House of Assembly
As passed all stages and awaiting assent.
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South Australia

Summary Procedure (Indictable Offences) Amendment Bill 2017

A BILL FOR

An Act to amend the *Summary Procedure Act 1921* and to make related amendments to the *Bail Act 1985*; the *Correctional Services Act 1982*; the *Criminal Investigation (Covert Operations) Act 2009*; the *Criminal Law Consolidation Act 1935*; the *Criminal Law (Sentencing) Act 1988*; the *District Court Act 1991*; the *Evidence Act 1929*; the *Juries Act 1927*; the *Magistrates Court Act 1991*; the *Supreme Court Act 1935*; the *Work Health and Safety Act 2012*; the *Young Offenders Act 1993* and the *Youth Court Act 1993*.

Contents

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Summary Procedure (Indictable Offences) Amendment Act 2017*.

2—Commencement

(1) This Act will come into operation on a day to be fixed by proclamation.

(2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or a provision of this Act.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Summary Procedure Act 1921*

4—Amendment of long title

Long title—delete "the Magistrates Court" and substitute:

courts

5—Amendment of section 1—Short title

Section 1—delete "Summary" and substitute:

Criminal

6—Amendment of section 4—Interpretation

(1) Section 4(1)—before the definition of ***the Chief Magistrate*** insert:

answer charge hearing—see section 109;

case statement means a defence case statement or a prosecution case statement;

(2) Section 4(1), definition of ***Court***—delete the definition and substitute:

defence case statement—see section 123;

(3) Section 4(1)—after the definition of ***foreign restraining order*** insert:

Full Court has the same meaning as in the *Supreme Court Act 1935*;

(4) Section 4(1)—after the definition of ***the Principal Registrar*** insert:

prosecution case statement—see section 123;

(5) Section 4(1)—after the definition of ***sensitive material notice*** insert:

sentencing law means the *Criminal Law (Sentencing) Act 1988* or an Act enacted in substitution for that Act;

7—Substitution of Part 5

Part 5—delete the Part and substitute:

Part 5—Indictable offences

Division 1—Informations

100—Informations charging indictable offences

(1) An information charging an indictable offence must contain—

(a) a statement of the specific offence or offences that the accused person is charged with; and

(b) such particulars as are necessary for giving reasonable information as to the nature of the charge.

(2) Despite any rule of law or practice (but subject to the provisions of this Act), an information charging an indictable offence and laid in a court will not be open to objection in respect of its form or contents if it is framed in accordance with any requirements prescribed by the rules of that court.

101—Laying of information

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

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

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

102—Joinder and separation of charges

(1) Subject to this Act, charges for 2 or more offences may be joined in the same information if those charges are founded on the same facts or form, or are a part of, a series of offences of the same or a similar character.

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

(a) major indictable offences;

(b) minor indictable offences;

(c) summary offences.

(3) Subject to subsection (4)—

(a) 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

(b) if an 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.

(4) If 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 separate information.

(5) A 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 (provided that a court may only direct that charges contained in separate informations be tried together if the charges could, in accordance with subsection (1), have been joined together in the same information).

(6) Despite subsection (5) and any rule of law to the contrary, if 2 or more counts charging sexual offences involving different alleged victims are joined in the same information, the following provisions apply:

(a) subject to paragraph (b), those counts are to be tried together;

(b) the judge may order a separate trial of a count relating to a particular alleged victim if (and only if) evidence relating to that count is not admissible in relation to each other count relating to a different alleged victim.

(7) Substantive charges may be laid in the same information (and tried together) against—

(a) any number of accessories at different times to any offence; and

(b) any number of receivers at different times of property stolen at 1 time,

notwithstanding that the principal offender is not included in the same information or is not available to be tried.

(8) Where—

(a) 2 or more defendants are charged with committing a summary or minor indictable offence jointly; and

(b) 1 or more of the defendants is to be tried in a superior court for that offence or for another offence charged on the same information,

the Magistrates Court must order that all the defendants be committed for trial in the superior court together (notwithstanding that 1 or more of the defendants may have failed to elect for trial in a superior court or are charged only with 1 or more summary offences).

(9) In this section—

sexual offence means—

(a) an offence against section 48, 48A, 49, 50, 56, 58, 63B or 72 of the *Criminal Law Consolidation Act 1935*; or

(b) an attempt to commit, or an assault with intent to commit, any of those offences; or

(c) a substantially similar offence against a corresponding previous enactment; or

(d) an offence against the law of the Commonwealth, another State or a Territory corresponding to an offence referred to in a preceding paragraph.

103—DPP may lay information in superior court

(1) Despite any other provision of this Part, a person may be tried, at any criminal sessions of the Supreme Court or District Court, for any offence on an information presented to the Supreme Court or the District Court (as the case may be) in the name and by the authority of the Director of Public Prosecutions.

(2) The fact that an information charging an indictable offence has been filed in the Magistrates 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 if the Director of Public Prosecutions thinks fit (and the information filed in the Magistrates 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).

(3) Subject to any modifications prescribed by the regulations, the provisions of this Act, and any other law, relating to informations charging indictable offences apply to an information presented to the Supreme Court or District Court in accordance with this section.

(4) For the avoidance of doubt, any power of the Supreme Court or the District Court to order the transfer of proceedings under this or any other Act or law applies to proceedings brought under this section in the same way as it applies to any other criminal proceedings.

Division 2—Pre-committal hearings etc

104—Securing attendance in Magistrates Court

If an information charging an indictable offence has been filed in the Magistrates 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 in relation to the charge; or

(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 the defendant in custody or on bail to appear at a nominated time and place in relation to the charge; or

(ii) the Court may appoint a time and place for the defendant to appear before the Court in relation to the charge and issue a summons requiring the defendant to appear at the time and place so appointed.

105—Pre-committal hearings and documents

(1) A defendant charged with an indictable offence must be given the following documents at or before the defendant's first appearance in the Magistrates Court in relation to the charge (in accordance with any requirements imposed by the rules):

(a) a notice, in a form prescribed by the regulations, containing the matters specified in subsection (2) and such other matters as may be prescribed;

(b) a copy of the information;

(c) a brief description of the alleged offending (whether in the form of an extract from a police report relating to the alleged offence or otherwise);

(d) if the defendant is charged with a minor indictable offence—the appropriate form for electing for trial in a superior court.

(2) A notice referred to in subsection (1)(a) must provide the defendant with information about—

(a) sentencing reductions available under the sentencing laws in relation to guilty pleas; and

(b) the process for having the matter called on in a court for the purpose of entering a guilty plea.

(3) A document required to be given to the defendant under subsection (1) may be given to a person who is acting on behalf of the defendant.

(4) Failure to comply with subsection (1) does not affect any proceedings relating to the offence or offences.

(5) The Magistrates Court must, on adjourning the defendant's first appearance before the Court in relation to the charge, appoint a time and place for the defendant's second appearance before the Court in relation to the charge, having regard to any information provided by the prosecution as to the likely length of time the prosecution requires in order to obtain witness statements and other material prior to the next appearance (subject to any requirements applying under section 106).

106—Indictable matters commenced by SA Police

(1) The following provisions apply in relation to an information charging an indictable offence where SA Police have been the investigating authority and the offence is to be subsequently prosecuted by the Director of Public Prosecutions (a ***State criminal offence***):

(a) SA Police must provide the Director of Public Prosecutions with information in relation to the matter (the ***preliminary brief***) that is, in the opinion of the Director of Public Prosecutions, sufficient for the Director of Public Prosecutions to make a determination (the ***charge determination***) as to the appropriate charge or charges to be proceeded with;

(b) unless the Director of Public Prosecutions determines otherwise, SA Police will appear before the Magistrates Court on behalf of the prosecution until—

(i) the Director of Public Prosecutions considers the preliminary brief and makes the charge determination; or

(ii) the defendant elects to have the relevant offence or offences called on in the Magistrates Court for the purpose of entering a guilty plea,

whichever occurs first;

(c) SA Police must, as soon as practicable after providing the preliminary brief to the Director of Public Prosecutions—

(i) give a copy of the preliminary brief to the defendant or a legal practitioner representing the defendant; and

(ii) file a copy of the preliminary brief in the Magistrates Court;

(d) the Magistrates Court must, in adjourning the proceedings under section 105(5)—

(i) have regard to information provided by the prosecution as to the witness statements and other material to be obtained for the purposes of completion of the preliminary brief and the time within which it is expected that the preliminary brief can be completed; and

(ii) ensure that the adjournment is for a period that—

(A) allows sufficient time for the completion of the preliminary brief; and

(B) allows an additional period of not less than 4 weeks for the Director of Public Prosecutions to consider the preliminary brief and make a charge determination;

(e) the Magistrates Court must not commence committal proceedings under Division 3 unless the Court has been advised by the prosecution that the Director of Public Prosecutions has made the charge determination.

(2) If the Director of Public Prosecutions has not made the charge determination by the time of the defendant's second appearance before the Magistrates Court in relation to the charge, the prosecution may apply to the Court for an adjournment of the matter to enable that to occur.

(3) On an application under subsection (2), the Magistrates Court—

(a) must have regard to information provided by the prosecution as to the witness statements and other material to be obtained for the purposes of completion of the preliminary brief and the time within which it is expected that the preliminary brief can be completed and the charge determination made; and

(b) having regard to that information, may grant the adjournment of the matter or may dismiss the charge,

(and, if the proceedings are adjourned and at any subsequent appearance the Court is advised that the Director of Public Prosecutions has still not made the charge determination, subsection (2) and this subsection also apply to the Court in relation to that appearance).

(4) The fact that a charge has been dismissed by the Magistrates Court under this section does not prevent the charge from being subsequently laid again.

(5) If an information to which this section applies also includes charges of offences other than State criminal offences, the Magistrates Court may make such orders varying the operation of this section as it thinks necessary in the circumstances.

107—Pre-committal subpoenas

A subpoena may only be issued in relation to proceedings for an indictable offence before committal proceedings relating to the offence have been completed in accordance with Division 3—

(a) by the Registrar if—

(i) the subpoena is sought in relation to a charge of a minor indictable offence and the Registrar is satisfied that the defendant will not be electing, in accordance with the rules, for trial in a superior court; or

(ii) the subpoena is only issued for the purpose of compelling a witness to give oral evidence in committal proceedings; or

(iii) each party to the proceedings and each person to whom the subpoena will apply (if granted) consent to the grant of the subpoena; or

(b) by a magistrate on an application under this section.

Division 3—Committal proceedings

108—Division not to apply to certain matters

(1) If a defendant charged with a minor indictable offence does not elect, in accordance with the rules, for trial in a superior court, the Magistrates Court will not proceed to deal with the charge in accordance with this Division (and the matter will instead be dealt with by trial conducted in the Magistrates Court or by plea entered in the Magistrates Court) unless section 102(8) applies to the defendant.

Note—

In relation to trials and pleas for minor indictable offences conducted in the Magistrates Court see Division 4

(2) If a defendant charged with a major indictable offence pleads guilty before the commencement of committal proceedings under this Division, the Magistrates Court may, subject to section 116(1)—

(a) determine and impose sentence on the defendant; or

(b) commit the defendant to a superior court for sentence.

109—Committal proceedings generally

(1) The committal proceedings for an indictable offence will consist of—

(a) an appearance (the ***committal appearance***) in the Magistrates Court conducted in accordance with section 110; and

(b) a hearing (the ***answer charge hearing***) in the Magistrates Court at which—

(i) the defendant will be asked to formally answer the charge in accordance with section 113; and

(ii) if the defendant does not plead guilty—the Court will go on to take evidence in accordance with section 114 and evaluate that evidence in accordance with section 115.

(2) The Magistrates Court may exclude a defendant from any committal proceedings if his or her conduct is disruptive and may excuse a defendant from attendance at the committal appearance for any proper reason.

(3) 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 committal proceedings, withdraw the election and in that event—

(a) the Magistrates Court will not proceed to deal with the charge in accordance with this Division (and the matter will instead be dealt with by trial conducted in the Magistrates Court or by plea entered in the Magistrates Court); and

(b) if the matter is dealt with by trial conducted in the Magistrates Court, the Magistrates Court may, if the defendant agrees, admit evidence given or tendered at the answer charge hearing.

Note—

In relation to trials and pleas for minor indictable offences conducted in the Magistrates Court see Division 4

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

110—Committal appearance

(1) If the defendant pleads guilty at the committal appearance, an answer charge hearing will not be required and the Magistrates Court may (subject to section 116(1))—

(a) determine and impose sentence on the defendant; or

(b) commit the defendant to a superior court for sentence.

(2) If the defendant does not plead guilty—

(a) the prosecution must provide the Court with information as to the witness statements and other material to be obtained for the purposes of completion of the committal brief in accordance with the requirements of section 111 and the time within which it is expected that the committal brief can be completed; and

(b) the defendant must be given an opportunity to respond to the information provided by the prosecution and to advise the Court whether any negotiations are taking place with the prosecution or provide the Court with information as to any other relevant matter; and

(c) the Court must adjourn the proceedings and appoint a time and place for the answer charge hearing, ensuring that sufficient time is allowed for the completion of the committal brief in accordance with the requirements of section 111.

(3) If the defendant advises the Court that negotiations are taking place with the prosecution, the defendant may, at any time within the period of 4 weeks after the committal appearance, have the matter called on in the Magistrates Court for the purpose of entering a guilty plea in relation to the charge (and in such a case the defendant will, for the purposes of this Act and the sentencing law, be treated as if the defendant had pleaded guilty at the committal appearance).

111—Committal brief etc

(1) Where a charge of an indictable offence is to proceed to an answer charge hearing, the prosecutor must, at least 4 weeks before the date appointed for that hearing, file in the Magistrates Court a brief (the ***committal brief***) containing—

(a) statements of witnesses for the prosecution on which the prosecutor relies as tending to establish the guilt of the defendant; and

(b) 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

(c) 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

(d) 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,

provided that any such material that has already been included in the preliminary brief (filed in the Magistrates Court and given to the defendant or a legal practitioner representing the defendant under section 106) need not be included in the committal brief.

(2) If material of the kind required to be included in the committal brief comes into the prosecutor's possession after the filing of the committal brief, the prosecutor must file the new material in the Magistrates Court as soon as practicable after it comes into the prosecutor's possession (and on so doing it will be taken to form part of the committal brief for the purposes of this Act).

(3) If material is filed in the Court in accordance with subsection (1) or (2), a copy of that material must be given to the defendant or a legal practitioner representing the defendant as soon as practicable after it is so filed.

(4) A witness statement included in a committal brief—

(a) must be in the form of an affidavit; 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) an audio visual record or audio record of the interview, or the reading over of a written record of the interview, was made under the *Summary Offences Act 1953*,

must be accompanied by a copy of the audio visual record or audio record.

(5) However, if the witness is a witness to whom this subsection applies, 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 an audio visual record or audio record of an interview with the witness that is accompanied by a written transcript verified by an investigating officer or person of a prescribed class who was present at the interview as a complete record of the interview;

(b) if a recording referred to in paragraph (a)(ii) is filed in the Court, the prosecutor must—

(i) provide the defendant with a copy of the verified written transcript of the recording at least 4 weeks before the date appointed for the answer charge hearing or, if the recording comes into the prosecutor's possession on a later date, as soon as practicable after the recording comes into the prosecutor's possession; and

(ii) inform the defendant that the defendant is entitled to have the recording 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 recording;

(c) the time proposed for playing the recording must be at least 2 weeks before the date appointed for the answer charge hearing or, if the recording comes into the prosecutor's possession at a later date, as soon as practicable after the recording comes into the prosecutor's possession (but the time and place may be modified by agreement).

(6) Subsection (5) applies to a witness who is—

(a) illiterate; or

(b) a child of or under the age of 14 years; or

(c) a person with a disability that adversely affects the person's capacity to give a coherent account of the person's experiences or to respond rationally to questions.

(7) If the prosecutor relies on evidence that is sensitive material as tending to establish the guilt of the defendant, the prosecutor must, at least 4 weeks before the date appointed for the answer charge hearing—

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

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

112—Notices relating to committal proceedings

(1) A defendant charged with an indictable offence may file in the Magistrates Court, and give to the prosecution, a notice indicating that the defendant intends to assert that there is no case to answer on the charge in committal proceedings conducted in accordance with section 114.

(2) A defendant charged with an indictable offence may file in the Magistrates Court, and give to the prosecution, a notice requesting the oral examination of a witness or witnesses in committal proceedings conducted in accordance with section 114.

(3) A notice under this section must—

(a) be filed in the Court and given to the prosecution before the date appointed for the answer charge hearing; and

(b) in the case of a notice under subsection (1)—specify why the defendant asserts that there is no case to answer; and

(c) in the case of a notice under subsection (2)—specify which witness or witnesses and why the defendant asserts there are special reasons for the oral examination; and

(d) comply with any other requirements prescribed by the regulations.

(4) If a notice under this section is given to the prosecution less than 2 weeks before the date appointed for the answer charge hearing, the Magistrates Court must, at the request of the prosecution, adjourn the answer charge hearing for a period of up to 2 weeks (or such longer period as the Court thinks fit) to allow the prosecution time to consider the notice and properly prepare for the answer charge hearing.

113—Conduct of answer charge hearing

(1) In cases where the defendant does not appear at the answer charge hearing, the Magistrates Court will proceed as follows:

(a) if the defendant has, in accordance with the rules, returned a written plea of guilty, the Court may, subject to section 116(1)—

(i) determine and impose sentence on the defendant; or

(ii) 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 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 committal proceedings as if the defendant had appeared and denied the charge.

(2) In cases where the defendant appears to answer the charge, the Magistrates Court will proceed as follows:

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

(b) the defendant may then—

(i) plead guilty; or

(ii) deny the charge; or

(iii) assert previous conviction or acquittal of the charge,

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

(c) the Court will then proceed as follows:

(i) if the defendant pleads guilty—the Court may (subject to section 116(1))—

(A) determine and impose sentence on the defendant; or

(B) commit the defendant to a superior court for sentence;

(ii) if the defendant denies the charge—subject to subsection (3), 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 committal proceedings as if the defendant had denied the charge.

(3) If a defendant who is represented by a legal practitioner concedes that there is a case to answer in relation to an offence, the Court may act on that basis and need not itself consider the evidence for the purpose of determining whether it is sufficient to put the defendant on trial for the offence.

114—Taking evidence at committal proceedings

(1) Where a charge is not admitted by a defendant in committal proceedings, the following procedure applies:

(a) the prosecutor will tender the statements and other material filed in the Court as part of the committal brief 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 as part of the committal brief for oral examination if—

(i) the defendant has filed and given to the prosecution a notice in accordance with section 112(2) indicating that the defendant required 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) if the defendant has filed and given to the prosecution a notice in accordance with section 112(1) indicating that the defendant intends to assert that there is no case to answer on the charge—the defendant may give or call evidence, or make submissions, in support of that assertion;

(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, a person with a cognitive impairment that adversely affects the person's capacity to give a coherent account of the person's experiences or to respond rationally to questions or a child of or under the age of 14 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.

115—Evaluation of evidence at committal proceedings

(1) The following principles govern the Magistrates Court's approach to evidence in committal proceedings:

(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 committal proceedings, reserving any dispute as to its admissibility for determination by the court of trial.

(2) If the Magistrates 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 Magistrates 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 information charging the defendant with summary offences only.

(4) Where the Magistrates 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.

(5) If, in any legal proceedings, the question arises whether a defendant has been provided with the statement and explanations required by subsection (4), it will be presumed, in the absence of proof to the contrary, that the defendant has been provided with the statement and explanations.

Division 4—Forum for trial or sentence

116—Forum for sentence

(1) If—

(a) a defendant pleads guilty to a charge of a major indictable offence (other than treason, murder, or an attempt or conspiracy to commit, or assault with intent to commit, either of those offences); and

(b) the prosecution and the defendant consent to the defendant being sentenced by the Magistrates Court,

the Magistrates Court is to determine and impose sentence itself unless the Court is of the opinion that the interests of justice require committal to a superior court.

(2) Subject to this section, the Magistrates Court may sentence a person for a minor or major indictable offence in the same way as for a summary offence.

(3) In determining and imposing sentence in relation to an indictable offence, the Magistrates Court is to observe procedural rules specifically applicable to indictable offences.

(4) The rules may provide that specified provisions of this Act or any other Act or law apply with necessary adaptations and modifications to sentencing by the Magistrates Court of a person charged with an indictable offence.

(5) Where the Magistrates 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 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;

(b) in any other case, the defendant should be committed to the District Court for sentence.

117—Forum for trial

(1) The Magistrates Court will conduct a trial of a minor indictable offence (where the defendant has not elected, in accordance with the rules, for trial in a superior court) in the same way as a trial of a summary offence.

(2) The rules may provide that specified provisions of this Act or any other Act or law apply with necessary adaptations and modifications to the trial by the Magistrates Court of a person charged with an indictable offence.

(3) Where the Magistrates 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.

118—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 factors.

119—Change of plea following committal for sentence

(1) A person who has been committed to a superior court for sentence in relation to a charge of an offence may only enter a change of plea in the superior court in relation to that charge with the permission of the court.

(2) If the superior court gives permission for a change of plea, 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 5—Procedure following committal for trial or sentence

120—Fixing of arraignment date and remand of defendant

(1) Where the Magistrates Court commits a defendant to a superior court for trial, the Magistrates Court must fix a date for the defendant's arraignment and in doing so must—

(a) have regard to information provided by the prosecution as to the material to be considered for the purposes of completion of the prosecution case statement and the time within which it is expected that the prosecution case statement can be completed; and

(b) have regard to information (if any) provided by the defendant as to the time that may be required for the purposes of completion of the defence case statement; and

(c) ensure that the date fixed for the arraignment—

(i) allows a period of at least 6 weeks (or such longer period as may be necessary in the circumstances) for the completion of the prosecution case statement; and

(ii) allows an additional period of not less than 6 weeks (to ensure that all of the case statement requirements set out in section 123 can be complied with).

(2) Where the Magistrates 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.

121—Material to be forwarded by Registrar

Where a person is committed for trial or sentence, the Principal Registrar must forward to the relevant prosecution authority—

(a) a copy of the order for committal;

(b) a transcript of the oral evidence (if any) taken in the committal proceedings.

122—Prosecution may decline to prosecute

(1) If, on examining the committal brief for a matter committed to a superior court for trial, the prosecution is of the opinion that there is no reasonable ground for putting the person committed for trial on trial for an offence, the prosecution may so certify in the form prescribed by the rules of the superior court.

(2) If the prosecution has certified that the prosecution will not be filing an information against an accused person—

(a) if the person is in prison, a judge of the Supreme Court or the District Court may, by warrant in the form prescribed by the rules of the relevant court, direct—

(i) the Chief Executive within the meaning of the *Correctional Services Act 1982*; or

(ii) the person in whose custody the person is,

immediately to discharge the person from prison in respect of the offence mentioned in that warrant; or

(b) if the person is on bail—the recognizances of bail taken from the person and the person's sureties become void on the prosecution so certifying.

123—Case statements

(1) Subject to section 122, where the Magistrates Court commits a defendant charged with an indictable offence to a superior court for trial, the prosecution—

(a) must present, or cause to be presented, an information against that person; and

(b) must, not less than 6 weeks before the date fixed for the defendant's arraignment in the superior court—

(i) file in that court; and

(ii) give to the defendant or a legal practitioner representing the defendant,

a prosecution case statement.

(2) A prosecution case statement must include (in accordance with prosecution duties of disclosure) the following:

(a) a summary of the alleged facts;

(b) a description of evidence that may be led by the prosecution in relation to each element of the offence;

(c) a list of the witnesses the prosecution intends to call at trial;

(d) details of each expert witness the prosecution intends to call at trial;

(e) details of any additional witness statement that the prosecution is aware will be obtained, but which has not yet been obtained;

(f) whether the prosecution intends to lead discreditable conduct evidence (within the meaning of section 34P of the *Evidence Act 1929*) and, if so, details of that evidence;

(g) whether the prosecution intends to make any pre-trial applications under the *Evidence Act 1929* and, if so, a copy of any such application;

(h) whether the trial is one that is to be given priority under section 50B of the *District Court Act 1991*;

(i) an estimate of the length of the prosecution case;

(j) whether any interpreter will be required for the prosecution case (and if so, the language that the interpreter will be required to interpret).

(3) A defendant committed to a superior court for trial on a charge of an indictable offence must, not more than 4 weeks after being given the prosecution case statement—

(a) file in that court; and

(b) give to the prosecution,

a defence case statement.

(4) A defence case statement must include the following:

(a) any facts of the offence set out in the prosecution case statement which the defendant admits in accordance with section 34 of the *Evidence Act 1929*;

(b) any elements of the offence set out in the prosecution case statement which the defendant admits in accordance with section 34 of the *Evidence Act 1929*;

(c) any witnesses the defendant asks the prosecution to call (being witnesses who have provided a statement but who are not included in the list of the witnesses the prosecution intends to call at trial contained in the prosecution case statement);

(d) whether the defendant consents to any of the prosecution applications included in the prosecution case statement;

(e) whether the defendant intends to introduce—

(i) expert evidence; or

(ii) evidence of alibi (within the meaning of section 124),

(in which case section 124 must also be complied with);

(f) whether the defendant intends to raise any of the following prior to commencement of the trial:

(i) issues relating to joinder or severance;

(ii) issues relating to cross-admissibility of evidence;

(iii) challenges to the legality of any searches;

(iv) challenges to the admissibility of any other prosecution evidence;

(v) applications for stay of proceedings;

(vi) issues relating to chain of evidence or continuity of custody of exhibits;

(vii) any other points of law;

(g) whether the defendant agrees with the prosecution estimate of the length of the prosecution case and the defendant's estimate of the length of the trial;

(h) whether the defendant will apply for trial by judge alone;

(i) whether the defendant requires any interpreter (and if so, the language that the interpreter will be required to interpret).

(5) A defence case statement must be in the form of a written statement verified by declaration (which may form part of the statement and must be signed by the defendant personally or be signed, in the presence of the defendant, by a legal practitioner representing the defendant or, in the case of a body corporate, by a legal practitioner representing the body corporate) and complying with any other requirements prescribed by the regulations.

(6) The obligation to disclose information or material of a kind that is required to be included in a case statement under this section is ongoing until—

(a) the defendant is convicted or acquitted of the offence; or

(b) the prosecution is terminated.

(7) In accordance with subsection (6), if—

(a) any information or material included in a case statement by a party subsequently changes; or

(b) any information or material is obtained or anything else occurs after a case statement has been filed in a court by a party that would have been required to be included in that party's case statement if it had been obtained or had occurred before the case statement was so filed,

the information, material or occurrence is to be disclosed to the other party to the proceedings as soon as practicable.

(8) If subsection (7) applies to a defendant, the defendant may file and give to the prosecution an updated case statement that includes the information or material or that discloses the occurrence.

(9) The regulations may prescribe circumstances in which the prosecution will be required to file in the relevant superior court and give to the defendant or a legal practitioner representing the defendant a response to the defence case statement (or updated defence case statement) and may impose any requirements in relation to such response.

(10) For the purposes of this Act, any information or material provided by the prosecution to the defence before the prosecution case statement was filed in a court will be taken to form part of the prosecution case statement.

(11) Where proceedings have been instituted in a superior court by the Director of Public Prosecutions laying an information ex officio in accordance with section 103, this section and section 124 apply in relation to those proceedings with the modifications prescribed by the rules of the superior court.

(12) Where 2 or more defendants are jointly charged with an indictable offence, the prosecution and defence case statements required in relation to the trial of each defendant in a superior court must be given to each other defendant in accordance with any orders made by the superior court (whether on arraignment of the defendants or at any later time).

(13) A court may make orders modifying the application of any requirement under this section or section 124—

(a) in relation to a defendant who is unrepresented; or

(b) in relation to any party to proceedings if the court is satisfied that the modification is necessary because of exceptional circumstances.

124—Expert evidence and evidence of alibi

(1) If a defendant is to be tried for an indictable offence in a superior court, and expert evidence or evidence of alibi is to be introduced for the defence, notice of intention to introduce the evidence must be prepared in accordance with this section and be—

(a) filed in the court at the same time that the defence case statement is filed in the court; and

(b) given to the prosecution at the same time that the defence case statement is given to the prosecution.

(2) If expert evidence becomes available to the defence after the time referred to in subsection (1), or any information specified in a notice under subsection (1) relating to expert evidence subsequently changes, the defendant must, as soon as practicable after such evidence becomes available or the defence becomes aware of such changes, file in the relevant superior court and give to the prosecution a notice or updated notice (as the case may require) under this section.

(3) Notice of proposed evidence of alibi is not required under this section if the same evidence, or evidence to substantially the same effect, was received in the committal proceedings at which the defendant was committed for trial.

(4) A notice relating to expert evidence must—

(a) set out the name and qualifications of the expert; and

(b) describe the general nature of the evidence and what it tends to establish.

(5) A notice relating to evidence of alibi must contain—

(a) a summary setting out with reasonable particularity the facts sought to be established by the evidence; and

(b) the name and address of the witness by whom the evidence is to be given; and

(c) any other particulars that may be required by the rules.

(6) A notice under this section—

(a) must be in the form of a written statement verified by declaration (which may form part of the notice and must be signed by the defendant personally or be signed, in the presence of the defendant, by a legal practitioner representing the defendant or, in the case of a body corporate, by a legal practitioner representing the body corporate) and complying with any other requirements prescribed by the regulations; and

(b) is taken to form part of the defence case statement for the purposes of this Act.

(7) If the defence proposes to introduce expert psychiatric evidence or other expert medical evidence relevant to the defendant's mental state or medical condition at the time of an alleged offence, the court may, on application by the prosecutor, require the defendant to submit, at the prosecutor's expense, to an examination by an independent expert approved by the court.

(8) The court may, on application by the prosecution, require the defendant to provide to the prosecution a copy of any report obtained by the defendant from a person proposed to be called to give expert evidence at the trial.

(9) In this section—

evidence of alibi means evidence given or adduced, or to be given or adduced, by a defendant tending to show that the defendant was in a particular place or within a particular area at a particular time and therefore tending to rebut an allegation made against the defendant, either in the charge on which the defendant is to be tried or in evidence adduced in support of the charge at committal proceedings.

125—Failure to comply with disclosure requirements

(1) A superior court determining proceedings for an indictable offence may refuse to admit evidence in the proceedings that is sought to be adduced by a party who has failed to comply with disclosure requirements applying to the evidence.

(2) A superior court may grant an adjournment to a party to proceedings for an indictable offence if—

(a) another party seeks to adduce evidence in the proceedings and failed to comply with disclosure requirements applying to the evidence; and

(b) the evidence would prejudice the case of the party seeking the adjournment.

(3) If, in proceedings for an indictable offence before a superior court—

(a) the prosecution receives notice under section 124 of an intention to introduce expert evidence after the time at which the defence case statement was required to be given to the prosecution in accordance with section 123; or

(b) expert evidence that has not been previously disclosed to the prosecution is admitted at the trial,

the court should, on application by the prosecution, grant an adjournment to allow the prosecution a reasonable opportunity to obtain expert advice on the proposed evidence unless there are good reasons to the contrary (and, if a jury has been empanelled and the adjournment would, in the court's opinion, adversely affect the course of the trial, the court may discharge the jury and order that the trial be re-commenced).

(4) The regulations may make provision for, or with respect to, the exercise of the powers of a court under subsection (1) and (2) (including the circumstances in which the powers may not be exercised).

(5) Without limiting the regulations that may be made under subsection (4), the powers of a court may not be exercised under subsection (1) to prevent a defendant adducing evidence unless the prosecution has complied with the disclosure requirements applying to the prosecution.

(6) If a defendant in proceedings for an indictable offence in a superior court fails to comply with disclosure requirements applying under section 124, the failure may be made the subject of comment to the jury by the prosecutor or the judge (or both).

(7) Except with the permission of the court, evidence in rebuttal of an alibi must not be adduced after the close of the case for the prosecution.

(8) Permission will be granted under subsection (7) where the defendant gives or adduces evidence of alibi that was not disclosed, or was not sufficiently disclosed, in accordance with the disclosure requirements (but this section does not limit the discretion of the court to grant such permission in any other case).

(9) In this section—

disclosure requirements, in relation to a party to proceedings, means a requirement to disclose or otherwise provide information or material applying to that party under section 123 or section 124.

126—Subpoenas

(1) A subpoena may only be issued in relation to proceedings for an indictable offence in a superior court—

(a) by the registrar of the superior court if—

(i) the subpoena is only issued for the purpose of compelling a witness to give oral evidence in the proceedings; or

(ii) each party to the proceedings and each person to whom the subpoena will apply (if granted) consent to the grant of the subpoena; or

(b) by a master or judge of the superior court on an application under this section.

(2) A master or judge must not grant an application under subsection (1)(b) unless satisfied that it is in the interests of justice for the subpoena to be issued.

127—Prescribed proceedings

(1) The Supreme Court and the District Court must make rules for expediting prescribed proceedings and, if there has been a determination by a bail authority under the *Bail Act 1985* that the defendant in such proceedings is a serious and organised crime suspect, the trial of the matter must be commenced within the period of 6 months after the making of that determination, unless the determination ceases to apply or the court determines—

(a) on its own initiative, that it is not reasonably practicable for the court to deal with the matter within that period; or

(b) on application by the Director of Public Prosecutions or the defendant, that exceptional circumstances exist that justify the matter being set down for trial at a later date.

(2) In this section—

prescribed proceedings means proceedings for—

(a) an alleged serious and organised crime offence; or

(b) an offence joined in the same information as an alleged serious and organised crime offence,

where the proceedings have been instituted in a superior court by the Director of Public Prosecutions laying an information ex officio in accordance with section 103.

Division 6—Pleas and proceedings on trial in superior court

128—Objections to informations in superior court, amendments and postponement of trial

(1) An application to quash an information on the basis of a formal defect apparent on the face of the information must be made before the jury is empanelled and not afterwards.

(2) Subject to subsection (3), the court may before trial, or at any stage of a trial, make an order to amend an information as the court thinks necessary if—

(a) the information is defective; or

(b) there is a variation between a particular stated in the information and the evidence offered in proof of that particular.

(3) An order should not be made under subsection (2) if, having regard to the merits of the case, the proposed amendment to the information cannot be made without causing injustice.

(4) If the court makes an order to amend an information under subsection (2)—

(a) the order must be noted and endorsed on the information; and

(b) the information will be treated, for the purposes of the trial and all connected proceedings, as having been presented in the amended form.

(5) If before trial, or at any stage of a trial the court forms the opinion that as a result of exercising a power under this Act to—

(a) amend an information; or

(b) order a separate trial of a count,

it is expedient to postpone the trial, the court may make such an order.

(6) If an order of the court is made for a separate trial or for the postponement of a trial—

(a) in the case of an order made during a trial—the court may order that the jury be discharged from giving a verdict on the count or counts the trial of which is postponed or on the whole information, as the case may be; and

(b) the procedure on the separate trial of a count will be the same in all respects as if the count had been presented as a separate information and the procedure on the postponed trial will be the same in all respects (if the jury has been discharged) as if the trial had not commenced; and

(c) the court may make such other orders as the court thinks fit, including as to admitting the accused person to bail and the enlargement of recognizances.

(7) Any power of the court under this section is in addition to and does not limit any other power of the court for the same or similar purposes.

129—Plea of not guilty and refusal to plead

(1) A person arraigned on an information who pleads not guilty will, by that plea, without any further form, be taken to have put themself on the country for trial (and the court must, in the usual manner, proceed to the trial of that person accordingly).

(2) If any person, being so arraigned, refuses or fails to enter a plea to the information, it is lawful for the court to order a plea of not guilty to be entered on the person's behalf and the person will be treated as if the person had pleaded not guilty.

130—Form of plea of *autrefois convict* or *autrefois acquit*

In any plea of *autrefois convict* or of *autrefois acquit*, it is sufficient for the defendant to allege that they have been lawfully convicted or acquitted, as the case may be, of the offence charged in the information, without specifying the time or place of the previous conviction or acquittal.

131—Certain questions of law may be determined before jury empanelled

A superior court before which a person has been arraigned may, if it thinks fit, hear and determine any question relating to the admissibility of evidence or any other question of law affecting the conduct of the trial before the jury is empanelled.

132—Determinations of court binding on trial judge

A determination or order made by a judge of the superior court in proceedings dealing with charges laid in an information is binding on a judge of the court presiding at the trial of the defendant, whether the trial is the first or a new trial following a stay of the proceedings, discontinuance of an earlier trial or an appeal, unless—

(a) the trial judge considers that it would not be in the interests of justice for the determination or order to be binding; or

(b) the determination or order is inconsistent with an order made on such an appeal.

133—Conviction on plea of guilty of offence other than that charged

If a person arraigned on an information pleads not guilty of an offence charged in the information but guilty of some other offence of which the person might be found guilty on trial for the offence charged, and the plea of guilty is accepted by the prosecution, then (whether or not the 2 offences are separately charged in distinct counts)—

(a) the person may be convicted on the plea of guilty and the conviction operates as an acquittal of the offence charged; and

(b) if the person has been placed in the charge of the jury, the jury may be discharged without being required to give a verdict (unless the trial is to continue in respect of further counts that are unaffected by the plea); and

(c) the person is liable to be punished for the offence of which the person has been convicted in the same manner as if the person had been found guilty of the offence on trial for the offence charged.

134—Power to require notice of intention to adduce certain kinds of evidence

(1) A court before which a defendant is to be tried on information may, on application by the prosecutor, require the defence to give the prosecution written notice of an intention to introduce evidence of any of the following kinds:

(a) evidence tending to establish that the defendant was mentally incompetent to commit the alleged offence or is mentally unfit to stand trial;

(b) evidence tending to establish that the defendant acted for a defensive purpose;

(c) evidence of provocation;

(d) evidence of automatism;

(e) evidence tending to establish that the circumstances of the alleged offence occurred by accident;

(f) evidence of necessity or duress;

(g) evidence tending to establish a claim of right;

(h) evidence of intoxication.

(2) Before making an order under this section, the court must satisfy itself that—

(a) the prosecution has provided the defence with the prosecution case statement in accordance with section 123; and

(b) the prosecution has no existing, but unfulfilled, obligations of disclosure to the defence.

(3) Non-compliance with a requirement under subsection (1) does not render evidence inadmissible but the prosecutor or the judge (or both) may comment on the non-compliance to the jury.

(4) A court before which a defendant is to be tried on information may require the defence to notify the prosecutor, in writing, whether the defendant consents to dispensing with the calling of prosecution witnesses proposed to be called to establish the admissibility of specified intended evidence of any of the following kinds:

(a) documentary, audio, visual, or audiovisual evidence of surveillance or interview;

(b) other documentary, audio, visual or audiovisual evidence;

(c) exhibits.

(5) If the defence fails to comply with a notice under subsection (4), the defendant's consent to the tender of the relevant evidence for purposes specified in the notice will be conclusively presumed.

135—Inspection and copies of statements

A defendant is entitled—

(a) at the time of the person's trial, to inspect, without fee or reward, all statements taken against the defendant which are in the custody of the court; and

(b) at any time before the defendant's trial, to have a copy of all statements taken against the defendant from the person having the lawful custody thereof, on payment of such fee as the court or a judge may direct.

136—Defence to be invited to outline issues in dispute at conclusion of opening address for the prosecution

(1) On the trial of an offence on information in a superior court, the judge is to invite the defendant, at the conclusion of the prosecutor's opening address, to address the court to outline the issues in contention between the prosecution and the defence.

(2) The defendant may then address the court accordingly or decline the invitation.

(3) If the trial is before a jury, the invitation to exercise a right under this section must be made in the absence of the jury and a defendant's failure to exercise a right that the defendant has been invited to exercise under this section is not to be made the subject of comment by the judge or the prosecutor to the jury.

137—Right to call or give evidence

(1) A person charged with an offence may, at the conclusion of the evidence for the prosecution, give or call evidence in the person's defence.

(2) If evidence is to be given for the defence, the defendant may, before giving or calling the evidence, address the court outlining the case for the defence.

(3) If there are 2 or more defendants, an address on behalf of any of those defendants must be given before evidence is given by or on behalf of that defendant and, if the court so directs, before evidence is given by or on behalf of any of the defendants.

(4) A defendant may exercise a right to address the court under this section even though the defendant has already addressed the court to outline issues in contention between the prosecution and the defence.

138—Right of reply

(1) At the conclusion of the evidence, the prosecutor and the defendant are entitled to address the court on the evidence.

(2) The address for the prosecution is to be made before any address for the defence.

139—Postponement of trial

(1) No person is entitled to traverse or postpone the trial of any information presented against the person in a court of criminal jurisdiction but, if the court is of the opinion that a trial should, for any reason, be adjourned, it may—

(a) adjourn it to any day during the current sessions, or to the next sessions, on such terms as to bail or otherwise as it thinks fit; and

(b) respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses are bound to attend on the day to which the trial has been adjourned without entering into any fresh recognizances for that purpose.

(2) Nothing in this section extends to any prosecution by information in the nature of a *quo warranto*.

140—Verdict for attempt where full offence charged

If on the trial of a person charged with any offence it appears to the jury on the evidence that the defendant did not complete the offence charged but that the person was guilty only of an attempt to commit the offence—

(a) the jury may return as their verdict that the defendant is guilty of an attempt to commit the offence charged; and

(b) in that case—the defendant will be liable to be punished in the same manner as if the defendant had been convicted on an information for such an attempt.

Part 6—Limitations on rules relating to double jeopardy

Division 1—Preliminary

141—Interpretation

(1) In this Part—

acquittal of an offence includes—

(a) acquittal in appellate proceedings relating to the offence; and

(b) acquittal at the direction or discretion of the court,

(whether in this State or in another jurisdiction);

administration of justice offence means any of the following offences:

(a) an offence of perjury or subornation of perjury;

(b) an offence against section 243, 244, 245 or 248 of the *Criminal Law Consolidation Act 1935*;

(c) an offence against section 249 or 250 of the *Criminal Law Consolidation Act 1935* where the public officer is a judicial officer;

(d) an offence against section 256 of the *Criminal Law Consolidation Act 1935*;

(e) a substantially similar offence against a previous enactment or the law of another jurisdiction corresponding to an offence referred to in a preceding paragraph;

Category A offence means any of the following offences:

(a) an offence of murder;

(b) manslaughter or attempted manslaughter;

(c) an aggravated offence of rape;

(d) an aggravated offence of robbery;

(e) an offence of trafficking in a commercial quantity, or large commercial quantity, of a controlled drug contrary to section 32(1) or (2) of the *Controlled Substances Act 1984*;

(f) an offence of manufacturing a commercial quantity, or large commercial quantity, of a controlled drug contrary to section 33(1) or (2) of the *Controlled Substances Act 1984*;

(g) an offence of selling a commercial quantity, or large commercial quantity, of a controlled precursor contrary to section 33A(1) or (2) of the *Controlled Substances Act 1984*;

(h) a substantially similar offence against a previous enactment or the law of another jurisdiction corresponding to an offence referred to in a preceding paragraph;

judicial body means a court or tribunal, body or person invested by law with judicial or quasi-judicial powers, or with authority to make an inquiry or to receive evidence;

judicial officer means a person who alone or with others constitutes a judicial body;

relevant offence means—

(a) a Category A offence; and

(b) any other offence for which the offender is liable to be imprisoned for life or for at least 15 years.

(2) For the purposes of this Part, a reference to an ***offence of murder*** includes—

(a) an offence of conspiracy to murder; and

(b) an offence of aiding, abetting, counselling or procuring the commission of murder.

142—Meaning of fresh and compelling evidence

(1) For the purposes of this Part, evidence relating to an offence of which a person is acquitted is—

(a) ***fresh*** if—

(i) it was not adduced at the trial of the offence; and

(ii) it could not, even with the exercise of reasonable diligence, have been adduced at the trial; and

(b) ***compelling*** if—

(i) it is reliable; and

(ii) it is substantial; and

(iii) it is highly probative in the context of the issues in dispute at the trial of the offence.

(2) Evidence that would be admissible on a retrial under this Part is not precluded from being fresh or compelling just because it would not have been admissible in the earlier trial of the offence resulting in the relevant acquittal.

143—Meaning of tainted acquittal

For the purposes of this Part, if at the trial of an offence a person is acquitted of the offence, the acquittal will be ***tainted*** if—

(a) the person or another person has been convicted (whether in this State or in another jurisdiction) of an administration of justice offence in connection with the trial resulting in the acquittal; and

(b) it is more likely than not that, had it not been for the commission of the administration of justice offence, the person would have been convicted of the offence at the trial.

144—Application of Part

(1) This Part applies whether the offence of which a person is acquitted is alleged to have occurred before or after the commencement of this Part.

(2) This Part does not apply if a person is acquitted of the offence with which the person is charged but is convicted of a lesser offence arising out of the same set of circumstances that gave rise to the charge.

(3) However, this Part does apply in the circumstances set out in subsection (2) if the acquittal was tainted.

Division 2—Circumstances in which police may investigate conduct relating to offence of which person previously acquitted

145—Circumstances in which police may investigate conduct relating to offence of which person previously acquitted

(1) A police officer may not carry out an investigation to which this section applies, or authorise the carrying out of an investigation to which this section applies, without the written authorisation of the Director of Public Prosecutions.

(2) However, a police officer may carry out, or authorise the carrying out of, such an investigation without the written authority of the Director of Public Prosecutions if the police officer reasonably believes that—

(a) urgent action is required in order to prevent the investigation being substantially and irrevocably prejudiced; and

(b) it is not reasonably practicable in the circumstances to obtain the consent of the Director of Public Prosecutions before taking the action.

(3) The Director of Public Prosecutions must be informed, as soon as practicable, of any action taken under subsection (2) and the investigation must not proceed further without the written authorisation of the Director of Public Prosecutions.

(4) The Director of Public Prosecutions must not authorise an investigation to which this section applies unless—

(a) the Director of Public Prosecutions is satisfied that—

(i) as a result of the investigation, the person under investigation is, or is likely, to be charged with—

(A) an offence of which the person has previously been acquitted; or

(B) an administration of justice offence that is related to the offence of which the person has previously been acquitted; and

(ii) it is in the public interest for the investigation to proceed; and

(b) in the opinion of the Director of Public Prosecutions, the previous acquittal would not be a bar to the trial of the person for an offence that may be charged as a result of the investigation.

(5) This section applies to an investigation in respect of a person's conduct in relation to an offence of which the person has previously been acquitted and includes—

(a) the questioning, search or arrest of the person;

(b) the issue of a warrant for the arrest of the person;

(c) a forensic procedure (within the meaning of the *Criminal Law (Forensic Procedures) Act 2007*) carried out on the person;

(d) the search or seizure of property or premises owned or occupied by the person.

(6) In subsection (5), a reference to ***an offence of which the person has previously been acquitted*** includes a reference—

(a) to any other offence with which the person was charged that was joined in the same information as that in which the offence of which the person was acquitted was charged; and

(b) to any other offence of which the person could have been convicted at the trial of the offence of which the person was acquitted.

Division 3—Circumstances in which trial or retrial of offence will not offend against rules of double jeopardy

146—Retrial of relevant offence of which person previously acquitted where acquittal tainted

(1) The Full Court may, on application by the Director of Public Prosecutions, order a person who has been acquitted of a relevant offence to be retried for the offence if the Court is satisfied that—

(a) the acquittal was tainted; and

(b) in the circumstances, it is likely that the new trial would be fair having regard to—

(i) the length of time since the relevant offence is alleged to have occurred; and

(ii) whether there has been any failure on the part of the police or prosecution to act with reasonable diligence or expedition with respect to the making of the application; and

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

(2) An application under subsection (1) must be made within 28 days after—

(a) the person is charged with the relevant offence following the acquittal; or

(b) a warrant is issued for the person's arrest for the relevant offence following the acquittal.

(3) If the Full Court orders a person to be retried for an offence of which the person has been acquitted, the Court—

(a) must—

(i) quash the acquittal; or

(ii) remove the acquittal as a bar to the person being retried for the offence,

(as the case requires); and

(b) must make a suppression order under Part 8 of the *Evidence Act 1929* forbidding the publication of specified material or material of a specified class if satisfied that the order is necessary to prevent prejudice to the administration of justice; and

(c) may make any other order that the Court thinks fit in the circumstances.

(4) The Director of Public Prosecutions may not, without the permission of the Full Court, present an information for the retrial of a person in respect of whom the Court has made an order under this section more than 2 months after the Court made the order.

(5) The Full Court should not give permission for the late presentation of an information for a retrial unless the Court is satisfied that, despite the period of time that has passed since the Court made the order for the retrial—

(a) the Director of Public Prosecutions has acted with reasonable expedition; and

(b) there is good and sufficient reason why the late presentation of the information should be allowed.

(6) If, more than 2 months after an order for the retrial of a person for a relevant offence was made under this section, an information for the retrial of the person for the offence has not been presented or has been withdrawn or quashed, the person may apply to the Full Court to set aside the order for the retrial and—

(a) to restore the acquittal that was quashed; or

(b) to restore the acquittal as a bar to the person being retried for the offence,

(as the case requires).

(7) In this section—

acquitted person means a person who has been acquitted of a relevant offence (whether in this State or in another jurisdiction).

147—Retrial of Category A offence of which person previously acquitted where there is fresh and compelling evidence

(1) The Full Court may, on application by the Director of Public Prosecutions, order a person who has been acquitted of a Category A offence to be retried for the offence if the Court is satisfied that—

(a) there is fresh and compelling evidence against the acquitted person in relation to the offence; and

(b) in the circumstances, it is likely that the new trial would be fair having regard to—

(i) the length of time since the offence is alleged to have occurred; and

(ii) whether there has been any failure on the part of the police or prosecution to act with reasonable diligence or expedition with respect to the making of the application.

(2) An application under subsection (1)—

(a) must be made within 28 days after—

(i) the person is charged with the Category A offence following the acquittal; or

(ii) a warrant is issued for the person's arrest for the Category A offence following the acquittal; and

(b) may only be made once in respect of the person's acquittal of the Category A offence.

Note—

An application cannot be made under this section for a further retrial if the person is acquitted of the Category A offence on being retried for the offence (but an application may be made under section 146 if the acquittal resulting from the retrial is tainted).

(3) If the Full Court orders a person to be retried for an offence of which the person has been acquitted, the Court—

(a) must—

(i) quash the acquittal; or

(ii) remove the acquittal as a bar to the person being retried for the offence,

(as the case requires); and

(b) must make a suppression order under Part 8 of the *Evidence Act 1929* forbidding the publication of specified material or material of a specified class if satisfied that the order is necessary to prevent prejudice to the administration of justice; and

(c) may make any other order that the Court thinks fit in the circumstances.

(4) The Director of Public Prosecutions may not, without the permission of the Full Court, present an information for the retrial of a person in respect of whom the Court has made an order under this section more than 2 months after the Court made the order.

(5) The Full Court should not give permission for the late presentation of an information for a retrial unless the Court is satisfied that, despite the period of time that has passed since the Court made the order for the retrial—

(a) the Director of Public Prosecutions has acted with reasonable expedition; and

(b) there is good and sufficient reason why the late presentation of the information should be allowed.

(6) If, more than 2 months after an order for the retrial of a person for a Category A offence was made under this section, an information for the retrial of the person for the offence has not been presented or has been withdrawn or quashed, the person may apply to the Full Court to set aside the order for the retrial and—

(a) to restore the acquittal that was quashed; or

(b) to restore the acquittal as a bar to the person being retried for the offence,

(as the case requires).

(7) In this section—

acquitted person means a person who has been acquitted of a Category A offence (whether in this State or in another jurisdiction).

148—Circumstances in which person may be charged with administration of justice offence relating to previous acquittal

(1) The Full Court may, on application by the Director of Public Prosecutions, order a person who has been acquitted of an indictable offence to be tried for an administration of justice offence that is related to the offence of which the person has been acquitted if the Court is satisfied that—

(a) there is fresh evidence against the acquitted person in relation to the administration of justice offence; and

(b) in the circumstances, it is likely that a trial would be fair having regard to—

(i) the length of time since the administration of justice offence is alleged to have occurred; and

(ii) whether there has been any failure on the part of the police or prosecution to act with reasonable diligence or expedition with respect to the making of the application; and

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

(2) An application under subsection (1) must be made within 28 days after—

(a) the person is charged with the administration of justice offence; or

(b) a warrant is issued for the person's arrest for the administration of justice offence.

(3) If the Full Court orders a person to be tried for an administration of justice offence that is related to an indictable offence of which the person has been acquitted, the Court—

(a) must remove the acquittal as a bar to the person being tried for the administration of justice offence; and

(b) may make any other order that the Court thinks fit in the circumstances.

(4) The Director of Public Prosecutions may not, without the permission of the Full Court, present an information for the trial of a person in respect of whom the Court has made an order under this section more than 2 months after the Court made the order.

(5) The Full Court should not give permission for the late presentation of an information for any such trial unless the Court is satisfied that, despite the period of time that has passed since the Court made the order for the trial—

(a) the Director of Public Prosecutions has acted with reasonable expedition; and

(b) there is good and sufficient reason why the late presentation of the information should be allowed.

(6) If, more than 2 months after an order for the trial of a person for an administration of justice offence was made under this section, an information for the trial of the person for the offence has not been presented or has been withdrawn or quashed, the person may apply to the Full Court to set aside the order for the trial and to restore the acquittal as a bar to the person being tried for the offence.

(7) In this section—

acquitted person means a person who has been acquitted of an indictable offence (whether in this State or in another jurisdiction).

Division 4—Prohibition on making certain references in retrial

149—Prohibition on making certain references in retrial

At the retrial of a person for an offence of which the person had previously been acquitted by order of the Full Court under Division 3, the prosecution must not refer to the fact that, before making the order for the retrial of the offence, the Court had to be satisfied that—

(a) the acquittal was tainted; or

(b) there is fresh and compelling evidence against the acquitted person in relation to the offence,

(as the case requires).

Part 6A—Appeals

Division 1—Appeal against sentence

150—Appeal against sentence

Despite any other rule of law, if on an appeal against sentence the court is satisfied that the sentence should be quashed and another sentence (whether more severe or otherwise) imposed, the court must—

(a) impose the sentence that should have been imposed in the first instance; and

(b) order that the sentence—

(i) will be taken to have come into effect on a date before the date of the order; or

(ii) will take effect on a date on or after the date of the order.

Division 2—Other appeals

151—Interpretation

In this Part, unless inconsistent with the context or subject matter—

ancillary order means—

(a) an intervention order or restraining order issued under the sentencing law; or

(b) an order for the restitution of property under the sentencing law; or

(c) an order for compensation under the sentencing law,

made by the District Court, or by the Supreme Court in the exercise of its criminal jurisdiction at first instance;

appellant includes a person who has been convicted and desires to appeal under this Act;

conviction in relation to a case where a court finds a person guilty of an offence but does not record a conviction, includes the formal finding of guilt;

court means the Supreme Court or the District Court;

issue antecedent to trial means a question (whether arising before or at trial) as to whether proceedings on an information or a count of an information should be stayed on the ground that the proceedings are an abuse of process of the court;

judge means a judge of the Supreme Court or the District Court;

sentence includes any order of the court of trial or of the judge of such court made on, or in connection with, a conviction with reference to the convicted person, or any property, or with reference to any moneys to be paid by the person, and also includes an order under the sentencing law discharging the convicted person, without imposing a penalty, on the person entering into a bond.

152—Court to decide according to opinion of majority

The determination of any question before the Full Court under this Act will be according to the opinion of the majority of the members of the Court hearing the case.

153—Reservation of relevant questions

(1) In this section—

relevant question means a question of law and includes a question about how a judicial discretion should be exercised or whether a judicial discretion has been properly exercised.

(2) A court by which a person has been, is being or is to be tried or sentenced for an indictable offence may reserve for consideration and determination by the Full Court a relevant question on an issue—

(a) antecedent to trial; or

(b) relevant to the trial or sentencing of the defendant,

and the court may (if necessary) stay the proceedings until the question has been determined by the Full Court.

(3) Unless required to do so by the Full Court, a court must not reserve a question for consideration and determination by the Full Court if reservation of the question would unduly delay the trial or sentencing of the defendant.

(4) A court before which a person has been tried and acquitted of an offence must, on application by the Attorney-General or the Director of Public Prosecutions, reserve a question antecedent to the trial, or arising in the course of the trial, for consideration and determination by the Full Court.

(5) The Full Court may, on application under subsection (6), require a court to refer a relevant question to it for consideration and determination.

(6) An application for an order under subsection (5) may be made by—

(a) the Attorney-General or the Director of Public Prosecutions; or

(b) a person who—

(i) has applied unsuccessfully to the primary court to have the question referred for consideration and determination by the Full Court; and

(ii) has obtained the permission of the primary court or the Supreme Court to make the application.

(7) If a person is convicted, and a question relevant to the trial or sentencing is reserved for consideration and determination by the Full Court, the primary court or the Supreme Court may release the person on bail on conditions the court considers appropriate.

154—Case to be stated by trial judge

(1) When a court reserves a question for consideration and determination of the Full Court, the presiding judge must state a case setting out—

(a) the question reserved; and

(b) the circumstances out of which the reservation arises; and

(c) any findings of fact necessary for the proper determination of the question reserved.

(2) The Full Court may, if it thinks necessary, refer the stated case back for amendment.

155—Powers of Full Court on reservation of question

(1) The Full Court may determine a question reserved under this Part and make consequential orders and directions.

Examples—

The Full Court might, for example, quash an information or a count of an information or stay proceedings on an information or a count of an information if it decides that prosecution of the charge is an abuse of process.

The Full Court might, for example, set aside a conviction and order a new trial.

(2) However—

(a) a conviction must not be set aside on the ground of the improper admission of evidence if—

(i) the evidence is merely of a formal character and not material to the conviction; or

(ii) the evidence is adduced for the defence; and

(b) a conviction need not be set aside if the Full Court is satisfied that, even though the question reserved should be decided in favour of the defendant, no miscarriage of justice has actually occurred; and

(c) if the defendant has been acquitted by the court of trial, no determination or order of the Full Court can invalidate or otherwise affect the acquittal.

156—Costs

(1) If a question is reserved on application by the Attorney-General or the Director of Public Prosecutions on an acquittal, the Crown is liable to pay the adjudicated costs of the defendant in proceedings for the reservation and determination of the question.

(2) If the defendant does not appear in the proceedings, the Crown must instruct counsel to present argument to the Court that might have been presented by counsel for the defendant.

157—Right of appeal in criminal cases

(1) Appeals lie to the Full Court as follows:

(a) if a person is convicted on information—

(i) the convicted person may appeal against the conviction as of right on any ground that involves a question of law alone;

(ii) the convicted person may appeal against the conviction on any other ground with the permission of the Full Court or on the certificate of the court of trial that it is a fit case for appeal;

(iii) subject to subsection (2), the convicted person or the Director of Public Prosecutions may appeal against sentence passed on the conviction (other than a sentence fixed by law), or a decision of the court to defer sentencing the convicted person, on any ground with the permission of the Full Court;

(b) if a person is tried on information and acquitted, the Director of Public Prosecutions may, with the permission of the Full Court, appeal against the acquittal on any ground—

(i) if the trial was by judge alone; or

(ii) if the trial was by jury and the judge directed the jury to acquit the person;

(c) if a court makes a decision on an issue antecedent to trial that is adverse to the prosecution, the Director of Public Prosecutions may appeal against the decision—

(i) as of right, on any ground that involves a question of law alone; or

(ii) on any other ground with the permission of the Full Court;

(d) if a court makes a decision on an issue antecedent to trial that is adverse to the defendant—

(i) the defendant may appeal against the decision before the commencement or completion of the trial with the permission of the court of trial (but permission will only be granted if it appears to the court that there are special reasons why it would be in the interests of the administration of justice to have the appeal determined before commencement or completion of the trial);

(ii) the defendant may, if convicted, appeal against the conviction under paragraph (a) asserting as a ground of appeal that the decision was wrong.

(2) If a convicted person is granted permission to appeal under subsection (1)(a)(iii), the Director of Public Prosecutions may appeal under that subparagraph without the need to obtain the permission of the Full Court.

158—Determination of appeals in ordinary cases

(1) The Full Court, on any such appeal against conviction, will only allow the appeal if it thinks that—

(a) the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or

(b) the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision on any question of law; or

(c) on any ground there was a miscarriage of justice.

(2) The Full Court may, notwithstanding that it is of the opinion that the point raised in an appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(3) Subject to the special provisions of this Act, the Full Court will, if it allows an appeal against conviction, quash the conviction and either direct a judgment and verdict of acquittal to be entered or direct a new trial.

(4) On an appeal against acquittal brought by the Director of Public Prosecutions, the Full Court may exercise any 1 or more of the following powers:

(a) it may dismiss the appeal;

(b) it may allow the appeal, quash the acquittal and order a new trial;

(c) it may make any consequential or ancillary orders that may be necessary or desirable in the circumstances.

(5) If the Full Court orders a new trial under subsection (4)(b), the Court—

(a) may make such other orders as the Court thinks fit for the safe custody of the person who is to be retried or for admitting the person to bail; but

(b) may not make any order directing the court that is to retry the person on the charge to convict or sentence the person.

(6) If an appeal is brought against a decision on an issue antecedent to trial, the Full Court may exercise any one or more of the following powers:

(a) it may revoke any permission to appeal granted by the court of trial;

(b) it may confirm, vary or reverse the decision subject to the appeal;

(c) it may make any consequential or ancillary orders that may be necessary or desirable in the circumstances.

(7) Subject to subsection (8), on an appeal against sentence, the Full Court must—

(a) if it thinks that the sentence is affected by error such that the defendant should be re-sentenced—

(i) quash the sentence passed at the trial and substitute such other sentence as the Court thinks ought to have been passed (whether more or less severe); or

(ii) quash the sentence passed at the trial and remit the matter to the court of trial for re-sentencing; or

(b) in any other case—dismiss the appeal.

(8) The Full Court must not increase the severity of a sentence on an appeal by the convicted person except to extend the non-parole period where the Court passes a shorter sentence.

159—Second or subsequent appeals

(1) The Full Court may hear a second or subsequent appeal against conviction by a person convicted on information if the Court is satisfied that there is fresh and compelling evidence that should, in the interests of justice, be considered on an appeal.

(2) A convicted person may only appeal under this section with the permission of the Full Court.

(3) The Full Court may allow an appeal under this section if it thinks that there was a substantial miscarriage of justice.

(4) If an appeal against conviction is allowed under this section, the Court may quash the conviction and either direct a judgment and verdict of acquittal to be entered or direct a new trial.

(5) If the Full Court orders a new trial under subsection (4), the Court—

(a) may make such other orders as the Court thinks fit for the safe custody of the person who is to be retried or for admitting the person to bail; but

(b) may not make any order directing the court that is to retry the person on the charge to convict or sentence the person.

(6) For the purposes of subsection (1), evidence relating to an offence is—

(a) ***fresh*** if—

(i) it was not adduced at the trial of the offence; and

(ii) it could not, even with the exercise of reasonable diligence, have been adduced at the trial; and

(b) ***compelling*** if—

(i) it is reliable; and

(ii) it is substantial; and

(iii) it is highly probative in the context of the issues in dispute at the trial of the offence.

(7) Evidence is not precluded from being admissible on an appeal referred to in subsection (1) just because it would not have been admissible in the earlier trial of the offence resulting in the relevant conviction.

160—Powers of Court in special cases

(1) If it appears to the Full Court that an appellant, although not properly convicted on some count or part of the information, has been properly convicted on some other count or part of the information, the Court may either affirm the sentence passed on the appellant at the trial or pass such other sentence in substitution or as it thinks proper and as may be warranted in law by the verdict on the count or part of the information on which the Court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could, on the information, have found the appellant guilty of some other offence and, on the finding of the jury, it appears to the Full Court that the jury must have been satisfied of facts which proved the appellant guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) Where on the conviction of the appellant the jury has found a special verdict and the Full Court considers that a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the effect of that verdict, the Full Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

161—Right of appeal against ancillary orders

(1) A person against whom an ancillary order has been made may, in accordance with rules of court, appeal to the Full Court against that order.

(2) The Attorney-General may, in accordance with rules of court, appeal to the Full Court against an ancillary order or a decision not to make an ancillary order.

(3) An appeal under this section (whether relating to civil or criminal proceedings) may, if appropriate, be heard together with an appeal against sentence and may be brought as part of such an appeal.

(4) If an appeal against sentence and an appeal against an ancillary order are brought separately the Supreme Court may direct that they be heard together.

162—Revesting and restitution of property on conviction

(1) The operation of any order for the restitution of any property to any person, or with reference to any property or the payment of money, made on, or in connection with, a conviction on information and the operation, in case of any such conviction, of the provisions of section 24(1) of the *Sale of Goods Act 1895* as to the revesting of the property in stolen goods on conviction will (unless the court before which the conviction takes place directs to the contrary in any case in which in its opinion the title to the property is not in dispute) be suspended—

(a) in any case, until the expiration of 10 days after the date of the conviction; and

(b) in cases where notice of appeal or permission to appeal is given within 10 days after the date of conviction—until the determination of the appeal,

and, in cases where the operation of any such order or provisions is suspended until the determination of the appeal, the order or provisions (as the case may be) will not take effect as to the property in question if the conviction is quashed on appeal, except by the special order of the Full Court.

(2) Provision may be made by rules of court for securing the safe custody of any property pending the suspension of the operation of any such order or provisions.

(3) The Full Court may, by order, annul or vary, or refuse to annul or vary, any order made on, or in connection with, a conviction for the restitution of any property to any person, or with reference to any property or the payment of money, whether the conviction or sentence is or is not quashed (and the order, if annulled, will not take effect and, if varied, will take effect as so varied).

163—Jurisdiction of Full Court

All jurisdiction and authority under any other Act in relation to questions of law arising in criminal trials which are vested in the judges of the Supreme Court or the Full Court of the Supreme Court as constituted by the *Supreme Court Act 1935* is vested in the Full Court for the purposes of this Act.

164—Enforcement of orders

Where a conviction or order has been affirmed, amended or made on appeal to the Full Court under this Part, the District Court has the same authority to enforce that conviction or order as if it had not been appealed against or had been made in the first instance.

165—Appeal to Full Court

(1) An appeal to the Full Court, or an application for permission to appeal to the Full Court under this Act, must be made in accordance with the appropriate rules of court.

(2) The Full Court may (either before or after the time allowed by the rules has expired) extend the time for making such an appeal or application.

(3) The Chief Justice may determine that the Full Court is to be constituted of only 2 judges for the purposes of any appeal to the Full Court under this Act.

(4) The decision of the Full Court when constituted by 2 judges is to be in accordance with the opinion of those judges or, if the judges are divided in opinion, the proceedings are to be reheard and determined by the Full Court constituted by such 3 judges as the Chief Justice directs (including, if practicable, the 2 judges who first heard the proceedings on appeal).

166—Supplemental powers of Court

For the purposes of this Act, the Full Court may, if it thinks it necessary or expedient in the interests of justice—

(a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case; and

(b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in the manner provided by rules of court before any judge of the Supreme Court or before any officer of the Supreme Court or justice of the peace or other person appointed by the Full Court for the purpose, and allow the admission of any statements so taken as evidence before the Full Court; and

(c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness; and

(d) where any question arising on the appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot, in the opinion of the Full Court, conveniently be conducted before the Court, order the reference of the question in the manner provided by rules of court for inquiry and report to a special commissioner appointed by the Court and act on the report of any such commissioner so far as it thinks fit to adopt it; and

(e) appoint any person with special expert knowledge to act as assessor to the Full Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case; and

(f) exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Supreme Court on appeals or applications in civil matters; and

(g) issue any warrants necessary for enforcing the orders or sentences of the Court,

but in no case will any sentence be increased by reason of, or in consideration of, any evidence that was not given at the trial.

167—Presence of appellant or respondent on hearing of appeal

(1) The Supreme Court may make rules with respect to the presence in court of an appellant or respondent who is in custody during—

(a) the hearing of the appeal; or

(b) the hearing of an application for permission to appeal; or

(c) any proceedings preliminary or incidental to an appeal.

(2) Without limiting subsection (1), the rules of court may (for example)—

(a) provide that the appellant or respondent may be present during the hearing of an appeal or an application for permission to appeal, or a proceeding preliminary or incidental to an appeal—

(i) in person; or

(ii) by means of an audio visual link; or

(iii) by means of an audio link; and

(b) provide that the appellant or respondent may not be present during any such hearing or proceeding.

(3) Despite any rule to the contrary, the Full Court may, if the Court considers there is good reason to do so, proceed with the hearing of an appeal or an application for permission to appeal, or a proceeding preliminary or incidental to an appeal, in the absence of the appellant or respondent.

(4) In this section—

audio link means a system of 2-way communication linking different places so that a person speaking at any 1 of the places can be heard at the other;

audio visual link means a system of 2-way communication linking different places so that a person speaking at any 1 of the places can be seen and heard at the other.

168—Director of Public Prosecutions to be represented

The Director of Public Prosecutions, or counsel on behalf of the Director, will appear for the Crown on every appeal to the Full Court under this Act (unless a private prosecutor in the case of a private prosecution undertakes the defence of the appeal) and provision must be made by rules of court for the transmission to the Director of all such documents, exhibits and other things connected with the proceedings as the Director may require for the purposes of carrying out duties under this section.

169—Costs of appeal

On the hearing and determination of an appeal or new trial or any proceedings preliminary or incidental thereto under this Act, no costs will be allowed on either side.

170—Admission of appellant to bail and custody when attending Court

(1) An appellant who is not admitted to bail must, pending the determination of his appeal, be treated in such manner as may be directed by or under the Acts regulating prisons.

(2) The Full Court may, if it thinks fit, on the application of an appellant, admit the appellant to bail pending the determination of the appeal or, where a new trial is directed, until the commencement of the new trial.

(3) The time during which an appellant, pending the determination of the appeal or pending a new trial, is admitted to bail under this section will not count as part of any term of imprisonment under the appellant's sentence and any imprisonment of the appellant (whether under the sentence passed by the court of trial or the sentence passed by the Full Court) will, subject to any directions of the Full Court, be deemed to be resumed or to begin to run, as the case requires—

(a) if the appellant is in custody—as from the day on which the appeal is determined; or

(b) if the appellant is not in custody—as from the day on which the appellant is received into prison under the sentence.

(4) Where a question of law is reserved under this Part, this section applies to the person in relation to whose conviction the question is reserved as it applies to an appellant.

171—Duties of registrar with respect to notices of appeal etc

(1) The registrar must take all necessary steps for obtaining a hearing under this Act of any appeals or applications, notice of which is given to the registrar under this Act, and must obtain and lay before the Full Court in proper form all documents, exhibits and other things relating to the proceedings in the court before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) If it appears to the registrar that any notice of an appeal against a conviction does not show any substantial ground of appeal, the registrar may refer the appeal to the Full Court for summary determination and, where the case is so referred, the Court may, if it considers that the appeal is frivolous or vexatious and can be determined without adjourning it for a full hearing, dismiss the appeal summarily without calling on any persons to attend the hearing or to appear for the Crown.

(3) Any documents, exhibits or other things connected with the trial of any person on information must be kept in the custody of the court of trial, in accordance with rules of court made for the purpose, for such time as may be provided by the rules and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits or things from that custody.

(4) The registrar must furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Act to any person who demands them and to officers of courts, keepers of gaols and such other officers or persons as the registrar thinks fit, and the keeper of a gaol must cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Act and must cause any such notice given by such prisoners to be forwarded on behalf of the prisoner to the registrar.

172—Notes of evidence on trial

(1) On any appeal, or application for permission to appeal, a transcript of the notes of the judge of the court of trial, or, where shorthand notes have been taken by direction of the judge, a transcript of the notes or any part thereof, must be made, if the registrar so requests, and be furnished—

(a) to the registrar for the use of the Full Court or any judge of the Full Court; and

(b) to any interested party on the payment of such charges as the Attorney-General may fix.

(2) The Attorney-General or Director of Public Prosecutions may also request a transcript of the notes to be made and furnished to the Attorney-General or Director of Public Prosecutions (as the case may be).

(3) The cost of making any such transcript, where a transcript is requested to be made by the registrar, Attorney-General or Director of Public Prosecutions, will be defrayed in accordance with scales of payment fixed for the time being by the Attorney-General out of moneys provided by Parliament for the purpose.

(4) Rules of court may make such provision as is necessary for the verification of the transcript.

Division 3—References on petitions for mercy

173—References by Attorney-General

(1) Nothing in this Part affects the prerogative of mercy but the Attorney-General, on the consideration of any petition for the exercise of Her Majesty's mercy having reference to the conviction of a person on information or to the sentence passed on a person so convicted, may, if the Attorney-General thinks fit, at any time, either—

(a) refer the whole case to the Full Court, and the case must then be heard and determined by that Court as in the case of an appeal by a person convicted; or

(b) refer any point arising in the case to those judges for their opinion and those judges, or any 3 of them, must consider the point so referred and furnish the Attorney-General with their opinion accordingly.

(2) If a full pardon is granted to a convicted person in the exercise of Her Majesty's mercy in relation to a conviction of an offence, the Attorney-General may refer the matter to the Full Court and the Full Court may, if it thinks fit, quash the conviction.

8—Insertion of sections 175 to 180

Before section 181 insert:

175—Proceedings other than State criminal proceedings

(1) Rules of court may provide that specified provisions of this Act apply with necessary adaptations and modifications to—

(a) proceedings for offences that are not State criminal offences; or

(b) proceedings involving both State criminal offences and other offences.

(2) In this section—

State criminal offence means—

(a) a summary offence where SA Police are both the investigating authority and the prosecuting authority; or

(b) an indictable offence where SA Police are the investigating authority and the offence is being, or may be, prosecuted by the Director of Public Prosecutions.

176—Overlapping offences

No objection to a charge or a conviction can be made on the ground that the defendant might, on the same facts, have been charged with, or convicted of, some other offence.

177—Proceedings against corporations

(1) In this section—

representative, in relation to a corporation, means a person appointed by the corporation to represent it for the purposes of this section.

(2) For the purposes of this section—

(a) a representative need not be appointed under the seal of a corporation; and

(b) a statement in writing purporting to be signed by a managing director of a corporation or by 1 or more of the persons having the management of the affairs of a corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section is admissible in evidence and, in the absence of evidence to the contrary, is proof that the person has been so appointed.

(3) A corporation charged with an offence may appear in the proceedings by its representative and may, by its representative, enter or withdraw a plea or make or withdraw an election.

(4) If—

(a) a representative appears in a proceeding against a corporation for an offence; and

(b) there is a requirement that something be done in the presence of the defendant, or be said to the defendant,

it is sufficient if that thing is done in the presence of the representative or said to the representative.

(5) The trial of a corporation may proceed in the absence of any representative of the corporation.

(6) If a corporation arraigned on an information fails to appear by a representative to enter a plea in relation to the charge, the court may order that a plea of not guilty be entered.

178—Defects cured by verdict

A judgment after verdict for an indictable offence cannot be stayed or reversed—

(a) for want of a similiter; or

(b) by reason of any defect or irregularity in the summoning of the jurors for the misnomer or misdescription of a juror; or

(c) because a person who has served as a juror has not been returned by the sheriff as a juror.

179—Forfeiture abolished

(1) No confession, verdict, inquest, conviction or judgment of or for any treason or felony, or an offence formerly classified as a felony, will cause any attainder, forfeiture or escheat.

(2) When a person is charged with treason or felony, or an offence formerly classified as a felony, the jury will not be charged to inquire concerning the person's lands, tenements or goods or whether the person fled for the offence.

(3) In this section—

forfeiture does not include any fine or penalty imposed by way of sentence.

180—Orders as to firearms and offensive weapons

(1) If a court is satisfied by evidence adduced before it that—

(a) a firearm or other offensive weapon was used in the commission of an offence; or

(b) the commission of an offence was facilitated by the use of a firearm or other offensive weapon; or

(c) in the circumstances it is expedient that an order or orders be made under this section,

the court may make any one or more of the following orders:

(d) an order that the firearm or other weapon be forfeited to the Crown;

(e) an order that the firearm or other weapon be delivered into the custody of the Commissioner of Police for a period specified in the order or until further order;

(f) any other order as to the custody or disposition of the firearm;

(g) an order—

(i) that a specified person is subject to a firearms prohibition order under the *Firearms Act 2015* until further order; or

(ii) prohibiting a specified person from using or possessing an offensive weapon of any kind, or of a kind specified in the order, for a period specified in the order or until further order.

(2) On application by a person with a proper interest in the matter, the court may vary or revoke an order under subsection (1)(e), (f) or (g).

(3) If an application is made under subsection (2), the court must not vary or revoke the order in respect of which the application is made unless it is satisfied that it is not inimical to the safety of the community to do so.

(4) A person who contravenes or fails to comply with an order under this section is guilty of an offence.

Maximum penalty: $500 or imprisonment for 12 months.

(5) Subsection (4) does not derogate from the power of a court to punish for contempt.

(6) In this section—

court includes any judge, magistrate or special justice entitled to preside over or constitute a court;

firearm has the same meaning as in the *Firearms Act 2015*;

offensive weapon means—

(a) an article or substance made or adapted for use for causing, or threatening to cause, personal injury or incapacity including—

(i) a firearm or imitation firearm (ie an article intended to be taken for a firearm); or

(ii) an explosive or an imitation explosive (ie an article or substance intended to be taken for an explosive); or

(b) an article or substance that a person has—

(i) for the purpose of causing personal injury or incapacity; or

(ii) in circumstances in which another is likely to feel reasonable apprehension that the person has it for the purpose of causing personal injury or incapacity.

9—Amendment of section 189B—Costs in committal proceedings

Section 189B—delete "a preliminary examination of" and substitute:

committal proceedings for

10—Insertion of section 191A

After section 191 insert:

191A—Review

(1) The Attorney-General must, at the end of 3 years from the commencement of this section, appoint a person recommended by the Chief Justice of the Supreme Court to—

(a) conduct an inquiry into the operation of Part 5 Divisions 2, 3, 4 and 5, as enacted by the *Summary Procedure (Indictable Offences) Amendment Act 2016*, and the related amendments to the sentencing law also enacted by that Act; and

(b) prepare a report on the effect (if any) that the operation of those Divisions has had on improving the operation and effectiveness of the criminal justice system.

(2) The report must be provided to the Minister who must cause a copy of the report to be laid before each house of Parliament within 3 months after receipt of the report.

Schedule 1—Statute Law Revision Amendments to *Summary Procedure Act 1921*

Section amended	How amended

Section 4(1), definition of ***firearms order***	Delete the definition
Sections 7, 181(2), 182(2) and 191(2)	Delete "The Court" wherever occurring and substitute in each case: A court
Sections 20(1)(c), 22(c), 27(3), 27C(2), 49(5), 51(2), 57, 57A(4), 58, 59, 60, 62(3), 62C(6), 69A(1), 76A, 76B, 78, 79(2)(b) and (4)(b), 80, 81, 82, 99AA, 99AAC(2), (3), (4), (5)(b) and (7), 99C, 99E(3)(a)(i), 99F, 99H, 99I(3), 99J(a), 99K, 99KA, 187A(1) and (1a)(a), 188(2) and (3), 189, 189A(2) and (3), 189B, 189C and 189D	Delete "Court" wherever occurring and substitute in each case: Magistrates Court
Sections 27A(2), 27B, 27C(1) and (3), 62(1) and (2), 62A(1), 62BA(1), 62C, 62D(1) and (2), 62B(3), 63, 64, 67(2), 69A, 70(1), 70A(1), 70B, 71(1), 187A(1)	Delete "court" wherever occurring and substitute in each case: Magistrates Court
Section 28	Delete "the Court" and substitute: the Magistrates Court
Section 29	Delete "before the Court" and substitute: to which this Act applies
Section 49(1)	After "may be laid" insert: in the Magistrates Court
Section 57A	Delete "the court" wherever occurring and substitute in each case: the Magistrates Court
Heading to Part 4 Division 3	Delete "The Hearing" and substitute: Hearing of summary offence
Section 62B(1)	Delete "court shall" and substitute: Magistrates Court does
Section 62B(2)	Delete "shall not be required and the court" and substitute: is not required and the Magistrates Court
Section 62B(4)	Delete "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 information laid against him and the" and substitute: in this section prejudices any application by a defendant to withdraw a plea of guilty at any time prior to the hearing and determination of the relevant information and any
Section 62B(5)	Delete subsection (5) and substitute: (5) If a defendant, in a form under section 57A, states matters which, if true, would indicate that the defendant has a valid defence to the information, or which differ substantially in relevant particulars

	from the matters recited to the Magistrates Court by the prosecutor— (a) the Court may strike out the plea of guilty, adjourn the hearing of the information to a time and place appointed and order that the defendant be served with a summons as provided by section 57; and (b) the information must then be dealt with as though the previous summons had not been issued and the provisions of this section and section 57A will no longer apply.
Section 62B(6)	Delete "court shall" and substitute: Magistrates Court must
Section 62B(7)	Delete "shall be deemed to comply with section 57A, and the provisions of this section shall apply, except that the court" and substitute: will be deemed to comply with section 57A, and the provisions of this section will apply, except that the Magistrates Court
Section 62BA(1a)	Delete "court finds the charge proved, the prosecutor may recite to the court" and substitute: Magistrates Court finds the charge proved, the prosecutor may recite to the Court
Section 68(1)	Delete "court shall" and substitute: Magistrates Court will
Section 68(3)	Delete "the Court upon the hearing of any information with respect to the examination and cross-examination of witnesses and the right of addressing the court in reply, or otherwise, shall" and substitute: the Magistrates Court on the hearing of any information with respect to the examination and cross-examination of witnesses and the right of addressing the Court in reply, or otherwise, will
Section 69	Delete section 69 and substitute: **69—After hearing parties, Magistrates Court to convict or dismiss** (1) Subject to subsection (2), after the parties and their evidence have been heard, the Magistrates Court must consider the whole matter and determine whether to— (a) convict or make an order against the defendant; or (b) dismiss the information. (2) The Magistrates Court may, at any time before the matter the subject of the hearing in subsection (1) has been finally determined, permit the information to be withdrawn on such terms (if any) as it thinks fit.

Section 69A(2)(c)	Delete "court shall" and substitute: Magistrates Court must
Section 79(2)(b)	Delete "Courts" and substitute: Magistrates Court
Section 99AAC(3)	Delete "the Court's" and substitute: the Magistrates Court's
Section 99AAC(6)	Delete "the Court" wherever occurring and substitute in each case: the Magistrates Court
Section 182(1)	Delete "the Court" and substitute: a court issued under this Act
Section 182(2)(a)	Delete "Court" and substitute: court
Section 183(a)	Delete "the Court" and substitute: a court
Section 183(c)	Delete "Court" and substitute: court
Section 183	Delete "the Court may direct" and substitute: the court may direct
Section 184	Delete "the Court" wherever occurring and substitute in each case: the court
Section 188(1)	Delete "Court" and substitute: court
Section 189D(1)	After "If proceedings" insert: in the Magistrates Court
Section 191	After subsection (2) insert: (3) This section is in addition to and does not derogate from any other power to set fees in respect of proceedings under this Act.
Section 192	After its present contents (now to be designated as subsection (1)) insert: (2) The regulations— (a) may be of general or limited application; and (b) may make different provision according to the persons, things or circumstances to which they are expressed to apply; and (c) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and (d) may impose a penalty not exceeding $2 500 for a contravention of the

	regulations.

Schedule 2—Related amendments and transitional provisions

Part 1—Related amendments to *Bail Act 1985*

1—Amendment of section 3A—Serious and organised crime suspects

Section 3A(2)(b)—delete "section 275(3) of the *Criminal Law Consolidation Act 1935*" and substitute:

section 127 of the *Criminal Procedure Act 1921*

2—Amendment of section 6—Nature of bail agreement

Section 6(1)(a)(i)—delete "relating to any preliminary examination of the charge and" and substitute:

that are committal proceedings relating to the charge or that relate

Part 2—Related amendment to *Correctional Services Act 1982*

3—Amendment of section 28—Removal of prisoner for criminal investigation, attendance in court etc

Section 28(1)—delete "preliminary examination" and substitute:

committal proceedings

Part 3—Related amendment to *Criminal Investigation (Covert Operations) Act 2009*

4—Amendment of section 30—Interpretation

Section 30(a)(iii)—delete "a preliminary examination" and substitute:

committal proceedings

Part 4—Related amendments to *Criminal Law Consolidation Act 1935*

5—Amendment of section 5—Interpretation

Section 5(1), definition of ***Full Court***—delete the definition

6—Amendment of section 269E—Reservation of question of mental competence

Section 269E(3)—delete "the preliminary examination of" and substitute:

committal proceedings for

7—Amendment of section 269J—Order for investigation of mental fitness to stand trial

Section 269J(4)—delete "a preliminary examination of an indictable offence is conducted is of the opinion that the defendant may be mentally unfit to stand trial, the preliminary examination" and substitute:

committal proceedings for an indictable offence are conducted is of the opinion that the defendant may be mentally unfit to stand trial, the committal proceedings

8—Amendment of section 269X—Power of court to deal with defendant before proceedings completed

Section 269X(1)—delete "a preliminary examination" and substitute:

committal proceedings

9—Repeal of Part 9 Divisions 6 to 12

Part 9 Divisions 6 to 12—delete Divisions 6 to 12 (inclusive)

10—Repeal of Part 9 Division 15

Part 9 Division 15—delete the Division

11—Repeal of Parts 10 to 11

Parts 10, 10A and 11—delete Parts 10, 10A and 11

12—Repeal of Schedules 1 to 3 and 10

Schedules 1 to 3 and 10—delete Schedules 1 to 3 (inclusive) and 10

Part 5—Related amendments to *Criminal Law (Sentencing) Act 1988*

13—Insertion of section 7D

After section 7C insert:

7D—Expert evidence

(1) If a defendant is to be sentenced for an indictable offence and expert evidence is to be presented to the court by the defence, written notice of intention to introduce the evidence must be given to the Director of Public Prosecutions—

(a) at least 28 days before the date appointed for submissions on sentence; or

(b) if the evidence does not become available to the defence until later—as soon as practicable after it becomes available to the defence.

(2) The notice must—

(a) set out the name and qualifications of the expert; and

(b) describe the general nature of the evidence and what it tends to establish.

(3) The court may, on application by a defendant, exempt the defendant from the obligation imposed by this section.

(4) If the defence proposes to introduce expert psychiatric evidence or other expert medical evidence relevant to the defendant's mental state or medical condition at the time of an alleged offence, the court may, on application by the prosecution, require the defendant to submit, at the prosecution's expense, to an examination by an independent expert approved by the court.

(5) If a defendant fails to comply with a requirement of or under this section, the evidence will not be admitted without the court's permission (but the court cannot allow the admission of evidence if the defendant fails to submit to an examination by an independent expert under subsection (4)).

(6) If the prosecution receives notice under this section of an intention to introduce expert evidence less than 28 days before the day appointed for submissions on sentence, the court may, on application by the prosecution, adjourn the sentencing to allow the prosecution a reasonable opportunity to obtain expert advice on the proposed evidence.

(7) The court should grant an application for an adjournment under subsection (6) unless there are good reasons to the contrary.

(8) The court may, on application by the prosecution, require the defendant to provide to the prosecution a copy of any report obtained by the defendant from a person proposed to be called to give expert evidence at the sentencing.

14—Insertion of section 10AB

After section 10A insert:

10AB—Reduction of sentences for cooperation with procedural requirements

(1) If a defendant has not pleaded guilty to an indictable offence but the sentencing court is satisfied that the defendant complied with all statutory or court ordered requirements relating to pre-trial disclosure and procedures and has otherwise conducted their case in a cooperative and expeditious manner, the sentencing court may reduce the sentence that it would otherwise have imposed by up to 10%.

(2) In determining the percentage by which a sentence for an offence is to be reduced in accordance with this section, the court must have regard to—

(a) the impact of the proceedings on any victim of the offence; and

(b) the utilitarian benefit to the community of the defendant's conduct in relation to the proceedings,

and may have regard to any factor or principle the court thinks relevant.

(3) Nothing in this section affects the operation of sections 15, 16 and 17.

15—Amendment of section 10B—Reduction of sentences for guilty plea in Magistrates Court etc

(1) Section 10B(1)(a)—delete "sentencing court is the Magistrates Court" and substitute:

offence is a summary offence

(2) Section 10B(1)(b)—delete "matter dealt with" and substitute:

minor indictable offence that has been tried in the same way

(3) Section 10B(3)—delete subsection (3) and substitute:

(3) If—

(a) a maximum reduction available under subsection (2) does not apply in relation to a defendant's plea of guilty because the defendant did not plead guilty within the relevant period; and

(b) the court is satisfied that the only reason that the defendant did not plead guilty within the relevant period was because—

(i) the court did not sit during that period; or

(ii) the court did not sit during that period at a place where the defendant could reasonably have been expected to attend; or

(iii) the court did not list the defendant's matter for hearing during that period; or

(iv) the court was, for any other reason outside of the control of the defendant, unable to hear the defendant's matter during that period; or

(v) the prosecution was, for any reason outside of the control of the defendant, unable to finalise negotiations with the defendant in relation to the plea during that period,

the court may nevertheless reduce the sentence that it would otherwise have imposed as if the defendant had pleaded guilty during the relevant period.

(4) Section 10B(4)(a)—delete "shock the public conscience" and substitute:

, or may, affect public confidence in the administration of justice

16—Substitution of section 10C

Section 10C—delete the section and substitute:

10C—Reduction of sentences for guilty pleas in other cases

(1) This section applies to a court sentencing a defendant for an offence other than an offence described in section 10B(1).

(2) If —

(a) a defendant in any proceedings is pleading guilty to more than 1 offence; and

(b) this section applies to at least 1 of the offences,

this section will be taken to apply to all of the offences (despite section 10B(1)).

(3) If a defendant has pleaded guilty to an offence or offences—

(a) not more than 4 weeks after the defendant's first court appearance in relation to the relevant offence or offences—the sentencing court may reduce the sentence that it would otherwise have imposed by up to 40%;

(b) more than 4 weeks after the defendant's first court appearance in relation to the relevant offence or offences but on the day of, or before, the defendant's committal appearance in relation to the relevant offence or offences—the sentencing court may reduce the sentence that it would otherwise have imposed by up to 30%;

(c) during the period commencing on the day after the defendant's committal appearance in relation to the relevant offence or offences and ending immediately before the defendant is committed for trial for the offence or offences—the sentencing court may reduce the sentence that it would otherwise have imposed by up to 20%;

Note—

See also section 110(3) of the *Criminal Procedure Act 1921*

(d) during the period commencing immediately after the defendant is committed for trial for the relevant offence or offences and ending immediately after the arraignment appearance of the defendant in a superior court—the sentencing court may reduce the sentence that it would otherwise have imposed by up to 15%;

(e) during the period commencing immediately after the defendant's arraignment appearance in a superior court in relation to the relevant offence or offences and ending at the commencement of the defendant's trial for the relevant offence or offences—the sentencing court may, if satisfied that there is good reason to do so, reduce the sentence that it would otherwise have imposed by up to 10%.

(4) If—

(a) a maximum reduction available under subsection (3) does not apply in relation to a defendant's plea of guilty because the defendant did not plead guilty within the relevant period; and

(b) the court is satisfied that the only reason that the defendant did not plead guilty within the relevant period was because—

(i) the court did not sit during that period; or

(ii) the court did not sit during that period at a place where the defendant could reasonably have been expected to attend; or

(iii) the court did not list the defendant's matter for hearing during that period; or

(iv) the court was, for any other reason outside of the control of the defendant, unable to hear the defendant's matter during that period; or

(v) after the making of the charge determination (within the meaning of section 106 of the *Criminal Procedure Act 1921*)—the prosecution was, for any reason outside of the control of the defendant, unable to finalise negotiations with the defendant in relation to the plea during that period,

the court may nevertheless reduce the sentence that it would otherwise have imposed as if the defendant had pleaded guilty during the relevant period.

(5) In determining the percentage by which a sentence for an offence is to be reduced in respect of a guilty plea made within a particular period, a court must have regard to such of the following as may be relevant:

(a) whether the reduction of the defendant's sentence by the percentage contemplated would be so disproportionate to the seriousness of the offence, or so inappropriate in the case of that particular defendant, that it would, or may, affect public confidence in the administration of justice;

(b) the stage in the proceedings for the offence at which the defendant indicated his or her intention to plead guilty (including whether it would, in the opinion of the court, have been reasonable to expect the defendant to have done so at an earlier stage in the proceedings);

(c) whether the defendant was initially charged with a different offence in respect of the same conduct and whether (and at what stage in the proceedings) negotiations occurred with the prosecution in relation to the offence charged;

(d) in the case where the defendant has been charged with more than 1 offence—whether the defendant pleaded guilty to all of the offences;

(e) if the defendant satisfies the court that the defendant could not reasonably have been expected to plead guilty at an earlier stage in the proceedings because of circumstances outside of the defendant's control—that fact;

(f) whether or not the defendant was made aware of any relevant matter that would have enabled the defendant to plead guilty at an earlier stage in the proceedings,

and may have regard to any factor or principle the court thinks relevant.

(6) Nothing in this section affects the operation of sections 15, 16 and 17.

(7) For the purposes of this section a reference to a defendant appearing in a court will be taken to include a reference to a person appearing in a court on behalf of the defendant.

(8) Where proceedings have been instituted in a superior court by the Director of Public Prosecutions laying an information ex officio in accordance with section 103 of the *Criminal Procedure Act 1921*, this section applies in relation to those proceedings with the modifications prescribed by the regulations.

(9) In this section—

committal appearance has the same meaning as in section 109 of the *Criminal Procedure Act 1921*.

10D—Application of sentencing reductions

(1) For the purpose of applying section 10A, 10AB, 10B or 10C in sentencing a defendant for a particular offence, the sentencing court must—

(a) first determine the sentence that the court would apply but for the existence of those provisions; and

(b) then determine the maximum percentage reduction that is applicable to the sentencing in accordance with those provisions; and

(c) then determine the percentage reduction that is, in the opinion of the court, appropriate in the particular case (being not more than the maximum percentage determined in accordance with paragraph (b)); and

(d) finally, apply the percentage reduction determined in accordance with paragraph (c) to the sentence determined in accordance with paragraph (a).

(2) A sentencing court that wants to apply section 18A to sentence a defendant to a single penalty for more than 1 offence must, if the court would otherwise be required to apply section 10A, 10AB, 10B or 10C in sentencing the defendant for any 1 or more of those offences (the ***discounted offences***), determine, in accordance with subsection (1), the appropriate sentence for each discounted offence before applying section 18A to determine the total sentence (and for the purposes of section 18A, a reference to the maximum penalty that could be imposed in respect of an offence will, in the case of each discounted offence, be a reference to the sentence determined, in accordance with subsection (1), for that discounted offence).

Part 6—Related amendments to *District Court Act 1991*

17—Amendment of section 45—Non-application to criminal proceedings

Section 45—delete "Part 11 of the *Criminal Law Consolidation Act 1935*" and substitute:

Part 6A of the *Criminal Procedure Act 1921*

18—Amendment of section 54—Accessibility to Court records

Section 54(2)(d) and (e)—delete "a preliminary examination" wherever occurring and substitute in each case:

committal proceedings

Part 7—Related amendments to *Evidence Act 1929*

19—Amendment of section 21—Competence and compellability of witnesses

Section 21(7)—delete "section 352(1)(a)(i) or (ii) of the *Criminal Law Consolidation Act 1935*" and substitute:

section 157(1)(a)(i) or (ii) of the *Criminal Procedure Act 1921*

20—Amendment of section 34J—Special provision for taking evidence where witness is seriously ill

Section 34J(3)—delete "preliminary examination" and substitute:

committal proceedings

21—Amendment of section 34K—Admissibility of depositions at trial

(1) Section 34K(1)(a)—delete "the preliminary examination of a charge of an indictable offence or oral evidence is taken from a witness at a preliminary examination" and substitute:

committal proceedings relating to a charge of an indictable offence or oral evidence is taken from a witness in committal proceedings

(2) Section 34K(1)—delete "at the preliminary examination" and substitute:

in the committal proceedings

22—Amendment of section 59IQ—Appearance etc by audio visual link or audio link

Section 59IQ(5)(a)(ii)—delete "a preliminary examination of an indictable offence" and substitute:

an answer charge hearing (within the meaning of the *Criminal Procedure Act 1921*)

23—Amendment of section 67D—Interpretation

Section 67D, definition of ***committal proceedings***—delete "means proceedings for the preliminary examination of a charge of an indictable offence" and substitute:

—see Part 5 Division 3 of the *Criminal Procedure Act 1921*

24—Amendment of section 67G—Interpretation and application

Section 67G(1), definition of ***criminal proceedings***, (a)—delete "proceedings for the preliminary examination of" and substitute:

committal proceedings for

25—Amendment of section 69AB—Review of suppression orders

Section 67AB(1)(a)(i) and (ii)—delete "a preliminary examination" wherever occurring and substitute in each case:

committal proceedings

26—Amendment of section 71A—Restriction on reporting on sexual offences

Section 71A(1)(a)—delete "a preliminary examination of" and substitute:

committal proceedings for

Part 8—Related amendment to *Juries Act 1927*

27—Amendment of section 7—Trial without jury

Section 7(3a)—delete "section 275 of the *Criminal Law Consolidation Act 1935* and the information includes a charge of a serious and organised crime offence (within the meaning of that Act)" and substitute:

section 103 of the *Criminal Procedure Act 1921* and the information includes a charge of a serious and organised crime offence (within the meaning of the *Criminal Law Consolidation Act 1935*)

Part 9—Related amendments to *Magistrates Court Act 1991*

28—Amendment of section 9—Criminal jurisdiction

Section 9(a)—delete "a preliminary examination of" and substitute:

committal proceedings for

29—Amendment of section 42—Appeals

Section 42(1)—delete "a preliminary examination" and substitute:

committal proceedings

30—Amendment of section 43—Reservation of question of law

Section 43(1)—delete "a preliminary examination of" and substitute:

committal proceedings for

31—Amendment of section 51—Accessibility to Court records

Section 51(2)(d) and (e)—delete "a preliminary examination" wherever occurring and substitute in each case:

committal proceedings

Part 10—Related amendments to *Supreme Court Act 1935*

32—Amendment of section 5—Interpretation

Section 5(1), definition of ***Full Court***, (b)(ii)(A)—delete subsubparagraph (A) and substitute:

(A) section 165(3) of the *Criminal Procedure Act 1921*; or

33—Amendment of section 131—Accessibility to court records

Section 131(2)(d) and (e)—delete "a preliminary examination" wherever occurring and substitute in each case:

committal proceedings

Part 11—Related amendment to *Work Health and Safety Act 2012*

34—Amendment of section 230—Prosecutions

Section 230(7)—delete "A preliminary examination" and substitute:

Committal proceedings

Part 12—Related amendments to *Young Offenders Act 1993*

35—Amendment of section 17—Proceedings on charge laid before Youth Court

Section 17(3)—delete "a preliminary examination of" and substitute:

committal proceedings in relation to

36—Amendment of section 17A—Proceedings on charge laid before Magistrates Court

Section 17A(2)—delete "preliminary examination" and substitute:

committal proceedings

37—Amendment of heading to Part 4 Division 2

Heading to Part 4 Division 2—delete "preliminary examination" and substitute:

committal proceedings

38—Amendment of section 19—Committal for trial

Section 19—delete "a preliminary examination is to be conducted by the Court, the procedure to be followed by and the powers of the Court are, subject to this Act, the same as for a preliminary examination" and substitute:

committal proceedings are to be conducted by the Court, the procedure to be followed by and the powers of the Court are, subject to this Act, the same as for committal proceedings

Part 13—Related amendments to *Youth Court Act 1993*

39—Amendment of section 22—Appeals

Section 22(1)—delete "a preliminary examination" and substitute:

committal proceedings

40—Amendment of section 23—Reservation of question of law

Section 23(1)—delete "a preliminary examination" and substitute:

committal proceedings

Part 14—Transitional provision

41—Transitional provision

The amendments made by this Act apply to proceedings relating to an offence that are commenced after the commencement of this Act, regardless of when the offence occurred (and the Acts amended by this Act, as in force before the commencement of this Act, continue to apply to proceedings that were commenced before the commencement of this Act).