

## CRIMES AMENDMENT BILL

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### EXPLANATORY NOTE

#### *Government Policy Statement*

Under current law, the trial of a person charged with an offence can proceed with 11 jurors if a juror has been discharged under section 374 (3) of the Crimes Act 1961. However, a trial cannot proceed with fewer than 11 jurors unless the prosecutor and the accused consent. Accordingly, if more than 1 juror is discharged after the commencement of the trial, a retrial is necessary unless the consent of the prosecutor and the accused is obtained.

The Government considers that there should be greater flexibility than provided in the existing law, to ensure that lengthy or difficult trials are able to be completed. This objective is consistent with ensuring public confidence in the integrity of the criminal justice system. This Bill would introduce greater flexibility to enable a trial to proceed with fewer than 11 jurors in certain limited circumstances.

An example of the need for greater flexibility in the law is a case where the trial is due to commence early in 1998. The trial is set down for an estimated 100 days. The accused is charged with 40, mostly sexual, offences involving 27 complainants. However, the charges also include one of murder. Given the expected length of the trial, it is possible that more than 1 juror will need to be discharged, during the course of the trial, on the grounds of illness, or some other ground of incapacity. In this event, the emotional costs of a new trial on the complainants, the effects on the court system, and public confidence in the operation of the criminal justice system could be considerable.

This Bill also includes, with some modification, amendments to section 374 of the Crimes Act 1961 that are currently contained in the Statutes Amendment Bill (No. 2). The amendments alter the grounds for discharging jurors. These changes have been incorporated into this Bill because it is sensible to progress them as part of 1 legislative measure, rather than in an unco-ordinated manner in 2 separate measures.

#### *Clause by Clause Analysis*

*Clause 1* relates to the Short Title and commencement. The Bill comes into force on the day after the date of Royal assent.

*Clause 2* provides that the Bill applies to any trial for which the jury is constituted on or after the Bill comes into force.

Clause 3 amends section 374 of the principal Act by repealing subsections (3) to (5), and substituting *new subsections (3) to (5)*.

The existing subsections—

- (a) Set out certain grounds on which a Judge may discharge a juror in a criminal trial after a case has opened:
- (b) Provide that on discharging a juror on any of those grounds, the Judge may discharge the whole jury or proceed with the remaining jurors:
- (c) Provide that the trial may not proceed with fewer than 11 jurors unless both the prosecutor and the accused consent.

*New subsection (3)* sets out additional grounds on which a Judge may discharge a juror. The new grounds (set out in *new paragraphs (d) and (e)*) are taken from section 22 (1) of the Juries Act 1981.

*New subsection (4)* provides that on discharging a juror under *new subsection (3)*, the Judge may discharge the jury or proceed with the remaining jurors. The *new subsection (4)* repeats the substance of the existing provision, but provides an additional requirement that in deciding which option to take, the Judge is to have regard to the interests of justice.

*New subsection (4A)* provides a new exception to the general rule that, on the discharge of a juror, the trial must not proceed with fewer than 11 jurors. At present, this can occur only where both the prosecutor and the accused consent. *New subsection (4A)* provides an additional exception where the Court considers that, because of exceptional circumstances relating to the trial (including, without limitation, the length or expected length of the trial), and having regard to the interests of justice, the Court should proceed with fewer than 11 jurors. In this case, the Court may proceed with 10 jurors whether or not the prosecutor and the accused consent. However, the Court may proceed with fewer than 10 jurors only if both the prosecutor and the accused consent.

*New subsection (5)* repeats the substance of the existing subsection (5), which is that the verdict of a jury of fewer than 12 jurors has the same effect as the verdict of 12 jurors.

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*Hon D A M Graham*

## CRIMES AMENDMENT

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### ANALYSIS

Title	2. Application
1. Short Title and commencement	3. Discharge of jury

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### A BILL INTITLED

#### **An Act to amend the Crimes Act 1961**

BE IT ENACTED by the Parliament of New Zealand as follows:

5     **1. Short Title and commencement**—(1) This Act may be cited as the Crimes Amendment Act 1997, and is part of the Crimes Act 1961\* (“the principal Act”).

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

10     **2. Application**—This Act applies to any trial for which a jury is constituted on or after the date on which this Act comes into force.

15     **3. Discharge of jury**—Section 374 of the principal Act (as substituted by section 13 of the Crimes Amendment Act (No. 2) 1980) is amended by repealing subsections (3) to (5), and substituting the following subsections:

“**(3) Subsection (4)** applies if, at any time before the verdict of the jury is taken, the Court is of the opinion that—

20     “(a) A juror is incapable of continuing to perform his or her duty; or

“(b) A juror is disqualified; or

“(c) A juror’s spouse or family member, or a family member of a juror’s spouse, is ill or has died; or

\*R.S. Vol. 1, p. 635

Amendments: 1979, Nos. 5, 127; 1980, Nos. 63, 85; 1982, Nos. 46, 157; 1985, Nos. 82, 121, 160, 171; 1986, Nos. 4, 33, 71, 75, 82; 1987, Nos. 1, 167; 1988, No. 114; 1989, Nos. 22, 103; 1991, Nos. 63, 106; 1993, Nos. 33, 46, 62; 1994, No. 27; 1995, Nos. 49, 68, 88

“(d) A juror is personally concerned in the facts of the case;  
or

“(e) A juror is closely connected with 1 of the parties or with  
1 of the witnesses or prospective witnesses.

“(4) Where this subsection applies, the Court, having regard 5  
to the interests of justice, may—

“(a) Make an order discharging the jury without their giving  
a verdict; or

“(b) Subject to **subsection (4A)**, make an order to proceed with  
the remaining jurors and take their verdict. 10

“(4A) The Court must not proceed with fewer than 11 jurors  
except in the following cases:

“(a) If the prosecutor and the accused consent:

“(b) If the Court considers that, because of exceptional  
circumstances relating to the trial (including, 15  
without limitation, the length or expected length of  
the trial), and having regard to the interests of  
justice, the Court should proceed with fewer than 11  
jurors; and in that case—

“(i) The Court may proceed with 10 jurors 20  
whether or not the prosecutor and the accused  
consent:

“(ii) The Court may proceed with fewer than 10  
jurors only if the prosecutor and the accused  
consent. 25

“(5) If the Court proceeds with fewer than 12 jurors, their  
verdict has the same effect as the verdict of 12 jurors.”