

Courts Matters Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Courts Matters Bill, and recommends that it be passed with the amendments shown.

Cognate bills

The Courts Matters Bill and the Tribunals Powers and Procedures Legislation Bill are deemed to be cognate bills due to their closely related nature. Under Standing Order 269, cognate bills may be treated as though they are a single bill throughout the parliamentary process.

The bills seek to contribute to a modern, efficient, and effective courts and tribunals system. They would amend courts and tribunals legislation to improve:

- timeframes for hearing and resolving matters
- users' experience of the courts and tribunals system
- efficiency, effectiveness, and timeliness by enabling greater use of modern technology
- productivity and efficiency by simplifying and standardising statutory powers and procedures
- consumer protection and redress and greater access to justice.

This commentary covers the main amendments that we recommend to the Courts Matters Bill. It does not discuss minor, technical, or consequential amendments.

About the Courts Matters Bill as introduced

The Courts Matters Bill is an omnibus bill which seeks to amend 14 Acts. It aims to improve users' experience by making courts and tribunals safer and more secure,

through amendments to the Courts Security Act 1999. It also aims to improve the efficiency, effectiveness, and timeliness of:

- criminal processes (through changes to the Criminal Procedure Act 2011 and the Criminal Procedure (Mentally Impaired Persons) Act 2003)
- fines enforcement (by amending the Summary Proceedings Act 1957)
- the courts generally (through amendments to 11 other Acts).

Amendments to the Courts Security Act 1999

Definition of “Judge”

Clause 5 of the bill as introduced would amend the definitions of “tribunal” and “Judge” in section 2 of the Courts Security Act. The new definition of Judge would include the Chief High Court Judge, Employment Court Judges, and members of bodies declared to be courts and tribunals.

We consider it unnecessary to list the Judges and members of each court and tribunal because the Act is intended to cover the courts and tribunals listed in section 3(5). We therefore recommend replacing the definition of Judge in section 2(1) with a more generic definition.

Power to include additional courts and tribunals under the Act

Section 36(a) provides for the Governor-General to make regulations to extend the scope of the Act by including additional courts and tribunals. Clause 24 of the bill as introduced would repeal section 36(a). Instead, clause 5, amending section 2, and clause 6, amending section 3, would authorise the Minister for Courts to extend the scope of the Act. This would be done by including further courts and tribunals by a notice in the *Gazette*, rather than through regulations.

We received advice from the Regulations Review Committee that it would be more appropriate for courts and tribunals to be added or removed through primary legislation, rather than by regulations or *Gazette* notice. The Regulations Review Committee is also concerned that the public does not always know about, or access, notifications through the *Gazette*.

We were advised that primary legislation would be needed to bring the Employment Court and several tribunals under the jurisdiction of the Act. This is because the Ministry of Justice assumed administrative responsibility for these bodies without a change to legislation. We therefore consider that regulations remain the appropriate mechanism for expanding the courts and tribunals covered by the Act.

Accordingly, we recommend amending clauses 5, 6, and 24 so that courts and tribunals would continue to be extended by regulations, rather than by *Gazette* notice.

Definition of “specified offence”

Clause 5(5), amending section 2, would broaden the definition of “specified offence” to include lower level offences that disrupt how the court operates. The new defin-

ition would cover possession of controlled drugs, which is an offence under section 7 of the Misuse of Drugs Act 1975.

We recommend amending section 2 to also include drug paraphernalia (section 13 of the Misuse of Drugs Act) in the definition of “specified offence”.

Expanding the definition of “court”

Clause 6, amending section 3, would expand the definition of “court”. It would include any part of the building being used for services related to the courts, including the footpath between the building and the road. This would enable court security officers (CSOs) to deal with disruptive incidents that continue on to the footpath outside the court.

For clarity, we recommend amending section 3(3)(b)(ii) and (3)(4)(ca) in clause 6(3) and (6) to include any other area between the building and the road. This would mean that areas such as berms or verges between the building and the road would also be covered.

Court premises

We recommend replacing all references to “court premises” with “court” in Part 1 of the bill. We consider that “court premises” is inconsistent with the terminology of the Act.

Removal or disposal of alcohol

Clause 9, inserting new section 15A, would authorise a CSO to require a person to remove alcohol from the court. The CSO could seize and dispose of the alcohol if the person refused or failed to remove it.

We recommend amending clause 9 to insert new section 15A(2). This would make it clear that the powers in section 15A(1) would be limited by sections 24 to 29, which deal with limits on the powers of CSOs.

New powers for CSOs to detain a person

Section 19 of the Act permits a CSO to detain a person if the CSO reasonably believes that a person may have committed a specified offence. Clause 12, inserting new section 19A(1), would extend the powers for CSOs to detain people.

Clause 12, inserting new section 19A(1)(b), would authorise a CSO to detain a person who had refused a direction from a CSO to do anything needed to protect the safety of a person being escorted in or out of the court.

We consider that this clause, as introduced, could imply that it relates to escorting a person in custody. We recommend amending section 19A(1)(b)(i) to replace for “reasons related to appearances in court” with “services related to the court”. This would make it clear that this section is designed to enable CSOs to protect people they are escorting, such as judges and juries, on activities related to court.

Clause 12, inserting new section 19A(1)(c), would empower CSOs to detain a person suspected of committing a specified offence in court who has refused to give their

contact details at the request of a CSO, after being warned that they may be detained if they refuse to provide those details.

We consider this section to be inconsistent with section 19 of the Act which allows a CSO to simply detain a person suspected of committing an offence, without asking for name and address information.

We received advice that new section 19A(1)(c) was intended only for people who had committed a relatively minor specified offence. The CSO could use their contact details to file a complaint with the Police about the offending, rather than detaining them. A person's full name is required for a complaint to be filed with the Police.

We recommend making this process more flexible for CSOs (and reconciling sections 19 and 19A) by deleting section 19A(1)(c) and inserting new clause 11A. This would amend section 19 by inserting new sections 19(2A) and (2B). Section 19 would allow a CSO, if appropriate, to ask for the suspected offender's contact details instead of detaining them. A CSO could still detain a person if they failed to provide those details.

Powers to seize items and detain persons

Clause 13, amending section 20, would limit the maximum period that a CSO could detain a person who had committed, or attempted to commit, a specified offence in the court.

We consider that this clause, as introduced, implies that a CSO could seize items without also detaining the person from whom they were seized. We recommend amending section 20(1) to make it clear that items could be seized only if the person was detained.

Clause 13, replacing section 20(5), would require that a person be detained separately from other prisoners. We recommend amending this section to require separate detention only if it is practicable.

Power to use reasonable force

Clause 15, amending section 21, would extend CSOs' powers to use reasonable force when exercising their powers or duties. We recommend amending this clause so that the power to use reasonable force also applied (under new section 20A, inserted by clause 14) where a CSO was pursuing a person who had fled or escaped from the court.

Allowing people denied entry or removed from court to re-enter

Clause 11, inserting new section 18A, would empower a CSO to refuse access to, or remove a person from, court if they reasonably believe the person is, or will be, intimidating, violent, or disruptive.

Section 22 of the Act allows a person denied entry, or removed from court under certain sections of the Act, to re-enter if they modify their behaviour. Clause 16, amending section 22, would allow a person to re-enter if they had been denied entry or removed from the court for their disruptive behaviour (under new section 18A).

We recommend deleting section 22(1) and inserting new section 22(2A). Section 22(2A) would require the CSO to allow a person denied entry or removed from court to re-enter if the CSO is satisfied the person will not repeat their behaviour.

When CSOs can exercise their powers for a person in custody

Section 26 of the Act states that a CSO can exercise their statutory powers to search, seize dangerous items, and detain people who commit specified offences if a presiding judicial officer directs them to. This relates to a person in the custody of the Police or Oranga Tamariki who is about to appear before a presiding judicial officer.

Clause 19, amending section 26, would require a CSO to exercise their powers when directed to by a presiding judicial officer or when the direction has been issued by a Judge who is not in the court.

We recommend amending clause 19 by inserting new section 26(2A). This would specify that the direction given by the presiding judicial officer during a proceeding should prevail if there was any inconsistency with the earlier directions of the Judge.

We recommend inserting section 26(4A) to make it clear that judicial officers could direct CSOs to exercise their statutory powers over a person in Police, Corrections, or Oranga Tamariki custody at any time after the person has been brought to court.

We also recommend amending clause 19, replacing section 26(2), to authorise a CSO to exercise their powers at their own discretion in appropriate circumstances.

When CSOs can exercise their powers in courtroom where proceedings being heard

Section 28 allows a CSO to exercise any of their statutory powers in a courtroom where proceedings are being heard when directed by a presiding judicial officer. CSOs can also do so at their own discretion. They must reasonably believe that a person may have committed a specified offence in the court and it is not practicable to wait for a direction from the presiding judicial officer.

Clause 20, replacing section 28(1), would allow a CSO to exercise within the courtroom the powers of detention or removal for contempt that are conferred on a judicial officer, if the presiding judicial officer directs the CSO to do so.

We consider that this clause, as introduced, would remove a CSO's authority to exercise their statutory powers at their own discretion when a person has committed a specified offence. It would also mean that CSOs could only detain a person who had committed a specified offence because they would no longer have the authority to identify and seize potentially dangerous items.

We recommend amending section 28 to retain a CSO's existing ability to exercise their statutory powers during a hearing.

Offence to obstruct court security officer

Section 30 of the Act provides that prosecutions for the offence of obstructing a CSO can be heard by a District Court Judge or two or more Justices of the Peace. Clause

22, amending section 30, would also authorise Community Magistrates to hear these prosecutions.

We recommend deleting this clause. This is because obstructing a CSO is classified as a category 2 offence under the Criminal Procedure Act because the maximum penalty includes a term of imprisonment of up to 3 months. The Act generally does not allow Community Magistrates to hear category 2 offences and Community Magistrates are unable to impose prison sentences under the Act.

Amendments to the Criminal Procedure Act 2011

Streamlining the process for adding charges during the trial

To add a charge during a trial, the prosecutor must file a charging document for the new charge. They must also seek the court's leave to add the charge to the existing proceeding. This process may result in the trial being adjourned while the charging document is filed.

We recommend streamlining the process and minimising disruption to the trial by inserting clause 31A, new section 136A. This would remove the requirement for the prosecutor to file the charging document. The court would still need to give leave to add the charge to the existing proceeding. New section 136A is modelled on current section 136, which enables the prosecutor to amend charges during the trial.

Processes for prosecutions when the Solicitor-General assumes responsibility

Sections 187 to 193 of the Act relate to the Solicitor-General assuming responsibility for Crown prosecutions from the Police and other prosecuting agencies. Under the bill as introduced, the prosecutor would need to seek leave to join two sets of charges if the Solicitor-General assumes responsibility for a prosecution after the case review is complete.

To ensure consistency and reflect the law that applied prior to the Act, we recommend inserting clause 33A, new section 192A. This would specify that leave is not required to join charges, regardless of when the Solicitor-General assumes responsibility for the prosecution.

Proceedings that should have been dealt with in Youth Court

Section 380 of the Act provides that a conviction in the District Court for a young defendant is still valid even if it is discovered that the matter should have been dealt with in the Youth Court. Section 380 also enables the young person to apply for a re-hearing of the charge due to the error.

Clause 40, amending section 380, would clarify that this section applies both before and after conviction. At present, when a prosecutor's error is discovered before conviction, the prosecution is stopped and charges are refiled in the Youth Court. The proposed amendment would mean that the prosecution could continue in the District Court, even if halfway through the trial it was discovered that the prosecution should be in the Youth Court.

We recommend deleting clause 40. We consider it unfair that Youth Court processes may be removed from a young person and their family because the charge has been filed in the wrong court.

Transitional provisions regarding formal statements

Formal statements are signed witness statements that the prosecutor must provide to the defendant before a jury trial case. Clause 29, amending section 82(1)(b), would require a witness to acknowledge that a formal statement may be used in court proceedings. At present, the witness is required to declare that the statement will be used in court proceedings.

We recommend adding a transitional provision by inserting clause 25A, new section 5A and new Schedule 2A. This would specify that a formal statement made under the existing provisions would not become inadmissible after the commencement of this legislation. It would ensure a formal statement made under the existing provision could still be used in criminal proceedings after the commencement of clause 29.

Amendments to the Summary Proceedings Act 1957

Allowing Community Magistrates to make decisions about certain claims

Clause 61, amending section 88AE of the Summary Proceedings Act, would authorise District Court Judges and Community Magistrates to order the forced sale of real property such as land in certain circumstances if the defendant owed \$50,000 or more.

Section 100J of the Act specifies the process for ensuring that claims of secured creditors are appropriately treated.

We recommend amending clause 71, section 100J, to also allow Community Magistrates to make decisions about secured creditors' claims to property that is subject to forced sale.

Amendments to the Bail Act 2000

Consolidating variations of conditions of bail

Clause 86, replacing sections 33 and 34 of the Bail Act, would consolidate variations of conditions of bail in the District Court, High Court, Court of Appeal, and Supreme Court. At present, the process is separate for the District Court.

We consider that the proposed wording for the amendment is unclear because the reference to the specific courts has been removed. We recommend amending section 33 to make it clear that the court is the one that has jurisdiction at the time.

Consolidating the procedures for appeal

Clause 87, replacing sections 41 to 52 and the cross-headings, would consolidate the procedures for appeal in the District Court, High Court, Court of Appeal, and Supreme Court.

Clause 87, replacing section 44(1), provides for a situation where an appeal against a decision relating to bail is not granted by the appeal court. In this case, a warrant for the detention of the defendant in custody must be issued by the Judge of the appeal court. As introduced, this clause does not make any reference to bail. For clarity we recommend amending section 44(1) to refer to the granting of bail.

Granting of bail to a person in custody or on home detention appealing to the District Court

Clause 88 would repeal section 53 of the Act. This deals with granting bail to a person in custody or on home detention pending an appeal to the District Court. The section is being repealed because it was considered to have no effect. A person cannot be in custody or on home detention in these circumstances.

We understand that that this section assumes that the sentence would have been imposed by a Justice or Community Magistrate. We also assumed that this section was considered to have no effect because a Justice or Community Magistrate cannot order a sentence of imprisonment.

However, we heard that a Justice or Community Magistrate can order a sentence of imprisonment in limited circumstances—for non-payment of a sum of money, disobeying a court order, or contempt of court. Given this section may not be completely redundant, we recommend retaining it by deleting clause 88.

Granting of bail to a person in custody or on home detention pending appeal

Clause 89 would replace sections 54 and 55. The replacement section 54 would standardise the procedures for bail pending the determination of an appeal. At present, section 54 relates to appeals to the High Court, while section 55 relates to appeals to the Court of Appeal or Supreme Court.

Replacement section 55 would set out when a person is in custody or on home detention for the purposes of section 54. We recommend amending section 55(a) to reflect that the sentence referred to is a cumulative one.

Amendments to the Care of Children Act 2004

Mandatory statement and evidence in applications

Section 47B of the Care of Children Act requires an application for a parenting order to include a statement that the applicant has completed a parenting information programme in the previous 2 years, except in certain circumstances. Clause 93, amending section 47B, would align the list of exemptions with the family dispute resolution provisions under section 46E of the Act.

One such exemption is clause 93, amended section 47B(3)(d), which would exempt an application relating to a child who is the subject of proceedings under Part 2 of the Oranga Tamariki Act 1989.

We heard that, in some situations, children may be placed with another family member when court proceedings are not involved, as the result of agreement at a family

conference. Oranga Tamariki usually encourages the child's caregivers to apply for a parenting order under the Care of Children Act to give the arrangements stability and enable caregivers to make decisions in consultation with the parents.

Parenting information programmes focus on issues relating to separating parents and are not relevant when a child is placed in the care of another family member. We therefore recommend amending clause 93, section 47B(3), to exempt a person from attending a parenting information programme where an application for a parenting order is made by a person following intervention by Oranga Tamariki.

Reports from other persons

Section 133 allows the court to obtain psychological reports about a child when needed to help with determining an application under the Act. A party may obtain a second opinion on the report.

If the court declines approval for a second opinion, or a party does not seek approval, a party may apply under section 133(14) and (15) to seek disclosure of the report writer's materials (report, notes, and other materials) to a psychologist employed by the party. The court can only permit disclosure if it is satisfied that the psychologist requires the report or the notes and other materials to help them with their cross-examination at the hearing.

Clause 95, amending section 133(15), provides that the psychological report could still be disclosed to a party's psychologist to help the party prepare for cross-examination. However, any other notes and materials could only be disclosed in exceptional circumstances.

We recommend amending section 133(15) to provide that the release of materials, other than the psychologist's report, be limited to information about the party seeking that information. This would reflect the Judicial Practice Note in relation to section 133 reports.

We also recommend amending this section to provide that the court may permit disclosure of the psychological report, as well as the report writer's notes and other materials used to prepare the psychological report, subject to any terms and conditions the court considers appropriate.

We expressed concern regarding clause 95 that report writers' notes and other materials could be released. We recommend that the House consider further changes to this clause in the Committee of the whole House to prohibit release of any of this material.

Amendment to the Courts (Remote Participation) Act 2010

We recommend that a further Act be amended.

Using audio-visual links in criminal procedural matters

Section 8 of the Courts (Remote Participation) Act sets out when audio-visual link (AVL) technology should be used in criminal procedural matters. If available, it must be used for a participant in custody who is appearing for a criminal procedural matter.

However, a judicial officer or Registrar can determine that using AVL is contrary to the interests of justice.

We propose broadening the participants who can appear remotely by AVL for criminal procedural matters. We recommend inserting clause 95B, amending section 8, to allow AVL to be used, if available, even if the participant is not in custody. A judicial officer or Registrar could still determine that using AVL is contrary to the interests of justice.

Amendment to the Protection of Personal and Property Rights Act 1988

Appointing more than one welfare guardian

Clause 136, amending section 12 of the Protection of Personal and Property Rights Act, would allow a court to appoint more than one welfare guardian for a person if it was satisfied that it is in the person's interests. At present, more than one welfare guardian can be appointed only in exceptional circumstances.

We recommend amending section 12(6) to replace the reference to "interests" with "best interests". This would widen the circumstances where more than one welfare guardian could be appointed and ensure that they are only appointed when it is in the best interests of a person.

We also recommend inserting new section 12(6A) to make it clear that, if the court appoints more than one welfare guardian, they must regularly consult each other.

Reviewing welfare guardians

Section 86 of the Act sets out how personal orders, including welfare guardians, can be reviewed. We recommend amending clause 141, section 86, by inserting new section 86(5A) to make it clear that the court can add or dismiss, without replacing, welfare guardians through the section 86 review process.

Amendments to the Family Court Rules

Clause 136, amending section 12(2) and (3), deals with amendments to forms under the Family Court Rules 2002. We recommend deleting these sections because we consider that the changes should be made by regulations. This would ensure that the required form changes can be adequately considered and quality replacement forms produced.

Appendix

Committee process

The Courts Matters Bill was referred to the Justice and Electoral Committee of the 51st Parliament on 15 August 2017. The bill was reinstated in the 52nd Parliament and referred to the Justice Committee on 8 November 2017.

The closing date for submissions was 16 February 2018. We received and considered 16 submissions from interested groups and individuals. We heard oral evidence from 4 submitters at hearings in Wellington.

We received advice from the Ministry of Justice. The Regulations Review Committee reported to the committee on the powers contained in clauses 5 and 6 in the Courts Matters Bill.

Committee membership

Raymond Huo (Chairperson)

Ginny Andersen

Hon Maggie Barry

Chris Bishop

Hon Mark Mitchell

Greg O'Connor

Priyanca Radhakrishnan

Hon Dr Nick Smith

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Andrew Little

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, 9A, 11 to 22, 28, 29, 31A, 32, 33, 33A, 61, 65, 69(1), 70 to 72, and 74 to 77, and 134 to 143**) comes into force on the day after the date on which it receives the Royal assent. 5
- (2) **Sections 7, 9A, 11 to 22, 28, 29, 31A, 32, 33, 33A, 61, 65, 69(1), 70 to 72, and 74 to 77, and 134 to 143** 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) (2)** comes into force on **1 July 2020**.

Part 1 Amendments to Courts Security Act 1999

- 3 Principal Act** 5
This **Part** amends the Courts Security Act 1999 (the **principal Act**).
- 4 Long Title amended**
- (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**
- 5 Section 2 amended (Interpretation)**
- (1) ~~In section 2, definition of **Judge**, after paragraph (c), insert:~~
- ~~(ea) the Chief High Court Judge:~~ 15
- (2) ~~In section 2, definition of **Judge**, after paragraph (i), insert:~~
- ~~(ia) the Chief Judge of the Employment Court:~~
- ~~(ib) any other Judge of the Employment Court:~~
- (1) In section 2, replace the definition of **Judge** with:
- Judge** means— 20
- (a) a Judge, including an Associate Judge, or member of any court or tribunal specified in section 3:
- (b) a person who presides over, or is a member of, a body for the time being declared by regulations to be a court or tribunal for the purposes of this Act 25
- (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~~
- (4) In section 2, definition of **presiding judicial officer**, after paragraph (g), insert: 30
- (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—

- (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
 - (C) sections 45 and 46 of the Arms Act 1983; and
 - (D) ~~section 7~~ sections 7 and 13 of the Misuse of Drugs Act 1975; and
- (ii) any other offence committed ~~on court premises~~ within a court 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~~ court; and
- (b) includes an attempt to commit an offence specified in **paragraph (a)**
- (6) In section 2, insert in its appropriate alphabetical order:
- tribunal** means a body that—
- (a) exercises judicial or quasi-judicial functions and that holds ~~a hearings~~ 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 regulations~~ as a tribunal for the purposes of this Act
- 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:
- (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) if the building is adjacent to a road, any footpath or other area 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)”.
- (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:

- (ca) if the building is adjacent to a road, any footpath or other area 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: 5
- (l) every court, tribunal, and other constituted dispute-resolution body that 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:~~ 10
- 7 New section 11A and cross-heading inserted**
- 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— 15
- (a) ~~all directions given and requirements made by a presiding judicial officer under this Act or any other Act that apply to the person imposed, by~~ the presiding judicial officer in a courtroom where proceedings are being heard, that apply to the person; and 20
- (b) ~~all directions given or requirements made imposed elsewhere in the court by or on behalf of the chief executive, or by a court security officer, that affect that person.~~
- (1A) Directions given or requirements imposed may, without limitation, include directions or requirements allowing (with or without conditions), limiting, or prohibiting the use of cell phones, cameras, or recording equipment in a courtroom or elsewhere in the court. 25
- (2) **Subsection (1)** is subject to—
- (a) sections 12(2), 13(2), 14(1)(b), 15(4) and (5), 17(4), 18(1)(b), **18A**, 19, and 20(2), (which provide for the denial of entry to a person or their removal from a court unless the person is allowed to enter or re-enter under section 22(1) or **22(1A)** and the detention of a person who a court security officer has reasonable grounds to believe may have committed a specified offence): 30
- (ab) any direction given by a presiding judicial officer that a person must not enter or remain in a courtroom or any other specified part of the court. 35

<p>(b) any inherent or implied jurisdiction of a court <u>Judge or presiding judicial officer</u> to regulate its own <u>the procedure of a court or tribunal over which that person presides</u>:</p> <p>(c) any enactment regulating who may be present at proceedings.</p>	
<p>8 Section 15 amended (Power to ask to examine detected items)</p> <p>After section 15(6), insert:</p> <p>(7) This section is subject to section 15A.</p>	<p>5</p>
<p>9 New section 15A inserted (Removal or disposal of alcohol)</p> <p>After section 15, insert:</p> <p>15A Removal or disposal of alcohol</p> <p>(1) A court security officer may—</p> <p>(a) require a person who brings alcohol onto court premises <u>into a court</u> to remove it from those premises <u>the court</u>;</p> <p>(b) seize and dispose of that <u>the</u> alcohol if the person who is required to remove it refuses or fails to do so <u>promptly</u>.</p> <p>(2) <u>Sections 24 to 29 set out limits on the power in subsection (1).</u></p>	<p>10</p> <p>15</p>
<p>9A Section 16 replaced (Power to seize detected items)</p> <p>Replace section 16 with:</p> <p>16 Power to seize detected items</p> <p>(1) <u>This section applies—</u></p> <p>(a) <u>if—</u></p> <p>(i) <u>a person complies with a request under section 15(1); and</u></p> <p>(ii) <u>the item handed over is of such a nature as to give the court security officer reasonable grounds to believe that the person may recently have committed a specified offence in the court or in any area immediately adjacent to it or may be about to commit such an offence; and</u></p> <p>(iii) <u>the person does not give the officer a reasonable excuse for the item being on the person’s person or property; or</u></p> <p>(b) <u>if—</u></p> <p>(i) <u>a person complies with a request under section 15(1); and</u></p> <p>(ii) <u>the item handed over is of such a nature as to give the court security officer reasonable grounds to believe that it is capable of being used to commit an offence involving violence within the courtroom or would otherwise be dangerous to allow the person to keep with him or her in the court.</u></p>	<p>20</p> <p>25</p> <p>30</p> <p>35</p>

- (2) The court security officer may, if **subsection (1)(a)** applies, exercise the powers in section 20.
- (3) The court security officer, may if **subsection (1)(b)** applies,—
- (a) ask the person whether he or she consents to the surrender of the item while the person is in court: 5
- (b) if the person does not consent to surrendering the item, deny the person entry to, or remove the person from, the court:
- (c) if the person does consent, detain the item in accordance with **section 20(6)**.
- (4) Sections 24 to 29 set out limits on the powers in this section. 10
- 10 Section 17 amended (Power to ask to take detected items into temporary custody)**
- 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),— 15
- (a) the person may claim the item when leaving the court or at any time within 10 working days of leaving the item; and
- (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~~ deny entry to, or remove person from, court premises)** 20
- After section 18, insert:
- 18A ~~General power to refuse person access~~ deny entry to, or remove person from, court premises**
- (1) A court security officer may ~~refuse a person access to, or direct a person to leave, court premises~~ deny a person entry to, or remove a person from, a court if the court security officer believes on reasonable grounds that the person— 25
- (a) is harassing or intimidating, ~~or will harass or intimidate,~~ another person; or
- (b) is causing a serious risk of, ~~or will cause,~~ violence within, or damage to, ~~court premises~~ the court; or 30
- (c) is significantly disrupting, ~~or will significantly disrupt,~~ proceedings, the administration of a court, or the conduct of lawful activities ~~on court premises~~ in a court.
- (2) Sections 24 to 29 set out limits on the powers in **subsection (1)**. 35

11A Section 19 amended (Power to detain if court security officer has reasonable grounds to believe person may have committed specified offence)

- (1) In section 19(1), replace “have committed a specified offence in the court or in an area immediately adjacent to it” with “have committed or attempted to commit a specified offence in the court”. 5
- (2) After section 19(2), insert:
- (2A) However, if the court security officer believes it appropriate to do so in the circumstances, the officer may, instead of exercising the powers in section 20, ask the person to give the court security officer his or her full name, address, and date of birth. 10
- (2B) If the person fails or refuses to produce those details, and after being warned of the consequences of failing to do so, the court security officer may exercise the powers in section 20.

12 New section 19A inserted (Power to detain in other circumstances) 15

After section 19, insert:

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— 20
- (i) refused to leave court premises after having been required to do so, or has attempted to re-enter a 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 25
- (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 a court premises for reasons related to appearances in court services related to the court; or 30
- (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 a court premises and that is part of the proceedings (for example, a jury visiting a crime scene); or 35
- (iv) to stop or avoid doing anything that adversely affects the safety or security of persons referred to in **subparagraph (iii)**; ~~or.~~

- (e) ~~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 after “must immediately detain a the person” with, insert “may and may continue to 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”.~~
- (3) Replace section 20(5) with:
- (5) With respect to a detained person, the court security officer must,—
- (a) if practicable, detain the person separately from other prisoners in a cell or other safe place until the arresting officer arrives or the court security officer is satisfied that the person is not going to be arrested; and 20
- (b) if—
- (i) a Police officer wants to arrest the person, deliver the person to the arresting Police officer; or 25
- (ii) if no Police officer wants to arrest the person, free the person.
- (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~~ 30
- (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. 35
- (6) Replace section 20(6) with:
- (6) With respect to a seized item, the court security officer must,—
- (a) if the person is arrested, hand the item over to the arresting Police officer.

- (b) if possession of the item is unlawful, hand it over to the Police officer:
- (c) if possession of the item is not illegal but may constitute a threat to the security of the court, and the person is released from custody, require the person to comply with section 17:
- (d) in any other case, return the item to the person.

5

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~~ in a court premises flees or otherwise escapes from the court ~~premises,~~—

10

- (a) a court security officer may, ~~and or~~, 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-escaper~~ escaper to the person or body who is entitled to custody of the escaper.

15

20

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~~, and **20A(b)**”.

16 Section 22 amended (Consequences of denial of entry to, or removal from, court)

25

(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)”.

(2A) After section 22(1), insert:

(1A) A person denied entry to or removed from a court under **section 18A** is entitled to enter (or re-enter) the court if a court security officer (being an officer who is aware of the reasons why the person was denied entry to, or removed from, the court) is satisfied that the person will not behave in the way described in **section 18A(1)(a) to (c)** if allowed to enter (or re-enter) the court.

30

(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)

35

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)**:
- (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”.

18A Section 25 amended (Powers not generally applicable to persons in custody of certain agencies)

Replace section 25(2) with:

- (2) A court security officer may not exercise or carry out any of the powers or duties in sections 12 to 23 in relation to a person who a court security officer is satisfied is in one of the categories in subsection (1), unless—
- (a) the person is about to appear before the court or is in the courtroom; and
- (b) the security officer is authorised to exercise the power or carry out the duty under the terms of a general or specific instruction issued by a Judge or other presiding judicial officer under **section 26(2)(a) or (b)** or is exercising a power under section 29(2).

19 Section 26 amended (When powers applicable to persons in custody of certain agencies)

- (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:
- (2) A court security officer ~~may or must, as the case requires~~ may, at his or her own discretion if authorised by the relevant provision or a direction referred to in **paragraph (b)**, or must, if so required by a direction of a Judge or other presiding judicial officer, 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
- (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 or other presiding judicial officer.

- (2A) To avoid doubt, if there is any inconsistency between a direction given under **subsection (2)(b)** and a subsequent direction given under **subsection (2)(a)**, the direction under **subsection (2)(a)** prevails.
- (2B) In section 26(3)(a), after “15(1),”, insert “**15A**,”.
- (3) After section 26(4)(b), insert: 5
 (ba) seize and dispose of any alcohol referred to in **section 15A(b)**; or
- (3A) After section 26(4), insert:
- (4A) For the purposes of **subsection (2)(b)**,—
 (a) a head of bench may issue general instructions about the searching or screening of persons brought before the court in custody (including persons described in section 25(1)): 10
 (b) a Judge who sits at a particular place or particular places where the court sits may issue general instructions about the searching or screening of persons brought before the court in custody (including persons described in section 25(1)) in that place or those places, and those instructions apply irrespective of whether that Judge or another judicial officer is the presiding judicial officer on any occasion when the court is hearing proceedings at that place or those places. 15
- (4B) In the event of any inconsistency between an instruction under **subsection (4A)(a)** and an instruction under **(4A)(b)**, the instruction under **subsection (4A)(b)** prevails. 20
- (4) In section 26(5),—
 (a) after “15(5),”, insert “**15A**,”:
 (b) replace “20(1), 20(2), or 20(3)” with “and 20(1), (2), and (3)”.
- 20 Section 28 amended (When powers applicable in courtroom where proceedings being heard)** 25
- (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.~~ 30
 (1) If either of the sets of circumstances in subsection (2) apply, a court security officer may exercise any of the powers in section 12(1), 13(1), 15(1), 15(5), **15A**, **16**, 17(2), **18A**, 19, **19A**, 20(1), (2), or (3), **20A**, or 21 in a courtroom where proceedings are being heard. 35
- (2) In section 28(3)(a), after “15(1),”, insert “**15A**,”.
- (2A) After section 28(2), insert:
 (2A) A court security officer may exercise any of the powers conferred by an enactment on a presiding judicial officer to detain a person for contempt for a

- period specified by the judicial officer, or to remove a disruptive person from the courtroom for contempt, if the presiding judicial officer directs the court security officer to exercise those powers.
- (2B) In section 28(3)(b)(i), after “13(1),”, insert “**15A**.”
- (3) After section 28(4)(c), insert: 5
 (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”. 10
- 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”. 15
- 22 Section 30 amended (Offence to obstruct security officer)**
- In section 30(2), after “District Court Judge”, insert “, a Community Magistrate,”. 20
- 23 Section 35 amended (Powers of other persons not affected)**
- (1) In section 35(1), replace “judge,” with “Judge or other presiding judicial officer,”.
- (2) In section 35(2), replace “or tribunal in relation to contempt of court or of a tribunal” with “in relation to contempt of court”. 25
- 24 Section 36 amended (Regulations)**
- Repeal section 36(a), (b), (b) and (e).

Part 2

Amendments to Criminal Procedure Act 2011

- 25 Principal Act** 30
 This **Part** amends the Criminal Procedure Act 2011 (the **principal Act**).
- 25A New section 5A inserted (Transitional, savings, and related provisions)**
The transitional, savings, and related provisions, in **Schedule 1AA** have effect according to their terms.

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 10

- (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.
- (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—
 - (a) be made in the manner prescribed by regulations made under the Evidence Act 2006; and 35

- (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)”.

31A New section 136A inserted (Procedure if charge added during trial) 20

After section 136, insert:

136A Procedure if charge added during trial

- (1) During the trial, the court may, on the prosecutor's application, grant leave to add a charge in the proceedings (the **new charge**).
- (2) Leave may be granted under **subsection (1)** only if the court is satisfied— 25
- (a) that there is a variance between the proof and the existing charge or charges; and
- (b) the new charge fits with the proof; and
- (c) the time for filing a charging document under section 25 for the new charge has not expired; and
- (d) that the defendant will not be, or has not been, misled or prejudiced in his or her defence by the addition of the new charge during the trial. 30
- (3) **Subsection (4)** applies if the court is satisfied that—
- (a) the defendant will be, or has been, misled or prejudiced in his or her defence by the addition of the new charge during the trial; but
- (b) the effect of that prejudice can be removed by adjourning or postponing the trial. 35

- (4) If this subsection applies, the court may grant leave to add the new charge and may—
 - (a) adjourn the trial; or
 - (b) postpone the trial and discharge the jury.
- (5) If the court grants leave to add a new charge under **subsection (1) or (4)**,— 5
 - (a) a charging document is deemed to have been filed in accordance with section 14 in respect of the new charge; and
 - (b) leave is deemed to have been given under **section 138(2)** for the new charge to be added to the proceeding, and section 139 applies accordingly. 10

32 Section 138 replaced (Trial of different charges together)

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— 15
 - (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.
 - (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— 20
 - (a) for trial, if the trial procedure is the Judge-alone procedure; or
 - (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— 25
 - (a) in accordance with any notification given under **subsection (1)**; or
 - (b) if leave is granted under **subsection (2)**.
 - (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. 30
 - (5) An order under **subsection (4)** may be made before or during the trial, and,— 35
 - (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
 - (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 which the trial is not to proceed.

32A Section 139 amended (Procedure if charges to be heard together)

- (1) In section 139(2)(b), after “Court”, insert “; and”.
- (2) After section 139(2)(b), insert:
- (c) if the charges against more than 1 defendant are tried by jury, for the purposes of this Act, each defendant must be treated as if he or she had elected trial by jury. 5

33 Section 162 amended (To whom warrant to be directed and power of person executing warrant to enter premises)

- (1) Replace section 162(5) and (6) with:
- (5) Before or on entry into the premises, the constable must— 10
- (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
- (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, unless to do so would prejudice an ongoing investigation,— 15
- (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
- (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. 20
- (6A) The notice required by **subsection (6)** is a written notice containing the following particulars: 25
- (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;
- (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: 30
- (a) any person who is under 14 years of age;
- (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. 35

33A New section 192A inserted (Power of Solicitor-General or Crown prosecutor to join charge or charges)

After section 192, insert:

192A Power of Solicitor-General or Crown prosecutor to join charge or charges

- (1) Without the leave of the court, the Solicitor-General or a Crown prosecutor may, on filing a notice under section 189 in relation to a proceeding, or before the trial and within any prescribed period after filing that notice, file in the court hearing the proceeding a notice that— 5
 - (a) 2 or more charges against 1 defendant are to be heard together:
 - (b) the charges against 1 defendant are to be heard with charges against 1 or more other defendants. 10
- (2) **Subsection (1) overrides section 138(2).**
- (3) **Subsection (1) does not prevent—**
 - (a) the Solicitor-General or a Crown prosecutor seeking the leave of the court under section 138(2) for charges to be heard together; or 15
 - (b) the court, on its own motion or on the application of the prosecutor or defendant, ordering under section 138(4) that 1 or more charges against a defendant be heard separately.

34 Section 219 amended (First appeal courts)

In section 219, insert as subsection (2): 20

- (2) For the purposes of **subsection (1)**, if a defendant elected a jury trial but subsequently withdrew his or her election before trial,—
 - (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. 25

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. 30

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. 35

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.~~ 5

(2) For the purposes of **subsection (1)**, if a defendant elected a jury trial but subsequently withdrew his or her election before trial,—

(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

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): 15

(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.~~

(2) For the purposes of **subsection (1)**, if a defendant elected a jury trial but subsequently withdrew his or her election before trial,— 20

(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. 25

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**”.

(2) Replace section 357(1) with:

(1) This section applies to— 30

(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. 35

(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.

40 Section 380 amended (Proceedings not invalid because defendant should have been dealt with in Youth Court)

5

(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

(b) is charged with or convicted of a category 3 offence and did not elect a jury trial.

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(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:

400 When defendants or proceedings to be heard together under same procedural law

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(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

(b) the proceedings have not been finally determined; and

(c) the proceedings are not proceedings to which section 399 applies; and

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(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

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(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.

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(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 Proceed-

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ings 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)

In section 403A(c), replace “sections 54, 55, 58 and 59A of the Bail Act” with “sections 14, 53, 54, 55, 58, and 60 of that Act”. 5

42A New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 2A** of this Act as the first schedule to appear after the last section of the principal Act.

Part 3

10

Amendments to Summary Proceedings Act 1957

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:

15

2A Transitional, savings, and related provisions

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:

20

23A Service of documents under this Part

(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.

25

24 Ways documents may be served

(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

(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

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- (c) leaving the document for the defendant at the defendant’s place of business or place of work with another person; or
 - (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 5
 - (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
 - (f) complying with a means of service prescribed by rules or regulations made under **section 212(2)(f)**. 10
- (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)**.
- (3) For defendants to whom **section 28** applies, **subsection (1)** is modified to the extent provided by that section. 15

46 Sections 25 to 27 repealed

Repeal sections 25 to 27.

47 Sections 28 and 29 replaced

Replace sections 28 and 29 with:

- 28 Service provisions modified in special cases** 20
- (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.
 - (2) If the defendant is a body corporate or a Crown organisation, a document may be served—
 - (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: 25
 - (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. 30
 - (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**.
 - (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,— 35

- (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:
- (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: 5
- (c) in the case of a defendant who is a prisoner, the manager or any other officer apparently in charge of the prison.
- 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. 10
- (2) An endorsement under **subsection (1)** must be signed by the person who served the document.
- (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. 15
- (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.
- 48 New cross-heading above section 30 inserted**
- After section 29, insert: 30
- Use of Māori language*
- 49 Section 79 amended (Interpretation)**
- (1) In section 79(1), replace the definition of **property** with:
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**”. 35
- (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:
 - (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:
 - 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—
 - (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—
 - (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)

- (1) Replace section 79A(1)(d) with:
 - (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:
 - (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”.

(2) In section 84(2)(f), replace “section 86 or 86C,” with “section 86, 86C, or **86DA**,”.

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(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**:

(4) After section 84(2)(f)(iv), insert:

(v) a statutory land charge:

10

(vi) a sale order:

(5) In section 84(2)(g), after “District Court Judge”, insert “, Community Magistrate, or Registrar”.

(6) In section 84(5)(c), replace “section 86 or 86C” with “section 86, 86C, or **86DA**”.

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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**,”.

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

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(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

(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

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(2) After section 86A(4), insert:

(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.

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

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(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) 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 5

After section 86D, insert:

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: 10
 - (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,— 15
 - (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: 20
 - (c) if an existing arrangement is suspended, for more than 5 years after the date on which payments resume under the arrangement.
- (3) Subject to **section 86DC**, the chief executive may approve an automated electronic system to be administered by the Ministry of Justice to— 25
 - (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,— 30
 - (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 35

- (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
- (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
- (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.
- (6) In this section and **section 86DB**,— 10
- 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
- vary** includes adding a further fine to an existing arrangement. 15
- 86DB Chief executive may approve automated electronic system to add fine to existing arrangement, attachment order, or deduction notice without notice**
- (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— 20
- (a) another fine is imposed on the defendant; and
- (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. 25
- (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.
- (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)**. 30
- (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) 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 40

- order or notice, giving a copy to the defendant, and serving a copy on the defendant’s employer or bank; and
- (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: 5
 - (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. 10

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 15
 - (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. 20
- (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 25

- (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. 30
- (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. 35

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
 - (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.

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

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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,—
- (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 or sections 117 to 121 of the Land Transfer Act 2017, as the case requires, and the provisions of ~~that Act~~ those Acts 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.
- (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)**.
- (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.

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58 New sections 87AAA and 87AAB inserted

After section 87, insert:

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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.
- (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. 5
- (3) The agreement has the effect of—
- (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. 10
- 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**”.
- 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),”. 20
- 60A Section 88AA amended (Form and execution of warrant for arrest)**
- After section 88AA(4), insert:
- (5) For the purposes of this Act, a warrant to arrest is issued when a Registrar enters the details of that warrant into a computer system accessible to the Police or a bailiff. 25
- 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))**
- (1) In section 88AE(1)(a), after “section 87(2)”, insert “or **(2A)**”. 30
- (2) After section 88AE(1)(a), insert:
- (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 35

- 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
- 62 Section 89 amended (Rights of representation and appeal)**
In section 89(1), replace “barrister or solicitor” with “lawyer”. 5
- 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—
- (i) to subscribers to enable them to assess the creditworthiness of query subjects: 10
- (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:
- 64 Section 92H amended (Monitoring and audits by chief executive)**
In section 92H(1)(a), after “conditions”, insert “or restrictions”. 15
- 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”.
- 66 ~~Cross-heading above section 100A repealed~~**
~~Repeal the cross-heading above section 100A.~~ 20
- 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)”.
- 68 Section 100F amended (Release of property to certain owners)** 25
In section 100F(1), after “seized property”, insert “(whether real property or personal property)”.
- 69 Section 100H amended (Lessor may apply to Registrar)**
- (1) In section 100H(1)(a), after “property seized”, insert “(whether real property or personal property)”. 30
- (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.
- (3) In section 100H(5), replace “property” with “a motor vehicle”. 35

- 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)**
- (1) In section 100J(1), replace “The Registrar or a District Court Judge” with “The Registrar, a Community Magistrate, or a District Court Judge”.
 - (2) In section 100J(1), replace “seized property” with “property to be sold (whether real property or personal property)”. 30
- 72 Section 100L amended (Sale of secured property by secured party or by court)**
- In section 100L(1), after “if the property”, insert “(whether real property or personal property)”. 35
- 73 Section 100N amended (Application of proceeds of sale by secured party)**
- (1) Replace section 100N(1)(b) with:
 - (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
- (2) In section 100N(2), after “section 100R(1)(c) to (j) and (2)”, insert “or **section 100RA(1)(b) to (g)**”.
- 74 Section 100O amended (Failure by secured party to sell or account for proceeds)** 10
- (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)**
- (1) In the heading to section 100P, delete “**seized**”.
- (2) In section 100P(1), after “warrant to seize property”, insert “or ~~has been~~ may be sold under a sale order”. 15
- (3) In section 100P(2), after “property was seized”, insert “or a sale order was issued”.
- (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. 20
- (5) Replace section 100P(10) with:
- (10) The purchaser or assignee of property sold, or disposed of, under this section obtains as a consequence of this section,— 25
- (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:
- (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. 30
- 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”.
- 77 New section 100RA inserted (Application of proceeds of sale of real property)** 35
- 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)

- (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)

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)

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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:
 - (h) regulating the searching of records of 1 or more of the following: 30
 - (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**).

85A Section 26 amended (Breach of condition of Police bail)

In section 26, replace “, 51, and 52” with “and **54A**”. 15

86 Sections 33 and 34 replaced

Replace sections 33 and 34 with:

33 Variation of conditions of bail

(1) The court ~~in which~~ for the time being having jurisdiction in the proceeding for an offence with which a defendant has been charged ~~is, may,—~~ 20

(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

(b) on the application of an EM assessor, make an order varying the EM address. 25

(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—

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

(b) an order varying or revoking any existing authorisation of absence from the EM address: 30

(c) an order varying the EM address.

- (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
- (5) A Registrar may exercise the power conferred by **subsection (1)** to make an order if—
- (a) the court in which the proceeding for an offence is, is the District Court; and 10
- (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. 15
- 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: 20
- (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
- (ii) be satisfied that the defendant understands the conditions of bail; and 25
- (iii) require the defendant to ~~sign~~ authenticate 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). 30
- (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~~ authenticate 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. 35

- (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.

86A Section 40 amended (Bail on deferment of sentence)

- (1) In section 40(4), replace “44 to 52” with “41 to 44”. 5
- (2) Replace section 40(5) and (6) with:
- (5) If any decision is made by the District Court or the High Court under section 33(1) (as applied by subsection (4)) in respect of an offender, the provisions of sections 41 to 43, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant granted bail. 10

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,— 15

- (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:
- (b) if a decision of a District Court Judge is appealed against, the High Court: 20
- (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. 25
- (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. 30
- (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. 35

- (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.
- (6) An appeal under this section is by way of rehearing.
- 43 Procedure relating to appeal under section 42** 5
- (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.
- (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— 10
- (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)**. 15
- (3) Every decision of the appeal court on an appeal under **section 42** is final.
- (4) No decision appealed against under **section 42** is suspended merely because notice of that appeal has been given.
- (5) An appeal under **section 42** that is not heard before the date on which the decision appealed against ceases to have any effect— 20
- (a) lapses on that date; and
- (b) is deemed to be abandoned.
- (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. 25
- 44 Execution of decision of appeal court on appeal relating to bail under section 42**
- (1) If, on an appeal under **section 42**, the appeal court determines that ~~the defendant should be remanded in custody~~ bail should not be granted or, as the case may be, should not be continued, a warrant for the detention of the defendant in custody must be issued by a Judge of the appeal court. 30
- (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. 35
- (3) If, on an appeal under **section 42** against a refusal to grant bail, bail is granted,—
- (a) the appeal court must order that the defendant be released on bail; and

- (b) sections 30 and 31 apply.
- (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:
 - (a) if the defendant is present at the appeal 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
 - (ii) be satisfied that the defendant understands the conditions of bail; and
 - (iii) require the defendant to sign authenticate the notice of bail or bail bond:
 - (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) 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 authenticate 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.

87A Section 52A amended (Period for which warrant for detention in custody may be issued)

Replace section 52A(1) with:

- (1) This section applies to a warrant issued under **section 44(1)**.

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

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

- (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— 5
- (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,— 10
- (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).
- (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 personally 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. 15
- (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. 20
- (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. 25
- (5A) Section 53(6) applies for the purposes of this section.
- (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. 30
- 54A Appeal against entry by court of non-performance of condition of bail in court record**
- (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. 35
- (2) After considering an appeal under **subsection (1)**, the appeal court Judge may order that— 40
- (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.
- (4) No direction appealed against under this section is suspended merely because notice of that appeal has been given. 5

55 When person is in custody or on home detention for purposes of section 54

For the purposes of **section 54**,—

- (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 (a cumulative sentence) 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 10
- (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. 15
20

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

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. 25

Consequential amendments to other Acts

90A Amendments to Sentencing Act 2002

- (1) In section 80MA, replace “54, or 55” with “or 54”.
- (2) In section 80ZGD(1)(b), replace “54, or 55” with “or 54”. 30

90B Amendment to Extradition Act 1999

In section 43(4), replace “44, 45, and 52 of the Bail Act 2000” with “41 to 43 and 52 of the Bail Act 2000”.

90C Amendment to International Crimes and International Criminal Court Act 2000 35

In section 41(5), replace “44, 45, and 52 of the Bail Act 2000” with “41 to 43 and 52 of the Bail Act 2000”.

Subpart 2—Amendments to Care of Children Act 2004

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)

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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 Oranga Tamariki~~ Act 1989; or
 - (da) is brought by a person, who is not the parent or guardian of the child, and is brought by that person in response to the chief executive of the Ministry for Children exercising a power or carrying out a function in relation to that child under Part 2 or 4 of the Oranga Tamariki 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)

35

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 5
 - (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. 10
- (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. 15

95 Section 133 amended (Reports from other persons)

- (1) In section 133(13), after “second opinion”, insert “subject to any terms and conditions that the court considers appropriate”.
- (2) Replace section 133(15) with:
- (15) The court may— 20
 - (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—~~ 25
 - ~~(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.~~ 30
 - (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 35
 - (ii) the notes and other materials to be released comprise information solely about the party who is seeking their release; and
 - (iii) there are exceptional circumstances; and

- (c) if the court permits disclosure under **paragraph (a) or (b)**, the disclosure is subject to any terms and conditions that the court considers appropriate

Subpart 2A—Amendments to Courts (Remote Participation) Act 2010

- 95A Principal Act** 5
 This **subpart** amends the Courts (Remote Participation) Act 2010 (the **principal Act**).
- 95B Section 8 amended (Use of audio-visual links in criminal procedural matters)**
- (1) In the heading to section 8, after “**procedural**”, insert “**or sentencing**”. 10
- (2) After section 8(1), insert:
- (1A) AVL may be used for the appearance of a participant in a criminal procedural matter—
- (a) if AVL is available; and
- (b) unless a judicial officer or a Registrar determines that the use of AVL is contrary to the interests of justice. 15
- (3) In section 8(3), after “subsection (1)”, insert “, **(1A)**”.

Subpart 3—Amendments to Criminal Disclosure Act 2008

- 96 Principal Act**
 This **subpart** amends the Criminal Disclosure Act 2008 (the **principal Act**). 20
- 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)**
- (1) In section 10(1)(b), delete “or facsimile”.
- (2) Replace section 10(3) with: 25
- (3) If ~~Unless a person proves that, otherwise than through fault on the person’s part, it was not received, if~~ information, a notice, or an application is sent to any person—
- (a) by post, it will be treated as having been received by the person 5 working days after the day it is posted: 30
- (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:

- (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.~~ 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 10
- (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.

Subpart 4—Amendments to Criminal Investigations (Bodily Samples) Act 1995 15

100 Principal Act

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) 20

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

101A Section 14 amended (Prohibition against publication of name of respondent)

In section 14(1)(a), after “a District Court Judge”, insert “or a High Court Judge”. 25

101B Section 15 amended (Information may be withheld from respondent)

In section 15(1), after “a District Court Judge”, insert “or a High Court Judge”.

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”.

102A Section 61 amended (Extension of period for which sample may be retained) 30

- (1) In section 61(1), after “District Court Judge”, insert “or High Court Judge”.
- (2) In section 61(3), after “District Court Judge”, insert “or High Court Judge”.

102B Consequential amendment to Criminal Investigations (Bodily Samples) Regulations 2004

- (1) This section amends the Criminal Investigations (Bodily Samples) Regulations 2004.
- (2) In the Schedule, form 3, below the heading “**Can a court vary this order?**”, replace “You may apply to the District Court to have the date or place, or date and place, specified in this order varied by a District Court Judge” with “You may apply to the District Court or the High Court to have the date or place, or date and place, specified in this order varied by a District Court Judge or a High Court Judge”.

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

103 Principal Act

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:

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.

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

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	
(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—	5
(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) .	10
(3)	The standard of proof required for a finding under subsection (2) is the balance of probabilities.	
(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.	15
109	Section 9 repealed (Court must be satisfied of defendant’s involvement in offence)	
	Repeal section 9.	20
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.	
(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.	25
111	Section 11 amended (Inquiry during Judge-alone trial into defendant’s involvement)	30
(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.	
(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.	35

- 112 Section 12 amended (Inquiry during jury trial into defendant’s involvement)**
- (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. 5
- (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. 10
- 113 Section 13 amended (Outcome of consideration of defendant’s involvement)**
- (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”. 15
- (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)**,—
- (a) the court must dismiss the charge against the defendant under section 147 of the Criminal Procedure Act 2011; and 20
- (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.
- (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. 25
- 114 Section 14 repealed (Determining if defendant unfit to stand trial)**
- Repeal section 14.
- 115 Section 15 amended (Jurisdiction may be exercised in absence of defendant)** 30
- 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)**
- (1) In the heading to section 16, after “**fitness to stand trial**”, insert “**or sufficiency of evidence**”. 35
- (2) Replace section 16(1) with:

- (1) A defendant may appeal ~~under **section 8A(2)(b)**~~ against the finding under **section 8A(2)(b)** that the defendant is unfit to stand trial or, as the case may be, fit to stand trial.
- (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. 5
- 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)**”. 10
- (2) ~~In section 17(3),—~~
- (a) after “appeal”, insert “under section 16(1)”; and
- (b) replace “under subsection (1)” with “under **subsection (1A)**”.
- (2) In section 17(3), after “appeal”, insert “under **section 16(1)**”.
- 118 New Schedule 1AA inserted** 15
- 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**”.
- Subpart 6—Amendments to Family Proceedings Act 1980 20
- 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)**
- (1) In section 142(2), replace “the New Zealand court may” with “the New Zealand court must”. 25
- (2) Repeal section 142(2A).
- 122 Section 142E amended (Provisional order discharging, etc, child maintenance order)**
- (1) In section 142E(1), replace “the New Zealand court may” with “the New Zealand court must”. 30
- (2) Repeal section 142E(1A).

Subpart 7—Amendments to Juries Act 1981

123 Principal Act

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: 5
- co-extensive jury districts** means 2 jury districts that comprise the same area and that are—
- (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): 10
- (2) For the purpose of issuing a summons under section 13 or for 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. 15

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— 20
- (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) 25

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)”. 30
- (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)**
- 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)** 5
- (1) In the heading to section 16AA, replace “**discharge**” with “**cancel**”.
- (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** 10
- This **subpart** amends the Land Transport Act 1998 (the **principal Act**).
- 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)**”. 15
- (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): 20

(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)** 25
- (1) In the heading to section 91B, after “**stop order**”, insert “**or details of related fines**”.
- (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,”. 30
- (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,—
- (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
- (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.

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).
- (2) In section 91E(3), after “subsection (1)”, insert “or **(2A)**”.
- (3) Replace section 91E(3)(b) with:
- (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
- (4) Replace section 91E(3)(e) with:
- (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

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

134 Principal Act

This **subpart** amends the Protection of Personal and Property Rights Act 1988 (the **principal Act**).

135 Transitional, savings, and related provisions

After section 4, insert: 35

4A Transitional, savings, and related provisions

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

136 Section 12 amended (Court may appoint welfare guardian)

- (1) Replace section 12(6) with: 5
- (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 best interests of the person to do so.
- (6A) If the court appoints more than 1 welfare guardian for the same person, those welfare guardians must regularly consult each other.
- (2) ~~In the Family Court Rules 2002, Schedule 9, form PPPR 7, notes, replace the paragraph under the heading “*Number of welfare guardians*” 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.”~~ 10
- (3) ~~In the Family Court Rules 2002, Schedule 9, form PPPR 8, notes, replace the paragraph under the heading “*Number of welfare guardians*” 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.”~~ 15

137 Section 45 amended (Statements required)

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))”. 20

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”. 25

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”. 30

140 Section 74 amended (Attendance of person in respect of whom application is made)

Replace section 74(2) with: 35

- (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
- (b) attendance or continued attendance is likely to cause the person serious mental, emotional, or physical harm.

141 Section 86 amended (Review of personal orders) 5

(1AA) After section 86(5), insert:

(5A) The power to vary an order under subsection (5)(a) or to make an order under subsection (5)(d) includes the power to substitute a new welfare guardian in place of the welfare guardian named in the original or any subsequent order.

- (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”. 10
- (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”.~~ 15
- (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”. 20
- (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”.~~ 25
- (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”.~~ 30
- (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”.~~ 35

143 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 4** of this Act as the first-S 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**).

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”.

(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).

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**).

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:

(a) an order forbidding publication of any report or account of the whole or any part of—

(i) the evidence adduced:

(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:

(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. 5
- (3) Every application to the court for an order under this section may be heard in open court or in chambers.
- (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 10
- (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 15
- (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— 20
- (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. 25
- (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
- 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. 30
- (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. 35

- (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

149 Amendments to Victims' Orders Against Violent Offenders

Revoke rule 44 of the Victims' Orders Against Violent Offenders Rules 2014.

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Schedule 1
New Schedule 1 of Summary Proceedings Act 1957 inserted

s 83

Schedule 1
Transitional, savings, and related provisions

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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—

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- (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: 15
- (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. 20

Schedule 2
Amendments to other enactments consequential on changes to
Summary Proceedings Act 1957

s 84

Summary Proceedings Regulations 1958 (SR 1958/38) 5

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”. 10

Schedule 2A
New Schedule 1AA of Criminal Procedure Act 2011 inserted

s 42A

Schedule 1AA
Transitional, savings, and related provisions

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s 5A

Part 1
Provision relating to Courts Matters Act 2017

1 **Declaration made under old law continues to be admissible**

A declaration containing the statement required by section 82(1)(b) of the principal Act (as it read before the amendments made by **section 29** of the Courts Matters Act **2017**) continues to be admissible in proceedings on and after the commencement of **section 29** of the Courts Matters Act **2017**.

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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 has begun proceedings to determine under section 9 of the principal Act (as it was before the commencement of this schedule) ~~that whether~~ the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged, or the court has made a determination under that section that 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~~ in accordance with the directions of the Judge who set the review period. 10

Legislative history

1 August 2017
 15 August 2017
 8 November 2017

Introduction (Bill 285–1)
 First reading and referral to Justice and Electoral Committee
 Reinstated before Justice Committee