

## SUMMARY PROCEEDINGS AMENDMENT BILL

### EXPLANATORY NOTE

THIS Bill amends 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 under section 6 of the Moneylenders Act 1908 (by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of facts, inducing or attempting to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed):
- (d) Offences against *clause 56 (1)* of the Transport Bill (causing bodily injury or death through reckless or negligent driving), offences against *clause 56 (2)* of that Bill (causing bodily injury or death through driving while under influence of drink or drugs) and offences under *clause 65 (4)* of that Bill (failure to stop after motor accident and render assistance to any person injured).

Summary jurisdiction in respect of those offences (except the offence under section 6 of the Moneylenders Act 1908 and the offence under the provisions of the Transport Act 1949 corresponding to *clause 56 (2)* of the Transport Bill) 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*: By section 20 of the principal Act a witness who fails to obey a summons to attend the hearing may be compelled by warrant to attend the Court. This clause also makes it an offence for a witness to fail to obey such a summons. The penalty is a fine not exceeding £20.

*Clause 6*: 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 14 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 7*: Section 77 of the principal Act allows the correction by a Magistrate of an erroneous sentence where the Court has imposed a sentence that is not within the jurisdiction of the Court. This amendment extends that power to the correction of an order where the Court has made an order that is not within its jurisdiction.

*Clause 8*: Under section 171 of the principal Act, where a defendant committed for trial is granted bail, the main condition of the bail bond is that he must attend personally on the first day of the next sittings of the Supreme Court at the place specified in the bond. The effect of *subclause (1)* is that he must also report to the Registrar on that day and must attend thereafter on such other day or days as may be notified by the Registrar to him or his counsel.

*Subclause (2)* 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 Hanan*

## SUMMARY PROCEEDINGS AMENDMENT

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### ANALYSIS

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1. Short Title and commencement	6. Appeal on question of law only by way of case stated
2. Application of certain provisions of Crimes Act 1961	7. Power of Court to amend defective sentences or orders
3. Summary jurisdiction in respect of indictable offences	8. Release on bail of defendant committed for trial or sentence
4. Amendments consequential on provisions of Crimes Act 1961	Schedule

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### 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, as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Summary Proceedings Amendment Act 1961, and shall be read together with and deemed part of the Summary Proceedings Act 1957 (hereinafter referred to as the principal Act).

(2) Sections 2 to 4 and section 8 of this Act and the Schedule hereto shall come into force on the first day of January, nineteen hundred and sixty-two.

(3) Sections 5 to 7 of this Act shall come into force on the passing of this Act.

**2. Application of certain provisions of Crimes Act 1961—**  
The principal Act is hereby amended by repealing section 3, and substituting the following section:

“3. (1) The following provisions of the Crimes Act 1961, 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 8: 10

“(b) Section 13 (which preserves the powers of Courts under other Acts):

“(c) Section 17 (which prohibits a sentence of solitary confinement):

“(d) Part III (which relates to matters of justification or excuse): 15

“(e) Part IV (which relates to parties to the commission of offences), except sections 68 and 69:

“(f) Section 314 (which prescribes the procedure where prior consent to a prosecution is required): 20

“(g) Sections 315 and 316 (which relate to arrests):

“(h) Section 317 (which relates to entry on premises):

“(i) Section 319 (which relates to bail):

“(j) Sections 357 to 360 (which relate to the special pleas of previous acquittal, previous conviction, and pardon): 25

“(k) Section 369 (which relates to admissions by an accused person):

“(l) Section 376 (which relates to the presence of an accused person): 30

“(m) Section 400 (which relates to the consent of the Attorney-General in certain proceedings):

“(n) Section 403 (which relates to the power of the Court to order payment of compensation):

“(o) Section 404 (which relates to restitution of property): 35

“(p) Section 405 (which relates to the preservation of civil remedies):

“(q) Section 406 (which relates to the prerogative of mercy):

“(r) Section 407 (which defines the effect of a free pardon). 40

“(2) In addition to the provisions specified in subsection (1) of this section, the following provisions of the Crimes Act 1961, as far as they are applicable and with the necessary modifications, shall apply to the summary trial of indictable  
5 offences under this Act, namely:

“(a) Sections 2 and 4 (interpretation):

“(b) Section 8 (which relates to jurisdiction in respect of crimes on ships and aircraft beyond New Zealand):

10 “(c) Section 69 (which relates to parties to certain crimes outside New Zealand):

“(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  
15 section 6 of this Act:

“(e) Sections 337 and 338 (which relate to the proof of an attempt when a crime is charged and the proof of a crime when an attempt is charged):

20 “(f) Section 344 (which relates to accessories after the fact and receivers).”

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

(1) Section 6 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

25 “(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—

30 “(a) Conspiring to commit any indictable offence to which subsection (1) of this section applies (being a conspiracy to which section 310 of the Crimes Act 1961 applies):

35 “(b) Attempting to commit any indictable offence to which subsection (1) 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 311 of the Crimes Act 1961 applies):

“(c) Being accessory after the fact to any indictable offence to which subsection (1) of this section applies (being any case to which section 312 of the Crimes Act 1961 applies).”

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

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

“The Bankruptcy Act 1908	138	Crimes by bankrupt”:	10
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(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 1911	128 (2)	Breaches of Act which are indictable offences”:	15
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(c) By inserting in the appropriate columns of Part II, after the provisions relating to the Merchandise Marks Act 1954, the following words: 20

“The Moneylenders Act 1908	6	False statements, etc., by moneylenders”:	
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(d) By omitting from Part II so much thereof as relates to the Transport Act 1949, and substituting, in their appropriate columns, the following words: 25

<u>“The Transport Act 1961</u>	<u>56 (1)</u>	Causing bodily injury or death through reckless or negligent driving	
	<u>56 (2)</u>	Causing bodily injury or death through driving while under influence of drink or drugs	30
	<u>65 (4)</u>	Failing to stop after accident and render assistance to injured person”.	35

(3) The following enactments are hereby repealed:

(a) Section 139 of the Bankruptcy Act 1908 (as substituted by section 16 of the Bankruptcy Amendment Act 1956): 40

(b) Subsection (3) of section 128 of the Mental Health Act 1911:

(c) Section 16 of the Bankruptcy Amendment Act 1956.

**4. Amendments consequential on provisions of Crimes Act 1961—**(1) The principal Act is hereby further amended—

- 5 (a) By omitting from paragraph (a) of subsection (1) of section 8 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 “subsection (3) of section 345 of the Crimes Act 1961”:
- 10 (b) By omitting from subsection (2) of section 8 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 1961, and the provisions of sections 357 to 359”:
- 15 (c) By omitting from section 46 the words “section three hundred and sixty-eight of the Crimes Act 1908”, and substituting the words “section 319 of the Crimes Act 1961”:
- (d) By repealing section 70:
- 20 (e) By omitting from subsection (4) of section 75 the words “section three hundred and sixty-eight of the Crimes Act 1908”, and substituting the words “section 319 of the Crimes Act 1961”:
- (f) By omitting from subsection (1) of section 138 and also from subsection (2) of that section the words “made under this Act”:
- 25 (g) By omitting from subsection (2) of section 171 the words “section three hundred and sixty-eight of the Crimes Act 1908, but subject to the provisions of”, and substituting the words “section 319 of the Crimes Act 1961, but subject to the provisions of section 318 of that Act and of”:
- 30 (h) By repealing Part I of the First Schedule, and substituting the new Part I set out in the Schedule to this Act:
- 35 (i) By repealing so much of Part II of the First Schedule as relates to section 32 of the Police Offences Act 1927.

(2) Section 186 of the principal Act is hereby amended by repealing paragraph (c), and substituting the following  
40 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 1961:
- “(i) Section 294 (which relates to arson): 5
- “(ii) Section 296 (which relates to damage to certain property by fire or explosive):
- “(iii) Section 298 (which relates to wilful damage):
- “(iv) Section 299 (which relates to waste or 10 diversion of gas, water, or electricity):
- “(v) Section 300 (which relates to interfering with means of transport):
- “(vi) Section 301 (which relates to wrecking of ships and aircraft): 15
- “(vii) Section 303 (which relates to interfering with navigation signals):
- “(viii) Section 304 (which relates to interfering with mines).”

**5. Penalty for disobeying witness summons**—Section 20 of the principal Act is hereby amended by adding the following subsection:

“(5) Every person commits an offence who, having been served with a summons under this section calling upon him to appear as a witness at the hearing, refuses or neglects, 25 without sufficient cause, to appear or to produce any books, deeds, papers, writings, or photographs required by the summons to be produced, and is liable on summary conviction to a fine not exceeding twenty pounds.”

**6. Appeal on question of law only by way of case stated**— 30 Section 107 of the principal Act is hereby amended—

- (a) By inserting in subsection (3), 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”: 35
- (b) By omitting from subsection (8) the words “submit a case to the Magistrate or Justice or Justices”, and substituting the words “file a case”.



**7. Power of Court to amend defective sentences or orders—**

Section 77 of the principal Act is hereby amended by omitting from subsection (1) the words “imposes a sentence that is not within the jurisdiction of the Court to impose”, and substituting the words “imposes a sentence or makes an order that is not within the jurisdiction of the Court to impose or make”.

**8. Release on bail of defendant committed for trial or for sentence—**

(1) Section 171 of the principal Act is hereby amended by omitting from subsection (1) the words “on the first day of the next sittings of the Supreme Court for the trial of criminal cases at the place specified in the bond”, and substituting the words “and report to the Registrar of the Supreme Court, at the place specified in the bond, on the first day of the next sittings of the Supreme Court for the trial of criminal cases at that place, and that he attend personally thereafter on such other day or days during those sittings as may be notified by the Registrar, in writing, to him or to his counsel”.

(2) Section 171 of the principal Act is hereby further amended by adding the following subsection:

“(4) No warrant under subsection (3) 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.”

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Section 4 (1) (h)

## SCHEDULE

NEW PART I OF FIRST SCHEDULE TO PRINCIPAL ACT

"PART I—INDICTABLE OFFENCES UNDER THE CRIMES ACT 1961"

Section of Act	Offence
<i>Part V—Crimes Against Public Order</i>	
86	Unlawful assembly
87	Riot
91	Forcible entry and detainer
<i>Part VI—Crimes Affecting the Administration of Law and Justice</i>	
107	Contravention of statute
110, 111	Making false oath or statement or declaration
114	Use of purported affidavit or declaration
118	Assisting escape of prisoners of war or internees
119	Breaking penal institution
120	Escape from lawful custody
121	Assisting escape from lawful custody
122	Assisting escape of mentally defective person under detention for offence
<i>Part VII—Crimes Against Religion, Morality, and Public Welfare</i>	
124	Distribution or exhibition of indecent matter
125, 126	Indecent acts
130	Incest
131	Sexual intercourse with girl under care or protection
132	Sexual intercourse with girl under twelve
133	Indecency with girl under twelve
134	Sexual intercourse or indecency with girl between twelve and sixteen
135	Indecent assault on woman or girl
136	Conspiracy to induce sexual intercourse
137	Inducing sexual intercourse under pretence of marriage
138	Sexual intercourse with idiot or imbecile woman or girl
139	Indecent act between woman and girl
140, 141	Indecency between males
144	Indecency with animal
145	Criminal nuisance
146	Keeping place of resort for homosexual acts
147	Brothel-keeping
148	Living on earnings of prostitution
149	Procuring sexual intercourse
150	Misconduct in respect of human remains

SCHEDULE—*continued*

Section of Act	Offence
<i>Part VIII—Crimes Against the Person</i>	
151, 152, 153	Neglect to provide necessaries of life
154	Abandoning child under six
181	Concealing dead body of child
185	Procuring own miscarriage
186	Supplying means of procuring abortion
189	Injuring with intent
190	Injuring by unlawful act
192	Aggravated assault
193	Assault with intent to injure
194	Assault on a child, or by a male on a female
195	Cruelty to a child
196	Common assault
200 (2)	Poisoning with intent to cause inconvenience or annoyance
202	Setting traps, etc.
203 (2)	Endangering transport without intent to injure
206	Bigamy
207	Feigned marriage
208, 210	Abduction
<i>Part X—Crimes Against Rights of Property</i>	
227	Theft
228	Conversion or attempted conversion of motorcar, etc.
229	Being in possession of instrument for conversion
230	Criminal breach of trust
231	Fraudulently destroying document
232	Fraudulent concealment
233	Bringing stolen property into New Zealand
234	Robbery
236	Compelling execution of documents by force
237	Assault with intent to rob
238	Extortion by threats
239	Demanding with intent to steal
241	Burglary
242	Entering with intent
243	Being armed with intent to break or enter
244	Being disguised or in possession of instruments for burglary
246	Obtaining by false pretence
247	Obtaining credit fraudulently
248	Personation
249	Acknowledging instrument in false name
250	False statement by promoter
251	Falsifying accounts relating to public funds

## SCHEDULE—continued

Section of Act	Offence
<i>Part X—Crimes Against Rights of Property—continued</i>	
252, 253, 254	False accounting or statement by officer, employee, etc.
255	Issuing false dividend warrants
256	Concealing deeds and encumbrances
257	Conspiracy to defraud
258	Receiving property dishonestly obtained
262	Taking reward for recovery of stolen goods
265	Forgery
266	Uttering forged document
267, 268	Counterfeiting public or corporate seal
269	Sending false telegram
270	Procuring execution of document by fraud
271	Possessing forged banknote
272	Drawing document without authority
273	Using probate obtained by forgery or perjury
274	Paper or implements for forgery
275	Counterfeiting stamp
276, 277	Falsifying registers or extract therefrom
278	Uttering false certificate
279	Forging certificate
280, 281	Imitating authorised or customary mark
283, 284, 285, } 286, 287, 288, } 289, 290, 291, }	Preparations for coining, counterfeiting, altering, impairing, defacing, or melting coin, or possessing, uttering, buying, or selling, or importing, or exporting counterfeit coin
292	
294, 295	Arson or attempted arson
296, 297	Damage or attempted damage to property by fire or explosive
298	Wilful damage
299	Wilful waste or diversion of water, gas, or electricity
300	Interfering with means of transport
301, 302	Wrecking or attempting to wreck
303	Interfering with signals
304	Interfering with mines
305	Providing explosive to commit a crime
<i>Part XI—Threatening, Conspiring, and Attempting to Commit Offences</i>	
306	Threatening to kill or do grievous bodily harm
307	Threatening to destroy property
308	Threatening acts
309	Conspiring to prevent collection of rates or taxes"