South Australia

Criminal Procedure Act 1921

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

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Introductory

1—Short title

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

4—Interpretation

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

answer charge hearing—see section 109;

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

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

cognitive impairment includes—

(a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);

(b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);

(c) a mental illness;

defence case statement—see section 123;

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

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

investigating officer means—

(a) an officer of the police force; or

(b) a person authorised under an Act to investigate offences;

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

minor indictable offence—see section 5;

offence of violence means an offence where the offender—

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

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

for the purpose of committing the offence, or escaping from the scene of the offence;

personal service—see subsection (3)(a);

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

prosecution case statement—see section 123;

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

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

rules means the rules of the Magistrates Court;

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

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

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

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

(a) rape; or

(ab) compelled sexual manipulation; or

(b) indecent assault; or

(ba) persistent sexual exploitation of a child or persistent sexual abuse of a child; or

(c) any offence involving unlawful sexual intercourse or an act of gross indecency; or

(ca) an offence of sexual exploitation of a person with a cognitive impairment under section 51 of the *Criminal Law Consolidation Act 1935*; or

(d) incest; or

(e) any attempt to commit or assault with intent to commit, any of the foregoing offences;

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

summary offence—see section 5;

telephone includes any telecommunication device.

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

(3) Subject to the rules, for the purposes of this Act, unless the contrary intention appears—

(a) a reference to a summons, notice or other document, or documentary material, being served personally includes service by means described in section 27(1)(a) and (b); and

(b) a reference to a summons, notice or other document, or documentary material, being served by post includes service by means described in section 27(1)(c), (d) and (e).

5—Classification of offences

(1) Offences are divided into the following classes:

(a) summary offences;

(b) indictable offences—comprising minor indictable offences and major indictable offences.

(2) A summary offence is—

(a) an offence that is not punishable by imprisonment;

(b) an offence for which a maximum penalty of, or including, imprisonment for two years or less is prescribed;

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

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

Note—

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

(ii) an offence of violence; or

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

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

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

(i) an offence of violence; or

(ii) an offence that is one of a series of offences of the same or a similar character involving more than $2 500 in aggregate,

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

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

(a) the following are minor indictable offences:

(i) those not punishable by imprisonment but for which a maximum fine exceeding twice a Division 1 fine is prescribed;

(ii) those for which the maximum term of imprisonment does not exceed 5 years;

(iii) those for which the maximum term of imprisonment exceeds 5 years and which fall into one of the following categories:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7—Abolition of rule as to disputed title

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

Part 3—General procedure

20—Form of warrant

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

(a) state shortly the matter of the information upon which it is founded; and

(b) name or otherwise describe the defendant; and

(c) order the person or persons to whom it is directed to apprehend the defendant and bring him before the Magistrates Court to answer the charge contained in the information, and to be further dealt with according to law.

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

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

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

22—Rules in respect of summonses

(1) The Magistrates Court may make rules to provide for summonses for the appearance of persons before the Court, including to provide for the manner in which, and by whom, the summons is to be issued, given, sent to, or served, on the person.

(2) Without limiting the generality of subsection (1), a summons for the appearance of a person—

(a) must be in a form prescribed by the rules; and

(b) must be directed to the person; and

(c) must state in brief the matter or matters in relation to which the person is charged or is to be charged; and

(d) must require the person to appear before the Magistrates Court at a specified time and place to answer to the charge and to be dealt with according to law; and

(e) may include any other information that is, in the opinion of the Court, necessary or expedient for the purposes of this Act or any other Act or law.

22A—Description of offence

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

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

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

27—Service

(1) Subject to this Act or any other Act, and the regulations or the rules, a summons, notice or other document required or authorised to be issued, given or sent to, or served on, a person under this Act may—

(a) be given personally to the person; or

(b) be left for the person at the person's last known residential, business or (in the case of a body corporate) registered address with someone apparently over the age of 16 years; or

(c) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a body corporate) registered address (in which case the summons, notice or other document will be taken to have been served at the time when it would, in the ordinary course of post, have reached the address to which it was posted); or

(d) for the purpose of particular proceedings—be transmitted by fax or email to a fax number or email address provided by the person or a legal practitioner representing the person (in which case the summons, notice or other document will be taken to have been given or served at the time of transmission); or

(e) for the purpose of particular proceedings—be made available to the person by some other electronic means, including (for example)—

(i) by transmission to an Internet address provided by the person or a legal practitioner representing the person (in which case the summons, notice or other document will be taken to have been given or served at the time of transmission); or

(ii) by means of providing (by means of an email transmitted to an email address provided by the person or a legal practitioner representing the person) a link to an Internet address from which the person or legal practitioner may access or download the summons, notice or other document (in which case the summons, notice or other document will be taken to have been given or served at the time of transmission of the email); or

(iii) by means of a data storage device from which the summons, notice or other document can be accessed or downloaded—

(A) being given personally to the person or a legal practitioner representing the person (in which case the summons, notice or other document will be taken to have been given or served at the time the data storage device is given to the person or legal practitioner, as the case may be); or

(B) being left for the person or a legal practitioner representing the person—

- at the person's last known residential, business or (in the case of a body corporate) registered address with someone apparently over the age of 16 years; or
- at the last known business address of the legal practitioner representing the person with someone apparently over the age of 16 years,

(in which case the summons, notice or other document will be taken to have been given or served at the time the data storage device is so left); or

(C) being sent by registered post in an envelope—

- addressed to the person at the person's last known residential, business or (in the case of a body corporate) registered address; or
- addressed to a legal practitioner representing the person at the legal practitioner's business address,

(in which case the summons, notice or other document will be taken to have been given or served at the time when proof of receipt is given on delivery of the envelope to the address to which it was posted).

(2) A summons, notice or other document required or authorised to be given or sent to, or served on, a person under this Act may only be given or sent to, or served on, the person by means referred to in subsection (1)(d) or (e) if, before so doing, it has been ascertained that the person or legal practitioner will be readily able to access or download and (if required) print, the summons, notice or other document.

(3) Without limiting the generality of paragraph (e) of subsection (1), the regulations or the rules may prescribe electronic means of service other than those referred to in that paragraph for the purposes of this Act.

(4) Without limiting the effect of the preceding subsections, a summons, notice or other document required or authorised to be given or sent to, or served on, a person by this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

(5) If a summons, notice or other document is given or sent to, or served, otherwise than by being given personally to the person to whom it is to be given or sent, or on whom it is to be served, the Magistrates Court may require the summons, notice or other document to again be given or sent to, or re-served on, the person if there is reasonable cause to believe that the summons, notice or other document has not come to the notice of the person.

27B—Hearing on a written plea of guilty

If—

(a) an information and summons in the form required by the rules under section 57A is served on the defendant named in the summons in accordance with the rules; and

(b) the defendant fails to appear in obedience to the summons but pleads guilty in writing to the offence to which that summons relates,

the Magistrates Court may proceed to deal with the matter in the manner provided by sections 62B and 62C.

27C—Hearing if defendant fails to appear

(1) Subject to this section, if a summons is served in accordance with section 27 on the defendant named in the summons and—

(a) either the defendant fails to appear in obedience to the summons; or

(b) the defendant fails to plead guilty in the manner provided for under section 57A to the offence to which the summons relates,

the Magistrates Court may—

(c) proceed in the absence of the defendant to the hearing of the information to which the summons relates (and, despite section 62C, adjudicate the matter as if the defendant had personally appeared in obedience to the summons); or

(d) order that the information be heard in the absence of the defendant and adjourn the hearing (and, on the adjourned hearing, proceed in the manner provided for in paragraph (c)).

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

(3) On conviction after a hearing under subsection (1), the Magistrates Court must not—

(a) impose any penalty other than a fine; or

(b) disqualify the defendant from holding or obtaining a licence to drive a motor vehicle; or

(c) treat the offence as other than a first offence unless the informant proves that the defendant has previously been convicted of such an offence; or

(d) make an order for payment of compensation of an amount that exceeds an amount specified in the information,

unless—

(e) the summons was given personally to the defendant; or

(f) —

(i) the Court has first adjourned the hearing of the information to a specified time and place; and

(ii) the defendant is personally served, not less than 14 days before the time to which the hearing has been adjourned, with a notice informing the defendant of—

(A) the conviction; and

(B) the time and place to which the hearing has been adjourned; and

(C) the provisions of section 76A; and

(iii) the defendant does not, within 14 days after the date of service of the notice on the defendant, apply in accordance with section 76A, for an order setting aside the conviction.

(4) If a defendant, not being a defendant who has been personally served with a notice under subsection (3)(f), is convicted after a hearing under subsection (1), the Registrar must, within 7 days of that conviction, serve on the defendant a notice setting out the particulars of the conviction, the penalty imposed and section 76A.

(5) If a defendant who has been personally served with a notice under subsection (3)(f) is convicted after a hearing under subsection (1), the Registrar must, within 7 days after the imposition of a penalty in respect of that conviction, serve on the defendant a notice setting out the particulars of that conviction and the penalty imposed.

28—Proof by affidavit of service etc

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

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

(b) the handwriting of any officer or person on any warrant, summons, notice, process, or document; or

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

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

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

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

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

Maximum penalty: Imprisonment for two years.

29—Assistance of counsel

A party to proceedings to which this Act applies may be represented by counsel.

Part 4—Summary jurisdiction

Division 2—Information and subsequent proceedings

49—Information

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

(2) An information may be laid by the informant personally or by a legal practitioner or other person duly authorised to lay the information on the informant's behalf.

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

(4) An information charging a person with summary offences only need not be laid on oath unless—

(a) some Special Act requires the information to be laid on oath; or

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

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

51—Joinder and separation of charges

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

(2) The Magistrates 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.

52—Limitation on time in which proceedings may be commenced

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

(a) in the case of an expiable offence—

(i) if an expiation notice was given to the person—the proceedings must be commenced within 6 months of the expiry of the expiation period specified in the notice;

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

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

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

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

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

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

54—Allegations and descriptions in informations and proceedings

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

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

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

56—Exceptions or exemptions need not be specified or disproved by informant

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

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

57—Issue of summons by Magistrates Court

(1) When an information has been laid and filed in the Magistrates Court, the Magistrates Court must, subject to subsection (2), issue a summons for the appearance of the defendant.

(2) No summons need be issued by the Magistrates Court—

(aa) where the summons for the appearance of the defendant has already been issued prior to the information being laid and filed in the Magistrates Court; or

(a) where the relevant law under which the information is laid provides for the matter to be dealt with in the absence of the defendant; or

(b) where the defendant is already before the Magistrates Court; or

(c) where a warrant is issued to have the defendant arrested and brought before the Magistrates Court.

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

57A—Rules may make provision for written guilty pleas

(1) The Magistrates Court may make rules to provide for a person against whom an information has been laid for an offence that is not punishable by imprisonment (either for a first or subsequent offence) to elect to plead guilty to the offence without appearing in the Court in obedience to a summons.

(2) Without limiting the generality of subsection (1), the rules may make provision for any of the following matters:

(a) the forms of information and summons;

(b) the manner in which an information or summons is to be given or sent to, or served on, a person;

(c) the manner in which a plea of guilty may be made and given to the Magistrates Court;

(d) any other matter that is, in the opinion of the Court, necessary or expedient for the purposes of this section.

(3) A defendant who returns a form in which the defendant pleads guilty in accordance with the rules need not attend the Magistrates Court as directed by the summons.

(4) If a defendant who has been served with forms of information and summons in accordance with the rules fails to return a form pleading guilty in accordance with the rules, and fails to appear in obedience to the summons, the Magistrates Court may, subject to section 62B, proceed to exercise its powers under section 62(1)(a) or (b).

(5) This section does not apply in relation to a defendant who is a child within the meaning of the *Young Offenders Act 1993* except where the defendant—

(a) is of or above the age of 16 years; and

(b) is charged with an offence under the *Road Traffic Act 1961*.

58—Issue of warrant

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

(a) the allegations in the information are substantiated on oath; or

(b) the defendant fails to appear in obedience to a summons and the Magistrates Court is satisfied that the summons was served a reasonable time before the time appointed for the hearing.

59—Defendant to be brought before Magistrates Court

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

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

60—Forms of custody etc

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

(a) by warrant to the nearest prison or to some place of security; or

(b) verbally to the custody of the constable or other person who has apprehended him; or

(c) verbally to such other safe custody as the Magistrates Court deems fit,

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

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

Division 3—Hearing of summary offence

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

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

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

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

62—Proceedings on non-appearance of defendant

(1) If the defendant fails to appear in obedience to the summons the Magistrates Court may—

(a) issue a warrant as provided by section 58, and adjourn the hearing until the defendant is apprehended; or

(b) upon proof that the summons was served a reasonable time before the time thereby appointed for his appearance, proceed in the absence of the defendant to the hearing of the information and subject to section 62C to adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had personally appeared before it in obedience to the summons; or

(ba) upon proof that the summons was served a reasonable time before the time thereby appointed for the defendant's appearance, order that the information may be heard in the absence of the defendant and adjourn the hearing; or

(c) if the defendant has pleaded guilty in writing pursuant to section 57A proceed in the manner provided by sections 62B and 62C.

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

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

62A—Power to proceed in absence of defendant

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

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

62B—Powers of Magistrates Court on written plea of guilty

(1) This section sets out the powers of the Magistrates Court that apply when a defendant fails to appear in obedience to a summons but has given the Court, in the manner and form prescribed by the rules made under section 57A, a form pleading guilty.

(2) The Magistrates Court may not issue a warrant for the arrest of the defendant on the ground of non-appearance but may—

(a) on proof of service of the information and summons; and

(b) on production of the form duly completed,

convict and, subject to this section, adjudicate the matter as fully and effectually to all intents and purposes as if the defendant—

(c) had personally appeared before the Court in obedience to the summons; and

(d) had pleaded guilty and made the same submissions as to penalty as are set out in the form.

(3) The Magistrates Court may receive and act on receipt of a form that has been completed and sent to the Court.

(4) The prosecution may recite to the Magistrates Court any relevant matters alleged against the defendant in the same way as if the defendant had personally appeared and pleaded guilty.

(5) Nothing in this section prejudices an application by a defendant to withdraw a plea of guilty at any time prior to the hearing and determination of the information laid against the defendant, and the Magistrates Court before whom the defendant appears to answer the information may permit a withdrawal of the plea on such terms as may be just.

(6) If a defendant includes in a form pleading guilty matters that would, if true, indicate 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 prosecution, the Court may—

(a) strike out the plea of guilty; and

(b) adjourn the hearing of the information to a specified time and place; and

(c) order that the defendant be served with a summons under section 57,

after which the defendant must be dealt with as though the previous summons had not been issued, and the provisions of this section and section 57A no longer apply.

(7) If a defendant who has given the Magistrates Court a form pleading guilty is convicted, the Court must not—

(a) impose a sentence of imprisonment on the defendant; or

(b) disqualify the defendant from holding or obtaining a licence to drive a motor vehicle unless—

(i) it is proved to the Court that the summons was given personally to the defendant; or

(ii) the procedure prescribed in section 62C is followed; or

(c) treat the offence as other than a first offence unless the informant proves that the defendant has been previously convicted; or

(d) subject to the rules—order the defendant to pay witness fees.

(8) Where a defendant is convicted under this section, the Registrar must immediately, either personally or by post, give the defendant written notice of—

(a) the conviction; and

(b) any fine or other monetary sum to be paid; and

(c) the time and manner of payment.

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

(1) If in any proceedings under this Act—

(a) an information has been laid against a defendant; and

(b) the defendant has been duly served with a summons but—

(i) does not appear at the time and place appointed for the hearing or determination of the information or at a time and place at which the information is subsequently heard or determined; or

(ii) in the case of an information and summons served under section 57A—the defendant neither appears nor pleads guilty in the manner provided under that section,

the Magistrates Court may proceed to adjudicate on the information in the absence of the defendant in accordance with section 62, and in so doing regard any allegation contained in the summons, or information and summons, (as served on the defendant) as sufficient evidence of the matter alleged.

(2) If the Magistrates Court finds the charge proved, the prosecution may recite to the Court any relevant matters alleged against the defendant in the same way as if the defendant had personally appeared and pleaded guilty.

(3) For the purposes of subsection (1), allegations are contained in a summons, or information and summons, if they are contained in, annexed to, or accompany, the summons or information and summons.

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

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

62C—Proceedings in absence of defendant

(1) If a defendant fails to appear in obedience to a summons and is convicted (whether on a plea of guilty under section 57A or after a hearing in the defendant's absence)—

(a) the Magistrates Court may not disqualify the defendant from holding or obtaining a licence to drive a motor vehicle unless—

(i) the summons was given personally to the defendant; or

(ii) the Court has first adjourned the hearing to a specified time and place in order to enable the defendant to appear for the purpose of making submissions on the question of penalty; and

(b) the Court must not sentence the defendant to imprisonment unless the Court has first adjourned the hearing to a specified time and place in order to enable the defendant to appear for the purpose of making submissions on the question of penalty.

(2) The Registrar must, as soon as practicable after an adjournment under subsection (1)(a)(ii) or (b), give written notice to the defendant on the form prescribed by the rules, informing the defendant of the purpose for which the hearing was adjourned and of the defendant's right to be heard at the adjourned hearing.

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

(a) the defendant appears; or

(b) the defendant fails to appear and it is proved that the notice in writing was served on the defendant,

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

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

(5) The contents of a notice may be proved by the production of a document purporting to be a copy of the notice certified by the Registrar to the effect that the document is a true copy of the notice served on the defendant in the manner or at the address, and on the day stated, in the certificate.

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

62D—Proof of previous convictions

(1) Where a defendant is served, at least three days before the hearing of the information, with a notice signed by the informant and—

(a) stating particulars of any previous convictions of the defendant; and

(b) stating that those particulars may be alleged against him at the hearing of the information,

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

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

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

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

63—Non-appearance of informant

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

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

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

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

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

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

68—Procedure on plea of not guilty

(1) If the defendant does not admit the truth of the information the Magistrates Court will proceed to hear—

(a) the informant and his witnesses and any other evidence which he adduces in support of his information; and

(b) the defendant and his witnesses and any other evidence which he adduces in his defence; and

(c) any evidence which the informant adduces in reply if the defendant adduces any evidence other than as to his, the defendant's, general character.

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

(3) The practice before the 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 be in accordance, as nearly as may be, with the practice for the time being of the Supreme Court upon the trial of an action.

69—After hearing 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.

69A—Examination of defendant

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

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

(a) the contents of the report shall be made known to the defendant, or his counsel or solicitor, if the defendant or his counsel or solicitor so requests;

(b) the defendant, or his counsel or solicitor shall, if he so desires, be given an opportunity of cross-examining the person who prepared the report on the matters therein dealt with;

(c) the Magistrates Court must, if so required by the defendant, or his counsel or solicitor, procure the attendance of that person before the Magistrates Court for cross-examination.

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

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

Division 4—Judgment

70—Conviction to be minuted

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

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

70A—Convictions where charges joined in information

(1) Where charges for more than one offence have been joined in the same information, pursuant to this Act, the Magistrates Court may—

(a) convict the defendant of such one or more of those offences as it finds proved:

(b) include any number of offences in a minute or memorandum of conviction or in any formal conviction.

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

70B—Conviction for attempt where full offence charged

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

71—Order and certificate of dismissal

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

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

76A—Power to set aside conviction or order

(1) The Magistrates Court may set aside a conviction or order—

(a) on its own initiative; or

(b) on the application of a party made within 14 days after the party receives notice of the conviction or order.

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

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

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

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

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

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

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

76B—Correction of conviction or order

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

Division 5—Non-association and place restriction orders

77—Interpretation

In this Division—

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

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

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

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

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

(e) the defendant's guardians or carers;

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

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

non-association order means an order under section 78—

(a) prohibiting a defendant—

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

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

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

(b) prohibiting a defendant—

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

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

place restriction order means an order under section 78—

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

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

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

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

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

78—Non-association and place-restriction orders

(1) An information may be laid under this section by a police officer.

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

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

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

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

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

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

(4) The Magistrates Court may—

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

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

(5) If a defendant disputes some or all of the grounds on which a non-association order or a place restriction order is sought or made but consents to the order, the Magistrates Court may make or confirm the order without receiving any further submissions or evidence as to the grounds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A non-association order or a place restriction order may be made in the absence of the defendant if the defendant was required by summons or conditions of bail to appear at the hearing of the information and failed to appear.

(2) A non-association order or a place restriction order may be made in the absence of the defendant and despite the fact that the defendant was not summoned to appear at the hearing of the information, but in that case, the Magistrates Court must summon the defendant to appear before the Magistrates Court to show cause why the order should not be confirmed.

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

(a) the deponent must, if the defendant so requires, appear personally at the proceedings for confirmation of the order to give oral evidence of the matters referred to in the affidavit; and

(b) if the deponent does not appear personally to give evidence in pursuance of such a requirement, the Magistrates Court may not rely on the evidence contained in the affidavit for the purpose of confirming the order.

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

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

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

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

(6) A non-association order or a place restriction order made under subsection (2)—

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

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

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

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

(iii) with the consent of the defendant.

(7) The Magistrates Court may confirm a non-association order or a place restriction order in an amended form.

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

81—Service

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

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

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

(b) until so served—

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

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

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

(a) require the person to remain at a particular place for—

(i) so long as may be necessary for the order, and, if the order is subject to confirmation, the summons to appear before the Magistrates Court to show cause why the order should not be confirmed, to be served on the person; or

(ii) 2 hours,

whichever is the lesser; and

(b) if the person refuses or fails to comply with the requirement or the officer has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (a).

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

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

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

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

(2) An application for variation or revocation of a non-association order or place restriction order may only be made by the defendant with the permission of the Magistrates Court and permission is only to be granted if the Magistrates Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.

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

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

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

83—Contravention of non-association and place restriction orders

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

Maximum penalty:

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

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

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

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

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

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

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

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

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

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

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

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

Division 7—Restraining orders

99AA—Paedophile restraining orders

(a1) An application for a restraining order under this section may be made to the Magistrates Court by a police officer.

(1) On the hearing of an application under this section, the Magistrates Court may make a restraining order against the defendant if—

(a) the defendant—

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

(ii) has been found—

(A) loitering near children; or

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

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

(c) the Magistrates Court is satisfied that the making of the order is appropriate in the circumstances.

(2) A restraining order under this section may restrain the defendant from 1 or more of the following:

(a) loitering—

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

(ii) near children in any circumstances;

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

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

(3) In considering whether or not to make a restraining order under this section and in considering the terms of the restraining order, the Magistrates Court must have regard to the following:

(a) whether the defendant's behaviour has aroused, or may arouse, reasonable apprehension or fear in a child or other person;

(b) whether there is reason to think that the defendant may, unless restrained, commit a sexual offence against a child or otherwise act inappropriately in relation to a child;

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

(d) any evidence of sexual dysfunction suffered by the defendant;

(e) any apparent pattern in the defendant's behaviour, any apparent connection between the defendant's behaviour and the presence of children and any apparent justification for the defendant's behaviour;

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

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

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

99AAB—Power to conduct routine inspection of computer etc

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

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

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

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

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

Maximum penalty: Imprisonment for 2 years.

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

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

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

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

(b) within 1 month after the removal,

whichever occurs first.

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

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

99AAC—Child protection restraining orders

(1) An application for a restraining order under this section may be made to the Magistrates Court by—

(a) a police officer; or

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

(2) On the hearing of an application under this section, the Magistrates Court may make a restraining order against the defendant if—

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

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

(c) —

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

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

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

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

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

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

(d) the Magistrates Court is satisfied that the making of the order is appropriate in the circumstances.

(3) In considering whether or not to make a restraining order under this section and in considering the terms of the restraining order, the Magistrates Court's primary consideration must be the best interests of the child, and in determining the best interests of the child the Magistrates Court must have regard to the following matters:

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

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

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

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

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

(4) The Magistrates Court may—

(a) require that a copy of the application under this section be served on the child, or a guardian of the child, personally; and

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

(5) A restraining order under this section—

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

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

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

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

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

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

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

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

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

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

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

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

(i) sexual abuse; or

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

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

(8) In this section—

Chief Executive has the same meaning as in the *Children and Young People (Safety) Act 2017*;

child sexual offence means any of the following offences committed against or in relation to a child under 16 years of age (including a substantially similar offence against a corresponding previous enactment or the law of another place):

(a) rape;

(b) indecent assault;

(c) incest;

(d) an offence involving unlawful sexual intercourse;

(daa) an offence of persistent sexual abuse of a child under section 50 of the *Criminal Law Consolidation Act 1935*;

(da) an offence of sexual exploitation of a person with a cognitive impairment under section 51 of the *Criminal Law Consolidation Act 1935*;

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

(f) an offence involving child prostitution;

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

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

(i) any other offence (such as homicide or abduction), if there are reasonable grounds to believe that any of the offences referred to in the above paragraphs was also committed by the same person against or in relation to the child in the course of, or as part of events surrounding, the commission of the offence;

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

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

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

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

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

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

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

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

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

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

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

Minister means the Minister to whom the administration of the *Children and Young People (Safety) Act 2017* is committed;

prescribed offence means—

(a) a child sexual offence; or

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

sexual abuse—a child is sexually abused if—

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

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

99C—Issue of restraining order in absence of defendant

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

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

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

(a) the deponent must, if the defendant so requires, appear personally at the proceedings for confirmation of the order to give oral evidence of the matters referred to in the affidavit; and

(b) if the deponent does not appear personally to give evidence in pursuance of such a requirement, the Magistrates Court may not rely on the evidence contained in the affidavit for the purpose of confirming the order.

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

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

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

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

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

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

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

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

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

(iii) with the consent of the defendant.

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

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

99E—Service

(1) Subject to the making of an order under subsection (5), a restraining order must be served on the defendant in accordance with this section and is not binding on the defendant until it has been so served.

(2) If a restraining order is confirmed in an amended form or is varied before being confirmed, or at any other time, subject to the making of an order under subsection (5) or a declaration under subsection (6)—

(a) the order in its amended or varied form must be served on the defendant in accordance with this section; and

(b) until so served—

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

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

(3) For the purposes of this section, a restraining order, or a restraining order in its amended or varied form, is served on the defendant if—

(a) the order is served personally on the defendant; or

(b) the order is served on the defendant in some other manner authorised by the Magistrates Court; or

(c) the defendant is present in the Court when the order is made, amended or varied (as the case requires).

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

(a) require the person to remain at a particular place for—

(i) so long as may be necessary for the order, and, if the order is subject to confirmation, the summons to appear before the Court to show cause why the order should not be confirmed, to be served on the person; or

(ii) 2 hours,

whichever is the lesser; and

(b) if the person refuses or fails to comply with the requirement or the officer has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (a).

(5) If a police officer satisfies the Court that all reasonable efforts have been made to effect personal service of an order on a defendant but that those efforts have failed, the Court may make an order authorising service in such other manner as the Court thinks fit and specifies in the order (and, in such a case, the restraining order will not be binding on the defendant until it has been served in accordance with that order).

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

99F—Variation or revocation of restraining order

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

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

(b) in any case—

(i) by a police officer; or

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

(iii) by the defendant.

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

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

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

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

99G—Notification of making etc of restraining orders

(1) Where a restraining order is made, the Principal Registrar must forward a copy of the order to the Commissioner of Police and, if the applicant for the order is not a police officer, the applicant.

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

99H—Registration of foreign restraining orders

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

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

(3) The Magistrates Court may—

(a) give such directions; and

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

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

(4) The Magistrates Court may—

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

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

at any time on application—

(c) by a police officer; or

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

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

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

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

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

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

Maximum penalty: Imprisonment for 2 years.

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

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

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

(5) If—

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

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

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

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

99J—Applications by or on behalf of child

An application that could otherwise be made by a person under this Division may, if the person is a child, be made—

(a) by the child with the permission of the Magistrates Court, if the child has attained the age of 14 years; or

(b) on behalf of the child—

(i) by a parent or guardian of the child; or

(ii) by a person with whom the child normally or regularly resides.

99K—Burden of proof

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

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

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

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

(b) the report—

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

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

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

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

Maximum penalty: $10 000.

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

(a) officers of the Magistrates Court;

(b) officers of an administrative unit of the Public Service assisting a Minister with the administration of the *Children and Young People (Safety) Act 2017*;

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

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

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

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

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

(6) In this section—

child protection restraining order proceedings means—

(a) proceedings under section 99AAC; or

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

Division 8—Bushfire offender monitoring orders

99L—Court may make monitoring order

(1) A police officer may apply to the Magistrates Court for an order requiring a person who has been found guilty of a bushfire offence (the ***defendant***) to be monitored, during the State's fire danger season in each year, by use of an electronic monitoring device.

(2) On the hearing of an application under this section, the Magistrates Court may make a monitoring order against the defendant if the Court is satisfied that the defendant is at risk of committing a further bushfire offence.

(3) In considering whether or not to make a monitoring order, the Magistrates Court must have regard to the following:

(a) whether the defendant has engaged in any conduct (whether or not constituting an offence) that indicates that they might commit a further bushfire offence;

(b) any psychological or psychiatric condition that indicates that the defendant may be at risk of committing a further bushfire offence;

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

(4) A monitoring order—

(a) may be made in relation to a defendant regardless of whether the defendant was found guilty of the bushfire offence before or after the commencement of this section; and

(b) remains in force until revoked by the Court in accordance with subsection (6); and

(c) ceases to apply to the defendant during any period during which—

(i) the order is suspended by the Court under subsection (8); or

(ii) the defendant is being monitored by an electronic monitoring device under any other Act or law.

(5) A person subject to a monitoring order must—

(a) report to the Commissioner of Police in each year in accordance with any directions of the Commissioner of Police; and

(b) wear or carry the electronic monitoring device supplied by the Commissioner of Police for the purposes of the order at all times during the State's fire danger season in each year; and

(c) take reasonable care to maintain the electronic monitoring device undamaged (other than by normal wear and tear); and

(d) comply with any directions of a corrections officer for the purposes of installing or maintaining the electronic monitoring device; and

(e) comply with all reasonable directions of the Commissioner of Police in relation to the electronic monitoring device during the period for which the requirement applies.

Maximum penalty: $10 000 or imprisonment for 2 years.

(6) The Magistrates Court may, on application made by a police officer or by the defendant, revoke a monitoring order if the Court is satisfied that—

(a) the defendant is no longer at risk of committing a further bushfire offence; or

(b) the defendant is, or will be, residing in a place outside the State and the defendant undertakes to not be present in the State during the State's fire danger season in any year.

(7) If the defendant contravenes an undertaking given in accordance with subsection (6)(b), the defendant is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 2 years.

(8) The Magistrates Court may, on application made by a police officer or by the defendant, suspend a monitoring order for a specified period if the court is satisfied that the defendant is not at risk of committing a further bushfire offence during that period or that it is otherwise appropriate to do so.

(9) An application for revocation or suspension of a monitoring order may only be made by the defendant with the permission of the Magistrates Court and permission is only to be granted if the Magistrates Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last suspended.

(10) The Magistrates Court must, before revoking or suspending a monitoring order—

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

(b) have regard to the same factors that the Magistrates Court is required to have regard to in considering whether or not to make a monitoring order.

(11) In proceedings under this section other than for an offence, the Magistrates Court is to decide questions of fact on the balance of probabilities.

(12) The Magistrates Court may, for the purpose of proceedings for the making, revocation or suspension of a monitoring order, require a party to the proceedings or any other body or person to furnish the Court with a report on any matter.

(13) A copy of any report furnished to the Magistrates Court under subsection (12) must be given to each party to the proceedings.

(14) For the purposes of this section (and any monitoring order under this section), the ***State's fire danger season*** will be taken to continue while any part of the State is subject to a fire danger season fixed under section 78 of the *Fire and Emergency Services Act 2005*.

(15) In this section—

bushfire offence means an offence against section 85B of the *Criminal Law Consolidation Act 1935*;

corrections officer means an officer or employee of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Correctional Services Act 1982*;

electronic monitoring device means a device approved under section 4 of the *Correctional Services Act 1982*;

monitoring order means an order referred to in subsection (1).

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.

(3) To avoid doubt, subsection (2) applies regardless of whether the Director of Public Prosecutions has made a determination as to the appropriate charge or charges to be proceeded with in relation to the information charging the major indictable offence.

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; or

(d) the victim of an alleged sexual offence; or

(e) the victim of an alleged offence involving domestic abuse (within the meaning of the *Intervention Orders (Prevention of Abuse) Act 2009*).

(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, the victim of an alleged offence involving domestic abuse (within the meaning of the *Intervention Orders (Prevention of Abuse) Act 2009*), 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 3A—Pleas to alternative offences and attempts in the Magistrates Court

115A—Pleas to alternative offences and attempts in the Magistrates Court

(1) If, in the Magistrates Court, a person pleads not guilty to an offence charged but guilty to—

(a) some other offence of which the person might be found guilty on trial for the offence charged; or

(b) an attempt to commit the offence charged,

and the plea of guilty is accepted by the prosecution, then the Court may—

(c) if the offence to which the person pleads guilty is a major indictable offence—commit the person to a superior court for sentence or sentence the person in accordance with section 116; or

(d) in any other case—sentence the person.

(2) If a person (having pleaded not guilty to an offence charged referred to in subsection (1)) changes or withdraws a plea of guilty accepted under that subsection, nothing in this section is to be taken to prevent the filing of a fresh information in respect of the offence charged.

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;

(iv) where the case is of a kind prescribed by the regulations;

(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*) that relies on a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue 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 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, sentenced for the offence to which the plea of guilty is entered 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).

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 Court of Appeal 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 Court of Appeal 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 Court of Appeal, 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal, 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal, 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal.

(3) Unless required to do so by the Court of Appeal, a court must not reserve a question for consideration and determination by the Court of Appeal 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 Court of Appeal.

(5) The Court of Appeal 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 Court of Appeal; 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 Court of Appeal, 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 Court of Appeal, 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 Court of Appeal may, if it thinks necessary, refer the stated case back for amendment.

155—Powers of Court of Appeal on reservation of question

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

Examples—

The Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal;

(b) if a person is tried on information and acquitted, the Director of Public Prosecutions may, with the permission of the Court of Appeal, 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 Court of Appeal;

(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;

(e) subject to subsection (3), the Director of Public Prosecutions may, with the permission of the Full Court, appeal against an interlocutory judgment.

(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 Court of Appeal.

(3) The Full Court may only grant permission for an appeal under subsection (1)(e) if satisfied that—

(a) the interlocutory judgment destroys or substantially weakens the prosecution case in respect of any charge and, if correct, is likely to lead to abandonment of that charge; or

(b) it is otherwise in the interests of justice to do so.

158—Determination of appeals in ordinary cases

(1) The Court of Appeal, 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal.

(3) The Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal against that order.

(2) The Attorney-General may, in accordance with rules of court, appeal to the Court of Appeal 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 Court of Appeal.

(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 Court of Appeal 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 Court of Appeal

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 Court of Appeal Division of the Supreme Court as constituted by the *Supreme Court Act 1935* is vested in the Court of Appeal 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 Court of Appeal 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 Court of Appeal

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

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

166—Supplemental powers of Court

For the purposes of this Act, the Court of Appeal 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 Court of Appeal for the purpose, and allow the admission of any statements so taken as evidence before the Court of Appeal; 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 Court of Appeal, 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal) will, subject to any directions of the Court of Appeal, 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 Court of Appeal 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 Court of Appeal 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 Court of Appeal or any judge of the Court of Appeal; 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 Court of Appeal, 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 Court of Appeal and the Court of Appeal may, if it thinks fit, quash the conviction.

Part 7—Supplementary provisions

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.

(1a) If a court makes an order under subsection (1)(g)(i) that a person is subject to a firearms prohibition order—

(a) the order operates as a firearms prohibition order in force against the person under Part 8 of the *Firearms Act 2015*; and

(b) the court may exercise the powers of the Registrar under section 45(17) of the *Firearms Act 2015* to grant an exemption from specified provisions of that section; and

(c) the Registrar of the court must notify the Registrar of Firearms of the details of the 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 (other than an order under subsection (1)(g)(i) that a specified person is subject to a firearms prohibition order) is guilty of an offence.

Maximum penalty:

(a) in the case of a breach of an order relating to a firearm—$50 000 or imprisonment for 10 years;

(b) in the case of a breach of an order relating to an offensive weapon—$10 000 or imprisonment for 2 years.

(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.

181—Charges

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

(2) A court may—

(a) amend an information to cure a defect of substance or form (but if the defendant has been substantially prejudiced by the defect, no amendment may be made); or

(b) dismiss an information if the defect cannot appropriately be cured by amendment.

182—Orders, warrants etc

(1) An order, summons, warrant or other process of a court issued under this Act is not invalid by reason of any defect of substance or form.

(2) A court may—

(a) amend an order, summons, warrant or other process of the court in order to correct a defect of substance or form; or

(b) if the person against whom an order, summons, warrant or other process has been made or issued has been, or may be, substantially prejudiced by the defect—revoke the order, summons, warrant or other process.

183—Remand to training centre

If—

(a) a court orders that a person charged with or convicted of an offence be remanded in custody; and

(b) the person—

(i) is already in custody in a training centre; or

(ii) is alleged to have committed the offence while—

(A) on conditional release from a training centre; or

(B) serving a sentence of home detention in accordance with the *Young Offenders Act 1993*; or

(C) subject to an order under section 26 of that Act; and

(c) the court is satisfied that good reason exists for remanding the person to a training centre,

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

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

(1) If—

(a) a person charged with or convicted of an offence has been, by order under this Act, remanded in custody in a prison; and

(b) the person—

(i) would, but for that order, be in custody in a training centre; or

(ii) is alleged to have committed the offence while—

(A) on conditional release from a training centre; or

(B) serving a sentence of home detention in accordance with the *Young Offenders Act 1993*; or

(C) subject to an order under section 26 of that Act; and

(c) the court is, on the application of the person or the chief executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Youth Justice Administration Act 2016*, satisfied that good reason exists for remanding the person to a training centre,

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

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

(a) there has been a material change in the circumstances of the person; or

(b) the applicant has become aware of new facts or circumstances relevant to the question.

187AA—Cancellation of unexecuted warrants

(1) The Governor may cancel—

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

(b) any other warrant if it has not been executed within 7 years from the day on which it was issued.

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

187A—Proof of convictions or orders

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

(1a) The copy must be certified by—

(a) the person, or one of the persons, constituting the Magistrates Court by which the conviction or order was made; or

(b) a Registrar.

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

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

188—Registration of orders for the purpose of enforcement

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

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

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

189—Costs generally

Subject to sections 189A to 189D (inclusive), the Magistrates Court may award such costs for or against a party to proceedings as the Magistrates Court thinks fit.

189A—Costs payable by defendant in certain criminal proceedings

(1) This section does not apply to—

(a) a defendant who enters a written plea of guilty in accordance with section 57A.

(2) If the Magistrates Court finds a defendant guilty in proceedings for an offence prosecuted by a police officer, the Magistrates Court must, subject to subsection (3), make an order for costs against the defendant for—

(a) if an amount is prescribed by regulation for the purposes of this subsection—the prescribed amount; or

(b) if no such amount is prescribed—$100.

(3) If the prosecution agrees that an order under subsection (2) should not be made, the Magistrates Court may instead make some other order as to costs (or may make no order as to costs).

189B—Costs in pre-committal and committal proceedings

Despite any other provision of this Part, costs will not be awarded against a party to proceedings for an indictable offence under Part 5 Divisions 2 and 3 unless the Magistrates Court is satisfied that the party has unreasonably obstructed the proceedings.

189C—Costs against informant in proceedings for restraining order

(1) Despite any other provision of this Part, costs will not be awarded against an informant in proceedings for a restraining order unless the Magistrates Court is satisfied that the informant has acted in bad faith or unreasonably in bringing the proceedings.

(2) In this section—

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

restraining order includes a domestic violence restraining order under the *Domestic Violence Act 1994* and an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*.

189D—Costs—delay or obstruction of proceedings

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

(a) disallow the whole or part of the costs as between the legal practitioner and his or her client (and, where appropriate, order the legal practitioner to repay costs already paid);

(b) order the legal practitioner to indemnify his or her client or any other party to the proceedings for costs resulting from the delay;

(c) order the legal practitioner to pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Magistrates Court as compensation for time wasted.

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

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

(a) an order that the party or witness indemnify any party for costs resulting from the obstruction or delay;

(b) an order that the party or witness pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Magistrates Court as compensation for time wasted in consequence of the obstruction or delay.

(4) Before making an order under subsection (1), (2) or (3), the Magistrates Court must inform the person against whom the order is proposed of the nature of the proposed order and allow that person a reasonable opportunity to give or call evidence and make representations on the matter.

(5) A person against whom an order for costs is made under subsection (1), (2) or (3) has the same rights of appeal as a party to a civil action.

190—Witness fees

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

191—Fees

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

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

(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.

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.

192—Regulations

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

(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.

Legislative history

Notes

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

Formerly

Justices Act 1921

Summary Procedure Act 1921

Legislation repealed by principal Act

The *Criminal Procedure Act 1921* repealed the following:

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

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

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

Minor Offences Procedure Act 1869

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

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

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

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

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

Legislation amended by principal Act

The *Criminal Procedure Act 1921* amended the following:

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

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

Principal Act and amendments

New entries appear in bold.

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

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

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

2003	44	*Statute Law Revision Act 2003*	23.10.2003	Sch 1—24.11.2003 (*Gazette 13.11.2003 p4048*)
2003	53	*Statutes Amendment (Expiation of Offences) Act 2003*	4.12.2003	Pt 4 (s 12)—18.12.2003 (*Gazette 18.12.2003 p4527*)
2004	23	*Statutes Amendment (Courts) Act 2004*	8.7.2004	Pt 8 (ss 24—26)—1.9.2004 (*Gazette 26.8.2004 p3402*)
2004	52	*Criminal Law Consolidation (Child Pornography) Amendment Act 2004*	16.12.2004	Pt 5 (s 10)—30.1.2005 (*Gazette 13.1.2005 p67*)
2005	62	*Statutes Amendment and Repeal (Aggravated Offences) Act 2005*	1.12.2005	Pt 7 (ss 29 & 30)—15.5.2006 (*Gazette 20.4.2006 p1127*)
2005	74	*Statutes Amendment (Criminal Procedure) Act 2005*	8.12.2005	Pt 6 (ss 13 & 14)—1.3.2007 (*Gazette 1.3.2007 p672*)
2006	17	*Statutes Amendment (New Rules of Civil Procedure) Act 2006*	6.7.2006	Pt 73 (ss 227—234)—4.9.2006 (*Gazette 17.8.2006 p2831*)
2006	44	*Statutes Amendment (Justice Portfolio) Act 2006*	14.12.2006	Pt 30 (ss 63—66)—18.1.2007 (*Gazette 18.1.2007 p234*)
2007	38	*Summary Procedure (Paedophile Restraining Orders) Amendment Act 2007*	11.10.2007	9.12.2007 (*Gazette 29.11.2007 p4382*)
2008	7	*Statutes Amendment (Evidence and Procedure) Act 2008*	17.4.2008	Pt 6 (ss 25 & 26)—23.11.2008 (*Gazette 20.11.2008 p5171*)
2008	10	*Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008*	17.4.2008	Sch 1 (cl 6)—23.11.2008 (*Gazette 20.11.2008 p5171*)
2009	40	*Statutes Amendment (Property Offences) Act 2009*	17.9.2009	Pt 3 (s 7)—20.12.2009 (*Gazette 17.12.2009 p6351*)
2009	78	*Statutes Amendment (Children's Protection) Act 2009*	10.12.2009	Pt 4 (ss 8—19)—1.8.2010 (*Gazette 17.6.2010 p3077*)
2009	84	*Statutes Amendment (Public Sector Consequential Amendments) Act 2009*	10.12.2009	Pt 151 (s 346)—1.2.2010 (*Gazette 28.1.2010 p320*)
2009	85	*Intervention Orders (Prevention of Abuse) Act 2009*	10.12.2009	9.12.2011 (*Gazette 20.10.2011 p4269*) except Sch 1 (cll 20(2), 22, 23 (insofar as it deletes s 99A), 24, 27(1), 28—30 & 33)—uncommenced
2011	31	*Statutes Amendment (Budget 2011) Act 2011*	4.8.2011	Pt 5 (s 18)—1.7.2012 (*Gazette 20.10.2011 p4270*)
2012	12	*Statutes Amendment (Serious and Organised Crime) Act 2012*	10.5.2012	Pt 12 (ss 49 & 50)—17.6.2012 (*Gazette 14.6.2012 p2756*)
2012	43	*Statutes Amendment (Courts Efficiency Reforms) Act 2012*	22.11.2012	Pt 13 (ss 36—42)—1.7.2013 (*Gazette 16.5.2013 p1541*)
2013	31	*Statutes Amendment (Fines Enforcement and Recovery) Act 2013*	1.8.2013	Pt 10 (s 47)—3.2.2014 (*Gazette 30.1.2014 p422*)
2015	16	*Statutes Amendment (Vulnerable Witnesses) Act 2015*	6.8.2015	Pt 6 (ss 30 & 31)—1.7.2016 (*Gazette 23.6.2016 p2618*)
2016	28	*Statutes Amendment (Attorney-General's Portfolio) Act 2016*	16.6.2016	Pt 14 (ss 33—35)—16.6.2016: s 2(1)

2016	43	*Summary Procedure (Abolition of Complaints) Amendment Act 2016*	29.9.2016	Pt 2 (ss 4—49) & Sch 1 (cl 2)—3.10.2017 (*Gazette 1.8.2017 p3039*)
2016	62	*Statutes Amendment (Courts and Justice Measures) Act 2016*	8.12.2016	Pt 8 (s 14)—8.12.2016: s 2(1)
2016	63	*Statutes Amendment (South Australian Employment Tribunal) Act 2016*	8.12.2016	Pt 19 (ss 136 & 137)—1.7.2017 (*Gazette 16.5.2017 p1221*)
2017	18	*Summary Procedure (Indictable Offences) Amendment Act 2017*	14.6.2017	Pt 2 (ss 4—10), Sch 1 & Sch 2 (cl 41)—5.3.2018 (*Gazette 12.12.2017 p4961*) (20 of the amendments purportedly made by Schedule 1 are of no effect because of amendments made by 36 of 2017 that came into operation on 4.3.2018)
2017	36	*Summary Procedure (Service) Amendment Act 2017*	22.8.2017	Pt 2 (ss 4—17)—4.3.2018 (*Gazette 23.1.2018 p283*)
2017	41	*Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2017*	24.10.2017	Pt 8 (ss 14 & 15)—24.10.2017
2017	64	*Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017*	12.12.2017	Pt 20 (ss 130 & 131)—22.10.2018 (*Gazette 19.12.2017 p5119*)
2017	71	*Fines Enforcement and Debt Recovery Act 2017*	12.12.2017	Sch 1 (cl 32)—30.4.2018 (*Gazette 6.2.2018 p609*)
2018	9	*Criminal Procedure (Miscellaneous) Amendment Act 2018*	9.8.2018	9.8.2018
2019	21	*Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2019*	19.9.2019	Pt 4 (s 10)—7.11.2019 (*Gazette 31.10.2019 p3618*)
2019	45	*Supreme Court (Court of Appeal) Amendment Act 2019*	19.12.2019	Sch 1 (cll 12 to 37)—1.1.2021 (*Gazette 10.12.2020 p5638*)
2020	35	*Statutes Amendment (Sentencing) Act 2020*	22.10.2020	Pt 2 (ss 4 to 6)—2.11.2020 (*Gazette 29.10.2020 p4927*)
2021	17	*Statutes Amendment (Transport Portfolio) Act 2021*	20.5.2021	Pt 2 (s 4)—uncommenced
2021	57	*Statutes Amendment (Child Sexual Abuse) Act 2021*	9.12.2021	Pt 3 (ss 9 to 11)—1.6.2022 (*Gazette 17.2.2022 p490*)
2022	25	*Statutes Amendment (Stealthing and Consent) Act 2022*	8.12.2022	Pt 3 (ss 4 & 5)—8.3.2023 (*Gazette 2.3.2023 p464*)
2022	**28**	***Criminal Procedure (Monitoring Orders) Amendment Act 2022***	**8.12.2022**	**18.12.2022 (*Gazette 15.12.2022 p6904*)**
2023	4	*Statutes Amendment (Attorney-General's Portfolio and Other Justice Measures) Act 2023*	23.2.2023	Pt 7 (s 12)—uncommenced

Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 5 of The Public General Acts of South Australia 1837-1975 at page 316.

New entries appear in bold.

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

Provision	How varied	Commencement
Long title	amended by 72/1991 s 3	6.7.1992
	amended by 18/2017 s 4	5.3.2018
Pt 1		
s 1	substituted by 72/1991 s 4	6.7.1992
	amended by 18/2017 s 5	5.3.2018
s 2	*deleted by 72/1991 s 5*	*6.7.1992*
s 3	*amended by 46/1982 s 3*	*3.6.1982*
	amended by 68/1982 s 4	*1.8.1982*
	substituted by 51/1988 s 42	*1.1.1989*
	deleted by 72/1991 s 5	*6.7.1992*
s 4		
s 4(1)		
answer charge hearing	inserted by 18/2017 s 6(1)	5.3.2018
case statement	inserted by 18/2017 s 6(1)	5.3.2018
clerk	*substituted by 26/1982 s 3(a)*	*1.8.1982*
	deleted by 72/1991 s 6(a)	*6.7.1992*
the Chief Magistrate	inserted by 108/1983 s 4(a)	2.4.1984
cognitive impairment	inserted by 28/2016 s 33(1)	16.6.2016
complaint	*amended by 72/1991 s 6(b)*	*6.7.1992*
	deleted by 43/2016 s 4	*3.10.2017*
Court	*inserted by 72/1991 s 6(c)*	*6.7.1992*
	deleted by 18/2017 s 6(2)	*5.3.2018*
court of summary jurisdiction or court	*deleted by 72/1991 s 6(c)*	*6.7.1992*
defence case statement	inserted by 18/2017 s 6(2)	5.3.2018
defendant	amended by 20/1994 s 3(a)	1.8.1994
district	*deleted by 72/1991 s 6(d)*	*6.7.1992*
District Criminal Court	*deleted by 72/1991 s 6(d)*	*6.7.1992*
fine	*deleted by 51/1988 s 43(a)*	*1.1.1989*
firearms order	*inserted by 20/1994 s 3(b)*	*1.8.1994*
	deleted by 18/2017 Sch 1	*5.3.2018*

foreign restraining order	inserted by 20/1994 s 3(b)	1.8.1994
Full Court	*inserted by 18/2017 s 6(3)*	*5.3.2018*
	deleted by 45/2019 Sch 1 cl 12	*1.1.2021*
gaol	*deleted by 51/1988 s 43(b)*	*1.1.1989*
group 1 offence	*deleted by 72/1991 s 6(d)*	*6.7.1992*
group 2 offence	*deleted by 72/1991 s 6(d)*	*6.7.1992*
group 3 offence	*deleted by 72/1991 s 6(d)*	*6.7.1992*
guardian	*deleted by 20/1994 s 3(c)*	*1.8.1994*
the Industrial Court	*deleted by 44/2006 s 63(3)*	*18.1.2007*
industrial magistrate	*substituted by 44/2006 s 63(1)*	*18.1.2007*
	deleted by 63/2016 s 136(1)	*1.7.2017*
industrial offence	*substituted by 72/1991 s 6(e)*	*6.7.1992*
	deleted by 63/2016 s 136(2)	*1.7.2017*
investigating officer	inserted by 65/1995 s 8	3.3.1996
interstate summary protection order	*inserted by 75/1992 s 3(a)*	*4.3.1993*
	deleted by 20/1994 s 3(d)	*1.8.1994*
justice	*deleted by 44/2006 s 63(2)*	*18.1.2007*
justices	*deleted by 72/1991 s 6(f)*	*6.7.1992*
keeper of a gaol	*deleted by 51/1988 s 43(c)*	*1.1.1989*
major offence	*inserted by 66/1983 s 3*	*14.11.1983*
	deleted by 72/1991 s 6(g)	*6.7.1992*
major indictable offence	inserted by 72/1991 s 6(g)	6.7.1992
minor indictable offence	substituted by 109/1981 s 44(a)	1.2.1982
	substituted by 72/1991 s 6(h)	6.7.1992
offence of violence	inserted by 72/1991 s 6(h)	6.7.1992
	amended by 62/2005 s 29	15.5.2006
passage for trial	*deleted by 72/1991 s 6(p)*	*6.7.1992*
personal service	inserted by 26/1982 s 3(b)	1.8.1982
	substituted by 36/2017 s 4(1)	4.3.2018
the Principal Registrar	inserted by 72/1991 s 6(j)	6.7.1992
prosecution case statement	inserted by 18/2017 s 6(4)	5.3.2018
the Registrar	*inserted by 68/1982 s 5*	*1.8.1982*
	amended by 33/1987 s 5	*1.7.1987*
	deleted by 72/1991 s 6(i)	*6.7.1992*
Registrar	inserted by 72/1991 s 6(j)	6.7.1992

relevant family contact order	*inserted by 67/1996 s 30*	*17.10.1996*
	deleted by 85/2009 Sch 1 cl 20(1)	*9.12.2011*
restraining order	inserted by 20/1994 s 3(e)	1.8.1994
	substituted by 51/1995 s 4	30.10.1995
	substituted by 78/2009 s 8	1.8.2010
rules	inserted by 72/1991 s 6(j)	6.7.1992
Schedule 3 offence	*inserted by 72/1991 s 6(o)*	*6.7.1992*
	deleted by 26/2002 s 19(2) (Sch 3 cl 9(a))	*5.7.2003*
Schedule 4 offence	*inserted by 72/1991 s 6(d)*	*6.7.1992*
	deleted by 26/2002 s 19(2) (Sch 3 cl 9(a))	*5.7.2003*
Senior Judge	*deleted by 72/1991 s 6(k)*	*6.7.1992*
the senior magistrate	*inserted by 34/1981 s 38*	*1.7.1981*
	deleted by 108/1983 s 4(b)	*2.4.1984*
sensitive material	inserted by 7/2008 s 25	23.11.2008
sensitive material notice	inserted by 7/2008 s 25	23.11.2008
sentencing law	inserted by 18/2017 s 6(5)	5.3.2018
sexual offence	inserted by 60/1987 s 4	17.9.1987
	amended by 10/2008 Sch 1 cl 6(1)—(3)	23.11.2008
	amended by 28/2016 s 33(2)	16.6.2016
	amended by 41/2017 s 14	24.10.2017
simple offence	*amended by 109/1981 s 44(b)*	*1.2.1982*
	deleted by 72/1991 s 6(l)	*6.7.1992*
special justice	*deleted by 72/1991 s 6(m)*	*6.7.1992*
special magistrate	*inserted by 108/1983 s 4(c)*	*2.4.1984*
	deleted by 72/1991 s 6(n)	*6.7.1992*
summary offence	inserted by 72/1991 s 6(n)	6.7.1992
summary protection order	*inserted by 75/1992 s 3(b)*	*4.3.1993*
	substituted by 62/1993 s 30	*1.7.1993*
	deleted by 20/1994 s 3(f)	*1.8.1994*
sum adjudged to be paid by a conviction	*deleted by 51/1988 s 43(d)*	*1.1.1989*
sum adjudged to be paid by an order	*deleted by 51/1988 s 43(d)*	*1.1.1989*
telephone	inserted by 75/1992 s 3(b)	4.3.1993
s 4(3)	inserted by 36/2017 s 4(2)	4.3.2018
s 4A	*deleted by 72/1991 s 7*	*6.7.1992*
s 5	amended by 109/1981 s 45	1.2.1982
	amended by 26/1982 s 4	1.8.1982
	amended by 66/1983 s 4	14.11.1983

	amended by 51/1988 s 44	1.1.1989
	substituted by 72/1991 s 8	6.7.1992
s 5(2)	amended by 69/2001 s 30(a), (b)	3.2.2002
	amended by 26/2002 s 19(2) (Sch 3 cl 9(b))	5.7.2003
	amended by 25/2003 s 3(1)	24.7.2003
	amended by 40/2009 s 7(1)	20.12.2009
s 5(3)	amended by 59/1994 Sch 2	1.1.1995
	amended by 80/1999 Sch paras. (a), (b)	25.12.1999
	amended by 69/2001 s 30(c)	3.2.2002
	amended by 26/2002 s 19(2) (Sch 3 cl 9(c)—(e))	5.7.2003
	amended by 25/2003 s 3(2), (3)	24.7.2003
	amended by 23/2004 s 24	1.9.2004
	amended by 62/2005 s 30	15.5.2006
	amended by 44/2006 s 64(1), (2)	18.1.2007
	amended by 40/2009 s 7(2)	20.12.2009
s 5(3a)	inserted by 26/2002 s 19(2) (Sch 3 cl 9(f))	5.7.2003
	amended by 40/2009 s 7(3)	20.12.2009
s 5(6)	substituted by 43/1994 s 19	9.6.1994
	amended by 43/2016 s 5(1)	3.10.2017
s 5(7)	substituted by 43/1994 s 19	9.6.1994
s 5(8)	amended by 43/2016 s 5(2)	3.10.2017
s 7	substituted by 72/1991 s 9	6.7.1992
	amended by 18/2017 Sch 1	5.3.2018
s 7A	*inserted by 90/1986 s 10(1) (Sch Pt 1)*	*1.2.1987*
	deleted by 72/1991 s 9	*6.7.1992*
s 8	*deleted by 72/1991 s 10*	*6.7.1992*
	inserted by 62/1993 s 31	*1.7.1993*
	deleted by 63/2016 s 137	*1.7.2017*
s 9	*deleted by 72/1991 s 10*	*6.7.1992*
s 9A	*inserted by 34/1981 s 39*	*1.7.1981*
	amended by 68/1982 s 6	*1.8.1982*
	amended by 108/1983 s 4(d)	*2.4.1984*
	deleted by 72/1991 s 10	*6.7.1992*
Pt 2	*amended by 66/1983 s 5*	*14.11.1983*
	amended by 108/1983 s 4(e)—(g)	*2.4.1984*
	deleted by 72/1991 s 11	*6.7.1992*
Pt 3		
Heading preceding s 20	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 20		
s 20(1)	amended by 72/1991 s 12	6.7.1992
	amended by 43/2016 s 6(1), (2)	3.10.2017

	amended by 18/2017 Sch 1	5.3.2018
s 21	*deleted by 6/1985 s 4(a)*	*7.7.1985*
s 22	amended by 72/1991 s 13	6.7.1992
	amended by 43/2016 s 7(1), (2)	3.10.2017
	substituted by 36/2017 s 5	4.3.2018
s 22A		
s 22A(1)	amended by 43/2016 s 8	3.10.2017
s 22A(4)	*deleted by 72/1991 s 14*	*6.7.1992*
ss 23—25	*deleted by 72/1991 s 15*	*6.7.1992*
s 26	*amended by 51/1988 s 45*	*1.1.1989*
	deleted by 72/1991 s 15	*6.7.1992*
s 26A	*deleted by 72/1991 s 15*	*6.7.1992*
Heading preceding s 27	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 27 before substitution by 36/2017		
s 27(1)	*s 27 proviso deleted by 26/1982 s 5(a)*	*1.8.1982*
	s 27 redesignated as s 27(1) by 26/1982 s 5(b)	*1.8.1982*
s 27(2)	*inserted by 26/1982 s 5(b)*	*1.8.1982*
	amended by 43/2016 s 9	*3.10.2017*
s 27(3)	*inserted by 26/1982 s 5(b)*	*1.8.1982*
	amended by 72/1991 s 16	*6.7.1992*
s 27	substituted by 36/2017 s 6	4.3.2018
Heading preceding s 27A	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 27A before deletion by 36/2017		
s 27A(1)	*amended by 49/1980 s 2*	*3.7.1980*
	amended by 72/1991 s 17	*6.7.1992*
	amended by 43/2016 s 10	*3.10.2017*
s 27A(3)	*amended by 32/1986 s 3*	*1.7.1986*
	amended by 5/1988 s 3	*5.5.1988*
s 27A	*deleted by 36/2017 s 6*	*4.3.2018*
s 27B	amended by 43/2016 s 11	3.10.2017
	substituted by 36/2017 s 7	4.3.2018
s 27C before substitution by 36/2017		
s 27C(1)	*amended by 43/2016 s 12(1)—(3)*	*3.10.2017*
s 27C(2)	*substituted by 72/1991 s 18(a)*	*6.7.1992*
s 27C(3)	*amended by 26/1982 s 6(a)*	*1.8.1982*
	amended by 51/1988 s 46(a)	*1.1.1989*
	amended by 43/2016 s 12(4), (5)	*3.10.2017*
s 27C(4)	*amended by 26/1982 s 6(b)*	*1.8.1982*

	amended by 72/1991 s 18(b)	*6.7.1992*
s 27C(5)	*amended by 72/1991 s 18(c)*	*6.7.1992*
s 27C(6)	*amended by 26/1982 s 6(c)*	*1.8.1982*
	deleted by 51/1988 s 46(b)	*1.1.1989*
s 27C	substituted by 36/2017 s 7	4.3.2018
s 27D	*deleted by 26/1982 s 7*	*1.8.1982*
Heading preceding s 28	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 28		
s 28(1)	amended by 72/1991 s 19(a)—(c)	6.7.1992
	amended by 18/2017 Sch 1	5.3.2018
s 28(2) and (3)	substituted by 72/1991 s 19(d)	6.7.1992
s 28(4)	inserted by 72/1991 s 19(d)	6.7.1992
Heading preceding s 29	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 29	substituted by 72/1991 s 20	6.7.1992
	amended by 62/1993 s 32	1.7.1993
	amended by 18/2017 Sch 1	5.3.2018
ss 30—41 and headings	*deleted by 6/1985 s 4(b)*	*7.7.1985*
Pt 4		
Pt 4 Div 1	*amended by 26/1982 s 8*	*1.8.1982*
	amended by 68/1982 s 7	*1.8.1982*
	amended by 51/1988 s 47	*1.1.1989*
	deleted by 72/1991 s 21	*6.7.1992*
Pt 4 Div 2		
heading	amended by 43/2016 s 13	3.10.2017
Heading preceding s 49	*amended by 51/1988 s 48*	*1.1.1989*
	deleted by 44/2003 s 3(1) (Sch 1)	*24.11.2003*
s 49	substituted by 72/1991 s 22	6.7.1992
s 49(1)	amended by 62/1993 s 33	1.7.1993
	amended by 43/2016 s 14(1)	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 49(2)	amended by 62/1993 s 33	1.7.1993
	amended by 43/2016 s 14(2)	3.10.2017
s 49(3)	amended by 43/2016 s 14(3)	3.10.2017
s 49(4)	amended by 43/2016 s 14(4), (5)	3.10.2017
s 49(5)	amended by 43/2016 s 14(6), (7)	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 50	*deleted by 72/1991 s 22*	*6.7.1992*
s 51	substituted by 72/1991 s 23	6.7.1992
s 51(1)	amended by 43/2016 s 15(1)	3.10.2017
s 51(2)	amended by 43/2016 s 15(1), (2)	3.10.2017

	amended by 18/2017 Sch 1	5.3.2018
s 52	substituted by 35/1996 s 3	3.2.1997
s 52(1)	s 52 amended and redesignated as s 52(1) by 53/2003 s 12(1), (2)	18.12.2003
s 52(2)	inserted by 53/2003 s 12(2)	18.12.2003
	amended by 71/2017 Sch 1 cl 32	30.4.2018
	amended by 17/2021 s 4	uncommenced—not incorporated
Heading preceding s 53	*omitted in pursuance of the Acts Republication Act 1967*	*17.10.1996*
s 53	*deleted by 67/1996 s 31*	*17.10.1996*
Heading preceding s 54	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 54		
s 54(1)—(3)	amended by 43/2016 s 16	3.10.2017
s 55	*deleted by 72/1991 s 24*	*6.7.1992*
Heading preceding s 56	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 56		
s 56(1)	amended by 43/2016 s 17(1)	3.10.2017
s 56(2)	amended by 43/2016 s 17(1), (2)	3.10.2017
Heading preceding s 57	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 57	substituted by 72/1991 s 25	6.7.1992
s 57(1)	amended by 43/2016 s 18(1)	3.10.2017
	amended by 36/2017 s 8(1)	4.3.2018
	amended by 18/2017 Sch 1	5.3.2018
s 57(2)	amended by 17/2006 s 227	4.9.2006
	amended by 43/2016 s 18(2)	3.10.2017
	amended by 36/2017 s 8(2), (3)	4.3.2018
	amended by 18/2017 Sch 1	5.3.2018
s 57(3)	amended by 43/2016 s 18(3)	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 57A before substitution by 36/2017		
s 57A(1)	*amended by 49/1980 s 3(a)*	*3.7.1980*
	amended by 72/1991 s 26(a), (b)	*6.7.1992*
	amended by 43/2016 s 19(1), (2)	*3.10.2017*
s 57A(2)	*amended by 43/2016 s 19(3)*	*3.10.2017*
s 57A(4)	*amended by 49/1980 s 3(b)*	*3.7.1980*
	substituted by 72/1991 s 26(c)	*6.7.1992*
s 57A(5)	*deleted by 72/1991 s 26(c)*	*6.7.1992*
s 57A(6)	*amended by 72/1991 s 26(d)*	*6.7.1992*
s 57A(7)	*amended by 72/1991 s 26(e)*	*6.7.1992*

	amended by 43/2016 s 19(4)	*3.10.2017*
s 57A(7a)	*inserted by 26/1982 s 9*	*1.8.1982*
	amended by 72/1991 s 26(f), (g)	*6.7.1992*
	amended by 43/2016 s 19(5), (6)	*3.10.2017*
s 57A(8)	*amended by 49/1980 s 3(c)*	*3.7.1980*
	amended by 72/1991 s 26(h)	*6.7.1992*
	amended by 43/2016 s 19(7)	*3.10.2017*
s 57A(9)	*amended by 72/1991 s 26(i), (j)*	*6.7.1992*
	amended by 43/2016 s 19(8)	*3.10.2017*
s 57A(10)	*substituted by 44/1979 s 5(2) (Sch)*	*1.7.1979*
s 57A(11)	*substituted by 49/1980 s 3(d)*	*3.7.1980*
s 57A(11)	*substituted by 49/1980 s 3(d)*	*3.7.1980*
public officer	*amended by 78/2009 s 19(3)*	*1.8.2010*
s 57A	substituted by 36/2017 s 9	4.3.2018
Heading preceding s 58	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 58	substituted by 72/1991 s 27	6.7.1992
	amended by 43/2016 s 20	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
Heading preceding s 59	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 59	amended by 6/1985 s 4(c)	7.7.1985
	substituted by 72/1991 s 28	6.7.1992
s 59(1) and (2)	amended by 18/2017 Sch 1	5.3.2018
s 60		
s 60(1)	amended by 72/1991 s 29(a)—(d)	6.7.1992
	amended by 43/2016 s 21	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 60(2)	substituted by 6/1985 s 4(d)	7.7.1985
	amended by 72/1991 s 29(e)	6.7.1992
	amended by 18/2017 Sch 1	5.3.2018
s 62		
s 62(1) and (2)	amended by 17/2006 s 228	4.9.2006
	amended by 43/2016 s 22	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 62(3)	substituted by 72/1991 s 30	6.7.1992
	amended by 18/2017 Sch 1	5.3.2018
Pt 4 Div 3		
heading	amended by 18/2017 Sch 1	5.3.2018
s 62A	amended by 6/1985 s 4(e)	7.7.1985
s 62A(1)	amended by 17/2006 s 229	4.9.2006
	amended by 43/2016 s 23(1), (2)	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018

s 62B before substitution by 36/2017		
s 62B(1)	*amended by 43/2016 s 24(1)*	*3.10.2017*
s 62B(4)	*amended by 43/2016 s 24(2)*	*3.10.2017*
s 62B(5)	*amended by 43/2016 s 24(1)*	*3.10.2017*
s 62B(6)	*amended by 51/1988 s 49(a), (b)*	*1.1.1989*
	(d) deleted by 60/1998 s 44(a)	*6.3.2000*
	amended by 43/2016 s 24(3)	*3.10.2017*
s 62B(8)	*amended by 51/1988 s 49(c)*	*1.1.1989*
	amended by 72/1991 s 31	*6.7.1992*
	amended by 60/1998 s 44(b)	*6.3.2000*
s 62B	substituted by 36/2017 s 10	4.3.2018
s 62B(5)	substituted by 18/2017 Sch 1	5.3.2018
	substituted by 9/2018 s 3	9.8.2018
s 62BA before substitution by 36/2017		
s 62BA(1)	*amended by 49/1980 s 4(a)*	*3.7.1980*
	amended by 17/2006 s 230	*4.9.2006*
	amended by 43/2016 s 25(1)—(4)	*3.10.2017*
s 62BA(2)	*amended by 43/2016 s 25(5)*	*3.10.2017*
s 62BA(4)	*amended by 49/1980 s 4(b)*	*3.7.1980*
	amended by 43/2016 s 25(6), (7)	*3.10.2017*
s 62BA(5)	*amended by 43/2016 s 25(8)*	*3.10.2017*
s 62BA	substituted by 36/2017 s 10	4.3.2018
s 62C before substitution by 36/2017		
s 62C(1)	*amended by 51/1988 s 50*	*1.1.1989*
	amended by 17/2006 s 231	*4.9.2006*
	amended by 43/2016 s 26	*3.10.2017*
s 62C(2)	*amended by 72/1991 s 32(a), (b)*	*6.7.1992*
	amended by 43/2016 s 26	*3.10.2017*
s 62C(3)		
s 62C(3a)	*amended by 72/1991 s 32(c)*	*6.7.1992*
s 62C(5)	*amended by 72/1991 s 32(c)*	*6.7.1992*
s 62C(6)	*substituted by 72/1991 s 32(d)*	*6.7.1992*
s 62C	substituted by 36/2017 s 10	4.3.2018
s 62D		
s 62D(1)	amended by 43/2016 s 27(1), (2)	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 62D(2)	amended by 18/2017 Sch 1	5.3.2018
s 62D(3) and (4)	inserted by 26/1982 s 10	1.8.1982

s 63		
s 63(1)	amended by 43/2016 s 28(1), (2)	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 63(2)	*deleted by 72/1991 s 33*	*6.7.1992*
s 64	amended by 43/2016 s 29	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 65	*amended by 6/1985 s 4(f)—(h)*	*7.7.1985*
	amended by 51/1988 s 51	*1.1.1989*
	deleted by 72/1991 s 34	*6.7.1992*
s 66	*deleted by 72/1991 s 35*	*6.7.1992*
s 67		
s 67(1)	amended by 43/2016 s 30	3.10.2017
s 67(2)	amended by 43/2016 s 30	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 68		
s 68(1)	amended by 43/2016 s 31(1)—(3)	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 68(3)	amended by 72/1991 s 36	6.7.1992
	amended by 43/2016 s 31(1)	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 69	amended by 43/2016 s 32	3.10.2017
	substituted by 18/2017 Sch 1	5.3.2018
s 69A		
s 69A(1)	amended by 51/1988 s 52	1.1.1989
	amended by 72/1991 s 37	6.7.1992
	amended by 43/2016 s 33	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 69A(2) and (3)	amended by 18/2017 Sch 1	5.3.2018
Pt 4 Div 4		
Heading preceding s 70	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 70		
s 70(1)	s 70 first sentence redesignated as s 70(1) by 44/2003 s 3(1) (Sch 1)	24.11.2003
	amended by 18/2017 Sch 1	5.3.2018
s 70(2)	s 70 second sentence redesignated as s 70(2) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 70A		
s 70A(1)	amended by 43/2016 s 34	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 70AB and heading	*deleted by 51/1988 s 53*	*1.1.1989*
s 70B	amended by 72/1991 s 38	6.7.1992
	amended by 43/2016 s 35	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018

s 71		
s 71(1)	amended by 43/2016 s 36	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 71(2)	amended by 43/2016 s 36	3.10.2017
s 72	*amended by 26/1982 s 11*	*1.8.1982*
	amended by 72/1991 s 39	*6.7.1992*
	deleted by 27/1995 s 22	*4.5.1995*
s 73 and heading	*deleted by 51/1988 s 54*	*1.1.1989*
s 74 and heading	*deleted by 51/1988 s 55*	*1.1.1989*
s 75	*amended by 109/1981 s 46*	*1.2.1982*
	deleted by 51/1988 s 55	*1.1.1989*
s 76	*amended by 68/1982 s 8*	*1.8.1982*
	deleted by 51/1988 s 55	*1.1.1989*
Heading preceding s 76A	*inserted by 26/1982 s 12*	*1.8.1982*
	deleted by 44/2003 s 3(1) (Sch 1)	*24.11.2003*
s 76A	inserted by 26/1982 s 12	1.8.1982
	substituted by 72/1991 s 40	6.7.1992
s 76A(1)	substituted by 43/2012 s 36	1.7.2013
	amended by 18/2017 Sch 1	5.3.2018
s 76A(2)	*deleted by 43/2012 s 36*	*1.7.2013*
s 76A(3) and (4)	amended by 18/2017 Sch 1	5.3.2018
s 76B	inserted by 68/1982 s 9	1.8.1982
	deleted by 6/1985 s 4(i)	7.7.1985
	inserted by 72/1991 s 40	6.7.1992
	amended by 18/2017 Sch 1	5.3.2018
Pt 4 Div 5		
s 77	*amended by 51/1988 s 56*	*1.1.1989*
	deleted by 72/1991 s 41	*6.7.1992*
ss 78 and 79	*deleted by 51/1988 s 57*	*1.1.1989*
Pt 4 Div 5	inserted by 12/2012 s 49	17.6.2012
s 78		
s 78(1)	amended by 43/2016 s 37(1)	3.10.2017
s 78(2)	amended by 43/2016 s 37(2), (3)	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 78(4) and (5)	amended by 18/2017 Sch 1	5.3.2018
s 79		
s 79(2) and (4)	amended by 18/2017 Sch 1	5.3.2018
s 80		
s 80(1)	amended by 43/2016 s 38	3.10.2017
s 80(2)	amended by 43/2016 s 38	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 80(3)—(8)	amended by 18/2017 Sch 1	5.3.2018

s 81		
s 81(3)—(5)	amended by 18/2017 Sch 1	5.3.2018
s 82		
s 82(1)—(3)	amended by 18/2017 Sch 1	5.3.2018
Pt 4 Div 5A	*inserted by 68/1982 s 10*	*1.8.1982*
	amended by 51/1988 ss 58, 59	*1.1.1989*
	amended by 72/1991 s 42	*6.7.1992*
	deleted by 60/1998 s 45	*6.3.2000*
Pt 4 Div 6	*amended by 109/1981 s 47*	*1.2.1982*
	amended by 26/1982 s 13	*1.8.1982*
	amended by 68/1982 s 11	*1.8.1982*
	amended by 77/1984 s 3	*1.1.1985*
	amended by 69/1986 s 21	*8.12.1986*
	amended by 49/1987 Sch 2	*21.6.1987*
	deleted by 51/1988 s 60	*1.1.1989*
Pt 4 Div 7	substituted by 46/1982 s 4	3.6.1982
	amended by 72/1991 s 43	6.7.1992
	amended by 75/1992 ss 4—6	4.3.1993
	amended by 62/1993 ss 34—37	1.7.1993
	substituted by 20/1994 s 4	1.8.1994
s 99 before deletion by 85/2009		
s 99(a1)	*inserted by 78/2009 s 9(1)*	*1.8.2010*
s 99(1)	*amended by 78/2009 s 9(2)*	*1.8.2010*
s 99(2)	*amended by 24/1999 s 13(a)*	*16.5.1999*
	amended by 55/2001 s 6(a)	*13.1.2002*
s 99(2a)	*inserted by 24/1999 s 13(b)*	*16.5.1999*
s 99(2ab)	*inserted by 55/2001 s 6(b)*	*13.1.2002*
s 99(2b)	*inserted by 24/1999 s 13(b)*	*16.5.1999*
s 99(3a)	*inserted by 24/1999 s 13(c)*	*16.5.1999*
	amended by 78/2009 s 19(1)	*1.8.2010*
s 99(3b)	*inserted by 24/1999 s 13(c)*	*16.5.1999*
s 99(4)	*substituted by 67/1996 s 32*	*17.10.1996*
s 99(5) and (6)	*inserted by 67/1996 s 32*	*17.10.1996*
s 99	*deleted by 85/2009 Sch 1 cl 21*	*9.12.2011*
s 99AA	inserted by 51/1995 s 5	30.10.1995
s 99AA(a1)	inserted by 78/2009 s 10(1)	1.8.2010
	amended by 43/2016 s 39(1)	3.10.2017
	substituted by 36/2017 s 11(1)	4.3.2018
s 99AA(1)	amended by 38/2007 s 4(1)	9.12.2007
	(b) deleted by 38/2007 s 4(1)	9.12.2007
	amended by 78/2009 s 10(2)	1.8.2010
	amended by 43/2016 s 39(2)	3.10.2017

	amended by 36/2017 s 11(2)	4.3.2018
	amended by 18/2017 Sch 1	5.3.2018
s 99AA(2)	substituted by 38/2007 s 4(2)	9.12.2007
s 99AA(3)	amended by 38/2007 s 4(3), (4)	9.12.2007
	amended by 18/2017 Sch 1	5.3.2018
s 99AA(4)	amended by 44/2006 s 65(1), (2)	18.1.2007
	substituted by 38/2007 s 4(5)	9.12.2007
s 99AAB	inserted by 38/2007 s 5	9.12.2007
s 99AAB(2)	amended by 78/2009 s 11	1.8.2010
s 99AAC	inserted by 78/2009 s 12	1.8.2010
s 99AAC(1)	amended by 43/2016 s 40(1)	3.10.2017
	amended by 36/2017 s 12(1)	4.3.2018
s 99AAC(2)	amended by 43/2016 s 40(2)	3.10.2017
	amended by 36/2017 s 12(2)	4.3.2018
	amended by 18/2017 Sch 1	5.3.2018
s 99AAC(3)	amended by 18/2017 Sch 1	5.3.2018
s 99AAC(4)	amended by 43/2016 s 40(3)	3.10.2017
	amended by 36/2017 s 12(3), (4)	4.3.2018
	amended by 18/2017 Sch 1	5.3.2018
s 99AAC(5) and (6)	amended by 18/2017 Sch 1	5.3.2018
s 99AAC(7)	amended by 43/2016 s 40(4)—(10)	3.10.2017
	amended by 36/2017 s 12(5)—(11)	4.3.2018
	amended by 18/2017 Sch 1	5.3.2018
s 99AAC(8)		
Chief Executive	substituted by 64/2017 s 130(1)	22.10.2018
child sexual offence	amended by 28/2016 s 34	16.6.2016
	amended by 41/2017 s 15	24.10.2017
Minister	amended by 64/2017 s 130(2)	22.10.2018
s 99A	*deleted by 78/2009 s 13*	*1.8.2010*
s 99B before deletion by 85/2009		
s 99B(1)	*amended by 78/2009 s 19(1)*	*1.8.2010*
s 99B(2)	*substituted by 24/1999 s 14(a)*	*16.5.1999*
s 99B(3) and (4)	*substituted by 24/1999 s 14(b)*	*16.5.1999*
s 99B(5)	*amended by 24/1999 s 14(c)*	*16.5.1999*
s 99B(5a)	*inserted by 24/1999 s 14(d)*	*16.5.1999*
s 99B(7)	*amended by 78/2009 s 19(1), (2)*	*1.8.2010*
s 99B	*deleted by 85/2009 Sch 1 cl 23*	*9.12.2011*
s 99C		
s 99C(1)	amended by 43/2016 s 41	3.10.2017
	amended by 36/2017 s 13	4.3.2018
s 99C(2)	substituted by 24/1999 s 15(a)	16.5.1999

	amended by 43/2016 s 41	3.10.2017
	amended by 36/2017 s 13	4.3.2018
	amended by 18/2017 Sch 1	5.3.2018
s 99C(3)	amended by 18/2017 Sch 1	5.3.2018
s 99C(3a)	*inserted by 23/2004 s 25*	*1.9.2004*
	deleted by 78/2009 s 14	*1.8.2010*
s 99C(4)—(6)	substituted by 24/1999 s 15(b)	16.5.1999
	amended by 18/2017 Sch 1	5.3.2018
s 99C(7) and (8)	inserted by 24/1999 s 15(b)	16.5.1999
	amended by 18/2017 Sch 1	5.3.2018
s 99CA before deletion by 85/2009	*inserted by 23/2004 s 26*	*1.9.2004*
s 99CA(1)	*amended by 78/2009 s 19(1)*	*1.8.2010*
s 99CA	*deleted by 85/2009 Sch 1 cl 25*	*9.12.2011*
s 99D before deletion by 85/2009		
s 99D(1)	*amended by 51/1995 s 6*	*30.10.1995*
	amended by 24/1999 s 16(a)	*16.5.1999*
	amended by 78/2009 s 19(1)	*1.8.2010*
s 99D(2)	*amended by 24/1999 s 16(b)*	*16.5.1999*
s 99D	*deleted by 85/2009 Sch 1 cl 25*	*9.12.2011*
s 99E before substitution by 36/2017		
s 99E(1)	*s 99E redesignated as s 99E(1) by 24/1999 s 17*	*16.5.1999*
s 99E(2)	*inserted by 24/1999 s 17*	*16.5.1999*
s 99E(3)	*inserted by 24/1999 s 17*	*16.5.1999*
	amended by 78/2009 s 19(1), (2)	*1.8.2010*
s 99E(4)	*inserted by 24/1999 s 17*	*16.5.1999*
	amended by 78/2009 s 19(1)	*1.8.2010*
	deleted by 85/2009 Sch 1 cl 26	*9.12.2011*
s 99E	substituted by 36/2017 s 14	4.3.2018
s 99F		
s 99F(1)	amended by 78/2009 ss 15, 19(1)	1.8.2010
	(c) deleted by 78/2009 s 15	1.8.2010
	amended by 18/2017 Sch 1	5.3.2018
s 99F(1a)	inserted by 24/1999 s 18(a)	16.5.1999
	amended by 17/2006 s 232	4.9.2006
	amended by 18/2017 Sch 1	5.3.2018
s 99F(2)	*deleted by 85/2009 Sch 1 cl 27(2)*	*9.12.2011*
s 99F(3)	substituted by 67/1996 s 33	17.10.1996
	amended by 24/1999 s 18(b)	16.5.1999
	amended by 18/2017 Sch 1	5.3.2018
s 99G		

s 99G(1)	amended by 43/2016 s 42	3.10.2017
	amended by 78/2009 s 19(1)	1.8.2010
	amended by 36/2017 s 15(1), (2)	4.3.2018
s 99G(2)	amended by 78/2009 s 19(1)	1.8.2010
	amended by 43/2016 s 42	3.10.2017
	amended by 36/2017 s 15(3), (4)	4.3.2018
s 99H		
s 99H(1) and (3)	amended by 18/2017 Sch 1	5.3.2018
s 99H(4)	amended by 78/2009 s 19(1)	1.8.2010
	amended by 18/2017 Sch 1	5.3.2018
s 99H(6)	amended by 18/2017 Sch 1	5.3.2018
s 99I		
s 99I(1)	amended by 78/2009 s 16(1)	1.8.2010
s 99I(2)	amended by 78/2009 s 19(1), (2)	1.8.2010
s 99I(3)	amended by 18/2017 Sch 1	5.3.2018
s 99I(5)	inserted by 38/2007 s 6	9.12.2007
s 99I(6)	inserted by 78/2009 s 16(2)	1.8.2010
s 99J	amended by 17/2006 s 233	4.9.2006
	amended by 43/2016 s 43(1), (2)	3.10.2017
	amended by 36/2017 s 16(1), (2)	4.3.2018
	amended by 18/2017 Sch 1	5.3.2018
s 99K	amended by 18/2017 Sch 1	5.3.2018
s 99KA	inserted by 78/2009 s 17	1.8.2010
s 99KA(1) and (2)	amended by 18/2017 Sch 1	5.3.2018
s 99KA(4)	amended by 18/2017 Sch 1	5.3.2018
	amended by 64/2017 s 131	22.10.2018
s 99KA(5)	amended by 18/2017 Sch 1	5.3.2018
s 99L	*deleted by 85/2009 Sch 1 cl 31*	*9.12.2011*
Pt 5 before substitution by 18/2017	*amended by 64/1976 s 2*	*25.11.1976*
	amended by 115/1976 ss 19, 20	*23.12.1976*
	amended by 31/1977 s 14	*1.9.1977*
	amended by 109/1981 ss 48—57	*1.2.1982*
	amended by 66/1983 ss 6—8	*14.11.1983*
	amended by 77/1984 s 4	*1.1.1985*
	amended by 78/1984 s 3	*15.11.1984*
	amended by 107/1984 s 10	*20.12.1984*
	amended by 6/1985 s 4(j)—(r)	*7.7.1985*
	amended by 60/1987 s 5	*17.9.1987*
	amended by 51/1988 ss 61—65	*1.1.1989*
	amended by 33/1989 ss 4—9	*1.1.1990*
	amended by 33/1991 s 12	*6.6.1991*
	amended by 49/1991 Sch 2	*6.7.1992*

	substituted by 72/1991 s 44	*6.7.1992*
Pt 4 Div 8	**inserted by 28/2022 s 3**	**18.12.2022**
Pt 5 Div 1		
s 102		
s 102(3)	*amended by 43/1994 s 20(a)*	*9.6.1994*
s 102(3a)	*inserted by 43/1994 s 20(b)*	*9.6.1994*
	amended by 43/2016 s 44	*3.10.2017*
s 103		
s 103(3a)	*inserted by 37/2001 s 4(a)*	*3.8.2001*
s 103(3aa)	*inserted by 43/2012 s 37*	*1.7.2013*
s 103(4)	*inserted by 43/1994 s 21*	*9.6.1994*
s 103(5)	*inserted by 12/2012 s 50*	*17.6.2012*
Pt 5 Div 2		
s 104		
s 104(1)	*amended by 42/1999 s 55(a), (b)*	*3.10.1999*
	amended by 52/2004 s 10(1), (2)	*30.1.2005*
	amended by 74/2005 s 13(1)	*1.3.2007*
	amended by 7/2008 s 26(1)	*23.11.2008*
	amended by 36/2017 s 17(1)	*4.3.2018*
s 104(2)	*amended by 42/1999 s 55(c)*	*3.10.1999*
	amended by 74/2005 s 13(2)	*1.3.2007*
s 104(3)	*substituted by 65/1995 s 9*	*3.3.1996*
	amended by 16/2015 s 30(1)	*1.7.2016*
	amended by 43/2016 s 45(1)	*3.10.2017*
s 104(4)	*substituted by 65/1995 s 9*	*3.3.1996*
	amended by 16/2015 s 30(2)—(5)	*1.7.2016*
s 104(4a)	*inserted by 16/2015 s 30(6)*	*1.7.2016*
s 104(5)	*deleted by 65/1995 s 9*	*3.3.1996*
s 104(5)	*inserted by 52/2004 s 10(3)*	*30.1.2005*
	substituted by 7/2008 s 26(2)	*23.11.2008*
s 104(6)	*inserted by 62/1993 s 38*	*1.7.1993*
	amended by 78/2009 s 18	*1.8.2010*
	deleted by 43/2016 s 45(2)	*3.10.2017*
s 104(7)	*inserted by 74/2005 s 13(3)*	*1.3.2007*
	deleted by 36/2017 s 17(2)	*4.3.2018*
Note	*deleted by 16/2015 s 30(7)*	*1.7.2016*
s 105		
s 105(1)	*amended by 43/2012 s 38(1)*	*1.7.2013*
s 105(2)	*amended by 43/2012 s 38(2)*	*1.7.2013*
s 105(4a)	*inserted by 37/2001 s 4(b)*	*3.8.2001*
	amended by 43/2012 s 38(3)	*1.7.2013*
s 106		
s 106(1)	*amended by 17/2006 s 234(1), (2)*	*4.9.2006*

s 106(2)	*amended by 44/2006 s 66*	*18.1.2007*
s 106(3)	*amended by 17/2006 s 234(3)*	*4.9.2006*
	amended by 28/2016 s 35	*16.6.2016*
	amended by 16/2015 s 31	*1.7.2016*
s 107		
s 107(3)	*amended by 62/1993 s 39*	*1.7.1993*
	amended by 43/2016 s 46	*3.10.2017*
s 107(5) and (6)	*substituted by 74/2005 s 14*	*1.3.2007*
Pt 5 Div 3		
s 108		
s 108(1)	*inserted by 43/2012 s 39*	*1.7.2013*
s 108(2)	*s 108 redesignated as s 108(2) by 43/2012 s 39*	*1.7.2013*
Pt 5 Div 4		
s 112	*amended by 27/1995 s 23*	*4.5.1995*
s 113	*amended by 26/1992 s 12*	*6.7.1992*
Pt 5 Div 5		
heading	*amended by 43/2012 s 40*	*1.7.2013*
s 114	*amended by 43/2012 s 41*	*1.7.2013*
Pt 5	substituted by 18/2017 s 7	5.3.2018
Pt 5 Div 3		
s 108		
s 108(3)	inserted by 35/2020 s 4	2.11.2020
s 111		
s 111(6)	amended by 57/2021 s 9	1.6.2022
s 114		
s 114(3)	amended by 57/2021 s 10	1.6.2022
Pt 5 Div 3A	inserted by 35/2020 s 5	2.11.2020
Pt 5		
s 117		
s 117(3)	amended by 45/2019 Sch 1 cl 13	1.1.2021
Pt 5 Div 5		
s 123		
s 123(2)	amended by 9/2018 s 4(1)	9.8.2018
s 123(5)	amended by 9/2018 s 4(2)	9.8.2018
s 124		
s 124(8)	substituted by 25/2022 s 4	uncommenced—not incorporated
Pt 5 Div 6		
s 133	amended by 35/2020 s 6(1)	2.11.2020
	(c) deleted by 35/2020 s 6(2)	2.11.2020
Pt 6	*amended by 26/1982 ss 14—17*	*1.8.1982*
	amended by 68/1982 s 12	*1.8.1982*
	amended by 6/1985 s 4(s), (t)	*7.7.1985*

	amended by 51/1988 ss 66, 67	*1.1.1989*
	deleted by 72/1991 s 45	*6.7.1992*
Pt 6	inserted by 18/2017 s 7	5.3.2018
s 146		
s 146(1) and (3)—(6)	amended by 45/2019 Sch 1 cl 14	1.1.2021
s 147		
s 147(1) and (3)—(6)	amended by 45/2019 Sch 1 cl 15	1.1.2021
s 148		
s 148(1) and (3)—(6)	amended by 45/2019 Sch 1 cl 16	1.1.2021
s 149	amended by 45/2019 Sch 1 cl 17	1.1.2021
Pt 6A	inserted by 18/2017 s 7	5.3.2018
s 152	amended by 45/2019 Sch 1 cl 18	1.1.2021
s 153		
s 153(2)—(7)	amended by 45/2019 Sch 1 cl 19	1.1.2021
s 154		
s 154(1) and (2)	amended by 45/2019 Sch 1 cl 20	1.1.2021
s 155		
s 155(1) and (2)	amended by 45/2019 Sch 1 cl 21	1.1.2021
s 157		
s 157(1)	amended by 45/2019 Sch 1 cl 22	1.1.2021
	amended by 57/2021 s 11(1)	1.6.2022
s 157(2)	amended by 45/2019 Sch 1 cl 22	1.1.2021
s 157(3)	inserted by 57/2021 s 11(2)	1.6.2022
s 158		
s 158(1)—(8)	amended by 45/2019 Sch 1 cl 23	1.1.2021
s 159		
s 159(1)—(3) and (5)	amended by 45/2019 Sch 1 cl 24	1.1.2021
s 160		
s 160(1)—(3)	amended by 45/2019 Sch 1 cl 25	1.1.2021
s 161		
s 161(1) and (2)	amended by 45/2019 Sch 1cl 26	1.1.2021
s 162		
s 162(1) and (3)	amended by 45/2019 Sch 1 cl 27	1.1.2021
s 163	amended by 45/2019 Sch 1 cl 28(1), (2)	1.1.2021
s 164	amended by 45/2019 Sch 1 cl 29	1.1.2021
s 165		
s 165(1) and (2)	amended by 45/2019 Sch 1 cl 30(1)	1.1.2021
s 165(3) and (4)	*deleted by 45/2019 Sch 1 cl 30(2)*	*1.1.2021*
s 166	amended by 45/2019 Sch 1 cl 31	1.1.2021
s 167		

s 167(3)	amended by 45/2019 Sch 1 cl 32	1.1.2021
s 168	amended by 45/2019 Sch 1 cl 33	1.1.2021
s 170		
s 170(2) and (3)	amended by 45/2019 Sch 1 cl 34	1.1.2021
s 171		
s 171(1) and (2)	amended by 45/2019 Sch 1 cl 35	1.1.2021
s 172		
s 172(1)	amended by 45/2019 Sch 1 cl 36	1.1.2021
s 173		
s 173(1) and (2)	amended by 45/2019 Sch 1 cl 37	1.1.2021
Pt 7		
ss 175—179	inserted by 18/2017 s 8	5.3.2018
s 180	inserted by 18/2017 s 8	5.3.2018
s 180(1a)	inserted by 21/2019 s 10(1)	7.11.2019
s 180(4)	amended by 21/2019 s 10(2), (3)	7.11.2019
Heading preceding s 181	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 181	substituted by 72/1991 s 46	6.7.1992
s 181(1)	amended by 43/2016 s 47	3.10.2017
s 181(2)	amended by 43/2016 s 47	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 182	substituted by 72/1991 s 46	6.7.1992
s 182(1) and (2)	amended by 18/2017 Sch 1	5.3.2018
Heading preceding s 183	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 183	deleted by 72/1991 s 46	6.7.1992
	inserted by 41/1998 s 9	1.10.1998
	amended by 18/2017 Sch 1	5.3.2018
s 184	deleted by 72/1991 s 46	6.7.1992
	inserted by 41/1998 s 9	1.10.1998
s 184(1)	amended by 84/2009 s 346	1.2.2010
	amended by 62/2016 s 14	8.12.2016
	amended by 18/2017 Sch 1	5.3.2018
s 184(2)	amended by 18/2017 Sch 1	5.3.2018
ss 185—187	*deleted by 72/1991 s 46*	*6.7.1992*
Heading preceding s 187AA	*substituted by 104/1988 s 2*	*15.12.1988*
	deleted by 44/2003 s 3(1) (Sch 1)	*24.11.2003*
s 187AA	substituted by 104/1988 s 2	15.12.1988
Heading preceding s 187A	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
s 187A		
s 187A(1)	amended by 26/1982 s 18(a)	1.8.1982
	amended by 72/1991 s 47(a)	6.7.1992

	amended by 43/2016 s 48(1), (2)	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 187A(1a)	inserted by 26/1982 s 18(b)	1.8.1982
	substituted by 72/1991 s 47(b)	6.7.1992
	amended by 18/2017 Sch 1	5.3.2018
s 187AB and heading	*inserted by 6/1985 s 4(u)*	*7.7.1985*
	deleted by 72/1991 s 48	*6.7.1992*
s 187B and heading	*deleted by 51/1988 s 68*	*1.1.1989*
s 188	amended by 49/1991 Sch 2	6.7.1992
	substituted by 72/1991 s 48	6.7.1992
s 188(1)—(3)	amended by 18/2017 Sch 1	5.3.2018
s 189 before substitution by 31/2011	*substituted by 72/1991 s 48*	*6.7.1992*
s 189(1)	*substituted by 62/1993 s 40(a)*	*1.7.1993*
	amended by 24/1999 s 19(a)	*16.5.1999*
s 189(2a)	*inserted by 24/1999 s 19(b)*	*16.5.1999*
s 189(5)	*substituted by 62/1993 s 40(b)*	*1.7.1993*
s 189(8)	*inserted by 24/1999 s 19(c)*	*16.5.1999*
complainant	*inserted by 85/2009 Sch 1 cl 32*	*9.12.2011*
restraining order	*substituted by 85/2009 Sch 1 cl 32*	*9.12.2011*
s 189	substituted by 31/2011 s 18	1.7.2012
	amended by 18/2017 Sch 1	5.3.2018
s 189A	inserted by 31/2011 s 18	1.7.2012
s 189A(1)	(b) deleted by 31/2013 s 47	3.2.2014
s 189A(2) and (3)	amended by 18/2017 Sch 1	5.3.2018
s 189B	inserted by 31/2011 s 18	1.7.2012
	amended by 18/2017 s 9, Sch 1	5.3.2018
	amended by 9/2018 s 5	9.8.2018
s 189C	inserted by 31/2011 s 18	1.7.2012
s 189C(1)	amended by 43/2016 s 49(1), (2)	3.10.2017
	amended by 18/2017 Sch 1	5.3.2018
s 189C(2)		
complainant—see informant		
informant	complainant amended to read informant by 43/2016 s 49(3)	3.10.2017
s 189D	inserted by 31/2011 s 18	1.7.2012
s 189D(1)—(4)	amended by 18/2017 Sch 1	5.3.2018
s 190	substituted by 72/1991 s 48	6.7.1992
s 191	substituted by 72/1991 s 48	6.7.1992
s 191(2)	amended by 18/2017 Sch 1	5.3.2018
s 191(3)	inserted by 18/2017 Sch 1	5.3.2018
s 191A	inserted by 18/2017 s 10	5.3.2018

s 192	substituted by 72/1991 s 48	6.7.1992
s 192(1)	s 192 redesignated as s 192(1) by 18/2017 Sch 1	5.3.2018
s 192(2)	inserted by 18/2017 Sch 1	5.3.2018
ss 193—203 and headings	*amended by 26/1982 s 19*	*1.8.1982*
	deleted by 72/1991 s 48	*6.7.1992*
Schs 1 and 2	*deleted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
Sch 3	*inserted by 72/1991 s 49*	*6.7.1992*
	amended by 59/1994 Sch 2	*1.1.1995*
	amended by 80/1999 Sch para (c)	*25.12.1999*
	deleted by 26/2002 s 19(2) (Sch 3 cl 9(g))	*5.7.2003*
Sch 4	*inserted by 72/1991 s 49*	*6.7.1992*
	amended by 59/1994 Sch 2	*1.1.1995*
	deleted by 26/2002 s 19(2) (Sch 3 cl 9(g))	*5.7.2003*

Transitional etc provisions associated with Act or amendments

Statutes Repeal and Amendment (Courts) Act 1991

22—Transitional provisions—general

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

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

(a) if the effect of the amendment is to reduce the penalty for an offence, the amendment applies whether the offence was committed before or after the amendment takes effect;

(b) if the effect of the amendment is to increase the penalty for an offence, the amendment applies only to offences committed after it takes effect;

(c) if the effect of the amendment is to increase or remove a time limit for commencing proceedings for an offence, the previous limit applies in respect of an offence committed before the amendment takes effect;

(d) an amendment affecting the classification of an offence as summary or indictable does not apply in relation to an offence committed before the amendment takes effect.

Summary Procedure (Restraining Orders) Amendment Act 1994

5—Transitional provision

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

Statutes Amendment and Repeal (Justice Portfolio) Act 1999

56—Transitional provision

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

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

5—Transitional provision

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

Statutes Amendment (Courts and Judicial Administration) Act 2001

31—Transitional provision

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

Statutes Amendment (Courts Efficiency Reforms) Act 2012

42—Transitional provisions

(1) The amendment made to section 76A of the *Summary Procedure Act 1921* by section 36 applies in respect of convictions and orders made before or after the commencement of the amendment.

(2) The amendments made to sections 103, 105 and 108 of the *Summary Procedure Act 1921* by sections 37, 38 and 39—

(a) do not apply in respect of the procedure to be followed after the commencement of this Part in proceedings commenced before that commencement (and such proceedings are to proceed as if this Act had not been enacted); and

(b) apply in respect of the procedure to be followed in proceedings commenced after that commencement.

Summary Procedure (Abolition of Complaints) Amendment Act 2016, Sch 1 Pt 2—Transitional provision

2—Certain statements to have effect as affidavits

(1) For the purposes of section 104(3) of the *Summary Procedure Act 1921* (as amended by this Act), a requirement under that subsection that a statement be in the form of an affidavit will be taken to be satisfied if the statement is in the form of a written statement verified by declaration made before the commencement of this clause and in the form prescribed by the rules (as in force immediately before the commencement of this clause).

(2) In this clause—

rules has the same meaning as in the *Summary Procedure Act 1921*.

Summary Procedure (Indictable Offences) Amendment Act 2017, Sch 2 Pt 14

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).

Criminal Procedure (Miscellaneous) Amendment Act 2018, Sch 1—Transitional provision

1—Application of amendment

Section 189B of the *Criminal Procedure Act 1921*, as in force after the commencement of section 5, applies in relation to proceedings whether commenced before or after the commencement of section 5.

Historical versions

Reprint No 2—6.7.1992
Reprint No 3—4.3.1993
Reprint No 4—1.7.1993
Reprint No 5—9.6.1994
Reprint No 6—1.8.1994
Reprint No 7—1.1.1995
Reprint No 8—4.5.1995
Reprint No 9—30.10.1995
Reprint No 10—3.3.1996
Reprint No 11—17.10.1996
Reprint No 12—3.2.1997
Reprint No 13—1.10.1998
Reprint No 14—16.5.1999
Reprint No 15—3.10.1999
Reprint No 16—25.12.1999
Reprint No 17—6.3.2000
Reprint No 18—3.8.2001
Reprint No 19—13.1.2002
Reprint No 20—3.2.2002
Reprint No 21—5.7.2003
Reprint No 22—24.7.2003
Reprint No 23—18.12.2003
1.9.2004
30.1.2005
15.5.2006
4.9.2006
18.1.2007

1.3.2007
9.12.2007
23.11.2008
20.12.2009
1.2.2010
1.8.2010
9.12.2011
17.6.2012
1.7.2012
1.7.2013
3.2.2014
16.6.2016
1.7.2016
8.12.2016
1.7.2017
3.10.2017
24.10.2017
4.3.2018 (electronic only)
5.3.2018
30.4.2018
9.8.2018
22.10.2018
7.11.2019
2.11.2020
1.1.2021
1.6.2022