

# **Criminal Procedure Legislation Bill**

Government Bill

As reported from the Justice and Electoral  
Committee

## **Commentary**

### **Recommendation**

The Justice and Electoral Committee has examined the Criminal Procedure Legislation Bill, and recommends that it be passed with the amendments shown.

### **Introduction**

This bill proposes minor and technical amendments to the Criminal Procedure Act 2011 and 18 other enactments. The amendments largely fall into the following categories:

- cross-referencing and technical matters
- amendments to allow procedures and processes to operate as intended
- references to “crime” (reflecting the repeal of the definition of “crime” in the Crimes Act 1961) to make explicit the type of offence that is being referred to, where the context requires it
- clarification of Community Magistrates’ jurisdiction.

Normally amendments of this nature would be suitable for inclusion in a Statutes Amendment Bill. However, with no guarantee of the 2012 Statutes Amendment Bill being enacted by 1 July 2013, when the bulk of the criminal procedure legislation is due to commence, a stand-alone bill was considered necessary.

During our consideration of the bill a small number of additional technical amendments have been identified, which have also been included.

The Criminal Procedure Act 2011 and its 14 associated Amendment Acts were passed in October 2011 to modernise and simplify criminal procedure. The comprehensive package of reforms is designed to make the criminal justice system more transparent, understandable, and efficient.

This commentary covers the significant amendment we recommend to the bill; it does not cover the other minor or technical amendments.

### **Changes to references to “crime”**

The Crimes Act 1961 defines a “crime” as an offence where the offender may be proceeded against by way of indictment. Under the Criminal Procedure Act 2011 offences are to be proceeded against by way of charging documents, and the summary or indictable distinction is to be abolished and replaced by four categories of offence. The definition of “crime” will therefore be repealed from 1 July 2013.

We are aware of concern about sub-clause 15(3) of the bill as introduced, which would insert new section 409(h) into section 409 of the Criminal Procedure Act 2011 to add “crime” to the list of terminology that may be amended by regulation. Although the purpose of section 409 is to make only consequential amendments, we share the concern about the use of a “Henry VIII” power (a power to make regulations that amend statutes) here. We would not want to see the addition of “crime” inappropriately used to make substantive changes to the criminal law, and recommend that clause 15(3)(h) of the bill be removed.

## **Appendix**

### **Committee process**

The Criminal Procedure Legislation Bill was referred to the committee on 4 December 2012. The closing date for submissions was 8 February 2013. We received and considered two submissions, one of which was presented orally.

We received advice from the Ministry of Justice.

### **Committee membership**

Scott Simpson (Chairperson)

Dr Jackie Blue

Hon Lianne Dalziel

Julie Anne Genter

Andrew Little

Alfred Ngaro

Denis O'Rourke

Katrina Shanks

Hon Kate Wilkinson

---



**Criminal Procedure Legislation Bill**

---

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

---



*Hon Chester Borrows*

## **Criminal Procedure Legislation Bill**

Government Bill

### **Contents**

		Page
1	Title	4
2	Commencement	4
<b>Part 1</b>		
<b>Amendments to Criminal Procedure Act 2011</b>		
3	Principal Act	4
4	Section 5 amended (Interpretation)	4
5	Section 16 amended (Charging documents)	4
6	Section 31 amended (Charging document must be filed promptly)	5
6A	Section 82 amended (Requirements for formal statements)	5
7	Section 138 replaced (Trial of different charges together)	5
	138 Trial of different charges together	5
8	Section 157 amended (Transfer of proceedings to court at different place or different sitting)	6
8A	Section 169 amended (Warrant for detention of defendant in hospital or secure facility)	6
9	Section 187 amended (Assumption of responsibility for Crown prosecutions by Solicitor-General)	6
9A	Section 191 amended (Power of Solicitor-General or Crown prosecutor to add new charges)	6
10	Section 321 amended (Related appeals that are to be heard by Court of Appeal)	7

**Criminal Procedure Legislation Bill**

---

11	Section 357 amended (Jurisdiction of Community Magistrates to impose sentence in respect of certain category 1 and 2 offences)	7
11A	Section 358 amended (Power to impose penalties provided for in Land Transport Act 1998)	7
12	Section 361 replaced (Jurisdiction of Justices and Community Magistrates to take pleas)	9
	361 Jurisdiction of Justices and Community Magistrates to take pleas	9
13	Section 380 replaced (Proceedings not invalid because defendant should have been dealt with in Youth Court)	9
	380 Proceedings not invalid because defendant should have been dealt with in Youth Court	9
14	Section 382 amended (Payment and recovery of fees)	10
14A	New section 385A inserted (Judge or Registrar may waive certain fees)	10
	385A Judge or Registrar may waive certain fees	10
14B	New section 404A inserted (Access to court documents)	10
	404A Access to court documents	10
14C	New section 406A inserted (Savings)	10
	406A Savings	11
15	Section 409 amended (Regulations making consequential amendments)	11
16	Schedule 3 amended	11
17	Further amendments to principal Act	14

**Part 2**

**Amendments to other enactments**

Subpart 1—Amendment to Auctioneers Act 1928

18	Principal Act	14
19	Section 38 amended (Misappropriation, theft, falsifying accounts)	14

Subpart 2—Amendments to Crimes Act 1961

20	Principal Act	14
21	Section 8 amended (Jurisdiction in respect of crimes on ships or aircraft beyond New Zealand)	14
22	Section 411 amended (Consequential amendments)	15
23	Consequential amendment to Crimes Amendment Act (No 4) 2011	15
24	Further amendments to principal Act	15



**Criminal Procedure Legislation Bill**

---

	Subpart 3—Amendments to Criminal Disclosure Act 2008	
25	Principal Act	15
26	Section 6 amended (Interpretation)	15
27	Section 33 amended (Appeals)	16
27A	Section 34A amended (Information disclosed late by defendant)	16
	Subpart 3A—Amendments to Evidence Act 2006	
27B	Principal Act	16
27C	Section 112 amended (Witness anonymity order for purpose of High Court trial)	17
27D	Section 114 amended (Trial to be held in High Court if witness anonymity order made)	17
	Subpart 4—Amendments to Juries Act 1981	
28	Principal Act	17
29	Section 29C amended (Criminal cases)	17
30	Consequential amendment to Juries Amendment Act 2011	17
	Subpart 5—Amendments to Misuse of Drugs Act 1975	
31	Principal Act	18
32	Section 11 amended (Theft, etc, of controlled drugs)	18
	Subpart 5A—Amendments to Sentencing Act 2002	
32A	Principal Act	18
32B	Section 81B amended (Procedure if offender convicted in District Court and court believes offender could be sentenced to life imprisonment)	18
32C	Section 90 amended (Procedure if offender convicted in District Court and court believes offender could be sentenced to preventive detention)	18
	Subpart 6—Amendments to Summary Offences Act 1981	
33	Principal Act	19
34	Section 28 amended (Being found in public place preparing to commit crime)	19
	<b>Schedule 1</b>	<b>20</b>
	<b>Further amendments to Criminal Procedure Act 2011</b>	
	<b>Schedule 2</b>	<b>23</b>
	<b>Further amendments to Crimes Act 1961</b>	

**The Parliament of New Zealand enacts as follows:****1 Title**

This Act is the Criminal Procedure Legislation Act **2012**.

**2 Commencement**

This Act comes into force on **1 July 2013**.

5

**Part 1****Amendments to Criminal Procedure Act  
2011****3 Principal Act**

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

10

**4 Section 5 amended (Interpretation)**

In section 5, insert in its appropriate alphabetical order:

“**imprisonable offence** means,—

“(a) in the case of an individual, an offence punishable by imprisonment for life or by a term of imprisonment: 15

“(b) in the case of a body corporate, an offence that would be punishable by imprisonment for life or by a term of imprisonment if the offence were committed by an individual”. 20

**5 Section 16 amended (Charging documents)**

~~In section 16(2)(e),—~~

(a) after “private prosecution”, insert “brought by an individual”; and

(b) after “proceeding”, insert “(if applicable)”. 25

Replace section 16(2)(e) with:

“(e) except if the prosecution is a private prosecution brought by an individual,—

“(i) the name of the prosecuting organisation; and

“(ii) the particulars of an appropriate contact person in relation to the prosecution; and” 30

**6 Section 31 amended (Charging document must be filed promptly)**

In section 31(2), delete “and in any event not less than 5 working days before the date on which the defendant is required by the summons to appear”.

5

**6A Section 82 amended (Requirements for formal statements)**

After section 82(4), insert:

“(5) A formal written statement that satisfies the requirements of section 162 of the Summary Proceedings Act 1957 may be treated as a formal statement that satisfies the requirements of this section.”

10

**7 Section 138 replaced (Trial of different charges together)**

Replace section 138 with:

**“138 Trial of different charges together**

“(1) Subject to **subsection (2)**, the The prosecutor may—

15

“(a) notify the court before which a proceeding is being conducted proposing that—

“(i) 2 or more charges be heard together; or

“(ii) the charges against 1 defendant be heard with charges against 1 or more other defendants:

20

“(b) amend a notification given under **paragraph (a)**.

“(2) If Despite **subsection (1)**, if the prosecutor seeks to give or amend a notification involving a charge in respect of which the proceeding has been adjourned after the entry of a not guilty plea, the prosecutor must seek the leave of the court.

25

“(3) Charges must be heard together in accordance with any notification given under **subsection (1)(a)** or amended under **subsection (1)(b)** unless the court—

“(a) does not grant leave where the prosecutor seeks leave under **subsection (2)**; or

30

“(b) makes an order under **subsection (5)**.

“(4) **Subsection (2)** does not apply to a notification that is deemed under section 191(2)(b) to have been given under **subsection (1)(a)**.

“(5) If the court before which the proceeding is being conducted thinks it is in the interests of justice to do so, it may, on its

35

own motion or on the application of a defendant, order that 1  
or more charges against the defendant be heard separately.

“(6) An order under **subsection (5)** may be made either before or  
during the trial, and,—

“(a) if it is made during the course of a Judge-alone trial, the 5  
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  
on which the trial is not to proceed.” 10

**8 Section 157 amended (Transfer of proceedings to court at  
different place or different sitting)**

(1) In section 157(3), replace “the Registrar” with “a District  
Court presided over by 1 or more Justices of the Peace or 1 or  
more Community Magistrates”. 15

(2) After section 157(3), insert:

“(3A) A Registrar may exercise the power specified in subsection  
(3).”

**8A Section 169 amended (Warrant for detention of defendant  
in hospital or secure facility)** 20

In the heading to section 169, replace “Warrant” with  
“Order”.

**9 Section 187 amended (Assumption of responsibility for  
Crown prosecutions by Solicitor-General)**

After section 187(4), insert: 25

“(5) No Crown prosecution is invalid only because the Crown—

“(a) did not assume responsibility for a prosecution in ac-  
cordance with regulations made under this Act; or

“(b) assumed responsibility for a prosecution for which it  
should not have assumed responsibility.” 30

**9A Section 191 amended (Power of Solicitor-General or  
Crown prosecutor to add new charges)**

Replace section 191(2)(b) with:

“(b) a notice filed under subsection (1)—

- “(i) satisfies the requirements of **section 138(1)**; and  
“(ii) **section 138(2)** does not apply when new charges are added to a proceeding in accordance with that notice; and”.

- 10 Section 321 amended (Related appeals that are to be heard by Court of Appeal)** 5  
 Replace section 321(2) with:
- “(2) Appeals arising from the exercise of a related right of appeal by the convicted person or the prosecutor must be heard and determined by the Court of Appeal. 10
- “(2A) **Subsection (2)** does not apply to any appeal to the Supreme Court for which the Supreme Court has given leave.”
- 11 Section 357 amended (Jurisdiction of Community Magistrates to impose sentence in respect of certain category 1 and 2 offences)** 15
- (1) In the heading to section 357, delete “**1 and**”.
- (2) Replace section 357(1) with:
- “(1) This section applies to any category 2 offence (not being a continuing offence) in respect of which—
- “(a) the maximum term of imprisonment that can be imposed does not exceed 3 months: 20
- “(b) the sentence that can be imposed relates to an offence punishable by a community-based sentence and not punishable by a term of imprisonment.”
- (3) After section 357(2)(m), insert: 25
- “(ma) make, under section 129A of that Act, a confiscation and destruction order in respect of a motor vehicle:
- “(mb) make, under section 129B of that Act, an order that a written caution be issued and served:”.
- 11A Section 358 amended (Power to impose penalties provided for in Land Transport Act 1998)** 30
- (1) After section 358(1)(b), insert:
- “(ba) must, if that offence is an offence to which section 33 of the Land Transport Act 1998 applies, make, in addition to any other penalties it may impose but subject to sec- 35

- tions 81 and 94 of that Act, an order under section 33 of that Act disqualifying the person from holding or obtaining a driver licence for 6 months or more, unless the court, for special reasons relating to the offence, thinks fit to order otherwise.”. 5
- (2) In section 358(1)(d), replace “56,” with “56, 57A,” in each place.
- (3) In section 358(1)(e), replace “57” with “57 or 57AA(3)” in each place.
- (4) In section 358(1)(g), replace “Director” with “New Zealand Transport Agency”. 10
- (5) After section 358(1)(g), insert:
- “(ga) may, if that offence is an offence to which section 65A(1) of the Land Transport Act 1998 applies, impose an alcohol interlock licence disqualification: 15
- “(gb) must, if an alcohol interlock licence disqualification is imposed under section 65A of the Land Transport Act 1998,—
- “(i) make, in addition to any other penalties it may impose, an order under section 65A(2)(a) disqualifying the person from holding any driver licence for a period of 3 months; and 20
- “(ii) make an order under section 65A(2)(b) of the Land Transport Act 1998:
- “(gc) must, if that offence is an offence to which section 65B(1) of the Land Transport Act 1998 applies, make an order authorising the person to apply for a zero alcohol licence that has effect for a period of 3 years from the date on which the licence is issued.”. 25
- (6) After section 358(1)(h), insert: 30
- “(i) must, if that offence is an offence to which section 79D of the Land Transport Act 1998 applies, make, in addition to any other penalties it may impose but subject to sections 81 and 94 of that Act, an order under section 79D of that Act disqualifying the person from holding or obtaining a transport service licence for 6 months or more, unless the court, for special reasons relating to the offence, thinks fit to order otherwise.” 35

- 12 Section 361 replaced (Jurisdiction of Justices and Community Magistrates to take pleas)**  
 Replace section 361 with:
- “361 Jurisdiction of Justices and Community Magistrates to take pleas** 5
- “(1) A District Court presided over by 1 or more Justices or 1 or more Community Magistrates may—
- “(a) receive a plea under section 37 from a defendant charged with an offence that is not a category 4 offence:
- “(b) require a plea under section 39 from a defendant charged with an offence that is not a category 4 offence. 10
- “(2) If the defendant indicates to the court exercising the power under **subsection (1)** that he or she wishes to plead guilty to an offence, the defendant must be brought before a Judge to enter a plea. 15
- “(3) **Subsection (2)** does not apply if—
- “(a) the defendant is entering a plea in respect of any offence to which **section 357(1)** applies; and
- “(b) the court exercising jurisdiction under **subsection (1)** is presided over by 1 or more Community Magistrates. 20
- “(4) Nothing in this section applies when a District Court presided over by 1 or more Justices or 1 or more Community Magistrates is exercising jurisdiction in accordance with section 355 or 356.”
- 13 Section 380 replaced (Proceedings not invalid because defendant should have been dealt with in Youth Court)** 25  
 Replace section 380 with:
- “380 Proceedings not invalid because defendant should have been dealt with in Youth Court**
- “(1) This section applies if— 30
- “(a) section 177(1) applies; or
- “(b) the defendant—
- “(i) is convicted of a category 3 offence punishable by a term of imprisonment exceeding 3 years; and 35
- “(ii) did not elect a jury trial.

- “(2) No conviction or order or other process or proceeding is invalid by reason only that at the time the defendant was convicted the defendant should by reason of his or her age have been dealt with in a Youth Court.
- “(3) On the application of either party, a retrial of the charge may be granted under section 177. 5
- “(4) If, at the time appointed for the retrial, the defendant is still a child or young person within the meaning of the Children, Young Persons, and Their Families Act 1989, the court must remit the proceedings to a Youth Court to be dealt with in that court.” 10

**14 Section 382 amended (Payment and recovery of fees)**  
Repeal section 382(6) and (7).

**14A New section 385A inserted (Judge or Registrar may waive certain fees)** 15

After section 385, insert:

**“385A Judge or Registrar may waive certain fees**

A Judge or Registrar may, subject to any terms or conditions that the Judge or Registrar thinks fit, waive the payment of a fee prescribed under section 387 for accessing documents (in whole or in part) if the Judge or Registrar is satisfied that the person is unable, or should not be required, to pay the fee.” 20

**14B New section 404A inserted (Access to court documents)**

After section 404, insert:

**“404A Access to court documents** 25

Part 6 of the Criminal Procedure Rules 2012 applies, with any necessary modifications, to a request for access to court documents relating to a proceeding that was commenced prior to the commencement date as if that proceeding were a proceeding under the Criminal Procedure Act 2011.” 30

**14C New section 406A inserted (Savings)**

After section 406, insert:



**406A Savings**

The Witnesses and Interpreters Fees Regulations 1974, insofar as they apply to criminal proceedings, continue in force, and may be amended, as if they had been made under section 387.”

- 15 Section 409 amended (Regulations making consequential amendments) 5**
- (1) In section 409, replace “before” with “before, on, or after”.
- (2) In section 409(e), replace “, or” with “or”.
- (3) After section 409(e), insert:
- “(f) the Crimes Act 1961: 10
- “(g) ‘indictable’ or ‘indictment’ or any related terminology:
- ~~“(h) ‘crime’ or any related terminology:~~
- “(i) ‘committal’ or any related terminology:
- “(j) ‘accused’ or any related terminology.”
- 16 Schedule 3 amended 15**
- (1) In Schedule 3, Part 1, item relating to the Criminal Investigations (Bodily Samples) Act 1995, replace the item relating to definition of charged in section 2(1) with:
- “Definition of **charged** in section 2(1): repeal and substitute:
- “‘**charged**, in relation to a person, means that a charging document charging the person with an offence has been filed in a District Court (including in relation to proceedings in the Youth Court)’. ” 20
- (2) In Schedule 3, Part 1, item relating to the Criminal Investigations (Bodily Samples) Act 1995, after the item relating to section 24F(b)(i), insert:
- “Section 24J(1)(b): omit ‘by way of summons’ and substitute ‘by filing a charging document’.
- “Section 24K(1)(b): omit ‘by way of summons’ and substitute ‘by filing a charging document’.” 30
- (3) In Schedule 3, Part 1, item relating to the Criminal Investigations (Bodily Samples) Act 1995, after the item relating to section 26A(3)(b), insert:
- “Section 50C(4)(a): omit ‘laid’ and substitute ‘filed’.
- “Section 50C(4)(b): omit ‘laid’ and substitute ‘filed’.” 35

- (4) In Schedule 3, Part 1, item relating to the Extradition Act 1999, item relating to new section 68(3), replace “the court that made the determination” with “the court to which the appeal is being taken”.
- (4A) In Schedule 3, Part 1, item relating to the Fisheries Act 1996, 5  
after the item relating to section 237(1), insert:  
“Section 237(1): omit ‘specified in subsection (1) of that section’ and substitute ‘permitted by those rules’.”
- (5) In Schedule 3, Part 1, item relating to the Insurance Law Reform Act 1977, replace “Section 112A(3)(a) and (b)” with 10  
“Section 12A(3)(a) and (b)”.
- (6) In Schedule 3, Part 1, item relating to the Policing Act 2008, after the item relating to section 33(4)(b), insert:  
“Section 34(3)(a): omit ‘Crimes Act 1961, or under the Summary Proceedings Act 1957’ and substitute ‘Criminal Procedure Act 2011’.” 15  
“Section 34(3)(b): omit ‘committal process’ and substitute ‘pre-trial’.”
- (7) In Schedule 3, Part 1, item relating to the Local Government Act 2002, 20  
after the item relating to section 239(1) and (2),  
insert:  
“Section 239A(2) (as inserted by section 6 of the Local Government (Alcohol Reform) Amendment Act 2012): omit ‘the laying of an information under the Summary Proceedings Act 1957, or by the filing of a notice of prosecution under section 20A of that Act’ and substitute ‘filing a charging document under section 14 of the Criminal Procedure Act 2011’.” 25
- (8) In Schedule 3, Part 1, item relating to the Local Government Act 2002, 30  
after the item relating to section 244(a), insert:  
“Section 244(1)(a) (as inserted by section 7 of the Local Government (Alcohol Reform) Amendment Act 2012): omit ‘Summary Proceedings Act 1957’ and substitute ‘Criminal Procedure Act 2011’.”  
“Section 244(2)(b) (as inserted by section 7 of the Local Government (Alcohol Reform) Amendment Act 2012): omit 35  
‘Summary Proceedings Act 1957’ and substitute ‘Criminal Procedure Act 2011’.”

- (9) In Schedule 3, Part 1, item relating to the Misuse of Drugs Act 1975, replace the item relating to definition of **served** in section 31(5) with:  
“Definition of **served** in section 31(5): omit ‘in accordance with sections 24 to 29 of the Summary Proceedings Act 1957’ and substitute ‘as if the certificate were a document required to be served in accordance with rules made under the Criminal Procedure Act 2011’.” 5
- (10) In Schedule 3, Part 1, item relating to the Parole Act 2002, after item relating to section 107G(7), insert: 10  
“Section 107G(8): omit ‘form that’ and substitute ‘form for which the content’.”
- (11) In Schedule 3, Part 4, item relating to the International Criminal Court Regulations 2004, replace the item relating to regulation 6(2) with: 15  
“Regulation 6(2): omit ‘section 24 of the Summary Proceedings Act 1957 as if references in that section to the defendant were references to the person required to be served’ and substitute ‘rules in relation to service of a summons made under the Criminal Procedure Act 2011 that apply (with all necessary modifications)’.  
“Regulation 7: revoke.”
- (12) In Schedule 3, Part 4, item relating to the International War Crimes Tribunals Regulations 1995, replace the item relating to regulation 4(2) with: 25  
“Regulation 4(2): omit “provisions of section 24 of the Summary Proceedings Act 1957 as if references in that section to the defendant were references to the person required to be served” and substitute “rules in relation to service of a summons made under the Criminal Procedure Act 2011 that apply (with all necessary modifications)”.  
“Regulation 4(3): revoke.”
- (13) In Schedule 3, Part 4, item relating to the Mutual Assistance in Criminal Matters Regulations 1993, replace the item relating to regulation 4(2) with: 35  
“Regulation 4(2): omit “provisions of section 24 of the Summary Proceedings Act 1957 as if references in that section to the defendant were references to the person required to be

served” and substitute “rules in relation to service of a summons made under the Criminal Procedure Act 2011 that apply (with all necessary modifications)”.

“Regulation 4(3): revoke.”

- 17 Further amendments to principal Act** 5  
Amend the principal Act as set out in **Schedule 1**.

## **Part 2**

### **Amendments to other enactments**

#### Subpart 1—Amendment to Auctioneers Act 1928

10

- 18 Principal Act**  
**This subpart** amends the Auctioneers Act 1928 (the **principal Act**).

- 19 Section 38 amended (Misappropriation, theft, falsifying accounts)** 15  
In section 38, delete “commits a crime and”.

#### Subpart 2—Amendments to Crimes Act 1961

- 20 Principal Act**  
**This subpart** amends the Crimes Act 1961 (the **principal Act**). 20

- 21 Section 8 amended (Jurisdiction in respect of crimes on ships or aircraft beyond New Zealand)**

- (1) Replace section 8(2) with:  
“(2) If a person does or omits to do any act to which this section applies, and that act or omission would, if it occurred within New Zealand, be an offence, under this Act or any other enactment (whether that enactment was passed before or after the commencement of this Act), punishable by imprisonment for life or by 2 or more years’ imprisonment, then, subject to the provisions of this Act and that other enactment, the person is 25  
30

liable on conviction as if the act or omission had occurred in New Zealand.

- “(2A) If any proceedings are taken by virtue of the jurisdiction conferred by this section, it is a defence to prove that the act or omission would not have been an offence under the law of the country of which the person charged was a national or citizen at the time of the act or omission, if it had occurred in that country.”
- (2) In section 8(3), replace “a crime” with “an offence punishable by imprisonment for life or by 2 or more years’ imprisonment”.
- (3) In section 8(7), replace “crime” with “offence”.

**22 Section 411 amended (Consequential amendments)**

Repeal section 411(2).

**23 Consequential amendment to Crimes Amendment Act (No 4) 2011**

- (1) This section amends the Crimes Amendment Act (No 4) 2011.
- (2) In the Schedule,—
- (a) repeal the item relating to section 8 of the principal Act;
- (b) repeal the item relating to section 411(2) of the principal Act.

**24 Further amendments to principal Act**

Amend the principal Act as set out in **Schedule 2**.

Subpart 3—Amendments to Criminal Disclosure Act 2008

25

**25 Principal Act**

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

**26 Section 6 amended (Interpretation)**

In section 6(1), insert in its appropriate alphabetical order: “**working day** has the same meaning as in section 5 of the Criminal Procedure Act 2011”.

**27 Section 33 amended (Appeals)**

(1) Replace section 33(3) with:

“(3) An appeal under this section—

“(a) may be made to the Court of Appeal with the leave of that court, or to the Supreme Court with the leave of that court, if the order was made by—

“(i) the High Court; or

“(ii) a District Court in a proceeding for a category 3 offence after the defendant elected a jury trial:

“(b) may, in any other case, be made to the High Court with the leave of that court.”

(2) Replace section 33(4) and (5) (as substituted by section 8 of the Criminal Disclosure Amendment Act 2011) with:

“(4) Subpart 2 of Part 6 of the Criminal Procedure Act 2011 applies to an appeal under this section with any necessary modifications.

“(5) Despite subpart 2 of Part 6 of the Criminal Procedure Act 2011,—

“(a) a notice of application for leave to appeal to the High Court must be filed within 3 working days after the date of the decision to which the appeal relates:

“(b) a notice of application for leave to appeal to the Court of Appeal or the Supreme Court must be filed within 10 working days after the date of the decision to which the appeal relates.”

**27A Section 34A amended (Information disclosed late by defendant)**

In section 34A(a) (as inserted by section 7 of the Criminal Disclosure Amendment Act 2011), replace “; and” with “; or”.

Subpart 3A—Amendments to Evidence Act 30  
2006

**27B Principal Act**

**This subpart amends the Evidence Act 2006 (the principal Act).**

**27C Section 112 amended (Witness anonymity order for purpose of High Court trial)**

Replace section 112(1) and (2) (as amended by section 5 of the Evidence Amendment Act 2011) with:

“(1) This section and section 113 apply if a person is charged with a category 3 or 4 offence. 5

“(2) The prosecution or the defendant may apply to a High Court Judge for a witness anonymity order under this section.”

**27D Section 114 amended (Trial to be held in High Court if witness anonymity order made)** 10

(1) Replace section 114(1) (as amended by section 5 of the Evidence Amendment Act 2011) with:

“(1) In any case where a witness who may be called to give evidence in a criminal trial is the subject of a witness anonymity order made under section 112, the trial must be held in the High Court.” 15

(2) Repeal section 114(2).

## Subpart 4—Amendments to Juries Act 1981

**28 Principal Act**

**This subpart** amends the Juries Act 1981 (the **principal Act**). 20

**29 Section 29C amended (Criminal cases)**

(1) Replace section 29C(4)(b) with:

“(b) affects section 110 or 143 of the Criminal Procedure Act 2011.”

(2) Replace section 29C(5) with: 25

“(5) If, in terms of section 110 or 143 of the Criminal Procedure Act 2011, the offence charged, as described in the enactment creating the offence or as charged in the charge, includes the commission of any other offence, the court may accept a majority verdict on the offence charged instead of a unanimous verdict on the included offence.” 30

**30 Consequential amendment to Juries Amendment Act 2011**

(1) This section amends the Juries Amendment Act 2011.

- (2) In the Schedule, repeal the item relating to section 29C(4)(b) and (5) of the principal Act.

Subpart 5—Amendments to Misuse of  
Drugs Act 1975

- 31 Principal Act** 5  
**This subpart** amends the Misuse of Drugs Act 1975 (the principal Act).
- 32 Section 11 amended (Theft, etc, of controlled drugs)**
- (1) In section 11(1)(c),— 10
- (a) replace “any crime” with “any offence”; and
- (b) replace “a crime” with “an offence”.
- (2) In section 11(3), replace—
- (a) “The definition of crime in section 2, and sections” with “Sections”; and
- (b) “1961,” with “1961”. 15

Subpart 5A—Amendments to Sentencing  
Act 2002

- 32A Principal Act** 20  
**This subpart** amends the Sentencing Act 2002 (the **principal Act**).
- 32B Section 81B amended (Procedure if offender convicted in District Court and court believes offender could be sentenced to life imprisonment)**
- In section 81B(2) (as inserted by section 5 of the Sentencing Amendment Act (No 2) 2011), replace “endorse on the charging document a statement” with “make an entry in the permanent court record”. 25
- 32C Section 90 amended (Procedure if offender convicted in District Court and court believes offender could be sentenced to preventive detention)** 30
- Replace section 90(2) (as amended by section 7 of the Sentencing Amendment Act (No 2) 2011) with:



- “(2) The court must transfer the offender to the High Court for sentence and make an entry in the permanent court record to the effect that the court has declined jurisdiction on the ground that it has reason to believe that the offender should be considered for a sentence of preventive detention.”

5

Subpart 6—Amendments to Summary  
Offences Act 1981

**33 Principal Act**

**This subpart** amends the Summary Offences Act 1981 (the **principal Act**).

10

**34 Section 28 amended (Being found in public place  
preparing to commit crime)**

- (1) In the heading to section 28, replace “**crime**” with “**offence**”.
- (2) In section 28(1), replace “a crime” with “an imprisonable offence”.
- (3) In section 28(3), replace “a crime” with “an imprisonable offence”.

15

**Schedule 1****s 17****Further amendments to Criminal  
Procedure Act 2011****Section 58**

In section 58(1)(a), replace “57; or” with “57:”.

**Section 59**

In section 59(1)(a), replace “apply; or” with “apply:”.

**Section 73**

In section 73(6)(c), after “different”, insert “or an alternative”.

**Section 74**

In section 74(4), after “High Court”, insert “at the place”.  
~~In section 74(5)(c), after “different”, insert “or an alternative”.~~

**Section 152**

In section 152(1), definition of **specified serious offence**, paragraph (a), replace “a term of imprisonment of 14 years” with “imprisonment for life or by imprisonment for 14 years”.

**Section 191**

In section 191(2)(b), replace “section 138(1)” with “**section 138(1)(a)**”.

**Section 215**

In section 215(1),—  
(a) replace “Judge makes” with “court makes”; and  
(b) replace “a Judge alone” with “Judge-alone trial procedure”.

**Section 217**

In section 217(2)(f), replace “section 138(4)” with “**section 138(5)**”.

**Section 222**

In section 222(1)(a), replace “an application” with “a notice of application”.

**Section 318**

In section 318(3), replace “to appeal” with “under section 317”.

**Section 335**

In section 335(3), replace “Subsection (2) does” with “Subsection (2)(a) to (d) and (f) do”.

5

**Section 356**

In section 356(1)(c), replace “that is” with “unless the offence is”.

**Section 364**

In section 364(1), delete “and section 381”.

**Section 368**

In section 368(3), delete “in accordance with rules of court”.

10

**Section 387**

In section 387(1)(d), replace “places of trial other than” with “different or alternative places of trial from”.

**Section 399**

In section 399(1)(b), replace “before or after” with “before, on, or after”.

15

**Section 400**

In section 400(1), replace “after” with “on or after”.

In section 400(3), replace “Schedule 1” with “Schedule 2” in each place.

20

**Section 402**

In section 402, replace “before or after” with “before, on, or after”.

**Section 403**

In section 403, replace “before or after” with “before, on, or after”.

25

**Section 404**

In section 404(1), replace “before or after” with “before, on, or after”.

---

**Schedule 2****s 24****Further amendments to Crimes Act 1961****Section 86**

In section 86(3), replace “a crime” with “an offence”.

**Section 182**

5

In section 182(2), replace “crime” with “offence”.

**Section 216F**

In section 216F(2), replace “a crime” with “an offence”.

**Section 233**

In section 233(1)(b), replace “crime” with “imprisonable offence”. 10

**Section 246**

In section 246(1), replace “crime” with “imprisonable offence”.

In section 246(2), replace “a crime” with “an imprisonable offence” in each place.

In section 246(3), replace “crime” with “imprisonable offence”. 15

In section 246(4), replace “crime” with “imprisonable offence” in each place.

**Section 251**

In section 251(1)(a), replace “a crime” with “an offence”.

In section 251(1)(b), replace “a crime” with “an offence” in each 20 place.

In section 251(2)(b), replace “a crime” with “an offence”.

**Section 272**

In section 272, replace “a crime” with “an offence”.

**Section 312**

25

In section 312, replace “crime punishable by imprisonment” with “imprisonable offence”.

In section 312, replace “a crime in respect of” with “an offence in respect of”.

---

**Criminal Procedure Legislation Bill**

---

**Section 312**—*continued*

In section 312, replace “for that crime” with “for that offence”.

In section 312, replace “committed the crime” with “committed the offence”.

---

**Legislative history**

15 October 2012  
4 December 2012

Introduction (Bill 74–1)  
First reading and referral to Justice and Electoral  
Committee

---