



NEW ZEALAND  
LAW SOCIETY

NZLS EST 1869

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

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*12/06/2018*

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

### 1 Introduction

- 1.1 The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Administration of Justice (Reform of Contempt of Court) Bill (the Bill).
- 1.2 The Bill implements reforms proposed by the Law Commission in *Reforming the Law of Contempt of Court: a Modern Statute* (Law Commission Report).<sup>1</sup>
- 1.3 Contempt of court is a difficult issue with competing interests, including the right to freedom of expression, the rights of charged persons to a fair trial, and the administration of justice in a manner that is just, speedy and inexpensive. The Law Society considers the Bill generally strikes the right balance between these competing considerations.
- 1.4 The Law Society's submission is limited to suggested drafting amendments, to improve the Bill's clarity and workability.
- 1.5 The Law Society does not seek to be heard.

### 2 Purpose and objective (clause 3)

- 2.1 Clause 3 sets out the principal purposes and objectives of the Bill. One of the Bill's objectives is that jury verdicts should be "... based only on facts admitted or proved by properly adduced evidence after free, frank, and confidential jury discussions", and that "the finality of verdicts will be protected" (clause 3(2)(b)).
- 2.2 The Law Society considers that the finality of verdicts, which is also protected by other legislation such as section 76 of the Evidence Act 2006,<sup>2</sup> deserves recognition as a separate objective of the Bill. It is recommended that clause 3(2)(b) be amended as follows (amendments underlined):
- (b) *jury verdicts are based only on facts admitted or proved by properly adduced evidence after free, frank, and confidential jury discussions;*
- (c) the finality of verdicts is protected; ...
- 2.3 As a minor point, it is also noted that clause 3(2) commences "To those ends" (referring to the principal purposes set out in clause 3(1)). It would be clearer if this read "For those purposes".

### 3 Interpretation (clause 4)

- 3.1 Clause 4 incorporates words with established definitions or meanings into the Bill. The phrase usually used is "has the same meaning as in [name of Act]". Two definitions in clause 4 use a slightly different phrase, and for consistency and clarity the following minor rewording is recommended (additions underlined):
- (a) "bailiff has the same meaning as in section 4 of the District Court Act 2016"

<sup>1</sup> Law Commission *Reforming the Law of Contempt of Court: a Modern Statute* (NZLC R140, 2017).

<sup>2</sup> Evidence Act 2006, s 76(1) states: "A person must not give evidence about the deliberations of a jury."

- (b) “**category 3 offence** and **category 4 offence** have the same meanings as given to them in section 6 of the Criminal Procedure Act 2011”

#### **4 Automatic suppression (clause 8)**

- 4.1 Clause 8 provides for automatic suppression of details of previous convictions and concurrent charges if a person is arrested for an offence that “may be triable by a jury”. The word “triable” in this context means “capable of being tried”, so there is no need for the conditionality expressed by the “may be”.
- 4.2 It appears that there has been an attempt to resolve this double conditionality by defining “triable by a jury” in clause 4 as meaning:
- (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.*
- 4.3 However, separately defining “triable by a jury” introduces unnecessary complexity. The two subclauses simply state what a category 3 offence and category 4 offence are respectively in the Criminal Procedure Act 2011. Category 3 and 4 offences are already defined in the Bill. It does not matter for the operation of Subpart 1 of Part 2 whether a person arrested actually elects trial by a jury; the provisions have effect when the person is arrested for a category 3 or 4 offence.
- 4.4 The same position applies in relation to clause 14.
- 4.5 It follows that the definition of “triable by a jury” could be removed from the Bill altogether, and clauses 8(1) and 14(1) redrafted so as to remove the unnecessary layer. The new clauses would read (additions underlined):

#### **8 Automatic suppression of details of previous convictions and concurrent charges**

- (1) *If a person (the **arrested person**) is arrested for a category 3 offence or a category 4 offence ~~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.*

...

**14 Offence to publish certain criminal trial information**

- (1) *This section applies if a person (the **arrested person**) is arrested for a category 3 offence or a category 4 offence ~~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*
- (b) *ceases to apply if the charge is dealt with or disposed of otherwise than by a jury trial.*

**5 Suppression of trial-related information (clause 9)**

- 5.1 Clause 9(1) refers to the temporary suppression of specific information relating to “matters of character” of an accused person. The phrase “matters of character” is not defined in the Bill and its meaning is not explained in the Law Commission Report. Clause 9(1) could be worded more clearly and simply by referring only to “the character” of the accused person.

**6 Offence to disclose jury deliberations (clause 20)**

- 6.1 Clause 20(1) provides that it is an offence to disclose statements made during, or other information relating to, deliberations of a jury. Subclauses (2) and (3) provide for circumstances in which the disclosure of such information would not amount to an offence.
- 6.2 Another situation, not referred to, in which a person may have cause to disclose information about the deliberations of a jury is when directed to do so by the Court of Appeal relating to its hearing of an appeal from conviction. That may occur when, under section 76(3) of the Evidence Act 2006, the Court considers that there are exceptional circumstances justifying the information being sought. The Court has a practice of appointing an independent lawyer to interview the relevant jury members.
- 6.3 Disclosure of information in these circumstances should be recognised in clause 20 as not amounting to an offence.

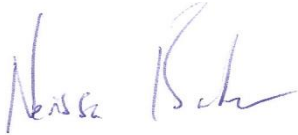
**7 Consequential amendments**

- 7.1 Clause 31 amends the enactments specified in Schedule 2 of the Bill. The Law Commission’s draft Bill contained the following note at the beginning of Schedule 2:

*Note*

*Schedule 2 contains the main consequential amendments that the Law Commission considers necessary to give effect to its proposals in this [draft] Bill. **Other amendments may need to be added to Schedule 2 before the introduction of this Bill.** [emphasis added]*

- 7.2 It is not clear whether the need for the other amendments has been fully considered.<sup>3</sup>
- 7.3 The Committee may wish to seek advice from officials on this point.

A handwritten signature in blue ink, appearing to read "Nerissa Barber".

Nerissa Barber  
**Vice President**  
12 June 2018

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<sup>3</sup> The Law Commission Report at [3.57] noted that amendments would need to be made to enable the Human Rights Review Tribunal to cite persons for disruptive behaviour, however Schedule 2 of the Bill as introduced does not include consequential amendments to the Human Rights Act 1993.