person complying with directions given or requirements made by a presiding judicial officer, or a court security officer.

Clauses 8 and 9 amend section 15 and insert *new section 15A*. *New section 15A* gives court security officers the power to require people who bring alcohol into court to remove it, and to seize and dispose of the alcohol if they refuse or fail to do so.

Clause 10 amends section 17 to provide that if a person leaves an item with a court security officer at that officer's request, the person may claim it when leaving the court or within the next 10 working days. If the item has not been claimed within 10 working days, a court security officer may dispose of it.

Clause 11 inserts *new section 18A*. That new section empowers a court security officer to refuse a person access to, or direct a person to leave, court premises if the court security officer believes on reasonable grounds that the person—

- is harassing or intimidating another person; or
- is causing a serious risk of violence on, or damage to, court premises; or
- is significantly disrupting proceedings, the administration of a court or tribunal, or the conduct of lawful activities on court premises.

The grounds are additional to those currently provided as grounds on which a person may be refused entry or asked to leave court premises (including the premises of a tribunal).

Clause 12 inserts *new section 19A*. At present, section 19 of the principal Act permits a court security officer to detain a person only if the court security officer has reasonable grounds to believe that the person has committed a specified offence. *New section 19A* confers powers to detain persons who have refused to leave court premises or attempted to re-enter them after being removed or denied entry, or have refused or failed to follow directions from a court security officer as to safety or security, or who are believed to have committed offences on court premises and have failed to give identification details.

Clause 13 amends section 20 to limit the maximum period of detention of a person by a court security officer to 4 hours and to provide that anyone detained is to be detained separately from other prisoners and is subject to the directions of a court security officer in relation to safety and security issues while in detention.

Clause 14 inserts *new section 20A*. *New section 20A* empowers and, if the court orders, requires a court security officer to pursue anyone who escapes from lawful custody in the court while the person remains a short distance from the court security officer. If the court security officer catches the escaper, he or she may detain the escaper and return him or her to lawful authority.

Clauses 15 to 17 consequentially amend sections 21 to 23.

Clause 18 amends section 24 to provide that the chief executive of the Ministry of Justice may exempt classes of persons from the application of sections 12 to 23. An example of a class of persons who might be considered for exemption is lawyers.

Clause 19 amends section 26 (which requires court security officers to exercise specific powers in relation to persons about to appear on the direction of the presiding judicial officer) to similarly apply where a direction, whether specified or general, has been issued by a Judge who is not in the court.

Clause 20 amends section 28 to allow a court security officer to exercise, within the courtroom setting, powers of detention or removal for contempt that are conferred on a judicial officer by an enactment, if the court security officer is directed to do so by the presiding judicial officer.

Clause 21 consequentially amends section 29.

Clause 22 amends section 30 to include a Community Magistrate in the list of judicial officers empowered to exercise jurisdiction in relation to an offence under that section.

Clause 23 consequentially amends section 35.

Clause 24 repeals the provisions relating to the exemption by regulations of persons from the application of provisions of the Act and the designation of courts and tribunals to be covered by the Act. This power is to be replaced by a power to exempt vested in the chief executive and a power vested in the Minister to declare new courts and tribunals to be covered by the Act.

Part 2

Amendments to Criminal Procedure Act 2011

Clause 25 provides that *Part 2* amends the Criminal Procedure Act 2011 (the **principal Act**).

Clause 26 amends the definitions of category 1 and category 2 offences to provide that an offence punishable by a maximum penalty of a community-based sentence is in future a category 1 offence rather than a category 2 offence.

Clause 27 inserts *new section 34A*. *New section 34A* allows a warrant to be issued for a category 2, 3, or 4 offence, irrespective of whether a summons has been issued or served, if a judicial officer or Registrar is satisfied that a warrant to arrest is necessary to compel the defendant to attend or if, having regard to the gravity of the alleged offence and the circumstances of the case, a warrant is desirable to compel the attendance of the defendant.

Clause 28 amends section 56 to require information about charges to be heard together (if a defendant is charged with 2 or more offences or if charges against 1 or more defendants are to be heard together) to be included in the case management memorandum.

Clause 29 amends section 82 in 2 ways. First, it amends section 82(1)(b) to require a defendant to acknowledge that a formal statement will or may be used in court proceedings. At present, the requirement is for the defendant to acknowledge that the statement will be read in court proceedings, which is unrealistic because frequently it will be impossible to determine, at the time a formal statement is made, whether it

will or will not be used in court proceedings. Secondly, a *new subsection (3A)* is inserted requiring a formal statement made in the form of a video record by a person aged under 18 years or a person who is incapable of making the declaration required by section 82(1)(b) to instead comply with requirements in regulations made under the Evidence Act 2006, including any provisions in those regulations requiring witnesses to tell the truth.

Clause 30 amends section 119 to prohibit the imposition of a community-based sentence in a defendant's absence. *Clause 30* also amends section 119 to provide that if a court that finds the defendant guilty in the defendant's absence has reason to believe that a community-based sentence may be imposed, the court may issue a summons to bring the defendant before the court or issue a warrant to arrest a defendant to bring him or her before the court.

Clause 31 amends section 124, consequential on the changes made by *clause 30*.

Clause 32 replaces section 138 with a *new section 138* to provide a presumption that charges will be heard together (irrespective of the number of defendants jointly charged) if the prosecutor notifies the court that charges should be heard together before the date on which the proceedings are adjourned for trial callover (for jury trial cases) or the date on which the proceedings are adjourned for trial (for Judge-alone trial cases). However, if, after that date, the prosecutor proposes to have additional charges heard together, the prosecutor must seek the leave of the court to do so.

Clause 33 amends section 162 to require a constable, before or on entering premises to execute a warrant to arrest a person, to give or show the occupier of the premises a copy of the warrant, to identify himself or herself by name or by unique identifier, and, if not in Police uniform, to produce evidence of his or her identity. If the occupier is absent, the constable carrying out the entry must leave a copy of the notice and the arrest warrant in a prominent position at the premises. If that is not reasonably practicable, a copy of the notice and the arrest warrant must be provided to the occupier not later than 7 days after the exercise of the power. These changes will enable the Police to show the occupier a copy of the warrant on a mobile device, rather than having to provide a paper copy of the warrant, and are also intended to better align section 162 with the provisions of the Search and Surveillance Act 2012 governing the execution of search warrants.

Clause 34 amends section 219 (which specifies which court is the first court of appeal) by providing that if a defendant elects a jury trial and withdraws his or her elections before trial, the defendant must be treated as if he or she had not elected a jury trial. The intention of the changes made by this clause and *clauses 35 to 38* is to reverse the effect of *Jackson v R* [2016] NZCA 627.

Clauses 35 to 38 make an amendment to sections 230, 247, 272, and 297, respectively, that is similar to that made by *clause 34*.

Clause 39 amends section 357 to continue the jurisdiction of 1 or more Community Magistrates to impose a sentence for an offence punishable only by a community-based sentence.

Clause 40 amends section 380 (which describes the circumstances where proceedings are not invalid because the defendant should have been dealt with in the Youth Court). Section 380 will now apply if a defendant is charged with or convicted of a category 1 or 2 offence, or a category 3 offence punishable by a term of imprisonment where the defendant did not elect a jury trial. The changes have been made in response to the decision in *Police v Hemsley* [2014] DCR 332, which indicates that section 380 of the principal Act applies only if a conviction has been entered.

Clause 41 replaces section 400. *New section 400* is a transitional provision that requires proceedings begun on or after 1 July 2013 that are closely related to proceedings against the same defendant begun before that date to be determined under the laws of criminal procedure that applied before the commencement of the Criminal Procedure Act 2011.

Clause 42 consequentially amends section 403A to reflect changes made to the Bail Act 2000 in this Bill.

Part 3

Amendments to Summary Proceedings Act 1957

Clause 43 provides that *Part 3* amends the Summary Proceedings Act 1957 (the **principal Act**).

Clauses 44 to 82 amend the principal Act to enhance the operation of that Act in the following areas:

- service of documents:
- translation of documents served on Māori (insertion of new cross-heading only):
- terminology changes in 3 sections to replace references to solicitor, or barrister and solicitor, with the word lawyer:
- fines enforcement, to enable a Registrar to cancel an extension of time to pay a fine without notice, in 3 circumstances:
- fines enforcement, including provision for the chief executive to approve automated electronic systems to perform 3 aspects of fines enforcement:
- fines enforcement, to enable charges to be registered under the Statutory Land Charges Registration Act 1928, and orders for the sale of assets (including land) to be issued in the District Court:
- disclosure of fine status responses (a minor technical change):
- monitoring and audits by the chief executive (a minor technical change):
- application of proceeds of sale by secured party:
- making of regulations relating to service of documents.

Further detail of the amendments in these subject areas is set out below in the order they are dealt with in the Bill.

Clause 44 inserts *new section 2A*, which gives effect to transitional, savings, and related provisions that are set out in *new Schedule 1* of the principal Act.

Clause 45 replaces sections 23A and 24. *New section 23A* identifies the 3 provisions in Part 2 of the principal Act that apply to the service of documents in relation to infringement offences. Since the 2013 amendments to the principal Act (consequent on the coming into force of the Criminal Procedure Act 2011), the only relevant documents in this context are reminder notices and notices of hearing. *New section 24* sets out the various ways that reminder notices and notices of hearing may be served. These ways are essentially the same as those currently set out in section 24(1), but with the addition that a document may be served by complying with a means of service that is prescribed by rules or regulations.

Clause 46 repeals sections 25 to 27. Section 25 sets out who may serve documents and its detail is no longer relevant since reminder notices and notices of hearing (being the only types of documents to which Part 2 now relates) are required to be served by the informant. Sections 26 and 27 are, similarly, no longer relevant since they provide for service of witness summonses.

Clause 47 replaces section 28, which provides how service may be effected in particular cases, and section 29, which provides for proof of service. *New section 28* modernises the language of existing section 28 and includes the provision in existing section 24(1A), dealing with service on a defendant that is a body corporate or Crown organisation. *New section 29* sets out how service may be proved, and includes the provision in existing section 24(3) dealing with proof of service by pre-paid post.

Clause 48 inserts a new cross-heading above section 30. Section 30 is about the translation of documents served on Māori and is appropriately separated from provisions that relate to service per se.

Clause 49 replaces 3 definitions in section 79 and amends others.

Clause 50 amends section 79A in Part 3 to implement 2 substantive changes. The first change is the inclusion of *new section 79A(1)(e)*, which enables service to be effected by complying with a means of service prescribed by rules or regulations made under *new section 212(2)(f)*. The second change is to extend the definition of authorised process server in subsection (5) so that service of documents under Part 3 may be effected by an individual who is authorised by the Secretary for Justice to serve documents under Part 3.

Clause 51 amends section 79B to replace references to solicitor with references to lawyer.

Clause 52 amends section 84 to add references to the chief executive's new powers under *new sections 86DA and 86DB*. The amendments mean that information about the new powers will be included in fine notices together with existing references to powers of Registrars and bailiffs. Section 84 is also amended to require references to the possibility of statutory land charges and sale orders to be included in notices of fines.

Clause 53 amends section 86(5) to add the reference to *new section 86DA* into the definition of representative in the section.

Clause 54 amends section 86A to allow a Registrar to cancel an arrangement to extend the period for paying a fine, without notice, in 2 additional circumstances. The circumstances are if the Registrar has reason to believe that—

- the defendant's or his or her representative's financial position has improved significantly since the arrangement was entered into:
- the defendant or his or her representative entered into the arrangement for the purpose of the defendant avoiding interception at a New Zealand airport before departing from New Zealand and the defendant is intending to leave New Zealand for an extended period within the next 10 days.

Clause 55 inserts *new sections 86DA to 86DD* to—

- allow the chief executive to approve an automated electronic system to arrange an extension of time to pay a fine or to vary or suspend an existing arrangement, subject to certain requirements specified in *new section 86DA*, and, if this is done, procedures for the operation of the system must also be approved by the chief executive and these must include certain procedures specified in the section:
- allow the chief executive to approve an automated electronic system to add a new fine to an existing arrangement, attachment order, or deduction notice, subject to certain requirements specified in *new section 86DB*, and, if it is approved, procedures for the operation of the system must also be approved by the chief executive and these must include certain procedures specified in the section:
- require the chief executive, before approving an automated electronic system under *new section 86DA, 86DB, or 87(2C)*, to be satisfied that the system has the capacity to perform any actions required with reasonable reliability and to make available a process under which a person affected by an action performed by an electronic system can have the action reviewed by the person without undue delay (*new section 86DC*):
- allow a Registrar or the chief executive to require a bank to cancel payments being made to pay a fine (including by way of an automatic payment) whether or not the bank has the permission of the customer or account holder to do so (*new section 86DD*).

The new processes listed above will be administered by the Ministry of Justice and will increase the efficiency of dealing with the collection of large numbers of small fines. The existing processes were designed to collect a small number of court-imposed fines. However, at present about 330 000 people owe fines of \$1,000 or less. About 225 000 voluntary arrangements are made with Registrars each year and the manual processing of these arrangements is inefficient. Research has also indicated that some people would like to be able to enter into a time payment without talking to a court officer.

The ability of Registrars and the chief executive to require cancellation of payments being made by a bank once a fine is paid will prevent overpayments, which occur frequently and have to be refunded manually. Multiple refunds sometimes need to be made when address information is out of date. Banks have advised that they cannot cancel payments without the permission of the account holder, so legislative change is needed to allow for this.

Clause 56 inserts *new section 86I*, which empowers a Registrar to order that a defendant be brought before the Registrar to undergo a financial assessment.

Clause 57 amends section 87 to provide that, if that section applies and the amount of money owed is more than \$5,000, a charge applies to the amount and the charge may be registered in respect of the defendant's land under the Statutory Land Charges Registration Act 1928. *Clause 57* makes a further amendment to allow the chief executive to make an attachment order if a defendant defaults in payment of a fine. The chief executive may also approve an automated system to perform that function, and, if it is approved, procedures for the operation of the system must also be approved by the chief executive. The procedures must (where relevant) be consistent with certain specified sections of the principal Act, for example, section 105, which defines the protected earnings rate. The amendment in *clause 57* also provides for defendants to pay a single fee for each attachment order issued by the chief executive.

Registrars manually issue approximately 7 500 attachment orders each week. The amendments will allow this process to be done electronically, which will be more efficient.

Clause 58 inserts *new sections 87AAA and 87AAB*. The new sections allow a Registrar to grant relief in respect of a charge and to transfer it to other land, and provide that a transfer of land subject to a charge, except where it is made in good faith for value, is void against the Registrar.

Clauses 59 and 60 amend sections 87B and 88, respectively, to insert new cross-references and make other clarifying amendments.

Clause 61 amends section 88AE to allow District Court Judges and Community Magistrates to issue a sale order in certain circumstances if the total amount owed is \$50,000 or more.

Clause 62 amends section 89 to replace a reference to barrister and solicitor with a reference to lawyer.

Clause 63 makes a minor technical amendment to section 92B(2) to clarify that *sub-paragraphs (i) and (ii) of paragraph (b)* are alternatives.

Clause 64 makes a minor technical amendment to section 92H to align the wording with that in section 92C(2) and (3).

Clause 65 amends section 97 to make changes reflecting the extension of the Part to allow enforcement mechanisms to apply to real property as well as personal property.

Clauses 66 to 68 repeal a cross-heading and amend sections 100E and 100F to make changes reflecting the extension of Part 3 of the principal Act to allow enforcement mechanisms to apply to real property as well as personal property.

Clause 69 similarly amends section 100H. It also replaces section 100H(1)(c) to clarify that the section does not apply just to motor vehicles.

Clauses 70 to 72 amend sections 100I, 100J, and 100L, respectively, to make changes reflecting the extension of Part 3 of the principal Act to allow enforcement mechanisms to apply to real property as well as personal property.

Clause 73 amends section 100N to allow secured parties to pay into court the proceeds of sale of the property less 2 amounts that the section currently allows them to retain plus the amount owing under the security agreement. At present, the amount owing under the security agreement is paid into court by the secured party and then paid back to the secured party by the court. The amendment avoids this double handling.

Clause 74 amends section 100O to insert new cross-references.

Clauses 75 and 76 amend sections 100P and 100R, respectively, to make changes reflecting the extension of Part 3 of the principal Act to allow enforcement mechanisms to apply to real property as well as personal property.

Clause 77 inserts *new section 100RA* (which sets out rules for the disposal of proceeds of the sale of real property).

Clause 78 amends section 102B to replace a reference to solicitor with a reference to lawyer.

Clause 79 amends section 103 to refer to *new section 87(2B)* along with other provisions relating to attachment orders and to add a requirement that a copy of an attachment order be given to a defendant.

Clause 80 amends section 105 by including a reference to the chief executive alongside the existing reference to Registrar.

Clause 81 amends section 106 by including 2 references to the chief executive alongside the existing references to Registrar.

Clause 82 replaces section 212(2), which expressly provides for the making of rules and regulations in respect of specified matters. The paragraph numbering in this provision is tidied up and a new paragraph is inserted to enable rules and regulations to be made prescribing the means by which documents may be served. This new paragraph is cross-referenced in *new sections 24(1)(f) and 79A(1)(e)*.

Clause 83 inserts *new Schedule 1*. *New Schedule 1*, which is found in *Schedule 1*, sets out the relevant transitional, savings, and related provisions.

Amendments to other enactments

Clause 84 provides that the enactments specified in *Schedule 2* are amended as set out in that schedule.

Part 4

Amendments to other Acts

Subpart 1—Amendments to Bail Act 2000

Clause 85 provides that *subpart 1 of Part 4* amends the Bail Act 2000 (the **principal Act**).

Clause 86 replaces existing sections 33 and 34, which currently draw distinctions between procedures for varying bail in the District Court and in the High Court, Court of Appeal, and Supreme Court. *New sections 33 and 34* standardise the procedures that apply for variation of bail in different courts.

Clause 87 replaces sections 41 to 52 with *new sections 41 to 44*. The purpose of this change is to standardise the procedures for appeal in the District Court, High Court, Court of Appeal, and Supreme Court.

Clause 88 repeals section 53 (which deals with the granting of bail to an appellant in custody or on home detention pending an appeal to the District Court presided over by a District Court Judge). This section currently has no effect because a person cannot be in custody or on home detention in these circumstances.

Clause 89 replaces sections 54 and 55 with *new sections 54, 54A, and 55*, which standardise the procedures applicable to bail pending the determination of an appeal in relation to an offence.

Clause 90 amends section 58 to clarify that a sentence of home detention is suspended if an appellant is released on bail and continues to be suspended while the defendant is on bail.

Subpart 2—Amendments to Care of Children Act 2004

Clause 91 provides that *subpart 2 of Part 4* amends the Care of Children Act 2004 (the **principal Act**).

Clause 92 amends section 46E(4), which sets out the exceptions to the requirement that a family dispute resolution form accompany an application made under section 46R (disputes between guardians) or 48 (parenting orders). The exception in section 46E(4)(d) for an application seeking the enforcement of an existing order is redundant since an application of this kind is not made under section 46R or 48.

Clause 93 amends section 47B to better align that section with section 46E. The effect of the amendments is that the exceptions in the latter section to the requirement that a family dispute resolution form accompany an application are the same as the exceptions in section 47B to the requirement that an application include a statement that the applicant has attended a parenting information programme within the preceding 2 years.

Clause 94 amends section 49A to provide that a parent who, under an interim parenting order made on an application without notice, has neither the day-to-day care of nor contact with a child may seek a hearing date within 6 weeks. In any other case, a

hearing date must be assigned that is not more than 3 months after the date on which the interim order was made. At the hearing date that is assigned in any circumstance, the court may replace the interim parenting order with a further interim order or a final order.

Clause 95 amends section 133 to provide that the materials other than the report of a psychologist engaged by the court may be disclosed to a party's psychologist under subsection (14) only if there are exceptional circumstances.

Subpart 3—Amendments to Criminal Disclosure Act 2008

Clause 96 provides that *subpart 3 of Part 4* amends the Criminal Disclosure Act 2008 (the **principal Act**).

Clause 97 corrects a reference in the overview diagram set out in section 3(2) by replacing a reference to “21 days” with “15 working days”.

Clause 98 replaces section 10(3) (which deals with times at which documents are treated as having been received). Under *new section 10(3)*, if information, a notice, or an application is posted, it will be treated as having been received 6 working days after it is posted. If it is sent electronically, it will be treated as having been received on the same working day if it is sent before 5 pm, but if it is sent after 5 pm on a working day or at any time on a non-working day, it will be treated as having been received on the next working day.

Clause 99 clarifies which appeal court has jurisdiction if a defendant withdraws his or her election for a jury trial.

Subpart 4—Amendments to Criminal Investigations (Bodily Samples) Act 1995

Clause 100 provides that *subpart 4 of Part 4* amends the Criminal Investigations (Bodily Samples) Act 1995 (the **principal Act**).

Clause 101 amends section 13 to enable applications for a person aged 18 or over to give a bodily sample to be made to a High Court Judge as well as a District Court Judge.

Clause 102 amends section 16 to enable a High Court Judge as well as a District Court Judge to make an order requiring a person aged 18 or over to provide a bodily sample.

Subpart 5—Amendments to Criminal Procedure (Mentally Impaired Persons) Act 2003

Clause 103 provides that *subpart 5 of Part 4* amends the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the **principal Act**).

Clause 104 replaces one of the existing purposes of the principal Act. At present, the principal Act requires an inquiry to be undertaken into whether there is sufficient evidence that the defendant caused the act or omission that forms the basis of an offence before the defendant's fitness to stand trial is considered. The Bill changes this se-

quence by requiring issues relating to fitness to stand trial to be determined before an inquiry is undertaken to determine whether there is sufficient evidence that the defendant caused the act or omission that forms the basis of the offence. The altered purpose clause reflects that change in sequence.

Clause 105 inserts *new section 5A* (dealing with transitional matters, savings, and related provisions).

Clauses 106 to 108 make changes to the principal Act that are consequential on the decision to reverse the order of the 2 inquiries.

Clauses 109 to 112 repeal section 9 (which provides that an inquiry into whether the defendant caused the act or omission that constituted an offence must be concluded before an inquiry into the defendant's fitness to stand trial is undertaken) and consequentially amend sections 10 to 12 to require the inquiry into the defendant's involvement in the offence to take place after the inquiry into fitness to stand trial, but only if the defendant is found unfit to plead.

Clause 113 amends section 13 to provide that if the court is not satisfied, on the balance of probabilities, that a defendant found unfit to stand trial caused the act that constituted the offence, the court must dismiss the charge, the finding of unfitness to plead is deemed to have been quashed, and the defendant must not be dealt with under subpart 3 of Part 2 (the regime applicable to those held pending trial after being found unfit to plead).

Clauses 114 to 117 consequentially repeal section 14 and make amendments to sections 15 to 17 that are consequential on the change in sequence in the 2 inquiries.

Clause 118 inserts *new Schedule 1AA* (dealing with transitional matters, savings, and related provisions) into the principal Act.

Clause 119 amends the heading of the Schedule in the principal Act.

Subpart 6—Amendments to Family Proceedings Act 1980

Clause 120 provides that *subpart 6 of Part 4* amends the Family Proceedings Act 1980 (the **principal Act**).

Clause 121 amends section 142 to provide that the District Court, when proposing to discharge or vary a maintenance order (other than a child maintenance order) that has been registered or confirmed in New Zealand, must make a provisional order in any case where the provisional order can be confirmed under the law of the country in which the domestic maintenance order was made.

Clause 122 similarly amends section 142E to provide that the District Court, when proposing to discharge or vary a child maintenance order that has been registered or confirmed in New Zealand, must make a provisional order in any case where the provisional order can be confirmed under the law of the country in which the child maintenance order was made.

Subpart 7—Amendments to Juries Act 1981

Clause 123 provides that *subpart 7 of Part 4* amends the Juries Act 1981 (the **principal Act**).

Clauses 124 to 129 amend the Juries Act 1981 to—

- insert, into section 2, a new definition of co-extensive jury districts to enable the same jury lists to be used for trials in the High Court and the District Court if the area covered by the jury district for each court is the same;
- insert a new provision into section 2 to allow the filing of applications or other documents to be done by electronic communications that a Registrar permits, in accordance with the Jury Rules (instead of by hard copy);
- make section 5(5) gender neutral;
- insert *new section 5(6)* (which allows the same jury list to be used for co-extensive jury districts);
- allow written general directions by the chief executive under section 14AC to be in electronic form;
- insert, into section 14B(3), *new paragraph (aa)*, which allows a person to apply to defer or be excused from jury service if he or she has difficulties in understanding or communicating in the English language so that he or she is not capable of acting effectively as a juror;
- correct a cross-reference in section 14C;
- change the terminology in section 16AA, which refers to a “discharge of a summons”, to the more readily understood “cancel a summons”.

Subpart 8—Amendments to the Land Transport Act 1998

Clause 130 provides that *subpart 8 of Part 4* amends the Land Transport Act 1998 (the **principal Act**).

Clauses 131 to 133 amend the principal Act to—

- include, in section 31(1)(d), references to all the circumstances in section 30 where a person is required to surrender or return a driver licence, and to make it an offence to fail to do so in those circumstances;
- insert, into section 91B, a presumption of when a warning notice or driver licence stop order is served by means of an electronic communication, a rule about what amounts to sufficient proof of service of the electronic communication, and a new definition of information system for the purpose of the section;
- insert, into section 91E, a provision enabling a driver licence stop order to be issued and served on a defendant by an enforcement officer at the roadside or another place.

Subpart 9—Amendments to Protection of Personal and Property Rights Act 1988

Clause 134 provides that *subpart 9 of Part 4* amends the Protection of Personal and Property Rights Act 1988 (the **principal Act**).

Clause 135 inserts *new section 4A* (dealing with transitional, savings, and related provisions).

Clause 136 amends section 12 to allow a court to appoint more than 1 welfare guardian for a person if the court is satisfied that it would be in the interests of that person to do so. At present, more than 1 welfare guardian can be appointed for a person only if there are exceptional circumstances.

Clause 137 amends section 45 to allow a manager to file a statement of property with only 1 copy of the statement instead of 2 copies if the court has previously dispensed with the need for service on the person for whom the manager is acting.

Clause 138 makes an amendment to section 46 that is consequential on the change made by *clause 136* to section 45.

Clause 139 amends section 48 to give a Judge, to whom the failure of a manager to file a statement under section 45(2) when required to do so is referred by a Registrar, a discretion as to whether to make an order requiring the manager to remedy the default.

Clause 140 amends section 74, which allows the court to excuse the attendance of a person from a hearing at which jurisdiction under the Act is sought, to recast section 74(2) in a more understandable form.

Clause 141 amends section 86(7) to increase the maximum period for which a personal order can be extended, without the need for a further review, from 3 to 5 years, and repeals section 86(8).

Clause 142 similarly amends section 87 (which relates to the review of property orders) to enable the extension of a property order for up to 5 years without the need for a further review.

Clause 143 inserts *new Schedule 1AA* (dealing with transitional, savings, and related provisions).

Subpart 10—Amendments to Sentencing Act 2002

Clause 144 provides that *subpart 10 of Part 4* amends the Sentencing Act 2002 (the **principal Act**).

Clause 145 amends section 137 to clarify that a Registrar does not have to pay any amount recovered from the sale of a confiscated vehicle to a secured party if the amount has already been recovered by the secured party.

Clause 146 amends section 141B to enable a secured party to whom a confiscated vehicle is transferred under section 141 to keep the amount to which the person is entitled under the relevant security agreement, rather than paying the money into court.

Subpart 11—Amendment to Victims’ Orders Against Violent Offenders Act 2014

Clause 147 provides that *subpart 11 of Part 4* amends the Victims’ Orders Against Violent Offenders Act 2014 (the **principal Act**).

Clause 148 inserts *new sections 24A to 24C*. *New section 24A* provides a court that is hearing proceedings with a power to clear the court and restrict the publication of the proceedings. *New section 24B* provides for applications to renew orders made under *new section 24A* (if the order applies for a limited time) or to review the order (if made permanently). *New section 24C* sets out offences related to the contravention of orders made under *new section 24A*.

Hon Mark Mitchell

Courts Matters Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Courts Matters Act **2017**.

2 Commencement

- (1) This Act (except **sections 7, 11 to 22, 32, 61, 65, 69(1), 70 to 72, and 74 to 77**) comes into force on the day after the date on which it receives the Royal assent. 5
- (2) **Sections 7, 11 to 22, 32, 61, 65, 69(1), 70 to 72, and 74 to 77** come into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates. 10
- (3) Any provision that has not earlier been brought into force under **subsection (1)** comes into force on **1 July 2020**.

Part 1 Amendments to Courts Security Act 1999

3 Principal Act

This **Part** amends the Courts Security Act 1999 (the **principal Act**).

4 Long Title amended

5

- (1) In the Long Title, paragraph (a), after “**courts**”, insert “**and tribunals**”.
- (2) In the Long Title, paragraph (b), replace “**the courts**” with “**courts and tribunals; and**”.
- (3) In the Long Title, after paragraph (b), insert:

(c) the promotion of the orderly operation of courts and tribunals

10

5 Section 2 amended (Interpretation)

- (1) In section 2, definition of **Judge**, after paragraph (c), insert:

(ca) the Chief High Court Judge:

- (2) In section 2, definition of **Judge**, after paragraph (i), insert:

(ia) the Chief Judge of the Employment Court:

15

(ib) any other Judge of the Employment Court:

- (3) In section 2, definition of **Judge**, replace paragraph (q) with:

(q) any person who presides over, or is a member of, a body for the time being designated by the Minister by notice in the *Gazette* as a court or tribunal for the purposes of this Act

20

- (4) In section 2, definition of **presiding judicial officer**, after paragraph (g), insert:

(h) a member of a body described in **section 3(5)(l) or (la)**

- (5) In section 2, replace the definition of **specified offence** with:

specified offence—

(a) means—

25

(i) an offence under any of—

(A) sections 87, 121, 167, 168, 171 to 177, 188 to 194, 196 to 199, 202A, 202C, and 306 of the Crimes Act 1961; and

(B) sections 3, 9, 11, 11A, 11B, 13, and 13A of the Summary Offences Act 1981; and

30

(C) sections 45 and 46 of the Arms Act 1983; and

(D) section 7 of the Misuse of Drugs Act 1975; and

(ii) any other offence committed on court premises that a court security officer believes on reasonable grounds—

- (A) threatens the safety or security of another person or that person's property; or
- (B) may cause serious damage to the court premises; and
- (b) includes an attempt to commit an offence specified in **paragraph (a)**
- (6) In section 2, insert in its appropriate alphabetical order: 5
- tribunal** means a body that—
- (a) exercises judicial or quasi-judicial functions and that holds a hearing at which persons appear in person to address the body; and
- (b) is, for the time being, designated by the Minister by notice in the *Gazette* as a tribunal for the purposes of this Act 10
- 6 Section 3 amended (Meaning of court and courtroom)**
- (1) In section 3(2)(b), replace “before the proceedings are heard and while they are being heard” with “before the proceedings are heard, while they are being heard, and shortly after they finish being heard”.
- (2) After section 3(3)(b)(i), insert: 15
- (ia) every other part of the building (including any cells) that is being used for services relating to the court; and
- (3) After section 3(3)(b)(ii), insert:
- (iia) any footpath between the building and the road; and
- (4) In section 3(4)(a), replace “subsection (5)(a) to (h)” with “subsection (5)(aa) to (h)”. 20
- (5) After section 3(4)(b), insert:
- (ba) any other part of the building (including any cells) that is used for services relating to judicial or quasi-judicial functions; and
- (6) After section 3(4)(c), insert: 25
- (ca) any footpath between the building and the road; and
- (7) After section 3(5)(e), insert:
- (ea) the Employment Court:
- (8) Replace section 3(5)(l) with:
- (l) every court, tribunal, and other constituted dispute-resolution body that 30
conducts proceedings in a building that also accommodates a court or tribunal listed in this subsection:
- (la) every body for the time being designated by the Minister by notice in the *Gazette* as a court or a tribunal for the purposes of this Act:
- 7 New section 11A and cross-heading inserted** 35
- After section 11, insert:

Right of public to enter and remain in courtroom

11A	Right of public to enter and remain in areas of court open to public	
(1)	A person may enter and remain in an area of the court premises that is open to the public if the person complies with—	
(a)	all directions given and requirements made by a presiding judicial officer under this Act or any other Act that apply to the person; and	5
(b)	all directions given or requirements made by a court security officer that affect that person.	
(2)	Subsection (1) is subject to—	
(a)	sections 12(2), 13(2), 15(4) and (5), 17(4), 18A , 19, and 20(2):	10
(b)	any inherent or implied jurisdiction of a court to regulate its own procedure:	
(c)	any enactment regulating who may be present at proceedings.	
8	Section 15 amended (Power to ask to examine detected items)	
	After section 15(6), insert:	15
(7)	This section is subject to section 15A .	
9	New section 15A inserted (Removal or disposal of alcohol)	
	After section 15, insert:	
15A	Removal or disposal of alcohol	
	A court security officer may—	20
(a)	require a person who brings alcohol onto court premises to remove it from those premises:	
(b)	seize and dispose of that alcohol if the person who is required to remove it refuses or fails to do so.	
10	Section 17 amended (Power to ask to take detected items into temporary custody)	25
	After section 17(4), insert:	
(4A)	If a person has left an item with a court security officer in compliance with a request under subsection (2),—	
(a)	the person may claim the item when leaving the court or at any time within 10 working days of leaving the item; and	30
(b)	a court security officer may dispose of the item if it has not been claimed within 10 working days.	

11 New section 18A inserted (General power to refuse person access to, or remove person from, court premises)

After section 18, insert:

18A General power to refuse person access to, or remove person from, court premises

5

A court security officer may refuse a person access to, or direct a person to leave, court premises if the court security officer believes on reasonable grounds that the person—

- (a) is harassing or intimidating another person; or
- (b) is causing a serious risk of violence within, or damage to, court premises; or
- (c) is significantly disrupting proceedings, the administration of a court, or the conduct of lawful activities on court premises.

10

12 New section 19A inserted (Power to detain in other circumstances)

After section 19, insert:

15

19A Power to detain in other circumstances

(1) This section applies if a court security officer has reasonable grounds to believe that a person—

- (a) has—
 - (i) refused to leave court premises after having been required to do so, or has attempted to re-enter court premises after being removed or denied entry; and
 - (ii) been warned that the person may be detained if he or she persists with those actions; but
 - (iii) persisted with those actions; or
- (b) has refused to obey a direction from a court security officer—
 - (i) to do anything that is reasonably necessary to protect the safety or security of persons being escorted into or out of court premises for reasons related to appearances in court; or
 - (ii) to stop or avoid doing anything that adversely affects the safety or security of persons referred to in **subparagraph (i)**; or
 - (iii) to do anything that is reasonably necessary to protect the safety or security of any person involved in any activity outside the court premises and that is part of the proceedings (for example, a jury visiting a crime scene); or
 - (iv) to stop or avoid doing anything that adversely affects the safety or security of persons referred to in **subparagraph (iii)**; or

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- (c) has committed any offence on court premises and has refused to give his or her full name, address, and date of birth on the request of a court security officer, and the person has been warned that the person may be detained if he or she refuses to provide those details, but the person continues to fail or refuse to give those details. 5
- (2) The court security officer may exercise the powers in section 20.
- (3) Sections 24 to 29 set out limits on the powers in this section.

13 Section 20 amended (Powers to seize items and detain persons)

- (1) In section 20(1), replace “must immediately detain a person” with “may detain the person for a period not exceeding 4 hours or any lesser period considered by the court security officer to be reasonable in the circumstances”. 10
- (2) In section 20(2), replace “section 19 applies, the court security officer may detain the person” with “section 19 or **19A** applies, the court security officer may detain the person for a period not exceeding 4 hours or any lesser period that the court security officer considers to be reasonable in the circumstances”. 15
- (3) In section 20(5), replace “must,” with “must”.
- (4) Before section 20(5)(a), insert:
 - (aaa) detain him or her, separately from other prisoners in a cell or other safe place, until the arresting Police officer arrives or the court security officer is satisfied that the person is not going to be arrested; or 20
- (5) After section 20(5), insert:
 - (5A) With respect to a detained person, the court security officer may direct the person to do or not to do a thing if the court security officer believes on reasonable grounds that the direction is necessary in the circumstances for the purpose of ensuring the safety of the person or the security officer or any other person. 25

14 New section 20A inserted (Power to pursue person)

After section 20, insert:

20A Power to pursue person

If a person who is to be detained under this Act or who is otherwise in lawful custody on court premises flees or otherwise escapes from the court premises,— 30

- (a) a court security officer may, and, if the court orders, must, pursue that person while he or she is within a short distance of the court security officer; and
- (b) the court security officer may detain the pursued person, who must subsequently be dealt with under section 20(2) to (7), except that, in the case of a person who escaped from lawful custody (the **escaper**), the court security officer must return, or arrange for the return, of the escapee to the person or body who is entitled to custody of the escaper. 35

- 15 Section 21 amended (Power to use reasonable force)**
 In section 21(1), replace “17(4), 18(1)(b), or 20” with “**15A(b)**, 17(4), 18(1)(b), **18A**, and 20”.
- 16 Section 22 amended (Consequences of denial of entry to, or removal from, court)** 5
 (1) In section 22(1), replace “or 18(1)(b)” with “18(1)(b), and **18A**”.
 (2) In section 22(1)(b), replace “or 17(2)” with “and 17(2)”.
 (3) In section 22(2), replace “or 18(1)(b)” with “18(1)(b), and **18A**”.
- 17 Section 23 amended (Duty of court security officer to inform of consequences when person denied entry or removed)** 10
 In section 23, replace “or 18(1)(b)” with “18(1)(b), and **18A**”.
- 18 Section 24 amended (Powers not generally applicable to presiding judicial officers and other exempted persons)**
 (1) After section 24(1)(g), insert:
 (ga) persons holding office as a member of a court, a tribunal, or any other body referred to in **section 3(5)(l) or (la)**: 15
 (2) In section 24(1)(h), replace “exempted from the application of sections 12 to 23 by regulations made under section 36” with “while exempted from the application of sections 12 to 23 by the chief executive”.
- 19 Section 26 amended (When powers applicable to persons in custody of certain agencies)** 20
 (1) In section 26(1), replace “section 25(1) and who is about to appear before a presiding judicial officer” with “section 25(1)(a) or (c) and has been brought to the court to appear before a presiding judicial officer but has not yet appeared”.
 (2) Replace section 26(2) with: 25
 (2) A court security officer may or must, as the case requires, exercise any of the powers in sections 13(1), 15(1) and (5), **15A**, 16, 17(2), 19, 20(1), (2), and (3), and 21 in relation to a person about to appear if—
 (a) the presiding judicial officer directs the court security officer, in specific language, to exercise any such power in relation to the person; or 30
 (b) the court security officer is authorised or required to exercise the power in relation to the person by a direction about the use of the power (whether in general or specific terms) given by a Judge.
 (3) After section 26(4)(b), insert:
 (ba) seize and dispose of any alcohol referred to in **section 15A(b)**; or 35
 (4) In section 26(5),—
 (a) after “15(5),”, insert “**15A**,”:

(b) replace “20(1), 20(2), or 20(3)” with “20(1), (2), and (3)”.

20 Section 28 amended (When powers applicable in courtroom where proceedings being heard)

(1) Replace section 28(1) with:

(1) A court security officer may exercise any of the powers conferred by an enactment on a presiding judicial officer to detain or remove a disruptive person for contempt if the presiding judicial officer directs the court security officer to exercise those powers. 5

(2) In section 28(3)(a), after “15(1),” insert “**15A**,”.

(3) After section 28(4)(c), insert: 10
(ca) seize and dispose of any alcohol referred to in **section 15A(b)**; or

(4) In section 28(5), replace “16, 17(2), 19, 20(1), 20(2), or 20(3)” with “**15A**, 16, 17(2), **18A**, 19, **19A**, 20(1), (2), and (3), and **20A**”.

(5) In section 28(6)(a), replace “15(1), or” with “15(1), **15A**, and”.

(6) In section 28(6)(b), replace “15(1), or” with “15(1), **15A**, and”.

21 Section 29 amended (Powers not generally applicable if Police involved)

(1) In the heading to section 29, after “**Police**”, insert “**or other agencies**”.

(2) In section 29(1), after “Police officer”, insert “or any other person referred to in section 25(1)(b) or (c)”.

(3) In section 29(2), replace “Police officer, if the Police officer” with “Police officer or any other person referred to in section 25(1)(b) or (c), if the Police officer or other person”. 20

22 Section 30 amended (Offence to obstruct security officer)

In section 30(2), after “District Court Judge”, insert “, a Community Magistrate,”. 25

23 Section 35 amended (Power of other persons not affected)

In section 35(2), replace “or tribunal in relation to contempt of court or of a tribunal” with “in relation to contempt of court”.

24 Section 36 amended (Regulations)

Repeal section 36(a), (b), and (e). 30

Part 2

Amendments to Criminal Procedure Act 2011

25 Principal Act

This **Part** amends the Criminal Procedure Act 2011 (the **principal Act**).

26 Section 6 amended (Categories of offence defined)

- (1) In section 6(1), definition of **category 1 offence**, paragraph (a)(ii), delete “or (c)”.
- (2) In section 6(1), definition of **category 2 offence**, paragraph (b), delete “; or”.
- (3) In section 6(1), definition of **category 2 offence**, repeal paragraph (c). 5

27 New section 34A inserted (When warrant may be issued irrespective of whether summons has been issued or served)

After section 34, insert:

34A When warrant may be issued irrespective of whether summons has been issued or served

- (1) This section applies if a charging document has been filed for a category 2, 3, or 4 offence, whether or not a summons has been issued or served. 10
- (2) A judicial officer or Registrar may issue a warrant to arrest the defendant and bring him or her before the District Court if the judicial officer or Registrar is satisfied that— 15
 - (a) a warrant is necessary to compel the attendance of the defendant (for example, because the location of the defendant is unknown); or
 - (b) having regard to the gravity of the alleged offence and the circumstances of the case, a warrant is desirable to compel the attendance of the defendant. 20

28 Section 56 amended (Information to be provided in case management memorandum)

After section 56(1)(c), insert:

- (ca) whether any charges are to be heard together under **section 138(1)** (including together with charges heard against 1 or more other defendants): 25

29 Section 82 amended (Requirements for formal statements)

- (1) In section 82(1)(b), replace “that it is to be used” with “that it may be used”.
- (2) In section 82(1)(c), replace “subsections (2) and (3)” with “subsection (2), (3), or **(3A)**”.
- (3) After section 82(3), insert: 30
 - (3A) Despite subsection (1)(b), if a formal statement under subsection (1) is made by a person aged under 18 years or by a person who is incapable of making the declaration required by subsection (1)(b), and is in the form of a video record, no declaration is required but the statement must— 35
 - (a) be made in the manner prescribed by regulations made under the Evidence Act 2006; and

- (b) substantially comply with the requirements prescribed in those regulations (including any provisions in those regulations requiring the witness to tell the truth).

30 Section 119 amended (Non-attendance of defendant charged with offence in category 1) 5

After section 119(3), insert:

- (4) Despite subsection (2), a court may not impose a community-based sentence on a defendant in the defendant’s absence.
- (5) If the defendant pleads, or is found, guilty and the court has reason to believe that a community-based sentence may be imposed on the defendant, the court may— 10
 - (a) issue a summons to bring the defendant before the court; or
 - (b) issue a warrant to arrest the defendant to bring him or her before the court.

31 Section 124 amended (Procedure when hearing proceeds in absence of defendant) 15

In section 124(2)(d)(i), after “sentencing”, insert “(unless **section 119(4) or (5)** applies)”.

32 Section 138 replaced (Trial of different charges together) 20

Replace section 138 with:

- 138 Trial of different charges together**
- (1) The prosecutor may, by notifying the court before which a proceeding is being heard, propose that—
 - (a) 2 or more charges against 1 defendant be heard together; or
 - (b) the charges against 1 defendant be heard with charges against 1 or more other defendants. 25
 - (2) Despite **subsection (1)**, the prosecutor must seek leave for the charges to be heard together if the notification involves a charge in respect of which the proceedings have been adjourned—
 - (a) for trial, if the trial procedure is the Judge-alone procedure; or 30
 - (b) for trial callover, if the trial procedure is the jury trial procedure.
 - (3) Unless the court makes an order under **subsection (4)**, charges must be heard together—
 - (a) in accordance with any notification given under **subsection (1)**; or
 - (b) if leave is granted under **subsection (2)**. 35
 - (4) If the court before which the proceeding is being conducted considers it is in the interests of justice to do so, it may, on its own motion or on the application

	of the prosecutor or a defendant, order that 1 or more charges against the defendant be heard separately.	
(5)	An order under subsection (4) may be made before or during the trial, and,—	
	(a) if it is made during the course of a Judge-alone trial, the court must adjourn the trial of the charges in respect of which the trial is not to proceed; and	5
	(b) if it is made during the course of a jury trial, the jury must be discharged from giving a verdict on the charges in respect of the trial is not to proceed.	
33	Section 162 amended (To whom warrant to be directed and power of person executing warrant to enter premises)	10
(1)	Replace section 162(5) and (6) with:	
(5)	Before or on entry into the premises, the constable must—	
	(a) give or show the occupier of the premises a copy of the warrant; and	
	(b) identify himself or herself by name or by a unique identifier; and	15
	(c) if not in Police uniform, produce evidence of his or her identity.	
(6)	If the occupier of the premises is not present at any time during the entry, or no person is in charge of the premises during the entry, the constable carrying out the entry must,—	
	(a) on completion of the entry, leave a copy of the notice referred to in subsection (6A) and a copy of the arrest warrant (if applicable) in a prominent position at the premises; or	20
	(b) if that is not reasonably practicable, provide a copy of the notice referred to in subsection (6A) and a copy of the arrest warrant (if applicable) to the occupier of the premises no later than 7 days after the exercise of the power.	25
(6A)	The notice required by subsection (6) is a written notice containing the following particulars:	
	(a) the date and time of the commencement and completion of the entry:	
	(b) the name or unique identifier of the person who had overall responsibility for the entry:	30
	(c) the address of the office to which inquiries should be made.	
(6B)	For the purposes of this section, the following persons may not be treated as the occupier of the premises:	
	(a) any person who is under 14 years of age:	35
	(b) any person who the constable executing the warrant has reasonable grounds to believe is not the occupier of the premises.	

- (2) In section 162(7), replace “subsection (4) or (5)” with “subsection (4), **(5)**, or **(6)**” in each place.

34 Section 219 amended (First appeal courts)

In section 219, insert as subsection (2):

- (2) For the purposes of **subsection (1)**, if a defendant elected a jury trial but subsequently withdrew his or her election before trial,— 5
- (a) the defendant must be treated as if he or she had not elected a jury trial; but
- (b) any appeal commenced before the date on which the defendant withdrew his or her election must be determined by the appeal court that had jurisdiction to determine the appeal at the time it was commenced. 10

35 Section 230 amended (First appeal courts)

In section 230, insert as subsection (2):

- (2) For the purposes of **subsection (1)**, if a convicted person elected a jury trial but subsequently withdrew his or her election before trial, the convicted person must be treated as if he or she had not elected a jury trial. 15

36 Section 247 amended (First appeal courts)

In section 247, insert as subsection (2):

- (2) For the purposes of **subsection (1)**, if a convicted person elected a jury trial but subsequently withdrew his or her election before trial, the convicted person must be treated as if he or she had not elected a jury trial. 20

37 Section 272 amended (First appeal courts)

In section 272, insert as subsection (2):

- (2) For the purposes of **subsection (1)**, if a convicted person elected a jury trial but subsequently withdrew his or her election before trial, the convicted person must be treated as if he or she had not elected a jury trial. 25

38 Section 297 amended (First appeal courts)

- (1) In section 297(b)(i), replace “person charged” with “defendant”.

(2) In section 297, insert as subsection (2):

- (2) For the purposes of **subsection (1)**, if a convicted person elected a jury trial but subsequently withdrew his or her election before trial, the convicted person must be treated as if he or she had not elected a jury trial. 30

39 Section 357 amended (Jurisdiction of Community Magistrates to impose sentence in respect of certain category 2 offences)

- (1) In the heading to section 357, after “**certain category**”, insert “**1 and**”. 35

(2) Replace section 357(1) with:

- (1) This section applies to—
- (a) any category 1 offence in respect of which the maximum penalty that can be imposed is a community-based sentence and not a term of imprisonment; and
 - (b) any category 2 offence in respect of which the maximum term of imprisonment that can be imposed does not exceed 3 months. 5
- (3) After section 357(4), insert:
- (5) Nothing in this section applies when the District Court presided over by 1 or more Community Magistrates is exercising jurisdiction in accordance with section 356. 10
- 40 Section 380 amended (Proceedings not invalid because defendant should have been dealt with in Youth Court)**
- (1) Replace section 380(1) with:
- (1) This section applies if the defendant—
- (a) is charged with or convicted of a category 1 or 2 offence; or 15
 - (b) is charged with or convicted of a category 3 offence and did not elect a jury trial.
- (2) In section 380(2), delete “was convicted the defendant”.
- 41 Section 400 replaced (Defendants and proceedings to be tried together)**
- Replace section 400 with: 20
- 400 When defendants or proceedings to be heard together under same procedural law**
- (1) This section applies if—
- (a) proceedings were commenced (in any of the ways described in section 397(3)) before 1 July 2013 against a defendant for an offence; and 25
 - (b) the proceedings have not been finally determined; and
 - (c) the proceedings are not proceedings to which section 399 applies; and
 - (d) on or after 1 July 2013,—
 - (i) a charging document is filed against the defendant for an offence arising from the same transaction, set of circumstances, incident, or series of incidents as the offence for which proceedings were commenced before 1 July 2013; or 30
 - (ii) a charging document is filed against another person charging him or her with an offence arising from the same transaction, set of circumstances, incident, or series of incidents specified in the information laid against the defendant, and the prosecutor wishes the charges against both defendants to be heard together. 35

- (2) The proceedings against the defendant or defendants must be conducted in accordance with the law as it was before 1 July 2013 as if any charging document filed under the Act were an information laid and filed under the Summary Proceedings Act 1957.
- (3) The prosecutor must give a notice to the court and the defendant or defendants that states whether the charging document referred to in **subsection (2)** is to be treated as an information in form 1 of Schedule 2 of the Summary Proceedings Act 1957 (as it read before its repeal) or an information in form 2 of Schedule 2 of that Act (as it read before its repeal).
- 42 Section 403A amended (Transitional provision regarding effect of appeal on sentence of home detention)** 10
- In section 403A(c), replace “sections 54, 55, 58 and 59A of the Bail Act” with “sections 14, 54, 55, 58, and 60 of that Act”.

Part 3

Amendments to Summary Proceedings Act 1957 15

- 43 Principal Act**
- This **Part** amends the Summary Proceedings Act 1957 (the **principal Act**).
- 44 New section 2A inserted (Transitional, savings, and related provisions)**
- After section 2, insert:
- 2A Transitional, savings, and related provisions** 20
- The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.
- 45 Sections 23A and 24 replaced**
- Replace sections 23A and 24 with:
- 23A Service of documents under this Part** 25
- (1) **Sections 24, 28, and 29** apply to the service of a document under this Part.
- (2) In this section and in **sections 24, 28, and 29, document** means—
- (a) a reminder notice; or
 - (b) a notice of hearing.
- 24 Ways documents may be served** 30
- (1) If, under this Part, an informant is required to serve a document on a defendant, the requirement may be met by the informant—
- (a) delivering the document to the defendant or, if the defendant refuses to accept it, bringing it to the defendant’s notice; or

<p>(b) leaving the document for the defendant at the defendant’s place of residence with another person who appears to be of or over the age of 14 years; or</p> <p>(c) leaving the document for the defendant at the defendant’s place of business or place of work with another person; or</p> <p>(d) sending the document to the defendant by prepaid post addressed to the defendant’s last known place of residence or place of business or work; or</p> <p>(e) sending the document in electronic form to the defendant’s electronic address in any case where the defendant does not have a known place of residence or business in New Zealand; or</p> <p>(f) complying with a means of service prescribed by rules or regulations made under section 212(2)(f).</p> <p>(2) However, a District Court Judge, a Justice, a Community Magistrate, or the Registrar may, if he or she thinks fit, direct that a document be served in accordance with subsection (1)(a).</p> <p>(3) For defendants to whom section 28 applies, subsection (1) is modified to the extent provided by that section.</p>	<p>5</p> <p>10</p> <p>15</p>
<p>46 Sections 25 to 27 repealed</p> <p>Repeal sections 25 to 27.</p>	20
<p>47 Sections 28 and 29 replaced</p> <p>Replace sections 28 and 29 with:</p>	
<p>28 Service provisions modified in special cases</p> <p>(1) If a document is served in accordance with this section, it is, for the purposes of section 24, taken to be served on the defendant concerned.</p> <p>(2) If the defendant is a body corporate or a Crown organisation, a document may be served—</p> <p style="padding-left: 20px;">(a) by being sent, in accordance with section 24(1)(d) or (e), to the body corporate or Crown organisation for the attention of an officer or employee of that body or organisation:</p> <p style="padding-left: 20px;">(b) by being delivered to an officer or employee of the body corporate or Crown organisation at its head office, principal place of business, or registered office, or by bringing it to the officer’s notice or the employee’s notice if that person refuses to accept it.</p> <p>(3) If a lawyer has authenticated a memorandum stating that the lawyer is authorised to accept service of a document on behalf of the defendant, the document may be served on the lawyer in any way authorised by section 24.</p>	<p>25</p> <p>30</p> <p>35</p>

- (4) In addition to the ways of service authorised by **section 24**, a document may be served by delivering or sending it to, or by leaving it with,—
- (a) in the case of a defendant who lives or works on board a vessel (including a vessel belonging to the Royal New Zealand Navy), the person on board who is apparently in charge of the vessel: 5
 - (b) in the case of a defendant who is a member of the New Zealand Armed Forces, the officer apparently in command of the unit or detachment to which the defendant belongs:
 - (c) in the case of a defendant who is a prisoner, the manager or any other officer apparently in charge of the prison. 10

29 Proof of service of documents

- (1) Service of a document by an informant may be proved by an endorsement on a copy of the document showing the fact, date, time, and mode of service.
- (2) An endorsement under **subsection (1)** must be signed by the person who served the document. 15
- (3) A person who wilfully endorses a false statement on a copy of a document commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$2,000, or to both.
- (4) If a document is sent by prepaid post, then, unless the contrary is shown, the document is to be treated as having been served on the 5th working day after the date on which the document was posted, and, in proving service, it is sufficient to prove that the letter concerned was properly addressed and posted. 20
- (5) If a document is sent in electronic form, then, unless the contrary is shown, the document is to be treated as having been served at the time the electronic communication first enters an information system that is outside the control of the document's originator, and, in proving service, it is sufficient to prove that the document concerned was properly addressed and sent. 25
- (6) In this section, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications. 30

48 New cross-heading above section 30 inserted

After section 29, insert:

Use of Māori language

49 Section 79 amended (Interpretation)

- (1) In section 79(1), replace the definition of **property** with: 35
property has the same meaning as in section 4 of the Property Law Act 2007
- (2) In section 79(1), definition of **resolved**, paragraph (a)(i), replace “and 86C” with “86C, and **86DA**”.

- (3) In section 79(1), definition of **resolved**, paragraph (a)(ii), after “83(2)(c),”, insert “**86DB**,”.
- (4) In section 79(1), definition of **resolved**, paragraph (a)(iii), replace “87(2)(b)” with “**86DB**, 87(2)(b),”.
- (5) In section 79(1), definition of **resolved**, after paragraph (a)(iv), insert: 5
 (v) by a sale order under **section 88AE(1)(ab)**; or
- (6) In section 79(1), replace the definitions of **secured party**, **security agreement**, and **security interest** with: 10
secured party includes—
 (a) a secured party (within the meaning of section 16(1) of the Personal Property Securities Act 1999), which applies as if the reference to a security interest is a reference to a security interest under this section; and
 (b) a mortgagee (within the meaning of section 4 of the Property Law Act 2007)
security agreement includes— 15
 (a) a security agreement (within the meaning of section 16(1) of the Personal Property Securities Act 1999) other than a lease; and
 (b) a mortgage (within the meaning of section 4 of the Property Law Act 2007)
security interest includes— 20
 (a) a security agreement (within the meaning of section 16(1) of the Personal Property Securities Act 1999) other than a lease; and
 (b) a mortgage (within the meaning of section 4 of the Property Law Act 2007)
- 50 Section 79A amended (Service of documents under this Part)** 25
- (1) Replace section 79A(1)(d) with: 30
 (d) if authorised by rules or regulations made under **section 212(2)(e)**, by the Registrar or the chief executive communicating, in accordance with those rules or regulations, the contents of the document to the recipient orally (including by telephone):
 (e) by complying with a means of service prescribed by rules or regulations made under **section 212(2)(f)**.
- (2) In section 79A(5), definition of **authorised process server**, paragraph (e), after “Part”, insert “; or”.
- (3) In section 79A(5), definition of **authorised process server**, after paragraph (e), insert: 35
 (f) an individual who is authorised by the Secretary for Justice to serve documents under this Part

51 Section 79B amended (Service provisions modified in special cases)

In section 79B(3), replace “solicitor” with “lawyer” in each place.

52 Section 84 amended (Notice of fine)

- (1) In section 84(2)(e), replace “a Registrar or bailiff” with “a Registrar, a bailiff, or the chief executive”. 5
- (2) In section 84(2)(f), replace “section 86 or 86C,” with “section 86, 86C, or **86DA**,”.
- (3) After section 84(2)(f)(iii), insert:
- (iiia) the fine may be added to an existing arrangement, an attachment order, or a deduction notice under **section 86DB**: 10
- (4) After section 84(2)(f)(iv), insert:
- (v) a statutory land charge:
- (vi) a sale order:
- (5) In section 84(2)(g), after “District Court Judge”, insert “, Community Magistrate, or Registrar”. 15
- (6) In section 84(5)(c), replace “section 86 or 86C” with “section 86, 86C, or **86DA**”.

53 Section 86 amended (Registrar may arrange extension of time to pay)

In section 86(5), replace “sections 86A, 86C, and 86D,” with “sections 86A, 86C, 86D, and **86DA**,”. 20

54 Section 86A amended (Registrar may vary, suspend, or cancel arrangement for extension of time to pay fine or attachment order)

- (1) After section 86A(1)(a), insert:
- (aa) the defendant’s or his or her representative’s financial position has improved significantly since the arrangement was entered into; or 25
- (ab) the defendant or his or her representative entered into the arrangement for the purpose of avoiding interception at a New Zealand airport before departing from New Zealand and the defendant intends to leave New Zealand for an extended period within the next 10 days; or
- (2) After section 86A(4), insert: 30
- (4A) If, under subsection (1)(a), **(aa)**, or **(ab)**, an arrangement extending the time to pay is cancelled, the cancellation may be made without notice and takes effect immediately.
- (4B) If the Registrar, after cancelling an arrangement extending the time to pay under subsection (1)(a), **(aa)**, or **(ab)**, becomes aware (whether as a result of new information or otherwise) that there were no or inadequate grounds for 35

cancelling the arrangement, the Registrar must reinstate the arrangement and it continues in force as if it had not been cancelled.

- (3) In section 86A(5), replace “If subsection (1)(a) or (b)” with “Unless **subsection (4A)** applies, if subsection (1)(a), **(aa)**, **(ab)**, or (b)”.
- (4) In section 86A(8)(a), after “subsection (1)(a)”, insert “, **(aa)**, **(ab)**,”. 5
- (5) In section 86A(9), after “86D”, insert “**86DA**,”.
- (6) After section 86A(9)(b)(i), insert:
- (ia) the chief executive under subsection (1); or

55 New sections 86DA to 86DD inserted

After section 86D, insert: 10

86DA Chief executive may approve automated electronic system to arrange extension of time to pay fine or to vary or suspend existing arrangement

- (1) If a fine is payable and not subject to an order for immediate payment, the chief executive may enter into an arrangement with a defendant or with his or her representative, or agree to vary or suspend an existing arrangement, to allow for either or both of the following: 15
- (a) a greater time for payment:
- (b) payment to be made by instalments.
- (2) An arrangement under **subsection (1)** may not permit a fine to remain unpaid,— 20
- (a) unless **paragraph (b) or (c)** applies, for more than 5 years after the date on which the arrangement is entered into:
- (b) if an existing arrangement is varied, for more than 5 years after the date on which the variation is agreed:
- (c) if an existing arrangement is suspended, for more than 5 years after the date on which payments resume under the arrangement. 25
- (3) Subject to **section 86DC**, the chief executive may approve an automated electronic system to be administered by the Ministry of Justice to— 30
- (a) receive and process applications for an arrangement or to vary or suspend an existing arrangement under **subsection (1)**; and
- (b) enter into or decline to enter into an arrangement, or vary or suspend or decline to vary or suspend an existing arrangement, under **subsection (1)**.
- (4) If the chief executive approves an automated electronic system under **subsection (3)**, he or she must also approve procedures for the operation of the system, which must include procedures for,— 35
- (a) subject to this section, setting the criteria for determining whether an arrangement will be entered into, varied, or suspended; and

- (b) identifying the information that will be sought from or about a defendant when an application under this section is made (which must be limited to information relevant to the application); and
- (c) notifying the defendant or his or her representative that he or she may apply to vary or suspend an arrangement if it becomes too onerous or if the defendant's financial circumstances change; and 5
- (d) a review by a person, under **section 86DC(b)**, of any action taken under this section by the system and notifying the defendant or his or her representative about that option.
- (5) If an application made under this section is declined, a defendant or his or her representative may apply to a Registrar or a bailiff under section 86 or 86C to extend the time to pay the fine. 10
- (6) In this section and **section 86DB**,—
- arrangement** means an arrangement extending the time to pay a fine
- existing arrangement** means an arrangement that was previously entered into under this Part with a Registrar, a bailiff, or the chief executive and under which payments are still being made 15
- vary** includes adding a further fine to an existing arrangement.
- 86DB Chief executive may approve automated electronic system to add fine to existing arrangement, attachment order, or deduction notice without notice** 20
- (1) The chief executive may, without notice, but subject to **subsection (2)** and any procedures approved under **subsection (4)**, add the amount of another fine to an existing arrangement, attachment order, or deduction notice if—
- (a) another fine is imposed on the defendant; and 25
- (b) the defendant defaults in the payment of the fine and does not enter into an arrangement with a Registrar, a bailiff, or the chief executive to extend the time to pay.
- (2) The addition of another fine to an existing arrangement or attachment order under **subsection (1)** must not have the effect that either of those measures continues to operate for more than 5 years after the date on which the last fine is added, unless the measure is varied or suspended under this Part. 30
- (3) Subject to **section 86DC**, the chief executive may approve an automated electronic system to be administered by the Ministry of Justice to perform the actions described in **subsection (1)**. 35
- (4) If the chief executive approves an automated electronic system under **subsection (3)**, he or she must also approve procedures for the operation of the system, which must include procedures for,—

- (a) if a fine has been added to an existing arrangement, notifying the defendant of the new amount owing under the arrangement and the period over which payments will need to be made; and
- (b) if a fine has been added to an existing attachment order or deduction notice, making a new order or issuing a new notice to replace the existing order or notice, giving a copy to the defendant, and serving a copy on the defendant's employer or bank; and 5
- (c) notifying the defendant that he or she may apply—
- (i) to vary or suspend an arrangement, attachment order, or deduction notice if the payments become too onerous or if his or her financial circumstances change: 10
- (ii) for a review by a person under **section 86DC(b)** of any action taken under this section by the system.
- (5) In this section, an **existing arrangement** means an arrangement that was previously entered into with a Registrar, a bailiff, or the chief executive and under which payments are still being made. 15

86DC Approval of automated electronic systems

- (1) The chief executive may approve the automated electronic systems described in this Part only if satisfied that—
- (a) each system has the capacity to do any actions required with reasonable reliability; and 20
- (b) there is a process available under which a person affected by an action preferred by an electronic system can have that action reviewed by a person authorised by the chief executive to review those actions, without undue delay. 25
- (2) A person authorised by the chief executive under **subsection (1)** to review actions may, on a review of an action, confirm, vary, or cancel the action.
- (3) An action confirmed or varied under **subsection (2)** must, for the purposes of this Part, be treated as an arrangement with the chief executive.

86DD Registrar or chief executive may require bank to cancel automatic payment 30

- (1) When an arrangement to pay a fine is made with a Registrar, a bailiff, or the chief executive under this Part, a Registrar or the chief executive may, at any time, notify a bank from which any payment or payments have been received, including by way of automatic payment, to stop any further payments after a particular date. 35
- (2) If a bank receives advice from a Registrar or the chief executive under **subsection (1)**, it must stop any further payments after the date stated in the notice, whether or not the bank has the permission of the customer or account holder to do so. 40

56 New section 86I inserted (Financial assessment if fine is unpaid)

After section 86H, insert:

86I Financial assessment if fine is unpaid

- (1) This section applies if—
 - (a) a fine is unpaid; and 5
 - (b) the Registrar considers it would be desirable to require the defendant to undertake a financial assessment before deciding what enforcement action to undertake under section 87.
- (2) The Registrar may order that the defendant be brought before the court to enable the Registrar to undertake a financial assessment of the defendant. 10

57 Section 87 amended (Action if fine or instalment not paid or if arrangement or attachment order cancelled)

After section 87(2), insert:

- (2A) If this section applies and the total amount of any fine or fines owed by a defendant is \$5,000 or more,— 15
 - (a) a charge applies to that amount; and
 - (b) the charge may be registered against land owned by the defendant, in accordance with the Statutory Land Charges Registration Act 1928, and the provisions of that Act apply accordingly.
- (2B) If a defendant defaults in payment of a fine, the chief executive may make an attachment order attaching any salary or wages payable or becoming payable to the defendant. 20
- (2C) Subject to **section 86DC**, the chief executive may approve an automated electronic system to be administered by the Ministry of Justice to make an attachment order under **subsection (2B)**. 25
- (2D) If the chief executive approves an automated electronic system under **subsection (2C)**, he or she must also approve procedures for the operation of the system, which (where relevant) must be consistent with sections 103, 104, and 105.
- (2E) For each attachment order (if any) made under **subsection (2B)**, the defendant is liable to pay a single fee in the amount set under regulations made under this Act in respect of enforcement action taken under this Act to enforce a fine, except that the fee may be waived if the chief executive is satisfied that the defendant does not have the means to pay the fee. 30

58 New sections 87AAA and 87AAB inserted 35

After section 87, insert:

87AAA Agreements to vary charge on land

- (1) If any land owned by a defendant is subject to a charge referred to in **section 87(2A)(b)**, a Registrar may, if he or she considers that it would be unjust or unreasonable to require immediate payment of the amount charged, enter into an agreement with the defendant for the release of all or part of the land from all or part of the charge. 5
- (2) The agreement may provide for all or part of the charge to attach to any other land owned by the defendant, and may be subject to conditions.
- (3) The agreement has the effect of— 10
- (a) releasing from the charge any land agreed to be released from the charge; and
 - (b) subjecting any land agreed to be subject to a charge to the charge as agreed.

87AAB Enforcement of charge on land

A transfer or an act done with the intention, or having the effect, of defeating a charge referred to in **section 87(2A)** is void, except where the transfer or act is to, or in favour of, a purchaser in good faith for value who, at the time of the transfer or act, had no notice of the charge. 15

59 Section 87B amended (Deduction of fines)

In section 87B(1)(b), replace “or 86C” with “, 86C, or **86DA**”. 20

60 Section 88 amended (Actions if fine remains unpaid)

- (1) In section 88(1)(a), after “section 87(2)”, insert “or **(2A)**”.
- (2) In section 88(1)(c)(ii), after “for any other reason”, insert “(and even though enforcement action has not been taken),”.

61 Section 88AE amended (Powers of District Court Judge or Community Magistrate after considering report of Registrar under section 88(2)(b) or 88AD(2)(c)) 25

- (1) In section 88AE(1)(a), after “section 87(2)”, insert “or **(2A)**”.
- (2) After section 88AE(1)(a), insert: 30
- (ab) if the total amount of any fine or fines owed by the defendant is \$50,000 or more and the District Court Judge or Community Magistrate is satisfied that a sale order will not cause undue hardship to the defendant or the dependants of the defendant, make a sale order in a form approved under section 209A authorising the District Court Judge, Community Magistrate, or Registrar, as the case requires, to sell some or all of the defendant’s property (including land under the Land Transfer Act 1952), and the proceeds of sale must be dealt with under section 100R or **100RA**; or 35

- 62 Section 89 amended (Rights of representation and appeal)**
In section 89(1), replace “barrister or solicitor” with “lawyer”.
- 63 Section 92B amended (Purpose of disclosure and use of information)**
Replace section 92B(2)(b) with:
- (b) authorise credit reporters to disclose fine status responses— 5
 - (i) to subscribers to enable them to assess the creditworthiness of query subjects:
 - (ii) to subscribers who are credit providers, to enable them to protect themselves against the possible subordination of their security interests that might otherwise be required by this Act: 10
- 64 Section 92H amended (Monitoring and audits by chief executive)**
In section 92H(1)(a), after “conditions”, insert “or restrictions”.
- 65 Section 97 amended (Purposes of sections 98 to 100T)**
In section 97(a), replace “seizure of property” with “seizure and, where appropriate, sale of real and personal property”. 15
- 66 Cross-heading above section 100A repealed**
Repeal the cross-heading above section 100A.
- 67 Section 100E amended (Release of property if fine and other costs paid or if certain appeals successful)**
In section 100E(1), after “Any property”, insert “(whether real property or personal property)”. 20
- 68 Section 100F amended (Release of property to certain owners)**
In section 100F(1), after “seized property”, insert “(whether real property or personal property)”.
- 69 Section 100H amended (Lessor may apply to Registrar)** 25
- (1) In section 100H(1)(a), after “property seized”, insert “(whether real property or personal property)”.
 - (2) Replace section 100H(1)(c) with:
 - (c) in the case of a motor vehicle seized in respect of a traffic fine, the lessor is not a substitute for the defendant or a nominee for the defendant or the substitute. 30
 - (3) In section 100H(5), replace “property” with “a motor vehicle”.

- 70 Section 100I amended (What happens if lessor does not apply to Registrar before property sold or disposed of)**
- (1) In section 100I(1)(b), after “property”, insert “(whether real property or personal property)”.
- (2) In section 100I(4), after “section 100R”, insert “or **100RA**, as the case requires,”. 5
- (3) In section 100I(5), replace “section 100R applies” with “if section 100R applies, it applies”.
- (4) After section 100I(5), insert:
- (5A) Despite subsection (4), if **section 100RA** applies, it applies subject to the following modifications: 10
- (a) the proceeds of the sale of the property must be applied in payment to the lessor of the amount to which the lessor would, but for the sale, have been entitled under the lease; and
- (b) the proceeds of the sale of the property must be applied in the manner and order of priority set out in **section 100RA**, except that,— 15
- (i) in the case of a lease for a term of 1 year or less, those proceeds must be applied for the payment to the lessor described in **paragraph (a)** after they are applied for the payments described in **section 100RA(1)(a)**, but before they are applied for the remainder of the payments described in **section 100RA(1)(b) to (g)**; 20
- and
- (ii) in the case of a lease for a term of more than 1 year, those proceeds must be applied for the payment to the lessor described in **paragraph (a)** as if they were payments described in **section 100RA(1)(b)**, and **section 100RA(2)** applied. 25
- 71 Section 100J amended (Claims by secured parties)**
- In section 100J(1), replace “seized property” with “property to be sold (whether real property or personal property)”.
- 72 Section 100L amended (Sale of secured property by secured party or by court)** 30
- In section 100L(1), after “if the property”, insert “(whether real property or personal property)”.
- 73 Section 100N amended (Application of proceeds of sale by secured party)**
- (1) Replace section 100N(1)(b) with: 35
- (b) pay into court the proceeds of sale, less—
- (i) any amount paid under section 100M; and

- (ii) the amount owing under the security agreement relating to the secured property; and
- (iii) the amount of costs and expenses of, and incidental to, the sale.
- (2) In section 100N(2), after “modifications”, insert “, or **section 100RA(1)(b) to (g)**, as the case requires”. 5
- 74 Section 100O amended (Failure by secured party to sell or account for proceeds)**
- (1) In section 100O(2), after “section 100R(1)”, insert “or **100RA(1)**”.
- (2) In section 100O(2), after “section 100R(5)”, insert “or **100RA(3)**”.
- 75 Section 100P amended (Sale or disposal of property seized)** 10
- (1) In the heading to section 100P, delete “**seized**”.
- (2) In section 100P(1), after “warrant to seize property”, insert “or has been sold under a sale order”.
- (3) In section 100P(2), after “property was seized”, insert “or a sale order was issued”. 15
- (4) After section 100P(7), insert:
- (7A) If real property is sold under this section, a District Court Judge or Community Magistrate must issue an order vesting the property in the person who bought it.
- (5) Replace section 100P(10) with: 20
- (10) The purchaser or assignee of property sold, or disposed of, under this section obtains as a consequence of this section,—
 - (a) in the case of personal property, good title to the property free of all ownership and other proprietary interests held in the property before that sale or disposition: 25
 - (b) in the case of real property, on registration, the estate or interests of the previous registered owner, freed of any registered mortgage, or charge.
- 76 Section 100R amended (Application of proceeds of sale)**
- (1) In the heading to section 100R, after “**sale**”, insert “**of personal property**”.
- (2) In section 100R(1), before “property”, insert “personal”. 30
- 77 New section 100RA inserted (Application of proceeds of sale of real property)**
- After section 100R, insert:

100RA Application of proceeds of sale of real property

- (1) When real property is sold under section 100P, following the making of a sale order under **section 88AE(1)(ab)**, the proceeds of the sale must be applied in the following manner and order of priority:
- (a) in payment of the costs of the sale (including all costs incurred in selling the property and in complying with the provisions of this Part preliminary to sale): 5
 - (b) if 1 or more security agreements have been recognised under section 100J before the proceeds of the sale are fully applied, in payment to each secured party of the amount to which the secured party would, but for the extinguishment of the security interest concerned, have been entitled under that agreement less any applicable default balance certified, under section 100K, in respect of that agreement: 10
 - (c) in payment of any amount of reparation payable by the defendant: 15
 - (d) in payment of any offender levy: 15
 - (e) in payment of the fine specified in the order: 15
 - (f) in payment to any secured party or secured parties of the applicable default balance or the applicable default balances certified under section 100K and deducted under **paragraph (b)**: 20
 - (g) to the defendant. 20
- (2) If any proceeds of sale are required to be applied to 2 or more mortgages under **subsection (1)(f)**, those proceeds must be applied in the order of the priority determined for those mortgages by section 185 of the Property Law Act 2007.
- (3) The Judge or a Community Magistrate may, on application or on his or her own initiative, give any directions as to the application of the proceeds of sale under **subsection (1) or (2)**. 25

78 Section 102B amended (Proceedings against bailiffs acting under warrants)

In section 102B(1)(a), replace “solicitor” with “lawyer”.

79 Section 103 amended (Effect of attachment order) 30

- (1) In section 103(1), replace “section 87(2)(b) or section 88AE(1)(a)” with “section 87(2)(b) or **(2B)** or 88AE(1)(a)”.

- (2) After section 103(1), insert:

(1A) A copy of an attachment order must be served on the defendant.

80 Section 105 amended (Content of attachment orders) 35

In section 105(3), replace “Registrar” with “Registrar or the chief executive”.

81 Section 106 amended (Liability of employer)

In section 106(4) and (4A), after “notify the Registrar of the court in which the attachment order was issued”, insert “or the chief executive, if the attachment order was made by the chief executive,”.

82 Section 212 amended (Rules and regulations)

5

Replace section 212(2) with:

- (2) Without limiting the general power to make rules and regulations conferred by this section, rules or regulations may be made under this section—
- (a) prescribing the forms to be used in respect of any proceedings to which this Act applies: 10
 - (b) prescribing the court fees to be paid in respect of any proceedings or any processes to which this Act applies:
 - (c) prescribing the fees and charges to be paid for the purposes of this Act:
 - (d) providing for documents to be sent in electronic form under section **24(1)(e)** or 79A(1)(c), including (without limitation) provisions for the retention of records that evidence the fact that, and the date and time when, such documents were sent to electronic addresses: 15
 - (e) specifying, for the purposes of **section 79A(1)(d)**, the kinds of documents that may be served by communicating their contents orally, and prescribing any conditions and restrictions for such communications and the ways in which such communications must be made, including any provisions for the recording of such communications and for the retention, custody, disclosure, use, and destruction of such recordings: 20
 - (f) prescribing, for the purposes of **sections 24(1)(f) and 79A(1)(e)**, a means by which documents may be served: 25
 - (g) prescribing requirements or other matters in relation to the provision of particulars of reminder notices in electronic form under section 21, and any matters in relation to the verification or processing of those particulars: 30
 - (h) regulating the searching of records of 1 or more of the following:
 - (i) particulars of reminder notices provided under section 21:
 - (ii) the results of any verification processes undertaken under section 21:
 - (iii) reminder notices deemed to have been filed and orders deemed to have been made under section 21: 35
 - (iv) notices of hearings filed under section 21:
 - (v) applications filed under section 78B:
 - (vi) any matter related to the items in **subparagraphs (i) to (v)**:

- (i) providing for any other matters in respect of which rules or regulations are contemplated under this Act.

83 New Schedule 1 inserted

Insert the **Schedule 1** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act. 5

Amendments to other enactments

84 Amendments to other enactments

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

Part 4

Amendments to other Acts

10

Subpart 1—Amendments to Bail Act 2000

85 Principal Act

This **subpart** amends the Bail Act 2000 (the **principal Act**).

86 Sections 33 and 34 replaced

Replace sections 33 and 34 with:

15

33 Variation of conditions of bail

- (1) The court in which the proceeding for an offence with which a defendant has been charged is, may,—

(a) on the application of the defendant or the prosecutor, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail; and 20

(b) on the application of an EM assessor, make an order varying the EM address.

- (2) However, in the case of the variation of an EM condition, the only orders the court may make under **subsection (1)(a)** in relation to that EM condition are— 25

(a) an order authorising absence from the EM address:

(b) an order varying or revoking any existing authorisation of absence from the EM address:

(c) an order varying the EM address. 30

- (3) If the court makes an order under **subsection (1)** in relation to an EM condition, sections 30A to 30S apply to the extent necessary and with the necessary modifications.

- (4) No application may be made under **subsection (1) or (6)** in respect of a bail bond that has been entered in any case where sureties are required, unless the sureties to the bail bond have consented to the making of the application.
- (5) A Registrar may exercise the power conferred by **subsection (1)** to make an order if— 5
- (a) the court in which the proceeding for an offence is, is the District Court; and
 - (b) the prosecutor agrees.
- (6) If a court or Registrar has, in granting bail to any defendant, imposed the condition that the defendant report to the Police at such time or times and at such place or places as the court or Registrar orders, a Registrar may, on the application of the defendant, make an order varying the time or times or the place or places at which the defendant is required to so report. 10
- 34 Consequences of variation of conditions of bail**
- (1) If a court or Registrar varies or revokes any condition of bail or substitutes or imposes any other condition of bail under **section 33(1)**, the following provisions apply: 15
- (a) if the defendant is present at the court, a Registrar must,—
 - (i) as soon as is reasonably practicable, prepare a new notice of bail or bail bond (whichever is applicable) setting out the conditions of bail as amended (if any); and 20
 - (ii) be satisfied that the defendant understands the conditions of bail; and
 - (iii) require the defendant to sign the notice of bail or bail bond:
 - (b) if the defendant is not present at the court, a Registrar must send written notice to the defendant and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh notice of bail or bail bond that contains the conditions as amended (if any). 25
- (2) If, in any case to which **subsection (1)** applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter a fresh notice of bail or bail bond, the Registrar of the office of the court at the place where the condition of bail was varied or revoked or substituted must refer the matter to a Judge, who may issue a warrant for the arrest of the defendant. 30
- (3) A Registrar may exercise the power under **subsection (2)** to issue a warrant to arrest the defendant if the court in which the proceeding for an offence is, is the District Court. 35

87 Sections 41 to 52 and cross-headings replaced

Replace sections 41 to 52 and the cross-headings above sections 41, 44, 47, 50, and 51 with:

41 Interpretation

In this subpart, unless the context otherwise requires, **appeal court** means,— 5

- (a) if a decision of a Justice or Justices or a Community Magistrate or Community Magistrates is appealed against, the District Court presided over by a District Court Judge: 5
- (b) if a decision of a District Court Judge is appealed against, the High Court: 10
- (c) if a decision of the High Court is appealed against, the Court of Appeal:
- (d) if a decision of the Court of Appeal is appealed against, the Supreme Court.

42 Appeal against decision relating to bail

- (1) If a court refuses to grant bail to a defendant (whether before or after conviction and whether under any enactment or rule of law or otherwise), the defendant may appeal to the appeal court against that decision. 15
- (2) If a court grants bail to a defendant (whether before or after conviction and whether under any enactment or rule of law or otherwise), the prosecutor may appeal to the appeal court against that decision. 20
- (3) If a court imposes, or refuses to impose, any condition of bail, or makes or refuses to make an order under **section 33** varying or revoking any condition of bail or substituting or imposing any other condition of bail, the defendant or the prosecutor may appeal to the appeal court against that decision.
- (4) For the purposes of an appeal under this section, the failure to impose a condition of bail on any occasion on which the condition could lawfully be imposed is deemed to be a refusal to impose the condition. 25
- (5) No person may seek bail in the High Court under that court's inherent jurisdiction if the person has a right of appeal to a District Court Judge under this section. 30
- (6) An appeal under this section is by way of rehearing.

43 Procedure relating to appeal under section 42

- (1) Sections 273 to 275 and subpart 12 of Part 6 of the Criminal Procedure Act 2011 apply to an appeal under **section 42** as if the appeal were a first appeal against a decision on a costs order, except that the notice of appeal must be filed within 20 working days after the date of the decision appealed against. 35
- (2) Despite any other enactment or rule of law, on the hearing of the appeal under **section 42**, it is not necessary for either party to produce—

<ul style="list-style-type: none"> (a) any note or transcript of the evidence adduced to the court appealed from; or (b) any note of the reasons for the decision appealed against; or (c) any copy of any note or transcript referred to in paragraph (a) or (b). 	5
<ul style="list-style-type: none"> (3) Every decision of the appeal court on an appeal under section 42 is final. 	5
<ul style="list-style-type: none"> (4) No decision appealed against under section 42 is suspended merely because notice of that appeal has been given. 	5
<ul style="list-style-type: none"> (5) An appeal under section 42 that is not heard before the date on which the decision appealed against ceases to have any effect— <ul style="list-style-type: none"> (a) lapses on that date; and (b) is deemed to be abandoned. 	10
<ul style="list-style-type: none"> (6) If the defendant does not appear at the hearing of the appeal under section 42(2), a Judge of the appeal court may, if he or she thinks fit, issue a warrant for the arrest of the defendant. 	10
<p>44 Execution of decision of appeal court on appeal relating to bail under section 42</p>	15
<ul style="list-style-type: none"> (1) If, on an appeal under section 42, the appeal court determines that the defendant should be remanded in custody, a warrant for the detention of the defendant in custody must be issued by a Judge of the appeal court. 	15
<ul style="list-style-type: none"> (2) The person who executes a warrant issued under subsection (1) must ensure that a copy of the notice of the result of the appeal is given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed. 	20
<ul style="list-style-type: none"> (3) If, on an appeal under section 42 against a refusal to grant bail, bail is granted,— <ul style="list-style-type: none"> (a) the appeal court must order that the defendant be released on bail; and (b) sections 30 and 31 apply. 	25
<ul style="list-style-type: none"> (4) If, on an appeal under section 42 in respect of any condition of bail, the appeal court varies or revokes any condition of bail or substitutes or imposes any other condition of bail, the following provisions apply: <ul style="list-style-type: none"> (a) if the defendant is present at the appeal court, a Registrar must,— <ul style="list-style-type: none"> (i) as soon as is reasonably practicable, prepare a new notice of bail or bail bond (whichever is applicable) setting out the conditions of bail as amended (if any); and (ii) be satisfied that the defendant understands the conditions of bail; and (iii) require the defendant to sign the notice of bail or bail bond: 	30
<ul style="list-style-type: none"> (a) if the defendant is present at the appeal court, a Registrar must,— <ul style="list-style-type: none"> (i) as soon as is reasonably practicable, prepare a new notice of bail or bail bond (whichever is applicable) setting out the conditions of bail as amended (if any); and (ii) be satisfied that the defendant understands the conditions of bail; and (iii) require the defendant to sign the notice of bail or bail bond: 	35

- (b) if the defendant is not present at the appeal court, a Registrar of the court appealed from must send written notice to the defendant and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh notice of bail or bail bond that contains the conditions as amended (if any) required to give effect to the decision on the appeal. 5
- (5) If, in any case to which **subsection (4)** applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to sign a fresh notice of bail or bail bond, a Judge of the court appealed from may issue a warrant for the arrest of the defendant. 10
- 88 Section 53 repealed (Granting of bail to appellant in custody or on home detention pending appeal to District Court presided over by District Court Judge)**
Repeal section 53.
- 89 Sections 54 and 55 replaced** 15
Replace sections 54 and 55 with:
- 54 Granting of bail to appellant in custody or on home detention pending appeal to High Court, Court of Appeal, or Supreme Court**
- (1) This section applies if a person—
- (a) is in custody under a conviction or is subject to a sentence of home detention; and 20
- (b) is appealing against the conviction or sentence, or both, to the High Court, Court of Appeal, or Supreme Court (as the case requires).
- (2) If the appellant is in custody, or is subject to a sentence of home detention, only under the conviction to which the appeal relates, the appellant is bailable at any time before the hearing of the appeal— 25
- (a) at the discretion of the Judge who presided over the court whose determination is appealed against (if applicable); or
- (b) if that Judge is not available,— 30
- (i) if the decision was made by a District Court Judge, at the discretion of another District Court Judge; or
- (ii) if the decision was made by a High Court Judge, at the discretion of another High Court Judge; or
- (c) at the discretion of the Court of Appeal or Supreme Court (in the case of an appeal to the Court of Appeal or to the Supreme Court). 35
- (3) Subject to the provisions of section 31 (as applied by **subsection (4)**), if an appellant is granted bail pending the determination of an appeal by the High Court, the appellant must be released on condition that the appellant attend per-

	sonally at the High Court on the day on which the appeal is to be heard and on any day to which the hearing may from time to time be adjourned.	
(4)	If an appellant is granted bail under this section, the provisions of sections 30 to 33 , 35 to 39, and 54A , as far as they are applicable and with any necessary modifications, apply as if the appellant were a defendant remanded in custody who had been granted bail.	5
(5)	If an appellant is granted or refused bail under this section, or if any decision is made under section 33(1) (as applied by subsection (4)) in respect of any appellant, the provisions of sections 42 and 43 , as far as they are applicable and with all necessary modifications, apply as if the appellant were a defendant who had been granted or, as the case may be, refused bail.	10
(6)	If an appeal is filed on a question of law under subpart 8 of Part 6 of the Criminal Procedure Act 2011 and the appeal relates to a person’s conviction, this section applies to the convicted person as it does to the appellant.	
54A	Appeal against entry by court of non-performance of condition of bail in court record	15
(1)	If a court directs, under section 39, that the non-performance of a bail condition be entered into the court record, the defendant may, within 20 working days of the direction being made, appeal against the direction to the appeal court.	
(2)	After considering an appeal under subsection (1) , the appeal court Judge may order that—	20
	(a) the direction stand; or	
	(b) the direction be amended; or	
	(c) the direction be revoked.	
(3)	There is no further right of appeal against a direction to enter the non-performance of a condition of bail in the court record than that given by this section.	25
(4)	No direction appealed against under this section is suspended merely because notice of that appeal has been given.	
55	When person is in custody or on home detention for purposes of section 54	
	For the purposes of section 54 ,—	30
(a)	an appellant is not deemed to be in custody only under the conviction to which the appeal relates if a direction has been given under section 83 of the Sentencing Act 2002 that another sentence or term of imprisonment is to follow the sentence imposed on that conviction, and the appellant has not appealed against the conviction in respect of which that other sentence or term was imposed; and	35
(b)	an appellant is not deemed to be subject to a sentence of home detention only under the conviction to which the appeal relates if a direction has been given under section 80B of the Sentencing Act 2002 that another	

sentence of home detention is to follow the sentence imposed on that conviction, and the appellant has not appealed against the conviction in respect of which that other sentence was imposed.

90 Section 58 amended (Time on bail pending appeal not to be taken as time served) 5

After section 58(1), insert:

- (1A) For the purposes of section 343(b) of the Criminal Procedure Act 2011, a sentence of home detention is suspended if an appellant is released on bail and continues to be suspended while the defendant is on bail.

Subpart 2—Amendments to Care of Children Act 2004 10

91 Principal Act

This **subpart** amends the Care of Children Act 2004 (the **principal Act**).

92 Section 46E amended (Family dispute resolution mandatory before commencement of proceedings) 15

Repeal section 46E(4)(d).

93 Section 47B amended (Mandatory statement and evidence in applications)

Replace section 47B(2) to (4) with:

- (2) The application must include—
- (a) a statement, made by or on behalf of the applicant for the order, that the applicant has undertaken a parenting information programme within the preceding 2 years; and
 - (b) evidence in support of that statement.
- (3) However, **subsection (2)** does not apply to an application that—
- (a) is made in response to an application that another party to the proceedings has made for an order under section 48 or 56; or
 - (b) is made without notice; or
 - (c) is for a consent order; or
 - (d) relates to a child who is the subject of proceedings already begun under Part 2 of the Children, Young Persons, and Their Families Act 1989; or
 - (e) is accompanied by an affidavit providing evidence that—
 - (i) the applicant is unable to participate effectively in a parenting information programme; or
 - (ii) at least 1 of the parties to the proceedings, or a child of one of the parties, has been subject to domestic violence by one of the other parties to the application.

- (4) A Registrar may refuse to accept an application if the Registrar considers that the evidence provided under **subsection (2)(b) or (3)(e)** is insufficient.

94 Section 49A amended (Interim parenting order where parent does not have day-to-day care for, or contact with, child)

Replace section 49A(2) with:

- (2) If the interim order was made on an application without notice, the parent who has neither the role of providing day-to-day care for nor contact with the child may give notice to the court that he or she wishes to be heard and, if he or she does so, the Registrar of the court must assign a hearing date that is—
 - (a) as soon as practicable; and
 - (b) not more than 42 days after the notice is received, unless there are special circumstances.
- (3) In any other case, the court must assign a hearing date that is—
 - (a) as soon as practicable; and
 - (b) not more than 3 months after the date on which the interim parenting order was made.
- (4) At the hearing on the date assigned under **subsection (2) or (3)**, the court may replace the interim order with—
 - (a) a further interim order; or
 - (b) a final parenting order.

95 Section 133 amended (Reports from other persons)

Replace section 133(15) with:

- (15) The court may—
 - (a) permit disclosure, under subsection (14), of the psychological report prepared by the report writer only if the court is satisfied that the psychologist requires the report to assist the party to prepare the party’s cross-examination; and
 - (b) permit disclosure, under subsection (14), of the report writer’s notes and other materials that the report writer used in preparing the psychological report only if the court is satisfied that—
 - (i) the psychologist requires those notes and other materials to assist the party to prepare the party’s cross-examination; and
 - (ii) there are exceptional circumstances.

Subpart 3—Amendments to Criminal Disclosure Act 2008

96 Principal Act

This **subpart** amends the Criminal Disclosure Act 2008 (the **principal Act**).

97 Section 3 amended (Purpose and overview)

In section 3(2), in the diagram, replace “21 days” with “15 working days”.

98 Section 10 amended (Service)

Replace section 10(3) with:

- (3) If information, a notice, or an application is sent to any person— 5
- (a) by post, it will be treated as having been received by the person 5 working days after the day it is posted:
- (b) electronically, to a valid address,—
- (i) on a working day on or before 5 pm, it will be treated as having been received on that working day: 10
- (ii) after 5 pm on a working day or at any time on a non-working day, it will be treated as having been received on the next working day.

99 Section 33 amended (Appeals)

After section 33(3), insert:

- (3A) For the purposes of subsection (3), if a convicted person elected a jury trial and subsequently withdrew his or her election the convicted person must be treated as if he or she had not elected a jury trial. 15

Subpart 4—Amendments to Criminal Investigations (Bodily Samples)
Act 1995

100 Principal Act 20

This **subpart** amends the Criminal Investigations (Bodily Samples) Act 1995 (the **principal Act**).

101 Section 13 amended (Application for order authorising taking of bodily sample)

In section 13(1), after “District Court Judge”, insert “or a High Court Judge”. 25

102 Section 16 amended (Judge may authorise bodily sample to be taken)

In section 16(1), after “District Court Judge”, insert “or a High Court Judge”.

Subpart 5—Amendments to Criminal Procedure (Mentally Impaired
Persons) Act 2003

103 Principal Act 30

This **subpart** amends the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the **principal Act**).

104 Section 3 amended (Purpose)

Replace section 3(b) with:

- (b) provide that a defendant found unfit to stand trial for an offence must be the subject of an inquiry to determine whether the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence: 5

105 New section 5A inserted (Transitional, savings, and related provisions)

After section 5, insert:

5A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms. 10

106 Subpart 1 heading in Part 2 replaced

In Part 2, replace the subpart 1 heading with:

Subpart 1—Findings of unfitness to stand trial and involvement in offence 15

107 Section 7 amended (When finding of unfitness to stand trial may be made)

Repeal section 7(2).

108 New section 8A inserted (Determining if defendant unfit to stand trial)

After section 8, insert:

8A Determining if defendant unfit to stand trial 20

- (1) The court must receive the evidence of 2 health assessors as to whether the defendant is mentally impaired.
- (2) If the court is satisfied on the evidence given under **subsection (1)** that the defendant is mentally impaired, the court must record a finding to that effect and— 25
 - (a) give each party an opportunity to be heard and to present evidence as to whether the defendant is unfit to stand trial; and
 - (b) find whether or not the defendant is unfit to stand trial; and
 - (c) record the finding made under **paragraph (b)**.
- (3) The standard of proof required for a finding under **subsection (2)** is the balance of probabilities. 30
- (4) If the court records a finding under **subsection (2)** that the defendant is fit to stand trial, the court must continue the proceedings.

- (5) If the court records a finding under **subsection (2)** that the defendant is unfit to stand trial, the court must inquire into the defendant’s involvement in the offence under section 10, 11, or 12, as the case requires.
- 109 Section 9 repealed (Court must be satisfied of defendant’s involvement in offence)** 5
Repeal section 9.
- 110 Section 10 amended (Inquiry before trial into defendant’s involvement in the offence)**
Replace section 10(1) and (2) with:
- (1) This section applies if, before trial, the defendant is found unfit to stand trial. 10
(2) The court must decide whether the court is satisfied, on the balance of probabilities, that the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged.
- 111 Section 11 amended (Inquiry during Judge-alone trial into defendant’s involvement)** 15
(1) In the heading to section 11, after “**involvement**”, insert “**in offence**”.
(2) Replace section 11(1) and (2) with:
- (1) This section applies if, during a Judge-alone trial, the defendant is found unfit to stand trial. 20
(2) The court must decide whether the court is satisfied, on the balance of probabilities, that the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged.
- 112 Section 12 amended (Inquiry during jury trial into defendant’s involvement)** 25
(1) In the heading to section 12, after “**involvement**”, insert “**in offence**”.
(2) Replace section 12(1) and (2) with:
- (1) This section applies if, during a jury trial, the defendant is found unfit to stand trial. 30
(2) The court must decide whether the court is satisfied, on the balance of probabilities, that the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged.
- 113 Section 13 amended (Outcome of consideration of defendant’s involvement)** 35
(1) In the heading to section 13, after “**involvement**”, insert “**in offence**”.

- (2) In section 13(1), replace “section 9” with “**section 10(2), 11(2), or 12(2)**, as the case requires”.
- (3) Replace section 13(2) with:
 - (2) If the court is not satisfied of the matter specified in **section 10(2), 11(2), or 12(2)**,— 5
 - (a) the court must dismiss the charge against the defendant under section 147 of the Criminal Procedure Act 2011; and
 - (b) the finding that the defendant is unfit to stand trial is deemed, for all legal purposes, to have been quashed; and
 - (c) the court must not deal with the defendant under subpart 3. 10
- (4) Replace section 13(4) with:
 - (4) If the court is satisfied of the matter specified in **section 10(2), 11(2), or 12(2)**, as the case requires, the court must deal with the defendant under subpart 3.
- 114 Section 14 repealed (Determining if defendant unfit to stand trial)** 15
 Repeal section 14.
- 115 Section 15 amended (Jurisdiction may be exercised in absence of defendant)**
 In section 15, replace “10 to 14” with “**8A** and 10 to 13”.
- 116 Section 16 amended (Appeal by defendant against finding relating to fitness to stand trial)** 20
 - (1) In the heading to section 16, after “**fitness to stand trial**”, insert “**or sufficiency of evidence**”.
 - (2) Replace section 16(1) with:
 - (1) A defendant may appeal under **section 8A(2)(b)** against the finding that the defendant is unfit to stand trial or, as the case may be, fit to stand trial. 25
 - (1A) A defendant may appeal against a finding under **section 10(2), 11(2), or 12(2)** that there is sufficient evidence to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged. 30
- 117 Section 17 amended (Matters for appellate court on appeal under section 16)**
 - (1) In section 17(1), replace “section 16” with “**section 16(1A)**”.
 - (2) In section 17(3),—
 - (a) after “appeal”, insert “under section 16(1)”; and 35
 - (b) replace “under subsection (1)” with “under **subsection (1A)**”.

- 118 New Schedule 1AA inserted**
 Insert the **Schedule 1AA** set out in the **Schedule 3** of this Act as the first schedule to appear after the last section of the principal Act.
- 119 Schedule amended**
 In the Schedule heading, replace “**Schedule**” with “**Schedule 1**”. 5
 Subpart 6—Amendments to Family Proceedings Act 1980
- 120 Principal Act**
 This **subpart** amends the Family Proceedings Act 1980 (the **principal Act**).
- 121 Section 142 amended (Discharge or variation of registered or confirmed order)** 10
 (1) In section 142(2), replace “the New Zealand court may” with “the New Zealand court must”.
 (2) Repeal section 142(2A).
- 122 Section 142E amended (Provisional order discharging, etc, child maintenance order)** 15
 (1) In section 142E(1), replace “the New Zealand court may” with “the New Zealand court must”.
 (2) Repeal section 142E(1A).
 Subpart 7—Amendments to Juries Act 1981
- 123 Principal Act** 20
 This **subpart** amends the Juries Act 1981 (the **principal Act**).
- 124 Section 2 amended (Interpretation)**
 (1) In section 2, insert in its appropriate alphabetical order:
 co-extensive jury districts means 2 jury districts that comprise the same area and that are— 25
 (a) a High Court Jury District constituted under section 5(1):
 (b) a District Court Jury District constituted under section 5(2)
- (2) In section 2, insert as subsection (2):
 (2) For the purpose of any applications made under any or all of sections 14A, 14AB, 14B, 14C, 15, 15A, and 29A, any requirement that the applications be made by writing or in the form of a document is satisfied by an electronic communication that, subject to any rules made under section 35, is in a form acceptable to the Registrar. 30

- 125 Section 5 amended (Jury districts)**
- (1) In section 5(5), replace “he” with “he or she”.
 - (2) After section 5(5), insert:
 - (6) If jury districts for the relevant High Court and District Court Registries are co-extensive jury districts, the same jury list can be used— 5
 - (a) to compile jury lists for trials in both the High Court and the District Court held within the jury district; and
 - (b) to create a jury panel and to summon and empanel jurors; and
 - (c) for any related purpose.
- 126 Section 14AC amended (Counsel to inspect protected particulars, and exercise rights of challenge, for litigant in person)** 10
- In section 14AC(5), after “written general directions”, insert “(including in electronic form)”.
- 127 Section 14B amended (Deferral of jury service)**
- (1) In section 14B(2)(a), replace “section 14C(1)(d)” with “section 14C(1)(c)”. 15
 - (2) After section 14B(3)(a), insert:
 - (aa) that the person has difficulties in understanding or communicating in the English language, so that they are not capable of acting effectively as a juror:
- 128 Section 14C amended (Further provisions relating to deferral of jury service)** 20
- In section 14C(3), replace “subsection (1)(d)” with “subsection (1)(c)”.
- 129 Section 16AA amended (Judge may discharge summons of person with disability or language difficulty)**
- (1) In the heading to section 16AA, replace “**discharge**” with “**cancel**”. 25
 - (2) In section 16AA(1), replace “discharge” with “cancel”.
 - (3) In section 16AA(2), replace “discharge” with “cancellation”.
- Subpart 8—Amendments to Land Transport Act 1998
- 130 Principal Act**
- This **subpart** amends the Land Transport Act 1998 (the **principal Act**). 30
- 131 Section 31 amended (Contravention of sections 5(1)(a), 5(1)(b), 5(4), 30(2), 30(3), or 30(4A))**
- (1) In the heading to section 31, replace “sections 5(1)(a), 5(1)(b), 5(4), 30(2), 30(3), or 30(4A)” with “section 5(1)(a) or (b) or (4) or 30(2), (3), (3A), (4A), or (4B)”. 35

- (2) Replace section 31(1)(d) with:
- (d) fails to surrender or return his or her driver licence to—
- (i) the Agency, a person appointed by the Agency, a court, a constable, or an enforcement officer when required to do so by section 30(2), (3), (3A), or (4A): 5
- (ii) an employee or agent of the Ministry of Justice, or an enforcement officer, when required to do so by section 30(4B)(b).
- 132 Section 91B amended (Ways in which warning notice or driver licence stop order must be served)**
- (1) In the heading to section 91B, after “**stop order**”, insert “**or details of related fines**”. 10
- (2) In section 91B(1), after “driver licence stop order”, insert “, or notice of details of the fines to which that order relates,”.
- (3) In section 91B(2), after “driver licence stop order”, insert “, or notice of details of the fines to which that order relates,”. 15
- (4) In section 91B(3), after “driver licence stop order”, insert “, or notice of details of the fines to which that order relates,”.
- (5) After section 91B(3), insert:
- (4) If a warning notice or driver licence stop order, or notice of details of the fines to which that order relates, is served in electronic form under subsection (1)(e), then, unless the contrary is shown,— 20
- (a) the notice or order, or notice of details, is served at the time the electronic communication containing the notice or order, or notice of details, first enters an information system outside the control of its originator; and 25
- (b) in proving service, it is sufficient to prove that the electronic communication was properly addressed and sent.
- (5) In this section, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications. 30
- 133 Section 91E amended (Imposition of driver licence stop order)**
- (1) After section 91E(2), insert:
- (2A) An enforcement officer may also impose an order and issue it for service in the circumstances described in subsection (1) (whether or not the person has received the order from the chief executive of the Ministry of Justice). 35
- (2) In section 91E(3), after “subsection (1)”, insert “or **(2A)**”.
- (3) Replace section 91E(3)(b) with:

<p>(b) that the notice of details of the traffic fine in respect of which the order is imposed and the amount owing on that fine will be served on the defendant either at the same time as the order is served or as soon as practicable after the order is served; and</p>	
<p>(4) Replace section 91E(3)(e) with:</p>	5
<p>(e) that if the order is served personally by an employee or agent of the Ministry of Justice or by an enforcement officer (including at the roadside), the defendant must surrender any driver licence held by the defendant to that employee, agent, or enforcement officer; and</p>	
<p>Subpart 9—Amendments to Protection of Personal and Property Rights Act 1988</p>	
<p>134 Principal Act</p>	
<p>This subpart amends the Protection of Personal and Property Rights Act 1988 (the principal Act).</p>	
<p>135 Transitional, savings, and related provisions</p>	
<p>After section 4, insert:</p>	
<p>4A Transitional, savings, and related provisions</p>	
<p>The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.</p>	
<p>136 Section 12 amended (Court may appoint welfare guardian)</p>	
<p>(1) Replace section 12(6) with:</p>	
<p>(6) The court must not appoint more than 1 welfare guardian for any person unless the court is satisfied that it would be in the interests of the person to do so.</p>	
<p>(2) In the Family Court Rules 2002, Schedule 9, form PPPR 7, notes, replace the paragraph under the heading “<i>Number of welfare guardians</i>” with “The court must not appoint more than 1 welfare guardian for any person unless the court is satisfied that it would be in the interests of the person to do so.”</p>	
<p>(3) In the Family Court Rules 2002, Schedule 9, form PPPR 8, notes, replace the paragraph under the heading “<i>Number of welfare guardians</i>” with “The court must not appoint more than 1 welfare guardian for any person unless the court is satisfied that it would be in the interests of the person to do so.”</p>	
<p>137 Section 45 amended (Statements required)</p>	
<p>In section 45(2), after “2 copies”, insert “(or together with only 1 copy if, under section 46(1), it is not necessary to send a copy to the person for whom the manager is acting because the court has previously dispensed with service under section 63(2))”.</p>	

- 138 Section 46 amended (Statement to be examined by or on behalf of Public Trust)**
- In section 46(1), replace “and send the other copy to the person for whom the manager is acting” with “and (except where the court has previously dispensed with service under section 63(2)) send 1 copy to the person for whom the manager is acting”. 5
- 139 Section 48 amended (Enforcement of manager’s duty to prepare and file statements)**
- In section 48(1), replace “who may make an order” with “who must, unless the Judge considers it inappropriate to do so, make an order”. 10
- 140 Section 74 amended (Attendance of person in respect of whom application is made)**
- Replace section 74(2) with:
- (2) The court may excuse the person if it is satisfied that—
- (a) the person wholly lacks the capacity to understand the nature and purpose of the proceedings; or 15
- (b) continued attendance is likely to cause the person serious mental, emotional, or physical harm.
- 141 Section 86 amended (Review of personal orders)**
- (1) In section 86(7)(a) and (b), replace “not later than 3 years” with “5 years, or if the court considers it appropriate, a lesser period”. 20
- (2) Repeal section 86(8).
- (3) In the Family Court Rules 2002, Schedule 9, form PPPR 7, notes, in the paragraph under the heading *Periodic reviews of order*, replace “3 years” with “5 years”. 25
- (4) In the Family Court Rules 2002, Schedule 9, form PPPR 8, notes, in the paragraph under the heading *Periodic reviews of order*, replace “3 years” with “5 years”.
- 142 Section 87 amended (Review of property orders)**
- (1) In section 87(8), replace “not later than 3 years” with “5 years or, if the court considers it appropriate, a lesser period”. 30
- (2) Repeal section 87(9).
- (3) In section 87(10), delete “or subsection (9)”.
- (4) In the Family Court Rules 2002, Schedule 9, form PPPR 10, notes, in the paragraph under the heading *Periodic reviews of order*, replace “3 years” with “5 years”. 35

- (5) In the Family Court Rules 2002, Schedule 9, form PPPR 11, notes, in the paragraph under the heading *Periodic reviews of order*, replace “3 years” with “5 years”.
- (6) In the Family Court Rules 2002, Schedule 9, form PPPR 12, notes, in the paragraph under the heading *Periodic reviews of order*, replace “3 years” with “5 years”.
- (7) In the Family Court Rules 2002, Schedule 9, form PPPR 13, notes, in the paragraph under the heading *Periodic reviews of order*, replace “3 years” with “5 years”.

143 New Schedule 1AA inserted 10

Insert the **Schedule 1AA** set out in **Schedule 4** of this Act as the first Schedule to appear after the last section of the principal Act.

Subpart 10—Amendments to Sentencing Act 2002

144 Principal Act

This **subpart** amends the Sentencing Act 2002 (the **principal Act**). 15

145 Section 137 amended (Sale of confiscated motor vehicles)

In section 137(3)(c), after “entitled under that agreement”, insert “(and which has not already been recovered)”.

146 Section 141B amended (Application of proceeds of sale by secured party)

(1) In section 141B(1)(b)(ii), after “sale”, insert “; and”. 20

(2) After section 141B(1)(b)(ii), insert:

(iii) the amount to which the secured party would, but for the extinguishment of the security interest concerned, have been entitled under the relevant security agreement (and that has not already been recovered). 25

Subpart 11—Amendment to Victims’ Orders Against Violent Offenders Act 2014

147 Principal Act

This **subpart** amends the Victims’ Orders Against Violent Offenders Act 2014 (the **principal Act**). 30

148 New sections 24A to 24C and cross-heading inserted

After section 24, insert:

*Power to clear court and restrict publication of proceedings***24A Power to clear court and restrict publication of proceedings**

- (1) If, in any proceedings under this Act, the court is of the opinion that it is desirable to do so, after having regard to the interests of any person (including, without limitation, the privacy of the applicant) and to the public interest, the court may make 1 or more of the following orders: 5
- (a) an order forbidding publication of any report or account of the whole or any part of—
- (i) the evidence adduced: 10
- (ii) the submissions made:
- (b) an order forbidding the publication of—
- (i) the name of any person, or any name or particulars likely to lead to the identification of that person: 15
- (ii) the affairs of any person:
- (c) an order excluding all or any persons other than the parties to the proceedings, any lawyer engaged in the proceedings, and any officer of the court from the whole or any part of the proceedings.
- (2) The court may make an order under this section on its own motion or on the application of any party to the proceedings.
- (3) Every application to the court for an order under this section may be heard in open court or in chambers. 20
- (4) An order made under **subsection (1)(a) or (b)**—
- (a) may be made for a limited period or permanently; and
- (b) if it is made for a limited period, may be renewed for a further period or periods by the court under **section 24B**; and 25
- (c) if it is made permanently, may be reviewed by the court at any time under **section 24B**.
- (5) Nothing in this section limits or restricts any other power of the court—
- (a) to prohibit or restrict the publication of reports or particulars relating to proceedings; or 30
- (b) to hear proceedings in private or to exclude any person from the court.

Compare: 1997 No 92 s 39

24B Application for renewal or review of order made under section 24A

- (1) If the court makes an order under **section 24A(1)(a) or (b)**, any person may at any time apply to the court— 35
- (a) for a renewal of the order, if the order was made for a limited time:
- (b) for a review of the order, if the order was made permanently.

- (2) An application may be made under **subsection (1)** by any person who was a party to the proceedings in which the order was made or by any other person.
- (3) After considering an application under this section, the court may renew, revoke, vary, or continue the order as it thinks fit.

Compare: 1997 No 92 s 40

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24C Contravention of orders made under section 24A

- (1) A person commits an offence if the person breaches any order made under **section 24A(1)(a) or (b)** or evades or attempts to evade any such order.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$1,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$5,000.
- (3) The breach of any order made under **section 24A(1)(c)**, or any evasion or attempted evasion of it, may be dealt with as contempt of court.

Compare: 1997 No 92 s 41

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Schedule 1
New Schedule 1 of Summary Proceedings Act 1957 inserted

s 83

Schedule 1
Transitional, savings, and related provisions

5

s 2A

Part 1
Provision relating to Part 3 of the Courts Matters Act 2017

The provisions of Part 3 of the principal Act (as amended by Part 3 of the Courts Matters Act **2017**) apply in respect of—

10

- (a) any fine or amount owing, whether imposed or arising before, on, or after the commencement of this schedule:
- (b) any arrangement to extend the time to pay a fine, whether entered before, on, or after the commencement of this schedule:
- (c) any attachment order imposed, whether before, on, or after the commencement of this schedule:
- (d) any deduction order issued, whether before, on, or after the commencement of this schedule:
- (e) any payment made by a bank or any other financial institution under an attachment order or deduction order, whether the payment is made before, on, or after the commencement of this schedule.

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Schedule 2

Amendments to other enactments

s 84

Summary Proceedings Regulations 1958 (SR 1958/38)

In regulation 15K(1), replace “or a deduction notice is issued under any of sections 83(1B), 83(2), 87(2), or 88AE(1)” with “a statutory land charge is registered, or a deduction notice is issued under any of sections 83(1B) and (2), 87(2) and **(2A)**, and 88AE(1) of the Act, or a sale order is made under **section 88AE(1)(ab)**”.

In regulation 15K(2), replace “or Registrar” with “, Registrar, or the chief executive”.

Schedule 3
**New Schedule 1AA of Criminal Procedure (Mentally Impaired
 Persons) Act 2003 inserted**

s 118

Schedule 1AA
Transitional, savings, and related provisions

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s 5A

Part 1
**Provision relating to subpart 5 of Part 4 of the Courts Matters Act
 2017**

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1 Proceedings part heard at commencement

- (1) If, at the commencement of this schedule, criminal proceedings have been commenced against a defendant but the court has not held any hearing to determine, in accordance with section 9 of the principal Act (as it read before the commencement of this schedule), the nature of the defendant's involvement with the offence, the court may direct that criminal proceedings against the defendant be continued under the provisions of this Act (as amended by subpart 5 of Part 4 of the Courts Matters Act **2017** (the **2017 Act**)).
- (2) The court may give a direction under **subclause (1)** only if it is satisfied that it is in the interests of justice to do so.
- (3) If, however, before the commencement of this schedule, the court determines under section 9 of the principal Act (as it was before the commencement of this schedule) that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged, proceedings against the defendant must be continued as if the **2017 Act** had not been passed.

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Schedule 4
Schedule 1AA of Protection of Personal and Property Rights Act
1988 inserted

s 143

Schedule 1AA
Transitional, savings, and related provisions

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s 4A

Part 1
Provision relating to subpart 9 of Part 4 of the Courts Matters Act
2017

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1 Appointment of welfare guardian or guardians

Section 12(6) (as substituted by **section 136**) of subpart 9 of Part 4 of the Courts Matters Act **2017** (the **2017 Act**), applies in relation to—

- (a) all appointments of 1 or more welfare guardians or the renewal of any such appointments, that occurs on or after the commencement of **section 12(6)**; and
- (b) any application for the appointment of 1 or more welfare guardians that has been filed but not determined before the commencement of **section 12(6)**.

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2 Statements by managers

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Sections 45(2) and 46(1) (as amended by **sections 137 and 138** of the **2017 Act**) apply in relation to—

- (a) any orders made on or after the commencement of **sections 137 and 138** of the **2017 Act**; and
- (b) any application made for an order that has been filed but not determined, before the commencement of **sections 137 and 138** of that Act.

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3 Manager's duty to prepare and file statements

Section 48(1) (as amended by **section 139** of the **2017 Act**) applies, on and after the commencement of **section 139** of the **2017 Act**, in respect of the enforcement of a manager's duty to prepare and file statements and any related order or application for an order in existence on the commencement of **section 139** of that Act.

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4 Personal order and property order

- (1) **Sections 86 and 87** (as amended by **sections 141 and 142** of the **2017 Act**) apply, on and after the commencement of **sections 141 and 142** of that Act in relation to—
- (a) personal orders and property orders in force on the commencement of **sections 141 and 142** and personal orders and property orders made after that commencement: 5
 - (b) applications for a personal order or a property order which have been made but not determined on that commencement date.
- (2) However, if on the commencement of **sections 141 and 142** of the **2017 Act**, a personal order or a property order has been in force for 3 or more years but less than 5 years, the review required by section 86 or 87 must take place as soon as practicable after the order has been in force for 5 years. 10