

## CRIMES AMENDMENT BILL (NO. 6)

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### EXPLANATORY NOTE

#### *General Policy Statement*

The Bill implements policy decisions in relation to 2 separate issues. The first relates to the bribery of foreign public officials and is required to enable New Zealand to ratify the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed by the Government on 17 December 1997.

The Convention followed 2 years' work within the OECD on the problem of bribery of public officials. Bribery of public officials is regarded as widespread in international business transactions (including trade and investment), raising serious moral and political concerns, undermining good governance and economic development, and distorting international competitive conditions.

In accordance with the Convention, a proposed new section of the Crimes Act 1961 will make the active bribery of foreign public officials in business transactions a criminal offence. The act of bribing, not the act of receiving the bribe, will be made an offence. Sanctions will be comparable to bribery of domestic officials. A maximum penalty of 7 years' imprisonment is proposed. This will enable confiscation of the bribe and any proceeds of the bribe, and permit the application of the provisions of our domestic money laundering law. Extradition and mutual assistance in criminal matters will be available for the offence.

The definition of "Foreign Public Official" under the Convention includes members of the executive, judiciary, or legislature of a foreign country, and any person employed by or exercising a public function for a foreign government, a foreign public body, or a public international organisation.

The second issue is the repeal by this Bill of most of the sections of Part X of the Crimes Act 1961—crimes against rights of property—and the addition of a *new Part 10A* to replace them. Many of these offences have not been updated for nearly 40 years. Some recent court cases and examples of computer misuse have highlighted major gaps in this Part of the Crimes Act 1961. This Bill modernises these offences to take account of computer-related crime and to update the traditional property offences in light of technological advances and recent case law. It creates new offences in relation to the misuse of, and damage to, computer systems. It also creates a new offence of dishonestly obtaining trade secrets.

This part of the Bill takes as its starting point the Crimes Bill 1989, which proposed a completely revised Crimes Act. The Crimes Bill would have resulted in a major restructuring of Part X of the Act, including the replacement of more than 90 offences with 45, mainly by consolidating a large number of discrete offences. The drafting was also greatly simplified for most offences. That Bill was referred to a Crimes Consultative Committee (the ‘CCC’, chaired by the Rt Hon Justice Casey) which presented its report to the Minister of Justice in 1991. The CCC substantially agreed with the property offence provisions of the Crimes Bill 1989, but recommended that an amended version of the Bill should proceed. However, the Crimes Bill 1989 was not carried over when Parliament was dissolved in 1993, with the result that the concerns that gave rise to the proposals for new general provisions relating to property offences remained. These concerns included—

- out-of-date provisions and offences in the Act generally
- difficulties with some of the definitions, such as ‘things capable of being stolen’ not including intangible things
- the need to clarify the concept of ‘fraudulently’ (by introducing a new concept of ‘dishonestly’)
- the lack of offences for misuse of trade secrets and computers.

These concerns have continued. This Bill implements most of the relevant recommendations of the CCC but with some changes and additional amendments to take account of more recent developments in technology and case law.

#### *Clause by Clause Analysis*

*Clause 1* relates to the Short Title and the commencement of the Bill. *Clauses 2 to 8, 15 to 24, 27, 28, and Schedule 2* come into force on 1 October 2000. The rest of the Bill comes into force on the day after the date on which it receives the Royal assent.

### PART 1

#### AMENDMENTS TO PRINCIPAL ACT

##### *Provisions Affected by Changes to Crimes Against Rights of Property*

*Clause 2* amends section 2 of the principal Act which relates to interpretation. The clause repeals the definition of the term “colour of right”. A new term “claim of right” is inserted to replace it. The terms “colour of right” and “claim of right” play an important role in a number of offence provisions in the Crimes Act 1961, particularly in a number of property offences in Part X and *new Part 10A*. The terms are used to qualify a number of offence provisions. For example, if an offence provision is qualified by the term “colour of right” or “claim of right”, a person to whom that provision would otherwise apply who has a “colour of right” or “claim of right” does not commit an offence.

There is a substantive difference in meaning between the 2 terms. The existing term “colour of right” means, subject to certain qualifications, “an honest belief that an act is justifiable”. The new term “claim of right” refers to a “belief that an act is lawful”. The reasons for narrowing the scope of the existing “colour of right” defence is discussed in the CCC’s report.

The definition of the term “crime involving dishonesty” is consequentially amended. The definition of the term “valuable security” is repealed as it will no longer be used in the principal Act.

*Clause 3* amends the definition of “home invasion” in section 17A of the principal Act. This amendment is required as a consequence of the removal of the element of “breaking and entering” from the offence of burglary and its replacement with the concept of unlawful entry.

*Clause 4* consequentially amends section 17B of the principal Act (which deals with maximum terms of imprisonment for offences involving home invasion that would otherwise carry maximum terms of 5, 7, or 10 years' imprisonment) by amending section references to the relevant offences to ensure consistency with proposed *new Part 10A* of the principal Act.

*Clauses 5, 6, and 8* make similar consequential amendments to sections 17C (1), 24 (2), and 98A of the principal Act.

*Clause 7* consequentially amends section 91 of the principal Act (which relates to forcible entry and detainer) by omitting the term "colour of right", and substituting the term "claim of right".

*Clauses 9 to 13* amend provisions of the principal Act relating to bribery. The purpose of these changes is to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the "Bribery Convention"). The amendments made by *clauses 9 to 12* involve the amendment of various provisions of the principal Act to ensure that the maximum penalties applicable to the bribery of various types of office holder in New Zealand are comparable to the maximum penalty for commission of the new offence of bribery of foreign public officials.

#### *Bribery of Public Officials*

*Clause 9* amends section 101 (2) of the principal Act (which creates the offence of corruptly giving or offering or agreeing to give any bribe to a person with intent to influence a judicial officer or a Registrar or Deputy Registrar) by increasing the maximum term of imprisonment for the offence from 5 years to 7 years.

*Clause 10* amends section 103 (2) of the principal Act (which creates the offence of corruptly giving or offering or agreeing to give a bribe to a person with intent to influence a member of Parliament in respect of an act or omission by that member in his or her capacity as a member) by increasing the maximum term of imprisonment for the offence from 3 years to 7 years.

*Clause 11* amends section 104 (2) of the principal Act (which creates the offence of corruptly giving or offering or agreeing to give a bribe to a person with intent to influence a law enforcement officer in respect of any act or omission in the officers' official capacity) by increasing the maximum term of imprisonment for the offence from 3 years to 7 years.

*Clause 12* amends section 105 (2) of the principal Act (which creates the offence of corruptly giving or offering or agreeing to give a bribe to a person with intent to influence an official in respect of an act or omission by the official in his or her official capacity) by increasing the maximum term of imprisonment for the offence from 3 years to 7 years.

*Clause 13* inserts *new sections 105c to 105E* into the principal Act.

*New section 105c* creates a new offence of bribery of a foreign public official. *New section 105c (1)* defines terms used in *new section 105c*, including "benefit", "foreign country", "foreign government", "foreign public agency", "foreign public enterprise", "foreign public official", "public international organisation", and "routine government action". These definitions are used in connection with the offence created by *new section 105c (2)*. That provision creates the new offence of corruptly giving or offering or agreeing to give a bribe to a person with intent to influence a foreign public official in respect of any act or omission by that official in his or her official capacity in order to obtain or retain business or obtain

any improper advantage in the conduct of business. The maximum term of imprisonment for the offence is 7 years.

*New section 105c (2)* does not apply if the act that is alleged to constitute the offence was not, at the time of its commission, an offence under the law of the place where the act was done. There is a presumption that, if the act that is alleged to constitute the offence was done outside New Zealand, the act was an offence under the law where the act was done. That presumption is displaced if the accused puts the matter at issue.

*New section 105D* creates a defence to a charge under *new section 105c (2)*. It is a defence to a charge under *new section 105c (2)* if the act that is alleged to constitute the offence was committed for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action, the value of the benefit is minor, and certain requirements regarding the recording of the benefit are satisfied. A minor benefit is defined as a benefit that has a value of less than \$50 or such other sum (not exceeding \$200) as may from time to time be prescribed by regulations made under the principal Act.

*New section 105E* enables the Secretary to the Treasury to issue a certificate stating the value of any unit of overseas currency in New Zealand dollars on a date specified in the certificate. Such a certificate must be received in proceedings for an offence under *new section 105c* and, in the absence of proof to the contrary, is sufficient evidence of the matters referred to in the certificate.

*Clause 14* amends section 106 of the principal Act by adding *new section 105c* to the list of offence provisions that require the leave of the Attorney-General to be obtained before a prosecution can be brought.

#### *Murder*

*Clause 15* amends section 168 (2) of the principal Act (which specifies offences to which the extended definition of murder set out in section 168 (1) applies) by correcting the existing reference to the offence of sexual violation and updating the existing references to burglary, robbery, and arson, in light of the *new Part 10A* (as inserted by *clause 19*).

#### *Endangering Transport*

*Clause 16* repeals section 203 of the principal Act (which relates to the offence of endangering transport). This offence is replaced by the new offence of endangering transport contained in *new section 305ZR* (inserted by *clause 19*).

#### *Crimes Against Rights of Property*

*Clause 17* repeals sections 217 to 227B, 229A to 243, 245 to 281, 287, 288, and 293 to 305 in Part X of the principal Act.

*Clause 18* amends section 228 of the principal Act to omit the term “colour of right”, and substitute the term “claim of right” (*see new definition in clause 2*).

*Clause 19* amends the principal Act by inserting a *new Part 10A*. *New Part 10A* contains proposed *new sections 305A to 305ZW* of the principal Act.

#### *Interpretation*

*New section 305A*, in part, replaces sections 217, 218, and 263 of the principal Act. It defines the following terms that are used in the *new Part 10A*: “deception”, “dishonestly”, “document”, “obtain”, and “property”. The focus is now on the concept of being deprived of property, rather than the concept of things capable of being stolen.

### *Unlawful Taking*

*New section 305B* defines the concept of ownership. It provides that a person is to be regarded as the owner of any stolen property if, when the property is taken, that person has possession or control of the property, any interest in the property, or the right to take possession or control of the property. Drawing on section 225 of the principal Act, it also provides that an owner of any property may be guilty of theft against another owner of that property. Drawing on section 219 of the principal Act, it also provides that wild animals can be owned if they are in a state of confinement.

*New section 305c* is a simplified version of section 220 of the principal Act relating to theft. The essence is a dishonest taking or keeping of property, intending to deprive the owner of it permanently, or being reckless as to whether or not the owner is being deprived of it permanently.

*New section 305D* is a simplified version of section 222 of the principal Act. It provides that a person in a special relationship commits theft if that person intentionally fails to account to the other person as required or intentionally deals with property or any proceeds of property in a way that is not in accordance with those requirements.

*New section 305E* replaces section 221 of the principal Act. It provides that a person commits theft if that person kills an animal owned by another person with the intention of stealing the animal or a specified part of it.

*New section 305F* replaces section 226 of the principal Act. It provides that a person can be convicted for stealing the property of his or her spouse.

*New section 305G* sets out the punishment for theft. It replaces in simpler form section 227 of the principal Act. If theft is committed by a person in a special relationship or the property has a value exceeding \$1,000, the person is liable to imprisonment for a term not exceeding 7 years. If the value exceeds \$500 but does not exceed \$1,000, the person is liable to imprisonment for a term not exceeding 1 year. If the value does not exceed \$500, the person is liable to imprisonment for a term not exceeding 3 months.

*New section 305H* replaces section 227A of the principal Act. It creates a power to search without warrant for stolen or unlawfully obtained property that is in transit and seize any such property. Members of the Police can only exercise the power if they have reasonable grounds to believe that the property is in the possession of any person, or in any container, package, or receptacle, or in or on any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle. In addition, the person or mode of transportation must be in an airport, port, harbour, or waterway, or in or on a railway or railway line or railway station, or in a depot, terminus, or yard, or in or on any other place used between trips by vehicles engaged in the carriage of goods for reward.

*New section 305I* replaces section 227B of the principal Act. It creates a power to search vehicles without warrant for property stolen or obtained by a crime involving dishonesty and to seize such property. Members of the Police can only exercise the power if they have reasonable grounds to believe that the property is in the vehicle.

*New section 305J* replaces section 229A of the principal Act. It provides that every one is liable to imprisonment for a term not exceeding 7 years who, dishonestly and without claim of right, takes or obtains, or uses or attempts to use, any document capable of being used to obtain any gain.

*New section 305K* replaces section 230 of the principal Act. It sets out the elements of the crime of criminal breach of trust. It provides that every trustee who commits such a crime is liable to imprisonment for a term not exceeding 7 years.

*New section 305L* is new. It provides that every one is liable to imprisonment for a term not exceeding 5 years who, with intent to obtain pecuniary advantage or cause loss to another, dishonestly takes, obtains, or copies any trade secret, or dishonestly takes, obtains, or copies any copy of any trade secret.

#### *Burglary*

*New section 305M* replaces section 241 of the principal Act (which relates to burglary). In essence, the offence remains the same, but it is stripped of its archaic technical language. The offence is committed by unlawful entry (without authority) into a building with intent to commit a crime. The concept of “breaking and entering” is dropped. The crime of burglary is subject to a maximum penalty of 10 years’ imprisonment.

*New section 305N* replaces, in simplified form, section 240A of the principal Act, (which relates to aggravated burglary). It prescribes a penalty of imprisonment for a term not exceeding 14 years for a person who commits burglary while armed with a weapon, and imprisonment for a term not exceeding 5 years for a person who is armed with a weapon with intent to commit burglary.

#### *Robbery and Blackmail*

*New section 305O* re-enacts section 234 of the principal Act (which relates to robbery). The existing penalty for the offence of a maximum term of 10 years’ imprisonment is retained.

*New section 305P* re-enacts, with 1 substantive amendment, section 235 of the principal Act (which relates to aggravated robbery). The substantive change involves the omission of the reference in present section 235 (1) (b) and (c) of the principal Act to assault with intent to rob. This offence is included in *new section 305Q*. The existing penalty for the offence of a maximum term of 14 years’ imprisonment is retained.

*New section 305Q* replaces section 237 of the principal Act (which relates to assault with intent to rob).

*Subsection (1) (a)*, which is new, applies if a person who, with intent to rob any person, causes grievous bodily harm to that person or any other person.

*Subsections (1) (b) and (c)* apply if there is an assault with intent to rob in circumstances where the offender is accompanied by others or is armed. These offences are currently included in section 235 (1) (b) and (c) of the principal Act.

*Subsection (2)* applies if a person assaults any person with intent to rob that person or any other person.

The penalty for an offence against *new section 305Q* is imprisonment for a term not exceeding 14 years, in the case of an offence against *subsection (1)*, and imprisonment for a term not exceeding 7 years, in the case of an offence against *subsection (2)*.

*New section 305R* replaces section 238 of the principal Act (which relates to “extortion by certain threats”). *New section 305R* alters the present law by—

- using the term “blackmail” rather than “extortion”
- applying the term “blackmail” to any threat of disclosure against any person (whether living or dead), not just threatened disclosure of sexual misconduct or criminal offending as at present
- further broadening the scope of the threats covered by the provision to include a threat to cause serious damage to property or endanger the safety of any person as well as a threat to disclose something about a person
- providing that a threat to which the provision applies will amount to blackmail even if a person is entitled, or believes that he or she is entitled, to receive what he or she is demanding, unless the making of the threat is, in the circumstances, a reasonable and proper means for effecting his or her purpose.

*New section 305s* sets out the punishment for blackmail. It retains the current penalty for blackmail in section 238 (1) of the principal Act of a maximum term of 14 years' imprisonment.

*New section 305t* combines sections 236 and 239 of the principal Act (which relate respectively, to compelling the execution of documents by force, and demanding with intent to steal). The existing penalties for offences against sections 236 and 239 are retained in the new section. A person who compels any person to execute, make, accept, endorse, alter, or destroy a document with intent to obtain any benefit is subject to a maximum penalty of 14 years' imprisonment. A person who demands property with menaces is subject to a maximum penalty of 7 years' imprisonment.

#### *Crimes Involving Deceit*

*New section 305u* draws on sections 246, 247, and 270 of the principal Act. It combines obtaining by false pretence, obtaining credit fraudulently, and procuring execution of documents by fraud in the crime of obtaining by deception.

*New section 305v* sets out the punishment for obtaining by deception. If the value of what is obtained or sought to be obtained exceeds \$1,000, the person is liable to imprisonment for a term not exceeding 7 years. If the value exceeds \$500 but does not exceed \$1,000, the person is liable to imprisonment for a term not exceeding 1 year. If the value does not exceed \$500, the person is liable to imprisonment for a term not exceeding 3 months.

*New section 305w* replaces section 250 of the principal Act. It provides that every one is liable to imprisonment for a term not exceeding 10 years who makes false statements with the intent to induce any person to subscribe to a security, or to deceive or cause loss to any person, or to induce any person to entrust or advance any property to any other person.

*New section 305x* replaces section 257 of the principal Act. It provides that every one is liable to imprisonment for a term not exceeding 7 years who conspires with another person to obtain property or cause loss by deception.

#### *Money Laundering*

*New sections 305y to 305za* define the crime of, and punishment for, money laundering. A person engages in a money laundering transaction if the person deals with property or assists another person to deal with property for the purposes of concealing the property or enabling another person to conceal that property. These new sections are in substantially similar terms to section 257A of the principal Act, except for the addition of the concept of recklessness. At present, section 257A of the principal Act requires that the person know or believe that the property is the proceeds of a serious offence. *New section 305y* also applies if the person is reckless as to whether or not the property is the proceeds of a serious offence.

#### *Receiving*

*New section 305zb* defines the crime of receiving. It replaces sections 258, 260, and 261 of the principal Act.

*Subsection (1)* provides that every one is guilty of receiving who receives any property stolen or obtained by any other crime, knowing it to have been stolen or so obtained or being reckless as to whether it is stolen or so obtained. The element of recklessness is new.

*Subsections (2) and (5)* deal with the situation where property is obtained by an act committed outside New Zealand.

*Subsection (3)* defines when receiving is complete. It is in similar terms to the existing section 260 of the principal Act.

*Subsection (4)* deals with subsequent receiving after the property has been returned to its owner or legal title to the property has been acquired by any person. This subsection provides that subsequent receiving of the property is not an offence. It is in substantially similar terms to the existing section 261 of the principal Act.

The provisions of section 258 (2) of the principal Act (allowing evidence to be given of prior receiving convictions or recent possession of other stolen property) are not repeated in the *new section 305ZB*.

*New section 305ZC* sets out the punishment for receiving. If the value of the property received exceeds \$1,000, the person is liable to imprisonment for a term not exceeding 7 years. If the value exceeds \$500 but does not exceed \$1,000, the person is liable to imprisonment for a term not exceeding 1 year. If the value does not exceed \$500, the person is liable to imprisonment for a term not exceeding 3 months.

#### *Crimes Involving Computers*

*New section 305ZD* is new. It defines the terms “access” and “computer systems” used in *new sections 305ZE and 305ZF*.

*New section 305ZE* is new. It relates to accessing a computer system for a dishonest purpose.

*Subsection (1)* provides that every one is liable to imprisonment for a term not exceeding 7 years who accesses any computer system and, dishonestly or by deception and without claim of right, obtains gain or causes loss to another person.

*Subsection (2)* provides that every one is liable to imprisonment for a term not exceeding 5 years who accesses a computer system with the intent of dishonestly or by deception and without claim of right obtaining gain or causing loss to another.

*New section 305ZF* is new. It relates to damaging or interfering with a computer system.

*Subsection (1)* provides that every one is liable to imprisonment for a term not exceeding 7 years who, with the intent to cause serious damage and without authority, damages, deletes, modifies, or otherwise interferes with any data or software stored in any computer system or causes any data or software stored in any computer to be damaged, deleted, modified, or otherwise interfered with.

*Subsection (2)* provides that every one is liable to imprisonment for a term not exceeding 7 years who, knowing that serious damage is likely to result, recklessly and without authority, damages, deletes, modifies, or otherwise interferes with any data or software stored in any computer system or causes any data or software stored in any computer to be damaged, deleted, modified, or otherwise interfered with.

#### *Forgery and Counterfeiting*

*New section 305ZG* defines the terms “bank note” and “false document” used in this section and in *new sections 305ZH and 305ZO*:

*New section 305ZH* defines the crime of, and punishment for, forgery. It replaces sections 264 and 265 of the principal Act.

*Subsection (1)* relates to making a false document with the intention of using it to obtain some sort of gain.

*Subsection (2)* relates to making a false document with the intention that it be used or acted upon as genuine.

*Subsections (3) and (4)* follow subsections (3) and (4) of section 264 of the principal Act.

*New section 305ZI* relates to using forged documents. It replaces section 266 of the principal Act.



*New section 305ZJ* relates to altering, concealing, destroying, or reproducing a document with intent to deceive. It replaces sections 231, 256, and 266A of the principal Act. It deals with deceptive alteration, concealment, destruction, or reproduction of documents where the conduct concerned may not amount to forgery within the terms of *new section 305ZH*.

*New section 305ZK* relates to using an altered or reproduced document with intent to deceive. It replaces section 266B of the principal Act.

*New section 305ZL* relates to false accounting. It replaces sections 251 to 254 of the principal Act. It incorporates the making of false entries in, and the omission of material particulars from, any book or account or other document required or used for accounting purposes. It also covers false transfers of an interest in a stock, debenture, or debt. Section 255 of the principal Act (which relates to issuing false dividend warrants) is not repeated. That conduct is intended to be covered by *new section 305U*.

*New section 305ZM* relates to counterfeiting of public seals. It replaces section 267 of the principal Act and is in substantially the same terms as that section. Every one is liable to imprisonment for a term not exceeding 10 years who unlawfully makes or counterfeits a public seal, stamp, or impression or uses any such seal, stamp, or impression knowing it to be counterfeit.

*New section 305ZN* relates to counterfeiting of corporate seals. It replaces section 268 of the principal Act and is in substantially the same terms as that section. Every one is liable to imprisonment for a term not exceeding 10 years who unlawfully makes or counterfeits a corporate seal, stamp, or impression or uses any such seal, stamp, or impression knowing it to be counterfeit.

*New section 305ZO* relates to the possessing of forged bank notes. It replaces section 271 of the principal Act and is in substantially similar terms to that section.

*New section 305ZP* relates to possession of paper or implements for forgery with intent to use them for that purpose. The new section is a much simplified replacement for section 274 of the principal Act.

*New section 305ZQ* relates to imitating authorised or customary marks. It replaces sections 280 and 281 of the principal Act. The new section is in similar terms to the existing sections except that the references to intent to defraud or deceive are replaced with references to acting “dishonestly” (as that term is defined in *new section 305A*). Every one is liable to imprisonment for a term not exceeding 5 years who dishonestly counterfeits or imitates any mark, word, or description that denotes that a particular thing has been examined or certified to be of a particular quality.

#### *Arson, Damage, and Waste*

*New section 305ZR* replaces sections 294 and 296 of the principal Act with a simplified offence of arson. The essence is damaging any property by fire or explosives. The penalty for destroying or damaging without claim of right any immovable property or any vehicle, ship, or aircraft remains imprisonment for a term not exceeding 14 years. The penalty for destroying or damaging, without claim of right, any other property is imprisonment for a term not exceeding 7 years. The intentional damage of a person’s own property with reckless disregard for the safety of other property is subject to a maximum penalty of 5 years’ imprisonment.

*New section 305ZS* prescribes a penalty of imprisonment for a term not exceeding 10 years for attempted arson in respect of any immovable property, vehicle, ship, or aircraft.

*New section 305ZT* replaces section 298 of the principal Act (which relates to intentional damage of property). The deliberate damage of property (without lawful authority) is subject to a penalty of imprisonment for a term not exceeding 14 years. The damage of a person’s own property with reckless disregard for the

safety of other property is subject to a maximum penalty of 7 years' imprisonment.

*New section 305zu* is a simplified version of sections 203 and 300 to 303 of the principal Act (which relate to endangering transport). The crime of endangering transport is subject to a maximum penalty of 14 years' imprisonment.

*New section 305zv* re-enacts, without substantive amendment, section 299 of the principal Act (which relates to wasting or diverting water, gas, or electricity). The crime of wasting or diverting water, gas, or electricity is subject to a maximum penalty of 5 years' imprisonment.

*New section 305zw* re-enacts, without substantive amendment, section 305 of the principal Act (which relates to the provision of explosives to commit crime). The crime of providing explosives to commit crimes is subject to a maximum penalty of 2 years' imprisonment.

*Other Provisions Affected by Changes to Crimes Against Rights of Property*

*Clause 20* consequentially amends section 307 (2) of the principal Act (which relates to threatening to destroy property) by omitting the term "colour of right", and substituting the term "claim of right".

*Clause 21* amends the definition of "specified offence" in section 312A of the principal Act to update references to the offences of theft, money laundering, and receiving, in light of the *new Part 10A*.

*Clause 22* amends the definition of "specified offence" in section 318 of the principal Act to update references to the offences of robbery, aggravated robbery, and assault with intent to rob, in light of the *new Part 10A*.

*Clauses 23 and 24* amend sections 319 (3) and 344AA of the principal Act by updating references to the offence of money laundering, in light of the *new Part 10A*.

## PART 2

### OTHER MATTERS

#### *Extradition of Offenders*

*Clause 25* provides that, for the purposes of the Extradition Act 1999, the crime described in *new section 105c* of the principal Act is deemed to be a crime included in any extradition treaty concluded before the commencement of this section and for the time being in force between New Zealand and any foreign country that is party to the Bribery Convention.

#### *Amendments to Mutual Assistance in Criminal Matters Act 1992*

*Clause 26* amends section 24A of the Mutual Assistance in Criminal Matters Act 1992 to enable assistance to be granted or sought in respect of the offence created by *new section 105c* or offences outside the jurisdiction of New Zealand that, if committed within the jurisdiction of New Zealand, would correspond to an offence against *new section 105c*. *Clause 26* also amends Schedule 1 of the Mutual Assistance in Criminal Matters Act 1992 by including the amendment set out in *Schedule 1* of this Bill.

#### *Consequential Repeals and Amendments*

*Clause 27* effects consequential repeals.

*Clause 28* provides that the enactments specified in *Schedule 2* are amended in the manner indicated in that schedule.

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**CRIMES AMENDMENT (NO. 6)**

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## A BILL INTITULED

## An Act to—

- (a) Amend the Crimes Act 1961 to implement the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and
- (b) Amend the Crimes Act 1961 to create crimes in relation to the misuse of computer systems and the dishonest obtaining of trade secrets; and

**(c) Rationalise and update certain existing property crimes**

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 (No. 6) 1999, and is part of the Crimes Act 1961\* (“the principal Act”).

(2) **Sections 2 to 8, 15 to 24, 27, and 28, and Schedule 2** come into force on **1 October 2000**.

10 (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

\*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; 1997, Nos. 88, 93, 99; 1998, Nos. 35, 79; 1999, No. 75

PART 1

AMENDMENTS TO PRINCIPAL ACT

*Provisions Affected by Changes to Crimes Against Rights of Property*

15 **2. Interpretation**—(1) Section 2 (1) of the principal Act is amended by repealing the definition of the term “colour of right”, and substituting the following definition:

20 “‘Claim of right’, in relation to any act, means a belief that the act is lawful, although that belief may be based on ignorance or mistake of fact or of any matter of law other than the enactment against which the offence is alleged to have been committed.”

(2) Section 2 (1) of the principal Act is amended by repealing the definition of the term “crime involving dishonesty”, and substituting the following definition:

25 “‘Crime involving dishonesty’ means any crime described in Part X or **Part 10A**, except the crimes described in **sections 305ZR to 305ZW**.”

30 (3) Section 2 (1) of the principal Act is amended by repealing the definition of the term “valuable security”.

**3. Interpretation**—(1) Section 17A (1) of the principal Act is amended by repealing the definition of the term “home invasion”, and substituting the following definition:

35 “‘Home invasion’, when used in the expression ‘the offence involved home invasion’ or in any other provision, means that the person who committed the offence did so—

“(a) While unlawfully entering an occupied dwellinghouse; or

“(b) While in an occupied dwellinghouse after having unlawfully entered the dwellinghouse; or

“(c) While leaving an occupied dwellinghouse having entered it or remained in it unlawfully; or

“(d) While otherwise unlawfully in an occupied dwellinghouse.”

(2) Section 17A of the principal Act is amended by repealing subsection (2), and substituting the following subsection: 10

“(2) For the purposes of the definition of the term ‘home invasion’ in subsection (1), the terms ‘entering’ and ‘unlawfully’ must be construed in a sense consistent with **section 305M**, and **section 305M** applies accordingly.”

**4. Maximum terms of imprisonment for offences involving home invasion: offences otherwise carrying maximum term of 5, 7, or 10 years’ imprisonment—** 15

(1) Section 17B (2) of the principal Act is amended by repealing paragraphs (l) and (m), and substituting the following paragraphs: 20

“(l) **Section 305Q** (2) (assault with intent to rob):

“(m) **Section 305T** (2) (demanding with intent to steal, etc):”

(2) Section 17B (3) is amended by repealing paragraph (g), and substituting the following paragraph:

“(g) **Section 305O** (robbery).” 25

**5. Maximum terms of imprisonment for offences involving home invasion: offences otherwise carrying maximum term of 14 or 20 years’ imprisonment—**Section 17C (1) of the principal Act is amended by repealing paragraphs (n) to (p), and substituting the following paragraphs: 30

“(n) **Section 305N** (aggravated burglary):

“(o) **Section 305P** (aggravated robbery):

“(p) **Section 305Q** (1) (assault with intent to rob):

“(q) **Section 305T** (1) (demanding with intent to steal, etc).”

**6. Compulsion—**Section 24 (2) of the principal Act is amended by repealing paragraphs (k) to (l), and substituting the following paragraphs: 35

“(k) **Section 305O** (robbery):

“(l) **Section 305P** (aggravated robbery):

“(m) **Section 305ZR** (arson).” 40

**7. Forcible entry and detainer**—Section 91 of the principal Act is amended by omitting from subsections (2) and (3) the words “colour of right”, and substituting in each case the words “claim of right”.

5 **8. Participation in criminal gang**—Section 98A (1) of the principal Act is amended by repealing subparagraphs (vi) to (viii) of paragraph (b) of the definition of the term ‘serious offence’, and substituting the following subparagraphs:

10 “(vi) **Section 305g (b)** (theft of an object exceeding \$1,000 in value);

“(vii) **Section 305v** (money laundering);

“(viii) **Section 305zc (a)** (receiving); or”.

*Bribery of Public Officials*

15 **9. Bribery of judicial officer, etc**—Section 101 (2) of the principal Act is amended by omitting the expression “5 years”, and substituting the expression “7 years”.

20 **10. Corruption and bribery of member of Parliament**—Section 103 (2) of the principal Act is amended by omitting the expression “3 years”, and substituting the expression “7 years”.

**11. Corruption and bribery of law enforcement officer**—Section 104 (2) of the principal Act is amended by omitting the expression “3 years”, and substituting the expression “7 years”.

25 **12. Corruption and bribery of official**—Section 105 (2) of the principal Act is amended by omitting the expression “3 years”, and substituting the expression “7 years”.

**13. New sections inserted**—The principal Act is amended by inserting, after section 105B, the following sections:

30 “105c. **Bribery of foreign public official**—(1) In this section and in **sections 105d and 105e**,—

“‘Benefit’ means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect:

35 “‘Foreign country’ includes—

“(a) A territory for whose international relations the government of a foreign country is responsible; and

- “(b) An organised foreign area or entity including an autonomous territory or a separate customs territory:
- “ ‘Foreign government’ includes all levels and subdivisions of government, such as local, regional, and national government: 5
- “ ‘Foreign public agency’ means any person or body, wherever situated, that carries out a public function under the laws of a foreign country:
- “ ‘Foreign public enterprise’ means— 10
- “(a) A company, wherever incorporated, that—
- “(i) A foreign government is able to control or dominate (whether by reason of its ownership of shares in the company, its voting powers in the company, or its ability to appoint 1 or more directors (however described), or by reason that the directors (however described) are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and 15
- “(ii) Enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which **subparagraph (i) or paragraph (b) (i)** apply; or 25
- “(b) A person or body (other than a company), wherever situated, that—
- “(i) A foreign government is able to control or dominate (whether by reason of its ability to appoint the person or 1 or more members of the body, or by reason that the person or members of the body are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and 30
- “(ii) Enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which **subparagraph (i) or paragraph (a) (i)** apply: 35
- “ ‘Foreign public official’ includes any of the following: 40
- “(a) A member or officer of the executive, judiciary, or legislature of a foreign country:
- “(b) A person who is employed by a foreign government, foreign public agency, foreign public enterprise, or public international organisation: 45



“(c) A person, while acting in the service of or purporting to act in the service of a foreign government, foreign public agency, foreign public enterprise, or public international organisation:

5 “‘Public international organisation’ means any of the following organisations, wherever situated:

“(a) An organisation of which 2 or more countries or 2 or more governments are members, or represented on the organisation:

10 “(b) An organisation constituted by an organisation to which **paragraph (a)** applies or by persons representing 2 or more such organisations:

“(c) An organisation constituted by persons representing 2 or more countries or 2 or more governments:

15 “(d) An organisation that is part of an organisation referred to in any of **paragraphs (a) to (c)**:

20 “‘Routine government action’, in relation to the performance of any action by a foreign public official, does not include—

“(a) Any decision about—

“(i) Whether to award new business; or

“(ii) Whether to continue existing business with any particular person or body; or

25 “(iii) The terms of new business or existing business; or

“(b) Any action that is outside the scope of the ordinary duties of that official.

30 “(2) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give a bribe to a person with intent to influence a foreign public official in respect of any act or omission by that official in his or her official capacity (whether or not the act or omission is within the scope of the official’s authority) in order to—

35 “(a) Obtain or retain business; or

“(b) Obtain any improper advantage in the conduct of business.

40 “(3) This section does not apply if the act that is alleged to constitute the offence was not, at the time of its commission, an offence under the law of the place where the act was done.

45 “(4) If a person is charged with an offence under this section and the act that is alleged to constitute the offence was committed outside New Zealand, it is to be presumed, unless the person charged puts the matter at issue, that the act was an offence under the law where the act was done.

- “105D. **Defence of minor facilitation payment**—(1) It is a defence to a charge under **section 105c** if—
- “**(a)** The act that is alleged to constitute the offence was committed for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action; and
- “**(b)** The value of the benefit is minor; and
- “**(c)** As soon as practicable after the act in question occurred, the person who committed the act made a record in writing of—
- “**(i)** The value of the benefit concerned; and
- “**(ii)** The date on which the act occurred; and
- “**(iii)** The identity of the foreign public official who received the benefit; and
- “**(d)** The person who committed the act has taken all reasonable steps to ensure that the record referred to in **paragraph (c)** is kept for a period of not less than 10 years.
- “(2) For the purposes of **subsection (1)**, the value of a benefit is minor if it is less than—
- “**(a)** \$50; or
- “**(b)** Such other amount (not exceeding \$200) as may from time to time be prescribed by regulations made under this Act.
- “(3) The amounts referred to in **subsection (2)** are inclusive of goods and services tax.
- “105E. **Certificate as to value of foreign currency**—
- (1) For the purposes of determining the value of any benefit under **section 105D (2)**, the Secretary to the Treasury may issue a certificate stating the value of any unit of overseas currency in New Zealand dollars on a date specified in the certificate.
- “(2) A certificate given under **subsection (1)** must be received in evidence in proceedings under **section 105c** and, in the absence of proof to the contrary, is sufficient evidence of the matters referred to in the certificate.
- “(3) A Court or a person acting judicially to which or to whom a certificate given under **subsection (1)** is produced must take judicial notice of the signature on it of the Secretary to the Treasury.”
- 14. Restrictions on prosecution**—Section 106 (1) of the principal Act is amended by omitting the expression “and 105B of this Act”, and substituting the expression “105B, and 105c”.

*Murder*

**15. Further definition of murder**—(1) Section 168 (2) of the principal Act is amended by repealing paragraph (f), and substituting the following paragraph:

5 “(f) Section 128 (sexual violation):”.

(2) Section 168 (2) of the principal Act is amended by repealing paragraphs (j) to (l), and substituting the following paragraphs:

10 “(j) **Section 305M** (burglary):

“(k) **Section 305O** (robbery):

“(l) **Section 305ZR** (arson).”

*Endangering Transport*

**16. Endangering transport**—Section 203 of the principal Act is repealed.

15 *Crimes Against Rights of Property*

**17. Repeal of certain provisions of Part X**—Sections 217 to 227B, 229A to 243, 245 to 281, 287, 288, and 293 to 305 of the principal Act are repealed.

20 **18. Conversion or attempted conversion of motorcars, etc**—Section 228 of the principal Act is amended by omitting from subsections (1) and (2) the words “colour of right”, and substituting in each case the words “claim of right”.

**19. New Part 10A**—The principal Act is amended by inserting, after Part X, the following Part:

25 “PART 10A

“OTHER CRIMES AGAINST RIGHTS OF PROPERTY

“*Interpretation*

“305A. **Interpretation**—In this Part, unless the context otherwise requires,—

30 “‘Deception’, in relation to **sections 305X and 305ZE**, means any of the following made or used with intent to deceive any person:

“(a) A false representation, whether oral, documentary, or by conduct; or

35 “(b) An omission to disclose a material particular; or

“(c) A fraudulent device, trick, or stratagem:

“‘Dishonestly’, in relation to an act or omission, means done or omitted without a belief that there was

express or implied consent to, or authority for, the act or omission from a person entitled to give such consent or authority:

- “ ‘Document’ means a document, or part of a document, in any form; and includes, without limitation,— 5
- “(a) Any paper or other material used for writing or printing, marked with matter capable of being read; or
- “(b) Any photograph, or any photographic negative, plate, slide, film, or microfilm, or any photostatic negative; or 10
- “(c) Any disc, tape, wire, sound track, card, or other material or device in or on which information, sounds, or other data are recorded, stored (whether temporarily or permanently), or embodied so as to be capable, with or without the aid of some other equipment, of being reproduced; or 15
- “(d) Any material by means of which information is supplied, whether directly or by means of any equipment, to any device used for recording or storing or processing information; or 20
- “(e) Any material derived, whether directly or by means of any equipment, from information recorded or stored or processed by any device used for recording or storing or processing information: 25
- “ ‘Obtain’ means obtain or retain for himself or herself or for any other person:
- “ ‘Property’ includes real and personal property, and all things, animate or inanimate, in which any person has any interest or over which any person has any claim; and also includes money, things in action, and electricity. 30

Cf. 1961, No. 43, ss. 217, 218, 263

*“Unlawful Taking*

- “305B. **Matters of ownership**—(1) For the purposes of this Part, a person is to be regarded as the owner of any property that is stolen if, at the time of the theft, that person has— 35
- “(a) Possession or control of the property; or
- “(b) Any interest in the property; or
- “(c) The right to take possession or control of the property. 40
- “(2) An owner of any property may be guilty of theft against another owner of that property.

5 “(3) All living creatures wild by nature, such as are not commonly found in a condition of natural liberty in New Zealand, are, if kept in a state of confinement, capable of being stolen, not only while so confined, but after they have escaped from confinement.

“(4) All other living creatures wild by nature are, if kept in a state of confinement, capable of being stolen so long as they remain in confinement, or are being pursued upon escaping from confinement.

10 “(5) A wild living creature is in a state of confinement so long as it is in an enclosure designed to prevent escape, or otherwise secured, and to allow its owner to take possession of it when he or she pleases.

15 “(6) Shellfish of all types are capable of being stolen when in oyster beds, marine farms, layings, and fisheries that are the property of any person and are sufficiently marked out or shown as such property.

Cf. 1961, No. 43, ss. 219, 225

20 “305c. **Theft or stealing**—(1) Theft or stealing is the act of,—

“(a) Dishonestly and without claim of right, taking any property with intent to deprive any owner permanently of that property or of any interest in that property; or

25 “(b) Dishonestly and without claim of right, using or dealing with any property with intent to deprive any owner permanently of that property or of any interest in that property after obtaining possession of or control over the property in whatever manner.

30 “(2) An intent to deprive any owner permanently of property includes an intent to deal with property in such a manner that—

“(a) The property cannot be returned to any owner in the same condition; or

35 “(b) Any owner is likely to be permanently deprived of the property or of any interest in the property.

“(3) In this section, the term ‘taking’ does not include obtaining ownership or possession of or control over any property with the consent of the person from whom it is obtained, whether or not consent is obtained by deception.

40 “(4) For tangible property, theft is committed by a taking when the offender moves the property or causes it to be moved.

Cf. 1961, No. 43, s. 220 (1), (2), (5)

“305D. **Theft by person in special relationship**—(1) This section applies to any person who has received or is in possession of or has control over any property on terms or in circumstances that the person knows require the person—

“(a) To account to any other person for the property, or for any proceeds arising from the property; or 5

“(b) To deal with the property, or any proceeds arising from the property, in accordance with the requirements of any other person.

“(2) Every one to whom **subsection (1)** applies commits theft who intentionally fails to account to the other person as so required or intentionally deals with the property, or any proceeds of the property, otherwise than in accordance with those requirements. 10

“(3) This section applies whether or not the person was required to deliver over the identical property received or in the person’s possession or control. 15

“(4) For the purposes of **subsection (1)**, it is a question of law whether the circumstances required any person to account or to act in accordance with any requirements. 20

Cf. 1961, No. 43, ss. 222, 223, 224

“305E. **Theft of animals**—Every one commits theft if he or she kills any animal that is the property of any other person with intent to steal the carcass, skin, or plumage, or any other part, of the animal. 25

Cf. 1961, No. 43, s. 221

“305F. **Theft by spouse**—A person may be convicted of theft of another person’s property even though those persons were married to each other at the time of the theft.

Cf. 1961, No. 43, s. 226 30

“305G. **Punishment of theft**—Every one who commits theft is liable as follows:

“(a) In the case of any offence against **section 305D**, to imprisonment for a term not exceeding 7 years:

“(b) If the value of the property stolen exceeds \$1,000, to imprisonment for a term not exceeding 7 years: 35

“(c) If the value of the property stolen exceeds \$500 but does not exceed the sum of \$1,000, to imprisonment for a term not exceeding 1 year:

“(d) If the value of the property stolen does not exceed \$500, to imprisonment for a term not exceeding 3 months. 40

Cf. 1961, No. 43, s. 227

“305H. **Power of search for goods stolen or unlawfully obtained in transit**—(1) This section applies if—

5 “(a) Any member of the Police has reasonable grounds for believing that any property that has been stolen or unlawfully obtained is—

“(i) In the possession of any person; or

“(ii) In any container, package, or receptacle; or

“(iii) In or on any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle; and

10 “(b) The person, container, package, receptacle, aircraft, hovercraft, ship or ferry or other vessel, or vehicle is—

“(i) In any airport, or in or on any port or harbour or waterway; or

15 “(ii) In or on any railway or railway line or railway station, or in any depot, terminus, or yard; or

“(iii) In or on any other place used between trips by vehicles engaged in the carriage of goods for reward.

20 “(2) In the circumstances specified in **subsection (1)**, the member of the Police may, without warrant, search and detain for the purpose of search the person, container, package, receptacle, aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle, and may take possession of any property  
25 described in **subsection (1) (a)** found during the search.

“(3) If it is necessary for any member of the Police to stop a vehicle for the purpose of exercising the power conferred by **subsection (2)** to search a person who is in the vehicle, sections 314A to 314D apply with any necessary modifications as if  
30 references in those sections to a statutory search power were references to the power to search a person under **subsection (2)**.

“(4) **Subsection (3)** does not limit the application of sections 314A to 314D in respect of the stopping of any vehicle for the purpose of exercising the power to search the vehicle under  
35 **subsection (2)**.

“(5) Any member of the Police conducting a search under **subsection (2)** may use reasonable force, if necessary,—

“(a) To break open any container, package, or receptacle:

40 “(b) To effect entry to any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle.

Cf. 1961, No. 43, s. 227A

“305I. **Power to search vehicles for goods stolen or obtained by crimes involving dishonesty**—(1) Any member of the Police who has reasonable grounds for believing

that any property that is stolen or obtained by a crime involving dishonesty is in or on any vehicle may, without warrant, search the vehicle for the purpose of locating that property.

“(2) Any member of the Police conducting a search under **subsection (1)** may use reasonable force, if necessary, to effect entry to the vehicle. 5

“(3) During a search under **subsection (1)**, any member of the police may seize any property that is—

“(a) Stolen or obtained by a crime involving dishonesty; and 10

“(b) Found in or on the vehicle.

“(4) Every member of the Police must, before conducting a search under **subsection (1)**,—

“(a) Identify himself or herself to any person in or on the vehicle; and 15

“(b) If the member is not in uniform and if so required, produce evidence that the member is a member of the Police; and

“(c) Tell any person in or on the vehicle that the search is being conducted under this section. 20

Cf. 1961, No. 43, s. 227B

“305j. **Dishonestly taking or using document**—Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration,— 25

“(a) Dishonestly and without claim of right, takes or obtains any document that is capable of being used to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or

“(b) Dishonestly and without claim of right, uses or attempts to use any document that is capable of being used to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration. 30

Cf. 1961, No. 43, s. 229A

“305k. **Criminal breach of trust**—(1) Every trustee is guilty of criminal breach of trust who, dishonestly and contrary to the terms of the trustee’s trust, converts anything of which the trustee is trustee to any use that is unauthorised by the terms of that trust. 35

“(2) Every trustee who commits a criminal breach of trust is liable to imprisonment for a term not exceeding 7 years. 40

Cf. 1961, No. 43, s. 230



“305L. **Taking, obtaining, or copying trade secrets—**

(1) Every one is liable to imprisonment for a term not exceeding 5 years who, with intent to obtain any pecuniary advantage or to cause loss to any other person,—

5 “(a) Dishonestly takes, obtains, or copies any document or any model or other depiction of any thing or process containing or embodying any trade secret, knowing that it contains or embodies a trade secret; or

10 “(b) Dishonestly takes or obtains any copy of any document or any model or other depiction of any thing or process containing or embodying any trade secret, knowing that it contains or embodies a trade secret.

15 “(2) For the purposes of this section, trade secret means any information that—

“(a) Is, or has the potential to be, used industrially or commercially; and

“(b) Is not generally available in industrial or commercial use; and

20 “(c) Has economic value or potential economic value to the possessor of the information; and

“(d) Is the subject of all reasonable efforts to preserve its secrecy.

“*Burglary*

25 “305M. **Burglary—**(1) Every one commits burglary and is liable to imprisonment for a term not exceeding 10 years—

“(a) Who enters any building or ship, or part of a building or ship, unlawfully, with intent to commit a crime in the building or ship; or

30 “(b) Who, having entered any building or ship, remains in it unlawfully, with intent to commit a crime in the building or ship.

35 “(2) In this section, and in **section 305N**, ‘building’ means any building or structure of any description, whether permanent or temporary; and includes a tent, a caravan, or a houseboat; and also includes any enclosed yard or any closed cave or closed tunnel.

“(3) For the purposes of this section and **section 305N**,—

“(a) ‘Unlawfully’ means without authority:

40 “(b) Entrance into a building or ship is made as soon as any part of the body of the person making the entrance, or any part of any instrument used by that person, is within the building or ship:

“(c) Every one who gains entrance to a building or ship by any threat or artifice used for that purpose, or by collusion with any person in the building or ship, or who enters any chimney or aperture permanently left open for any necessary purpose, is to be treated as having entered unlawfully. 5

Cf. 1961, No. 43, ss. 240, 241, 242

“305N. **Aggravated burglary**—(1) Every one is liable to imprisonment for a term not exceeding 14 years who,—

“(a) While committing burglary, has a weapon with him or her; or 10

“(b) Having committed burglary, has a weapon with him or her, or uses any thing as a weapon, while still in the building or ship.

“(2) Every one is liable to imprisonment for a term not exceeding 5 years who is armed with a weapon with intent to commit burglary. 15

“(3) **Subsection (1)** is subject to section 17C (1) (which sets out a higher maximum penalty for an offence against this section involving home invasion). 20

Cf. 1961, No. 44, ss. 240A, 243; 1986, No. 71, s. 6

*“Robbery and Blackmail*

“305O. **Robbery**—(1) Robbery is theft accompanied by violence or threats of violence, to any person or property, used to extort the property stolen or to prevent or overcome resistance to its being stolen. 25

“(2) Every one who commits robbery is liable to imprisonment for a term not exceeding 10 years.

“(3) This section is subject to section 17B (3) (which sets out a higher maximum penalty for an offence against this section involving home invasion). 30

Cf. 1961, No. 43, s. 234

“305P. **Aggravated robbery**—(1) Every one is liable to imprisonment for a term not exceeding 14 years who—

“(a) Robs any person, and at the time of, or immediately before or immediately after, the robbery causes grievous bodily harm to any person; or 35

“(b) Being together with any other person or persons, robs any person; or

“(c) Being armed with any offensive weapon or instrument, or any thing appearing to be such a weapon or instrument, robs any other person. 40

“(2) This section is subject to section 17C (1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).

Cf. 1961, No. 43, s. 235

5 “305Q. **Assault with intent to rob**—(1) Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to rob any person,—

“(a) Causes grievous bodily harm to that person or any other person; or

10 “(b) Being armed with any offensive weapon or instrument, or any thing appearing to be such a weapon or instrument, assaults that person or any other person; or

15 “(c) Being together with any other person or persons, assaults that person or any other person.

“(2) Every one who assaults any person with intent to rob that person or any other person is liable to imprisonment for a term not exceeding 7 years.

20 “(3) This section is subject to sections 17B (2) and 17C (1) (which set out higher maximum penalties for offences against this section involving home invasion).

Cf. 1961, No. 43, ss. 235 (1) (b), (c), 237

25 “305R. **Blackmail**—(1) Every one commits blackmail who threatens, expressly or by implication, to make any accusation against any person (whether living or dead), to disclose something about any person (whether living or dead), or to cause serious damage to property or endanger the safety of any person, with intent—

30 “(a) To cause the person to whom the threat is made to act in accordance with the will of the person making the threat; and

“(b) To obtain any benefit or to cause loss to any other person.

35 “(2) Every one who acts in the manner described in subsection (1) is guilty of blackmail, even though that person believes that he or she is entitled to the benefit or to cause the loss, unless the making of the threat is, in the circumstances, a reasonable and proper means for effecting his or her purpose.

40 “(3) In this section and in section 305T, ‘benefit’ means any benefit, pecuniary advantage, privilege, property, service, or valuable consideration.

Cf. 1961, No. 43, s. 238

“305s. **Punishment of blackmail**—Every one who commits blackmail is liable to imprisonment for a term not exceeding 14 years.

Cf. 1961, No. 43, s. 238 (1)

“305T. **Demanding with intent to steal, etc**—(1) Every one is liable to imprisonment for a term not exceeding 14 years who, dishonestly and without claim of right, by force or with any threat, compels any person to execute, make, accept, endorse, alter, or destroy any document capable of conferring a pecuniary advantage with intent to obtain any benefit. 5 10

“(2) Every one is liable to imprisonment for a term not exceeding 7 years who, with menaces or by any threat, demands any property from any person with intent to steal it.

“(3) This section is subject to sections 17B (2) and 17C (1) (which set out higher maximum penalties for offences against this section involving home invasion). 15

Cf. 1961, No. 43, ss. 236, 239

*“Crimes Involving Deceit*

“305U. **Obtaining by deception**—(1) Every one is guilty of obtaining by deception who, by any deception and without claim of right,— 20

“(a) Obtains ownership or possession of or control over any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly; or 25

“(b) In incurring any debt or liability, obtains credit; or

“(c) Induces or causes any other person to deliver over, execute, make, accept, endorse, destroy, or alter any document or thing capable of being used to derive a pecuniary advantage. 30

“(2) In this section, ‘deception’ means any false representation, whether oral, documentary, or by conduct, where the person making the representation intends any other person to act upon it and—

“(a) Knows it is false in a material particular; or 35

“(b) Is reckless as to whether it is false in a material particular.

Cf. 1961, No. 43, ss. 246, 247, 270

“305V. **Punishment of obtaining by deception**—Every one who is guilty of obtaining by deception is liable as follows: 40

“(a) If the value of what is obtained or sought to be obtained exceeds \$1,000, to imprisonment for a term not exceeding 7 years:

5 “(b) If the value of what is obtained or sought to be obtained exceeds \$500 but does not exceed \$1,000, to imprisonment for a term not exceeding 1 year:

“(c) If the value of what is obtained or sought to be obtained does not exceed \$500, to imprisonment for a term not exceeding 3 months.

10 Cf. 1961, No. 43, s. 246 (2)

“305w. **False statement by promoter, etc**—(1) Every one is liable to imprisonment for a term not exceeding 10 years who, in respect of any body, whether incorporated or unincorporated and whether formed or intended to be formed, makes or concurs in making or publishes any false statement, whether in any prospectus, account, or otherwise, with intent—

20 “(a) To induce any person, whether ascertained or not, to subscribe to any security within the meaning of the Securities Act 1978; or

“(b) To deceive or cause loss to any person, whether ascertained or not; or

25 “(c) To induce any person, whether ascertained or not, to entrust or advance any property to any other person.

“(2) In this section, ‘false statement’ means any false statement in respect of which the person making or publishing the statement—

30 “(a) Knows the statement is false in a material particular; or

“(b) Is reckless as to whether the statement is false in a material particular.

Cf. 1961, No. 43, s. 250

35 “305x. **Conspiracy to deceive**—Every one is liable to imprisonment for a term not exceeding 7 years who conspires with any other person—

“(a) To obtain, whether directly or indirectly, any property, pecuniary advantage, or valuable consideration by deception; or

“(b) To cause loss by deception to any other person.

40 Cf. 1961, No. 43, s. 257

*“Money Laundering*

“305Y. **Money laundering**—(1) For the purposes of this section and **sections 305z and 305ZA**,—

- “ ‘Conceal’, in relation to property, means to conceal or disguise the property; and includes (without limitation)— 5
- “(a) To convert the property from 1 form to another:
- “(b) To conceal or disguise the nature, source, location, disposition, or ownership of the property or of any interest in the property: 10
- “ ‘Deal with’, in relation to property, means to deal with the property in any manner and by any means; and includes (without limitation)—
- “(a) To dispose of the property, whether by way of sale, purchase, gift, or otherwise: 15
- “(b) To transfer possession of the property:
- “(c) To bring the property into New Zealand:
- “(d) To remove the property from New Zealand:
- “ ‘Interest’, in relation to property, means— 20
- “(a) A legal or equitable estate or interest in the property; or
- “(b) A right, power, or privilege in connection with the property:
- “ ‘Proceeds’, in relation to a serious offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence: 25
- “ ‘Property’ means real or personal property of any description, whether situated in New Zealand or elsewhere and whether tangible or intangible; and includes an interest in any such real or personal property: 30
- “ ‘Serious offence’ means an offence punishable by imprisonment for a term of 5 years or more; and includes any act, wherever committed, that, if committed in New Zealand, would constitute an offence punishable by imprisonment for a term of 5 years or more. 35
- “(2) Subject to **sections 305z and 305ZA**, every one is liable to imprisonment for a term not exceeding 7 years who, in respect of any property that is the proceeds of a serious offence, engages in a money laundering transaction, knowing or believing that all or part of the property is the proceeds of a 40

serious offence, or being reckless as to whether or not the property is the proceeds of a serious offence.

5 “(3) Subject to **sections 305z and 305zA**, every one is liable to imprisonment for a term not exceeding 5 years who obtains or has in his or her possession any property (being property that is the proceeds of a serious offence committed by another person)—

“(a) With intent to engage in a money laundering transaction in respect of that property; and

10 “(b) Knowing or believing that all or part of the property is the proceeds of a serious offence, or being reckless as to whether or not the property is the proceeds of a serious offence.

15 “(4) For the purposes of this section, a person engages in a money laundering transaction if, for the purpose of concealing any property or enabling another person to conceal any property, that person—

“(a) Deals with that property; or

20 “(b) Assists any other person, whether directly or indirectly, to deal with that property.

“(5) In any prosecution for an offence against **subsection (2) or subsection (3)**,—

25 “(a) It is not necessary for the prosecution to prove that the accused knew or believed that the property was the proceeds of a particular serious offence or a particular class of serious offence:

30 “(b) It is no defence that the accused believed any property to be the proceeds of a particular serious offence, when in fact the property was the proceeds of another serious offence.

“(6) Nothing in this section or in **sections 305z or 305zA** limits or restricts the operation of any other provision of this Act or any other enactment.

Cf. 1961, No. 43, ss. 233, 257A (1)–(5), 9

35 “**305z. Defence of enforcement of enactment**—It is a defence to a charge under **section 305y** if the person charged proves that the act to which the charge relates was done by that person, in good faith, for the purpose of or in connection with—

40 “(a) The enforcement or intended enforcement of this section or any other provision of this Act or of any other enactment relating to a serious offence; or

“(b) The enforcement or intended enforcement of the Proceeds of Crime Act 1991; or

“(c) The enforcement or intended enforcement of the Financial Transactions Reporting Act 1996.

Cf. 1961, No. 43, s. 257A (6)

“**305ZA. Section 305Y not to apply to certain acts committed outside New Zealand**—(1) Subject to **subsection (2)**, **section 305Y** does not apply if— 5

“(a) Any property is alleged to be the proceeds of a serious offence; and

“(b) The act that is alleged to constitute that serious offence was committed outside New Zealand; and 10

“(c) The act was not, at the time of its commission, an offence under the law of the place where the act was done.

“(2) If a person is charged with an offence under this section and the act that is alleged to constitute the serious offence resulting in proceeds was committed outside New Zealand, it is to be presumed, unless the person charged puts the matter at issue, that the act was an offence under the law of the place where the act was done. 15

Cf. 1961, No. 43, s. 257A (7), (8) 20

“*Receiving*

“**305ZB. Receiving**—(1) Every one is guilty of receiving who receives any property stolen or obtained by any other crime, knowing that property to have been stolen or so obtained or being reckless as to whether or not the property had been stolen or so obtained. 25

“(2) For the purposes of this section, property that was obtained by any act committed outside New Zealand that, if it had been committed in New Zealand, would have constituted a crime is, subject to **subsection (5)**, to be regarded as having been obtained by a crime. 30

“(3) The act of receiving any property stolen or obtained by any other crime is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of or control over the property, or helps in concealing or disposing of the property. 35

“(4) If—

“(a) Any property stolen or obtained by any other crime has been returned to the owner; or

“(b) Legal title to any such property has been acquired by any person,— 40



a subsequent receiving of it is not an offence, even though the receiver may know that the property had previously been stolen or obtained by any other crime.

5 “(5) If a person is charged with an offence under this section and the property was obtained by an act committed outside New Zealand, it is to be presumed, unless the person charged puts the matter at issue, that the doing of the act by which the property was obtained was an offence under the law of the place where the act was done.

10 Cf. 1961, No. 43, ss. 258 (1), 260, 261

“305zc. **Punishment of receiving**—Every person who is guilty of receiving is liable as follows:

“(a) If the value of the property received exceeds \$1,000, to imprisonment for a term not exceeding 7 years:

15 “(b) If the value of the property received exceeds \$500 but does not exceed the sum of \$1,000, to imprisonment for a term not exceeding 1 year:

20 “(c) If the value of the property received does not exceed \$500, to imprisonment for a term not exceeding 3 months.

Cf. 1961, No. 43, s. 258 (1)

*“Crimes Involving Computers*

“305zd. **Interpretation**—For the purposes of this section and of **sections 305ze and 305zf**,—

25 “‘Access’, in relation to any computer system, means instruct, communicate with, store data in, retrieve data from, or otherwise make use of any of the resources of the computer system:

“‘Computer system’ means—

30 “(a) A computer; or

“(b) Two or more interconnected computers; or

“(c) Any communication links between computers or to remote terminals; or

35 “(d) Two or more interconnected computers combined with any communication links between computers or to remote terminals,—

together with all related input, output, processing, storage, software, or communication facilities, and stored data.

40 “305ze. **Accessing computer system for dishonest purpose**—(1) Every one is liable to imprisonment for a term not exceeding 7 years who, directly or indirectly, accesses any

computer system, or any part of any computer system and, dishonestly or by deception, and without claim of right,—

“(a) Obtains any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or

“(b) Causes loss to any other person. 5

“(2) Every one is liable to imprisonment for a term not exceeding 5 years who, directly or indirectly, accesses any computer system, or any part of any computer system, with intent, dishonestly or by deception, and without claim of right,— 10

“(a) To obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or

“(b) To cause loss to any other person.

“**305ZF. Damaging or interfering with computer system**—(1) Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to cause serious damage, and without authority,— 15

“(a) Damages, deletes, modifies, or otherwise interferes with any data or software stored in any computer system; or 20

“(b) Causes any data or software stored in any computer system to be damaged, deleted, modified, or otherwise interfered with.

“(2) Every one is liable to imprisonment for a term not exceeding 7 years who, knowing that serious damage is likely to result, recklessly, and without authority,— 25

“(a) Damages, deletes, modifies, or otherwise interferes with any data or software stored in any computer system; or

“(b) Causes any data or software stored in any computer system to be damaged, deleted, modified, or otherwise interfered with. 30

*“Forgery and Counterfeiting*

“**305ZG. Interpretation**—For the purposes of this section and of **sections 305ZH and 305ZO**,— 35

“‘Bank note’ means any negotiable instrument used or intended for use as currency and issued by the Reserve Bank of New Zealand, or by any bank in any country other than New Zealand, or by the government of any such country, or by any other authority authorised by law to issue notes: 40

“ ‘False document’ means a document—

“(a) Of which the whole or any material part purports to be made by any person who did not make it, or by a fictitious person; or

5 “(b) Of which the whole or any material part purports to be made by or on behalf of any person who did not authorise its making, or on behalf of a fictitious person; or

10 “(c) Of which the whole or any material part has been altered, whether by addition, insertion, deletion, obliteration, erasure, removal, or otherwise, and that purports to have been altered by or on behalf of a person who did not alter it or authorise its alteration, or by or on behalf of a fictitious person; or

15 “(d) That is, in whole or in part, a reproduction of any other document, and that purports to have been made by or on behalf of a person who did not make it or authorise its making, or by or on behalf of a fictitious person; or

20 “(e) That is made in the name of a person, either by that person or by that person’s authority, with the intention that it should pass as being made by some other person who did not make it, or by a fictitious person.

25 Cf. 1961, No. 43, s. 263

“305ZH. **Forgery**—(1) Every one is liable to imprisonment for a term not exceeding 10 years who makes a false document with the intention of using it to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration.

30 “(2) Every one is liable to imprisonment for a term not exceeding 3 years who makes a false document, knowing it to be false, with the intent that it in any way be used or acted upon, whether in New Zealand or elsewhere, as genuine.

35 “(3) Forgery is complete as soon as the document is made with the intent described in **subsection (1)** or with the knowledge and intent described in **subsection (2)**.

40 “(4) Forgery is complete even though the false document may be incomplete, or may not purport to be such a document as would be binding or sufficient in law, if it is so made and is such as to indicate that it was intended to be acted upon as genuine.

Cf. 1961, No. 43, ss. 264, 265

**“305ZI. Using forged documents—**(1) Every one is liable to imprisonment for a term not exceeding 10 years who, knowing a document to be forged,—

“(a) Uses the document to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or 5

“(b) Uses, deals with, or acts upon the document as if it were genuine; or

“(c) Causes any other person to use, deal with, or act upon it as if it were genuine. 10

“(2) For the purposes of this section, a document made or altered outside New Zealand in a manner that would have amounted to forgery if the making or alteration had been done in New Zealand is to be regarded as a forged document.

Cf. 1961, No. 43, s. 266 15

**“305ZJ. Altering, concealing, destroying, or reproducing document with intent to deceive—**(1) Every one is liable to imprisonment for a term not exceeding 10 years who, with intent to obtain by deception any property, privilege, service, pecuniary advantage, benefit, or valuable consideration, or to cause loss to any other person,— 20

“(a) Alters, conceals, or destroys any document, or causes any document to be altered, concealed, or destroyed; or

“(b) Makes a document or causes a document to be made that is, in whole or in part, a reproduction of any other document. 25

“(2) An offence against **subsection (1)** is complete as soon as the alteration or document is made with the intent referred to in that subsection, although the offender may not have intended that any particular person should— 30

“(a) Use or act upon the document altered or made; or

“(b) Act on the basis of the absence of the document concealed or destroyed; or

“(c) Be induced to do or refrain from doing anything. 35

Cf. 1961, No. 43, ss. 231, 256, 266A

**“305ZK. Using altered or reproduced document with intent to deceive—**(1) Every one is liable to imprisonment for a term not exceeding 10 years who, knowing any document to have been made or altered in the manner and with the intent referred to in **section 305ZJ**, with intent to obtain by deception any property, privilege, service, pecuniary advantage, benefit, or valuable consideration, or to cause loss to any other person,— 40

“(a) Uses or deals with or acts upon the document; or

“(b) Causes any person to use or deal with or act upon the document.

“(2) For the purposes of this section, it does not matter that the document was altered or made outside New Zealand.

5 Cf. 1961, No. 43, s. 266B

“305ZL. **False accounting**—Every one is liable to imprisonment for a term not exceeding 10 years who, with intent to obtain by deception any property, privilege, service, pecuniary advantage, benefit, or valuable consideration, or to  
10 deceive or cause loss to any other person,—

“(a) Makes or causes to be made, or concurs in the making of, any false entry in any book or account or other document required or used for accounting purposes; or

15 “(b) Omits or causes to be omitted, or concurs in the omission of, any material particular from any such book or account or other document; or

“(c) Makes any transfer of any interest in a stock, debenture, or debt, in the name of any person other than the  
20 owner of that interest.

Cf. 1961, No. 43, ss. 251, 252, 253, 254

“305ZM. **Counterfeiting public seals**—Every one is liable to imprisonment for a term not exceeding 10 years who—

“(a) Unlawfully makes or counterfeits—  
25 “(i) Any public seal in use at any time in New Zealand or any other country; or

“(ii) Any seal or stamp used in New Zealand or any other country by any court, local authority, public body, or public officer; or

30 “(iii) The impression of any such seal or stamp; or

“(b) Uses any such seal, stamp, or impression, knowing it to be counterfeit.

Cf. 1961, No. 43, s. 267

35 “305ZN. **Counterfeiting corporate seals**—Every one is liable to imprisonment for a term not exceeding 5 years who—

“(a) Unlawfully makes or counterfeits—

“(i) Any seal or stamp used in New Zealand or any other country by any company or other corporate body (not being a body to which **section 305ZM** applies), or by any other person; or  
40

“(ii) The impression of any such seal or stamp; or

“(b) Uses any such seal, stamp, or impression, knowing it to be counterfeit.

Cf. 1961, No. 43, s. 268

“305ZO. **Possessing forged bank notes**—Every one is liable to imprisonment for a term not exceeding 7 years who, without lawful authority or excuse (the proof of the lawful authority or excuse lying on him or her), purchases or receives from any person, or has in his or her possession or under his or her control, any forged bank note, whether complete or not, knowing it to be forged.

Cf. 1961, No. 43, s. 271

“305ZP. **Paper or implements for forgery**—Every one is liable to imprisonment for a term not exceeding 10 years who, without lawful authority or excuse, has in his or her possession or under his or her control, anything capable of being used to forge any document with intent to use it for such a purpose.

Cf. 1961, No. 43, s. 274

“305ZQ. **Imitating authorised or customary marks**—(1) Every one is liable to imprisonment for a term not exceeding 5 years who dishonestly counterfeits or imitates any mark, word, or description that is—

“(a) Impressed or otherwise made or written upon or affixed to any chattel, or upon or to any thing containing or connected with any chattel; and

“(b) A mark, word, or description that is by recognised practice understood to denote that the thing upon or to which it is impressed, made, written, or affixed has been examined and certified to be of a particular quality by any particular officer or other person.

“(2) **Subsection (1)** applies whether the officer or other person referred to in **subsection (1) (b)** is or is not expressly authorised by law to so certify.

Cf. 1961, No. 43, ss. 280, 281

“*Arson, Damage, and Waste* 35

“305ZR. **Arson**—(1) Every one commits arson and is liable to imprisonment for a term not exceeding 14 years who—

“(a) Intentionally or recklessly damages by fire or by means of any explosive any property, if he or she knows or ought to know that danger to life is likely to ensue; or

- “(b) Intentionally or recklessly, and without claim of right, damages by fire or by means of any explosive any immovable property, or any vehicle, ship, or aircraft, in which that person has no interest; or
- 5 “(c) Intentionally damages by fire or by means of any explosive any immovable property, or any vehicle, ship, or aircraft, with intent to obtain any benefit, or to cause loss to any other person.
- “(2) Every one commits arson and is liable to imprisonment 10 for a term not exceeding 7 years who—
- “(a) Intentionally or recklessly, and without claim of right, damages by fire or by means of any explosive any property in which that person has no interest (other than property referred to in **subsection (1)**); or
- 15 “(b) Intentionally or recklessly damages by fire or by means of any explosive any property (other than property referred to in **subsection (1)**) with intent to obtain any benefit, or with intent to cause loss to any other person.
- 20 “(3) Every one is liable to imprisonment for a term not exceeding 5 years who intentionally damages by fire or by means of any explosive any property with reckless disregard for the safety of any other property.
- “(4) In this section and in **section 305zT**, ‘benefit’ means any 25 benefit, pecuniary advantage, privilege, property, service, or valuable consideration.
- Cf. 1961, No. 43, ss. 294, 296
- “**305zS. Attempted arson**—Every one is liable to imprisonment for a term not exceeding 10 years who attempts 30 to commit arson in respect of any immovable property or any vehicle, ship, or aircraft.
- Cf. 1961, No. 32, s. 295
- “**305zT. Intentional damage**—(1) Every one is liable to imprisonment for a term not exceeding 14 years who—
- 35 “(a) Intentionally or recklessly destroys or damages any property if he or she knows or ought to know that danger to life is likely to result; or
- “(b) Intentionally or recklessly, and without claim of right, destroys or damages any property in which that 40 person has no interest; or
- “(c) Intentionally or recklessly, and without claim of right, destroys or damages any property with intent to obtain any benefit, or with intent to cause loss to any other person.

“(2) Every one is liable to imprisonment for a term not exceeding 7 years who intentionally destroys or damages any property with reckless disregard for the safety of any other property.

Cf. 1961, No. 43, s. 298

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“305ZU. **Endangering transport**—(1) Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to cause danger to persons or property or with reckless disregard for the safety of persons or property,—

“(a) Interferes with any transport facility; or

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“(b) Does anything to any transport facility that is likely to cause danger to persons or property.

“(2) For the purposes of this section, ‘transport facility’ means any vehicle, ship, or aircraft, and any property used in connection with the transportation of persons or goods; and includes equipment of any kind used in navigation or guidance of any vehicle, ship, or aircraft.

15

Cf. 1961, No. 43, ss. 203, 300–303

“305ZV. **Waste or diversion of electricity, gas, or water**—Every one is liable to imprisonment for a term not exceeding 5 years who, without claim of right and with intent to cause loss or harm to any person, wastes or diverts any electricity, gas, or water, or causes it to be wasted or diverted.

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Cf. 1961, No. 43, s. 299

“305ZW. **Providing explosive to commit crime**—Every one is liable to imprisonment for a term not exceeding 2 years who knowingly has in his or her possession or makes any explosive substance, or any dangerous engine, instrument, or thing, with intent to use or enable another person to use the substance, dangerous engine, instrument or thing, to commit a crime.”

25

30

Cf. 1961, No. 43, s. 305

*Other Provisions Affected by Changes to Crimes Against Rights of Property*

**20. Threatening to destroy property**—Section 307 (2) of the principal Act is amended by omitting the words “colour of right”, and substituting the words “claim of right”.

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**21. Interpretation**—Section 312A (1) of the principal Act is amended by repealing paragraphs (d) to (f) of the definition of the term “specified offence”, and substituting the following paragraphs:

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“(d) An offence punishable under **section 305g (b)** (theft of an object exceeding \$1,000 in value):

“(e) An offence against **section 305v** (which relates to money laundering):

5 “(f) An offence punishable under **section 305zc (a)** (which relates to receiving property dishonestly obtained).”

**22. When bail not allowable**—Section 318 (7) of the principal Act is amended by omitting the items relating to  
10 sections 234 and 235 of the Crimes Act 1961, and substituting the following items:

“**Section 305o** (robbery):

“**Section 305p** (aggravated robbery):

“**Section 305q (1)** (assault with intent to rob).”

15 **23. Rules as to granting bail**—Section 319 (3) is amended by repealing paragraphs (i) to (l), and substituting the following paragraph:

“(i) **Section 305zo** (imitating authorised or customary marks).”

20 **24. Money laundering**—Section 344AA of the principal Act is amended by omitting from subsections (1) and (3) the expression “section 257A”, and substituting in each case the expression “**section 305v**”.

## PART 2

### 25 OTHER MATTERS

#### *Extradition of Offenders*

**25. Crimes against section 105c deemed to be included in extradition treaties**—(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under  
30 section 15 or section 104 of that Act, the crime described in **section 105c** of the principal Act is deemed to be an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between New Zealand and any foreign country that is a party  
35 to the Bribery Convention.

(2) If **subsection (1)** deems a crime to be an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act 1999 in respect of an act or omission that amounts to that crime is liable to be surrendered in accordance  
40 with the provisions of that Act, whether the act or omission

occurred before or after the date on which the crime was deemed to be an offence described in the extradition treaty.

(3) This section does not apply in respect of an act or omission that, had it occurred within the jurisdiction of New Zealand, would not at that time have constituted an offence under New Zealand law. 5

(4) A certificate given under the hand of the Minister of Foreign Affairs and Trade that any foreign country is a party to the Bribery Convention is, in the absence of proof to the contrary, sufficient evidence of that fact. 10

(5) For the purposes of this section,—

“Bribery Convention” means the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, done at Paris on 17 December 1997: 15

“Foreign country” includes any territory for whose international relations the government of a foreign country is responsible and to which the extradition treaty and the Bribery Convention extends.

*Amendments to Mutual Assistance in Criminal Matters Act 1992* 20

**26. Amendments to Mutual Assistance in Criminal Matters Act 1992**—(1) Section 24A of the Mutual Assistance in Criminal Matters Act 1992 is amended by adding the following subsection:

“(7) If a convention country requests assistance under this Part in accordance with a convention specified in Part 7 of Schedule 1, the request must relate to criminal matters arising from the commission or suspected commission of an offence that, if committed within the jurisdiction of New Zealand, would correspond to an offence against section 105c of the Crimes Act 1961.” 25 30

(2) Section 24B (2)(b) of the Mutual Assistance in Criminal Matters Act 1992 is amended by inserting, after the expression “24A (6)”, the expression “or section 24A (7)”.

(3) Section 24B (3) of the Mutual Assistance in Criminal Matters Act 1992 is amended by inserting, after the expression “section 24A (6)”, the expression “or section 24A (7)”. 35

(4) Schedule 1 of the Mutual Assistance in Criminal Matters Act 1992 is amended by adding the Part 7 set out in Schedule 1.

*Consequential Repeals and Amendments* 40

**27. Consequential repeals**—The following enactments are consequentially repealed:

(a) The Crimes Amendment Act 1985:

- (b) Sections 2 to 4 of the Crimes Amendment Act 1986:
- (c) Section 6 of the Crimes Amendment Act (No. 2) 1986:
- (d) Sections 4 and 5 of the Crimes Amendment Act 1995:
- 5 (e) So much of the First Schedule of the Crimes Amendment Act (No. 2) 1995 as relates to section 258 of the principal Act:
- (f) Sections 5 and 6 of the Crimes Amendment Act (No. 2) 1997.

10 **28. Consequential amendments**—The enactments specified in **Schedule 2** are consequentially amended in the manner indicated in that schedule.

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**SCHEDULES****Section 26 (4)****SCHEDULE 1**

NEW PART ADDED TO SCHEDULE 1 OF MUTUAL ASSISTANCE IN CRIMINAL  
MATTERS ACT 1992

**“PART 7**

The Convention on Combating Bribery of Foreign Public Officials in  
International Business Transactions, done at Paris on 17 December 1997.”

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SCHEDULE 2  
ENACTMENTS AMENDED

Section 28

Title of Act	Amendments
1908, No. 141—The Pawn-brokers Act 1908 (R.S. Vol. 10, p. 667)	By omitting from section 36 the words “colour of right” in both places where they appear, and substituting in each case the words “claim of right”.
1947, No. 16—The District Courts Act 1947 (R.S. Vol. 28, p. 57)	<p>By omitting from Part I of Schedule 1A the heading and all the items under the heading relating to Part X of the Crimes Act 1961, and substituting the following heading and items:</p> <p style="padding-left: 40px;"><i>“Part 10A—Other Crimes Against Rights of Property</i></p> <p style="padding-left: 40px;">“305N Aggravated burglary</p> <p style="padding-left: 40px;">“305P (1) (b) Aggravated robbery</p> <p style="padding-left: 40px;">“305O (1) (c) Assault with intent to rob</p> <p style="padding-left: 40px;">“305T (1) Demanding with intent to steal</p> <p style="padding-left: 40px;">“305ZR (1) Arson</p> <p style="padding-left: 40px;">“305ZT (1) Intentional damage”.</p> <p>By omitting from Part II of Schedule 1A the heading and the item under the heading relating to Part X of the Crimes Act 1961, and substituting the following heading and item:</p> <p style="padding-left: 40px;"><i>“Part 10A—Other Crimes Against Rights of Property</i></p> <p style="padding-left: 40px;">“305P (1) (a) Aggravated robbery”</p> <p style="padding-left: 40px;">and (c)</p> <p style="padding-left: 40px;">“305O (1) (a) Assault with intent to rob”.</p>
1957, No. 87—The Summary Proceedings Act 1957 (R.S. Vol. 9, p. 583)	<p>By repealing subparagraphs (iv) to (xi) of section 186 (c), and substituting the following subparagraphs:</p> <p style="padding-left: 40px;">“(iv) Section 305ZR (which relates to arson):</p> <p style="padding-left: 40px;">“(v) Section 305ZT (which relates to intentional damage):</p> <p style="padding-left: 40px;">“(vi) Section 305ZU (which relates to endangering transport):</p> <p style="padding-left: 40px;">“(vii) Section 305ZV (which relates to waste or diversion of electricity, gas, or water).”</p> <p>By omitting from Part I of the First Schedule all the items under the heading relating to Part X of the Crimes Act 1961, and substituting the following items:</p> <p style="padding-left: 40px;">“228 Conversion or attempted conversion of motor-cars, etc</p>

SCHEDULE 2—*continued*  
ENACTMENTS AMENDED—*continued*

Title of Act	Amendments
1957, No. 87—The Summary Proceedings Act 1957 (R.S. Vol. 9, p. 583)— <i>continued</i>	“229      Being in possession of instrument for conversion
	“244      Being disguised or in possession of instrument for burglary
	“283, 284, 285, 286, 289, 290, 291, 292      Preparations for coining, counterfeiting, altering, or impairing coin, or possessing, uttering, buying or selling or importing or exporting counterfeit coin”.
	By inserting in Part I of the First Schedule, after the items under the heading relating to Part X of the Crimes Act 1961, the following heading and items:
	“Part 10A— <i>Other Crimes Against Rights of Property</i>
	“305C      Theft or stealing
	“305J      Dishonestly taking or using document
	“305K      Criminal breach of trust
	“305L      Taking, obtaining, or copying trade secrets
	“305M      Burglary
	“305O      Robbery
	“305Q      Assault with intent to rob
	“305T      Demanding with intent to steal, etc
	“305U      Obtaining by deception
	“305W      False statement by promoter, etc
	“305X      Conspiracy to deceive
	“305Y      Money laundering
	“305ZB      Receiving
	“305ZE      Accessing computer system for dishonest purpose
	“305ZF      Damaging or interfering with computer system
	“305ZH      Forgery
“305ZJ      Using forged documents	

SCHEDULE 2—*continued*  
ENACTMENTS AMENDED—*continued*

Title of Act	Amendments
1957, No. 87—The Summary Proceedings Act 1957 (R.S. Vol. 9, p. 583)— <i>continued</i>	<p>“305ZJ Altering, concealing, destroying, or reproducing document with intent to deceive</p> <p>“305ZK Using altered or reproduced document with intent to deceive</p> <p>“305ZL False accounting</p> <p>“305ZM Counterfeiting public seals</p> <p>“305ZN Counterfeiting corporate seals</p> <p>“305ZO Possessing forged bank notes</p> <p>“305ZP Paper or implements for forgery</p> <p>“305ZQ Imitating authorised or customary marks</p> <p>“305ZR (2) and (3) Arson</p> <p>“305ZS Attempted arson</p> <p>“305ZU Endangering transport</p> <p>“305ZV Waste or diversion of electricity, gas, or water</p> <p>“305ZW Providing explosive to commit crime”.</p>
1963, No. 10—The Second-hand Dealers Act 1963 (R.S. Vol. 9, p. 559)	<p>By repealing paragraph (a) of section 17 (1), and substituting the following paragraph: “(a) If the licensee is convicted of an offence under this Act or an offence under Part X or Part 10A of the Crimes Act 1961; other than an offence under sections 305ZR to 305ZW of that Act; or”.</p>
1971, No. 53—The Armed Forces Discipline Act 1971 (R.S. Vol. 23, p. 33)	<p>By repealing the definition of the term “colour of right” in section 2 (1), and substituting the following definition: “‘Claim of right’ has the same meaning as it has in section 2(1) of the Crimes Act 1961.”.</p> <p>By omitting from the definition of the term “stealing” in section 2 (1) the expression</p>

SCHEDULE 2—*continued*ENACTMENTS AMENDED—*continued*

Title of Act	Amendments
1971, No. 53—The Armed Forces Discipline Act 1971 (R.S. Vol. 23, p. 33)— <i>continued</i>	<p>“section 220”, and substituting the expression “<b>section 305c</b>”.</p> <p>By omitting from section 58 (2) the expression “sections 260 and 261 and subsections (2) and (3) of section 258”, and substituting the expression “<b>section 305zb (2) to (5)</b>”.</p> <p>By omitting from section 60 the words “colour of right” in both places where they appear, and substituting in each case the words “claim of right”.</p>
1974, No. 48—The Private Investigators and Security Guards Act 1974 (R.S. Vol. 24, p. 633)	<p>By omitting from the definition of the term “crime involving dishonesty” in section 2 (1) the expression “sections 217 to 292”, and substituting the expression “<b>sections 228, 229, 244, 283 to 286, 290 to 292, and 305A to 305zd</b>”.</p>
1975, No. 116—The Misuse of Drugs Act 1975 (R.S. Vol. 26, p. 567)	<p>By repealing paragraph (c) of section 11 (1), and substituting the following paragraph:</p> <p>“(c) Receives a controlled drug obtained by any crime, or by any act wherever committed which, if committed in New Zealand would constitute a crime, knowing that controlled drug to have been dishonestly obtained or being reckless whether or not the controlled drug had been stolen or so obtained.”</p> <p>By omitting from section 11 (2) the expression “Subsections (2) and (3) of section 258”, and substituting the expression “<b>Section 305zb (2) to (5)</b>”.</p> <p>By omitting from section 11 (3) the expression “sections 220, 222, 225, 226, 245, 260, and 261”, and substituting the expression “<b>sections 305c, 305d, 305f, 305u, and 305zb (2) to (5)</b>”.</p> <p>By omitting from the definition of the term “serious offence” in section 12B (1) the expression “section 257A”, and substituting the expression “<b>section 305v</b>”.</p>



SCHEDULE 2—*continued*

ENACTMENTS AMENDED—*continued*

Title of Act	Amendments
<p>1975, No. 116—The Misuse of Drugs Act 1975 (R.S. Vol. 26, p. 567)—<i>continued</i></p>	<p>By repealing section 12B(2) and (3), and substituting the following subsections:                      “(2) Subject to subsections (6) to (8), every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 7 years who, in respect of any property that is the proceeds of a specified drug offence, engages in a money laundering transaction, knowing or believing that all or part of the property is the proceeds of a specified drug offence, or being reckless whether or not the property is the proceeds of a specified drug offence.                      “(3) Subject to subsections (6) to (8), every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years who obtains or has in his or her possession any property (which property is the proceeds of a specified drug offence committed by another person)—                      “(a) With intent to engage in a money laundering transaction concerning that property; and                      “(b) Knowing or believing that all or part of the property is the proceeds of a specified drug offence, or being reckless whether or not the property is the proceeds of a specified drug offence.”</p>
<p>1975, No. 127—The Motor Vehicle Dealers Act 1975 (R.S. Vol. 5, p. 749)</p>	<p>By omitting from the definition of the term “crime involving dishonesty” in section 2(1) the expression “sections 217 to 292”, and substituting the expression “sections 228, 229, 244, 283 to 286, 290 to 292 and 305A to 305Z<sup>0</sup>”.</p>
<p>1976, No. 9—The Real Estate Agents Act 1976 (R.S. Vol. 34, p. 817)</p>	<p>By omitting from the definition of the term “crime involving dishonesty” in section 2(1) the expression “sections 217 to 292”, and substituting the expression “sections 228, 229, 244, 283 to 286, 290 to 292 and 305A to 305Z<sup>0</sup>”.</p>

SCHEDULE 2—*continued*ENACTMENTS AMENDED—*continued*

Title of Act	Amendments
1980, No. 44—The Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980	<p>By omitting from Schedule 2 all the items under the headings “Section of Crimes Act 1961” and “Subject-matter”, and substituting the following items:</p> <p>“305Z<del>R</del> Arson  “305Z<del>S</del> Attempted arson  “305Z<del>T</del> Intentional damage  “305Z<del>U</del> Endangering transport”.</p>
1981, No. 113—The Summary Offences Act 1981 (R.S. Vol. 28, p. 887)	<p>By repealing the definition of the term “colour of right” in section 2 (1), and substituting the following definition:</p> <p>“‘Claim of right’ has the same meaning as it has in section 2(1) of the Crimes Act 1961.”</p> <p>By repealing the definition of the term “crime involving dishonesty” in section 2 (1), and substituting the following definition:</p> <p>“‘Crime involving dishonesty’ means any crime described in Part X or Part 10A of the Crimes Act 1961, except the crimes described in sections 305Z<del>R</del> to 305Z<del>W</del>.”</p> <p>By omitting from section 11 (2) the words “colour of right”, and substituting the words “claim of right”.</p> <p>By omitting from Part I of Schedule 3 the items relating to sections 234, 235, 237, 294, 296, and 298 of the Crimes Act 1961, and substituting the following items:</p> <p>“305<del>O</del> Robbery  “305<del>P</del> Aggravated robbery  “305<del>Q</del> Assault with intent to rob  “305Z<del>R</del> Arson  “305Z<del>T</del> Intentional damage”.</p>
1982, No. 118—The Friendly Societies and Credit Unions Act 1982	<p>By omitting from section 155 (1) the expression “section 230”, and substituting the expression “section 305<del>K</del>”.</p>
1985, No. 120—The Criminal Justice Act 1985	<p>By repealing section 155 (2).</p> <p>By omitting paragraphs (j) and (k) of the definition of the term “serious violent offence” in section 2 (1), and substituting the following paragraphs:</p> <p>“(j) Section 305<del>O</del> (robbery):  “(k) Section 305<del>P</del> (aggravated robbery):</p>

SCHEDULE 2—*continued*  
ENACTMENTS AMENDED—*continued*

Title of Act	Amendments
1985, No. 120—The Criminal Justice Act 1985— <i>continued</i>	“(1) <b>Section 305o</b> (1) (assault with intent to rob):”.
1992, No. 86—The Mutual Assistance in Criminal Matters Act 1992	By omitting from Part 1 of Schedule 2 the items relating to sections 294, 295, 296, 297, 298, and 300 of the Crimes Act 1961, and substituting the following items: “ <b>Section 305zr</b> Arson “ <b>Section 305zs</b> Attempted arson “ <b>Section 305zt</b> Intentional damage “ <b>Section 305zu</b> Endangering transport”.
1994, No. 164—The Income Tax Act 1994	By omitting from section CD 6 the words “colour of right”, and substituting the words “claim of right”.
1995, No. 55—The Criminal Investigations (Blood Samples) Act 1995	By omitting from Part A of the Schedule the items relating to “robbery”, “aggravated robbery”, “assault with intent to rob”, and “aggravated burglary”, and substituting the following items: “Aggravated burglary <b>Section 305n</b> “Robbery <b>Section 305o</b> “Aggravated robbery <b>Section 305p</b> “Assault with intent <b>Section 305a</b> ”. to rob By omitting the items in Part B of the Schedule, and substituting the following item: “Burglary <b>Section 305m</b> ”.
1996, No. 9—The Financial Transactions Reporting Act 1996	By omitting from the definition of the term “money laundering offence” in section 2 (1), the expression “section 257A”, and substituting the expression “ <b>section 305y</b> ”. By omitting from section 18 (c) the expression “section 257A (4)”, and substituting the expression “ <b>section 305y (4)</b> ”. By omitting from section 18 the expression “section 257A (6) (a)” wherever it appears, and substituting in each case the expression “ <b>section 305z (a)</b> ”.

*Crimes Amendment (No. 6)*

SCHEDULE 2—*continued*  
 ENACTMENTS AMENDED—*continued*

Title of Act	Amendments
1996, No. 9—The Financial Transactions Reporting Act 1996— <i>continued</i>	By omitting from sections 18, 21, 28, and 43 the expression “section 257A” wherever it appears, and substituting in each case the expression “section 305v”.
1999, No. 55—The Extradition Act 1999	<p>By inserting, after section 101, the following section:</p> <p>“101A. <b>Treaties deemed to incorporate crimes</b>—(1) An extradition treaty between New Zealand and an extradition country must be construed to give effect to every specified provision (being a provision relating to the inclusion of offences within certain treaties by operation of law).</p> <p>“(2) For the purposes of subsection (1), each of the following provisions is a specified provision:</p> <p>“(a) Sections 7 and 7A of the Aviation Crimes Act 1972:</p> <p>“(b) Section 35 of the Misuse of Drugs Act 1975:</p> <p>“(c) Sections 10 and 10A of the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980:</p> <p>“(d) Section 8 of the Crimes of Torture Act 1989:</p> <p>“(e) Section 14 of the Maritime Crimes Act 1999:</p> <p>“(f) Section 25 of the Crimes Amendment Act (No. 6) 1999.”.</p>