TASMANIA

MAGISTRATES COURT (CRIMINAL AND GENERAL DIVISION) ACT 2019

No. 43 of 2019

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An Act to establish a criminal and general division of the Magistrates Court, to provide for the conduct of proceedings in that division and to provide for related matters

[Royal Assent 12 December 2019]

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Magistrates Court (Criminal and General Division) Act 2019*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Objects of Act

The objects of this Act are to –

(a) establish the Magistrates Court (Criminal and General Division); and

(b) provide for the administration of justice in the Magistrates Court (Criminal and General Division) in such manner as to –

(i) provide for enhanced access to justice; and

(ii) facilitate the timely dispensing of justice according to law; and

(iii) ensure that all proceedings are conducted fairly; and

(iv) facilitate and improve the case management of proceedings.

4. Interpretation

In this Act, unless the contrary intention appears –

Administrator means the Administrator of the Magistrates Court appointed under section 16 of the *Magistrates Court Act 1987*;

affected person means a person upon or in respect of whom a defendant is charged with having committed one or more of the following crimes:

(a) a crime under section 122, 124, 125, 125A, 125B, 125C, 125D, 126, 127, 129, 130, 133, 137, 158, 159, 170, 170A, 172, 178, 185, 186 or 189 of the *Criminal Code*;

(b) a crime under section 127A of the *Criminal Code* as in force immediately before the commencement of the *Criminal Code Amendment (Sexual Assault) Act 2017* which repealed that section;

(c) a crime under section 298, 299 or 300 of the *Criminal Code* in relation to a crime specified in a section referred to in paragraph (a);

(d) a crime under section 4, 7 or 9 of the *Sex Industry Offences Act 2005* or an offence under section 8(2) of that Act;

(e) an offence under section 73 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*;

alleged offence means the offence that a person is alleged, in a charge sheet, to have committed;

approved means approved by the Chief Magistrate;

arrest warrant means a warrant issued by the Court, a magistrate, a justice or a district registrar that requires a defendant or other person to be arrested for the purpose of bringing him or her before the Court;

assessment of costs means an assessment of costs under the rules of court;

authorised justice means a justice authorised by the Chief Magistrate, under section 13, to constitute the Court;

bail notice means a notice referred to in section 5(1)(a) of the *Bail Act 1994*;

bench justice means a bench justice appointed under section 7;

breach of duty means an act or omission –

(a) that is not a summary offence or an indictable offence; but

(b) in respect of which the Court may order a person to pay money or to do, or refrain from doing, any other act;

breach of duty order means an order made in relation to an allegation of a breach of duty;

case management hearing means a case management hearing referred to in section 86;

charge means an allegation of a summary offence or an indictable offence or an allegation of a breach of duty;

charge sheet means a charge sheet referred to in section 40;

Chief Magistrate means the Chief Magistrate appointed under section 5 of the *Magistrates Court Act 1987*;

conviction includes a finding of guilt;

Court means the Magistrates Court (Criminal and General Division);

court attendance notice means a notice –

(a) issued under section 51 or 52; or

(b) a notice issued under the rules of court that, by reason of section 57, is taken to be a court attendance notice;

Court seal means –

(a) the seal of the Magistrates Court designed and kept under section

16B of the *Magistrates Court Act 1987*; and

(b) any seal in the custody of a district registrar under section 16B of the *Magistrates Court Act 1987*;

Court stamp means the stamp of the Court bearing an imprint identical to the Court seal;

defendant means a person in respect of whom proceedings have been commenced under this Act in relation to the commission of an indictable offence, summary offence or breach of duty;

Director means the Director of Corrective Services appointed under section 5 of the *Corrections Act 1997*;

district registrar means a district registrar appointed under section 16A of the *Magistrates Court Act 1987*;

district registry means a district registry of the Magistrates Court established under section 15A of the *Magistrates Court Act 1987*;

electable offence has the meaning given by section 6;

elected summary offence has the meaning given by section 6;

electronic communication has the same meaning as in the *Electronic Transactions Act 2000*;

family violence order means –

(a) an FVO made under section 16 of the *Family Violence Act 2004*; or

(b) an external family violence order registered under section 27 of the *Family Violence Act 2004*; or

(c) an interstate DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*; or

(d) a registered foreign order, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*;

filed means filed with a district registry;

first attendance, in relation to the attendance of a defendant before the Court, means the first attendance before the Court constituted by a magistrate;

indictable offence means an offence which may be prosecuted upon indictment before the Supreme Court;

interim family violence order means an interim FVO made under section 23 of the *Family Violence Act 2004*;

interim restraint order means an order made under section 12 or 13 of the *Restraint Orders Act 2019*;

justice means a person who holds the office of Justice of the Peace in accordance with an appointment to that office under section 5 of the *Justices of the Peace Act 2018*;

legal practitioner means an Australian legal practitioner within the meaning of the *Legal Profession Act 2007*;

legal representative, in relation to a person, means the legal practitioner representing the person in proceedings under this Act;

magistrate has the same meaning as in the *Magistrates Court Act 1987*;

Magistrates Court means the Magistrates Court of Tasmania established by section 3A of the *Magistrates Court Act 1987*;

Magistrates Rule Committee means the Magistrates Rule Committee continued by section 15AC of the *Magistrates Court Act 1987*;

minor crime has the meaning given by section 5;

order to attend means an order made under section 21;

party means –

(a) the prosecutor or defendant in relation to proceedings for an offence; and

(b) the applicant or respondent in relation to proceedings on an application; and

(c) the appellant or respondent in relation to proceedings on an appeal;

police family violence order means a PFVO made under section 14 of the *Family Violence Act 2004*;

practice directions means practice directions issued by the Chief Magistrate under section 15AA of the *Magistrates Court Act 1987* in respect of this Act;

preliminary proceedings means proceedings conducted by the Court under Part 9 in accordance with a preliminary proceedings order;

preliminary proceedings order means an order of the Supreme Court made under section 331B(2)(b) of the *Criminal Code* that requires the giving of evidence on oath in preliminary proceedings;

prescribed means prescribed by this Act, the regulations or the rules of court;

prescribed prosecutor means a person referred to in section 42(2)(c), (d), (e), (f) or (g);

private prosecutor means a person referred to in section 42(2)(a) or (b);

process means any document required to be filed, issued, given, provided or served under this or any other Act or under an Act of the Commonwealth;

prosecutor means a person or body that –

(a) is entitled to sign a charge sheet under section 42(2); or

(b) commences, or is responsible for the conduct of, the prosecution of an offence;

public officer means –

(a) a police officer; or

(b) a person employed in any capacity in the public service of this State, another State, a Territory or the Commonwealth; or

(c) a person employed in any capacity in a statutory authority; or

(d) a person employed in any capacity in a council; or

(e) a person employed in any capacity in or by a Government Business Enterprise, within the

meaning of the *Government Business Enterprises Act 1995*; or

(f) a person employed in any capacity in or by a State-owned company;

regulations means the regulations made and in force under this Act;

restraint order means an order made under section 6 of the *Restraint Orders Act 2019*;

return day means –

(a) in relation to proceedings for an offence, the day on which a defendant is required to attend before the Court as specified in a court attendance notice or bail notice; or

(b) in relation to any other proceedings, the day on which a party is required to attend before the Court or on which a hearing on any matter, other than an offence, is to be held;

rules of court means the rules of court made by the Magistrates Rule Committee under section 15AE of the *Magistrates Court Act 1987* for the purposes of the Court in relation to proceedings under this Act;

sealed means –

(a) sealed with the Court seal; or

(b) stamped with the Court stamp;

sentence indication means an indication, given by the Court under section 90(2), of the sentence that the Court would impose on a defendant if the defendant pleaded guilty;

State-owned company means a company established under the Corporations Act, the members of which are Ministers of the Crown and the beneficial ownership of which rests with the Crown;

statutory authority means an incorporated or unincorporated body which is established, constituted or continued by or under an Act of this State, another State, a Territory or the Commonwealth or under the royal prerogative, being a body which, or of which the governing authority, wholly or partly comprises a person or persons appointed by –

(a) the Governor of this State or another State; or

(b) the Administrator of a Territory; or

(c) the Governor-General; or

(d) a Minister of the government of this or another State, a Territory or the Commonwealth; or

(e) another statutory authority;

summary offence means –

(a) an offence that is punishable on summary conviction; or

(b) an indictable offence that is, by reason of section 99 or 101, taken to be a summary offence;

witness attendance notice means –

(a) a notice issued under section 23; or

(b) a witness attendance notice as amended under section 24.

5. Meaning of *minor crime*

In this Act, a reference to a minor crime is a reference to an offence referred to in section 99 that is taken to be a summary offence by reason of that section unless, and until, the Court determines that the offence is to be dealt with by the Supreme Court.

6. Meaning of *electable offence* and *elected summary offence*

(1) In this Act, a reference to an ***electable offence*** is a reference to –

(a) an offence referred to in section 101(1), (3) or (4) in respect of which the defendant may elect to have the offence dealt with by the Court or by the Supreme Court; or

(b) an indictable offence under another Act in respect of which that other Act provides that –

(i) the defendant may elect to have the offence dealt with by the Court; or

(ii) the Court may determine that the offence is to be dealt with by the Court, whether or not the Court may only make that determination with the consent or agreement of a person or in specified circumstances.

(2) In this Act, a reference to an ***elected summary offence*** is a reference to –

(a) an offence referred to in subsection (1)(a) in respect of which the defendant has elected under section 107(4) or section 109(1) to have the offence dealt with by the Court, or is taken to have

made such an election by reason of section 111; or

(b) an indictable offence referred to in subsection (1)(b) in respect of which the defendant has elected to have the offence dealt with by the Court; or

(c) an indictable offence referred to in subsection (1)(b) in respect of which the Court has determined that the offence be dealt with by the Court until the Court, under a provision of the Act providing the power to make the determination, determines that the offence be dealt with by the Supreme Court.

7. Bench justice

(1) The Chief Magistrate, by instrument in writing, may appoint a person who is a justice as a bench justice.

(2) An appointment has effect for the period specified in it unless sooner revoked.

(3) The Chief Magistrate may vary, suspend or revoke an appointment.

(4) A variation, suspension or revocation of an appointment must be in writing.

(5) An appointment is revoked if –

(a) the bench justice ceases to be a justice; or

(b) the appointment is revoked by the Chief Magistrate.

(6) The Chief Magistrate may –

(a) reinstate a suspended appointment; or

(b) reappoint a person whose appointment has been revoked by the Chief Magistrate if that person is a justice.

8. Bench justice may constitute Court

A bench justice may constitute the Court in accordance with this Act.

PART 2 – ESTABLISHMENT OF CRIMINAL AND GENERAL DIVISION OF MAGISTRATES COURT

9. Establishment of Criminal and General Division

(1) There is established a division of the Magistrates Court to be known as the Magistrates Court (Criminal and General Division).

(2) The jurisdiction conferred on the Court by this Act and any other Act is to be exercised solely within the Criminal and General Division of the Magistrates Court established by subsection (1).

10. Composition of Court

The Court may be constituted by –

(a) a single magistrate; or

(b) one or more bench justices; or

(c) a single authorised justice.

PART 3 – JURISDICTION OF COURT

11. Jurisdiction of Court generally

(1) The Court has jurisdiction –

(a) to hear and determine a charge for a summary offence; and

(b) to hear and determine a charge for a breach of duty; and

(c) to conduct preliminary proceedings; and

(d) to hear and determine a charge for an indictable offence that is to be heard summarily in accordance with this or any other Act; and

(e) to hear and determine all applications and all other matters required or permitted to be made to the Court under this or any other Act or under the rules of court; and

(f) to hear and determine appeals under section 131; and

(g) to hear and determine proceedings relating to bail, except as otherwise provided under this Act or any other Act; and

(h) to make orders incidental or ancillary to the exercise of its jurisdiction.

(2) Despite subsection (1), the Court when constituted by one bench justice sitting alone may exercise jurisdiction only in the following proceedings and matters:

(a) subject to this or any other Act, proceedings relating to bail under this or any other Act;

(b) adjourning proceedings under this Act;

(c) preliminary proceedings;

(d) proceedings relating to the making, variation or extension of an interim restraint order;

(e) the making of an interim family violence order or proceedings to vary or extend an interim family violence order;

(f) proceedings for the variation or extension of a family violence order;

(g) other proceedings or matters prescribed by the rules of court.

(3) Despite paragraphs (d), (e) and (f) of subsection (2), if the Court constituted by one bench justice sitting alone exercises jurisdiction under any of those paragraphs to make, vary or extend an interim restraint order, an interim family violence order or a family violence order, or adjourns proceedings relating to any such order –

(a) the interim restraint order or interim family violence order made by the Court, or variation or extension by the Court of the interim restraint order, interim family violence order or family violence order, has effect for the period specified by the Court; and

(b) the Court is to specify a day on which the matter is to be brought before the Court constituted by a magistrate, being a day not later than the expiration of the period referred to in paragraph (a) of this subsection.

(4) Despite subsection (1), the Court when constituted by an authorised justice may exercise jurisdiction –

(a) only as specified in section 13; and

(b) subject to the conditions of his or her appointment as an authorised justice.

12. Decision and procedure of Court constituted by 2 or more bench justices

When 2 or more bench justices constitute the Court at a hearing, the decision of the majority is the decision of the Court but, if the bench justices are equally divided in opinion, the bench justices present, or a majority of them, may –

(a) dismiss the case; or

(b) adjourn the case for a rehearing with additional bench justices, by other bench justices or by a magistrate sitting alone.

13. Jurisdiction of authorised justice

(1) The Chief Magistrate, by instrument in writing, may authorise –

(a) a particular justice who is a member of the Court's staff; or

(b) justices of a class of justices who are members of the Court's staff –

to constitute the Court.

(2) An authorisation –

(a) has effect for the period specified in it; and

(b) is subject to any conditions specified in it.

(3) A justice authorised under subsection (1) may do one or more of the following:

(a) adjourn to a later date proceedings before the Court;

(b) if the prosecutor consents, admit the defendant to bail;

(c) if the defendant has attended before the Court in accordance with his or her bail,

continue that bail to the date to which the proceedings are being adjourned;

(d) where the Court continues a defendant's bail and both the defendant and the prosecutor consent to a variation of the conditions to which that bail is subject, vary those conditions.

(4) An authorisation is revoked if –

(a) the justice ceases to be a justice; or

(b) the justice ceases to be a member of the Court's staff; or

(c) the authorisation is revoked by the Chief Magistrate.

(5) The Chief Magistrate may vary or revoke an authorisation.

(6) A variation or revocation of an authorisation must be in writing.

14. Lack of jurisdiction discovered during proceedings

(1) If, in the course of any proceeding, the Court when constituted by a magistrate finds that it does not have jurisdiction to hear and determine the proceeding, the Court may –

(a) remove the proceeding to a court of competent jurisdiction; or

(b) where the court of competent jurisdiction may be constituted by a magistrate,

continue to hear and determine the proceeding as the court of competent jurisdiction.

(2) If, in the course of any proceeding, the Court when constituted otherwise than by a magistrate finds that it does not have jurisdiction to hear and determine the proceeding, the Court must transfer the proceeding to the Court constituted by a magistrate.

(3) In transferring proceedings to another court under subsection (1) or (2), the Court may –

(a) give directions as it considers necessary; and

(b) take or make any procedural action or order that could be taken or made by the court to which the proceeding is being transferred.

PART 4 – GENERAL PROCEDURE

Division 1 – Arrest, procedure following arrest and bail

15. Arrest warrant against defendant

(1) A police officer may apply to a district registrar or justice, in an approved form, for the issue of an arrest warrant against a defendant.

(2) On receiving, in support of an application under subsection (1), a charge sheet, the district registrar or justice may issue an arrest warrant against the defendant –

(a) if satisfied that the issue of the warrant is reasonably likely to –

(i) ensure the attendance of the defendant before the Court in respect of the offence; or

(ii) prevent a repetition or continuation of the offence; or

(iii) prevent the harassment of, or interference with, a person who may be required to give evidence in respect of the offence; or

(iv) prevent the fabrication of evidence in respect of the offence; or

(v) preserve the safety or welfare of any person; or

(vi) prevent the concealment, loss or destruction of evidence relating to the commission of an offence; or

(b) if satisfied that it is in the interests of justice to do so.

(3) The district registrar or justice is to refuse to issue the arrest warrant if not satisfied as required by subsection (2).

16. Manner of issuing arrest warrant by district registrar or justice

(1) A police officer may apply to a district registrar or justice for an arrest warrant in person or by use of electronic communication.

(2) A district registrar, or justice, to whom an application is made under subsection (1) may issue an arrest warrant in person or by use of electronic communication.

(3) A paper that has been produced by, or directly from, the electronic communication of an arrest warrant to a police officer is taken to be the warrant.

17. Arrest warrant by Court

The Court may issue an arrest warrant against a defendant at any time after proceedings against the defendant have commenced.

18. Procedure following arrest

(1) For the purposes of this section –

arrest means –

(a) arrest under an arrest warrant issued under this Act or any other Act, or arrest without warrant under any Act or other legal authority, for the purpose of bringing a person before the Court in relation to a charge for an offence; or

(b) take into custody to facilitate the making of an application for a protective order;

person to be protected means a person for whose benefit a protective order is sought or was made;

person to be restrained means –

(a) a person who is, or is to be, taken into custody to facilitate the making of an application for a protective order, other than a police family violence order; or

(b) a person who, after having been taken into custody as specified in paragraph (a) and released on bail under section 4E of the *Bail Act 1994*, is arrested under section 5(5A) of that Act; or

(c) a person who is taken into custody in respect of an alleged protective order offence;

protective order means a family violence order, interim family violence order, police family violence order, restraint order or interim restraint order;

protective order offence means an offence consisting of a contravention of a family violence order, interim family violence order, police family violence order, restraint order or interim restraint order.

(2) If a person is arrested and then brought before the Court (the ***arrested person***), the Court must determine whether there is alleged against that person, in the charge sheet or application for a protective order, an act or omission that would constitute an offence or grounds for making a protective order.

(3) If the Court determines that an allegation of a kind referred to in subsection (2) has not been made, the Court must release the arrested person.

(4) If the Court determines that an allegation of a kind referred to in subsection (2) has been made, the Court –

(a) must cause the charge or application for a protective order to be read to, or explained in simple terms to, the arrested person unless the arrested person is represented by a legal practitioner; and

(b) in the case of an application for a protective order, may make a protective order under the *Family Violence Act 2004* or the *Restraint Orders Act 2019*; and

(c) must ask the arrested person whether he or she wishes to apply for bail unless the only matter before the Court is an application for a protective order and such an order is made.

(5) If the arrested person wishes to apply for bail and the proceedings are to be adjourned, the Court –

(a) in the case of an application for a protective order, is to proceed under section 20 of the *Restraint Orders Act 2019* or section 25A of the *Family Violence Act 2004*, as appropriate; or

(b) in every other case –

(i) admit the arrested person to bail; or

(ii) refuse to admit the arrested person to bail and remand him or her in custody to a time and day specified by the Court.

Division 2 – Representation, evidence and attendance

19. Representation by legal practitioner, &c.

(1) Subject to this and any other Act, a party may conduct a prosecution of his or her case, and examine and cross-examine witnesses –

(a) in person; or

(b) by a legal practitioner.

(2) If a party is represented by a legal practitioner and this Act requires anything to be done by that party, or any document or other thing to be served on or otherwise provided or made available to that party –

(a) that thing, if appropriate, may be done by the legal practitioner; and

(b) that document or other thing may be served on or otherwise provided or made available to the legal practitioner.

20. Attendance by audio or audio visual link

(1) In this section –

audio link has the same meaning as in the *Evidence (Audio and Audio Visual Links) Act 1999*;

audio visual link has the same meaning as in the *Evidence (Audio and Audio Visual Links) Act 1999*.

(2) On the application of a party or witness in proceedings or on the Court's motion, and subject to the *Evidence (Audio and Audio Visual Links) Act 1999* and the *Evidence (Children and Special Witnesses) Act 2001*, the Court may direct that a party or witness, or another person, attend before, or attend proceedings of, the Court by audio link or audio visual link.

(3) In determining whether to direct that a person attend before, or attend proceedings of, the Court by audio link or audio visual link, the Court is to take into account –

(a) the difficulty involved in the person appearing before, or attending at, the Court in person; and

(b) whether the interests of justice would be detrimentally affected by allowing, or refusing to allow, the person to attend before, or attend the proceedings of, the Court by audio link or audio visual link.

21. Order to attend

The Court may make an order requiring a party to proceedings to do one or more of the following on the day, and at the time and place, specified in the order:

(a) attend before the Court;

(b) if the party is not a defendant in the proceedings, produce to the Court a

document or other thing in the possession or under the control of that party.

22. Failure to comply with order to attend

(1) A party to proceedings who –

(a) was present before the Court when an order to attend was made; or

(b) has been served with an order to attend –

must not fail or refuse to comply with the order to attend without reasonable excuse.

(2) The Court may issue an arrest warrant against a party to proceedings if –

(a) the party fails or refuses to comply with an order to attend; and

(b) a reasonable excuse for that failure or refusal to comply with the order to attend has not been provided to the Court; and

(c) the Court is satisfied that –

(i) the party was present before the Court when the order to attend was made; or

(ii) the order to attend has been served on the party; or

(iii) although the party was not present before the Court when the order to attend was made and the

order to attend has not been served on the party, all reasonable steps have been taken to so serve it.

(3) When a party to proceedings is brought before the Court under an arrest warrant issued under this section, the Court may –

(a) make a further order to attend in relation to the party and release him or her; or

(b) admit the party to bail; or

(c) refuse to admit the party to bail and remand him or her in custody to a time and day specified by the Court.

Division 3 – Witnesses and production of documents, &c.

23. Witness attendance notice

(1) A notice to a person, other than a party to proceedings, requiring him or her to do one or more of the following may be issued as specified in this section:

(a) to appear as a witness before the Court on the day, and at the time and place, specified in the notice;

(b) to produce to the Court, on the day, and at the time and place, specified in the notice, a document or other thing in the possession or under the control of the person.

(2) A notice under subsection (1) may be issued –

(a) if the Court requires the attendance of the person or the production of a document or other thing, or both, or otherwise considers it appropriate to issue the notice – by the Court; or

(b) if a private prosecutor requires the attendance of the person or the production of a document or other thing, or both, and is not represented by a legal practitioner – by the Court or a district registrar; or

(c) in any other case, by a justice or a district registrar.

(3) Without limiting the matters that the Court or district registrar may consider when considering whether to issue to a person a notice under this section on the application of a party, other than a public officer, who is not represented by a legal practitioner, the Court or district registrar may consider any of the following matters:

(a) whether the person may have relevant evidence to give;

(b) whether the person may have a relevant document or other thing in his or her possession or under his or her control;

(c) whether the person may incur unreasonable hardship by attending the Court.

(4) A notice issued to a person under this section –

(a) if issued by the Court under subsection (2)(a), is to be served on the person by the person specified by the Court; or

(b) if issued by the Court or a district registrar under subsection (2)(b) at the request of a private prosecutor who is not represented by a legal practitioner, by the private prosecutor; or

(c) if issued under subsection (2)(c) by a justice or district registrar at the request of a party to the proceedings, by that party.

(5) If the Court is satisfied by evidence given on oath that it is probable that a person to whom a notice under this section may be issued will not attend the Court to give evidence, produce a document or other thing, or both, the Court, instead of issuing such a notice, may issue an arrest warrant against the person.

24. District registrar may amend witness attendance notice

If –

(a) a witness attendance notice has been issued to a person; and

(b) for any reason it is necessary to amend the day, time or place specified in the

notice for the attendance before the Court of the person as a witness or the production of a document or other thing, or both –

a district registrar may issue an amended witness attendance notice to the person.

25. Failure to comply with witness attendance notice

(1) A person, without reasonable excuse, must not fail or refuse to comply with a witness attendance notice.

Penalty: Fine not exceeding 5 penalty units.

(2) The Court may issue an arrest warrant against a person if –

(a) the person fails or refuses to comply with a witness attendance notice; and

(b) a reasonable excuse for that failure or refusal to comply with the witness attendance notice has not been presented to the Court; and

(c) the Court –

(i) is satisfied that the witness attendance notice has been served on the person; or

(ii) although the witness attendance notice has not been served on the person, is satisfied that all reasonable steps have been taken

to so serve the notice and that the person has deliberately avoided service of the notice.

(3) When a person arrested under an arrest warrant issued under this section is brought before the Court, the Court may –

(a) order the person to attend before, or to produce a document or thing to, the Court, or both, on the day, and at the time and place, specified in the order and release him or her; or

(b) admit the person to bail; or

(c) refuse to admit the person to bail and remand him or her in custody to a day, time and place specified by the Court.

(4) An order under subsection (3)(a) has the same effect as a witness attendance notice.

26. Dismissal of witness on undertaking

(1) In this section –

witness includes a person who is to give evidence as a witness.

(2) A witness may be dismissed on giving an undertaking to the Court.

(3) An undertaking is to be in the terms, and is subject to the conditions, determined by the Court.

(4) Without limiting the generality of subsection (3), the Court may determine that the undertaking is subject to a condition that –

(a) the witness must deposit with the Court a specified amount of money to be forfeited to the Crown if the witness fails to attend before the Court as required by the undertaking or otherwise fails to comply with a condition of the undertaking; or

(b) one or more suitable persons (other than the witness) must also enter into an undertaking, as determined by the Court, to forfeit a specified amount of money if the witness fails to attend before the Court as required by his or her undertaking or otherwise fails to comply with a condition of his or her undertaking.

(5) An undertaking given under subsection (2) or subsection (4)(b) may require a witness or suitable person to give security in the terms or in the manner required by the Court so as to better secure compliance with the undertaking.

(6) If the witness who has entered into an undertaking does not attend on the day, and at the time and place, specified in the undertaking, the Court may adjourn the hearing and may issue an arrest warrant against the witness.

(7) If a witness, or any suitable person referred to in subsection (4)(b), refuses to enter into an

undertaking when required to do so under this section, the Court may order that the witness be remanded in custody to a time and day specified by the Court or until after the trial of the defendant unless, in the meantime, the witness or suitable person enters into the required undertaking before the Court.

27. Expenses of witness

(1) In this section –

witness includes a person who is to give evidence as a witness.

(2) A party to proceedings, other than a public officer, is liable to pay the expenses of a person if –

(a) that party has required the attendance before the Court of the person as a witness, or the provision of a document or other thing by the person to the Court, or both, by the issue of a witness attendance notice; and

(b) that party would be liable to pay those expenses had the proceeding been a criminal proceeding within the meaning of the *Criminal Procedure (Attendance of Witnesses) Act 1996*.

(3) Subsection (2) applies whether or not an order may be, or is, made for the payment of the costs of a party to proceedings (including witnesses' expenses) by another party.

(4) Before the conclusion of proceedings under this Act –

(a) a party may ask the Court to fix the expenses of any person for which the party is liable under subsection (2); and

(b) the Court, on that application, may make an order so fixing those expenses in accordance with the scale for the time being prescribed for the purposes of section 17 of the *Criminal Procedure (Attendance of Witnesses) Act 1996* or refuse to make such an order.

(5) If –

(a) the Court reasonably believes that a witness who has given evidence before the Court or produced any documents or other things to the Court in any proceedings, or both, has –

(i) attempted to evade service of a witness attendance notice for that purpose; or

(ii) failed to attend before, or produce a document or other thing to, the Court in compliance with a witness attendance notice served on the witness or of which the witness had knowledge, or in compliance with an undertaking; or

(b) the Court considers the conduct or demeanour of a person when attending before it is unsatisfactory or improper –

the Court may fix less expenses to be paid to the person than it would otherwise fix under this section or may refuse to make an order fixing the expenses to be paid to that person.

(6) If under subsection (2) a party to proceedings is liable to pay a person a reasonable amount or as much as the person deserves for expenses, an order under subsection (4) is conclusive of the amount.

(7) A public officer who is a party to proceedings may, at or after the hearing –

(a) obtain an order under subsection (4) as if he or she were personally liable to the persons whose attendance at the proceeding he or she has required; and

(b) in the case of an indictable offence, have included in that order the expenses of any person who might be entitled under section 17 of the *Criminal Procedure (Attendance of Witnesses) Act 1996* as if he or she were personally liable to that person for the expenses.

(8) A person whose expenses are fixed by an order under subsection (4) obtained by a public officer pursuant to subsection (7) is entitled to payment by the Secretary of the Department of the amount so fixed, out of money provided by Parliament for the purpose, on the making and

verification of a claim as directed by the Attorney-General.

(9) Payment under subsection (8) is taken as satisfaction of an entitlement under section 17 of the *Criminal Procedure (Attendance of Witnesses) Act 1996* in respect of the same attendance of a person.

(10) This section does not affect the operation of Part 13 and the Court is not bound to make the amount, which a person is entitled to receive under this section from the party to proceedings who required his or her attendance, the same as the amount which it allows under that Part against the party.

Division 4 – Miscellaneous

28. Hearing in absence of defendant or respondent

(1) Except as otherwise provided by this Act or another Act or by the rules of court, a charge for an offence or an application may only be heard and determined in the presence of –

(a) the defendant or respondent; or

(b) his or her legal representative; or

(c) both the defendant, or respondent, and his or her legal representative.

(2) The Court may hear and determine a charge for an offence in the absence of the defendant or his or her legal representative, or both, if –

(a) the defendant does not attend and the Court is satisfied that the defendant has been served with a court attendance notice and provided with a charge sheet; or

(b) the defendant is the subject of bail in relation to the charge and does not attend; or

(c) the Court has required the removal of the defendant, or has ordered that the defendant not attend the Court, because of the behaviour of the defendant in the courtroom or adjacent areas.

(3) The Court, under subsection (2), may hear and determine a charge for an offence whether or not the procedure under section 93 applies.

(4) Subject to a contrary provision in any other Act, the Court may hear and determine any application in the absence of the respondent or his or her legal representative, or both, and whether or not the application has been served on the respondent, if the Court determines that it is appropriate to do so.

(5) In hearing and determining a charge for an offence or an application in the absence of the defendant or respondent or his or her legal representative, or both, the Court may receive evidence orally, by affidavit or by a combination of those means.

(6) The Court, after finding a defendant guilty of a charge for an offence in his or her absence, may

issue an arrest warrant against the defendant for the purpose of bringing him or her before the Court for sentencing.

(7) The Court, after finding a defendant guilty of a charge for an offence in his or her absence, may sentence the defendant in the absence of the defendant or his or her legal representative, or both, only if the Court is intending to impose a sentence referred to in section 7(e), (g) or (h) of the *Sentencing Act 1997*.

(8) Except as provided in subsection (7), the Court, after finding a defendant guilty of a charge for an offence in his or her absence, may not make an order or proceed under section 7 of the *Sentencing Act 1997* until the defendant is present before the Court.

29. Setting aside order made in absence of defendant or respondent

(1) In this section –

administrative sanction means an administrative sanction imposed under Part 6 of the *Monetary Penalties Enforcement Act 2005*;

civil sanction means a civil sanction imposed under Part 7 of the *Monetary Penalties Enforcement Act 2005*;

enforcement order has the same meaning as in the *Monetary Penalties Enforcement Act 2005*;

relevant order means an order made, in accordance with section 28, in the absence of a defendant or respondent;

relevant proceedings means the proceedings that resulted in the relevant order.

(2) A reference in this section –

(a) to a prosecutor or defendant is a reference to the prosecutor or defendant in the proceedings in respect of which the relevant order was made; and

(b) to an applicant or respondent is a reference to the applicant or respondent in the proceedings in respect of which the relevant order was made.

(3) The Court may set aside a relevant order on its own motion or on the application of a party to the relevant order.

(4) An application to set aside a relevant order is to be –

(a) made in writing; and

(b) filed with a district registrar of the district registry where the relevant order was made.

(5) After filing an application to set aside a relevant order, the applicant is to serve a copy of the application on the other party unless the other party is not in the State or is unable to be served for any reason.

(6) The Court may only set aside a relevant order if satisfied that it is in the interests of justice to do so –

(a) if the Court is acting on the application of the defendant or respondent in the relevant proceedings, that the defendant or respondent –

(i) has provided valid and relevant reasons for his or her failure to attend the relevant proceedings; and

(ii) has demonstrated that there is a reasonable likelihood that, had he or she attended the relevant proceedings, the relevant order made at those proceedings would have been substantially different from the relevant order; or

(b) if the Court is acting on the application of the prosecutor or applicant in the relevant proceedings, that the prosecutor or applicant –

(i) provided erroneous evidence to the Court in the relevant proceedings; and

(ii) has demonstrated that there is a reasonable likelihood that, had the erroneous evidence not been provided, the order made at those proceedings would have been

substantially different from the relevant order.

(7) If the Court is acting on the application of a party to the relevant proceedings, the Court may set aside the relevant order in the absence of any or all parties to those proceedings if all the parties have endorsed on the application their consent to the setting aside of the relevant order.

(8) If the Court sets aside a relevant order that consists of, or includes, a conviction for an offence –

(a) new proceedings in respect of the offence may be commenced under this Act and any limitation period for commencing such proceedings is taken to commence on the day on which the conviction is set aside; and

(b) any enforcement order, administrative sanction or civil sanction relating to the offence is revoked; and

(c) the Court is to notify the Director, Monetary Penalties Enforcement Service, in writing, that the conviction has been set aside.

(9) After setting aside a relevant order, the Court may make such orders as are within its jurisdiction.

30. Adjournment of proceedings

(1) At any time during proceedings, the Court, on its own motion or on the application of a party, may adjourn the proceedings if the Court considers it in the interests of justice to do so.

(2) Before adjourning proceedings under subsection (1), the Court may provide the opportunity to be heard on the matter to the parties present before the Court.

(3) In determining whether or not to adjourn proceedings under subsection (1), the Court is to take into account –

(a) the object of this Act; and

(b) any relevant practice directions; and

(c) the need to avoid unnecessary delay in finalising the proceedings; and

(d) the need to ensure a fair hearing; and

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

(4) If a party to proceedings provides to the Court a written consent to an adjournment of the proceedings that is signed by all parties, the Court may adjourn the proceedings in accordance with the consent.

(5) If a party to proceedings files, before the date set for the hearing of the proceedings by the Court, a written consent to an adjournment of the

proceedings that is signed by all parties, the district registrar may adjourn the proceedings –

(a) to another sitting of the Court; or

(b) to another place in which the sittings of the Court are held; or

(c) to both another such sitting and another such place.

(6) A district registrar may exercise the power under subsection (5) to adjourn proceedings only –

(a) subject to the practice directions; and

(b) if he or she considers it appropriate in the interests of justice to do so.

31. Procedure on adjournment in offence proceedings

If for any reason proceedings in the Court for an offence are adjourned, the Court may –

(a) remand the defendant in custody; or

(b) admit the defendant to bail; or

(c) if the defendant appeared before the Court in accordance with his or her bail, continue that bail (with or without a variation to the conditions of that bail) to the time at, and the day and place to, which the proceedings are adjourned; or

(d) order the defendant to appear before the Court at the time, on the day and at the

place to which the proceedings are adjourned.

32. Limitation on power of Court to admit defendant to bail

Despite anything to the contrary in this Act, the Court may not admit a defendant to bail under this Act if the defendant –

(a) has attained the age of 17 years; and

(b) is charged with the crime of treason or murder.

33. Power to remove or refer proceedings

(1) If the Court considers it appropriate to do so, it may refer or remove the proceedings, or any matter relating to the proceedings, to –

(a) the Court constituted differently; or

(b) another division of the Magistrates Court.

(2) If, under subsection (1), the sentencing of a defendant has been removed to the Court constituted differently, it is not necessary for the Court to which the sentencing has been removed to hear evidence as to the commission of the offence of which the defendant has been found guilty, except in so far as the Court constituted differently considers will assist it in determining the appropriate sentence.

34. Committing defendant on remand to secure mental health unit

(1) In this section –

Chief Forensic Psychiatrist means the person appointed as Chief Forensic Psychiatrist under the *Mental Health Act 2013*;

mental illness has the same meaning as in the *Mental Health Act 2013*;

secure mental health unit has the same meaning as in the *Mental Health Act 2013*;

specified means specified in an order under this section that commits a defendant to a secure mental health unit.

(2) If –

(a) the Court determines to remand a defendant in custody; and

(b) the defendant appears to be suffering from a mental illness; and

(c) the Court considers that the defendant should be admitted to a secure mental health unit for his or her own health or safety or for the protection of others; and

(d) the Chief Forensic Psychiatrist has provided a report to the effect that –

(i) the admission of the defendant to the secure mental health unit is

necessary for his or her care or treatment; and

(ii) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the defendant; and

(iii) in the case of a defendant who has not attained the age of 18 years, the secure mental health unit is the most appropriate place available to accommodate him or her in the circumstances, having regard to the objectives and general principles set out in sections 4 and 5 of the *Youth Justice Act 1997* –

the Court may remand the defendant in custody and commit the defendant to a secure mental health unit instead of committing the defendant to prison.

(3) An order made under subsection (2) –

(a) is to specify that the specified person, or a person of the specified class of persons, is responsible for taking the defendant to the specified secure mental health unit; and

(b) may specify that the specified person or another specified person, or a person of the specified class of persons or of another specified class of persons, is responsible for bringing the defendant

from the specified secure mental health unit before the Court in connection with the exercise by it of its powers under this Act.

(4) A copy of an order under made subsection (2) and the report of the Chief Forensic Psychiatrist are to accompany the defendant to the specified secure mental health unit.

(5) While a defendant is the responsibility of a person as specified in an order made under subsection (2) –

(a) that person has the custody of the defendant; and

(b) the defendant is taken to be a forensic patient for the purposes of the application of relevant provisions of Parts 4 and 5 of Chapter 2 of the *Mental Health Act 2013*.

(6) The Court may make such orders as to the distribution and security of the report provided by the Chief Forensic Psychiatrist as it considers necessary or appropriate.

(7) Unless the Court orders otherwise, the Chief Forensic Psychiatrist must provide a copy of his or her report, as soon as practicable, to –

(a) the prosecutor; and

(b) the defendant or his or her legal representative.

(8) The prosecutor or the defendant may dispute the whole or any part of the report of the Chief Forensic Psychiatrist.

(9) If the whole or any part of the report of the Chief Forensic Psychiatrist is disputed, the Court must not take into consideration the report or part in dispute unless the party disputing the report or part has had the opportunity –

(a) to lead evidence on the disputed matters; and

(b) to cross-examine, on the disputed matters –

(i) the Chief Forensic Psychiatrist; or

(ii) if the Chief Forensic Psychiatrist has delegated his or her function of writing the report, the author of the report.

35. Variation or revocation of order committing defendant to secure mental health unit

(1) In this section –

Chief Forensic Psychiatrist means the person appointed as Chief Forensic Psychiatrist under the *Mental Health Act 2013*;

secure mental health unit has the same meaning as in the *Mental Health Act 2013*.

(2) Each of the following persons may apply at any time to the Court for the variation or revocation of an order made under section 34(2) that commits a defendant to a secure mental health unit:

(a) the Director of Public Prosecutions or the prosecutor;

(b) the Secretary of the responsible Department in relation to the *Mental Health Act 2013*;

(c) the Chief Forensic Psychiatrist;

(d) the defendant.

(3) The Chief Forensic Psychiatrist must apply to the Court for the revocation of an order made under section 34(2) that commits a defendant to a secure mental health unit if the Chief Forensic Psychiatrist is of the opinion that the defendant –

(a) no longer requires care and treatment in a secure mental health unit; or

(b) could no longer benefit from such care and treatment.

(4) On hearing an application made under subsection (2) or (3), the Court –

(a) may vary, revoke or confirm the order made under section 34(2); and

(b) if it revokes the order made under section 34(2), may do one or more of the following:

(i) make an order to attend in relation to the defendant;

(ii) release the defendant;

(iii) admit the defendant to bail;

(iv) remand the defendant in custody to a time and day specified by the Court.

(5) An application made under subsection (2) or (3) is to be heard and determined within 14 days after it is made.

36. Power to make ancillary order

The Court may make any ancillary order it considers appropriate in respect of any matter for which it has jurisdiction or any proceeding before it.

37. Administrator may apply under *Vexatious Proceedings Act 2011*

The Administrator may apply to the Supreme Court under the *Vexatious Proceedings Act 2011* for a vexatious proceedings order in relation to a person who has instituted any proceedings under this Act.

38. Rules of court govern Court practice and procedure and practice directions

The practice and procedure of the Court, and the practice directions, are to be in accordance with the rules of court.

PART 5 – COMMENCING PROCEEDINGS FOR SUMMARY OFFENCE OR INDICTABLE OFFENCE

Division 1 – Commencing proceedings for summary offence or indictable offence

39. Offences for which proceedings may be commenced in Court

(1) If proceedings for a summary offence committed in this State or elsewhere may be taken in this State, those proceedings may be commenced in the Court.

(2) If proceedings for an indictable offence committed in this State or elsewhere may be taken in this State, those proceedings may be commenced in the Court.

40. Proceedings for summary offence or indictable offence commenced by court attendance notice or charge sheet

(1) Proceedings for a summary offence or an indictable offence are commenced in the Court by filing with the Court –

(a) if the prosecutor is a private prosecutor, a charge sheet that meets the requirements of section 42; or

(b) if the prosecutor is a prescribed prosecutor, either a court attendance notice that has been served on a person

or a charge sheet that meets the requirements of section 42.

(2) For the purposes of subsection (1), a charge sheet is filed if it, or a copy of it, is filed and a court attendance notice is filed if –

(a) it, or a copy of it, is filed; or

(b) the prescribed information is filed.

(3) Subsection (1) does not apply to an offence if any other Act or law prescribes that proceedings for the offence commence, or are taken to have commenced, on a day other than the day on which the court attendance notice or charge sheet is filed or on the occurrence of another event.

41. Limitation on commencing proceedings for an offence under *Criminal Code Act 1924*

(1) Only –

(a) a public officer in his or her capacity as such and in good faith; or

(b) a person authorised or directed by the Crown or the Commonwealth to sign a charge sheet, or to commence or undertake proceedings, for or on behalf of the Crown or the Commonwealth; or

(c) a person authorised or directed by the Director of Public Prosecutions to sign a

charge sheet for or on behalf of the Director of Public Prosecutions; or

(d) a person who has the consent of the Director of Public Prosecutions –

may commence proceedings for an offence under the *Criminal Code Act 1924*.

(2) The Director of Public Prosecutions may give consent under subsection (1)(d) to a person to commence proceedings for an offence under the *Criminal Code Act 1924* only if satisfied that the person is acting in good faith and on reasonable grounds.

Division 2 – Charge sheets

42. Form of charge sheet

(1) A charge sheet is to –

(a) be in writing; and

(b) be in the form prescribed by the rules of court or, if those rules do not prescribe a form, in an approved form; and

(c) specify the name of the prosecutor; and

(d) be signed as specified in subsection (2); and

(e) except as provided by section 43, relate to only one offence; and

(f) specify the offence and identify the statutory provision creating the offence; and

(g) state the particulars of the alleged conduct of the defendant that would constitute that offence; and

(h) if the offence relates to property, the value of the property as estimated by the prosecutor; and

(i) include any other information or matters prescribed by the rules of court.

(2) A charge sheet must be signed by –

(a) an individual who has a right to complain of the behaviour of the defendant that is alleged to constitute the offence, or the legal representative of such an individual; or

(b) a body corporate or unincorporate that has a right to complain of the behaviour of the defendant that is alleged to constitute the offence, or a legal representative or other person authorised or directed by such a body to sign the charge sheet, or to commence or undertake the proceedings, for or on behalf of the body corporate or unincorporate; or

(c) a police officer; or

(d) another public officer in his or her capacity as such; or

(e) a person authorised or directed by another Act to sign the charge sheet or to commence or undertake the proceedings; or

(f) a person authorised or directed by the Crown, the Commonwealth or a statutory authority to sign the charge sheet, or to commence or undertake the proceedings, for or on behalf of the Crown, the Commonwealth or a statutory authority; or

(g) a person authorised or directed by the Director of Public Prosecutions to sign a charge sheet for or on behalf of the Director of Public Prosecutions.

(3) A charge sheet signed by a public officer may be signed by the public officer in the name of, and for –

(a) a person; or

(b) the –

(i) Agency, within the meaning of the *State Service Act 2000*; or

(ii) agency or department of the public service of this State, another State, a Territory or the Commonwealth; or

(iii) statutory authority; or

(iv) council; or

(v) Government Business Enterprise within the meaning of the *Government Business Enterprises Act 1995*; or

(vi) State-owned company –

in which the public officer is employed.

43. Joinder of charges in charge sheet

(1) Except as otherwise provided in another Act, 2 or more offences may be joined in one charge sheet if –

(a) those offences arise substantially from the same facts or closely related facts; or

(b) those offences are, or form part of, a series of offences of the same or similar character.

(2) If 2 or more offences are joined in one charge sheet, the description of each offence is to be set out in a separate numbered paragraph.

(3) If more than one offence is joined in one charge sheet and the description of each offence is set out in a separate paragraph, the charge for each offence is to be regarded as a separate charge.

(4) If one paragraph of a charge sheet contains more than one offence, the Court, at any time during the proceedings and on such conditions as it considers appropriate, may permit the prosecutor –

(a) to amend that paragraph so that it only contains one offence; and

(b) to add new paragraphs that each contain one of the offences that were contained in the original paragraph.

(5) At any stage in the proceedings, the Court may order that a separate hearing be held in respect of any offence joined in a charge sheet –

(a) if it appears to the Court that the defendant may be prejudiced in his or her defence by hearing and determining the charges together; or

(b) if it appears to the Court that an offence has been joined with one or more other offences in one charge sheet in contravention of subsection (1); or

(c) for any other reason that the Court considers appropriate.

44. Joinder of defendants in charge sheet

(1) In this section –

prescribed defendant, in relation to an offence, means a person who, by reason

of section 94 of this Act or section 3 of the *Criminal Code*, could be found guilty of the offence.

(2) Except as otherwise provided in another Act, more than one prescribed defendant to an offence may be joined in one charge sheet.

(3) The Court, on the application of a prescribed defendant joined in a charge sheet made at any stage in the proceedings on that charge sheet, may order that a separate hearing be held in respect of one or more charges against any of the prescribed defendants, or any combination of the prescribed defendants, joined in that charge sheet.

45. Filing and provision of charge sheet

(1) A copy of the charge sheet must be filed in accordance with the rules of court.

(2) If a charge sheet is not provided to the defendant as required by this Act, that failure to provide the charge sheet does not invalidate the proceedings but may give rise to an adjournment of the proceedings.

46. Irregularity in, and amendment of, charge sheet

(1) A defendant to proceedings for an offence may not object to a charge sheet on any of the following grounds:

(a) that the charge sheet contains a defect in substance or form;

(b) that the charge sheet varies from the evidence supporting it.

(2) The Court may amend a charge sheet as it considers appropriate if it appears to the Court that the charge sheet –

(a) fails to disclose an allegation of an offence or is otherwise defective; and

(b) ought to be amended –

(i) to disclose an allegation of an offence; or

(ii) to cure the other defect.

(3) The Court amends a charge sheet by requiring the Court's record of the charge sheet to be amended as specified by the Court.

(4) If –

(a) the Court considers that a charge sheet does not contain an allegation of an offence but has not amended the charge sheet under subsection (2); or

(b) it appears to the Court that the defendant has been prejudiced by a defect or variance referred to in subsection (1) –

the Court, if it considers that the interests of justice so require, may dismiss the proceedings commenced by the charge sheet.

47. Removal of charge from charge sheet

(1) The prosecutor may amend a charge sheet so as to remove a charge for an offence from it at any time before, or at, the first attendance of the defendant.

(2) The prosecutor may amend a charge sheet so as to remove a charge for an offence from it at any time after the first attendance of the defendant but before the proceedings relating to the offence have been finally determined if the Court grants leave to do so.

(3) The Court, under subsection (2), may not grant leave to amend a charge sheet if the charge has been dismissed or otherwise determined by the Court.

(4) The Court, under subsection (2), may not grant leave to amend a charge sheet so as to remove an indictable offence unless the Director of Public Prosecutions is making the application for leave or has consented in writing to the amendment.

(5) In determining whether to grant leave, under subsection (2), to amend a charge sheet, the Court is to take into account –

(a) whether –

(i) the defendant or his or her legal representative is present at the time when the request for the Court's leave is made; or

(ii) the prosecutor, not less than 48 hours before seeking leave to amend the charge sheet, has provided to the defendant written notice of the intention to make the request; and

(b) any prejudice to the defendant caused by the removal of the charge from the charge sheet or the cessation of the proceedings on the charge; and

(c) that a defendant who has entered a plea of not guilty to the charge is entitled to have the proceedings determined; and

(d) the effect that the removal of the charge from the charge sheet may have on the admissibility of evidence in any future proceedings; and

(e) any other matter that the Court considers appropriate in the interests of justice in the particular case.

(6) The amendment of a charge sheet under this section takes effect –

(a) if the amendment is made at an attendance of the prosecutor before the Court, when the amendment is made; or

(b) in any other case, when the amended charge sheet is filed.

(7) If a charge sheet is amended under subsection (1), the prosecutor is to provide a copy of the amended charge sheet to the defendant.

(8) If the prosecutor amends a charge sheet so as to remove a charge for an offence from it –

(a) the charge is taken to be withdrawn; and

(b) the defendant is taken not to have been charged in relation to the offence.

(9) The removal of a charge for an offence from a charge sheet does not prevent a later charge for the same offence being made in relation to the person who was the subject of the charge sheet.

48. Withdrawal of charge sheet

(1) The prosecutor may withdraw a charge sheet at any time before, or at, the first attendance of the defendant.

(2) The prosecutor may withdraw a charge sheet at any time after the first attendance of the defendant but before the proceedings relating to the offence have been finally determined if the Court grants leave to do so.

(3) The Court, under subsection (2), may not grant leave to withdraw a charge sheet if the charge, or any of the charges, specified in the charge sheet

has been dismissed or otherwise determined by the Court.

(4) The Court, under subsection (2), may not grant leave to withdraw a charge sheet relating to an indictable offence unless the Director of Public Prosecutions is making the application for leave or has consented in writing to the withdrawal.

(5) In determining whether to grant leave, under subsection (2), to withdraw a charge sheet, the Court is to take into account –

(a) whether –

(i) the defendant or his or her legal representative is present at the time when the request for the Court's leave is made; or

(ii) the prosecutor, not less than 48 hours before seeking leave to withdraw the charge sheet, has provided to the defendant written notice of the intention to make the request; and

(b) any prejudice to the defendant caused by the withdrawal of the charge sheet or the cessation of the proceedings on the charge; and

(c) that a defendant who has entered a plea of not guilty to the charge is entitled to have the proceedings determined; and

(d) the effect that the withdrawal of the charge sheet may have on the admissibility of evidence in any future proceedings; and

(e) any other matter that the Court considers appropriate in the interests of justice in the particular case.

(6) The withdrawal of a charge sheet is to be in the approved form.

(7) The withdrawal of a charge sheet takes effect –

(a) if the charge sheet is withdrawn with the leave of the Court at an attendance of the prosecutor before the Court, when the withdrawal is accepted by the Court; or

(b) in any other case, when the withdrawal is filed.

(8) If a charge sheet is withdrawn under subsection (1), the prosecutor is to provide a copy of the withdrawal of the charge sheet to the defendant.

(9) If the prosecutor withdraws a charge sheet –

(a) the charge for the offence specified in the charge sheet is taken to be withdrawn; and

(b) the defendant is taken not to have been charged in relation to the offence.

(10) The withdrawal of a charge for an offence against a person because of the withdrawal of a charge sheet does not prevent a later charge for the same offence being made in relation to the person who was the subject of the charge sheet.

49. Defendant may obtain charge sheet

(1) In this section –

preliminary brief has the same meaning as in Part 6.

(2) At any time after a preliminary brief is required to be provided to a defendant in relation to proceedings for an offence, the defendant may obtain a copy of the charge sheet, free of charge, from the prosecutor or the appropriate district registrar.

50. Relationship of this Part with other law

(1) Nothing in this Part affects any law or practice relating to indictments presented to, or filed with, the Supreme Court by the Director of Public Prosecutions or the Attorney-General.

(2) If another Act or a statutory rule, within the meaning of the *Rules Publication Act 1953*, provides for proceedings for an offence which may be taken in the Court to be commenced otherwise than by the filing of a court attendance notice or charge sheet under this Act, those proceedings may be so commenced by the filing

of a court attendance notice or charge sheet under this Act.

Division 3 – Court attendance notices

51. Court attendance notice issued to defendant by district registrar

(1) If the prosecutor is a private prosecutor, a district registrar may issue a notice to a defendant requiring the defendant to attend before the Court on the day, and at the time and place, specified in the notice to answer a charge for an offence.

(2) The private prosecutor must ensure that the notice issued under subsection (1) is served on the defendant.

52. Court attendance notice issued to defendant by prescribed prosecutor

(1) If a prescribed prosecutor considers that proceedings in relation to an offence should be commenced against a person but a charge sheet has not been filed, the prescribed prosecutor may issue a notice to the person requiring him or her to attend before the Court on the day, and at the time and place, specified in the notice.

(2) If a prescribed prosecutor has filed a charge sheet in relation to an offence that a person is alleged to have committed, that prescribed prosecutor or another prescribed prosecutor may

issue a court attendance notice to the person requiring him or her to attend before the Court on the day, and at the time and place, specified in the notice.

(3) The prescribed prosecutor must ensure that the notice issued under subsection (1) or (2) is served on the defendant.

(4) If a prescribed prosecutor issues a court attendance notice –

(a) before a charge sheet has been filed, the prescribed prosecutor is to –

(i) file a copy of the court attendance notice, or the information prescribed for the purposes of section 40(2)(b), as soon as practicable but not later than 7 days after the issue of the court attendance notice; and

(ii) file a charge sheet, in relation to the matter from which the issue of the court attendance notice resulted, not later than 21 days before the return day specified in the court attendance notice; or

(b) after a charge sheet has been filed, the prescribed prosecutor must file a copy of the court attendance notice, or the information prescribed for the purposes of section 40(2)(b), as soon as practicable

but not later than 7 days after the issue of the court attendance notice.

53. Duty of defendant to provide contact details

(1) On receiving a court attendance notice, the person on whom it is served is to notify the prosecutor, as specified in the notice, of his or her full name, or in the case of a body corporate of its corporate name, and an address where information, documents and other things required by this Act to be served on, or otherwise provided to, him, her or it may be so served or provided.

(2) For the purposes of subsection (1), a person, whether an individual or a body corporate, may provide –

(a) an electronic address where he, she or it can receive electronic communication; or

(b) his, her or its postal or business address to which mail may be posted to him, her or it; or

(c) in the case of an individual, his or her residential address or the address of his or her place of employment if mail may be posted to him or her there; or

(d) in the case of a body corporate, its principal or registered office or principal place of business.

(3) Any information, document or other thing served on, or otherwise provided to, a defendant at an address provided by the defendant to the prosecutor under this section is taken to have been effectively served on, or otherwise provided to, the defendant, unless the information, document or other thing is required under this Act or the rules of court to be personally served on the defendant or served on or provided to the defendant in a different manner or at a different address.

54. Failure to comply with court attendance notice

(1) A defendant who has been served with a court attendance notice, including a person referred to in section 52, must not fail or refuse to comply with it without reasonable excuse.

(2) The Court may issue an arrest warrant against a defendant if –

(a) the defendant fails or refuses to comply with a court attendance notice; and

(b) a reasonable excuse for that failure or refusal to comply with the court attendance notice has not been provided to the Court; and

(c) the Court is satisfied that –

(i) the court attendance notice has been served on the defendant; or

(ii) although the court attendance notice has not been served on the defendant, all reasonable steps have been taken to so serve it.

(3) When a defendant is brought before the Court under an arrest warrant issued under subsection (2), the Court may –

(a) admit the defendant to bail; or

(b) refuse to release the defendant and remand him or her in custody to a day, time and place specified by the Court.

55. Form of court attendance notice

A court attendance notice issued to a person is to –

(a) be in writing; and

(b) be in the form prescribed by the rules of court or, if those rules do not prescribe a form, an approved form; and

(c) be signed –

(i) if being issued by a district registrar, by a district registrar; or

(ii) in any other case, by the person who is issuing it; and

(d) specify that the person is to attend before the Court on the day, and at the time and place, specified in the notice; and

(e) include a brief description of the conduct comprising the offence (but a reference to the legislation which establishes the offence is not required); and

(f) if the defendant has been admitted to bail under section 4E of the *Bail Act 1994* or section 4(3) of the *Criminal Law (Detention and Interrogation) Act 1995*, include or have attached the bail notice; and

(g) specify that failure to comply with the court attendance notice may result in the defendant being arrested or the matter dealt with in the absence of the party or person.

56. Withdrawal of court attendance notice

(1) If –

(a) a court attendance notice issued by a prescribed prosecutor has been served on a person in respect of conduct that may constitute an offence; but

(b) a charge sheet relating to that conduct has not been filed –

the court attendance notice may be withdrawn by that or another prescribed prosecutor or, if the Court so directs, by a district registrar.

(2) If a court attendance notice in respect of conduct that may constitute an offence has been served on a person and a charge sheet relating to that conduct has been filed, the court attendance notice may be withdrawn –

(a) if it was issued by a district registrar, by the district registrar; or

(b) if it was issued by a prescribed prosecutor, by that or another prescribed prosecutor.

(3) The withdrawal of a court attendance notice is to be by notice issued to the person to whom the court attendance notice was issued.

(4) If a court attendance notice is withdrawn after the filing of a charge sheet, or court attendance notice, by a prescribed prosecutor, the prescribed prosecutor is to file a copy of the notice of withdrawal with the Court.

(5) The withdrawal of a court attendance notice before the filing of a charge sheet takes effect when it is provided to the defendant.

(6) The withdrawal of a court attendance notice after the filing of a charge sheet takes effect –

(a) if withdrawn by a district registrar, when the district registrar so withdraws the court attendance notice; and

(b) if withdrawn by a prescribed prosecutor, when the prescribed prosecutor files the copy of it with the Court.

(7) If a court attendance notice is withdrawn after the filing of a charge sheet –

(a) the withdrawal notice is to include a statement that the charge sheet is also withdrawn; and

(b) the charge sheet is taken to have been withdrawn and that withdrawal of the charge sheet is taken to take effect when the withdrawal of the court attendance notice takes effect; and

(c) section 48(9) and (10) applies to the withdrawal of the charge sheet.

(8) For the avoidance of doubt, it is stated that the withdrawal of a court attendance notice does not prevent the issuance of another court attendance notice in respect of the same conduct to which the withdrawn court attendance notice related.

57. Notice taken to be court attendance notice

A notice or direction issued under the rules of court that requires a defendant to attend before the Court on the day, and at a time and place,

specified in the notice or direction is taken, if appropriate, to be a court attendance notice.

PART 6 – PRE-HEARING PROCEDURES RELATING TO OFFENCES

Division 1 – Interpretation of Part 6

58. Interpretation of Part 6

In this Part –

indictable offence brief means an indictable offence brief referred to in section 65;

preliminary brief means a preliminary brief referred to in section 61;

record of interview has the meaning given by section 59;

relevant charge sheet means the charge sheet in which the relevant offence is specified;

relevant offence means the offence in respect of which a preliminary brief, summary offence brief or indictable offence brief, as appropriate, is required to be provided;

summary offence brief means a summary offence brief referred to in section 63;

time of disclosure, in relation to a preliminary brief, summary offence brief or indictable offence brief, means the time at which the preliminary brief, summary offence brief or indictable offence brief is provided to the defendant.

59. Meaning of *record of interview*

(1) In this Part –

record of interview means –

(a) if –

(i) a defendant has been formally interviewed in relation to the relevant offence by a police officer or another person investigating the relevant offence; and

(ii) an audio or audio-visual recording of the interview has been made –

a copy of the audio recording or of the audio of the audio-visual recording; or

(b) if –

(i) a defendant has participated in a formal interview in relation to the relevant offence conducted by a police officer or another person investigating the relevant offence; but

(ii) no audio or audio-visual recording of the interview has been made –

the written record of the interview or written statement made by the defendant.

(2) When required to provide a record of interview, the prosecutor may provide instead an audio-visual recording of the formal interview of a defendant and, if he or she does so, that audio-visual recording is taken to be a record of interview.

60. Meaning of *prosecutor*

In relation to proceedings for an indictable offence, a reference in this Part to the prosecutor is taken to be a reference to –

(a) the Director of Public Prosecutions if he or she is responsible for the prosecution of the offence and the Commissioner of Police has not been responsible for the investigation of the offence; or

(b) the Commissioner of Police if he or she has been responsible for the investigation of the offence; or

(c) the prosecutor in any other case.

Division 2 – Pre-hearing disclosure of prosecution case

61. Preliminary brief to be provided

The prosecutor is to provide a preliminary brief in relation to the offence (whether a summary offence or an indictable offence) specified in a charge sheet to the defendant –

(a) if the defendant's first attendance before the Court is under section 18, at that attendance or as soon as reasonably practicable after that attendance; or

(b) if the defendant's first attendance is in accordance with a court attendance notice or a bail notice, at least 21 days before the return day specified in the court attendance notice or bail notice requiring the defendant to attend before the Court for a first attendance.

62. Contents of preliminary brief

(1) A preliminary brief is to include –

(a) a copy of the relevant charge sheet; and

(b) a summary of the material facts; and

(c) if the prosecutor is a police officer, the Director of Public Prosecutions or the Commonwealth Director of Public Prosecutions, a copy of the criminal record of the defendant or a statement

that the defendant has no previous convictions; and

(d) a copy of the record of interview; and

(e) a statement specifying that, if an audio-visual recording of the formal interview of the defendant has been made, the recording may be viewed by the defendant and the name and contact details of the person with whom the defendant may arrange for such a viewing; and

(f) if the relevant offence is a summary offence, any other information, document or other thing that the regulations require to be included in the preliminary brief.

(2) A preliminary brief may consist of more than one set of documents and things and those sets may be provided to the defendant in instalments.

(3) However, if a preliminary brief is provided in instalments, the last instalment is to be provided to the defendant as specified in section 61.

63. Summary offence brief to be provided

(1) In proceedings for a summary offence, the prosecutor is to provide to the defendant a summary offence brief relating to that offence if the defendant has pleaded not guilty to the charge for the offence at any attendance before the Court or by filing a written plea.

(2) The prosecutor is to provide the summary offence brief to the defendant at least 28 days before –

(a) the case management hearing; or

(b) if a case management hearing is not held, the hearing of the charge for the summary offence.

(3) On the application of the defendant or the prosecutor, the Court, by order, may vary the day by which the summary offence brief is to be provided under subsection (2), whether that day as so varied is before or after the day specified under that subsection.

(4) On the application, in proceedings where a case management hearing is to be held, of the defendant or the prosecutor made before the day by which the summary offence brief is to be provided under subsection (2), the Court, by order, may vary the information, documents and things which are required to be included in the summary offence brief by removing any information, document or thing.

(5) If the Court under subsection (4) has removed any information, document or thing from the information, documents and things that would otherwise have been required to be provided to the defendant, the prosecutor is to provide that removed information, document or thing to the defendant not later than 28 days before the hearing of the charge for the offence, unless the Court orders otherwise.

64. Contents of summary offence brief

(1) A summary offence brief in relation to a summary offence is to include the following information, documents, things and copies of documents and things unless, at the time of disclosure, the information, documents, things and copies have been included in the preliminary brief provided to the defendant, have been otherwise disclosed or provided to the defendant, are in the possession or under the control of the defendant, or are not in the possession of, or are not available to, the prosecutor:

(a) any information, document, thing, or copy of a document or thing, that is required to be provided in a preliminary brief in relation to the relevant offence but has not been provided;

(b) a copy of any statement relevant to the charge and signed by the defendant that is in the possession of the prosecutor;

(c) a copy of the relevant statements made by each person to a police officer or other person investigating the relevant offence;

(d) a copy of each document that the prosecutor, at the time of disclosure, intends to tender as evidence at the hearing of the charge;

(e) a copy of each relevant photograph or relevant audio recording, or a copy of the

audio of each relevant audio-visual recording;

(f) a list or general description of the documents and other things that –

(i) are required to be provided in the summary offence brief; but

(ii) are not practicable for the prosecutor to copy or include in the summary offence brief, or the disclosure or publication of which are prohibited, or limited to viewing, under this Act, another Act or another law –

together with a statement specifying that they may be viewed by the defendant and the name and contact details of the person with whom the defendant may arrange for such a viewing.

(2) A summary offence brief may consist of more than one set of documents and things and those sets may be provided to the defendant in instalments.

(3) However, if a summary offence brief is provided in instalments, the last instalment is to be provided to the defendant as specified in section 63(2).

65. Indictable offence brief to be provided

(1) In this section –

second attendance means the next attendance before the Court of the defendant in proceedings on a charge for an indictable offence following the defendant's first attendance.

(2) In proceedings for an indictable offence, the prosecutor is to provide to the defendant an indictable offence brief relating to that offence after the defendant's first attendance and before his or her second attendance.

66. Contents of indictable offence brief

(1) An indictable offence brief in relation to an indictable offence is to include the following information, documents, things and copies of documents and things unless, at the time of disclosure, the information, documents and things have been included in the preliminary brief provided to the defendant, have been otherwise disclosed or provided to the defendant, are in the possession or under the control of the defendant, or are not in the possession of, or are not available to, the prosecutor:

(a) any information, document, thing, or copy of a document or thing, that is required to be provided in a preliminary brief in relation to the relevant offence but has not been provided;

(b) a copy of the relevant statements made by each person to a police officer or other person investigating the relevant offence.

(2) An indictable offence brief may consist of more than one set of documents and things and those sets may be provided to the defendant in instalments.

(3) However, if an indictable offence brief is provided in instalments, the last instalment is to be provided to the defendant as specified in section 65(2).

67. Continuing obligation of disclosure

(1) Subsection (2) applies to any information, document or other thing, or a copy of any document or other thing –

(a) that comes to the prosecutor's notice or into the prosecutor's possession after the preliminary brief, summary offence brief or indictable offence brief is provided to the defendant; and

(b) that the prosecutor –

(i) would have been required to include, or would have been required to include a copy of, in that brief; or

(ii) would have been required to allow a viewing of by the defendant in conjunction with the provision of that brief –

had the prosecutor had notice, or been in possession, of the information,

document, other thing or copy at the time when that brief was provided to the defendant.

(2) The prosecutor is to –

(a) provide to the defendant any information, document or other thing, or a copy of any document or other thing, that would have been required, or a copy of which would have been required, to be included in the preliminary brief, summary offence brief or indictable offence brief; and

(b) allow the viewing by the defendant of any document or other thing, or a copy of any document or other thing, which would have been required to be allowed in conjunction with the provision of the preliminary brief, summary offence brief or indictable offence brief –

as soon as reasonably practicable after the information, document or other thing comes to the prosecutor's notice or into his or her possession.

68. Duty to allow viewing of audio-visual recording and certain other documents and things

(1) If –

(a) an audio-visual recording was made of the formal interview of a defendant; but

(b) the defendant has not been provided with a copy of that recording as the record of interview or otherwise –

the prosecutor is to make the recording, or a copy of it, available for viewing by the defendant as arranged in accordance with the relevant preliminary brief, summary offence brief or indictable offence brief.

(2) If a document or thing, or a copy of a document or thing, is required to be provided to the defendant in a summary offence brief or indictable offence brief and the prosecutor instead includes in that brief a statement that the document or thing, or a copy of the document or thing, may be viewed by the defendant, the prosecutor is to make the document or thing, or a copy of it, available for viewing by the defendant as arranged in accordance with the relevant summary offence brief or indictable offence brief.

69. Limitation on disclosure of person's address

(1) The prosecutor is not required to disclose the address, telephone number, email address or facsimile number (whether a private, business or official address or number) of any person when providing any information, document or other thing, or a copy of any document or other thing, under this Division unless –

(a) the prosecutor reasonably believes that the address or number is relevant to the alleged offence and such disclosure is not

likely to cause a risk to the life or safety of any person; or

(b) the Court allows or requires the disclosure.

(2) For the purposes of including in a preliminary brief, summary offence brief or indictable offence brief, or otherwise disclosing, any information, document or other thing, or a copy of any document or other thing, the prosecutor may delete, blank out or render illegible, in or on any information, document or other thing, or a copy of any document or other thing, an address or number referred to in subsection (1) before providing the information, document, other thing or copy to the defendant.

70. Limitation on disclosure of sensitive material

(1) In this section –

child exploitation material means material that describes or depicts, in a way that a reasonable person would regard as being, in all the circumstances, offensive, a person who is or who appears to be under the age of 18 years –

(a) engaged in a sexual activity; or

(b) in a sexual context; or

(c) as the subject of torture, cruelty or abuse (whether or not in a sexual context);

sensitive material means –

(a) child exploitation material; or

(b) material that consists of, or contains or displays, an image of a person that, disregarding the fact that the material was brought into existence or is in the possession of the prosecutor for the purpose of providing evidence of an offence, is obscene or indecent; or

(c) material that consists of, or contains or displays, an image of a person the disclosure of which, without the person's consent, would interfere with the person's privacy; or

(d) an audio recording, an audio-visual recording or the audio of an audio-visual recording of an affected person; or

(e) a photograph of an affected person.

(2) The prosecutor is not required to provide in a preliminary brief, a summary offence brief or indictable offence brief, or otherwise disclose, sensitive material.

(3) For the purposes of including in a preliminary brief, summary offence brief or indictable offence brief, or otherwise disclosing, any

information, document or other thing, or a copy of a document or other thing, the prosecutor may delete, blank out or render illegible, in or on any information, document or other thing, or a copy of any document or other thing, any sensitive material before providing the information, document, other thing or copy to the defendant.

(4) Despite subsection (2), if the prosecutor does not include in a preliminary brief, summary offence brief or indictable offence brief, or otherwise disclose, sensitive material which, were the material not sensitive material, he or she would have been required to so include or disclose to the defendant under this Division, the prosecutor is to –

(a) provide the defendant with a written notice containing a description of the sensitive material and the name and contact details of the person with whom the defendant may arrange for a viewing of the material; and

(b) make the sensitive material available for viewing by the defendant as arranged in accordance with that notice.

71. Effect of privilege and public interest immunity

A requirement under this Division to disclose or provide any information, document or other thing, or a copy of any document or other thing, is subject to –

(a) any law to the effect that the information, document, thing or copy is privileged and need not be disclosed to a court; and

(b) the law on public interest immunity.

72. Disclosure not required if information, &c., already provided

(1) The prosecutor is not required under this Division to provide in a preliminary brief, summary offence brief or indictable offence brief, or to otherwise disclose to the defendant, any information, document or other thing, or a copy of a document or other thing, if the information, document, thing or copy –

(a) has already been provided or disclosed to the defendant; or

(b) is in the possession, or under the control, of the defendant.

(2) Despite subsection (1), if –

(a) any information, document or other thing, or a copy of a document or other thing, has been provided to a defendant who, at the time when he or she was provided with it, was not represented by a legal practitioner; and

(b) the defendant retains legal representation; and

(c) the legal representative, in writing, requests that the prosecutor provide to

him or her that information, document, other thing or copy –

the prosecutor is to provide that information, document, other thing or copy to the legal representative as soon as practicable.

(3) For the avoidance of doubt, it is stated that subsection (1) does not prevent the prosecutor from providing to the defendant any information, document or other thing, or a copy of a document or other thing, referred to in that subsection.

73. Consequences of non-disclosure

(1) If, on the application of a defendant at his or her hearing before the Court, the Court is satisfied that the prosecutor failed to disclose or provide any information, document or other thing, or a copy of any document or other thing, in the preliminary brief, summary offence brief or indictable offence brief, or otherwise, or failed to allow a viewing of any document or other thing, or a copy of any document or other thing, as required by this Division, the Court may adjourn the hearing so as to allow sufficient time for –

(a) the prosecutor to disclose or provide, or to allow the viewing of, the information, document, thing or copy; and

(b) the defendant to investigate properly the evidence or other matter disclosed, provided or viewed and to obtain any

further evidence that may be necessary as a result of that investigation.

(2) On the resumption of a hearing following an adjournment under subsection (1), the defendant may –

(a) require a person who has given evidence, including himself or herself, to be recalled as a witness; and

(b) cross-examine or further cross-examine the person about the evidence or other matter disclosed, provided or viewed during the adjournment; and

(c) adduce evidence in rebuttal of that evidence or other matter.

74. Common law disclosure requirements

Except as provided in sections 69 and 70, nothing is this Division derogates from the prosecutor's duty under common law to disclose information to the defendant.

75. Limitation on use of disclosed information, documents, other things, and copies by defendant

A defendant, or his or her legal representative, who has been provided with any information, document, other thing, or a copy of a document or other thing, must not –

(a) disclose it, or allow it to be disclosed, to any person for a purpose not connected with the proceedings; or

(b) copy it, or allow it to be copied, for a purpose not connected with the proceedings –

unless required by law, or authorised by the Court, to do so.

Penalty: Fine not exceeding 150 penalty units or imprisonment for a term not exceeding 6 months, or both.

Division 3 – Warning to defendant

76. Court to warn defendant of need for notice relating to admissible opinion evidence

(1) In this section –

admissible opinion evidence means evidence of an opinion to which section 79 of the *Evidence Act 2001* applies.

(2) If a defendant on a charge for a summary offence that is not an electable offence enters a plea, the Court is to warn the defendant of the requirements of section 77 in relation to admissible opinion evidence.

(3) If a defendant on a charge for an electable offence –

(a) elects under section 107(4) or section 109(1) to have the offence dealt

with by the Court or, under section 111, is taken to have made such an election; and

(b) enters a plea –

the Court is to warn the defendant of the requirements of section 77 in relation to admissible opinion evidence.

Division 4 – Pre-hearing disclosure of defence case

77. Disclosure relating to opinion evidence

(1) In this section –

admissible opinion evidence means evidence of an opinion to which section 79 of the *Evidence Act 2001* applies;

relevant proceedings, in relation to a defendant, means –

(a) a hearing of a charge for a summary offence; or

(b) an investigation under the *Criminal Justice (Mental Impairment) Act 1999* into the defendant's fitness to stand trial for an offence; or

(c) a special hearing held in accordance with section 15 of the *Criminal Justice (Mental Impairment) Act 1999*; or

(d) proceedings in relation to the sentencing of the defendant in relation to an offence for which the defendant has been found guilty.

(2) A defendant who intends to adduce, in relevant proceedings, admissible opinion evidence of a witness must provide to the prosecutor a notice of evidence in relation to the witness –

(a) in an investigation into the defendant's fitness to stand trial for an offence, or in a special hearing, under the *Criminal Justice (Mental Impairment) Act 1999*, as soon as practicable after the admissible opinion evidence becomes available to the defendant; or

(b) in proceedings in relation to the sentencing of the defendant, as soon as practicable after the admissible opinion evidence becomes available to the defendant; or

(c) in the case of a hearing of a charge for an offence, as soon as practicable but –

(i) not less than 7 days before the case management hearing; or

(ii) if a case management hearing is not held, not less than 7 days before the hearing of the charge for the offence.

(3) A notice of evidence is a notice, in writing, that –

(a) contains the name and business address of the witness; and

(b) describes the qualifications of the witness to give admissible opinion evidence; and

(c) either –

(i) sets out the substance of the admissible opinion evidence it is proposed to adduce from the witness and the acts, facts, matters and circumstances on which the opinion is formed; or

(ii) has attached to it the report, or a copy of the report, of the witness that sets out the opinion of the witness.

(4) If the defendant does not comply with subsection (2) in relation to admissible opinion evidence that he or she intends to adduce in relevant proceedings, the admissible opinion evidence may not be adduced in the proceedings except in accordance with an order or direction of the Court under subsection (5).

(5) The Court may do any or all of the following if a defendant does not comply with subsection (2) in relation to admissible opinion evidence:

(a) order or direct that the admissible opinion evidence may be adduced in relevant proceedings;

(b) order or direct that a notice of evidence in relation to the admissible opinion evidence is required to be provided to the prosecutor within the period specified in the order or direction;

(c) make any other order or direction that the Court considers appropriate in relation to the admissible opinion evidence.

(6) If the defendant intends to adduce, in relevant proceedings, admissible opinion evidence relevant to the defendant's mental state, or medical condition, at the time of an alleged offence to which the proceedings relate, the Court, on the application of the prosecutor, may require the defendant to submit, at the prosecutor's expense, to an examination by a person qualified to give admissible opinion evidence on the defendant's mental state or medical condition.

(7) Subsection (8) applies in relation to admissible opinion evidence adduced, or to be adduced, in relevant proceedings if –

(a) the defendant adduces the admissible opinion evidence, or intends to adduce the admissible opinion evidence, in the proceedings in accordance with an order or direction of the Court under subsection (5); or

(b) a notice of evidence in relation to the admissible opinion evidence is provided to the prosecutor less than 14 days before the proceedings begin.

(8) If this subsection applies in relation to admissible opinion evidence adduced, or intended to be adduced, in relevant proceedings, the Court, on the application of the prosecutor, may adjourn the proceedings to allow the prosecution a reasonable opportunity to do any or all of the following:

(a) consider a notice of evidence, if any, in relation to the admissible opinion evidence;

(b) consider the admissible opinion evidence, if any;

(c) obtain evidence on the matter to which the admissible opinion evidence adduced, or intended to be adduced, relates.

(9) The Court is to grant an application for an adjournment under subsection (8), unless there are good reasons, in the opinion of the Court, not to do so.

(10) A notice of evidence may be provided to the prosecutor by –

(a) electronic communication to him or her; or

(b) giving it to him or her; or

(c) leaving it at, or sending it by post to, the postal address or place or address of business or employment of the prosecutor last known to the defendant; or

(d) if the prosecutor is not a public officer, sending it by post to the residential address of the prosecutor; or

(e) by any other means agreed between the defendant or defendant's legal representative and the prosecutor.

(11) In computing a period specified in subsection (2) or (7), any day that is an excluded day for the purposes of section 29 of the *Acts Interpretation Act 1931* is to be disregarded.

(12) This section applies despite section 11(1) of the *Criminal Justice (Mental Impairment) Act 1999*.

Division 5 – Provision of information and documents to defendant

78. Providing information and documents to defendant

(1) Subject to this or another Act, the rules of court or another law, if this Part requires the service on, or provision to, a defendant of any information or document, the information or document may be served or provided by electronic communication if the defendant has consented to it.

(2) Subsection (1) does not prevent the service or provision of any information or document under section 29AB of the *Acts Interpretation Act 1931*.

(3) If the defendant, for the purposes of the service on or provision to him or her of any information or document under this Part, has provided an email address or a telephone or facsimile number to the prosecutor or other person required under this Part to so serve or provide any information or document –

(a) the defendant is taken to have consented to the service or provision of the information or document by electronic communication to that email address or telephone or facsimile number; and

(b) any information or document sent by electronic communication to that email address or telephone or facsimile number is effectively served on or provided to the defendant.

PART 7 – SUMMARY OFFENCE PROCEDURES

Division 1 – Interpretation of Part 7

79. Meaning of *hearing*

In this Part, unless the context requires otherwise, a reference to a hearing is a reference to the hearing of a charge for a summary offence.

Division 2 – Commencing proceedings

80. Time limit for commencing proceedings for summary offence

(1) Proceedings for a summary offence must be commenced –

(a) within 6 months after the time when the alleged offence occurred; or

(b) if a different period for the commencing of the proceedings is specified in, or determined under, this or any other Act, within that different period.

(2) Subsection (1)(a) does not apply to –

(a) an offence that is taken to have been created a summary offence by reason of section 99 or 101; or

(b) an offence referred to in subsection (4) in the circumstances specified in that subsection.

(3) Proceedings for a summary offence that is not also an indictable offence referred to in Schedule 1 or 2 may be commenced against a defendant within 12 months after the time when the alleged offence occurred if –

(a) the circumstances of the alleged offence may also give rise to an indictable offence; and

(b) the defendant has been charged with that indictable offence within the period of 6 months, or the other period, referred to in subsection (1).

(4) Proceedings for a summary offence that is not also an indictable offence referred to in Schedule 1 or 2 may be commenced against a defendant at any time if –

(a) the circumstances of the alleged offence may also give rise to an indictable offence; and

(b) the defendant has been charged with that indictable offence within the period of 6 months, or the different period, referred to in subsection (1); and

(c) the defendant has consented in writing to the commencement of the proceedings.

Division 3 – First attendance of defendant and entering plea for summary offence

81. First attendance

(1) On the first attendance before the Court of a defendant charged with a summary offence, the Court –

(a) must cause the charge to be read to the defendant, or explain to the defendant, in simple terms, the offence with which he or she is charged; and

(b) if the defendant is not represented by a legal practitioner, must explain to the defendant, in the manner specified by the rules of court, the defendant's rights and duties under this Act in respect of the charge; and

(c) must invite the defendant to enter a plea to the charge.

(2) The Court is not required to comply with subsection (1)(a) if satisfied that the defendant –

(a) is represented by a legal practitioner; or

(b) has received a copy of, and understands the nature of, the charge.

82. Entering plea

(1) On the first attendance before the Court of a defendant on a charge for a summary offence,

the defendant is to plead to the offence at that attendance unless the Court, in the interests of justice, determines otherwise.

(2) If proceedings for a summary offence are adjourned and the defendant has not pleaded to the offence, the defendant is to plead to the offence when he or she next attends before the Court unless the Court, in the interests of justice, determines otherwise and further adjourns the proceedings.

(3) A defendant is entitled to plead –

(a) that he or she is guilty of the offence charged; or

(b) that he or she is not guilty of the offence charged; or

(c) that he or she is not guilty of the offence charged but is guilty of another offence of which he or she might be convicted on a charge for the offence charged; or

(d) that further proceedings may not be taken in respect of the charge; or

(e) that he or she has cause to show why he or she should not be convicted of the offence charged; or

(f) that he or she has previously been found guilty or not guilty of the offence charged.

(4) If a defendant pleads that further proceedings may not be taken in respect of the charge –

(a) the defendant is to state the grounds on which the plea is made; and

(b) the Court, before proceeding further, must hear and determine the plea and –

(i) amend the charge; or

(ii) dismiss the charge; or

(iii) overrule the plea.

(5) If, under subsection (4), the charge is amended or the plea is overruled, the defendant is to plead to the amended charge or to plead further.

(6) If, on being asked to plead to the charge, the defendant stands mute, refuses to plead or does not answer directly, the defendant is taken to have pleaded not guilty.

(7) A plea required to be entered or made by a defendant under this section may be made by the defendant personally or, if the Court consents, by the defendant's legal representative.

83. Notice of details of legal representation of defendant to be provided following plea of not guilty

If –

(a) a defendant enters a plea of not guilty at an attendance before the Court; and

(b) when entering that plea does not have a legal representative present but either at that time has retained, or later retains, a legal representative –

the legal representative, as soon as reasonably practicable after that plea has been entered, is to notify the prosecutor, within the meaning of section 60, of his or her representation of the defendant.

84. Procedure if defendant fails to attend before Court as required

(1) In this section –

prescribed circumstances means circumstances where a defendant has been provided with a court attendance notice, or a bail notice, in respect of a summary offence and either –

(a) fails to attend before the Court as required by that notice; or

(b) following an adjournment of proceedings relating to that offence, fails to attend before the Court on the day, and at the time and place, specified by the Court for the resumption of those proceedings.

(2) If the Court is satisfied that the prescribed circumstances exist, the Court may do any one or more of the following:

(a) in the case of –

(i) a failure to attend before the Court as required by a court attendance notice, issue an arrest warrant against the defendant in accordance with, and if satisfied as required by, section 54(2); or

(ii) a failure to attend before the Court as required by a bail notice, issue an arrest warrant against the defendant in accordance with section 5(5) of the *Bail Act 1994*; or

(iii) a failure to attend before the Court as required by the Court, issue an arrest warrant against the defendant;

(b) subject to sections 28 and 93, proceed to hear and determine the charge in the absence of the defendant;

(c) adjourn the proceedings on any terms that the Court considers appropriate.

Division 4 – Case management and case management hearings

85. Object of Division

The principal object of this Division is to ensure that proceedings on a charge for a summary offence are managed –

(a) in a manner that promotes the just and efficient determination of matters of fact and law; and

(b) in a manner that maximises the effective use of available judicial and administrative resources; and

(c) in a manner that eliminates any lapse of time, from the day on which proceedings are commenced until their final determination, that is not reasonably required for –

(i) the identification of the factual and legal issues in dispute between the prosecution and the defendant; and

(ii) the preparation of the case for the hearing and determination of the charge for the offence or for the other disposition of a matter in issue.

86. Case management hearing

(1) If the defendant charged with a summary offence pleads not guilty, the Court, on its own motion or on the application of the prosecutor or defendant, may determine that a case management hearing in respect of the charge should be conducted.

(2) Despite subsection (1), the Court may not determine that a case management hearing be

conducted in respect of a charge for a summary offence that is an offence to which the defendant may file a written plea of guilty unless the Court considers that it is in the interests of justice to do so.

(3) If the Court determines that a case management hearing should be conducted, the Court may –

(a) conduct the case management hearing at any time; or

(b) refer the case management hearing to the Court constituted differently.

(4) The purposes of a case management hearing are –

(a) to ascertain the precise issues in dispute in the hearing of the charge for the summary offence, whether or not the issues are of fact or law; and

(b) to explore the possibility of disposing of any such charge other than by way of the hearing of the charge; and

(c) to enable the duration of the hearing to be estimated as accurately as possible; and

(d) to determine what evidence may be proved by affidavit or by agreement of the parties; and

(e) to facilitate the course of the hearing of the charge.

87. Obligation to be ready to commence case management hearing

(1) If the Court determines that a case management hearing is to be held, the prosecution and the defendant are to be prepared to commence the hearing on the day set by the Court.

(2) If the day for a case management hearing has been set, the hearing is not to be adjourned unless the Court so determines after taking into account the obligations of the parties under subsection (1).

88. Listing of case management hearing for earlier day

The Court, on its own motion or on the application of the prosecutor or the defendant, may list a case management hearing for a day that is earlier than the day previously set.

89. Order relating to case management hearing

The Court may do one or more of the following from time to time during a case management hearing:

(a) order that the whole or any part of the case management hearing (including any sentence indication) be heard in closed court;

(b) prohibit the publication of a report of the whole or a part of a case management hearing (including any sentence indication) or of any information, or a

report of any information, obtained or derived from a case management hearing;

(c) prohibit the publication of any particular material, or material of a particular kind, that is relevant to a case management hearing.

90. Sentence indication

(1) In this section –

victim has the same meaning as in section 81A of the *Sentencing Act 1997*.

(2) At any time during a case management hearing in respect of a charge for a summary offence, the Court, on its own motion or on the application of the prosecutor or defendant, may indicate the sentence that it would impose on the entering of a plea of guilty to the charge or any alternative charge of which the defendant could be found guilty.

(3) Before giving a sentence indication, the Court is to –

(a) allow each victim in respect of the offence who would, had the defendant been convicted of the offence, be entitled to make a statement under section 81A(2) of the *Sentencing Act 1997* to provide a written statement that –

(i) gives particulars of any injury, loss or damage suffered by the victim as a direct consequence of the offence; and

(ii) describes the effects on the victim of the commission of the offence; and

(b) consider all such statements provided to the Court.

(4) The Court may allow a person to provide a statement under subsection (3) on behalf of a victim if the Court considers it appropriate and just in the circumstances.

(5) A decision to give, or refuse to give, a sentence indication does not give rise to a review under Part 12.

(6) If a sentence indication is given in respect of a charge for a summary offence, the hearing of the charge, and any other related proceeding, that occurs after the giving of the sentence indication is to be conducted by the Court constituted differently to the Court that gave the sentence indication.

(7) The giving of a sentence indication in respect of a charge for a summary offence does not affect any right to apply for a review of a sentence imposed in respect of a plea or finding of guilty to the charge.

Division 5 – Miscellaneous

91. Review of progress of proceedings

(1) At any time during proceedings in respect of a charge for a summary offence to which the defendant has pleaded not guilty, the Court, on its own motion or on the application of the prosecutor or defendant, may review the progress of proceedings on the charge and make orders, or give directions, for the purposes of the efficient and timely disposal of the proceedings as the Court considers just and expedient.

(2) Before the day set for the review of the progress of proceedings on a charge for a summary offence, the Court is to give notice of the review and the day, time and place of the review to the prosecutor and defendant.

92. Joinder of hearings

At any stage in proceedings relating to a summary offence, the Court may order that other charges against the defendant also be heard at the hearing if the Court considers that it is in the interests of justice to do so.

93. Charge sheet evidence in certain cases

If a defendant who is issued with a court attendance notice and provided with a charge sheet in respect of an offence prescribed for the purposes of section 162(1)(h) –

(a) does not attend as required by the court attendance notice and has not filed a written plea to the charge; or

(b) files a written plea of not guilty to the charge but, after being served with a further court attendance notice, does not attend before the Court in accordance with that further court attendance notice; or

(c) pleads not guilty in answer to the charge, either in person or through his or her legal representative, but does not attend the Court for the hearing of the charge either in person or through his or her legal representative –

the charge sheet may be received by the Court as sufficient evidence of the matters contained in it.

94. Person other than defendant may also be guilty of summary offence

(1) If a summary offence is committed and the contrary intention does not appear in the Act creating the offence, each of the following persons is guilty of the offence and may be charged with actually committing it:

(a) the person who actually commits the offence;

(b) a person who does any act or makes any omission for the purpose of enabling or

aiding another person to commit the offence;

(c) a person who abets another person in committing the offence;

(d) a person who instigates another person to commit the offence.

(2) If a person instigates another person to do an act or make an omission of such a nature that, if he or she had himself or herself done the act or made the omission, the act or omission would have constituted a summary offence on his or her part, that person –

(a) is guilty of the same offence as if he or she had himself or herself done the act or made the omission; and

(b) may be charged with committing the offence.

95. Summary offences committed in pursuit of common purpose

If –

(a) 2 or more persons form a common intention to pursue an unlawful purpose in conjunction with one another; and

(b) in the pursuit of that purpose a summary offence is committed of such nature that its commission was a probable consequence of the pursuit of that purpose –

each of those persons is taken to have committed the summary offence.

96. Alternative verdicts of, or relating to, attempting to commit summary offence, &c.

(1) If, on the hearing of a charge for a summary offence, the complete commission of the offence charged is not proved but the evidence establishes that the defendant attempted to commit that offence, the offence of attempting to commit that offence may be found proved.

(2) If, on the hearing of a charge for an attempt to commit a summary offence, the evidence establishes that the defendant has completed the commission of the summary offence, the summary offence may be found proved.

(3) If an attempt by a person to commit a summary offence has been found proved, the person is not liable to be tried for that summary offence.

97. What constitutes offence of attempting to commit an offence

(1) For the purposes of this Part, an attempt to commit an offence is an act or omission that is –

(a) done or made with the intention to commit that offence; and

(b) forms part of a series of events which, if not interrupted, would constitute the commission of that offence.

(2) The offence of attempting to commit another offence (in this section referred to as the ***primary offence***) may be committed –

(a) even though the offender voluntarily desists from the actual commission of the primary offence; and

(b) whether or not it was possible under the circumstances to commit the primary offence.

(3) The point at which the series of events mentioned in subsection (1)(b) begins depends on the circumstances of the particular case.

(4) Whether an act or omission of a person is or is not too remote to constitute an attempt to commit a primary offence is a question of law.

98. Attempts to commit summary offence triable summarily

An attempt to commit a summary offence is triable and punishable in the same manner as the offence attempted.

PART 8 – INDICTABLE OFFENCES TRIABLE SUMMARILY AND PROCEDURES

Division 1 – Minor crimes

99. Minor crimes triable summarily

(1) If a defendant attends before the Court on a charge for an offence under a section of the *Criminal Code* specified in Schedule 1 and the value stated on the charge sheet does not exceed $20 000, the section creating that offence is taken to have created a summary offence unless, and until, the Court determines under subsection (3) that the offence is to be dealt with by the Supreme Court.

(2) Despite subsection (1), if –

(a) the defendant is charged with more than one offence referred to subsection (1); and

(b) the total value specified in the charge sheet in respect of which those offences are committed is $20 000 or more –

none of those offences is taken to have created a summary offence and subsection (1) does not apply.

(3) At any time during proceedings for an offence referred to in subsection (1), the Court may determine that it is appropriate for the offence to be dealt with by the Supreme Court and,

accordingly, commit the defendant to the Supreme Court to be dealt with.

(4) If the Court under subsection (3) makes a determination that the offence is to be dealt with by the Supreme Court, the section that created the offence is no longer to be taken to have created a summary offence.

100. Procedure relating to minor crime

(1) Unless and until the Court determines under section 99 that a minor crime is to be dealt with by the Supreme Court, Part 7 (other than sections 96, 97 and 98) and all other relevant provisions of this Act relating to summary offences apply to the proceedings, and the procedure to be followed in proceedings, on the charge for the minor crime.

(2) If the Court determines under section 99 that a minor crime is to be dealt with by the Supreme Court, Part 9 and all other relevant provisions of this Act relating to indictable offences apply to the proceedings, and the procedure to be followed in proceedings, on the charge for that minor crime.

Division 2 – Electable offences

101. Electable offence may be tried summarily

(1) If a defendant attends before the Court on a charge for an offence under –

(a) a section of the *Criminal Code* specified in Part 1 of Schedule 2; or

(b) a section of the *Criminal Code* specified in Part 2 of Schedule 2 and the value specified in the charge sheet exceeds $20 000 but does not exceed $100 000 –

the defendant may elect to have the offence dealt with by the Court or by the Supreme Court.

(2) Despite subsection (1), if –

(a) the defendant is charged with more than one offence referred to in that subsection; and

(b) the total value specified in the charge sheet in respect of which those offences are committed exceeds $100 000 –

the defendant may not elect to have any of the offences dealt with by the Court or Supreme Court.

(3) If –

(a) a defendant attends before the Court on a charge for an offence under section 113 of the *Criminal Code*; and

(b) the prosecutor consents –

the defendant may elect to have the offence dealt with by the Court or by the Supreme Court.

(4) If –

(a) a defendant attends before the Court on a charge for an offence under section 105 of the *Criminal Code* in relation to an offence under the *Traffic Act 1925*, the *Vehicle and Traffic Act 1999*, the *Heavy Vehicle National Law (Tasmania) Act 2013* or the *Road Safety (Alcohol and Drugs) Act 1970*; and

(b) the Court and prosecutor agree that the offence is suitable to be tried before the Court –

the defendant may elect to have the offence dealt with by the Court or by the Supreme Court.

(5) If –

(a) a defendant –

(i) elects, under section 107(4) or section 109(1) or a provision of another Act, to have an electable offence dealt with by the Court; or

(ii) is taken to have elected to have an electable offence dealt with by the Court by reason of section 111; or

(b) the Court, under a provision of another Act, determines that an electable offence be dealt with by the Court –

the section that creates the offence is taken to have created a summary offence.

(6) At any time during proceedings for an electable offence (whether before or after the defendant has made an election under section 107(4) or section 109(1) or is taken to have made an election under section 111), the Court may determine that it is appropriate for the offence to be dealt with by the Supreme Court and, accordingly, may commit the defendant to the Supreme Court to be dealt with.

(7) In considering whether to make a determination under subsection (6), the Court is to take into account –

(a) the seriousness of the alleged offence; and

(b) the number and nature of any other charges for offences pending against the defendant.

(8) If the Court, under subsection (6), determines that an offence is to be dealt with by the Supreme Court and the determination is made before the defendant has made, or is taken to have made, an election, the section that creates the offence continues to create an indictable offence.

(9) If the Court, under subsection (6), determines that an offence is to be dealt with by the Supreme Court and the determination is made after the defendant has elected to have the offence dealt with by the Court, the section that creates the offence is no longer taken to have

created a summary offence but reverts to having created an indictable offence.

102. Procedure relating to electable offence

(1) Part 9 and all other relevant provisions of this Act relating to indictable offences apply to the proceedings, and the procedure to be followed in proceedings, on a charge for an electable offence until –

(a) the defendant makes an election under section 107(4) or section 109(1) or is taken, under section 111, to have made such an election; or

(b) the Court determines, under section 101(6) or a provision of another Act, that the electable offence is to be dealt with by the Supreme Court.

(2) If –

(a) a defendant on a charge for an electable offence elects under section 107(4) or section 109(1) to have the offence dealt with by the Supreme Court; or

(b) the Court determines, under section 101(6) or a provision of another Act, that an electable offence is to be dealt with by the Supreme Court –

Part 9 and all other relevant provisions of this Act relating to indictable offences apply to the proceedings, and the procedure to be followed in

the proceedings, on the charge from the time that election or determination is made.

(3) If –

(a) a defendant on a charge for an electable offence elects under section 107(4) or section 109(1) to have the offence dealt with by the Court or, under section 111, is taken to have made such an election; or

(b) the Court determines, under a provision of another Act, that an electable offence is to be dealt with by the Court –

Part 7, other than sections 96 and 97, and all other relevant provisions of this Act relating to summary offences apply to the proceedings, and the procedure to be followed in proceedings, on the charge for the electable offence from the time that election or determination is made.

103. Court to warn defendant of need for alibi notice

(1) In this section –

evidence in support of an alibi means evidence tending to show that, by reason of the presence of the defendant at a particular place or in a particular area at a particular time, the defendant was not, or was unlikely to have been, at the place where the elected summary offence is alleged to have been committed at the time of its alleged commission.

(2) If –

(a) under section 107(4) or section 109(1) or a provision of another Act, a defendant on a charge for an electable offence elects to have the offence dealt with by the Court or, under section 111, is taken to have made such an election; or

(b) under a provision of another Act, the Court determines that the charge for an electable offence is to be dealt with by the Court –

and the defendant enters a plea, other than a plea of guilty, to the charge, the Court is to warn the defendant that he or she may not be permitted to adduce evidence in support of an alibi, or call a witness to give evidence in support of an alibi, unless he or she serves on the prosecutor, in accordance with section 104, a notice giving particulars of the alibi.

104. Alibi evidence if elected summary offence

(1) In this section –

alibi notice means a notice required to be served on a prosecutor by subsection (3);

evidence in support of an alibi means evidence tending to show that, by reason of the presence of the defendant at a particular place or in a particular area at a particular time, the defendant was not, or was unlikely to have been, at the place

where the elected summary offence is alleged to have been committed at the time of its alleged commission;

prescribed period means –

(a) the period of 7 days from the day on which the defendant was informed, in accordance with section 103, of the requirements of this section; or

(b) if the defendant was not so informed, the period of 7 days from the day on which the defendant received written notice from the prosecutor of the requirements of this section.

(2) In computing the prescribed period, a day that is an excluded day for the purposes of section 29 of the *Acts Interpretation Act 1931* is to be disregarded.

(3) A defendant in a hearing of a charge for an elected summary offence is not entitled, without the leave of the Court, to adduce evidence in support of an alibi unless the defendant has served on the prosecutor a written notice of the particulars of that alibi within the prescribed period.

(4) A defendant in a hearing of a charge for an elected summary offence is not entitled, without the leave of the Court, to call any other person to give evidence in support of an alibi for the defendant –

(a) unless the alibi notice –

(i) includes the name and address of the other person; or

(ii) if the name or address, or both, of the other person is not known to the defendant at the time when the alibi notice is served on the prosecutor, includes any information in the defendant's possession which might be of material assistance in finding the other person; or

(b) if the name or address, or both, of the other person is not included in the alibi notice, unless the Court is satisfied that the defendant took, before serving the alibi notice, and continued to take, all reasonable steps to ascertain that name or address, or both; or

(c) if the name or address, or both, of the other person is not included in the alibi notice but the defendant subsequently –

(i) ascertains the name or address, or both, of the other person; or

(ii) receives information which might be of material assistance in ascertaining that name or address, or both –

unless the defendant as soon as practicable gives written notice to the

prosecutor of the name or address, or both, or the information; or

(d) if the defendant is notified, in writing, by the prosecutor that the other person has not been traced by the name or at the address given by the defendant to the prosecutor, unless –

(i) as soon as practicable after being so notified, the defendant gives written notice to the prosecutor of any information as to the name and address of the other person that is then in the possession of the defendant; or

(ii) as soon as practicable on subsequently receiving any such information, the defendant gives written notice to the prosecutor of that information.

(5) The Court, under subsection (3), must not refuse leave for a defendant to adduce evidence in support of an alibi if the Court considers that the defendant –

(a) was not warned by the Court under section 103; or

(b) was not informed by the prosecutor, in writing –

of the requirements of this section to serve written notice of the particulars of the alibi on the prosecutor.

(6) Subject to any directions of the Court, evidence to disprove an alibi may be given before or after evidence in support of the alibi is given unless the Court directs that such evidence is to be given at a specified time or during a specified period.

(7) An alibi notice or other notice required to be given to the defendant or prosecutor under this section is to be given in accordance with the rules of court.

Division 3 – Miscellaneous

105. Attempts to commit minor crime or elected summary offence

(1) If, on the hearing before the Court of a charge for a minor crime or an elected summary offence, the complete commission of the minor crime or elected summary offence is not proved but the evidence establishes that the defendant attempted to commit that minor crime or elected summary offence, the offence of attempting to commit the minor crime or elected summary offence may be found proved.

(2) If, on the hearing before the Court of a charge for a minor crime, or an elected summary offence, that is comprised of an attempt to commit an offence, the evidence establishes that the defendant has completed the commission of the offence, the offence may be found proved.

(3) If, on the hearing before the Court of a charge for a minor crime, or an elected summary

offence, that is comprised of an attempt to commit an offence, that minor crime or elected summary offence has been found proved by the Court, the person is not liable to be tried for the offence which was attempted.

106. Hearing under this Part

(1) In this section –

alternative offence, in relation to a created summary offence, is any other offence of which the defendant might be convicted, under Chapter XXXIX of Part IX of the *Criminal Code* or the other Act that created the indictable offence, on indictment on the same facts on which the charge for the created summary offence is based;

created summary offence means an offence that, by reason of section 99, 101 or 105, is taken to have been created a summary offence.

(2) At a hearing for a created summary offence under this Part, an alternative offence may be found proved by the Court if –

(a) the defendant is found not guilty of the created summary offence; and

(b) it is established by the evidence that the alternative offence has been committed by the defendant.

(3) If –

(a) the Court has found the charge for a created summary offence proved against the defendant; and

(b) the Court considers for any reason that the sentencing of the defendant is to be dealt with by the Supreme Court –

the Court may commit the defendant to the Supreme Court for sentence.

(4) If, under subsection (3), a defendant has been committed to the Supreme Court for sentence, the district registrar is to forward to the Registrar of the Supreme Court the following documents:

(a) the charge sheet;

(b) the record of the proceedings;

(c) copies of all bail orders;

(d) the committal order.

PART 9 – INDICTABLE OFFENCE PROCEDURES

107. First attendance before Court for indictable offence

(1) On the first attendance before the Court of a defendant charged with an indictable offence, the Court –

(a) must cause the charge to be read to the defendant, or explain to the defendant, in simple terms, the offence with which he or she is charged; and

(b) if the defendant is not represented by a legal practitioner, must explain to the defendant, in the manner specified by the rules of court, the defendant's rights and duties under this Act in respect of the charge; and

(c) must invite the defendant to enter a plea to the charge; and

(d) if the offence is one in respect of which the defendant, under section 101, is entitled to elect to have the offence dealt with either by the Court or the Supreme Court, must invite the defendant to make that election.

(2) The Court is not required to comply with subsection (1)(a) if it is satisfied that the defendant –

(a) is represented by a legal practitioner; or

(b) has received a copy of, and understands the nature of, the charge.

(3) On the first attendance before the Court of a defendant on a charge for an indictable offence, the defendant is to –

(a) plead to the offence as specified in section 110; or

(b) state that he or she does not wish to plead to the offence.

(4) On the first attendance before the Court of a defendant on a charge for an indictable offence –

(a) if the defendant enters a plea to the offence as charged and the offence is one in respect of which the defendant, under section 101 or a provision of another Act, is entitled to elect to have the offence dealt with either by the Court or the Supreme Court, the defendant is to make that election unless the Court determines otherwise in the interests of justice; or

(b) if the defendant enters a plea to the offence as charged and the offence is one in respect of which the Court, under a provision of another Act, may determine that the offence be dealt with either by the Court or the Supreme Court, the Court is to make that determination unless the Court determines otherwise in the interests of justice; or

(c) if, under section 110(1)(c), the defendant pleads not guilty to the offence as charged, being an offence which is not an electable offence, but pleads guilty to another offence which is an electable offence, the defendant and the Court are to proceed as specified in paragraph (b) in relation to that other offence; or

(d) if the defendant states that he or she does not wish to plead to the offence as charged and the offence is one in respect of which the defendant, under section 101 or a provision of another Act, is entitled to elect to have the offence dealt with either by the Court or the Supreme Court, the defendant may –

(i) make that election; or

(ii) state that he or she does not wish to make that election until he or she enters a plea to the offence as charged; or

(e) if the defendant states that he or she does not wish to plead to the offence as charged and the offence is one in respect of which the Court, under a provision of another Act, may determine that the offence be dealt with either by the Court or the Supreme Court, the Court may make or defer the making of that determination as it considers appropriate.

(5) If the defendant –

(a) enters a plea, other than a plea of guilty; or

(b) does not plead –

to the offence as charged, the Court is to adjourn the proceedings for a period not exceeding 4 weeks.

(6) Subsection (5) does not apply if –

(a) the offence as charged is one in respect of which the defendant, under section 101 or a provision of another Act, is entitled to elect to have the offence dealt with either by the Court or the Supreme Court and the defendant has elected to have the offence dealt with by the Court; or

(b) the offence as charged is one in respect of which the Court, under a provision of another Act, may determine that the offence be dealt with either by the Court or the Supreme Court and the Court has determined that the offence be dealt with by it.

108. Notice of details of legal representation of defendant to be provided following first attendance

If proceedings for an indictable offence are adjourned at the first attendance before the Court of the defendant, the legal representative of the defendant is to notify the prosecutor, within the

meaning of section 60, of his or her representation as soon as reasonably practicable.

109. Attendance before Court for indictable offence following adjournment

(1) On the attendance before the Court of a defendant charged with an indictable offence following an adjournment of the proceedings under section 107(5) –

(a) if the defendant has not entered a plea, he or she is to plead to the offence as specified in section 110; and

(b) if the charge is one in respect of which –

(i) the defendant, under section 101 or a provision of another Act, is entitled to elect to have the offence dealt with either by the Court or the Supreme Court but the defendant has not made that election, the defendant is to make that election; or

(ii) the Court, under a provision of another Act, may determine that the offence be dealt with either by the Court or the Supreme Court but the Court has not made that determination, the Court is to make that determination –

unless the Court determines that, in the particular circumstances, the interests of justice require that

proceedings be further adjourned before the defendant be required to make an election or plead to the charge or the Court be required to make that determination.

(2) If –

(a) the Court determines under subsection (1) that the defendant is not required to make an election or plead to the charge, or that the Court is not required to make a determination; and

(b) the proceedings are further adjourned –

that subsection applies to the next attendance of the defendant before the Court.

110. Entering plea

(1) In pleading to an indictable offence, the defendant may plead –

(a) that he or she is guilty of the offence charged; or

(b) that he or she is not guilty of the offence charged; or

(c) if the Director of Public Prosecutions consents in writing, that he or she is not guilty of the offence charged but is guilty of another offence of which he or she might be convicted for the offence charged; or

(d) that further proceedings may not be taken in respect of the charge; or

(e) that he or she has cause to show why he or she should not be convicted of the offence charged; or

(f) that he or she has previously been found guilty or not guilty of the offence charged.

(2) If the defendant, on being asked to plead to a charge under section 107 or 109, stands mute, refuses to plead or does not answer directly to the charge, the defendant is taken to have pleaded not guilty.

(3) If the defendant pleads guilty and is to be sentenced by the Supreme Court –

(a) the plea is to be recorded by the Court; and

(b) that record is to be signed, or authorised as being correct, by the defendant in the manner prescribed by the rules of court.

111. Failure to make election, &c.

If the defendant, on being asked to make an election under section 107 or 109, stands mute or refuses to, or does not, make a definite election, he or she is taken to have elected to have the offence dealt with by the Court.

112. Committal to Supreme Court

(1) When a defendant charged with an indictable offence that is not a minor crime or an electable offence enters a plea to the charge, the Court must commit the defendant to the Supreme Court for sentence or trial.

(2) When a defendant charged with an electable offence has entered a plea to the charge and also elected to have the offence dealt with by the Supreme Court, the Court must commit the defendant to the Supreme Court for sentence or trial.

(3) On the making of an order under subsection (1) or (2) that a defendant be committed to the Supreme Court –

(a) the Court must remand the defendant in custody or admit him or her to bail to attend before the Supreme Court on a day to be fixed by the Supreme Court; and

(b) the relevant district registrar is to forward to the Supreme Court, to the Director of Public Prosecutions or the Commonwealth Director of Public Prosecutions, as appropriate, and to the defendant the following documents and other materials:

(i) the charge sheet;

(ii) the record of proceedings;

(iii) copies of all bail orders;

(iv) the committal order.

113. Proceedings following preliminary proceedings order by Supreme Court

(1) In this section –

certified, in relation to a transcript of evidence recorded by means other than direct recording on paper, means the certification by the person who transcribed the recording that the transcript is a true and accurate record of the recording;

endorsed recording, in relation to the statement of a witness who is an affected person, means a copy of a written or other recording of a statement made by the affected person that is endorsed with, or accompanied by, a certificate that –

(a) purports to be made by a person who was present when the affected person made the statement; and

(b) states that the copy of the recording is a true and accurate copy;

transcribe means transcribe, or print, onto paper.

(2) On the receipt by a district registrar of a copy of a preliminary proceedings order, the Court is to

conduct the preliminary proceedings in accordance with that order.

(3) The defendant must be present during preliminary proceedings unless the Court permits the preliminary proceedings to proceed in the absence of the defendant.

(4) In preliminary proceedings –

(a) the evidence of a witness, other than an affected person, is to be taken by the examination, cross-examination and re-examination of the witness before the Court unless any other Act provides otherwise; and

(b) the evidence of a witness who is an affected person is to be taken by the receipt by the Court of the endorsed recording of the statement of the witness and the examination, cross-examination and re-examination of the witness as specified by subsection (5); and

(c) the evidence of a witness given in examination, cross-examination or re-examination is to be transcribed and the transcript is to be certified.

(5) A witness who is an affected person may only –

(a) be cross-examined and re-examined on matters specified in the preliminary proceedings order in accordance with the conditions and limitations specified in that order; and

(b) be examined, cross-examined and re-examined on matters not provided for in the preliminary proceedings order if the Court is satisfied that –

(i) to do so would not conflict with the preliminary proceedings order; and

(ii) exceptional circumstances exist; and

(iii) it is necessary to do so in the interests of justice.

(6) A decision of the Court to allow the examination, cross-examination or re-examination of a witness who is an affected person under subsection (5)(b) is final and not subject to appeal or other review.

(7) The room or place in which the Court conducts the preliminary proceedings is a closed court.

(8) Despite subsection (7), the following persons may not be excluded from the room or place in which the Court is conducting the preliminary proceedings:

(a) the prosecutor;

(b) the defendant;

(c) the legal representative of the prosecutor and the defendant;

(d) a person who has entered into a recognizance as referred to in section

7(5)(b) of the *Bail Act 1994* as a condition of bail being granted to the defendant under that Act;

(e) a person who has given a surety or undertaking under the rules of court as a condition of bail being granted to the defendant.

(9) On the application of the prosecutor or the defendant, the Court may allow a person to be present in the room or place in which the Court is conducting the preliminary proceedings so as to provide a witness or the defendant with support.

(10) The Court, under subsection (9), may allow a person to be present in the room or place in which the Court is conducting the preliminary proceedings only if satisfied that the person is not, or is not likely to be, a witness in, or a party to, the preliminary proceedings or at the hearing of the charge for the offence.

(11) At any time during preliminary proceedings, the Court may request the Supreme Court to give directions in relation to the conduct or finalisation of the preliminary proceedings.

(12) On the request of the Court under subsection (11), the Supreme Court may give such directions relating to the conduct or finalisation of the preliminary proceedings as it considers appropriate.

(13) When the Court has concluded the preliminary proceedings or cannot proceed, or proceed further, with them –

(a) the Court must remand the defendant in custody or admit him or her to bail to attend before the Supreme Court on a day to be fixed by the Registrar of the Supreme Court; and

(b) the relevant district registrar is to forward the transcripts of all evidence given in the preliminary proceedings, and all endorsed recordings of the statements of witnesses who are affected persons used in the preliminary proceedings, to the following courts and persons:

(i) the Supreme Court;

(ii) the Director of Public Prosecutions or the Commonwealth Director of Public Prosecutions, as appropriate;

(iii) the legal practitioner representing the defendant or, if the defendant is not so represented, the defendant; and

(c) the relevant district registrar is to forward all exhibits tendered in evidence in the preliminary proceedings to the Director of Public Prosecutions or the Commonwealth Director of Public Prosecutions, as appropriate.

114. Prohibition on publishing preliminary proceedings

(1) A person must not publish –

(a) any information given or produced in evidence before the Court in preliminary proceedings; or

(b) an account of the preliminary proceedings; or

(c) any information relating to preliminary proceedings –

unless the Court allows the publication of such information or such an account.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 24 months, or both.

(2) Subsection (1) does not apply to the publication of information, or an account, by the prosecutor or the defendant to another person if the publication is necessary for the prosecutor or defendant to effectively conduct his or her case in relation to the prosecution of the offence to which the preliminary proceedings related.

(3) If a provision of any other Act is inconsistent with subsection (1), subsection (1) prevails unless that other Act specifically provides otherwise.

PART 10 – APPLICATION PROCEDURES

115. Interpretation of Part 10

(1) In this Part, unless the contrary intention appears –

application proceedings means proceedings for which the Court has jurisdiction, other than proceedings for an offence.

(2) In this Part –

(a) a party claiming relief by means of an application referred to in section 116, or an oral application referred to in section 120, is called an ***applicant***; and

(b) any other party to application proceedings is called a ***respondent***.

(3) In this Part, if a party to application proceedings is required to do or omit to do any act, it is sufficient if the party's legal representative does or omits to do the act unless the context requires otherwise.

116. Commencing application proceedings

Application proceedings are commenced by filing an application, together with an affidavit referred to in section 118, with the Court.

117. Form of application

An application under section 116 is to –

(a) be in writing and in an approved form; and

(b) specify the parties to the application as at the time the application is made; and

(c) be signed by a prosecutor, public officer, applicant or applicant's legal representative; and

(d) specify the provision of the legislation, if any, under which the order or relief is sought; and

(e) specify the grounds on which the application is based; and

(f) specify the order or relief sought; and

(g) include any other information, or matters, prescribed by the rules of court.

118. Affidavit accompanying application

(1) An application under section 116 is to be accompanied by an affidavit in support of the application.

(2) An affidavit is to state the nature of the applicant's claim and the material facts on which that claim is based.

119. Service of application made under section 116

(1) A copy of an application under section 116, together with a copy of its accompanying

affidavit, must be served on all respondents to the application unless –

(a) the Court orders otherwise; or

(b) the rules of court provide otherwise; or

(c) another Act provides otherwise.

(2) If another Act provides that an application need not be served on one or more respondents without reference to the accompanying affidavit, the affidavit need not be served on any respondent on which the application need not be served.

120. Oral application

Despite sections 116, 117, 118 and 119, a person may commence application proceedings by oral application to the Court if the Court allows it and, in such circumstances, the Court may give directions –

(a) as to whether or not the application may be heard in the absence of the respondent or another party to the application proceedings; and

(b) as to whether or not the respondent or another party to the application proceedings must be notified of the oral application; and

(c) as to whether or not any other requirements of this Part must be

complied with by any party to the application proceedings; and

(d) in relation to any other matter that the Court considers relevant.

121. Conduct of application proceedings

Except as otherwise provided by this or any other Act, Part 4 applies, with such modifications as are necessary, to application proceedings as if –

(a) the application proceedings were proceedings for a summary offence; and

(b) the applicant were the prosecutor; and

(c) the respondent were the defendant.

122. Directions for modifying application of Act to application proceedings

(1) The Chief Magistrate may issue written practice directions with respect to the modifications necessary in the application of this Act to application proceedings as if they were proceedings for a summary offence.

(2) Practice directions issued under subsection (1) are to be published in such manner as the Chief Magistrate determines.

(3) On the application of a person who intends to commence application proceedings, a district registrar may give directions with respect to –

(a) the manner in which a provision of this Act applies to the proposed application proceedings; or

(b) a clarification of how a direction issued under subsection (1) applies to the proposed application proceedings.

(4) On the application of a party to application proceedings, a district registrar or the Court may give directions with respect to –

(a) the manner in which a provision of this Act applies to the application proceedings; or

(b) a clarification of how a direction issued under subsection (1) applies to the application proceedings.

PART 11 – BREACH OF DUTY PROCEDURES

123. Procedure for breach of duty as if it were summary offence

This Act applies, with such modifications as are necessary, to a breach of duty as if the breach of duty were a summary offence.

124. Directions for modifying application of Act to breach of duty

(1) The Chief Magistrate may issue written practice directions with respect to the modifications necessary in the application of this Act to a breach of duty as if it were a summary offence.

(2) Practice directions issued under subsection (1) are to be published in such manner as the Chief Magistrate determines.

(3) On the application of a person who intends to commence proceedings for a breach of duty, a district registrar may give directions with respect to –

(a) the manner in which a provision of this Act applies to the proposed proceedings for the breach of duty; or

(b) a clarification of how a direction issued under subsection (1) applies to the proposed proceedings for the breach of duty.

(4) On the application of a party to proceedings for a breach of duty, a district registrar or the Court may give directions with respect to –

(a) the manner in which a provision of this Act applies to the proceedings for the breach of duty; or

(b) a clarification of how a direction issued under subsection (1) applies to the proceedings for the breach of duty.

PART 12 – APPEALS AND REVIEWS

Division 1 – Preliminary

125. Interpretation of Part 12

In this Part, unless the contrary intention appears –

application for review means an application, made under section 139, for the review of an order made by the Court when constituted by a magistrate;

bail order means –

(a) an order made, on a formal bail application, by the Court that grants bail to a person, including any conditions to which the bail is subject; or

(b) an order made by the Court that adds, removes or varies any conditions to which the bail of a person is subject; or

(c) an order made by the Court that remands a person in custody rather than granting bail;

formal bail application means an application for bail made by a defendant to the Court, either orally or in writing, where submissions are made in support of the application;

notice of appeal means a notice of appeal filed under section 132;

order includes conviction for an offence, finding of guilty in relation to an offence, dismissal of a charge, determination and adjudication;

relevant order means the order of the Court that is the subject of a notice of appeal;

review applicant means a person who has made an application for review;

review respondent means a person who, under section 139(2)(b)(i), has been served with a copy of an application for review.

126. Non-application of Part

An order committing a defendant to be dealt with by the Supreme Court is not subject to review or appeal under this Part.

Division 2 – Appeals from bail orders made by authorised justice or one or more bench justices

127. Appeals from bail orders made by authorised justice or one or more bench justices

A person who is aggrieved by a bail order made by the Court when constituted by an authorised justice or one or more bench justices may appeal to the Court constituted by a magistrate within 21 days after the making of the bail order.

128. Procedure for commencing appeal

(1) An appeal under section 127 must be commenced by notice of appeal filed with a district registry.

(2) Within 7 days after filing a notice of appeal, the appellant must serve a copy of the notice of appeal on the person interested in upholding the bail order.

(3) The Court constituted by a magistrate may, on an affidavit setting out reasonable grounds and at its discretion, extend the period mentioned in subsection (2) at any time.

129. Procedure for hearing appeal

An appeal under section 127 is to be heard by way of a new hearing.

130. Power of Court on hearing appeal

On hearing an appeal under section 127, the Court may do any one or more of the following:

(a) dismiss the appeal;

(b) confirm, vary, amend, set aside or quash the bail order;

(c) make a new bail order;

(d) refuse to admit to bail the person against whom the bail order was made and

remand him or her in custody to a time and day specified by the Court;

(e) make any other order that the Court considers appropriate in the circumstances.

Division 3 – Appeals from orders, other than bail orders, made by Court constituted by authorised justice or one or more bench justices

131. Appeal from order, other than bail order, made by Court constituted by authorised justice or one or more bench justices

(1) A person who is aggrieved by an order, other than a bail order, made by the Court when constituted by an authorised justice or one or more bench justices may appeal to the Court constituted by a magistrate within 21 days after the making of that order.

(2) Pending the determination of an appeal under this section, the Court, on the application of the appellant and if satisfied that the application has been served on the respondent, may do one or more of the following:

(a) stay any proceedings on an order appealed against under this section;

(b) suspend the operation of such an order from its beginning;

(c) admit the appellant or respondent to bail;

(d) refuse to admit the appellant or respondent to bail and remand the appellant or respondent in custody to a time and day specified by the Court.

(3) An order made under subsection (2) may be made subject to any conditions that the Court considers appropriate.

132. Procedure for commencing appeal

(1) An appeal under section 131(1) must be commenced by notice of appeal filed with a district registry.

(2) A notice of appeal must –

(a) set out the grounds on which the appeal is based; and

(b) specify what orders are sought.

(3) Within 7 days after filing a notice of appeal, the appellant must serve a copy of the notice of appeal on the person interested in upholding the order.

(4) The Court constituted by a magistrate may, on an affidavit setting out reasonable grounds and at its discretion, extend the period mentioned in subsection (3) at any time.

133. Procedure for hearing appeal

An appeal under section 131(1) is to be heard by way of a new hearing.

134. Power of Court on hearing appeal

(1) On hearing an appeal under section 131(1), the Court may do any one or more of the following:

(a) dismiss the appeal;

(b) if the court considers that no substantial miscarriage of justice has occurred, and even though the matter raised by the appeal might be decided in favour of the appellant, dismiss the appeal;

(c) confirm, vary, amend, set aside or quash the order appealed against;

(d) prohibit the Court, or any person, from proceeding or proceeding further in respect of the order appealed against;

(e) amend or cause to be amended, on just terms, any defect or error in any proceedings before the Court which gave rise to the order appealed against;

(f) make any order, and cause any proceeding to be taken, that the Court considers necessary on the merits of the case to secure a final determination of the matter;

(g) make any order which the Court that made the order appealed against could have made.

(2) On hearing an appeal under section 131(1) in relation to an order that imposes a sentence on

an offender (whether the appeal is filed by the prosecutor or the offender), the Court may take into account any matter relevant to sentencing that has occurred between the time when the order appealed against was made and when the appeal is heard.

(3) Despite subsection (2), if the Court on hearing an appeal under section 131(1) in relation to an order that imposes a sentence on an offender sentences the offender again for the relevant offence, the Court, in doing so, must not take into account any element of double jeopardy in order to impose a less severe sentence than it would otherwise consider appropriate.

Division 4 – Appeals from bail orders made by magistrate

135. Appeals from bail orders made by magistrate

(1) If a defendant is aggrieved by a bail order made, on a formal bail application, by the Court when constituted by a magistrate, the defendant may appeal to the Supreme Court within 21 days after the making of the bail order.

(2) If a person, other than a defendant, is aggrieved by a bail order made, whether or not made on a formal bail application, by the Court when constituted by a magistrate, the person may appeal to the Supreme Court within 21 days after the making of the bail order.

136. Procedure for commencing appeal

(1) An appeal under section 135(1) or (2) must be commenced by notice of appeal filed with the Registrar of the Supreme Court.

(2) An appeal under section 135(1) or (2) must be supported by an affidavit specifying the facts on which the appellant is relying, unless a judge otherwise orders.

(3) Within 7 days after filing a notice of appeal, the appellant must serve a copy of the notice of appeal on the person interested in upholding the bail order.

(4) A judge may, on an affidavit setting out reasonable grounds and at his or her discretion, extend the period mentioned in subsection (3) at any time.

137. Procedure for hearing appeal

An appeal under section 135(1) or (2) is to be heard by way of a new hearing.

138. Power of Court on hearing appeal

On hearing an appeal under section 135(1) or (2), the Supreme Court may do any one or more of the following:

(a) dismiss the appeal;

(b) confirm, vary, amend, set aside or quash the bail order;

(c) make a new bail order;

(d) refuse to admit to bail the person against whom the bail order was made and remand him or her in custody to a time and day specified by the Supreme Court;

(e) make any other order that the Supreme Court considers appropriate in the circumstances.

Division 5 – Applications for review of orders by Court constituted by magistrate

139. Review of order of Court constituted by magistrate

(1) A person who is aggrieved by an order made by the Court when constituted by a magistrate, other than a bail order, may apply to the Supreme Court for a review of that order within 21 days after the making of that order.

(2) An applicant must –

(a) file the application for review with the Supreme Court; and

(b) serve a copy of the application on –

(i) the person interested in upholding the order; and

(ii) the district registrar of the Court that made the order which is the subject of the review.

(3) An application for review must specify that the application is based on one or more of the following grounds:

(a) that there was an error or mistake on the part of the Court on a matter or question of fact alone, of law alone or of both fact and law;

(b) that the Court had no jurisdiction to make the relevant order;

(c) that there has been a miscarriage of justice.

(4) An application for review must be made returnable on a day not less than 38 days after the making of the order to be reviewed.

(5) Before or after the expiry of the period of 21 days referred to in subsection (1), a judge may –

(a) on an affidavit setting out reasonable grounds; and

(b) at his or her discretion –

extend that period.

140. Duty of district registrar on application for review

(1) In this section –

certified recording means –

(a) a copy of an audio recording, audio-visual recording or digital

recording of any Court proceedings; or

(b) a copy of an audio recording, audio-visual recording or digital recording of a part of any Court proceedings; or

(c) a copy of any portion of a recording referred to in paragraph (a) or (b) –

that is endorsed with a certification by the person who created the copy stating that the copy is a true copy of that recording or that portion of that recording.

(2) A district registrar who has been served with a copy of an application for review is to –

(a) deliver the copy to the magistrate who constituted the Court that made the order as soon as practicable; and

(b) within 7 days after the delivery of the copy to that magistrate, transmit any prescribed documents to the Registrar of the Supreme Court; and

(c) take such steps as are necessary to preserve any recording of the proceedings to which the application for review relates.

(3) After an application for review has been served under section 139(2), the review applicant and

the review respondent are entitled to obtain from the district registrar, on payment of any prescribed fee, a certified recording of the audio recording, audio-visual recording or digital recording of the Court proceedings, or part of the Court proceedings, to which the application relates, or any portion of that recording, unless the district registrar certifies that –

(a) no recording of the relevant Court proceedings, or relevant part of the Court proceedings, exists; or

(b) the recording of the relevant Court proceedings or relevant part of the Court proceedings, or the recording in the relevant portion of the recording, is so unclear as to reasonably prevent the making of a comprehensible copy.

(4) After an application for review has been served under section 139(2), the review applicant and the review respondent are entitled to obtain from the Registrar of the Supreme Court a copy of the documents, or any part of the documents, prescribed for the purposes of subsection (2)(b).

141. Review applicant limited to grounds stated in application for review

(1) On the hearing of an application for review, the review applicant is not entitled to rely on a ground for review not specified in the application.

(2) Despite subsection (1), the Supreme Court, on the hearing of an application for review and on such terms as to costs and otherwise that it considers appropriate, may allow the review applicant to amend the application by doing one or more of the following:

(a) adding a new ground for the review;

(b) striking out a ground for review;

(c) amending a ground for review.

142. Interlocutory proceedings

On the application of a review applicant or a review respondent, the Supreme Court, at its discretion and on such terms as to costs and otherwise as it considers appropriate, may do one or more of the following:

(a) vary the return day of the application for review;

(b) impose conditions as to costs and security to be complied with before the application for review is heard;

(c) stay proceedings on the order to be reviewed or suspend the operation of that order from the time at which it was made;

(d) admit the review applicant to bail or refuse to admit the review applicant to bail.

143. Constitution of Supreme Court

(1) For the hearing of an application for review, the Supreme Court is to be constituted by a single judge but the judge may –

(a) reserve the application, or any matter arising from the application, for the Full Court; or

(b) direct that the application, or any matter arising from the application, be argued in the Full Court.

(2) The Full Court of the Supreme Court has power to hear and determine an application or matter reserved to it or directed to be argued in it under subsection (1).

144. Hearing of application for review

(1) At the hearing of an application for review, the Supreme Court, subject to subsection (2), must have regard to the documents transmitted to it under section 140(2)(b) and to any affidavits –

(a) which have been filed, and copies of which have been provided, under subsection (3); and

(b) which purport to set out material that was before the Court that made the order being reviewed.

(2) In having regard to the documents transmitted to it under section 140(2)(b), the Supreme Court may have regard to any notes of evidence only in

so far as those notes are not contradicted on oath, by affidavit or otherwise.

(3) On the hearing of an application for review, a party may not, except with the leave of the Supreme Court, use an affidavit unless –

(a) the affidavit has been filed with the Supreme Court; and

(b) a copy of the affidavit has been provided to every other party at least 48 hours before the application for review is returnable.

(4) The Supreme Court may grant the leave referred to in subsection (3) on such terms as to costs or otherwise as it considers appropriate.

145. Determining application for review

(1) In this section –

originating Court means the Court;

relevant order, in relation to an application for review, means the order which is the subject of the application;

sentencing order means a relevant order which imposes a sentence on an offender.

(2) At the hearing of an application for review, the Supreme Court, after considering the evidence and materials adduced and brought before the originating Court and such further evidence as the Supreme Court considers appropriate, is to –

(a) review the relevant order in so far as the order relates to the grounds specified in the application; and

(b) determine the application.

(3) In reviewing a relevant order and determining an application for review, the Supreme Court may do one or more of the following:

(a) dismiss the application;

(b) if the Supreme Court considers that no substantial miscarriage of justice has occurred even though the matter raised by the applicant might be decided in favour of the applicant, dismiss the application;

(c) confirm, vary, amend, rescind, set aside or quash the relevant order;

(d) remit the matter to the originating Court, with or without a direction in law;

(e) order that the matter be re-tried by the originating Court;

(f) prohibit the originating Court, or any other person, court or tribunal, from proceeding or further proceeding in respect of the relevant order;

(g) amend, or cause to be amended, on such terms as are just, a defect or error in any proceedings before the originating Court;

(h) make any order, and cause any proceeding to be taken, as the Supreme Court considers necessary to secure a final determination of the application on the merits of the case;

(i) exercise any power which the Supreme Court might exercise upon *habeas corpus* or an order of review under the *Judicial Review Act 2000*;

(j) exercise any power that might have been exercised by the originating Court.

(4) In reviewing a sentencing order and determining an application for review (whether the application is made by the prosecutor or the offender), the Supreme Court, in exercising a power in relation to sentencing, may take into account any matter relevant to sentencing that has occurred between the time when the sentencing order was made and when the Supreme Court hears and determines the application for review.

(5) Despite subsection (4), if the Supreme Court, in reviewing a sentencing order and determining an application for review, imposes a different sentence on the offender, the Supreme Court, in doing so, must not take into account any element of double jeopardy so as to impose a less severe sentence than it would otherwise consider appropriate.

(6) If the Supreme Court, in reviewing a relevant order and determining an application for review,

quashes the relevant order in relation to a matter and remits the matter to the originating Court, either with or without any direction in law –

(a) the originating Court must hear and determine the matter in accordance with the law and any such direction in law; and

(b) the originating Court, in sentencing the offender in relation to the matter, may take into account any matter relevant to sentencing that has occurred between the time when the Supreme Court quashed the relevant order and when the originating Court determines the remitted matter; and

(c) despite paragraph (b), the originating Court in sentencing the offender again for the relevant offence must not take into account any element of double jeopardy so as to impose a less severe sentence than it would otherwise consider appropriate.

(7) Before determining an application for review, the Supreme Court, if it considers that the reasons given for making the relevant order are insufficient, may remit the matter to the originating Court with a direction to provide the Supreme Court with further and better reasons within the time specified by the Supreme Court.

(8) If the Supreme Court has required further and better reasons under subsection (7), the Supreme

Court is to provide those reasons to the parties to the application for review as soon as practicable after receiving them and, in any event, before determining the application.

(9) Before determining an application for review, the Supreme Court must make, or cause to be made, all amendments referred to in subsection (3)(g) as are necessary for the purpose of determining the application.

146. Determination of application for review by new hearing

(1) Despite section 145 and subject to this section, a person, who has filed or been served with an application for review, may apply to the Supreme Court for an order that the matter to which the application relates be heard by the Supreme Court as a new hearing.

(2) An application under subsection (1) may be made on the return day fixed for the application for review but must be made before the hearing of the application for review has commenced.

(3) On receipt of an application under subsection (1), the Supreme Court may –

(a) order that the application for review is to be heard by the Supreme Court as a new hearing of the matter which is the subject of the application for review; or

(b) refuse to make such an order and proceed to hear and determine the application for review under section 145.

(4) An application under subsection (1) for the matter to be heard as a new hearing may not be made in relation to an application for review of an order that –

(a) was made in the absence of the other party, unless the applicant has first applied to set that order aside; or

(b) was made on the applicant's plea of guilty to a charge for an offence.

(5) The Supreme Court may not make an order that the application for review is to be heard as a new hearing of the matter which is its subject unless the Supreme Court is satisfied, having regard to all the circumstances, that the interests of justice require the new hearing.

(6) Without limiting the circumstances in respect of which the Supreme Court may be satisfied, under subsection (5), that it is in the interests of justice to require a new hearing, the Supreme Court may be so satisfied if –

(a) there does not exist, or it is not practicable to bring into existence, any sufficient account of that part of the proceedings to which any ground set out in the application for review relates; or

(b) in the proceedings that gave rise to the application for review the applicant was

not represented by a legal practitioner and evidence amounting to a substantial ground of defence, and available at that time, was not then adduced; or

(c) the parties to the application for review consent to the making of the order.

(7) If the Supreme Court makes an order that the application for review is to be heard by the Supreme Court as a new hearing of the matter which is its subject, the Supreme Court –

(a) may make such orders as to costs occasioned by the application for review and the application for the new hearing as it considers appropriate; and

(b) may require security for the costs of the new hearing of the charge for the offence to be given; and

(c) may extend the operation of any order made on the application for review or make any order that, but for the application for the new hearing, might have been made on the application for review under section 142(c) and (d).

(8) If the Supreme Court makes an order that the application for review is to be heard by the Supreme Court as a new hearing of the matter which is its subject –

(a) the Supreme Court has all the powers of the Court in the proceedings that gave rise to the application for review; and

(b) its orders and warrants have effect, and are enforceable, as if made by that Court.

147. Appeals to Full Court from review

(1) If a party to an application for review is dissatisfied with a ruling or order of the Supreme Court on a point of law or on the admission or rejection of evidence, the party may, subject to this section, appeal to the Full Court of the Supreme Court.

(2) Despite subsection (1), the following decisions of the Supreme Court on the hearing of an application for review are not subject to appeal under this section:

(a) a decision as to the sufficiency of the statement of a ground of review;

(b) a decision as to the amendment of, or the refusal to amend, the order being reviewed or a ground of review.

(3) On the hearing of an appeal under this section, the Full Court of the Supreme Court may –

(a) draw any inference of fact; and

(b) order –

(i) any judgment to be entered that ought to have been given; or

(ii) a new hearing on the terms as to costs or otherwise as it considers just; and

(c) make any other order it considers just and proper to ensure the determination on the merits of the real questions in controversy between the parties.

(4) An appeal under this section may not succeed merely on the ground of misdirection or improper reception or rejection of evidence unless, in the opinion of the Full Court of the Supreme Court, substantial wrong or miscarriage has been occasioned by that ground in the court below.

148. Bail where appeal to Full Court on review

If an appeal is made to the Full Court of the Supreme Court under section 147, the Full Court, on the application of the respondent, may admit the appellant to bail or refuse to admit the appellant to bail and remand him or her in custody to a time and day specified by the Supreme Court.

149. Proceedings not to be quashed for want of form

A charge sheet, application, appeal, order or proceeding before the Supreme Court under this Part may not be quashed or set aside, or adjudged void or insufficient, for want of form.

150. Costs in relation to proceedings before Supreme Court

In any proceedings on an application for review, or an appeal under section 147, before the

Supreme Court, the Supreme Court may make any order as to costs as it considers proper.

Division 6 – General provisions

151. Application to Court for interim relief

(1) In any proceedings under this Part, a person who is aggrieved by an order of the Court may apply to the Court, within 21 days after the making of that order, for the relief specified in subsection (2).

(2) On receipt of an application under subsection (1), the Court, on notice to the respondent and on any conditions that the Court considers appropriate, may refuse to grant the application or may grant the application and do one or more of the following:

(a) stay any proceedings on the order in respect of which the application is made;

(b) suspend the operation of such an order from its beginning;

(c) admit the applicant to bail.

PART 13 – COSTS

152. Costs

(1) In this section –

application proceedings has the same meaning as in section 115(1);

involved person means the prosecutor, defendant, applicant, appellant or respondent in proceedings, as the case requires.

(2) Except as provided by this or any other Act, an involved person in relation to proceedings under this Act is not liable for the costs of another involved person.

(3) If the Court finds an offence proved or makes an order in favour of a prosecutor, the Court, in its discretion, may order the defendant pay to the prosecutor the whole or a specified portion of the prosecutor's costs of, and incidental to, the prosecution of the offence.

(4) If the Court dismisses a charge in proceedings for a breach of duty, the Court, in its discretion, may order that the person who commenced the proceedings pay to the defendant the whole or a specified proportion of the defendant's costs of, and incidental to, the proceedings.

(5) If proceedings are adjourned, the Court, in its discretion, may order that the costs of, or

occasioned by, the adjournment be paid by any involved person to any other involved person.

(6) In proceedings under Part 12, other than proceedings relating to a bail order within the meaning of that Part, the Court, in its discretion, may order that the whole or a specified portion of the costs of the proceedings be paid by any involved person to any other involved person.

(7) If costs are allowed under this section, the costs are to be assessed –

(a) by the Court; or

(b) if the Court directs, by a district registrar.

(8) If costs are assessed by a district registrar, he or she must have regard to the same matters to which the Court would have regard if the Court were assessing the costs, including the amount that could have been awarded in respect of witnesses' expenses under the regulations.

(9) An assessment of costs –

(a) is part of the conviction, order of dismissal or other order to which it relates; and

(b) is to comply with any requirements prescribed by the rules of court.

(10) If costs are allowed in proceedings under this Act, those costs may be recovered as if they had been allowed under the *Magistrates Court (Civil Division) Act 1992*.

(11) Nothing in this section prejudices or affects the operation of the *Costs in Criminal Cases Act 1976* but subsections (7) and (9) apply to the assessment of costs ordered to be paid under that Act.

153. Amount of costs

(1) In making an order under section 152, the Court may have regard to any scale of costs, fees or expenses prescribed in the rules of court.

(2) If the Court has regard to a scale of costs, fees or expenses in determining the amount of costs in an order for costs, the Court must specify that scale in the order.

(3) An assessment of costs may be carried out by a district registrar and an assessment so carried out is subject to review by the Court.

154. Procedure for assessing costs

The parties to proceedings in which costs are to be assessed are to comply with the procedure for the assessment of costs prescribed by the rules of court.

155. Application of other Acts providing for costs

Despite the provisions of this Part, if another Act provides for the awarding of costs (including expenses) against a defendant who is found guilty of an offence against that Act, the

provisions of that Act relating to the awarding and determination of costs apply.

PART 14 – MISCELLANEOUS

156. Publication of proceedings

(1) A person must not publish, or cause or allow to be published –

(a) any information given or produced in proceedings before the Court; or

(b) an account of proceedings before the Court; or

(c) any other information relating to proceedings before the Court –

if the Court, by order, has prohibited publication of that information or account.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 24 months, or both.

(2) If a provision of any other Act is inconsistent with subsection (1), subsection (1) prevails unless that other Act specifically provides otherwise.

157. Powers in relation to goods in police custody

(1) If a police officer is in possession of property in relation to which an offence is alleged to have been committed and he or she is not satisfied as to who is entitled to the property, or the owner of the property is not known or cannot be found,

the police officer may apply to the Court for directions for the disposal of the property.

(2) On an application under subsection (1), the Court –

(a) after making such inquiry as it considers appropriate, may make an order for the delivery of the property to any person who appears to be entitled to it; or

(b) if no claim to the property is established, may make an order that the property be sold or otherwise disposed of and that the net proceeds of the sale, if any, be paid into the Consolidated Fund if no claim to the proceeds is established within 3 months after the date of the order.

(3) If there is more than one claimant to property in respect of which an application under subsection (1) is made, the Court, after hearing all the claimants appearing before it, may make an order for the delivery of the property on such conditions as it considers necessary for securing the safe custody of the property pending any action which may be brought for the recovery of it.

(4) An order under this section does not prejudice the right of a person to recover, in a court of competent jurisdiction, the property to which the order relates from the person to whom it has been delivered, if proceedings for the recovery of the property are commenced within 6 months after the order is made.

158. Exemption from fees, payment of fees by alternative person, &c.

(1) Fees may not be received or demanded from –

(a) a public officer; or

(b) an employee or officer of a statutory authority –

in respect of proceedings under this Act instituted by him or her in the execution of his or her duty.

(2) Subsection (1) does not apply to an officer of a council in respect of proceedings under this Act instituted by him or her under Part VII of the *Local Government (Highways) Act 1982*.

(3) If a person is convicted, or a breach of duty order is made against him or her, on a charge made by another person who is exempted from payment of fees under subsection (1), the Court may order the person to pay the amount of the prescribed fees that would otherwise have been payable by the other person in respect of the proceedings.

(4) For the purposes of recovery, the amount payable under subsection (3) is taken to be a sum of money payable as costs under the *Monetary Penalties Enforcement Act 2005*.

159. Waiver, remission or refund of fee

If the Court, the Administrator or a district registrar is satisfied that paying a fee would

cause a person undue hardship, the Court, Administrator or district registrar may do one or more of the following either unconditionally or on such conditions as the Court, Administrator or district registrar considers appropriate:

(a) waive the fee;

(b) reduce the fee;

(c) refund the whole or any part of the fee already paid;

(d) allow time for the payment of the whole or any part of the fee.

160. Validity of Court order or document

(1) Subject to subsection (2), an order made or document issued by the Court under this Act is taken to be valid –

(a) despite a want of form or a defect or error in it; and

(b) regardless of whether it has been validly made or issued.

(2) The Court may order that an order made or document issued by the Court under this Act is invalid, or may amend such an order or document so as to make it valid, from –

(a) the time of its making or issuing; or

(b) the time when the Court so orders or amends it; or

(c) some other time.

(3) Subsection (1) does not apply in relation to a person executing or giving effect to the order or document if that person knew or had reason to believe that the order or document –

(a) was wanting in form, or had a defect or error in it, such as to render it invalid; or

(b) was not validly made or issued.

161. Forms

The Chief Magistrate may approve forms to be used for the purposes of this Act.

162. Rules of court

(1) Without limiting the matters in respect of which rules of court may be made under section 15AE of the *Magistrates Court Act 1987* in respect of the Court, the rules of court may provide for –

(a) the jurisdiction of the Court when constituted by one or more bench justices; and

(b) the practice and procedure of the Court; and

(c) the practice and procedure of a bench justice when sitting in an out-of-hours Court session; and

(d) the form of a charge sheet, a court attendance notice or another document; and

(e) the joinder of charges, allegations of breaches of duty and parties in and to a charge sheet or application; and

(f) all matters relating to –

(i) objections to irregularities in a charge sheet or application; and

(ii) the amendment of such irregularities; and

(g) the issue of an order to attend to a person; and

(h) the summary offences and breaches of duty in respect of which a defendant, who is served with a charge sheet to answer a charge for such an offence or breach of duty, is not required to attend after being given notice that he or she may file a written plea of guilty or not guilty to the charge; and

(i) the hearing and determination in the absence of the defendant of a charge for a summary offence or an allegation of a breach of duty where the defendant has failed to attend in accordance with the court attendance notice or his or her conditions of bail; and

(j) the taking, at a hearing referred to in paragraph (i), of the charge as admitted, but with a right of the defendant to have the conviction or order then made vacated and the charge reheard, except where the defendant has filed a plea of guilty before the hearing; and

(k) all matters relating to procedures for case management by the Court; and

(l) the manner in which things done in the course of, or as preliminary or incidental to, any proceedings of the Court may be proved in any legal proceedings; and

(m) matters incidental to the adjournment of proceedings, including the continuation of bail and remanding in custody; and

(n) the giving of security or an undertaking under this Act; and

(o) the making of oral applications; and

(p) the assessment of costs allowed under this Act; and

(q) the entry of summary judgment on obligations of a civil nature enforceable as breaches of duty; and

(r) the execution of a conviction or order; and

(s) the provision to persons of transcripts or copies of recordings of proceedings in any cause or matter under this Act; and

(t) the settlement of disputes as to the accuracy of transcripts or copies of recordings of proceedings in any cause or matter under this Act; and

(u) the oaths to be taken by persons who –

(i) record proceedings in any cause or matter under this Act; or

(ii) transcribe the recordings of those proceedings; or

(iii) copy the recordings of those proceedings; and

(v) the keeping of records of proceedings before the Court.

(2) Rules of court made for the purposes of this Act may authorise any matter to be from time to time determined, approved, applied or regulated by the Chief Magistrate, another magistrate, the Administrator, a district registrar, the Secretary of the Department or another person specified in the rules of court.

163. Regulations

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

(2) Without limiting the generality of subsection (1), regulations made under this section may –

(a) provide for fees, costs and charges payable under this Act, or any other Act, in respect of any matter or proceeding for which the Court has jurisdiction; and

(b) provide for the payment to witnesses of expenses and compensation; and

(c) provide for the advances, whether periodical or otherwise, that may be made to those witnesses on account of those expenses; and

(d) provide for the waiver, remission, reduction or refund of, or exemption from, any fees, costs and charges payable under this Act.

(3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) The regulations may –

(a) provide that a contravention of any of the regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

(5) The regulations may authorise any matter to be from time to time determined, approved, applied or regulated by the Chief Magistrate, a magistrate, the Administrator, a district registrar, the Secretary of the Department or another person specified in the regulations.

(6) The regulations may –

(a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and

(b) provide for any of those savings or transitional matters to take effect on the day on which this Act commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

164. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Justice; and

(b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

165. Legislation repealed

The legislation specified in Schedule 3 is repealed.

166. Legislation rescinded

The legislation specified in Schedule 4 is rescinded.

SCHEDULE 1 – MINOR CRIMES TRIABLE SUMMARILY

Section 99

1. Sections of the *Criminal Code*:

Section	Crime
Section 234	Stealing
Section 235	Unlawfully dealing with a register [or record]
Section 236	Unlawfully dealing with a testamentary instrument [or document of title]
Section 237	Killing an animal with intent to steal
Section 238	Severing with intent to steal
Section 239	Unlawfully branding an animal
Section 244	Burglary if the accompanying intent is to commit a crime that does not include violence
Section 245(a)(iii)	Aggravated burglary if the accompanying intent is to commit a crime that does not include violence
Section 250	Obtaining goods by a false pretence
Section 251	Obtaining execution of a valuable security by a false pretence
Section 252	Cheating

Section	Crime
Section 252A(1)	Dishonestly acquiring a financial advantage
Section 253	Fraud in respect of payment for work
Section 258(1)	Receiving stolen property
Section 259	Corruptly taking a reward for recovery of stolen property
Section 260(1)	Fraudulently dealing with trust property
Section 261(a)	Misappropriation as a company officer
Section 261(b)	Fraud against a company as an officer [or member] [or contributory]
Section 264	Fraud as a clerk or servant
Section 265	Falsely accounting as a public officer
Section 266(1)	Corruption in relation to business
Section 266(2)	Corruptly using a false document
Section 278	Forgery
Section 279	Uttering
Section 280(a)	Obtaining property on a forged document
Section 280(b)	Obtaining property on a document obtained by false evidence
Section 280(c)	Obtaining property on a forged die

Section	Crime
Section 281	Unlawfully purchasing [or receiving] [or having in possession] a forged bank note
Section 282	Falsifying [or permitting the falsification of] a register [or record]
Section 284	Fraudulently using a false copy of a document relating to a company or society
Section 293(a)	Being an insolvent, failing to make full discovery of property
Section 293(b)	Being an insolvent, failing to deliver up property
Section 293(c)	Being an insolvent, failing to deliver up documents
Section 293(d)	Being an insolvent, concealing property [or liabilities]
Section 293(e)	Being an insolvent, fraudulently removing property
Section 293(f)	Being an insolvent, making fraudulent statement of affairs
Section 293(g)	Being an insolvent, failing to inform trustee of false claim
Section 293(h)	Being an insolvent, preventing production of documents

Section	Crime
Section 293(i)	Being an insolvent, fraudulently dealing with documents
Section 293(j)	Being an insolvent, making a false entry
Section 293(k)	Being an insolvent, alleging fictitious losses [or expenses]
Section 293(l)	Being an insolvent, obtaining credit by fraud
Section 293(m)	Being an insolvent, obtaining credit by false pretence
Section 293(n)	Being an insolvent, fraudulently disposing of property obtained on credit
Section 293(o)	Being an insolvent, fraudulently misleading creditors
Section 294(a)	Being an insolvent, obtaining credit without disclosing insolvency
Section 294(b)	Being an insolvent, changing trade name without disclosing former name
Section 295(1)(a)	Being an insolvent, incurring losses by speculation
Section 295(1)(b)	Being an insolvent, incurring losses by speculation
Section 295(1)(c)	Being an insolvent, failing to account for losses

Section	Crime
Section 296(1)	Fraud on a creditor
Section 299	Attempting to commit [crime specified in this Schedule]
Section 300	Being an accessory after the fact to [crime specified in this Schedule]

SCHEDULE 2 – CRIMES TRIABLE SUMMARILY ON ELECTION

Section 101

PART 1 – SECTIONS OF THE CRIMINAL CODE REFERRED TO IN SECTION 101(1)(A)

Section	Crime
Section 107	Escape from lawful custody
Section 108(1)(a)	Aiding escape from lawful custody
Section 108(1)(b)	Aiding escape from lawful custody
Section 108(1)(c)	Harbouring
Section 119(1)	Blasphemy
Section 120	Interfering with an officiating minister
Section 121	Disturbing religious worship
Section 127(1)	Indecent assault
Section 137	Indecency
Section 299	Attempting to commit [crime specified in this Part]
Section 300	Being an accessory after the fact to [crime specified in this Part]

PART 2 – SECTIONS OF THE CRIMINAL CODE REFERRED TO IN SECTION 101(1)(B)

Section	Crime
Section 234	Stealing
Section 235	Unlawfully dealing with a register [or record]
Section 236	Unlawfully dealing with a testamentary instrument [or document of title]
Section 237	Killing an animal with intent to steal
Section 238	Severing with intent to steal
Section 239	Unlawfully branding an animal
Section 244	Burglary if the accompanying intent is to commit a crime that does not include violence
Section 245(a)(iii)	Aggravated burglary except where it is alleged in the charge sheet that, in the commission of the offence, the defendant intended to commit a crime other than stealing
Section 250	Obtaining goods by a false pretence
Section 251	Obtaining execution of a valuable security by a false pretence
Section 252	Cheating
Section 252A(1)	Dishonestly acquiring a financial advantage

Section	Crime
Section 253	Fraud in respect of payment for work
Section 258(1)	Receiving stolen property
Section 259	Corruptly taking a reward for recovery of stolen property
Section 260(1)	Fraudulently dealing with trust property
Section 261(a)	Misappropriation as a company officer
Section 261(b)	Fraud against a company as an officer [or member] [or contributory]
Section 264	Fraud as a clerk or servant
Section 265	Falsely accounting as a public officer
Section 266(1)	Corruption in relation to business
Section 266(2)	Corruptly using a false document
Section 278	Forgery
Section 279	Uttering
Section 280(a)	Obtaining property on a forged document
Section 280(b)	Obtaining property on a document obtained by false evidence
Section 280(c)	Obtaining property on a forged die
Section 281	Unlawfully purchasing [or receiving] [or having in possession] a forged bank note

Section	Crime
Section 282	Falsifying [or permitting the falsification of] a register [or record]
Section 284	Fraudulently using a false copy of a document relating to a company or society
Section 293(a)	Being an insolvent, failing to make full discovery of property
Section 293(b)	Being an insolvent, failing to deliver up property
Section 293(c)	Being an insolvent, failing to deliver up documents
Section 293(d)	Being an insolvent, concealing property [or liabilities]
Section 293(e)	Being an insolvent, fraudulently removing property
Section 293(f)	Being an insolvent, making fraudulent statement of affairs
Section 293(g)	Being an insolvent, failing to inform trustee of false claim
Section 293(h)	Being an insolvent, preventing production of documents
Section 293(i)	Being an insolvent, fraudulently dealing with documents
Section 293(j)	Being an insolvent, making a false entry

Section	Crime
Section 293(k)	Being an insolvent, alleging fictitious losses [or expenses]
Section 293(l)	Being an insolvent, obtaining credit by fraud
Section 293(m)	Being an insolvent, obtaining credit by false pretence
Section 293(n)	Being an insolvent, fraudulently disposing of property obtained on credit
Section 293(o)	Being an insolvent, fraudulently misleading creditors
Section 294(a)	Being an insolvent, obtaining credit without disclosing insolvency
Section 294(b)	Being an insolvent, changing trade name without disclosing former name
Section 295(1)(a)	Being an insolvent, incurring losses by speculation
Section 295(1)(b)	Being an insolvent, incurring losses by speculation
Section 295(1)(c)	Being an insolvent, failing to account for losses
Section 296(1)	Fraud on a creditor
Section 299	Attempting to commit a crime specified in this Part

Section	Crime
Section 300	Being an accessory after the fact to a crime specified in this Part

SCHEDULE 3 – LEGISLATION REPEALED

Section 165

Justices Act 1959 (No. 77 of 1959)

SCHEDULE 4 – LEGISLATION RESCINDED

Section 166

Justices Rules 2003 (No. 184 of 2003)

Justices (Review) Rules 2004 (No. 117 of 2004)

Justices Amendment (Victim Impact Statement) Rules 2004 (No. 177 of 2004)

Justices Amendment (Family Violence) Rules 2005 (No. 18 of 2005)

Justices Amendment Rules 2005 (No. 38 of 2005)

Justices Amendment Rules (No. 2) 2005 (No. 90 of 2005)

Justices Amendment Rules 2006 (No. 138 of 2006)

Justices Amendment (Notice to Attend) Rules 2007 (No. 139 of 2007)

Justices (Review) Amendment Rules 2008 (No. 114 of 2008)

Justices Amendment Rules 2008 (No. 121 of 2008)

Justices Amendment Rules 2009 (No. 77 of 2009)

Justices Amendment Rules (No. 2) 2009 (No. 150 of 2009)

Justices Amendment Rules 2010 (No. 111 of 2010)

Justices Amendment Rules 2013 (No. 68 of 2013)

Justices Regulations 2013 (No. 105 of 2013)

Justices (Restraint Orders) Rules 2013 (No. 106 of 2013)

Justices Amendment Rules 2014 (No. 45 of 2014)

Magistrates Court (Criminal and General Division) Act 2019
Act No. 43 of 2019

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