

Administration of Justice (Reform of Contempt of Court) Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Administration of Justice (Reform of Contempt of Court) Bill and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to reform the law of contempt to make it more accessible, understandable, and reflective of the digital age. Most of New Zealand's law of contempt of court is currently found in the common law.

The Law Commission reviewed and reported on New Zealand's contempt of court law in 2017, recommending a statute to codify the law of contempt. A draft of this bill was attached as part of the commission's report.

The bill as introduced was a member's bill in the name of Hon Christopher Finlayson. It was then adopted by the Government, and is now in the name of Hon Andrew Little.

The bill as introduced proposes the following main provisions.

- **Publication contempt:** The bill would prohibit the publication of material that interferes with the administration of justice in criminal cases. Instances of publication in civil cases would continue to be dealt with by the common law.
- **Disruptive behaviour in the courtroom:** The bill would allow judicial officers to have people taken into custody for the day if they behave in a way that disrupts a courtroom.
- **Juror contempt:** The bill would create new offences prohibiting jurors from:

- investigating or researching information relevant to a case while a trial is ongoing
- disclosing their deliberations.
- **Enforcement of court orders:** If the bill is passed, a person could be fined up to \$25,000 or go to prison for up to 6 months for failing to comply with certain court orders.
- **Allegations or accusations about Judges or courts:** The bill would make it an offence for someone to publish an allegation or accusation that could undermine public confidence in a Judge or court.

If the bill is passed, the High Court would retain jurisdiction over contempt matters not covered in the bill.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Title

We agree with submitters that the title of the bill as introduced is too long, and that the reference to reform in the title will eventually become dated. Therefore, we recommend changing the title of the bill to the Contempt of Court Bill.

Objectives of the bill

Clause 3(2)(d) of the bill as introduced provides that, except in unusual circumstances, court proceedings will be open to the public and news media. We propose replacing this with new clause 3(2)(d) to reflect that Family Court and Youth Court proceedings are not open to the public.

We also recommend adding new clause 3(2)(e) to specify that the courts can enforce compliance with court orders.

Limiting publication of trial-related information

We note that the Criminal Procedure Act 2011 deals with many of the same issues as subpart 1 of Part 2 of the bill, so we recommend a different approach to that proposed in the bill as introduced. We recommend deleting subpart 1 of Part 2, and instead inserting these provisions (with some amendments which we discuss below) into Schedule 2 of the bill, to amend the Criminal Procedure Act.

In our discussion below we refer to clauses in the bill as introduced, to which we are recommending amendments.

Clause 8 of the bill, in subpart 1 of Part 2, provides that when a person is arrested for an offence where they are eligible for a jury trial, there is an automatic prohibition on publishing information relating to the person's criminal history, and other offences they are charged with. This is to prevent such information from prejudicing jurors.

Definition of “publication”

Clause 7 of the bill as introduced provides that, for the purposes of subpart 1 of part 2, “publication” has the same meaning as in section 195 of the Criminal Procedure Act.

We understand that the courts have previously interpreted the definition in the Criminal Procedure Act to prevent future publication of suppressed media, but also to require the media to remove existing historical publications.

We consider it unfair and impractical to expect media organisations to remove all historic publications that would be a breach of provisions in the bill. Specific historic publications that a court considers it necessary to have removed could be dealt with by take-down orders.

We therefore recommend inserting new section 199A(4) into the Criminal Procedure Act, to provide that an automatic suppression order would not apply to information published before a proceeding is commenced.

We also recommend inserting new section 199D(2) into the Criminal Procedure Act, to provide that a court could limit a temporary suppression order to require that only specified existing historic publications available on websites be removed.

Suppression period

Clause 8 of the bill as introduced covers automatic suppression of information relating to the criminal history or other charges of a person who has been arrested. We are aware that media organisations were concerned that, under the bill, a suppression period would begin when a person is arrested. This would create uncertainty for the media, as in many situations the media would not know of an arrest, or be able to easily find out.

We recommend that the suppression period begin when a charge is filed, as this is a clearer point of time which would apply in all cases (in some situations, a defendant may have been charged but not arrested). This is a later point than in the common law test, but we note that a person publishing prejudicial material after an arrest but before charges are filed would potentially be committing the separate publication contempt offence under clause 14.

We recommend inserting new clause 199A(1) into the Criminal Procedure Act, to provide for automatic suppression of the criminal history of a person against whom proceedings have commenced.

The bill as introduced provides that a suppression period will last until the start of a trial, at which point a Judge would review whether to continue it. We recommend inserting new clause 199A(2) into the Criminal Procedure Act, to provide that a suppression period would automatically last for the duration of a trial, unless lifted by a Judge at an earlier time.

Concurrent charges

The Chief Justice and the Chief District Court Judge were concerned about the workability of preventing publication of information about other offences a person is charged with. In the bill as introduced, the information suppressed would depend on the order in which charges are filed by the Police. This could distort reporting by the media.

Therefore, we recommend providing in proposed new section 199C(1)(c) of the Criminal Procedure Act that information about concurrent charges can be temporarily—but not automatically—suppressed.

Temporary suppression orders

Under clause 9(1) of the bill as introduced, the court may suppress trial-related information if satisfied that “it appears to be necessary for avoiding a real risk of prejudice to the administration of justice in any criminal trial”.

We consider that the threshold at which a court can issue a temporary suppression order is too low, and that only information that needs to be suppressed to protect the right to a fair trial should be suppressed.

We were also advised that the reference to the “administration of justice” in clause 9(1) was a drafting error. We recommend that proposed new section 199C(1) of the Criminal Procedure Act create a threshold where the court must be satisfied that there is a real risk from publication.

Online content hosts

The bill as introduced provides in clause 9(2) that a court may order an online content host to take down trial-related information. We heard from media organisations who were concerned that they might inadvertently breach a suppression order because they have no practical way of removing material that has been copied and shared by others because it is no longer under their control.

We recommend that proposed new section 199B of the Criminal Procedure Act clarify that a host is only required to take down content that is under its control.

Matters already dealt with by the Criminal Procedure Act

We note that matters covered in the following clauses of the bill as introduced are already dealt with by the Criminal Procedure Act:

- clause 10—which sets out the duration of suppression orders and clarifies that an order may be reviewed by the court at any time
- clause 11—which provides that suppression of information under subpart 1 of the bill does not prevent publication by the Police or others for official purposes
- clause 12—which affirms the right of the media to challenge, or be heard in relation to, suppression orders or take-down orders
- clause 13—which makes it an offence to publish any suppressed information.

We therefore recommend that these clauses be removed from the bill, with no change to the relevant provisions in the Criminal Procedure Act.

Defence for breaching a suppression order

We heard that members of the media were concerned about the possibility of committing an offence under clause 13(2) of the bill as introduced by unintentionally breaching a take-down order that they were unaware of.

We therefore recommend adding a new defence to proposed new section 211(7) of the Criminal Procedure Act. This would apply when a person could not reasonably have known that they had published suppressed information, and that person removes the suppressed material as soon as practicable after becoming aware of the breach.

Prohibiting publication of certain criminal trial information

Clause 14 of the bill as introduced would make it an offence to intentionally publish information relevant to a jury trial if there is a real risk that the publication could prejudice the arrested person's right to a fair trial.

The court's power to issue a take-down order

The bill as introduced does not address whether a court has the power to order a person convicted of an offence under clause 14(2) to take down the relevant information. We recommend inserting proposed new clause 15A(1) to give a court this power.

Section 211 of the Criminal Procedure Act would apply to any breach of such a take-down order.

Defences in a prosecution for the offence in clause 14(2)

Clause 14(4)(c) of the bill as introduced would provide a person with a defence in a prosecution for an offence under clause 14(2) if "the publication was in good faith made as a contribution to, or part of, a discussion of public affairs or matters of general public interest". We consider that this defence would undermine the offence in clause 14(2).

Similarly, section 14(4)(d) would provide a defence if "the publication was a fair and accurate report of court proceedings held in public and published contemporaneously and in good faith".

We recommend removing the two defences mentioned above, and inserting instead new clause 14(5). This clause would provide that the offence in clause 14(2) would not apply to good faith publications that are a fair and accurate report of court proceedings.

Guidance for a court to determine the risk to a fair trial from a publication

Clause 15(1) of the bill as introduced sets out guidance for the court when determining whether a publication creates a real risk of prejudice to the right to a fair jury trial.

We recommend amending clause 15(1) of the bill to make it clear that the court must consider whether it is likely that a publication will be available to jurors or potential

jurors. This clarifies that the primary purpose of clause 15(1) is to prevent prejudicial material from influencing the jury.

Dealing with disruptive behaviour in court proceedings

Subpart 3 in Part 2 of the bill as introduced makes provisions for dealing with disruptive behaviour in court proceedings.

Removing a person from a court hearing

Clause 16(2) provides that a judicial officer may cite a person for disruptive behaviour, and have the person taken into custody.

We understand that it is preferable for a court to deal with disruptions in as low-key a way as possible. We recommend amending this clause to provide that a judicial officer may order a person to leave a courtroom as an alternative to the existing provision.

Dealing with persons cited for disruptive behaviour

Clause 17 sets out the procedure for dealing with a person who has been cited for disruptive behaviour. Its provisions differ slightly from what currently exists in statute and under the common law. It would give a person reasonable opportunity to obtain legal representation and to apologise for offending behaviour.

Under clause 17 of the bill as introduced, where a person is detained by a Community Magistrate or a Justice of the Peace for disruptive behaviour, a Judge must review the case before the end of the day and determine further action. To allow for flexibility when a judge is not available, we recommend amending clause 17(2) of the bill to provide that a judicial officer could review the matter, and decide to adjourn proceedings until a Judge is available.

Clause 17(3) of the bill as introduced provides that the Bail Act 2000 applies if a person is cited for disruptive behaviour. We recommend amending this clause to refer instead to section 168 of the Criminal Procedure Act. This would mean that a judicial officer could allow a person to go at large, grant a person bail (under the Bail Act), or remand a person in custody.

Provisions relating to juries

Subpart 4 in part 2 of the bill as introduced would create two new offences, to prohibit:

- jurors from investigating or researching information relevant to the case they are hearing
- anyone from disclosing confidential jury deliberations.

Preventing jurors from researching information

The purpose of this offence is to ensure that a defendant receives a fair jury trial. We understand that jurors may undertake research because they are being overly conscientious, rather than from any intention to subvert the trial.

Not all research by jurors will be harmful or prejudicial to a trial, and much of what jurors might access is likely to be irrelevant. We believe that, in these circumstances, a criminal prosecution is not an appropriate response. We are aware of concern that the fear of prosecution may reduce self-reporting, drive the behaviour underground, and make detection more difficult.

Because of this, we believe that preventive measures should be the first approach. We understand that the Ministry of Justice is working with the courts to ensure that jurors fully understand their obligations.

We also recommend removing the offence from the bill, and replacing it with a statutory penalty in proposed new clause 19(5), under which a juror could be fined up to \$5,000 for undertaking their own research, but not convicted or imprisoned.

Because a person is not charged or prosecuted, we also recommend inserting new clause 19(3), which would require a Judge to provide a written statement to a juror, explaining the behaviour the Judge believes may constitute a breach.

This proposed new clause would also introduce procedural safeguards to give jurors reasonable opportunity to take legal advice, similar to those recommended in clauses 16 and 17.

Disclosure of jury deliberations

We understand that the law currently permits a person to disclose jury deliberations to a court if directed to do so by a court, in relation to an appeal from conviction. We therefore recommend adding the exemption in proposed new clause 21 of the bill so that it does not prevent disclosure in such situations.

Clause 20 of the bill as introduced would make it an offence to disclose jury deliberations, but not other information about a trial. The common law presently holds that it is a contempt to disclose information about a trial. We note that clause 29(4)(c) of the bill as introduced would abolish contempt by jurors as part of the common law.

To ensure that these sorts of disclosures of information by jurors remain in contempt of court, we recommend narrowing clause 29(4)(c) to abolish only the common law contempt of jurors researching information relevant to their case and the contempt of disclosing juror deliberations.

Enforcement of certain court orders

Employment Court should be able to enforce its own orders

Schedule 2 of the bill as introduced would give the following courts jurisdiction to enforce their own orders: the High Court, District Court, Family Court, Environment Court, and Māori Land Court.

We recommend amending Schedule 2 to extend this right to the Employment Court, giving it jurisdiction to enforce its own orders, and those of the Employment Relations Authority.

The bill would not completely replace current common law contempts

Clause 29(4)(d), in Part 3 of the bill as introduced, would abolish the common law contempt of disobeying court orders. We are aware that clause 22, which deals with orders that may be enforced, does not completely cover all activities that are currently a contempt under the common law.

Therefore, we recommend that clause 22 of the bill be amended to permit the following:

- the use of the enforcement process more than once to enforce an order if that is necessary, and used against a non-party
- the use by the High Court of the new enforcement process to enforce orders for the recovery of land
- an exclusion to prevent the enforcement process being used for debt recovery.

Application for a court order

We recommend an amendment to clause 22(2) to enable any person who benefits from or otherwise has an interest under an order to make an application to enforce that order.

Maximum fines should be increased for corporate entities

The maximum fine that could be imposed on individuals or corporate entities under clause 22 of the bill as introduced would be \$25,000.

We note that other fines in the bill for corporate entities are four times those imposed on individuals for the same breach. We recommend aligning clause 22 with the rest of the bill, and introducing a higher maximum fine for corporate entities of \$100,000.

Clarifying the Solicitor-General's role in enforcing orders

The bill as introduced provides that the Solicitor-General could bring contempt proceedings to enforce court orders at his or her discretion.

We heard that the provision could be misinterpreted to mean that the Solicitor-General would routinely enforce court orders, which would be a significant burden on the Crown Law Office.

We are aware that this is only expected to happen in rare cases where there is a high degree of public interest, and therefore recommend inserting new clause 22(2)(c) to reflect this.

Court's power to direct a fine be paid to a party

We recommend adding a provision in clause 22B that a court may—as it currently can under the common law—order a portion of a fine to be paid to another party.

Court may impose a community-based sentence

We recommend including a provision in clause 22(4) that a court may impose a sentence of community work as an alternative to imprisonment.

Publication of untrue allegations or accusations against Judges or courts

As introduced, clause 24(1) would make it an offence for a person to publish any statement that could undermine public confidence in a Judge or court.

Removing the offence

We agree with submitters who expressed concern that the offence created in clause 24(1) of the bill could prevent robust, legitimate criticism of Judges and courts.

We note that other common law countries do not have an offence of “scandalising the court”. The United Kingdom passed the Crime and Courts Act 2013, abolishing the offence in the common law, which went unprosecuted since 1931. Such an offence has been found unconstitutional in the United States, and incompatible with Canada’s Charter of Rights and Freedoms.

We believe that the bill should strike a better balance between preventing public confidence in Judges and courts from being undermined by the publication of false statements and protecting the right to freedom of expression.

To do this, we recommend removing clause 24 of the bill, and also clause 25, which contains further provisions that would apply for the purpose of clause 24.

Clause 26 as introduced provides that the High Court could order a person who may have committed the offence in clause 24(1) to take down the information published. We recommend keeping this provision, with some modifications, discussed below. Clause 26 would become proposed new clause 25 with the removal of clauses 24 and 25.

High Court orders

The bill as introduced provides that the High Court could require a person to take down, retract, apologise for, or correct an allegation.

We believe it is important that the High Court should have the capacity to take urgent action to avoid continuing unwarranted damage to public confidence in the judiciary or courts.

However, we share the concern of submitters that a court requiring that a person apologise for an allegation would constitute compelled speech. Therefore, we recommend providing in proposed new clause 25 that the High Court could only order a person to take down information. The clause would allow a court to make both interim and permanent take-down orders if it is satisfied on the balance of probabilities that the information is false and there is a real risk that it could undermine public confidence in a Judge or court.

We also recommend removing the offence proposed in clause 27 of the bill as introduced, regarding a failure to comply with an order made by the High Court under clause 26. We believe that breaches of take-down orders should be actioned by the Solicitor-General under the new process for enforcing court orders in subpart 4 of Part 2 of the bill.

Factual statements and expression of opinion

Under the bill as introduced, some publications that express an opinion about a Judge or court would be subject to take-down orders. We are aware of concern that this could prevent robust, legitimate criticism of the courts, which the Chief Justice acknowledged in her submission to be valuable in upholding the rule of law.

In this case, we consider the protection of freedom of speech to be more important than the potential risk that expression of opinion could pose a risk to public confidence in the judiciary.

We understand that untrue statements that appear credible have the greatest potential to undermine public confidence in a Judge or court. Therefore, we recommend that proposed new clause 25 only apply to false statements.

Risk that a statement could cause harm

We recommend providing in proposed new clause 25 that to issue a take-down order, the court must be satisfied that there is a real risk that an allegation could undermine public confidence in the independence, integrity, impartiality, or authority of a court.

Common law contempts not covered by the bill**New maximum penalty**

The current maximum penalty for a common law contempt is two years, because of a threshold set in the New Zealand Bill of Rights Act 1990. We recommend introducing in new clause 29A a maximum penalty of six months for any common law contempt not codified in the bill.

Power of the High Court to exercise its inherent jurisdiction

We are concerned that clause 29 of the bill as introduced (which would abolish the contempt of disobeying court orders) could restrict the High Court's inherent jurisdiction to enforce orders or directions made by statutory courts and tribunals.

Therefore, we recommend inserting new clause 29(2A), which would provide that the High Court may enforce orders made by other courts where it has jurisdiction to do so, or where another court does not have jurisdiction to do so.

Appendix

Committee process

The Administration of Justice (Reform of Contempt of Court) Bill was referred to the committee on 2 May 2018. The closing date for submissions was 14 June 2018. We received and considered 62 submissions from interested groups and individuals. We heard oral evidence from 17 submitters at hearings in Wellington.

We received advice from the Ministry of Justice and the Parliamentary Counsel Office.

Committee membership

Raymond Huo (Chairperson)

Ginny Andersen

Hon Maggie Barry

Chris Bishop

Hon Christopher Finlayson (until 30 January 2019)

Hon Mark Mitchell

Greg O'Connor

Hon Dr Nick Smith

Dr Duncan Webb

**Administration of Justice (Reform of Contempt of
Court) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Andrew Little

Administration of Justice (Reform of Contempt of Court) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the ~~Administration of Justice (Reform of Contempt of Court) Act 2018~~.
- 2 Commencement** 5
~~This Act comes into force on the day after the date on which it receives the Royal assent.~~
 - (1) This Act comes into force on the earlier of—
 - (a) a date appointed by the Governor-General by Order in Council; and
 - (b) the date that is 1 year after the date on which this Act receives the Royal assent. 10
 - (2) One or more Orders in Council may be made under **subsection (1)(a)** appointing different dates for different provisions.

Part 1
Preliminary provisions

15

- 3 Purposes ~~and objective~~**
 - (1) The principal purposes of this Act are to—
 - (a) promote and facilitate the administration of justice and uphold the rule of law; and
 - (b) maintain and enhance public confidence in the judicial system; and 20
 - (c) reform the law of contempt of the court.
 - (2) ~~To those ends, this Act enables courts to make certain orders and impose certain sanctions in order to achieve the following objectives:~~

- (a) ~~civil and criminal court proceedings are heard and determined fairly by independent and impartial Judges:~~
 - (b) ~~jury verdicts are based only on facts admitted or proved by properly adduced evidence after free, frank, and confidential jury discussions, and the finality of verdicts will be protected:~~ 5
 - (c) ~~individual cases are heard and determined in a manner that is expeditious, efficient, and consistent with the principles of justice:~~
 - (d) ~~except in unusual circumstances, proceedings will be open to the public and news media:~~
 - (e) ~~the independence, integrity, and impartiality of the judiciary will be protected.~~ 10
- (3) ~~In reforming the law of contempt of court in New Zealand, this Act abolishes the common law contempts of contempt in the face of the court, publishing information that interferes with a fair trial, contempt by jurors, disobeying court orders, and scandalising the court, while preserving the inherent jurisdiction of the High Court to punish for contempt of court in circumstances where this Act does not apply.~~ 15
- (2) For those purposes, this Act enables courts to make certain orders and impose certain sanctions so that—
 - (a) civil and criminal court proceedings are heard and determined fairly by independent and impartial Judges; and 20
 - (b) jury verdicts are based only on facts admitted or proved by properly adduced evidence after free, frank, and confidential jury discussions, and the finality of verdicts is protected; and
 - (c) individual cases are heard and determined in a manner that is expeditious, efficient, and consistent with the principles of justice and the rule of law; and 25
 - (d) except in proceedings where the law restricts access to the court or restricts the reporting of proceedings (such as proceedings in the Family Court or the Youth Court) or in unusual circumstances, proceedings are open to the public and news media; and 30
 - (e) orders made by the courts are enforceable; and
 - (f) the independence, integrity, impartiality, and authority of the judiciary are protected.
- (3) In reforming the law of contempt of court in New Zealand, this Act— 35
 - (a) abolishes the common law contempts of—
 - (i) contempt in the face of the court; and
 - (ii) publishing information that interferes with a fair trial; and
 - (iii) jurors researching information relevant to the trial; and

- (iv) disclosing juror deliberations; and
- (v) disobeying court orders; and
- (vi) scandalising the court; but
- (b) preserves the inherent jurisdiction of the High Court to punish for contempt of court in circumstances where this Act does not apply. 5

4 Interpretation

In this Act, unless the context otherwise requires,—

bailiff has the same meaning as in section 4 of the District Court Act 2016
category 3 offence and **category 4 offence** have the meanings given to them in section 6 of the Criminal Procedure Act 2011 10

charged, in relation to an offence, means ~~charged with the offence by charging document~~ a charging document for the offence has been filed under the Criminal Procedure Act 2011

constable has the same meaning as in section 4 of the Policing Act 2008

court means any of the following courts: 15

- (a) the District Court:
- (b) the High Court:
- (c) the Court of Appeal:
- (d) the Supreme Court

judicial officer means— 20

- (a) a High Court Judge:
- (b) a District Court Judge:
- (c) a Community Magistrate:
- (d) a Justice of the Peace;

officer of the court means— 25

- (a) a person who holds an office referred to in section 33 of the Senior Courts Act 2016:
- (b) a person who is an officer of the court as defined in section 4 of the District Court Act 2016:
- (e) ~~a person who is an officer of any other court to which this Act is applied, if the person is an officer of the court within the meaning of the Act that constitutes that court~~ 30

online content host, in relation to any information, means the person who has control over the part of the electronic retrieval system, such as an Internet site or an online application, on which the information is posted and accessible by the user 35

person, in relation to a defendant or other party in any proceedings, includes a body corporate

Police employee has the same meaning as in section 4 of the Policing Act 2008

~~**public prosecution** has the same meaning as in section 5 of the Criminal Procedure Act 2011~~

~~**publish**~~, except in **subpart 1 of Part 2**, includes—

- (a) insert in any newspaper or other periodical publication printed, published, or distributed in New Zealand; or
- (b) send to any person, by post or otherwise; or
- (c) deliver to any person or leave upon premises occupied by any person; or
- (d) broadcast within the meaning of the Broadcasting Act 1989; or
- (e) include in any film or video recording; or
- (f) disseminate by means of the Internet or any other electronic, digital, or similar medium; or
- (g) display by way of a sign, a notice, a poster, or other means.

~~**triable by a jury** means—~~

- (a) ~~tried by a jury in accordance with sections 50 and 73 of the Criminal Procedure Act 2011; or~~
- (b) ~~tried by a jury in accordance with section 74 of that Act if no order is made under section 102 or 103 of that Act that the person be tried before a Judge without a jury.~~

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

6 Act binds the Crown

- (1) This Act binds the Crown.
- (2) However, to avoid doubt, a court may not issue a warrant, impose a fine, or make an order under **section 22(4)(a) or (b)** against the Crown, the Attorney-General, a government department as defined in section 2(1) of the Crown Proceedings Act 1950, or an officer of the Crown.
- (3) Nothing in **subsection (2)** prevents any person seeking a declaratory order under the Declaratory Judgments Act 1908 that the Crown, Attorney-General, government department, or officer of the Crown is in breach of a judgment or order against the Crown.

Part 2

Provisions to promote and facilitate administration of justice

Subpart 1—Limiting publication of trial-related information

Meaning of publication

7 Interpretation 5

In this subpart, unless the context otherwise requires, **publication** has the same meaning as in section 195 of the Criminal Procedure Act 2011.

Suppression orders

8 Automatic suppression of details of previous convictions and concurrent charges 10

- (1) If a person (the **arrested person**) is arrested for an offence and may be triable by a jury if charged with that offence (**offence A**), no person may publish details of the following except as permitted by or under this section:
 - (a) any of the arrested person's previous convictions for any offence;
 - (b) any other offence that is a category 3 offence or a category 4 offence, if the arrested person is—
 - (i) already charged with that other offence when arrested for offence A; or
 - (ii) charged with that other offence at the same time as the person is charged with offence A; or
 - (iii) charged with that other offence at any subsequent time while the person remains charged with offence A.
- (2) A prohibition imposed by **subsection (1)** applies until the start of the trial for offence A, unless a different period applies under **subsection (3)(b)**.
- (3) If the arrested person is charged with offence A, the pre-trial court or trial court (as the case may be)—
 - (a) must keep the prohibition under review;
 - (b) may, by order made on application or on its own initiative,—
 - (i) lift the prohibition before the trial;
 - (ii) extend the prohibition for a period that ends after the start of the trial;
 - (iii) vary the effect of the prohibition by permitting the publication of any details as specified in the order.
- (4) In addition, the court may order that an online content host take down, or disable public access to, any specific details referred to in **subsection (1)** that the online content host has made accessible to members of the public.

- (5) The prohibition imposed by **subsection (1)** ceases to apply if—
- (a) the court makes an order to that effect under **subsection (3)(b)(i)**; or
 - (b) the arrested person ceases to be subject to arrest for offence A; or
 - (c) the charge against the arrested person for offence A is withdrawn, dismissed, stayed, or otherwise disposed of; or
 - (d) the arrested person does not elect trial by jury or the court orders that the trial for offence A is to be a Judge-alone trial.
- (6) The prohibition does not prevent the disclosure of any details referred to in subsection (1) if the disclosure is made to or by any of the following persons for the purpose of any proposed proceedings against the arrested person for offence A:
- (a) the Solicitor-General;
 - (b) a Police employee;
 - (c) any person who is conducting or proposing to conduct a public prosecution against the arrested person for offence A;
 - (d) a lawyer acting for the arrested person.
- 9 Court may suppress trial-related information temporarily**
- (1) If a court is satisfied that it appears to be necessary for avoiding a real risk of prejudice to the administration of justice in any criminal trial, or any part of the trial, the court may order that the publication of any of the following information be postponed for any period that the court thinks necessary for that purpose:
- (a) any specific information relating to matters of character of any person who is accused of or charged with an offence;
 - (b) any specific information relating to the previous convictions or matters of character of any person who—
 - (i) may be called as a witness; or
 - (ii) may be a victim of the offence; or
 - (iii) is connected with the person who is accused of or charged with the offence;
 - (c) any other specific information in relation to any trial.
- (2) In addition, the court may order that an online content host take down, or disable public access to, any specific information referred to in **subsection (1)** that the online content host has made accessible to members of the public.
- (3) Despite **subsection (1)**, the court may make an interim order of any kind described in **subsection (1)** or **(2)** if the person arrested for the offence advances an arguable case that publication would be likely to create a real risk of prejudice to a fair trial.

- (4) An interim order under **subsection (3)** may be made or renewed only in the absence of an order under **subsection (1)** or **(2)** and expires at the person's next court appearance for the offence, and may be renewed only if the court is satisfied that publication would be likely to create a real risk of prejudice to a fair trial. 5
- (5) The court may make an order under this section at any time after the person is arrested for an offence and before the completion of all proceedings relating to the offence.
- (6) If the District Court is presided over by 1 or more Justices, or 1 or more Community Magistrates, the court has the same power to make orders under this section as it has under section 362 of the Criminal Procedure Act 2011 to make suppression orders under subpart 3 of Part 5 of that Act. 10
- 10 Duration of suppression order and right to review**
- (1) An order under **section 9(1)**—
- (a) may be made for a limited period ending on a date specified in the order; and 15
- (b) may be renewed for a further period or periods by the court; and
- (c) expires at the completion of all proceedings relating to the offence, unless it expires at an earlier time in accordance with an order of the court or by operation of law. 20
- (2) The order may be reviewed and varied by the court at any time.
- 11 Publication by or at request of Police, etc**
- (1) Nothing in this subpart prevents publication by or at the request of any Police employee of the name, address, or occupation of any person who has escaped from lawful custody or has failed to attend any court when lawfully required to do so if that publication is made for the purpose of facilitating that person's recapture or arrest. 25
- (2) Nothing in this subpart prevents publication of the name, address, or occupation of any person, or any details of the offences charged, to—
- (a) any person assisting with the administration of the sentence imposed on the person or with the rehabilitation of the person; or 30
- (b) any Police employee, or any officer or employee of the Department of Corrections or of the Ministry of Justice, who requires the information for the purposes of his or her official duties; or
- (c) any person who is conducting or proposing to conduct a public prosecution against the person for an offence, and who requires the information for the purposes of— 35
- (i) deciding whether to commence proceedings; or
- (ii) conducting that public prosecution.

12 Standing of members of media

- (1) This section applies to—
 - (a) a person who is reporting on the proceedings and who is either subject to or employed by an organisation that is subject to—
 - (i) a code of ethics; and 5
 - (ii) the complaints procedures of the Broadcasting Standards Authority or the Press Council; and
 - (b) any other person reporting on the proceedings with the permission of the court.
- (2) A person to whom this section applies has standing to initiate, and be heard in relation to, any application for an order under **section 8** or **9**, and any application to renew, vary, or revoke the order. 10

13 Offences relating to breach of this subpart

- (1) A person commits an offence if the person knowingly or recklessly—
 - (a) fails to comply with **section 8(1)**; or 15
 - (b) fails to comply with an order made under **section 8** or **9**.
- (2) A person commits an offence if the person—
 - (a) fails to comply with **section 8(1)**; or
 - (b) fails to comply with an order made under **section 8** or **9**.
- (3) **Subsection (2)** does not apply to a person who hosts material on Internet sites or other electronic retrieval systems that can be accessed by a user unless the specific information has been placed or entered on the site or system by that person. 20
- (4) A person who commits an offence against **subsection (1)** is liable on conviction,— 25
 - (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or a fine not exceeding \$25,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (5) A person who commits an offence against **subsection (2)** is liable on conviction,— 30
 - (a) in the case of an individual, to a fine not exceeding \$10,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$40,000.
- (6) In a prosecution for an offence against **subsection (2)**, it is not necessary for the prosecution to prove that the defendant intended to commit an offence.

Subpart 2—Prohibiting publication of certain criminal trial information

14 Offence to publish certain criminal trial information

- (1) ~~This section applies if a person (the **arrested person**) is arrested for an offence and may be triable by a jury if charged with that offence, and—~~
- ~~(a) applies until the completion of all proceedings relating to the jury trial (including pre-trial proceedings); and~~ 5
 - ~~(b) ceases to apply if the charge is dealt with or disposed of otherwise than by a jury trial.~~
- (1) This section applies if a person (**person A**) is arrested for or charged with a category 3 offence or a category 4 offence, and— 10
- (a) applies from the time of the arrest or charge (whichever happens first) until the delivery of the verdict; and
 - (b) ceases to apply if—
 - (i) person A is not charged; or
 - (ii) person A pleads guilty to the offence or a jury delivers a verdict for the offence; or 15
 - (iii) the charge for the offence is withdrawn, dismissed, stayed, or otherwise disposed of; or
 - (iv) a Judge-alone trial starts for the offence.
- (2) A person commits an offence if— 20
- ~~(a) the person at any time intentionally publishes any information that is relevant to any trial to which this section applies; and~~
 - (a) the person intentionally publishes any information; and
 - (aa) the information is relevant to any trial of person A; and
 - ~~(b) there is a real risk that the publication could prejudice the arrested person's person A's right to a fair trial.~~ 25
- (3) A person who commits an offence against **subsection (2)** is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$25,000; or 30
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (4) A person has a defence in a prosecution for an offence against **subsection (2)** if the person proves that,—
- ~~(a) at the time of the publication of the information and after taking all reasonable care, the person was unaware of, and had no reason to be aware of, the arrested person's arrest, any pre-trial proceedings, or the possibility or existence of the trial; or~~ 35

- (a) at the time of the publication of the information and after taking all reasonable care, the person did not know or could not reasonably have known of person A's arrest or charge or the possibility or existence of a jury trial; or
 - (b) as the online content host or the distributor of the publication, after taking all reasonable care, the person ~~did not know and had no reason to suspect~~ did not know or could not reasonably have known that it contained information that created a real risk of prejudicing ~~the arrested person's~~ person A's right to a fair trial; ~~or,~~
 - (c) ~~the publication was in good faith made as a contribution to, or part of, a discussion of public affairs or matters of general public interest; or~~
 - (d) ~~the publication was a fair and accurate report of court proceedings held in public and published contemporaneously and in good faith.~~
 - (5) **Subsection (2)** does not apply to a fair and accurate report of a hearing held in public that is published contemporaneously with the hearing and in good faith.
- 15 How court determines whether publication creates real risk of prejudice to right to fair trial**
- (1) In determining whether, for the purpose of **section 14(2)(b)**, a publication creates a real risk of prejudice to ~~an arrested person's~~ person A's right to a fair trial, the court must consider the following:
 - (a) the likely effect of the publication as a whole:
 - (b) ~~the persons or groups of persons to whom the publication is likely to be made available:~~
 - (b) whether the publication is likely to be available to jurors or potential jurors:
 - (c) the medium in which the publication is presented and its potential accessibility and durability:
 - (ca) the content of the publication:
 - (d) the character of the publication, including the language and tone used in it:
 - (e) any other relevant circumstances relating to the likely effect of the publication.
 - (2) The court may (without limitation) treat the inclusion in a publication of any of the following information as creating a real risk of prejudicing ~~the arrested person's~~ right to a fair trial:
 - (a) ~~information indicating that the arrested person is of bad character, including previous misconduct, criminal or gang affiliations, or criticism of the arrested person's personality or previous charges or acquittals:~~

- (b) ~~information indicating that the arrested person has confessed to the charge, or any component of it, or to conduct that may result in charges being laid against the person:~~
- (e) ~~information commenting on the credibility of the arrested person or any witnesses:~~ 5
- (d) ~~information given at trial in the jury's absence or information that has been ruled inadmissible at trial:~~
- (e) ~~photographs, pictorial information, or other information that reveals the identity of the arrested person where the identity of the person is, or is likely to be, in issue at trial.~~ 10
- (2) In its consideration of the content of the publication, the court may (without limitation) consider whether the publication includes any of the following:
 - (a) information indicating that person A is of bad character, including previous misconduct, criminal or gang affiliations, criticism of person A's personality, or information about previous charges or acquittals: 15
 - (b) information indicating that person A has confessed to the charge, or any component of it, or to conduct that may result in person A being charged or convicted:
 - (c) information commenting on the credibility of person A or any witnesses:
 - (d) information given at trial in the jury's absence or information that has been ruled inadmissible at trial: 20
 - (e) photographs, pictorial information, or other information that reveals the appearance of person A if the identity of the alleged offender is, or is likely to be, in issue at trial.
- 15A Further provisions applying for purpose of section 14** 25
 - (1) If a person is convicted of an offence against **section 14(2)**, the court may also order any person (including an online content host) to take down, or disable public access to, the information concerned if it is under the person's control.
 - (2) A person who knowingly or recklessly fails to comply with an order made under **subsection (1)** commits an offence, and section 211 of the Criminal Procedure Act 2011 applies as if the order were a suppression order and the offence were an offence to which section 211(1) of that Act applies. 30
 - (3) A person who fails to comply with an order made under **subsection (1)** commits an offence, and section 211 of the Criminal Procedure Act 2011 applies as if the order were a suppression order and the offence were an offence to which section 211(2) of that Act applies. 35
 - (4) Subpart 7 of Part 6 of the Criminal Procedure Act 2011 (appeals against suppression orders) applies to any decision to make or refuse to make an order under **subsection (1)**. 40

Subpart 3—Dealing with disruptive behaviour relating to court proceedings

16 Judicial officer may cite disruptive behaviour

- (1) This section applies if a judicial officer believes that any person is—
 - (a) wilfully disrupting the proceedings of a court; or 5
 - (b) wilfully and without lawful excuse disobeying any order or direction of the court in the course of the hearing of any proceedings.
- ~~(2) The judicial officer may cite the person for disruptive behaviour and order that the person be taken into custody and detained until the court rises for the day.~~
- (2) The judicial officer may take 1 or more of the following actions: 10
 - (a) order that the person be excluded from the sitting of the court;
 - (b) cite the person for disruptive behaviour and order that the person be taken into custody and detained until a time no later than the time the court rises for the day.
- (3) Any constable or officer of the court, with or without the assistance of any other person, is authorised to execute the order and may take the person into custody or remove the person in accordance with the order. 15
- (4) Any person taken into custody under this section must be dealt with in accordance with the procedure in **section 17**, which applies for the purpose of this subpart. 20

17 Procedure for dealing with person cited for disruptive behaviour

- (1) While being held in custody, a person cited for disruptive behaviour must be given a reasonable opportunity to—
 - (a) obtain legal representation; and
 - (b) apologise to the court. 25
- ~~(2) Before the close of the day on which the person is cited and ordered to be detained, a Judge must review the matter and, if the Judge considers that further punishment may be necessary, adjourn any hearing and set the matter down for determination on a later date within the next 7 days.~~
- ~~(3) The Bail Act 2000 applies, with the necessary modifications, as if the person cited were charged with an offence that carries the penalties specified in **sub-section (5)(b)**.~~ 30
- (4) If the Judge sets down the matter for determination, he or she—
 - (a) must consider whether there are exceptional circumstances that warrant a different Judge hearing the matter; and 35
 - (b) must provide a written statement to the person cited that specifies the behaviour that he or she believes may cause the person to have committed disruptive behaviour and to be liable for further punishment; and

- (e) ~~may receive any explanation he or she considers helpful to ensure that the case proceeds on a reliable factual platform.~~
- (5) ~~On finding a person guilty of doing anything described in **section 16(1)(a) or (b)**, a Judge—~~
- (a) ~~must not convict the person; but~~ 5
- (b) ~~may—~~
- (i) ~~issue a warrant committing the person to imprisonment for a term not exceeding 3 months; or~~
- (ii) ~~impose on the person a fine not exceeding \$10,000.~~
- (2) Before the court rises for the day on which the person is cited and ordered to be detained, the judicial officer must review the matter and, if the judicial officer considers that further punishment is necessary, the judicial officer must— 10
- (a) provide a written statement to the person cited that specifies the behaviour that the judicial officer believes was disruptive behaviour; and
- (b) if the judicial officer is a Judge, consider whether there are exceptional circumstances that warrant a different Judge hearing the matter; and 15
- (c) set the matter down for determination before a Judge within the next 7 days.
- (3) If the matter is set down for determination, section 168 of the Criminal Procedure Act 2011 (dealing with a defendant on adjournment) applies with the necessary modifications. 20
- (4) At the hearing,—
- (a) the Judge may receive from any person any evidence or statement that the Judge considers relevant; and
- (b) the Judge must make a finding under **subsection (5)**. 25
- (5) On finding beyond reasonable doubt that the person is guilty of the conduct described in **section 16(1)(a) or (b)**, the Judge—
- (a) must not convict the person; but
- (b) may—
- (i) issue a warrant committing the person to imprisonment for a term not exceeding 3 months; or 30
- (ii) impose on the person a fine not exceeding \$10,000; or
- (iii) order the person to do community work, not exceeding 200 hours, as the Judge thinks fit.
- 18 Further provisions applying for purpose of this subpart** 35
- (1) ~~The Sentencing Act 2002 and subpart 5 of Part 6 of the Criminal Procedure Act 2011 (appeals against finding of or sentence for contempt of court) apply to~~

any action taken under ~~section 17(5)~~ as if the finding were a conviction for an offence and any imprisonment or fine were a sentence.

- (1) Subparts 1, 2, and 3 of Part 2 of the Sentencing Act 2002 apply to any action taken under **section 17(5)** as if the finding were a conviction for an offence and any imprisonment, fine, or order to do community work were a sentence. 5
- (1A) Subpart 5 of Part 6 of the Criminal Procedure Act 2011 (appeals against finding of or sentence for contempt of court) applies to any finding of guilt and to any imprisonment, fine, or order to do community work under **section 17(5)**.
- (2) A warrant for the committal of any person to prison under **section 17(5)** must be directed to a bailiff or constable, who may take the person into custody, and every constable has a duty to assist in the execution of the orders or warrants issued under that provision. 10
- (3) Any person committed to prison by any court under **section 17(5)** must be committed to a prison established under or deemed to be established under the Corrections Act 2004, and the prison manager of the prison mentioned in the order or warrant is bound to receive and keep the person until the person is lawfully discharged. 15

Subpart 4—Provisions relating to juries

19 ~~Offence for jury members to investigate or research case~~

- (1) A person commits an offence if the person is a member of a jury constituted for a case and— 20
 - (a) ~~during the trial period the person intentionally investigates or researches information relevant to the case; and~~
 - (b) ~~does so when the person knows or ought reasonably to know it is or may be information relevant to the case.~~ 25
- (2) ~~It is not an offence against **subsection (1)** if the investigation or research is undertaken with the permission, or at the direction, of the trial Judge.~~
- (3) ~~A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000.~~ 30
- (4) In this section,—

~~**information to the relevant case**~~ means information about any of the following—

 - (a) ~~the defendant;~~
 - (b) ~~any other person involved in the events which are the subject of the case;~~ 35
 - (c) ~~any person involved in the trial, including a witness;~~
 - (d) ~~the events that are the subject of the case;~~
 - (e) ~~the law relating to the case;~~

- (f) the law of evidence
- ~~investigate or research~~ includes—
- (a) ask a question or have a discussion (by any means) with a person who is not a jury member or the trial Judge:
- (b) search any information source, including the Internet: 5
- (c) visit or inspect a place or an object:
- (d) conduct an experiment:
- (e) ask another person to perform any of the actions listed above
- ~~trial period~~ means the period that—
- (a) begins when a jury has been constituted under section 19 of the Juries Act 1981; and 10
- (b) ends when the jury is discharged or, in the case of an individual jury member who is discharged during the trial, the member is discharged.
- 19 Jury members who investigate or research case are liable to fine**
- (1) This section applies if a person who is a member of a jury constituted for a trial— 15
- (a) during the trial period, intentionally investigates or researches information relevant to the trial; and
- (b) does so when the person knew or ought reasonably to have known it is or may be information relevant to the trial. 20
- (2) This section does not apply if the person undertakes the investigation or research with the permission, or at the direction, of the trial Judge.
- (3) If this section applies, the Judge—
- (a) must explain or provide a written statement to the person that specifies the behaviour that the Judge believes may constitute a breach of **subsection (1)** and cause the person to be liable for a fine; and 25
- (b) must give the person a reasonable opportunity to obtain legal advice; and
- (c) may receive from any person any evidence or statement that the Judge considers relevant; and
- (d) must make a finding under **subsection (4)**. 30
- (4) On finding beyond reasonable doubt that the person is guilty of the conduct described in **subsection (1)**, the Judge—
- (a) must not convict the person; but
- (b) may impose on the person a fine not exceeding \$5,000.
- (5) Subpart 5 of Part 6 of the Criminal Procedure Act 2011 (appeals against finding of or sentence for contempt of court) applies to any finding of guilt and to any fine under **subsection (4)**. 35

- (6) In this section,—
- information relevant to the trial** means information about any of the following:
- (a) the defendant:
 - (b) any other person involved in the events which are the subject of the trial: 5
 - (c) any person involved in the trial, including a witness:
 - (d) the events that are the subject of the trial:
 - (e) the law relating to the trial:
 - (f) the law of evidence
- investigate or research** includes— 10
- (a) ask a question or have a discussion (by any means) with a person who is not a jury member or the trial Judge:
 - (b) search any information source, including the Internet:
 - (c) visit or inspect a place or an object:
 - (d) conduct an experiment: 15
 - (e) ask another person to perform any of the actions listed above
- trial period** means the period that—
- (a) begins when a jury has been constituted under section 19 of the Juries Act 1981; and
 - (b) ends when the jury is discharged or, in the case of an individual jury member who is discharged during the trial, the member is discharged. 20
- 20 Offence to disclose jury deliberations**
- (1) A person commits an offence if the person intentionally discloses, solicits, or obtains information about statements made, opinions expressed, arguments advanced, or votes cast by members of a jury in the course of their deliberations in proceedings before a court. 25
 - (2) It is not an offence against **subsection (1)** if, during a trial, the information—
 - (a) is sought by, or disclosed to, the court in the course of the performance of the jury's functions; or
 - (b) is disclosed to the trial Judge in a complaint or allegation of misconduct by a juror or is disclosed for the purpose of investigating whether an offence has been committed. 30
 - (3) It is not an offence against **subsection (1)** if the information is sought or disclosed—
 - (a) by a current or former jury member in discussions with a health practitioner who is treating him or her in relation to issues arising out of his or her jury service; or 35

- (b) ~~during or after the trial with the permission of the presiding Judge or the relevant head of bench, including for the purpose of conducting research about juries or jury service.~~
- (4) A person who commits an offence against **subsection (1)** is liable on conviction to,— 5
- (a) ~~in the case of an individual, imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000;~~
- (b) ~~in the case of a body corporate, a fine not exceeding \$40,000.~~
- (5) In this section, **health practitioner** has the same meaning as in section 5 of the Health Practitioners Competence Assurance Act 2003. 10
- 21 Limited disclosure of jury deliberations permitted after jury discharged**
- (1) This section applies in relation to a jury trial if the trial has been completed and the jury discharged.
- (2) A person who has reason to believe that an offence against **section 19** or **20** may have been committed in relation to the jury trial, or that the conduct of any juror in the trial may provide grounds for a direction that a new trial be held or grounds for an appeal, may refer the matter to any person referred to in **subsection (3)**. 15
- (3) The persons concerned are—
- (a) the Solicitor-General; 20
- (b) a Police employee;
- (c) the prosecutor in the completed trial or any person who is conducting or proposing to conduct a public prosecution against a person for the offence;
- (d) a lawyer acting for the offender. 25
- (4) The person who refers the matter may disclose to the recipient information about statements made, opinions expressed, arguments advanced, or votes cast by members of a jury in the course of their deliberations.
- (5) A recipient of information under **subsection (4)** may disclose the information to any other person only so far as is necessary to enable the Police to investigate whether an offence has been committed and to consider whether the offender should be prosecuted. 30
- 20 Offence to disclose jury deliberations**
- (1) A person commits an offence if the person intentionally discloses, solicits, or obtains information about statements made, opinions expressed, arguments advanced, or votes cast by members of a jury in the course of their deliberations in proceedings before a court. 35
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to,—

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	(a) <u>in the case of an individual, imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000; or</u> (b) <u>in the case of a body corporate, a fine not exceeding \$40,000.</u>	
21	Exceptions to section 20	
(1)	It is not an offence against section 20(1) if the information—	5
	(a) <u>is sought by, or disclosed to, the court in the course of the performance of the jury's functions; or</u>	
	(b) <u>is disclosed to the trial Judge during or after the trial in a complaint or allegation of misconduct by a juror; or</u>	
	(c) <u>is sought or disclosed by a current or former juror in discussions with a health practitioner who is treating the juror in relation to issues arising out of their jury service; or</u>	10
	(d) <u>is sought or disclosed during or after the trial with the permission of the presiding Judge or the relevant head of bench, including for the purpose of conducting research about juries or jury service; or</u>	15
	(e) <u>is sought or disclosed as directed by a court (including on an appeal); or</u>	
	(f) <u>is disclosed under subsections (2) to (5).</u>	
(2)	A person who has reason to believe that an offence against section 20(1) may have been committed in relation to the jury trial, or that the conduct of any juror in the trial may provide grounds for an appeal, may refer the matter to any person referred to in subsection (3) .	20
(3)	The persons concerned are—	
	(a) <u>the Solicitor-General;</u>	
	(b) <u>a Police employee;</u>	
	(c) <u>the prosecutor in the trial;</u>	25
	(d) <u>a lawyer acting for the defendant.</u>	
(4)	The person who refers the matter may disclose to the recipient information about statements made, opinions expressed, arguments advanced, or votes cast by members of a jury in the course of their deliberations.	
(5)	A recipient of information under subsection (4) may disclose the information to any other person only for the purpose of considering whether an offence against section 20(1) may have been committed or the conduct of any juror in the trial may provide grounds for an appeal.	30
(6)	In this section, health practitioner has the same meaning as in section 5 of the Health Practitioners Competence Assurance Act 2003.	35

Subpart 5—Enforcement of certain court orders

22 Certain court orders and undertakings may be enforced

- (1) This section applies to—
 - (a) any interim or final order, decision, decree, direction, or judgment of a court (a **court order**) to do or abstain from doing something, except a court order to pay a sum of money or for the recovery of land as provided in **section 22A**; 5
 - (b) any undertaking given to the court if, on the faith of the undertaking, the court has sanctioned a particular course of action or inaction.
- (2) ~~A court may enforce the court order or undertaking against a person by taking action provided for in **subsection (3)** on application by the party who sought the order or undertaking being enforced, or on application by the Solicitor-General.~~ 10
- (3) The court may—
 - (a) either— 15
 - (i) issue a warrant committing the person or a director or an officer of the body corporate, as the case may be, to a term of imprisonment not exceeding 6 months; or
 - (ii) impose on the person a fine not exceeding \$25,000; and
 - (b) ~~if the court concerned is the High Court, make a sequestration order in accordance with the rules of court.~~ 20
- (4) ~~Before taking action under **subsection (3)**, the court—~~
 - (a) ~~must be satisfied beyond reasonable doubt that—~~
 - (i) ~~the court order or undertaking being enforced has been made in clear and unambiguous terms and is clearly binding on the person; and~~ 25
 - (ii) ~~the person has knowledge or proper notice of the terms of the court order or undertaking being enforced; and~~
 - (iii) ~~the person has, without reasonable excuse, intentionally failed to comply with the court order or undertaking being enforced; and~~ 30
 - (b) ~~must also be satisfied that other methods of enforcing the court order or undertaking have been considered and are inappropriate or have been tried unsuccessfully.~~
- (2) A court may enforce the court order or undertaking against the party, non-party, or other person bound by the order or undertaking by taking action provided for in **subsections (3) and (4)** on application by— 35
 - (a) the party who sought the order or undertaking being enforced; or

- (b) a person who benefits from, or has an interest under, the order or undertaking; or
 - (c) the Solicitor-General, if the Solicitor-General is satisfied that there is a high degree of public interest in enforcing the order or undertaking.
- (3) The court— 5
 - (a) must not proceed further under this section unless it is satisfied that other methods of enforcing the court order or undertaking have been considered and are inappropriate or have been tried unsuccessfully; and
 - (b) if so satisfied, must make a finding as to whether it is proved beyond reasonable doubt that— 10
 - (i) the court order or undertaking being enforced has been made in clear and unambiguous terms and is clearly binding on the person; and
 - (ii) the person had knowledge or proper notice of the terms of the court order or undertaking being enforced; and 15
 - (iii) the person has, without reasonable excuse, knowingly failed to comply with the court order or undertaking being enforced.
- (4) On finding beyond reasonable doubt that the requirements of **subsection (3)(b)(i) to (iii)** are met, the court may—
 - (a) do any of the following: 20
 - (i) issue a warrant committing the person or a director or an officer of the body corporate, as the case may be, to a term of imprisonment not exceeding 6 months:
 - (ii) impose a fine,— 25
 - (A) in the case of an individual, not exceeding \$25,000; or
 - (B) in the case of a body corporate, not exceeding \$100,000;
 - (iii) order the individual or a director or an officer of the body corporate, as the case may be, to do community work, not exceeding 200 hours, as the court thinks fit:
 - (b) if the court is the High Court, make a sequestration order in accordance with the rules of court. 30
- (5) An applicant may apply under **subsection (2)** on 1 or more occasions to enforce the same court order or undertaking, and the court may take further action under **subsections (3) and (4)** as it thinks necessary to enforce the order or undertaking. 35
- (6) Any enforcement action under this section does not operate to extinguish or affect the liability of the person to comply with a court order or an undertaking.

22A Jurisdiction to take certain action under section 22

- (1) A court may take action under **section 22** to enforce a court order to pay a sum of money only if the default in making payment is within an exception listed in section 3(2) of the Imprisonment for Debt Limitation Act 1908 or the order applies to money held by a person, trust, or entity other than the defaulter. 5
- (2) Only the High Court may take action under **section 22** to enforce a court order for the recovery of land.

22B Provisions relating to fines and orders

- (1) If the court fines a person under **section 22**, the court may direct that a portion of the fine be paid to 1 or more of the persons referred to in **section 22(2)(a) to (c)**. 10
- (2) If the remedy sought under **section 22** is a sequestration order and the application is filed in a court other than the High Court, the court may transfer the application to the High Court for enforcement action. 15
- (3) **Section 22** does not limit a court's power to make other orders that are available in the proceedings before it (for example, an order for costs or a stay of proceedings).

23 Further provisions applying for purpose of section 22

- (1) The Sentencing Act 2002 and subpart 5 of Part 6 of the Criminal Procedure Act 2011 apply to any committal or fine imposed under **section 22(3)** as if the sanction were a conviction for an offence to which that subpart 5 applies and any imprisonment or fine were a sentence. 20
- (2) A warrant for the committal of any person to prison under **section 22(3)** must be directed to a bailiff or constable, who may take the person into custody, and every constable has a duty to assist in the execution of the orders or warrants issued under that provision. 25
- (3) Any person committed to prison by any court under **section 22(3)** must be committed to a prison established under or deemed to be established under the Corrections Act 2004, and the prison manager of the prison mentioned in the order or warrant is bound to receive and keep the person until the person is lawfully discharged. 30
- (4) If at any time it appears to the satisfaction of a Judge of the court that committed the person to prison that the person ought for any reason to be discharged, the Judge may order the person's discharge from prison on any terms (including liability to rearrest if the terms are not complied with) that the Judge thinks fit. 35
- (5) A committal or fine imposed under **section 22(3)** does not operate to extinguish or affect the liability of the person to comply with a court order.

- 23 Application of Sentencing Act 2002 and Criminal Procedure Act 2011**
- (1) Subparts 1, 2, and 3 of Part 2 of the Sentencing Act 2002 apply to any action taken under **section 22(4)(a)** as if the person had been convicted of an offence and any imprisonment, fine, or order to do community work were a sentence. 5
- (2) Subpart 5 of Part 6 of the Criminal Procedure Act 2011 (appeals against finding of or sentence for contempt of court) applies to any finding of a failure to comply and to any imprisonment, fine, order to do community work, or sequestration order under **section 22(4)(a) or (b)**.
- 23A Provisions relating to imprisonment imposed under section 22** 10
- (1) A warrant for the committal of any person to prison under **section 22(4)** must be directed to a bailiff or constable, who may take the person into custody, and every constable has a duty to assist in the execution of warrants issued under that provision.
- (2) Any person committed to prison by any court under **section 22(4)** must be committed to a prison established under or deemed to be established under the Corrections Act 2004, and the prison manager of the prison mentioned in the warrant is bound to receive and keep the person until the person is lawfully discharged. 15
- (3) If at any time it appears to the satisfaction of a Judge of the court that committed the person to prison that the person ought for any reason to be discharged, the Judge may order the person's discharge from prison on any terms (including liability to rearrest if the terms are not complied with) that the Judge thinks fit. 20
- Subpart 6—Prohibiting publication of untrue allegations or accusations against Take-down orders relating to false statements about Judges or courts 25
- 24 Offence to publish untrue allegation or accusation against Judge or court**
- (1) A person commits an offence if the person publishes an allegation or accusation made by that person or another person against a Judge or a court, and there is a real risk that the publication could undermine public confidence in the independence, integrity, or impartiality of the judiciary or a court. 30
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment of less than 2 years or a fine not exceeding \$50,000; 35
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (3) A person has a defence in a prosecution for an offence against **subsection (1)** if the person proves on the balance of probabilities that —

- (a) ~~the allegation or accusation was true or not materially different from the truth; or~~
- (b) ~~where the prosecution is based on all or any of the contents of a publication, that publication taken as a whole was in substance true or in substance not materially different from the truth.~~ 5
- (4) A person has a defence in a prosecution for an offence against **subsection (1)** if the person proves that, as the online content host or distributor of the publication, the person did not know that it contained an allegation or accusation against a Judge or a court that created a real risk of undermining public confidence in the independence, integrity, or impartiality of the judiciary or a court. 10
- (5) In this section,—
court means any court, including a court as defined in **section 4**
Judge means a Judge of any court.
- 25 Further provisions applying for purpose of section 24**
- (1) This section applies if the Solicitor-General has reason to believe that a person may have committed an offence against **section 24(1)**. 15
- (2) The Solicitor-General may do 1 or more of the following:
 - (a) ~~request the alleged offender to retract the allegation or accusation or apologise for it, or both:~~
 - (b) ~~request the alleged offender to retract the allegation or accusation pending the hearing of the charge:~~ 20
 - (c) ~~request an online content host to take down, or disable public access to, any specified information relating to the allegation or accusation that the online content host has made accessible to members of the public:~~
 - (d) ~~apply to the High Court for an order under **section 26**.~~ 25
- (3) Nothing in **subsection (2)** obliges the Solicitor-General to take any action described in **paragraphs (a) to (c)** of that subsection or requires that a charge for the alleged offence be filed before he or she may apply for an order under **section 26**. 30
- (4) A charge for an offence against **section 24(1)** may be brought only by or on behalf of the Solicitor-General, and the prosecutor must be satisfied that there is a sufficient evidential foundation for the charge and that the prosecution is in the public interest.
- (5) For the purpose of deciding whether to prosecute a person for an offence against **section 24(1)**, the prosecutor may consider whether any complaint about the Judge's conduct has been made to the Police, or to the Judicial Conduct Commissioner under the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, and consider any explanation provided by the Judge. 35

- (6) ~~Despite anything in the Criminal Procedure Act 2011 or the Search and Surveillance Act 2012,—~~
- ~~(a) the Solicitor-General may investigate whether a person has committed an offence against **section 24(1)** or may request the Police to do so:~~
 - ~~(b) the Solicitor-General and the Police may exchange information for the purpose of an investigation:~~ 5
 - ~~(c) the powers that a constable or any other Police employee may exercise under any enactment in the case of an alleged offence punishable by a term of imprisonment of less than 2 years may be exercised in relation to the alleged offence against **section 24(1)** and, subject to **subsection (4)**, a charge may be filed against the alleged offender.~~ 10
- 26 High Court may make orders**
- (1) ~~On application under **section 25(2)(d)**, the High Court may, if satisfied that there is an arguable case that a person has committed an offence against **section 24(1)**, order the person to do 1 or more of the following:~~ 15
- ~~(a) take down, or disable public access to, material:~~
 - ~~(b) retract the allegation or accusation:~~
 - ~~(c) not encourage any other persons to engage in similar communications:~~
 - ~~(d) publish a correction:~~
 - ~~(e) publish an apology.~~ 20
- (2) ~~The court may—~~
- ~~(a) make an order on an interim basis, pending the filing of a charging document:~~
 - ~~(b) vary or discharge any interim order:~~
 - ~~(c) make an interim order permanent if the interim order is accepted or a person is convicted of the charge.~~ 25
- (3) ~~In addition, the court may order that an online content host take down, or disable public access to, any material related to the suspected offence that the online content host has made accessible to members of the public.~~
- (4) ~~In making an order that a correction or an apology be published under **subsections (1)(d) or (e)**, the court may include requirements relating to—~~ 30
- ~~(a) the content of the correction or apology:~~
 - ~~(b) the time of publication of the correction or apology:~~
 - ~~(c) the prominence to be given to the correction or apology in the particular medium in which it is published.~~ 35
- (5) ~~In doing anything under this section, the court must act consistently with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.~~

- (6) A person to whom ~~section 12(1)~~ applies has standing to be heard in relation to, any application for an order under ~~subsection (1)(a)~~, and any application to renew, vary, or revoke the order.
- (7) If an interim order is not made permanent, it lapses.
- 27 Offence to fail to comply with order under section 26** 5
- (1) A person commits an offence if the person knowingly or recklessly fails to comply with an order made under ~~section 26~~.
- (2) A person commits an offence if the person fails to comply with an order made under ~~section 26~~.
- (3) A person who commits an offence against ~~subsection (1)~~ is liable on conviction,— 10
- (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or a fine not exceeding \$25,000;
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (4) A person who commits an offence against ~~subsection (2)~~ is liable on conviction,— 15
- (a) in the case of an individual, to a fine not exceeding \$10,000;
- (b) in the case of a body corporate, to a fine not exceeding \$40,000.
- (5) In a prosecution for an offence against ~~subsection (2)~~, it is not necessary for the prosecution to prove that the defendant intended to commit an offence. 20
- 24 Interpretation**
- In this subpart,—
- court means any court, including a court as defined in **section 4**
- Judge means a Judge of any court.
- 25 Power to make take-down order** 25
- Interim order
- (1) On application by the Solicitor-General, the High Court may, if satisfied on the grounds set out in **subsection (2)**, order any person (including an online content host) to take down, or disable public access to, the information concerned if it is under the person's control. 30
- (2) The court may make an order under **subsection (1)** (an **interim order**) if satisfied on the balance of probabilities that there is an arguable case that—
- (a) the person has published a false statement about a Judge or court; and
- (b) there is a real risk that the statement could undermine public confidence in the independence, integrity, impartiality, or authority of the judiciary or a court. 35
- (3) An interim order expires if—

Administration of Justice (Reform of Contempt of Court) Bill	
Part 3 cl 28	
(a) an application for a permanent order is not made within 20 working days (as defined in section 5 of the Criminal Procedure Act 2011); or	
(b) an application for a permanent order is made within that period, but the application—	
(i) is declined; or	5
(ii) is withdrawn or otherwise lapses; or	
(c) a permanent order is made.	
<i>Permanent order</i>	
(4) On application by the Solicitor-General, the High Court may, if satisfied on the grounds set out in subsection (5) , order any person (including an online content host) to take down, or disable public access to, the information concerned if it is under the person's control.	10
(5) The court may make an order under subsection (4) (a permanent order) if satisfied on the balance of probabilities that—	
(a) the person has published a false statement about a Judge or court; and	15
(b) there is a real risk that the statement could undermine public confidence in the independence, integrity, impartiality, or authority of the judiciary or a court.	

Part 3	
General provisions and consequential amendments	20
28 Judicial powers exercisable as often as necessary to control proceedings	
(1) This section applies to the following actions under this Act:	
(a) making an order under section 8, 9, 10, or 26 :	
(b) eiting a person under section 16 :	
(c) issuing a warrant of committal or imposing a fine under section 17 or 22 .	25
(1) This section applies to any order that may be made, or action taken, under—	
(a) section 16 ; or	
(b) section 17 ; or	
(c) section 19 ; or	30
(d) section 22 .	
(2) Unless the context otherwise requires, the power of a Judge or judicial officer to make any order or take any action under this Act to which this section applies is exercisable in any proceedings as often as the Judge or judicial officer considers necessary to control the proceedings.	35

- 29 How this Act relates to other authority or power to punish for contempt of court**
- (1) Where this Act confers on a court or Judge any jurisdiction, authority, or power to punish a person for contravening or failing to comply with any provision of this Act, the court or Judge has no inherent jurisdiction or power to punish that conduct. 5
- (2) Nothing in this Act limits or affects any authority or power of a court, including the authority of the High Court under its inherent jurisdiction, to punish any person for contempt of court in any circumstances to which this Act does not apply. 10
- (2A) However, if any court, tribunal, or inquiry constituted by or under an Act lacks authority to punish a contempt or enforce its processes, the High Court may punish a contempt or enforce the processes of the court, tribunal, or inquiry in the same manner as it may punish a contempt or enforce the processes of the High Court under this Act. 15
- (3) The Supreme Court and the Court of Appeal have the same authority as the High Court to punish any person for contempt of court in any circumstances to which this Act does not apply.
- (4) The following contempts are abolished as part of the common law of New Zealand: 20
- (a) contempt in the face of the court:
 - (b) publishing information that interferes with a fair trial:
 - ~~(e) contempt by jurors:~~
 - (c) jurors researching information relevant to the trial:
 - (ca) disclosing juror deliberations: 25
 - (d) disobeying court orders:
 - (e) scandalising the court.
- 29A Maximum penalty and appeal rights for finding of contempt under inherent jurisdiction**
- (1) The maximum penalty that may be imposed by the High Court in the exercise of its inherent jurisdiction to punish any person for contempt of court in any circumstances to which this Act does not apply is 6 months' imprisonment. 30
- (2) Subpart 5 of Part 6 of the Criminal Procedure Act 2011 applies to the finding of contempt and the penalty imposed by the High Court in those circumstances.
- 29B References in other Acts to contempt of court** 35
- Unless the context otherwise requires, references in any other Act to the power of a court to punish a person for contempt of court or to proceedings for contempt of court must be read as references to the power to punish for contempt of court, or to proceedings, under this Act.

30 ~~Prosecution of offence against section 24~~

~~Only the Solicitor-General may conduct or authorise the conduct of a prosecution against a person for an offence against **section 24** (publishing untrue allegation or accusation against Judge or court).~~

31 Consequential amendments

5

Amend the enactments specified in **Schedule 2** as set out in that schedule.

Schedule 1 Transitional, savings, and related provisions

s 5

- 1 Contempt of court proceedings begun before commencement of this Act to be completed under former law** 5
 - (1) Any contempt of court proceeding at common law that was begun before the commencement of this Act must be continued and completed, or otherwise disposed of, as if this Act had not been passed.
 - (2) Any contempt of court proceeding under any Act that was begun before the commencement of this Act must also be continued and completed, or otherwise disposed of, as if this Act had not been passed. 10
- 2 Proceedings under this Act may enforce existing court order or undertaking**

~~Section 22~~ is deemed to **Sections 22 and 22A** apply to any court order or undertaking of a kind described in ~~that section~~ **section 22** that was made or given before the commencement of this Act and ~~has not been complied with or satisfied.~~ 15

Schedule 2

~~Consequential amendments~~ Amendments to other enactments

s 31

Commissions of Inquiry Act 1908 (1908 No 25)

In section 13B, replace “be contempt of Court, the doing of that act, whether in the face of that Commission or otherwise, shall constitute contempt of that Commission, and any member of that Commission who is a Judge of the High Court or a former Judge of the High Court may punish that person for contempt of that Commission by exercising, in relation to that person, the same powers as a Judge of the High Court would have had if that person had been guilty of contempt of Court (including the powers conferred by section 165 of the Senior Courts Act 2016); and the provisions of section 165 of the Senior Courts Act 2016 shall, with all necessary modifications, apply accordingly” with “be punishable by the High Court under **subpart 3 of Part 2 of the Contempt of Court Act 2019**, constitutes a disruption of the Commission and any member of that Commission who is a Judge of the High Court or a former Judge of the High Court may exercise the same powers as a Judge of the High Court can under **subpart 3 of Part 2 of the Contempt of Court Act 2019**, and that subpart applies with the necessary modifications”.

Coroners Act 2006 (2006 No 38)

After section 117(5), insert:

(5A) A coroner exercising the power under subsection (3)(e) has the same powers that a Judge has under **subpart 3 of Part 2 of the Contempt of Court Act 2019**, and subpart 3 and sections 28 and 29(1) and (2) of that Act apply with the necessary modifications.

Corporations (Investigation and Management) Act 1989 (1989 No 11)

In section 67(3), replace “had been guilty of contempt of court” with “were liable under **subpart 5 of Part 2 of the Contempt of Court Act 2019** for a breach of a court order”.

Courts Security Act 1999 (1999 No 115)

In section 33(1), replace “section 165 of the Senior Courts Act 2016” with “**subpart 3 of Part 2 of the Contempt of Court Act 2019**”.

Crimes Act 1961 (1961 No 43)

In section 9(a), delete “or of any court”.

In section 9, insert as subsection (2):

(2) The jurisdiction, authority, or power of a court to punish for contempt is subject to the ~~Administration of Justice (Reform of Contempt of Court) Act 2018~~.

Criminal Disclosure Act 2008 (2008 No 38)

In section 29(6), replace “as a contempt of court” with “under **subpart 5 of Part 2 of the Contempt of Court Act 2019** as a breach of a court order”.

In section 32(3)(b), replace “as a contempt of court” with “under **subpart 5 of Part 2 of the Contempt of Court Act 2019** as a breach of a court order”.

5

Criminal Procedure Act 2011 (2011 No 81)

After section 74, insert:

74A Application of Administration of Justice (Reform of Contempt of Court) Act 2018

(1) Despite sections 71 to 74, the trial court for an offence against **section 24 of the Administration of Justice (Reform of Contempt of Court) Act 2018** (publishing untrue allegation or accusation against Judge or court) is the High Court

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(2) Despite sections 71 to 74, the trial court for an offence against any of the following provisions of the **Administration of Justice (Reform of Contempt of Court) Act 2018** is the High Court if the trial is a High Court jury trial:

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(a) **section 14** (publishing certain criminal trial information); or

(b) **section 19** (jury member investigating or researching case); or

(c) **section 20** (disclosing jury deliberations).

Replace section 165(8) with:

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(8) Nothing in this section limits or affects any authority or power of the court to punish any witness under the **Administration of Justice (Reform of Contempt of Court) Act 2018**.

In section 194, replace the definition of **suppression order** with:

suppression order means an order made under—

25

(a) any of sections **199C**, 200, 202, and 205; or

(b) **section 199A(3)** that varies the effect of automatic suppression in any proceedings; or

(c) **section 199B(1) or 199D(2)**

After section 199, insert:

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Automatic suppression of previous convictions

199A Automatic suppression of details of previous convictions

(1) Once a proceeding has commenced for a category 3 offence or a category 4 offence (offence A), no person may publish details of any of the defendant’s previous convictions for any other offence except as permitted by or under this section.

35

Criminal Procedure Act 2011 (2011 No 81)—continued

- (2) The automatic suppression in **subsection (1)** remains in force, unless earlier lifted by the court, until—
- (a) the jury delivers a verdict for offence A; or
 - (c) the charge for offence A is withdrawn, dismissed, stayed, or otherwise disposed of; or
 - (d) a Judge-alone trial starts for offence A.
- (3) However, the court may, by order made on application or on its own initiative—
- (a) lift the suppression before the trial;
 - (b) vary the effect of the suppression by permitting the publication of any details as specified in the order.
- (4) This section does not apply to information published before a proceeding is commenced, unless the court makes an order to that effect under **section 199B(1)**.
- 199B Further provisions relating to automatic suppression**
- (1) The court may order a person who hosts material on a website or other electronic retrieval system that can be accessed by a user to take down, or disable public access to, details of the defendant’s previous convictions on that website or other electronic retrieval system that is under the person’s control.
- (2) Whenever reasonably practicable, the person who hosts the material must be—
- (a) served with the application for an order or notified that the court is considering making an order under **subsection (1)**; and
 - (b) given an opportunity to be heard by the court.
- (3) An order made under **subsection (1)** expires with the expiry of the automatic suppression to which it relates.
- Temporary suppression of trial-related information*
- 199C Court may temporarily suppress trial-related information**
- (1) If a court is satisfied that publication of the information would be likely to create a real risk of prejudice to a fair trial, the court may make an order forbidding publication of any of the following information for any period that the court thinks necessary for that purpose:
- (a) any specific information relating to matters of character of the defendant;
 - (b) any specific information relating to the previous convictions or matters of character of any person who—
 - (i) may be called as a witness; or

Criminal Procedure Act 2011 (2011 No 81)—continued

	(ii) <u>may be a victim of the offence; or</u>	
	(iii) <u>is connected with the defendant:</u>	
	(c) <u>any other offence that the defendant is also currently charged with:</u>	
	(d) <u>any other specific information in relation to any trial.</u>	
(2)	Despite subsection (1) , the court may make an interim order of the kind described in subsection (1) if the defendant advances an arguable case that publication would be likely to create a real risk of prejudice to a fair trial.	5
(3)	An interim order under subsection (2) —	
	(a) <u>may be made or renewed only in the absence of an order made under subsection (1); and</u>	10
	(b) <u>may be renewed only if the court is satisfied that publication would be likely to create a real risk of prejudice to a fair trial; and</u>	
	(c) <u>expires at the defendant's next court appearance for the offence.</u>	
199D	<u>Further provisions relating to temporary suppression of trial-related information</u>	15
(1)	The court may make an order under section 199C at any time after the proceeding is commenced.	
(2)	The court may limit the effect of an order under section 199C by ordering a person who hosts material on a website or other electronic retrieval system that can be accessed by a user to only take down or disable access to specific information on that website or electronic retrieval system.	20
(3)	Whenever reasonably practicable, the person who hosts the material must be—	
	(a) <u>served with the application for an order or notified that the court is considering making an order under subsection (2); and</u>	
	(b) <u>given an opportunity to be heard by the court.</u>	25
(4)	Despite section 208(1) or (2), an order made under subsection (2) or section 199C(1) expires when the defendant is convicted or acquitted, or the charge is otherwise disposed of.	
	Replace section 209(1) with:	
(1)	If a person has escaped from lawful custody or has failed to attend any court when lawfully required to do so,—	30
	(a) <u>nothing in sections 200 to 205 prevents the publication by or at the request of any Police employee of the name, address, or occupation of that person if that publication is made for the purpose of facilitating that person's recapture or arrest; and</u>	35
	(b) <u>nothing in sections 199A to 199D prevents publication by or at the request of any Police employee of any information suppressed under</u>	

Criminal Procedure Act 2011 (2011 No 81)—continued

those provisions if that publication is made for the purpose of facilitating that person’s recapture or arrest.

In section 209(2), replace “Nothing in sections 200 to 205 prevents publication of the name, address, or occupation of any person, or any details of the offences charged to” with “Nothing in sections **199A** to 205 prevents publication of any suppressed information to”.

After section 209(2)(c), insert:

- (d) a lawyer acting for the defendant or for a co-defendant, or a representative acting for a defendant who is a corporation.

Replace section 211(1) and (2) with:

- (1) Every person commits an offence who knowingly or recklessly publishes any name, address, occupation, or other information in breach of—
 - (a) a suppression order; or
 - (b) any of sections **199A**, 201, 203, and 204; or
 - (c) an order made under section 286 or 292.
- (2) Every person commits an offence who publishes any name, address, occupation, or other information in breach of—
 - (a) a suppression order; or
 - (b) any of sections **199A**, 201, 203, and 204; or
 - (c) an order made under section 286 or 292.

After section 211(6), insert:

- (7) A defendant has a defence to a charge under subsection (2) if the defendant proves that they—
 - (a) did not know or could not reasonably have known that the information published was suppressed; and
 - (b) removed the suppressed material as soon as practicable after becoming aware of the breach.

In section 282, after “or 205”, insert “, or under **section 8, 9, or 26(1)(a) or (3) of the Administration of Justice (Reform of Contempt of Court) Act 2018**”.

In section 282, replace “section 200, 202, or 205” with “section **199A(3), 199B(1), 199C, 199D(2)**, 200, 202, or 205”.

District Court Act 2016 (2016 No 49)

In section 123, definition of **decision**, delete “, but does not include an order under section 212 (which relates to an order for contempt of court)”.

Repeal section 131(b) and (c).

District Court Act 2016 (2016 No 49)—*continued*

Repeal sections 134, 135, 137(b) and (c), and 212 and the cross-heading above section 212.

Electoral Act 1993 (1993 No 87)

In section 247(2), delete “, and every person who refuses to obey any such order shall be guilty of contempt of court”.

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After section 247(2), insert:

(2A) Section 42 of the Senior Courts Act 2016 applies to a person who refuses or fails to comply with an order to attend as a witness.

Employment Relations Act 2000 (2000 No 24)

Replace section 196 with:

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~~196 Application of Administration of Justice (Reform of Contempt of Court) Act 2018~~

~~Subpart 3 of Part 2 and sections 28(1) and 29(1) and (2) of the Administration of Justice (Reform of Contempt of Court) Act 2018~~ apply in relation to the Employment Court—

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- (a) as if the court were the District Court; and
- (b) as if a Judge of the court were a District Court Judge; and
- (c) as if a member of the Authority were a judicial officer; and
- (d) with the other necessary modifications.

196 Application of Contempt of Court Act 2018

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(1) **Subparts 3 and 5 of Part 2 and sections 28 and 29(1) and (2) of the Contempt of Court Act 2018** apply with the necessary modifications to proceedings of the Employment Court and the Employment Relations Authority.

(2) Those provisions apply to proceedings of the Employment Court as if—

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- (a) references to a court include the Employment Court; and
- (b) references to a Judge or judicial officer include a Judge of the Employment Court; and
- (c) references to an officer of the court include an officer of the Employment Court.

(3) Those provisions apply to proceedings of the Employment Relations Authority as if—

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- (a) references to a judicial officer include the Employment Relations Authority; and
- (b) references to disrupting the proceedings of a court or disobeying any order or direction of the court made in the course of the hearing of any

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Employment Relations Act 2000 (2000 No 24)—*continued*

- proceedings include disruption of the proceedings of the Authority and disobedience of any order or direction of the Authority given in the course of the hearing of any proceedings; and
- (c) a disruption of the proceedings of the Authority includes the disruption of an investigation meeting held by the Authority.

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Family Court Act 1980 (1980 No 161)

After section 15, insert:

~~15A Application of Administration of Justice (Reform of Contempt of Court) Act 2018~~

~~**Subpart 3 and 5 of Part 2 and sections 28 and 29(1) and (2) of the Administration of Justice (Reform of Contempt of Court) Act 2018**~~ apply to the Family Court and Family Court Judges in the same manner and to the same extent as those subparts apply to the District Court and District Court Judges.

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15A Application of Contempt of Court Act 2018

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- (1) **Subparts 3 and 5 of Part 2 and sections 28 and 29(1) and (2) of the Contempt of Court Act 2018** apply with the necessary modifications to proceedings of the Family Court.
- (2) Those provisions apply to proceedings of the Family Court as if—
- (a) references to a court include the Family Court; and
- (b) references to a judicial officer or to a Judge include Judges of the Family Court.

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Habeas Corpus Act 2001 (2001 No 31)

Replace section 19 with:

19 Application of Contempt of Court Act 2018

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- (1) **Subpart 3 of Part 2 and sections 28 and 29(1) and (2) of the Contempt of Court Act 2018** apply with the necessary modifications to a person who wilfully hinders the prompt disposal of an application.
- (2) **Subpart 5 of Part 2 and sections 28 and 29(1) and (2) of the Contempt of Court Act 2018** apply with the necessary modifications to a person who—
- (a) having been released under an interim order made under section 11, fails to comply with a condition attached to the order; or
- (b) wilfully fails to comply with a writ of habeas corpus ordering the release from detention of a person.

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Habeas Corpus Act 2001 (2001 No 31)—*continued*

- (3) **Subpart 5 of Part 2 and sections 28 and 29(1) and (2) of the Contempt of Court Act 2018** apply, as if the application were a court order, to a person who is aware that an application has been made to the High Court seeking the release from detention of a person and removes or attempts to remove that person from the jurisdiction of the court.

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Harassment Act 1997 (1997 No 92)

Replace section 41(3) with:

- (3) The failure to comply with any order made under section 39(1)(c) may be dealt with under **subpart 5 of Part 2 of the Contempt of Court Act 2018**.

Human Rights Act 1993 (1993 No 82)

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Replace section 114 with:

114 Application of Contempt of Court Act 2018

- (1) **Subpart 3 of Part 2 and sections 28 and 29(1) and (2) of the Contempt of Court Act 2018** apply with the necessary modifications to proceedings of the Tribunal.
- (2) Those provisions apply to proceedings of the Tribunal as if—
- (a) references to a court include the Tribunal; and
 - (b) references to a Judge include a Chairperson of the Tribunal; and
 - (c) references to a judicial officer include a member of the Tribunal; and
 - (d) references to an officer of the court include an officer of the Tribunal;
 - (e) **section 17(2)(b)** of that Act does not apply if there is only 1 Chairperson of the Tribunal.

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Inquiries Act 2013 (2013 No 60)

Replace section 31 with:

31 Application of Contempt of Court Act 2018

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- (1) The Solicitor-General, on the Solicitor-General's own initiative or at the request of an inquiry, may commence proceedings in the High Court—
- (a) under **subpart 5 of Part 2 of the Contempt of Court Act 2018**; or
 - (b) under the inherent jurisdiction of the High Court to punish any contempt of an inquiry or enforce its processes, as described in **section 29(2A)** of that Act.
- (2) In determining any proceedings commenced under **subsection (1)**, the court may make any orders that it considers necessary and just to enable the inquiry to fulfil its purpose.

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Schedule 2	Administration of Justice (Reform of Contempt of Court) Bill	
<u>Juries Act 1981 (1981 No 23)</u>	In section 14A(6), replace “as contempt of court” with “under subpart 3 of Part 2 of the Contempt of Court Act 2018 ”.	
<u>Lawyers and Conveyancers Act 2006 (2006 No 1)</u>	Repeal section 29.	5
<u>Parole Act 2002 (2002 No 10)</u>	Repeal section 107G(7)(b).	
<u>Reserve Bank of New Zealand Act 1989 (1989 No 157)</u>	In section 150(3), replace “had been guilty of contempt of court” with “were liable under subpart 5 of Part 2 of the Contempt of Court Act 2018 for breach of a court order”.	10
<u>Resource Management Act 1991 (1991 No 69)</u>	Replace section 282 with:	
<u>282 Application of Administration of Justice (Reform of Contempt of Court) Act 2018</u>	<u>Subpart 3 and 5 of Part 2 and section 28 and 29(1) and (2) of the Administration of Justice (Reform of Contempt of Court) Act 2018</u> apply in relation to the Environment Court—	15
	(a) as if the court were the District Court; and	
	(b) as if an Environment Judge or alternate Environment Court Judge of the court were a District Court Judge; and	20
	(c) as if an Environment Commissioner were a judicial officer; and	
	(d) with the other necessary modifications.	
<u>282 Application of Contempt of Court Act 2018</u>		
<u>(1) Subparts 3 and 5 of Part 2 and sections 28 and 29(1) and (2) of the Contempt of Court Act 2018</u> apply with the necessary modifications to proceedings of the Environment Court.		25
<u>(2) Those provisions apply to proceedings of the Environment Court as if—</u>		
	(a) <u>references to a court include the Environment Court; and</u>	
	(b) <u>references to a Judge include an Environment Judge and an Alternate Environment Judge; and</u>	30
	(c) <u>references to a judicial officer include an Environment Commissioner and a Deputy Environment Commissioner; and</u>	
	(d) <u>references to an officer of the court include an officer of the Environment Court.</u>	35

Senior Courts Act 2016 (2016 No 48)

In section 20(2)(b), replace “165” with “166”.

After section 20(2)(h), insert:

- (i) **~~Subpart 3 and 5 of Part 2 and section 28 and 29(1) and (2) of the Administration of Justice (Reform of Contempt of Court) Act 2018.~~**

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In section 23, replace “Sections 42, 43, and 165 (which relate to the power to deal with witnesses and contempt)” with “Sections 42 and 43 (which relate to the power to deal with witnesses)”.

Replace section 23 with:

23 Application of provisions relating to witnesses and contempt

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- (1) Sections 42 and 43 (which relate to the power to deal with witnesses) apply to a proceeding before an Associate Judge in the same way as they apply to a proceeding before a High Court Judge.
- (2) **Subpart 3 of Part 2 of the Contempt of Court Act 2018** (which relates to contempt) applies to a proceeding before an Associate Judge, and references in that subpart to a Judge include an Associate Judge.

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Replace section 43(4) with:

- (4) Nothing in this section limits or affects any power or authority of the High Court under the **~~Administration of Justice (Reform of Contempt of Court) Act 2018.~~**

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In section 146(5)(b), delete “165”.

Replace section 146(5)(b) with:

- (b) sections 10, 40 to 43, 148 to 155, 162, 172, 176, and 181; and
- (c) the **Contempt of Court Act 2018.**

Repeal section 165 and the cross-heading above section 165.

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Tax Administration Act 1994 (1994 No 166)

Replace section 143G(2) with:

- (2) A person who commits an offence under subsection (1) is liable on conviction to imprisonment for a period not exceeding 3 months or a fine not exceeding \$1,000 for each offence.

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Te Ture Whenua Maori Act 1993 (1993 No 4)

Replace section 90 with:

Te Ture Whenua Maori Act 1993 (1993 No 4)—*continued*

90 Application of Administration of Justice (Reform of Contempt of Court) Act 2018

~~Subpart 3 and 5 of Part 2 and section 28 and 29(1) and (2) of the Administration of Justice (Reform of Contempt of Court) Act 2018~~ apply in relation to the court—

- (a) as if the court were the District Court; and
- (b) as if a Judge of the court were a District Court Judge; and
- (c) with the other necessary modifications.

90 Application of Contempt of Court Act 2018

(1) **~~Subparts 3 and 5 of Part 2 and sections 28 and 29(1) and (2) of the Contempt of Court Act 2018~~** apply with the necessary modifications to proceedings of the Maori Land Court and the Maori Appellate Court.

(2) Those provisions apply to proceedings of the Maori Land Court and the Maori Appellate Court as if—

- (a) references to a court include the Maori Land Court and the Maori Appellate Court; and
- (b) references to a judicial officer or to a Judge include a Judge of the Maori Land Court or the Maori Appellate Court; and
- (c) references to an officer of the court in those provisions include an officer of the Maori Land Court or the Maori Appellate Court.

Trustee Companies Management Act 1975 (1975 No 25)

In section 13(3), replace “had been guilty of contempt of court” with “were liable to punishment under **subpart 5 of Part 2 of the Contempt of Court Act 2018** for breach of a court order”.

Victims’ Orders Against Violent Offenders Act 2014 (2014 No 45)

Replace section 24C(3) with:

(3) The failure to comply with any order made under section 24A(1)(c) may be dealt with under **subpart 5 of Part 2 of the Contempt of Court Act 2019**.

Legislative history

22 March 2018
2 May 2018

Introduction (Bill 39–1)
First reading and referral to Justice Committee