



## Office of Hon Judith Collins

Minister of Justice

Minister Responsible for the Law Commission

Minister for ACC

Minister for Ethnic Affairs

23 JUN 2014

Grace Hayden

fyi-request-1732-12089880@requests.fyi.org.nz

Dear Ms Haden

### **Official Information Act request – convicted or guilty – why was section 3 Crimes Act repealed and what replaces it**

I refer to your email of 8 June 2014 about the repeal of the definition of “convicted on indictment” in section 3 of the Crimes Act 1961.

You requested the following information:

*“all documents and / or links to any documents e.g. submissions, which were considered in the removal of the definition of convicted from our legislation and the reasoning behind that decision.*

*Please provide document and / or legal precedents relied upon to redefine the word “convicted” and documents outlining the prescribed procedure for the court so as to be able to find someone guilty on indictment but not so that they are convicted (aside from any application for discharge without conviction)*

*Please provide evidence of the definition now relied upon for the word Convicted and any discussion as to why convicted and Guilty do not mean one and the same thing in New Zealand when internationally they are deemed to be synonymous in legal dictionaries.”*

Section 3 of the Crimes Act was repealed as part of Parliament’s reform of criminal procedure in 2011. That reform changed the way that offences are categorised. A key feature of the previous categorisation system was the distinction between “summary” and “indictable” offences. This distinction was abolished under the new categorisation of offences in the Criminal Procedure Act 2011.

Section 3 of the Crimes Act was repealed because it related to conviction on indictment. Because the “indictable offence” category was removed by the criminal procedure reforms, and indictments replaced with charging documents, section 3 was no longer needed.

The repeal of section 3 did not remove the distinction between (a) pleading or being found guilty, and (b) being convicted. That distinction remains and is reflected, for example, in section 114 of the Criminal Procedure Act 2011, which provides as follows:

#### **114 Procedure after defendant pleads or is found guilty**

- (1) If a defendant pleads guilty or is found guilty, the court may convict or deal with the defendant in any other manner authorised by law and—
  - (a) adjourn the proceeding; or
  - (b) sentence or otherwise deal with the defendant immediately.

The “any other manner authorised by law” referred to in section 114 of the Criminal Procedure Act 2011 may include, for example, discharging the defendant without conviction under section 106 of the Sentencing Act 2002.

There is a body of commentary and case law, both in New Zealand and overseas, as to the meaning of “convicted”. That material is publicly available and, accordingly, that part of your request is refused under section 18(d) of the Official Information Act 1982.

However, I can point you to material that may assist you to obtain that information. Adams on Criminal Law is a leading New Zealand text on the criminal law in this country. It is available through a number of libraries, including the National Library of New Zealand. It includes commentary and discussion of relevant case law on the meaning of “convicted”.

You have the right under section 28(3) of the Official Information Act to complain to the Ombudsman about the decision in relation to the information you seek.

Yours sincerely



Hon Judith Collins  
**Minister of Justice**