

House of Representatives

Supplementary Order Paper

Tuesday, 27 September 2011

Criminal Procedure (Reform and Modernisation) Bill

Proposed amendments

Hon Simon Power, in Committee, to move the following amendments:

Clause 2

Subclause (1)(f): to omit “**405C**” (line 11 on page 25) and substitute “**405D**”.

Subclause (1)(g): to omit “**and 411(2)**” (line 13 on page 25) and substitute “**, 411(2), and 411A**”.

Subclause (3): to omit “18 months” (line 24 on page 25) and substitute “2 years”.

Clause 5

Definition of **rules of court**: to omit this definition (line 11 on page 32) and substitute the following definition:

rules of court means rules made under **section 382** of this Act, section 51C of the Judicature Act 1908, and section 122 of the District Courts Act 1947, or any of those enactments

Clause 73(4)

To omit this subclause (lines 16 to 18 on page 76) and substitute the following subclause:

- (4) This section is subject to—
 - (a) any order made under section 4A of the District Courts Act 1947 or **section 157** of this Act; and
 - (b) **section 141**.

Clause 73A(5)

To omit this subclause (lines 33 to 35 on page 76) and substitute the following subclause:

- (5) This section is subject to—

- (a) any order made under section 4A of the District Courts Act 1947 or **section 157** of this Act; and
- (b) **section 141**.

Clause 84

Subclause (1)(a): to omit “written” (line 23 on page 84) and substitute “formal”.

Subclause (1)(b): to omit “sign” (line 26 on page 84) and substitute “authenticate”.

Subclause (1)(b): to omit “written” (line 26 on page 84).

Subclause (2)(a): to omit “written” (line 32 on page 84) and substitute “formal”.

Subclause (2)(b): to omit “sign” (line 34 on page 84) and substitute “authenticate”.

Subclause (2)(b): to omit “written” (line 34 on page 84).

Clause 88(2)(c)

To omit “; and” (line 7 on page 87) and substitute “:”.

Clause 101(1)(a)

To omit “the trial” (line 19 on page 93) and substitute “a jury trial”.

Clause 102(3)

To omit “by” (line 29 on page 94) and substitute “within”.

Clause 168(2)

Paragraph (a)(iv): to omit “are outstanding” (line 24 on page 146) and substitute “have been issued”.

Paragraph (b)(iii): to omit “are outstanding” (line 35 on page 146) and substitute “have been issued”.

Clause 195(1)

To insert after “or” (line 34 on page 163) “before the trial and”.

Clause 195A(1)

To insert after “or” (line 16 on page 164) “before the trial and”.

Clause 196

Subclause (1): to insert after “or” (line 2 on page 165) “before the trial and”.

Subclause (3)(a): to omit this paragraph (line 14 on page 165) and substitute the following paragraph:

- (a) give leave for the notice to withdraw the charges to be filed; or

New subclause (3A): to insert the following subclause after *subclause (3)* (after line 15 on page 165):

- (3A) A charge is withdrawn under this section on the filing of a notice to withdraw the charge.

Clause 380(2)

To omit this subclause (lines 11 and 12 on page 262) and substitute the following subclause:

- (2) If the High Court imposes 1 or more fines, section 19 of the Crimes Act 1961 applies.

Clause 380A(3)

To omit this subclause (lines 23 and 24 on page 262) and substitute the following subclause:

- (3) In any other case, section 19 of the Crimes Act 1961 applies.

Clause 385

To insert after “trial” (line 7 on page 269) “, or summary hearing at which the charge will be determined.”.

New clauses 405AA and 405AB

To insert the following clauses after *clause 405* (after line 24 on page 283):

405AA Issue of warrant to arrest defendant absconding or breaching bail condition or who fails to answer bail

- (1) Section 36(4)(a) is amended by inserting “, or a copy of it,” after “warrant”.
- (2) Section 36(4)(b) is amended by inserting “, or a copy of it,” after “it”.

405AB Issue of warrant to arrest defendant absconding or breaching bail condition

- (1) Section 60(4)(a) is amended by inserting “, or a copy of it,” after “warrant”.
- (2) Section 60(4)(b) is amended by inserting “, or a copy of it” after “it”.

New clause 405D

To insert the following clause after *clause 405C* (after line 24 on page 284):

405D Transitional provision regarding sections 405AA and 405AB

Sections 36(4) and 60(4) of the principal Act (as amended by **sections 405AA and 405AB**) apply to the execution of any warrant of arrest on or after the date on which **sections 405AA and 405AB** come into force even if the warrant was issued before that date.

Clause 406

To omit from the heading “**section 405**” (line 25 on page 284) and substitute “**sections 405 to 405AB**”.

To omit “**Section 405 expires**” (line 26 on page 284) and substitute “**Sections 405 to 405AB expire**”.

Clause 411A

To insert after “arrest” (line 28 on page 287) “on or”.

To omit “the commencement” (line 30 on page 287) and substitute “that”.

New clauses 420AA to 420AF

To insert the following clauses after *clause 420* (after line 15 on page 293):

420AA District Courts Act 1947 amendments taking into account section 14 of District Courts Amendment Act 2011

- (1) If section 14 of the District Courts Amendment Act 2011 is not in force on the date that this section comes into force,—
 - (a) section 84C(2)(c) of the District Courts Act 1947 is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “**section 173** of the **Criminal Procedure (Reform and Modernisation) Act 2010**”; and
 - (b) new section 84EA(5)(c) as inserted by section 14 of the District Courts Amendment Act 2011 is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “**section 173** of the **Criminal Procedure (Reform and Modernisation) Act 2010**”; and
 - (c) **subsection (2)** of this section is repealed.
- (2) If section 14 of the District Courts Amendment Act 2011 is in force on the date that this section comes into force,—
 - (a) section 84EA(5)(c) of the District Courts Act 1947 is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “**section 173** of the **Criminal Procedure (Reform and Modernisation) Act 2010**”; and
 - (b) **subsection (1)** of this section is repealed.

420AB District Courts Act 1947 amendment further taking into account section 14 of District Courts Amendment Act 2011

- (1) If section 14 of the District Courts Amendment Act 2011 is not in force on the date that this section comes into force,—
 - (a) section 84C(2)(d) of the District Courts Act 1947 is amended by omitting “constable” and substituting “Police employee”; and
 - (b) **subsection (2)** of this section is repealed.
- (2) If section 14 of the District Courts Amendment Act 2011 is in force on the date that this section comes into force, this section is repealed immediately after it has come into force.

420AC Amendment to District Courts Act 1947 taking into account section 19 of District Courts Amendment Act 2011

- (1) If section 19 of the District Courts Amendment Act 2011 is not in force on the date that this section comes into force,—
 - (a) section 84K(1) of the District Courts Act 1947 is amended by omitting “summary”; and
 - (b) **subsection (2)** of this section is repealed.
- (2) If section 19 of the District Courts Amendment Act 2011 is in force on the date that this section comes into force,—
 - (a) section 84K of the District Courts Act 1947 is amended by omitting “summary”; and
 - (b) **subsection (1)** of this section is repealed.

420AD District Courts Act 1947: first amendment taking into account section 23 of District Courts Amendment Act 2011

- (1) If section 23 of the District Courts Amendment Act 2011 is not in force on the date that this section comes into force,—
 - (a) section 84O(6)(b) of the District Courts Act 1947 is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “**section 173 of the Criminal Procedure (Reform and Modernisation) Act 2010**”; and
 - (b) new section 84OB(3)(d) as inserted by section 23 of the District Courts Amendment Act 2011 is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “**section 173 of the Criminal Procedure (Reform and Modernisation) Act 2010**”; and
 - (c) **subsection (2)** of this section is repealed.
- (2) If section 23 of the District Courts Amendment Act 2011 is in force on the date that this section comes into force,—
 - (a) section 84OB(3)(d) of the District Courts Act 1947 is amended by omitting “section 46 of the Summary Proceedings Act 1957” and substituting “**section 173 of the Criminal Procedure (Reform and Modernisation) Act 2010**”; and
 - (b) **subsection (1)** of this section is repealed.

420AE District Courts Act 1947: second amendment taking into account section 23 of District Courts Amendment Act 2011

- (1) If section 23 of the District Courts Amendment Act 2011 is not in force on the date that this section comes into force,—

- (a) section 84O(6)(c) of the District Courts Act 1947 is amended by omitting “constable” in each place where it appears and substituting in each case “Police employee”; and
 - (b) **subsection (2)** is repealed.
- (2) If section 23 of the District Courts Amendment Act 2011 is in force on the date that this section comes into force, this section is repealed immediately after it has come into force.

420AF District Courts Act 1947: third amendment taking into account section 23 of District Courts Amendment Act 2011

- (1) If section 23 of the District Courts Amendment Act 2011 is not in force on the date that this section comes into force,—
 - (a) section 84O(7) of the District Courts Act 1947 is amended by omitting “on an information”; and
 - (b) section 84O(8) of the District Courts Act 1947 is amended by omitting “on an information”; and
 - (c) section 23 of the District Courts Amendment Act 2011 is amended by omitting from new section 84O(6) “on an information” and substituting “before a Judge alone in relation to a charge”; and
 - (d) **subsection (2)** of this section is repealed.
- (2) If section 23 of the District Courts Amendment Act 2011 is in force on the date that this section comes into force,—
 - (a) section 84O(6) of the District Courts Act 1947 is amended by omitting “on an information” and substituting “before a Judge alone in relation to a charge”; and
 - (b) **subsection (1)** of this section is repealed.

Clause 435

New section 23(2)(a)(iv): to omit “are outstanding” (line 33 on page 300) and substitute “have been issued”.

New section 23(3)(b)(iii): to omit “are outstanding” (line 11 on page 301) and substitute “have been issued”.

Clause 435A

To omit “commencement of **section 435**” (lines 20 and 21 on page 301) and substitute “date on which **section 435** came into force”.

Schedule 2: item relating to new Parts 3 and 4

New section 35(2)(a): to omit this paragraph (lines 13 to 18 on page 322) and substitute the following paragraph:

- “(a) be brought before a District Court as soon as possible if the defendant was released on bail by a District Court

or Registrar in relation to a category 1 or 2 offence, or by a Police employee in relation to any offence; or

New section 35(2)(b): to omit this paragraph (lines 25 to 30 on page 322) and substitute the following paragraph:

“(b) be brought before a High Court Judge or District Court Judge as soon as possible if the defendant was released on bail in any circumstances to which **paragraph (a)** does not apply.

New section 37(5)(a): to insert after “warrant” (line 13 on page 325) “, or a copy of it,”.

New section 37(5)(b): to insert after “it” (line 14 on page 325) “, or a copy of it,”.

Schedule 3

Item relating to *new section 277: subsection (10)*: to omit “exceptions and further” (line 6 on page 358).

Item relating to *new section 277A: subsection (3)*: to omit “2 or” (line 20 on page 358).

Schedule 3B

Item relating to *new section 19AA*: to omit this item (lines 18 to 23 on page 373).

Item relating to section 19(1): to omit this item (lines 24 and 25 on page 373) and substitute the following item:

Section 19

Subsection (4)(b): repeal and substitute:

“(b) **sections 248 and 254** of the **Criminal Procedure (Reform and Modernisation) Act 2010** and any other relevant provisions of that Act relating to appeals against sentence apply with any necessary modifications.”

Subsection (7): repeal and substitute:

“(7) For the purposes of subsection (6), the outstanding fine or fines imposed by the District Court must be treated as if the fine or fines were imposed by the High Court and, in accordance with subsection (1), Part 3 of the Summary Proceedings Act 1957 applies to the fine or fines, subject to—

“(a) any necessary modifications; and

“(b) the modifications in subsections (2) and (4), but not the modification in subsection (5), if the outstanding fine or fines were imposed in the District Court.”

Item relating to section 19C(1): to omit this item (lines 26 and 27 on page 373).

Items relating to form 3 of Schedule 2: to omit these items (lines 20 to 27 on page 377) and substitute the following item:

Form 3: repeal.

Schedule 4A

Item relating to section 84C(2): to omit this item (lines 13 to 18 on page 387).

Item relating to section 84K(1): to omit this item (lines 21 and 22 on page 387).

Item relating to section 84O: to omit this item (line 23 on page 387 to line 1 on page 388).

Schedule 4B

Item relating to section 112: item relating to *new subsections (1) and (2)*: to omit this item (lines 4 to 10 on page 391) and substitute the following item:

Subsections (1) and (2): repeal and substitute:

“(1) This section and section 113 apply if a person is charged with—

“(a) a category 3 or 4 offence that has been transferred to the High Court for trial; or

“(b) a category 3 offence that is to be considered by a Judge under **section 70** of the **Criminal Procedure (Reform and Modernisation) Act 2010** or is subject to an application under **section 72** of that Act.

“(2) The prosecution or the defendant may apply for a witness anonymity order under this section,—

“(a) in the case of a category 3 or 4 offence, after the case has been transferred to the High Court for trial; or

“(b) in the case of a category 3 offence, at any time before a determination of the level of trial court for the case is made under **section 70 or 72** of the **Criminal Procedure (Reform and Modernisation) Act 2010** .”

Item relating to section 114: item relating to subsection (1): to omit this item (lines 15 to 17 on page 391) and substitute the following item:

Subsection (1): repeal and substitute:

“(1) If the Judge is considering transferring the case to the High Court under **section 70 or 72** of the **Criminal Procedure (Reform and Modernisation) Act 2010** and a witness anonymity order is made under section 112 in that case before the application is dealt with, the Judge considering the application must transfer the proceeding to the High Court.”

Item relating to section 116: items relating to subsection (1): to omit these items (lines 22 and 23 on page 391) and substitute the following item:

Subsection (1): omit “any committal hearing or the trial” and substitute “the giving of oral evidence in accordance with an oral evidence order or the trial”.

Schedule 4D

To insert the following item after the item relating to section 30(3)(b) (after line 29 on page 395):

Section 38A(4)(b)(ii)

Omit “or section 28I of the District Courts Act 1947”.

To insert the following item after the item relating to section 136(3) (after line 12 on page 399):

Section 138A(4)

Omit “or section 28I of the District Courts Act 1947”.

Schedule 5

Item relating to section 21: item relating to subsection (5): to insert after “(5)” (line 14 on page 401) “(b)”.

Item relating to section 21: item relating to subsection (5A): to insert after “(5A)” (line 15 on page 401) “(b)”.

Item relating to section 21: item relating to *new subsection (8)(d)(ii)*: to insert after “treated” (line 31 on page 401) “as”.

Item relating to section 24: to add the following item (after line 10 on page 402):

Subsection (1)(d): omit “ordinary” and substitute “prepaid”.

To insert the following item after the item relating to sections 76 to 78A and heading above section 76 (after line 8 on page 403):

Section 79D(3)

Omit “on indictment”.

Item relating to section 82: to omit this item (lines 9 and 10 on page 403) and substitute the following item:

Section 82(1)

Repeal.

Item relating to section 84(1): to insert before “complaint” (line 16 on page 403) “a”.

Item relating to section 88: to omit this item (line 20 on page 403 to line to 8 on page 404) and substitute the following items:

Section 88AB(c)

Omit “section 46 of this Act” and substitute “**section 173** of the **Criminal Procedure (Reform and Modernisation) Act 2010**”.

Section 88AC(d)

Omit “section 46 of this Act” and substitute “**section 173** of the **Criminal Procedure (Reform and Modernisation) Act 2010**”.

Section 88AE(3)

Omit “sections 45 to 59” and substitute “**sections 172 to 176** of the **Criminal Procedure (Reform and Modernisation) Act 2010**”.

Section 88AF(1)

Omit “information or complaint” and substitute “charge”.

Item relating to section 89: *new subsection (2)*: to omit “88(3)” (line 12 on page 404) and substitute “88AE(1)”.

Item relating to section 89: *new subsection (3)*: to omit “88(3)” (line 24 on page 404) and substitute “88AE(1)”.

To insert the following item after the item relating to section 89 (after line 26 on page 404):

Section 92

Omit “, or section 28I of the District Courts Act 1947,”.

Item relating to section 100J(6): to omit this item (lines 27 and 28 on page 404) and substitute the following item:

Section 100C(6)

Omit “summary”.

Item relating to *new sections 106G and 106H*: *new section 106G*: to omit this section (lines 5 to 15 on page 405) and substitute the following section:

“106G Actions under warrant to seize pending appeal

- “(1) If a warrant to seize property is issued before a notice of appeal or an application for leave to appeal is filed under **Part 6** of the **Criminal Procedure (Reform and Modernisation) Act 2010**, then—
- “(a) if the warrant has not been executed, it is suspended until the appeal has been determined or abandoned;
 - “(b) if the warrant has been executed,—
 - “(i) any seized property that has not been sold, assigned, applied, released, or otherwise disposed of must be retained while the appeal is pending; or
 - “(ii) if the seized property has been sold but the proceeds of the sale have not been applied in accordance with section 100N or 100R, the proceeds must be retained while the appeal is pending.
- “(2) If, on the determination or abandonment of the appeal, the determination in respect of which the warrant was issued continues in effect, the property must be dealt with, and any fees and costs payable under an enactment in respect of the property are payable, as if the notice of appeal had not been given.
- “(3) If, on the determination or abandonment of the appeal, the determination in respect of which the warrant was issued is set aside, the owner—
- “(a) is entitled to—
 - “(i) the return of the property if the property has been retained in accordance with **subsection (1)(b)(i)**; or
 - “(ii) the proceeds of any sale if the proceeds have been retained in accordance with **subsection (1)(b)(ii)**; and

- “(b) is not liable for any fees and costs payable under an enactment in respect of the property.

Schedule 5A

Item relating to section 12(4): to omit this item (lines 3 to 5 on page 408) and substitute the following item:

Section 12

Subsection (2)(c): omit “defended hearing, or trial,” and substitute “trial”.

Subsection (4): omit “the Criminal Justice Act 1985 or any other” and substitute “any”.

Schedule 6

Item relating to the Adoption Act 1955: to insert the following item after line 30 on page 409:

Heading to section 27: omit “**Summary offences**” and substitute “**Offences**”.

Item relating to the Adoption Act 1955: to insert the following item after line 31 on page 409:

Section 27A(2): omit “on indictment”.

Item relating to the Customs and Excise Act 1996: to insert the following item after the item relating to section 265(1) (after line 34 on page 455):

Paragraph (d) of the definition of **fine** in section 280C: repeal.

Item relating to the Family Courts Act 1980: to add the following item (after line 25 on page 479):

Section 16(4): omit “78A” and substitute “78”.

Item relating to section 27 of the Food Act 1981 (line 4 on page 492): omit and substitute:

Section 27: repeal and substitute:

“27 Time for filing charging document

“(1) Despite anything to the contrary in **section 22 of the Criminal Procedure (Reform and Modernisation) Act 2010**, the limitation period in respect of an offence against this Act or any regulations made under it ends on the date that is 12 months after the date on which the offence was committed.

“(2) **Subsection (1)** does not apply to an offence against section 11AA.”

New item relating to the Freedom Camping Act 2011: to insert the following item (after line 29 on page 492):

Freedom Camping Act 2011 (2011 No 61)

Section 25(1): omit “laying an information under the Summary Proceedings Act 1957” and substitute “filing a charging document under **section 12 of the Criminal Procedure (Reform and Modernisation) Act 2010**”.

Freedom Camping Act 2011 (2011 No 61)—continued

Section 25(2)(b): omit “laying an information under the Summary Proceedings Act 1957” and substitute “filing a charging document under **section 12** of the **Criminal Procedure (Reform and Modernisation) Act 2010**”.

Item relating to the Immigration Act 2009: to insert the following item before the item relating to section 350(5) (before line 11 on page 508):

Paragraph (d) of the definition of **fine** in section 295(4): repeal.

Item relating to the Land Transport Act 1998: to insert the following item after line 21 on page 528:

Section 75A(2): omit “or defended hearing”.

Item relating to the Land Transport Act 1998: to omit the item relating to section 88(5)(b) (line 24 on page 528) and substitute the following item:

Section 88(6)(b): omit “summary”.

Item relating to the Misuse of Drugs Amendment Act 1978: to omit the item relating to section 43 (lines 20 to 22 on page 553) and substitute the following item:

Section 43(1): omit “section 28I of the District Courts Act 1947” and substitute “Part 3 of the Summary Proceedings Act 1957”.

Item relating to the Privacy Act 1993: to insert the following item after the item relating to section 91(5)(a) (after line 8 on page 568):

Paragraph (d) of the definition of **fine** in section 103(5): repeal.

Item relating to the Reserves Act 1977: to omit the item relating to section 99 (line 20 on page 577) and substitute the following item:

Section 99: repeal and substitute:

“99 Time for filing charging document

Despite **section 22** of the **Criminal Procedure (Reform and Modernisation) Act 2010**, the limitation period in respect of an offence against this Act or any regulations made under it ends on the date that is 12 months after the date on which the offence was committed.”

Item relating to the Ship Registration Act 1992 (lines 5 to 9 on page 591): to omit the item relating to section 78(b) and substitute the following item:

Section 78(b): omit “The period of 6 months referred to in section 14 of the Summary Proceedings Act 1957 for the laying of an information” and substitute “The applicable limitation period referred to in **section 22** of the **Criminal Procedure (Reform and Modernisation) Act 2010** for the filing of a charging document”.

Item relating to the Smoke-free Environments Act 1990: to insert the following items after the item relating to section 37(2) and (3) (after line 11 on page 592):

Section 38B(a): omit “the laying of an information under the Summary Proceedings Act 1957” and substitute “filing a charging docu-

ment under **section 12** of the **Criminal Procedure (Reform and Modernisation) Act 2010**”.

Section 38C(3): omit “For the purposes of the Summary Proceedings Act 1957, an” and substitute “An”.

Item relating to the Social Security Act 1964: to insert the following item after the item relating to section 86F (after line 33 on page 592):

Paragraph (d) of the definition of **fine** in section 126A(1): repeal.

Item relating to the Student Loan Scheme Act 1992: to omit this item (lines 3 to 21 on page 595) and substitute:

Student Loan Scheme Act 2011 (2011 No 62)

Section 164: repeal and substitute:

“164 Proceedings to be commenced by Commissioner

A proceeding for an offence against section 163 must be commenced by the filing of a charging document in the name of the Commissioner.”

Heading to section 165: omit “**Information**” and substitute “**Charge**”.

Section 165(1): omit “An information” and substitute “A charge”.

Section 165(2): omit “an information” and substitute “a charging document”.

Section 165(2)(a): omit “information” and substitute “charging document”.

Section 166: repeal and substitute:

“166 Time for filing charging document

Despite anything to the contrary in **section 22** of the **Criminal Procedure (Reform and Modernisation) Act 2010**, the limitation period in respect of an offence against section 163 ends on the date that is 10 years after the end of the year in which the offence was committed.”

Item relating to the Tax Administration Act 1994: to insert the following item after the item relating to section 81(4)(a) (after line 31 on page 598):

Paragraph (d) of the definition of **finer defaulter** in section 85A(6): repeal.

Explanatory note

This Supplementary Order Paper amends the Criminal Procedure (Reform and Modernisation) Bill (the **Bill**) by—

- changing the default commencement date (the date on which the Bill will come into force if not earlier brought into force by Order in Council) from 18 months after the date that the Act receives the Royal assent to 2 years after the date that the Act receives the Royal assent:

- amending the Bail Act 2000 to provide that when a constable is entering premises to execute a warrant for breach of bail, the requirement on the constable to have or produce the arrest warrant may be fulfilled by having or producing a copy of it. These amendments make the position consistent with the amendment to section 316(2) of the Crimes Act 1961 in *clause 411*:
 - making a number of other minor and technical amendments:
 - correcting minor drafting errors and omissions:
 - making a number of amendments to the Bill, and enactments in the schedules, to take into account the effects of recently enacted legislation, such as the District Courts Amendment Act 2011 and the Summary Proceedings Amendment Act 2011 that resulted from the passage of the Courts and Criminal Matters Bill.
-