Criminal Procedure Legislation Bill 2012

Date of Introduction: 15 October 2012

Portfolio: Justice

Select Committee: As at 30 October, 1st Reading not held.

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Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.
Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The Bill’s explanatory note begins as follows:

“This Bill contains technical amendments required to ensure that the legislative intent of the Criminal Procedure Act 2011 (the 2011 Act), and related legislation arising from the dividing of the Criminal Procedure (Reform and Modernisation) Bill, is made clear and can be applied as intended by the judiciary, prosecutors, and defence counsel. Additionally, without the greater specificity and clarity provided by the proposed amendments, the full and effective implementation of the 2011 Act and the benefits sought to be achieved may not be fully realised”\(^1\).

The Explanatory note later states:

“*The required amendments fall largely into the following categories:

- “a number of cross-referencing and other minor technical fixes (for example, incorrect section or schedule citations);
- “amendments that ensure that the procedures and processes under the 2011 Act can be fully implemented to operate as intended;
- “references to crime in several statutes need to be amended, due to the repeal of the definition of crime in the Crimes Act 1961 on 1 July 2013. Not all references to crime need to

be amended. However, where that term is used, for example, to specify that it is an offence to
do certain acts with intent to commit a crime, amendments are necessary to make explicit the
type of offence covered by that term in the relevant context;

- “amendments that give full effect to the intended policy under the Act that Community
Magistrates have jurisdiction to receive guilty pleas for certain category 2 offences, being
offences in respect of which Community Magistrates have sentencing jurisdiction. The
opportunity is also taken to clarify with greater specificity other aspects of Community
Magistrates’ jurisdiction.”

Background

Not a Statutes Amendment Bill

The Explanatory note states:

“The proposed amendments are considered to be non-controversial and would normally be suitable
for a Statutes Amendment Bill (an SAB). However, due to the necessity of all amendments being in
force by 1 July 2013 (when the 2011 Act is to come fully into force), and with no guarantee that this
year’s SAB will be enacted by that date, this Bill is considered to be the only appropriate vehicle to
progress the required changes.”

Comment

Statutes Amendment Bills consists entirely of amendments to Acts and are a type of omnibus Bill that
may be introduced by virtue of Standing Order 259(1)(f). Standing Order No 301(1) provides that in
the Committee of the Whole House stage of a Bill “a question is proposed that each provision stand
part of the bill or as amended stand part of the bill. Standing Order 301(2) provides that “if any
member objects to a clause standing part of a Statutes Amendment Bill (or of a bill that was formerly
part of a Statutes Amendment Bill), the clause is struck out of the bill”.

Because this Bill is not a Statutes Amendment Bill, none of its clauses can be defeated on the
objection of one member as described in Standing Order No 301(2).

No Regulatory impact statement

There is no Regulatory Impact Statement associated with this Bill. Because the provisions of the Bill
are “technical revisions to improve legislative clarity”, are suitable for inclusion in a [Statutes
Amendment Bill], and “will repeal or remove redundant legislative provisions” they “are exempt from
the regulatory impact analysis”.

Main Provisions

Commencement

The Bill provides that the Act comes into force on 1 July 2013 (Clause 2).

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2 Ibid., pp. 1 and 2.
3 Ibid., p. 1.
4 Standing Orders of the House of Representatives, 2011, p. 81, Standing Order No 259(1)(f).
5 Standing Orders of the House of Representatives, 2011, p. 81, Standing Order No 301.
Criminal Procedure Act 2011

Imprisonable offence

The Bill inserts a definition of “imprisonable offence” (which is: “in the case of an individual, an offence punishable by a term of imprisonment” and “in the case of a body corporate, an offence that would be punishable by a term of imprisonment if the offence were committed by an individual”) (Part 1, Clause 4, amending Section 5 of the 2011 Act by inserting a definition of “imprisonable offence”).

Charging documents

The Bill provides that in charging documents the name of the employer is generally required unless the prosecution is a private one brought by an individual (Part 1, Clause 5, amending Section 16 of the 2011 Act).

Trial of different charges together

The Bill sets out the circumstances in which different charges may be heard together covering more circumstances than the present provision which is replaced (Part 1, Clause 7, substituting Section 138 of the 2011 Act).

Assumption of responsibility by Solicitor-General

The Bill adds a subsection to this provision which provides that no Crown prosecution is invalid only because the Crown did not assume responsibility for a prosecution as required, or assumed responsibility for a prosecution that it should not have (Part 1, Clause 9, amending Section 187 of the 2011 Act).

Other amendments to procedural matters and to save particular proceedings subject to certain errors

The Bill makes many other amendments relating to procedural matters and to prevent proceedings being invalidated by procedural errors (for example Clause 13 which saves proceedings which should have been held in the Youth Court but were not). Schedule 1 contains further amendments to the 2011 Act. “These amendments correct erroneous terminology, wrong cross-references, punctuation, and other minor errors, and make minor changes”7 (Part 1, Clauses 6, 8 and 10-17).

Crimes and Offences

The Bill amends references to crime in several statutes as explained above to make explicit the type of offence covered by that term in the relevant context. These statutes are: the Auctioneers Act 1928, the Crimes Act 1961, the Crimes Amendment Act (No 4) 2011, the Criminal Disclosure Act 2008, the Juries Act 1981, the Misuse of Drugs Act 1975 and the Misuse of Drugs Act 1975 (Part 2, Subparts 1-6, Clauses 18-20 and 22-34; Clause 24 inserts Schedule 2, which contains further amendments to the Crimes Act 1961. “These amendments replace various incorrect references to crime with offence or imprisonable offence, as the case requires”8).

Jurisdiction in respect of crimes on ships or aircraft beyond New Zealand

The bill also corrects the same problem in respect of Section 8 of the Crimes Act 1961.

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8 Ibid., p. 5.
Section 8 of the Crimes Act applies in general to any act done or omitted beyond New Zealand by any person:

- on board any Commonwealth ship; or
- on board any New Zealand aircraft; or
- on board any ship or aircraft, if that person arrives in New Zealand on that ship or aircraft in the course or at the end of a journey during which the act was done or omitted; or
- being a British subject, on board any foreign ship (not being a ship to which he belongs) on the high seas, or on board any such ship within the territorial waters of any Commonwealth country; or
- being a New Zealand citizen or a person ordinarily resident in New Zealand, on board any aircraft.

Section 8 at present provides that where any person did or omitted to do any act to which that section applied, and that act or omission would, if it occurred within New Zealand, be a crime under the Crimes Act or under any other enactment, he or she would be liable on conviction on indictment or, in the case of a crime to which Part 1 of the Summary Proceedings Act 1957 applied, either on conviction on indictment or on summary conviction under that Part, as if the act or omission had occurred in New Zealand:

The Bill provides, in relation to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand, that if a person does or omits to do any act specified in the provision, and that act or omission would, if it occurred within New Zealand, be an offence punishable by imprisonment for life or by two or more years’ imprisonment, then the person is liable on conviction as if the act or omission had occurred in New Zealand. If any proceedings are taken by virtue of that jurisdiction, it is a defence to prove that the act or omission would not have been an offence under the law of the country of which the person charged was a national or citizen at the time of the act or omission, if it had occurred in that country.

In particular, the replacement provisions amendments replace the term “crime” with the term “an offence punishable by imprisonment for life or by two or more years’ imprisonment” and replace the word “crime” with the word “offence”.

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