

House of Representatives

Supplementary Order Paper

Tuesday, 15 February 2011

Courts and Criminal Matters Bill

Proposed amendments

Hon Georgina te Heuheu, in Committee, to move the following amendments:

Clause 2

To insert the following subclause before *subclause (1)* (before line 4 on page 8):

(1AA) The following provisions come into force on the day after the date on which this Act receives the Royal assent:

- (a) **sections 3 and 5 to 7A:**
- (b) **sections 39, 42, 44, 45, and 47(1AA) and (1):**
- (c) **sections 51, 63, 67** (but only to the extent that it relates to **section 88B** of the Summary Proceedings Act 1957), **69** (but only to the extent that it relates to **section 92I** of the Summary Proceedings Act 1957), and **77:**
- (d) **subpart 1 of Part 4** (except **section 79A**):
- (e) **subparts 3 and 9 of Part 4:**
- (f) **subparts 11 and 12 of Part 4** (except **sections 113(2) and 115(7)**).

Subclause (1): to omit “This Act” (line 4 on page 8) and substitute “The rest of this Act”.

Subclause (2): to omit this subclause (lines 1 to 4 on page 9) and substitute the following subclause:

- (2) Any provisions in **Parts 3 and 4** (except **sections 82A to 82C, 89 to 90, 93 to 94, and 97A to 97D**) that are not in force on the expiry of the period of 15 months that starts on the date on which this Act receives the Royal assent come into force (despite **subsection (1)**) on that expiry.

Part 1

Amendments to District Courts Act 1947

New clauses 7A and 7B

To insert the following clauses after *clause 7* (after line 6 on page 10):

7A Deputy bailiffs

Section 16 is amended by inserting the following subsection after subsection (1):

“(1A) A person who is appointed as a deputy bailiff may exercise the powers and perform the functions and duties of a deputy bailiff of any District Court.”

7B New section 28I substituted

Section 28I is repealed and the following section substituted:

“28I Enforcement of fines

“(1) If a court exercising jurisdiction under this Part imposes 1 or more fines, Part 3 of the Summary Proceedings Act 1957 applies subject to any necessary modifications and subject to the modification in **subsection (2)**.

“(2) Despite section 90 of the Summary Proceedings Act 1957, the period of imprisonment that the court may impose on the offender for the non-payment of the fine or fines must not exceed, for each fine, the lesser of—

“(a) the maximum term of imprisonment to which the offender was liable on conviction; or

“(b) a period of 2 years.

“(3) In this section, **fine** has the meaning given to it in **section 79** of the Summary Proceedings Act 1957.”

Clause 9(2)

To add the following new subsections (after line 28 on page 10):

“(5C) Despite **subsections (5) and (5A)**, an attachment order may be made, and proceedings for such an attachment order may be commenced, immediately after a judgment or order for the payment of money is filed if,—

“(a) in the case of a money order (as defined in **section 19(1A)** of the Disputes Tribunals Act 1988 or, as the case may be, **section 78(2AB)** of the Residential Tenancies Act 1986),—

“(i) the money order records that the parties have agreed to enforce the payment of money specified in the money order by way of an attachment order made under this Act; and

“(ii) **section 19(1B)** of the Disputes Tribunals Act 1988 or, as the case may be, **section 78(2AC)** of

- the Residential Tenancies Act 1986 is complied with; or
- “(b) in the case of a judgment or order made by a court,—
 - “(i) the judgment or order records that the parties have agreed to enforce the payment of money specified in the judgment or order by way of an attachment order made under this Act; and
 - “(ii) **subsection (5D)** is complied with.
- “(5D) This subsection is complied with if—
- “(a) the judgment or order was given or made at or following a hearing at which both parties were present; and
 - “(b) the party ordered to pay money consented to the payment of the money being enforced by way of an attachment order; and
 - “(c) both parties agreed on the terms of the attachment order, including the details specified in **section 84H**; and
 - “(d) the judgment or order includes the details specified in **section 84H**.
- “(5E) Nothing in **subsection (5D)(c)** allows the parties to agree on a net amount to be paid for an earnings period that would otherwise derogate from **section 84I(3)**.
- “(5F) For the purposes of **subsection (5D)**, **hearing** includes a judicial settlement conference held under the rules.

Clause 12

New section 84AD(4): to omit this subsection (lines 10 to 15 on page 13) and substitute the following subsection:

- “(4) The summons must be served on the judgment debtor by a person referred to in **section 108A(3)(a)** and, at the same time as the summons is served, the judgment debtor must be notified of the court’s power to cancel the hearing in the circumstances referred to in **subsection (6)**.

New section 84B(4): to add “by a person referred to in **section 108A(3)(b)**” (line 25 on page 14).

New section 84C(1): to insert after “summons” (line 34 on page 14) “issued under **section 84AD or 84B**”.

New section 84C(3): to omit *paragraph (a)* (lines 9 to 16 on page 15) and substitute the following paragraph:

- “(a) a summons was served on an officer of the judgment debtor (the **relevant officer**) at least 3 working days or any shorter period agreed under **section 84AD(5) or 84B(5)** before the date of the hearing to which the summons relates; and

New section 84C(5)(d): to insert after “Registrar,” (line 37 on page 15) “then”.

New section 84E(2)(a): to omit “continued,” (line 36 on page 16) and substitute “continued (as the case may be), and”.

Clause 14

New section 84G(1): to insert the following paragraph before *paragraph (a)* (before line 33 on page 17):

“(aa) in the circumstances referred to in **section 79(5C)**; or

New section 84G: to insert the following subsection after *subsection (1)* (after line 35 on page 17):

“(1A) If an application is made under **subsection (1)(b)**,—

“(a) the party who makes the application must serve a copy of it on the other party; and

“(b) the court may make the attachment order even though the other party has not had the opportunity to make representations to the court about the application.

New section 84G(2): to omit this subsection (lines 1 to 3 on page 18) and substitute the following subsection:

“(2) If an attachment order is made, it must be served on the employer to whom the order relates, the judgment creditor, and the judgment debtor.

Heading to new section 84H: to omit this heading (line 8 on page 18) and substitute the following heading: “**Content of attachment orders**”.

New section 84H(1)(c): to insert after “amount” (line 15 on page 18) “or percentage”.

New section 84H(1)(d): to insert after “amount” (line 17 on page 18) “or percentage”.

New section 84H(2): to omit this subsection (lines 25 and 26 on page 18).

Clause 15(4)

Paragraph (b) of the definition of **protected earnings** in *new section 84I(6)*: to insert after “amount” (line 4 on page 20) “or percentage”.

New clause 16A

To insert the following clause after *clause 16* (after line 22 on page 20):

16A New section 84K substituted

Section 84K is repealed and the following section substituted:

“84K Wrongful treatment of employee

Every employer commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who dismisses any employee or alters any employee’s position in the employer’s business or undertaking to the employee’s prejudice by reason of—

“(a) the employee having been ordered to pay money owing under 1 or more judgments or orders imposed by a District Court or the High Court for the payment of a sum of money; or

“(b) an attachment order having been served on the employer; or

- “(c) the employer becoming aware that an attachment order is being made or has been made in respect of the employee.”

Clause 17

To omit *subclause (1)* (lines 24 and 25 on page 20) and substitute the following subclause:

- (1) Section 84L is amended by repealing subsection (3) and substituting the following subsection:
- “(3) If the judgment debtor is a servant of the Crown, an attachment order may be made against the Crown as employer.”

Clause 18

New section 84M: to insert the following subsection after *subsection (3)* (after line 15 on page 21):

- “(3A) The court may vary, suspend, or discharge the attachment order even though the other party has not had the opportunity to make representations to the court about the application.

New section 84M(4): to omit this subsection (lines 16 to 21 on page 21) and substitute the following subsections:

- “(4) If an attachment order is varied, suspended, or discharged under **subsection (3)**, notice of the variation, suspension, or discharge must be served on the employer to whom the order relates, the judgment creditor, and the judgment debtor.
- “(4A) A variation, suspension, or discharge of an attachment order takes effect when the notice referred to in **subsection (4)** is served on the employer, unless (in the case of a discharge) **subsection (5)** applies.

Clause 19(2): new section 84N(1A)

To insert after “hearing” (line 34 on page 21) “that was attended by the judgment creditor or his or her representative”.

Clause 20

To omit this clause (lines 1 to 22 on page 22) and substitute the following clause:

20 New sections 84O to 84OB substituted

Section 84O is repealed and the following sections are substituted:

“84O Contempt procedures

- “(1) No order may be made under **subsection (3)** unless any of the circumstances described in **subsection (2)** apply and the court is satisfied beyond reasonable doubt that—
- “(a) the judgment debtor has sufficient means to pay the judgment debt but refuses to do so; and

- “(b) all other methods of enforcing the judgment have been considered or tried and are inappropriate or unsuccessful.
- “(2) The circumstances referred to in **subsection (1)** are as follows:
 - “(a) a financial statement has been filed in court;
 - “(b) the court has been provided with information about the judgment debtor’s means for satisfying the judgment debt under **section 84AC**;
 - “(c) a hearing under **section 84AD** or a financial assessment hearing has taken place.
- “(3) The court may, on the application of a judgment creditor, order the judgment debtor to do community work, not exceeding 200 hours, as the court thinks fit.
- “(4) Alternatively, the court may impose any of the orders referred to in section 79(1), (3), or (4) or do any of the things referred to in **section 84E(2)** instead of or in addition to ordering the judgment debtor to do community work under **subsection (3)**.
- “(5) An order made under **subsection (3)** has effect as if it were a sentence of community work, and the relevant provisions of Part 2 of the Sentencing Act 2002, with any necessary modifications, apply accordingly.
- “(6) If a District Court, acting under this section, orders a respondent to do community work, the judgment debtor has the same right of appeal to the High Court against the order as the judgment debtor would have had if the judgment debtor had been convicted and sentenced by the District Court on an information.
- “(7) An order made under **subsection (3)** does not operate to extinguish or affect the liability of the judgment debtor to pay the judgment debt.

“**84OA Process for dealing with application for contempt procedures**

- “(1) On receipt of an application under **section 84O(3)**, the Registrar must—
 - “(a) appoint a time and place for the hearing of the application if satisfied, on the basis of information provided with the application, that the judgment debtor has sufficient means to pay the judgment debt but refuses to do so; or
 - “(b) if not so satisfied, refer the application to a Judge.
- “(2) On the referral of the application under **subsection (1)(b)**, the Judge must—
 - “(a) deal with the application on the papers; and

- “(b) consider whether he or she is satisfied, on the basis of information provided with the application, that the judgment debtor has sufficient means to pay the judgment debt but refuses to do so.
- “(3) If the Judge is so satisfied, he or she must direct the Registrar to appoint a time and place for the hearing of the application.
- “(4) If the Judge is not so satisfied, he or she must decline the application.
- “(5) If the Registrar appoints a time and place for the hearing of the application under **subsection (1)(a) or (3)**, the judgment debtor must be served with a copy of the application, and a notice of the time and place so appointed, by a person referred to in **section 108A(3)(c)**.
- “(6) The Registrar must notify the judgment creditor of the time and place so appointed.
- “(7) If the application is declined under **subsection (4)**, the Registrar must notify the judgment creditor that the application has been declined.

“84OB Warrant to arrest may be issued if judgment debtor cannot be served or fails to appear at hearing

- “(1) If a copy of the application cannot be served on the judgment debtor under **section 84OA(5)**, or if the judgment debtor fails to appear at the hearing of the application, a Judge or Registrar may issue a warrant to arrest the judgment debtor and bring the judgment debtor before the court as soon as possible.
- “(2) A warrant under **subsection (1)** ceases to have effect if the judgment debtor pays, or causes to be paid, the amount due under the judgment debt.
- “(3) If a judgment debtor is arrested under a warrant issued under **subsection (1)**, the following provisions apply:
 - “(a) the judgment debtor must be brought before a Judge or, if a Judge is not available, the Registrar:
 - “(b) if the judgment debtor is brought before the Registrar, the Registrar must appoint a time and place for the judgment debtor to appear before a Judge for the purpose of commencing or continuing the hearing:
 - “(c) the judgment debtor is bailable as of right:
 - “(d) section 46 of the Summary Proceedings Act 1957 and Parts 1 to 3 of the Bail Act 2000 apply, with any modifications that may be necessary, as if the hearing of the application referred to in **subsection (1)** were the hearing of a charge:
 - “(e) if the judgment debtor cannot practicably be brought immediately before a Judge or a Registrar, then any Police employee or any bailiff may take the bail bond

of the judgment debtor, and Parts 1 to 3 of the Bail Act 2000 apply with any necessary modifications as if the bail bond were taken by a Police employee under section 21(1) of that Act.”

Clause 26

To add the following subclause as *subclause (2)* (after line 28 on page 23):

- (2) Section 88 is amended by omitting “5 days” and substituting “7 days”.

Clause 27

To add the following subclause as *subclause (2)* (after line 32 on page 23):

- (2) Section 89 is amended by adding the following subsection:
“(3) The jurisdiction of a court under this section may be exercised by the Registrar.”

Clause 28

To add the following subclause as *subclause (2)* (after line 4 on page 24):

- (2) Section 90(1)(a) is amended by inserting “free of all ownership interests and other proprietary interests held in them before the sale” after “those goods”.

Clause 29

To add the following subclause as *subclause (2)* (after line 7 on page 24):

- (2) Section 91 is amended by adding the following subsection as subsection (2):
“(2) The purchaser of property sold under this section obtains, by virtue of this section, good title to the property free of all ownership interests and other proprietary interests held in the property before that sale.”

New clause 29A

To insert the following clause after *clause 29* (after line 7 on page 24):

29A New section 91A inserted

The following section is inserted after section 91:

“91A Personal property securities register to be checked

- “(1) If property is seized under a warrant to seize property, the Registrar must, on the next working day after the property is seized, check whether a financing statement that relates to the property has been registered on the personal property securities register kept under the Personal Property Securities Act 1999.
“(2) If a financing statement has been registered, the bailiff must promptly notify the person named as the secured party in the financing statement of the following:
“(a) that the court may, under section 89, sell the property after the expiration of 7 days from the date of seizure

if the judgment debt remains unpaid and no claim has been made in respect of the property by a person other than the judgment debtor:

- “(b) the rights that may be available to the person under sections 93 and 94.”

Clause 31

To add the following subclause as *subclause (2)* (after line 14 on page 24):

- (2) Section 93 is amended by adding the following subsection:
“(4) The purchaser of property sold under this section obtains, by virtue of this section, good title to the property free of all ownership interests and other proprietary interests held in the property before that sale.”

Clause 32

To insert the following subclause (before line 16 on page 24):

- (1AA) Section 94 is amended by omitting the heading and substituting the following heading: “**Third party claim process**”.

To add the following subclause as *subclause (2)* (after line 17 on page 24):

- (2) Section 94 is amended by inserting the following subsection after subsection (1):
“(1A) If a claim is made under section 93 in respect of property that is the subject of a financing statement registered on the personal property securities register kept under the Personal Property Securities Act 1999, the bailiff must obtain from the Registrar a summons calling before the court the party making the claim.”

Clause 34

New sections 108A and 108B: to omit these sections (line 25 on page 24 to line 30 on page 27) and substitute the following sections:

“**108A Service of documents under this Part**

- “(1) If a person is required to serve a document under **sections 84A to 94**, the requirement may be met in any of the following ways:
“(a) by—
“(i) delivering the document to the recipient or bringing it to the recipient’s notice if the recipient refuses to accept it; or
“(ii) leaving the document for the recipient at the recipient’s place of residence with another person who appears to be of or over the age of 14 years; or
“(iii) leaving the document for the recipient at the recipient’s place of business or place of work with another person:

- “(b) by sending the document to the recipient by prepaid post addressed to the recipient’s last known place of residence or business:
- “(c) if the recipient has a known electronic address, by sending it to the recipient at that address in electronic form.
- “(2) For recipients to whom **section 108B** applies, **subsection (1)** is modified to the extent provided by that section.
- “(3) Despite **subsection (1)**, the following documents must be served in accordance with **subsection (1)(a)** or, where applicable, **section 108B(2)(b) or (4)**:
- “(a) a summons issued under **section 84AD**, which must be served by an authorised process server:
- “(b) a summons issued under **section 84B**, which must be served by or on behalf of the judgment creditor or by an authorised process server:
- “(c) a copy of the application and notice of the time and place appointed for the hearing of the application that is required to be served on the judgment debtor under **section 84OA(5)**, which must be served by or on behalf of the judgment creditor or by an authorised process server.
- “(4) If a document is served by sending it by prepaid post, then, unless the contrary is shown, the document is served when it would have been delivered in the ordinary course of post, and in proving service it is sufficient to prove that the letter concerned was properly addressed and posted.
- “(5) This section is subject to **section 84L(4)(a)**.
- “(6) In this section and in **section 108B**,—
- “**authorised process server** means a person who is—
- “(a) a constable; or
- “(b) a Police employee authorised by the Commissioner of Police to serve documents under this Act; or
- “(c) an officer of the court; or
- “(d) a person who is authorised to serve documents under this Part under a general or particular authority given by a District Court Judge or Registrar; or
- “(e) an officer or employee of a corporation that is authorised by the Secretary for Justice to serve documents under this Part
- “**officer**, in relation to a body corporate or Crown organisation, includes a person involved in the decision making or management of the body or organisation
- “**recipient** means the person required to be served
- “**serve**, in relation to a document,—
- “(a) includes giving the document to a person; but

“(b) does not include filing the document in a court under rules of court.

“**108B Service provisions modified in special cases**

“(1) If a document is served in accordance with this section, it is, for the purposes of **section 108A**, taken to be served on the recipient concerned.

“(2) If the recipient is a body corporate or a Crown organisation, a document may be served—

“(a) if it may be served under **section 108A(1)(b) or (c)**, by being sent, in accordance with either of those paragraphs, to the body corporate or Crown organisation for the attention of an officer or employee of that body or organisation:

“(b) by being delivered to an officer or employee of the body corporate or Crown organisation at its head office, principal place of business, or registered office, or bringing it to the officer’s notice or the employee’s notice if that person refuses to accept it.

“(3) If a solicitor has signed a memorandum stating that the solicitor is authorised to accept service of a document on behalf of the recipient, the document may be served on the solicitor in any way authorised by **section 108A**.”

“(4) In addition to the ways of service authorised by **section 108A**, a document may be served by delivering or sending it to, or by leaving it with,—

“(a) in the case of a recipient who lives or works on board a vessel (including a vessel belonging to the Royal New Zealand Navy), the person on board who is apparently in charge of the vessel:

“(b) in the case of a recipient who is a member of the New Zealand Armed Forces, the officer apparently in command of the unit or detachment to which the recipient belongs:

“(c) in the case of a recipient who is a prisoner, the manager or other officer apparently in charge of the prison.”

Clause 35

Subclause (2): to omit this subclause (lines 34 to 37 on page 27) and substitute the following subclause:

(2) Section 116A is amended by repealing subsection (1) and substituting the following subsections:

“(1) If any summons or any other document is served by a person who is authorised to do so under this Act, the rules, or any other enactment, the service may be proved—

- “(a) by an endorsement on a copy of the document or, where applicable, on a printout that records an electronic document, showing the fact, date, time, and mode of service; or
- “(b) in any other manner prescribed by the rules.

“(1A) An endorsement under **subsection (1)(a)** must be signed by the person who served the summons or document.”

Subclause (4): to omit this subclause (lines 3 to 11 on page 28).

Clause 36

New section 122(3)(ib): to omit this paragraph (lines 15 and 16 on page 28) and substitute the following paragraph:

- “(ib) providing for documents to be sent in electronic form under **section 108A(1)(c)**, including (without limitation) provisions for the retention of records that evidence the fact that, and the date and time when, such documents were sent to electronic addresses.”

New clause 37A

To insert the following clause after *clause 37* (after line 19 on page 28):

37A New section 123AA inserted

The following section is inserted after section 123:

“123AA Chief executive of Ministry of Justice may approve forms

- “(1) The chief executive of the Ministry of Justice may approve and issue forms that the chief executive considers necessary for the purposes of this Act, not being forms required to be prescribed by regulations or rules made under this Act.
- “(2) Without limiting **subsection (1)**,—
- “(a) more than 1 form may be approved and issued in relation to the same matter; and
- “(b) a form may be described by any name that the chief executive considers appropriate even though it relates to a matter that is described by a different name under this Act, so long as the form refers to the appropriate provision of this Act.
- “(3) Every document purporting to be a form approved and issued by the chief executive under and for the purposes of this Act is deemed to have been so approved and issued unless the chief executive otherwise certifies.”

New clause 38A

To insert the following clause after *clause 38* (after line 22 on page 28):

38A Transitional provisions

- (1) **Section 28I** of the principal Act, as inserted by **section 7B** of this Act, does not apply in respect of any fine (as defined

in **section 79** of the Summary Proceedings Act 1957) that was imposed before the commencement of **section 7B** by a District Court in the exercise of its jurisdiction under Part 2A of the principal Act.

- (2) A person affected by any order or direction that was made before the commencement of **section 19** of this Act by a Registrar under section 84B of the principal Act (as it read immediately before that commencement) may, on and after that commencement, apply to a District Court Judge for a review of the order or direction under section 84N of the principal Act (as it read immediately before that commencement) as if this Act had not been enacted.
- (3) If, before the commencement of **section 12** of this Act, the examination of a judgment debtor had commenced under section 84B of the principal Act (as it read immediately before that commencement) as to the judgment debtor's means for satisfying the judgment debt, the District Court may, on and after that commencement, do any 1 or more of the things referred to in section 84E(1) of the principal Act (as it read immediately before that commencement) as if this Act had not been enacted.
- (4) If, before the commencement of **section 20** of this Act, a judgment debtor was examined under section 84B of the principal Act (as it read immediately before that commencement) as to the judgment debtor's means for satisfying the judgment debt, a judgment creditor may, on and after that commencement, apply for an order of community work under section 84O(1) of the principal Act (as it read immediately before that commencement) as if this Act had not been enacted.

Part 2

Amendments to Land Transport Act 1998

Clause 43

Definition of **resolved** in *new section 91A*: to omit "**section 79(1)**" (line 29 on page 30) and substitute "**section 79**".

New section 91AB(2): to insert after "driver licence stop order" (lines 12 and 13 on page 32) ", or, where applicable, on a printout that records an electronic document,".

New section 91G(5): to insert after "surrendered" (lines 7 and 8 on page 38) "and forwarded".

New section 91G(5): to omit "photo" (line 9 on page 38) and substitute "photographic".

New section 91G(6): to omit "photo" (line 14 on page 38) and substitute "photographic".

New section 91H(4): to insert after “surrendered” (lines 27 and 28 on page 38) “and forwarded”.

New section 91H(4): to omit “photo” (line 29 on page 38) and substitute “photographic”.

New section 91H(5): to omit “photo” (line 34 on page 38) and substitute “photographic”.

Clause 47

To insert the following subclause before *subclause (1)* (before line 13 on page 40):

(1AA) Section 105 is amended by repealing subsection (6) and substituting the following subsection:

“(6) If the court makes an order under this section, the Agency must, subject to the provisions of this Act, issue to the person entitled to it a limited licence in accordance with the order even though—

“(a) the person’s driver licence is suspended under section 90; or

“(b) the person is disqualified from holding or obtaining a driver licence.”

Subclause (2): new subsection (7A)(b): to insert after “when” (line 27 on page 40) “a driver licence stop order is”.

Subclause (3): to omit this subclause (lines 31 and 32 on page 40) and substitute the following subclauses:

(3) Section 105(8) is amended by inserting “photographic driver” after “his or her”.

(4) Section 105 is amended by inserting the following subsection after subsection (8):

“(8A) The holder of a limited licence that is revoked under **subsection (7A)** must immediately, and whether demand is made on the holder or not, surrender his or her photographic driver licence to an employee or agent of the Ministry of Justice or at an office of that Ministry or at the court.”

Part 3

Amendments to Summary Proceedings Act 1957

Clause 55: new section 24(1)(e)

To omit “in accordance with rules made under this Act” (lines 18 and 19 on page 44).

Clause 56

To insert the following subclause before *subclause (1)* (before line 22 on page 44):

(1AA) Section 78B(1)(a) is amended by omitting “, whether on the basis of a statutory declaration or evidence given before the

Judge,” and substituting “on the basis of information provided with the application”.

To insert the following subclause after *subclause (1)* (after line 31 on page 44):

(1A) Section 78B(1)(a) is amended by adding the following subparagraph:

“(viii) the defendant paid the infringement fee to the informant at the address specified in the infringement notice before or within 28 days after service on the defendant of a reminder notice in respect of the offence to which the notice relates; or”.

Subclause (2): to omit this subclause (lines 32 to 36 on page 44) and substitute the following subclauses:

(2) Section 78B is amended by inserting the following subsections after subsection (1):

“(1A) No more than 1 application, made in reliance on the ground stated in **subsection (1)(a)(ii)**, may be granted in respect of the same defendant for the same infringement offence.

“(1B) An application under subsection (1) may be made—

“(a) in writing in a form approved under **section 209A**; or

“(b) electronically in a manner approved by the chief executive of the Ministry of Justice.

“(1C) An application under subsection (1) may be—

“(a) made to any Court; and

“(b) considered in another Court besides the one to which it is made.”

(2A) Section 78B(2)(c) is amended by inserting “if both parties agree,” after “immediately”.

Subclause (3): *new section 78B(4)*: to omit “subsection (1)(b)” (lines 4 and 5 on page 45) and substitute “**subsection (1)(a)(viii)** or (1)(b)”.

Subclause (3): to insert the following subsection after *new section 78B(4)* (after line 5 on page 45):

“(4AA) A Judge or Registrar must deal with an application under subsection (1) on the papers unless the Judge or Registrar considers that a hearing is necessary.

Subclause (3): *new subsection 78B(4B)*: to omit this subsection (lines 12 to 29 on page 45) and substitute the following subsections:

“(4B) Despite **subsection (4A)**, if, before an application under subsection (1) is made, any property has been seized under a warrant to seize property to enforce the order to which that application relates,—

“(a) any seized property that has not been sold, assigned, applied, released, or otherwise disposed of must be retained under **section 100B(3)** while the application is pending; or

- “(b) if the seized property has been sold but the proceeds of sale have not been applied in accordance with **section 100M or 100Q**, the proceeds must be retained while the application is pending.
- “(4BA) If the order to which the application relates continues in effect after the application is determined or is discontinued, the property must be dealt with, and any fees and costs payable under an enactment in respect of the property are payable, as if the application had not been made.
- “(4BB) If, on the determination of the application, the order is set aside or ceases to have effect in accordance with subsection (5), the owner—
- “(a) is entitled to—
- “(i) the return of the property if the property has been retained in accordance with **subsection (4B)(a)**; or
- “(ii) the proceeds of any sale if the proceeds have been retained in accordance with **subsection (4B)(b)**; and
- “(b) is not liable for any fees and costs payable under an enactment in respect of the property.

Subclause (3): new subsection 78B(4D): to omit this subsection (lines 6 to 15 on page 46) and substitute the following subsection:

- “(4D) If, under subsection (2)(b), a Judge or Registrar authorises the informant to serve on the defendant a new reminder notice, the defendant may not give notice requesting a hearing in respect of the infringement offence to which the notice relates if the Registrar is satisfied that the notice was filed following the defendant’s default in paying 1 or more instalments under an arrangement entered into under section 21(3A) or (3C)(a).

Clause 57

New section 78C(3): to omit this subsection (lines 1 to 10 on page 47) and substitute the following subsections:

- “(3) In the case of an infringement notice issued for an owner liability offence, the defendant is not eligible to rely on the ground stated in **section 78B(1)(a)(ii)** unless the Registrar is satisfied that, at the date of the commission of that offence, the defendant complied or was not responsible for complying with any applicable obligations imposed on the defendant by Part 17 of the Land Transport Act 1998 and any regulations made under that Act in respect of the motor vehicle to which the infringement notice relates.

“(3A) The Registrar must be satisfied of the matters referred to in **subsection (3)** on the basis of documentary evidence of a kind approved by the Registrar.

Clause 58

New section 79(1): to insert the following definition before the definition of **chief executive** (before line 19 on page 47):

“**amount of reparation** or **reparation** means—

- “(a) any amount that is required to be paid under a sentence of reparation; or
- “(b) any amount that is required to be paid under an order of reparation

Paragraph (a) of the definition of **fine** in *new section 79(1)*: to omit “in respect of an offence” (lines 29 and 30 on page 47).

Paragraph (b) of the definition of **fine** in *new section 79(1)*: to omit “levy payable under section 105B of the Sentencing Act 2002” (lines 33 and 34 on page 47) and substitute “offender levy”.

New section 79(1): to insert the following definitions after the definition of **negotiable instrument** (after line 33 on page 48):

“**offender levy** means a levy imposed under section 105B of the Sentencing Act 2002

“**order of reparation** means—

- “(a) an order made under section 106, 108, or 110 of the Sentencing Act 2002; or
- “(b) an order made in respect of a child, or any parent or guardian of that child, under section 84(1)(b) of the Children, Young Persons, and Their Families Act 1989; or
- “(c) an order made in respect of a young person, or any parent or guardian of that young person, under section 283(f) or (g) of the Children, Young Persons, and Their Families Act 1989; or
- “(d) an order that—
 - “(i) requires the payment of any amount as compensation or restitution to the victim of an offence against any enactment; and
 - “(ii) is declared by the Governor-General, by Order in Council, to be an order of reparation for the purposes of this Part

Paragraph (a)(ii) of the definition of **resolved** in *new section 79(1)*: to omit “83(2)(c), 87(1)(c), or 88(3)(a)” (line 14 on page 49) and substitute “**83(1B)(b)**, 83(2)(c), **87(2)(c)**, **87B(1A)**, or **88AE(1)(a)**”.

Paragraph (a)(iii) of the definition of **resolved** in *new section 79(1)*: to omit “section 87(1)(b) or 88(3)(a)” (lines 15 and 16 on page 49) and substitute “**section 87(2)(b) or 88AE(1)(a)**”.

Paragraph (a)(iv) of the definition of **resolved** in *new section 79(1)*: to omit “section 88(3)(fb)” (lines 17 and 18 on page 49) and substitute “**section 88AE(1)(h)**”.

Paragraph (a)(v) of the definition of **resolved** in *new section 79(1)*: to omit this subparagraph (lines 19 and 20 on page 49).

Paragraph (c) of the definition of **resolved** in *new section 79(1)*: to omit “section 88(3)(g)” (line 24 on page 49) and substitute “**section 88AE(1)(i)**”.

Definition of **substituted sentence** in *new section 79(1)*: to omit “, or any sentence imposed, under section 88(3)” (line 12 on page 50) and substitute “under section 83(2)(a) or **88AE(1)(b)** or any sentence imposed under **section 88AE(1)(c) to (e)**”.

New section 79(2)(b)(iii): to omit “further” (line 6 on page 51).

New sections 79A and 79B: to omit these sections (line 27 on page 51 to line 33 on page 53) and substitute the following sections:

“79A Service of documents under this Part

“(1) If a person is required to serve a document under this Part, the requirement may be met in any of the following ways:

“(a) by an authorised process server—

“(i) delivering the document to the recipient or bringing it to the recipient’s notice if the recipient refuses to accept it; or

“(ii) in the case of a written caution,—

“(A) leaving the document for the recipient at the recipient’s place of residence with another person (other than the defendant) who appears to be of or over the age of 14 years; or

“(B) leaving the document for the recipient at the recipient’s place of business or place of work with another person (other than the defendant); or

“(iii) in any other case,—

“(A) leaving the document for the recipient at the recipient’s place of residence with another person who appears to be of or over the age of 14 years; or

“(B) leaving the document for the recipient at the recipient’s place of business or place of work with another person:

“(b) by sending the document to the recipient by prepaid post addressed to the recipient’s last known place of residence or business:

“(c) if the recipient has a known electronic address, by sending it to the recipient at that address in electronic form:

- “(d) if authorised by regulations made under section 212, by the Registrar or the chief executive conveying, in accordance with those regulations, the contents of the document to the recipient orally (including by telephone).
- “(2) However, a District Court Judge or Justice or Community Magistrate or the Registrar may, if he or she thinks fit, direct that a document must be served in accordance with **subsection (1)(a)(i)**.
- “(3) For recipients to whom **section 79B** applies, **subsection (1)** is modified to the extent provided by that section.
- “(4) Despite **subsection (1)**, a written caution under **section 93** must be served by an authorised process server in accordance with **paragraph (a)** of that subsection or, where applicable, **section 79B(2)(b) or (4)**.
- “(5) If a document is served by sending it by prepaid post, then, unless the contrary is shown, the document is served when it would have been delivered in the ordinary course of post, and in proving service it is sufficient to prove that the letter concerned was properly addressed and posted.
- “(6) In this section and in **section 79B**,—
- “**authorised process server** means a person who is—
- “(a) a constable; or
- “(b) a Police employee authorised by the Commissioner of Police to serve documents under this Part; or
- “(c) an officer of the Court; or
- “(d) a person who is authorised to serve documents under this Part under a general or particular authority given by a District Court Judge or Registrar; or
- “(e) an officer or employee of a corporation that is authorised by the Secretary for Justice to serve documents under this Part
- “**officer**, in relation to a body corporate or Crown organisation, includes a person involved in the decision making or management of the body or organisation
- “**recipient** means the person required to be served
- “**serve**, in relation to a document,—
- “(a) includes giving the document to a person; but
- “(b) does not include filing the document in a Court under rules of court or otherwise.

“**79B Service provisions modified in special cases**

- “(1) If a document is served in accordance with this section, it is, for the purposes of **section 79A**, taken to be served on the recipient concerned.

- “(2) If the recipient is a body corporate or a Crown organisation, a document may be served—
- “(a) if it may be sent under **section 79A(1)(b) or (c)** by being sent, in accordance with either of those paragraphs, to the body corporate or Crown organisation for the attention of an officer or employee of that body or organisation:
 - “(b) by an authorised process server delivering the document to an officer or employee of the body corporate or Crown organisation at its head office, principal place of business, or registered office, or bringing it to the officer’s notice or the employee’s notice if that person refuses to accept it.
- “(3) If a solicitor has signed a memorandum stating that the solicitor is authorised to accept service of a document on behalf of the recipient, the document may be served on the solicitor in any way authorised by **section 79A**.
- “(4) In addition to the ways of service authorised by **section 79A**, an authorised process server may, in the following cases, serve a document by delivering or sending it to, or by leaving it with,—
- “(a) in the case of a recipient who lives or works on board a vessel (including a vessel belonging to the Royal New Zealand Navy), the person on board who is apparently in charge of the vessel:
 - “(b) in the case of a recipient who is a member of the New Zealand Armed Forces, the officer apparently in command of the unit or detachment to which the recipient belongs:
 - “(c) in the case of a recipient who is a prisoner, the manager or other officer apparently in charge of the prison.

New section 79C(2)(a) to (d): to omit these paragraphs (lines 4 to 8 on page 54) and substitute the following paragraphs:

- “(a) a Registrar; or
- “(b) a bailiff; or
- “(c) any other officer of the Court; or
- “(d) the chief executive; or
- “(e) a person authorised by the chief executive.

New section 79D(1): to add “; or” (line 19 on page 54) and also to add the following paragraph (after line 19 on page 54):

- “(c) in any manner prescribed by regulations.

New section 79D(2) and (3): to omit these subsections (lines 20 to 34 on page 54) and substitute the following subsection:

- “(2) An endorsement under **subsection (1)(b)** must be signed by the person who served the document or who made the notification.

New clause 59A

To insert the following clause after *clause 59* (after line 5 on page 55):

59A Fines generally payable within 28 days

Section 80 is amended by inserting “or the Sentencing Act 2002” after “this Act”.

Clauses 60 and 61

To omit these clauses (lines 6 to 17 on page 55) and substitute the following clauses:

60 New section 81 substituted

Section 81 is repealed and the following section substituted:

81 Time to pay or payment by instalments

- “(1) If a fine is payable, the Court may—
- “(a) make an order doing either or both of the following:
 - “(i) allowing a greater time than 28 days for payment;
 - “(ii) allowing payment to be made by instalments; or
 - “(b) direct the Registrar to determine whether to enter into an arrangement with the defendant allowing greater time to pay or to pay by instalments, or both, under **section 86**.
- “(2) If an amount of reparation or an offender levy (whenever imposed) is payable, an order made under **subsection (1)(a)** or an arrangement entered into under **section 86**—
- “(a) must include payment of—
 - “(i) the reparation;
 - “(ii) the levy; and
 - “(b) must not result in amounts owed by a defendant being paid in a different order of priority to that set out in **section 86E**.
- “(3) The Court may take into account information received from any source about the defendant’s financial capacity before making an order under **subsection (1)(a)**.
- “(4) If the Court makes an order under **subsection (1)(a)** and the Court is subsequently satisfied either that the defendant provided false or misleading information about the defendant’s financial capacity before the order was made or that the defendant’s financial capacity has changed significantly since the order was made, the Court may, after giving the defendant the opportunity to be heard, vary, suspend, or cancel the order.”

61 New section 82 substituted

Section 82 is repealed and the following section substituted:

“82 Financial capacity of defendant

- “(1) If a Court, on the determination of a complaint, proposes to order that the defendant pay a fine, the Court must take into account the defendant’s financial capacity, and sections 41 to 43 of the Sentencing Act 2002 apply with any necessary modifications.
- “(2) If a Court is considering making an order under **section 81(1)(a) or 83(1)**, or makes a direction under **section 81(1)(b)** of this Act or **section 36(1)(c)** of the Sentencing Act 2002, the Court may direct that the defendant make a declaration as to financial capacity (in which case sections 42 to 43 of the Sentencing Act 2002 apply with any necessary modifications).”

New clause 61A

To insert the following clause after *clause 61* (after line 17 on page 55):

61A Order for immediate payment of fine

- (1) Section 83 is amended by repealing subsections (1) and (1A) and substituting the following subsections:
- “(1) If a fine is payable, the Court may order the defendant to pay the fine immediately if,—
- “(a) in the case of a fine that consists of or includes an amount of reparation, the Court is satisfied that the defendant has sufficient means to pay the fine immediately; or
- “(b) in any other case, the Court is satisfied that the defendant has sufficient means to pay the fine immediately and either—
- “(i) the defendant has no fixed place of residence; or
- “(ii) the Court is satisfied that, because of the gravity of the offence, the character of the defendant, or other special circumstances, the fine should be paid immediately.
- “(1A) If an amount of reparation or an offender levy (whenever imposed) is payable, an order made under **subsection (1)**—
- “(a) must require payment of the following at the same time as any other amount payable under the order:
- “(i) the reparation;
- “(ii) the levy; and
- “(b) must not result in amounts owed by a defendant being paid in a different order of priority to that set out in **section 86E**.
- “(1B) If any order of a Registrar to pay an amount of reparation immediately is not complied with, the Registrar may—

- “(a) issue a warrant to seize property in a form approved under **section 209A**; or
 - “(b) issue a deduction notice requiring a bank to deduct the amount due from a sum payable or to become payable to the defendant; or
 - “(c) refer the matter to a District Court Judge for the Judge to consider whether a warrant of commitment should be issued under subsection (2)(b) (which applies with any necessary modifications).”
- (2) Section 83(2) is amended by omitting “under subsection (1) of this section” and substituting “to pay a fine immediately”.
 - (3) Section 83(2)(a) is amended by omitting “the prescribed form” and substituting “a form approved under **section 209A**”.
 - (4) Section 83 is amended by inserting the following subsection after subsection (2):
 - “(2A) Subsection (2)(a) and (b) do not apply if the only amount payable under the order is an offender levy.”

Clause 62

New section 84(2)(f): to omit “section 81” (line 3 on page 56) and substitute “**section 81(1)(a)**”.

New section 84(5)(b): to omit “section 81(1)” (line 30 on page 56) and substitute “**section 81(1)(a)**”.

Clause 64

Heading to *clause 64*: to omit “**sections 86 to 86D**” (line 1 on page 57) and substitute “**sections 86 to 86H**”.

New section 86(5) and (6): to omit these subsections (lines 22 to 29 on page 57) and substitute the following subsection:

- “(5) In this section and in **sections 86A, 86C, and 86D**, **representative** means—
 - “(a) a person who—
 - “(i) enters into the arrangement concerned with the defendant’s written or oral consent; and
 - “(ii) appears to the Registrar to have the defendant’s consent to do so; or
 - “(b) a person who is authorised to enter into the arrangement concerned by operation of law.

New section 86A(4): to omit this subsection (lines 1 to 8 on page 59) and substitute the following subsection:

- “(4) A Registrar may determine that an attachment order be varied, suspended, or cancelled if—
 - “(a) another fine that is not subject to the attachment order is imposed on the defendant; and
 - “(b) the defendant defaults in the payment of the subsequent fine.

New section 86A(5): to omit “If **subsection (1), (2)(b)(ii), (3)(b)(ii), or (4)(b)** applies, the Registrar must, before he or she makes a determination in relation to the arrangement or the attachment order” (lines 9 to 11 on page 59) and substitute “If **subsection (1)(a) or (b), (2)(b)(ii), or (3)(b)(ii)** applies, the Registrar must, before he or she makes a determination in relation to the arrangement”.

New section 86A: to insert the following subsection after *subsection (5)* (after line 33 on page 59):

“(5A) Any written submissions that may be made under **subsection (5)** may be made electronically.

New section 86A(7)(a): to omit “**subsection (1), (2)(b)(ii), (3)(b)(ii), or (4)(b)**” (line 1 on page 60) and substitute “**subsection (1)(a) or (b), (2)(b)(ii), or (3)(b)(ii)**”.

New section 86A(7)(c): to omit “**(4)(a)**” (line 20 on page 60) and substitute “**(4)**”.

New section 86A(8): to insert after “sections **86C**” (line 22 on page 60) “, **86D**”.

New section 86C(8): to omit this subsection (lines 6 to 9 on page 62).

New section 86D: to insert the following subsection after *subsection (4)* (after line 36 on page 63):

“(4A) Any written submissions that may be made under **subsection (4)** may be made electronically.

New sections 86E to 86H

To insert the following sections after *new section 86D* (after line 17 on page 64):

“**86E Priority of payments received from defendant**

- “(1) Any payments received from a defendant in respect of a fine must be applied in the following order of priority:
- “(a) in payment of any amount of reparation:
 - “(b) in payment of any offender levy:
 - “(c) in payment of any other type of fine.
- “(2) **Subsection (1)** applies regardless of when any amount owed by the defendant was imposed or became due.

“**86F Manner in which amounts of reparation must be applied in cases involving same offence**

- “(1) This section applies if a person (the **liable person**) is required to pay an amount of reparation to 2 or more persons in relation to the same offence (whether the requirement to pay the amount of reparation arose before or after the commencement of this section).
- “(2) Any payments received from the liable person must be applied, as between the persons to whom the defendant is required to pay reparation, in the proportion that reflects the relative total or proportionate amounts ordered to be paid to each of them (or in equal amounts if the Court did not specify different amounts).

“(3) **Subsection (2)** applies subject to any contrary direction by a Court.

“**86G Manner in which amounts of reparation must be applied in cases involving different offences**

“(1) This section applies—

“(a) if a person (the **liable person**) is required to pay an amount of reparation to a person or persons in relation to an offence; and

“(b) if the liable person is later required to pay an amount of reparation to another person or other persons in relation to another offence; and

“(c) if both the amounts referred to in **paragraphs (a) and (b)** have not been paid in full; and

“(d) whether the requirements to pay the amounts referred to in **paragraphs (a) and (b)** arose before or after the commencement of this section.

“(2) For the purpose of **subsection (1)**, it does not matter whether or not the offence referred to in **subsection (1)(b)** is of the same kind as the offence referred to in **subsection (1)(a)**.

“(3) Any payments received from the liable person must, in respect of 1 or more amounts of reparation imposed on the same day in respect of different offences committed by the liable person, be applied (in accordance with **section 86F** if applicable)—

“(a) as between the persons to whom the defendant is required to pay the reparation; and

“(b) in the proportion that reflects the relative total or proportionate amounts ordered to be paid to each of them.

“(4) Any payments received from the liable person must, in respect of any amounts of reparation imposed on the liable person on different days, be applied (in accordance with **section 86F** or **subsection (3)**, if applicable) first in satisfaction of the amount of reparation that was imposed first in time.

“(5) After the amount of reparation referred to in **subsection (4)** has been paid in full, any further payments received from the liable person must next be applied (in accordance with **section 86F** or **subsection (3)**, if applicable) in satisfaction of the amount of reparation that was imposed next in time.

“(6) This section applies subject to any contrary direction by a Court.

“86H No Crown liability for error, etc, in applying payments of amounts of reparation

The Crown is not liable to any person for any error, omission, or delay in applying any payment of an amount of reparation in accordance with **sections 86E to 86G.**”

Clause 64A

To omit this clause (lines 18 to 25 on page 64) and substitute the following clause:

64A New section 87 substituted

Section 87 is repealed and the following section substituted:

“87 Action if fine or instalment not paid or if arrangement or attachment order cancelled

- “(1) This section applies if—
- “(a) the defendant defaults in the payment of any fine; or
 - “(b) the defendant defaults in the payment of any instalment in respect of a fine that may be paid by instalments; or
 - “(c) a Registrar cancels an arrangement extending the time to pay a fine, or an attachment order, in accordance with **section 86A**; or
 - “(d) an arrangement extending the time to pay a fine is cancelled in accordance with **section 86D.**
- “(2) The Registrar may—
- “(a) issue a warrant to seize property; or
 - “(b) make an attachment order attaching any salary or wages payable or to become payable to the defendant; or
 - “(c) issue a deduction notice requiring a bank to deduct the amount due from a sum payable or to become payable to the defendant.
- “(3) Enforcement procedures commenced under this section must cease on payment of the unpaid amount of the fine.
- “(4) If a default is made in the payment of any instalment in respect of a fine that may be paid by instalments, proceedings may be taken as if default had been made in the payment of all instalments that remain unpaid.
- “(5) **Subsection (2)(a)** does not apply if the only amount in default is an offender levy.
- “(6) The powers conferred by this section may not be exercised by a Registrar who is a constable.”

Clause 65

To insert the following subclause before *subclause (1AA)* (before line 27 on page 64):

- (1AAA) Section 87AA(1)(a)(i) is amended by omitting “section 87(1)(b)” and substituting “**section 87(2)(b)**”.

To insert the following subclause after *subclause (1)* (after line 36 on page 64):

- (1A) Section 87AA(2)(e) is amended by omitting “residential telephone number” and substituting “all telephone numbers”.

To insert the following subclauses after *subclause (2)* (after line 3 on page 65):

- (2A) Section 87AA(3) is amended—
(a) by omitting “any request” and substituting “a requirement”; and
(b) by omitting “notice” and substituting “requirement”.
(2B) Section 87AA is amended by inserting the following subsection after subsection (3):

“(3AA) A requirement under subsection (1) may be made by post or by fax, email, or other electronic means.”

Subclause (3): to omit this subclause (lines 4 and 5 on page 65) and substitute the following subclause:

- (3) Section 87AA(3A) is amended by omitting “on receipt of a notice under subsection (1)” and substituting “on receipt of a requirement under subsection (1)”.

New clauses 65A to 65D

To insert the following clauses after *clause 65* (after line 5 on page 65):

65A Publication of name of fines defaulter

Section 87A(1)(d) is amended by omitting “section 81 or section 86 or section 86A” and substituting “**section 81(1)(a)** or 86 or **86C**”.

65B Deduction of fines

Section 87B is amended by repealing subsection (1) and substituting the following subsections:

- “(1) This section applies if—
“(a) a fine is payable by a defendant; and
“(b) the defendant is, by virtue of an order made under **section 81(1)(a) or 83(1)**, an arrangement made under **section 86 or 86C**, or a direction given under **section 88AE(1)(h)**,—
“(i) ordered to pay the fine immediately; or
“(ii) allowed a greater time for payment; or
“(iii) allowed to pay by instalments; and
“(c) the defendant either—
“(i) fails to comply with the order, arrangement, direction, or condition; or
“(ii) refuses, without reasonable excuse, to enter into an arrangement.
“(1A) The Registrar may issue a deduction notice requiring a bank to deduct the amount due from a sum that is payable or becomes payable to the defendant, until the deduction notice is revoked

in accordance with section 87C or discharged under section 87H.”

65C Offences in relation to deduction notices

Section 87G(b) is amended by omitting “to the Registrar” and substituting “in accordance with section 208”.

65D Penalty for late deductions

- (1) Section 87I(1) is amended by omitting “pay to the Registrar” and substituting “pay in accordance with section 208”.
- (2) Section 87I(5) is amended by omitting “to the Registrar”.

Clause 66

To omit this clause (lines 6 to 20 on page 65) and substitute the following clause:

66 New sections 88 to 88AG substituted

Section 88 is repealed and the following sections are substituted:

“88 Actions if fine remains unpaid

- “(1) This section applies if—
- “(a) the Registrar has taken enforcement action under **section 87(2)**, but the fine remains unpaid; or
 - “(b) the Registrar is satisfied that the defendant does not have the means to pay the fine; or
 - “(c) the Registrar is satisfied that—
 - “(i) reasonable steps have been taken to locate the defendant, but the defendant has not been located and therefore enforcement action would be unlikely to be effective; or
 - “(ii) for any other reason enforcement action would be unlikely to be effective.
- “(2) The Registrar may—
- “(a) order that the defendant be brought before the Registrar; or
 - “(b) refer the matter to a District Court Judge or Community Magistrate with a report on the circumstances of the case.
- “(3) If the Registrar refers a matter to a District Court Judge or Community Magistrate, the Registrar may order that the defendant be brought before the Judge or Community Magistrate.
- “(4) For the purposes of **subsection (2)(a) or (3)**, the Registrar may, if necessary, issue a warrant for the arrest of the defendant.
- “(5) Despite **subsection (1)**, this section does not apply if the only amount that remains unpaid is an offender levy.

“88AA Form and execution of warrant for arrest

- “(1) A warrant for arrest issued under **section 88(4)** may be in the form of a computer printout of information entered by a Registrar into a computer system accessible to the Police or a bailiff.
- “(2) In addition to **subsection (1)**, the following provisions apply to the warrant for arrest:
- “(a) information about a defendant that the Registrar entered may be printed out by a constable or bailiff, and for all purposes constitutes a warrant for the arrest of the defendant:
 - “(b) the warrant is valid for a period of 7 days beginning on the date of its printing, and the warrant then lapses:
 - “(c) at any time and from time to time after a warrant lapses under **paragraph (b)**,—
 - “(i) the Registrar may re-enter the particulars into the same computer system or enter the particulars into any other computer system available to the Police or a bailiff:
 - “(ii) a constable or bailiff may obtain a further print-out of the original information entered by the Registrar or obtain a printout of the re-entered information or of the information entered into the other computer system, and each one of the print-outs constitutes a fresh warrant for the arrest of the defendant.
- “(3) A constable or bailiff may execute a warrant for arrest issued under **section 88(4)** or a computer printout that, under this section, constitutes a warrant for arrest.
- “(4) This section does not limit any other provision of this Act.

“88AB Provisions for defendant arrested under warrant for arrest issued for purpose of section 88(2)(a)

If a defendant is arrested under a warrant for arrest issued for the purpose of **section 88(2)(a)**, the following provisions apply:

- “(a) the defendant must be brought before the Registrar:
- “(b) the defendant is bailable as of right:
- “(c) section 46 of this Act and Part 3 of the Bail Act 2000 apply with any necessary modifications as if the appearance before the Registrar constituted part of the hearing of a charge:
- “(d) for the purpose of any bail application by the defendant, if the defendant cannot practicably be brought immediately before the Registrar, a District Court Judge, or a Community Magistrate, then a Police employee or a

bailiff may take the bail bond of the defendant and Parts 1 to 3 of the Bail Act 2000 apply with any necessary modifications as if the bail bond were taken by a Police employee under section 21(1) of that Act.

“88AC Provisions for defendant arrested under warrant for arrest issued for purpose of section 88(3)

If a defendant is arrested under a warrant for arrest issued for the purpose of **section 88(3)**, the following provisions apply:

- “(a) the defendant must be brought before a District Court Judge or Community Magistrate or, if neither a District Court Judge nor a Community Magistrate is available, the Registrar:
- “(b) if the defendant is brought before the Registrar, the Registrar must appoint a time and place for the defendant to appear before a District Court Judge or Community Magistrate:
- “(c) the defendant is bailable as of right:
- “(d) section 46 of this Act and Part 3 of the Bail Act 2000 apply with any necessary modifications as if the appearance before the Registrar or a District Court Judge or Community Magistrate constituted part of the hearing of a charge:
- “(e) if the defendant cannot practicably be brought immediately before a District Court Judge or Community Magistrate or the Registrar, then a Police employee or a bailiff may take the bail bond of the defendant and Parts 1 to 3 of the Bail Act 2000 apply with any necessary modifications as if the bail bond were taken by a Police employee under section 21(1) of that Act.

“88AD Powers of Registrar in relation to defendant brought before Registrar

- “(1) If a defendant is brought before a Registrar under **section 88(2)(a)**, the Registrar may examine the defendant as to the defendant’s financial position.
- “(2) The Registrar may also—
 - “(a) invoke 1 or more of the enforcement actions in **section 87(2)**; or
 - “(b) enter into an arrangement with the defendant under **section 86**; or
 - “(c) if the Registrar is satisfied that neither of the actions described in **paragraphs (a) and (b)** will be effective, refer the defendant to a District Court Judge or Community Magistrate with a report on the case (in which case **sections 88(3) and (4), 88AA, and 88AC** apply).

- “88AE Powers of District Court Judge or Community Magistrate after considering report of Registrar under section 88AD**
- “(1) After considering the report of the Registrar prepared under **section 88AD** and the defendant’s financial position (whether determined from a declaration of financial capacity prepared by the defendant or from other sources), a District Court Judge or Community Magistrate may—
- “(a) refer the matter to the Registrar with a direction that 1 or more of the enforcement actions referred to in **section 87(2)**, as specified in the direction, be invoked; or
 - “(b) subject to **section 106E**, direct that a warrant of commitment in the prescribed form be issued; or
 - “(c) subject to sections 80A to 80ZM of the Sentencing Act 2002 and **section 106E** of this Act, sentence the defendant to a sentence of home detention; or
 - “(d) subject to sections 69B to 80 of the Sentencing Act 2002 and **section 106E** of this Act, sentence the defendant to a sentence of community detention; or
 - “(e) subject to sections 55 to 80 of the Sentencing Act 2002 and **section 106E** of this Act, sentence the defendant to community work; or
 - “(f) direct that action be taken for a lesser amount than the fine due; or
 - “(g) if the amount that the defendant owes for 1 unpaid fine, or in total for more than 1 unpaid fine, is \$5,000 or more, refer the matter to the Registrar with a direction that action be taken to enforce 1 or all of the fines making up the total owing by the defendant as if the fine or fines were an order for the payment of money and as if the Registrar had obtained the order; or
 - “(h) direct that a greater time for payment of the fine be allowed, subject to any conditions that the Judge or Community Magistrate may direct; or
 - “(i) direct that no further enforcement proceedings be taken for the fine for any period or subject to any conditions that the Judge or Community Magistrate may direct; or
 - “(j) remit the fine or a part of the fine.
- “(2) A Community Magistrate may not—
- “(a) direct the issue of a warrant of commitment under **subsection (1)(b)**;
 - “(b) sentence a defendant to a sentence of home detention under **subsection (1)(c)**.
- “(3) If a Community Magistrate considers that the issue of a warrant of commitment or a sentence of home detention is appropriate in any case, the Community Magistrate must refer the

matter to a District Court Judge (in which case sections 45 to 59, to the extent that they are applicable and with the necessary modifications, apply).

- “(4) Despite **subsection (1)**, a period of imprisonment or a sentence of home detention must not be imposed on the defendant for a fine if—
- “(a) the fine was imposed for a traffic offence (as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989) not punishable by imprisonment; and
 - “(b) at the date of the commission of the offence, the defendant was a young person within the meaning of that Act.
- “(5) If a District Court Judge or Community Magistrate exercises any power conferred by **subsection (1)** and considers it appropriate to do so, he or she may also make an order under **section 88AG** for the return of the defendant.
- “(6) The remission of the whole or any part of an amount of reparation does not affect the right of the person who suffered the harm, loss, or damage to bring civil proceedings, or make claims under any accident compensation legislation applicable at the time of the offending, to recover the amount so remitted.

“**88AF Further provisions relating to powers of District Court Judge or Community Magistrate in section 88AE**

- “(1) A warrant of commitment or a sentence of community work, community detention, or home detention may be issued or imposed under **section 88AE(1)** even though the defendant was not liable to be imprisoned on the determination of the information or complaint for which the fine was imposed.
- “(2) Any warrant of commitment directed to be issued under **section 88AE(1)(b)** may be issued by any District Court Judge and may be withdrawn at any time by any District Court Judge.
- “(3) If any direction is given under **section 88AE(1)(f)**, the difference between the amount due under the fine and the amount for which action is directed to be taken under that provision is no longer payable and no proceedings may be taken or continued for its recovery.
- “(4) If a District Court Judge or Community Magistrate makes any order (other than a direction for the issue of a warrant of commitment) under **section 88AE**, the Judge or Community Magistrate may postpone the issue or defer the operation of the order for any period and subject to any conditions that he or she may direct.

“88AG Power of District Court Judge or Community Magistrate to order return of defendant

- “(1) If a District Court Judge or Community Magistrate makes any order (other than an order that directs the issue of a warrant of commitment) under **section 88AE** and considers it appropriate to do so, he or she may also issue an order for the return of the defendant. However, the order must not be executed until the time that the defendant ceases to comply with any of the conditions of the order under **section 88AE**, including (without limitation) the making of periodic payments due under an attachment order.
- “(2) A constable or bailiff may execute an order for the return of the defendant issued under **subsection (1)**.
- “(3) If a fine is being paid by attachment order, no order issued under **subsection (1)** for the return of a defendant may be executed until the time that the Registrar has confirmed with the employer that no periodic payment or payments have been made and the reason why no payment or payments have been made.
- “(4) If a defendant is detained in accordance with an order issued under **subsection (1)**, the provisions of **section 88AC** apply.”

New clause 66A

To insert the following clause after *clause 66* (after line 20 on page 65):

66A Consequential and related amendments arising from substitution of new sections 88 to 88AG in principal Act

The enactments specified in **Schedule 2A** are amended in the manner indicated in that schedule.

Clause 67

New section 88A(1): to omit “**section 88(3)(fa)**” (line 25 on page 65) and substitute “**section 88AE(1)(g)**”.

New section 88B(1): to omit this subsection (lines 9 to 21 on page 66) and substitute the following subsection:

- “(1) The Registrar may make an order remitting an amount of reparation if—
- “(a) the amount outstanding is \$25 or less; and
 - “(b) the amount of reparation was imposed at least 3 years before the date on which the Registrar makes the order remitting it; and
 - “(c) the Registrar has—
 - “(i) obtained the consent of the person who suffered the harm, loss, or damage; or
 - “(ii) made reasonable efforts to find the person who suffered the harm, loss, or damage to obtain his

or her consent, and has not been able to find that person and obtain his or her consent.

New section 88B(2): to omit “or compensation” (line 23 on page 66).

New section 88B(3): to insert after “may” (line 29 on page 66) “at any time”.

New section 88B(3): to omit “or compensation” (line 30 on page 66).

New section 88B(4): to omit “**subsections (2) and (3)**” (line 33 on page 66) and substitute “**subsections (1) to (3)**”.

New section 88B(4): to omit “or compensation” in each place where it appears (lines 34 and 35 on page 66).

New section 88B(5): to omit “compensation or any levy payable under the Sentencing Act 2002” (lines 1 and 2 on page 67) and substitute “any offender levy”.

New clause 67A

To insert the following clause after *clause 67* (after line 5 on page 67):

67A Scale of imprisonment for non-payment of fine

Section 90(a) is amended by omitting “by imprisonment” and substituting “by a period of imprisonment of more than 3 months”.

Clause 68

New section 91(2): to omit “in respect of the fine” (lines 21 and 22 on page 67) and substitute “unless the defendant is also subject to a sentence of community work, community detention, or home detention (as the case may be) for some other reason”.

New section 91: to insert the following subsection after *subsection (2)* (after line 22 on page 67):

“(2A) If a defendant who is subject to a period of imprisonment or any sentence referred to in **subsection (2)** makes part payment of not less than 10% of the total amount for which the period of imprisonment or sentence was imposed, the Registrar must immediately—

“(a) calculate the amount of the part payment as a proportion of the total amount for which the period of imprisonment or sentence was imposed; and

“(b) reduce the period of imprisonment or the sentence by the number of hours or days (whichever applies) that, as nearly as possible, bears the same proportion as the proportion referred to in **paragraph (a)**; and

“(c) notify the prison manager or the probation officer supervising the sentence of the payment and the reduction in the defendant’s period of imprisonment or sentence.

New clause 68A

To insert the following clause after *clause 68* (after line 26 on page 67):

68A Effect of warrant of commitment

Section 92 is amended by inserting “, or **section 281** of the District Courts Act 1947, or **section 19** of the Crimes Act 1961, as the case may be” after “section 90”.

Clause 69

New section 92A: definition of **credit reporter**: to omit this definition (lines 3 to 6 on page 68) and substitute the following definitions:

“**credit reporter** has the same meaning as in the credit reporting code of practice, but regardless of whether payment for information about creditworthiness is involved and whether that information is in respect of individuals or bodies corporate

“**credit reporting code of practice** means a code of practice relating to credit reporting for the time being issued under the Privacy Act 1993

New section 92A: paragraph (a) of the definition of identifying particulars: to add the following subparagraphs (after line 23 on page 68):

“(ix) driver licence number (if any) as defined in the credit reporting code of practice; and

“(x) driver licence card number (if any) as defined in the credit reporting code of practice; and

New section 92A: definition of **subscriber**: to omit “a code of practice for the time being issued under the Privacy Act 1993” (lines 8 and 9 on page 69) and substitute “the credit reporting code of practice”.

New section 92A: to add the following subsection as *subsection (2)* (after line 10 on page 69):

“(2) **Subparagraphs (ix) and (x)** of the definition of **identifying particulars** in **subsection (1)** do not apply unless the definition of credit information in the credit reporting code of practice includes driver licence numbers and driver licence card numbers.

New section 92I(1): to insert the following paragraph after *paragraph (e)* (after line 16 on page 74):

“(ea) requiring recognised users to obtain a query subject’s driver licence number (if any) or driver licence card number (if any), or both, from the query subject each time a fine status query is submitted:

New section 92I: to insert the following subsection after *subsection (2)* (after line 28 on page 75):

“(2A) **Subsection (1)(ea)** does not apply unless the definition of credit information in the credit reporting code of practice includes driver licence numbers and driver licence card numbers.

Clause 70

New section 93(1): to insert after “written caution be” (line 2 on page 76) “issued and”.

New section 96(1)(a) to (f): to omit these paragraphs (lines 15 to 31 on page 78) and substitute the following paragraphs:

- “(a) the motor vehicle was stolen or converted at the material time:
- “(b) the person did not own or have an interest in the motor vehicle at the material time:
- “(c) the person is a secured party under a security agreement relating to the motor vehicle or the lessor of the motor vehicle under a lease, but has no relationship of another kind with the defendant:
- “(d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998:
- “(e) the person took all reasonable steps to prevent the defendant from committing the traffic offence or traffic offences:
- “(f) the person had not, before the commission of the relevant traffic offence, been served with a written caution under **section 93** in relation to the defendant.

New section 96(4)(a): to omit “**subsection (1)(b) or (f)**” (line 1 on page 79) and substitute “**subsection (1)(a) or (d)**”.

New section 97(a): to insert after “enable” (line 10 on page 79) “a fine or any”.

New section 97(b): to insert after “where the” (line 12 on page 79) “fine or”.

New section 98: to omit this section (line 14 on page 79 to line 12 on page 80) and substitute the following section:

“98 Warrant to seize property

- “(1) If any warrant to seize property is issued under section 83(2)(a), **87(2)(a)**, or **88AE(1)(a)**, the warrant applies so as to authorise the seizure of—
 - “(a) any property that is apparently the property of the defendant:
 - “(b) any motor vehicle that is apparently the property of the substitute if the warrant is issued for a traffic fine and there is a substitute for the defendant.
- “(2) Every warrant to seize property of the kind described in **subsection (1)(a) or (b)**, or both, must—
 - “(a) be in a form approved under **section 209A**; and
 - “(b) contain full details of the fine and the amount remaining unpaid in respect of the fine.
- “(3) A warrant to seize property referred to in **subsection (1)** may be in the form of a computer printout of information entered

by a Registrar into a computer system accessible to the Police or a bailiff.

- “(4) In addition to **subsection (3)**, the following provisions apply to the warrant to seize property:
- “(a) information about a defendant that the Registrar entered may be printed out by a constable or bailiff, and for all purposes constitutes a warrant to seize property:
 - “(b) the warrant is valid for a period of 28 days beginning on the date of its printing, and the warrant then lapses:
 - “(c) at any time and from time to time after a warrant lapses under **paragraph (b)**,—
 - “(i) the Registrar may re-enter the particulars into the same computer system or enter the particulars into any other computer system available to the Police or a bailiff:
 - “(ii) a constable or bailiff may obtain a further print-out of the original information entered by the Registrar or obtain a printout of the re-entered information or of the information entered into the other computer system, and each one of the print-outs constitutes a fresh warrant to seize property.
- “(5) A constable or bailiff may execute a warrant to seize property referred to in **subsection (1)** or a computer printout that, under this section, constitutes a warrant to seize property.
- “(6) **Subsection (3)** does not limit any other provision of this Act.

New section 99(5)(b): to omit “any” in the second place where it appears (line 1 on page 81).

New section 100B(3): to insert after “sold” (line 12 on page 82) “, or assigned or applied.”.

New section 100D(2)(b): to omit “of” (line 32 on page 83).

New section 100E(6) and (7): to omit these subsections (lines 26 to 37 on page 84) and substitute the following subsections:

- “(6) If an appeal under section 102 or 110 of the Land Transport Act 1998 against the impoundment of the motor vehicle is allowed before the expiry of the 28-day period for which the motor vehicle would otherwise be required to be impounded under section 96 or 96A of that Act,—
- “(a) the Registrar must release the motor vehicle to the person who is registered in respect of that vehicle; and
 - “(b) that person is not liable for any fees and costs payable under an enactment in respect of the motor vehicle.
- “(7) **Subsection (6)**—
- “(a) applies despite **subsection (1) and sections 100F to 100I, 100K, and 100O**; but

- “(b) does not apply if the motor vehicle has already been released to a lessor or secured party under **section 100H or 100K(1)(a)** or been sold by the Court under **section 100O**.

New section 100F(2): to insert after “summons” (line 12 on page 85) “in a form approved under **section 209A**”.

New section 100F(5): to omit this subsection (lines 27 to 30 on page 85).

New section 100F(6)(a)(ii): to omit “10 days” (line 39 on page 85) and substitute “7 days”.

New section 100G(1): to insert after “sold” (line 7 on page 86) “assigned, applied, or otherwise disposed of”.

New section 100G(2)(a) and (b): to omit these paragraphs (lines 19 to 22 on page 86) and substitute the following paragraphs:

- “(a) the motor vehicle was stolen or converted at the material time:
“(b) the person did not own or have an interest in the motor vehicle at the material time:

New section 100G(5)(a)(ii): to omit “10 days” (line 11 on page 87) and substitute “7 days”.

New section 100G: to add the following subsection (after line 21 on page 87):

- “(7) If the claimant does not succeed in the claim to the property, any deposit paid or security provided may be applied as if it were the proceeds of the sale of the property.

To insert the following section after *new section 100H* (after line 10 on page 88):

“100HA What happens if lessor does not apply to Registrar before property sold or disposed of

- “(1) This section applies if—
“(a) **section 100H** applies; but
“(b) the lessor does not apply to the Court for the release of the property under **section 100H(2)** before it is sold or disposed of; and
“(c) the proceeds of the sale have not been fully applied.
“(2) The lessor may apply to the Court for the release of the proceeds of the sale of the property that have not been applied.
“(3) On an application under **subsection (2)**, the Registrar or a District Court Judge may release the proceeds of the sale of the property in accordance with **subsections (4) and (5)**.
“(4) The proceeds of the sale of the property must be applied in accordance with **section 100Q** as if the definitions of security agreement and security interest in **section 79** included a lease and the lessor were a secured party as defined in that subsection.
“(5) However, despite **subsection (4)**, **section 100Q** applies subject to the following modifications:

- “(a) the proceeds of the sale of the property must be applied in payment to the lessor of the amount to which the lessor would, but for the sale, have been entitled under the lease; and
- “(b) the proceeds of the sale of the property must be applied in the manner and order of priority set out in **section 100Q**, except that,—
 - “(i) in the case of a lease for a term of less than 1 year, those proceeds must be applied for the payment to the lessor described in **paragraph (a)** after they are applied for the payments described in **section 100Q(1)(a) and (b)**, but before they are applied for the remainder of the payments described in **section 100Q(1)(c) to (h)**; and
 - “(ii) in the case of a lease for a term of more than 1 year, those proceeds must be applied for the payment to the lessor described in **paragraph (a)** as if they were payments described in **section 100Q(1)(c) and section 100Q(2)** applied.

- “(6) On the release of the proceeds of the sale of the property to the lessor, the lease is cancelled.

New section 100L(2): to omit “10 days” (line 37 on page 92) and substitute “7 days”.

New section 100M(1): to omit “disposing of” (line 9 on page 93) and substitute “selling”.

New section 100M(1)(b)(ii) and (iii): to omit these subparagraphs (lines 13 to 16 on page 93) and substitute the following subparagraph:

- “(ii) the amount of the costs and expenses of, and incidental to, the sale.

New section 100M(2): to omit “**section 100Q(1)(d) to (f) and (h)**” (line 18 on page 93) and substitute “**section 100Q(1)(c) to (h) and (2)**”.

New section 100O: to insert the following subsection after *subsection (3)* (after line 36 on page 94):

- “(3A) Despite **subsections (1) to (3)**, the Registrar may dispose of a motor vehicle in any manner that he or she thinks fit if the Registrar has reasonable grounds to believe that the motor vehicle is a low-value motor vehicle referred to in **section 100A**.

New section 100O(4): to insert after “sold” (line 1 on page 95) “or disposed of”.

New section 100O(6)(a): to omit “10 days” (line 18 on page 95) and substitute “7 days”.

New section 100O: to insert the following subsection after *subsection (7)* (after line 25 on page 95):

- “(7A) However, the property may be sold and the proceeds of the sale must be held until the pending claim is determined if—

- “(a) the costs of storage have not been paid under **section 100P**; or
- “(b) a deposit has not been paid, or security has not been provided, under **section 100F**.

New section 100Q(1)(d): to omit “sentence or order of reparation” (line 20 on page 96) and substitute “amount of reparation”.

New section 100Q(1)(e): to omit “levy payable by the defendant under section 105B of the Sentencing Act 2002” (lines 22 and 23 on page 96) and substitute “offender levy”.

New section 100Q(1): to insert the following paragraphs after *paragraph (g)* (after line 28 on page 96):

- “(ga) in payment of any fees and accident insurance levies prescribed under section 242(2)(b) of the Land Transport Act 1998 that are outstanding in respect of the vehicle:
- “(gb) in payment of any road user charges under section 9 of the Road User Charges Act 1977 that are outstanding in respect of the vehicle:

New section 100R(1) and (2): to omit these subsections (lines 17 to 30 on page 97) and substitute the following subsections:

- “(1) This section applies if the realisation under **section 100M or 100O** of any motor vehicle seized in respect of a fine does not result in a reduction of the defendant’s fine by more than \$100.
- “(2) The Registrar must—
 - “(a) remit the impoundment costs and the costs of the sale of the motor vehicle (as those costs are described in **section 100Q(1)(a) and (b)**); and
 - “(b) remit—
 - “(i) the entire fine in default for which the motor vehicle was seized, if the amount of that fine is \$100 or less; or
 - “(ii) \$100 less any proceeds of that sale that have been applied towards paying the fine in default, if the amount of that fine is greater than \$100.

Example

A motor vehicle seized in respect of a fine sells for \$350. The impoundment costs and the costs of the sale of that motor vehicle are \$300. This leaves a balance of \$50 to be deducted from the fine. However, the Registrar must remit a further \$50 of the fine in order to comply with the requirement for \$100 to be deducted from the fine.

New section 100R(3)(a): to omit “or compensation” in each place where it appears (lines 32 and 34 on page 97).

New section 100R(3)(b): to omit “levy payable by the defendant under section 105B of the Sentencing Act 2002” (lines 35 and 36 on page 97) and substitute “offender levy”.

New clause 70A

To insert the following clause after *clause 70* (after line 15 on page 98):

70A Protection of Registrar, bailiff, etc

Section 102 is amended by inserting “sale, assignment, application, or” after “subsequent”.

Clause 71

To omit this clause (lines 16 to 19 on page 98) and substitute the following clause:

71 Effect of attachment order

Section 103(1) is amended—

- (a) by omitting “section 87(1)(b)” and substituting “**section 87(2)(b)**”; and
- (b) by omitting “writing in the prescribed form” and substituting “a form approved under **section 209A**”.

New clause 71A

To insert the following clause after *clause 71* (after line 19 on page 98):

71A Power to obtain information in respect of employers

- (1) Section 104A(1A) is amended by omitting “, by notice in writing.”.
- (2) Section 104A(2) is amended—
 - (a) by omitting “any request” and substituting “a requirement”; and
 - (b) by omitting “notice” and substituting “requirement”.
- (3) Section 104A is amended by inserting the following subsection after subsection (2):
“(2A) A requirement under subsection (1A) may be made by post or by fax, email, or other electronic means.”
- (4) Section 104A(3) is amended by omitting “notice” and substituting “requirement”.

Clause 72

Heading to *new section 105*: to omit this heading (line 22 on page 98) and substitute the following heading: “**Content of attachment orders**”.

New section 105(1)(b): to insert after “amount” (line 27 on page 98) “or percentage”.

New section 105(1)(c): to insert after “amount” (line 29 on page 98) “or percentage”.

New section 105(2): to omit this subsection (lines 1 and 2 on page 99).

New section 105(8): paragraph (b) of the definition of **protected earnings rate** to insert after “amount” (line 14 on page 100) “or percentage”.

New clauses 73A and 73B

To insert the following clauses after *clause 73* (after line 30 on page 100):

73A Section 106A substituted

Section 106A is repealed and the following section substituted:

“106A Wrongful treatment of employee

Every employer commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who dismisses any employee or alters any employee’s position in the employer’s business or undertaking to the employee’s prejudice by reason of—

- “(a) the employee having been ordered to pay 1 or more fines; or
- “(b) an attachment order having been served on the employer; or
- “(c) the employer becoming aware that an attachment order is being made or has been made in respect of the employee.”

73B Extent to which attachment orders bind the Crown

Section 106B is amended by repealing subsection (3) and substituting the following subsection:

- “(3) If the defendant liable to pay a fine is a servant of the Crown, an attachment order may be made against the Crown as employer.”

Clause 74

To omit this clause (line 31 on page 100 to line 9 on page 103) and substitute the following clause:

74 New sections 106E and 106EA substituted

Section 106E is repealed and the following sections are substituted:

“106E Restrictions on substituted sentences

- “(1) A District Court Judge or Community Magistrate must not impose a substituted sentence on a defendant for non-payment of 1 or more fines under this Part unless—
 - “(a) an assessment of the defendant’s financial capacity has been recently completed, being an assessment that does not include information given by a third party unless it also gives details of the source of the information and the date to which the information relates; and
 - “(b) the Judge or Community Magistrate has considered the assessment; and

- “(c) the Judge or Community Magistrate is satisfied that all other methods of enforcing the fine or fines have been considered or tried and that they are inappropriate or have been unsuccessful.
- “(2) A District Court Judge or Community Magistrate may, subject to the restrictions set out in this section, sentence a defendant to community work or community detention for non-payment of 1 or more fines under this Part.
- “(3) A District Court Judge may, subject to the restrictions set out in this section,—
- “(a) sentence a defendant to home detention for non-payment of 1 or more fines under this Part:
- “(b) issue, or direct the issue of, a warrant of commitment for the imprisonment of a defendant for non-payment of 1 or more fines under this Part.
- “(4) In sentencing a defendant for non-payment of 1 or more fines under this Part, the Court must impose the least restrictive sentence that is appropriate in the circumstances.
- “(5) A District Court Judge or Community Magistrate must not sentence a defendant to a sentence of community detention in accordance with **subsection (2)** unless—
- “(a) a pre-sentence report has been provided in accordance with section 26A of the Sentencing Act 2002; and
- “(b) the Judge or Community Magistrate is satisfied of the matters in section 69C of the Sentencing Act 2002.
- “(6) A District Court Judge must not sentence a defendant to a sentence of home detention in accordance with **subsection (3)(a)** unless—
- “(a) a pre-sentence report has been provided in accordance with section 26A of the Sentencing Act 2002; and
- “(b) the Judge is satisfied of the matters in section 80A(2)(a) of the Sentencing Act 2002; and
- “(c) either of the following applies:
- “(i) the defendant is already undergoing a sentence of home detention or is about to be sentenced to home detention for another offence at the time that the Judge is considering sentencing the defendant for non-payment of 1 or more fines under this Part:
- “(ii) the Judge is satisfied that the defendant has the financial capacity to pay the fine or fines.
- “(7) A District Court Judge must not issue, or direct the issue of, a warrant of commitment for the imprisonment of a defendant in accordance with **subsection (3)(b)** unless—
- “(a) the defendant has had the same opportunity for legal representation as is available to a defendant who is li-

able to a sentence of imprisonment under section 30 of the Sentencing Act 2002; and

“(b) the warrant of commitment can be executed immediately; and

“(c) either of the following applies:

“(i) the defendant is already undergoing a sentence of imprisonment or is about to be sentenced to imprisonment for another offence at the time that the Judge is considering the sentence for the defendant for non-payment of 1 or more fines under this Part:

“(ii) the Judge is satisfied that the defendant has the financial capacity to pay the fine or fines.

“(8) **Subsection (7)** is subject to section 83.

“(9) Section 19 of the Sentencing Act 2002 applies if a defendant is already undergoing a sentence or is about to be sentenced for another offence at the time that a District Court Judge is considering the sentence for the defendant for non-payment of 1 or more fines under this Part.

“106EA Defendant may be arrested for assessment of financial capacity

“(1) Before a District Court Judge sentences a defendant to home detention, or issues or directs the issue of a warrant of commitment, under **section 88AE(1)**, he or she may direct that a warrant for the defendant’s arrest be issued to have the defendant brought before a District Court Judge to enable the defendant’s financial capacity to pay the fine or fines to be assessed.

“(2) In assessing the defendant’s financial capacity to pay the fine or fines, a District Court Judge must take into account—

“(a) the Court’s assessment of the defendant’s capacity to pay the fine or fines (whether based on the defendant’s declaration of financial capacity or otherwise) when the fine or fines were imposed; and

“(b) any change of circumstances since that original assessment was made; and

“(c) the defendant’s current financial position.

“(3) If a defendant is arrested under **subsection (1)**, the provisions of **section 88AC** apply.

“(4) If a District Court Judge directs that a warrant for the defendant’s arrest be issued under **subsection (1)**,—

“(a) the Registrar may issue the warrant; and

“(b) a constable or bailiff may execute the warrant.”

New clause 74A

To insert the following clauses after *clause 74* (after line 9 on page 103):

74A Review of Registrar’s decision

- (1) Section 106F(1) is amended by inserting “section 78B or **78C** or under” after “under”.
- (2) Section 106F is amended by adding the following subsections:
 - “(3) If the decision to which the application under subsection (1) relates is a decision to issue a warrant to seize property and that warrant has been executed,—
 - “(a) any seized property that has not been sold, assigned, applied, released, or otherwise disposed of must be retained under **section 100B(3)** if an application for review is made under subsection (1) and the review is pending; or
 - “(b) if the seized property has been sold but the proceeds of the sale have not been applied in accordance with **section 100M or 100Q**, the proceeds must be retained if an application for review is made under subsection (1) and the review is pending.
 - “(4) If, on the determination of the review, the Judge confirms the Registrar’s decision to issue the warrant to seize property, the property must be dealt with, and any fees and costs payable under an enactment in respect of the property are payable, as if the application had not been made.
 - “(5) If, on the determination of the review, the Judge rescinds the Registrar’s decision to issue the warrant to seize property, the owner—
 - “(a) is entitled to—
 - “(i) the return of the property if the property has been retained in accordance with **subsection (3)(a)**; or
 - “(ii) the proceeds of any sale if the proceeds have been retained in accordance with **subsection (3)(b)**; and
 - “(b) is not liable for any fees and costs payable under an enactment in respect of the property.
 - “(6) On a review of a Registrar’s decision to issue a warrant to seize property, the Judge may, subject to **subsection (5)(b)**, make any order on any matter (including costs) that the Judge thinks just, having regard to all the circumstances of the case.”

Clause 75

To omit this clause (lines 10 to 37 on page 103) and substitute the following clause:

75 Provision as to issue of warrant pending appeal

Section 124(5) is repealed and the following subsections substituted:

- “(5) If a warrant to seize property is issued before a notice of intention to appeal is filed and—
- “(a) the warrant has not been executed, it must be suspended until the appeal has been determined or, as the case may be, until the District Court Judge or Justice or Justices have certified that it has not been prosecuted, or the Registrar of the High Court has certified that it has been dismissed for non-prosecution:
- “(b) the warrant has been executed,—
- “(i) any seized property that has not been sold, assigned, applied, released, or otherwise disposed of must be retained while the appeal is pending; or
- “(ii) if the seized property has been sold but the proceeds of the sale have not been applied in accordance with **section 100M or 100Q**, the proceeds must be retained while the appeal is pending.
- “(6) If, on the determination of the appeal or the issue of a certificate described in **subsection (5)(a)**, the determination in respect of which the warrant was issued continues in effect, the property must be dealt with, and any fees and costs payable under an enactment in respect of the property are payable, as if the notice of appeal had not been given.
- “(7) If, on the determination of the appeal, the determination in respect of which the warrant was issued is set aside or quashed, the owner—
- “(a) is entitled to—
- “(i) the return of the property if the property has been retained in accordance with **subsection (5)(b)(i)**; or
- “(ii) the proceeds of any sale if the proceeds have been retained in accordance with **subsection (5)(b)(ii)**; and
- “(b) is not liable for any fees and costs payable under an enactment in respect of the property.”

New clause 76A

To insert the following clause after *clause 76* (after line 4 on page 104):

76A New section 209A inserted

The following section is inserted after section 209:

“209A Chief executive of Ministry of Justice may approve forms

- “(1) The chief executive of the Ministry of Justice may approve and issue forms that the chief executive considers necessary for the purposes of this Act, not being forms required to be prescribed by regulations made under this Act.
- “(2) Without limiting **subsection (1)**,—
- “(a) more than 1 form may be approved and issued in relation to the same matter; and
- “(b) a form may be described by any name that the chief executive considers appropriate even though it relates to a matter that is described by a different name under this Act, so long as the form refers to the appropriate provision of this Act.
- “(3) Every document purporting to be a form approved and issued by the chief executive under and for the purposes of this Act is deemed to have been so approved and issued unless the chief executive otherwise certifies.”

Clause 77

To insert the following subclause as *subclause (1AA)* (before line 6 on page 104):

(1AA) Section 212(2) is amended by inserting the following paragraph after paragraph (c):

“(ca) prescribing the fees and charges to be paid for the purposes of this Act.”

New section 212(2)(daa) and (dab): to omit these paragraphs (lines 8 to 15 on page 104) and substitute the following paragraph:

“(daa) providing for documents to be sent in electronic form under **section 79A(1)(c)**, including (without limitation) provisions for the retention of records that evidence the fact that, and the date and time when, such documents were sent to electronic addresses:

New section 212(2)(dac): to omit “**section 79A(1)(g)**” (line 16 on page 104) and substitute “**section 79A(1)(d)**”.

New clauses 77A to 77C

To insert the following clauses after *clause 77* (after line 23 on page 104):

77A Further consequential amendments to principal Act

The principal Act is amended in the manner indicated in **Schedule 2B**.

77B Transitional provisions relating to Transport (Vehicle and Driver Registration and Licensing) Act 1986

- (1) In the period beginning on the commencement of this section and ending immediately before the commencement of section 32(2) of the Land Transport Amendment Act 2009,—
 - (a) any reference to a person who is registered in respect of a motor vehicle in **sections 97 to 100S** of the principal Act (as inserted by this Act) must (despite the definition of that term in **section 79** of the principal Act) be read as a reference to a registered owner within the meaning of the Transport (Vehicle and Driver Registration and Licensing) Act 1986:
 - (b) the references in **sections 100B(2), 100O(3), and 100Q(1)(ga)** of the principal Act (as inserted by this Act) to section 242 of the Land Transport Act 1998 is taken to be a reference to section 5 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.
- (2) Section 9 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 is consequentially amended by omitting “section 32(2) of the Land Transport Amendment Act 2009” and substituting “**Part 3 of the Courts and Criminal Matters Act 2010**”.

77C Transitional provisions relating to pre-commencement fines and warrants

- (1) The principal Act as amended by **this Part 3** applies to the enforcement of any fine whether adjudged, ordered, or deemed to be ordered to be paid before or after the commencement of **this Part**.
- (2) Section 10 of the Summary Proceedings (Vehicle Seizure) Amendment Act 2009 is consequentially repealed.

Part 4 Amendments to other Acts

New clause 79A

To insert the following clause after *clause 79* (after line 10 on page 105):

79A Hierarchy of court’s responses if charge against young person proved

Section 283 is amended by repealing paragraph (j) and substituting the following paragraph:

- “(j) make an order that could have been made by a court other than a Youth Court under section 128 or 129 of the Sentencing Act 2002 (which relate to confiscation of motor vehicles) if the young person were an adult

and had been convicted of the offence in a court other than a Youth Court, and, if the court makes the order, the following sections of that Act apply (to the extent they are applicable and subject to any necessary modifications):

“(i) section 128 or 129 (as the case may be):

“(ii) **sections 129EA**, 130, 131 to 136, 137, and 138 to 142”.

Part 4: new subparts 1A and 1B

To insert the following subparts before the heading to *subpart 2 of Part 4* (before line 11 on page 105):

Subpart 1A—Amendments to Crimes Act 1961

79B Principal Act amended

This subpart amends the Crimes Act 1961.

79C Section 19 substituted

Section 19 is repealed and the following section substituted:

“19 Enforcement of fines by High Court

“(1) If the High Court imposes 1 or more fines, Part 3 of the Summary Proceedings Act 1957 applies to the fine or fines, subject to any necessary modifications and subject to the modifications in **subsections (2) to (4)**.

“(2) Without limiting the actions that the High Court may take under Part 3 of the Summary Proceedings Act 1957 in relation to the fine or fines, the High Court may make any orders that it thinks fit, including an order directing that a writ of sale be issued against the property of the offender.

“(3) If an offender is sentenced by the High Court to community work, community detention, or home detention under **section 88AE(1)** of the Summary Proceedings Act 1957 or is imprisoned under a warrant of commitment issued under that section,—

“(a) sections 89(2) and (3) of the Summary Proceedings Act 1957 apply with any necessary modifications as if—

“(i) the references in those subsections to a District Court Judge were references to a High Court Judge; and

“(ii) the reference to the High Court was a reference to the Court of Appeal; and

“(b) sections 115 and 121 of the Summary Proceedings Act 1957, and any other relevant provisions of that Act relating to appeals against sentence, apply with any necessary modifications as if—

- “(i) the references in section 115 to a District Court were references to the High Court; and
 - “(ii) the references in those sections to the High Court were references to the Court of Appeal.
- “(4) Despite section 90 of the Summary Proceedings Act 1957, the period of imprisonment that the High Court may impose on the offender for the non-payment of 1 or more fines must not exceed, for each fine, the lesser of—
- “(a) the maximum term of imprisonment to which the offender was liable on the conviction; or
 - “(b) a period of 2 years.
- “(5) If the High Court enforces 1 or more fines under this section, the Court may, at the same time, enforce any outstanding fine or fines imposed on the offender by a District Court.
- “(6) For the purposes of **subsection (5)**, the outstanding fine or fines imposed by the District Court must be treated as if the fine or fines were imposed by the High Court and, in accordance with **subsection (1)**, Part 3 of the Summary Proceedings Act 1957 applies to the fine or fines, subject to any necessary modifications, and,—
- “(a) subject to the modifications in **subsections (2) to (4)**, if the outstanding fine or fines were imposed in the District Court’s indictable jurisdiction; and
 - “(b) subject to the modifications in **subsections (2) and (3)**, but not the modification in **subsection (4)**, if the outstanding fine or fines were imposed in the District Court’s summary jurisdiction.
- “(7) A Registrar of a District Court or of the High Court may exercise any jurisdiction and powers conferred on a Registrar of a District Court by Part 3 of the Summary Proceedings Act 1957 in respect of the fine or fines imposed by the High Court to which, under **subsection (1)**, that Part applies.
- “(8) The amount of the fee payable if default is made in the payment of 1 or more fines imposed by the High Court to which, under **subsection (1)**, Part 3 of the Summary Proceedings Act 1957 applies is the same as that prescribed by regulations, made under the Summary Proceedings Act 1957, in respect of enforcement action taken under that Act to enforce the fine or fines.
- “(9) To avoid doubt, **sections 92A to 92I** of the Summary Proceedings Act 1957 apply, subject to any necessary modifications, to any fine or fines imposed by the High Court, and accordingly, the chief executive of the Ministry of Justice may, among other things authorised by those sections, disclose information about default balances relating to such fine or fines in accordance with those sections.

- “(10) For the purposes of this section, and subject to **subsection (3)**, any reference in Part 3 of the Summary Proceedings Act 1957 to—
- “(a) a Court is, unless the context otherwise requires, taken to be a reference to the High Court; and
 - “(b) a District Court Judge is, unless the context otherwise requires, taken to be a reference to a High Court Judge; and
 - “(c) a Registrar is, unless the context otherwise requires, taken to be a reference to a Registrar of the High Court or of a District Court and includes a Deputy Registrar.
- “(11) In this section, **fine** has the meaning given to it in **section 79** of the Summary Proceedings Act 1957.”

79D Sections 19B to 19F repealed
Sections 19B to 19F are repealed.

Subpart 1B—Amendments to Criminal Proceeds
(Recovery) Act 2009

79E Principal Act amended
This subpart amends the Criminal Proceeds (Recovery) Act 2009.

79F Discharge of instrument forfeiture order by Official Assignee
Section 85 is amended by repealing paragraph (c) and substituting the following paragraph:

- “(c) thirdly, by paying, in the order of priority set out in **section 86E** of the Summary Proceedings Act 1957, any of the following outstanding amounts imposed on the former interest holder:
 - “(i) any amount of reparation (as defined in **section 79** of the Summary Proceedings Act 1957);
 - “(ii) any offender levy (as defined in **section 79** of the Summary Proceedings Act 1957);
 - “(iii) any other type of fine (as defined in **section 79** of the Summary Proceedings Act 1957):”.

Clause 81

To omit this clause (lines 15 to 19 on page 105) and substitute the following clause:

81 Interpretation

- (1) Section 280C is amended by repealing the definition of **fine** and substituting the following definition:

- “**fine** means—
- “(a) a fine within the meaning of **section 79** of the Summary Proceedings Act 1957:
- “(b) a fine to which **section 19** of the Crimes Act 1961 applies:
- “(c) a fine to which **section 43** or 45 of the Misuse of Drugs Amendment Act 1978 applies:
- “(d) a fine to which **section 281** of the District Courts Act 1947 applies:
- “(e) any amount payable under section 138A(1) of the Sentencing Act 2002”.
- (2) Section 280C is amended by repealing the definition of **reparation**.
- (3) Section 280C is amended by inserting the following definition in its appropriate alphabetical order:
- “**amount of reparation** has the same meaning as in **section 79** of the Summary Proceedings Act 1957”.

Part 4: new subpart 2A

To insert the following subpart after *subpart 2 of Part 4* (after line 32 on page 105):

Subpart 2A—Amendments to Disputes Tribunals Act
1988

82A Principal Act amended

This subpart amends the Disputes Tribunals Act 1988.

82B Functions of Tribunal

Section 18 is amended by inserting the following subsections after subsection (4):

- “(4A) An agreed settlement approved by the Tribunal under subsection (3) may include the terms of any agreement between the parties for payment of any amount specified in the agreed settlement to be enforced by way of an attachment order made under the District Courts Act 1947.
- “(4B) If **subsection (4A)** applies, then **section 19(1A) to (1C)** apply.”

82C Orders of Tribunal

Section 19 is amended by inserting the following subsections after subsection (1):

- “(1A) The Tribunal may record in an order made under subsection (1)(a) (a **money order**) that the parties have agreed to enforce the payment of the amount specified in that order by way of an attachment order made under the District Courts Act 1947 if—

- “(a) the money order was made at a hearing at which both parties were present; and
 - “(b) the party ordered to pay money consented to the payment of the money being enforced by way of an attachment order; and
 - “(c) both parties agreed on the terms of the attachment order, including the details specified in **subsection (1B)**.
- “(1B) If **subsection (1A)** applies, the money order must include the following details:
- “(a) the employer to whom the attachment order will relate; and
 - “(b) whether deductions are to be made every week, fortnight, or month, or by reference to some other period (the **earnings period**); and
 - “(c) the amount or percentage to be deducted from salary or wages for the earnings period; and
 - “(d) the amount or percentage below which the net amount paid for the earnings period must not fall; and
 - “(e) the name and address of the person to whom the amounts deducted are to be paid; and
 - “(f) that the attachment order is to remain in force until the amount specified in the money order has been paid in full or, if the attachment order is to remain in force for a fixed period, that period.
- “(1C) Nothing in **subsection (1B)(d)** allows the parties to agree on a net amount to be paid for an earnings period that would otherwise derogate from **section 84I(3)** of the District Courts Act 1947.
- “(1D) If **subsection (1B)** is complied with, the money order may be filed in any District Court and, if so filed, sections **79(5C)** and 84F to 84N of the District Courts Act 1947 apply to the extent they are applicable and subject to any necessary modifications.
- “(1E) In this section, **employer** and **salary or wages** have the same meanings as in section 84F of the District Courts Act 1947.”

Part 4: subpart 4

To omit this subpart (lines 8 to 16 on page 106).

Clause 88

To omit this clause (lines 21 to 26 on page 106) and substitute the following clause:

- 88 Information matching to locate person in serious default of payment of fine**
- (1) Section 295(4) is amended by repealing the definition of **fine** and substituting the following definition:

- “**fine** means—
- “(a) a fine within the meaning of **section 79** of the Summary Proceedings Act 1957:
 - “(b) a fine to which **section 19** of the Crimes Act 1961 applies:
 - “(c) a fine to which **section 43** or 45 of the Misuse of Drugs Amendment Act 1978 applies:
 - “(d) a fine to which **section 281** of the District Courts Act 1947 applies:
 - “(e) any amount payable under section 138A(1) of the Sentencing Act 2002”.
- (2) Section 295(4) is amended by repealing the definition of **reparation**.
- (3) Section 295(4) is amended by inserting the following definition in its appropriate alphabetical order:
“amount of reparation has the same meaning as in **section 79** of the Summary Proceedings Act 1957”.

Part 4: new subparts 5A and 5B

To insert the following subparts after *subpart 5 of Part 4* (after line 26 on page 106):

Subpart 5A—Amendment to Misuse of Drugs Act
1975

88A Principal Act amended

This subpart amends the Misuse of Drugs Act 1975.

88B Forfeiture

Section 32 is amended by repealing subsection (5) and substituting the following subsections:

- “(5) If the Court is considering whether to make an order for forfeiture under subsection (4), sections 128(5), 130, and 131 of the Sentencing Act 2002 apply to the extent that they are applicable and subject to any necessary modifications.
- “(6) If an order for forfeiture is made under subsection (4), the following provisions of the Sentencing Act 2002 apply to the extent that they are applicable and subject to any necessary modifications and the exception in **paragraph (b)**:
 - “(a) sections 132 to 136:
 - “(b) section 137, except that **section 137(3)(c)** and (g) do not apply and, instead, any proceeds of sale remaining after payment in accordance with section 137(3)(a), (b), and (d) to **(fb)** must be paid into a Crown Bank Account:
 - “(c) sections 138, 138A, and 140:

- “(d) **section 140A** (including **section 140A(4)**, which applies despite section 137(3)(c) not otherwise being applicable):
- “(e) sections 141A and 142.”

Subpart 5B—Amendments to Misuse of Drugs
Amendment Act 1978

88C Principal Act amended

This subpart amends the Misuse of Drugs Amendment Act 1978.

88D Section 43 substituted

Section 43 is repealed and the following section is substituted:

“43 Enforcement of fines

- “(1) If the Court sentences an offender on conviction for a drug dealing offence to pay a fine to which section 38 or 39 applies, **section 19** of the Crimes Act 1961 or **section 281** of the District Courts Act 1947 applies (whichever is applicable) to the enforcement of the fine, subject to any necessary modifications.
- “(2) The Court or the Registrar may make any orders as are appropriate under any of the provisions specified in **subsection (1)** in respect of any money or assets that are treated as belonging to the offender under section 42 (which are deemed to be the offender’s property for the purposes of this subsection).
- “(3) In **subsection (2), Registrar**—
 - “(a) means any Registrar of the High Court or a District Court; and
 - “(b) includes any Deputy Registrar.”

88E Sections 44 and 46 repealed

Sections 44 and 46 are repealed.

New clause 89A

To insert the following clause after *clause 89* (after line 5 on page 107):

89A Interpretation

Paragraph (b) of the definition of **working day** in section 16 is amended by inserting “**167A,**” after “165,” in each place where it appears .

Clause 90

New section 167A(1): to omit *paragraph (b)* (lines 15 to 18 on page 107) and substitute the following paragraph:

- “(b) has been sold or disposed of under—

- “(i) section 89, 91, or 93 of the District Courts Act 1947; or
- “(ii) section 137(1), 138, or 141(3)(b) of the Sentencing Act 2002; or
- “(iii) **section 100K(1)(a) or 100O(1)** of the Summary Proceedings Act 1957; or
- “(iv) a sale order issued under rule 17.63 of the High Court Rules.

New section 167A(2): to omit “A Registrar of the High Court or of a District Court” (line 19 on page 107) and substitute “A court registrar”.

New section 167A(3) and (4): to omit these subsections (lines 30 to 37 on page 107) and substitute the following subsections:

- “(3) As soon as is reasonably practicable after the financing change statement is entered in the register, the Registrar must ensure that the secured party is given a notice stating that the financing change statement will be registered unless a court order, under **subsection (4)**, cancelling that statement is served on the Registrar within 15 working days of the notice being given to the secured party.
- “(4) The court on whose behalf the financing change statement was entered may, on application, order the cancellation of that statement on the ground that the statement would affect collateral that is not personal property within the meaning of **subsection (1)**.
- “(5) An order under **subsection (4)** may be made by the court registrar of the appropriate court and any order made by that registrar is subject to review by a Judge of the appropriate court.
- “(6) If an order, under **subsection (4)**, cancelling the financing change statement is served on the Registrar within the period of 15 working days referred to in the notice given under **subsection (3)**, the financing change statement will not be registered and may be removed from the register by the Registrar.
- “(7) If an order, under **subsection (4)**, cancelling the financing change statement is not served on the Registrar within the period of 15 working days referred to in the notice given under **subsection (3)**, the financing change statement will be registered in accordance with section 144.”
- “(8) In this section, **court registrar**—
 - “(a) means any registrar of the High Court or of a District Court as appropriate; and
 - “(b) includes any deputy registrar of the High Court or of a District Court as appropriate”

Clause 92

New paragraph (d) of the definition of **order of reparation** in section 18(2): to omit *subparagraph (ii)* (lines 15 to 18 on page 108) and substitute the following subparagraph:

“(ii) is declared by the Governor-General, by Order in Council, to be an order of reparation for the purposes of Part 3 of the Summary Proceedings Act 1957.”

New clause 93A

To insert the following clause after *clause 93* (after line 22 on page 108):

93A Notice of adverse action proposed

- (1) Section 103(5) is amended by repealing the definition of **fine** and substituting the following definition:

“**fine** means—

“(a) a fine within the meaning of **section 79** of the Summary Proceedings Act 1957:

“(b) a fine to which **section 19** of the Crimes Act 1961 applies:

“(c) a fine to which **section 43** or 45 of the Misuse of Drugs Amendment Act 1978 applies:

“(d) a fine to which **section 281** of the District Courts Act 1947 applies:

“(e) any amount payable under section 138A(1) of the Sentencing Act 2002”.

- (2) Section 103(5) is amended by repealing the definition of **reparation**.

- (3) Section 103(5) is amended by inserting the following definition in its appropriate alphabetical order:

“**amount of reparation** has the same meaning as in **section 79** of the Summary Proceedings Act 1957”.

Part 4: new subpart 9A

To insert the following subpart after *subpart 9 of Part 4* (after line 33 on page 109):

Subpart 9A—Amendments to Residential Tenancies
Act 1986

97A Principal Act amended

This subpart amends the Residential Tenancies Act 1986.

97B Jurisdiction of Tribunal

- (1) Section 77(2) is amended by inserting the following paragraph after paragraph (p):

“(pa) to record in any order requiring a party to pay money to any other party that the parties have agreed to en-

force the payment of the amount specified in that order by way of an attachment order made under the District Courts Act 1947.”.

- (2) Section 77 is amended by inserting the following subsection after subsection (2):

“(2A) If **subsection (2)(pa)** applies, then **section 78(2AB) to (2AD)** apply.”

97C Orders of Tribunal

Section 78 is amended by inserting the following subsections after subsection (2A):

“(2AB) The Tribunal may record in an order made under subsection (1)(d) (a **money order**) that the parties have agreed to enforce the payment of the amount specified in that order by way of an attachment order made under the District Courts Act 1947 if—

“(a) the money order was made at a hearing at which both parties were present; and

“(b) the party ordered to pay money consented to the payment of the money being enforced by way of an attachment order; and

“(c) both parties agreed on the terms of the attachment order, including the details specified in **subsection (2AC)**.

“(2AC) If **subsection (2AB)** applies, the money order must include the following details:

“(a) the employer to whom the attachment order will relate; and

“(b) whether deductions are to be made every week, fortnight, or month, or by reference to some other period (the **earnings period**); and

“(c) the amount or percentage to be deducted from salary or wages for the earnings period; and

“(d) the amount or percentage below which the net amount paid for the earnings period must not fall; and

“(e) the name and address of the person to whom the amounts deducted are to be paid; and

“(f) that the attachment order is to remain in force until the amount specified in the money order has been paid in full or, if the attachment order is to remain in force for a fixed period, that period.

“(2AD) Nothing in **subsection (2AC)(d)** allows the parties to agree on a net amount to be paid for an earnings period that would otherwise derogate from **section 84I(3)** of the District Courts Act 1947.

“(2AE) If **subsection (2AC)** is complied with, the money order may be filed in any District Court and, if so filed, sections

79(5C) and 84F to 84N of the District Courts Act 1947 apply to the extent they are applicable and subject to any necessary modifications.

“(2AF) For the purposes of **subsection (2AB)(a)**, **hearing** includes mediation.

“(2AG) In this section, **employer** and **salary or wages** have the same meanings as in section 84F of the District Courts Act 1947.”

97D Functions of Tenancy Mediators

Section 88 is amended by adding the following subsection:

“(8) If a Tenancy Mediator makes an order under section 78(1)(d) to give effect to an agreed settlement, **section 78(2AB) to (2AD)** apply to the order, subject to the following modifications:

“(a) **section 78(2AB) and (2AD)** must be read as if—

“(i) the references to the money order were references to the agreed settlement; and

“(ii) the reference to the Tribunal were a reference to the Tenancy Mediator; and

“(iii) the reference to a hearing were a reference to mediation:

“(b) the order made by the Tenancy Mediator under section 78(1)(d) may be filed in any District Court to be enforced as an attachment order only if it is sealed under this section.”

Clause 100

To omit this clause (lines 9 to 13 on page 110) and substitute the following clause:

100 Taking into account financial capacity of offender

Section 35 is amended by repealing subsections (2) and (3) and substituting the following subsections:

“(2) **Subsection (3)** applies if the court is considering whether to impose—

“(a) more than 1 sentence of reparation on an offender; or

“(b) a sentence of reparation and a sentence of a fine on an offender; or

“(c) a sentence of reparation on an offender who is subject to an earlier sentence or order of reparation or an earlier sentence of a fine, or a combination of any of those.

“(3) The court must take into account that any payments received from the offender must be applied in the order of priority set out in **sections 86E to 86G** of the Summary Proceedings Act 1957.”

Clause 101: new section 36

To omit this section (line 16 on page 110 to line 24 on page 111) and substitute the following section:

“36 Payment conditions of sentence of reparation

- “(1) If a court sentences an offender to make reparation, the court may—
- “(a) make an order, under **section 81(1)(a)** of the Summary Proceedings Act 1957, allowing the offender greater time to pay or allowing the offender to pay by instalments, or both; or
 - “(b) make an order, under section 83(1) of the Summary Proceedings Act 1957, requiring the offender to pay immediately; or
 - “(c) direct the Registrar to determine the conditions of payment of the reparation, including whether to—
 - “(i) require the offender to pay the reparation immediately under section 83(1) of the Summary Proceedings Act 1957 (which applies with any necessary modifications); or
 - “(ii) enter into an arrangement with the offender allowing the offender greater time to pay or allowing the offender to pay by instalments, or both, under **section 86** of the Summary Proceedings Act 1957.
- “(2) If the court does not make an order or give a direction under **subsection (1)**, the reparation must be paid in 1 lump sum within the time allowed for the payment of fines generally by section 80 of the Summary Proceedings Act 1957.”

New clauses 101A to 101E

To insert the following clauses after *clause 101* (after line 24 on page 111):

101A New section 38A inserted

The following section is inserted after section 38:

“38A Cancellation of sentence of reparation

- “(1) A court may, on an application under **subsection (2) or (3)** or on its own initiative,—
- “(a) cancel a sentence of reparation; or
 - “(b) cancel a sentence of reparation and substitute any other sentence (including another sentence of reparation) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.
- “(2) An offender who is subject to a sentence of reparation or a Registrar may apply in accordance with section 72 for an order under **subsection (1)** on the ground that the reparation

- is unaffordable because the offender's financial position has changed significantly since the sentence was imposed.
- “(3) A Registrar may apply in accordance with section 72 for an order under **subsection (1)** on the ground that the Registrar reasonably believes that the sentence is unenforceable because the offender provided false or misleading information about the offender's financial position that the court relied on in imposing the sentence or because of any other reason.
- “(4) The court may make an order under **subsection (1)** (whether on application or on its own initiative) only if—
- “(a) the person to whom the offender is required to pay the reparation—
- “(i) has been informed and has been given the opportunity to be heard about the matter; or
- “(ii) is unable to be found despite reasonable efforts made by the Registrar; and
- “(b) the court is satisfied that—
- “(i) the ground in **subsection (2) or (3)** has been established; and
- “(ii) enforcement of the original sentence of reparation under Part 3 of the Summary Proceedings Act 1957 (or, if applicable, under **section 19** of the Crimes Act 1961 or **section 281** of the District Courts Act 1947) is unlikely to be effective.
- “(5) If the court is considering a substitute sentence,—
- “(a) the court must take the following matters into account:
- “(i) the amount of the original sentence of reparation that has been paid and the amount outstanding;
- “(ii) any other sentences or orders imposed on the offender for the offending for which the original reparation was imposed and the extent to which the reparation was taken into account in imposing those sentences or orders; and
- “(b) if the offender provided false or misleading information about the offender's financial position, the court may take the following matters into account:
- “(i) the extent to which the information was false or misleading;
- “(ii) the offender's culpability in providing the information, including whether, in the court's opinion, the offender intended to mislead the court.
- “(6) If the court cancels a sentence of reparation, the amount of reparation outstanding is deemed to be remitted from the date the order is made or any other date that the court may specify.”

101B Determining amount of fine

Section 40 is amended by repealing subsection (4) and substituting the following subsections:

- “(4) **Subsection (4A)** applies if a court imposes a fine—
- “(a) in addition to a sentence of reparation; or
 - “(b) on an offender who is subject to an earlier sentence or order of reparation.
- “(4A) In fixing the amount of the fine, the court must take into account—
- “(a) the amount of reparation payable; and
 - “(b) that any payments received from the offender must be applied in the order of priority set out in **sections 86E to 86G** of the Summary Proceedings Act 1957.”

101C New section 42A inserted

The following section is inserted after section 42:

“42A Offender may be detained for purpose of making declaration

A court may direct that an offender be detained in the custody of the court for a period not exceeding 2 hours for the purpose of making a declaration of financial capacity in accordance with section 42.”

101D Jurisdiction and procedure

- (1) The heading above section 72 is amended by adding “*and cancellation of sentences of reparation*”.
- (2) Section 72(1) is amended by inserting “**38A**,” after “section”.
- (3) Section 72(2) is amended by repealing paragraph (b) and substituting the following paragraphs:
 - “(b) on the chief executive of the Ministry of Justice, if a Registrar is not the applicant under **section 38A**; or
 - “(c) on the chief executive of the Department of Corrections, if a probation officer is not the applicant under section 54, 54K, 68, or 69I.”
- (4) Section 72 is amended by inserting the following subsections after subsection (2):
 - “(2A) An application under **section 38A** must be served in accordance with **section 79A or 79B** of the Summary Proceedings Act 1957.
 - “(2B) If an application under **section 38A** has been lodged in a court by a Registrar, the Registrar may, for the purpose of having the offender brought before the court dealing with the application, issue a warrant for the arrest of the offender.

- “(2C) **Sections 88AA and 88AC** of the Summary Proceedings Act 1957 apply with any necessary modifications to a warrant to arrest issued under **subsection (2B)**.
- “(2D) For the purposes of sections 280C to 280F of the Customs and Excise Act 1996 and sections 295 to 297 of the Immigration Act 2009, a warrant for the arrest of the offender issued under **subsection (2B)** is to be treated as a warrant for arrest that has been issued in respect of the non-payment of the whole, or of any part, of a fine.”

101E Section 105C repealed

Section 105C is repealed.

Clause 102

New section 106(3A): to omit “Sections 33 to 38” (line 28 on page 111) and substitute “Sections 32 to **38A**”.

To insert the following subclause as *subclause (2)* (after line 30 on page 111):

- (2) Section 106 is amended by repealing subsections (4) to (7).

Clause 103

New section 108(2A): to omit “Sections 33 to 38” (line 34 on page 111) and substitute “Sections 32 to **38A**”.

To insert the following subclause as *subclause (2)* (after line 36 on page 111):

- (2) Section 108 is amended by repealing subsections (3) to (6).

Clause 104

New section 110(3A): to omit “Sections 33 to 38” (line 4 on page 112) and substitute “Sections 32 to **38A**”.

To insert the following subclause as *subclause (2)* (after line 6 on page 112):

- (2) Section 110 is amended by repealing subsections (4) to (7).

New clauses 104A to 104K

To insert the following clauses after *clause 104* (after line 6 on page 112):

104A Interpretation of terms used in sections 128 to 142

- (1) Section 127(1) is amended by repealing the definition of **encumbrance**.
- (2) Section 127(1) is amended by repealing the definition of **hire purchase agreement** and substituting the following definition:

“**hire purchase agreement** means—

- “(a) an agreement under which goods are let or hired with an option to purchase, however the agreement describes the payments, under which the person who agrees to purchase the goods is given possession of them before the total amount payable has been paid:

- “(b) an agreement for the purchase of goods by instalment payments, however the agreement describes the payments, under which the person who agrees to purchase the goods is given possession of them before the total amount payable has been paid”.
- (3) Section 127(1) is amended by repealing the definition of **leasing agreement** and substituting the following definition:
“**lease** does not include a hire purchase agreement or a rental service agreement to which the holder of a rental service licence under the Land Transport Act 1998 is a party”.
- (4) Section 127(1) is amended by inserting the following definitions in their appropriate alphabetical order:
“**constable** has the meaning given to it in section 4 of the Policing Act 2008
“**Police employee** has the meaning given to it in section 4 of the Policing Act 2008
“**secured party** has the meaning given to it in section 16 of the Personal Property Securities Act 1999, except that the references to security interest are references to security interest as defined by this subsection
“**security agreement** has the meaning given to it in section 16 of the Personal Property Securities Act 1999, but does not include a lease
“**security interest** has the meaning given to it in section 17 of the Personal Property Securities Act 1999, but does not include a lease”.

104B Confiscation and destruction after third illegal street racing offence

- Section 129A is amended by adding the following subsection:
“(5) The court must not make an order under subsection (3) in respect of a motor vehicle that 1 or more persons treated as a substitute have an interest in if it is satisfied that either of the following applies to each substitute:
“(a) the substitute did not know, and could not reasonably have known, that the offender would commit the offence or offences; or
“(b) the substitute took all reasonable steps to prevent the offender from committing the offence or offences.”

104C Written caution to persons with interest in motor vehicles involved in offences

- (1) Section 129B(2) is amended by inserting “issued and” after “written caution be”.

- (2) Section 129B(3)(b) is amended by repealing subparagraph (ii) and substituting the following subparagraph:
“(ii) is a secured party under a security agreement relating to the motor vehicle, or the lessor of the motor vehicle under a lease, but has no relationship of another kind with the offender.”
- (3) Section 129B(7) is amended by adding the following paragraph:
“(c) by being left for the person at the person’s place of business with another person (other than the offender).”
- (4) Section 129B(8) is amended by inserting the following paragraph before paragraph (a):
“(aa) a constable:”.
- (5) Section 129B(8)(a) is amended by adding “authorised by the Commissioner of Police to serve documents under this Act”.
- (6) Section 129B(9) is amended by omitting “the date, and the time of service” and substituting “date, time, and mode of service”.

104D Review of written caution

Section 129C(1) is amended by repealing paragraph (c) and substituting the following paragraph:

- “(c) the applicant is a secured party under a security agreement relating to the motor vehicle, or the lessor of the motor vehicle under a lease, but has no relationship of another kind with the offender:”.

104E Appeal against confiscation by persons treated as substitutes

- (1) Section 129E(1) is amended by repealing paragraphs (a) to (g) and substituting the following paragraphs:
 - “(a) the motor vehicle was stolen or converted at the material time:
 - “(b) the appellant did not own or have an interest in the motor vehicle at the material time:
 - “(c) the appellant is a secured party under a security agreement relating to the motor vehicle, or the lessor of the motor vehicle under a lease, but has no relationship of another kind with the offender:
 - “(d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998:
 - “(e) the appellant took all reasonable steps to prevent the offender from committing the offence or offences:

- “(f) the appellant had not, before the commission of the offence or offences, been served with a written caution under section 129B in relation to the offender:
 - “(g) the appellant did not know, and could not reasonably have known, that the offender would commit the offence or offences:
 - “(h) confiscation of the motor vehicle is causing, or will cause, undue hardship to the appellant or any other person (other than the offender).”
- (2) Section 129E(2)(b) is amended by omitting “substitute who” and substituting “substitute or who”.
- (3) Section 129E(5)(a) is amended by omitting “subsection (1)(b) or (g)” and substituting “**subsection (1)(a), (d), or (h)**”.

104F New section 129EA inserted

The following section is inserted after section 129E:

“129EA Appeal against confiscation by third party

- “(1) If the court orders the confiscation of a motor vehicle under section 128, 129, or 129A, a person (other than the offender or, as the case may be, the substitute for the offender) may, within 20 working days after the date of the order, or within any further time that the appropriate court allows, appeal to the appropriate court against the order on the ground that the confiscation is causing, or will cause, undue hardship to the appellant or any other person (other than the offender or, as the case may be, the substitute for the offender).
- “(2) The appellant must serve the notice of appeal on—
- “(a) the prosecuting agency in the proceeding that resulted in the relevant conviction; and
 - “(b) any person (other than the offender or, as the case may be, the substitute for the offender) who owns or has an interest in the vehicle.
- “(3) The persons described in **subsection (2)** are parties to the appeal.
- “(4) The right of appeal under **subsection (1)** is independent of the offender’s right of appeal against conviction and sentence for the relevant offence or offences.
- “(5) The court must set aside the confiscation of the motor vehicle if satisfied that the ground of appeal stated in **subsection (1)** applies.
- “(6) For the purposes of **subsection (1)**,—
- “(a) if the order was made in a District Court, the appeal must be brought in the High Court in accordance with the High Court Rules:

“(b) if the order was made in the High Court, the appeal must be brought in the Court of Appeal in accordance with the rules of court governing civil appeals to that court.”

104G Warning notice to secured parties if confiscation not ordered for second illegal street racing offence

Section 129F(2)(c) is amended by omitting “an encumbrance” and substituting “a security agreement or lease”.

104H Court may order declaration of ownership to be completed

Section 130(2)(b) is amended by omitting “encumbrance” and substituting “security interest or lease”.

104I Enforcement of confiscation order

Section 132(5) is repealed.

104J Registrar may direct order to be enforced in another District Court

Section 135(1) is amended by omitting “, by order signed by the Registrar.”.

104K Offender must not acquire new interest in motor vehicle for 12 months

Section 136(5) is amended by omitting “sections 130” and substituting “**sections 129EA**, 130”.

Clause 105

New section 136A(b): to add (line 18 on page 112) “or disposed of”.

Clause 106

To omit *subclause (1)* (lines 20 to 22 on page 112) and substitute the following subclauses:

- (1) Section 137(2) is amended by omitting “in writing”.
- (1A) Section 137(3) is amended by repealing paragraph (c) and substituting the following paragraph:
 - “(c) if 1 or more security agreements have been brought to the notice of the Registrar before the proceeds of sale are fully applied, and have been established to the Registrar’s satisfaction, in payment to each secured party of the amount to which the secured party would, but for the extinguishment of the security interest concerned, have been entitled under that agreement.”.
- (1B) Section 137(3)(e) is amended by inserting “section 105B of” after “under”.

- (1C) Section 137(3) is amended by inserting the following paragraphs after paragraph (f):
- “(fa) in payment of any fees and accident insurance levies prescribed under section 242(2)(b) of the Land Transport Act 1998 that are outstanding in respect of the vehicle;
 - “(fb) in payment of any road user charges under section 9 of the Road User Charges Act 1977 that are outstanding in respect of the vehicle.”.
- (1D) Section 137 is amended by inserting the following subsection after subsection (3):
- “(3A) If any proceeds of sale are required to be applied to 2 or more security interests under **subsection (3)(c)**, those proceeds must be applied in the order of priority determined for those security interests by Part 7 or 8 of the Personal Property Securities Act 1999.”

To omit *subclause (3)* (lines 25 to 29 on page 112) and substitute the following subclause:

- (3) Section 137 is amended by adding the following subsections:
- “(5) A motor vehicle may be sold under this section even though it fails to comply in any respect with section 242 of the Land Transport Act 1998, and the purchaser of that motor vehicle—
- “(a) is, despite that Act or any other enactment, entitled to tow the motor vehicle to any appropriate place; and
 - “(b) in so towing the vehicle, is under no criminal or civil liability merely because of the failure of the vehicle to comply with that section; and
 - “(c) must comply in all respects with that Act as soon as the motor vehicle has been towed to that place.
- “(6) If the Registrar considers that a motor vehicle is not roadworthy and that it would be uneconomic to render it roadworthy, the Registrar must, before the motor vehicle is sold under this section, apply, under the Land Transport Act 1998, to have the registration of the motor vehicle cancelled as if the Registrar were the person who, under that Act, is entitled to apply for that cancellation.
- “(7) The person to whom a motor vehicle is sold under this section obtains, by virtue of this section, good title to the motor vehicle free of all ownership interests and other proprietary interests held in the motor vehicle before that sale.”

Clause 107

To omit this clause (lines 30 and 31 on page 112) and substitute the following clause:

107 Certain sales conditional on dismantling and destruction

Section 137A(4) is amended by omitting “The property in the motor vehicle does not pass from the Crown” and substituting “Despite **section 137(7)**, the property in the motor vehicle does not pass”.

Clause 108

To omit “, (2), and **(5)**” (line 4 on page 113) and substitute “, (2), **(5), and (7)**”.

New clauses 109A to 109D

To insert the following clauses after *clause 109* (after line 18 on page 113):

109A Offender liable for outstanding costs of seizure, storage, and sale

(1) Section 138A is amended by repealing subsection (4) and substituting the following subsection:

“(4) Part 3 (except **section 84**) of the Summary Proceedings Act 1957 (or, if applicable, **section 19** of the Crimes Act 1961 or **section 281** of the District Courts Act 1947) applies with any necessary modifications to any amount the offender is liable to pay under subsection (1) as if it were a fine.”

(2) Section 138A(5) is amended—

- (a) by omitting “appearing to have been signed” and substituting “issued”; and
- (b) by omitting “, without proof of the signature or office of the person appearing to have signed the certificate”.

109B Procedure if notice given that vehicle subject to encumbrance

(1) The heading to section 139 is amended by omitting “**encumbrance**” and substituting “**security agreement**”.

(2) Section 139(1) is amended—

- (a) by omitting “within 1 month after the date of sale” and substituting “before the proceeds of sale are fully applied”; and
- (b) by omitting “any encumbrance” and substituting “a security agreement”.

109C Lessor under leasing agreement may apply to Registrar

(1) The heading to section 140 is amended by omitting “**under leasing agreement**”.

(2) Section 140(1) is amended by—

- (a) omitting “leasing agreement” and substituting “lease”; and
 - (b) inserting “or disposed of” after “has sold”; and
 - (c) omitting “term of the agreement” and substituting “term of the lease”.
- (3) Section 140 is amended by inserting the following subsection after subsection (2):
- “(2A) On the transfer of the motor vehicle under subsection (2) to the lessor, the lease is cancelled.”

109D New section 140A inserted

The following section is inserted after section 140:

“140A What happens if lessor does not apply to Registrar before motor vehicle sold or disposed of

- “(1) This section applies if—
- “(a) section 140 applies; but
 - “(b) the lessor does not apply to the court for the transfer of the motor vehicle under section 140(1) before it is sold or disposed of; and
 - “(c) the vehicle is sold; and
 - “(d) the proceeds of the sale have not been fully applied.
- “(2) The lessor may apply to the court for the release of the proceeds of the sale of the motor vehicle that have not been applied.
- “(3) On an application under **subsection (2)**, the Registrar or a District Court Judge may release the proceeds of the sale of the motor vehicle in accordance with **subsections (4) and (5)**.
- “(4) The proceeds of the sale of the motor vehicle must be applied in accordance with section 137 as if the lease were a security agreement as defined in section 127(1) and the lessor were a secured party as defined in that subsection.
- “(5) However, despite **subsection (4)**, section 137 applies subject to the following modifications:
- “(a) the proceeds of the sale of the motor vehicle must be applied in payment to the lessor of the amount to which the lessor would, but for the sale, have been entitled to under the lease; and
 - “(b) the proceeds of the sale of the motor vehicle must be applied in the manner and order of priority set out in section 137, except that,—
 - “(i) in the case of a lease for a term of less than 1 year, those proceeds must be applied for the payment to the lessor described in **paragraph (a)** after they are applied for the payments described in section 137(3)(a) and (b), but before they are

applied for the remainder of the payments described in **section 137(3)(c)** to (g); and
“(ii) in the case of a lease for a term of more than 1 year, those proceeds must be applied for the payment to the lessor described in **paragraph (a)** as if they were payments described in **section 137(3)(c)** and **section 137(3)(c) and (3A)** applied.

“(6) On the release of the proceeds of the sale of the motor vehicle to the lessor, the lease is cancelled.”

Clause 110

To insert the following subclauses before *subclause (1)* (before line 20 on page 113):

(1AA) Section 141(1) is amended by omitting “any encumbrance (other than a leasing agreement)” and substituting “a security agreement”.

(1AB) Section 141(1) is amended by inserting “or disposed of” after “has sold”.

To insert the following subclause after *subclause (1)* (after line 21 on page 113):

(1A) Section 141 is amended by inserting the following subsection after subsection (3):

“(3A) If 2 or more secured parties have applied for an order under subsection (3), then the court must transfer the motor vehicle to the secured party with the highest-ranking security interest under the order of priority determined by Part 7 or 8 of the Personal Property Securities Act 1999.”

New clauses 110A to 110C

To insert the following clauses after *clause 110* (after line 27 on page 113):

110A Certain payments required before transfers take effect

Section 141A(3) is amended by adding “or its disposal under section 138”.

110B Application of proceeds of sale by secured party

(1) Section 141B(1) is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) pay into court the proceeds of the sale, less—
“(i) any costs paid under section 141A; and
“(ii) the amount of the costs and expenses of, and incidental to, the sale.”

(2) Section 141B(2) is amended by omitting “section 137(3)(d) to (g)” and substituting “section **137(3)(c)** to (g) and **(3A)**”.

110C New section 141C inserted

The following section is inserted after section 141B:

“141C Failure by secured party to sell or account for proceeds

- “(1) If the court has directed a secured party under section 141(3)(b) to sell a motor vehicle and the secured party fails to do so within a reasonable time, the Registrar may require any person in possession of the vehicle to surrender it to the Registrar, or a bailiff or constable, at a specified time and place.
- “(2) If the person in possession of the motor vehicle fails to surrender the motor vehicle at the time and place specified by the Registrar, the court may issue a warrant in the prescribed form authorising the Registrar or any bailiff or constable to recover the motor vehicle.
- “(3) For the purpose of executing a warrant issued under **subsection (2)**, the Registrar or bailiff or constable executing it may enter on any premises, by force if necessary, if the Registrar, bailiff, or constable has reasonable cause to believe that the motor vehicle in respect of which the warrant is issued is on those premises.
- “(4) If any person is in actual occupation of the premises, the Registrar or bailiff or constable must, on entering, produce the warrant to that person.
- “(5) If a motor vehicle is surrendered to or recovered by any bailiff or constable under this section, that officer must, as soon as practicable, deliver it into the custody of the Registrar.
- “(6) Sections 133 and 134 apply, with any necessary modifications, in respect of a motor vehicle surrendered or recovered under this section and to a warrant issued under this section.
- “(7) As soon as practicable after the motor vehicle is delivered into the Registrar’s custody under **subsection (5)**, the Registrar must arrange for its sale under section 137 or its disposal under section 138.
- “(8) A secured party who fails, in whole or in part, to pay into court the money required under **section 141B(1)(b)** is liable to the Crown for any amount not paid, and that amount may be recovered from the secured party as a debt due to the Crown.”

Clause 111

To omit this clause (lines 28 to 33 on page 113) and substitute the following clause:

111 Section 145 substituted

Section 145 is repealed and the following section substituted:

“145 Maximum period of detention for administrative tasks

- “(1) The purpose of this section is to provide for the maximum period for which an offender may be detained in the custody

- of the court, on any 1 occasion, to allow any administrative tasks to be completed if—
- “(a) 2 or more of those tasks apply or relate to the offender; and
 - “(b) they have to be completed at the same time.
- “(2) An offender may be detained in the custody of the court for a period not exceeding 3 hours if the offender is required, at any time before sentencing, to complete both of the following:
- “(a) make a declaration of financial capacity in accordance with section 42:
 - “(b) make a declaration of ownership of a motor vehicle in accordance with section 130.
- “(3) An offender may be detained in the custody of the court for a period specified in **subsection (4)** if, at any time after sentencing, 2 or more of the following are required to be completed:
- “(a) the offender to make a declaration of financial capacity in accordance with section 42:
 - “(b) an order for a community-based sentence to be drawn up and a copy given to the offender under section 74:
 - “(c) an order for a sentence of home detention to be drawn up and a copy given to the offender under section 80ZC:
 - “(d) a non-association order to be drawn up and a copy given to the offender under section 115:
 - “(e) a protection order to be drawn up and served on the offender under section 123E.
- “(4) The period referred to in **subsection (3)** is—
- “(a) a period not exceeding 3 hours if any 2 administrative tasks are required to be completed; or
 - “(b) a period not exceeding 4 hours if any 3 or more administrative tasks are required to be completed.
- “(5) If an offender is detained in the custody of the court for 2 or more orders for community-based sentences to be drawn up under section 74, each order is a separate administrative task for the purposes of **subsection (4)**.
- “(6) Nothing in this section limits or affects **sections 42A**, 74(4), 80ZC(4), 115(2), 123E(2), and 130(3) if the administrative task described in each of those sections is undertaken separately on any 1 occasion, rather than in conjunction with other administrative tasks.
- “(7) In this section, **administrative task** means a task of a kind specified in **subsection (2)** or, as the case may be, **subsection (3)**.”

New clauses 111A and 111B

To insert the following clauses after *clause 111* (after line 33 on page 113):

111A Sections 145A to 145D repealed

Sections 145A to 145D are repealed.

111B Transitional provisions relating to Transport (Vehicle and Driver Registration and Licensing) Act 1986

In the period beginning on the commencement of this section and ending immediately before the commencement of section 32(2) of the Land Transport Amendment Act 2009, the reference in **section 137(3)(fa) and (5)** of the principal Act (as inserted by this Act) to section 242 of the Land Transport Act 1998 is taken to be a reference to section 5 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

Clause 113

To omit this clause (lines 5 to 11 on page 114) and substitute the following clause:

113 Information on beneficiaries and former beneficiaries may be disclosed to Department for Courts for fines enforcement purposes

- (1) The heading to section 126A is amended by omitting “**Department for Courts**” and substituting “**Ministry of Justice**”.
- (2) Section 126A(1) is amended by repealing the definition of **fine** and substituting the following definition:

“**fine** means—

 - “(a) a fine within the meaning of **section 79** of the Summary Proceedings Act 1957:
 - “(b) a fine to which **section 19** of the Crimes Act 1961 applies:
 - “(c) a fine to which **section 43** or 45 of the Misuse of Drugs Amendment Act 1978 applies:
 - “(d) a fine to which **section 281** of the District Courts Act 1947 applies:
 - “(e) any amount payable under section 138A(1) of the Sentencing Act 2002.”
- (3) Section 126A(2) is amended by omitting “Department for Courts” in each place where it appears and substituting in each case “Ministry of Justice”.
- (4) Section 126A(3) is amended by omitting “Department for Courts” and substituting “Ministry of Justice”.
- (5) Section 126A is amended by inserting the following subsection after subsection (3):

“(3A) For each item of information to be supplied under subsection (3), the chief executive of the department must include the date when the information was most recently updated.”

- (6) Section 126A(4) is amended by omitting “Department for Courts” and substituting “Ministry of Justice”.

Clause 115

To omit this clause (lines 16 to 21 on page 114) and substitute the following clause:

115 Disclosure of certain information in relation to fines defaulters

- (1) Section 85A(1) is amended by omitting “Department for Courts” in each place where it appears and substituting in each case “Ministry of Justice”.
- (2) Section 85A(2) is amended—
- (a) by omitting “Department for Courts” and substituting “Ministry of Justice”; and
 - (b) by omitting “that Department” and substituting “that Ministry”.
- (3) Section 85A(3) is amended by omitting “Department for Courts” and substituting “Ministry of Justice”.
- (4) Section 85A is amended by repealing subsection (4) and substituting the following subsections:
- “(4) If the Commissioner has information relating to the fines defaulter, the Commissioner may supply to an authorised officer of the Ministry of Justice all or any of the following information that is held by the Commissioner in relation to the fines defaulter:
- “(a) the last known address of the fines defaulter; and
 - “(b) the last known telephone number of the fines defaulter; and
 - “(c) the name of the last known employer of the fines defaulter; and
 - “(d) the address of the last known employer of the fines defaulter; and
 - “(e) the telephone number of the last known employer of the fines defaulter.
- “(4A) For each item of information to be supplied under **subsection (4)**, the Commissioner must include the date when the information was most recently updated.”
- (5) The definition of **authorised officer** in section 85A(6) is amended—
- (a) by omitting “Department for Courts” and substituting “Ministry of Justice”; and
 - (b) by omitting “that Department” and substituting “that Ministry”.
- (6) The definition of **chief executive** in section 85A(6) is amended by omitting “Department for Courts” and substituting “Ministry of Justice”.

- (7) Section 85A(6) is amended by repealing the definition of **finer defaulter** and substituting the following definition:
- “**finer defaulter** means any person who is in default in the payment of—
- “(a) a fine within the meaning of **section 79** of the Summary Proceedings Act 1957:
 - “(b) a fine to which **section 19** of the Crimes Act 1961 applies:
 - “(c) a fine to which **section 43** or 45 of the Misuse of Drugs Amendment Act 1978 applies:
 - “(d) a fine to which **section 281** of the District Courts Act 1947 applies:
 - “(e) any amount payable under section 138A(1) of the Sentencing Act 2002”.

Schedule 1

Item relating to the Child Support Act 1991: to insert the following item after the item relating to section 183(5) (after line 13 on page 116):

Section 183(8): repeal.

Schedule 2

Item relating to section 87B(1)(a): to omit this item (line 6 on page 117).

Item relating to section 87B(1): to omit this item (line 7 on page 117).

Item relating to section 104A(1A): to omit this item (lines 26 and 27 on page 117).

New Schedules 2A and 2B

To insert the following schedules after *Schedule 2* (after line 27 on page 117):

Schedule 2A

s 66A

**Consequential and related amendments
arising from substitution of new sections 88
to 88AG in Summary Proceedings Act 1957**

Part 1

Amendments to Summary Proceedings Act 1957

Section 87AA(4)

Omit “section 88(3)(a)” and substitute “**section 88AE(1)(a)**”.

Section 89

Subsection (1): omit “section 88” and substitute “**sections 88 to 88AG**”.

Subsection (2): omit “section 88(3)” and substitute “**section 88AE(1)**”.

Subsection (3): omit “section 88(3)” and substitute “**section 88AE(1)**”.

Part 1—*continued*

Section 92

Omit “section 88(3)(b)” and substitute “**section 88AE(1)(b)**”.

Omit “section 88(3)(f)” and substitute “**section 88AE(1)(f)**”.

Section 102A(1)

Omit “warrant under section 88” and substitute “warrant for arrest issued under **section 88(4)** or a computer printout that, under **section 88AA**, constitutes a warrant for arrest”.

Section 102B(1)

Omit “warrant issued under section 88” and substitute “warrant for arrest issued under **section 88(4)** or a computer printout that, under **section 88AA**, constitutes a warrant for arrest”.

Section 103(1)

Omit “section 88(3)(a)” and substitute “**section 88AE(1)(a)**”.

Section 203(2)(n)

Omit “section 88(3)(fa)” and substitute “**section 88AE(1)(g)**”.

Part 2

Amendments to other Acts

Accident Compensation Act 2001 (2001 No 49)

Section 123(2)(e): omit “sections 87(1)(b), 88(3)(a)” and substitute “**sections 87(2)(b), 88AE(1)(a)**”.

Legal Services Act 2000 (2000 No 42)

Paragraph (b) of the definition of **criminal proceedings** in section 4: omit “section 88” and substitute “**sections 88 to 88AG**”.

Policing Act 2008 (2008 No 72)

Section 44(4): omit “section 88 or 93” and substitute “**section 88AA or 98**”.

Schedule 2B
Further amendments to Summary
Proceedings Act 1957

s 77A

Section 87A

Heading: omit “fines” and substitute “fine”.

Subsection (1)(c): insert “1 or more” after “in”.

Subsection (2): omit “fines” and substitute “fine”.

Section 90

Omit “any fine” and substitute “1 or more fines”.

Insert “, for each fine,” after “not exceeding”.

Section 91

Omit “a fine” in each place where it appears and substitute in each case “1 or more fines”.

Schedule 3

To insert in the third column after “an order and” (line 11 on page 118) “any amendments required to the person’s full address and telephone number, and”.

Explanatory note

This Supplementary Order Paper sets out proposed amendments to the Courts and Criminal Matters Bill.

Overview of proposed amendments

This Supplementary Order Paper—

- consolidates the statutory provisions, processes, and powers relating to the enforcement of fines and reparation by providing for Part 3 of the Summary Proceedings Act 1957 (which deals with the enforcement of District Court fines and reparation) to apply, subject to modifications, to the enforcement of fines and reparation imposed by the High Court; and
- further streamlines the procedural challenge process for unpaid infringement fees that have been filed with the court for enforcement; and
- amends the Sentencing Act 2002 to provide for the cancellation of a sentence or order of reparation that has become unaffordable or unenforceable and for the offender to be resentenced; and
- aligns the vehicle confiscation provisions in the Sentencing Act 2002 with the amended vehicle seizure provisions in the Summary Proceedings Act 1957; and
- amends the Sentencing Act 2002 to set the maximum period that an offender can be detained in the custody of the court for the purpose of com-

- pleting multiple administrative tasks (such as making a declaration as to financial capacity); and
- amends various Acts to further enhance the civil enforcement processes relating to the payment of judgment debts through attachment orders (mandatory deductions from salary and wages) and the seizure and sale of property; and
 - amends the Criminal Proceeds (Recovery) Act 2009 and the Misuse of Drugs Act 1975 to update and align the property forfeiture regimes in those Acts.

This Supplementary Order Paper also makes a number of drafting or technical changes to the Bill.

Specific provisions

Clause 2, which relates to the commencement of the Bill, is amended to insert *new subclause (IAA)*. The inserted *subclause (IAA)* brings several provisions of the Bill into force on the day after the date on which the Bill receives the Royal assent.

Clause 2(1) is amended to provide that the rest of the Bill will come into force on a date to be appointed by the Governor-General by Order in Council.

Clause 2(2) is amended to extend the date on which the provisions of the Bill will come into force if they have not already come into force on an earlier appointed date. The date is amended from the first anniversary of the date on which the Bill receives the Royal assent to 15 months starting on the date of Royal assent. *Clause 2(2)* is also amended to exclude *clauses 82A to 82C, 89 to 90, 93 to 94, and 97A to 97D* (which amend the Disputes Tribunals Act 1988, the Personal Property Securities Act 1999, the Privacy Act 1993, and the Residential Tenancies Act 1986 respectively). These provisions will come into force on a date to be appointed by the Governor-General by Order in Council.

Part 1

Amendments to District Courts Act 1947

Proposed *new clause 7A* clarifies that a person who is appointed as a deputy bailiff may exercise the powers and perform the functions and duties of a deputy bailiff in respect of any District Court and not just in relation to a particular District Court. The amendment is in the same terms as the amendments relating to Registrars, Deputy Registrars, and bailiffs in *clauses 5 to 7* of the Bill as introduced.

Proposed *new clause 7B* inserts *new section 28I*. *New section 28I* carries forward the application of Part 3 of the Summary Proceedings Act 1957, with any necessary modifications, to the enforcement of fines imposed by a District Court in the exercise of its jurisdiction under Part 2A of the District Courts Act 1947 in respect of indictable offences. However, the maximum term of imprisonment that the court may impose for the non-payment of 1 or more fines is increased. Currently, the maximum term of imprisonment to replace each unenforceable fine

available under section 90 of the Summary Proceedings Act 1957 is 3 months or the lesser of the maximum term to which the defendant was liable on conviction or a period of 1 year. Under *new section 28I*, the application of section 90 is modified in respect of indictable offences so as to provide that the maximum term of imprisonment to replace each unenforceable fine is the lesser of the maximum term to which the defendant was liable on conviction or a period of 2 years. This aligns with the equivalent term of imprisonment in respect of fines that may be imposed by the High Court.

Clause 9(2) is amended to insert *new subsections (5C) to (5F)* into section 79. The effect of the new subsections is that an attachment order can be made and proceedings for the attachment order can be commenced immediately after certain kinds of judgments or orders are filed. The judgments or orders in question are those that require the payment of money and record the agreement of the parties to enforce the payment by way of an attachment order, and include specific details necessary to give effect to the attachment order. The judgments or orders include certain monetary orders made under the Disputes Tribunals Act 1988 and the Residential Tenancies Act 1986.

Clauses 12, 14, and 15 are amended to make a number of minor drafting or consequential changes to *new sections 84AD, 84B, 84C, 84E, 84G, 84H, and 84I*. Most of the amendments are required to ensure a better alignment between these provisions and the other provisions of the Bill, including the requirements for service of documents in *new section 108A* (as set out in *clause 34*).

Proposed *new clause 16A* inserts *new section 84K*. *New section 84K* largely carries forward the provision in existing section 84K that makes it an offence for an employer to dismiss an employee or alter the position of an employee to the employee's prejudice because, among other things, an attachment order in respect of the employee has been served on the employer. However, *new section 84K* removes the existing requirement for the employer to prove that the employer's actions were not taken as a result of the employee's debt or the attachment order. It also consequentially removes the time limit for the protection provided to employees (currently 6 months). This protection now applies throughout the operation of the attachment order.

Clause 17 is amended to align with the generic service provisions in *new sections 108A and 108B*.

Clause 18 is amended to clarify that under *new section 84M*, a District Court may vary, suspend, or discharge an attachment order even though the other party has not had an opportunity to make representations to the court. It is also amended to better align *new section 84M* with the changes made by *clause 34* to the requirements for service in *new section 108A*.

Clause 19 is amended to clarify that a judgment creditor may apply for a review of an order or direction made by a Registrar under *new section 84E or 84G* only if the judgment creditor or his or her representative attended a financial assessment hearing.

Clause 20 is replaced with a new clause that inserts *new sections 84O to 84OB*. *New sections 84O to 84OB* largely carry forward, with modifications, existing

section 84O, which allows a judgment creditor to apply to a District Court for the judgment debtor to be sentenced to community work as a sanction for non-compliance with payment orders made by the court. The modifications include—

- allowing the court to impose any of the orders referred to in *new section 79(1), (3), or (4)* or to do any of the things referred to in *new section 84E(2)* instead of or in addition to ordering the judgment debtor to do community work;
- authorising Judges to decline an application from a judgment creditor for contempt proceedings, on the papers, if not satisfied that the judgment debtor can afford to pay the judgment debt and is refusing to do so;
- removing the requirement for an application for contempt proceedings to be supported by an affidavit setting out details of the judgment debtor’s alleged disobedience;
- authorising Registrars to issue warrants to arrest judgment debtors who fail to appear at the hearing of the application or who cannot be served with the application.

Clause 26 is amended to extend the period under section 88 that is required to elapse before goods seized under a warrant to seize property can be sold. The period is extended from 5 days to 7 days.

Clause 27 is amended to clarify that the jurisdiction of a District Court under section 89 may be exercised by the Registrar.

Clause 28 is amended to clarify in section 90 that the purchaser of goods sold by a bailiff charged with the enforcement of a warrant to seize property acquires good title to those goods free of all ownership interests and other proprietary interests held in them before the sale.

Clause 29 is amended to provide for the same effect as in *clause 28* in relation to the purchaser of property sold under section 91.

Proposed *new clause 29A* inserts *new section 91A*. *New section 91A* requires the Registrar to check whether a financing statement that relates to any property seized under a warrant to seize property has been registered on the personal property securities register kept under the Personal Property Securities Act 1999. If a financing statement has been registered, the bailiff must promptly notify the secured party concerned that the court may, under section 89, sell the property. *New section 91A* is in the same terms as *new section 100D* of the Summary Proceedings Act 1957.

Clause 31 is amended to provide for the same effect as in *clause 28* in relation to the purchaser of property sold under section 93.

Clause 32 is amended to update the terminology used in section 94. The term bailiff’s interpleader is replaced by the term third party claim process. *Clause 32* is also amended to provide in section 94 that if a claim has been made under section 93 in respect of property that is subject to a financing statement, the bailiff must obtain a summons calling before the court the party making the claim.

Clause 34 is amended to streamline the provisions relating to the service of documents used in connection with the enforcement of civil judgments and to align

these provisions to the extent appropriate with the provisions relating to the service of documents used in connection with the enforcement of fines in the Summary Proceedings Act 1957 and, in particular, to set out the requirements relating to the sending of documents in electronic form.

Clause 35 is amended to ensure that section 116A (which relates to proof of service of documents) is consistent with the corresponding provisions in the Summary Proceedings Act 1957 and the Land Transport Act 1998.

Clause 36 is consequentially amended as a result of the amendments to the requirements for service of documents set out in *new section 108A* (as inserted by *clause 34*).

Proposed *new clause 37A* inserts *new section 123AA*. *New section 123AA* allows the chief executive of the Ministry of Justice to approve and issue forms (other than forms required to be prescribed by rules or regulations) for the purposes of the principal Act.

Proposed *new clause 38A* sets out transitional provisions.

Part 2

Amendments to Land Transport Act 1998

Clause 43 is amended to make a minor drafting change to *new section 91A*, and to amend *new section 91AB* to align with proof of service provisions in other Acts. *New sections 91G and 91H* are amended to clarify that surrendered photographic driver licence cards must be returned to the New Zealand Transport Agency.

Clause 47 is amended to clarify that if the court makes an order authorising the grant of a limited licence, then although the New Zealand Transport Agency must issue to the person entitled to it a limited licence in accordance with the order even though the person's driver licence is suspended under section 90 or the person is disqualified from holding or obtaining a driver licence, this is not the case when the suspension occurs by way of a driver licence stop order.

Part 3

Amendments to Summary Proceedings Act 1957

Clause 55 is amended to remove the requirement in *new section 24(1)(e)* for rules to be made before a notice relating to an infringement offence may be sent in electronic form to the defendant.

Clause 56 is amended to streamline the procedures for an application to correct irregularities in proceedings for infringement offences. The amendments will enable the application to be made electronically in a manner approved by the chief executive of the Ministry of Justice. The amendments will also allow the application to be made to any District Court and to be considered in another District Court besides the one to which it is made. Furthermore, the amendments will clarify that the application can be dealt with on the papers unless the Judge or Registrar considers that a hearing is necessary.

Clause 57 is amended to clarify that in the case of an infringement notice issued for an owner liability offence, the restriction in *new section 78C* on the defendant

being able to rely on the fact that he or she did not receive the reminder notice does not apply to a defendant who did not own the motor vehicle in respect of which the offence was committed and who was, therefore, not responsible for ensuring that the vehicle was registered and licensed at the material time.

Clause 58 is amended by making a number of drafting changes to *new section 79*, including the addition of a number of definitions (some of which have been relocated from the Sentencing Act 2002) and some minor consequential changes to update existing cross-references. *Clause 58* is also amended by replacing *new sections 79A and 79B*, which relate to the service of documents under Part 3 of the Summary Proceedings Act 1957. The changes to *new sections 79A and 79B* do not alter the substantive approach to the service of documents as set down in the Bill as introduced, but they do include further refinements to better achieve the original policy intent. Some minor drafting changes have also been made to *new sections 79C and 79D*, which were already part of the Bill as introduced.

Proposed *new clause 59A* amends section 80 to acknowledge that payment conditions for reparation can be imposed under the Sentencing Act 2002.

Clause 60 is replaced by a new clause that substitutes a *new section 81*, which rationalises the way in which reparation and fines are treated. *New section 81* will allow the Court to direct a Registrar to determine whether to enter into an arrangement with the defendant allowing greater time to pay a fine or to pay the fine by instalments, or both. The Court may direct the Registrar to do so rather than making the order itself. *New section 81* also provides that if an amount of reparation or an offender levy is payable, an order made by the Court or an arrangement entered into in respect of the fine must include payment of the reparation or the levy.

Clause 61 is replaced by a new clause that substitutes a *new section 82*. Currently, section 82 allows the Court to order a defendant to supply a statement of means before imposing a fine on determination of a complaint. The statement of means may be given orally or completed in writing. *New section 82* largely carries this provision forward, except that it provides for sections 41 to 43 of the Sentencing Act 2002 (which relate to declarations of financial capacity) to apply, subject to any necessary modifications, instead of the defendant preparing a statement of means. *New section 82* also provides that a Court may direct a defendant to make a declaration as to financial capacity if the Court is considering taking other specified actions (such as making an order for the immediate payment of a fine).

Proposed *new clause 61A* amends section 83, which allows the Court to order immediate payment of a fine. Under the amendments, the Court may order a defendant to pay a fine immediately only if, in the case of a fine that consists of or includes an amount of reparation, the Court is satisfied that the defendant has sufficient means to do so or, in any other case, the Court is satisfied that the defendant has sufficient means to do so and either the defendant has no fixed place of residence or the Court is satisfied that the fine should be paid immediately given the gravity of the offence, the defendant's character, or any other special circumstances. Section 83 is also amended to clarify that if an amount of reparation or an offender levy is payable under an order imposing a fine, the

reparation or the levy must be paid at the same time as any other amount payable under the order.

Clause 62 is amended to make minor drafting changes.

Clause 64 is amended to make a number of drafting changes to *new sections 86 to 86D* and to insert *new sections 86E to 86H*. The drafting changes include an amendment to *new section 86* to clarify that a representative means a person who, among other things, appears to a Registrar to have the defendant's consent to enter into an arrangement in respect of the payment of a fine. The drafting changes also include an amendment to *new section 86A* to remove the requirement for a Registrar to consult a defendant before an attachment order imposed on the defendant can be varied, suspended, or cancelled. *New sections 86E to 86H* largely replicate sections 105C and 145A to 145D of the Sentencing Act 2002, which are being repealed by *clauses 101E and 111A* and relocated in the Summary Proceedings Act 1957. *New sections 86E to 86H* form part of the rationalisation of provisions relating to the payment of monetary penalties between the Summary Proceedings Act 1957 and the Sentencing Act 2002.

Clause 64A is replaced by a new clause that substitutes a *new section 87*. *New section 87* largely carries forward existing section 87, which sets out the actions that a Registrar may take if a fine or instalment of a fine is not paid or if an arrangement extending the time to pay a fine or an attachment order is cancelled. However, *new section 87* provides that the actions may also be taken if a bailiff cancels an arrangement extending the time to pay a fine in accordance with *new section 86D*. It also incorporates the requirement from section 145 of the Sentencing Act 2002 that the Registrar cannot issue a warrant to seize property if the only amount in default is an offender levy. The amendments made to existing section 87 that are now in *new section 87* mostly reflect the policy changes made elsewhere in the Bill.

Clause 65 is amended to authorise the electronic transmission of requests for information under section 87AA, which allows the Registrar to obtain information in respect of beneficiaries. The amendments also provide that all the telephone numbers of a defendant may be sought under section 87AA and not just the defendant's residential telephone number.

Proposed *new clauses 65A to 65D* make a number of minor drafting or consequential changes to reflect the policy changes made elsewhere in the Bill.

Clause 66 is amended to replace section 88 with *new sections 88 to 88AG*. *New sections 88 to 88AG* largely carry forward the provisions in existing section 88, which sets out actions that may be taken by the Registrar if any fine remains unpaid. In accordance with current drafting practice, however, those provisions have been reordered and divided into several sections to make them more readily accessible.

Proposed *new clause 66A* provides for the enactments listed in *new Schedule 2A* to be amended as a result of the substitution of *new sections 88 to 88AG* and the amendments to other provisions.

Clause 67 is amended to make a number of drafting or consequential changes to *new sections 88A and 88B*. The changes include an amendment to clarify that

section 88B (which relates to the remission of fines) also applies to an amount of reparation in some circumstances. The changes also authorise a Registrar to remit any fine (except reparation) at any time if the Registrar is satisfied that the defendant is a deceased individual or a body corporate or an unincorporated body that has been wound up.

Proposed *new clause 67A* amends section 90, which sets out the period of imprisonment for non-payment of any fine. The amendment clarifies that the period specified in section 90(a) applies in the case of an offence that was punishable by a period of imprisonment of more than 3 months.

Clause 68 is amended to clarify that, under section 91, a defendant who receives imprisonment or another substituted sentence for the non-payment of a fine must, on the payment of the fine, be discharged from prison or the sentence unless the defendant is also subject to imprisonment or the sentence for some other reason. Section 91 is also amended to allow a substituted sentence to be reduced in proportion to any part-payments of 10% or more of the total amount for which the sentence was imposed.

Proposed *new clause 68A* makes a minor consequential amendment to section 92, which describes the effect of a warrant of commitment.

Clause 69 is amended to allow driver licence numbers and driver licence card numbers to be included in the definition of identifying particulars in *new section 92A*, but only if the credit reporting code of practice issued under the Privacy Act 1993 authorises the use of driver licence numbers and driver licence card numbers as part of the information matching process for this initiative.

Clause 70 makes minor refinements to the provisions relating to the seizure and sale of property to pay overdue fines. The refinements include—

- changes to *new section 100E* to clarify that the owner of a motor vehicle is not liable for any fees or costs that have been incurred if an appeal against impoundment is successful after the vehicle has been seized from impoundment by the court and before the end of the impoundment period:
- the addition of *new section 100HA* to provide that if a lessor submits a claim to a seized motor vehicle after it has been sold but before the sale proceeds have been applied, the sale proceeds are to be returned to the lessor:
- changes to *new section 100Q* to authorise any vehicle licence fees and road user charges that are owing on a seized vehicle to be paid from the proceeds if any money remains after the monetary penalties and costs have been paid.

Proposed *new clause 70A* makes a minor drafting change to section 102, which protects Registrars, bailiffs, constables, and other officers from personal liability for any act done or omitted in good faith in the performance or purported performance of any power or function relating to the immobilisation of any vehicle or the seizure of any property or its subsequent disposal.

Clause 71 is amended to make a minor consequential amendment to section 103(1) and to provide that an attachment order must be in a form approved by

the chief executive of the Ministry of Justice under *new section 209A*. Section 103 describes the effect of an attachment order.

Proposed *new clause 71A* amends section 104A to authorise the electronic transmission of requests for information by Registrars to the Inland Revenue Department and to clarify and refine the drafting of this section.

Clause 72 is amended to make minor drafting or consequential changes to *new section 105*, which relates to the content of attachment orders.

Proposed *new clause 73A* replaces section 106A with *new section 106A*. *New section 106A* largely carries forward the provision in existing section 106A that makes it an offence for an employer to dismiss an employee or alter the position of an employee to the employee's prejudice because, among other things, an attachment order in respect of the employee has been served on the employer. However, *new section 106A* removes the existing requirement for the employer to prove that the employer's actions were not taken as a result of the employee's debt or the attachment order. It also consequentially removes the time limit for the protection provided to employees (currently 6 months). This protection now applies throughout the operation of the attachment order.

Proposed *new clause 73B* amends section 106B to align with the generic service provisions in *new sections 79A and 79B*.

Clause 74 is amended to divide existing section 106E into *new sections 106E and 106EA*. The 2 new sections largely carry forward the provisions of existing section 106E, except that those provisions have been reorganised somewhat to make them more readily accessible.

Proposed *new clause 74A* amends section 106F, which relates to the review of a Registrar's decisions. The amendments will allow a Registrar's decision relating to procedural irregularities in infringement proceedings to be reviewed by a District Court Judge under section 106F, and also set out rules for dealing with applications to review decisions in cases where property has been seized.

Proposed *new clause 76A* inserts *new section 209A*. *New section 209A* allows the chief executive of the Ministry of Justice to approve and issue forms (other than forms required to be prescribed by regulations) for the purposes of the principal Act.

Clause 77 makes minor drafting or consequential amendments to section 212, which provides for rules and regulations to be made for the purposes of the principal Act.

Proposed *new clause 77A* provides for further consequential amendments to the principal Act.

Proposed *new clauses 77B and 77C* set out transitional provisions.

Part 4

Amendments to other Acts

Proposed *new clause 79A* amends section 283 of the Children, Young Persons, and Their Families Act 1989 to update the cross references to the vehicle confiscation provisions in the Sentencing Act 2002.

Proposed *new subpart 1A* amends the Crimes Act 1961 to authorise fines imposed by the High Court to be enforced under Part 3 of the Summary Proceedings Act 1957 (which will apply subject to any necessary modifications and 3 specific modifications). The specific modifications are as follows:

- the High Court may, in addition to the enforcement actions available under Part 3 of the Summary Proceedings Act 1957, continue to make any orders it thinks fit, including an order directing that a writ of sale be issued against the property of the offender:
- an appeal against a sentence of community work, community detention, home detention, or imprisonment imposed by the High Court for non-payment of a fine is to be made to the Court of Appeal rather than the High Court:
- despite section 90 of the Summary Proceedings Act 1957, the period of imprisonment that the High Court may impose on the offender to replace an unenforceable fine is the lesser of the maximum term of imprisonment to which the offender was liable on conviction or 2 years.

Proposed *new subpart 1B* amends the Criminal Proceeds (Recovery) Act 2009 to authorise orders, as well as sentences, of reparation and offender levies to be paid from the sale proceeds of forfeited property.

Proposed *new subpart 2A* amends the Disputes Tribunals Act 1988 to authorise details of attachment orders agreed at a Dispute Tribunal hearing to be recorded in the tribunal's order so that it can be filed in a District Court for immediate enforcement.

Subpart 4, which amends the Immigration Act 1987, is omitted because that Act has now been repealed.

Clause 88 is amended to make minor consequential changes to certain definitions in section 295(4) of the Immigration Act 2009.

Proposed *new subpart 5A* amends section 32 of the Misuse of Drugs Act 1975 to align the vehicle forfeiture provisions in that section with those in the Criminal Proceeds (Recovery) Act 2009.

Proposed *new subpart 5B* amends the Misuse of Drugs Amendment Act 1978 to authorise fines imposed for drug dealing offences by the High Court to be enforced under *new section 19* of the Crimes Act 1961 or *new section 28I* of the District Courts Act 1947. The effect of this amendment is that Part 3 of the Summary Proceedings Act 1957 will apply to the enforcement of these fines but with the modifications set out in those provisions.

Clauses 89A and 90 amend the Personal Property Securities Act 1999 to allow courts to amend the Personal Property Securities Register in respect of security interests that are no longer valid because seized property has been sold by the court.

Clause 92 makes minor consequential changes in relation to section 18 of the Prisoners' and Victims' Claims Act 2005.

Proposed *new clause 93A* amends section 103 of the Privacy Act 1993 to make minor consequential changes to certain definitions in that section.

Proposed *new subpart 9A* amends the Residential Tenancies Act 1986 to authorise details of attachment orders agreed at a Tenancy Tribunal hearing to be recorded in the tribunal's order so that it can be filed in a District Court for immediate enforcement.

The amendments to *clauses 100 and 101* amend sections 35 and 36 of the Sentencing Act 2002 to reflect the rationalisation of provisions relating to the payment of monetary penalties between that Act and the Summary Proceedings Act 1957.

Proposed *new clause 101A* inserts *new section 38A*. *New section 38A* allows a court to cancel a sentence of reparation that has become unaffordable or unenforceable and to substitute any other sentence (including another sentence of reparation) that could have been imposed on the offender at the time of conviction.

Proposed *new clause 101B* makes minor drafting amendments to section 40, which deals with the amount of a fine.

Proposed *new clause 101C* inserts *new section 42A*. *New section 42A* provides that an offender may be detained in the custody of the court for the purpose of making a declaration of financial capacity in accordance with section 42.

Proposed *new clause 101D* amends section 72 to provide procedures relating to *new section 38A*, which relates to the cancellation of a sentence of reparation. The procedures are largely based on existing provisions in the Summary Proceedings Act 1957.

Proposed *new clause 101E* repeals section 105C, which relates to priority of payments received from an offender. The substance of section 105C has been relocated into *new section 86E* of the Summary Proceedings Act 1957.

Clauses 102 to 104 are amended to make minor drafting or consequential changes.

Proposed *new clauses 104A to 104K* and the amendments in *clauses 105 to 110C* amend the vehicle confiscation provisions in the Sentencing Act 2002 to ensure alignment with the corresponding provisions in the Summary Proceedings Act 1957. In particular,—

- the definitions relating to financing arrangements have been amended; and
- new provisions have been added to enable third parties who are affected by the confiscation of a vehicle to appeal against the confiscation; and
- section 137 has been amended to authorise any vehicle licence fees and road user charges that are owing on a confiscated vehicle to be paid from the sale proceeds if any money remains after the monetary penalties and costs have been paid; and
- *new section 140A* has been inserted to clarify that if a lessor submits a claim to a confiscated vehicle after it has been sold but before the sale proceeds have been applied, the sale proceeds are to be returned to the lessor; and

- *new section 141C* has been inserted to enable a Registrar to take action if a secured party to whom a confiscated vehicle has been released for sale fails to sell the vehicle or fails to account to the court for the sale proceeds.

Clause 111 is replaced by a new clause that substitutes a *new section 145*. *New section 145* sets out the maximum period that an offender can be detained in the custody of the court for the purpose of completing certain administrative tasks. The substance of the repealed section 145 has been relocated in the Summary Proceedings Act 1957.

Proposed *new clause 111A* repeals sections 145A to 145D. The substance of the repealed sections have been relocated in *new sections 79 and 86F to 86H* of the Summary Proceedings Act 1957.

Proposed *new clause 111B* sets out a transitional provision relating to the vehicle confiscation provisions.

Clauses 113 and 115 are amended to make minor drafting or consequential changes to section 126A of the Social Security Act 1964 and section 85A of the Tax Administration Act 1994 respectively.

Schedules 1 and 2 are amended to make further consequential amendments.

New Schedules 2A and 2B contain additional consequential and related amendments to the Summary Proceedings Act 1957 and other Acts.

Schedule 3 is amended to clarify the amendment to Schedule 5 of the Privacy Act 1993.