

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 6 August 1985.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 26 November 1985.

Words struck out are shown in italics within double bold round brackets; words inserted are shown in roman underlined with a double rule.

[This Bill was formerly clauses 14 to 17 of the Rape Law Reform Bill (No. 2)]

Hon. Geoffrey Palmer

SUMMARY PROCEEDINGS AMENDMENT (NO. 4)

ANALYSIS

	PART VA
	SPECIAL PROVISIONS RELATING TO PRELIMINARY HEARINGS IN CASES INVOLVING SEXUAL VIOLATION
Title	185A. Application
1. Short Title and commencement	185B. Hearings to be conducted by Judge
2. Jurisdiction to conduct preliminary hearing of indictable offences	185C. Evidence of complainant
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4. New Part VA inserted	185E. Other powers of Court preserved
	5. Transitional provisions

No. 3—3C

Price \$1.00

A BILL INTITLED

An Act to amend the Summary Proceedings Act 1957

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

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1. Short Title and commencement—(1) This Act may be cited as the Summary Proceedings Amendment Act (No. 4) 1985, and shall be read together with and deemed part of the Summary Proceedings Act 1957 (hereinafter referred to as the principal Act).

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(2) This Act shall come into force on the 1st day of ~~((December 1985))~~ February 1986.

2. Jurisdiction to conduct preliminary hearing of indictable offences—Section 5 of the principal Act is hereby amended by inserting, before the words “A Court”, the words “Subject to **section 185B** of this Act,”.

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New

3. Depositions of witnesses—Section 161 (1) of the principal Act (as substituted by section 20 (1) of the Summary Proceedings Amendment Act 1976) is hereby amended by omitting the expression “section 173A”, and substituting the expression “sections 173A and 185c”.

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4. New Part VA inserted—The principal Act is hereby amended by inserting, after Part V, the following Part:

“PART VA

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“SPECIAL PROVISIONS RELATING TO PRELIMINARY HEARINGS IN
CASES INVOLVING SEXUAL VIOLATION

“185A. **Application**—This Part of this Act applies to preliminary hearings of any of the following offences:

“(a) Sexual violation:

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“(b) Attempted sexual violation:

“(c) Assault with intent to commit sexual violation:

“(d) An offence against **section 129A** of the Crimes Act 1961
(*obtaining*) inducing sexual connection by coercion):

“(e) An offence against **section 142A** of that Act (compelling indecent act with animal):

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Struck Out

“(f) Aiding, abetting, inciting, counselling, or procuring the commission of any offence referred to in **paragraphs (a) to (e)** of this subsection:

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New

“(f) Being a party to the commission of any offence referred to in paragraphs (a) to (e) of this section:

“(g) Conspiring with any person to commit any such offence.

5 “185B. **Hearings to be conducted by Judge**—Every Court conducting a preliminary hearing to which this Part of this Act applies shall be presided over by a District Court Judge.

10 “185C. **Evidence of complainant**—(1) Notwithstanding anything in Part V of this Act, at any preliminary hearing to which this Part of this Act applies, the complainant’s evidence shall be given in the form of a written statement, and the complainant shall not be examined or cross-examined on that statement unless—

15 “(a) The Judge is satisfied that the complainant has been advised of the right to give evidence in the form of a written statement but nevertheless wishes to give evidence orally; or

20 “(b) The Judge orders, either of the Judge’s own motion or on the application of the defendant, that the complainant’s evidence be given orally on the ground—

25 “(i) That the written statement of the complainant, together with any other evidence tendered, is not sufficient to justify putting the defendant on trial; or

“(ii) That it is (indispensable) necessary in the interests of justice that the evidence be given orally.

30 “(2) Where, in such a case, the complainant gives oral evidence (whether in chief or under cross-examination or on re-examination), (only the following persons shall be present in the courtroom) no person shall be present in the courtroom except the following:

“(a) The Judge:

“(b) The (informant) prosecutor:

35 “(c) The defendant and any person who is for the time being acting as custodian of the defendant:

“(d) Any barrister or solicitor engaged in the proceedings:

“(e) Any officer of the Court:

New

40 “(ea) Any person who is for the time being responsible for recording the proceedings:

“(f) The member of the Police in charge of the case:

“(g) Any accredited news media reporter:

“(h) Any person whose presence is requested by the complainant:

“(i) Any person expressly permitted by the Judge to be present. 5

“(3) Before the complainant commences to give evidence in such a case, the Judge shall—

“(a) *(Satisfy himself)* Ensure that no person other than one referred to in **subsection (2)** of this section is present in the courtroom; and 10

“(b) Advise the complainant of the complainant’s right to request the presence of any person under **paragraph (h)** of that subsection.

New

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“(4) Where the evidence of the complainant is to be given in the form of a written statement, the prosecutor shall cause a copy of the complainant’s statement to be given to the defendant or the defendant’s solicitor at least 7 days before the date on which the hearing is to commence; and if the Judge at the hearing is satisfied that this requirement has not been complied with, the Judge may adjourn the hearing to allow further time for the defendant to consider the statement. 20

“(5) The provisions of sections 160 (1), 160A, 173A (except subsections (2) (c) and (3)), 180, 181 (1), 182 (1), and 184 of this Act shall apply, with any necessary modifications, to evidence given in the form of written statements made under this section. 25

“185D. **Power of Court to prohibit publication of certain details**—(1) Where in any preliminary hearing to which this Part of this Act applies the Court is of the opinion that the interests of the complainant so require, it may make an order forbidding publication of any report or account giving details of the criminal acts alleged to have been performed on the complainant or of any acts that the complainant is alleged to have been compelled or induced to perform or to consent to or acquiesce in. 30 35

“(2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who commits a breach of any order made under **subsection (1)** of this section or evades or attempts to evade any such order. 40

“185E. **Other powers of Court preserved**—Nothing in **section 185c (2) or section 185D** of this Act shall limit or affect the powers of the Court to exclude any person or forbid any report or account of any evidence under ~~(section 156)~~ section 138 of the Criminal Justice Act 1985 or section 206 of this Act or any other enactment.”

5. Transitional provisions—(1) Notwithstanding **section 1 (2)** of this Act, the provisions of **Part VA** of the principal Act (as inserted by **section 4** of this Act) shall apply, with all necessary
10 modifications, to any preliminary hearing of any offence specified in **subsection (2)** of this section if the hearing commences on or after the 28th day after the date on which this Act receives the Governor-General’s assent.

(2) **Subsection (1)** of this section applies to the following
15 offences:

- (a) Rape:
- (b) Attempted rape:
- (c) Assault with intent to commit rape:

Struck Out

20 (d) Aiding, abetting, inciting, counselling, or procuring the commission of any offence referred to in **paragraphs (a) to (c)** of this subsection:

New

25 “(d) Being a party to the commission of any offence referred to in **paragraphs (a) to (c)** of this subsection:

(e) Conspiring with any person to commit any such offence.