



## ANALYSIS

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1989, No. 20

**An Act to amend the Criminal Justice Act 1985**

[8 May 1989]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Criminal Justice Amendment Act 1989, and shall be read together with and deemed part of the Criminal Justice Act 1985 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 28th day after the date on which it receives the Royal assent.

**2. New Part (relating to non-association orders) inserted**—The principal Act is hereby amended by inserting, after Part II, the following Part:

“PART IIA

“NON-ASSOCIATION ORDERS

“28A. **Non-association order**—(1) Subject to subsections (2) and (3) of this section, where an offender is convicted of an offence punishable by imprisonment, the court may, in addition to or instead of passing any other sentence or making any other

order, make a non-association order in respect of the offender if it is satisfied that the making of the order is reasonably necessary to ensure that the offender does not commit further offences punishable by imprisonment.

“(2) The court shall not make a non-association order if the offender is already detained under a full-time custodial sentence imposed on an earlier occasion.

“(3) If the court makes a non-association order, it shall not at the same time impose on the offender any kind of full-time custodial sentence, whether for the offence for which that order was made or for any other offence for which the offender has appeared for sentence.

“(4) A non-association order shall have the effect of prohibiting the offender from associating with—

“(a) Any person or persons specified in the order; or

“(b) Any person or persons of any class specified in the order.

“(5) A non-association order shall have effect for such period, not exceeding 12 months, as the court may specify in the order.

“(6) Section 140 of this Act shall apply in respect of any person specified in a non-association order as if that person were connected with the proceedings.

“28B. **Cumulative orders and sentences**—(1) A non-association order shall not be cumulative on another non-association order or on a sentence of any kind.

“(2) No sentence of any kind shall be cumulative on a non-association order.

“28c. **Order to be drawn up and copy given to offender**—(1) Where a court makes a non-association order, it shall cause the particulars of non-association to be drawn up in the form of an order, and, where practicable, a copy of the order shall be given to the offender before he or she leaves the court.

“(2) Subsections (2) and (3) of section 58 of this Act shall apply in respect of a non-association order.

“28D. **Right of appeal against making of order**—For the purposes of Part IV of the Summary Proceedings Act 1957 and Part XIII of the Crimes Act 1961, a non-association order shall be deemed to be a sentence.

“28E. **Commencement of period of non-association**—The period of non-association prescribed by a non-association order shall commence on the day on which the order is made.

**“28F. Breach of order constitutes offence—**An offender in respect of whom a non-association order is made commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000 who, without reasonable excuse, associates with any person in contravention of the order.

**“28G. Effect of subsequent sentences—**Where an offender who is subject to a non-association order is subsequently sentenced for another offence, the following provisions shall apply:

“(a) Where the offender is subsequently sentenced to corrective training, or to imprisonment for a term of 12 months or more or for life, or to preventive detention, the non-association order shall be deemed to be cancelled:

“(b) Where any other sentence is imposed, the court may, unless an application has been made under section 28H of this Act, make an order cancelling the non-association order:

“(c) Where the offender is sentenced to imprisonment for a term of less than 12 months and the court makes no order under paragraph (b) of this section, the period of non-association shall continue to run while the offender is detained and, on the offender’s release, he or she shall continue to be subject to the non-association order for any unexpired residue of the period of non-association:

“(d) Notwithstanding anything in paragraph (c) of this section, where an offender to whom that paragraph applies is released from a penal institution by a District Prisons Board or pursuant to section 91 of this Act, the non-association order shall terminate on the day of the offender’s release.

**“28H. Application by probation officer to review order—**(1) Where—

“(a) An offender who is subject to a non-association order is convicted of an offence punishable by imprisonment; or

“(b) A probation officer believes on reasonable grounds that an offender who is subject to such an order has failed or is unable to comply with the order,—

any probation officer may, unless the order is cancelled or is deemed to be cancelled in accordance with section 28G of this

Act, apply to a court in accordance with section 28j of this Act for a review of the order.

“(2) On an application under this section, a court may—

“(a) Vary the particulars of non-association; or

“(b) Cancel the order; or

“(c) Substitute any other sentence that could have been imposed on the offender at the time when the offender was convicted of the offence for which the order was made.

“(3) Where any other sentence or period of imprisonment is substituted under this section for a non-association order, that order shall be deemed to be cancelled.

“(4) Where the court varies or cancels the non-association order, the Registrar shall give written notice of the decision to the member of the Police in charge of the Police station nearest to the court.

“28i. **Variation or cancellation of order**—(1) An offender who is subject to a non-association order may, at any time after the expiration of half the period of non-association specified in the order, apply to the court in accordance with section 28j of this Act for the variation or cancellation of the order.

“(2) Any probation officer may at any time apply to the court in accordance with section 28j of this Act for the variation or cancellation of a non-association order.

“(3) On an application under this section, a court may, having regard to any change of circumstances since the non-association order was made and the manner in which the offender has responded to the order, make an order varying the particulars of non-association, or cancelling the order.

“(4) Where the court cancels the order, the period of non-association shall expire on such date as the court may specify in that behalf.

“(5) Where any application is made under this section by a probation officer, the probation officer may suspend the order until the application has been heard and disposed of.

“(6) Where the court varies or cancels the non-association order, the Registrar shall give written notice of the decision to the member of the Police in charge of the Police station nearest to the court.

“28j. **Jurisdiction and procedure**—(1) A copy of every application under section 28h or section 28i of this Act shall, either before or as soon as practicable after the application is lodged in the office of the court, be served—

“(a) On the offender, where he or she is not the applicant; or

“(b) On a probation officer, where the offender is the applicant.

“(2) Subsections (1), (3), and (4) of section 65, and section 67, of this Act shall apply, with any necessary modifications, to every application under section 28H or section 28I of this Act.

“(3) Before determining any application under section 28H or section 28I of this Act, the court shall make such inquiries as to the circumstances of the case as the court considers reasonable, and may hear any evidence relevant to those circumstances.”

**3. Court may impose conditions of non-association on release on parole or remission date**—(1) The principal Act is hereby amended by inserting, after section 77A (as inserted by section 7 (1) of the Criminal Justice Amendment Act (No. 3) 1987), the following section:

“77B. (1) On imposing a sentence of imprisonment otherwise than for life, a court may impose a special condition that the offender shall not associate with any specified person, or with persons of any specified class, to which the offender shall be subject if the offender is released on parole, or is released on the date on which the offender becomes eligible for remission of sentence (or on any earlier day determined in relation to that date in accordance with section 82 of this Act), in respect of the sentence in accordance with Part VI of this Act; and every such condition shall be deemed for the purposes of that Part of this Act to have been imposed under that Part.

“(2) Every condition imposed under this section shall have effect for such period, not exceeding 6 months, as may be specified by the court.”

(2) Section 99 (2) of the principal Act is hereby amended by inserting, after paragraph (aa) (as inserted by section 7 (3) of the Criminal Justice Amendment Act (No. 3) 1987), the following paragraph:

“(ab) Such special conditions (if any) as the court thought fit to impose on sentence pursuant to section 77B of this Act for the period specified by the court; and”.

(3) Section 99 (3) of the principal Act is hereby amended by inserting, after paragraph (aa) (as inserted by section 7 (4) of the Criminal Justice Amendment Act (No. 3) 1987), the following paragraph:

“(ab) Such special conditions (if any) as the court thought fit to impose on sentence pursuant to section 77B of this Act for the period specified by the court; and”.

(4) Section 107 (1) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Such special conditions (if any) as the court thought fit to impose on sentence pursuant to section 77B of this Act for the period specified by the court; and”.

(5) Section 107 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Where an offender who is subject to a sentence of imprisonment for a term of less than one year is released from detention in a penal institution (including such a release following recall) on the date on which the offender becomes eligible for remission of sentence (or on any earlier day determined in relation to that date in accordance with section 82 of this Act), the offender shall be subject to such special conditions (if any) that the court thought fit to impose on sentence pursuant to section 77B of this Act for the period specified by the court.”

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This Act is administered in the Department of Justice.

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