



ANALYSIS

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1977, No. 14

An Act to amend the Crimes Act 1969

(30 September 1977)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Crimes Amendment Act 1977 and shall be read together with and deemed part of the Crimes Act 1969 (hereinafter referred to as "the principal Act").

2. Interpretation - Subsection (1) of Section 2 of the principal Act is hereby amended:

- (a) By inserting after the term "assault" and its definition and before the term "Cook Islands" and its definition the following term and definition:

" "Cook Islander" means a person belonging to the part of the Polynesian race indigenous to the Cook Islands; and includes any person descended from a Cook Islander:";

- (b) By inserting after the term "justified" and its definition and before the term "Medical Officer" and its definition the following term and definition:

"Maori Language" means the language indigenous to the Cook Islands:"

3. Defendant may be admitted to bail by constable in certain cases - The principal Act is hereby further amended by inserting after section 341, and before section 342 the following new section:

"341A. (1) Where any person who is charged with an offence for which there is prescribed by law a maximum penalty of not more than 3 years imprisonment, and who has been arrested without warrant and brought into the custody of a constable in charge of a police station or watch house, cannot practicably be brought immediately before a Court, that constable may, if he deems it prudent to do so, take the bail bond of that person.

(2) Any such bail bond may be either with or without sureties as the constable thinks fit, and shall be in such sum or sums as he thinks sufficient and be subject to the condition that at a time and place to be specified in the bond, not later than 7 days from the date of the bond, the person bailed attend personally before a Court.

(3) Every such bail bond shall have the same effect as if it had been taken before a Judge or Commissioner or Registrar."

4. Preliminary proceedings - The principal Act is hereby amended by inserting after section 372 and before section 373 the following section:

"372A. Where a trial of any person is to be heard by a Judge with a jury pursuant to the provisions of either sections 291 or 293 of the Cook Islands Act 1915 (as amended by section 3 of the Cook Islands Amendment (No. 3) Act 1970) the following procedure shall apply:

- (a) There shall be tendered to the Court and to the accused or his counsel or solicitor written statements of each witness to be called by the prosecutor at the trial setting out the evidence to be adduced thereat by that witness; Provided that where no written statement has been obtained from a witness the prosecutor shall tender in lieu thereof a summary in writing of the evidence to be adduced by that witness at the trial and state the reasons why no written statement has been obtained.
- (b) The written statement tendered under this section shall be:-
 - (i) signed by the person who made it; and
 - (ii) contain a declaration made pursuant to section 653 of the Cook Islands Act 1915 by that person to the effect that it is true to the best of his knowledge and belief.
- (c) Each written statement tendered under this section shall:-
 - (i) if the statement is made by a person under the age of 21 years give his age;
 - (ii) if it is made by a person who cannot read it, be read to him before he signs it and be accompanied by a declaration by the person who read the statement to the effect that it was so read; and
 - (iii) if it refers to any other document as an exhibit be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect the document or a copy thereof.
- (d) Where a witness is a Cook Islander the written statement tendered under this section shall be in both the English and Maori language: Provided that an accused who is a Cook Islander may require all statements to be written in both the aforesaid languages.

- (e) The written statements shall be tendered to the parties as required by this section not later than 28 days before the date fixed for trial.
- (f) Where the accused is represented by counsel or a solicitor:-
- (i) he, if he so desires, may not later than 14 days before the date of trial notify the Registrar that he requires the written statements to be considered by a Commissioner of the High Court for the purpose of a hearing in accordance with the provisions of paragraph (h) hereof;
- (ii) if no such notification is given as herein provided the accused shall be deemed to have consented to his committal for trial and the accused shall be so committed.
- (g) Where the accused is not represented by counsel or a solicitor, he shall not later than 14 days before the date of the trial be brought before a Commissioner of the High Court who shall conduct a hearing in accordance with the provisions of paragraph (h) hereof.
- (h) (i) At the hearing pursuant to paragraphs (f) and (g) hereof at which the prosecutor shall be present the Commissioner shall consider all written statements tendered for the purpose of the trial, hear any submission either party wishes to make and then decide whether the accused should be committed for trial.
- (ii) If the Commissioner decides the accused should be committed for trial he shall by record on the information direct accordingly and the accused shall be so committed.
- (iii) If the Commissioner decides the accused should not be committed for trial he shall forthwith discharge the accused.
- (iv) A discharge of the accused under this subsection shall not operate as a bar to any other proceedings in the same matter."

5. Written statements admissible as evidence - The principal Act is hereby further amended by inserting after section 404 and before section 405 the following section:

"404A. In any criminal proceedings a written statement by any person tendered pursuant to paragraph (a) of section 372A of this Act shall, if the accused consents, be admissible as evidence to the like extent as oral evidence to the like effect by that person."

6. Power to discharge accused - The principal Act is hereby further amended by inserting after section 407 and before section 408 the following section:

"407A. (1) Where any person is committed for trial, the Judge may in his discretion, after a perusal of the written statements tendered for the trial, direct that the accused shall not be arraigned on the information laid and direct that the accused shall be discharged.

- (ii) The Judge may in his discretion, at any stage of any trial, whether before or after his verdict, direct that the accused be discharged.
- (iii) A discharge under this section shall be deemed to be an acquittal.
- (iv) The provisions of subsection (3) of section 24 of the Criminal Justice Act 1967 shall extend and apply to a discharge under this section.
- (v) Nothing in this section shall affect the power of the Court to convict and discharge any person."

This Act is administered in the Justice Department.