

Queensland



JUSTICES ACT 1886

**Reprinted as in force on 23 June 1993
(includes amendments up to Act No. 68 of 1992)**

Reprint No. 1

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Information about this reprint

This Act is reprinted as at 23 June 1993. As required by section 5 of the *Reprints Act 1992*, it—

- shows the law as amended by all amendments that commenced on or before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the *Reprints Act 1992*, the reprint includes, in a suitable place, a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- omit the enacting words as permitted by section 7(1)(a) of that Act;
- use citations and references permitted by Division 2 of that Act;
- use updated references permitted by Division 3 of that Act;
- express gender specific provisions in a way consistent with current legislative drafting practice as permitted by section 24 of that Act;
- use gender neutral office names as permitted by section 25 of that Act;
- use different spelling consistent with current legislative drafting practice, as permitted by section 26(2) of that Act;
- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- use conjunctives and disjunctives consistent with current legislative drafting practice as permitted by section 28 of that Act;
- relocate marginal or cite notes as permitted by section 34 of that Act;
- use aspects of format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by sections 37 and 39 of that Act;
- omit unnecessary referential words as permitted by section 41 of that Act;
- omit historical notes as permitted by section 42 of that Act;
- use the numbering and renumbering of provisions and references permitted by section 43 of that Act;
- correct minor errors as permitted by section 44 of that Act.

Also see Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

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JUSTICES ACT 1886

[as amended by all amendments that commenced on or before 23 June 19932]

An Act to consolidate and amend the laws relating to justices of the peace and their powers and authorities

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Justices Act 1886*³⁻⁷.

Commencement of Act

3. This Act shall commence and take effect on and from 1 January 1887.

Meaning of terms

- 4.(1) In this Act—

“**breach of duty**” means any act or omission (not being a simple offence or a non-payment of a mere debt) on complaint of which a Magistrates Court may make an order on any person for the payment of money or for doing or refraining from doing any other act;

“**chairperson of a local authority**” means the mayor for the time being of a city or town and the chairperson for the time being of a shire within the meaning of the *City of Brisbane Act 1924*, or the *Local Government Act 1936*;

“**charge of an indictable offence**” means a charge of an indictable offence as such;

“**clerk of the court**” means the person who for the time being is the clerk

of every Magistrates Court at a place or places appointed under this Act for the holding of Magistrates Courts in question, and includes any assistant clerk of the court, deputy clerk of the court and any person who for the time being occupies or performs the duties of such office;

“complaint” includes the terms ‘information’, ‘information and complaint’, and ‘charge’ when used in any Act, and, unless a contrary intention appears, means an information, complaint or charge before a Magistrates Court;

“Court” means a Magistrates Court;

“decision” includes a committal for trial or for sentence, a conviction, order, order of dismissal or striking out or other determination;

“defendant” means a person complained against before a Magistrates Court or before justices for a simple offence, breach of duty or an indictable offence;

“examination of witnesses in relation to an indictable offence” means an examination of witnesses or the taking of a statement of any person by justices in relation to a charge of an indictable offence;

“hearing” includes an examination of witnesses in relation to an indictable offence;

“indictable offence” means an offence which may be prosecuted before the Supreme Court, a District Court, or other court having jurisdiction in that behalf, by indictment in the name of the Attorney-General or other authorised officer;

“indictment” means a written charge for an indictable offence presented to a court having jurisdiction to try the accused person by the Attorney-General or other authorised officer;

“jurisdiction” includes the place in which jurisdiction may be lawfully exercised;

“justices” or **“justice”** means justices of the peace or a justice of the peace having jurisdiction where the act in question is, or is to be, performed, and includes a Stipendiary Magistrate and, where necessary, a Magistrates Court;

“order” includes any order, adjudication, grant or refusal of any application, and any determination of whatsoever kind made by a Magistrates

Court, and any refusal by a Magistrates Court to hear and determine any complaint or to entertain any application made to it, but does not include any order made by justices committing a defendant for trial for an indictable offence, or dismissing a charge of an indictable offence or granting or refusing to grant bail and, in the last mentioned case, whether or not the justices are sitting as a Magistrates Court or to hear an examination of witnesses in relation to an indictable offence;

“police station” includes a police office, watch-house, and lockup;

“private complaint” means a complaint made by a person who is not—

- (a) a public officer; or
- (b) in making the complaint, acting in—
 - (i) the execution of a duty imposed on the person by law; or
 - (ii) the proper administration of an Act or Commonwealth Act;

“public officer” means—

- (a) an officer or employee of the public service of the State or the Commonwealth; or
- (b) an officer or employee of a statutory body that represents the Crown in right of the State or the Commonwealth; or
- (c) an officer or employee of a local authority;

who is acting in an official capacity;

“simple offence” means any offence (indictable or not) punishable, on summary conviction before a Magistrates Court, by fine, imprisonment, or otherwise;

“summary conviction” or **“conviction”** means a conviction by a Magistrates Court for a simple offence.

(2) When by this section a meaning is assigned to any word, any derivative of that word, when used in this Act, shall bear a corresponding meaning.

General saving of powers of justices

5. Nothing in this Act shall be construed to diminish or take away from any power or authority conferred on justices of the peace by any other Act,

except so far as the provisions of this Act are inconsistent with the existence or exercise of such power or authority.

PART 3—JURISDICTION

Division 1—General provisions

General provision

19. Whenever by any Act past or future, or by this Act, any person is made liable to a penalty or punishment, or to pay a sum of money, for any offence, act, or omission, and such offence, act, or omission is not by the Act declared to be an indictable offence, and no other provision is made for the trial of such person, the matter may be heard and determined by a Magistrates Court constituted, subject to this Act, by 2 or more justices in a summary manner under the provisions of this Act.

Authentication of acts of justices

20. All summonses, warrants, convictions, and orders (not being by law authorised to be made by word of mouth only) shall be under the hands of the justices issuing or making the same.

Presumption

21. Every act done or purporting to have been done by or before a justice shall be taken to have been done within the justice's jurisdiction without an allegation to that effect unless and until the contrary is shown.

Division 2—Magistrates Courts

Continuance of Magistrates Courts

22.(1) The Magistrates Courts, as formerly established as courts of

record in Queensland, are continued in existence.

(2) Each Magistrates Court is to have a seal that is to be kept by the clerk of the court and is to be judicially noticed.

Jurisdiction of Magistrates Courts

22A. Magistrates Courts are to have the civil, criminal and other jurisdiction—

- (a) that Courts of Petty Sessions or justices sitting in Petty Sessions had before the commencement of the *Justices Act Amendment Act 1964*; and
- (b) that is conferred on them by this Act and other Acts.

Magistrates Court districts

22B.(1) The Governor in Council may make regulations with respect to—

- (a) the appointment of districts, and divisions of districts, for the purposes of Magistrates Courts; and
- (b) the names of districts and divisions; and
- (c) the appointment of places for holding Magistrates Courts within districts and divisions; and
- (d) the transfer of proceedings, matters, documents, records and accounts from one Magistrates Court to another.

(2) Two or more Magistrates Courts may be held at the same time at the same place.

(3) Provision made by a proclamation under section 22 (as in force immediately before the commencement of this section) continues to have effect, after the commencement, as if it had been made by a regulation.

(4) Provision made by an order in council under section 5 of the *Decentralisation of Magistrates Courts Act 1965* (as in force immediately before the commencement of this section) continues to have effect, after the commencement, as if it had been made by a regulation under this Act.

Appointment of clerks of the court

22C.(1) The Governor in Council may, by Gazette notice, appoint a person to be clerk of the court, or an assistant clerk of the court, at 1 or more places.

(2) A clerk of the court—

- (a)** may discharge the functions of the office at each place for which the clerk is appointed; and
- (b)** is the clerk of each Magistrates Court held at the place.

Vacancy in office of clerk of court etc.

23.(1) If, in relation to a place appointed for holding a Magistrates Court, a clerk of the court is not appointed or is absent, a Magistrate may discharge the duties of the clerk of the court.

(2) Anything done by or in relation to a Magistrate acting under subsection (1) is taken to have been done by the clerk of the court.

(3) If a Magistrate is discharging the duties of clerk of the court under subsection (1), the Magistrate may require a police officer to perform, or assist in performing, a specified part of the duties.

(4) Anything done by or in relation to a police officer acting under subsection (3) is taken to have been done by the clerk of the court.

Division 3—Powers of single justice**Acts by 1 justice**

24. One justice may receive a complaint, and grant a summons or warrant thereon, and may issue the justice's summons or warrant to compel the attendance of witnesses, and do all other necessary acts and matters preliminary to the hearing, notwithstanding that the case must be heard and determined by 2 or more justices.

After decision 1 justice may issue warrant of execution or commitment

25. After a case has been heard and determined, 1 justice may issue thereon any warrant of execution or of commitment, and the justice who so acts need not be the justice or 1 of the justices by whom the case was heard and determined.

Warrants of execution after appeal

26. After an appeal against a conviction or order has been decided against the appellant, any justice may issue a warrant of execution or commitment for execution of the same as if no appeal had been brought.

Division 4—Hearing and quorum**Hearing of complaint**

27.(1) Subject to the provisions of any other Act, every complaint shall be heard and determined by a Magistrates Court constituted by 2 or more justices.

(2) If any Act authorises a matter of complaint to be heard and determined by—

- (a) a Magistrates Court constituted by 1 justice; or
- (b) 1 justice;

that matter of complaint may be heard and determined by a Magistrates Court constituted by 1 justice.

Majority to decide

28. When 2 or more justices are present and acting at the hearing of any matter and do not agree, the decision of the majority shall be the decision of the justices, and if they are equally divided in opinion, the case shall be reheard at a time to be appointed by the justices.

(2) Despite subsection (1), on a complaint for an indictable offence, any 2 or more of the justices may commit the defendant for trial even though a majority of the justices are of the opinion that the defendant should be

discharged.

(3) If the defendant is committed under subsection (2), a memorandum of the dissent of the majority of the justices is to be made on, or attached to, the depositions.

When 2 justices required, must be present throughout the case

29. Where a complaint must be heard and determined, or a conviction or order must be made, by 2 or more justices, the justices making the decision must be present and act together during the whole of the hearing and determination.

Division 5—Magistrates

Stipendiary Magistrates

30.(1) A Stipendiary Magistrate constituting a Magistrates Court shall have power to do alone whatever might be done by 2 or more justices constituting a Magistrates Court, and shall have power to do alone any act which by any Act may or shall be done by 2 or more justices.

(2) Unless otherwise expressly provided, when a Stipendiary Magistrate is present at a place appointed for holding Magistrates Courts and is available to constitute any such court to be held at that place the court shall be constituted by the Stipendiary Magistrate alone.

(3) Nothing in subsection (2) shall be construed to abridge or prejudice the ministerial power of justices in taking an examination of witnesses in relation to an indictable offence, or the powers of justices to receive a complaint or to issue, grant or endorse a summons or warrant, to admit to bail or to adjourn a hearing of a complaint of a simple offence or breach of duty.

Division 6—Extent of jurisdiction**Justices may act outside jurisdiction**

32. No act done by a justice shall be invalid merely by reason of the fact that at the time of doing such act the justice was outside the limits of the justice's jurisdiction, and it shall not be necessary that any conviction, order, or other proceeding, should appear to be made or done within the geographical limits of the jurisdiction of the justice making or doing the same.

Warrants of commitment and remand by justices of limited jurisdiction

33. A warrant of commitment or of remand shall be valid throughout the State, notwithstanding that the gaol or other place to which the defendant is committed or remanded, or any place into or through which the defendant is taken by virtue of the warrant, is outside the limits of the jurisdiction of the justice by whom the warrant is granted.

Police officers to obey warrants of justice etc.

34. Police officers must obey, and perform their duties in relation to, warrants, orders and directions of a justice.

Apprehended person may be taken before any justice

35.(1) A police officer or other person who apprehends a person (the “**offender**”) offending against law may take the offender before any justice.

(2) The justice may deal with the person according to law, even though the justice does not have jurisdiction for the place where the offender was apprehended.

Summons or warrant not avoided by death of justice etc.

37. A warrant or summons issued by a justice shall not be avoided by reason of such justice dying or ceasing to hold office.

Order in lieu of mandamus

38.(1) When a justice refuses to do any act relating to the duties of the justice's office as such justice the party requiring such act to be done may apply to the Supreme Court, or a Judge thereof, upon affidavit of the facts, for an order calling upon such justice and also the party to be affected by such act to show cause why such act should not be done, and if after due service of such order good cause is not shown against it, the Court or Judge may make the same absolute with or without or upon payment of costs.

(2) A justice upon being served with an order absolute shall obey the order and do the act required by it to be done.

Power of court to order delivery of certain property

39.(1) If property—

- (a) has come into the custody or possession of the police—
 - (i) in connection with any charge or prosecution; or
 - (ii) otherwise in the course of their duty; or
- (b) has come into the possession of a Magistrates Court or clerk of the court, whether as an exhibit or otherwise, in connection with a summary proceeding under this Act;

the Magistrates Court may, on application by a police officer or the clerk of the court or by a claimant of the property—

- (c) make an order for the delivery of the property to the person who appears to be its owner; or
- (d) if the owner cannot be ascertained—make such order in relation to the property as the Court considers appropriate.

(2) Subject to subsection (3), the order does not prevent a person from recovering the property by action from the person to whom the property is delivered under the order.

(3) An action for the recovery of the property may only be brought within 6 months after the making of the order.

(4) A regulation may make provision with respect to disposal of property mentioned in subsection (1) if—

- (a) the owner has not been ascertained; and
- (b) an order of a court of competent jurisdiction has not been made for the disposal of the property.

(5) The regulation may authorise the sale of the property and the application of the proceeds of sale.

Division 7—Interruption of proceedings

Penalty for insulting or interrupting justices

40.(1) A person who—

- (a) wilfully insults a justice or a witness or an officer of the court during his or her sitting as, or, as the case may be, attendance in a Magistrates Court or during his or her sitting or, as the case may be, attendance in any examination of witnesses in relation to an indictable offence or who is on his or her way to or from any such court or examination; or
- (b) wilfully misbehaves himself or herself in such a court or in the place where such an examination is being held; or
- (c) wilfully interrupts the proceedings of such a court or examination; or
- (d) unlawfully assaults, or wilfully obstructs a person in attendance at such a court or examination; or
- (e) without lawful excuse, disobeys a lawful order or direction of such court or justice;

may by oral order of such court or justice, be excluded from such court or examination and, whether the person is so excluded or not, may be summarily convicted by such court or justice of contempt.

(2) A person convicted of contempt under this section shall be liable to be imprisoned for a period not exceeding 14 days or to a fine not exceeding 2 penalty units and, in default of immediate payment of such fine, to be imprisoned for a period not exceeding 14 days.

(3) A person referred to in subsection (1)—

- (a) may be dealt with under this section without a complaint being made or a summons being issued in respect of the person;
- (b) may be taken into custody by a police officer on order of such court or justice and without further warrant;
- (c) may be called upon by such court or justice to show cause why the person should not be convicted of contempt under this section;
- (d) may be dealt with by such court or justice under this section upon the court's or justice's own view, or upon the evidence of a credible witness.

(4) A court or justice may, if it or the justice thinks fit, accept from any person convicted by it or the justice of contempt under this section, an apology for such contempt and may recommend that the Governor in Council remit or respite any fine or punishment imposed on such person in respect of such contempt.

PART 4—GENERAL PROCEDURE

Division 1—Complaints

Commencement of proceedings

42.(1) Except where otherwise expressly provided or where the defendant has been arrested without warrant, all proceedings under this Act shall be commenced by a complaint in writing, which may be made by the complainant in person or by the complainant's counsel or solicitor or other person authorised in that behalf.

(1A) However, where a defendant is present at a proceeding and does not object, a further charge or an amended charge may be made against the defendant and be proceeded with although no complaint in writing has been made in respect thereof.

(2) Where a defendant has been arrested on any charge and no complaint in writing has been made and in a case to which subsection (1A) applies particulars of the charge against the defendant shall be entered on the bench

charge sheet.

Matter of complaint

43.(1) Every complaint shall be for 1 matter only, and not for 2 or more matters, except—

- (a) in the case of indictable offences—if the matters of complaint are such that they may be charged in 1 indictment;
- (b) in cases other than cases of indictable offences—if the matters of complaint—
 - (i) are alleged to be constituted by the same act or omission on the part of the defendant; or
 - (ii) are alleged to be constituted by a series of acts done or omitted to be done in the prosecution of a single purpose; or
 - (iii) are founded on substantially the same facts; or
 - (iv) are, or form part of, a series of offences or matters of complaint of the same or a similar character;
- (c) when otherwise expressly provided.

(2) When 2 or more matters of complaint are joined in the 1 complaint each matter of complaint shall be set out in a separate paragraph.

(3) At the hearing of a complaint in which 2 or more matters of complaint have been joined but which does not comply with the provisions of this section—

- (a) if an objection is taken to the complaint on the ground of such noncompliance—the court shall require the complainant to choose 1 matter of complaint on which to proceed at that hearing;
- (b) if no such objection is taken to the complaint—the court may proceed with the hearing and may determine the matters of complaint, and may convict or acquit the defendant in accordance with such determination.

(4) If, at the hearing of a complaint, it appears to the court that a defendant may be prejudiced or embarrassed in the defendant's defence because the complaint contains more than 1 matter of complaint or that for any other reason it is desirable that 1 or more matters of complaint should

be heard separately, the court may order that such 1 or more matters of complaint be heard separately.

Description of persons and property

46. Such description of persons or things as would be sufficient in an indictment shall be sufficient in complaints.

What is sufficient description of offence

47.(1) The description of any offence in the words of the Act, order, by-law, regulation, or other instrument creating the offence, or in similar words, shall be sufficient in law.

(2) Where a person is convicted of an offence by a Magistrates Court other than a children's court and it is proved to the satisfaction of the court on oath or as prescribed by subsection (3) that there has been served upon the defendant with the summons or a reasonable time before the time appointed for the appearance of the defendant a notice specifying any alleged previous summary conviction of the defendant for an offence proposed to be brought to the notice of the court in the event of the defendant's conviction for the offence charged and the defendant is not present in person before the court, the court may take account of any such previous conviction so specified as if the defendant had appeared and admitted it.

(3) Any person who serves such a notice specifying any alleged previous conviction may serve such notice in the same manner as is provided for the service of a summons by this Act and may attend before any justice having jurisdiction in the State or part of the State or part of the Commonwealth in which such notice was served and depose, on oath and in writing endorsed on the notice, to the service thereof.

(3A) Such deposition shall upon production to the court by whom the case is heard and determined be sufficient proof of the service of the notice on the defendant.

(4) Unless otherwise expressly provided, if, for the purpose of the assessment of penalty in respect of a simple offence, it is intended to rely upon a circumstance which renders the defendant liable, upon conviction, to a greater penalty than that to which the defendant would otherwise have been liable, that circumstance shall be expressly stated in the complaint

made in respect of that offence except when that circumstance is that the defendant has been previously convicted summarily of an offence.

Division 2—Amendment of complaints, summonses and warrants

Amendment of complaint

48. If at the hearing of a complaint, it appears to the justices that—

- (a) there is a defect therein, in substance or in form, other than a noncompliance with the provisions of section 43; or
- (b) there is a defect in any summons or warrant to apprehend a defendant issued upon such complaint; or
- (c) there is a variance between such complaint, summons or warrant and the evidence adduced at the hearing in support thereof;

then—

- (d) if an objection is taken for any such defect or variance—the justices shall; or
- (e) if no such objection is taken—the justices may;

make such order for the amendment of the complaint, summons or warrant as appears to them to be necessary or desirable in the interests of justice.

Amendment

49. If in making an order for the amendment of a complaint summons or warrant the justices consider that the defendant has been misled by the form in which the complaint summons or warrant has been made out or if it appears to them that the variance between the complaint summons or warrant and the evidence adduced at the hearing in support thereof is such that the defendant has been thereby deceived or misled, they may, and at the request of the defendant shall, upon such terms as they think fit, adjourn the hearing of the case to some future day, and in the meantime may commit the defendant, or whether or not the defendant is in custody, may admit the defendant to bail or may suffer the defendant to go at large without bail.

Recording of amendment

50. If an order is made for the amendment of a complaint, summons or warrant, the Magistrates Court or justices must—

- (a) immediately enter particulars of the amendment on the complaint, summons or warrant; and
- (b) give a copy of the order to the party against whom the order is made on request by the party.

Division 3—How complaints are made

When complaint to be on oath and when not

51. Unless otherwise expressly provided—

- (a) when it is intended to issue a warrant in the first instance against the party charged—the complaint in writing must be on oath, which oath may be made by the complainant;
- (b) when it is intended to issue a summons in the first instance against the party charged—the complaint in writing need not be on oath.

Division 4—Limitation of proceedings

Limitation of proceedings

52. In any case of a simple offence or breach of duty, unless some other time is limited for making complaint by the law relating to the particular case, complaint must be made within 1 year from the time when the matter of complaint arose.

Division 5—Summonses

When justice may issue summons

53.(1) When a complaint is made before a justice that any person is

guilty of or is suspected of having committed any indictable offence, simple offence, or breach of duty, within the jurisdiction of such justice, then such justice may issue the justice's summons.

(2) No objection shall be taken or allowed to a summons issued upon a complaint under this section on the ground that—

- (a) the justice who issued the summons and the complainant were at the date of its issue—
 - (i) officers of the same department, sub-department, branch or section of a department of the Government of the Commonwealth or of the State;
 - (ii) employees of Brisbane City Council;
 - (iii) employees of the same local authority within the meaning of the *Local Government Act 1936*; or
- (b) the justice who issued the summons was at the date of its issue, the complainant's solicitor, or that solicitor's partner or an employee of either of them.

(3) Where the justice before whom a complaint is made considers that the matter of the complaint would be better resolved by mediation than by proceedings under this Act, the justice may, with the consent of the complainant, instead of issuing a summons under subsection (1), order the complainant to submit the matter of the complaint to mediation under the *Dispute Resolution Centres Act 1990*.

(4) Where an order is made under subsection (3) in relation to the matter of a complaint but—

- (a) the complainant withdraws the complainant's consent to the order; or
- (b) the matter of the complaint may not, by the operation of section 4.3(1) of the *Dispute Resolution Centres Act 1990*, be the subject of a mediation session under that Act; or
- (c) the defendant refuses to attend at, or participate in, a mediation session under that Act or either party withdraws from such a session; or
- (d) the Director of a Dispute Resolution Centre declines under section 4.5(1) of that Act to consent to the acceptance of the

matter of the complaint for mediation; or

- (e) a mediation session attended by the complainant and the defendant is terminated under section 4.5(2) of that Act;

a justice may issue a summons under subsection (1).

(5) It is sufficient compliance with subsection (4) if a justice who issues a summons pursuant to that subsection is informed by the complainant of a matter referred to in subsection (4)(a) to (e) (both inclusive).

Form of summons and filing of complaint and summons

54.(1) Every summons shall be directed to the defendant and shall require the defendant to appear at a certain time and place before the Magistrates Court, or, as the case may require, before justices taking an examination of witnesses in relation to an indictable offence, to answer the complaint and to be further dealt with according to law.

(1A) Every summons shall be served in accordance with this Act, and, where the summons has been issued on a complaint in writing, other than an entry of a charge on a bench charge sheet, a copy of such complaint shall be served with and in the same manner as the summons.

(2) Every summons and, where the summons has been issued on a complaint in writing, other than an entry of a charge on a bench charge sheet, such complaint, shall, before the hearing is proceeded with, be lodged with the clerk of the court at the place at which the defendant is required by the summons to appear, to be by such clerk kept and preserved.

(3) Where a summons has not been served upon a defendant prior to the time at which the defendant is thereunder required to appear before a Magistrates Court, or, as the case may be, before justices taking an examination of witnesses in relation to an indictable offence, the clerk of the court at the place where the defendant is required by the summons to appear, being a justice, or other justice at such place authorised by such clerk, whether or not such clerk is a justice, may, from time to time and before, at or after the time appointed by the summons for the appearance of the defendant in accordance with the summons, extend the time so appointed.

(4) Every such extension shall be made under the hand of the justice making the same, who shall alter the time appointed in the summons and

shall endorse and sign a memorandum in the margin of the summons, as nearly opposite such alteration as is practicable, stating that the time appointed has been extended and the date to which such time has been extended.

Ex parte proceedings

55. Nothing herein contained shall oblige any justice to issue a summons in any case where the application for an order of justices is by law to be made ex parte.

Service of summonses

56.(1) A summons shall be properly served upon the person to whom it is directed if it is served in accordance with this subsection, that is to say—

- (a) in the case of a summons directed to a person to appear to answer a complaint of a simple offence or breach of duty—by posting (by means of registered post) a copy thereof addressed to the person at the person's place of business or residence last known to the complainant at least 21 days before the date on which the defendant is, by the summons, required to appear; or
- (b) in all cases (including the case referred to in paragraph (a))—by delivering a copy thereof to the person personally or, if the person cannot reasonably be found, by leaving a copy thereof with some person for the person at the person's usual place of business or residence or place of business or residence last known to the person who serves the summons.

(2) Save where it appears that the person to whom a copy of a summons was posted addressed to the person at an address in this subsection specified was not, to the knowledge of the complainant, at the time of posting, residing or carrying on business at such address, it shall be sufficient compliance with subsection (1)(a) if the copy summons is addressed to an address as follows—

- (a) in the case of an offence arising out of the driving or use of a motor vehicle or an attempt so to do—the address appearing as the address of the person on a driver's licence produced by the person at or about the time of the alleged offence or upon the

investigation thereof;

- (b) in the case of an offence alleged against a person as owner of a motor vehicle—the address appearing in the current certificate of registration of the motor vehicle under the *Transport Infrastructure (Roads) Act 1991*, as the address of that person;
- (c) in the case of any other offence or breach of duty—the address appearing as the address of the person in any licence or registration for the time being in force pertaining to such person or to any property of which the person appears to be the owner or occupier and which licence or registration such person holds or has effected under the Act against or under a provision of which the offence or breach is alleged to have been committed.

(3) The person who serves a summons shall either—

- (a) attend personally before the Magistrates Court, or, as the case may be, the justices taking the examination of witnesses in relation to an indictable offence, at the place and time for hearing mentioned in the summons and, if necessary, at any extended time therefore, to depose, if necessary, to the service thereof; or
- (b) attend before any justice of the peace having jurisdiction in the State or part of the State or part of the Commonwealth in which such summons was served and depose, on oath and in writing endorsed on a copy of the summons, to the service thereof.

(4) Where a summons is served as prescribed by subsection (1)(a)—

- (a) the person who serves the summons shall, in the person's deposition as to service endorsed on a copy of the summons under subsection (3), state the time and place at which the person posted the copy of the summons;
- (b) the complainant shall depose, on oath and in writing endorsed on the copy of the summons endorsed under subsection (3), that the address to which a copy of the summons was posted is (if such be the case) the defendant's address last known to the person and as to the person's means of knowledge.

(5) Every such deposition shall, upon production to the Magistrates Court by which or to the Stipendiary Magistrate by whom the complaint upon which the summons issued, is heard, or, as the case may be, to the

justices who take the examination of witnesses in relation to an indictable offence in respect of that complaint, be evidence of the matters contained therein and be sufficient proof of the service of the summons on the defendant.

(6) Where proof is required in any proceeding of the service of a document which—

- (a) pursuant to any enactment or rule of law may be served in the same manner as a summons may be served under this Act; or
- (b) is served at the same time as, and in connection with a summons served under this Act;

the provisions of subsection (1) shall apply and be construed as if a reference in that subsection to a summons were a reference to such a document.

(7) The person who serves the document may attend before any justice having jurisdiction in the State or part of the State or part of the Commonwealth in which such document was served and depose on oath and in writing endorsed on the document to the service thereof.

(8) The deposition made under subsection (7) is, on production to the Magistrates Court or justices—

- (a) evidence of the matters contained in the deposition; and
- (b) sufficient proof of the service of the document on the defendant.

Right of entry to serve summons

56A.(1) Subject to subsection (3), a police officer or public officer, and a person acting in aid of the police officer or public officer, may enter, and remain for a reasonable time in or on, a place for the purpose of serving a summons.

(2) If the officer seeking to serve the summons is not a uniformed police officer, the officer must produce the officer's identification to any person requesting proof of the officer's authority to be in or on the place.

(3) If the place is premises, or the part of premises, used exclusively for residential purposes, a police officer or public officer, and a person acting in aid of the police officer or public officer, may enter the place only with the consent of the occupier.

Division 6—Warrants and arrest without warrant

Cases in which warrants may be issued

57. If a complaint is made before a justice—

- (a) that a person is suspected of having committed an indictable offence within the justice's jurisdiction; or
- (b) that a person charged with committing an indictable offence elsewhere within the State is suspected of being within the justice's jurisdiction; or
- (c) that a person charged with committing an indictable offence on the high seas, or elsewhere outside the State, of which notice may be taken by the courts of the State, is suspected of being within the justice's jurisdiction;

the justice may issue a warrant—

- (d) to apprehend the person; and
- (e) have the person brought before justices to answer the complaint and to be further dealt with according to law.

Summons may be issued instead of warrant

58.(1) A justice may issue a summons against a person for an indictable offence instead of issuing a warrant to apprehend the person for the offence.

(2) Despite the issue of the summons, a justice may issue a warrant for the apprehension of the person at any time before or after the time mentioned in the summons for the person's appearance.

Warrant in the first instance

59.(1) When complaint is made before a justice of a simple offence, the justice may, upon oath being made before the justice substantiating the matter of the complaint to the justice's satisfaction, instead of issuing a summons, issue in the first instance the justice's warrant to apprehend the defendant, and to cause the defendant to be brought before justices to answer the complaint and to be further dealt with according to law.

(2) A warrant in the first instance shall not be issued on a complaint of a simple offence (not being an indictable offence) pursuant to subsection (1) unless the Act or law creating the offence authorises—

- (a) the arrest of an offender without warrant; or
- (b) the issue of a warrant in the first instance.

Direction of warrant

60. A warrant to apprehend a defendant that the defendant may answer a complaint may be directed either to any police officer or officers by name, or generally to all police officers within the jurisdiction within which the warrant is to be executed, without naming them, or to both.

Any police officer may execute warrant

61. When a warrant is directed to all police officers any police officer may execute the warrant as if it was directed specially to the police officer by name.

What warrants shall order

62. A warrant shall state shortly the offence or matter of the complaint on which it is founded, and shall name or otherwise describe the person against whom it is issued, and it shall order the police officers to whom it is directed to apprehend the defendant, and to bring the defendant before justices to answer the complaint and to be further dealt with according to law.

Warrant to be in force till executed

63. A warrant need not be returnable at any particular time, but may remain in force until executed, and may be executed by apprehending the defendant at any place within the jurisdiction of the justice who issued it.

Sunday warrants

65. A justice may grant or issue a warrant upon a complaint of an

indictable offence, or a search warrant, on a Sunday as on any other day.

How person arrested without warrant to be dealt with

69. A person taken into custody for an offence without a warrant shall be brought before a justice to be dealt with according to law as soon as practicable after the person is taken into custody.

Division 7—When courts open

Open Court

70.(1) The room or place in which justices sit to hear and determine any complaint upon which a conviction or order may be made, shall be deemed an open and public court, to which all persons may have access so far as the same can conveniently contain them.

(2) However, in any case in which, in the opinion of the justices, the interests of public morality require that all or any persons should be excluded from the court, the justices may exclude such persons therefrom accordingly.

(3) But such power shall not be exercised for the purpose of excluding the counsel or solicitor for the defendant.

Exclusion of strangers

71. The room or place in which justices take the examinations and statements of persons charged with indictable offences for the purpose of committal for trial and the depositions of the witnesses in that behalf shall not be deemed an open court, and the justices may order that no person shall be in such room or place without their permission, but they shall not make such order unless it appears to them that the ends of justice require them so to do.

Prohibition on taking photographs, producing pictures or other optical effects

71B.(1) A person who, during the conduct of a proceeding involving the

exercise of any jurisdiction of justices or immediately before the commencement of that proceeding or immediately after the conclusion thereof or during an adjournment thereof, by means of a camera or similar apparatus or reproducing equipment, takes a photograph or produces a picture or other optical effect (in any case whether a movie or a still)—

- (a) in or of the room or place in which the proceeding is being, is about to be or has been conducted or of a person therein;
- (b) in or of the room or place for the time being set apart for a purpose connected with that proceeding or of a person therein;
- (c) in or of an entrance or passageway leading to or from any room or place referred to in paragraph (a) or (b) or of a person therein;

commits an offence against this Act unless the person takes the photograph or produces the picture or other optical effect with and in accordance with the consent first had and obtained of the justices who are to conduct, have conducted or, as the case may be, are conducting that proceeding.

Maximum penalty—7 penalty units or imprisonment for 1 month.

(2) A person who publishes a photograph taken or picture or other optical effect produced in such circumstances as to constitute an offence defined in subsection (1) commits an offence against this Act.

Maximum penalty—7 penalty units or imprisonment for 1 month.

Division 8—Right to conduct own case or have counsel or solicitor

Counsel or solicitor

72. Every complainant shall be at liberty to conduct the complainant's case and to have the witnesses examined and cross-examined by the complainant's counsel or solicitor, and every defendant shall be admitted to make the defendant's full answer and defence to the charge, and to have the witnesses examined and cross-examined by the defendant's counsel or solicitor.

Division 9—Evidence

Evidence how taken

73. Every witness shall be examined upon oath, or in such other manner as is prescribed or allowed by the Acts in force for the time being relating to giving evidence in courts of justice.

Prosecutor's and complainant's witnesses

74. Upon any complaint of an indictable offence or simple offence or breach of duty, the prosecutor or complainant shall be a competent witness to support such complaint.

Proof of negative, etc.

76. If the complaint in any case of a simple offence or breach of duty negatives any exemption, exception, proviso, or condition, contained in the Act on which the same is framed, it shall not be necessary for the complainant to prove such negative, but the defendant shall be called upon to prove the affirmative thereof in the defendant's defence.

Mode of taking evidence

77. Subject to the provisions of any other Act, the deposition of every witness shall be reduced to writing and shall—

- (a) in the case of an examination of witnesses in relation to an indictable offence—be read to the witness or, with the consent of the person charged with that offence, be read by the witness; or
- (b) in any other case—be read to or by the witness; and
- (c) in every case—be thereupon signed by the witness and by the justices constituting the Magistrates Court or, as the case may be, taking that examination.

Division 10—Witnesses in general

Power to issue summons to witness

78.(1) If a justice is satisfied that a person within the justice's jurisdiction

is likely to be able to give material evidence as a witness at the hearing of a complaint, the justice may issue a summons to the person.

(2) The summons must require the person—

- (a) to appear at a time and place specified in the summons; and
- (b) to testify before the justices present about what the person knows concerning the complaint.

(3) The summons must be served, and a memorandum of service endorsed on the summons, in the same way, and within the same time, as a summons to a defendant.

(4) Proof of service of the summons may be given in the same way as a summons to a defendant.

After summons warrant

79.(1) If a person summoned as a witness neglects or refuses to appear at the time and place appointed by the summons, and no just excuse is offered for such neglect or refusal, then (after proof upon oath that the summons was duly served upon such person, and, except in the case of indictable offences, that a reasonable sum was paid or tendered to the person for the person's costs and expenses of attendance) the justices before whom such person should have appeared may then and there impose upon the person in the person's absence a penalty not exceeding 2 penalty units, which may be recovered in the same manner as penalties imposed upon a summary conviction as hereinafter provided.

(2) The justices may also issue their warrant to bring and have such person at a time and place to be therein mentioned before such justices as shall then be there to testify as aforesaid.

(3) No payment or tender of expenses shall be necessary in the case of indictable offences.

Warrant in the first instance

81. If the justice is satisfied by evidence upon oath that it is probable that a person whose evidence is desired will not attend to give evidence without being compelled so to do, then instead of issuing a summons the justice may issue the justice's warrant in the first instance.

Witness not answering

82. If on the appearance of a person before a court or justices taking an examination of witnesses in relation to an indictable offence, either voluntarily or in obedience to a summons or upon being brought before them by virtue of a warrant, such person refuses to be examined upon oath concerning the matter, or refuses to take an oath, or having taken an oath refuses to answer such questions concerning the matter as are then put to the person, without offering any just excuse for such refusal, the court or justices may by warrant commit the person so refusing to gaol, there to remain and be imprisoned for any time not exceeding 7 days unless in the meantime the person consents to be examined and to answer concerning the matter.

Production of documents before justices

83.(1) When justices have authority to summon any person as a witness they shall have the like authority to require and compel the person to bring and produce for the purposes of evidence all documents and writings in the person's possession or power, and to proceed against the person in case of neglect or refusal so to do in the same manner as in case of neglect or refusal to attend or refusal to be examined.

(2) However, no person shall be bound to produce any document or writing not specified or otherwise sufficiently described in the summons, or which the person would not be bound to produce upon a subpoena duces tecum in the Supreme Court.

Division 11—Remand and adjournment**Remand of defendant**

84. In any case of a charge of an indictable offence, if from the absence of witnesses or from any other reasonable cause it becomes necessary or advisable to defer the hearing of the case, the justices before whom the defendant appears or is brought may adjourn such hearing to the same or some other place, and may by their warrant from time to time remand the defendant to some gaol, lockup, or other place of security, for such period as they may in their discretion deem reasonable, but not exceeding 8 clear

days (or such longer period as may be consented to by the defendant) at any one time, to be there kept, and to be brought before the same or such other justices as shall be acting at the time or place appointed for continuing the hearing.

Verbal remand

85. If the remand is for a time not exceeding 3 clear days the justices may verbally order the person in whose custody the defendant then is, or any other person named by the justices in that behalf, to keep the defendant in the person's custody, and to bring the defendant before the same or such other justices as shall be acting at the time and place appointed for continuing the hearing.

Bringing up during remand

86. Any justices may order the defendant to be brought before them at any time before the expiration of the time for which the defendant was so remanded, and the officer in whose custody the defendant then is shall duly obey such order.

Adjournment of the hearing

88.(1) In any case of a charge of a simple offence or breach of duty the justices present, or, if only 1 justice is present, that justice may—

- (a) adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties then present, or of his, her or their counsel, solicitors or agents then present;
- (b) adjourn the hearing and leave the time and place at which the hearing is to be continued to be later determined by such justices, or, as the case may be, justice.

(1A) However, a hearing so adjourned shall not be continued at a time and place so determined unless the justices then present are satisfied that the parties thereto have been given reasonable notice of such determination.

(1B) The power to adjourn a hearing conferred upon justices or a justice by this subsection includes power to adjourn a hearing to enable the matter

of a charge of a simple offence or breach of duty to be the subject of a mediation session under the *Dispute Resolution Centres Act 1990*.

(2) Upon adjourning a hearing the justices or, if only 1 justice is present, that justice—

- (a) may commit the defendant; or
- (b) whether or not the defendant is in custody, may admit the defendant to bail or suffer the defendant to go at large without bail.

(3) Upon an adjournment the justices or, as the case may be, the justice may order that costs of and occasioned by the adjournment be paid by any party to any other party as to the justices or justice may appear just.

Division 12—Committal and recognisance

Place of committal or detention

89. When justices commit a defendant by way of remand or upon an adjournment, or at any time before the decision, they may commit to the gaol or lockup, or any other place of security in the place for which they are then acting, or to such other safe custody as they think fit.

Place to which committal to be made

90. When justices commit a witness or person sought to be made a witness, and when they commit a defendant after the decision, they must commit to a gaol or lockup.

Notice to witness

91.(1) A clerk of the court may give to any witness or person sought to be made a witness a notice in the prescribed form requiring the person to attend the court at the time and place to which the hearing is adjourned or specified in the notice or that is to be determined or at all times and places to which the hearing is adjourned from time to time or specified in the notice.

(2) A notice pursuant to subsection (1)—

- (a) may be served personally or sent by post to the person to whom it is addressed at the person's address last known to the clerk of the court concerned;
- (b) shall have effect as if it were a summons to the witness or person sought to be made a witness issued out of the court that the witness or person is by the notice required to attend.

Adjournment on non-appearance

93. Where any witness, defendant or other person does not appear at any time and place to which the hearing is adjourned or that has been specified in the notice referred to in section 91 or that has been determined, the justices who are then present may adjourn the hearing.

Recognisances taken out of court

94.(1) If justices have fixed the amount in which the principal and any sureties are to be bound by a recognisance, the recognisance need not be entered into before the same justices, but may be entered into before—

- (a) another justice; or
- (b) a clerk of the court; or
- (c) an inspector of police or another police officer who is of a higher rank; or
- (d) another police officer who is in charge of a police station; or
- (e) if a party is in gaol—the keeper of the gaol.

(2) The recognisance has effect as if it had been entered into before the justices.

(3) If it is inconvenient for a surety to enter into the recognisance at the same time as the principal, the recognisance of the surety may be taken by any person authorised to take the recognisance of the principal and any other sureties, even though the person does not take the recognisance of the principal or other sureties.

Non-acceptance of sureties

94A. No person shall be accepted as a surety if it appears on the administering of an oath to such person that it would be ruinous or injurious to such person or the person's family should the recognisance be forfeited for any noncompliance with any of the conditions therein.

Forfeited recognisances how to be enforced

95. When the conditions, or any of them, in any recognisance taken before justices exercising a summary jurisdiction are not complied with, any justice may certify upon the back of the recognisance in what respect the conditions have not been observed, and transmit the same to the proper officer, to be proceeded upon in like manner as other recognisances, and such certificate shall be deemed sufficient prima facie evidence of the recognisance having been forfeited.

Conveying prisoners to gaol

97. The person to whom a warrant of commitment is directed shall convey the person therein named or described to the gaol or other place mentioned in the warrant, or to some other gaol or place of legal detention which is more accessible or convenient, and there deliver the person together with the warrant to the keeper of such gaol or place, who shall thereupon give the person delivering the prisoner into the person's custody a receipt for such prisoner, setting forth the state and condition in which such prisoner was when the prisoner was delivered into the custody of such keeper.

*Division 13—Records of court***Records of court**

98A.(1) The clerk of the court shall have the custody of all records and proceedings of every court of which he or she is clerk.

(2) Rules made pursuant to this Act may make provision with respect to the records to be made for the purposes of a court, the particulars to be inserted therein, the form and manner of keeping thereof and the receipt

thereof into evidence in any proceeding and such provision may vary in respect of different places for holding courts.

PART 4A—ENFORCEMENT OF INFRINGEMENT NOTICES BY REGISTRATION

Application of Part

98B. Sections 98C to 98M apply to an infringement notice under an Act or statutory rule if the provision providing for the infringement notice is prescribed for the purposes of this Part.

Interpretation

98C.(1) In this Part—

“**alleged offence**”, in relation to an infringement notice, means the offence for which the infringement notice was issued;

“**alleged offender**”, in relation to an infringement notice, means the person to whom the infringement notice was issued;

“**enforcement order**” means an order under section 98F;

“**infringement notice**” means a notice under an Act or statutory rule offering the person to whom it is issued an opportunity, by paying an amount specified in the notice, to have an offence alleged in the notice dealt with out of court;

“**infringement penalty**”, in relation to an infringement notice, means the amount specified in the infringement notice as payable in relation to the offence for which the infringement notice was issued;

“**principal enactment**”, in relation to an infringement notice, means the Act or statutory rule under which the infringement notice was issued;

“**reminder notice**” means a notice served under section 98D;

“**SETONS**” is an acronym for the ‘self-enforcing ticketable offence notice system’;

“**SETONS clerk**” means the person appointed to the office of that name under the *Public Service Management and Employment Act 1988*.

(2) For the purposes of this Part, an infringement notice that under an Act or statutory rule is to be given or served is taken to be an infringement notice that is to be issued.

Reminder notices

98D.(1) If—

- (a) an infringement notice has been issued; and
- (b) the infringement notice has not been withdrawn under the principal enactment; and
- (c) the time specified in the infringement notice for payment of the infringement penalty has expired; and
- (d) the infringement penalty has not been paid;

a person prescribed for the purposes of this subsection in relation to the principal enactment may serve a reminder notice on the alleged offender.

(2) The reminder notice must—

- (a) identify—
 - (i) the infringement notice; and
 - (ii) the alleged offence;
to which it relates; and
- (b) state that—
 - (i) if the alleged offender wishes to have a complaint of the alleged offence heard and determined by a court, written notice requiring the complaint to be heard and determined by a court must, within the specified time, be given as specified in the reminder notice; and
 - (ii) if the alleged offender wishes to not have a complaint of the alleged offence heard and determined by a court, the amount specified in the reminder notice to be the amount owing in relation to the alleged offence should be paid within the specified time to a specified person; and

- (iii) if action is not taken under subparagraph (i) or (ii), payment of the amount specified in the reminder notice and further costs will be enforceable under this Part; and
 - (c) include any other prescribed information.
- (3)** In a reminder notice—
- (a) the amount specified to be the amount owing in relation to the alleged offence must be the total of the infringement penalty that is unpaid and the prescribed amount by way of costs connected with serving the notice; and
 - (b) the time specified in the notice as the time within which the amount should be paid must be not less than 28 days after the day on which the notice is served on the alleged offender.

Enforcement procedure

98E.(1) If—

- (a) a reminder notice has been served on an alleged offender; and
- (b) the amount specified in the notice to be the amount owing in relation to the alleged offence has not been paid within the time specified in the notice; and
- (c) written notice requiring a complaint of the alleged offence to be heard and determined by a court has not been given;

a person prescribed for the purposes of this section in relation to the principal enactment may, on payment of the prescribed lodging fee, notify the SETONS clerk.

(2) The notification must—

- (a) identify—
 - (i) the alleged offender; and
 - (ii) the alleged offence; and
- (b) state that—
 - (i) an infringement notice was, on a specified day, issued to the alleged offender under the principal enactment in relation to the alleged offence; and

- (ii) a reminder notice was, on a specified day, served on the alleged offender under this Part in relation to the alleged offence; and
- (iii) the day on which the reminder notice was served on the alleged offender under this Part was after the time for payment of the penalty specified in the infringement notice had expired; and
- (iv) at the time of the notification—
 - (A) the time specified in the reminder notice as the time within which the amount owing in relation to the alleged offence should be paid had expired; and
 - (B) the amount specified in the reminder notice to be the amount owing in relation to the alleged offence has not been paid; and
 - (C) written notice that the alleged offender required a complaint of the alleged offence to be heard and determined by a court has not been given to a person specified for that purpose in the reminder notice; and
 - (D) a proceeding has not been started (other than under this Part) against the alleged offender in relation to the alleged offence; and
 - (E) a proceeding under this Part against the alleged offender in relation to the alleged offence has not been withdrawn under section 98M.

(3) If a limit is imposed by law on the time within which a court proceeding for an alleged offence may be started, a notification must not be given under subsection (1) in relation to the alleged offence after the time.

(4) On the giving of the notification—

- (a) the amount owing in relation to the alleged offence is the total of—
 - (i) the amount specified in the reminder notice that is unpaid; and
 - (ii) the amount of the lodging fee; and

(iii) the prescribed amount by way of costs, other than the lodging fee, that are connected with preparation and giving of the notification; and

(b) the amount mentioned in paragraph (a) may only be paid to the SETONS clerk or the clerk's agent.

(5) The SETONS clerk must cause the notification to be registered in a register kept by the SETONS clerk for the purposes of this Part.

(6) After the giving of the notification, a proceeding may not be started in a court otherwise than under this Part against the alleged offender in relation to the alleged offence.

(7) A person can only be prescribed for the purposes of this section in relation to a principal enactment if the person is authorised to make complaints of offences under the principal enactment.

Enforcement orders

98F.(1) On registering a notification given under section 98E, the SETONS clerk must make an order that—

(a) the alleged offender pay to the SETONS clerk the amount owing in relation to the alleged offence within a time specified in the order; and

(b) in default of payment—

(i) if the alleged offender is an individual—the alleged offender be imprisoned for—

(A) the prescribed period; or

(B) if there is not a prescribed period—the number of days determined in accordance with the following formula (rounded upwards to the nearest number)—

$$\text{number of days} = \frac{\text{amount then remaining unpaid}}{\text{amount of 1 penalty unit}} \quad ; \text{ or}$$

(ii) if the alleged offender is not an individual—the amount is to be levied under a warrant to seize property of the alleged offender.

(2) On the making of the order—

- (a) the order is taken to be an order of the prescribed court; and
- (b) the prescribed court is taken to have jurisdiction to make the order.

(3) For the purposes of subsection (1)(a), the time specified in the order must be not less than 7 days after the alleged offender is served with notice of the order.

(4) For the purposes of subsection (1)(b)(i)(A), the prescribed period must not exceed the maximum period of imprisonment a court could impose on a person on conviction for the alleged offence in default of payment of a penalty equal to the amount owing in relation to the alleged offence.

Notice of enforcement order

98G.(1) On the making of an enforcement order, the SETONS clerk must, by certified mail, notify the alleged offender.

(2) The notice must—

- (a) identify—
 - (i) the infringement notice to which the order relates; and
 - (ii) the alleged offence in relation to which the infringement notice was issued; and
- (b) inform the alleged offender that—
 - (i) an order has been made under section 98F for the payment by the alleged offender of an amount in relation to the infringement notice; and
 - (ii) within the time specified in the notice—
 - (A) the amount must be paid as specified in the notice; or
 - (B) if the alleged offender wishes to have a complaint of the alleged offence heard and determined by a court, an election to have the alleged offence heard and determined by a court must be made under section 98L; and
 - (iii) if payment is not made and an election is not made, a

warrant will be issued under this Part in relation to the infringement notice.

Applications for time to pay

98H.(1) A person against whom an enforcement order is made may apply to the SETONS clerk for—

- (a) an extension of the time within which payment under the enforcement order may be made; or
- (b) permission for payment to be made by instalments.

(2) An application may not be made after the issue of a warrant under section 98I in relation to the enforcement order.

(3) The SETONS clerk may order that the enforcement order be varied by—

- (a) extending the time within which payment is required by the enforcement order; or
- (b) permitting payment to be made by specified instalments.

(4) The SETONS clerk must notify the alleged offender of the variation.

Issue of warrants

98I.(1) If—

- (a) the amount specified in an enforcement order has not been paid as required by the order; and
- (b) an election has not been made under section 98L;

the SETONS clerk may—

- (c) if the alleged offender is an individual—issue a warrant of commitment against the alleged offender; or
- (d) if the alleged offender is not an individual—issue a warrant of execution against the property of the alleged offender.

(2) The warrant—

- (a) is to be directed to all police officers; and

(b) takes effect as a warrant issued by a justice.

(3) On the issue of the warrant, the amount owing in relation to the alleged offence is—

(a) the amount that was outstanding before the warrant was issued;
and

(b) the amount of the execution fee prescribed.

Effect of proceedings under this Part

98J.(1) If, in relation to an infringement notice—

(a) the amount owing in relation to the alleged offence is paid in full under this Part; or

(b) a warrant is executed under this Part in relation to the alleged offence;

the proceedings that may be brought against, and the penalties that may be imposed on, the alleged offender in relation to the alleged offence are limited to proceedings and penalties that could be brought or imposed if the alleged offender had already been convicted of, and punished for, the alleged offence.

(2) The making of an enforcement order does not constitute a conviction in relation to an alleged offence.

(3) Payment of an amount under this Part in relation to an alleged offence is not an admission for the purposes of any proceeding, whether civil or criminal, arising out of the event for which the infringement notice was issued.

(4) Subsection (3) does not apply so far as the principal enactment provides that payment of the infringement penalty under the principal enactment is to be regarded as an admission.

(5) Section 177 applies to an enforcement order in the same way as it applies to a conviction.

Fine option orders

98K. Division 3 of Part 5 of the *Corrective Services Act 1988* applies to

an enforcement order made under this Part as if—

- (a) the amount specified in the infringement notice were a fine; and
- (b) the enforcement order were an original order made by the court prescribed for the purpose of section 98F(2) directing that the alleged offender be imprisoned for a period in default of payment of the amount required to be paid by the order within the time fixed by the order; and
- (c) the SETONS clerk were the clerk of the court prescribed for the purposes of section 98F(2).

Election for court hearing

98L.(1) Despite any other provision of this Part, after an enforcement order is made in relation to an alleged offence, but before—

- (a) the amount outstanding under this Part is paid; or
- (b) a warrant under this Part is issued;

the alleged offender may elect, by writing given to the SETONS clerk, to have a complaint of the alleged offence heard and determined by a court.

(2) On the making of an election—

- (a) any order issued under this Part in relation to the alleged offence ceases to have effect; and
- (b) the SETONS clerk must notify—
 - (i) the alleged offender; and
 - (ii) the person who gave the relevant notice under section 98E(1);

that this Part no longer applies to the alleged offence.

(3) On the giving of the notices under subsection (2)(b), the provisions of this Act (other than this Part) apply in relation to the alleged offence.

Withdrawal from acting under this Part

98M.(1) If—

- (a) a reminder notice has been served in relation to an infringement

notice; and

- (b) a warrant under this Part has not been issued in relation to the alleged offence; and
- (c) the matter has not been dealt with by a court;

a person, prescribed for the purposes of this subsection in relation to the principal enactment, may (whether or not payment has been made of the amount owing in relation to the alleged offence) withdraw from acting under this Part in relation to the alleged offence.

(2) The withdrawal must be effected by—

- (a) serving on the alleged offender a notice in a form approved by the chief executive of the department; and
- (b) refunding any amount paid under this Part by the alleged offender in relation to the alleged offence; and
- (c) if a notice has been given under section 98E in relation to the alleged offence—giving to the SETONS clerk a copy of the notice.

(3) After the action required by subsection (2) has been taken—

- (a) any notification or enforcement order under this Part in relation to the alleged offence ceases to have effect; and
- (b) if a court proceeding has started under section 98L(3)—the proceeding is, by the operation of this section, discontinued.

PART 5—PROCEEDINGS IN CASE OF INDICTABLE OFFENCES

Division 1—Procedure on presentation of information

Certificate where information is presented

99. Where an information is presented in the Supreme Court or a District Court against any person then at large, whether the person is bound by any

undertaking as to bail to appear to answer to the same, or is not so bound, the person acting as clerk of arraigns at such court shall at any time after the end of the sessions at which the information was presented, if such person has not already appeared and pleaded to the information, grant to the prosecutor upon the prosecutor's application a certificate of the information having been presented.

Warrant thereon

100. Upon production of such certificate to any justice for any jurisdiction or place in which the offence is in the information alleged to have been committed, or in which the person informed against is supposed or suspected to be, such justice shall issue the justice's warrant to apprehend such person, and to cause the person to be brought before justices, to be dealt with according to law.

Committal of person who has been apprehended

101. Upon its being proved on oath before justices that a person apprehended under a warrant issued under section 100 or issued by order of a Judge of the Supreme Court, or of a District Court, is identical with the person who has been informed against, the justices shall, without further inquiry or examination commit the person to be dealt with according to law by the court in which the information concerned has been presented and, in the meantime, may commit that person to gaol or admit the person to bail and the provisions of this Part relating to the committal to gaol of a defendant committed by justices to be tried for an indictable offence shall apply with respect to a person committed to a court under this section who, for this purpose, shall be deemed to be a person charged before the justices with the offence with which the person has been charged in the information presented against the person.

Detainer of prisoner in gaol

102. If the person so informed against is at the time of such application and production of the certificate to the justice confined in any gaol for any other offence than that charged in the information, the justice, upon proof upon oath that the person so informed against and the person so confined are one and the same, shall issue the justice's warrant directed to the keeper

of the gaol in which the person so informed against is then confined, commanding the keeper of the gaol to detain such person in the keeper's custody until the person is lawfully removed therefrom for the purpose of being tried upon the information, or until the person is otherwise removed or discharged out of the keeper's custody by due course of law.

Division 2—Procedure for private complaint

Application of provisions

102A. Sections 102A to 102G apply to and in relation to a private complaint charging a person with an indictable offence, including an indictable offence a charge of which may be dealt with summarily, other than a private complaint charging a person with an offence of which injury to the person or property of the complainant is an element, and do not apply to or in relation to any other private complaint.

Service of summons and particulars on private complaint

102B.(1) Proceedings shall not be had upon a private complaint unless the summons issued thereon has been served on the defendant at least 14 days before the date on which it is sought to have the proceedings.

(2) When the matter of a private complaint is first before justices on a date when proceedings thereon may be had in accordance with law, the defendant may apply to the justices for an order that the complainant shall furnish to the defendant in writing particulars of the charge in the complaint whereupon, without prejudice to their exercising the power conferred by section 102G, the justices may make such an order and, if the case require it, shall adjourn the matter of the complaint for a period of 14 days at the least.

(2A) If the complainant or the complainant's representative is not present when such order is made, an advice thereof signed by the clerk of the court at the place where the order is made shall be sent by post to the complainant at the complainant's address last known to the clerk.

(3) If, forthwith upon the making of an order under subsection (2) or within 14 days of the day on which the order is made or within such further time as may be allowed by justices in a particular case, the complainant does

not furnish in writing to the defendant particulars that in the justices' opinion are sufficient, the justices shall order that the private complaint be struck out and may award to the defendant such costs as to them seem just.

(3A) Such costs awarded shall constitute a debt due and owing by the complainant to the defendant and may be recovered by the defendant by action in a court of competent jurisdiction.

(4) Where a private complaint has been struck out pursuant to subsection (3), no further proceedings shall be had upon a private complaint charging the same offence.

Application for dismissal of frivolous or vexatious complaints

102C.(1) At any time before evidence is led as to the facts of a charge contained in a private complaint the defendant may make application for an order of a Stipendiary Magistrate that the complaint be dismissed on the ground that it is—

- (a) an abuse of process; or
- (b) frivolous; or
- (c) vexatious.

(1A) Such application may be made orally to the Stipendiary Magistrate before whom is the matter of the complaint, or in writing lodged with the clerk of the court at the place where the complaint is filed.

(1B) Upon receipt of such an application the clerk of the court shall refer the same to a Stipendiary Magistrate at the place where the application is lodged or at the nearest place at which a Stipendiary Magistrate attends and shall inform the complainant and the defendant of the place and time appointed for hearing the matter of the application, by advice signed by the clerk and given to each of them or sent by post to the address of each of them last known to the clerk.

(1C) Where an application is made orally under subsection (1A) in the absence of the complainant, the clerk of the court at the place where the application is made shall inform the complainant of the place and time appointed for hearing the matter of the application by advice signed by the clerk of the court and given to the complainant or sent by post to the complainant at the complainant's address last known to the clerk.

(2) Where an application under subsection (1) is made the complainant shall be required to give security, in such manner and in such amount as the Stipendiary Magistrate to whom the application is made or referred may order, that the complainant will pay to the defendant such costs incurred by the defendant on the application as the Stipendiary Magistrate who determines the matter of the application may order the complainant to pay.

(2A) If a complainant ordered to give security for costs does not comply with the order within the time specified therein or, if no time is specified, within a reasonable time the Stipendiary Magistrate before whom the matter of the application is brought shall order that the complaint to which the application relates be struck out.

(3) Upon the hearing of an application made under subsection (1)—

- (a) the matter shall be heard in camera;
- (b) the Stipendiary Magistrate shall consider all relevant evidence led before the Stipendiary Magistrate, and all relevant written material duly exhibited or otherwise produced before the Stipendiary Magistrate, and the submissions made before the Stipendiary Magistrate by the complainant and the defendant or either of them;
- (c) the onus shall be on the defendant to prove on the balance of probabilities the ground on which the application is made.

(4) An application made under subsection (1) may be heard and disposed of in the absence of the complainant or the defendant.

(5) If upon an application made under subsection (1) the Stipendiary Magistrate dismisses a private complaint or orders that a private complaint be struck out pursuant to subsection (2) the Stipendiary Magistrate may award to the defendant such costs as to the Stipendiary Magistrate seem just and reasonable but, if the Stipendiary Magistrate does not dismiss the complaint or order it to be struck out as aforesaid, the Stipendiary Magistrate may award to the complainant such costs as to the Stipendiary Magistrate seem just.

(6) Such costs awarded shall constitute a debt due and owing by the person against whom they are awarded to the person to whom they are awarded and may be recovered by action in a court of competent jurisdiction.

Appeal to Supreme Court from Magistrates decision

102D.(1) A person aggrieved by the decision of a Stipendiary Magistrate upon an application made under section 102C to dismiss a private complaint or to refuse the application may appeal from that decision to a Judge of the Supreme Court in chambers by way of application made by originating summons.

(2) An appeal under subsection (1)—

(a) shall be instituted within 28 days after the date when the Stipendiary Magistrate's decision is pronounced; and

(b) shall be by way of hearing de novo;

and the decision of the Judge in such an appeal shall be final.

(3) Where an appeal under subsection (1) is instituted the appellant shall be required to give security, in such manner and in such amount as a Judge of the Supreme Court may order, that the appellant will pay to the respondent such costs incurred by the respondent on the appeal as the Judge who determines the matter of the appeal may order the appellant to pay.

(3A) If an appellant ordered to give security for costs does not comply with the order within the time specified therein or, if no time is specified, within a reasonable time the Judge before whom the appeal is brought shall order that the appeal be struck out.

(4) Upon an appeal the Judge may order that the order in respect of which the appeal is made be affirmed or reversed and may make such order as to costs as to the Judge seems just.

(4A) Such costs awarded shall constitute a debt due and owing by the person against whom they are awarded to the person to whom they are awarded and may be recovered by action in a court of competent jurisdiction.

(5) Save as is prescribed by this section no appeal shall lie in respect of any order made in any proceeding relating to a private complaint pursuant to section 102B or 102C or this section.

Further proceedings on a dismissed or struck out complaint prohibited

102E.(1) If there is made, upon an application made under

section 102C(1) or upon an appeal from a decision therein duly instituted under section 102D, an order having the effect that a private complaint be dismissed or if a Stipendiary Magistrate orders that a private complaint be struck out pursuant to section 102C(2), the complaint shall be taken to be dismissed at the time when the order takes effect as prescribed by subsection (2) or, as the case may be, shall be taken to be struck out, and no further proceedings shall be had upon a private complaint charging the same offence by the same defendant.

(2) An order referred to in subsection (1) having the effect that a private complaint be dismissed—

- (a) if it be that of a Stipendiary Magistrate and no appeal is duly instituted under section 102D—shall take effect upon the expiration of the time limited by that section for instituting an appeal;
- (b) if it be that of a Stipendiary Magistrate and an appeal is duly instituted under section 102D—shall abide the determination of the appeal or, as the case may be, shall take effect upon the appeal being struck out, whichever event occurs;
- (c) if it be that of a Judge of the Supreme Court—shall take effect according to the Rules of the Supreme Court.

Publication prohibited

102F.(1) A person shall not allude to the making or existence of a private complaint against any person or to any proceeding taken or to be taken in relation to a private complaint against any person in—

- (a) any newspaper, magazine, book, pamphlet, or other paper intended for public distribution; or
- (b) any report, commentary or speech broadcast publicly by radio, television or other means; or
- (c) any speech delivered publicly;

until it is established that the complaint will not be dismissed on a ground referred to in section 102C(1).

Maximum penalty—

- (a) in the case of an individual—4 penalty units or imprisonment for

6 months; or

(b) in the case of a corporation—20 penalty units.

(2) Where a contravention against subsection (1) is committed by a corporation, a person who at the time of the contravention is a director or member of the governing body of the corporation or the manager or an officer concerned in the management of the business in Queensland of the corporation (including, where the publication in question is in a newspaper or magazine, the editor thereof) shall be deemed to have committed a like contravention and shall be liable therefor unless the person proves that the contravention occurred without the person's knowledge and that the person exercised all due diligence to prevent the contravention.

(3) Nothing in subsection (1) shall render any person liable to a penalty on account of the publication of matter referred to therein in a recognised series of law reports.

Dismissal for want of prosecution

102G.(1) If the complainant under a private complaint does not proceed with due diligence to prosecute the complaint, the justices may order that the complaint be struck out for want of prosecution and may award to the defendant such costs as to them seem just and reasonable.

(1A) Such costs awarded shall constitute a debt due and owing by the complainant to the defendant and may be recovered by the defendant by action in a court of competent jurisdiction.

(2) Where a private complaint has been struck out pursuant to subsection (1), no further proceedings shall be had upon a private complaint charging the same offence.

Division 3—Warrant of committal

Disobedience of summons

103.(1) When a person charged with an indictable offence, and against whom a summons has been issued, does not appear before the justices at the time and place mentioned in the summons, and it is made to appear to the justices by oath or by deposition as provided in section 56 with respect

to the service of a summons, that the summons was duly served upon the person a reasonable time before the time therein appointed for appearing to it, then such justices, upon oath being made before them substantiating the matter of the complaint to their satisfaction, may issue their warrant to apprehend the defendant and to bring the defendant before justices to answer the complaint and to be further dealt with according to law.

(2) This section does not apply where the person charged with an indictable offence is so charged upon a private complaint and the charge is one that cannot be dealt with summarily or that can be dealt with summarily without the defendant's consent.

Division 4—Defendant's appearance on private complaint

Defendant's appearance upon private complaint

103A.(1) Where a person is charged upon a private complaint with an indictable offence and the charge is one that cannot be dealt with summarily or that can be dealt with summarily without the defendant's consent, and a summons has been issued against the defendant—

- (a) the defendant is not required to appear in person in answer to the summons until the justices or any of them before whom the matter of the complaint is heard are or is satisfied that the evidence is sufficient to put the defendant upon trial for an indictable offence;
- (b) the defendant is entitled to appear at the hearing of the matter of complaint by the defendant's counsel or solicitor until the defendant is required pursuant to this section to appear in person.

(2) If the justices before whom a matter of complaint referred to in subsection (1) is heard or any of them are or is satisfied that the evidence is sufficient to put the defendant upon trial for an indictable offence such justices of justice may order that the defendant appear in person at the further hearing of the matter of complaint at a time and place specified in the order and may if necessary adjourn the hearing to such time and place.

(2A) Notice of the making of an order for the personal appearance of the defendant shall be sufficiently given to the defendant if—

- (a) the order is made in the presence of the defendant's counsel or

solicitor; or

- (b) a copy of the order is served on the defendant in the same manner as is provided for the service of a summons.

(2B) Any person who serves a copy of an order made under subsection (2) may attend before any justice having jurisdiction in the State or part of the Commonwealth in which such copy order is served and depose on oath and in writing endorsed on a copy of the order to the service thereof.

(2C) Such deposition shall upon production to a justice be sufficient proof of service of the copy of the order on the defendant.

(3) If at the time and place specified in an order made pursuant to subsection (2) the defendant so required to appear in person fails to so appear the justices then present, upon being satisfied that notice of the making of the order has been sufficiently given to the defendant, shall issue their warrant to apprehend the defendant and to cause the defendant to be brought before justices to be dealt with according to law.

Division 5—Examination of witnesses

Proceedings upon an examination of witnesses in relation to an indictable offence

104.(1) The examination of witnesses in relation to an indictable offence—

- (a) may be conducted by a single justice;
- (b) subject to the provisions of section 40, shall be conducted in the presence and hearing of the defendant, if the defendant is required to be present, and of the defendant's counsel and solicitor, if any.

(2) When, upon such an examination all the evidence to be offered on the part of the prosecution has been adduced and the evidence, in the opinion of the justices then present, is not sufficient to put the defendant upon trial for any indictable offence, the justices shall order the defendant, if the defendant is in custody, to be discharged as to the charge the subject of that examination, but if in the opinion of such justices (or if there be more justices than 1 then present, in the opinion of any 1 of such justices) the

evidence is sufficient to put the defendant upon trial for an indictable offence then the justices or 1 of them shall—

- (a) save, with respect to a particular defendant, in relation to evidence given during the absence of that defendant pursuant to the provisions of section 104A, cause to be read to the defendant the deposition of the witnesses who may have given evidence at the examination in the defendant's absence;
- (b) address to the defendant the following words or words to like effect—

‘You will have an opportunity to give evidence on oath before us and to call witnesses. But first I am going to ask you whether you wish to say anything in answer to the charge. You need not say anything unless you wish to do so and you are not obliged to enter any plea; and you have nothing to hope from any promise, and nothing to fear from any threat that may have been held out to induce you to make any admission or confession of guilt. Anything you say will be taken down and may be given in evidence at your trial. Do you wish to say anything in answer to the charge or enter any plea?’

(3) Whatever the defendant may say in answer to the words addressed to the defendant pursuant to subsection (2) shall be reduced to writing and read to the defendant and shall thereupon be signed by the justices and by the defendant, if the defendant so desires, and shall be kept with the depositions of the witnesses and shall, if the defendant is committed to be tried or for sentence, be transmitted with such depositions in accordance with the provisions of section 126.

(4) If the defendant desires to offer evidence with respect to the charge the subject of the examination the justices shall hear and receive all admissible evidence tendered on behalf of the defendant which tends to show whether or not the defendant is guilty of the offence with which the defendant is charged.

(5) Where upon the examination the defendant is committed for trial, the justices shall warn the defendant that the defendant may not be permitted at that trial to give evidence of an alibi or to call witnesses in support of an alibi unless the defendant gives to the Crown Solicitor written notice in the prescribed form of that alibi and of those witnesses within the time prescribed by section 590A of the Criminal Code.

Defendant may be excused from certain attendances

104A.(1) The justices or justice may, in connection with the examination of witnesses in relation to an indictable offence as referred to in section 104, upon application made by a defendant appearing before the justices or justice together with 1 or more other defendants, or made by the defendant's counsel or solicitor on the defendant's behalf, excuse the defendant from attendance during the taking of any evidence for the prosecution.

(2) In considering the application, the justices or justice shall have regard to—

- (a) the evidence being led;
- (b) the defendant or defendants against whom the evidence is admissible;
- (c) any other matter considered by the justices or justice to be relevant to the merits of the application.

(3) The justices or justice, in excusing the defendant from attendance during the taking of any evidence for the prosecution, may grant bail to the defendant or enlarge the undertaking of the defendant as to bail on such conditions as the justices or justice thinks fit under, subject to and in accordance with the provisions of the *Bail Act 1980*.

Statement may be put in evidence at trial

105. Afterwards upon the trial of the defendant any such statement made by the defendant may, if necessary, be given in evidence against the defendant without further proof thereof, if the same purports to be signed by the justice or justices by or before whom it purports to have been taken, unless it is proved that it was not in fact signed by the justice or justices by whom it purports to be signed.

Saving

106. Nothing herein contained shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the defendant made at any time, which by law would be admissible as evidence against such person.

Procedure upon a consideration of all the evidence

108.(1) If upon a consideration of all the evidence adduced upon an examination of witnesses in relation to an indictable offence (including any answer made by the defendant to the words addressed to the defendant pursuant to section 104(2)) the justices are of the opinion that the evidence is not sufficient to put the defendant upon the defendant's trial for any indictable offence, the justices shall order the defendant, if the defendant is in custody, to be discharged as to the charge the subject of the examination but if the justices are of the opinion that the evidence is sufficient to put the defendant upon trial for an indictable offence they shall, subject to section 113, order the defendant to be committed to be tried for the offence before a court of competent jurisdiction, and in the meantime shall by their warrant commit the defendant to gaol, to be there safely kept until the sittings of the court before which the defendant is to be tried, or until the defendant is delivered by due course of law or admitted to bail.

(2) If, having regard to the length of time which should elapse before a court of competent jurisdiction next sits at a place to which the defendant would in the absence of this subsection be committed to be tried, the justices are of the opinion—

- (a) that it would be just that the trial of the defendant should be held at some other place before a court of competent jurisdiction, the justices may, with the prior consent in writing of the defendant (which consent shall be kept with the depositions of the witnesses), order the defendant to be committed to be tried for the offence at such other place before such a court;
- (b) that, by reason of the expense likely to be incurred in the keeping or preservation of any exhibit tendered in evidence upon the examination of witnesses and to be, or proposed to be, tendered in evidence at the trial of the defendant, the trial of the defendant should be held at some other place before a court of competent jurisdiction, the justices may order the defendant to be committed to be tried for the offence at such other place before such a court.

One justice

109. But if there is only 1 justice present, and the evidence is such as neither to raise a strong or probable presumption of guilt nor to warrant the

dismissal of the charge, such justice shall order the defendant to be remanded from time to time until the defendant can be taken before 2 or more justices.

Justices need not be present during whole examination

110. A justice or justices may make or join in making an order of committal or dismissal although the justice or justices had not or have not been present during the whole time during which the examinations have been taken.

Use of tendered statements in lieu of oral testimony in committal proceedings

110A.(1) The provisions of this section are additional to and not in derogation of any other provisions of this Act in relation to proceedings in the case of indictable offences.

(2) Justices conducting proceedings with a view to determining whether a defendant should be committed for trial or sentence in relation to an indictable offence may, subject to the provisions of this section being satisfied, admit as evidence written statements of witnesses tendered to them by the prosecution or the defence without those witnesses appearing before them to give evidence or make statements.

(3) Written statements so admitted as evidence shall be deemed to be evidence given or statements made upon an examination of witnesses in relation to an indictable offence under section 104 and they shall be admissible as evidence to the like extent as oral evidence to the like effect by the persons making the written statements.

(4) Written statements shall not be admitted where the defendant or, where there is more than 1 defendant, 1 of the defendants is not represented by counsel or a solicitor.

(5) A written statement shall not be admitted unless—

- (a) the prosecution and the defence agree to its admission;
- (b) a copy of it is made available, by or on behalf of the party proposing to tender it, to the other party or parties;
- (c) it is signed by the person making it and it contains a declaration

by that person under the *Oaths Act 1867* to the effect that it is true to the best of the person's knowledge and belief and that the person made it knowing that, if it were admitted as evidence, the person would be liable to prosecution if the person stated in it anything that the person knew to be false;

- (d) the other party does not object or, as the case may be, none of the other parties objects, before the written statement is admitted in evidence, to the statement being so admitted pursuant to this section.

(6) Subject to this section, where—

- (a) all the evidence before justices (whether for the prosecution or the defence), without reference to other evidence by way of exhibits, consists of written statements admitted in accordance with this section; and
- (b) counsel or the solicitor for the defendant consents to the defendant being committed for trial or, as the case may be, for sentence without consideration of the contents of the written statements;

the justices, without determining whether the evidence is sufficient to put the defendant upon trial for an indictable offence, shall formally charge the defendant and, with necessary adaptations, the provisions of section 104 shall apply and, subject thereto, the justices shall order the defendant to be committed for trial or, as the case may be, for sentence.

(7) Where some of the evidence before justices consists of written statements admitted in accordance with this section and some of the evidence is evidence given orally by witnesses upon their examination under this Part, the justices shall, when all the evidence to be offered on the part of the prosecution is before them, consider such evidence and determine whether it is sufficient to put the defendant upon trial for an indictable offence, whereupon the provisions of this Part shall apply as in the case of an examination of witnesses where there are no written statements admitted pursuant to this section.

(8) A written statement may be admitted as evidence by justices pursuant to this section subject to agreement between the prosecution and the defence that the person making the statement shall be present when the written statement is tendered to be cross-examined by the other party or parties, as the case requires, and in any such case the justices shall consider both the

written and the oral evidence in respect of that person.

(9) Notwithstanding that a written statement made by any witness is admissible by virtue of this section as part of the prosecution case or as part of the defence case, whether it has been admitted in the proceedings before justices or not, the justices may require that witness to attend before them and to give evidence, and in respect of those proceedings the justices shall consider all the evidence, oral and written (and exhibits if any), whether counsel or the solicitor for the defendant has consented to a committal for trial or sentence or not, and determine whether such evidence is sufficient to put the defendant upon trial for an indictable offence, whereupon the provisions of this Part shall apply as in the case of an examination of witnesses where there are no written statements admitted pursuant to this section.

(10) Where all the evidence before justices consists of written statements admitted in accordance with this section and counsel or the solicitor for the defendant does not consent to the defendant being committed for trial or for sentence, the justices, after hearing any submissions the prosecution and the defence desire to make, shall determine whether the evidence is sufficient to put the defendant upon trial for an indictable offence, whereupon the provisions of this Part shall apply as in the case of an examination of witnesses where there are no written statements admitted pursuant to this section.

(11) A written statement admitted in accordance with this section shall, on being so admitted by the justices, be signed by the justices.

(12) A written statement admitted in accordance with this section shall have effect as if it is the deposition of the witness whose statement it is, and it may be used at the trial of the defendant in the same manner, to the same extent and for the same purpose as a deposition may be used.

(13) A written statement admitted in accordance with this section may, when the defendant has been committed by justices to be tried for an indictable offence, without further proof be read as evidence on the trial of the defendant, whether for the offence for which the defendant has been committed for trial or for any other offence for which an indictment shall be presented, arising out of the same transaction or set of circumstances as the offence for which the defendant has been committed for trial, and whether or not combined with other circumstances, if—

- (a) the written statement purports to be signed in manner prescribed by the person making it and by the justices before whom it purports to have been tendered as evidence; and
- (b) the condition mentioned in section 111(3)(a), read with the words ‘written statement’ substituted for the word ‘deposition’ where twice occurring, is satisfied.

(13A) The provisions of section 4 of the *Criminal Law Amendment Act 1892* apply for the purposes of this subsection as though the reference to ‘depositions’ or ‘deposition’ is a reference to ‘written statements’ or ‘written statement’ referred to in this section.

(14) If a written statement admitted in accordance with this section refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (5) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect that document or a copy thereof.

(15) Any document or object referred to as an exhibit and identified in a written statement admitted in accordance with this section shall be treated as if it had been produced as an exhibit and identified during the proceedings by the maker of the statement.

Depositions of persons dead, absent etc.

111.(1) When a defendant has been committed by justices to be tried for any indictable offence, the deposition of any person taken before justices, or the transcription of the record of evidence given by any person before justices where the evidence is recorded under the *Recording of Evidence Act 1962* and the transcription is certified to as correct in accordance with that Act, with respect to the transaction or set of circumstances out of which has arisen the charge on which the defendant has been committed to be tried may, if the conditions mentioned in subsection (3) are satisfied in the case of the deposition and if the conditions mentioned in subsection (3)(a) and (b) are satisfied in the case of the transcription, without further proof be read as evidence on the trial of that person, whether for the offence for which the person has been committed for trial or for any other offence for which an indictment shall be presented, arising out of the same transaction or set of circumstances as the offence for which the person has been committed for trial, and whether or not combined with other circumstances.

(2) Moreover, when any person has been charged before justices with an indictable offence of a sexual nature alleged to have been committed on a child under the age of 12 years, and has been committed for trial, the deposition of such child or of any other child under the age of 12 years, or the transcription of the record of the evidence or statement given or made by such child or of any other child under the age of 12 years where the evidence or statement is recorded under the *Recording of Evidence Act 1962* and the transcription is certified to as correct in accordance with that Act, may, in the discretion of the Judge of trial and if the conditions mentioned in subsection (3)(b) and (c) are satisfied in the case of the deposition and if the condition mentioned in subsection (3)(b) is satisfied in the case of the transcription, without further proof be read as evidence on the trial of that person, whether for the offence for which the person has been committed for trial or for any other offence for which an indictment shall be presented, arising out of the same transaction or set of circumstances as the offence for which the person has been committed for trial, and whether or not combined with other circumstances.

(3) The conditions mentioned in subsections (1) and (2) are the following—

- (a) the deposition or the transcription of the record of evidence must be the deposition or the transcription of the record of evidence either of a witness whose attendance at the trial is not required by the accused person, in accordance with the provisions of section 4 of the *Criminal Law Amendment Act 1892* and which accused person has duly signed the statement in the manner provided by the said section 4 and the Schedule to that Act, or of a witness who is proved at the trial by the oath of a credible witness to be dead or insane, or so ill as not to be able to travel, or to be kept out of the way by means of the procurement of the accused or on the accused's behalf;
- (b) it must be proved at the trial, either by a certificate purporting to be signed by the justices before whom the deposition purports to have been taken or before whom the evidence or statement was given or made or by the clerk of the court or any person acting as such, or by the oath of a credible witness, that the deposition was taken or the evidence or statement was given or made in the presence of the accused unless the accused was excluded from the proceeding whereat such deposition was taken or such evidence

or statement was given or made pursuant to the provisions of section 40 or, where the deposition, evidence or statement was taken, given or made in a case where and at a time when the accused was not required to be present in person, that the same was taken, given or made in the presence of the accused's counsel or solicitor and that the accused or the accused's counsel or solicitor had the full opportunity of cross-examining the witness;

- (c) the deposition must purport to be signed by the justices before whom it purports to have been taken.

(4) However, the provisions of this section shall not have effect in any case in which it is proved that the deposition, or, where the proof required by subsection (3)(b) is given by means of a certificate, that the certificate was not in fact signed by the justices or clerk the court or person acting as such by whom it purports to have been signed.

Division 6—Defendant admitting guilt

Procedure if defendant pleads guilty

113.(1) If the defendant, upon being addressed by the justices pursuant to section 104(2) says that he or she is guilty of the charge the justices, instead of committing the defendant to be tried, shall order the defendant to be committed for sentence before some court of competent jurisdiction, and, in the meantime shall, by their warrant, commit the defendant to gaol to be there safely kept until the sittings of that court, or until the defendant is delivered by due course of law or admitted to bail.

(4) If, having regard to the length of time which should elapse before a court of competent jurisdiction next sits at a place to which the defendant would in the absence of this subsection be committed for sentence, the justices are of the opinion—

- (a) that it would be just that the defendant should be sentenced for the offence at some other place before a court of competent jurisdiction, the justices may, with the prior consent in writing of the defendant (which consent shall be kept with the depositions of the witnesses), order the defendant to be committed for sentence for the offence at such other place before such court;

- (b) that, by reason of the expense likely to be incurred in the keeping or preservation of any exhibit tendered in evidence upon the examination of witnesses and to be, or proposed to be, tendered as an exhibit upon the appearance of the defendant for sentence, the defendant should be sentenced for the offence at some other place before a court of competent jurisdiction, the justices may order the defendant to be committed for sentence for the offence at such other place before such court.

Division 7—Corporation charged with indictable offence

Committal proceedings where defendant is a corporation

113A.(1) Where a corporation is charged with an indictable offence, it may appear before the justices by a representative at the time and place mentioned in the summons issued against it.

(2) A representative may on behalf of a corporation—

- (a) make a statement before the justices in answer to the charge;
- (b) enter a plea to the charge;

and any statement so made or plea so entered shall for all purposes be taken to be a statement made or plea entered by the corporation.

(3) Where a representative appears, any requirement of this Act that anything shall be done in the presence of the defendant, or shall be read or said to the defendant, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or said to the representative.

(4) Where a representative does not appear—

- (a) any requirement referred to in subsection (3) shall not apply; and
- (b) the justices may nevertheless, if upon a consideration of all the evidence adduced upon an examination of witnesses in relation to the offence they are of the opinion that the evidence is sufficient to put the corporation upon its trial for an indictable offence, order the corporation to be committed to be tried for the offence before a court of competent jurisdiction.

(5) Justices may commit a corporation for trial or for sentence notwithstanding their inability to exercise their powers of committal to gaol or admission to bail following such committal.

(6) Where a representative does not appear and justices order the corporation to be committed for trial, the clerk of the court at which the corporation has been so committed shall forthwith give to the corporation a notice in writing of such committal containing particulars in relation thereto.

(6A) The notice may be given to the corporation by leaving it at or sending it by post to the registered office of the corporation or to any place at which it trades or carries on business.

(7) In this section—

“**representative**” means a person appointed by the corporation to represent it for the purposes of this section, but a person so appointed is not, by virtue only of being so appointed, qualified to act on behalf of the corporation before justices for any other purpose.

(8) A representative need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation or by any other person (by whatever name called) having, or being 1 of the persons having, the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section shall be admissible without further proof as prima facie evidence that that person has been so appointed.

Division 8—Action on committal for trial

Transmission of undertaking as to bail

121. When an undertaking as to bail has been taken by a person authorised in that behalf, other than the committing justices and the clerk of the court at the place where the commitment was ordered, such person shall forthwith transmit the undertaking to the committing justices, or 1 of them, or to the clerk aforesaid, who shall transmit it with the depositions in accordance with the provisions of section 126.

Notice to witness

123.(1) Where justices commit a defendant for trial for an indictable offence, the clerk of the court at which the defendant has been so committed shall forthwith give to each witness who has been examined before the justices and to each maker of a written statement whose statement was admitted as evidence in accordance with section 110A a notice in the prescribed form requiring each of them to attend at the court to which the defendant has been committed and to give evidence at the defendant's trial.

(2) A notice referred to in subsection (1)—

- (a) may be served personally on or sent by post to the person to whom it is addressed at the person's address last known to the clerk of the court;
- (b) shall have effect as if it were a summons to the witness issued out of the court that the witness is by the notice required to attend.

Transmission of depositions

126.(1) When a defendant is committed to be tried or for sentence the committing justices shall, as soon as practicable after such committal, transmit, or cause to be transmitted, all informations, depositions, statements, undertakings as to bail and copies of notices to witnesses relating to such committal, in the following manner—

- (a) when the committal is to a sittings of a court to be held within the Northern District, to a Crown Prosecutor stationed in that district;
- (b) in all other cases, to the Attorney-General or Director of Prosecutions.

(2) In this section—

“Northern District” means that part of the State defined as such in the *Supreme Court Act 1895*.

Duty of Attorney-General etc.

127. The Attorney-General, Director of Prosecutions, and Crown Prosecutor shall, respectively, after such transmission and before the day of trial, have and be subject to the same duties and liabilities in respect of the

said several documents upon a certiorari directed to them respectively, or upon a rule or order directed to them in lieu of that writ, as the justices would have had and been subject to upon a certiorari to them if such documents had not been so transmitted.

Authority of Judge

128. The said officers respectively, and any officer prosecuting for them respectively, shall, at any time after the opening of the Court at the sittings or sessions at which the trial is to be had, or the sentence passed, deliver the said documents, or any of them, to the proper officer of the Court, if and when the presiding Judge so directs.

Recommittal in case of error

129.(1) If in any case a defendant is committed to take the defendant's trial or for sentence before a Court which has not jurisdiction to try the case or pass sentence upon the defendant, or before which the defendant ought not to be committed to take the defendant's trial or for sentence, or the Judge whereof is by reason of interest or otherwise incapacitated from trying the case or passing sentence, the committing justices or any other justices may at any time before the time appointed for holding such Court direct the defendant and the warrant of commitment (if any) to be brought before them, whether the defendant has been admitted to bail or not, and may, upon production of the depositions and without further evidence, cancel the warrant or commitment, and may commit the defendant afresh to take the defendant's trial or for sentence before another and the proper Court, and may, in a proper case, admit the defendant to bail or enlarge the defendant's bail, if the defendant has been already admitted to bail, or if the defendant is brought before the Court at the time appointed for holding the same, the Court may, notwithstanding such defect of jurisdiction or incapacity, remand the defendant to take the defendant's trial or for sentence before another and the proper Court, and may, in a proper case, admit the defendant to bail or enlarge the defendant's bail if the defendant has been already admitted to bail.

(2) Where a fresh commitment or remand has been so made, the justices or any other justices or the Court may give fresh notices to the witnesses to appear and give evidence at the Court to which the defendant is so

committed or remanded and for that purpose section 123 shall apply as if the notices had been given in accordance with that section.

Division 9—Examination of witnesses in another court district

Examination by justices for an offence committed in another Magistrates Court District

132. When a person is charged before justices with an indictable offence alleged to have been committed in a place situated elsewhere than within the Magistrates Courts District within which the justices are then sitting but within the jurisdiction of the Supreme Court the justices shall receive such evidence in proof of the charge as shall be produced before them and if, in their opinion, such evidence is sufficient on which to commit the defendant to be tried, or for sentence, for any indictable offence the justices may—

- (a) commit the defendant to be tried, or for sentence, as the case may require, for the indictable offence established by such evidence in the opinion of the justices and shall commit the defendant to gaol or admit the defendant to bail and give to each witness the notice prescribed by section 123 to be given; or
- (b) proceed in accordance with the provisions of section 133.

Remand to another place

133.(1) If, in any such case as is referred to in section 132, the evidence is not, in the opinion of the justices, sufficient on which to commit the defendant to be tried, or for sentence, for any indictable offence or, if the justices elect to proceed in accordance with the provisions of this section notwithstanding the sufficiency of the evidence, the justices—

- (a) may adjourn the hearing to the place where the offence is alleged to have been committed or where any of the witnesses to be examined are, or to a place convenient to any such place; and
- (b) shall order that each witness be given the notice prescribed by section 123 with such adaptations as are necessary.

(1A) Section 123 shall apply and extend to notices given to witnesses pursuant to subsection (1) as if they were notices given under that section.

(2) When justices have adjourned a hearing pursuant to the provisions of this section they may—

- (a) by warrant order the defendant to be taken before justices at the place to which the hearing has been adjourned; or
- (b) admit the defendant to bail.

(3) When a warrant is issued pursuant to subsection (2), the justices shall deliver the complaint, or a copy thereof and every deposition, statement, undertaking as to bail taken and notice to witness given in relation to the proceeding to the police officer who first has custody of the warrant to be delivered by the police officer or any other police officer to the justices before whom the hearing is resumed at the place to which the hearing has been adjourned.

(4) When the defendant is admitted to bail pursuant to subsection (2), the justices shall deliver the complaint, or a copy thereof, and every deposition, statement, undertaking as to bail taken and notice to witness given in relation to the proceedings to the clerk of the court at the place where they conducted the examination of witnesses in relation to an indictable offence to be by the clerk of the court transmitted by post to the justices before whom the hearing is to be resumed at the place to which the hearing has been adjourned.

Effect of depositions, undertakings as to bail and notices to witnesses taken, given or ordered to be given elsewhere than at place of committal

134.(1) Every deposition, undertaking as to bail and notice to witness delivered to justices in accordance with section 133 shall be deemed to have been taken, given or ordered to have been given in the case as if they had been taken, given or ordered to have been given by or before the justices who commit the defendant to be tried or for sentence or pursuant to their order and shall, together with such depositions, undertakings as to bail and notices to witnesses as are taken, given or ordered to be given in the matter of the charge against the defendant by or before such last mentioned justices or pursuant to their order, be transmitted to the proper officer at the time and in the manner provided by this Act where the defendant is committed for trial or for sentence on a charge of an indictable offence.

(2) Notwithstanding subsection (1), if such last mentioned justices are of

opinion that the evidence is not sufficient on which to commit the defendant to be tried or for sentence and order that the defendant be discharged as to the charge the subject matter of the examination, then every undertaking as to bail and notice to witness so taken or given and delivered shall be of no force or effect.

PART 6—PROCEEDINGS IN CASE OF SIMPLE OFFENCES AND BREACHES OF DUTY

Division 1—Venue

Where summary cases to be heard

139.(1) Subject to the provisions of any other Act in that behalf, a complaint of a simple offence or breach of duty shall be heard and determined—

- (a) at a place appointed for holding Magistrates Courts within the district within which the offence or breach of duty was committed; or
- (b) at a place appointed for holding Magistrates Courts within the district within 35 km of the boundary of which the offence or breach of duty was committed; or
- (c) where the offence or breach of duty has occurred in or on or in relation to any vehicle or a vessel (other than an aircraft) in the course of a journey and the evidence to be adduced on behalf of the complainant does not disclose with certainty in which district the offence or breach of duty has occurred—at a place appointed for holding Magistrates Courts within any of the districts through which, or any part of which, such vehicle or vessel has passed in the course of such journey; or
- (d) where the offence or breach has occurred in or on or in relation to an aircraft in the course of a flight which commenced and is scheduled to terminate within Queensland and the evidence to be adduced on behalf of the complainant does not disclose with

certainty over which district the offence or breach occurred—at a place appointed for holding Magistrates Courts within any district over which, or any part of which, such aircraft has passed in the course of such flight.

(2) Where a complaint for a simple offence or breach of duty is before a Magistrates Court at any place at which that complaint may lawfully be heard and determined and it appears to the court, either of its own motion or upon the submission of the complainant or defendant made in writing to or by appearance before the court, that the hearing would more conveniently take place at another place in Queensland, the court may, before any evidence is adduced, adjourn the hearing to such other place and to a time to be then stated or to be determined as hereinbefore in this Act provided.

(2A) The resumed hearing may proceed and the complaint may be heard and determined before a Magistrates Court at such other place constituted in accordance with this Act by such justices as may then be there.

(2B) Where a complaint for a simple offence or breach of duty is partly heard before a Magistrates Court at any place at which that complaint may lawfully be heard and determined, the court may adjourn the hearing to such other place in Queensland as shall be consented to by the complainant and the defendant and to such time as it thinks fit.

(2C) The hearing of the complaint may continue and the complaint determined before a Magistrates Court at such other place constituted in accordance with this Act.

(2D) The court, on adjourning the hearing as aforesaid, may commit the defendant in the meantime or admit the defendant to bail.

(2E) Upon such adjournment, the defendant and every witness summoned to give evidence and who has not been discharged by the court from further attendance, shall be bound to attend at such time and place accordingly.

(2F) Upon an adjournment under this subsection the clerk of the court at the place where such adjournment was ordered shall forthwith transmit by post to the clerk of the court at the place whence the hearing has been adjourned the complaint, the summons issued thereon and all other documents relevant to the complaint which the clerk of the court has in the clerk's possession.

(3) When a defendant fails to appear to answer a complaint for a simple

offence or breach of duty and a warrant is issued for the purpose of apprehending the defendant and bringing the defendant before the court, the matter may, with the defendant's consent, be dealt with before a Magistrates Court at a place within the district in which the defendant is apprehended under the warrant.

Adjournment to different place

140.(1) When 2 or more places are appointed for holding Magistrates Courts in a district, and in any other case in which a complaint of a simple offence or breach of duty may lawfully be heard and determined at any 1 of 2 or more places then, if, at the hearing of the complaint at 1 of such places, it appears to the justices, either of their own motion or upon the submission of the complainant or defendant made in writing to or by appearance before the justices, that the hearing would more conveniently take place or the decision be more conveniently given at another of such places, the justices may adjourn the hearing or, as the case may require, the giving of the decision to such other place, and may commit the defendant in the meantime or admit the defendant to bail.

(1A) Upon such adjournment, the defendant and, in the case of an adjournment of the hearing, every witness summoned to give evidence and who has not been discharged by the court from further attendance, shall be bound to attend at such time and place accordingly.

(2) Where 2 or more places are appointed for holding Magistrates Courts in a district and the clerk of the court at 1 such place receives a notification in writing purporting to be given by a defendant or by a solicitor acting on the defendant's behalf that the defendant wishes to plead guilty in respect of a complaint of a simple offence or breach of duty appointed by the summons to be heard at that place without appearing before the court and the defendant does not appear at the time and place appointed for the hearing or adjourned hearing of the complaint, that clerk of the court, if the clerk of the court considers that the hearing of the complaint would more conveniently take place at another place for holding a court in that district, shall refer the matter to justices constituting a court in that district, and the justices may proceed to hear and determine the case in another such place in the district in the absence of the defendant in like manner as if the defendant had appeared and pleaded guilty.

(2A) The clerk of the court receiving the notification in the first instance

shall, on the decision being made by justices and communicated to the clerk of the court to hear and determine the case at another place in the district, forthwith transmit such notification together with the complaint, the summons issued thereon and all other documents relevant to the complaint that the clerk of the court has in his or her possession to the clerk of the court at such other place.

(2B) Sections 142 and 146A apply subject to this subsection in a case to which this subsection applies.

(3) Where 2 or more places are appointed for holding Magistrates Courts in a district and a defendant does not appear at 1 such place at the time appointed by the summons for appearance there for the hearing and determining of a complaint of a simple offence or breach of duty, the hearings there may be adjourned pursuant to this Act and thereafter justices may proceed *ex parte* to hear and determine the case at another place in the district appointed for holding a court as fully and effectually as if they were hearing and determining the case at the first mentioned place in the first instance.

(4) Where the defendant has not so appeared at the first mentioned place at the time appointed, the justices may proceed *ex parte* as aforesaid without any further notification to the defendant.

(5) The clerk of the court at the first mentioned place shall, on the decision being made by justices and communicated to the clerk of the court to hear and determine the case at another place in the district, forthwith transmit the complaint, the summons issued thereon and all other documents relevant to the complaint that the clerk of the court has in his or her possession to the clerk of the court at the other place in the district where the case is to be heard and determined, and any witness summoned to give evidence and who has not been discharged by the court from further attendance shall be bound to attend at such other place at the time appointed accordingly.

(6) Section 142 applies subject to this section and section 142(6) applies as if a hearing and determination *ex parte* under this subsection is a hearing and determination *ex parte* under section 142(1)(a).

Division 2—Default by complainant or defendant

Dismissal or adjournment in absence of complainant

141. If upon the day and at the place appointed by the summons for hearing and determining a complaint of a simple offence or breach of duty the defendant attends voluntarily in obedience to the summons, or is brought before the justices by virtue of a warrant, and the complainant (having had notice of such day and place) does not appear personally or by counsel, or solicitor, the justices shall dismiss the complaint, unless for some reason they think proper to adjourn the hearing of the same to some other day, in which case they may adjourn the hearing accordingly, upon such terms as they think fit, and may commit the defendant in the meantime or may admit the defendant to bail.

Proceedings in absence of defendant

142.(1) If at the time and place so appointed the defendant does not appear when called, and proof is made to the justices upon oath, or by deposition made in manner hereinbefore prescribed, of due service of the summons upon the defendant a reasonable time before the time appointed for the defendant's appearance the justices may—

- (a) proceed *ex parte* to hear and determine the case as fully and effectually to all intents and purposes as if the defendant had personally appeared before them in obedience to the said summons; or
- (b) upon oath being made before them substantiating the matter of the complaint to their satisfaction, issue their warrant to apprehend the defendant and to bring the defendant before justices to answer the complaint and to be further dealt with according to law; or
- (c) upon the written plea of guilty of the defendant and upon being satisfied that the requirements of section 146A have been complied with in all respects, proceed as prescribed by that section; or
- (d) because of the absence of any witness or any other reasonable cause, adjourn the hearing to a time and place to be then stated or to be determined as hereinbefore in this Act provided before a court constituted in accordance with this Act by such justices as may then be present.

(2) When the justices proceed as prescribed by subsection (1)(a) or (c) they shall not—

- (a) order that the defendant be disqualified either absolutely or for any period from holding or obtaining any licence, registration, certificate, permit or other authority under any Act or order that any licence, registration, certificate, permit or other authority held by the defendant under any Act be cancelled or suspended; or
- (b) order that the defendant be imprisoned (not being imprisonment in default of payment of any penalty, compensation, sum of money or costs adjudged to be paid by the decision of the justices);

unless the justices have first adjourned or further adjourned the hearing of the complaint to a time and place appointed by the justices to enable the defendant to appear for the purpose of making submissions on the question of such disqualification, cancellation or suspension or penalty, as the case may be.

(3) The clerk of the court shall forthwith after any adjournment under subsection (2) give notice in writing to the defendant informing the defendant of—

- (a) the time and place to which the hearing is adjourned; and
- (b) the purpose of the adjournment; and
- (c) the defendant's right to be heard at the adjourned hearing.

(3A) Such notice may be given by service thereof upon the defendant personally or by post at the address of the defendant last known to the clerk of the court.

(4) If at any time and place to which the hearing is adjourned pursuant to subsection (2)—

- (a) the defendant does not appear; and
- (b) it is proved that the notice in writing prescribed by subsection (3) was given to the defendant a reasonable time before the adjourned hearing;

the justices then present may proceed as prescribed by subsection (1)(a) or (c) as if subsection (2) had not been enacted.

(5) A document purporting to be a duplicate original or a copy of a notice given to the defendant under this section and endorsed with a certificate purporting to be signed by the person by whom the document was served upon the defendant personally or, where the document was served by post, by the clerk of the court to the effect that—

- (a) the document is a duplicate original or copy of the notice given to the defendant named therein; and
- (b) the document was served upon the defendant personally, or, as the case may be, was posted to the address appearing therein which was the address of the defendant last known to the clerk; and
- (c) where the document was served by post—in the ordinary course of post the notice would be delivered on the date specified in such endorsement;

shall be evidence that the notice was given to the defendant named therein according to the certificate so endorsed and, where the document was served by post, that the address appearing therein is the address of the defendant last known to the clerk.

(6) Where a case is, at any place, heard and determined *ex parte* under subsection (1)(a), any Magistrates Court at that place, upon application made in that behalf by the clerk of the court or the complainant or by the defendant or on the defendant's behalf by counsel or solicitor within 28 days after such determination, may, for such reason as it thinks proper, grant a re-hearing of the complaint upon such terms and subject to the payment of such costs as it thinks fit.

(7) When a re-hearing is granted—

- (a) the conviction or order made upon the first hearing shall, subject to the provisions of subsection (8), forthwith cease to have effect;
- (b) the court may proceed with the re-hearing forthwith or may set down the re-hearing for a later date;
- (c) on such re-hearing, the court shall have the same powers and shall follow the same procedures as if the re-hearing were an original hearing.

(8) If the clerk of the court, the complainant or the defendant, as the case may be, does not appear at the time and place for which the re-hearing is set

down, the court may, if it thinks fit, without re-hearing the case, direct that the original conviction or order be restored when it shall be restored to effect accordingly and shall be deemed to be of effect on and from the date it was first pronounced.

Permissible procedure in absence of defendant in certain cases

142A.(1) Notwithstanding the provisions of this Act or any other Act it shall be lawful to adopt in respect of a complaint of a simple offence or breach of duty made by a public officer or a member of the police force the procedure prescribed by this section.

(2) Every step or proceeding to be taken in carrying out such procedure and the making of any order in the course thereof shall be subject to the provisions of this Act (other than of this section) and the provisions of the *Decentralisation of Magistrates Courts Act 1965* except so far as the provisions of this section are inconsistent with the other provisions of this Act or, as the case may be, the provisions of that Act.

(4) Where—

- (a) a complaint of a simple offence or breach of duty is made by a public officer or a member of the police force; and
- (b) a summons issued upon the complaint is served at least 14 days before the date on which the defendant is required by such summons to appear or a notice of adjournment is given to the defendant a reasonable time before the date fixed for the hearing of the complaint if the hearing is adjourned; and
- (c) the defendant does not appear at the time and place fixed for the hearing of the complaint;

the court before which the complaint comes for hearing, whether on the return date or an adjourned date, may, if it is satisfied that the facts as alleged in or annexed to or served with the complaint or summons according to law constitute such a simple offence or breach of duty and that reasonably sufficient particulars thereof are set out in or annexed to or served with the complaint or summons as aforesaid, deal with and determine the matter of the complaint as fully and effectually to all intents and purposes as if the said facts and particulars had been established by evidence under oath before it and as if the defendant had personally

appeared before it in obedience to the said summons.

(5) In dealing with and determining a complaint pursuant to subsection (4) the court may take into account any information considered by it to be relevant brought to its notice by or on behalf of the complainant or defendant in relation to the circumstances of the matter of the complaint and the imposition of a penalty.

(6) If in respect of a proceeding under subsection (4) the court considers that—

- (a) the defendant should be imprisoned otherwise than by way of default; or
- (b) any licence, registration, certificate, permit or other authority held by the defendant under any Act should be cancelled or suspended; or
- (c) the defendant should be disqualified from holding or obtaining any licence, registration, certificate, permit or other authority under any Act;

it shall not deal further with the complaint in such proceeding unless it has first adjourned or further adjourned the hearing of the complaint to a time and place appointed by it to enable the defendant to appear for the purpose of making submissions on the question of such penalty, disqualification, cancellation or suspension, as the case may be.

(7) The clerk of the court shall forthwith after any adjournment of a hearing under this section give notice in writing to the defendant informing the defendant of—

- (a) the time and place to which the hearing is adjourned; and
- (b) the purpose of the adjournment; and
- (c) the defendant's right to be heard at the adjourned hearing.

(7A) Such notice may be given by service thereof upon the defendant personally or by post at the address of the defendant last known to the clerk of the court.

(8) If at any time and place to which a hearing is adjourned under this section—

- (a) the defendant does not appear; and

- (b) it is proved that the notice in writing prescribed by subsection (7) was given to the defendant a reasonable time before the adjourned hearing;

the court may proceed as prescribed by subsection (4) and, if the hearing is adjourned pursuant to subsection (6), may proceed as prescribed by subsection (4) as if subsection (6) had not been enacted.

(9) A document purporting to be a duplicate original or a copy of a notice given to the defendant under this section and endorsed with a certificate purporting to be signed by the person by whom the document was served upon the defendant personally or, where the document was served by post, by the clerk of the court to the effect that—

- (a) the document is a duplicate original or copy of the notice given to the defendant named therein; and
- (b) the document was served upon the defendant personally or, as the case may be, was posted to the address appearing therein which was the address of the defendant last known to the clerk; and
- (c) where the document was served by post, in the ordinary course of post the notice would be delivered on the date specified in such endorsement;

shall be evidence that the notice was given to the defendant named therein according to the certificate so endorsed and, where the document was served by post, that the address appearing therein is the address of the defendant last known to the clerk.

(10) The clerk of the court shall forthwith upon the determination of the matter of a complaint pursuant to this section send by post to the defendant at the defendant's address last known to the clerk an advice of the minute or memorandum of the conviction or order made and signed under section 150.

(10A) The advice shall set forth a statement to the effect of the provisions of subsections (11) to (12B).

(11) A warrant of commitment or execution shall not issue until after the expiration of 28 days from the date of the conviction or order.

(12) Upon the determination of the matter of a complaint in accordance with the provisions of this section, the court at the place of determination, upon application made in that behalf by the clerk of the court or the

complainant or by the defendant or on the defendant's behalf by counsel or solicitor within 28 days after such determination may, for such reason as it thinks proper, grant a re-hearing of the complaint upon such terms and subject to the payment of such costs as it thinks fit.

(12A) When a re-hearing is granted—

- (a) the conviction or order made in the first instance shall, subject to subsection (12B), forthwith cease to have effect;
- (b) the court may proceed with the re-hearing forthwith or may set down the re-hearing for a later date;
- (c) on such re-hearing, the court shall have and may exercise all the powers and procedures that it has in the case of an original hearing.

(12B) If the clerk of the court, the complainant or the defendant, as the case may be, does not appear at the time and place for which the re-hearing is set down, the court may, if it thinks fit, without re-hearing the case, direct that the original conviction or order be restored whereupon it shall be restored to have effect accordingly and shall be deemed to be of effect on and from the date it was first pronounced.

(13) The jurisdiction of the court under this section other than with respect to an adjournment may be exercised only by a Stipendiary Magistrate.

(14) For the purposes of this section, a complaint that purports to have been laid by a public officer or by a member of the police force, shall, until the contrary is proved, be presumed to have been so laid.

(15) In this section—

“public officer” does not include—

- (a) an officer of the public service of the Commonwealth; or
- (b) an officer or employee of a statutory body that represents the Crown in right of the Commonwealth.

Or justices may adjourn the case

143.(1) When the justices upon the non-appearance of the defendant issue their warrant, they shall adjourn the hearing of the complaint until the

defendant is apprehended, and if the defendant is afterwards apprehended under such warrant, the defendant shall be detained in safe custody and shall be brought, as soon as practicable, before a court to be dealt with according to law.

(2) The complainant shall be given reasonable notice of the time and place at which the defendant will be brought before such court.

Division 3—Hearing

Both parties appearing

144. If both parties appear either personally or by counsel or solicitor, then the justices may proceed to hear and determine the complaint.

Defendant to be asked to plead

145.(1) When the defendant is present at the hearing the substance of the complaint shall be stated to the defendant and the defendant shall be asked how he or she pleads.

(2) If the defendant pleads guilty, the Magistrates Court shall convict the defendant or make an order against the defendant or deal with the defendant in any other manner authorised by law.

Where defendant pleads not guilty

146.(1) If the defendant pleads not guilty then the court may—

- (a) proceed to hear the complainant and the complainant's witnesses, and the defendant and the defendant's witnesses, and the complainant and such witnesses as the complainant may examine in reply if the defendant has given evidence other than as to the defendant's general character and, upon consideration of all the evidence adduced, determine the matter and shall convict the defendant or make an order against the defendant or dismiss the complaint as justice may require; or
- (b) upon good reason appearing therefor, before any evidence is adduced, adjourn the hearing.

(2) A hearing may be adjourned pursuant to subsection (1) from time to time provided no evidence has been adduced before any court in respect of the complaint.

(3) When a hearing is adjourned pursuant to subsection (1) the provisions of section 88 shall, with all necessary adaptations, apply thereto.

(4) The hearing so adjourned may proceed at the time and place to which it is adjourned before a court constituted in accordance with this Act by such justices as may then be present, notwithstanding that the defendant has pleaded to the complaint.

Proceeding at the hearing on defendant's confession in absentia

146A.(1) This section applies if a summons has been issued requiring a person to appear before a Magistrates Court or justices to answer a complaint, other than a complaint of—

- (a) an offence that is also triable on indictment; or
- (b) an offence for which the defendant is liable to be sentenced to imprisonment for a term of more than 1 year; or
- (c) an offence prescribed by regulation for the purposes of this paragraph; or
- (d) an offence in relation to which another Act requires the court or justices to proceed in a way different from that provided by this section.

(2) Where the clerk of the court receives a notification in writing purporting to be given by the defendant or by a solicitor acting on the defendant's behalf that the defendant wishes to plead guilty without appearing before the court and the defendant does not appear at the time and place appointed for the hearing or adjourned hearing of the complaint, then—

- (a) the justices may proceed to hear and determine the case in the absence of the defendant in like manner as if the defendant had appeared and pleaded guilty; or
- (b) if the justices decide not to proceed as aforesaid, they shall adjourn or further adjourn the hearing for the purpose of dealing with the complaint as if the notification aforesaid had not been

given.

(2A) However—

- (a) if at any time before the hearing the clerk of the court receives an intimation in writing purporting to be given by or on behalf of the defendant that the defendant wishes to withdraw the notification aforesaid, the justices shall deal with the complaint as if this section had not been passed;
- (b) before accepting the plea of guilty and convicting the defendant in the defendant's absence under subsection (2), the justices shall cause the aforesaid notification, including any submission received with the notification which the defendant wishes to be brought to the attention of the justices with a view to mitigation of penalty, to be read out before the court and shall require a statement with respect to the facts relating to the offence to be made by or on behalf of the complainant.

(3) Section 142(1)(b) shall not apply to an adjournment by reason of the requirements of subsection (2)(b).

(3A) In relation to such an adjournment, the adjourned hearing shall not be resumed at the appointed time and place unless the justices are satisfied that the defendant has had adequate notice thereof.

(3B) The defendant shall be deemed to have had adequate notice of the adjourned hearing if notice thereof has been given to the defendant as a notice of adjournment may be given for the purposes of section 142 under subsection (3) of that section, and subsections (3) and (5) of that section shall, with and subject to all necessary adaptations, apply accordingly.

(4) Where justices convict a person in the person's absence under subsection (2) for an offence upon conviction wherefor the justices may, whether or not they impose a penalty, order the defendant to pay any fee, charge or other sum of money whatsoever to any person or authority, then—

- (a) upon proof to the satisfaction of the justices, on oath or in the prescribed manner, that there has been served upon the defendant with the summons, or a reasonable time before the time appointed for the appearance of the defendant, a notice informing the defendant that if the defendant is convicted of the offence referred to in the summons application will be made to the court to order

the defendant to pay the amount stated in the notice of such fee, charge or other sum of money; and

- (b) upon being satisfied that the amount or any part of the amount stated in such notice, should have been, but has not been, paid by the defendant to such person or authority in respect of such fee, charge or other sum of money;

the justices may, in addition to the penalty (if any) imposed for the offence, order the defendant to pay such unpaid amount or part.

(5) A person who serves a notice referred to in subsection (4) may serve such notice in the same manner as is provided for the service of a summons by this Act and may attend before any justice having jurisdiction in the State or part of the State or part of the Commonwealth in which such notice was served, and depose, on oath and in writing endorsed on the notice, to the service thereof.

(6) Such deposition shall upon production to the justices by whom the case is heard and determined be sufficient proof of the service of the notice on the defendant.

Payment to clerk of petty sessions of money recoverable in a summary way

146B.(1) Any person summoned under this Act to answer a complaint that the person has failed to pay a sum of money allegedly payable by the person under any Act and recoverable, whether with or without the addition of a further sum by way of penalty, by complaint in a summary way under this Act, may pay to a clerk of the court a sum of money in answer to such complaint together with the costs incurred by the complainant up to the time of payment.

(2) Notice of the payment to a clerk of the court shall be communicated by the defendant to the complainant by post or by causing it to be delivered at the complainant's usual or last known place of residence or business, and such sum of money shall be paid to the complainant, but if the complainant elects to proceed, and does not recover a further sum (including an additional sum (if any) by way of penalty) in the proceedings than is paid to a clerk of the court, the complainant shall pay to the defendant the costs incurred by the defendant in the proceedings after the payment, and an order shall thereupon be made by the justices for the payment of the costs by the

complainant.

(3) Where the defendant is desirous of paying money to a clerk of the court it shall, together with court fees and the solicitor's costs—

- (a) in the case of a summons served not less than 7 clear days before the return day thereof—be paid 4 clear days before such return day; or
- (b) in the case of a summons served less than 7 clear days before the return day thereof—be paid before such return day.

(4) Solicitor's costs payable to a clerk of the court under this section shall be according to the scale prescribed by regulations made under this Act and, in so far as not so prescribed, shall be according to the scale prescribed by the Magistrates Courts Rules.

(5) However, at any time before the return day the defendant may pay money into court with such costs as aforesaid and give notice thereof to the complainant and where money is so paid in less than 4 clear days before the return day in the case of a summons served not less than 7 days before the return day it shall be lawful for the Court to order the defendant to pay such costs as the complainant shall have reasonably incurred in preparing for hearing before the notice of such payment was received by the complainant.

Justices may proceed to hearing in absence of both or either of the parties

147. If at the time or place to which a hearing or further hearing is adjourned, either or both of the parties does not or do not appear personally or by counsel or solicitor, the justices then present may proceed to such hearing or further hearing as if such party or parties were present, or if the complainant does not appear the justices may dismiss the complaint with or without costs.

Power of justices to reopen proceedings and rectify orders

147A.(1) Where justices convict a defendant and—

- (a) impose a penalty that is contrary to law; or
- (b) fail to impose a penalty that is in conformity with the law;

they may, of their own motion or on the application of a party to the proceedings or a clerk of the court reopen the proceedings and after giving the parties an opportunity of being heard, amend the order made on the complaint and impose a penalty that is in accordance with the law.

(2) Where justices record a conviction or make an order that is based on or contains an error of fact, those justices or any other justices may, on the application of a party to the proceedings or a clerk of the court reopen the proceedings and after giving the parties an opportunity of being heard, set aside the conviction or vacate or vary the order in either case to conform with the facts.

(3) The powers conferred by subsection (2) include power to set aside a conviction or vacate or vary an order where the justices are satisfied that—

- (a) the conviction or order has been recorded or made against the wrong person;
- (b) the summons issued upon the complaint originating the proceedings that resulted in the conviction or order did not come to the knowledge of the defendant;
- (c) the defendant in the proceedings that resulted in the conviction or order has been previously convicted of the offence the subject of the complaint originating those proceedings.

(4) The justices may, upon the hearing of an application pursuant to this section, take evidence orally or by affidavit.

(5) An application pursuant to subsection (1) or (2) shall be made within 28 days after the date of the conviction or order or such further time as the justices allow upon application made at any time in that behalf.

(6) In this section—

“**penalty**” includes a forfeiture, disqualification, cancellation, loss or suspension of a licence or privilege.

Conduct of summary proceedings regulated

148. The practice before justices upon the hearing of a complaint of a simple offence or breach of duty shall, in respect of the examination and cross-examination of witnesses and the right of addressing the justices upon the case in reply or otherwise, be in accordance as nearly as may be with the

practice for the time being of the Supreme Court upon the trial of an issue of fact in an action at law.

Division 4—Dismissal

Dismissal of complaint

149. If the justices dismiss a complaint, they may, if required so to do, and if they think fit, make an order of dismissal, and give the defendant a certificate thereof, which certificate shall upon production and without further proof be a bar to any subsequent complaint for the same matter against the same person.

Minute of decision to be made and advice thereof sent by post

150.(1) When justices convict or make an order, a minute or memorandum of the conviction or order shall be made and signed by them and where neither the person convicted or against whom the order was made nor the person's counsel, solicitor or agent was present when the conviction was pronounced or the order made, an advice thereof signed by the clerk of the court by which the conviction was pronounced or the order made shall be sent by post to the person convicted or against whom the order was made at the person's address last known to that clerk.

(2) A minute or memorandum made pursuant to this section shall not form part of the warrant of commitment or execution.

(3) In a case provided for by this section a warrant of commitment or execution shall not issue until after the expiration of 28 days from the date of the conviction or order, unless the adjudicating justices otherwise direct.

Division 5—Convictions and orders

Formal convictions and orders

151. The conviction or order shall afterwards, if required, be drawn up by the justices in proper form, and they shall cause the same to be lodged with the clerk of the court, to be by the clerk of the court filed among the records

of the court.

Formal record of conviction not necessary, except for special purposes

152. Provided that it shall not be necessary for justices formally to draw up a conviction or order or any other record of a decision, unless the same is demanded by a party to the proceedings for the purpose of an appeal against the decision, or is required for the purpose of a return to a writ of habeas corpus or other writ from the Supreme Court.

No certiorari

153. No conviction shall be quashed for want of form or be removed by certiorari or otherwise into the Supreme Court, and no warrant of commitment on a conviction shall be held void by reason of any formal defect therein, provided it is therein alleged that the party has been duly convicted and there is a good and valid conviction to sustain it.

Division 6—Supply of copies of record

Copies of record

154.(1) When in any proceeding before justices an order is made, or the justices commit the defendant to be tried or for sentence, or discharge the defendant, the person having custody of the record of the proceeding shall upon—

- (a) the application in writing of any person who, in the person's opinion, has a sufficient interest in the proceeding or in securing a copy of the record thereof or of the part of such record applied for; and
- (b) payment of the amount of the prescribed fee;

subject to this section, supply to the applicant a copy of the complaint relevant to the proceeding, the depositions taken therein, any order made therein (including an order for the committal or discharge of the defendant), any documentary exhibit therein other than a photograph, or, as the case may require, a copy of such of them as the applicant applies for.

(2) Save where the application is made by or on behalf of a person who feels aggrieved by a conviction or order of any justice or justices in connection with the institution of an appeal against that conviction or order, or where the Minister otherwise determines, a person shall not be entitled under this section to a copy of—

- (a) any part of the record of a proceeding in a Children's Court; or
- (b) any part of the record of a proceeding which has been made whilst persons have been excluded from the court, room or place wherein the proceeding was conducted by order of justices under section 70, 71 or 71A.

(3) The provisions of this section shall not be construed to prejudice the provisions of sections 705 and 706 of the Criminal Code.

Division 7—Imprisonment

Imposition of imprisonment

156.(1) A Magistrates Court may direct that a sentence of imprisonment imposed upon a defendant by its decision shall commence at the expiration of a term of imprisonment which the defendant is serving or has been sentenced to serve when such decision is made.

(2) If a defendant is ordered to serve more than 1 sentence of imprisonment either by the decision of a Magistrates Court or by 2 or more decisions of the same Magistrates Court made at the same sitting then, whether or not the Court has directed pursuant to subsection (1) with respect to any 1 of those sentences, the Court may direct that such sentences be concurrent or cumulative.

(3) When 2 or more sentences of imprisonment are directed to be cumulative they shall take effect one after the other in accordance with the order in which the decisions whereby they are imposed are recorded or as the Court directs.

(4) Subject to section 26 of the *Prisons Act 1958*, a sentence of imprisonment imposed by a decision of a Magistrates Court shall take effect from the commencement of the defendant's custody under that sentence.

(5) A sentence of imprisonment ordered to be served in default of

payment of a fine or sum of money or in default of doing any other act shall be deemed to be a sentence of imprisonment within the meaning of this section.

Division 8—Costs

Costs on conviction or order

157. In all cases of summary convictions and orders including such a conviction for an indictable offence, the justices making the same may, in their discretion, order by the conviction or order that the defendant shall pay to the complainant such costs as to them seem just and reasonable.

Costs on dismissal

158.(1) When justices instead of convicting or making an order dismiss the complaint, they may by their order of dismissal order that the complainant shall pay to the defendant such costs as to them seem just and reasonable.

(2) When a complaint is before a Magistrates Court which the court has not jurisdiction to hear and determine the court shall order the complaint to be struck out for want of jurisdiction and may order that the complainant pay to the defendant such costs as to the court seem just and reasonable.

Exercise of discretion in relation to an award of costs

158A.(1) Despite section 158(1), justices who dismiss a complaint may make an order for costs in favour of a defendant against a complainant who is a police officer or public officer only if the justices are satisfied that it is proper that the order for costs should be made.

(2) In deciding whether it is proper to make the order for costs, the justices must take into account all relevant circumstances, including, for example—

- (a) whether the proceeding was brought and continued in good faith; and
- (b) whether there was a failure to take appropriate steps to investigate

a matter coming to, or within, the knowledge of a person responsible for bringing or continuing the proceeding; and

- (c) whether the investigation into the offence was conducted in an appropriate way; and
- (d) whether the order of dismissal was made on technical grounds and not on a finding that there was insufficient evidence to convict or make an order against the defendant; and
- (e) whether the defendant brought suspicion on himself or herself by conduct engaged in after the events constituting the commission of the offence; and
- (f) whether the defendant unreasonably declined an opportunity before a charge was laid—
 - (i) to explain the defendant's version of the events; or
 - (ii) to produce evidence likely to exonerate the defendant;and the explanation or evidence could have avoided a prosecution; and
- (g) whether the defendant conducted the defence in a way that prolonged the proceeding unreasonably; and
- (h) whether the defendant was acquitted on a charge, but convicted on another.

(3) If an order for costs under section 158 is made against a complainant who is a police officer or public officer (within the meaning of this subsection), the clerk of the court is to give to the defendant a certificate signed by the clerk showing the amount of costs awarded.

(4) Subject to subsection (5), the defendant is entitled to be paid by the State the amount shown in the certificate within 2 months after payment is claimed.

(5) If application for an order to review the order for costs is made under section 209—

- (a) payment of the amount shown in the certificate is stayed until the application is determined; and
- (b) payment is to be made of the amount (if any) ordered or confirmed by further order made on the application.

(6) In subsection (3)—

“**public officer**” does not include—

- (a) an officer or employee of the public service of the Commonwealth; or
- (b) an officer or employee of a statutory body that represents the Crown in right of the Commonwealth; or
- (c) an officer or employee of a local authority.

The sum allowed for costs to be specified in the conviction or order

159. The sum so allowed for costs shall in all cases be specified in the conviction or order or order of dismissal, or order striking out a complaint for want of jurisdiction.

Costs how recoverable

160. The sum allowed for costs in a conviction or order by which a penalty or sum of money is adjudged to be paid shall be recoverable in the same manner and under the same warrants as the penalty or sum of money adjudged to be paid by the conviction or order is recoverable.

Division 9—Enforcement of decisions

Mode of enforcement where no express provision made

161. When any decision adjudges or requires the payment of a penalty or compensation or sum of money or costs and when the Act by virtue of which such decision is made does not expressly provide—

- (a) that the amount of such penalty or compensation or sum of money or costs is to be levied by distress and sale of the goods and chattels of the person liable to make such payment, or by execution; or
- (b) that such person in default of payment of such penalty or compensation or sum of money or costs either immediately or within a time to be fixed by the adjudicating justices is to be

imprisoned for any period not exceeding the period stated in such Act;

then the adjudicating justices shall in their discretion either direct that the amount of such penalty or compensation or sum of money or costs shall be recoverable by execution against the goods and chattels of the person liable to make such payment or in the alternative direct that in default of payment of such penalty or compensation or sum of money or costs either immediately or within a time to be fixed by them such person shall be imprisoned for any period not exceeding the period prescribed by the *Penalties and Sentences Act 1992*.

Mode of levying penalties, moneys or costs

161A. When the adjudicating justices in their discretion direct that the amount of the penalty or compensation or sum of money or costs adjudged or required to be paid under a decision shall be recoverable by execution and also when the Act by virtue of which a decision adjudging or requiring the payment of a penalty or compensation or sum of money or costs is made expressly provides that the amount of such penalty or compensation or sum of money or costs is to be levied by distress or execution, then the amount of such penalty or compensation or sum of money or costs shall be recoverable by execution against the goods and chattels of the person liable to make such payment and a warrant of execution may be issued for the purpose of levying the same.

Power to detain until return of warrant

162. When a justice issues a warrant of execution the justice may suffer the person against whom such warrant of execution is issued to go at large, or the justice may verbally or by writing order such person to be kept and detained in safe custody until return is made to the warrant of execution, unless such person gives sufficient security by recognisance or otherwise to the satisfaction of the justice for the person's appearance at the time and place appointed for the return of the warrant of execution.

Commitment in default of execution

163. In any case in which a warrant of execution may be issued under the

provisions hereinbefore contained, if at the time and place appointed for the return of the warrant the officer who has the execution of the same, returns that the officer could find no goods or chattels, or no sufficient goods or chattels, whereon the officer could levy the sum therein mentioned together with the costs of or occasioned by levying the same, the justice before whom the same is returned may order the person against whom such warrant of execution is issued to be imprisoned for a period as prescribed by the *Penalties and Sentences Act 1992*, unless the sum adjudged to be paid and all costs and charges of the execution, and also, if the justice thinks fit so to order, the costs and charges of taking and conveying such person to gaol (the amount thereof being ascertained and stated in the warrant of commitment), are sooner paid.

When Court may order imprisonment in default of execution

163A. In all cases where the decision adjudges or requires the payment of a penalty or compensation or sum of money or costs, and the same is, in pursuance of this Act, recoverable by execution against the goods and chattels of the person liable to make such payment, the adjudicating justices may, as part of such decision, further order that in default of sufficient distress to satisfy the sum adjudged to be paid and the costs and charges of execution, the person liable to make such payment shall be imprisoned for a period as prescribed by the *Penalties and Sentences Act 1992*, unless the sum adjudged to be paid and all costs and charges of the execution, and also, if the justices think fit so to order, the costs and charges of taking and conveying the said person to prison (the amount thereof being ascertained and stated in the said decision), are sooner paid.

Payment by instalments of, or security taken for payment of, money

164.(1) When by a decision any sum or costs is or are adjudged to be paid the justices may do all or any of the following things, namely—

- (a) allow time for the payment of the sum or costs;
- (b) direct payment of the sum or costs to be made by instalments;
- (c) direct that the person liable to pay the sum or costs shall be at liberty to give, to the satisfaction of such person as shall be specified by the justices, security, with or without a surety or

sureties, for the payment of the sum or costs, or of any instalment thereof, and such security may be given and enforced in manner provided by this Act.

(2) When a sum or costs is or are directed to be paid by instalments and default is made in the payment of any 1 instalment the same proceedings may be taken as if the original decision had adjudged the payment of all the instalments then remaining unpaid and default had been made therein.

(3) The justices directing the payment of a sum or costs or of an instalment of a sum or costs may direct such payment to be made at such time or times, and in such place or places, and to such person or persons, as may be specified, and every person to whom any such sum or costs or instalment is or are paid, if the person is not the clerk of the court, shall as soon as may be pay over or account for the same to the clerk of the court.

Power to issue or postpone warrant

166A.(1) Notwithstanding anything in this Act or any other Act, the clerk of the court at the place where a decision was made or a justice at that place authorised by that clerk shall issue a warrant of execution for any sum adjudged to be paid by a decision or shall issue a warrant of commitment for non-payment of such sum or for default of sufficient distress to satisfy such sum as soon as practicable after the expiration of the time (if any) allowed by the court for the payment of the sum adjudged to be paid and no sooner.

(2) The clerk of the court or justice may if the clerk of the court or justice deems it expedient so to do and upon application in writing made by any party to the proceedings postpone the issue of the warrant for such time and on such conditions (if any) as seem just.

(3) This section shall apply in a case provided for by section 150 subject to the provisions of that section.

Commitment where execution would be ruinous

167. If it appears to the justices that the issue of a warrant of execution would be ruinous or injurious to the person against whom a decision is made or the person's family, or if it appears to such justices by the confession of the person against whom a decision is made or otherwise that

the person has no goods or chattels whereon to levy the penalty or compensation or sum of money or costs, then such justices, instead of issuing a warrant of execution, may order such person to be imprisoned for a period as prescribed by the *Penalties and Sentences Act 1992*, unless the sum and costs (if any), or the costs adjudged to be paid, and also, if the justices think fit so to order, the costs and charges of taking and conveying such person to gaol (the amount thereof being ascertained and stated in the warrant of commitment), are sooner paid.

To whom payments to be made

169. In every warrant of execution the person to whom it is directed shall be thereby ordered to pay the amount of the sum and costs to be levied thereunder to the clerk of the court, and if any person convicted of any penalty or ordered by justices to pay any sum of money or costs pays the same to any other person, such other person shall forthwith pay the same to such clerk of the court.

Effect thereof

171. By virtue of such warrant the sum therein mentioned as payable, and costs, or so much thereof as has not been before levied or paid, shall and may be levied by the person bringing such warrant or by the person to whom it was originally directed, by execution against the goods and chattels of the person against whom it is issued.

Procedure on execution

172. With respect to warrants of execution issued by justices, the following provisions shall have effect—

- (a) the warrant shall be executed by seizure and sale of the goods and chattels of the person against whom the warrant is issued, and shall be executed by or under the direction of a police officer;
- (b) except so far as the person against whom the execution is issued otherwise consents in writing, the goods and chattels seized shall be sold by public auction, and 5 clear days, at the least, shall intervene between the making of the levy and the sale, of which due and public notice shall be given, except in the case of

perishable goods, which may be sold at the expiration of 24 hours from seizure after such notice as is practicable; but where written consent is so given, the sale may be made in accordance with such consent;

- (c) subject as aforesaid, the goods and chattels seized shall be sold within the period fixed by the warrant, and if no period is so fixed, then within the period of 14 days from the date of making the levy, unless the sum for which the warrant was issued, together with the charges of the execution, are sooner paid;
- (d) subject to any directions to the contrary given by the warrant of execution, where household goods are seized, the goods shall not, except with the consent, in writing, of the person against whom the execution is issued, be removed from the house until the day of sale, but so much of the goods as is, in the opinion of the person executing the warrant, sufficient to satisfy the execution shall be impounded by affixing to the articles impounded a conspicuous mark, and any person who removes any goods so marked, or defaces or removes such mark, shall be liable to a penalty not exceeding 1 penalty unit;
- (e) when a person charged with the execution of a warrant of execution wilfully retains from the produce of any goods sold to satisfy the execution or otherwise exacts, any greater costs and charges than those to which the person is for the time being entitled by law, or makes any improper charge, the person shall be liable to a penalty not exceeding 1 penalty unit, and the justices before whom the person is convicted may order the person to pay any sum so retained, exacted, or improperly charged, to the person entitled thereto;
- (f) a written account of the costs and charges incurred in respect of the execution of any warrant of execution shall be sent by the police officer charged with the execution of the warrant, as soon as practicable, to the clerk of the court, and the person against whom the warrant was issued may, at any time within 1 month after the levy, inspect such account without fee or reward, at any reasonable time, and take a copy of such account;
- (g) the police officer charged with the execution of a warrant of execution shall cause the goods and chattels seized under it to be

sold, and may deduct out of the amount realised by such sale all costs and charges actually incurred in effecting such sale, and shall render to the owner the overplus (if any) after retaining the amount of the sum for which the warrant was issued, and the proper costs and charges of the execution of the warrant;

- (h) when a person pays or tenders to the police officer charged with the execution of a warrant of execution the sum mentioned in such warrant, or produces the receipt for the same of the clerk of the court and also pays the amount of the costs and charges of the execution up to the time of such payment or tender, the officer shall not execute the warrant.

Mitigation of punishment by justices

173.(1) Subject as in this Act mentioned and notwithstanding any enactment to the contrary, when justices have authority under this Act or under any other Act, whether past or future, to impose imprisonment or to impose a fine for an offence punishable on summary conviction, such justices may, in the case of imprisonment, reduce the prescribed period thereof, and in the case of a fine, if it is imposed as in respect of a first offence, may reduce the prescribed amount thereof.

(2) Where in a case when either imprisonment or fine is imposed there is prescribed a requirement for the defendant to enter into the defendant's recognisance and to find sureties for keeping the peace, or being of good behaviour, and observing some other condition, or to do any of such things, the justices may dispense with any such requirement or any part thereof.

(3) Where justices have authority under an Act other than this Act, whether past or future, to impose imprisonment for an offence punishable on summary conviction, and have not authority to impose a penalty for that offence, they may notwithstanding, when adjudicating on that offence, if they think that the justice of the case will be better met by a fine than by imprisonment, impose a penalty not exceeding 165 penalty units, and not being of such an amount as will subject the offender under the *Penalties and Sentences Act 1992*, in default of payment of the penalty, to any greater term of imprisonment than that to which the person is liable under the Act authorising the imprisonment.

Police officer to execute warrant of commitment when full sum not tendered

174A.(1) When a person tenders to the police officer charged with the execution of a warrant of commitment for non-payment of the amount of any penalty or compensation or sum of money or costs adjudged or required to be paid by a decision the sum mentioned in such warrant together with the amount of the costs and charges (if any) therein also mentioned such police officer shall accept the sum so tendered.

(2) If the sum mentioned in such warrant together with the amount of the costs and charges (if any) therein also mentioned is paid to such police officer the police officer shall not execute the warrant but if part only of such sum is tendered the police officer shall execute such warrant according to the directions thereby given.

Transfer of jurisdiction as to enforcement of fines etc.

175.(1) When any decision adjudges or requires the payment of any penalty or compensation or sum of money or costs and it appears that the person liable to make such payment does not reside at or near the place where such decision was made the clerk of the court at such place may if the clerk of the court considers that any act or acts for the enforcement of such decision can more conveniently be performed at some other place appointed for holding Magistrates Courts prepare and sign a certificate in duplicate called a 'transfer of fine certificate' and transmit to the clerk of the court at such other place such transfer of fine certificate and the duplicate thereof together with the minute or memorandum of the decision aforesaid.

(2) Where it appears at any time to a clerk of the court to whom a transfer of fine certificate has been transmitted that any act or acts for the enforcement of such decision can more conveniently be performed at some other place appointed for holding Magistrates Courts such clerk of the court may prepare and sign a further transfer of fine certificate, in triplicate, and transmit to the clerk of the court at such other place such certificate and the duplicate thereof together with a minute or memorandum of the decision aforesaid and shall thereupon transmit forthwith to the clerk of the court at the place where the decision aforesaid was made the triplicate of such certificate.

(3) Every transfer of fine certificate shall include particulars of the minute

or memorandum of the decision aforesaid and shall state the acts if any performed to enforce the said decision and the amount still required to be paid in satisfaction of such decision and when such certificate has been signed by the clerk of the court it shall be prima facie evidence of the facts therein stated.

(4) When a clerk of the court receives a transfer of fine certificate the clerk of the court shall forthwith sign the memorandum of receipt endorsed on the duplicate certificate and transmit the same to the clerk of the court from whom the certificate has been received.

(5) As from the date of the transmission of a transfer of fine certificate all acts for the enforcement of such decision which if such a certificate had not been transmitted could have been performed at some other place shall (unless a further transfer of fine certificate is signed and transmitted as hereinbefore provided) be performed at the place to which such certificate has been transmitted and not otherwise.

(6) However, any payment received by a clerk of the court by virtue of a transfer of fine certificate shall be forthwith transmitted by the clerk of the court to and shall be accounted for by the clerk of the court at the place where such decision was made.

(7) Where such decision is enforced by virtue of a transfer of fine certificate the clerk of the court at the place where such decision is so enforced shall report the result of such enforcement to the clerk of the court at the place where such decision was made.

Allocation of part payments

175A. Subject to any direction contained in the Act under which the complaint was made any sum received by a clerk of the court under a decision shall be applied—

- (a) in the first place, in the repayment to the complainant (or in the case of an order of dismissal or other order in favour of the defendant, to the defendant) of any court fees paid by the complainant or defendant; and
- (b) in the second place, in the payment of any Court fees which have been ordered to be paid and have not already been paid by the complainant or defendant as aforementioned; and

- (c) in the third place, in the payment of any costs and charges of taking and conveying the person making payment to prison (if previously ascertained and stated in the decision); and
- (d) in the fourth place, in payment or repayment of any witnesses' expenses payable under the decision; and
- (e) in the fifth place, in payment of any professional costs payable under the decision; and
- (f) in the sixth place, in payment of any other fees or costs payable under the decision; and
- (g) in the seventh place, in payment of any compensation restitution or damages adjudged by the decision to be paid; and
- (h) in the eighth place, in payment of any sum directed by the decision to be paid and, subject to such direction (if any) in the manner in which fines, penalties, or forfeitures are to be duly appropriated.

Remission of penalty

177. The Governor may remit the whole or any part of any fine, penalty, forfeiture, or costs imposed by a conviction, whether any part thereof is payable to any person other than Her Majesty or not, and upon such remission the conviction shall cease to have effect either wholly or partially as the case may be.

Power to withhold fines payable to informers

178. The justices may adjudge that no part of a penalty, or such part only of a penalty as they think fit, shall be paid to an informer, not being a party aggrieved, unless by the Act on which the conviction is founded it is expressly directed that a moiety or other fixed portion of the penalty shall be paid to the informer.

PART 7—RECIPROCAL ENFORCEMENT OF FINES AGAINST BODIES CORPORATE

Meaning of terms

179. In this Part—

“**fine**” includes a pecuniary penalty, pecuniary forfeiture, pecuniary compensation and fees, charges and costs payable under a conviction or order of a court in the exercise of summary jurisdiction;

“**reciprocating court**” means a court of a reciprocating State or Territory declared by regulation to be a reciprocating court;

“**reciprocating State or Territory**” means a State or Territory declared by regulation to a reciprocating State or Territory.

Proclamation of reciprocating States and Territories and reciprocating courts

180.(1) The Governor in Council may declare another State or a Territory of the Commonwealth, being a State or Territory having laws providing for enforcement in that State or Territory of a fine payable under a conviction or order of a magistrates court or other court having a summary jurisdiction in Queensland against a body corporate in that State or Territory, to be a reciprocating State or Territory for the purposes of the enforcement in Queensland of a fine payable under a conviction or order of a court having summary jurisdiction in the other State or in the Territory against a body corporate in Queensland.

(2) The Governor in Council may declare a court having summary jurisdiction in a reciprocating State or Territory to be a reciprocating court for the purposes of the enforcement in Queensland of a fine payable under a conviction or order of that court against a body corporate in Queensland.

(3) For the purposes of subsection (2), a court may be declared singly or in conjunction with another or others by such description or class and by means of such reference as the Governor in Council thinks fit.

Enforcement by Magistrates Court

181.(1) Where, under a conviction or order of a reciprocating court made in the exercise of its summary jurisdiction, a fine is payable by a body corporate having or appearing to have property in Queensland, and the clerk of a Magistrates Court at or near to a place where the body corporate has or appears to have property receives a request in writing from the clerk or other corresponding officer of that reciprocating court for the enforcement of the conviction or order accompanied by—

- (a) a certified copy of the conviction or order; and
- (b) a certificate under the hand of the clerk or corresponding officer making the request certifying the amount of the fine outstanding under the conviction or order;

the clerk shall—

- (c) register the conviction or order in the Magistrates Court by filing in the court a certified copy of the conviction or order; and
- (d) note the date of the registration on the copy.

(2) Upon the registration of a conviction or order under subsection (1)—

- (a) the conviction or order shall for the purposes of this Part be deemed to be a conviction or order of a Magistrates Court requiring payment by the body corporate of the amount of the fine stated in the certificate referred to in subsection (1) as outstanding; and
- (b) the clerk shall for the purposes of this Part issue a warrant of execution for the purpose of recovering the amount of the fine required to be paid by levying against the goods and chattels of the body corporate; and
- (c) the warrant so issued shall be deemed to be a warrant of execution issued by a justice under this Act and the provisions of this Act shall, with all necessary adaptations, apply and extend accordingly with respect to the enforcement of that warrant.

(3) Where the clerk receives, subsequent to the request for the enforcement of the conviction or order, a notification from the clerk or other corresponding officer of the reciprocating court of payment by or on behalf of the body corporate of an amount in satisfaction in whole or in part of the

amount of the fine outstanding, the clerk shall—

- (a) note the particulars of such payment on the certified copy of the conviction or order filed in the court; and
- (b) arrange for the return of the warrant issued pursuant to subsection (2) if it is unexecuted, and—
 - (i) withdraw it if the amount of the fine has been paid in full; or
 - (ii) if part of the amount of the fine remains outstanding, amend the amount stated in the warrant to show the amount still outstanding, and thereafter the warrant shall be enforced in respect of such altered amount.

(4) A sum of money paid to or received by a clerk of a Magistrates Court in satisfaction in whole or in part of a fine payable under a conviction or order enforced under subsection (2) shall be remitted forthwith to the clerk or other corresponding officer of the reciprocating court by which the conviction or order was made.

Enforcement by reciprocating court

182. A sum of money paid to or received by a clerk of a Magistrates Court in Queensland from a reciprocating court in satisfaction in whole or in part of a fine payable under a conviction or order of the Magistrates Court enforced by the reciprocating court shall be paid to or received by and applied by the clerk of the Magistrates Court as if the sum had been paid to the clerk of the Magistrates Court by the body corporate by which the fine was payable in satisfaction in whole or in part of the fine.

PART 9—APPEALS FROM THE DECISIONS OF JUSTICES

Division 1—Appeal by way of order to review

Order to review

209.(1) When any person who feels aggrieved as complainant, defendant, or otherwise by any conviction or order of any justices or justice or against whom any warrant has been issued by any justices or justice shows by affidavit to a Judge of the Supreme Court sitting in court or chambers a prima facie case of error or mistake in law or fact on the part of such justices or justice, or that such justices or justice had no jurisdiction to convict or make such order or issue such warrant or exceeded their, his or her jurisdiction in convicting or making such order or issuing such warrant, the Judge may, whether any other right or remedy is provided by law or not, upon application made within 28 days from the making of such conviction or order or the issuing of such warrant grant the applicant (“**the appellant**”) an order (“**an order to review**”) calling upon the party interested in maintaining the conviction order or warrant (“**the respondent**”) and also if the Judge for any special reason so directs upon the justices or justice to show cause (at a time to be therein mentioned or so soon thereafter as the matter can come on for hearing) why the conviction order or warrant should not be reviewed.

(2) Such order to review may be made returnable before the Court of Appeal or a Supreme Court Judge sitting in court or chambers.

(3) Where an order to review has been made returnable before a Judge and the respondent desires that the order to review be returnable before the Court of Appeal the respondent may, within 7 days after the service on the respondent of the order to review, serve on the appellant a notice that the respondent requires the order to review to be made returnable before the Court of Appeal at the first sittings thereof appointed to be held not less than 10 days after service of such notice and file with the Registrar of the Court an affidavit of the service of such notice, and the order to review shall thereupon be returnable before the Court of Appeal instead of before a Judge to all intents and purposes as if such order to review had been made returnable before the Court of Appeal in the first instance.

(4) There shall be no appeal to the Court of Appeal from any determination of a Judge but on the return of an order to review before a Judge the Judge may, if the Judge thinks fit, refer the same for hearing and determination by the Court of Appeal.

(5) No order to review any order by any justices or justice made on any complaint for any moneys recoverable summarily or on any complaint for any claim determinable summarily shall be granted unless the sum or (as the case may be) the amount, value, or damages in respect to which the person applying for the order to review is aggrieved exceeds or exceed \$50 (exclusive of costs) or unless it appears to the Judge that the order complained of ought to be reviewed on the ground that some important principal of law or justice is involved, or unless the said justices or justice had no jurisdiction to make such order or exceeded their, his or her jurisdiction in making such order and substantial justice has not been done.

Appeal from refusal to grant order to review

210. On the refusal of a Judge whether sitting in court or chambers to grant such order to review or to grant it upon any ground or grounds the applicant may renew his or her application to the Court of Appeal which shall have all the powers of the Judge provided that such application shall be renewed not later than the first day of the next ensuing sittings of the Court of Appeal or within such extended time as that Court may allow.

Grounds to be stated

211. Every order to review shall state in specific terms the grounds upon which it is sought to review the conviction order or warrant.

Return of order and terms on which it may be granted

212.(1) Every order to review returnable before a Judge shall be returnable at such time as the Judge may direct but such time may be enlarged by any Judge.

(2) On granting an order to review the Judge may—

- (a) impose such conditions as to costs and security as the Judge may think fit; and

(b) make such provision for a stay of proceedings and for admitting any person to bail as the Judge may think necessary.

(3) Subsection (2) applies whether the order to review is returnable before the Court of Appeal or a Judge.

(4) In this section—

“**stay of proceedings**” includes suspension of an order of disqualification or otherwise affecting status.

Powers of Court or Judge on return of order to review

213.(1) On return of an order to review and upon a consideration of the evidence and materials adduced and brought before the said justices or justice and if the Court or Judge thinks fit of any further evidence either oral or by affidavit the Court or Judge may—

- (a) discharge the order to review;
- (b) confirm, vary, amend, rescind, set aside or quash the conviction, order or warrant;
- (c) increase, reduce or vary any penalty imposed by the said conviction or order and, in doing so, may substitute wholly or partly a penalty of a kind different from that imposed by the said conviction or order;
- (d) remit the case or matter for hearing or rehearing to the said justices or justice with or without any direction in law;
- (e) order that the case or matter be retried by a Stipendiary Magistrate;
- (f) if the Court or Judge thinks necessary, rehear the case or matter or order that the case or matter be reheard by another Judge;
- (g) prohibit the said justices or justice or any other person from proceedings or further proceeding in respect of the said conviction order or warrant;
- (h) amend or cause to be amended on such terms as are just any defect or error in any proceedings before the said justices or justice, and all such amendments shall be made as may be necessary for the purpose of determining the case or matter upon

the merits;

- (i) make all such orders and cause all such proceedings to be had and taken as the Court or Judge thinks necessary to secure a final determination of the case or matter upon the merits;

and in addition to any other power herein before conferred the Court or Judge may exercise all or any of the powers or jurisdiction which the Court possesses or might exercise upon certiorari mandamus prohibition or habeas corpus.

(1A) However, notwithstanding that the Court or Judge may be of opinion that any point raised by the order to review might be decided in favour of the appellant the Court or Judge may discharge the order if the Court or Judge considers that no substantial miscarriage of justice has occurred.

(2) Where any case or matter is reheard by the Court or a Judge in accordance with this section the Court or Judge may exercise any power which might be exercised by the justices or justice by whom the case or matter was originally dealt with and any order made by the Court or Judge shall have the like effect and be enforceable in the like manner as if made by the said justices or justice.

Costs

214. The Court or Judge may make such order as to costs as the Court or Judge deems just.

Report by justices

215. On the return of an order to review, the justices or justice shall if thereunto required by the Court or Judge make to such Court or Judge a report in writing on such matter or matters bearing upon the question or questions in issue as the said Court or Judge may direct.

Affidavits

216. Upon the return of an order to review, no affidavit shall be used by any party unless—

- (a) such affidavit has been filed with the Registrar of the Court and a copy thereof delivered to every other party to the proceedings 48 hours before the time appointed for the return of the order; or
- (b) the Court or Judge upon such terms if any as the Court or Judge thinks fit grants special leave for that purpose.

Dismissal for want of prosecution

217. If any appellant makes default in prosecuting the appeal without delay or in taking any necessary steps in the presentation thereof, any other party may apply to a Judge in chambers by summons served on such appellant for an order discharging the order to review and the Judge shall make such order as shall be just with regard to the subject matter of the application and to costs.

As to drawing up and transmitting conviction or order

218.(1) The time for applying for an order to review shall begin to run from the time when the decision is pronounced whether the conviction or order is formally drawn up or not.

(2) However, the Court may postpone its decision until the conviction or order is so drawn up and transmitted in due form.

Memorandum of decision

219. Whenever a decision is given on an order to review the Registrar shall forthwith send to the proper clerk of petty sessions a memorandum of the decision of the Court or Judge and such memorandum shall be sufficient evidence of the decision for all purposes.

Enforcement of decision of Court or Judge

220. Any conviction sentence or order affirmed, amended, varied, adjudged, imposed or made by the decision of the Court or Judge in relation to any order to review may be enforced (subject to any variation made therein) by any justices or justice (whether the justices or justice in respect of whose decision the order to review was granted or not) in the same way as if it had been adjudged, imposed or made by the justices or justice, and

any justices or justice may issue, make, adjudge or impose all such summonses, warrants, orders, convictions and sentences as may be necessary to carry into effect any directions contained in any decision of the Court or Judge given in relation to any order to review and no action or proceedings shall be taken against any justices or justice for enforcing any such conviction, sentence, or order notwithstanding any defect therein.

Appellant by way of order to review deemed to have abandoned other rights of appeal

221. Any person who appeals by way of order to review against any order of any justices or justice, from which the person is by law entitled to appeal in any other manner, shall be taken to have abandoned any such other right of appeal.

Division 2—Appeal to a Judge of District Courts

Appeal to a single Judge

222.(1) When any person feels aggrieved as complainant, defendant, or otherwise by any order made by any justices or justice in a summary manner upon a complaint for an offence or breach of duty such person may appeal as hereinafter provided to a Judge of District Courts whose determination shall be final between the parties to the appeal.

(1A) However, in the case of a defendant who feels aggrieved by a summary conviction of an offence or by an order made by justices on the breach of a statutory duty an appeal under this section shall not lie unless—

- (a) the fine, penalty, or forfeiture exceeds the sum or value of \$10 or the imprisonment adjudged exceeds 1 month; or
- (b) such person has upon application made within 28 days after the decision obtained the leave of a Judge to appeal under this section.

(2) Every such appeal shall be made under and subject to the following rules and conditions—

- (a) the appellant shall—
 - (i) within 28 days after the decision or within 7 days after

obtaining the leave of a Judge to appeal against the decision, as the case may be, serve on the person concerned in upholding such decision and on the clerk of the court at the place where the decision was given a notice of appeal in the prescribed form setting forth the grounds of the appeal and stating the place where the appellant desires the appeal to be heard and determined in accordance with the *District Courts (Venue of Appeals) Act 1988* (however, if the appellant is unable through no fault of his or her own to serve notice as aforesaid the appellant may apply to a Judge for an order enlarging the time for service thereof and, if necessary, for an order for substituted service thereof, and such Judge may make such order or orders as the Judge thinks fit);

- (ii) after service of such notice on the other party and on the said clerk of the court and within 7 days of such service enter into a recognisance before a justice in such sum and with such sureties (if any) as the justice may require conditioned to appear on the hearing of the appeal and to abide the determination of the Judge thereof and to pay such costs as the Judge may order or if the justice so permits the appellant may deposit with the said clerk of the court such sum of money as the justice may direct by way of security in lieu of such recognisance but the amount of any such recognisance or sum of money shall in no case be less than \$40;
- (b) the said clerk of the court shall on receipt of the notice of appeal forthwith transmit a copy of the said notice together with the complaint depositions and other proceedings before the justices to the Registrar of the District Court at the place where the appeal is to be heard in accordance with the *District Courts (Venue of Appeals) Act 1988* and as stated in the notice of appeal;
- (c) the said Registrar shall give to the appellant and to the person concerned in upholding such decision 10 days' notice of the day on which the appeal is to be heard;
- (d) if the appellant is in custody—any justice may order the appellant's release upon the appellant entering into the recognisance or lodging the security mentioned in paragraph (a), and the appeal shall not operate as a stay of execution unless and

until the appellant enters into such recognisance or gives such security;

- (e) if the appellant obtains an order to review under section 209—the appellant shall be deemed to have waived his or her right of appeal under this section and any proceedings taken by the appellant under this section shall be null and void and a Judge may order the appellant to pay the costs occasioned to any other party by reason of such proceedings to such other party;
- (f) except where the sole ground of appeal is that the fine penalty forfeiture or punishment is excessive or inadequate, as the case may be—no appeal shall lie under this section where the defendant pleaded guilty or admitted the truth of the complaint.

(3) Where by any Act a person summarily convicted or against whom an order is made by justices is entitled to appeal to a Judge of the Supreme Court or District Court, the appeal shall lie to a Judge of District Courts in the same manner as if it were an appeal pursuant to the provisions of this section.

Appeal to be on original materials unless rehearing ordered or agreed to

223. If the Judge so orders or the parties so agree the appeal shall be by way of rehearing but otherwise the appeal shall be heard and determined upon the evidence and proceedings before the justices.

Power to adjourn appeal

224. The Judge may at any time adjourn the hearing of the appeal for such time and upon such terms and conditions as the Judge may think fit.

Powers of Judge on hearing appeal

225. Upon the hearing of any appeal the Judge may by the Judge's order confirm, quash, set aside, vary, increase or reduce the conviction order sentence or adjudication appealed against or make such other order in the matter as the Judge may think just and may by such order exercise any power which the justices might have exercised and such order shall have the

like effect and may be enforced in the like manner as if it had been made by justices.

Costs

226. The Judge may make such order as to costs to be paid by either party as the Judge may think just.

Judge may state case

227. The Judge may state in the form of a special case for the opinion of Court of Appeal any question or questions of law arising upon the facts of the case and his or her judgment shall be affirmed amended altered or reversed and such order made as to costs as the Court of Appeal upon the hearing of such special case shall direct.

Appeal not to be defeated for defect in notice etc. if amendable

228.(1) No appeal shall be defeated merely by reason of any defect whether of substance or of form in any notice of appeal or in the statement of the grounds of appeal.

(2) If the Judge is of the opinion that any such notice or statement is capable of amendment and ought to be amended the Judge may amend the same accordingly upon such terms as to payment of costs to the other party or postponement of the hearing of the appeal to another day or both payment of posts and postponement as the Judge may think just.

Failure to prosecute appeal

229.(1) If any appellant makes default in prosecuting the appeal without delay or in taking any necessary steps in the presentation thereof any other party may apply to a Judge in chambers by summons served on such appellant for an order discharging the notice of appeal and the Judge shall make such order as shall be just with regard to the subject matter of the application and to costs.

(2) If the appellant fails to appear on the day on which the appeal is to be heard the Judge may upon proof of notice of the hearing having been given to both parties estreat the recognisance entered into by the appellant or order

the forfeiture of the deposit lodged by way of security in lieu of such recognisance and order the appellant to pay to the other party such costs as the Judge may think just.

Memorandum of Judge's determination

230. Upon the determination of an appeal the Registrar shall forthwith send to the proper clerk of the court a memorandum of the determination of the Judge and such memorandum or a copy thereof certified as correct by the said clerk of the court shall be sufficient evidence of such determination for all purposes.

Enforcement of decision

231.(1) If upon the hearing of the appeal the Judge by the Judge's order confirms varies increases or reduces the conviction order sentence or adjudication appealed against such conviction order sentence or adjudication may be enforced (subject to any variation increase or reduction made therein) by any justices or justice as if no appeal had been brought unless the Judge by the Judge's order gives any direction as to the enforcement of such conviction order sentence or adjudication.

(2) If the appellant has entered into a recognisance the Judge may if the Judge thinks fit direct that such recognisance be put in suit or if the appellant has made a deposit by way of security in lieu of such recognisance the Judge may direct that the money so deposited be applied so far as it will extend in payment of any moneys the appellant is required to pay on the enforcement of the said conviction order or adjudication and the residue (if any) of the amount so deposited be repaid to the appellant.

(3) Notwithstanding subsections (1) and (2), where an appellant is required consequent upon the order of the Judge to serve a term of imprisonment or the unexpired portion of a term of imprisonment, the Judge shall, as part of the Judge's order upon the appeal, direct that a warrant be issued to arrest the appellant and commit the appellant to gaol.

(4) A warrant directed to be issued in accordance with subsection (3) shall be issued by the Registrar of the Court.

Costs of appeal

232.(1) If upon any appeal the Judge orders either party to pay costs such order shall direct such costs to be paid to the Registrar to be paid over to the party entitled to the same and shall state within what time such costs are to be paid.

(2) If such costs are not paid within the time so limited the Registrar upon the application of the party entitled to such costs or of any person on the party's behalf and on payment of the prescribed fee shall grant to the party so applying a certificate that such costs have not been paid.

(3) Upon production of such certificate to any justice, the payment of such costs may be enforced in the same manner as is hereinbefore provided for enforcing the payment of costs awarded by justices or by putting the recognisance (if any) in suit or in both of such modes.

Division 3—General provisions**Control of Supreme Court over summary convictions**

233.(1) No person brought before the Supreme Court, or a Judge thereof, on habeas corpus shall be discharged from custody by reason of any defect or error in a warrant of commitment of any justices exercising a summary jurisdiction, unless such justices, or 1 of them, and the prosecutor or other party interested in supporting the warrant have received reasonable and sufficient notice of the intention to apply for such discharge.

(2) Such notice shall require them to transmit or cause to be transmitted to the Court or Judge the conviction or order (if any) on which the commitment was founded, together with the depositions and complaint (if any) intended to be relied on in support of such conviction or order, or certified copies thereof.

Amendment

234. If any such conviction or order, complaint, and depositions, or certified copies, are so transmitted, and the offence charged or intended to be charged thereby appears to have been established, and the judgment of the justices thereupon to have been in substance warranted, and the defects or

errors appear to be defects of form only, or mistakes not affecting the substantial merits of the proceedings before the justices, the Court or Judge shall allow the warrant of commitment, and may allow the conviction or order also, to be forthwith amended in all necessary particulars in accordance with the facts, and the person committed shall thereupon be remanded to the person's former custody.

In cases of certiorari

235. The like proceedings as mentioned in sections 233 and 234 shall be had and the like amendments may and shall be allowed to be made in respect of every order brought before the Court or a Judge by writ of certiorari, and after amendment in any such case the order may be enforced in the proper manner, and shall in all respects and for all purposes be regarded and dealt with as if it had been drawn up originally as amended.

Notice dispensed with

236.(1) The notice hereby prescribed may be given either before or after the issue of the writ of habeas corpus or certiorari.

(2) However, when copies of the conviction or order and depositions are produced at the time of applying for the writ, the Court or Judge may dispense with such notice.

Power to Court or Judge to admit to bail

237.(1) When any person committed to gaol by virtue of a summary conviction or order is brought up by writ of habeas corpus, and the Court or Judge postpones the final decision of the case, such Court or Judge may admit the person to bail.

(2) If the judgment of the Court or Judge is against any person so brought up, the Court or Judge may remand the person to the person's former custody, there to serve the rest of the term for which the person was committed.

Respecting the amendment of convictions etc.

238. Whenever the facts or evidence appearing by the depositions in substance support the adjudication of the justices, then if such adjudication does not extend beyond the complaint, and if such facts or evidence would have justified the justices in making any necessary allegation or finding omitted in such adjudication, or in the formal conviction or order, or any warrant issued in pursuance of such adjudication, the powers of amendment conferred by the foregoing provisions of this Part may be exercised, and when in a conviction there is some excess which may (consistently with the merits of the case) be corrected, the conviction shall be amended accordingly, and shall stand good for the remainder, and all amendments shall be subject to such order as to costs and otherwise as the Court or Judge thinks fit.

Want of summons or complaint

239. When the person convicted, or against whom an order has been made, or any person whose goods have been condemned or directed to be sold as forfeited, was present at the hearing of the case, the conviction or order shall be sustained, although there may have been no complaint or summons or amendment thereof, unless the person objected at the hearing that there was no complaint or summons or amendment thereof.

Distribution of penalty

240. No conviction or order shall be defeated for the want of any distribution, or for a wrong distribution of the penalty or forfeiture.

Absconding appellant may be arrested

241. If any person who has been convicted summarily of an offence or against whom an order has been made by justices on the breach of a statutory duty appeals against such conviction or order and it is made to appear upon oath to any justice that such person—

- (a) is under a recognisance to appear on the hearing of the appeal and to abide the decision of the Court or a Judge thereon; and
- (b) is about to leave, or has left, Queensland;

such justice may issue the justice's warrant for the apprehension of such person and upon such person being brought before the justice may either release the person on a recognisance with a surety or sureties sufficient in the opinion of such justice to secure the appearance of the appellant to abide the decision of the said Court or Judge or commit the person to gaol if such justice is satisfied that the ends of justice would otherwise be defeated.

PART 10—REGULATIONS AND RULES OF COURT

Regulations

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

(2) A regulation may make provision with respect to—

- (a) prescribing or approving forms for the purposes of this Act, the method of verifying any information required by or in forms and the completion or preparation of forms in accordance with the directions contained in forms; and
- (b) the matters for which fees, costs and charges are payable under this Act, the amounts of the fees, costs and charges, the persons who are liable to pay fees, costs and charges, when fees, costs and charges are payable, and the recovery of any unpaid amount of fees, costs and charges; and
- (c) prescribing offences for contraventions of a regulation, and fixing a maximum penalty of a fine of 2 penalty units for such a contravention.

(3) The power conferred by this section to make a regulation providing for the imposition of fees may be exercised by providing for all or any of the following matters—

- (a) specific fees;
- (b) maximum or minimum fees;

- (c) scales of fees;
- (d) the reduction, waiver or refund of fees.

Rules of court

267.(1) The Governor in Council with the concurrence of a majority of the Judges of the Supreme Court may from time to time by order in council make rules of court providing for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of this Act, and whether in amendment to or modification of or addition to this Act, and where there may be in this Act no provision or no sufficient provision in respect of any matter or thing adequate, necessary, or expedient to give effect to this Act, providing for and supplying such omission or insufficiency.

(2) The provisions of the *Supreme Court Act 1921* and the *Supreme Court Acts Amendment (Rules Ratification) Act 1928* shall apply and extend in respect of such rules of court.

(3) Rules of court are subordinate legislation.

PART 11—SAVINGS AND TRANSITIONAL

Savings and transitional

268.(1) A reference in any Act or document to—

- (a) a Police Magistrate; or
- (b) justices in petty sessions or a Court of Petty Sessions; or
- (c) a place for holding Courts of Petty Sessions; or
- (d) a clerk of Petty Sessions;

is taken to be a reference to—

- (e) a Magistrate; or
- (f) a Magistrates Court; or

(g) a place for holding Magistrates Courts; or

(h) a clerk of the court;

respectively.

(2) If, by or under any Act, any jurisdiction, function or power is conferred on a Police Magistrate, the jurisdiction, function or power is taken to have been conferred on a Magistrate.

ENDNOTES

1 Index to Endnotes

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2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the *Reprints Act 1992*. Accordingly, this reprint includes all amendments that commenced operation on or before 23 June 1993. Future amendments of the *Justices Act 1886* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

3 List of legislation

Justices Act 1886 50 Vic No. 17

date of assent 13 October 1886
commenced 1 January 1887 (see s 3)
as amended by—

Justices Act Amendment Act 1892 56 Vic No. 23

date of assent 4 November 1892
commenced on date of assent

Criminal Code Act 1899 63 Vic No. 9 s 3(2)–(3) Schs 3–4

date of assent 28 November 1899
commenced on date of assent

Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 Sch 1

date of assent 23 December 1908
commenced on date of assent

Justices Act Amendment Act 1909 9 Edw 7 No. 11

date of assent 23 December 1909
commenced on date of assent

Criminal Code Amendment Act 1922 13 Geo 5 No. 2 s 6

date of assent 31 July 1922
commenced on date of assent

Justices Act Amendment Act 1924 15 Geo 5 No. 6

date of assent 8 September 1924
commenced on date of assent

Justices Acts Amendment Act 1929 20 Geo 5 No. 32

date of assent 23 December 1929
commenced on date of assent

Justices Acts and Real Property Fees Act 1932 23 Geo 5 No. 7 Pt 2

date of assent 22 September 1932
commenced on date of assent

Justices Acts Amendment Act 1932 23 Geo 5 No. 8

date of assent 22 September 1932
commenced on date of assent

Justices Acts Amendment Act 1941 5 Geo 6 No. 9

date of assent 20 November 1941
commenced on date of assent

Justices Acts Amendment Act 1942 6 Geo 6 No. 17

date of assent 29 October 1942
commenced on date of assent

Criminal Law Amendment Act 1945 9 Geo 6 No. 11 Pt 3

date of assent 5 April 1945
commenced on date of assent

Criminal Law Amendment Act 1946 11 Geo 6 No. 6 s 4

date of assent 20 December 1946
commenced on date of assent

Justices Acts Amendment Act 1948 12 Geo 6 No. 28

date of assent 6 April 1948
commenced on date of assent

Justices Acts Amendment Act 1949 13 Geo 6 No. 30

date of assent 22 April 1949
commenced on date of assent

Criminal Code and Justices Acts Amendment Act 1956 5 Eliz 2 No. 5 Pt 3

date of assent 29 October 1956
commenced on date of assent

Justices Acts Amendment Act 1958 7 Eliz 2 No. 39

date of assent 21 November 1958
commenced 2 February 1959 (proc pubd Gaz 20 December 1958 p 2140)

Justices Acts Amendment Act 1960 9 Eliz 2 No. 46

date of assent 16 December 1960
commenced on date of assent

Justices Acts Amendment Act 1963 No. 10

date of assent 7 November 1963
commenced on date of assent

Justices Acts Amendment Act 1964 No. 32

date of assent 14 April 1964
commenced 1 January 1965 (proc pubd Gaz 7 November 1964 p 827)

Decentralization of Magistrates Courts Act 1965 No. 43 Pt 5

date of assent 23 November 1965
commenced 1 March 1968 (proc pubd Gaz 13 January 1968 p 254)

Decimal Currency Act 1965 No. 61 s 11 Sch 2

date of assent 23 December 1965
commenced 14 February 1966 (see s 1(2))

Justices Acts and Other Acts Amendment Act 1968 No. 14 Part 2

date of assent 19 April 1968
commenced on date of assent

Metric Conversion Act 1972 No. 31 Part 2 Sch 1

date of assent 21 December 1972
commenced 1 June 1973 (proc pubd Gaz 5 May 1973 p 93)

Justices Act Amendment Act 1973 No. 22

date of assent 13 April 1973
commenced 1 July 1973 (proc pubd Gaz 9 June 1973 p 1130)

Criminal Code and the Justices Act and Another Act (Stock Offences) Amendment Act 1973 No. 88 Pt 3

date of assent 20 December 1973
commenced 1 April 1974 (proc pubd Gaz 16 February 1974 p 687)

Justices Act and Another Act Amendment Act 1974 No. 25 Pt 2

date of assent 24 April 1974
commenced 29 July 1974 (proc pubd Gaz 20 July 1974 p 1690)

Limitation of Actions Act 1974 No. 75 s 4 Sch

date of assent 1 November 1974
commenced 1 July 1975 (see s 2)

Criminal Code and the Justices Act Amendment Act 1975 No. 27 s 42

date of assent 15 May 1975
commenced 1 July 1975 (see s 1(4))

Justices of the Peace Act 1975 No. 51 s 3

date of assent 4 November 1975
commenced 1 January 1976 (proc pubd Gaz 20 December 1975 p 1574)

Justices Act and the Criminal Code Amendment Act 1977 No. 13 Pt 2

date of assent 14 April 1977
commenced 1 July 1977 (proc pubd Gaz 18 June 1977 p 1050)

Justices Act Amendment Act 1977 (No. 2) No. 33

date of assent 13 September 1977
commenced on date of assent

Evidence Act 1977 No. 47 s 3(4) Sch 1 Pt D

date of assent 3 October 1977
commenced 1 January 1978 (see s 1(2))

Justices Act and the Criminal Code Amendment Act 1978 No. 10 Pt 2

date of assent 31 May 1978
commenced on date of assent

Criminal Law Amendment Act 1979 No. 2 Pt 4

date of assent 6 April 1979
commenced 7 April 1979 (proc pubd Gaz 7 April 1979 p 1359)

Justices Act Amendment Act 1979 No. 43

date of assent 26 June 1979
commenced on date of assent

Justices Act Amendment Act 1980 No. 32

date of assent 14 May 1980
commenced 1 July 1980 (proc pubd Gaz 28 June 1980 p 1634)

Bail Act 1980 No. 35 s 4(1) Sch 1

date of assent 14 May 1980
commenced 1 July 1980 (proc pubd Gaz 28 June 1980 p 1634)

Bail Act Amendment Act 1982 No. 56 s 13

date of assent 3 December 1982
commenced 18 April 1983 (proc pubd Gaz 9 April 1983 p 1689)

Director of Prosecutions Act and Justices Act Amendment Act 1985 No. 25 Pt 3

date of assent 15 April 1985
commenced on date of assent

Penalty Units Act 1985 No. 73 s 12

date of assent 23 October 1985
commenced 1 May 1986 (proc pubd Gaz 12 April 1986 p 1571)

Family Services Act 1987 No. 32 s 69(1), (7) Sch cl 30

date of assent 30 April 1987
commenced 9 June 1987 (proc pubd Gaz 30 May 1987 p 846)

District Courts (Venue of Appeals) Act 1988 No. 7 Pt 3

date of assent 7 April 1988
commenced 1 August 1988 (proc pubd Gaz 16 July 1988 p 2876)

Corrective Services (Consequential Amendments) Act 1988 No. 88 s 3 Sch 1

date of assent 1 December 1988
commenced 15 December 1988 (see s 2(2) of Act and o in c pubd Gaz
10 December 1988 p 1675)

Bail Act and Other Acts Amendment Act 1988 No. 105 Pt 3

date of assent 14 December 1988

commenced 4 December 1989 (proc pubd Gaz 11 November 1989 p 1961)

Criminal Code, Evidence Act and other Acts Amendment Act 1989 No. 17 Pt 7

date of assent 30 March 1989

commenced 3 July 1989 (proc pubd Gaz 24 June 1989 p 1821 as amended by
proc pubd Gaz 1 July 1989 p 2190)**Dispute Resolution Centres Act 1990 No. 35 s 5.9**

date of assent 15 June 1990

commenced 1 July 1990 (see s 1.2(2))

Public Service (Administrative Arrangements) Act 1990 (No 2) No. 80 s 3 Sch 6

date of assent 14 November 1990

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 Sch

date of assent 6 December 1990

commenced on date of assent

order published Gazette—

20 April 1991 p 2538

commenced on date of publication

Supreme Court of Queensland Act 1991 No. 68 s 111 Sch 2

date of assent 24 October 1991

commenced 14 December 1991 (1991 SL No. 173)

Stipendiary Magistrates Act 1991 No. 75 s 24 Sch 1

date of assent 21 November 1991

commenced 1 January 1992 (1992 SL No. 211)

Offence Notices Legislation Amendment Act 1992 No. 23 Pt 2

date of assent 1 June 1992

commenced 1 July 1992 (1992 SL No. 195)

Justice Legislation (Miscellaneous Provisions) Act 1992 No. 40 Pt 2

date of assent 14 August 1992

ss 21, 80(1), 91, 105–106 commenced 12 March 1993 (1993 SL No. 62)

ss 50, 120 commenced 18 June 1993 (1993 SL No. 211)

remaining provisions commenced on date of assent

Penalties and Sentences Act 1992 No. 48 s 207 Sch

date of assent 24 November 1992

commenced 27 November 1992 (1992 SL No. 377)

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 s 3 Sch 2

date of assent 7 December 1992

commenced on date of assent

4 List of annotations

Key to abbreviations in list of annotations

RA	=	<i>Reprints Act 1992</i>
amd	=	amended
ins	=	inserted
om	=	omitted
renum	=	renumbered
sub	=	substituted
Chap	=	Chapter
Pt hdg	=	Part heading
Div hdg	=	Division heading
Sdiv hdg	=	Subdivision heading
hdg prec	=	heading preceding
prov hdg	=	provision heading
cl	=	clause
prev	=	previous
pres	=	present

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Preamble

om 1908 8 Edw 7 No. 18 s 2 Sch 1

Short title

s 1 amd 1932 23 Geo 5 No. 7 s 4; 1974 No. 25 s 5
sub 1992 No. 40 s 4

Repeal of existing Acts

s 2 om 1908 8 Edw 7 No. 18 s 2 Sch 1

COMMENCEMENT OF ACT

hdg prec s 3 om 1992 No 40 s 5

INTERPRETATION

hdg prec s 4 om 1992 No. 40 s 5

Meaning of terms

s 4 sub 1964 No. 32 s 4
def “**breach of duty**” amd 1992 No. 40 s 6(3)
def “**clerk of the court**” amd 1992 No. 40 s 6(4)
def “**decision**” amd 1980 No. 35 s 4(1) Sch 1
def “**District Court**” om 1992 No. 40 s 6(1)
def “**justices**” or “**justice**” amd 1992 No. 40 s 6(5)
def “**Magistrates Court**” om 1992 No. 40 s 6(1)
def “**Minister**” sub 1990 No. 80 s 3 Sch 6
om 1992 No. 40 s 6(1)
def “**oath**” om 1992 No. 40 s 6(1)
def “**order**” sub 1949 13 Geo 6 No. 30 s 2
def “**police officer**” om 1992 No. 40 s 6(1)
def “**police station**” ins 1958 7 Eliz 2 No. 39 s 2
def “**private complaint**” ins 1992 No. 40 s 6(2)
def “**public officer**” ins 1992 No. 40 s 6(2)

def “**Stipendiary Magistrate**” om 1992 No. 40 s 6(1)

PART 2—JUSTICES

Pt hdg om (see s 37 RA)

Appointment of justices generally

s 6 amd 1964 No. 32 ss 5–6
om 1975 No. 51 s 3(1)

Removal from office

s 7 amd 1964 No. 32 ss 5, 7
om 1975 No. 51 s 3(1)

Chairmen of Municipal Districts to be justices

s 8 amd 1964 No. 32 s 8
om 1975 No. 51 s 3(1)

Unless prohibited

s 9 amd 1964 No. 32 s 9
om 1975 No. 51 s 3(1)

Persons to be justices for the State

s 10 amd 1964 No. 32 s 5
om 1975 No. 51 s 3(1)

Stipendiary Magistrates

s 11 amd 1941 5 Geo 6 No. 9 s 2; 1964 No. 32 s 10
om 1991 No. 75 s 24 Sch 1

Justices beyond the State

s 12 amd 1964 No. 32 s 5
om 1975 No. 51 s 3(1)

Jurisdiction of justices

s 13 om 1975 No. 51 s 3(1)

Acts done beyond the State

s 14 om 1975 No. 51 s 3(1)

Oath of Office

s 15 om 1975 No. 51 s 3(1)

Need not be taken second time

s 16 amd 1964 No. 32 ss 5, 11
om 1975 No. 51 s 3(1)

DESCRIPTION

hdg prec s 17 om 1975 No. 51 s 3(1)

Justices how described

s 17 amd 1964 No. 32 s 5
om 1975 No. 51 s 3(1)

Titles and letters prima facie evidence of status

s 18 amd 1941 5 Geo 6 No. 9 s 3
sub 1964 No. 32 s 12

amd 1975 No. 51 s 3(1)
om 1991 No. 75 s 24 Sch 1

Division 1—General provisions

Div hdg ins 1992 No. 40 s 7

GENERAL PROVISIONS

hdg prec s 19 om 1992 No. 40 s 7

General provision

s 19 amd 1949 13 Geo 6 No. 30 s 3; 1964 No. 32 s 13

Division 2—Magistrates Courts

Div hdg ins 1992 No. 40 s 8

MAGISTRATES COURTS

hdg prec s 22 om 1992 No. 40 s 8

Continuance of Magistrates Courts

s 22 sub 1949 13 Geo 6 No. 30 s 4
amd 1958 7 Eliz 2 No. 39 s 3; 1964 No. 32 s 14
sub 1992 No. 40 s 9

Jurisdiction of Magistrates Courts

s 22A ins 1992 No. 40 s 9

Magistrates Court districts

s 22B ins 1992 No. 40 s 9

Appointment of clerks of the court

s 22C ins 1992 No. 40 s 9

Vacancy in office of clerk of court etc.

s 23 prev om 1964 No. 32 s 15
pres ins 1992 No. 40 s 10

Division 3—Powers of single justice

Div hdg ins 1992 No. 40 s 11

POWERS OF 1 JUSTICE

hdg prec s 24 om 1992 No. 40 s 11

Acts by 1 justice

s 24 amd 1964 No. 32 s 16

After decision 1 justice may issue warrant of execution or commitment

s 25 amd 1949 13 Geo 6 No. 30 s 5

Division 4—Hearing and quorum

Div hdg ins 1992 No. 40 s 12

HEARING AND QUORUM

hdg prec s 27 om 1992 No. 40 s 12

Hearing of complaint

s 27 sub 1964 No. 32 s 17

Majority to decide

s 28 amd 1992 No. 40 s 13

Division 5—Magistrates

Div hdg ins 1992 No. 40 s 14

STIPENDIARY MAGISTRATES

hdg prec s 30 om 1992 No. 40 s 14

Stipendiary Magistratess 30 sub 1964 No. 32 s 18
 amd 1992 No. 40 s 15**Duties of clerks of petty sessions to be discharged by police magistrate**

s 31 om 1992 No. 40 s 16

Division 6—Extent of jurisdiction

Div hdg ins 1992 No. 40 s 17

EXTENT OF JURISDICTION

hdg prec s 32 om 1992 No. 40 s 17

Warrants of commitment and remand by justices of limited jurisdiction

s 33 amd 1964 No. 32 s 5

Police officers to obey warrants of justice etc.

s 34 sub 1992 No. 40 s 18

Apprehended person may be taken before any justice

s 35 sub 1992 No. 40 s 19

Duty of police officers

s 36 om 1992 No. 40 s 20

Power of court to order delivery of certain propertys 39 sub 1932 23 Geo 5 No. 8 s 2
 amd 1949 13 Geo 6 No. 30 s 6
 sub 1992 No. 40 s 21**Division 7—Interruption of proceedings**

Div hdg ins 1992 No. 40 s 22

INTERRUPTION OF PROCEEDINGS

hdg prec s 40 om 1992 No. 40 s 22

Penalty for insulting or interrupting justicess 40 amd 1949 13 Geo 6 No. 30 s 7
 sub 1964 No. 32 s 19
 amd 1992 No. 40 s 23**Accessories**

s 41 om 1899 63 Vic No. 9 s 3(2) Sch 3

Division 1—Complaints

Div hdg ins 1992 No. 40 s 24

COMPLAINTS**hdg prec s 42** om 1992 No. 40 s 24**Commencement of proceedings****s 42** sub 1964 No. 32 s 20
amd 1965 No. 43 s 13(2)(a)**Matter of complaint****s 43** sub 1964 No. 32 s 21**Property of partners, &c.****s 44** om 1899 63 Vic No. 9 s 3(2) Sch 3**Property in public works****s 45** om 1899 63 Vic No. 9 s 3(2) Sch 3**What is sufficient description of offence****s 47** amd 1963 No. 10 s 2; 1964 No. 32 s 22**Division 2—Amendment of complaints, summonses and warrants****Div hdg** ins 1992 No. 40 s 25**VARIANCE AND AMENDMENT****hdg prec s 48** om 1992 No. 40 s 25**Amendment of complaint****s 48** sub 1949 13 Geo 6 No. 30 s 8; 1964 No. 32 s 23**Amendment****s 49** amd 1949 13 Geo 6 No. 30 s 9; 1980 No. 35 s 4(1) Sch 1**Recording of amendment****s 50** amd 1949 13 Geo 6 No. 30 s 10
sub 1964 No. 32 s 24
amd 1965 No. 43 s 13(2)(b)
sub 1992 No. 40 s 26**Division 3—How complaints are made****Div hdg** ins 1992 No. 40 s 27**COMPLAINTS HOW MADE****hdg prec s 51** om 1992 No. 40 s 27**When complaint to be on oath and when not****s 51** sub 1964 No. 32 s 25**Division 4—Limitation of proceedings****Div hdg** ins 1992 No. 40 s 28**LIMITATION****hdg prec s 52** om 1992 No. 40 s 28**Limitation of proceedings****s 52** amd 1942 6 Geo 6 No. 17 s 2; 1949 13 Geo 6 No. 30 s 11**Division 5—Summonses****Div hdg** ins 1992 No. 40 s 29

SUMMONS**hdg prec s 53** om 1992 No. 40 s 29**When justice may issue summons****s 53** amd 1973 No. 22 s 3; 1990 No. 35 s 5.9(1)(a)**Form of summons and filing of complaint and summons****s 54** sub 1964 No. 32 s 26
amd 1965 No. 43 s 13(2)(c); 1968 No. 14 s 4**SERVICE, ENDORSEMENT, AND PROOF OF SERVICE****hdg prec s 56** om 1992 No. 40 s 30**Service of summonses****prov hdg** ins 1992 No. 40 s 31(1)**s 56** sub 1964 No. 32 s 27
amd 1968 No. 14 s 5; 1973 No. 22 s 4; 1992 No. 40 s 31(2)–(4)**Right of entry to serve summons****s 56A** ins 1992 No. 40 s 32**Division 6—Warrants and arrest without warrant****Div hdg** ins 1992 No. 40 s 33**WARRANTS IN THE FIRST INSTANCE****hdg prec s 57** om 1992 No. 40 s 33**Cases in which warrants may be issued****s 57** amd 1964 No. 32 s 5
sub 1992 No. 40 s 34**Summons may be issued instead of warrant****s 58** sub 1992 No. 40 s 35**Warrant in the first instance****s 59** amd 1977 No. 13 s 5**DIRECTION OF WARRANTS****hdg prec s 60** om 1992 No. 40 s 36**FORM OF WARRANT****hdg prec s 62** om 1992 No. 40 s 36**Warrant to be in force till executed****s 63** amd 1968 No. 14 s 6**Search warrants****s 64** om 1899 63 Vic No. 9 s 3(2) Sch 3**SUNDAY WARRANTS****hdg prec s 65** om 1992 No. 40 s 36**Backing of warrants****s 66** om 1964 No. 32 s 28**Effect thereof****s 67** om 1964 No. 32 s 28

Jurisdiction in such cases

s 68 om 1964 No. 32 s 28

ARREST WITHOUT WARRANT

hdg prec s 69 om 1992 No. 40 s 36

How person arrested without warrant to be dealt with

s 69 sub 1958 7 Eliz 2 No. 39 s 4

TAKING OF BAIL BY POLICE OFFICERS

hdg prec s 69A ins 1958 7 Eliz 2 No. 39 s 5

sub 1964 No. 32 s 29

om 1980 No. 35 s 4(1) Sch 1

When police officer may take bail

s 69A ins 1958 7 Eliz 2 No. 39 s 5

amd 1960 9 Eliz 2 No. 46 s 2

sub 1964 No. 32 s 29

amd 1965 No. 43 s 13(2)(d)

om 1980 No. 35 s 4(1) Sch 1

Division 7—When courts open

Div hdg ins 1992 No. 40 s 37

PUBLICITY

hdg prec s 70 om 1992 No. 40 s 37

Sexual offences against children to be heard in camera

s 71A ins 1945 9 Geo 6 No. 11 s 15

amd 1946 11 Geo 6 No. 6 s 4; 1968 No. 14 s 7; 1987 No. 32 s 69(1), (7)
Sch cl 30

om 1989 No. 17 s 77

Prohibition on taking photographs, producing pictures or other optical effects

s 71B ins 1977 No. 13 s 6

amd 1992 No. 40 s 38

Division 8—Right to conduct own case or have counsel or solicitor

Div hdg ins 1992 No. 40 s 39

COUNSEL AND SOLICITOR

hdg prec s 72 om 1992 No. 40 s 39

Counsel or solicitor

s 72 amd 1968 No. 14 s 8

Division 9—Evidence

Div hdg ins 1992 No. 40 s 40

EVIDENCE

hdg prec s 73 om 1992 No. 40 s 40

Defendant, and wife or husband, when competent

s 75 om 1977 No. 47 s 3(4) Sch 1 Part D

Mode of taking evidence

s 77 sub 1964 No. 32 s 30

Division 10—Witnesses in general

Div hdg ins 1992 No. 40 s 41

WITNESSES IN GENERAL

hdg prec s 78 om 1992 No. 40 s 41

Power to issue summons to witness

s 78 sub 1992 No. 40 s 42

After summons warrant

s 79 amd 1964 No. 32 s 31; 1992 No. 40 s 43

Warrant may be backed if necessary

s 80 om 1968 No. 14 s 9

Warrant in the first instance

s 81 amd 1968 No. 14 s 10

Witness not answering

s 82 amd 1964 No. 32 s 32

Division 11—Remand and adjournment

Div hdg ins 1992 No. 40 s 44

REMAND AND ADJOURNMENT

hdg prec s 84 om 1992 No. 40 s 44

Remand of defendant

s 84 amd 1949 13 Geo 6 No. 30 s 12

Bail of defendant during examination

s 87 om 1980 No. 35 s 4(1) Sch 1

Adjournment of the hearing

s 88 amd 1949 13 Geo 6 No. 30 s 13

sub 1964 No. 32 s 33

amd 1980 No. 35 s 4(1) Sch 1; 1990 No. 35 s 5.9(1)(b)

Division 12—Committal and recognisance

Div hdg ins 1992 No. 40 s 45

COMMITTAL AND RECOGNISANCE

hdg prec s 89 om 1992 No. 40 s 45

Notice to witness

s 91 sub 1980 No. 35 s 4(1) Sch 1

Recognisances

s 92 amd 1941 5 Geo 6 No. 9 s 5; 1964 No. 32 s 34; 1968 No. 14 s 11

om 1980 No. 35 s 4(1) Sch 1

Adjournment on non-appearance

prov hdg amd 1968 No. 14 s 12(a)

s 93 amd 1949 13 Geo 6 No. 30 s 14; 1958 7 Eliz 2 No. 39 s 6; 1964 No. 32

s 35; 1968 No. 14 s 12(b)–(d)
 sub 1980 No. 35 s 4(1) Sch
 amd 1982 No. 56 s 13
 sub 1988 No. 105 s 30

RECOGNISANCES GENERALLY

hdg prec s 94 om 1992 No. 40 s 46

Recognisances taken out of Court

s 94 amd 1964 No. 32 s 36
 sub 1992 No. 40 s 47

Non-acceptance of sureties

s 94A ins 1949 13 Geo 6 No. 30 s 15

Arrest of principal by sureties

s 96 om 1980 No. 35 s 4(1) Sch 1

EXECUTION OF WARRANTS OF COMMITMENT

hdg prec s 97 om 1992 No. 40 s 48

Conveying prisoners to gaol

s 97 amd 1949 13 Geo 6 No. 30 s 16

FORMS

hdg prec s 98 om 1992 No. 40 s 49

Forms in Schedule 3

s 98 amd 1949 13 Geo 6 No. 30 s 17
 om 1992 No. 40 s 50

Division 13—Records of court

Div hdg ins 1992 No. 40 s 51

Records of court

s 98A ins 1964 No. 32 s 37
 sub 1965 No. 43 s 13(2)(e)

PART 4A—ENFORCEMENT OF INFRINGEMENT NOTICES BY REGISTRATION

Pt hdg ins 1992 No. 23 s 4

Application of Part

s 98B ins 1992 No. 23 s 4

Interpretation

s 98C ins 1992 No. 23 s 4
 def “**prescribed**” om 1992 No. 68 s 3 Sch 2
 def “**SETONS**” ins 1992 No. 40 s 52
 def “**SETONS clerk**” ins 1992 No. 40 s 52

Reminder notices

s 98D ins 1992 No. 23 s 4
 amd 1992 No. 40 s 53

Enforcement procedure

s 98E ins 1992 No. 23 s 4
amd 1992 No. 40 s 54

Enforcement orders

s 98F ins 1992 No. 23 s 4
amd 1992 No. 40 ss 54–55

Notice of enforcement order

s 98G ins 1992 No. 23 s 4
amd 1992 No. 40 s 54

Applications for time to pay

s 98H ins 1992 No. 23 s 4
amd 1992 No. 40 s 54, 56

Issue of warrants

s 98I ins 1992 No. 23 s 4
amd 1992 No. 40 s 54

Effect of proceedings under this Part

s 98J ins 1992 No. 23 s 4

Fine option orders

s 98K ins 1992 No. 23 s 4
amd 1992 No. 40 s 57

Election for court hearing

s 98L ins 1992 No. 23 s 4
amd 1992 No. 40 s 54, 56

Withdrawal from acting under this Part

s 98M ins 1992 No. 23 s 4
amd 1992 No. 40 s 54

Regulations

s 98N ins 1992 No. 23 s 4
om 1992 No. 40 s 58

Division 1—Procedure on presentation of information

Div hdg ins 1992 No. 40 s 59

INFORMATION PRESENTED

hdg prec s 99 om 1992 No. 40 s 59

Certificate where information is presented

s 99 amd 1980 No. 35 s 4(1) Sch 1

Committal of person who has been apprehended

prov hdg ins 1992 No. 40 s 60
s 101 sub 1964 No. 32 s 38
amd 1980 No. 35 s 4(1) Sch 1

Division 2—Procedure for private complaint

Div hdg ins 1992 No. 40 s 61

PROCEDURE FOR PRIVATE COMPLAINT

hdg prec s 102A ins 1979 No. 2 s 12
om 1992 No. 40 s 61

Application of provisions

s 102A prev s 102A ins 1979 No. 2 s 12
om 1979 No. 43 s 2
pres s 102A ins 1979 No. 43 s 3

Service of summons and particulars on private complaint

s 102B prev s 102B ins 1979 No. 2 s 12
om 1979 No. 43 s 2
pres s 102B ins 1979 No. 43 s 3

Application for dismissal of frivolous or vexatious complaints

s 102C prev s 102C ins 1979 No. 2 s 12
om 1979 No. 43 s 2
pres s 102C ins 1979 No. 43 s 3

Appeal to Supreme Court from Magistrate's decision

s 102D prev s 102D ins 1979 No. 2 s 12
om 1979 No. 43 s 2
pres s 102D ins 1979 No. 43 s 3

Further proceedings on a dismissed or struck out complaint prohibited

s 102E prev s 102E ins 1979 No. 2 s 12
om 1979 No. 43 s 2
pres s 102E ins 1979 No. 43 s 3

Publication prohibited

s 102F prev s 102F ins 1979 No. 2 s 12
om 1979 No. 43 s 2
pres s 102F ins 1979 No. 43 s 3
amd 1992 No. 40 s 62

Dismissal for want of prosecution

s 102G ins 1979 No. 43 s 3

Meaning of expression "private complaint"

s 102H ins 1979 No. 43 s 3
om 1992 No. 40 s 63

Division 3—Warrant of committal

Div hdg ins 1992 No. 40 s 64

WARRANT—COMMITTAL

hdg prec s 103 om 1992 No. 40 s 64

Disobedience of summons

s 103 amd 1964 No. 32 s 39; 1977 No. 33 s 2

Division 4—Defendant's appearance on private complaint

Div hdg ins 1992 No. 40 s 65

Defendant's appearance upon private complaint

s 103A ins 1977 No. 33 s 3
amd 1979 No. 2 s 13; 1992 No. 40 s 66

Division 5—Examination of witnesses

Div hdg ins 1992 No. 40 s 67

Proceedings upon an examination of witnesses in relation to an indictable offence

s 104 amd 1949 13 Geo 6 No. 30 s 18
sub 1964 No. 32 s 40
amd 1973 No. 22 s 5; 1975 No. 27 s 42; 1977 No. 33 s 4; 1980 No. 32 s 3

Defendant may be excused from certain attendances

s 104A ins 1980 No. 32 s 4

Discharge of defendant

s 107 om 1964 No. 32 s 41

Procedure upon a consideration of all the evidence

s 108 amd 1956 5 Eliz 2 No. 5 s 7
sub 1964 No. 32 s 42
amd 1973 No. 88 s 14; 1980 No. 35 s 4(1) Sch 1

Use of tendered statements in lieu of oral testimony in committal proceedings

s 110A ins 1974 No. 25 s 6
amd 1977 No. 13 s 7

Depositions of persons dead, absent etc.

s 111 sub 1929 20 Geo 5 No. 32 s 2
amd 1942 6 Geo 6 No. 17 s 3; 1945 9 Geo 6 No. 11 s 16; 1964 No. 32 s 43;
1974 No. 25 s 7; 1977 No. 33 s 5; 1992 No. 40 s 68

Evidence for defence

s 112 om 1964 No. 32 s 44

Division 6—Defendant admitting guilt

Div hdg ins 1992 No. 40 s 69

DEFENDANT ADMITTING GUILT

hdg prec s 113 om 1992 No. 40 s 69

Procedure if defendant pleads guilty

s 113 amd 1899 63 Vic No. 9 s 3(2) Sch 3; 1924 15 Geo 5 No. 6 s 2; 1956 5 Eliz
2 No. 5 s 8
sub 1964 No. 32 s 45
amd 1973 No. 88 s 15; 1980 No. 35 s 4(1) Sch 1

Division 7—Corporation charged with indictable offence

Div hdg ins 1992 No. 40 s 70

CORPORATION CHARGED WITH INDICTABLE OFFENCE

hdg prec s 113A ins 1978 No. 10 s 4
om 1992 No. 40 s 70

Committal proceedings where defendant is a corporation**s 113A** ins 1978 No. 10 s 4**BAIL****hdg prec s 114** om 1980 No. 35 s 4(1) Sch 1**Justices not to admit to bail in certain cases****s 114** amd 1922 13 Geo 5 No. 2 s 6
sub 1964 No. 32 s 46
om 1980 No. 35 s 4(1) Sch 1**Justices may admit to bail in other cases****s 115** amd 1922 13 Geo 5 No. 2 s 6; 1949 13 Geo 6 No. 30 s 19
sub 1964 No. 32 s 47
om 1980 No. 35 s 4(1) Sch 1**Committing justices to indicate bail****s 116** amd 1922 13 Geo 5 No. 2 s 6
sub 1964 No. 32 s 48
om 1980 No. 35 s 4(1) Sch 1**Certificate****s 117** amd 1922 13 Geo 5 No. 2 s 6
om 1964 No. 32 s 49**Duplicate certificate of consent to bail****s 118** amd 1964 No. 32 s 50
om 1980 No. 35 s 4(1) Sch 1**Procedure****s 119** om 1964 No. 32 s 51**Bail for persons charged with other misdemeanours****s 120** om 1964 No. 32 s 52**Division 8—Action on committal for trial****Div hdg** ins 1992 No. 40 s 71**TRANSMISSION OF UNDERTAKING AS TO BAIL****hdg prec s 121** amd 1980 No. 35 s 4(1) Sch 1
om 1992 No. 40 s 71**Transmission of undertaking as to bail****prov hdg** amd 1980 No. 35 s 4(1) Sch 1
s 121 sub 1964 No. 32 s 53
amd 1980 No. 35 s 4(1) Sch 1**WARRANT OF DELIVERANCE****hdg prec s 122** om 1980 No. 35 s 4(1) Sch 1**Admission to bail of a person in custody****s 122** sub 1964 No. 32 s 54
om 1980 No. 35 s 4(1) Sch 1**WITNESSES WHERE COMMITTAL FOR TRIAL****hdg prec s 123** om 1992 No. 40 s 72

Notice to witness

s 123 sub 1977 No. 13 s 8

Signature of justices

s 124 om 1977 No. 13 s 9

Justices may commit refractory witness

s 125 om 1977 No. 13 s 10

TRANSMISSIONS OF DEPOSITIONS, ETC.

hdg prec s 126 om 1992 No. 40 s 72

Transmission of depositionss 126 sub 1964 No. 32 s 55
amd 1980 No. 35 s 4(1) Sch 1; 1985 No. 25 s 9**Duty of Attorney-General etc.**

s 127 amd 1985 No. 25 s 10

RECOMMITTAL

hdg prec s 129 om 1992 No. 40 s 72

Recommittal in case of error

s 129 amd 1977 No. 13 s 11; 1980 No. 35 s 4(1) Sch 1

Defendant may have copies of the deposition

s 130 om 1899 63 Vic No. 9 s 3(2) Sch 3

Copies of deposition

s 131 om 1899 63 Vic No. 9 s 3(2) Sch 3

Division 9—Examination of witnesses in another court district

Div hdg ins 1992 No. 40 s 73

REMOTE PLACES

hdg prec s 132 om 1992 No. 40 s 73

Examination by justices for an offence committed in another Magistrates Court Districts 132 sub 1964 No. 32 s 56
amd 1980 No. 35 s 4(1) Sch 1**Remand to another place**s 133 sub 1964 No. 32 s 57
amd 1980 No. 35 s 4(1) Sch 1**Effect of depositions, undertakings as to bail and notices to witnesses taken, given or ordered to be given elsewhere than at place of committal**

s 134 sub 1964 No. 32 s 58; 1980 No. 35 s 4(1) Sch 1

Proviso

s 135 om 1964 No. 32 s 59

Procedure on apprehension under backed warrant

s 136 om 1964 No. 32 s 59

Defendant may have to pay costs

s 137 om 1964 No. 32 s 59

Certain persons not to be discharged on General Gaol Delivery

s 138 om 1964 No. 32 s 59

Division 1—Venue

Div hdg ins 1992 No. 40 s 74

VENUE

hdg prec s 139 om 1992 No. 40 s 74

Where summary cases to be heard

s 139 amd 1942 6 Geo 6 No. 17 s 4

sub 1964 No. 32 s 60

amd 1972 No. 31 s 6 Sch 1; 1973 No. 22 s 6; 1974 No. 25 s 8; 1980 No. 35 s 4(1) Sch 1

Adjournment to different place

s 140 amd 1964 No. 32 s 61; 1974 No. 25 s 9; 1980 No. 35 s 4(1) Sch 1

Division 2—Default by complainant or defendant

Div hdg ins 1992 No. 40 s 75

COMPLAINANT'S DEFAULT

hdg prec s 141 om 1992 No. 40 s 75

Dismissal or adjournment in absence of complainant

s 141 amd 1980 No. 35 s 4(1) Sch 1

DEFENDANT'S DEFAULT

hdg prec s 142 om 1992 No. 40 s 76

Proceedings in absence of defendant

s 142 amd 1949 13 Geo 6 No. 30 s 20

sub 1963 No. 10 s 3

amd 1964 No. 32 s 62; 1968 No. 14 s 13; 1973 No. 22 s 7; 1974 No. 25 s 10; 1992 No. 40 s 77

Permissible procedure in absence of defendant in certain cases

s 142A ins 1974 No. 25 s 11

amd 1992 No. 40 s 78

Or justices may adjourn the case

s 143 amd 1964 No. 32 s 63

Division 3—Hearing

Div hdg ins 1992 No. 40 s 79

HEARING

hdg prec s 144 om 1992 No. 40 s 79

Both parties appearing

s 144 amd 1964 No. 32 s 64

Defendant to be asked to plead

s 145 sub 1964 No. 32 s 65

Where defendant pleads not guilty**s 146** sub 1964 No. 32 s 66**Proceeding at the hearing on defendant's confession in absentia****s 146A** prev s 146A renum as s 146B 1963 No. 10 s 5
pres s 146A ins 1963 No. 10 s 4
amd 1964 No. 32 s 67; 1992 No. 40 s 80**Payment to clerk of petty sessions of money recoverable in a summary way****s 146B** (prev s 146A) ins 1941 5 Geo 6 No. 9 s 6
amd 1942 6 Geo 6 No. 17 s 5
renum 1963 No. 10 s 5
amd 1965 No. 61 s 11 Sch 2; 1992 No. 40 s 81**Power of justices to re-open proceedings and rectify orders****s 147A** ins 1977 No. 13 s 12**PRACTICE****hdg prec s 148** om 1992 No. 40 s 82**Division 4—Dismissal****Div hdg** ins 1992 No. 40 s 83**DISMISSAL****hdg prec s 149** om 1992 No. 40 s 83**MINUTES OF CONVICTIONS AND ORDERS****hdg prec s 150** om 1973 No. 22 s 8**Minute of decision to be made and advice thereof sent by post****s 150** amd 1949 13 Geo 6 No. 30 s 21; 1960 9 Eliz 2 No. 46 s 3; 1964 No. 32
s 68; 1965 No. 43 s 13(2)(f)
sub 1973 No. 22 s 8**Division 5—Convictions and orders****Div hdg** ins 1992 No. 40 s 84**CONVICTIONS AND ORDERS****hdg prec s 151** om 1992 No. 40 s 84**Formal convictions and orders****s 151** amd 1992 No. 40 s 85**NO CERTIORARI****hdg prec s 153** om 1992 No. 40 s 86**Division 6—Supply of copies of record****Div hdg** ins 1992 No. 40 s 87**COPIES OF DEPOSITIONS, ETC.****hdg prec s 154** om 1992 No. 40 s 87**Copies of record****s 154** amd 1964 No. 32 s 69
sub 1968 No. 14 s 14

Imprisonment in first instance

s 155 om 1973 No. 22 s 9

Division 7—Imprisonment

Div hdg ins 1992 No. 40 s 88

IMPRISONMENT

hdg prec s 156 om 1992 No. 40 s 88

Imposition of imprisonment

s 156 sub 1964 No. 32 s 70; 1968 No. 14 s 15
amd 1990 No. 88 s 3 Sch

Division 8—Costs

Div hdg ins 1992 No. 40 s 89

COSTS

hdg prec s 157 om 1992 No. 40 s 89

Costs on conviction or order

s 157 amd 1964 No. 32 s 71

Costs on dismissal

s 158 amd 1964 No. 32 s 72; 1992 No. 40 s 90

Exercise of discretion in relation to an award of costs

s 158A ins 1992 No. 40 s 91

The sum allowed for costs to be specified in the conviction or order

s 159 amd 1964 No. 32 s 73

Division 9—Enforcement of decisions

Div hdg ins 1992 No. 40 s 92

ENFORCEMENT OF DECISIONS

hdg prec s 161 ins 1949 13 Geo 6 No. 30 s 22
om 1992 No. 40 s 92

Mode of enforcement where no express provision made

s 161 sub 1892 56 Vic No. 23 s 3; 1949 13 Geo 6 No. 30 s 22
amd 1985 No. 73 s 12(1); 1992 No. 48 s 207 Sch

EXECUTION

hdg prec s 161A ins 1949 13 Geo 6 No. 30 s 22
om 1992 No. 40 s 93

Mode of levying penalties, moneys, or costs

s 161A ins 1949 13 Geo 6 No. 30 s 22

Power to detain until return of warrant

prov hdg sub 1949 13 Geo 6 No. 30 s 23
s 162 amd 1949 13 Geo 6 No. 30 s 23

Commitment in default of execution

prov hdg sub 1949 13 Geo 6 No. 30 s 24
s 163 amd 1949 13 Geo 6 No. 30 s 24; 1985 No. 73 s 12(1); 1988 No. 88 s 3
Sch 1; 1992 No. 48 s 207 Sch

When Court may order imprisonment in default of execution

s 163A ins 1909 9 Edw 7 No. 11 s 3
 amd 1949 13 Geo 6 No. 30 s 25; 1985 No. 73 s 12(1); 1988 No. 88 s 3
 Sch 1; 1992 No. 48 s 207 Sch

Payment by instalments of, or security taken for payment of, money

s 164 amd 1949 13 Geo 6 No. 30 s 26; 1992 No. 40 s 94

Commitment for non-payment of a penalty or a sum ordered to be paid

s 165 amd 1949 13 Geo 6 No. 30 s 27; 1985 No. 73 s 12(1); 1988 No. 88 s 3
 Sch 1
 om 1992 No. 48 s 207 Sch

Commitment for non-payment of a penalty or a sum ordered to be paid

s 166 amd 1988 No. 88 s 3 Sch 1
 om 1992 No. 48 s 207 Sch

Power to issue or postpone warrant

s 166A ins 1909 9 Edw 7 No. 11 s 4
 amd 1949 13 Geo 6 No. 30 s 28; 1964 No. 32 s 74
 sub 1973 No. 22 s 10

IMMEDIATE IMPRISONMENT

hdg prec s 167 om 1992 No. 40 s 95

Commitment where execution would be ruinous

prov hdg amd 1949 13 Geo 6 No. 30 s 29
s 167 amd 1949 13 Geo 6 No. 30 s 29; 1973 No. 22 s 11; 1985 No. 73 s 12(1);
 1988 No. 88 s 3 Sch 1; 1992 No. 48 s 207 Sch

SATISFACTION OF EXECUTION BY PAYMENT

hdg prec s 168 om 1985 No. 73 s 12(1)

Discharge on payment

prov hdg amd 1949 13 Geo 6 No. 30 s 30
s 168 om 1985 No. 73 s 12(1)

PAYMENT UNDER EXECUTION

hdg prec s 169 om 1992 No. 40 s 95

To whom payments to be made

s 169 amd 1992 No. 40 s 96

Backing of warrants of execution

s 170 om 1964 No. 32 s 75

BACKING OF WARRANTS OF EXECUTION

hdg prec s 171 om 1992 No. 40 s 97

Effect thereof

s 171 amd 1964 No. 32 s 76

MODE OF EXECUTION

hdg prec s 172 om 1992 No. 40 s 97

Procedure on execution

s 172 amd 1992 No. 40 s 98

IMPRISONMENT

hdg prec s 173 om 1992 No. 40 s 99

Mitigation of punishment by justices

s 173 amd 1985 No. 73 s 12(1); 1988 No. 88 s 3 Sch 1; 1992 No. 40 s 100; 1992 No. 48 s 207 Sch

Scale of imprisonment for non-payment of money

s 174 amd 1909 9 Edw 7 No. 11 s 5; 1949 13 Geo 6 No. 30 s 31; 1964 No. 32 s 77; 1973 No. 22 s 12
om 1985 No. 73 s 12(1)

Police officer to execute warrant of commitment when full sum not tendered

s 174A ins 1949 13 Geo 6 No. 30 s 32

DUTY OF CLERK OF PETTY SESSIONS AND OF KEEPER OF GAOL

hdg prec s 175 om 1992 No. 40 s 101

Transfer of jurisdiction as to enforcement of fines etc.

s 175 sub 1949 13 Geo 6 No. 30 s 33
amd 1973 No. 22 s 13; 1992 No. 40 s 102

Allocation of part payments

s 175A ins 1949 13 Geo 6 No. 30 s 33
amd 1992 No. 40 s 103

Accounts to be kept in the form in Schedule 4

s 176 om 1964 No. 32 s 78

REMISSION

hdg prec s 177 om 1992 No. 40 s 104

PART 7—RECIPROCAL ENFORCEMENT OF FINES AGAINST BODIES CORPORATE

Pt hdg sub 1974 No. 25 s 12

Meaning of terms

s 179 prev s 179 om 1899 63 Vic No. 9 s 3(2) Sch 3
pres s 179 ins 1974 No. 25 s 13
def “**reciprocating court**” sub 1992 No. 40 s 105
def “**reciprocating State or Territory**” sub 1992 No. 40 s 105

Proclamation of reciprocating States and Territories and reciprocating courts

s 180 prev s 180 om 1899 63 Vic No. 9 s 3(2) Sch 3
pres s 180 ins 1974 No. 25 s 13
amd 1992 No. 40 s 106

Enforcement by magistrates court

s 181 prev s 181 om 1899 63 Vic No. 9 s 3(2) Sch 3
pres s 181 ins 1974 No. 25 s 14

Enforcement by reciprocating court

s 182 prev s 182 om 1899 63 Vic No. 9 s 3(2) Sch 3
pres s 182 ins 1974 No. 25 s 14

Defence

s 183 om 1899 63 Vic No. 9 s 3(2) Sch 3

Option given to be tried by jury

s 184 om 1899 63 Vic No. 9 s 3(2) Sch 3

Proviso

s 185 om 1899 63 Vic No. 9 s 3(2) Sch 3

Confession of simple larceny or stealing from the person, or embezzlement or obtaining or attempting to obtain money by false pretences

s 186 om 1899 63 Vic No. 9 s 3(2) Sch 3

Caution

s 187 om 1899 63 Vic No. 9 s 3(2) Sch 3

Restriction on summary dealing with adult charged with indictable offence

s 188 om 1899 63 Vic No. 9 s 3(2) Sch 3

Justices may dismiss the defendant if they deem it expedient not to inflict any punishment

s 189 om 1899 63 Vic No. 9 s 3(2) Sch 3

Presiding justices may order restitution of property

s 190 om 1899 63 Vic No. 9 s 3(2) Sch 3

Or payment

s 191 om 1899 63 Vic No. 9 s 3(2) Sch 3

Summary trial of children for indictable offences

s 192 om 1899 63 Vic No. 9 s 3(2) Sch 3

Proceedings under this Part of this Act a bar to further proceedings

s 193 om 1899 63 Vic No. 9 s 3(2) Sch 3

No. formal objection, &c

s 194 om 1899 63 Vic No. 9 s 3(2) Sch 3

No general forfeiture under this Part of this Act

s 195 om 1899 63 Vic No. 9 s 3(2) Sch 3

Reference to 29 Vic., No. 6, s.9

s 196 om 1899 63 Vic No. 9 s 3(2) Sch 3

Convictions, &c., to be returned to the clerk of the peace

s 197 amd 1899 63 Vic No. 9 s 3(3) Sch 4
om 1964 No. 32 s 79

PART 8—SURETY OF THE PEACE AND FOR GOOD BEHAVIOUR

Pt hdg om 1964 No. 32 s 80

Complaint praying for surety of the peace

s 198 om 1964 No. 32 s 80

Complaint praying for surety for the good behaviour

s 199 om 1964 No. 32 s 80

Evidence in support

s 200 om 1964 No. 32 s 80

Warrant

s 201 om 1964 No. 32 s 80

Proceedings on appearance of defendant

s 202 om 1964 No. 32 s 80

Evidence

s 203 om 1964 No. 32 s 80

Case to be dismissed, or surety of the peace, &c., required

s 204 om 1964 No. 32 s 80

Notice of recognisance

s 205 om 1964 No. 32 s 80

Discharge

s 206 om 1964 No. 32 s 80

Estreating recognisance

s 207 om 1964 No. 32 s 80

Costs

s 208 om 1964 No. 32 s 80

PART 9—APPEALS FROM THE DECISIONS OF JUSTICES

Pt hdg sub 1949 13 Geo 6 No. 30 s 34

Division 1—Appeal by way of order of review

Div hdg ins 1949 13 Geo 6 No. 30 s 34

Order to reviews 209 sub 1949 13 Geo 6 No. 30 s 34
amd 1964 No. 32 s 81; 1991 No. 68 s 111 Sch 2**Appeal from refusal to grant order to review**s 210 amd 1941 5 Geo 6 No. 9 s 7
sub 1949 13 Geo 6 No. 30 s 34
amd 1991 No. 68 s 111 Sch 2**Grounds to be stated**

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