

## SUMMARY PROCEEDINGS AMENDMENT BILL

### EXPLANATORY NOTE

THIS Bill makes miscellaneous amendments to the Summary Proceedings Act 1957.

*Clause 2* replaces section 3 of the principal Act specifying those provisions of the Crimes Act 1908 that are to apply to summary proceedings under the principal Act. The only changes are the substitution of the provisions of the Crimes Bill that correspond to the sections of the 1908 Act referred to.

*Clause 3: Subclause (1)* replaces section 6 (2) of the principal Act, which specifies the cases in which a Magistrate's Court presided over by a Magistrate may deal summarily with a charge of conspiring to commit, or attempting to commit, or being accessory after the fact to, certain indictable offences under the Crimes Act 1908. The only changes are a substitution of references to the corresponding provisions of the Crimes Bill.

The effect of *subclause (2)* is to include among the indictable offences in Part II of the First Schedule to the principal Act that may be dealt with summarily by a Magistrate's Court presided over by a Magistrate the following offences:

- (a) Offences under section 138 of the Bankruptcy Act 1908 (crimes by bankrupt, such as, incurring debts without any reasonable expectation of being able to pay the same, failing to keep proper books of account, fraudulent gift or transfer of property, etc.):
- (b) Offences under section 128 (2) of the Mental Health Act 1911 (breaches of that Act which are indictable offences):
- (c) Offences against section 47 (3) of the Transport Act 1949 (failure to stop after motor accident and render assistance to any person injured).

Summary jurisdiction in respect of those offences is conferred by the Acts creating them, and the purpose of this subclause is to make the list in Part II of the First Schedule to the principal Act complete.

*Clause 4* provides for miscellaneous amendments to the principal Act, all of which are consequential on provisions of the Crimes Bill. Paragraph (h) of *subclause (1)* replaces Part I of the existing First Schedule to the principal Act, specifying the indictable offences under the Crimes Act 1908 in respect of which a Magistrate's Court presided over by a Magistrate may exercise summary jurisdiction. The new Part I specifies the offences under the Crimes Bill in respect of which summary jurisdiction may be so exercised.

*Clause 5:* Section 107 (3) of the principal Act requires a case stated on appeal to be submitted to the Magistrate or Justice or Justices whose decision is appealed against. This must be done within fourteen days after the filing of the notice of appeal.

The effect of this amendment is that the case on appeal must be filed in the Court within that time, and the Registrar must as soon as practicable submit it to the Magistrate or Justice or Justices.

*Clause 6* confers power on the Supreme Court to ante-date a sentence passed by that Court on an appeal. For example, if a sentence of imprisonment is quashed on appeal and a sentence of corrective training substituted, the Court could under this provision ante-date the substituted sentence in order to take account of any part of the term of imprisonment already served.

*Clause 7* is intended to make it clear that where a defendant who is committed for trial in the Supreme Court is released on bail pending the Supreme Court sitting, the warrant issued under section 171 (3) of the principal Act for his detention pending trial is not spent when he is released on bail, but is suspended and revives if he does not obtain further bail on the first day of the sittings of the Supreme Court.

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*Hon. Mr Mason*

## SUMMARY PROCEEDINGS AMENDMENT

### ANALYSIS

Title	4. Amendments consequential on provisions of Crimes Act 1959
1. Short Title and commencement	5. Appeal on question of law only by way of case stated
2. Application of certain provisions of Crimes Act 1959	6. Court may ante-date substituted sentence
3. Summary jurisdiction in respect of indictable offences	7. Release on bail of defendant committed for sentence
	Schedule

### A BILL INTITULED

#### **An Act to amend the Summary Proceedings Act 1957**

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,  
5 as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Summary Proceedings Amendment Act 1959, and shall be read together with and deemed part of the Summary Proceedings Act 1957 (hereinafter referred to as the principal  
10 Act).

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty.

**2. Application of certain provisions of Crimes Act 1959**—  
15 The principal Act is hereby amended by repealing section three, and substituting the following section:

“3. (1) The following provisions of the Crimes Act 1959, as far as they are applicable and with the necessary modifications, shall apply to summary proceedings under this Act (whether in respect of summary offences or in respect of indictable offences dealt with summarily), namely: 5

- “(a) Part I (which relates to jurisdiction) except section eight:
- “(b) Section thirteen (which preserves the powers of Courts under other Acts):
- “(c) Section twenty-five (which prohibits a sentence of solitary confinement): 10
- “(d) Part III (which relates to matters of justification or excuse):
- “(e) Part IV (which relates to parties to the commission of offences), except sections seventy-six and seventy-seven: 15
- “(f) Section three hundred and twenty-five (which prescribes the procedure where prior consent to a prosecution is required):
- “(g) Sections three hundred and twenty-six and three hundred and twenty-seven (which relate to arrests): 20
- “(h) Section three hundred and twenty-eight (which relates to entry on premises):
- “(i) Section three hundred and thirty (which relates to bail): 25
- “(j) Sections three hundred and seventy to three hundred and seventy-three (which relate to the special pleas of previous acquittal, previous conviction, and pardon):
- “(k) Section three hundred and eighty-two (which relates to admissions by an accused person): 30
- “(l) Section three hundred and eighty-nine (which relates to the presence of an accused person):
- “(m) Section four hundred and thirteen (which relates to the consent of the Attorney-General in certain proceedings): 35
- “(n) Section four hundred and sixteen (which relates to the power of the Court to order payment of compensation):
- “(o) Section four hundred and seventeen (which relates to restitution of property): 40
- “(p) Section four hundred and eighteen (which relates to the preservation of civil remedies):

“(q) Section four hundred and nineteen (which relates to the prerogative of mercy):

“(r) Section four hundred and twenty (which defines the effect of a free pardon).

5 “(2) In addition to the provisions specified in subsection one of this section, the following provisions of the Crimes Act 1959, as far as they are applicable and with the necessary modifications, shall apply to the summary trial of indictable offences under this Act, namely:

10 “(a) Sections two and four (interpretation):

“(b) Section eight (which relates to jurisdiction in respect of crimes on ships and aircraft):

“(c) Section seventy-seven (which relates to parties to certain crimes outside New Zealand):

15 “(d) Such of the provisions of Parts V to VIII and Parts X and XI as relate to any of the indictable offences in respect of which a Magistrate has jurisdiction under section six of this Act:

20 “(e) Sections three hundred and forty-nine and three hundred and fifty (which relate to the proof of an attempt when a crime is charged and the proof of a crime when an attempt is charged):

“(f) Section three hundred and fifty-six (which relates to accessories after the fact and receivers).”

25 **3. Summary jurisdiction in respect of indictable offences—**

(1) Section six of the principal Act is hereby amended by repealing subsection two, and substituting the following subsection:

30 “(2) A Court presided over by a Magistrate shall have summary jurisdiction in respect of the following indictable offences, and proceedings in respect of any such offence may accordingly be taken in a summary way in accordance with this Act, namely—

35 “(a) Conspiring to commit any indictable offence to which subsection one of this section applies (being a conspiracy to which section three hundred and twenty-one of the Crimes Act 1959 applies):

40 “(b) Attempting to commit any indictable offence to which subsection one of this section applies, or inciting, counselling, or attempting to procure any person to commit any such offence which is not committed (being any case to which section three hundred and twenty-two of the Crimes Act 1959 applies):

“(c) Being accessory after the fact to any indictable offence to which subsection one of this section applies (being any case to which section three hundred and twenty-three of the Crimes Act 1959 applies).”

(2) The First Schedule to the principal Act is hereby amended— 5

(a) By inserting in the appropriate columns in Part II, after the provisions relating to the Auctioneers Act 1928, the following words:

“The Bankruptcy Act 1908 | 138 | Crimes by bankrupt”: 10

(b) By inserting in the appropriate columns of Part II, after the provisions relating to the Medical Practitioners Act 1950, the following words:

“The Mental Health Act | 128 (2) | Breaches of Act which are indictable offences”: 15

(c) By inserting in the appropriate columns of Part II, after the provisions relating to section thirty-nine of the Transport Act 1949, the following words:

“47 (3) | Failing to stop after accident and render assistance to injured person”. 20

(3) The following enactments are hereby repealed:

(a) Section one hundred and thirty-nine of the Bankruptcy Act 1908, as substituted by section sixteen of the Bankruptcy Amendment Act 1956: 25

(b) Subsection three of section one hundred and twenty-eight of the Mental Health Act 1911:

(c) The proviso to subsection three of section forty-seven of the Transport Act 1949, as added by subsection one of section twelve of the Transport Amendment Act 1953: 30

(d) Subsection one of section twelve of the Transport Amendment Act 1953:

(e) Section sixteen of the Bankruptcy Amendment Act 1956.

**4. Amendments consequential on provisions of Crimes Act 1959—** (1) The principal Act is hereby further amended— 35

(a) By omitting from paragraph (a) of subsection one of section eight the words “section three hundred and sixty-nine or subsection two of section four hundred and seven of the Crimes Act 1908”, and substituting the words “section three hundred and thirty-three or subsection two of section three hundred and fifty-seven of the Crimes Act 1959”: 40

- (b) By omitting from subsection two of section eight the words “the Crimes Act 1908, and the provisions of sections four hundred and two to four hundred and four”, and substituting the words “the Crimes Act 1959, and the provisions of sections three hundred and seventy to three hundred and seventy-two”:
- (c) By omitting from section forty-six the words “section three hundred and sixty-eight of the Crimes Act 1908”, and substituting the words “section three hundred and thirty of the Crimes Act 1959”:
- (d) By repealing section seventy:
- (e) By omitting from subsection four of section seventy-five the words “section three hundred and sixty-eight of the Crimes Act 1908”, and substituting the words “section three hundred and thirty of the Crimes Act 1959”:
- (f) By omitting from subsection one of section one hundred and thirty-eight and also from subsection two of that section the words “made under this Act”:
- (g) By omitting from subsection two of section one hundred and seventy-one the words “section three hundred and sixty-eight of the Crimes Act 1908, but subject to the provisions of,” and substituting the words “section three hundred and thirty of the Crimes Act 1959, but subject to the provisions of section three hundred and twenty-nine of that Act and of”:
- (h) By repealing Part I of the First Schedule, and substituting the new Part I set out in the Schedule to this Act:
- (i) By repealing so much of Part II of the First Schedule as relates to section thirty-two of the Police Offences Act 1927.
- (2) Section one hundred and eighty-six of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:
- “(c) That the defendant has threatened to do, or to procure some other person to do, any act which if done would constitute an offence under any of the following provisions of the Crimes Act 1959:
- “(i) Section three hundred and five (which relates to arson):
- “(ii) Section three hundred and seven (which relates to damage to certain property by fire or explosive):

“(iii) Section three hundred and nine (which relates to wilful damage):

“(iv) Section three hundred and ten (which relates to waste or diversion of gas, water, or electricity):

“(v) Section three hundred and eleven (which relates to interfering with means of transport):

“(vi) Section three hundred and twelve (which relates to wrecking of ships and aircraft):

“(vii) Section three hundred and fourteen (which relates to interfering with navigation signals):

“(viii) Section three hundred and fifteen (which relates to interfering with mines).”

**5. Appeal on question of law only by way of case stated—**

(1) Section one hundred and seven of the principal Act is hereby amended by inserting in subsection three, after the words “appeal is made, and”, the words “file it in the office of the Court in which the notice of appeal was filed, and the Registrar shall as soon as practicable”.

(2) Section one hundred and seven of the principal Act is hereby further amended by omitting from subsection eight the words “submit a case to the Magistrate or Justice or Justices”, and substituting the words “file a case”.

**6. Court may ante-date substituted sentence—**The principal Act is hereby further amended by inserting, after section one hundred and thirty-two, the following section:

“132A. Where on any appeal the Supreme Court quashes the sentence imposed by the convicting Court and imposes another sentence in substitution for it, the Supreme Court may order that the substituted sentence shall be deemed to have commenced on the day on which the quashed sentence commenced.”

**7. Release on bail of defendant committed for sentence—**Section one hundred and seventy-one of the principal Act is hereby further amended by adding the following subsection:

“(4) No warrant under subsection three of this section shall cease to have effect by reason only that the defendant is released on bail, but the warrant shall be deemed to be suspended during any period that the defendant is on bail.”



## SCHEDULE

Section 4 (1) (h)

## NEW PART I OF FIRST SCHEDULE TO PRINCIPAL ACT

## "PART I—INDICTABLE OFFENCES UNDER THE CRIMES ACT 1959

Section of Act	Offence
<i>Part V—Crimes Against Public Order</i>	
94	Unlawful assembly
95	Riot
100	Forcible entry and detainer
<i>Part VI—Crimes Affecting the Administration of Law and Justice</i>	
116	Contravention of statute
119, 120	Making false oath or statement or declaration
123	Use of purported affidavit or declaration
127	Assisting escape of prisoners of war or internees
128	Breaking penal institution
129	Escape from lawful custody
130	Assisting escape from lawful custody
131	Assisting escape of mentally defective person under detention for offence
<i>Part VII—Crimes Against Religion, Morality, and Public Welfare</i>	
133	Distribution or exhibition of indecent matter
134, 135	Indecent acts
139	Incest
140	Sexual intercourse with girl under twelve
141	Indecency with girl under twelve
142	Sexual intercourse or indecency with girl between twelve and sixteen.
143	Indecent assault on woman or girl
144	Conspiracy to induce sexual intercourse
145	Inducing sexual intercourse under pretence of marriage
146	Sexual intercourse with girl under care or protection
147	Sexual intercourse with idiot or imbecile woman or girl
148	Indecent act between woman and girl
149, 150	Indecency between males
154	Indecency with animal
155	Criminal nuisance
156	Keeping place of resort for homosexual acts
157	Brothel-keeping
158	Living on earnings of prostitution
159	Procuring sexual intercourse
160	Misconduct in respect of human remains

## SCHEDULE—continued

Section of Act	Offence
<i>Part VIII—Crimes Against the Person</i>	
161, 162, 163	Neglect to provide necessaries of life
164	Abandoning child under six
191	Concealing dead body of child
195	Procuring own miscarriage
196	Supplying means of procuring abortion
199	Injuring with intent
200	Injuring by unlawful act
202	Aggravated assault
203	Assault with intent to injure
204	Assault on a child, or by a male on a female
205	Cruelty to a child
206	Common assault
210 (2)	Poisoning with intent to cause inconvenience or annoyance
212	Setting traps, etc.
213 (2)	Endangering transport without intent to injure
216	Bigamy
217	Feigned marriage
218, 219, 221	Abduction
<i>Part X—Crimes Against Rights of Property</i>	
237	Theft
238	Conversion or attempted conversion of motorcar, etc.
239	Conversion with intent
240	Being in possession of instrument for conversion
241	Criminal breach of trust
242	Fraudulently destroying document
243	Fraudulent concealment
244	Bringing stolen property into New Zealand
245	Robbery
247	Compelling execution of documents by force
248	Assault with intent to rob
249	Extortion by threats
250	Demanding with intent to steal
252	Burglary
253	Entering with intent
254	Being armed with intent to break or enter
255	Being disguised or in possession of housebreaking instruments
257	Obtaining by false pretence
258	Obtaining credit fraudulently
259	Personation
260	Acknowledging instrument in false name
261	False statement by promoter
262	Falsifying accounts relating to public funds

SCHEDULE—*continued*

Section of Act	Offence
<i>Part X—Crimes Against Rights of Property—continued</i>	
263, 264, 265	False accounting or statement by officer, employee, etc.
266	Issuing false dividend warrants
267	Concealing deeds and encumbrances
268	Conspiracy to defraud
269	Receiving property dishonestly obtained
273	Taking reward for recovery of stolen goods
276	Forgery
277	Uttering forged document
278, 279	Counterfeiting public or corporate seal
280	Sending false telegram
281	Procuring execution of document by fraud
282	Possessing forged banknote
283	Drawing document without authority
284	Using probate obtained by forgery or perjury
285	Paper or implements for forgery
286	Counterfeiting stamp
287, 288	Falsifying registers or extract therefrom
289	Uttering false certificate
290	Forging certificate
291, 292	Imitating authorised or customary mark
294, 295, 296, } 297, 298, 299, } 300, 301, 302, } 303 }	Preparations for coining, counterfeiting, altering, impairing, defacing, or melting coin, or possessing, uttering, buying, or selling, or importing, or exporting counterfeit coin
305, 306	Arson or attempted arson
307, 308	Damage or attempted damage to property by fire or explosive
309	Wilful damage
310	Wilful waste or diversion of water, gas, or electricity
311	Interfering with means of transport
312, 313	Wrecking or attempting to wreck
314	Interfering with signals
315	Interfering with mines
316	Providing explosive to commit a crime
<i>Part XI—Threatening, Conspiring, and Attempting to Commit Offences</i>	
317	Threatening to kill or do grievous bodily harm
318	Threatening to destroy property
319	Threatening acts
320	Conspiring to prevent collection of rates or taxes"