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.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Introductory

1—Short title

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

4—Interpretation

(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 a magistrate assigned by the Governor under section 19A of the *Fair Work Act 1994* to be an industrial magistrate;

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;

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

(b) inflicts serious harm on another, or threatens to inflict serious harm 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;

restraining order means an order made under Division 7 of Part 4;

rules means the rules of the Magistrates Court;

sensitive material—see section 67H of the *Evidence Act 1929*;

sensitive material notice—see section 67I of the *Evidence Act 1929*;

sexual offence means an offence under the *Criminal Law Consolidation Act 1935* of the following kind:

(a) rape; or

(ab) compelled sexual manipulation; or

(b) indecent assault; or

(ba) persistent sexual exploitation of a child; 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.

(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 articled to the solicitor and appearing on the solicitor's instructions.

5—Classification of offences

(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;

(ba) an offence against Part 4 of the *Criminal Law Consolidation Act 1935* involving $2 500 or less not being—

(i) an offence of arson or causing a bushfire; or

Note—

See sections 85 and 85B of the *Criminal Law Consolidation Act 1935*.

(ii) an offence of violence; or

(iii) an offence that is 1 of a series of offences of the same or a similar character involving more than $2 500 in aggregate;

(c) an offence against Part 5 of the *Criminal Law Consolidation Act 1935* involving $2 500 or less not being—

(ai) an offence against Division 3 of that Part (robbery); or

(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 $2 500 in aggregate,

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

(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) an offence involving interference with, damage to or destruction of property where the loss resulting from commission of the offence does not exceed $30 000;

(AB) an offence involving a threat to interfere with, damage or destroy another person's property where, if the threat had been carried out, the loss would not have exceeded $30 000;

(B) an offence against section 24(2) of the *Criminal Law Consolidation Act 1935* (recklessly causing harm to another);

(C) an offence against section 56 of the *Criminal Law Consolidation Act 1935* (indecent assault) (not being an offence committed against a child under the age of 14 years);

(D) an offence involving $30 000 or less against Part 5 of the *Criminal Law Consolidation Act 1935*, other than an offence against Division 3 (robbery) or an offence of violence;

(E) an offence against section 169(1) or 170(1) of the *Criminal Law Consolidation Act 1935* (serious criminal trespass etc) where the offence is a basic offence within the meaning of that Act and the intended offence is an offence of dishonesty (not being an offence of violence) involving $30 000 or less or an offence of interference with, damage to or destruction of property involving $30 000 or less; and

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

(3a) For the purposes of the above classifications, an offence against section 85 or Part 5 of the *Criminal Law Consolidation Act 1935* includes—

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

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

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

(d) an offence of being an accessory after the fact to such an offence.

(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.

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

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.

7—Abolition of rule as to disputed title

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.

8—Industrial offences

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

Part 3—General procedure

20—Form of warrant

(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.

22—Form of summons

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.

22A—Description of offence

(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.

27—Service

(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.

27A—Service of summons by post

(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.

(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.

27B—Hearing on a written plea of guilty

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.

27C—Hearing where defendant fails to appear

(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.

28—Proof by affidavit of service etc

(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

(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.

Maximum penalty: Imprisonment for two years.

29—Assistance of counsel

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

Part 4—Summary jurisdiction

Division 2—Complaint and subsequent proceedings

49—Complaint

(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.

51—Joinder and separation of charges

(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.

52—Limitation on time in which proceedings may be commenced

(1) 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;

(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.

(2) For the purposes of subsection (1), an expiation notice is to be taken into account despite its subsequent withdrawal except if the notice of withdrawal specifies that it is withdrawn because—

(a) the issuing authority has received a statutory declaration or other document sent to the authority by the alleged offender in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice; or

(b) it has become apparent that the alleged offender did not receive the notice until after the expiation period, or has never received it, as a result of error on the part of the authority or failure of the postal system,

(in which case the withdrawn expiation notice is to be disregarded).

54—Allegations and descriptions in complaints and proceedings

(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).

(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.

(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.

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

(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 negatived 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 negatived in the complaint, no proof in relation to it shall be required on the part of the complainant.

57—Issue of summons

(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 in the absence of the defendant; 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.

57A—Procedure enabling written plea of guilty

(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.

(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*.

(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 police officer, any member of the Australian Federal Police 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.

58—Issue of warrant

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.

59—Defendant to be brought before Court

(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.

60—Forms of custody etc

(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

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

(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.

62—Proceedings on non-appearance of defendant

(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 in the absence of the defendant 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 in the absence of the defendant 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 in the absence of the defendant 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.

(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.

62A—Power to proceed in absence of defendant

(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 in the absence of the defendant, 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.

62B—Powers of court on written plea of guilty

(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.

62BA—Proceedings where defendant neither appears nor returns written plea of guilty

(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 to adjudicate on the complaint in the absence of the defendant 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.

62C—Proceedings in absence of defendant

(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 a hearing in his or her absence) the court shall not impose upon the defendant—

(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.

62D—Proof of previous convictions

(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.

63—Non-appearance of complainant

(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.

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

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.

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

(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.

68—Procedure on plea of not guilty

(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.

69—After hearing the parties court to convict or dismiss

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.

69A—Examination of defendant

(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

70—Conviction to be minuted

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

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

70A—Convictions where charges joined in the complaint

(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.

70B—Conviction for attempt where full offence charged

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.

71—Order and certificate of dismissal

(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.

76A—Power to set aside conviction or order

(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.

76B—Correction of conviction or order

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

Division 5—Non-association and place restriction orders

77—Interpretation

In this Division—

close family, in relation to a defendant, means the following people:

(a) the defendant's spouse, or former spouse, or a person in a close personal relationship with the defendant;

(b) the defendant's parents and grandparents (whether by blood or by marriage);

(c) the defendant's children and grandchildren (whether by blood or by marriage);

(d) the defendant's brothers and sisters (whether by blood or by marriage);

(e) the defendant's guardians or carers;

close personal relationship has the same meaning as in Part 3 of the *Family Relationships Act 1975*;

health service means a health service within the meaning of the *Health Care Act 2008* and includes any service of a kind prescribed by regulation for the purposes of this definition;

non-association order means an order under section 78—

(a) prohibiting a defendant—

(i) from being in company with a specified person; or

(ii) from communicating with that person by any means,

except at the times or in the circumstances (if any) specified in the order; or

(b) prohibiting a defendant—

(i) from being in company with a specified person; and

(ii) from communicating with that person by any means;

place restriction order means an order under section 78—

(a) prohibiting a defendant from frequenting or visiting a specified place or area except at the times or in the circumstances (if any) specified in the order; or

(b) prohibiting a defendant from frequenting or visiting a specified place or area at any time or in any circumstance;

prescribed offence means an indictable offence or an offence that would, if committed in this State, be an indictable offence;

spouse—a person is the spouse of another if they are legally married;

welfare service means services (whether provided as public or private services) relating to the provision of housing, employment benefits, rental assistance or other financial assistance, family support and other community welfare services necessary for the promotion, protection, development and maintenance of the well-being of persons.

78—Non-association and place-restriction orders

(1) A complaint may be made under this section by a police officer.

(2) On a complaint, the Court may make a non-association order or a place restriction order (or both) in respect of the defendant if—

(a) the defendant has, within the period of 2 years immediately preceding the making of the complaint, been convicted (in this State or elsewhere) of a prescribed offence; and

(b) the Court is satisfied that it is reasonably necessary to do so to ensure that the defendant does not commit any further prescribed offences.

(3) A non-association order or a place restriction order—

(a) operates for the period specified in the order (which must be not more than 2 years); and

(b) may specify that it is to commence at the end of a period of imprisonment being served by the defendant.

(4) The Court may—

(a) in determining whether it is reasonably necessary to make a non-association order or a place restriction order to ensure that the defendant does not commit any further prescribed offences, take into account events that have taken place outside of this State; and

(b) make a non-association order or a place restriction order against a defendant whether resident in or outside of this State.

(5) If a defendant disputes some or all of the grounds on which a non-association order or a place restriction 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.

79—Non-association and place restriction orders not to restrict certain associations or activities

(1) The persons specified in a non-association order as persons with whom the defendant must not associate may not include any member of the defendant's close family.

(2) Despite subsection (1), a member of the defendant's close family may be specified in a non-association order if—

(a) the defendant requests that the member be specified in the order; or

(b) the Court has reasonable cause to believe, having regard to the criminal antecedents of the member and the defendant, the nature and pattern of criminal activity in which the member and the defendant have both participated or any other matter the Courts thinks fit, that there is an appreciable risk that the defendant may be involved in conduct that could involve the commission of a further prescribed offence if the defendant associates with that member.

(3) The places or areas specified in a place restriction order as places or areas that the defendant must not frequent or visit may not include—

(a) the defendant's place of residence or the place of residence of any member of the defendant's close family; or

(b) any place of work at which the defendant is regularly employed; or

(c) any educational institution at which the defendant is enrolled; or

(d) any place of worship that the defendant regularly attends.

(4) Despite subsection (3), a place or area referred to in that subsection may be specified in a place restriction order if—

(a) the defendant requests that the place or area be specified in the order; or

(b) the Court has reasonable cause to believe, having regard to the ongoing nature and pattern of participation of the defendant in criminal activity occurring at that place or area, that there is an appreciable risk that the defendant may be involved in conduct that could involve the commission of a further prescribed offence if the defendant frequents or visits that place or area.

80—Issue of non-association or place restriction order in absence of defendant

(1) A non-association order or a place restriction 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.

(2) A non-association order or a place restriction 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 non-association order or a place restriction 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—

(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 non-association order or a place restriction 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.

81—Service

(1) Subject to the making of an order under subsection (4), a non-association order or place restriction order must be served on the defendant personally and is not binding on the defendant until it has been so served.

(2) If a non-association order or place restriction order is confirmed in an amended form or is varied before being confirmed or at any other time, subject to the making of a declaration under subsection (4) or subsection (5)—

(a) the order in its amended or varied form must be served on the defendant personally; and

(b) until so served—

(i) the amendment or variation is not binding on the defendant; but

(ii) the order as in force prior to the amendment or variation continues to be binding on the defendant.

(3) If a police officer has reason to believe that a person is subject to a non-association order or place restriction order that has not been served on the person, the officer 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) 2 hours,

whichever is the lesser; and

(b) if the person refuses or fails to comply with the requirement or the officer 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) If a police officer satisfies the Court that all reasonable efforts have been made to effect personal service of an order on a defendant in accordance with this section but that those efforts have failed, the Court may declare that subsection (2)(a) does not apply and may make such orders as it thinks fit in relation to substituted service (and in such a case, the non-association order or place restriction order will not be binding on the defendant until it has been served in accordance with the orders for substituted service).

(5) If the Court is satisfied that the order in its amended or varied form is more favourable to the defendant, the Court may declare that subsection (2)(b) does not apply and that the amendment or variation is to be binding on the defendant as from the day of the declaration or such other day as the Court specifies.

82—Variation or revocation of non-association or place restriction order

(1) The Court may vary or revoke a non-association order or place restriction order on application by a police officer or the defendant.

(2) An application for variation or revocation of a non-association order or place restriction order may only be made by the defendant with the permission of the Court and permission 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.

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

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

(b) have regard to the same factors that the Court is required to have regard to in considering whether or not to make a non-association order or place restriction order and in considering the terms of such an order.

83—Contravention of non-association and place restriction orders

(1) A person who contravenes or fails to comply with a non-association order or place restriction order is guilty of an offence.

Maximum penalty:

(a) for a first offence—imprisonment for 6 months;

(b) for a subsequent offence—imprisonment for 2 years.

(2) Subsection (1) does not apply if the person establishes that he or she had a reasonable excuse for the contravention or failure to comply.

(3) Without limiting subsection (2), it is a reasonable excuse for associating with a specified person in contravention of a non-association order if—

(a) the person did so in compliance with an order of a court; or

(b) the person did so unintentionally and terminated the association as soon as was reasonably practicable.

(4) Without limiting subsection (2), it is a reasonable excuse for frequenting or visiting a specified place or area in contravention of a place restriction order if—

(a) the person did so in compliance with an order of a court; or

(b) the person did so unintentionally and left the place or area as soon as was reasonably practicable; or

(c) the person needed to frequent or visit the place or area in order to—

(i) receive a health service or a welfare service; or

(ii) obtain legal advice or otherwise be provided with legal services.

Division 7—Restraining orders

99AA—Paedophile restraining orders

(a1) A complaint may be made under this section by a police officer.

(1) On a complaint, the Court may make a restraining order against the defendant if—

(a) the defendant—

(i) is required to comply with the reporting obligations imposed by Part 3 of the *Child Sex Offenders Registration Act 2006*; or

(ii) has been found—

(A) loitering near children; or

(B) using the internet to communicate with children or persons whom the defendant believed to be children (other than children or persons with whom the defendant has some good reason to communicate),

on at least 2 occasions and there is reason to think that the defendant may, unless restrained, again so loiter or so use the internet; 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 1 or more of the following:

(a) loitering—

(i) near children at or in the vicinity of a specified place or class of places or in specified circumstances; or

(ii) near children in any circumstances;

(b) using the internet or using the internet in a manner specified in the order;

(c) owning, possessing or using a computer or other device that is capable of being used to gain access to the internet.

(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 sexual offence against a child 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;

(ea) any apparent pattern in the defendant's use of the internet (if any) to contact children;

(f) any other matter that, in the circumstances of the case, the Court considers relevant.

(4) For the purposes of this section, a defendant ***loiters near children*** if the defendant loiters, without reasonable excuse, at or in the vicinity of a school, public toilet or place at which children are regularly present, whether or not children are actually present at the school, public toilet or place.

99AAB—Power to conduct routine inspection of computer etc

(1) If a restraining order under section 99AA includes provisions relating to use of the internet by the defendant, a police officer may, at any time, enter premises occupied by the defendant and—

(a) inspect any computer or device capable of storing electronic data at those premises; or

(b) remove from the premises any computer or device capable of storing electronic data for the purpose of inspecting the computer or device,

to determine whether there is any evidence to suggest that the defendant may have contravened the restraining order.

(2) If the defendant is aware that, in order to gain access to data stored on a computer or other device being inspected or removed by a police officer under this section it is necessary to enter any password, code or other information or to perform any function in relation to the data, the defendant must provide the police officer with that password, code or information or assist the police officer in performing that function.

Maximum penalty: Imprisonment for 2 years.

(3) If a person is convicted of an offence against subsection (2) in relation to a computer or device that is owned by the convicted person, the computer or device is forfeited to the Crown and may be dealt with and disposed of in such manner as the Minister may direct.

(4) A power must not be exercised under this section in relation to particular premises more than once in any 12 month period.

(5) If a computer or device removed from premises in accordance with subsection (1)(b) is not to be seized and retained as evidence of an offence, the computer or device must be returned to the defendant—

(a) as soon as practicable following inspection of the computer or device; or

(b) within 1 month after the removal,

whichever occurs first.

(6) A police officer may use such force to enter premises, or to take other action under this section, as is reasonably necessary for the purpose.

(7) This section is in addition to, and does not derogate from, any other police powers.

99AAC—Child protection restraining orders

(1) A complaint may be made under this section by—

(a) a police officer; or

(b) a child, or the guardian of a child, for the protection of whom a restraining order under this section is sought.

(2) On a complaint, the Court may make a restraining order against the defendant if—

(a) the defendant is an adult who is, or has been, residing with a child under the age of 17 years of whom the defendant is not a guardian; and

(b) the defendant and the child are, or have been, residing at premises other than premises in which a guardian of the child resides; and

(c) —

(i) the defendant or another person who resides at, or frequents, premises at which the defendant and the child reside or have resided—

(A) has, within the preceding 10 years, been convicted of a prescribed offence; or

(B) is, or has at any time been, subject to a restraining order under this section; or

(ii) the Court is satisfied that, as a consequence of the child's contact or residence with the defendant, the child is at risk of—

(A) sexual abuse or physical, psychological or emotional abuse or neglect; or

(B) engaging in, or being exposed to, conduct that is an offence under Part 5 of the *Controlled Substances Act 1984*; and

(d) the Court is satisfied that the making of the order is appropriate in the 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's primary consideration must be the best interests of the child, and in determining the best interests of the child the Court must have regard to the following matters:

(a) the degree of control or influence exerted by the defendant over the child;

(b) the prior criminal record (if any) of the defendant;

(c) any apparent pattern in the defendant's behaviour towards the child or other children and any apparent justification for that behaviour;

(d) the views of the child and any guardian of the child (to the extent that they are made known to the Court);

(e) any other matter that the Court considers relevant.

(4) The Court may—

(a) require that a copy of the complaint be served on the child, or a guardian of the child, personally; and

(b) issue any orders it thinks fit to ensure that the child, or a guardian of the child, is given an opportunity to be heard in relation to the complaint.

(5) A restraining order under this section—

(a) may impose such restraints on the defendant as are necessary or desirable to protect the child from any apprehended risk; and

(b) may include any consequential or ancillary orders that the Court thinks fit; and

(c) will expire when the child reaches the age of 17 years or, if an earlier time is specified in the order, at that earlier time.

(6) If the Court has made a restraining order under this section, the Court may also, subject to any current proceedings before, or orders of, the Family Court of Australia or the Youth Court, make orders providing for the temporary placement of the child (pending, if necessary, proceedings before either of those courts)—

(a) subject to paragraphs (b) and (c), into the custody of a guardian of the child; or

(b) if the Court is not satisfied that placement of the child with a guardian is in the best interests of the child, or if such a placement is not possible or appropriate—into the custody of such other person as the Court directs; or

(c) if the Court is not satisfied that placement of the child with a guardian or some other person is in the best interests of the child, or if such a placement is not possible or appropriate—into the custody of the Minister (for a period not exceeding 28 days) and the care of such person as the Chief Executive, or the Chief Executive's nominee, directs.

(7) If the complainant is not a police officer, and the complaint is not made by telephone by a person introduced by a police officer, the following provisions apply despite any other provisions of this Act:

(a) the Court must not issue a summons for the appearance of the defendant and must dismiss the complaint unless it is supported by oral evidence;

(b) in addition to the discretion whether to make an order under section 99C(2), the Court has, subject to this subsection, a discretion to refuse to issue a summons for the appearance of the defendant and to dismiss the complaint;

(c) without limiting the circumstances in which the Court may exercise the discretion, the Court may exercise the discretion under paragraph (b) to dismiss the complaint if satisfied that the complaint is frivolous, vexatious, without substance or has no reasonable prospect of success;

(d) there is a presumption against exercising the discretion under paragraph (b) to dismiss the complaint if the complaint discloses allegations of—

(i) sexual abuse; or

(ii) conduct that is an offence under Part 5 of the *Controlled Substances Act 1984*;

(e) if the Court exercises the discretion under paragraph (b) to dismiss the complaint, it must record the reasons for doing so in writing.

(8) In this section—

Chief Executive means the person for the time being holding, or acting in, the position of Chief Executive of the administrative unit of the Public Service charged with the administration of the *Children's Protection Act 1993*;

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 a corresponding previous enactment or the law of another place):

(a) rape;

(b) indecent assault;

(c) incest;

(d) an offence involving unlawful sexual intercourse;

(e) an offence involving an act of gross indecency;

(f) an offence involving child prostitution;

(g) an offence involving indecency or sexual misbehaviour including an offence against Part 3 Division 11A of the *Criminal Law Consolidation Act 1935* or against section 23 or 33 of the *Summary Offences Act 1953*;

(h) an attempt to commit, or assault with intent to commit, any of the offences referred to in the above paragraphs;

(i) 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 paragraphs 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;

conviction—a person is taken to have been ***convicted*** of an offence if—

(a) the person was convicted of the offence; or

(b) the person was charged with, and found guilty of, the offence but was discharged without conviction; or

(c) a court, with the consent of the person, took the offence, of which the person had not been found guilty, into account in passing sentence on the person for another offence; or

(d) a court has, under Part 8A Division 2 of the *Criminal Law Consolidation Act 1935* recorded findings that—

(i) the person was mentally incompetent to commit the offence; and

(ii) the objective elements of the offence were established; or

(e) a court has, under Part 8A Division 3 of the *Criminal Law Consolidation Act 1935*, recorded findings that—

(i) the person was mentally unfit to stand trial on a charge of the offence; and

(ii) the objective elements of the offence were established;

guardian, of a child, means a parent of the child, a person who is the legal guardian of the child or has the legal custody of the child or any other person who stands *in loco parentis* to the child and has done so for a significant length of time;

Minister means the Minister to whom the administration of the *Children's Protection Act 1993* is committed;

prescribed offence means—

(a) a child sexual offence; or

(b) an offence under Part 5 of the *Controlled Substances Act 1984*;

sexual abuse—a child is sexually abused if—

(a) a child sexual offence is committed against or in relation to the child; or

(b) the child is exposed to the commission of a child sexual offence against or in relation to another child.

99C—Issue of restraining order in absence of defendant

(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—

(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.

99E—Service

(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 police officer has reason to believe that a person is subject to a restraining order that has not been served on the person, the officer 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 officer 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).

99F—Variation or revocation of restraining order

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

(a) in the case of a restraining order made under section 99AAC—by a parent or guardian of the child for the protection of whom the order was made; and

(b) in any case—

(i) by a police officer; or

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

(iii) by the defendant.

(1a) An application for variation or revocation of a restraining order may only be made by the defendant with the permission of the Court and permission 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.

(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

(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.

99G—Notification of making etc of restraining orders

(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 police officer, 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 police officer, the complainant, of the variation or revocation.

99H—Registration of foreign restraining orders

(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 police officer; 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.

99I—Offence to contravene or fail to comply with restraining order

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

Maximum penalty: Imprisonment for 2 years.

(2) If a police officer has reason to suspect that a person has committed an offence against subsection (1), the officer 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.

(5) If—

(a) a person is convicted of an offence of contravening or failing to comply with a restraining order under section 99AA; and

(b) the offence involved the use of a computer or other device capable of being used to gain access to the internet that is owned by the convicted person,

the computer or device is forfeited to the Crown and may be dealt with and disposed of in such manner as the Minister may direct.

(6) If a restraining order is made under section 99AAC for the protection of a child, the child cannot be convicted of an offence of aiding, abetting, counselling or procuring the commission of an offence against subsection (1) relating to a contravention of, or failure to comply with, the restraining order.

99J—Complaints or applications by or on behalf of child

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 permission 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.

99K—Burden of proof

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

99KA—Special restrictions relating to child protection restraining order proceedings

(1) A person must not publish, by radio, television, newspaper or in any other way, a report of child protection restraining order proceedings if—

(a) the Court prohibits publication of any report of the proceedings; or

(b) the report—

(i) identifies the child or contains information tending to identify the child for the protection of whom a restraining order is sought or has been made; or

(ii) reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification, of any child who is concerned in those proceedings.

(2) The Court may, on such conditions as it thinks fit, permit the publication of particulars, pictures or films that would otherwise be suppressed from publication under subsection (1)(b).

(3) A person who contravenes subsection (1), or a condition imposed under subsection (2), is guilty of an offence.

Maximum penalty: $10 000.

(4) No person may be present in the Court during child protection restraining order proceedings except the following:

(a) officers of the Court;

(b) officers of the administrative unit of the Public Service charged with the administration of the *Children's Protection Act 1993*;

(c) parties to the proceedings and their legal representatives;

(d) witnesses while giving evidence or permitted by the Court to remain in the Court;

(e) any guardian of the child for the protection of whom the restraining order is sought;

(f) any other persons authorised by the Court to be present.

(5) The Court may, however, exclude any of those persons from the Court if the Court considers it necessary to do so in the interests of the proper administration of justice.

(6) In this section—

child protection restraining order proceedings means—

(a) proceedings under section 99AAC; or

(b) proceedings under section 99F relating to an application to vary or revoke a restraining order made under section 99AAC.

Part 5—Indictable offences

Division 1—Charges of indictable offences

101—Information of indictable offence

(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.

102—Joinder and separation of charges

(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.

103—Procedure in Magistrates Court

(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]

(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.

(5) The fact that an information charging an indictable offence has been filed in the Court does not prevent the Director of Public Prosecutions from subsequently presenting to the Supreme Court or District Court an information charging the same offence under section 275 of the *Criminal Law Consolidation Act 1935* if the Director of Public Prosecutions thinks fit (and the information filed in the Court will, on the giving of written notice by the Director of Public Prosecutions to the Registrar of that fact, be taken to have been withdrawn).

Note—

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

Division 2—Preliminary examination of charges

104—Preliminary examination of charges of indictable offences

(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 sensitive material or documents that are of only peripheral relevance to the subject matter of the charge); and

(iii) a document describing any other evidentiary material (including sensitive material and documents that are of only peripheral relevance to the subject matter of the charge) on which the prosecutor relies as tending to establish the guilt of the defendant together with a statement of the significance the material is alleged to have; and

(iv) all other material relevant to the charge (whether relevant to the case for the prosecution or the case for the defence) that is available to the prosecution except material exempt from production because of privilege or for some other reason; 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 in subsection (1)(a)(i) 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.

(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).

(5) If the prosecutor relies on evidence that is sensitive material as tending to establish the guilt of the defendant, the prosecutor must, at least 14 days before the date appointed for the defendant's appearance to answer the charge—

(a) give the defendant copies of the sensitive material; or

(b) give the defendant a sensitive material notice in relation to the material.

(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.

Maximum penalty: Imprisonment for 2 years.

(7) Documentary material that is to be given to the defendant or a legal practitioner representing the defendant may be given by transmitting the material, in electronic form, to an internet address provided for the purpose by the intended recipient.

Note—

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.

105—Procedure at preliminary examination

(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;

(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]

(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.

Note—

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

106—Taking of evidence at preliminary examination

(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 permission to call that witness for oral examination;

(c) the prosecutor may, with the permission 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 permission 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 permission 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 permission 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.

107—Evaluation of evidence at preliminary examination

(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

(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—

(a) provide the defendant with a written statement in the prescribed form—

(i) setting out the more important statutory obligations of the defendant to be fulfilled in anticipation of trial; and

(ii) explaining that non-compliance with those obligations may have serious consequences; and

(b) give the defendant such further explanations of the trial procedure and the defendant's obligations in regard to the trial as the Court considers appropriate.

(6) If, in any legal proceedings, the question arises whether a defendant has been provided with the statement and explanations required by subsection (5), it will be presumed, in the absence of proof to the contrary, that the defendant has been provided with the statement and explanations.

Division 3—Forum for trial or sentence

108—Forum for sentence

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.

109—Forum for trial

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.

110—Change of forum

(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.

111—Change of plea following committal for sentence

(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.

(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

112—Remand of defendant

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.

113—Material to be forwarded by Registrar

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

114—Procedural provisions of Criminal Law Consolidation Act

The rules may provide that specified provisions of the *Criminal Law Consolidation Act 1935* apply with necessary adaptations and modifications to the trial or sentencing by the Court of a person charged with a minor indictable offence.

Part 7—Supplementary provisions

181—Charges

(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.

182—Orders, warrants etc

(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.

183—Remand to training centre

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.

184—Application may be made to Court for transfer to training centre

(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 administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Family and Community Services Act 1972*, 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.

187AA—Cancellation of unexecuted warrants

(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.

187A—Proof of convictions or orders

(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.

188—Registration of orders for the purpose of enforcement

(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.

189—Costs

(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.

(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—

complainant, in relation to a restraining order, includes an applicant for a restraining order;

restraining order includes an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*.

190—Witness fees

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

191—Fees

(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.

192—Regulations

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

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Formerly

Justices Act 1921

Legislation repealed by principal Act

The *Summary Procedure Act 1921* repealed the following:

An ordinance appointing the fees to be taken by Magistrates in South Australia (No. 4 of 1843)

To facilitate the performance of the duties of Justices of the Peace out of sessions with respect to persons charged with indictable offences (No. 15 of 1849)

To facilitate the performance of the duties of Justices of the Peace out of sessions with respect to summary convictions and orders (No. 6 of 1850)

Minor Offences Procedure Act 1869

An Act to amend the Minor Offences Procedure Act 1869 and The Criminal Law Consolidation Act 1876 (No. 166 of 1880)

The Justices Procedure Amendment Act 1883 (No. 298 of 1883)

The Magistrates' Fees Amendment Act 1907 (No. 926 of 1907)

The Minor Offences Procedure Act Amendment Act 1913 (No. 1127 of 1913)

The Justices Procedure (Indictable Offences) Amendment Act 1913 (No. 1133 of 1913)

Legislation amended by principal Act

The *Summary Procedure Act 1921* amended the following:

An Act to amend the Criminal Law (No. 10 of 1854)

An Act to enable persons accused of offences to give evidence on oath (No. 245 of 1882)

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1921	1479	*Justices Act 1921*	7.12.1921	26.7.1922 (*Gazette 29.6.1922 p1575*)
1923	1573	*Justices Act Amendment Act 1923*	21.11.1923	21.11.1923
1931	2051	*Justices Act 1931*	9.12.1931	9.12.1931
1935	2252	*Criminal Law Consolidation Act 1935*	21.12.1935	21.12.1935
1936	2261	*Justices Act Amendment Act 1936*	23.7.1936	23.7.1936
1943	24	*Justices Act Amendment Act 1943*	16.12.1943	16.12.1943
1956	57	*Justices Act Amendment Act 1956*	6.12.1956	6.12.1956
1957	37	*Justices Act Amendment Act 1957*	14.11.1957	1.2.1958 (*Gazette 19.12.1957 p1529*)
1960	17	*Justices Act Amendment Act 1960*	8.9.1960	8.9.1960
1965	54	*Maintenance Act Amendment Act 1965*	23.12.1965	27.1.1966 (*Gazette 27.1.1966 p145*)
1966	3	*Juvenile Courts Act 1966*	10.2.1966	7.7.1966 (*Gazette 7.7.1966 p57*)
1969	39	*Justices Act Amendment Act 1969*	13.11.1969	2.1.1970 (*Gazette 18.12.1969 p2019*)
1969	75	*Justices Act Amendment Act (No. 2) 1969*	11.12.1969	31.8.1970 (*Gazette 20.8.1970 p696*)
1972	7	*Justices Act Amendment Act 1972*	23.3.1972	30.11.1972 (*Gazette 16.11.1972 p2334*)
1972	54	*Local and District Criminal Courts Act Amendment Act 1972*	27.4.1972	9.11.1972 (*Gazette 9.11.1972 p2252*)
1972	92	*Justices Act Amendment Act (No. 2) 1972*	2.11.1972	15.2.1973 (*Gazette 15.2.1973 p496*)
1974	31	*Justices Act Amendment Act 1974*	11.4.1974	11.4.1974
1974	42	*Statute Law Revision Act 1974*	11.4.1974	11.4.1974
1975	8	*Justices Act Amendment Act 1975*	20.3.1975	20.3.1975
1975	24	*Statute Law Revision Act 1975*	27.3.1975	27.3.1975
1975	29	*Justices Act Amendment Act (No. 2) 1975*	27.3.1975	22.5.1975 (*Gazette 22.5.1975 p1987*)
1976	64	*Justices Act Amendment Act 1976*	25.11.1976	25.11.1976
1976	115	*Statutes Amendment (Capital Punishment Abolition) Act 1976*	23.12.1976	23.12.1976
1977	31	*Statutes Amendment (Narcotic and Psychotropic Drugs and Justices) Act 1977*	11.8.1977	1.9.1977 (*Gazette 1.9.1977 p601*)
1979	44	*Children's Protection and Young Offenders Act 1979*	15.3.1979	Sch—1.7.1979 (*Gazette 28.6.1979 p1951*)
1980	49	*Justices Act Amendment Act 1980*	3.7.1980	3.7.1980
1981	34	*Statutes Amendment (Administration of Courts and Tribunals) Act 1981*	19.3.1981	1.7.1981 (*Gazette 28.6.1981 p1896*)
1981	109	*Statutes Amendment (Jurisdiction of Courts) Act 1981*	23.12.1981	1.2.1982 (*Gazette 28.1.1982 p209*)

1982	26	*Justices Act Amendment Act 1982* as amended by 68/1982	25.3.1982	1.8.1982 (*Gazette 15.7.1982 p168*) except s 4 (*Gazette 30.7.1982 p335*)—which will not be brought into operation as the subsection it inserted was subsequently substituted by 66/1983
1982	46	*Justices Act Amendment Act (No. 2) 1982*	22.4.1982	3.6.1982 (*Gazette 3.6.1982 p1850*)
1982	68	*Justices Act Amendment Act (No. 3) 1982*	1.7.1982	1.7.1982 except ss 3—12—1.8.1982: s 3
1983	66	*Justices Act Amendment Act 1983*	13.10.1983	14.11.1983 (*Gazette 10.11.1983 p1354*)
1983	108	*Statutes Amendment (Magistrates) Act 1983*	22.12.1983	2.4.1984 (*Gazette 22.3.1984 p725*)
1984	77	*Justices Act Amendment Act 1984*	15.11.1984	1.1.1985 (*Gazette 6.12.1984 p1744*)
1984	78	*Criminal Law Consolidation Act Amendment Act (No. 2) 1984*	15.11.1984	15.11.1984
1984	107	*Evidence Act Amendment Act (No. 3) 1984*	20.12.1984	20.12.1984
1985	6	*Statutes Amendment (Bail) Act 1985*	7.3.1985	7.7.1985 (*Gazette 9.5.1985 p1398*)
1986	32	*Justices Act Amendment Act 1986*	10.4.1986	1.7.1986 (*Gazette 1.5.1986 p1104*)
1986	69	*Statutes Amendment (Parole) Act 1986*	20.11.1986	8.12.1986 (*Gazette 27.11.1986 p1700*)
1986	90	*Criminal Law Consolidation Act Amendment Act 1986*	4.12.1986	1.2.1987 (*Gazette 15.1.1987 p52*)
1987	33	*Local and District Criminal Courts Act Amendment Act 1987*	23.4.1987	1.7.1987 (*Gazette 28.5.1987 p1384*)
1987	49	*Criminal Law (Enforcement of Fines) Act 1987*	30.4.1987	21.6.1987 (*Gazette 4.6.1987 p1430*) except ss 5 & 6(4)—(6)—1.11.1987 (*Gazette 29.10.1987 p1449*)
1987	60	*Justices Act Amendment Act 1987*	17.9.1987	17.9.1987 (*Gazette 17.9.1987 p886*)
1988	5	*Justices Act Amendment Act 1988*	10.3.1988	5.5.1988 (*Gazette 5.5.1988 p1115*)
1988	51	*Statutes Amendment and Repeal (Sentencing) Act 1988*	5.5.1988	12.5.1988 (*Gazette 12.5.1988 p1181*) except ss 3 & 4—8.9.1988 (*Gazette 8.9.1988 p994*) and except ss 5, 6, 12, 15—20, 22—27, 30—39, 41—68, 70—78—1.1.1989 (*Gazette 15.12.1988 p2009*)
1988	104	*Justices Act Amendment Act (No. 2) 1988*	15.12.1988	15.12.1988
1989	33	*Statutes Amendment (Criminal Sittings) Act 1989*	4.5.1989	1.1.1990 (*Gazette 16.11.1989 p1501*)
1991	33	*Statutes Amendment (Attorney-General's Portfolio) Act 1991*	24.4.1991	6.6.1991 (*Gazette 6.6.1991 p1776*)
1991	49	*Director of Public Prosecutions Act 1991*	21.11.1991	6.7.1992 (*Gazette 25.6.1992 p1869*)
1991	72	*Justices Amendment Act 1991*	12.12.1991	6.7.1992 (*Gazette 2.7.1992 p209*)
1992	26	*Statutes Amendment (Attorney-General's Portfolio) Act 1992*	14.5.1992	6.7.1992 (*Gazette 2.7.1992 p209*)

1992	75	*Summary Procedure (Summary Protection Orders) Amendment Act 1992*	26.11.1992	4.3.1993 (*Gazette 25.2.1993 p713*) except s 5(b) which will not be brought into operation as the words it inserted were subsequently struck out by 62/1993
1993	62	*Statutes Amendment (Courts) Act 1993*	27.5.1993	ss 30—40—1.7.1993 (*Gazette 24.6.1993 p2047*)
1994	20	*Summary Procedure (Restraining Orders) Amendment Act 1994*	26.5.1994	1.8.1994 (*Gazette 14.7.1994 p69*)
1994	43	*Statutes Amendment (Courts) Act 1994*	2.6.1994	9.6.1994 (*Gazette 9.6.1994 p1669*)
1994	59	*Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994*	27.10.1994	1.1.1995 (*Gazette 8.12.1994 p1942*)
1995	27	*Statutes Amendment (Attorney-General's Portfolio) Act 1995*	27.4.1995	ss 22 & 23—4.5.1995 (*Gazette 4.5.1995 p1705*)
1995	51	*Statutes Amendment (Paedophiles) Act 1995*	27.7.1995	30.10.1995 (*Gazette 21.9.1995 p783*)
1995	65	*Statutes Amendment (Recording of Interviews) Act 1995*	10.8.1995	Pts 1 & 3—3.3.1996 (*Gazette 21.12.1995 p1760*)
1996	35	*Summary Procedure (Time for Making Complaint) Amendment Act 1996*	2.5.1996	3.2.1997 (*Gazette 19.12.1996 p1924*)
1996	67	*Statutes Amendment (Attorney-General's Portfolio) Act 1996*	15.8.1996	ss 30—33—17.10.1996 (*Gazette 17.10.1996 p1361*)
1998	41	*Statutes Amendment (Young Offenders) Act 1998*	13.8.1998	Pt 3 (s 9)—1.10.1998 (*Gazette 10.9.1998 p815*)
1998	60	*Statutes Amendment (Fine Enforcement) Act 1998*	3.9.1998	Pt 9 (ss 44 & 45)—6.3.2000 (*Gazette 18.11.1999 p2358*)
1999	24	*Statutes Amendment (Restraining Orders) Act 1999*	1.4.1999	Pt 4 (ss 13—19)—16.5.1999 (*Gazette 13.5.1999 p2502*)
1999	42	*Statutes Amendment and Repeal (Justice Portfolio) Act 1999*	5.8.1999	Pt 12 (ss 55 & 56)—3.10.1999 (*Gazette 23.9.1999 p1208*)
1999	80	*Criminal Law Consolidation (Serious Criminal Trespass) Amendment Act 1999*	2.12.1999	25.12.1999 (*Gazette 23.12.1999 p3668*)
2001	37	*Criminal Law (Sentencing) (Sentencing Procedures) Amendment Act 2001*	3.8.2001	3.8.2001
2001	55	*Statutes Amendment (Stalking) Act 2001*	8.11.2001	Pt 4 (s 6)—13.1.2002 (*Gazette 10.1.2002 p4*)
2001	69	*Statutes Amendment (Courts and Judicial Administration) Act 2001*	6.12.2001	Pt 13 (ss 30 & 31)—3.2.2002 (*Gazette 24.1.2002 p346*)
2002	26	*Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002*	31.10.2002	Sch 3 (cl 9)—5.7.2003 (*Gazette 15.5.2003 p1979*)
2003	25	*Summary Procedure (Classification of Offences) Amendment Act 2003*	24.7.2003	24.7.2003
2003	44	*Statute Law Revision Act 2003*	23.10.2003	Sch 1—24.11.2003 (*Gazette 13.11.2003 p4048*)

2003	53	*Statutes Amendment (Expiation of Offences) Act 2003*	4.12.2003	Pt 4 (s 12)—18.12.2003 (*Gazette 18.12.2003 p4527*)
2004	23	*Statutes Amendment (Courts) Act 2004*	8.7.2004	Pt 8 (ss 24—26)—1.9.2004 (*Gazette 26.8.2004 p3402*)
2004	52	*Criminal Law Consolidation (Child Pornography) Amendment Act 2004*	16.12.2004	Pt 5 (s 10)—30.1.2005 (*Gazette 13.1.2005 p67*)
2005	62	*Statutes Amendment and Repeal (Aggravated Offences) Act 2005*	1.12.2005	Pt 7 (ss 29 & 30)—15.5.2006 (*Gazette 20.4.2006 p1127*)
2005	74	*Statutes Amendment (Criminal Procedure) Act 2005*	8.12.2005	Pt 6 (ss 13 & 14)—1.3.2007 (*Gazette 1.3.2007 p672*)
2006	17	*Statutes Amendment (New Rules of Civil Procedure) Act 2006*	6.7.2006	Pt 73 (ss 227—234)—4.9.2006 (*Gazette 17.8.2006 p2831*)
2006	44	*Statutes Amendment (Justice Portfolio) Act 2006*	14.12.2006	Pt 30 (ss 63—66)—18.1.2007 (*Gazette 18.1.2007 p234*)
2007	38	*Summary Procedure (Paedophile Restraining Orders) Amendment Act 2007*	11.10.2007	9.12.2007 (*Gazette 29.11.2007 p4382*)
2008	7	*Statutes Amendment (Evidence and Procedure) Act 2008*	17.4.2008	Pt 6 (ss 25 & 26)—23.11.2008 (*Gazette 20.11.2008 p5171*)
2008	10	*Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008*	17.4.2008	Sch 1 (cl 6)—23.11.2008 (*Gazette 20.11.2008 p5171*)
2009	40	*Statutes Amendment (Property Offences) Act 2009*	17.9.2009	Pt 3 (s 7)—20.12.2009 (*Gazette 17.12.2009 p6351*)
2009	78	*Statutes Amendment (Children's Protection) Act 2009*	10.12.2009	Pt 4 (ss 8—19)—1.8.2010 (*Gazette 17.6.2010 p3077*)
2009	84	*Statutes Amendment (Public Sector Consequential Amendments) Act 2009*	10.12.2009	Pt 151 (s 346)—1.2.2010 (*Gazette 28.1.2010 p320*)
2009	85	*Intervention Orders (Prevention of Abuse) Act 2009*	10.12.2009	9.12.2011 (*Gazette 20.10.2011 p4269*) except Sch 1 (cll 20(2), 22, 23 (insofar as it deletes s 99A), 24, 27(1), 28—30 & 33)—uncommenced
2011	31	*Statutes Amendment (Budget 2011) Act 2011*	4.8.2011	Pt 5 (s 18)—1.7.2012 (*Gazette 20.10.2011 p4270*)
2012	**12**	***Statutes Amendment (Serious and Organised Crime) Act 2012***	**10.5.2012**	**Pt 12 (ss 49 & 50)—17.6.2012 (*Gazette 14.6.2012 p2756*)**

Provisions amended since 3 February 1976

- 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.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 72/1991 s 3	6.7.1992
Pt 1		
s 1	substituted by 72/1991 s 4	6.7.1992

s 2	*deleted by 72/1991 s 5*	*6.7.1992*
s 3	*amended by 46/1982 s 3*	*3.6.1982*
	amended by 68/1982 s 4	*1.8.1982*
	substituted by 51/1988 s 42	*1.1.1989*
	deleted by 72/1991 s 5	*6.7.1992*
s 4		
s 4(1)		
clerk	*substituted by 26/1982 s 3(a)*	*1.8.1982*
	deleted by 72/1991 s 6(a)	*6.7.1992*
the Chief Magistrate	inserted by 108/1983 s 4(a)	2.4.1984
complaint	amended by 72/1991 s 6(b)	6.7.1992
court of summary jurisdiction or court	*deleted by 72/1991 s 6(c)*	*6.7.1992*
Court	inserted by 72/1991 s 6(c)	6.7.1992
defendant	amended by 20/1994 s 3(a)	1.8.1994
district	*deleted by 72/1991 s 6(d)*	*6.7.1992*
District Criminal Court	*deleted by 72/1991 s 6(d)*	*6.7.1992*
fine	*deleted by 51/1988 s 43(a)*	*1.1.1989*
firearms order	inserted by 20/1994 s 3(b)	1.8.1994
foreign restraining order	inserted by 20/1994 s 3(b)	1.8.1994
gaol	*deleted by 51/1988 s 43(b)*	*1.1.1989*
group 1 offence	*deleted by 72/1991 s 6(d)*	*6.7.1992*
group 2 offence	*deleted by 72/1991 s 6(d)*	*6.7.1992*
group 3 offence	*deleted by 72/1991 s 6(d)*	*6.7.1992*
guardian	*deleted by 20/1994 s 3(c)*	*1.8.1994*
the Industrial Court	*deleted by 44/2006 s 63(3)*	*18.1.2007*
industrial magistrate	substituted by 44/2006 s 63(1)	18.1.2007
industrial offence	substituted by 72/1991 s 6(e)	6.7.1992
investigating officer	inserted by 65/1995 s 8	3.3.1996
interstate summary protection order	*inserted by 75/1992 s 3(a)*	*4.3.1993*
	deleted by 20/1994 s 3(d)	*1.8.1994*
justice	*deleted by 44/2006 s 63(2)*	*18.1.2007*
justices	*deleted by 72/1991 s 6(f)*	*6.7.1992*
keeper of a gaol	*deleted by 51/1988 s 43(c)*	*1.1.1989*
major offence	*inserted by 66/1983 s 3*	*14.11.1983*
	deleted by 72/1991 s 6(g)	*6.7.1992*
major indictable offence	inserted by 72/1991 s 6(g)	6.7.1992
minor indictable offence	substituted by 109/1981 s 44(a)	1.2.1982
	substituted by 72/1991 s 6(h)	6.7.1992

offence of violence	inserted by 72/1991 s 6(h)	6.7.1992
	amended by 62/2005 s 29	15.5.2006
the Registrar	*inserted by 68/1982 s 5*	*1.8.1982*
	amended by 33/1987 s 5	*1.7.1987*
	deleted by 72/1991 s 6(i)	*6.7.1992*
personal service	inserted by 26/1982 s 3(b)	1.8.1982
the Principal Registrar	inserted by 72/1991 s 6(j)	6.7.1992
Registrar	inserted by 72/1991 s 6(j)	6.7.1992
relevant family contact order	*inserted by 67/1996 s 30*	*17.10.1996*
	deleted by 85/2009 Sch 1 cl 20(1)	*9.12.2011*
restraining order	inserted by 20/1994 s 3(e)	1.8.1994
	substituted by 51/1995 s 4	30.10.1995
	substituted by 78/2009 s 8	1.8.2010
rules	inserted by 72/1991 s 6(j)	6.7.1992
Schedule 3 offence	*inserted by 72/1991 s 6(o)*	*6.7.1992*
	deleted by 26/2002 s 19(2) (Sch 3 cl 9(a))	*5.7.2003*
Schedule 4 offence	*inserted by 72/1991 s 6(d)*	*6.7.1992*
	deleted by 26/2002 s 19(2) (Sch 3 cl 9(a))	*5.7.2003*
Senior Judge	*deleted by 72/1991 s 6(k)*	*6.7.1992*
the senior magistrate	*inserted by 34/1981 s 38*	*1.7.1981*
	deleted by 108/1983 s 4(b)	*2.4.1984*
sensitive material	inserted by 7/2008 s 25	23.11.2008
sensitive material notice	inserted by 7/2008 s 25	23.11.2008
sexual offence	inserted by 60/1987 s 4	17.9.1987
	amended by 10/2008 Sch 1 cl 6(1)—(3)	23.11.2008
simple offence	*amended by 109/1981 s 44(b)*	*1.2.1982*
	deleted by 72/1991 s 6(l)	*6.7.1992*
special justice	*deleted by 72/1991 s 6(m)*	*6.7.1992*
special magistrate	*inserted by 108/1983 s 4(c)*	*2.4.1984*
	deleted by 72/1991 s 6(n)	*6.7.1992*
summary offence	inserted by 72/1991 s 6(n)	6.7.1992
summary protection order	*inserted by 75/1992 s 3(b)*	*4.3.1993*
	substituted by 62/1993 s 30	*1.7.1993*
	deleted by 20/1994 s 3(f)	*1.8.1994*
telephone	inserted by 75/1992 s 3(b)	4.3.1993
sum adjudged to be paid by a conviction	*deleted by 51/1988 s 43(d)*	*1.1.1989*
sum adjudged to be paid by an order	*deleted by 51/1988 s 43(d)*	*1.1.1989*
passage for trial	*deleted by 72/1991 s 6(p)*	*6.7.1992*

s 4A	*deleted by 72/1991 s 7*	*6.7.1992*
s 5	amended by 109/1981 s 45	1.2.1982
	amended by 26/1982 s 4	1.8.1982
	amended by 66/1983 s 4	14.11.1983
	amended by 51/1988 s 44	1.1.1989
	substituted by 72/1991 s 8	6.7.1992
s 5(2)	amended by 69/2001 s 30(a), (b)	3.2.2002
	amended by 26/2002 s 19(2) (Sch 3 cl 9(b))	5.7.2003
	amended by 25/2003 s 3(1)	24.7.2003
	amended by 40/2009 s 7(1)	20.12.2009
s 5(3)	amended by 59/1994 Sch 2	1.1.1995
	amended by 80/1999 Sch paras. (a), (b)	25.12.1999
	amended by 69/2001 s 30(c)	3.2.2002
	amended by 26/2002 s 19(2) (Sch 3 cl 9(c)—(e))	5.7.2003
	amended by 25/2003 s 3(2), (3)	24.7.2003
	amended by 23/2004 s 24	1.9.2004
	amended by 62/2005 s 30	15.5.2006
	amended by 44/2006 s 64(1), (2)	18.1.2007
	amended by 40/2009 s 7(2)	20.12.2009
s 5(3a)	inserted by 26/2002 s 19(2) (Sch 3 cl 9(f))	5.7.2003
	amended by 40/2009 s 7(3)	20.12.2009
s 5(6) and (7)	substituted by 43/1994 s 19	9.6.1994
s 7	substituted by 72/1991 s 9	6.7.1992
s 7A	*inserted by 90/1986 s 10(1) (Sch Pt 1)*	*1.2.1987*
	deleted by 72/1991 s 9	*6.7.1992*
s 8	deleted by 72/1991 s 10	6.7.1992
	inserted by 62/1993 s 31	1.7.1993
s 9	*deleted by 72/1991 s 10*	*6.7.1992*
s 9A	*inserted by 34/1981 s 39*	*1.7.1981*
	amended by 68/1982 s 6	*1.8.1982*
	amended by 108/1983 s 4(d)	*2.4.1984*
	deleted by 72/1991 s 10	*6.7.1992*
Pt 2	*amended by 66/1983 s 5*	*14.11.1983*
	amended by 108/1983 s 4(e)—(g)	*2.4.1984*
	deleted by 72/1991 s 11	*6.7.1992*
Pt 3		
Heading preceding s 20	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 20		
s 20(1)	amended by 72/1991 s 12	6.7.1992
s 21	*deleted by 6/1985 s 4(a)*	*7.7.1985*
s 22	amended by 72/1991 s 13	6.7.1992
s 22A		

s 22A(4)	*deleted by 72/1991 s 14*	*6.7.1992*
ss 23—25	*deleted by 72/1991 s 15*	*6.7.1992*
s 26	*amended by 51/1988 s 45*	*1.1.1989*
	deleted by 72/1991 s 15	*6.7.1992*
s 26A	*deleted by 72/1991 s 15*	*6.7.1992*
Heading preceding s 27	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 27		
s 27(1)	s 27 proviso deleted by 26/1982 s 5(a)	1.8.1982
	s 27 redesignated as s 27(1) by 26/1982 s 5(b)	1.8.1982
s 27(2)	inserted by 26/1982 s 5(b)	1.8.1982
s 27(3)	inserted by 26/1982 s 5(b)	1.8.1982
	amended by 72/1991 s 16	6.7.1992
Heading preceding s 27A	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 27A		
s 27A(1)	amended by 49/1980 s 2	3.7.1980
	amended by 72/1991 s 17	6.7.1992
s 27A(3)	amended by 32/1986 s 3	1.7.1986
	amended by 5/1988 s 3	5.5.1988
s 27C		
s 27C(2)	substituted by 72/1991 s 18(a)	6.7.1992
s 27C(3)	amended by 26/1982 s 6(a)	1.8.1982
	amended by 51/1988 s 46(a)	1.1.1989
s 27C(4)	amended by 26/1982 s 6(b)	1.8.1982
	amended by 72/1991 s 18(b)	6.7.1992
s 27C(5)	amended by 72/1991 s 18(c)	6.7.1992
s 27C(6)	*amended by 26/1982 s 6(c)*	*1.8.1982*
	deleted by 51/1988 s 46(b)	*1.1.1989*
s 27D	*deleted by 26/1982 s 7*	*1.8.1982*
Heading preceding s 28	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 28		
s 28(1)	amended by 72/1991 s 19(a)—(c)	6.7.1992
s 28(2) and (3)	substituted by 72/1991 s 19(d)	6.7.1992
s 28(4)	inserted by 72/1991 s 19(d)	6.7.1992
Heading preceding s 29	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 29	substituted by 72/1991 s 20	6.7.1992
	amended by 62/1993 s 32	1.7.1993
ss 30—41 and headings	*deleted by 6/1985 s 4(b)*	*7.7.1985*
Pt 4		
Pt 4 Div 1	*amended by 26/1982 s 8*	*1.8.1982*

	amended by 68/1982 s 7	*1.8.1982*
	amended by 51/1988 s 47	*1.1.1989*
	deleted by 72/1991 s 21	*6.7.1992*
Pt 4 Div 2		
Heading preceding s 49	*amended by 51/1988 s 48*	*1.1.1989*
	deleted by 44/2003 s 3(1) (Sch 1)	*24.11.2003*
s 49	substituted by 72/1991 s 22	6.7.1992
s 49(1) and (2)	amended by 62/1993 s 33	1.7.1993
s 50	*deleted by 72/1991 s 22*	*6.7.1992*
s 51	substituted by 72/1991 s 23	6.7.1992
s 52	substituted by 35/1996 s 3	3.2.1997
s 52(1)	s 52 amended and redesignated as s 52(1) by 53/2003 s 12(1), (2)	18.12.2003
s 52(2)	inserted by 53/2003 s 12(2)	18.12.2003
Heading preceding s 53	*omitted in pursuance of the Acts Republication Act 1967*	*17.10.1996*
s 53	*deleted by 67/1996 s 31*	*17.10.1996*
Heading preceding s 54	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 55	*deleted by 72/1991 s 24*	*6.7.1992*
Heading preceding s 56	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
Heading preceding s 57	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 57	substituted by 72/1991 s 25	6.7.1992
s 57(2)	amended by 17/2006 s 227	4.9.2006
s 57A		
s 57A(1)	amended by 49/1980 s 3(a)	3.7.1980
	amended by 72/1991 s 26(a), (b)	6.7.1992
s 57A(4)	amended by 49/1980 s 3(b)	3.7.1980
	substituted by 72/1991 s 26(c)	6.7.1992
s 57A(5)	*deleted by 72/1991 s 26(c)*	*6.7.1992*
s 57A(6)	amended by 72/1991 s 26(d)	6.7.1992
s 57A(7)	amended by 72/1991 s 26(e)	6.7.1992
s 57A(7a)	inserted by 26/1982 s 9	1.8.1982
	amended by 72/1991 s 26(f), (g)	6.7.1992
s 57A(8)	amended by 49/1980 s 3(c)	3.7.1980
	amended by 72/1991 s 26(h)	6.7.1992
s 57A(9)	amended by 72/1991 s 26(i), (j)	6.7.1992
s 57A(10)	substituted by 44/1979 s 5(2) (Sch)	1.7.1979
s 57A(11)	substituted by 49/1980 s 3(d)	3.7.1980
s 57A(11)	substituted by 49/1980 s 3(d)	3.7.1980
public officer	amended by 78/2009 s 19(3)	1.8.2010

Heading preceding s 58	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 58	substituted by 72/1991 s 27	6.7.1992
Heading preceding s 59	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 59	amended by 6/1985 s 4(c)	7.7.1985
	substituted by 72/1991 s 28	6.7.1992
s 60		
s 60(1)	amended by 72/1991 s 29(a)—(d)	6.7.1992
s 60(2)	substituted by 6/1985 s 4(d)	7.7.1985
	amended by 72/1991 s 29(e)	6.7.1992
s 62		
s 62(1) and (2)	amended by 17/2006 s 228	4.9.2006
s 62(3)	substituted by 72/1991 s 30	6.7.1992
Pt 4 Div 3		
s 62A	amended by 6/1985 s 4(e)	7.7.1985
s 62A(1)	amended by 17/2006 s 229	4.9.2006
s 62B		
s 62B(6)	amended by 51/1988 s 49(a), (b)	1.1.1989
	(d) deleted by 60/1998 s 44(a)	6.3.2000
s 62B(8)	amended by 51/1988 s 49(c)	1.1.1989
	amended by 72/1991 s 31	6.7.1992
	amended by 60/1998 s 44(b)	6.3.2000
s 62BA		
s 62BA(1)	amended by 49/1980 s 4(a)	3.7.1980
	amended by 17/2006 s 230	4.9.2006
s 62BA(4)	amended by 49/1980 s 4(b)	3.7.1980
s 62C		
s 62C(1)	amended by 51/1988 s 50	1.1.1989
	amended by 17/2006 s 231	4.9.2006
s 62C(2)	amended by 72/1991 s 32(a), (b)	6.7.1992
s 62C(3a) and (5)	amended by 72/1991 s 32(c)	6.7.1992
s 62C(6)	substituted by 72/1991 s 32(d)	6.7.1992
s 62D		
s 62D(3) and (4)	inserted by 26/1982 s 10	1.8.1982
s 63		
s 63(2)	*deleted by 72/1991 s 33*	*6.7.1992*
s 65	*amended by 6/1985 s 4(f)—(h)*	*7.7.1985*
	amended by 51/1988 s 51	*1.1.1989*
	deleted by 72/1991 s 34	*6.7.1992*
s 66	*deleted by 72/1991 s 35*	*6.7.1992*
s 68		
s 68(3)	amended by 72/1991 s 36	6.7.1992

s 69A		
s 69A(1)	amended by 51/1988 s 52	1.1.1989
	amended by 72/1991 s 37	6.7.1992
Pt 4 Div 4		
Heading preceding s 70	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 70		
s 70(1)	s 70 first sentence redesignated as s 70(1) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 70(2)	s 70 second sentence redesignated as s 70(2) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 70AB and heading	*deleted by 51/1988 s 53*	*1.1.1989*
s 70B	amended by 72/1991 s 38	6.7.1992
s 72	*amended by 26/1982 s 11*	*1.8.1982*
	amended by 72/1991 s 39	*6.7.1992*
	deleted by 27/1995 s 22	*4.5.1995*
s 73 and heading	*deleted by 51/1988 s 54*	*1.1.1989*
s 74 and heading	*deleted by 51/1988 s 55*	*1.1.1989*
s 75	*amended by 109/1981 s 46*	*1.2.1982*
	deleted by 51/1988 s 55	*1.1.1989*
s 76	*amended by 68/1982 s 8*	*1.8.1982*
	deleted by 51/1988 s 55	*1.1.1989*
Heading preceding s 76A	*inserted by 26/1982 s 12*	*1.8.1982*
	deleted by 44/2003 s 3(1) (Sch 1)	*24.11.2003*
s 76A	inserted by 26/1982 s 12	1.8.1982
	substituted by 72/1991 s 40	6.7.1992
s 76B	inserted by 68/1982 s 9	1.8.1982
	deleted by 6/1985 s 4(i)	7.7.1985
	inserted by 72/1991 s 40	6.7.1992
Pt 4 Div 5		
s 77	*amended by 51/1988 s 56*	*1.1.1989*
	deleted by 72/1991 s 41	*6.7.1992*
ss 78 and 79	*deleted by 51/1988 s 57*	*1.1.1989*
Pt 4 Div 5	**inserted by 12/2012 s 49**	**17.6.2012**
Pt 4 Div 5A	*inserted by 68/1982 s 10*	*1.8.1982*
	amended by 51/1988 ss 58, 59	*1.1.1989*
	amended by 72/1991 s 42	*6.7.1992*
	deleted by 60/1998 s 45	*6.3.2000*
Pt 4 Div 6	*amended by 109/1981 s 47*	*1.2.1982*
	amended by 26/1982 s 13	*1.8.1982*
	amended by 68/1982 s 11	*1.8.1982*
	amended by 77/1984 s 3	*1.1.1985*
	amended by 69/1986 s 21	*8.12.1986*

	amended by 49/1987 Sch 2	*21.6.1987*
	deleted by 51/1988 s 60	*1.1.1989*
Pt 4 Div 7	substituted by 46/1982 s 4	3.6.1982
	amended by 72/1991 s 43	6.7.1992
	amended by 75/1992 ss 4—6	4.3.1993
	amended by 62/1993 ss 34—37	1.7.1993
	substituted by 20/1994 s 4	1.8.1994
s 99 before deletion by 85/2009		
s 99(a1)	*inserted by 78/2009 s 9(1)*	*1.8.2010*
s 99(1)	*amended by 78/2009 s 9(2)*	*1.8.2010*
s 99(2)	*amended by 24/1999 s 13(a)*	*16.5.1999*
	amended by 55/2001 s 6(a)	*13.1.2002*
s 99(2a)	*inserted by 24/1999 s 13(b)*	*16.5.1999*
s 99(2ab)	*inserted by 55/2001 s 6(b)*	*13.1.2002*
s 99(2b)	*inserted by 24/1999 s 13(b)*	*16.5.1999*
s 99(3a)	*inserted by 24/1999 s 13(c)*	*16.5.1999*
	amended by 78/2009 s 19(1)	*1.8.2010*
s 99(3b)	*inserted by 24/1999 s 13(c)*	*16.5.1999*
s 99(4)	*substituted by 67/1996 s 32*	*17.10.1996*
s 99(5) and (6)	*inserted by 67/1996 s 32*	*17.10.1996*
s 99	*deleted by 85/2009 Sch 1 cl 21*	*9.12.2011*
s 99AA	inserted by 51/1995 s 5	30.10.1995
s 99AA(a1)	inserted by 78/2009 s 10(1)	1.8.2010
s 99AA(1)	amended by 38/2007 s 4(1)	9.12.2007
	(b) deleted by 38/2007 s 4(1)	9.12.2007
	amended by 78/2009 s 10(2)	1.8.2010
s 99AA(2)	substituted by 38/2007 s 4(2)	9.12.2007
s 99AA(3)	amended by 38/2007 s 4(3), (4)	9.12.2007
s 99AA(4)	amended by 44/2006 s 65(1), (2)	18.1.2007
	substituted by 38/2007 s 4(5)	9.12.2007
s 99AAB	inserted by 38/2007 s 5	9.12.2007
s 99AAB(2)	amended by 78/2009 s 11	1.8.2010
s 99AAC	inserted by 78/2009 s 12	1.8.2010
s 99A	*deleted by 78/2009 s 13*	*1.8.2010*
s 99B before deletion by 85/2009		
s 99B(1)	*amended by 78/2009 s 19(1)*	*1.8.2010*
s 99B(2)	*substituted by 24/1999 s 14(a)*	*16.5.1999*
s 99B(3) and (4)	*substituted by 24/1999 s 14(b)*	*16.5.1999*
s 99B(5)	*amended by 24/1999 s 14(c)*	*16.5.1999*
s 99B(5a)	*inserted by 24/1999 s 14(d)*	*16.5.1999*
s 99B(7)	*amended by 78/2009 s 19(1), (2)*	*1.8.2010*

s 99B	*deleted by 85/2009 Sch 1 cl 23*	*9.12.2011*
s 99C		
s 99C(2)	substituted by 24/1999 s 15(a)	16.5.1999
s 99C(3a)	*inserted by 23/2004 s 25*	*1.9.2004*
	deleted by 78/2009 s 14	*1.8.2010*
s 99C(4)—(6)	substituted by 24/1999 s 15(b)	16.5.1999
s 99C(7) and (8)	inserted by 24/1999 s 15(b)	16.5.1999
s 99CA before deletion by 85/2009	*inserted by 23/2004 s 26*	*1.9.2004*
s 99CA(1)	*amended by 78/2009 s 19(1)*	*1.8.2010*
s 99CA	*deleted by 85/2009 Sch 1 cl 25*	*9.12.2011*
s 99D before deletion by 85/2009		
s 99D(1)	*amended by 51/1995 s 6*	*30.10.1995*
	amended by 24/1999 s 16(a)	*16.5.1999*
	amended by 78/2009 s 19(1)	*1.8.2010*
s 99D(2)	*amended by 24/1999 s 16(b)*	*16.5.1999*
s 99D	*deleted by 85/2009 Sch 1 cl 25*	*9.12.2011*
s 99E		
s 99E(1)	s 99E redesignated as s 99E(1) by 24/1999 s 17	16.5.1999
s 99E(2)	inserted by 24/1999 s 17	16.5.1999
s 99E(3)	inserted by 24/1999 s 17	16.5.1999
	amended by 78/2009 s 19(1), (2)	1.8.2010
s 99E(4)	*inserted by 24/1999 s 17*	*16.5.1999*
	amended by 78/2009 s 19(1)	*1.8.2010*
	deleted by 85/2009 Sch 1 cl 26	*9.12.2011*
s 99F		
s 99F(1)	amended by 78/2009 ss 15, 19(1)	1.8.2010
	(c) deleted by 78/2009 s 15	1.8.2010
s 99F(1a)	inserted by 24/1999 s 18(a)	16.5.1999
	amended by 17/2006 s 232	4.9.2006
s 99F(2)	*deleted by 85/2009 Sch 1 cl 27(2)*	*9.12.2011*
s 99F(3)	substituted by 67/1996 s 33	17.10.1996
	amended by 24/1999 s 18(b)	16.5.1999
s 99G		
s 99G(1)	amended by 78/2009 s 19(1)	1.8.2010
s 99G(2)	amended by 78/2009 s 19(1)	1.8.2010
s 99H		
s 99H(4)	amended by 78/2009 s 19(1)	1.8.2010
s 99I		
s 99I(1)	amended by 78/2009 s 16(1)	1.8.2010
s 99I(2)	amended by 78/2009 s 19(1), (2)	1.8.2010
s 99I(5)	inserted by 38/2007 s 6	9.12.2007

s 99I(6)	inserted by 78/2009 s 16(2)	1.8.2010
s 99J	amended by 17/2006 s 233	4.9.2006
s 99KA	inserted by 78/2009 s 17	1.8.2010
s 99L	*deleted by 85/2009 Sch 1 cl 31*	*9.12.2011*
Pt 5	amended by 64/1976 s 2	25.11.1976
	amended by 115/1976 ss 19, 20	23.12.1976
	amended by 31/1977 s 14	1.9.1977
	amended by 109/1981 ss 48—57	1.2.1982
	amended by 66/1983 ss 6—8	14.11.1983
	amended by 77/1984 s 4	1.1.1985
	amended by 78/1984 s 3	15.11.1984
	amended by 107/1984 s 10	20.12.1984
	amended by 6/1985 s 4(j)—(r)	7.7.1985
	amended by 60/1987 s 5	17.9.1987
	amended by 51/1988 ss 61—65	1.1.1989
	amended by 33/1989 ss 4—9	1.1.1990
	amended by 33/1991 s 12	6.6.1991
	amended by 49/1991 Sch 2	6.7.1992
	substituted by 72/1991 s 44	6.7.1992
s 102		
s 102(3)	amended by 43/1994 s 20(a)	9.6.1994
s 102(3a)	inserted by 43/1994 s 20(b)	9.6.1994
s 103		
s 103(3a)	inserted by 37/2001 s 4(a)	3.8.2001
s 103(4)	inserted by 43/1994 s 21	9.6.1994
s 103(5)	**inserted by 12/2012 s 50**	**17.6.2012**
s 104		
s 104(1)	amended by 42/1999 s 55(a), (b)	3.10.1999
	amended by 52/2004 s 10(1), (2)	30.1.2005
	amended by 74/2005 s 13(1)	1.3.2007
	amended by 7/2008 s 26(1)	23.11.2008
s 104(2)	amended by 42/1999 s 55(c)	3.10.1999
	amended by 74/2005 s 13(2)	1.3.2007
s 104(3) and (4)	substituted by 65/1995 s 9	3.3.1996
s 104(5)	*deleted by 65/1995 s 9*	*3.3.1996*
s 104(5)	inserted by 52/2004 s 10(3)	30.1.2005
	substituted by 7/2008 s 26(2)	23.11.2008
s 104(6)	inserted by 62/1993 s 38	1.7.1993
	amended by 78/2009 s 18	1.8.2010
s 104(7)	inserted by 74/2005 s 13(3)	1.3.2007
s 105		
s 105(4a)	inserted by 37/2001 s 4(b)	3.8.2001
s 106		

s 106(1)	amended by 17/2006 s 234(1), (2)	4.9.2006
s 106(2)	amended by 44/2006 s 66	18.1.2007
s 106(3)	amended by 17/2006 s 234(3)	4.9.2006
s 107		
s 107(3)	amended by 62/1993 s 39	1.7.1993
s 107(5) and (6)	substituted by 74/2005 s 14	1.3.2007
s 112	amended by 27/1995 s 23	4.5.1995
s 113	amended by 26/1992 s 12	6.7.1992
Pt 6	*amended by 26/1982 ss 14—17*	*1.8.1982*
	amended by 68/1982 s 12	*1.8.1982*
	amended by 6/1985 s 4(s), (t)	*7.7.1985*
	amended by 51/1988 ss 66, 67	*1.1.1989*
	deleted by 72/1991 s 45	*6.7.1992*
Pt 7		
Heading preceding s 181	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
ss 181 and 182	substituted by 72/1991 s 46	6.7.1992
Heading preceding s 183	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 183	deleted by 72/1991 s 46	6.7.1992
	inserted by 41/1998 s 9	1.10.1998
s 184	deleted by 72/1991 s 46	6.7.1992
	inserted by 41/1998 s 9	1.10.1998
s 184(1)	amended by 84/2009 s 346	1.2.2010
ss 185—187	*deleted by 72/1991 s 46*	*6.7.1992*
Heading preceding s 187AA	*substituted by 104/1988 s 2*	*15.12.1988*
	deleted by 44/2003 s 3(1) (Sch 1)	*24.11.2003*
s 187AA	substituted by 104/1988 s 2	15.12.1988
Heading preceding s 187A	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 187A		
s 187A(1)	amended by 26/1982 s 18(a)	1.8.1982
	amended by 72/1991 s 47(a)	6.7.1992
s 187A(1a)	inserted by 26/1982 s 18(b)	1.8.1982
	substituted by 72/1991 s 47(b)	6.7.1992
s 187AB and heading	*inserted by 6/1985 s 4(u)*	*7.7.1985*
	deleted by 72/1991 s 48	*6.7.1992*
s 187B and heading	*deleted by 51/1988 s 68*	*1.1.1989*
s 188	amended by 49/1991 Sch 2	6.7.1992
	substituted by 72/1991 s 48	6.7.1992
s 189	substituted by 72/1991 s 48	6.7.1992
s 189(1)	substituted by 62/1993 s 40(a)	1.7.1993
	amended by 24/1999 s 19(a)	16.5.1999

s 189(2a)	inserted by 24/1999 s 19(b)	16.5.1999
s 189(5)	substituted by 62/1993 s 40(b)	1.7.1993
s 189(8)	inserted by 24/1999 s 19(c)	16.5.1999
complainant	inserted by 85/2009 Sch 1 cl 32	9.12.2011
restraining order	substituted by 85/2009 Sch 1 cl 32	9.12.2011
s 189	substituted by 31/2011 s 18	1.7.2012—not incorporated
ss 189A—189D	inserted by 31/2011 s 18	1.7.2012—not incorporated
ss 190—192	substituted by 72/1991 s 48	6.7.1992
ss 193—203 and headings	*amended by 26/1982 s 19*	*1.8.1982*
	deleted by 72/1991 s 48	*6.7.1992*
Schs 1 and 2	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
Sch 3	*inserted by 72/1991 s 49*	*6.7.1992*
	amended by 59/1994 Sch 2	*1.1.1995*
	amended by 80/1999 Sch para (c)	*25.12.1999*
	deleted by 26/2002 s 19(2) (Sch 3 cl 9(g))	*5.7.2003*
Sch 4	*inserted by 72/1991 s 49*	*6.7.1992*
	amended by 59/1994 Sch 2	*1.1.1995*
	deleted by 26/2002 s 19(2) (Sch 3 cl 9(g))	*5.7.2003*

Transitional etc provisions associated with Act or amendments

Statutes Repeal and Amendment (Courts) Act 1991

22—Transitional provisions—general

(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.

Summary Procedure (Restraining Orders) Amendment Act 1994

5—Transitional provision

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.

Statutes Amendment and Repeal (Justice Portfolio) Act 1999

56—Transitional provision

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.

Criminal Law (Sentencing) (Sentencing Procedures) Amendment Act 2001

5—Transitional provision

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

Statutes Amendment (Courts and Judicial Administration) Act 2001

31—Transitional provision

The amendments made to the principal Act by this Part do not apply in respect of an offence committed before the commencement of this Part.

Historical versions

Reprint No 2—6.7.1992

Reprint No 3—4.3.1993

Reprint No 4—1.7.1993

Reprint No 5—9.6.1994

Reprint No 6—1.8.1994

Reprint No 7—1.1.1995

Reprint No 8—4.5.1995

Reprint No 9—30.10.1995

Reprint No 10—3.3.1996

Reprint No 11—17.10.1996

Reprint No 12—3.2.1997

Reprint No 13—1.10.1998

Reprint No 14—16.5.1999

Reprint No 15—3.10.1999

Reprint No 16—25.12.1999

Reprint No 17—6.3.2000

Reprint No 18—3.8.2001

Reprint No 19—13.1.2002

Reprint No 20—3.2.2002

Reprint No 21—5.7.2003

Reprint No 22—24.7.2003

Reprint No 23—18.12.2003

1.9.2004

30.1.2005

15.5.2006

4.9.2006

18.1.2007

1.3.2007

9.12.2007

23.11.2008

20.12.2009

1.2.2010

1.8.2010

9.12.2011