



October 2009

DISCUSSION DOCUMENT: CATEGORIES OF OFFENCES AND THE MIDDLE BAND

PURPOSE

1. The Criminal Procedure (Simplification) Project (the Project) is proposing a range of comprehensive reforms to criminal procedure. This paper outlines proposals made by the Project Team relating to how offences should be categorised for the purpose of defining how they should proceed. It focuses mainly on categories of purely indictable offences. Other categories of offence are more fully considered in a previous discussion document issued from the Project ("*Proposals relating to restricting availability of jury trials*").

SUMMARY OF PROPOSALS

2. At present in New Zealand, when offences are proceeded with by way of 'indictment' it means they must (with certain limited exceptions) be tried by jury in either the High Court or a District Court. In order to determine how any particular offence is to proceed through the Courts, offences are divided into categories.
3. The following general offence categories are found in legislation:
 - 3.1. *Indictable* offences:
 - 3.1.1. Offences triable only in the High Court ('High Court only indictable');
 - 3.1.2. Offences triable in either the High Court or the District Courts ('middle band' offences);
 - 3.1.3. Offences triable only in the District Courts ('District Court only indictable');
 - 3.1.4. Offences identified in Schedule 1 of the Summary Proceedings Act 1957 that may be laid summarily at the discretion of the prosecution ('Schedule 1' offences) and, if so, are heard by a judge alone unless the defendant exists.
 - 3.2. *Summary* offences:
 - 3.2.1. Offences that are ordinarily tried by judge alone, but which may be tried by jury in the District Court if the defendant elects trial by jury ('electable' offences);

- 3.2.2. Offences that are only triable by judge alone ('purely summary' offences).
4. The above offence categories have developed over many years as the structure of New Zealand's courts has changed. The consequence of this gradual evolution is that this current system of classification is now overly complex, sometimes arbitrary, and inefficient.
5. In response to these issues we propose simplifying the categories of offence and reducing the above six categories to four:
 - 5.1. Two indictable categories:
 - 5.1.1. Offences triable by jury only in the High Court ('High Court only indictable');
 - 5.1.2. Offences triable by jury in either the High Court or the District Courts ('middle band' offences); and
 - 5.2. Two summary categories:
 - 5.2.1. Offences that are ordinarily tried by judge alone, but which may be tried by jury in the District Court if the defendant elects trial by jury ('electable' offences);
 - 5.2.2. Offences that are only triable by judge alone in the District Courts ('purely summary' offences).

There would be no District Court only indictable, or Schedule 1 category of offences.

High Court Only indictable Offences

6. We consider that offences suitable for the category of High Court only indictable offences should be of two types:
 - 6.1. Specified offences against justice when the charge relates to proceedings that were held in the High Court (for example, perjury); and
 - 6.2. Offences that are so serious, or of sufficient public importance, that for symbolic reasons it is appropriate that they are tried in the High Court.
7. A revised schedule of High Court only offences is attached as Appendix 4.

Middle Band Offences

8. While we recommend the retention of the middle band category, we also recommend a number of changes to the list of offences currently within it.
9. We consider that offences suitable for the middle band category should include only those offences that, because of their seriousness and public importance, warrant trial in the High Court in sufficient numbers as to make it appropriate that they be systematically reviewed in every case. Our

proposals to change the current list of middle band offences are made accordingly. A revised schedule of middle band offences is attached as Appendix 5.

10. We also recommend changes to the process for deciding in which court a middle band case will be heard (District or High). We recommend that decisions are made by a District Court Judge in consultation with the High Court (with powers for a High Court Judge to subsequently transfer a case from the District Court to the High Court, if necessary) rather than a High Court Judge, as now.

Offences that are Currently District Court Only Indictable

11. The District Court only indictable category currently includes:

- 11.1. Specified offences against justice when the charge relates to proceedings that were not held in the High Court (for example, perjury);
- 11.2. Some offences that we presume have been left off the list of High Court only offences in error (for example, genocide);
- 11.3. Some offences we think are serious enough to be added to the middle band category; and
- 11.4. Other offences that have lower penalties and which differ little from those that would be in the electable category if the election threshold was raised (as we have proposed elsewhere, and noted below, at paragraph 15).

12. We therefore consider that the current general category of District Court only offences can be eliminated. We propose offences currently in it be removed to other categories, as indicated, with the exception of those offences identified in 11.1.

Summary Offences

13. In the discussion document "*Proposals relating to restricting availability of jury trials*" issued from the Criminal Procedure (Simplification) Project in June 2009 we made proposals to:

- 13.1. Remove the prosecution discretion to lay a charge summarily or indictably and hence to eliminate the category of Schedule 1 offences; and
- 13.2. Raise the threshold for election of jury trial (which would have the effect of expanding the purely summary category of offences).

14. Arguments for these proposals are not rehearsed again in this paper, although we do consider whether any offences currently in the Schedule 1 category should be retained as indictable offences, and conclude not.

Implementation

15. To implement legislatively the recommendations relating to the indictable categories of offence it would be necessary to establish an alternative

mechanism for making clear the category into which every offence falls. We therefore propose that:

- 15.1. No individual offence provision will specify the category into which the offence falls;
 - 15.2. There will be a list of High Court only offences (our recommended list is provided in Appendix 4);
 - 15.3. There will be a list of middle band offences (our recommended list is provided in Appendix 5);
 - 15.4. An offence that is not included in either the list of High Court only offences or the list of middle band offences will, by default, be electable, unless the threshold for election of trial by jury is not met, in which case it will be summary;
 - 15.5. There will still be an Order in Council mechanism to transfer cases from one category to another.
16. In recognition that some electable cases may warrant trial in the High Court if jury trial is elected by the defendant, we further recommend that provision be made for these cases to be transferred to the High Court if they meet the relevant criteria. (This would be similar to the current provision in section 28J(1) of the District Courts Act 1947.)

A Possible Alternative

17. While our proposals simplify the current arrangements, they are still relatively complex. Further, part of the complication of the current framework arises because it revolves around a link between two logically independent issues: the appropriate fact-finder (judge or jury) and the level of hierarchy of court in which a matter should be tried (District or High Court).
18. We therefore suggest further consideration could be given to developing a framework that separates these issues. For example:
- 18.1. Only a very small number of offences would be left as High Court jury trial offences.
 - 18.2. All other offences carrying a maximum penalty of more than 3 years imprisonment would be made electable, so that the decision about the fact-finder would be left in the hands of the defendant.
 - 18.3. The allocation of work between the High Court and the District Courts would not depend upon whether the case was to be tried by jury or by judge alone.
 - 18.4. There would be a set of statutory criteria and a protocol between the Chief High Court Judge and Chief District Court Judge to determine which cases should be systematically reviewed to consider whether they should be tried in the High Court.

INTRODUCTION

Background

19. The way in which a criminal case currently proceeds through the courts in New Zealand is largely dependent on how charges are laid. Charges can be laid either summarily or indictably.
20. There are a number of offences (“purely indictable offences”) that can only be proceeded with by way of indictment and, therefore, can only be tried by jury (with certain limited exceptions in individual cases¹). Subject to section 6 and Schedule 1 of the Summary Proceedings Act 1957 (which enables offences listed in it to be laid summarily at the discretion of the prosecution), these include all offences in the Crimes Act and offences in other statutes that are described as “crimes” or as carrying a maximum penalty that is available following “conviction on indictment”.
21. When offences are of the purely indictable kind, they can presently be tried in either the High Court or a District Court. The proposals in this paper do not change this. Both Courts have a trial jurisdiction and, without a major restructuring of our court system (which is beyond the scope of the Criminal Procedure (Simplification) Project), it is necessary that they retain that jurisdiction and that both have a sufficient volume of cases to maintain a critical mass of criminal trial work. A key issue for this Project is, therefore, how offences should be distributed between the two courts.
22. At present, this distribution of cases between courts is achieved by dividing offences into a number of different categories. Historically, indictable offences were all heard in the Supreme Court and summary offences were heard in the Magistrates’ Court. However, following the restructuring of the Courts, in 1980 the jurisdiction of the District Courts was widened to enable those courts to conduct jury trials. The jurisdiction of the District Courts has continued to widen as the workload of the criminal courts has increased.
23. The consequence of this gradual evolution is that the current system of classification (which has evolved alongside these other changes) is now overly complex, sometimes arbitrary, and inefficient.

Categories of Offence

24. There are currently six (in simple terms) different categories of offence². The categories of *indictable offences* fall into four categories and include:
 - 24.1. Offences triable only in the High Court (‘High Court only indictable’);
 - 24.2. Offences triable in either the High Court or the District Courts (‘middle band’ offences);

¹A judge alone trial may be ordered under sections 361A-361E of the Crimes Act 1961 (for example, where the trial is likely to be particularly long or complex, or where there is a threat of juror intimidation).

² Minor offences and infringements comprise a further category of offence. However, minor offences are being considered as a separate issue by the Project Team, and infringements are out of scope of this Project.

- 24.3. Offences triable only in the District Courts ('District Court only indictable');
- 24.4. Offences listed in Schedule 1 of the Summary Proceedings Act 1957, which may be tried by judge alone (summarily) in a District Court if the prosecution chooses this route (Schedule 1 offences).
25. Other offences are always proceeded with summarily, unless the defendant elects trial by jury. The categories of *summary offences* fall into two categories:
- 25.1. Offences that are ordinarily tried by judge alone, but which may be tried by jury in the District Court if the defendant elects trial by jury ('electable' offences);
- 25.2. Offences that are only triable by judge alone ('purely summary' offences).
26. In the discussion document "*Proposals relating to restricting availability of jury trials*", which was issued by the Project for consultation in June 2009, we made two recommendations that impact upon offence categories. These were that:
- 26.1. Schedule 1 should be abolished; and
- 26.2. The threshold for election of jury trial should be raised.
27. We proposed that offences in Schedule 1 become purely summary (if they do not reach the threshold for election of jury trial) or electable, unless they are designated as purely indictable offences. We consider, at paragraphs 83 to 89, whether any offences that are currently in Schedule 1 should be designated as purely indictable (and conclude they do not).
28. We also proposed that the threshold for election of jury trial be raised to three years imprisonment. This would obviously expand the current category of purely summary offences and reduce the current category of electable offences.
29. We do not rehearse these proposals again in this paper. Rather, this paper will focus attention on each of the indictable categories of offences. We consider each of these in turn, although we note the interdependence of each.

HIGH COURT ONLY

30. The High Court is New Zealand's highest criminal court of primary jurisdiction. Not only does it have symbolic importance for the community, but it also has the primary responsibility for maintaining consistency in the application of legal principle. In addition, as a purely practical consideration, trials heard in the High Court cost more than trials conducted in the District Courts.
31. We therefore consider that trials in the High Court should generally be reserved for only the most serious and complex cases, and for other cases that should be heard in New Zealand's highest criminal court of primary jurisdiction for symbolic reasons (for example, because they arise out of

behaviour that gives effect to international conventions). We are also conscious that the limited resource of the High Court should be used efficiently.

32. The category of offences that are triable on indictment in the High Court currently fall into two groups. The first group comprises, by virtue of section 28A(2) of the District Courts Act 1947, an offence against sections 109 (perjury), 113 (fabricating evidence), 115 (conspiracy to bring a false accusation), 116 (conspiring to defeat justice) and 117 (corrupting juries and witnesses) of the Crimes Act 1961 if the proceedings to which the charge relates were held in the High Court. We propose that this group of High Court only offences should remain. Where offences that directly affect the processes of a Court are committed, it is appropriate that that Court should have jurisdiction to deal with them.

33. The second group comprises, offences that are listed in Part 2 of Schedule 1A of the District Courts Act 1947 (attached as Appendix 1). We propose that the second group should also be retained. However, we consider that two offences in the current list in Part 2 do not warrant inclusion. These are:

33.1. Section 183(1) Crimes Act – procuring abortion; and

33.2. Section 237 Crimes Act – blackmail.

34. The offence of *procuring abortion* can range from fairly simple cases of unlawful back-street abortion to complex legal and factual challenges under section 187A³ as to the “lawfulness” of any procedure. Given the wide variance of complexity of these cases, we consider that this offence is not of sufficient public importance that it would require trial in the High Court on every occasion. We therefore consider that this offence should be placed in the middle band (discussed, at paragraphs 40 to 63, below). Indeed, we note also that the positioning of section 183(1) is more consistent with the current placement of the related section 186 offence, *supplying means of procuring abortion*, in the electable category.

35. In regard to *blackmail*, we not only consider that this offence is not of sufficient public importance that it would require trial in the High Court on every occasion, but we also consider that the public interest does not require that it always be tried by jury. While it is possible to imagine a case of blackmail that is serious enough to warrant a 14 year maximum penalty, blackmail cases are rarely complex or involve a question of community standard that could justify the state requiring a jury trial. We think that this offence should therefore be made electable. (We discuss our rationale for placing offences in the electable category further below, at paragraph 53).

36. The list in Part 2 includes some offences in the Maritime Crimes Act, the Aviation Crimes Act and the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act. These offences include conduct that could in some circumstances be relatively minor and scarcely warrant the attention of the High Court. However, they all give effect to international conventions to which New Zealand is a party, and

³ Section 187A of the Crimes Act 1961 provides a meaning for “unlawfully” in relation to the sections on abortion.

therefore address behaviour that has given rise to significant international concern. There is therefore some symbolic value in keeping them within the jurisdiction of the High Court, and prosecutions under them are uncommon. Accordingly, we propose that they be retained in the list in Part 2.

37. We do not propose the removal of other offences from Part 2. However, we have identified some offences currently triable only in the District Court that we presume have been omitted from the list in Part 2 in error. These offences are as follows:

International Crimes and International Criminal Court Act 2000

section 9 - genocide

section 10 - crimes against humanity

section 11 - war crimes

section 15 - corruption of a Judge

section 16 - bribery of a Judge

section 17 - corruption and bribery of an official of the ICC

section 18 - giving false evidence before the ICC

section 19 - fabricating evidence before the ICC

section 20 - conspiracy to defeat justice in the ICC

section 21 - interference with witnesses or officials of the ICC

Mercenary Activities (Prohibition) Act 2004

section 7 - recruiting a person to be a mercenary

section 8 - using a mercenary

section 9 - financing a mercenary

section 10 - training a prospective mercenary

section 11 - training a mercenary

section 12 - taking part as a mercenary in hostilities in an armed conflict or in a concerted act of violence

Terrorism Suppression Act 2002

section 6A - engaging in a terrorist act

section 13E - offences involving radioactive material and radioactive devices.

38. All of these offences are intended, like some others in Part 2 noted above, to give effect to international conventions to which New Zealand is a party. They involve conduct that, in the unlikely event that they lead to a prosecution within New Zealand, would be of high public importance and require the attention of the High Court for symbolic reasons. We therefore propose that these offences should be shifted into the Part 2 list.

39. A revised schedule of High Court only offences is attached as Appendix 4.

MIDDLE BAND

40. Middle band offences are those purely indictable offences that may be tried in either the High Court or the District Court. They are listed in Part 1 of Schedule 1A to the District Courts Act 1947 (inserted by the District Courts

Amendment Act 1991). That list is attached as Appendix 3. The maximum penalties range from 7 years to life imprisonment.

41. When a defendant is committed for trial in respect of a middle band offence, he or she is committed to the High Court, subject to the middle band decision. The defendant is accordingly remanded to a callover date in the High Court. Under section 184Q of the Summary Proceedings Act 1957, the trial may be transferred back to the District Court if a judge of the High Court determines that this would be appropriate. If that occurs, the High Court callover date is vacated and the defendant is notified by letter of a new date upon which he or she should appear in the District Court (the High Court having been advised of that date by the District Court at the time the defendant was committed to the High Court).

The rationale for the middle band

42. The principal reason for the creation of the middle band category in 1990 was to alleviate pressure on the High Court, which at the time was facing a significant increase in the number of criminal jury trials. In essence, it was a flexible mechanism to enable workload to be allocated between the High Court and the District Court so as to ensure that there was an appropriate distribution of workload between them, and to ensure that cases with a high level of seriousness, complexity or public profile were retained by the High Court.

43. We think that there remains a need for a flexible mechanism of this sort for three reasons:

- 43.1. The arbitrary allocation of offences to the High Court or the District Court by reference to their offence type or their maximum penalty would often be inappropriate. There needs to be flexibility in the system to take into account a range of other factors such as the public importance of the case, the seriousness of the particular offence or the complexity of the issues. That can only be achieved if the appropriate jurisdiction for trial in relation to some offences is left to judicial determination.

- 43.2. A rigid division between High Court and District Court offences would not be sufficiently responsive to fluctuating caseload and would unduly impact on the extent to which there are delays before a trial. As the Chief District Court Judge stated in a submission to us, defendants have the right to trial without undue delay, and an allocation of work between the courts that resulted in such delay would be detrimental to the overall interests of justice.

- 43.3. We agree with the view of the High Court judiciary, expressed in a submission to us, that the process of allocating cases between the Courts should ensure that the High Court maintains a critical mass and range of High Court work. This could not be achieved by a diet of cases drawn only from a category of High Court only offences.

44. We therefore propose the retention of the middle band category. However, we think that there needs to be some modification to the list of offences currently included in it.

Offences in the middle band category

45. We consider that offences should be included in the middle band only if they are so serious or complex (consistent with our criteria for High Court only offences, at paragraphs 31 and 32) that they warrant trial in the High Court in a sufficient proportion of cases that it is appropriate that they be systematically reviewed in every case. Otherwise the transfer mechanism under section 28J of the District Courts Act 1947⁴, which we propose below (at paragraphs 92 to 95) should be retained in an amended form, is sufficient to deal with the occasional District Court cases that should be heard in the High Court, as they arise. We therefore propose the following changes.

46. First, we note that some of the offences in the Part 1 list are likely to be repealed following the review of Part 8 of the Crimes Act:

- 46.1. Section 191 Crimes Act – aggravating wounding or injury;
- 46.2. Section 199 Crimes Act – acid throwing;
- 46.3. Section 200(1) Crimes Act – poisoning with intent.

47. Until final decisions are made, we do not propose to consider these in any detail. However, we expect that, if not repealed, these offences would remain in the middle band.

48. Secondly, we agree with the High Court's view that there are a number of sexual offences that will only rarely, if ever, be complex enough to warrant trial in the High Court (and if they do, can be transferred under section 28J, refer paragraphs 92 to 95):

- 48.1. Section 129A(1) – inducing sexual connection by threat (maximum penalty 14 years);
- 48.2. Section 132(3) Crimes Act – indecent act on child under 12 (maximum penalty 10 years);
- 48.3. Section 142A Crimes Act – compelling indecent act with animal (maximum penalty 14 years);
- 48.4. Section 144A Crimes Act – sexual conduct with children outside New Zealand (maximum penalty dependent on relevant New Zealand offence provision; penalty ranges from 7 years to 14 years);
- 48.5. Section 144C Crimes Act – organising or promoting sex tours (maximum penalty 7 years).

49. We propose that all of these offences should be electable⁵ except for those offences covered by section 144A of the Crimes Act 1961 that are middle band offences if committed in New Zealand (sections 132(1) and 132(2) of the Crimes Act). There is no reason in principle for those offences to be in a

⁴ Section 28J allows a High Court Judge to order transfer of a case from the District Court to the High Court on application or with consent of the parties.

⁵ Note that we propose to eliminate the 'District Court only indictable' category, which is the other category that these offences could potentially be placed in. See discussion in paragraphs 72 to 82.

different category depending on whether they are committed in New Zealand or elsewhere.

50. The converse argument has been made to us that all child sex offences should be dealt with in the High Court because, in order to ensure the protection of children, these offences require special judicial and prosecutorial expertise, and often special procedures that can only be provided in the High Court.
51. While we agree that particular expertise and protective measures are required in these cases, we note that the vast majority of cases involving children will continue to be dealt with in the District Courts anyway, since offences committed against those over 12 that fall short of sexual violation will be electable (refer paragraphs 72 to 89). We think that the appropriate expertise therefore already resides and will continue to reside primarily in the District Courts and it is better that the bulk of trials take place in that forum.
52. Thirdly, there are some other offences in Part 1 that we do not think are serious enough to warrant retaining as offences triable only by jury at all. We propose these should also be placed in the electable category. They include:
 - 52.1. Section 204 Crimes Act – impeding rescue (maximum penalty 10 years);
 - 52.2. Section 232(1) Crimes Act – aggravated burglary (maximum penalty 14 years);
 - 52.3. Section 269(1) Crimes Act – intentionally damaging property endangering life (maximum penalty 10 years);
 - 52.4. Section 6 Misuse of Drugs Act - dealing with class B controlled drugs (maximum penalty 10 years);
 - 52.5. Section 10(1) Misuse of Drugs Act – aiding an offence against the corresponding law of another country (where the controlled drug is not classified as a Class A drug in New Zealand) (maximum penalty 7 years);
 - 52.6. Section 12C Misuse of Drugs Act – commission of offences outside New Zealand (where the controlled drug is not classified as a Class A drug in New Zealand) (maximum penalty dependent on relevant New Zealand offence, but in all cases is less than 14 years);
 - 52.7. Section 58 Securities Act – misstatement in advertisement or registered prospectus (maximum penalty 5 years).
53. It might be thought too big a step to convert all of these offences from the middle band category into electable offences. However, as discussed in our previous paper *“Proposals relating to restricting the availability of jury trials”*, we consider that the right to jury trial is ultimately a right of the accused. There will be very few serious cases, or cases where, for reasons of symbolism or public confidence in the system, the public interest in a jury trial will outweigh the wishes of the accused.
54. As a result of the changes we propose, the offences that will remain from the current list of middle band offences are primarily bribery or corruption of judicial, law enforcement or other public officials; various forms of sexual violation; wounding with intent; aggravated robbery; and kidnapping. This

accords with the types of middle band cases that have been retained by the High Court for trial in recent years.

55. As well as recommending the removal of some offences from the middle band, there are four further offences currently in the 'District Court only indictable' category that we consider are sufficiently serious to warrant being added to that list. These are:

55.1. Section 98AA(1) Crimes Act – dealing in people under 18 for sexual exploitation, removal of body parts or engagement in forced labour (maximum penalty 14 years);

55.2. Section 298A Crimes Act – causing disease or sickness in animals (maximum penalty 10 years);

55.3. Section 298B Crimes Act – contaminating food, crops, water or other products (maximum penalty 10 years);

55.4. Section 307A Crimes Act – threats of harm to people or property (maximum penalty 7 years).

56. These offences all potentially deal with conduct that results in very serious harm to individuals or widespread social or economic damage. In a significant proportion of cases, therefore, they will attract the type of public interest and public profile that would justify their removal into the High Court.

57. In a letter dated 6 July 2009, the Chief Justice also proposed to us that the following additional cases should be included within the middle band:

57.1. Prosecutions brought by the Serious Fraud Office;

57.2. Bribery and corruption offences under the Electoral Act;

57.3. Some corporate offences under the Companies Act 1993, the Securities Markets Act 1988 and the Takeovers Act 1993;

57.4. The offence of participating in an organised criminal group under section 98A of the Crimes Act.

58. We agree with the Chief Justice that the section 98A offence should be transferred into the middle band category. The penalty for that offence has recently been increased to 10 years imprisonment. As the Chief Justice noted, cases brought under this section frequently raise serious issues involving organised criminal activity as well as human rights and civil liberties. That gives them a public significance that may often warrant trial in the High Court.

59. However, we do not think that Serious Fraud Office prosecutions should be middle banded. These offences are presently in Schedule 1 and, following the abolition of Schedule 1, would otherwise become electable. It is not appropriate that they be categorised as purely indictable merely because of the fact that they have been brought by one prosecution agency rather than another. There is nothing about the nature of Serious Fraud Office prosecutions per se that requires differential treatment. Where they involve difficult and complex issues that are more appropriately heard before a High Court judge and jury than in the District Court, they may be transferred to the High Court under section 28J of the District Courts Act (refer paragraphs 92 to 95).

60. We are also opposed to the inclusion of the bribery and corruption offences under the Electoral Act. These are relatively low level offences, which is reflected in the fact that their maximum penalties do not exceed two years. More serious instances of bribery and corruption can be charged under the relevant Crimes Act offences, which are already included in the middle band category.
61. In addition, we are opposed to the inclusion of the corporate offences in the Companies Act, the Securities Markets Act and the Takeovers Act. We agree with the Chief Justice that it is illogical that section 58 of the Securities Act (misstatements in a prospectus or an advertisement) is included in the middle band, while similar forms of offending in other statutes are not. However, we do not think the solution is to include those other offences within the middle band category. Rather we have proposed that section 58 be removed from it.
62. We agree with the argument, made by the Chief Justice, that prosecutions for these offences will often be complex and expose offenders to substantial penalties (although we note that the maximum penalty in relation to any of them is only 5 years imprisonment). However, it would be odd to make them triable only by jury, since their complex and technical nature is likely to make them unsuitable for trial by jury and, in the absence of the consent of the parties, few of them could be tried before a judge alone under the restrictive criteria in section 361D of the Crimes Act. We think that the better solution is to leave them as electable offences and, in the event that the defence elects jury trial, leave open the possibility of transfer to the High Court under section 28J(3) without the consent of the parties (see below, at paragraph 92 to 95).
63. A revised schedule of middle band offences is attached as Appendix 5.

The middle band process

64. As well as the need to consider what offences should be classified as appropriate for the middle band category, it is also necessary to consider how decisions as to which court a middle band case should be heard are made.
65. In our view, the current process for determining the allocation of middle band cases between the High and District Courts does not work efficiently or effectively. The Project Team has discussed these issues extensively with members of the judiciary.⁶ In summary, the problems include:
- 65.1. It does not systematically address workload issues in the courts system as a whole, because it transfers work to the District Court without sufficient consultation or analysis of the implications for that jurisdiction;
 - 65.2. It creates avoidable administrative costs upon the High Court and District Court registries;
 - 65.3. It builds in unnecessary delay while cases are transferred to the High Court, only for a substantial majority of them to be transferred back again;

⁶ For example, refer paper entitled "*Discussion Document: The Middle Band*", which was provided to the judiciary in July 2008.

- 65.4. The sequence of events around middle banding leaves court customers (particularly victims and defendants) with an impression of poor service.
66. Some of these problems could be mitigated to some degree within the current middle band structure. For example, victims could be advised of the court in which the offender is to be tried only after the middle band decision is made, so that they do not need to be sent two letters if the case is transferred back to the District Court (the first advising of committal to the High Court; the second advising of a transfer to the District Court). Middle band decisions could also be based on summary information, with the files retained by the District Court until the middle band decision is made (as is currently the practice in Auckland). However, the core objections to the current structure would remain.
67. We therefore propose significant changes to the way in which the middle band decisions are currently made.
68. We propose that, when the parties file their trial callover memorandum, they should also advise the court of their respective views as to the jurisdiction within which the case should be tried, with reasons. (This would essentially be a continuation of the current process, whereby the Crown and defence counsel file a middle band information sheet setting out their respective views in relation to factors that may be relevant to the middle band decision.)
69. A Judge in the District Court nominated on a regional basis by the Chief District Court Judge as responsible for that decision should, on the basis of the written evidence and the submissions from prosecution and defence, make a decision whether or not to transfer the case to the High Court on the basis of specified statutory criteria. These should be a slightly modified version of the criteria currently stated in section 184Q of the Summary Proceedings Act 1957, and comprise:
- 69.1. The nature and seriousness of the offence;
 - 69.2. The complexity of the factual and legal issues likely to arise in the proceedings;
 - 69.3. The extent to which the offending has a high public profile or has provoked widespread public or media interest;
 - 69.4. The need for enhanced security or facilities during trial that are not readily available in the District Court;
 - 69.5. The respective workloads of the High Court and the District Court in the particular locality and the desirability of the prompt disposal of trials; and
 - 69.6. The interests of justice generally.
70. It would be expected that the District Court Judge, in making such decisions, would consult with the High Court criminal list judge. However, a requirement for consultation should not be prescribed in legislation. It would be better for it to be left to local administrative arrangements, perhaps subject to a protocol jointly issued by the Chief High Court Judge and the Chief District Court Judge. Such a protocol might specify the way in which consultation should be undertaken, including the types of offences in which specific consultation with

the High Court is always required. It might include a requirement that the District Court Judge always consult in respect of offences which either prosecution or defence wish to have tried in the High Court.

71. If a decision is made that a case is to be heard in the District Court, there should be a power for the High Court criminal list judge to subsequently transfer the case to the High Court where he or she is satisfied that the statutory criteria (set out above at paragraph 69) have been met. This could be at the High Court Judge's own motion or on application by the prosecution and/or defence (although such an application should only be permitted if there has been an earlier submission to the District Court that the case should be tried in the High Court or there has been a change in the nature of the charges since the middle band decision was made).

DISTRICT COURT ONLY OFFENCES

72. Under section 28A(1)(b) of the District Courts Act 1947, the default position is that, in the absence of any provision to the contrary, the District Court has sole trial jurisdiction over all offences proceeding by way of indictment (unless the case is transferred under section 28J of the District Courts Act 1947, which, as already noted, we consider further below at paragraph 92 to 95).

73. The current list of District Court only indictable offences is, in reality, relatively narrow and can be organised into four groups.

74. The first group are the offences in sections 109, 113, 115, 116 and 117 of the Crimes Act 1961 where the charge does not relate to proceedings that were held in the High Court. For the reasons stated above, at paragraph 32, we propose that these offences should remain triable only in the District Court, and special provision be made for this.

75. The second group are the offences that we have proposed above (at paragraph 37) should be transferred into the list in Part 2 and made triable only in the High Court. These comprise the offences in sections 9-21 of the International Crimes and International Criminal Court Act 2000, sections 7-12 of the Mercenary Activities (Prohibition) Act 2004, and sections 6A and 13E of the Terrorism Suppression Act 2002.

76. The third group comprises the following offences, already referred to above at paragraph 55, that in our view ought to be placed in the middle band:

76.1. Section 98AA(1) Crimes Act – dealing with people under 18 for sexual exploitation, etc.;

76.2. Section 298A Crimes Act – causing disease or sickness in animals;

76.3. Section 298B Crimes Act – contaminating food, crops, water or other products;

76.4. Section 307A Crimes Act – threats of harm to people or property.

77. The final group of offences, which we have attached as Appendix 2, comprises a range of offences in both the Crimes Act and a number of other Acts. If the election threshold is raised to three years imprisonment (as we

have proposed), many of these offences will become purely summary because their maximum penalty is less than three years. None of the remaining offences carries a maximum penalty of more than seven years imprisonment and it is difficult to see why any of them should be triable only by jury. They cannot readily be distinguished from other offences which, with the abolition of Schedule 1, will become electable – that is, tried summarily unless jury trial is elected by the defendant. We accordingly propose that, with one exception, all of these offences should become electable offences.

78. The one exception relates to section 40 of the International War Crimes Tribunal Act 1995, which contains a variety of relatively minor offences that may be committed at any sitting of the Tribunal in New Zealand. This offence has presumably been made purely indictable because it is implementing New Zealand's obligations under an international convention. However, it is punishable by only three months imprisonment and would therefore normally be a purely summary offence.

79. While recognising the seriousness of cases heard by the International War Crimes Tribunal, the offence is procedural and we do not consider an offence carrying a maximum term of only three months imprisonment should be triable by jury. To be consistent with our previous recommendations and our proposal to raise the jury trial threshold to 3 years, we propose that this offence be made purely summary rather than electable.

80. In summary, therefore, we propose that in relation to the current District Court only offences:

80.1. The offences in sections 109-117 of the Crimes Act remain triable only in the District Court where they relate to proceedings not held in the High Court.

80.2. A small number of offences that appear to have been accidentally omitted from Part 2 should be relocated in Part 2 and be made triable only in the High Court.

80.3. Four offences be made middle band offences (sections 298AA(1), 289A, 298B, and 307A of the Crimes Act).

80.4. Section 40 of the International War Crimes Tribunal Act 1995 be made a purely summary offence.

80.5. All remaining offences that are currently triable only by jury in the District Court be made electable offences (excluding those offences that will become purely summary because their maximum penalty is under the election threshold).

81. If these proposals are implemented, there will be no offences left in the category of those that are currently triable only by jury in the District Court (apart from those contained in sections 109 –117 of the Crimes Act that will continue to have separate provision made for them). The question therefore arises whether the District Court only category should be retained as a general category. If it is not, the default position in section 28A(1)(b) would be removed.

82. We think that there is a strong argument that a general category of offences triable only by jury in the District Court is neither necessary nor desirable. As

noted at paragraph 53, and our earlier discussion document "*Proposals relating to restricting availability of jury trials*", offences should be purely indictable only when they are very serious and, for reasons of symbolism or public confidence in the system, always need to be tried by jury. As long as purely indictable offences are properly confined in this way (which evidently has not been the case to date), all of the offences in the category should in a substantial proportion of cases be appropriate for trial in the High Court (and thus at a minimum meet our criterion for inclusion of an offence in the middle band set out at paragraph 31 above). As a result, they should all be placed in either the High Court only or middle band category.

SCHEDULE 1 OFFENCES

83. As noted above (at paragraph 24.4), there are a number of indictable offences that, under section 6 of the Summary Proceedings Act, may be laid summarily by the prosecution if it so chooses. These offences are listed in Schedule 1 to the Act. As also noted (at paragraph 26.1), we have proposed elsewhere that Schedule 1 should be abolished so that the prosecution will no longer be able to choose the form of trial. Accordingly, the offences in Schedule 1 will need to be moved to other categories of offence.
84. In considering current Schedule 1 offences, our starting position is that, unless there is a compelling reason to the contrary, these offences should be electable. They have already been considered suitable for either form of trial, and the defendant should therefore be left to choose which form of trial he or she wants.
85. However, there are a small number of offences in Schedule 1 that, as a matter of practice, are generally laid indictably, presumably because the prosecution regards them as sufficiently serious to warrant jury trial. To the best of our knowledge, these offences, and the number and proportions that were laid indictably in 2007, are as follows:

<i>Provision</i>	<i>Offence</i>	<i>Number/% laid indictably</i>
Crimes Act		
130	Incest	3 (75%)
131(1)	Sexual connection with dependent family member	4 (100%)
131(2)	Attempted sexual connection with dependent family member	1 (100%)
131(3)	Indecent act with dependent family member	6 (85.7%)
131B	Meeting young person following sexual grooming	12 (85.7%)
134(1)	Sexual connection with young person under 16	125 (80.1%)
134(2)	Attempted sexual connection with young person	2 (66.7%)
134(3)	Indecent act with young person under 16	93 (84.5%)
138(1)	Exploitative sexual connection with person with significant impairment	3 (75%)
138(4)	Exploitative indecent act with person with significant impairment	3 (100%)
243	Money laundering	54 (91.5%)
Domestic Violence Act 1995		
49(3)	Contravention of protection order (3 rd and subsequent)	109 (100%)
Misuse of Drugs Act 1975		
6(1)(a)	Importing/exporting cannabis	1 (100%)
6(1)(b)	Producing/manufacturing cannabis (other than cultivation)	1 (100%)
6(1)(c) & (e)	Selling/supplying cannabis	362 (72.8%)

86. We have therefore given careful consideration to whether those offences, or any others, should be made triable only by jury.

87. As we have noted above (at paragraph 53), our approach has been that there are only a very small number of offences (if any) that are so serious that the public interest in a jury trial ought always to override the wishes of the defendant.

88. We have not been able to identify any Schedule 1 offence that meets this criterion. There are a few offences in the above list that carry a maximum penalty of 10 years imprisonment: sections 130, 134(1) and 134(2). So too do a few others, even though they routinely result in summary trial at present, in particular:

88.1. Section 198A(2) – using any firearm to resist arrest (maximum penalty 10 years);

88.2. Section 198B – commission of a crime with a firearm (maximum penalty 10 years);

88.3. Section 234 – robbery (maximum penalty 10 years);

88.4. Section 138(1) – exploitative sexual connection with person with significant impairment (maximum penalty 10 years);

88.5. Section 138(2) – attempted exploitative sexual connection with person with significant impairment (maximum penalty 10 years).

89. However, we are not convinced that any of these are so serious that they always require trial by jury. Some of them, of course, will end up before a jury at the election of the defence, but there is no good argument for requiring jury trial in other cases where the defence is content with trial by summary defended hearing.

CASES INVOLVING OFFENCES IN MORE THAN ONE CATEGORY

90. Where a case involves multiple charges that straddle the categories proposed here, there should be explicit provision for all charges to be tried together in the forum dictated by the most serious offence. This is to avoid the requirement for more than one trial to be held where a group of offences arise from the same set of circumstances.

LEGISLATIVE IMPLEMENTATION OF PROPOSAL TO RECATEGORISE

91. The abolition of a default category of purely indictable offences triable only in the District Court means that the legislation will need to have an alternative mechanism for making clear the category into which every offence falls. We propose that this be achieved in the following way:

91.1. No individual offence provision will specify the category into which the offence falls (that is, whether it is summary, electable or to be dealt with only by way of indictment).

91.2. There will be a list of High Court only offences (the list in Part 2 modified as we have proposed – see Appendix 4).

91.3. There will be a list of middle band offences (the list in Part 1 modified as we have proposed – see Appendix 5).

91.4. An offence that is not included in either the list of High Court only offences or the list of middle band offences will be electable (assuming it is over the election threshold). (We see no need for this to be made explicit in the legislation; it will be the position by default.).

91.5. There will still be an Order in Council mechanism to transfer cases from one category to another.

TRANSFER OF OTHER ELECTABLE CASES

92. There are a number of offences that, in the event that jury trial is elected, may be suitable for trial in the High Court. Examples include serious fraud cases that involve complex financial transactions or result in major financial loss. At present such cases can be transferred following election of jury trial only if there is an application by one of the parties under section 28J(1), or an order by a High Court Judge under section 28J(3) with the consent of both parties on the basis that the High Court can deal with the case more expeditiously.

93. We propose that, if a High Court Judge is satisfied that an electable offence meets the criteria for transfer proposed for middle band offences in paragraph 69 above, he or she should be able to order a transfer to the High Court on his or her own initiative. It does not seem appropriate that such transfers should require the consent of the parties.

94. As with middle band offences, cases suitable for transfer in this category might be identified by the High Court. They might alternatively be identified by the District Court, perhaps on the basis of criteria set out in the protocol referred to in paragraph 70 above. However, the actual decision would still be based on the criteria set out in paragraph 69.

Required amendments to section 28J

95. In order to give effect to our process for transferring middle band and electable cases to the High Court, the following amendments to section 28J of the District Courts Act 1947 will be required:

95.1. Applications to transfer a middle band case under that section should be prohibited unless there has been a prior submission to the District Court to that effect in the trial callover memorandum or a significant change in the nature of the charges since the middle band decision was made.

95.2. The criteria for transfers under that section should be the same as those governing the middle band decision.

95.3. Transfers of electable cases should not be dependent upon the consent of the parties.

POSTSCRIPT

96. Although we have made proposals for change largely within the current framework, we believe that it is unnecessarily complicated. Part of the complication arises from the fact that the framework revolves around a link between two logically independent issues: the appropriate fact-finder (judge or jury) and the level of hierarchy in which the case should be tried (High Court or District Court).

97. There might be some merit, therefore, in reconsidering the framework itself. For example, it would be possible to devise a framework along the following lines:
- 97.1. Only a very small number of offences (perhaps those involving homicide) would be left as High Court jury trial offences.
 - 97.2. All other offences carrying a maximum penalty of more than 3 years imprisonment would be made electable (assuming the jury threshold is raised to this level as proposed), so that the decision about the fact-finder would be left in the hands of the defendant.
 - 97.3. That decision would not affect the decision as to the court in which the offender should be tried. The allocation of work between the High Court and the District Court would thus not depend upon whether the case was to be tried by jury or by judge alone.
 - 97.4. There would be no statutory offence categories as to the court in which cases were to be tried. All electable cases would, as now, begin in the District Court. A set of statutory criteria (similar to the middle band criteria proposed above) and a protocol between the Chief High Court Judge and the Chief District Court Judge would determine which cases should be systematically reviewed to consider whether they should be tried in the High Court. This would allow a greater range of considerations (such as monetary value in dishonesty cases or the number of defendants) to determine the nature of the cases requiring systematic consideration. As with the middle band, these cases would comprise a small proportion of the total volume of cases and should therefore not increase the number of judicial decisions required.
 - 97.5. The decision as to whether a case was to be transferred from the District Court to the High Court would be made in the first instance by a designated District Court Judge, but with a power for the High Court Judge to order transfer on his or her own initiative (as proposed above in paragraph 55).
 - 97.6. Both prosecution and defence would continue to have the right to apply to the High Court for transfer.
98. It is proposed that a more detailed proposal of this sort be developed and attached to the commentary to the exposure bill. This will give stakeholders the opportunity to provide feedback both on the model set out in the exposure bill and on an alternative and more fundamental reform.

APPENDIX 1

Current Part 2 of Schedule 1A of the District Courts Act 1947 Offences triable only in High Court

Part A: Offences against Crimes Act 1961

<i>Section</i>	<i>Offence</i>
68(1)	Party to murder outside New Zealand
68(2)	Inciting murder outside New Zealand (not committed)
69(1)	Party to any other crime outside New Zealand
69(2)	Inciting treason outside New Zealand (not committed)
69(3)	Aiding and abetting crime outside New Zealand
73	Treason (or conspiracy to commit treason)
74(3)	Attempted treason
76	Accessory to, or failure to prevent, treason
77	Inciting to mutiny
78	Espionage
79(1)	Sabotage
92(1)	Piracy
93, 94	Piratical acts
95	Attempts to commit piracy
96	Conspiracy to commit piracy
97	Accessory after the fact to piracy
98(1)	Dealing in slaves
98C	Smuggling migrants
98D	Trafficking in people by means of coercion or deception
100	Judicial corruption
101	Bribery of judicial officer, etc
102	Corruption and bribery of Minister of the Crown
103	Corruption and bribery of member of Parliament
172	Murder
173	Attempted murder
174	Attempting to procure murder (not committed)
175	Conspiracy to murder
176	Accessory after the fact to murder
177	Manslaughter
178	Infanticide
179	Aiding and abetting suicide

180(2)	Surviving party of suicide pact
182	Killing unborn child
183(1)	Procuring abortion
237	Blackmail
238(1) †	Extortion by certain threats
301†	Wrecking

† as it read before 1 October 2003

Part B: Offences against other enactments

<i>Section</i>	<i>Offence</i>
Anti-Personnel Mines Prohibition Act 1998	
7	Using, etc, an anti-personnel mine
Aviation Crimes Act 1972	
3	Hijacking
5	Other crimes relating to aircraft
5A	Crimes relating to international airports
Chemical Weapons (Prohibition) Act 1996	
6	Chemical weapons
8	Riot control agents
Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980	
3	Crimes against persons
4	Crimes against premises or vehicles
5	Threats against persons
6	Threats against premises or vehicles
8(1)	Hostage-taking
Crimes of Torture Act 1989	
3	Acts of torture
Geneva Conventions Act 1958	
3(4)	Grave breaches of Conventions of First Protocol
Judicature Act 1908	
56C(2)	Contempt of Court
56O	Contempt of Federal Court of Australia
Maritime Crimes Act 1999	
4(1)(a)-(h)	Crimes relating to ships
4(2)(a), (b)	Crimes relating to ships
4(3)(a), (b)	Crimes relating to ships

5(1)(a)-(e)	Crimes relating to fixed platforms
5(2)(a), (b)	Crimes relating to fixed platforms
5(3)(a), (b)	Crimes relating to fixed platforms
New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987	
5-8, 14	Offences against Act
Nuclear-Test-Ban Act 1999	
5	Nuclear explosions prohibited
Terrorism Suppression Act 2002	
7(1)	Terrorist bombing
8(1), (2A)	Financing of terrorism
9(1)	Prohibition on dealing with property of, or derived or generated from property of, terrorist and associated entities
10(1)	Prohibition on making property, or financial or related services, available to terrorist and associated entities
12(1)	Recruiting members of terrorist groups
13(1)	Participating in terrorist groups
13A	Harbouring or concealing terrorists
13B	Offences involving use and movement of unmarked plastic explosives
13C	Offences involving physical protection of nuclear material
13D	Importation, acquisition, etc, of radioactive material

Offences triable only in District Court

(excluding those recommended for transfer to Part 2 and those referred to in section 28A(2)(b) of the District Courts Act 1947)

Crimes Act 1961

80	Oath to commit offence
90	Riotous damage
123	Blasphemous libel
143	Bestiality
197	Disabling

Other enactments

Companies Act 1993	
386A	Director of failed company must not be director, etc, of phoenix company with same or substantially similar name
Copyright Act 1994	
226C	Prohibited conduct in relation to technological protection measure
226J	Dealing in work subject to copyright management information interference
Coroners Act 2006	
138	False or misleading statement for purposes of coroner's decision not to open inquiry
Evidence Act 2006	
119(1)	Knowingly breaching pre-trial witness anonymity order
119(2)	Knowingly breaching witness anonymity order made for purpose of High Court trial
Health Act 1956	
69ZZO	Contamination of raw water or pollution of water supply
Insolvency Act 2006	
248	False claim by secured creditor
436	Offence by bankrupt in relation to management of companies
International War Crimes Tribunal Act 1995	
40	Contempt of Tribunal
Local Electoral Act 2001	
125	Bribery
126	Treating
127	Undue influence

128	Personation
134	False return
136(1)	Excessive expenditure
Maritime Security Act 2004	
50	Taking weapons on to ships or into port security areas
Overseas Investment Act 2005	
42	Giving effect to overseas investment without consent
43	Defeating, evading, or circumventing operation of Act
44	Resisting, obstructing, deceiving
Summary Proceedings Act 1957	
184V(5)	Wilful endorsement any false statement of fact or time of service on copy of notice to witness to attend at trial Court
Terrorism Suppression Act 2002	
43(1)	Failure to report suspicion that property owned or controlled by designated terrorist entities
Trustee Act 1956	
83B(9)	False statement in statement of accounts, report or certificate required in respect of audit of trust estate

APPENDIX 3

Current Part 1 of Schedule 1A of the District Courts Act 1947 Offences triable in either District Court or High Court (middle band offences)

Part A: Offences against Crimes Act 1961

<i>Section</i>	<i>Offence</i>
104	Corruption and bribery of law enforcement officer
105	Corruption and bribery of official
105A	Corrupt use of official information
105B	Use or disclosure of personal information disclosed in breach of section 105A
105C	Bribery of foreign public official
105D	Bribery outside New Zealand of foreign public official
128‡	Sexual violation
128*	Rape
128, 128B	Sexual violation
129‡	Attempt to commit sexual violation
129(1)	Attempted sexual violation
129(2)	Attempted assault with intent to commit sexual violation
129A‡	Inducing sexual connection by coercion
129A(1)	Inducing sexual connection by threat
132(1) ‡	Sexual intercourse with girl under 12
132(1)	Sexual connection with child under 12
132(2)	Attempted sexual connection with child under 12
132(3)	Indecent act on child under 12
142‡	Anal intercourse
142**	Sodomy
142A	Compelling indecent act on animal
144A	Sexual conduct with children outside New Zealand
144C	Organising or promoting child sex tours
188	Wounding with intent
191	Aggravated wounding or injury
198	Discharging firearm or doing dangerous act with intent
198A(1)	Using firearm against law enforcement officer, etc
199	Acid throwing
200(1)	Poisoning with intent
201	Infecting with disease

203(1) †	Endangering transport
204	Impeding rescue
208‡	Abduction of woman or girl
208	Abduction for purposes of marriage or sexual connection
209	Kidnapping
232(1)	Aggravated burglary
235(1)(a) and (c)†	Aggravated robbery (causing grievous bodily harm)
235(1)(b) †	Aggravated robbery (with other person or persons)
236(1)	Assault with intent to rob
239(1)	Demanding with intent to steal, etc
240A†	Aggravated burglary
267(1)	Arson
269(1)	Intentional damage
270	Endangering transport
294†	Arson
298(1) †	Wilful damage

* as it read before 1 February 1986

** as it read before 8 August 1986

† as it read before 1 October 2003

‡ as it read before 20 May 2005

Part B: Offences against other enactments

<i>Section</i>	<i>Offence</i>
Misuse of Drugs Act 1975	
6	Dealing with controlled drugs where the charge relates to a class A or class B controlled drug
10(1)	Aiding offences against corresponding law of another country
12C	Commission of offences outside New Zealand
Prostitution Reform Act 2003	
16	Inducing or compelling persons to provide commercial sexual services or earnings from prostitution
Securities Act 1978	
58	Misstatement in advertisement or registered prospectus

Revised Schedule of High Court Only Offences

Offences against the Crimes Act 1961

<i>Section</i>	<i>Offence</i>
68(1)	Party to murder outside New Zealand
68(2)	Inciting murder outside New Zealand (not committed)
69(1)	Party to any other crime outside New Zealand
69(2)	Inciting treason outside New Zealand (not committed)
69(3)	Aiding and abetting crime outside New Zealand
73	Treason (or conspiracy to commit treason)
74(3)	Attempted treason
76	Accessory to, or failure to prevent, treason
77	Inciting to mutiny
78	Espionage
79(1)	Sabotage
92(1)	Piracy
93, 94	Piratical acts
95	Attempts to commit piracy
96	Conspiracy to commit piracy
97	Accessory after the fact to piracy
98(1)	Dealing in slaves
98C	Smuggling migrants
98D	Trafficking in people by means of coercion or deception
100	Judicial corruption
101	Bribery of judicial officer, etc
102	Corruption and bribery of Minister of the Crown
103	Corruption and bribery of member of Parliament
172	Murder
173	Attempted murder
174	Attempting to procure murder (not committed)
175	Conspiracy to murder
176	Accessory after the fact to murder
177	Manslaughter
178	Infanticide
179	Aiding and abetting suicide
180(2)	Surviving party of suicide pact

182	Killing unborn child
238(1) †	Extortion by certain threats
301†	Wrecking

† as it read before 1 October 2003

Offences against other enactments

<i>Section</i>	<i>Offence</i>
Anti-Personnel Mines Prohibition Act 1998	
7	Using, etc, an anti-personnel mine
Aviation Crimes Act 1972	
3	Hijacking
5	Other crimes relating to aircraft
5A	Crimes relating to international airports
Chemical Weapons (Prohibition) Act 1996	
6	Chemical weapons
8	Riot control agents
Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980	
3	Crimes against persons
4	Crimes against premises or vehicles
5	Threats against persons
6	Threats against premises or vehicles
8(1)	Hostage-taking
Crimes of Torture Act 1989	
3	Acts of torture
Geneva Conventions Act 1958	
3(4)	Grave breaches of Conventions of First Protocol
International Crimes and International Criminal Court Act 2000	
9	Genocide
10	Crimes against humanity
11	War crimes
15	Corruption of a Judge
16	Bribery of a Judge
17	Corruption and bribery of an official of the ICC
18	Giving false evidence before the ICC
19	Fabricating evidence before the ICC
20	Conspiracy to defeat justice in the ICC

21	Interference with witnesses or officials of the ICC
Judicature Act 1908	
56C(2)	Contempt of Court
56O	Contempt of Federal Court of Australia
Maritime Crimes Act 1999	
4(1)(a)-(h)	Crimes relating to ships
4(2)(a), (b)	Crimes relating to ships
4(3)(a), (b)	Crimes relating to ships
5(1)(a)-(e)	Crimes relating to fixed platforms
5(2)(a), (b)	Crimes relating to fixed platforms
5(3)(a), (b)	Crimes relating to fixed platforms
Mercenary Activities (Prohibition) Act 2004	
7	Recruiting a person to be a mercenary
8	Using a mercenary
9	Financing a mercenary
10	Training a prospective mercenary
11	Training a mercenary
12	Taking part as a mercenary in hostilities in an armed conflict or in a concerted act of violence
New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987	
5-8, 14	Offences against Act
Nuclear-Test-Ban Act 1999	
5	Nuclear explosions prohibited
Terrorism Suppression Act 2002	
6A	Engaging in a terrorist act
7(1)	Terrorist bombing
8(1), (2A)	Financing of terrorism
9(1)	Prohibition on dealing with property of, or derived or generated from property of, terrorist and associated entities
10(1)	Prohibition on making property, or financial or related services, available to terrorist and associated entities
12(1)	Recruiting members of terrorist groups
13(1)	Participating in terrorist groups
13A	Harbouring or concealing terrorists
13B	Offences involving use and movement of unmarked plastic explosives
13C	Offences involving physical protection of nuclear material
13D	Importation, acquisition, etc, of radioactive material
13E	Offences involving radioactive material and radioactive devices

Revised Schedule of Middle Band Offences

Part A: Offences against Crimes Act 1961

<i>Section</i>	<i>Offence</i>
98A	Participation in organised criminal group
98AA(1)	Dealing in people under 18 for sexual exploitation, removal of body parts or engagement in forced labour
104	Corruption and bribery of law enforcement officer
105	Corruption and bribery of official
105A	Corrupt use of official information
105B	Use or disclosure of personal information disclosed in breach of section 105A
105C	Bribery of foreign public official
105D	Bribery outside New Zealand of foreign public official
128‡	Sexual violation
128*	Rape
128, 128B	Sexual violation
129‡	Attempt to commit sexual violation
129(1)	Attempted sexual violation
129(2)	Attempted assault with intent to commit sexual violation
132(1) ‡	Sexual intercourse with girl under 12
132(1)	Sexual connection with child under 12
132(2)	Attempted sexual connection with child under 12
142‡	Anal intercourse
142**	Sodomy
144A	Sexual conduct with children and young people outside New Zealand that would be an offence under section 132(1) or 132(2) if committed in New Zealand.
183(1)	Procuring abortion
188	Wounding with intent
191^	Aggravated wounding or injury
198^	Discharging firearm or doing dangerous act with intent
198A(1)	Using firearm against law enforcement officer, etc
199^	Acid throwing
200(1)^	Poisoning with intent
201	Infecting with disease
203(1) †	Endangering transport
208‡	Abduction of woman or girl

208	Abduction for purposes of marriage or sexual connection
209	Kidnapping
235(1)(a) and (c)†	Aggravated robbery (causing grievous bodily harm)
235(1)(b) †	Aggravated robbery (with other person or persons)
236(1)	Assault with intent to rob
239(1)	Demanding with intent to steal, etc
267(1)	Arson
270	Endangering transport
294†	Arson
298(1) †	Wilful damage
298A	Causing disease or sickness in animals
298B	Contaminating food, crops, water or other products
307A	Threats of harm to people or property

* as it read before 1 February 1986

** as it read before 8 August 1986

† as it read before 1 October 2003

‡ as it read before 20 May 2005

^ proposed for repeal following review of Part 8 of the Crimes Act 1961

Part B: Offences against other enactment

Prostitution Reform Act 2003	
16	Inducing or compelling persons to provide commercial sexual services or earnings from prostitution
Misuse of Drugs Act 1975	
12C	Commission of offences outside New Zealand (where the controlled drug is classified as a Class A drug in New Zealand)