



## ANALYSIS

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1991, No. 7

An Act to amend the Judicature Act 1980-81

(15 May 1991)

BE IT ENACTED by the Parliament 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 Judicature Amendment Act 1991 and shall be read together with and deemed part of the Judicature Act 1980-81 (hereinafter referred to as "the principal Act").

2. Interpretation - Section 2 of the principal Act is amended by adding after the definition of "Plaintiff" the following new definition:

"Process" includes every manner of summons, application, petition, writ, warrant, notice, order, affidavit, or other document filed, used, or required for the purpose of any proceedings."

3. Service out of the Cook Islands - The principal Act is amended by adding after section 8 the following new sections:

"8A. Rules and Regulations as to Service - (1) The Queen's Representative may from time to time by Order in Executive Council made with the recommendation of at least two members of the Rules Committee prescribe rules for the purpose of facilitating the expeditious, inexpensive, and just service of Process out of the Cook Islands.

(2) Without affecting the generality of subsection (1) of this section, rules made pursuant to that subsection may provide:

(a) As to the circumstances if any in which service may be effected without leave of

- the Court and the terms of such service;
- (b) As to the circumstances if any in which service shall be effected by leave of the Court;
- (c) For time limits which are to have application in particular circumstances;
- (d) For service of Process by direction of the Court where personal service cannot be effected for any sufficient reason;
- (e) For any party serving or served with a Process to file an address for service on the same island as that from which the Process was issued.

(3) Nothing in this Act or any rules made pursuant to this section shall affect the right of the person served to apply to the Court to exercise its discretion to stay any proceedings on the ground of forum non conveniens or any other ground.

8B. Past and Future Service - (1) Where prior to the coming into force of this section any Process has been served out of the Cook Islands, whether by leave or not, and a final determination has been made thereon by the Court, such service shall be deemed to have been valid and effective.

(2) In any case to which the rules referred to in section 8A(1) do not apply (or if such rules shall not have been made) the High Court may grant leave for service to be effected out of the Cook Islands on such terms and conditions as it may direct.

(3) Where before this Act comes into force -

- (a) Any Process has been served out of the Cook Islands and
- (b) The Court has not made a final determination in respect of those proceedings

then such service shall not be valid or effective, unless on the application of a party to the proceedings the Court orders otherwise as shall be just and equitable in the circumstances and upon such terms and conditions as the Court may think fit."

4. Rules - Line 2 of subsection (2) of section 102 of the principal Act is amended by replacing the words "with the concurrence" by the words "on the recommendation".

5. Election for Specified Offences - The principal Act is amended by adding the following new section:

"15A Election for Specified Offences - (1) Notwithstanding this or any other enactment, on the trial of any defendant, where sections 14 and 15 of this Act do not apply, the defendant shall have the right to have a trial before 3 Justices sitting together, or before a Judge alone where the matter to be tried is under

- (a) Part X of the Crimes Act 1969 and the information as worded refers to a monetary value not exceeding \$5000, and the offence if punishable by a sentence of ten years or less,

- (b) section 250 of the Crimes Act 1969,
- (c) section 119 of the Transport Act 1966,
- (d) the Public Moneys and Stores Act 1987,
- (e) the Income Tax Act 1968-69,
- (f) the Turnover Tax Act 1980,
- (g) the Customs Act 1913 (N.Z.), or
- (h) the Import Levy Act 1972.

(2) On the trial of any offence to which this section applies, the Court shall, before the charge is gone into, inform the defendant of the right conferred on him by subsection (1) of this section, by addressing him to the following effect:

"You are charged with an offence for which you are entitled, if you desire it, to be tried by 3 Justices sitting together, or by a Judge alone. Do you desire to be tried by 3 Justices sitting together, or by a Judge alone?"

(3) Where a defendant elects to be tried by a Judge alone pursuant to this section, or does not elect when requested by the Court to do so, he shall be remanded, with or without bail, to appear before a Court to be presided over by a Judge without a jury, and the provisions of Part I of the Criminal Procedure Act 1980-81 relating to preliminary proceedings shall apply accordingly.

(4) A defendant who has elected under this section to be tried by a Judge alone may, by leave of the Court, at any time before the charge is gone into but not afterwards, withdraw his election, and thereupon the case shall be dealt with by 3 Justices sitting together.

(5) An election under this section, if the defendant is personally present, may be made on his behalf by any barrister or solicitor who appears for him."

6. Right to Elect in Certain Cases - Subsection (1) of section 16 of the principal Act is deleted and replaced by the following:

"(1) On the trial of any defendant for any offence punishable by imprisonment for a term exceeding 6 months, not being an offence to which sections 14 or 15A of this Act apply, the person charged may before the charge is gone into but not afterwards, elect whether the Judge shall sit with or without a jury. Before the defendant is called upon to make his election under this section, the substance of the charge shall be read to him."

7. Preliminary Proceedings - Subsection (3) of section 16 of the principal Act is deleted and replaced by the following:

"(3) Where a defendant has made his election pursuant to this section, he shall be remanded, with or without bail, to appear before a Court to be presided over by a Judge sitting with or without a jury, as the case may be, and the provisions of Part I of the Criminal Procedure Act 1980-81 relating to preliminary proceedings shall apply accordingly. Where a defendant does not elect when

requested by the Court to do so pursuant to this section, he shall be deemed to have elected to be tried by a Judge and a jury."

8. Maximum Penalties - Section 21 of the principal Act is deleted and replaced by the following:

"3. Maximum Penalty on Conviction by Justice or Justices - (1) Where any person is convicted of any offence by a Justice sitting alone, the Court may sentence him to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$500 or to both, or to the penalty provided by any enactment, whichever is the less, or, in the event that the enactment provides for a minimum penalty, to that penalty.

(2) Where any person is convicted of any offence by 3 Justices sitting together, the Court may sentence him to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$1000 or to both, or to the penalty provided by any enactment, whichever is the less, or, in the event that the enactment provides for a minimum penalty, to that penalty, or in the event that the trial was held following an election made pursuant to section 15A of this Act, to the penalty provided for in the enactment."

9. Jurisdiction - (1) Subsection (a) of section 20 of the principal Act is amended by adding the following paragraph:

"(iii) in any case where the trial is to be heard by 3 Justices as a result of an election or a withdrawal of an election made pursuant to section 15A of this Act."

(2) Subsection (1) of section 24 of the principal Act is amended by adding immediately after the words "by way of information" the words "are before 3 Justices pursuant to section 15A of this Act, or".

10. Consequential - (1) Subsection (1) of section 99 of the Criminal Procedure Act 1980-81 is amended by adding immediately after the words "Judge sitting with" the words "or without".

(2) The first paragraph of section 372A of the Crimes Act 1969 is amended by adding immediately after the words "Judge with" the words "or without".

11. Transitional - Nothing in this Act shall affect the rights of any defendant to be tried by a Judge and a jury where any defendant has elected to be tried by a Judge and a jury pursuant to section 16 of the principal Act prior to the coming into force of this Act.

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This Act is administered by the Department of Justice