

COURTS AND CRIMINAL MATTERS BILL

EXPLANATORY NOTE

The Business Committee of the House has agreed to the introduction of this Bill under Standing Order 259 (c). That Standing Order provides that the Business Committee may agree to the introduction of a law reform Bill or other omnibus Bill that amends more than one Act.

The Bill is in 6 Parts and will be broken up into separate Bills at the committee of the whole stage in the House. The Parts are:

- Part 1—amending the Credit Contracts Act 1981, to extend the jurisdiction of Disputes Tribunals:
- Part 2—amending the District Courts Act 1947, making changes relating to the enforcement of civil remedies:
- Part 3—amending the Hire Purchase Act 1971, to extend the jurisdiction of Disputes Tribunals:
- Part 4—amending the Judicature Act 1908, giving Masters the same tenure as High Court Judges:
- Part 5—amending the Summary Proceedings Act 1957, to allow the disclosure of penalties on the form of information in certain cases:
- Part 6—amending the Victims of Offences Act 1987, to allow victims of sexual violation or other serious assault or injury to request notification of the offender's impending release or escape from penal custody, or impending hearing for release to home detention.

PART 1

CREDIT CONTRACTS ACT 1981

Clause 3 extends the jurisdiction of Disputes Tribunals. The Tribunals currently have jurisdiction under section 45A of the Credit Contracts Act 1981 to hear applications under Part I of that Act, which relates to the re-opening of credit contracts. The proposed amendment substitutes a new section 45A, which will give Tribunals jurisdiction to hear applications under Part II as well. Part II relates to disclosure, and gives remedies for failure to make proper disclosure. All applications are subject to the usual jurisdictional limit of Disputes Tribunals, which is currently \$3,000, or \$5,000 by agreement between the parties. These amounts are proposed to be increased to \$7,500 and \$12,000, respectively, by the Statutes Amendment Bill (No. 2), currently before a select committee. If that Bill is passed before this one, this clause will be amended at the appropriate time.

PART 2

DISTRICT COURTS ACT 1947

Clause 6 amends section 84B of the District Courts Act 1947. Section 84B allows a judgment creditor or a judgment debtor to apply to the District Court for an order for examination as to the means of the judgment debtor. The amendment relates to subsection (4), and as proposed, the judgment creditor must pay the travel expenses of the judgment debtor, only if the judgment debtor so requests.

Clause 7 inserts *new section 104A* into the District Courts Act 1947. *New section 104A* allows bailiffs or constables to immobilise vehicles when executing warrants for the recovery of chattels or distress warrants issued under section 104 (2). Under the Summary Proceedings Act 1957, bailiffs and constables already have the power to immobilise vehicles pending the payment of unpaid fines. This amendment will mean that bailiffs and constables have a similar power when enforcing civil judgments.

PART 3

HIRE PURCHASE ACT 1971

Clause 9 extends the jurisdiction of Disputes Tribunals. The Tribunals currently have jurisdiction under section 47A of the Hire Purchase Act 1971 to authorise a variation to a hire purchase agreement (section 10 (1)), and to grant relief to purchasers where a vendor has issued a notice of default or has repossessed goods (section 26 (2)). The proposed amendment substitutes a *new section 47A*, which will give Tribunals jurisdiction to exercise any of the Court's powers under the Hire Purchase Act 1971. The Tribunals' jurisdiction is subject to the usual monetary limit, which is currently \$3,000, or \$5,000 by agreement between the parties. These amounts are proposed to be increased to \$7,500 and \$12,000, respectively, by the Statutes Amendment Bill (No. 2), currently before a select committee. If that Bill is passed before this one, this clause will be amended at the appropriate time.

PART 4

JUDICATURE ACT 1908

Clause 12 amends section 26C of the Judicature Act 1908, and provides for Masters of the High Court to have the same tenure as High Court Judges. Currently Masters are appointed for a fixed term of up to 5 years. The clause provides that Masters hold office until they retire or resign or are removed from office. Masters who are in office when the provision comes into force will also hold office indefinitely. The policy behind this amendment is to provide public assurance that Masters' judicial independence is protected by giving them permanent judicial tenure, as appropriate to their office.

PART 5

SUMMARY PROCEEDINGS ACT 1957

Clause 14 inserts *new section 69AB* into the Summary Proceedings Act 1957. The new section relates to the disclosure of certain penalties on an information. *New section 69AB* applies if a defendant is charged with an offence for which the penalty is greater if the defendant has previous convictions for that offence or another offence, and section 69 does not apply. The information must disclose the penalty to which the defendant would be liable if the existence of a previous conviction or convictions were to be proved against the defendant.

This amendment responds to concerns that defendants with previous convictions may not be aware of the liability to the higher penalty before entering their pleas. Knowledge of the higher penalty may be material to the kind of plea that is entered. An example where this might occur is section 49 of the Domestic

Violence Act 1995. Under section 49, a defendant is liable to a higher penalty if the defendant breaches a protection order and that defendant has also been convicted of breaching a protection order on 2 separate occasions within a certain time period. In this instance, the proposed amendment will mean the defendant is alerted to the fact that, if convicted, a higher penalty may be imposed.

PART 6

VICTIMS OF OFFENCES ACT 1987

Clause 16 repeals section 11 of the Victims of Offences Act 1987, and substitutes a *new section 11*. The existing section 11 allows victims of sexual violation or other serious assault or injury (and the immediate families of deceased victims) to request notification of the offender's impending release, or escape, from penal custody. The new section adds a requirement that victims (and the immediate families of deceased victims) also be notified of the offender's impending parole hearing or hearing for release to home detention.

This Part supersedes provisions in Part 45 of the Statutes Amendment Bill (No. 2).

Clause 17 contains a consequential repeal.

Hon D A M Graham

COURTS AND CRIMINAL MATTERS

ANALYSIS

Title	9. Jurisdiction of Disputes Tribunals	
1. Short Title and commencement	10. Consequential repeals	
PART 1		
CREDIT CONTRACTS ACT 1981		
2. Part to be part of Credit Contracts Act 1981	11. Part to be part of Judicature Act 1908	
3. Jurisdiction of Disputes Tribunals	12. Appointment of Masters	
4. Consequential repeal	PART 5	
PART 2		
DISTRICT COURTS ACT 1947		
5. Part to be part of District Courts Act 1947	SUMMARY PROCEEDINGS ACT 1957	
6. Order for examination of judgment debtor	13. Part to be part of Summary Proceedings Act 1957	
7. Immobilisation of motor vehicles	14. Information to refer to greater penalty in certain cases	
PART 3		
HIRE PURCHASE ACT 1971		
8. Part to be part of Hire Purchase Act 1971	PART 6	
VICTIMS OF OFFENCES ACT 1987		
	15. Part to be part of Victims of Offences Act 1987	
	16. Notification of offender's parole hearing, release, or escape in certain cases	
	17. Consequential repeal	

A BILL INTITULED

An Act to amend various enactments relating to courts and criminal matters

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 Courts and Criminal Matters Act 1997.

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

PART 1

CREDIT CONTRACTS ACT 1981

2. Part to be part of Credit Contracts Act 1981—(1) This Part is part of the Credit Contracts Act 1981* (in this Part referred to as the principal Act). 5

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

*1981, No. 27
Amendment: 1982, No. 2

3. Jurisdiction of Disputes Tribunals—(1) The principal Act is amended by repealing section 45A, and substituting the following section: 10

“45A. (1) A Disputes Tribunal established under the Disputes Tribunals Act 1988 has jurisdiction to exercise the powers conferred on a Court by Parts I and II in any case where the total amount in respect of which an order of the Tribunal is sought is not more than \$3,000. 15

“(2) An order of a Disputes Tribunal under Part I or Part II must not—

“(a) Require a person to pay an amount exceeding \$3,000:

“(b) Declare a person not liable to another person for an amount exceeding \$3,000: 20

“(c) Vest any property exceeding \$3,000 in value in any person:

“(d) Direct the transfer or assignment or delivery of possession of any property exceeding \$3,000 in value— 25

and an order of a Tribunal that exceeds any such restriction is entirely of no effect.

“(3) Where, in respect of any proceedings properly before a Disputes Tribunal, the jurisdiction of the Tribunal has been extended under an agreement made under section 13 of the Disputes Tribunals Act 1988, **subsections (1) and (2)** of this section are to be read as if every reference in those subsections to \$3,000 were a reference to \$5,000.” 30

4. Consequential repeal—Section 70 of the Disputes Tribunals Act 1988 is consequentially repealed. 35

PART 2

DISTRICT COURTS ACT 1947

5 **5. Part to be part of District Courts Act 1947**—(1) This Part is part of the District Courts Act 1947* (in this Part referred to as the principal Act).

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

*R.S. Vol. 28, p. 57

Amendments: 1994, No. 29; 1995, No. 65; 1996, No. 119

10 **6. Order for examination of judgment debtor**—Section 84B (4) of the principal Act is amended by inserting, before the words “the person”, the words “, if requested by the judgment debtor,”.

7. Immobilisation of motor vehicles—The principal Act is amended by inserting, after section 104, the following section:

15 “104A. (1) A bailiff or constable executing—

“(a) A warrant for the recovery of chattels; or

“(b) A distress warrant issued under section 104 (2)—

20 may, instead of demanding and seizing a motor vehicle under the warrant, immobilise the vehicle by attaching to the vehicle any device designed for the purpose, pending delivery of the vehicle to the person named in the warrant for the recovery of chattels or the person who obtained the issue of the distress warrant.

25 “(2) No vehicle may be immobilised under **subsection (1)** unless,—

“(a) At the time of its immobilisation, it is on private property; or

30 “(b) At the time of its immobilisation, it is in a public place and the bailiff or constable is satisfied that immobilising the vehicle will not cause undue inconvenience to other persons.

“(3) If a motor vehicle is immobilised under **subsection (1)**, a bailiff or constable—

“ (a) May at any time seize the vehicle:

35 “ (b) Must, on the direction of the Registrar, seize the vehicle—

and then must deliver the vehicle to the person named in the warrant for the recovery of chattels or the person who obtained the issue of the distress warrant.

“(4) A person commits an offence who, without reasonable excuse, tampers with, removes, or attempts to remove a device attached to a vehicle under **subsection (1)**.

“(5) A person who commits an offence against **subsection (4)** is liable on summary conviction to a fine not exceeding \$1,000.” 5

PART 3

HIRE PURCHASE ACT 1971

8. Part to be part of Hire Purchase Act 1971—(1) This Part is part of the Hire Purchase Act 1971* (in this Part referred to as the principal Act). 10

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

*R.S. Vol. 23, p. 509

9. Jurisdiction of Disputes Tribunals—(1) The principal Act is amended by repealing section 47A, and substituting the following section: 15

“47A. (1) A Disputes Tribunal established under the Disputes Tribunals Act 1988 has jurisdiction to exercise the powers conferred on a Court by this Act in any case where—

“(a) The occasion for the exercise of the power arises in the course of proceedings properly before that Tribunal; and 20

“(b) The total amount in respect of which an order of the Tribunal is sought is not more than \$3,000.

“(2) An order of a Disputes Tribunal under this Act must not— 25

“(a) Require a person to pay an amount exceeding \$3,000:

“(b) Declare a person not liable to another for an amount exceeding \$3,000:

“(c) Direct the transfer or assignment or delivery of possession of goods, the cash price of which exceeds \$3,000— 30

and an order of a Tribunal that exceeds any such restriction is entirely of no effect.

“(3) Where, in respect of any proceedings properly before a Disputes Tribunal, the jurisdiction of the Tribunal has been extended under an agreement made under section 13 of the Disputes Tribunals Act 1988, **subsections (1) and (2)** of this section are to be read as if every reference in those subsections to \$3,000 were a reference to \$5,000.” 35

10. Consequential repeals—The following provisions are consequentially repealed: 40

- (a) Section 76 of the Disputes Tribunals Act 1988:
- (b) Section 47 (3) (e) of the Credit Repossession Act 1997.

PART 4

JUDICATURE ACT 1908

5 **11. Part to be part of Judicature Act 1908**—(1) This Part is part of the Judicature Act 1908* (in this Part referred to as the principal Act).

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

*R.S. Vol. 22, p. 107

Amendments: 1990, No. 44; 1991, No. 60; 1993, No. 117; 1994, No. 42, 1995, No. 70

10 **12. Appointment of Masters**—(1) Section 26C of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

15 “(4) A Master holds office until, in accordance with section 26E, he or she retires or resigns or is removed from office.”

(2) **Section 26c (4)** of the principal Act (as substituted by **subsection (1)**) applies—

(a) To every Master appointed after the commencement of this section:

20 (b) To every Master who holds office at the commencement of this section (despite any provision to the contrary in any enactment or warrant of appointment).

PART 5

SUMMARY PROCEEDINGS ACT 1957

25 **13. Part to be part of Summary Proceedings Act 1957**—(1) This Part is part of the Summary Proceedings Act 1957* (in this Part referred to as the principal Act).

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

*R.S. Vol. 9, p. 583

Amendments: 1982, Nos. 47, 131, 158; 1985, Nos. 51, 55, 162, 191; 1986, Nos. 73, 76; 1987, Nos. 165, 172; 1989, Nos. 21, 105; 1991, Nos. 62, 105; 1992, No. 82; 1993, No. 47; 1994, No. 161; 1995, Nos. 64, 87; 1996, Nos. 66, 146

30 **14. Information to refer to greater penalty in certain cases**—(1) The principal Act is amended by inserting, after section 69AA (as substituted by section 4 (1) of the Summary Proceedings Amendment Act 1994), the following section:

35 “69AB. (1) This section applies if—

“(a) A defendant is charged with an offence for which the penalty is greater if the defendant has previously

been convicted of that offence or another offence;
and

“(b) Section 69 does not apply.

“(2) If this section applies, the information must disclose the penalty to which the defendant would be liable if the existence of a previous conviction or convictions were to be proved against the defendant or admitted by the defendant.

“(3) No information may be dismissed simply because it does not comply with **subsection (2)**.

“(4) If an information does not comply with **subsection (2)** and the information is not subsequently amended to comply with that subsection, the defendant is liable to the penalty to which he or she would be liable if the defendant did not have any previous convictions.

“(5) This section does not limit or affect—

“(a) The right of the Court, when sentencing the defendant, to take previous convictions into account; or

“(b) Section 341 of the Crimes Act 1961.”

(2) The principal Act applies, in respect of proceedings commenced before the commencement of this section, as if **subsection (1)** had not been enacted.

PART 6

VICTIMS OF OFFENCES ACT 1987

15. Part to be part of Victims of Offences Act 1987—

(1) This Part is part of the Victims of Offences Act 1987* (in this Part referred to as the principal Act).

(2) This Part comes into force on a date to be appointed by the Governor-General by Order in Council.

*1987, No. 173

Amendments: 1988, No. 219; 1994, No. 66

16. Notification of offender’s parole hearing, release, or escape in certain cases—(1) The principal Act is amended by repealing section 11 (as amended by section 10 (3) of the Department of Justice (Restructuring) Act 1995), and substituting the following section:

“11. (1) The victim of an offence of sexual violation or other serious assault or injury should be given the opportunity to request notification of—

“(a) The offender’s impending release from penal custody; or

“(b) The offender’s escape from penal custody; or

“(c) The time and date of—

“(i) The offender’s parole hearing; or

“(ii) Any hearing for a home detention order allowing the offender to serve the remainder of his or her sentence by way of home detention; or

5 “(iii) Any hearing under **section 103A** of the Criminal Justice Act 1985 for the release of the offender to home detention.

“(2) Where the victim makes such a request, then so long as the victim has supplied a current address and telephone number to the chief executive of the Department of
10 Corrections, the victim should be—

“(a) Promptly notified of the offender’s impending release, or escape, from penal custody; or

“(b) Given reasonable prior notice of the time and date of—

15 “(i) The offender’s parole hearing; or

“(i) Any hearing for a home detention order allowing the offender to serve the remainder of his or her sentence by way of home detention; or

20 “(ii) Any hearing under **section 103A** of the Criminal Justice Act 1985 for the release of the offender to home detention.”

17. Consequential repeal—The Department of Justice (Restructuring) Act 1995 is consequentially amended by repealing so much of the Second Schedule as relates to section 11 of the principal Act.