

South Australia

SUMMARY PROCEDURE ACT 1921

An Act to make provision for the procedures of the Magistrates Court in criminal proceedings and for other purposes.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **13 January 2002**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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being

Justices Act 1921 No. 1479 of 1921
[Assented to 7 December 1921]¹

as amended by

Justices Act Amendment Act 1923 No. 1573 of 1923 [Assented to 21 November 1923]
Justices Act 1931 No. 2051 of 1931 [Assented to 9 December 1931]
Criminal Law Consolidation Act 1935 No. 2252 of 1935 [Assented to 21 December 1935]
Justices Act Amendment Act 1936 No. 2261 of 1936 [Assented to 23 July 1936]
Justices Act Amendment Act 1943 No. 24 of 1943 [Assented to 16 December 1943]
Justices Act Amendment Act 1956 No. 57 of 1956 [Assented to 6 December 1956]
Justices Act Amendment Act 1957 No. 37 of 1957 [Assented to 14 November 1957]²
Justices Act Amendment Act 1960 No. 17 of 1960 [Assented to 8 September 1960]
Maintenance Act Amendment Act 1965 No. 54 of 1965 [Assented to 23 December 1965]³
Juvenile Courts Act 1966 No. 3 of 1966 [Assented to 10 February 1966]⁴
Justices Act Amendment Act 1969 No. 39 of 1969 [Assented to 13 November 1969]⁵
Justices Act Amendment Act (No. 2) 1969 No. 75 of 1969 [Assented to 11 December 1969]⁶
Justices Act Amendment Act 1972 No. 7 of 1972 [Assented to 23 March 1972]⁷
Local and District Criminal Courts Act Amendment Act 1972 No. 54 of 1972 [Assented to 27 April 1972]⁸
Justices Act Amendment Act (No. 2) 1972 No. 92 of 1972 [Assented to 2 November 1972]⁹
Justices Act Amendment Act 1974 No. 31 of 1974 [Assented to 11 April 1974]
Statute Law Revision Act 1974 No. 42 of 1974 [Assented to 11 April 1974]
Justices Act Amendment Act 1975 No. 8 of 1975 [Assented to 20 March 1975]
Statute Law Revision Act 1975 No. 24 of 1975 [Assented to 27 March 1975]
Justices Act Amendment Act (No. 2) 1975 No. 29 of 1975 [Assented to 27 March 1975]¹⁰
Justices Act Amendment Act 1976 No. 64 of 1976 [Assented to 25 November 1976]
Statutes Amendment (Capital Punishment Abolition) Act 1976 No. 115 of 1976 [Assented to 23 December 1976]
Statutes Amendment (Narcotic and Psychotropic Drugs and Justices) Act 1977 No. 31 of 1977 [Assented to 11 August 1977]¹¹
Children's Protection and Young Offenders Act 1979 No. 44 of 1979 [Assented to 15 March 1979]¹²
Justices Act Amendment Act 1980 No. 49 of 1980 [Assented to 3 July 1980]
Statutes Amendment (Administration of Courts and Tribunals) Act 1981 No. 34 of 1981 [Assented to 19 March 1981]¹³
Statutes Amendment (Jurisdiction of Courts) Act 1981 No. 109 of 1981 [Assented to 23 December 1981]¹⁴
Justices Act Amendment Act 1982 No. 26 of 1982 [Assented to 25 March 1982]¹⁵ (as amended by s. 2 of Justices Act Amendment Act (No. 3) 1982)
Justices Act Amendment Act (No. 2) 1982 No. 46 of 1982 [Assented to 22 April 1982]¹⁶
Justices Act Amendment Act (No. 3) 1982 No. 68 of 1982 [Assented to 1 July 1982]¹⁷
Justices Act Amendment Act 1983 No. 66 of 1983 [Assented to 13 October 1983]¹⁸
Statutes Amendment (Magistrates) Act 1983 No. 108 of 1983 [Assented to 22 December 1983]¹⁹
Justices Act Amendment Act 1984 No. 77 of 1984 [Assented to 15 November 1984]²⁰
Criminal Law Consolidation Act Amendment Act (No. 2) 1984 No. 78 of 1984 [Assented to 15 November 1984]
Evidence Act Amendment Act (No. 3) 1984 No. 107 of 1984 [Assented to 20 December 1984]
Statutes Amendment (Bail) Act 1985 No. 6 of 1985 [Assented to 7 March 1985]²¹
Justices Act Amendment Act 1986 No. 32 of 1986 [Assented to 10 April 1986]²²
Statutes Amendment (Parole) Act 1986 No. 69 of 1986 [Assented to 20 November 1986]²³

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix 1.

Criminal Law Consolidation Act Amendment Act 1986 No. 90 of 1986 [Assented to 4 December 1986]²⁴
Local and District Criminal Courts Act Amendment Act 1987 No. 33 of 1987 [Assented to 23 April 1987]²⁵
Criminal Law (Enforcement of Fines) Act 1987 No. 49 of 1987 [Assented to 30 April 1987]²⁶
Justices Act Amendment Act 1987 No. 60 of 1987 [Assented to 17 September 1987]²⁷
Justices Act Amendment Act 1988 No. 5 of 1988 [Assented to 10 March 1988]²⁸
Statutes Amendment and Repeal (Sentencing) Act 1988 No. 51 of 1988 [Assented to 5 May 1988]²⁹
Justices Act Amendment Act (No. 2) 1988 No. 104 of 1988 [Assented to 15 December 1988]
Statutes Amendment (Criminal Sittings) Act 1989 No. 33 of 1989 [Assented to 4 May 1989]³⁰
Statutes Amendment (Attorney-General's Portfolio) Act 1991 No. 33 of 1991 [Assented to 24 April 1991]³¹
Director of Public Prosecutions Act 1991 No. 49 of 1991 [Assented to 21 November 1991]³²
Justices Amendment Act 1991 No. 72 of 1991 [Assented to 12 December 1991]³³
Statutes Amendment (Attorney-General's Portfolio) Act 1992 No. 26 of 1992 [Assented to 14 May 1992]³³
Summary Procedure (Summary Protection Orders) Amendment Act 1992 No. 75 of 1992 [Assented to 26 November 1992]³⁴
Statutes Amendment (Courts) Act 1993 No. 62 of 1993 [Assented to 27 May 1993]³⁵
Summary Procedure (Restraining Orders) Amendment Act 1994 No. 20 of 1994 [Assented to 26 May 1994]³⁶
Statutes Amendment (Courts) Act 1994 No. 43 of 1994 [Assented to 2 June 1994]³⁷
Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994 No. 59 of 1994 [Assented to 27 October 1994]³⁸
Statutes Amendment (Attorney-General's Portfolio) Act 1995 No. 27 of 1995 [Assented to 27 April 1995]³⁹
Statutes Amendment (Paedophiles) Act 1995 No. 51 of 1995 [Assented to 27 July 1995]⁴⁰
Statutes Amendment (Recording of Interviews) Act 1995 No. 65 of 1995 [Assented to 10 August 1995]⁴¹
Summary Procedure (Time for Making Complaint) Amendment Act 1996 No. 35 of 1996 [Assented to 2 May 1996]⁴²
Statutes Amendment (Attorney-General's Portfolio) Act 1996 No. 67 of 1996 [Assented to 15 August 1996]⁴³
Statutes Amendment (Young Offenders) Act 1998 No. 41 of 1998 [Assented to 13 August 1998]⁴⁴
Statutes Amendment (Fine Enforcement) Act 1998 No. 60 of 1998 [Assented to 3 September 1998]⁴⁵
Statutes Amendment (Restraining Orders) Act 1999 No. 24 of 1999 [Assented to 1 April 1999]⁴⁶
Statutes Amendment and Repeal (Justice Portfolio) Act 1999 No. 42 of 1999 [Assented to 5 August 1999]⁴⁷
Criminal Law Consolidation (Serious Criminal Trespass) Amendment Act 1999 No. 80 of 1999 [Assented to 2 December 1999]⁴⁸
Criminal Law (Sentencing) (Sentencing Procedures) Amendment Act 2001 No. 37 of 2001 [Assented to 3 August 2001]
Statutes Amendment (Stalking) Act 2001 No. 55 of 2001 [Assented to 8 November 2001]⁴⁹

- 1 Came into operation 26 July 1922: *Gaz.* 29 June 1922, p. 1575.
- 2 Came into operation 1 February 1958: *Gaz.* 19 December 1957, p. 1529.
- 3 Came into operation 27 January 1966: *Gaz.* 27 January 1966, p. 145.
- 4 Came into operation 7 July 1966: *Gaz.* 7 July 1966, p. 57.
- 5 Came into operation 2 January 1970: *Gaz.* 18 December 1969, p. 2019.
- 6 Came into operation 31 August 1970: *Gaz.* 20 August 1970, p. 696.
- 7 Came into operation 30 November 1972: *Gaz.* 16 November 1972, p. 2334.
- 8 Came into operation 9 November 1972: *Gaz.* 9 November 1972, p. 2252.
- 9 Came into operation 15 February 1973: *Gaz.* 15 February 1973, p. 496.
- 10 Came into operation 22 May 1975: *Gaz.* 22 May 1975, p. 1987.
- 11 Came into operation 1 September 1977: *Gaz.* 1 September 1977, p. 601.
- 12 Came into operation (except ss. 9(3)(b), 50(2), (3) and the part of the schedule affecting the Guardianship of Infants Act 1940) 1 July 1979: *Gaz.* 28 June, 1979, p. 1951; s. 50(2) came into operation 19 February 1981: *Gaz.* 19 February 1981, p. 455; remainder of suspended provisions repealed by the Children's Protection and Young Offenders Act Amendment Act 1980.
- 13 Came into operation 1 July 1981: *Gaz.* 28 June 1981, p. 1896.
- 14 Came into operation 1 February 1982: *Gaz.* 28 January 1982, p. 209.
- 15 Came into operation (except s. 4: *Gaz.* 30 July 1982, p. 335) 1 August 1982: *Gaz.* 15 July 1982, p. 168; s. 4 will not be brought into operation (the subsection it inserted was subsequently substituted by Act No. 66 of 1983, s. 4)
- 16 Came into operation 3 June 1982: *Gaz.* 3 June 1982, p. 1850.
- 17 Ss. 1 and 2 came into operation on assent; remainder of Act came into operation 1 August 1982: s. 3.
- 18 Came into operation 14 November 1983: *Gaz.* 10 November 1983, p. 1354.
- 19 Came into operation 2 April 1984: *Gaz.* 22 March 1984, p. 725.
- 20 Came into operation 1 January 1985: *Gaz.* 6 December 1984, p. 1744.
- 21 Came into operation 7 July 1985: *Gaz.* 9 May 1985, p. 1398.
- 22 Came into operation 1 July 1986: *Gaz.* 1 May 1986, p. 1104.
- 23 Came into operation 8 December 1986: *Gaz.* 27 November 1986, p. 1700.
- 24 Came into operation 1 February 1987: *Gaz.* 15 January 1987, p. 52.
- 25 Came into operation 1 July 1987: *Gaz.* 28 May 1987, p. 1384.
- 26 Came into operation (except ss. 5, 6(4), (5) and (6)) 21 June 1987: *Gaz.* 4 June 1987, p. 1430; remainder of Act came into operation 1 November 1987: *Gaz.* 29 October 1987, p. 1449.
- 27 Came into operation 17 September 1987: *Gaz.* 17 September 1987, p. 886.
- 28 Came into operation 5 May 1988: *Gaz.* 5 May 1988, p. 1115.
- 29 Came into operation (except ss. 3-6, 12, 15-20, 22-27, 30-39, 41-68, 70-78) 12 May 1988: *Gaz.* 12 May 1988, p. 1181; ss. 3 and 4 came into operation 8 September 1988: *Gaz.* 8 September 1988, p. 994; remainder of Act came into operation 1 January 1989: *Gaz.* 15 December 1988, p. 2009.
- 30 Came into operation 1 January 1990: *Gaz.* 16 November 1989, p. 1501.
- 31 Came into operation 6 June 1991: *Gaz.* 6 June 1991, p. 1776.
- 32 Came into operation 6 July 1992: *Gaz.* 25 June 1992, p. 1869.
- 33 Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.
- 34 Came into operation (except s. 5(b)) 4 March 1993: *Gaz.* 25 February 1993, p. 713; s. 5(b) will not be brought into operation (the words it inserted were subsequently struck out by Act No. 62 of 1993, s. 34(a)).
- 35 Came into operation 1 July 1993: *Gaz.* 24 June 1993, p. 2047.
- 36 Came into operation 1 August 1994: *Gaz.* 14 July 1994, p. 69.
- 37 Came into operation 9 June 1994: *Gaz.* 9 June 1994, p. 1669.
- 38 Came into operation 1 January 1995: *Gaz.* 8 December 1994, p. 1942.
- 39 Came into operation 4 May 1995: *Gaz.* 4 May 1995, p. 1705.
- 40 Came into operation 30 October 1995: *Gaz.* 21 September 1995, p. 783.
- 41 Came into operation 3 March 1996: *Gaz.* 21 December 1995, p. 1760.
- 42 Came into operation 3 February 1997: *Gaz.* 19 December 1996, p. 1924.
- 43 Came into operation 17 October 1996: *Gaz.* 17 October 1996, p. 1361.
- 44 Part 3 (s. 9) came into operation 1 October 1998: *Gaz.* 10 September 1998, p. 815.
- 45 Part 9 (ss. 44 & 45) came into operation 6 March 2000: *Gaz.* 18 November 1999, p. 2358.
- 46 Part 4 (ss. 13-19) came into operation 16 May 1999: *Gaz.* 13 May 1999, p. 2502.
- 47 Part 12 (ss. 55 & 56) came into operation 3 October 1999: *Gaz.* 23 September 1999, p. 1208.
- 48 Came into operation 25 December 1999: *Gaz.* 23 December 1999, p. 3668.
- 49 **Part 4 (s. 6) came into operation 13 January 2002: *Gaz.* 10 January 2002, p. 4.**

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N.B. The amendments effected to this Act by the *Statutes Amendment (Courts and Judicial Administration) Act 2001* had not been brought into operation at the date of, and have not been included in, this reprint.

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The Parliament of South Australia enacts as follows:

**PART 1
INTRODUCTORY**

Short title

1. This Act may be cited as the *Summary Procedure Act 1921*.

* * * * *

Interpretation

4. (1) In this Act, unless inconsistent with the context—

"**the Chief Magistrate**" means the person for the time being holding, or acting in, the office of the Chief Magistrate under the *Magistrates Act 1983*;

"**complaint**" includes a charge of a minor indictable offence, if, and when, the Magistrates Court proceeds to dispose of such charge summarily;

"**Court**" means the Magistrates Court of South Australia;

"**defendant**" means person charged with any offence or against whom relief is sought or granted;

"**firearms order**" means an order under section 99D supplementary to an order under section 99;

"**foreign restraining order**" means an order made under a law of another State or a Territory of the Commonwealth or New Zealand declared by regulation to be a law corresponding to Division 7 of Part 4;

"**industrial magistrate**" means an Industrial Magistrate within the meaning of the *Industrial Conciliation and Arbitration Act 1972*;

"**industrial offence**" means a summary offence declared by regulation under this Act to be an industrial offence;

"**investigating officer**" means—

- (a) an officer of the police force; or
- (b) a person authorised under an Act to investigate offences;

"**justice**" means justice of the peace for the State of South Australia, and includes any magistrate, by whatever name called, who is authorised to act as a justice of the peace in and for the said State;

"**major indictable offence**" means any indictable offence except a minor indictable offence;

"**minor indictable offence**"—*See section 5*;

"**offence of violence**" means an offence where the offender—

- (a) uses a weapon, or threatens to use a weapon, against another; or

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(b) inflicts serious injury on another, or threatens to inflict serious injury on another, for the purpose of committing the offence, or escaping from the scene of the offence;

"**personal service**" of a summons or notice means service under section 27(1); and the adverb "personally" when used in relation to the verb "to serve" has a corresponding meaning;

"**the Principal Registrar**" means the Principal Registrar of the Magistrates Court;

"**Registrar**" means the Principal Registrar or any other Registrar of the Magistrates Court;

"**relevant family contact order**", in relation to a restraining order, means a Division 11 contact order within the meaning of Part 7 of the *Family Law Act 1975* of the Commonwealth, as amended from time to time, that relates to contact between—

(a) the person for whose benefit, or against whom, the restraining order is made or sought; and

(b) a child of, or in the care of, either of those persons;

"**restraining order**" means an order under section 99 (including a firearms order supplementary to that order) or an order under section 99AA;

"**rules**" means the rules of the Magistrates Court;

"**schedule 3 offence**" means—

(a) an offence against a section of the *Criminal Law Consolidation Act 1934* listed in schedule 3; or

(b) an offence of attempting to commit such an offence; or

(c) an offence of aiding, abetting, counselling or procuring such an offence; or

(d) an offence of conspiring to commit such an offence; or

(e) an offence of being an accessory after the fact to such an offence;

"**schedule 4 offence**" means—

(a) an offence against a section of the *Criminal Law Consolidation Act 1934* listed in schedule 4; or

(b) an offence of attempting to commit such an offence; or

(c) an offence of aiding, abetting, counselling or procuring such an offence; or

(d) an offence of conspiring to commit such an offence; or

(e) an offence of being an accessory after the fact to such an offence;

"**sexual offence**" means—

(a) rape; or

- (b) indecent assault; or
- (c) any offence involving unlawful sexual intercourse or an act of gross indecency; or
- (d) incest; or
- (e) any attempt to commit or assault with intent to commit, any of the foregoing offences;

"**Special Act**" means statute, rule, regulation, or by-law authorising the making of the conviction or order, or the determination or adjudication in question, or otherwise specially applicable to the case;

"**summary offence**"—*See section 5;*

"**telephone**" includes any telecommunication device;

"**the Industrial Court**" means the Industrial Court of South Australia continued in existence by the *Industrial Conciliation and Arbitration Act 1972*.

(2) A reference in the provisions of this Act other than Part 7 to a solicitor shall be deemed to include a reference to a law clerk articulated to the solicitor and appearing on the solicitor's instructions.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

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Classification of offences

5. (1) Offences are divided into the following classes:

- (a) summary offences;
- (b) indictable offences—comprising minor indictable offences and major indictable offences.

(2) A summary offence is—

- (a) an offence that is not punishable by imprisonment;
- (b) an offence for which a maximum penalty of, or including, imprisonment for two years or less is prescribed;
- (c) a schedule 3 offence involving \$2 000 or less not being—
 - (i) an offence of violence; or
 - (ii) an offence that is one of a series of offences of the same or a similar character involving more than \$2 000 in aggregate,

but an offence for which a maximum fine exceeding twice a Division 1 fine is prescribed is not a summary offence.

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(3) All offences apart from summary offences are indictable and of these—

(a) the following are minor indictable offences:

- (i) those not punishable by imprisonment but for which a maximum fine exceeding twice a Division 1 fine is prescribed;
- (ii) those for which the maximum term of imprisonment does not exceed 5 years;
- (iii) those for which the maximum term of imprisonment exceeds 5 years and which fall into one of the following categories:
 - a schedule 3 or schedule 4 offence (not being an offence of violence) involving \$25 000 or less;
 - an offence involving interference with, damage to or destruction of property where the loss resulting from commission of the offence does not exceed \$25 000;
 - an offence against section 23 (malicious wounding) or 40 (assault occasioning actual bodily harm) of the *Criminal Law Consolidation Act 1935*;
 - an offence against section 56 of the *Criminal Law Consolidation Act 1935* (indecent assault);
 - an offence against section 169(1) or 170(1) of the *Criminal Law Consolidation Act 1935* (serious criminal trespass, etc.) where the intended offence is an offence of dishonesty (not being an offence of violence) involving \$25 000 or less or an offence of interference with, damage to or destruction of property involving \$25 000 or less;
 - an offence against section 171 of the *Criminal Law Consolidation Act 1935* (nocturnal offences) where—
 - the intended offence is an offence of dishonesty (not being an offence of violence) involving \$25 000 or less or an offence of interference with, damage to or destruction of property involving \$25 000 or less; and
 - the defendant is not alleged to have been armed with an offensive weapon or in company with a person so armed; and

(b) all other indictable offences are major indictable offences.

(4) For the purposes of the above classifications, an offence will be taken to involve a particular sum of money if that sum represents—

(a) the amount or value of the benefit that the offender would have gained through commission of the offence; or

(b) the amount of the loss that would have resulted from commission of the offence,

assuming that the offence had been successfully completed and the offender had escaped detection.

(5) If a law prescribes differential maximum penalties, then for the purposes of classifying the offence in accordance with the above rules, it will be taken to create separate offences which are (where necessary) to be separately classified in accordance with the above rules.

(6) Where an offence may be either a summary offence or an indictable offence according to the circumstances surrounding its commission, or the antecedents of the defendant, and the offence is designated as a summary offence in the complaint charging the offence, then, subject to subsection (8), the circumstances and the defendant's antecedents will be conclusively presumed to be such as to make the offence a summary offence.

(7) Where an offence may be either a minor indictable offence or a major indictable offence according to the circumstances surrounding its commission, or the antecedents of the defendant, and the offence is classified as a minor indictable offence in the information charging the offence, then, subject to subsection (8), the circumstances and the defendant's antecedents will be conclusively presumed to be such as to make the offence a minor indictable offence.

(8) A defendant may, in accordance with the rules, challenge the classification of an offence in the complaint or information charging the offence and for the purposes of such a challenge the above presumptions do not apply.

(9) Where a summary offence is erroneously dealt with as an indictable offence or a minor indictable offence is erroneously dealt with as a major indictable offence, the proceedings are not invalid but any penalties imposed should conform with what would be appropriate if the offence had been correctly classified at the inception of the proceedings.

(10) If the Act under which an offence is created classifies an offence in a manner inconsistent with this section, that classification prevails.

Powers of Supreme Court may be exercised by a Judge in Chambers

6. The authority and jurisdiction by this Act vested in the Supreme Court may, subject to any rules or orders of such Court in relation thereto, be exercised by a Judge of such Court sitting in court or in chambers.

Abolition of rule as to disputed title

7. The Court is not prevented from trying an offence by reason of the fact that the trial involves a dispute as to the title to property.

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Industrial offences

8. A charge of an industrial offence must be set down for hearing by an industrial magistrate.

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**PART 3
GENERAL PROCEDURE**

Form of Warrant and Summons

Form of warrant

20. (1) Every warrant for the apprehension of a defendant shall—

- (a) state shortly the matter of the information or complaint upon which it is founded; and
- (b) name or otherwise describe the defendant; and
- (c) order the person or persons to whom it is directed to apprehend the defendant and bring him before the Court to answer the charge contained in the information or complaint, and to be further dealt with according to law.

(2) The warrant may be directed specially to any constable or other person by name, or generally to all constables and peace officers of the State, or both specially and generally as aforesaid; and where the warrant is directed generally it shall be lawful for any constable or other peace officer to execute such warrant in like manner as if the same had been specially directed to him by name.

(3) It shall not be necessary to make the warrant returnable at any particular time, but the same shall remain in force until it is executed.

(4) Every warrant may be executed by apprehending the defendant at any place within the State.

* * * * *

Form of summons

22. Subject to the provisions of section 57A every summons for the appearance of a defendant shall be in duplicate and—

- (a) be directed to the defendant charged by the information or complaint:
- (b) state shortly the matter so charged:
- (c) require the defendant to be and appear before the Court at a specified time and place to answer to the charge contained in the information or complaint, and to be further dealt with according to law.

Description of offence

22A. (1) Every information, complaint, summons, warrant, or other document under this Act in which it is necessary to state the matter charged against any person shall be sufficient if it contains a statement of the specific offence with which the accused person is charged, together with such particulars as are necessary for giving reasonable information as to the nature of the charge.

(2) The statement of the offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and, if the offence charged is one created by statute, shall contain a reference to the section of the statute creating the offence.

(3) After the statement of the offence, necessary particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be required.

* * * * *

Service

Service

27. (1) Subject to the provisions of this or any other enactment specially applicable to the particular case, any summons or notice required or authorised by this Act to be served upon any person may be served upon such person by—

- (a) delivering the same to him personally; or
- (b) leaving the same for him at his last or most usual place of abode or of business with some other person, apparently an inmate thereof or employed thereat, and apparently not less than sixteen years of age.

* * * * *

(2) Subject to any other provision of this Act, where this Act authorises service of a notice on a party to proceedings by post, service of the notice may be effected by sending the notice by ordinary prepaid post (either alone or with other documents relating to the same proceedings) in an envelope addressed to the party at—

- (a) the address appearing on the relevant complaint or summons as the address of that party; or
- (b) where the person by whom the notice is to be given has notice of some more recent address of the party—that address,

and the notice shall be deemed to have been served at the time when it would, in the ordinary course of post, have reached the address to which it was posted.

(3) Where a summons or notice is served otherwise than by being delivered personally to the person on whom it is to be served, the Court may require the summons or notice to be re-served if there is reasonable cause to believe that the summons or notice has not come to the notice of the person to be served.

Service of Summons by Post, and other Matters

Service of summons by post

27A. (1) Subject to this section, where a public authority or public officer as defined in section 57A of this Act makes a complaint for a summary offence, not being an offence—

- (a) punishable by imprisonment either for a first offence or for a subsequent offence; or
- (b) in respect of which it is provided that a period of disqualification from holding or obtaining a licence to drive a motor vehicle shall be imposed,

any summons for the appearance of the defendant may, in lieu of any other mode of service provided for by this Act, be served on the defendant by posting the summons by ordinary prepaid post addressed to the defendant named in the summons at his last known or most usual place of abode or of business.

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(2) Without limiting the effect of subsection (1) of this section and in the absence of circumstances making it appear to the court that the defendant resides or, as the case may be, carries on business elsewhere, the address of the defendant appearing on the summons referred to in that subsection shall be deemed to be his last known or most usual place of abode.

(3) Where—

- (a) the affidavit of service of a summons referred to in subsection (1) of this section sets out the name and address of the person to which it was addressed and the time and place of the posting of the summons; and
- (b) the time of the posting of the summons is—
 - (i) not more than four months after the day on which it is alleged that the offence to which the summons relates was committed or, in the case of an alleged offence against the *Electoral Act 1985*, not more than six months after that day; and
 - (ii) not less than twenty-eight days before the day on which the defendant is summoned to appear to answer to the charge,

that summons shall, in the absence of proof to the contrary, and notwithstanding any other enactment, be deemed to have been served on the defendant named therein at the time at which it would have been delivered in the ordinary course of post.

Hearing on a written plea of guilty

27B. Where a complaint and summons in the form and bearing the endorsements referred to in section 57A of this Act is, pursuant to subsection (3) of section 27A of this Act, deemed to have been served on the defendant named therein and that defendant fails to appear in obedience to that summons but has, pursuant to section 57A of this Act, pleaded guilty to the offence to which that summons relates, the court may proceed in the manner provided by section 62B and section 62C of this Act as if the summons had been served on the defendant in the manner provided for in section 27 of this Act.

Hearing where defendant fails to appear

27C. (1) Subject to this section, where a summons is, pursuant to subsection (3) of section 27A of this Act, deemed to have been served on the defendant named therein and the defendant fails to appear in obedience to that summons and, where the summons was in the nature of a complaint and summons in the form and bearing the endorsements referred to in section 57A of this Act, fails to plead guilty in the manner provided in that section to the offence to which the summons relates, the court may—

- (a) proceed in the absence of the defendant to the hearing of the complaint, to which the summons relates, and, notwithstanding anything in section 62C of this Act, adjudicate thereon as fully and effectually as if the defendant had personally appeared in obedience to the summons; or
- (b) order that the complaint may be heard in the absence of the defendant and adjourn the hearing and on the adjourned hearing proceed in the manner provided for in paragraph (a) of this subsection.

(2) Where a hearing is adjourned under subsection (1)(b), it is not necessary for the Court to be constituted of the same judicial officer at the adjourned hearing.

(3) Upon conviction after a hearing, pursuant to subsection (1) of this section, the court shall not—

- (a) impose any penalty other than a fine; or
- (b) disqualify the defendant from holding or obtaining a licence to drive a motor vehicle; or
- (c) treat the offence as other than a first offence unless the complainant proves that the defendant has previously been convicted of such an offence; or
- (d) fail to allow the defendant a reasonable time for the payment of any fine or other sum adjudged to be paid,

unless—

- (e) the court has first adjourned the hearing of the complaint to a time and place appointed; and
- (f) the defendant is personally served, not less than fourteen days before the time to which the hearing has been adjourned, with a notice informing him of—
 - (i) the conviction; and
 - (ii) the time and place to which the hearing has been adjourned; and
 - (iii) the provisions of section 76A; and
- (g) the defendant does not, within fourteen days after the date of service of the notice upon him, apply in accordance with section 76A, for an order setting aside the conviction.

(4) Where a defendant, not being a defendant who has been personally served with a notice pursuant to paragraph (f) of subsection (3) of this section, is convicted after a hearing pursuant to subsection (1) of this section, the Registrar must, within seven days of that conviction, serve by post on the defendant a notice setting out the particulars of that conviction the penalty imposed, and of the provisions of section 76A.

(5) Where a defendant, who has been personally served with a notice pursuant to paragraph (f) of subsection (3) of this section, is convicted after a hearing pursuant to subsection (1) of this section, the Registrar must within seven days after the imposition of a penalty in respect of that conviction serve by post on the defendant a notice setting out the particulars of that conviction and the penalty imposed.

* * * * *

Proof of service, and other matters

Proof by affidavit of service, etc.

28. (1) In any proceeding, without prejudice to any other mode of proof—

- (a) the service on any person of any summons, notice, process, or document required or authorised to be served; or
- (b) the handwriting of any officer or person on any warrant, summons, notice, process, or document; or

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- (c) the payment or tender, to any person summoned to attend as a witness, of any sum in respect of the costs or expenses of such attendance,

may be proved by an affidavit taken before a justice or before a commissioner for taking affidavits in the Supreme Court: Provided that the Court may require the person making such affidavit to be called as a witness, or require further evidence of the facts.

(2) Service may also be proved by tender of a certificate of service signed by the person who effected service.

(3) A document appearing to be an affidavit or certificate under this section may be accepted, without further evidence, as proof of the matters stated in it.

(4) A person who gives a false certificate under this section is guilty of an offence.

Penalty: Imprisonment for two years.

Assistance of counsel

Assistance of counsel

29. A party to proceedings before the Court may be represented by counsel.

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PART 4
SUMMARY JURISDICTION

* * * * *

DIVISION 2—COMPLAINT AND SUBSEQUENT PROCEEDINGS

The Complaint

Complaint

49. (1) Where a person is suspected of having committed a summary offence, a complaint may be made in accordance with the rules charging that person with the offence.

(2) A complaint may be made by the complainant personally or by a legal practitioner or other person duly authorised to make the complaint on the complainant's behalf.

(3) If the complaint is made orally, it must be reduced to writing.

(4) A complaint need not be made on oath unless—

(a) some Special Act requires the complaint to be made on oath; or

(b) a warrant for the arrest of the defendant is to be issued.

(5) A complaint must be filed in the Court as soon as practicable after it is made.

* * * * *

Joinder and separation of charges

51. (1) A person may be charged with any number of summary offences in the same complaint (either cumulatively or in the alternative) if the charges arise from the same set of circumstances or from a series of circumstances of the same or a similar character.

(2) The Court may direct that—

(a) charges contained in a single complaint be dealt with in separate proceedings; or

(b) charges contained in separate complaints be dealt with together in the same proceedings.

Limitation on time in which proceedings may be commenced

52. Subject to any provision of an Act to the contrary, if a person is to be prosecuted for a summary offence, the proceedings must be commenced within the following time limits:

(a) in the case of an expiable offence—

(i) if an expiation notice was given to the person—the proceedings must be commenced within 6 months of the expiry of the expiation period specified in the notice (whether or not the notice was subsequently withdrawn);

(ii) if an expiation notice was not given to the person—the proceedings must be commenced within 6 months of the date on which the offence is alleged to have been committed;

(b) in the case of an offence that is not expiable—the proceedings must be commenced within 2 years of the date on which the offence is alleged to have been committed.

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Allegations and Descriptions in Complaints and Proceedings thereon

Allegations as to ownership

54. (1) Whenever in any complaint, or the proceedings thereon, it is necessary to state the ownership of any property belonging to, or in the possession of, partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another or others (as the case may be).

Parties

(2) Whenever in any complaint or the proceedings thereon it is necessary to mention for any purpose whatsoever any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in the same manner.

Property in public works

(3) Whenever in any complaint or the proceedings thereon it is necessary to describe the ownership of any work or building made, maintained, or repaired at the expense of any public board of commissioners or trustees, or of any materials for the making, altering, or repairing of the same, it shall be sufficient to describe the same as the property of such commissioners or trustees without naming them.

* * * * *

Exceptions and Exemptions

Exceptions or exemptions need not be specified or disproved by the complainant

56. (1) No exception, exemption, proviso, excuse, or qualification (whether it does or does not accompany in the same section the description of the offence in the Special Act or other document creating the offence) need be specified or negated in the complaint.

(2) Any such exception, exemption, proviso, excuse, or qualification as aforesaid may be proved by the defendant, but, whether it is or is not specified or negated in the complaint, no proof in relation to it shall be required on the part of the complainant.

Summons to Defendant

Issue of summons

57. (1) When a complaint has been made and filed in the Court, the Court must, subject to subsection (2), issue a summons for the appearance of the defendant.

(2) No summons need be issued—

- (a) where the relevant law under which the complaint is made provides for the matter to be dealt with *ex parte*; or
- (b) where the defendant is already before the Court; or
- (c) where a warrant is issued to have the defendant arrested and brought before the Court.

(3) If when a complaint is filed in the Court the whereabouts of the defendant is unknown, the Court may defer issuing a summons until informed of a place at which service might be effected.

Procedure enabling written plea of guilty

57A. (1) Where a public authority or public officer makes a complaint for a summary offence not punishable by imprisonment either for a first or subsequent offence, he may, by using a form of complaint and summons bearing the endorsements prescribed by the rules, and causing two copies thereof to be served on the defendant, initiate a procedure whereby the defendant may plead guilty without appearing in court in obedience to the summons.

(2) A defendant upon whom forms of complaint and summons are served pursuant to this section may plead guilty to the charge specified therein by completing the form on one copy thereof and signing his name thereto before a justice of the peace for any State or Territory of the Commonwealth or a solicitor duly admitted and entitled to practise as such in any State or Territory of the Commonwealth or a police officer of any such State or Territory, and by serving the completed form as provided by subsection (4) hereof not less than three clear days before the date of hearing specified therein.

(3) A defendant may, if he wishes, complete that part of the form relating to submissions on the question of penalty, but his failure to complete that part of the form shall not be construed as a failure to comply with this section.

(4) The completed form must be returned to the Registrar—

(a) by delivering it at an office of the Court; or

(b) by sending it by post to the Principal Registrar at an address shown on the form.

* * * * *

(6) Any defendant who returns a form pleading guilty which complies with this section need not attend the court as directed by the summons.

(7) Where a defendant who has been served with forms of complaint and summons pursuant to this section fails to return a form pleading guilty which complies with this section and fails to appear in obedience to the summons, the court may, subject to subsection (7) of section 62B, proceed to exercise its powers under paragraph (a) or (b) of section 62.

(7a) Where—

(a) the defendant named in a complaint and summons bearing the endorsements mentioned in subsection (1) gives written notice to the Registrar of his intention to plead not guilty to the charge; and

(b) the Registrar, by notice served personally or by post on the defendant, notifies him of a time and place at which the court will proceed with the hearing of the charge,

the summons shall have effect as if the time and place notified by the Registrar were substituted for the time and place fixed in the summons for the hearing of the complaint.

(8) Where a complainant uses the form of complaint and summons prescribed by the rules he shall be deemed to be a public authority or a public officer lawfully acting pursuant to subsection (1) hereof unless the defendant satisfies the court to the contrary.

(9) Any defendant who has been charged upon complaint with a summary offence not punishable by imprisonment either for a first or subsequent offence, and who has been served with a summons issued pursuant to section 57, may plead guilty without appearing in court in obedience to the summons by completing and returning the form prescribed by subsection (1) of this section, whereupon the provisions of this section and sections 62B and 62C shall apply.

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(10) This section shall not apply in relation to a defendant who is a child within the meaning of the *Children's Protection and Young Offenders Act 1979* except where the defendant—

- (a) is of or above the age of sixteen years; and
- (b) is charged with an offence under the *Road Traffic Act 1961-1979*.

(11) In this section—

"public authority" means—

- (a) any instrumentality or agency of the Crown in right of the State or the Commonwealth; or
- (b) the Corporate Affairs Commission; or
- (c) a municipal or district council; or
- (d) any county board or local board of health; or
- (e) any body declared by proclamation to be a public authority;

"public officer" means—

- (a) any member of the Police Force of the State or the Commonwealth or any other officer or employee of the State or the Commonwealth; or
- (b) any officer or employee of a public authority.

(12) The Governor may, by proclamation, declare a body to be a public authority for the purposes of this section and may, by subsequent proclamation, vary or revoke any such declaration.

Warrant to Apprehend a Defendant

Issue of warrant

58. The Court may issue a warrant to have the defendant arrested and brought before the Court if—

- (a) the allegations in the complaint are substantiated on oath; or
- (b) the defendant fails to appear in obedience to a summons and the Court is satisfied that the summons was served a reasonable time before the time appointed for the hearing.

Return of Warrant and Remand

Defendant to be brought before Court

59. (1) A defendant who has been arrested under a warrant must be brought before the Court.

(2) If it is not practicable to deal immediately with the matter for which the defendant has been brought before the Court, the Court may remand the defendant in custody, or on bail, to appear before the Court at a time and place fixed in the order for remand.

Forms of custody, etc.

60. (1) When a defendant is apprehended under a warrant or is remanded upon any adjournment of the hearing, the Court may commit the defendant—

- (a) by warrant to the nearest prison or to some place of security; or
- (b) verbally to the custody of the constable or other person who has apprehended him; or
- (c) verbally to such other safe custody as the Court deems fit,

and the Court must order the defendant to be brought before the Court at some stated time and place, of which order the complainant shall have due notice.

(2) In any such case, the Court may, instead of committing the defendant to prison or some other form of custody, release him on bail.

DIVISION 3—THE HEARING

Sittings to be in open court but witnesses and other persons may be ordered to leave the Court

61. (1) The room in which any court sits shall be deemed an open and public court, to which the public generally may have access so far as the same can conveniently contain them, and subject to the provisions hereinafter contained.

(2) The court may, if it thinks fit, order that all witnesses (except the parties and any of their witnesses whom it sees fit to except) shall go and remain outside and beyond the hearing of the court until required to give evidence.

(3) Nothing herein contained shall restrict the power of the court under Part 8 of the *Evidence Act 1929* or require any case to be heard in open court if it is, by any Special Act, required or authorised to be heard in camera.

Proceedings on non-appearance of defendant

62. (1) If the defendant fails to appear in obedience to the summons the court may—

- (a) issue a warrant as provided by section 58, and adjourn the hearing until the defendant is apprehended; or
- (b) upon proof that the summons was served a reasonable time before the time thereby appointed for his appearance, proceed *ex parte* to the hearing of the complaint and subject to section 62C to adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had personally appeared before it in obedience to the summons; or
- (ba) upon proof that the summons was served a reasonable time before the time thereby appointed for the defendant's appearance, order that the complaint may be heard *ex parte* and adjourn the hearing; or
- (c) if the defendant has pleaded guilty in writing pursuant to section 57A proceed in the manner provided by sections 62B and 62C.

(2) At a hearing adjourned pursuant to paragraph (ba) of subsection (1) of this section, the court may proceed *ex parte* to the hearing of the complaint and subject to section 62C of this Act adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had personally appeared before it in obedience to the summons.

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(3) Where a hearing is adjourned under subsection (1), the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

Power to proceed *ex parte*

62A. (1) If a person who has been apprehended (whether under a warrant or without a warrant), and released on bail fails to appear at the time and place appointed for the hearing of a complaint laid or to be laid against him, the court may in its discretion hear the complaint *ex parte*, and may adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had appeared at that time and place.

(2) This section shall apply whether the defendant is discharged pursuant to powers granted by this or any other Act.

Powers of court on written plea of guilty

62B. (1) Where a defendant fails to appear in obedience to the summons but serves a form pleading guilty which complies with section 57A, the court shall not have power to issue a warrant for the apprehension of the defendant, on the ground of non-appearance, but may upon proof of service of the complaint and summons and upon production of the form duly completed, convict, and subject to this section, adjudicate thereon as fully and effectually to all intents and purposes as if the defendant had personally appeared before it in obedience to the summons and had pleaded guilty and made the same submissions as to penalty as are set out in the form.

(2) Where the completed form is apparently a genuine document purporting to be signed by the defendant before a justice of the peace, or a solicitor, or a police officer, proof of any of the signatures, or of the official capacity of any witness of the defendant's signature, shall not be required and the court may receive and act upon such document.

(3) The prosecutor may recite to the court any relevant matters alleged against the defendant in the same way as if the defendant had personally appeared and pleaded guilty.

(4) Nothing herein contained shall prejudice any application by a defendant to withdraw his plea of guilty at any time prior to the hearing and determination of the complaint made against him and the court before whom the defendant appears to answer the complaint may permit a withdrawal of the plea upon such terms as may be just.

(5) Where a defendant in a form under section 57A states matters which, if true, would indicate that he has a valid defence to the complaint, or which differ substantially in relevant particulars from the matters recited to the court by the prosecutor, the court may strike out the plea of guilty, adjourn the hearing of the complaint to a time and place appointed and order that the defendant be served with a summons as provided by section 57. Thereupon the complaint shall be dealt with as though the previous summons had not been issued, and the provisions of this section and section 57A shall no longer apply.

(6) Where a defendant who has served a form pleading guilty which complies with section 57A, is convicted, the court shall not—

- (a) impose any sentence of imprisonment on the defendant; or
- (b) disqualify the defendant from holding or obtaining a licence to drive a motor vehicle, unless the procedure prescribed in section 62C is followed; or
- (c) treat the offence as other than a first offence unless the complainant proves that the defendant has been previously convicted; or

* * * * *

(e) subject to subsection (7) hereof, order the defendant to pay witness fees.

(7) Where a defendant serves a form pleading guilty which complies with the provisions of section 57A with one exception, namely that the form is served less than three clear days before the date of hearing, the form shall be deemed to comply with section 57A, and the provisions of this section shall apply, except that the court may order the defendant to pay witness fees.

(8) Where a defendant is convicted under this section, the Principal Registrar must forthwith, either personally or by post, give the defendant written notice of the conviction and of any fine or other monetary sum to be paid and of the time and manner of payment. Service by post under this section may be effected by notice addressed to the defendant at the address shown on the form pleading guilty and shall be deemed to be effected at the time at which such notice would in the ordinary course of post be delivered at the address of the defendant.

* * * * *

***Ex parte* proceedings where defendant neither appears nor returns written plea of guilty**

62BA. (1) Where in any proceedings under this Act—

- (a) a complaint has been made by a public authority or public officer within the meaning of section 57A of this Act; and
- (b) the defendant has been duly served with a summons but does not appear at the time and place appointed for the hearing or determination of the complaint or at a time and place at which the complaint is subsequently heard or determined, or, in the case of a complaint and summons served under section 57A of this Act, he neither so appears nor pleads guilty in the manner provided by that section,

the court may proceed *ex parte* to adjudicate upon the complaint in the manner provided by, and subject to the conditions in, section 62 of this Act, but may in so doing regard any allegation contained in the summons, or complaint and summons, (as served upon the defendant) as sufficient evidence of the matter alleged.

(1a) If the court finds the charge proved, the prosecutor may recite to the court any relevant matters alleged against the defendant in the same way as if the defendant had personally appeared and pleaded guilty.

(2) Allegations are contained in a summons, or complaint and summons, for the purposes of subsection (1) of this section if they are contained in, annexed to, or accompany, the summons or complaint and summons.

(3) The allegations referred to in subsection (1) of this section may include particulars of the alleged offence and of the circumstances in which it is alleged to have been committed.

(4) Where a complaint purports to have been made by a public authority or public officer within the meaning of section 57A of this Act, it shall be presumed to have been so made in the absence of proof to the contrary.

(5) The provisions of this section are supplementary to, and do not derogate from, any other statutory provisions regulating the hearing and determination of a complaint.

***Ex parte* proceedings**

62C. (1) Where a defendant fails to appear in obedience to a summons and is convicted (whether upon a plea of guilty under section 57A of this Act or after an *ex parte* hearing) the court shall not impose upon the defendant—

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- (a) any disqualification from holding or obtaining a licence to drive a motor vehicle; or
- (b) any sentence of imprisonment,

unless the court has first adjourned the hearing of the complaint to a time and place appointed and stated by the court in order to enable the defendant to appear for the purpose of making submissions on the question of penalty.

(2) The Registrar shall forthwith after such adjournment either personally or by post give written notice to the defendant on the form prescribed by the rules, informing him of the purpose for which the hearing of the complaint was adjourned and of his right to be heard at the adjourned hearing.

(3) If at the time and place so appointed—

- (a) the defendant appears; or
- (b) the defendant fails to appear and it is proved that the notice in writing was served on him either personally or by post,

the court may, according to the circumstances, order that he be imprisoned or disqualified from holding or obtaining a licence to drive a motor vehicle, or both.

(3a) If it appears to the court that, after making due inquiry and exercising reasonable diligence, the Registrar was unable to give a defendant the notice referred to in subsection (2) of this section, the court may, notwithstanding any other provision of this section, proceed to determine the question of penalty and make its order thereon as fully and effectually as if the defendant had been duly given the notice.

(4) Service by post under this section may be effected by notice addressed to the defendant at the address shown on the summons or the form pleading guilty under section 57A and shall be deemed to be effected at the time at which such notice would in the ordinary course of post be delivered at the address of the defendant.

(5) The contents of a notice, including the date of postage and service, may be proved by the production of a document purporting to be a copy of the notice and having endorsed thereon a certificate purporting to be signed by the Registrar to the effect that the document is a true copy of the notice served on or posted to the defendant named therein at the address and on the day stated therein, and that in the ordinary course of post the notice would be delivered at the defendant's address on the day stated therein.

(6) Where a hearing is adjourned under subsection (1), the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

Proof of previous convictions

62D. (1) Where a defendant is served, at least three days before the hearing of the complaint, with a notice signed by the complainant and—

- (a) stating particulars of any previous convictions of the defendant; and
- (b) stating that those particulars may be alleged against him at the hearing of the complaint,

the prosecutor may, after the court has convicted the defendant of the offence alleged in the complaint, tender a copy of the notice in evidence before the court.

(2) The court may regard an allegation contained in any such notice as sufficient evidence of the matter alleged.

(3) A notice under this section may be served personally or by post.

(4) If the prosecution tenders a copy of a notice under this section as evidence of convictions, it is not precluded from tendering other evidence of the same or other convictions.

Non-appearance of complainant

63. (1) If the defendant appears in obedience to the summons, or is brought before the court by virtue of any warrant, then if the complainant, having had due notice, does not appear in person or by his counsel or solicitor, the court shall dismiss the complaint, unless for some reason it thinks proper to adjourn the hearing.

* * * * *

If both parties appear, court to hear and determine the case

64. If both parties appear before the court, either in person or by their respective counsel or solicitors, then the court shall proceed to hear and determine the matter of the complaint.

* * * * *

When defendant pleads guilty, court to convict or make an order

67. (1) When the defendant is present at the hearing the substance of the complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted or why an order should not be made against him (as the case may be).

(2) If the defendant admits the truth of the complaint, and shows no sufficient cause why he should not be convicted, or why an order should not be made against him, the court shall convict him or make an order against him accordingly.

Procedure on plea of not guilty

68. (1) If the defendant does not admit the truth of the complaint the court shall proceed to hear—

- (a) the complainant and his witnesses and any other evidence which he adduces in support of his complaint; and
- (b) the defendant and his witnesses and any other evidence which he adduces in his defence; and
- (c) any evidence which the complainant adduces in reply if the defendant adduces any evidence other than as to his, the defendant's, general character.

(2) Subject to the provisions of section 12 of the *Evidence Act 1929* every witness shall be examined upon oath.

(3) The practice before the Court upon the hearing of any complaint with respect to the examination and cross-examination of witnesses and the right of addressing the court in reply, or otherwise, shall be in accordance, as nearly as may be, with the practice for the time being of the Supreme Court upon the trial of an action.

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After hearing the parties court to convict or dismiss

69. When the parties and their evidence have been heard, the court shall consider the whole matter and determine the same, and shall convict or make an order against the defendant or dismiss the complaint, as the case may require: Provided that the court may, at any time before the matter has been finally determined, without determining the same permit the complaint to be withdrawn, upon such terms (if any) as it thinks fit.

Examination of defendant

69A. (1) Where the Court finds proved any matter alleged in a complaint (not being a charge of an offence), the court may order that the defendant be examined by a physician, psychiatrist or psychologist directed by the court to conduct the examination and that the defendant submit to the examination.

(2) Before making any other order in respect of the defendant, the court may consider and act upon a report on the defendant prepared by the person who conducted the examination: Provided that before the order is made—

- (a) the contents of the report shall be made known to the defendant, or his counsel or solicitor, if the defendant or his counsel or solicitor so requests;
- (b) the defendant, or his counsel or solicitor shall, if he so desires, be given an opportunity of cross-examining the person who prepared the report on the matters therein dealt with;
- (c) the court shall, if so required by the defendant, or his counsel or solicitor, procure the attendance of that person before the court for cross-examination.

(3) For the purpose of enabling the defendant to be examined as mentioned in this section, the court may order that the defendant be taken to a suitable place for the examination.

(4) This section shall not apply where the defendant is a child under the age of eighteen years.

DIVISION 4—JUDGMENT

The Conviction or order

Conviction to be minuted

70. When the court convicts or makes an order against the defendant a minute or memorandum of the conviction or order shall then be made.

No fee shall be paid for any such minute or memorandum.

Convictions where charges joined in the complaint

70A. (1) Where charges for more than one offence have been joined in the same complaint, pursuant to this Act, the court may—

- (a) convict the defendant of such one or more of those offences as it finds proved:
- (b) include any number of offences in a minute or memorandum of conviction or in any formal conviction.

(2) This section shall apply notwithstanding anything contained in the Special Act.

* * * * *

Conviction for attempt where full offence charged

70B. If upon the trial of a person charged with an offence (whether a summary offence or a minor indictable offence) it appears to the court upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit that offence, the court may convict him of an attempt to commit the offence charged and thereupon he shall be liable to be punished in the same manner as if he had been convicted upon a complaint for such an attempt.

Order and certificate of dismissal

71. (1) If the court dismisses the complaint a minute or memorandum shall be made as aforesaid, and the court may, on being required to do so and if it thinks fit, draw up an order of dismissal and give the defendant a certificate thereof.

(2) A certificate of dismissal shall, upon production and without further proof, be a bar to any subsequent complaint for the same matter against the same party.

* * * * *

Application to have conviction or order of a court of summary jurisdiction set aside

Power to set aside conviction or order

76A. (1) The Court may, on its own initiative or on the application of any party, set aside a conviction or order.

(2) An application to set aside a conviction or order under this section must be made within 14 days after the applicant receives notice of the conviction or order.

(3) The Court may set aside a conviction or order under this section if satisfied—

(a) that the parties consent to have it set aside; or

(b) that the conviction or order was made in error; or

(c) that it is in the interests of justice to set aside the conviction or order.

(4) Where the Court sets aside a conviction or order under this section it may, without further formality—

(a) proceed to re-hear the proceedings in which the conviction or order was made; or

(b) adjourn the proceedings for subsequent re-hearing.

Correction of conviction or order

76B. The Court may, on its own initiative or on the application of any party, correct an error in a conviction or order.

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DIVISION 7—RESTRAINING ORDERS

Restraining orders

99. (1) On a complaint under this Division, the Court may make a restraining order against the defendant if—

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- (a) there is a reasonable apprehension that the defendant may, unless restrained, cause personal injury or damage to property or behave in an intimidating or offensive manner; and
- (b) the Court is satisfied that the making of the order is appropriate in the circumstances.

(2) For the purposes of this section, a defendant behaves in an intimidating or offensive manner if on two or more separate occasions—

- (a) the defendant follows a person; or
- (b) the defendant loiters outside the place of residence of a person or some other place frequented by the person; or
- (c) the defendant enters or interferes with property occupied by, or in the possession of, a person; or
- (d) the defendant—
 - (i) gives or sends offensive material to a person or leaves offensive material where it will be found by, given to, or brought to the attention of a person; or
 - (ii) publishes or transmits offensive material by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, a person; or
- (da) the defendant communicates with a person, or to others about a person, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication; or
- (e) the defendant keeps a person under surveillance; or
- (f) the defendant takes any other action in relation to a person or a person's property,

so as to reasonably arouse in the person apprehension or fear of personal injury or damage to property or any significant apprehension or fear.

(2a) The Court may—

- (a) in determining whether there is a reasonable apprehension that the defendant may, unless restrained, cause personal injury or damage to property or behave in an intimidating or offensive manner, take into account events that have taken place outside of this State; and
- (b) make a restraining order against a defendant whether resident in or outside of this State.

(2ab) For the purposes of this section, the circumstances of a dealing with material may be taken into account in determining whether the material was offensive material but, if material was inherently offensive material, the circumstances of a dealing with the material cannot be taken to have deprived it of that character.

(2b) If a defendant disputes some or all of the grounds on which a restraining order is sought or made but consents to the order, the Court may make or confirm the order without receiving any further submissions or evidence as to the grounds.

(3) A restraining order may impose such restraints on the defendant as are necessary or desirable to prevent the defendant acting in the apprehended manner.

(3a) Without limiting the effect of subsection (3), if the defendant has possession of a weapon or article (other than a firearm) that has been used, or that there is some reason to believe might be used, by the defendant to threaten or injure a person or to damage property, a restraining order may—

- (a) order that the weapon or article be confiscated and disposed of or dealt with as directed by the Court; and
- (b) if the circumstances of the case so require—authorise a member of the police force to enter any premises in which such a weapon or article is suspected to be, and search for and take possession of the weapon or article.

(3b) If a restraining order that includes an order for the confiscation of a weapon or article is subject to confirmation and the restraining order is not confirmed, any weapon or article confiscated under the order must be returned to the defendant.

(4) The Court may make a restraining order restraining the defendant from entering premises, or limiting the defendant's access to premises, whether or not the defendant has a legal or equitable interest in the premises.

(5) In considering whether or not to make a restraining order and in considering the terms of the order, the Court must have regard to—

- (a) the welfare of any children who may be affected by the order; and
- (b) the accommodation needs of any person who may be affected by the order; and
- (c) any relevant family contact order of which the Court has been informed; and
- (d) how the restraining order would be likely to affect contact (in accordance with a relevant family contact order or otherwise) between—
 - (i) the person for whose benefit, or against whom, the order is sought; and
 - (ii) any child of, or in the care of, either of those persons.

(6) The complainant must inform the Court of any relevant family contact order, or any pending application for a relevant family contact order, of which the complainant is aware (but a restraining order is not invalid merely because the complainant fails to so inform the Court).

Paedophile restraining orders

99AA. (1) On a complaint under this Division, the Court may make a restraining order against the defendant if—

- (a) the defendant has been found loitering near children; and
- (b) —
 - (i) the defendant has been found guilty of a child sexual offence within the previous five years; or

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- (ii) the defendant, having been sentenced to imprisonment for a child sexual offence, has been released from prison within the previous five years; or
 - (iii) the defendant has been found loitering near children on at least one previous occasion and there is reason to think that the defendant may, unless restrained, again loiter near children; and
- (c) the Court is satisfied that the making of the order is appropriate in the circumstances.
- (2) A restraining order under this section may restrain the defendant from—
- (a) loitering near children at or in the vicinity of a specified place or class of places or in specified circumstances; or
 - (b) loitering near children in any circumstances.
- (3) In considering whether or not to make a restraining order under this section and in considering the terms of the restraining order, the Court must have regard to the following:
- (a) whether the defendant's behaviour has aroused, or may arouse, reasonable apprehension or fear in a child or other person;
 - (b) whether there is reason to think that the defendant may, unless restrained, commit a child sexual offence or otherwise act inappropriately in relation to a child;
 - (c) the prior criminal record (if any) of the defendant;
 - (d) any evidence of sexual dysfunction suffered by the defendant;
 - (e) any apparent pattern in the defendant's behaviour, any apparent connection between the defendant's behaviour and the presence of children and any apparent justification for the defendant's behaviour;
 - (f) any other matter that, in the circumstances of the case, the Court considers relevant.
- (4) For the purposes of this section—
- (a) a defendant **loiters near children** if—
 - (i) the defendant loiters, without reasonable excuse, at or in the vicinity of a school, public toilet or place at which children are regularly present; and
 - (ii) children are present at the school, toilet or place at the time of the loitering; and
 - (b) a **child sexual offence** means any of the following offences committed against or in relation to a child under 16 years of age (including a substantially similar offence against the law of another place):
 - (i) rape;
 - (ii) indecent assault;
 - (iii) incest;
 - (iv) an offence involving unlawful sexual intercourse;

- (v) an offence involving an act of gross indecency;
- (vi) an offence involving child prostitution;
- (vii) an offence involving indecency or sexual misbehaviour including an offence against section 58A of the *Criminal Law Consolidation Act 1935* or against section 23 or 33 of the *Summary Offences Act 1953*;
- (viii) an attempt to commit, or assault with intent to commit, any of the offences referred to in the above subparagraphs;
- (ix) any other offence (such as homicide or abduction), if there are reasonable grounds to believe that any of the offences referred to in the above subparagraphs was also committed by the same person against or in relation to the child in the course of, or as part of events surrounding, the commission of the offence.

Complaints

99A. A complaint may be made—

- (a) by a member of the police force; or
- (b) by a person against whom, or against whose property, the behaviour that forms the subject matter of the complaint has been, or may be, directed.

Complaints by telephone

99B. (1) A complaint may be made and dealt with by telephone as follows:

- (a) the complainant must be—
 - (i) a member of the police force who establishes his or her identity and official position in a manner acceptable to the Court; or
 - (ii) a person introduced by a member of the police force who establishes his or her identity and official position in a manner acceptable to the Court;
- (b) the Court must satisfy itself (as far as practicable) that the complaint is genuine, and that the case is of sufficient urgency to justify making a restraining order without requiring the personal attendance of the complainant, by the oral questioning of the complainant and any other available witnesses by telephone;
- (c) if the Court is then satisfied that it is appropriate to make a restraining order, the member of the police force who made the complaint or introduced the complainant—
 - (i) must make out, in accordance with directions communicated by the Court by telephone, a document in the form required by the rules comprising—
 - (A) the terms of the Court's order; and
 - (B) a summons requiring the defendant to appear before the Court at a specified time and place to show cause why the order should not be confirmed; and
 - (ii) must return a copy of the completed document, or send it by facsimile, to the Court;

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(d) if the Court is not satisfied that it is an appropriate case for making a restraining order without requiring the personal attendance of the complainant, the Court may adjourn the hearing of the complaint to a time and place fixed by the Court and inform the complainant of the time and place so fixed.

(2) Proceedings conducted by telephone under this section—

(a) need not be open to the public;

(b) must be recorded by audio tape or other form of recording from which sound can be produced.

(3) The Court may, from time to time without requiring the attendance of any party, adjourn the hearing to which a defendant is summoned under subsection (1)(c) to a later date if satisfied that the summons has not been served or that there is other adequate reason for the adjournment.

(4) The date fixed in the first instance for the hearing to which a defendant is summoned under subsection (1)(c) must be within 7 days of the date of the order, and the date fixed under subsection (3) for an adjourned hearing must be within 7 days of the date on which the adjournment is ordered, unless the Court is satisfied—

(a) that a later date is required to enable the summons to be served; or

(b) that there is other adequate reason for fixing a later date.

(5) A restraining order issued on a complaint made by telephone without requiring the personal attendance of the defendant—

(a) continues in force until the conclusion of the hearing to which the defendant is summoned, or, if the hearing is adjourned, until the conclusion of the adjourned hearing; but

(b) will not be effective after the conclusion of the hearing to which the defendant is summoned, or the adjourned hearing, unless the Court confirms the order—

(i) on failure of the defendant to appear at the hearing in obedience to the summons; or

(ii) having considered any evidence given by or on behalf of the defendant; or

(iii) with the consent of the defendant.

(5a) The Court may confirm a restraining order in an amended form.

(6) If a hearing is adjourned under this section, the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

(7) If a member of the police force has reason to believe that a complaint is being or is about to be made against a person by telephone, the member may—

(a) require the person to remain at a particular place while the complaint is made and dealt with so that any order or summons made or issued on the complaint may be served on the person; and

- (b) if the person refuses or fails to comply with the requirement or the member has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for—
 - (i) so long as may be necessary for the complaint to be made and dealt with and any order or summons made or issued to be served on the person; or
 - (ii) two hours,whichever is the lesser.

Issue of restraining order in absence of defendant

99C. (1) A restraining order may be made in the absence of the defendant if the defendant was required by summons or conditions of bail to appear at the hearing of the complaint and failed to appear in obedience to the summons.

(2) A restraining order may be made in the absence of the defendant and despite the fact that the defendant was not summoned to appear at the hearing of the complaint, but in that case, the Court must summon the defendant to appear before the Court to show cause why the order should not be confirmed.

(3) The Court may make an order under subsection (2) on the basis of evidence received in the form of an affidavit but, in that case—

- (a) the deponent must, if the defendant so requires, appear personally at the proceedings for confirmation of the order to give oral evidence of the matters referred to in the affidavit; and
- (b) if the deponent does not appear personally to give evidence in pursuance of such a requirement, the Court may not rely on the evidence contained in the affidavit for the purpose of confirming the order.

(4) The Court may, from time to time without requiring the attendance of any party, adjourn the hearing to which a defendant is summoned under subsection (2) to a later date if satisfied that the summons has not been served or that there is other adequate reason for the adjournment.

(5) The date fixed in the first instance for the hearing to which a defendant is summoned under subsection (2) must be within 7 days of the date of the order, and the date fixed under subsection (4) for an adjourned hearing must be within 7 days of the date on which the adjournment is ordered, unless the Court is satisfied—

- (a) that a later date is required to enable the summons to be served; or
- (b) that there is other adequate reason for fixing a later date.

(6) A restraining order made under subsection (2)—

- (a) continues in force until the conclusion of the hearing to which the defendant is summoned or, if the hearing is adjourned, until the conclusion of the adjourned hearing; but
- (b) will not be effective after the conclusion of the hearing to which the defendant is summoned, or the adjourned hearing, unless the Court confirms the order—

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- (i) on failure of the defendant to appear at the hearing in obedience to the summons; or
- (ii) having considered any evidence given by or on behalf of the defendant; or
- (iii) with the consent of the defendant.

(7) The Court may confirm a restraining order in an amended form.

(8) If a hearing is adjourned under this section, the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

Firearms orders

99D. (1) Subject to subsection (2), when the Court makes a restraining order under section 99, it must also make the following supplementary orders:

- (a) if the defendant has possession of a firearm—
 - (i) an order that the firearm be confiscated, and disposed of or dealt with as directed by the Court; and
 - (ii) if the circumstances of the case so require—an order authorising a member of the police force to enter any premises in which such a firearm is suspected to be, and search for and take possession of any such firearm; and
- (b) if the defendant has a licence or permit to be in possession of a firearm—an order that the licence or permit be cancelled and delivered up to the Registrar of Firearms; and
- (c) an order that the defendant be disqualified from holding or obtaining a licence or permit to be in possession of a firearm; and
- (d) an order that the defendant be prohibited from possessing a firearm in the course of his or her employment.

(2) If the restraining order is subject to confirmation—

- (a) an order for confiscation of a firearm must provide for the return of any confiscated firearm to the defendant if the restraining order is not confirmed; and
- (b) if the defendant has a licence or permit to be in possession of a firearm—an order will be made in the first instance for the suspension of the licence or permit until the court determines whether to confirm the restraining order, but if the restraining order is confirmed, an order must then be made for the cancellation of the licence or permit and its delivery up to the Registrar of Firearms; and
- (c) an order disqualifying the defendant from holding or obtaining a licence or permit to be in possession of a firearm will lapse if the restraining order is not confirmed; and
- (d) an order prohibiting the defendant from possessing a firearm in the course of his or her employment will lapse if the restraining order is not confirmed.

Service

99E. (1) A restraining order must be served on the defendant personally and is not binding on the defendant until it has been so served.

(2) If a restraining order is confirmed in an amended form or is varied before being confirmed or at any other time, the order in its amended form must be served on the defendant personally and until so served—

- (a) the variation is not binding on the defendant; but
- (b) the order as in force prior to the variation continues to be binding on the defendant.

(3) If a member of the police force has reason to believe that a person is subject to a restraining order that has not been served on the person, the member may—

- (a) require the person to remain at a particular place for—
 - (i) so long as may be necessary for the order, and, if the order is subject to confirmation, the summons to appear before the Court to show cause why the order should not be confirmed, to be served on the person; or
 - (ii) two hours,whichever is the lesser; and
- (b) if the person refuses or fails to comply with the requirement or the member has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (a).

(4) The Court may, when making a firearms order, order that a member of the police force, the complainant or the defendant serve a copy of the firearms order on an employer of the defendant specified by the Court in whose employment the Court has reason to believe the defendant may be supplied with or have access to a firearm.

Variation or revocation of restraining order

99F. (1) The Court may vary or revoke a restraining order on application—

- (a) by a member of the police force; or
- (b) by the person for whose benefit the order was made; or
- (c) by the defendant.

(1a) An application for variation or revocation of a restraining order may only be made by the defendant with the leave of the Court and leave is only to be granted if the Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.

(2) A firearms order cannot be revoked unless the Court is satisfied—

- (a) that the restraining order should be revoked in its entirety; or
- (b) that the defendant has never been guilty of violent or intimidatory conduct and needs to have a firearm for purposes related to earning a livelihood.

(3) The Court must, before varying or revoking a restraining order under this section—

- (a) allow all parties a reasonable opportunity to be heard on the matter; and

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- (b) have regard to the same factors that the Court is required to have regard to in considering whether or not to make a restraining order and in considering the terms of a restraining order.

Notification of making, etc., of restraining orders

99G. (1) Where a restraining order is made, the Principal Registrar must forward a copy of the order to the Commissioner of Police and, if the complainant is not a member of the police force, the complainant.

(2) Where a restraining order is varied or revoked, the Principal Registrar must notify the Commissioner of Police, and, where the complainant is not a member of the police force, the complainant, of the variation or revocation.

Registration of foreign restraining orders

99H. (1) The Principal Registrar may, subject to the rules, register a foreign restraining order in the Court.

(2) Subject to subsection (3), a registered foreign restraining order has the same effect, and may be enforced in the same way, as a restraining order made under this Division.

(3) The Court may—

(a) give such directions; and

(b) make such adaptations or modifications to the order (as it applies in this State),

as the Court considers necessary or desirable for the effective operation of the order in this State.

(4) The Court may—

(a) vary a registered foreign restraining order as it applies in this State; or

(b) cancel the registration of a foreign restraining order,

at any time on application—

(c) by a member of the police force; or

(d) by the person for whose benefit the order was made; or

(e) by the person against whom the order was made.

(5) If a foreign restraining order is registered under this section, the Principal Registrar must forward a copy of the order to the Commissioner of Police.

(6) If the Court varies a registered foreign restraining order as it applies in this State, or cancels the registration of the order, the Principal Registrar must notify the Commissioner of Police of the variation or cancellation.

Offence to contravene or fail to comply with restraining order

99I. (1) A person who contravenes or fails to comply with a restraining order or a registered foreign restraining order is guilty of an offence.

Penalty: Division 5 imprisonment.

(2) If a member of the police force has reason to suspect that a person has committed an offence against subsection (1), the member may, without warrant, arrest and detain that person.

(3) A person arrested and detained under subsection (2) must be brought before the Court as soon as practicable, and, in any event, not more than 24 hours after arrest, to be dealt with for the offence.

(4) In calculating the time that has elapsed since arrest for the purposes of subsection (3), no period falling on a Saturday, Sunday or public holiday will be counted.

Complaints or applications by or on behalf of child

99J. A complaint or application that could otherwise be made by a person under this Division may, if the person is a child, be made—

- (a) by the child with the leave of the Court, if the child has attained the age of 14 years; or
- (b) on behalf of the child—
 - (i) by a parent or guardian of the child; or
 - (ii) by a person with whom the child normally or regularly resides.

Burden of proof

99K. In proceedings under this Division other than for an offence, the Court is to decide questions of fact on the balance of probabilities.

Relation to Domestic Violence Act

99L. A complaint made under this Division that could have been made under the *Domestic Violence Act 1994* may be dealt with as if it had been made under that Act.

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**PART 5
INDICTABLE OFFENCES**

DIVISION 1—CHARGES OF INDICTABLE OFFENCES

Information of indictable offence

101. (1) Where a person is suspected of having committed an indictable offence triable in this State, an information may be laid, in accordance with the rules, charging that person with that offence.

(2) If the information is laid orally, it must be reduced to writing.

(3) An information must be filed in the Court as soon as practicable after it is laid.

Joinder and separation of charges

102. (1) A person may be charged with any number of offences in the same information (either cumulatively or in the alternative) if the charges arise from the same set of circumstances or from a series of circumstances of the same or a similar character.

(2) The charges joined in the same information under subsection (1) may include charges of the following three classes or any two of those classes:

(a) major indictable offences;

(b) minor indictable offences;

(c) summary offences.

(3) Subject to subsection (3a) if an information contains a charge of a major indictable offence, all charges of minor indictable or summary offences included in the same information will be dealt with according to the procedures applicable to major indictable offences and if the information includes a charge of a minor indictable offence, but no charge of a major indictable offence, all charges of summary offences included in the same information will be dealt with according to the procedures applicable to minor indictable offences (but the penalty that may be awarded for an offence is unaffected by the fact that the offence is dealt with according to procedures applicable to offences of a more serious class).

(3a) Where a person has been committed to a superior court for trial on an information which includes charges for both indictable offences and summary offences, the superior court may, if it thinks fit, order that the charges of summary offences be remitted to the Magistrates Court and dealt with in the same way as if the offences had been charged in a complaint.

(4) The Court may direct that—

(a) charges contained in a single information be dealt with in separate proceedings; or

(b) charges contained in separate informations be dealt with together in the same proceedings.

Procedure in the Magistrates Court

103. (1) Where an information charging an indictable offence has been filed in the Court—

(a) if the defendant is in custody—the Court may remand the defendant in custody or on bail to appear before the Court at a nominated time and place to answer the charge;

- (b) if the defendant is not in custody—
 - (i) the Court may, if the charge has been substantiated on oath, issue a warrant to have the defendant arrested and brought before the Court and then, on the appearance of the defendant, remand him or her in custody or on bail to appear at a nominated time and place to answer the charge; or
 - (ii) the Court may appoint a time and place for the defendant to appear to answer the charge and issue a summons requiring the defendant to appear at the time and place so appointed.

(2) The defendant must be provided with a copy of the information and, if the defendant is charged with a minor indictable offence, the appropriate form for electing for trial in a superior court.

(3) If a defendant charged with a minor indictable offence does not elect, in accordance with the rules, for trial in a superior court, the charge will be dealt with in the same way as a charge of a summary offence.

(3a) However, in determining and imposing sentence, the Court is to observe procedural rules specifically applicable to indictable offences.¹

¹ See in particular, section 9B of the *Criminal Law (Sentencing) Act 1988*.

- (4) Where—
 - (a) two or more people are charged with committing a crime jointly; and
 - (b) one or more of the defendants elect for trial in a superior court; and
 - (c) one or more of the defendants fail to elect for trial in a superior court,

the Court may order that the defendants who have failed to elect for trial in a superior court be committed for trial in a superior court with the defendants who have so elected.

DIVISION 2—PRELIMINARY EXAMINATION OF CHARGES

Preliminary examination of charges of indictable offences

104. (1) Where a charge of an indictable offence is to proceed to a preliminary examination, the prosecutor must at least 14 days before the date appointed for the defendant's appearance to answer the charge—

- (a) file in the Court in accordance with the rules—
 - (i) statements of witnesses for the prosecution on which the prosecutor relies as tending to establish the guilt of the defendant; and
 - (ii) copies of any documents on which the prosecutor relies as tending to establish the guilt of the defendant (other than documents that, in the opinion of the prosecutor, are only of peripheral relevance to the subject matter of the charge); and
 - (iii) a document describing any other evidentiary material (including documents of peripheral relevance that have not been filed in the Court) on which the prosecutor relies as tending to establish the guilt of the defendant together with a statement of the significance that the material is alleged to have; and

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- (iv) any other material relevant to the charge that is available to the prosecution; and
- (b) give personally or by post to the defendant or a legal practitioner representing the defendant copies of all documentary material filed under paragraph (a).

(2) If material of the kind referred to above comes into the prosecutor's possession after the time appointed for filing in the Court and giving copies to the defendant or the defendant's legal representative, the prosecutor must comply with the above requirements in relation to that material as soon as practicable after it comes into the prosecutor's possession.

(3) A statement filed in the Court—

- (a) must be in the form of a written statement verified by declaration in the form prescribed by the rules; and
- (b) if—
 - (i) the statement is tendered for the prosecution and relates to an interview between an investigating officer and the defendant; and
 - (ii) a videotape or audiotape recording of the interview, or the reading over of a written record of the interview, was made under the *Summary Offences Act 1953*,¹

must be accompanied by a copy of the videotape or audiotape.

¹ See section 74D of the *Summary Offences Act 1953*. The videotape or audiotape referred to here should be distinguished from the videotape or audiotape of an interview with a young child or a person who is illiterate or suffers from an intellectual handicap. (See subsection (4).) The *Summary Offences Act 1953* establishes its own scheme under which a defendant may obtain access to a videotape or audiotape recording of an interview with the defendant under that Act. Hence there is no separate provision in this section for access to the recording (although the defendant is entitled to copies of the witness's statement and accompanying *documentary* material under subsection (1)(b)). However, where the witness is a young child, or a person who is illiterate or who suffers from an intellectual handicap, subsection (4) provides for access to the contents of the videotape or audiotape.

(4) However, if the witness is a child under the age of 12 years or a person who is illiterate or suffers from an intellectual handicap, the following provisions apply:

- (a) the witness's statement may be—
 - (i) in the form of a written statement taken down by an investigating officer at an interview with the witness and verified by the officer as an accurate record of the witness's oral statements at the interview so far as they are relevant to the subject matter of the charge; or
 - (ii) in the form of a videotape or audiotape record of an interview with the witness that is accompanied by a written transcript verified by an investigating officer who was present at the interview as a complete record of the interview; and
- (b) if a videotape or audiotape is filed in the Court under paragraph (a)(ii), the prosecutor must—
 - (i) provide the defendant with a copy of the verified written transcript of the tape at least 14 days before the date appointed for the defendant's appearance to answer the charge or, if the tape comes into the prosecutor's possession on a later date, as soon as practicable after the tape comes into the prosecutor's possession; and

- (ii) inform the defendant that the defendant is entitled to have the tape played over to the defendant or his or her legal representative (or both) and propose a time and place for the playing over of the tape; and
- (c) the time proposed for playing the tape must be at least 14 days before the date appointed for the defendant's appearance to answer the charge or, if the tape comes into the prosecutor's possession at a later date, as soon as practicable after the tape comes into the prosecutor's possession (but the time and place may be modified by agreement).

* * * * *

(6) If—

- (a) a statement filed in the Court under this section is false or misleading in a material particular; and
- (b) the person by whom the statement was made—
 - (i) knew that the statement was to be used for the purposes of a prosecution; and
 - (ii) knew that the statement was false or misleading,

that person is guilty of an offence.

Penalty: Division 5 imprisonment.

Procedure at preliminary examination

105. (1) In cases where the defendant does not appear personally at a preliminary examination to answer the charge, the Court will proceed with a preliminary examination as follows:

- (a) if the defendant has, in accordance with the rules, returned a written plea admitting the charge, the Court will commit the defendant to a superior Court for sentence;
- (b) if the defendant neither returns a written plea in accordance with the rules nor appears personally to answer the charge, the Court may—
 - (i) issue a summons requiring the defendant to appear at a nominated time and place to answer the charge (and if the defendant then fails to appear, issue a warrant to have the defendant arrested and brought before the Court); or
 - (ii) issue a warrant to have the defendant arrested and brought before the Court to answer the charge; or
 - (iii) if there is reason to believe that the defendant has absconded, or there is some other good reason for proceeding in the absence of the defendant—proceed with the preliminary examination as if the defendant had appeared and denied the charge.

(2) In cases where the defendant appears personally at a preliminary examination to answer the charge, the Court will proceed as follows:

- (a) the charge will be read and the defendant will be asked how he or she pleads to it;

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(b) the defendant may then—

- (i) admit the charge;
- (ii) deny the charge;
- (iii) assert previous conviction or acquittal of the charge,

and if the defendant refuses or fails to plead to the charge, he or she will be taken to have denied the charge;

(c) the Court will then proceed as follows:

- (i) if the defendant admits the charge—the defendant will be committed to a superior Court for sentence;
- (ii) if the defendant denies the charge—the Court will consider the evidence for the purpose of determining whether it is sufficient to put the defendant on trial for an offence;
- (iii) if the defendant asserts previous conviction or acquittal, the Court will reserve the questions raised by the plea for consideration by the Court of trial and proceed with the preliminary examination as if the defendant had denied the charge.

(3) The Court may exclude a defendant from a preliminary examination if his or her conduct is disruptive and may excuse a defendant from attendance at a preliminary examination for any proper reason.

(4) A defendant who has elected for trial of a minor indictable offence by a superior court may at any time before the conclusion of the preliminary examination withdraw the election and in that event—

- (a) the charge will be dealt with in the same way as a charge of a summary offence; and
- (b) the Court may, if the defendant agrees, admit evidence given or tendered at the preliminary examination.

(4a) However, in determining and imposing sentence, the Court is to observe procedural rules specifically applicable to indictable offences.¹

¹ See in particular, section 9B of the *Criminal Law (Sentencing) Act 1988*.

(5) A defendant who has pleaded to a charge at or before a preliminary examination may withdraw the plea and substitute some other plea before the conclusion of the preliminary examination.

Taking of evidence at preliminary examination

106. (1) Where a charge is not admitted by a defendant at a preliminary examination, the following procedure applies:

- (a) the prosecutor will tender the statements and other material filed in the Court and the Court will, subject to any objections as to admissibility upheld by the Court, admit them in evidence;

- (b) the prosecutor will call a witness whose statement has been filed in the Court for oral examination if—
 - (i) the defence has given notice, in accordance with the rules, that it requires production of that witness; and
 - (ii) the Court grants leave to call that witness for oral examination;
- (c) the prosecutor may, by leave of the Court, call oral evidence in support of the case for the prosecution;
- (d) the defendant may give or call evidence;
- (e) the prosecutor may call evidence in rebuttal of evidence given for the defence.

(2) The Court will not grant leave to call a witness for oral examination under subsection (1) unless it is satisfied that there are special reasons for doing so.

(3) In determining whether special reasons exist for granting leave to call a witness for oral examination, the Court must have regard to—

- (a) the need to ensure that the case for the prosecution is adequately disclosed; and
- (b) the need to ensure that the issues for trial are adequately defined; and
- (c) the Court's need to ensure (subject to this Act) that the evidence is sufficient to put the defendant on trial; and
- (d) the interests of justice,

but if the witness is the victim of an alleged sexual offence or a child under the age of 12 years, the Court must not grant leave unless satisfied that the interests of justice cannot be adequately served except by doing so.

(4) If a witness is called for oral examination the usual oath will be administered (unless the witness is not liable to the obligation of an oath) and the witness will be examined, cross-examined and re-examined in the usual manner.

Evaluation of evidence at preliminary examination

107. (1) The following principles govern the Court's approach to evidence at a preliminary examination:

- (a) evidence will be regarded as sufficient to put the defendant on trial for an offence if, in the opinion of the Court, the evidence, if accepted, would prove every element of the offence;
- (b) although the Court may reject evidence if it is plainly inadmissible, the Court will, if it appears that arguments of substance can be advanced for the admission of evidence, admit the evidence for the purpose of the preliminary examination, reserving any dispute as to its admissibility for determination by the Court of trial.

(2) If the Court, after completing its consideration of the evidence, is of the opinion that the evidence is not sufficient to put the defendant on trial for any offence, the Court will—

- (a) reject the information; and

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- (b) if the defendant is in custody on the charges contained in the information (and for no extraneous reason)—order that the defendant be discharged from custody.
- (3) If, after completing consideration of the evidence, the Court is of the opinion that the evidence is sufficient to put the defendant on trial for an offence—
 - (a) the Court will review the charges, as laid in the information, in order to ensure that they properly correspond to the offences for which there is, in the opinion of the Court, sufficient evidence to put the defendant on trial and make any necessary amendment to the information; and
 - (b) following the review of the charges—
 - (i) if the defendant stands charged with a major indictable offence—the Court will commit the defendant to a superior Court for trial;
 - (ii) if the defendant stands charged with a minor indictable offence but with no major indictable offence—the Court will, if the defendant has not previously elected for trial by a superior court on that charge, allow the defendant a reasonable opportunity to do so and, if the defendant does so elect, will commit the defendant to a superior Court for trial but otherwise will proceed to deal with the charge in the same way as a charge of a summary offence;
 - (iii) if the defendant stands charged with a summary offence but with no indictable offence—the Court will proceed to deal with the charge in the same way as if the proceedings had been commenced on complaint.
- (4) The Court will not proceed to deal with a charge of a minor indictable offence in the same way as a charge of a summary offence unless it has satisfied itself that the defendant fully understands that he or she is entitled to elect for trial by jury.
- (5) Where the Court commits a defendant for trial the Court must inform the defendant of his or her obligation to give notice of evidence of alibi that the defendant may desire to adduce at the trial and provide the defendant with a written statement explaining that obligation.
- (6) If in any legal proceedings the question arises whether a defendant has been provided with the information and statement required by subsection (5), it will be presumed, in the absence of proof to the contrary, that the defendant has been provided with that information and statement.

DIVISION 3—FORUM FOR TRIAL OR SENTENCE

Forum for sentence

108. Where the Court is to commit a defendant to a superior Court for sentence, the following principles govern the choice of forum:

- (a) the defendant should be committed for sentence in the Supreme Court if—
 - (i) the admitted offence is treason, murder, or an attempt or conspiracy to commit, or assault with intent to commit, either of those offences; or
 - (ii) the gravity of the offences justifies, in the opinion of the Magistrates Court, committal to the Supreme Court; and
- (b) in any other case, the defendant should be committed to the District Court for sentence.

Forum for trial

109. Where the Court is to commit a defendant to a superior Court for trial, the following principles govern the choice of forum:

- (a) the defendant should be committed for trial in the Supreme Court in the following cases:
 - (i) where the charge is treason or murder, or an attempt or conspiracy to commit, or an assault with intent to commit, either of those offences;
 - (ii) where a major indictable offence is charged and the circumstances of its alleged commission are of unusual gravity;
 - (iii) where a major indictable offence is charged and trial of the charge is likely to involve unusually difficult questions of law or fact;
- (b) in any other case, the defendant should be committed for trial in the District Court.

Change of forum

110. (1) Where the Supreme Court is of the opinion that a defendant committed for trial or sentence in the Supreme Court (not being a defendant committed for trial or sentence on a charge of treason or murder, or an attempt or conspiracy to commit or an assault with intent to commit either of those offences) should be tried or sentenced in the District Court, the Supreme Court may order that the case be referred to the District Court.

(2) Where the Supreme Court is of the opinion that a defendant committed for trial or sentence in the District Court should be tried or sentenced in the Supreme Court, the Court may remove the case into the Supreme Court.

(3) Where the District Court is of the opinion that a defendant committed for trial or sentence in the District Court should be tried or sentenced in the Supreme Court, the Court may order that the case be referred to the Supreme Court.

(4) Where a case is referred to the District Court or removed or referred to the Supreme Court under this section, the case will proceed as if the committal had been to the Court to which the case is referred or removed.

(5) In deciding whether to exercise its powers under this section, the Supreme Court or the District Court will have regard to—

- (a) the gravity of the case; and
- (b) the difficulty of any questions of law or fact; and
- (c) the views (insofar as they have been expressed) of the prosecutor and defendant; and
- (d) any other relevant factor.

Change of plea following committal for sentence

111. (1) A person who has been committed to a superior court for sentence may, on appearing before that court, withdraw the admission of guilt and plead not guilty to the charge.

(2) In such a case, the superior court may, if satisfied that the interests of justice require it to do so, remit the case to the Magistrates Court for preliminary examination of the charge.

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(3) The change of plea must not be made the subject of any comment to the jury at a subsequent trial of the charge.

**DIVISION 4—PROCEDURE FOLLOWING COMMITTAL FOR TRIAL
OR SENTENCE**

Remand of defendant

112. Where the Court commits a defendant who is a natural person to a superior court for trial or sentence, the Court will remand the defendant in custody or release the defendant on bail to await trial or sentence.

Material to be forwarded by Registrar

113. Where a person is committed for trial or sentence, the Principal Registrar must forward to the Director of Public Prosecutions—

- (a) a copy of the order for committal;
- (b) a copy of any documentary material filed in the Court in connection with the preliminary examination;
- (c) a transcript of the oral evidence (if any) taken at the preliminary examination.

**DIVISION 5—CASES WHERE COURT ITSELF DEALS WITH
MINOR INDICTABLE OFFENCES**

Procedural provisions of Criminal Law Consolidation Act

114. The rules may provide that specified provisions of the *Criminal Law Consolidation Act 1934* apply with necessary adaptations and modifications to the trial or sentencing by the Court of a person charged with a minor indictable offence.

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PART 7
SUPPLEMENTARY PROVISIONS

Irregularities and Amendment

Charges

181. (1) An information or complaint is not invalid because of a defect of substance or of form.

(2) The Court may—

- (a) amend an information or complaint to cure a defect of substance or form (but if the defendant has been substantially prejudiced by the defect, no amendment may be made); or
- (b) dismiss an information or complaint if the defect cannot appropriately be cured by amendment.

Orders, warrants, etc.

182. (1) An order, summons, warrant or other process of the Court is not invalid by reason of any defect of substance or form.

(2) The Court may—

- (a) amend an order, summons, warrant or other process of the Court in order to correct a defect of substance or form; or
- (b) if the person against whom an order, summons, warrant or other process has been made or issued has been, or may be, substantially prejudiced by the defect—revoke the order, summons, warrant or other process.

Remand or Transfer to Training Centre

Remand to training centre

183. If—

- (a) the Court orders that a person charged with or convicted of an offence be remanded in custody; and
- (b) the person—
 - (i) is already in custody in a training centre; or
 - (ii) is alleged to have committed the offence while—
 - (A) on conditional release from a training centre; or
 - (B) serving a sentence of home detention in accordance with the *Young Offenders Act 1993*; or
 - (C) subject to an order under section 26 of that Act; and
- (c) the Court is satisfied that good reason exists for remanding the person to a training centre,

the Court may direct that the person be remanded to a training centre.

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Application may be made to Court for transfer to a training centre

184. (1) If—

- (a) a person charged with or convicted of an offence has been, by order under this Act, remanded in custody in a prison; and
- (b) the person—
 - (i) would, but for that order, be in custody in a training centre; or
 - (ii) is alleged to have committed the offence while—
 - (A) on conditional release from a training centre; or
 - (B) serving a sentence of home detention in accordance with the *Young Offenders Act 1993*; or
 - (C) subject to an order under section 26 of that Act; and
- (c) the Court is, on the application of the person or the Chief Executive of the Department of Human Services, satisfied that good reason exists for remanding the person to a training centre,

the Court may order that the person be transferred to a training centre.

(2) If the Court has, on a previous occasion, considered the question of whether the person should be remanded to a prison or to a training centre, an application may only be made under this section if, since the Court considered the question—

- (a) there has been a material change in the circumstances of the person; or
- (b) the applicant has become aware of new facts or circumstances relevant to the question.

* * * * *

Unexecuted Warrants

Cancellation of unexecuted warrants

187AA. (1) The Governor may cancel—

- (a) a warrant for the apprehension of a person if it has not been executed within 15 years from the day on which it was issued; and
- (b) any other warrant if it has not been executed within 7 years from the day on which it was issued.

(2) A warrant that is cancelled pursuant to subsection (1) ceases to have any force or effect and must be destroyed.

Proof of Convictions and Orders

Proof of convictions or orders

187A. (1) Any conviction or order whatsoever made by the Court may be proved by a copy of the information or complaint on which the conviction or order was made, and of the minute or memorandum thereof made by the court and endorsed on the complaint.

(1a) The copy must be certified by—

- (a) the person, or one of the persons, constituting the Court by which the conviction or order was made; or
- (b) a Registrar.

(2) No proof shall be required of the signature or judicial or official character of the person appearing to have signed any such copy as aforesaid.

(3) This section shall apply to any conviction or order whether made before or after the commencement of this Act, and shall be in addition to and not in substitution for any other enactment providing a mode of proving convictions and orders.

* * * * *

Registration of orders for the purpose of enforcement

188. (1) This section applies to an order for payment of a fine or other monetary sum made against a body corporate by a Court of summary jurisdiction established under the law of some other State, or of a Territory of the Commonwealth.

(2) The Principal Registrar may, subject to the order, register an order to which this section applies in the Court.

(3) Subject to the rules, proceedings may be taken for the enforcement of an order registered under this section as if it were an order of the Court.

Costs

189. (1) Subject to this section, the Court may award such costs for or against a party to proceedings as the Court thinks fit.

(2) Costs will not be awarded against a party to a preliminary examination of an indictable offence unless the Court is satisfied that the party has unreasonably obstructed the proceedings.

(2a) Costs will not be awarded against a complainant in proceedings for a restraining order unless the Court is satisfied that the complainant has acted in bad faith or unreasonably in bringing the proceedings.

(3) If proceedings are delayed through the neglect or incompetence of a legal practitioner, the Court may—

- (a) disallow the whole or part of the costs as between the legal practitioner and his or her client (and, where appropriate, order the legal practitioner to repay costs already paid);
- (b) order the legal practitioner to indemnify his or her client or any other party to the proceedings for costs resulting from the delay;
- (c) order the legal practitioner to pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted.

(4) If proceedings are delayed through the neglect or incompetence of a prosecutor who is not a legal practitioner, the Court may order the Crown, or, where the prosecution is brought on behalf of a body that does not represent the Crown, that body, to indemnify any party to the proceedings for costs resulting from the delay.

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(5) If proceedings are unreasonably obstructed by a party or a witness, or proceedings are delayed through the failure of a party or a witness to appear before the Court when required to do so, the Court may make either or both of the following orders:

- (a) an order that the party or witness indemnify any party for costs resulting from the obstruction or delay;
- (b) an order that the party or witness pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted in consequence of the obstruction or delay.

(6) Before making an order under subsection (3), (4) or (5), the Court must inform the person against whom the order is proposed of the nature of the proposed order and allow that person a reasonable opportunity to give or call evidence and make representations on the matter.

(7) A person against whom an order for costs is made under subsection (3), (4) or (5) has the same rights of appeal as a party to a civil action.

(8) In this section—

"**restraining order**" includes a domestic violence restraining order under the *Domestic Violence Act 1994*.

Witness fees

190. Witness fees and expenses in respect of proceedings under this Act are payable in accordance with the regulations.

Fees

191. (1) Fees are payable in respect of proceedings under this Act in accordance with the regulations.

(2) The Court may, if satisfied that proper grounds exist to remit a fee payable under the regulations, remit the fee wholly or in part.

Regulations

192. The Governor may make regulations for the purposes of this Act.

* * * * *

SCHEDULES

SCHEDULE 1

Number and year of Act	Title or Short Title	Extent of Repeal
4 of 1843	An ordinance appointing the fees to be taken by Magistrates in South Australia	The whole
15 of 1849	To facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to Persons charged with Indictable Offences	The whole
6 of 1850	To facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to Summary Convictions and Orders	The whole
10 of 1854	An Act to amend the Criminal Law	Section 14
8 of 1869-70	<i>Minor Offences Procedure Act 1869</i>	The whole
166 of 1880	An Act to amend the <i>Minor Offences Procedure Act 1869</i> and <i>The Criminal Law Consolidation Act 1876</i>	The whole
245 of 1882	An Act to enable Persons Accused of Offences to give Evidence on Oath	Section 2
298 of 1883-4	<i>The Justices Procedure Amendment Act 1883-4</i>	The whole
926 of 1907	<i>The Magistrates' Fees Amendment Act 1907</i>	The whole
1127 of 1913	<i>The Minor Offences Procedure Act Amendment Act 1913</i>	The whole
1133 of 1913	<i>The Justices Procedure (Indictable Offences) Amendment Act 1913</i>	The whole

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SCHEDULE 2

Summary Adjudications and Non-indictable Offences

	\$ c.
For every complaint or application of any kind	1.00
For every summons (except a summons to witness), warrant, commitment, conviction and order, each step	1.00
For every summons to witness (for each person intended to be summoned)	0.25
For every hearing	2.00
For every recognizance upon appeal to the Supreme Court	1.00
For every other recognizance (except a recognizance to appear and prosecute or to appear and give evidence, upon which no fee shall be charged)	0.50
For a copy of evidence or depositions, reasons for judgment or any other document, for each foolscap page, or part thereof	0.30

Minor Indictable Offences and Indictable Offences

Same fees as in non-indictable offences, except as follows:—

For every information	1.00
For every summons (except a summons to witness), warrant, commitment and conviction, each step	1.00

SCHEDULE 3

Summary or Indictable Offences of Dishonesty

The description of the offence is given for ease of reference only.

Section of <i>Criminal Law Consolidation Act 1934</i>	Description
131	Simple larceny
132	Larceny by bailee
136	Stealing cattle
137	Killing animals with intent to steal the carcass
138	Stealing deer, llama or alpaca in enclosed land
144	Stealing or fraudulently destroying, cancelling or obliterating valuable security
145	Stealing or fraudulently destroying, cancelling, obliterating or concealing title to land or a will
146	Stealing or fraudulently taking or unlawfully and maliciously cancelling, obliterating, injuring or destroying a court record
147	Stealing or attempting to steal fixtures or parts of a building
148	Stealing or attempting to steal vegetation in any pleasure ground, garden or other enclosed land
152A	Stealing or attempting to steal precious stones
153	Fraudulently removing or concealing precious stones or ore from mine
154	Stealing electricity
174	Stealing goods in process of manufacture
175	Stealing from ships or docks
183	Larceny by tenants and lodgers
184	Fraudulent misappropriation
189	Fraudulent appropriation of company property
192	Director, public officer or manager publishing fraudulent statements
195	False pretences
196	Receiving
197A	Receiving goods stolen outside the State
202	Corruptly taking reward for recovery of stolen property
204	Impersonation in order to obtain property
205	Impersonating the owner of stock
214 except an offence against paragraph (a)(i), (ii), or (iii)	Forgery of deeds, wills, bills of exchange, etc.
215	Forgery in relation to transfer of stock
216	Forgery of power of attorney in relation to transfer of stock
234	Demanding property under forged instruments
235	Forgery of other instrument or matter

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SCHEDULE 4

Indictable Offences of Dishonesty

The description of the offence is given for ease of reference only.

Section of *Criminal
Law Consolidation
Act 1934*

Description

176	Larceny and embezzlement by clerks and servants
177	Larceny and embezzlement in the Public Service
178	Falsification of accounts
182	Larceny by partners
185	Fraudulent sales under powers of attorney
186	Fraud by factors or agents
190	Fraudulent company accounts
191	Fraudulent destruction or alteration of company books, etc.

APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provisions from Statutes Repeal and Amendment (Courts) Act 1991, s. 22)

22. (1) This section applies to amendments made by this Act or the *Justices Amendment Act 1991*.

(2) The following transitional provisions apply in relation to those amendments:

- (a) if the effect of the amendment is to reduce the penalty for an offence, the amendment applies whether the offence was committed before or after the amendment takes effect;
- (b) if the effect of the amendment is to increase the penalty for an offence, the amendment applies only to offences committed after it takes effect;
- (c) if the effect of the amendment is to increase or remove a time limit for commencing proceedings for an offence, the previous limit applies in respect of an offence committed before the amendment takes effect;
- (d) an amendment affecting the classification of an offence as summary or indictable does not apply in relation to an offence committed before the amendment takes effect.

(Transitional provision from Summary Procedure (Restraining Orders) Amendment Act 1994, s. 5)

5. An order in force or registered under Part 4 Division 7 of the principal Act immediately before the commencement of this Act continues to have effect as if it were an order in force or registered under that Part as substituted by this Act.

(Transitional provision from Statutes Amendment and Repeal (Justice Portfolio) Act 1999, s. 56)

56. Section 104 of the principal Act, as amended by this Part, applies in relation to proceedings commenced before or after the commencement of this Part.

(Transitional provision from Criminal Law (Sentencing) (Sentencing Procedures) Amendment Act 2001, s. 5)

5. The amendments made by the Act are to be considered procedural rather than substantive.

Legislative History

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 5 of The Public General Acts of South Australia 1837-1975 at page 316.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Long title:	amended by 72, 1991, s. 3
Section 1:	substituted by 72, 1991, s. 4
Section 2:	repealed by 72, 1991, s. 5
Section 3:	amended by 46, 1982, s. 3; 68, 1982, s. 4; substituted by 51, 1988, s. 42; repealed by 72, 1991, s. 5
Section 4(1):	definition of "clerk" substituted by 26, 1982, s. 3(a); repealed by 72, 1991, s. 6(a) definition of "the Chief Magistrate" inserted by 108, 1983, s. 4(a) definition of "complaint" amended by 72, 1991, s. 6(b)

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definition of "court of summary jurisdiction" or "court" repealed and definition of "Court" inserted in its place by 72, 1991, s. 6(c)

definition of "defendant" amended by 20, 1994, s. 3(a)

definition of "district" repealed by 72, 1991, s. 6(d)

definition of "District Criminal Court" repealed by 72, 1991, s. 6(d)

definition of "fine" repealed by 51, 1988, s. 43(a)

definition of "firearms order" inserted by 20, 1994, s. 3(b)

definition of "foreign restraining order" inserted by 20, 1994, s. 3(b)

definition of "gaol" repealed by 51, 1988, s. 43(b)

definitions of "group 1 offence", "group 2 offence" and "group 3 offence" repealed by 72, 1991, s. 6(d)

definition of "guardian" repealed by 20, 1994, s. 3(c)

definition of "industrial offence" substituted by 72, 1991, s. 6(e)

definition of "investigating officer" inserted by 65, 1995, s. 8

definition of "interstate summary protection order" inserted by 75, 1992, s. 3(a); repealed by 20, 1994, s. 3(d)

definition of "justices" repealed by 72, 1991, s. 6(f)

definition of "keeper of a gaol" repealed by 51, 1988, s. 43(c)

definition of "major offence" inserted by 66, 1983, s. 3; repealed and definition of "major indictable offence" inserted in its place by 72, 1991, s. 6(g)

definition of "minor indictable offence" substituted by 109, 1981, s. 44(a); 72, 1991, s. 6(h)

definition of "offence of violence" inserted by 72, 1991, s. 6(h)

definition of "the Registrar" inserted by 68, 1982, s. 5; amended by 33, 1987, s. 5; repealed by 72, 1991, s. 6(i)

definition of "personal service" inserted by 26, 1982, s. 3(b)

definition of "the Principal Registrar" inserted by 72, 1991, s. 6(j)

definition of "Registrar" inserted by 72, 1991, s. 6(j)

definition of "relevant family contact order" inserted by 67, 1996, s. 30

definition of "restraining order" inserted by 20, 1994, s. 3(e); substituted by 51, 1995, reg. 4

definition of "rules" inserted by 72, 1991, s. 6(j)

definition of "schedule 3 offence" inserted by 72, 1991, s. 6(o)

definition of "schedule 4 offence" inserted by 72, 1991, s. 6(d)

definition of "Senior Judge" repealed by 72, 1991, s. 6(k)

definition of "the senior magistrate" inserted by 34, 1981, s. 38; repealed by 108, 1983, s. 4(b)

definition of "sexual offence" inserted by 60, 1987, s. 4

definition of "simple offence" amended by 109, 1981, s. 44(b); repealed by 72, 1991, s. 6(l)

definition of "special justice" repealed by 72, 1991, s. 6(m)

definition of "special magistrate" inserted by 108, 1983, s. 4(c); repealed by 72, 1991, s. 6(n)

definition of "summary offence" inserted by 72, 1991, s. 6(n)

definition of "summary protection order" inserted by 75, 1992, s. 3(b); substituted by 62, 1993, s. 30; repealed by 20, 1994, s. 3(f)

definition of "telephone" inserted by 75, 1992, s. 3(b)

definition of "sum adjudged to be paid by a conviction" and "sum adjudged to be paid by an order" repealed by 51, 1988, s. 43(d)

passage "for trial" repealed by 72, 1991, s. 6(p)

repealed by 72, 1991, s. 7

amended by 109, 1981, s. 45, 26, 1982, s. 4; 66, 1983, s. 4; 51, 1988, s. 44; substituted by 72, 1991, s. 8

Section 4A:

Section 5:

Section 5(3):	amended by 59, 1994, Sched. 2; 80, 1999, Sched. paras. (a), (b)
Section 5(6) and (7):	substituted by 43, 1994, s. 19
Section 7:	substituted by 72, 1991, s. 9
Section 7A:	inserted by 90, 1986, s. 10(1) (Sched. Pt. 1); repealed by 72, 1991, s. 9
Section 8:	repealed by 72, 1991, s. 10; inserted by 62, 1993, s. 31
Section 9:	repealed by 72, 1991, s. 10
Section 9A:	inserted by 34, 1981, s. 39; amended by 68, 1982, s. 6; 108, 1983, s. 4(d); repealed by 72, 1991, s. 10

Part 2 comprising ss. 10 - 19 and headings amended by 66, 1983, s. 5; 108, 1983, s. 4(e)-(g); repealed by 72, 1991, s. 11

Section 20(1):	amended by 72, 1991, s. 12
Section 21:	repealed by 6, 1985, s. 4(a)
Section 22:	amended by 72, 1991, s. 13
Section 22A(4):	repealed by 72, 1991, s. 14
Sections 23 - 25:	repealed by 72, 1991, s. 15
Section 26:	amended by 51, 1988, s. 45; repealed by 72, 1991, s. 15
Section 26A:	repealed by 72, 1991, s. 15
Section 27:	redesignated to read as s. 27(1) by 26, 1982, s. (b)
Section 27 proviso:	repealed by 26, 1982, s. 5(a)
Section 27(2):	inserted by 26, 1982, s. 5(b)
Section 27(3):	inserted by 26, 1982, s. 5(b); amended by 72, 1991, s. 16
Section 27A(1):	amended by 49, 1980, s. 2; 72, 1991, s. 17
Section 27A(3):	amended by 32, 1986, s. 3; 5, 1988, s. 3
Section 27C(2):	substituted by 72, 1991, s. 18(a)
Section 27C(3):	amended by 26, 1982, s. 6(a); 51, 1988, s. 46(a)
Section 27C(4):	amended by 26, 1982, s. 6(b); 72, 1991, s. 18(b)
Section 27C(5):	amended by 72, 1991, s. 18(c)
Section 27C(6):	amended by 26, 1982, s. 6(c); repealed by 51, 1988, s. 46(b)
Section 27D:	repealed by 26, 1982, s. 7
Section 28(1):	amended by 72, 1991, s. 19(a)-(c)
Section 28(2) and (3):	substituted by 72, 1991, s. 19(d)
Section 28(4):	inserted by 72, 1991, s. 19(d)
Section 29:	substituted by 72, 1991, s. 20; amended by 62, 1993, s. 32
Sections 30 - 41 and headings:	repealed by 6, 1985, s. 4(b)

Division 1 of Part 4 comprising ss. 42 - 48 and heading amended by 26, 1982, s. 8; 68, 1982, s. 7; 51, 1988, s. 47; repealed by 72, 1991, s. 21

Heading preceding section 49:	amended by 51, 1988, s. 48
Section 49:	substituted by 72, 1991, s. 22
Section 49(1) and (2):	amended by 62, 1993, s. 33
Section 50:	repealed by 72, 1991, s. 22
Section 51:	substituted by 72, 1991, s. 23
Section 52:	substituted by 35, 1996, s. 3
Heading preceding section 53:	omitted in pursuance of the <i>Acts Republication Act 1967</i>
Section 53:	repealed by 67, 1996, s. 31
Section 55:	repealed by 72, 1991, s. 24
Section 57:	substituted by 72, 1991, s. 25
Section 57A(1):	amended by 49, 1980, s. 3(a); 72, 1991, s. 26(a), (b)
Section 57A(4):	amended by 49, 1980, s. 3(b); substituted by 72, 1991, s. 26(c)
Section 57A(5):	repealed by 72, 1991, s. 26(c)
Section 57A(6):	amended by 72, 1991, s. 26(d)
Section 57A(7):	amended by 72, 1991, s. 26(e)
Section 57A(7a):	inserted by 26, 1982, s. 9; amended by 72, 1991, s. 26(f), (g)
Section 57A(8):	amended by 49, 1980, s. 3(c); 72, 1991, s. 26(h)
Section 57A(9):	amended by 72, 1991, s. 26(i), (j)

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Section 57A(10):	substituted by 44, 1979, s. 5(2) (Sched.)
Section 57A(11) and (12):	substituted by 49, 1980, s. 3(d)
Section 58:	substituted by 72, 1991, s. 27
Section 59:	amended by 6, 1985, s. 4(c); substituted by 72, 1991, s. 28
Section 60(1):	amended by 72, 1991, s. 29(a)-(d)
Section 60(2):	substituted by 6, 1985, s. 4(d); amended by 72, 1991, s. 29(e)
Section 62(3):	substituted by 72, 1991, s. 30
Section 62A:	amended by 6, 1985, s. 4(e)
Section 62B(6):	amended by 51, 1988, s. 49(a), (b)
Section 62B(6)(d):	repealed by 60, 1998, s. 44(a)
Section 62B(8):	amended by 51, 1988, s. 49(c); 72, 1991, s. 31; 60, 1998, s. 44(b)
Section 62BA(1):	amended by 49, 1980, s. 4(a)
Section 62BA(4):	amended by 49, 1980, s. 4(b)
Section 62C(1):	amended by 51, 1988, s. 50
Section 62C(2):	amended by 72, 1991, s. 32(a), (b)
Section 62C(3a) and (5):	amended by 72, 1991, s. 32(c)
Section 62C(6):	substituted by 72, 1991, s. 32(d)
Section 62D(3) and (4):	inserted by 26, 1982, s. 10
Section 63(2):	repealed by 72, 1991, s. 33
Section 65:	amended by 6, 1985, s. 4(f)-(h); 51, 1988, s. 51; repealed by 72, 1991, s. 34
Section 66:	repealed by 72, 1991, s. 35
Section 68(3):	amended by 72, 1991, s. 36
Section 69A(1):	amended by 51, 1988, s. 52; 72, 1991, s. 37
Section 70AB and heading:	repealed by 51, 1988, s. 53
Section 70B:	amended by 72, 1991, s. 38
Section 72:	amended by 26, 1982, s. 11; 72, 1991, s. 39; repealed by 27, 1995, s. 22
Section 73 and heading:	repealed by 51, 1988, s. 54
Section 74 and heading:	repealed by 51, 1988, s. 55
Section 75:	amended by 109, 1981, s. 46; repealed by 51, 1988, s. 55
Section 76:	amended by 68, 1982, s. 8; repealed by 51, 1988, s. 55
Heading preceding section 76A:	inserted by 26, 1982, s. 12
Section 76A:	inserted by 26, 1982, s. 12; substituted by 72, 1991, s. 40
Section 76B:	inserted by 68, 1982, s. 9; repealed by 6, 1985, s. 4(i); inserted by 72, 1991, s. 40
Section 77:	amended by 51, 1988, s. 56; repealed by 72, 1991, s. 41
Sections 78 and 79:	repealed by 51, 1988, s. 57
	Division 5A of Part 4 comprising s. 79A and heading inserted by 68, 1982, s. 10; amended by 51, 1988, ss. 58, 59; 72, 1991, s. 42; repealed by 60, 1998, s. 45
	Division 6 of Part 4 comprising ss. 80 - 98 and headings amended by 109, 1981, s. 47; 26, 1982, s. 13; 68, 1982, s. 11; 77, 1984, s. 3; 69, 1986, s. 21; 49, 1987, Sched. 2; repealed by 51, 1988, s. 60
	Division 7 of Part 4 comprising ss. 99 - 100 and heading repealed and s. 99 and heading inserted in its place by 46, 1982, s. 4; amended by 72, 1991, s. 43; 75, 1992, ss. 4-6; 62, 1993, ss. 34-37; repealed and ss. 99 - 99L and heading inserted in its place by 20, 1994, s. 4
Section 99(2):	amended by 24, 1999, s. 13(a); 55, 2001, s. 6(a)
Section 99(2a):	inserted by 24, 1999, s. 13(b)
Section 99(2ab):	inserted by 55, 2001, s. 6(b)
Section 99(2b):	inserted by 24, 1999, s. 13(b)
Section 99(3a) and (3b):	inserted by 24, 1999, s. 13(c)
Section 99(4):	substituted by 67, 1996, s. 32

Section 99(5) and (6):	inserted by 67, 1996, s. 32
Section 99AA:	inserted by 51, 1995, s. 5
Section 99B(2):	substituted by 24, 1999, s. 14(a)
Section 99B(3) and (4):	substituted by 24, 1999, s. 14(b)
Section 99B(5):	amended by 24, 1999, s. 14(c)
Section 99B(5a):	inserted by 24, 1999, s. 14(d)
Section 99C(2):	substituted by 24, 1999, s. 15(a)
Section 99C(4) - (6):	substituted by 24, 1999, s. 15(b)
Section 99C(7) and (8):	inserted by 24, 1999, s. 15(b)
Section 99D(1):	amended by 51, 1995, s. 6; 24, 1999, s. 16(a)
Section 99D(2):	amended by 24, 1999, s. 16(b)
Section 99E:	redesignated as s. 99E(1) by 24, 1999, s. 17
Section 99E(2) - (4):	inserted by 24, 1999, s. 17
Section 99F(1a):	inserted by 24, 1999, s. 18(a)
Section 99F(3):	substituted by 67, 1996, s. 33; amended by 24, 1999, s. 18(b)

Part 5 comprising ss. 101 - 156 and headings amended by 64, 1976, s. 2; 115, 1976, ss. 19, 20; 31, 1977, s. 14; 109, 1981, ss. 48-57; 66, 1983, ss. 6-8; 77, 1984, s. 4; 78, 1984, s. 3; 107, 1984, s. 10; 6, 1985, s. 4(j)-(r); 60, 1987, s. 5; 51, 1988, ss. 61-65; 33, 1989, ss. 4-9; 33, 1991, s. 12; 49, 1991, Sched. 2; repealed and ss. 101 - 114 and headings inserted in its place by 72, 1991, s. 44

Section 102(3):	amended by 43, 1994, s. 20(a)
Section 102(3a):	inserted by 43, 1994, s. 20(b)
Section 103(3a):	inserted by 37, 2001, s. 4(a)
Section 103(4):	inserted by 43, 1994, s. 21
Section 104(1):	amended by 42, 1999, s. 55(a), (b)
Section 104(2):	amended by 42, 1999, s. 55(c)
Section 104(3) and (4):	substituted by 65, 1995, s. 9
Section 104(5):	repealed by 65, 1995, s. 9
Section 104(6):	inserted by 62, 1993, s. 38
Section 105(4a):	inserted by 37, 2001, s. 4(b)
Section 107(3):	amended by 62, 1993, s. 39
Section 112:	amended by 27, 1995, s. 23
Section 113:	amended by 26, 1992, s. 12

Part 6 comprising ss. 162 - 179 and headings amended by 26, 1982, ss. 14-17; 68, 1982, s. 12; 6, 1985, s. 4(s), (t); 51, 1988, ss. 66, 67; repealed by 72, 1991, s. 45

Sections 181 and 182:	substituted by 72, 1991, s. 46
Sections 183 and 184:	repealed by 72, 1991, s. 46; inserted by 41, 1998, s. 9
Sections 185 - 187:	repealed by 72, 1991, s. 46
Section 187AA and heading:	substituted by 104, 1988, s. 2
Section 187A(1):	amended by 26, 1982, s. 18(a); 72, 1991, s. 47(a)
Section 187A(1a):	inserted by 26, 1982, s. 18(b); substituted by 72, 1991, s. 47(b)
Section 187AB and heading:	inserted by 6, 1985, s. 4(u); repealed by 72, 1991, s. 48
Section 187B and heading:	repealed by 51, 1988, s. 68
Section 188:	amended by 49, 1991, Sched. 2; substituted by 72, 1991, s. 48
Section 189:	substituted by 72, 1991, s. 48
Section 189(1):	substituted by 62, 1993, s. 40(a); amended by 24, 1999, s. 19(a)
Section 189(2a):	inserted by 24, 1999, s. 19(b)
Section 189(5):	substituted by 62, 1993, s. 40(b)
Section 189(8):	inserted by 24, 1999, s. 19(c)
Sections 190 - 192:	substituted by 72, 1991, s. 48
Sections 193 - 203 and headings:	amended by 26, 1982, s. 19; repealed by 72, 1991, s. 48
Schedule 3:	inserted by 72, 1991, s. 49; amended by 59, 1994, Sched. 2; 80, 1999, Sched. para. (c)
Schedule 4:	inserted by 72, 1991, s. 49; amended by 59, 1994, Sched. 2

Summary Procedure Act 1921**APPENDIX 2****DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.