



# Justices Act 1886

Current as at 5 July 2021

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## Queensland

# Justices Act 1886

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# Justices Act 1886

**An Act to consolidate law about the powers and jurisdiction of justices and magistrates and to provide for proceedings before, and appeals from, justices and magistrates, and other matters**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Justices Act 1886*.

### 2 Note in text

A note in the text of this Act is part of this Act.

### 4 Definitions

In this Act—

*address*, for part 3 division 2A, see section 23A.

*appealed order*, for part 9, division 1, see section 221.

*approved procedures*, for computer warrants, see section 67(1).

*arresting officer*, for part 4, division 10B, see section 83D.

*associated place*, for part 6A, see section 178B.

*audio link facilities* means facilities, including telephone, that enable reasonably contemporaneous and continuous audio communication between persons at different places.

***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.

***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 means an information, complaint or charge before a Magistrates Court.

***computer warrant*** see section 67(1).

***correctional institution***, for part 6A, see section 178B.

***court*** means a Magistrates Court.

***court cell***, for part 6A, see section 178B.

***decision*** includes a committal for trial or for sentence, a conviction, order, order of dismissal or striking out or other determination.

***defendant***—

- (a) for part 3, division 2A—see section 23A; or
- (b) otherwise—means a person complained against before a Magistrates Court or before justices for a simple offence, breach of duty or an indictable offence.

***disclosure obligation***, for part 4, division 10B, see section 83D.

***disclosure obligation direction***, for part 4, division 10B, see section 83D.

***domestic violence offence*** see the Criminal Code, section 1.

***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.

***facility user***, for part 6A, see section 178B.

***fine***, for part 7, see section 179.

***general manager***, for part 9, division 1, see section 221.

***hearing*** includes an examination of witnesses in relation to an indictable offence.

***incorporated legal practice*** see the *Legal Profession Act 2007*, schedule 2.

***indictable offence*** means an offence which may be prosecuted before the Supreme Court, the 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 magistrate and, where necessary, a Magistrates Court.

***lawyer*** means an Australian lawyer who, under the *Legal Profession Act 2007*, may engage in legal practice in this State.

***notice of appeal***, for part 9, division 1, see section 221.

***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.

**party**, for part 4, division 10B, see section 83D.

**police station** includes a police office, watch-house, and lockup.

**primary court**, for part 6A, see section 178B.

**prison**, for part 9, division 1, see section 221.

**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.

**proceeding**, for part 6A, see section 178B.

**prosecution**, for part 4, division 10B, see section 83D.

**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 government;
- who is acting in an official capacity.

**reciprocating court**, for part 7, see section 179.

**reciprocating State or Territory**, for part 7, see section 179.



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**registry committal** means a committal by the clerk of a court under an order under part 5, division 7A.

**relevant clerk of the court**, for part 9, division 1, see section 221.

**relevant Magistrates Court**, for part 9, division 1, see section 221.

**relevant registrar**, for part 9, division 1, see section 221.

**respondent**, for part 9, division 1, see section 221.

**RSPCA inspector** means a person who—

- (a) holds an appointment as an inspector under the *Animal Care and Protection Act 2001*; and
- (b) is an employee of the Royal Society for the Prevention of Cruelty to Animals (Queensland) Limited.

**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.

**video link facilities** means facilities, including closed-circuit television, that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places, including, for example, video link facilities.

## 5 General saving of powers of justices

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**

#### **19            General provision**

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.

#### **20            Authentication of acts of justices**

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.

#### **21            Presumption**

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**

#### **22            Continuance of Magistrates Courts**

- (1) The Magistrates Courts, as formerly established as courts of record in Queensland, are continued in existence.

- (2) Each Magistrates Court is to have and use a seal with the words ‘Magistrates Court of Queensland’.
- (3) Each Magistrates Court may have other seals required for the business and administration of the court.

## **22A Jurisdiction of Magistrates Courts**

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 Acts Amendment Act 1964*; and
- (b) that is conferred on them by this Act and other Acts.

## **22B Magistrates Courts districts**

- (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.
- (1A) Despite the appointment under subsection (1)(c) of a particular place within a district or division as a place for holding a Magistrates Court—
  - (a) the Magistrates Court, if constituted by a magistrate, may sit at another place in the district or division; and
  - (b) if it sits at another place in the district or division, the place is taken to have also been appointed under subsection (1)(c).

- (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 the *Decentralisation of Magistrates Courts Act 1965*, section 5 (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.

## **22C Appointment of clerks of the court**

- (1) The chief executive may appoint an appropriate 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.

## **22D Principal clerk of courts**

- (1) The Governor in Council may appoint a principal clerk of courts.
- (2) The principal clerk of courts is appointed under the *Public Service Act 2008*.
- (3) The principal clerk of courts is appointed for all Magistrates Courts in Queensland.
- (4) The appointment of a person as principal clerk of courts is for the whole of Queensland, and the person must not be appointed for any particular place.
- (5) The principal clerk of courts may, for any place for which a clerk of the court or assistant clerk of the court is appointed

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under section 22C, discharge all the functions the clerk of the court or assistant clerk of the court may discharge.

- (6) The principal clerk of courts may give directions to each clerk of the court and assistant clerk of the court appointed under section 22C, and to any other officer employed in a registry of a Magistrates Court, about the discharge of the functions of the clerk of the court, assistant clerk of the court or other officer.

### **23 Vacancy in office of clerk of court etc.**

- (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.
- (3A) If, in relation to a place appointed for holding a Magistrates Court—
- (a) the person appointed as clerk of the court for the place is a police officer; and
  - (b) there is no magistrate available at the place to discharge the duties of the clerk of the court during the clerk's absence from the place;
- a magistrate may require another appropriately qualified police officer to perform, or assist in performing, the duties or a specified part of the duties during the clerk's absence.
- (4) Anything done by or in relation to a police officer acting under subsection (3) or (3A) is taken to have been done by the clerk of the court.

## **Division 2A**                    **Decentralisation of Magistrates Courts**

### **23A**    **Definitions for div 2A**

In this division—

*address*, in relation to any person, means the place of residence or place of business or other address of that person.

*defendant* means a person to whom a summons is directed upon a plaint or complaint.

### **23B**    **Act has effect subject to division**

This Act has effect subject to this division.

### **23C**    **Venue of hearing complaint to be determined subject to this section**

- (1) Section 139 shall apply in respect of a complaint of a simple offence or breach of duty to which this subsection refers subject to the following provisions—
  - (a) when a simple offence or breach of duty has been committed within a district and within 800m of the common boundary of 2 or more divisions of that district a complaint of such offence or breach may be heard and determined within any of those divisions;
  - (b) when a simple offence or breach of duty has been committed within a district a complaint of such offence or breach may be heard and determined within a division of that district in which division the defendant resides or is reasonably believed by the complainant at the time of making the complaint to reside or be;
  - (c) when a simple offence or breach of duty has been committed at a place which is not within any district but within 35km of a boundary of a division of a district which is not a common boundary between 2 or more divisions of that district a complaint of such offence or

breach may be heard and determined within the division such boundary of which is nearest by direct measurement to the place of commission of such offence or breach but, subject to the following provisions of this Act, within no other division of that district or of any other district;

- (ca) however, where such an offence or breach has been committed at a place equidistant by direct measurement from such a boundary of 2 or more divisions (whether of the same district or different districts) a complaint of such offence or breach may be heard and determined in any of such divisions;
  - (d) save as is prescribed by this Act a complaint of a simple offence or breach of duty committed within a division shall not be heard and determined within any other division of the same district or within a division of any other district.
- (2) No provision of subsection (1) shall be construed to prejudice the jurisdiction conferred by section 139 upon a court situated elsewhere than within a district.

### **23D Power of clerk of the court to adjourn hearings**

- (1) If, before the time at which a defendant is required by a summons to appear within a division, it appears to the clerk of the court for such division that—
- (a) in the case of a summons issued upon a plaint or upon a complaint of a simple offence or breach of duty—a court within such division has jurisdiction to hear and determine the plaint or complaint in question; and
  - (b) —
    - (i) the hearing of the plaint or complaint cannot proceed or is not likely to proceed at the time and place at which the defendant is required by the summons to appear; or

- (ii) the manifest preponderance of convenience to the plaintiff or, as the case may be, complainant or to the defendant of hearing the plaint or complaint at some other time or place requires such an adjournment; or
- (iii) for such other reason as the clerk of the court considers sufficient the hearing should be so adjourned;

the clerk of the court may, either upon application made to the clerk in that behalf or of the clerk's own motion, adjourn the hearing to a certain time and place, whether situated in that division or in some other division of the district, to be then appointed by the clerk of the court.

- (2) When a hearing is so adjourned the clerk of the court shall cause the time and place to which the hearing is adjourned to be stated in the presence and hearing of every party to the proceeding concerned or of the party's lawyer or agent who is then present and if any party to such proceeding is not then present either personally or by the party's lawyer or agent the clerk of the court shall, forthwith after such adjournment, give notice in writing to that party or, as the clerk of the court may elect, the party's lawyer or agent informing the person of—
  - (a) the time and place to which the hearing is adjourned; and
  - (b) the reason for the adjournment; and
  - (c) the right of the party concerned to be heard at the adjourned hearing.
- (3) When a hearing is so adjourned the defendant shall not be obliged to appear at the time and place referred to in the summons in question but such summons shall thenceforth be read and construed as if the time and place to which such hearing is, for the time being, adjourned were appointed by such summons as the time and place at which the defendant is thereby required to appear.
- (4) The hearing as adjourned shall not commence at the appointed time and place unless the court is satisfied that the parties or



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their respective lawyers or agents have been given reasonable notice thereof.

- (5) A document purporting to be a certificate signed by the clerk of the court who last adjourned the hearing in question pursuant to this section as to the making of a statement in the presence and hearing of a party or the party's lawyer or agent of the time and place to which the hearing is adjourned shall upon its production in any proceeding and without further proof be received as evidence of the matter therein contained and a document purporting to be a duplicate original or copy of a notice last directed to any person in accordance with this section and endorsed with a certificate purporting to be signed by the person who served the original of such notice or, where such notice was sent by post, by the clerk of the court who last adjourned the hearing in question that—
- (a) the document is a duplicate original or, as the case may be, copy of the notice directed to the person named therein; and
  - (b) the original of such notice was served upon such person personally on a date specified or, as the case may be, was posted on a date specified to the address appearing therein and such address was the address of such person last known to such clerk of the court; and
  - (c) where the original of such notice was sent by post, in the ordinary course of post such original would have been delivered at such address on a date specified;

shall, upon its production in any proceeding and without further proof, be received as evidence that the original of such notice was given to the person named therein, according to the certificate so endorsed and, where such original was sent by post, that the address appearing therein is the address of such person last known to such clerk and that such original was delivered to the address appearing therein on the date on which the same would be delivered in the ordinary course of post according to the certificate so endorsed.

- (6) Costs of and occasioned by any adjournment under this section may be ordered by the court hearing and determining

the plaint or complaint to be paid by any party to any other party as to the court may appear just.

- (7) Where a hearing is duly adjourned under this section from one division to another division of a district—
- (a) the clerk of the court by whom the hearing is adjourned, unless the clerk is also clerk of the court for the division to which the hearing is adjourned, shall forthwith transmit to the clerk of the court for such division the plaint or complaint and summons and any other documents relating to the proceeding which have been filed with or received by the clerk of the court; and
  - (b) the plaint or complaint and summons and other documents relating to the proceeding shall be kept and preserved by the clerk of the court for the division to which the hearing is adjourned as if the clerk were the clerk of the court at the place where the defendant is required by the summons to appear unless the hearing and determination of the complaint is further adjourned to another division of the district; and
  - (c) the plaint or complaint may be heard and determined in the division to which the hearing is adjourned and all proceedings may be commenced, continued or completed and all acts, matters and things which are authorised, permitted or required by law to be done, executed or taken, whether for the purpose of the enforcement or variation of an order made in such a proceeding or any other purpose, may be done, executed, or taken as fully and effectually as if the hearing or order were a hearing by or, as the case may be, an order of a court at the place at which the defendant was originally required by the summons to appear.
- (8) The hearing of a plaint or complaint which has been adjourned under this section may be further adjourned from time to time under this section or any other provision of this Act or under any relevant provision of any other Act and the

relevant provision, whether of this Act or such other Act, shall with all necessary adaptations, extend and apply accordingly.

- (9) A clerk of the court need not constitute a court for the purpose of exercising any power or function under this section, and may exercise in respect of a defendant to a complaint any of the powers which justices might exercise in respect of a defendant upon an adjournment under this Act apart from this division.
- (10) No provision of this section shall be construed to affect the powers or duties of a registrar of a court under the *Magistrates Courts Rules 1960*.

*Note—*

Now see the *Uniform Civil Procedure Rules 1999*—see the *Magistrates Courts Act 1921*, section 61.

### **23DA Further powers of clerk of the court**

- (1) This section is in addition to, and does not limit, section 23D.
- (2) The clerk of the court has the following additional powers—
  - (a) power to adjourn a matter before the court on terms decided by the clerk or stated in an application;
  - (b) power to make any order a magistrate may make with the consent of all the parties to a matter.
- (3) However, the clerk of the court may exercise the powers mentioned in subsection (2) only if—
  - (a) application for the adjournment or order is made to a Magistrates Court; and
  - (b) all the parties to the matter consent in writing, personally or by their agent, to the exercise of the power.
- (4) When exercising a power under subsection (2)—
  - (a) the parties to the matter need not be present; and
  - (b) the clerk of the court is taken to constitute a Magistrates Court.

### **23E Court or justices may adjourn within or outside district**

- (1) Notwithstanding the provisions of this Act or any other Act a court or justices sitting for any purpose at a place within a district may, in order to carry out such purpose, sit at any other place within such district or within an adjoining district and may, from time to time (whether before or after entering upon the purpose for which such court or, as the case may be, justices are then sitting)—
  - (a) adjourn the proceeding 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 their respective lawyers or agents then present; or
  - (b) adjourn the proceeding and leave the time and place at which the proceeding is to be continued to be later determined by such court or, as the case may be, justices.
- (1A) However, a proceeding so adjourned shall not be continued at a time and place so determined unless the court or, as the case may be, justices are satisfied that the parties or their respective lawyers or agents have been given reasonable notice of such determination.
- (2) Upon such an adjournment the court or, as the case may be, justices may exercise in respect of a defendant to a complaint any of the powers which the court or justices might exercise in respect of a defendant upon an adjournment under this Act apart from this division.

### **23EA Additional powers of court or justices**

- (1) This section is in addition to, and does not limit, any other provision of this Act.
- (2) A court or justices have the following additional powers—
  - (a) power to give any direction the court or justices consider appropriate;
  - (b) power to direct a party to file and serve stated documents, including affidavits, within a stated time;

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- (c) power to make orders to which all the parties to a matter consent.
- (3) When exercising the power under subsection (2)(c), the parties to the matter need not be present.

### **23EB Management by clerk of the court of charge pending finalisation of proceeding under *ex officio* indictment**

- (1) A court may, under this section, refer to the clerk of the court a charge before the court, but only if the defendant in relation to the charge—
- (a) is represented by a lawyer; and
  - (b) is not in custody; and
  - (c) is not in breach of any condition of the undertaking on which the defendant was granted bail.
- (2) A charge (the *relevant charge*) may be referred to the clerk of the court if—
- (a) it is a charge for an indictable offence; and
  - (b) the prosecution and the defendant advise the court they are agreed that—
    - (i) an indictment for the offence the subject of the relevant charge has been or is to be presented under the Criminal Code, section 561; or
    - (ii) an indictment for another indictable offence (the *other offence*) has been or is to be presented under the Criminal Code, section 561, and the other offence arises out of the same set of circumstances alleged in relation to the relevant charge.
- (3) If the relevant charge is referred under this section—
- (a) the clerk of the court has the following functions—
    - (i) keeping the relevant charge under review;
    - (ii) referring the relevant charge back to the court if—

- (A) the clerk of the court considers this should be done to ensure the hearing of the relevant charge is not unnecessarily delayed; or
  - (B) the prosecution or the defendant asks the clerk of the court to do so; and
- (b) the registrar of the court in which the indictment mentioned in subsection (2)(b)(i) or (ii) is presented must, within 1 calendar month after the relevant charge or the charge for the other offence is disposed of in that court, advise the clerk of the court of the fact.
- (4) If the clerk of the court is advised under subsection (3)(b), no further appearance is required in the Magistrates Court by any party to the proceeding for the relevant charge.
- (5) The functions of the clerk of the court under this section do not include any function in relation to bail.

*Note—*

See the *Bail Act 1980*, section 34BB (Varying bail for charge for indictable offence referred to clerk of the court under Justices Act 1886).

- (6) If the relevant charge is referred back to the court under subsection (3)(a)(ii), the clerk of the court must give reasonable notice, in writing, to all parties to the proceeding—
- (a) advising that the relevant charge has been referred back to the court; and
  - (b) stating the time and place for the next hearing of the proceeding in the court.

## **23EC Conduct of proceeding by video link facilities or audio link facilities by court outside district or division**

- (1) This section applies if—
- (a) a Magistrates Court (the *original court*) has jurisdiction under this Act or another Act to hear a proceeding, including a criminal proceeding; and

- (b) the original court is authorised under this Act or another Act (an ***authorising law***) to conduct the proceeding using video link facilities or audio link facilities; and

*Examples of authorising laws—*

- part 6A of this Act
- *Evidence Act 1977*, part 3A
- *Penalties and Sentences Act 1992*, section 15A

- (c) a practice direction made by the Chief Magistrate provides for the proceeding to be conducted by an alternative court by video link facilities or audio link facilities under this section.

- (2) The alternative court may conduct the proceeding by using video link facilities or audio link facilities under the authorising law as if the alternative court—

- (a) had jurisdiction under the Act mentioned in subsection (1)(a) to hear the proceeding; and
- (b) were the original court for the purpose of the authorising law.

- (3) In this section—

***alternative court***, in relation to a proceeding, means a Magistrates Court outside the district or division in which the proceeding would otherwise be required to be heard.

## Division 3 Powers of single justice

### 24 Acts by 1 justice

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.

**25 After decision 1 justice may issue warrant of execution or commitment**

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.

**26 Warrants of execution after appeal**

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**

**27 Hearing of complaint**

- (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.

**28 Majority to decide**

- (1) 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.



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- (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.

**29 When 2 justices required, must be present throughout the case**

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**

**30 Magistrates**

- (1) A 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 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 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 grant bail or to adjourn a hearing of a complaint of a simple offence or breach of duty.

## **Division 6                      Extent of jurisdiction**

### **32            Justices may act outside jurisdiction**

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.

### **33            Warrants of commitment and remand by justices of limited jurisdiction**

A warrant of commitment or of remand shall be valid throughout the State, notwithstanding that the prison 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.

### **35            Apprehended person may be taken before any justice**

- (1) A 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.

### **37            Summons or warrant not avoided by death of justice etc.**

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

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**38 Order in lieu of mandamus**

- (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.

**39 Power of court to order delivery of certain property**

- (1) If property—
  - (a) has come into the custody or possession of a public officer—
    - (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 public 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.
- (6) In this section—

*public officer*—

  - (a) in relation to a complaint of an offence against the Criminal Code, section 242 or 468, includes an RSPCA inspector; and
  - (b) other than in relation to a thing seized by a police officer that is in the possession of the Crime and Corruption Commission, does not include a police officer.

## **Division 7                      Interruption of proceedings**

### **40            Penalty for insulting or interrupting justices**

- (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 under subsection (1) is liable to a maximum penalty of 84 penalty units or imprisonment for 1 year.
- (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; and
  - (b) may be taken into custody by a police officer on order of such court or justice and without further warrant; and
  - (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; and
  - (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 1A              Prosecution disclosure**

#### **41              Prosecution disclosure**

The laws relating to prosecution disclosure for a relevant proceeding as defined in the Criminal Code, section 590AD are set out in the Criminal Code, chapter 62, chapter division 3.

### **Division 1                      Complaints**

#### **42              Commencement of proceedings**

- (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 lawyer 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.

#### **43              Matter of complaint**

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

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- (a) in the case of indictable offences—if the matters of complaint are such that they may be charged in 1 indictment; or
  - (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; or
  - (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; or
  - (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.

### **43A Court may order particular complaints to be heard together**

- (1) This section applies in relation to a complaint of a simple offence or breach of duty.
- (2) A court may order that 2 or more complaints against the same defendant be heard together if all the matters of complaint in the complaints are of a kind that could have been joined in 1 complaint under section 43.
- (3) Also, a court may order that 2 or more complaints against different defendants be heard together if the matters of complaint in the complaints are founded on—
  - (a) substantially the same facts; or
  - (b) facts so closely related that a substantial part of the facts is relevant to all the matters of complaint.

### **46 Description of persons and property**

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

### **47 What is sufficient description of offence**

- (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 the Childrens 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 complaint or a reasonable time before the time appointed for the appearance of the defendant a notice specifying any alleged previous 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



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conviction so specified as if the defendant had appeared and admitted it.

- (3) Any person who serves a notice specifying any alleged previous conviction of the defendant may serve, and document service of, the notice in the same way as is provided for the service and documenting of service of a notice to appear under the *Police Powers and Responsibilities Act 2000*.

*Note—*

For documenting service, see the *Police Powers and Responsibilities Act 2000*, section 389(2).

- (3A) Without limiting section 56, a document of service of a notice under subsection (3) is, on production to the court—
- (a) evidence of the matters contained in the document; and
  - (b) 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.
- (5) However, if the circumstance is that the defendant has been previously convicted of an offence, the alleged previous conviction must be stated in a notice—
- (a) served with the complaint; or
  - (b) served before the day appointed for the defendant's appearance; or
  - (c) given to the defendant on the day appointed for the defendant's appearance.
- (6) For subsection (5)(c), if the notice of an alleged previous conviction is given to the defendant on the day appointed for the defendant's appearance, the court may, if the court is satisfied it is in the interests of justice to do so, adjourn the

hearing of the proceeding to allow the defendant to consider the notice.

- (7) Subject to subsection (2), the circumstance that the defendant has been previously convicted of an offence may be relied on for the assessment of penalty for a simple offence whether or not a notice has been served or given under subsection (5).
- (8) If a notice has not been served or given under subsection (5), reliance on the circumstance that the defendant has been previously convicted of an offence does not render the defendant liable to a greater penalty than that to which the defendant would otherwise have been liable.
- (9) A complaint for an offence may state the offence is also a domestic violence offence.

*Note—*

See the *Penalties and Sentences Act 1992*, section 12A for when a conviction for the offence must also be recorded as a conviction for a domestic violence offence or entered in the offender's criminal history as a domestic violence offence.

## **Division 2                      Amendment of complaints,                                                  summonses and warrants**

### **48            Amendment of complaint**

- (1) 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—

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- (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.
- (2) Without limiting subsection (1), if the justices consider the offence charged in the complaint is also a domestic violence offence but the complaint does not include a statement to that effect, the court may order that the complaint be amended to state the offence is also a domestic violence offence.

## **49 Amendment**

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 grant the defendant bail or may suffer the defendant to go at large without bail.

## **50 Recording of amendment**

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**

### **51            When complaint to be on oath and when not**

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; and
- (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**

### **52            Limitation of proceedings**

- (1) 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.
- (2) However, if in relation to the matter of complaint—
  - (a) a proceeding was previously commenced for an indictable offence against the Criminal Code or the *Drugs Misuse Act 1986*; and
  - (b) the proceeding has been discontinued, or is to be discontinued by a Crown Law Officer as defined in the Criminal Code;complaint must be made within 2 years from the time when the matter of the complaint arose.
- (3) Also, subsection (1) does not apply to an offence if, under the Act providing for the offence, the Magistrates Court has jurisdiction for the offence regardless of when the matter of complaint arose.

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*Example for subsection (3)—*

The Criminal Code, section 552F gives jurisdiction to a Magistrates Court that hears and decides a charge summarily under section 552A, 552B or 552BA of that Code despite the time that has elapsed from the time when the matter of complaint of the charge arose.

## **Division 5                      Summonses**

### **53            When justice may issue summons**

- (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, subdepartment, branch or section of a department of the Government of the Commonwealth or of the State; or
    - (ii) employees of Brisbane City Council; or
    - (iii) employees of the same local government within the meaning of the *Local Government Act 2009*; or
  - (b) the justice who issued the summons was at the date of its issue, the complainant's lawyer, that lawyer's partner, or an employee of either of them, or a lawyer, director or employee of an incorporated legal practice that represented the complainant.

### **53A        Power, after summons issued, to order mediation**

- (1) If a summons has been issued under section 53, a magistrate or the clerk of the court for the place where the defendant is

required to appear may order the complainant to submit the matter to mediation under the *Dispute Resolution Centres Act 1990* (an *order to mediate*).

- (2) The magistrate or clerk of the court may make an order to mediate if—
  - (a) the magistrate or clerk considers that the matter would be better resolved by mediation than by proceeding on the summons; or
  - (b) the complainant consents to the order.
- (3) The clerk of the court may, at any time, refer a summons to a magistrate for directions as to whether or not to make an order.
- (4) An order to mediate must be in the approved form.
- (5) If an order to mediate is made—
  - (a) the magistrate or clerk of the court must give notice of the order to the complainant and defendant; and
  - (b) the summons may not be served and no other action may be taken on the summons, unless a magistrate or clerk of the court orders that the summons may be proceeded with under section 53B.

### **53B Further provision for a summons after mediation is ordered**

- (1) If a magistrate or the clerk of the court for the place where the defendant is required to appear is satisfied that an event mentioned in subsection (2) has happened, the magistrate or clerk of the court may order that the summons may be proceeded with.
- (2) The events are—
  - (a) if the complainant consented to the order—the complainant withdraws the consent; or
  - (b) the matter of the complaint may not be mediated at a convenient place because of a decision made by the

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- director of a dispute resolution centre under the *Dispute Resolution Centres Act 1990*, section 30(1); or
- (c) the defendant refuses to attend at, or participate in, a mediation session under that Act, or either party withdraws from a mediation session under that Act; or
  - (d) the director of a dispute resolution centre declines under section 32(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 32(2) of that Act.
- (3) A magistrate or clerk of the court may be satisfied about the happening of an event even if the only information before the magistrate or clerk is from the complainant.

*Note—*

Under the *Police Powers and Responsibilities Act 2000*, section 388(2)(a), a requirement in a notice to appear that a person appear before a court at a stated time and place is taken to be a summons issued under the *Justices Act 1886*.

## **54 Form of summons and filing of complaint and summons**

- (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 filed, within 3 days of the summons being issued, 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.
- (5) If the complainant gives the clerk of the court written notice that the dispute has been resolved by mediation—
  - (a) the filing fee paid on filing of the summons must be refunded; and
  - (b) the summons may not be served, and no other action may be taken on the summons.

## **55 Ex parte proceedings**

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.

## **56 Service of summonses**

- (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—



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- (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 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 Operations (Road Use Management) Act 1995*, 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; and
  - (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 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.
- (9) In this section—

*motor vehicle* see the *Transport Operations (Road Use Management) Act 1995*.

## **56A Right of entry to serve summons**

- (1) Subject to subsection (3), a public officer, and a person acting in aid of the public officer, may enter, and stay for a reasonable time in or on a place for the purpose of serving a summons.
- (2) 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 public officer, and a person acting in aid of the public officer, may enter the place only with the consent of the occupier.

## **Division 6                      Warrants and arrest without warrant**

### **57            Cases in which warrants may be issued**

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) to have the person brought before justices to answer the complaint and to be further dealt with according to law.

### **58            Summons may be issued instead of warrant**

- (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.

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## **59 Warrant in the first instance**

- (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) The justice may issue a warrant under subsection (1) for a simple offence, not being an indictable offence, only if the justice is satisfied—
  - (a) proceeding by way of complaint and summons for the offence would be ineffective; or
  - (b) the Act or law creating the offence authorises the issue of a warrant in the first instance.

## **60 Direction of warrant**

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.

## **62 What warrants shall order**

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.

### **63 Warrant to be in force till executed**

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.

### **65 How person arrested without warrant to be dealt with**

- (1) 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.
- (2) Subsection (1) does not apply to a police officer.

*Editor's note—*

For police officers, see the *Police Powers and Responsibilities Act 2000*, chapter 14 (Arrest and custody powers).

## **Division 6A Procedures for computer warrants**

### **66 Purpose and application of division**

- (1) This division authorises procedures under which computers may be used to create, store and otherwise manage warrants.
- (2) The objective of the procedures is to reduce the handling of warrants in the form of written documents.
- (3) For this division, it is immaterial whether a warrant is a type that is issued—
  - (a) by a justice or anyone else; or
  - (b) under this or another Act.
- (4) However, the warrant must be of a type prescribed under a regulation.

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## 67 Approved procedures for computer warrants

- (1) A warrant (*computer warrant*) may be created in the form of computer stored information under procedures (*approved procedures*)—
  - (a) prescribed under a regulation; or
  - (b) made by the chief executive, by the commissioner of the police service, or jointly by the chief executive and commissioner, and approved under a regulation; or
  - (c) partly prescribed under a regulation, and partly made as mentioned in paragraph (b) and approved under a regulation.
- (2) Approved procedures may include provision for the following—
  - (a) the use of computer systems for computer warrants;
  - (b) the generation and management of written versions of computer warrants;
  - (c) security of, and access to, information about warrants that is kept in computer systems;
  - (d) any matter required or permitted to be prescribed under approved procedures;
  - (e) any matter necessary or convenient to be prescribed for carrying out or giving effect to this division.

## 68 Creation of a computer warrant

- (1) The creation of a computer warrant by a person under the approved procedures has the same effect as the issue of the same type of warrant under the person's hand.
- (2) Without limiting subsection (1), a requirement under an Act that a warrant be issued by a person, issued under a person's hand, or signed by a person, is taken to be complied with if the person creates the warrant as a computer warrant.
- (3) A computer warrant may be created even though the warrant is authorised under a provision of an Act authorising the issue

of a warrant on application made by telephone or other form of distance communication.

- (4) For a computer warrant mentioned in subsection (3)—
- (a) a requirement that a form or copy of the warrant be completed or made for execution or otherwise may be complied with by making a written version of the warrant or, if the form or copy is made for execution, a document mentioned in section 69B(1)(b); and
  - (b) a requirement that the warrant or a form or copy of the warrant be dealt with in a particular way may be complied with by dealing with a written version of the warrant in that way or by completing another process stated in the approved procedures.

*Example of paragraph (b)—*

A requirement that a form of a warrant be sent to the issuing magistrate may be complied with by sending a written version of the warrant to the magistrate.

- (5) Subsections (3) and (4) do not limit the application of other provisions of this division to the type of warrant to which the subsections apply or to another type of warrant.

## **69 Computer version of computer warrant**

- (1) This section applies to information stored in a computer for a computer warrant.
- (2) The information must include, for the creation of the warrant or any step in the warrant's use—
  - (a) information that would have been included or endorsed on the warrant were the warrant issued in writing; and
  - (b) any information prescribed under a regulation.
- (3) The information may include directions and conditions.



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**69A Written version of computer warrant**

- (1) A written version of a computer warrant may be generated under the approved procedures.
- (2) The written version must state the following—
  - (a) the time the written version was made;
  - (b) the time the written version is taken to be cancelled under subsection (4);
  - (c) information that would have been included on the warrant were the warrant issued in writing;
  - (d) any information prescribed under a regulation.
- (3) The written version is taken to be an original warrant issued at the time of the computer warrant's creation by the person who created the computer warrant.
- (4) The written version—
  - (a) may be cancelled by endorsement of anyone entitled to execute the warrant; and
  - (b) is taken to be cancelled 8 hours after it is made, if it has not been executed by that time.
- (5) The making or cancellation of the written version does not affect the existence of the computer warrant.

**69B Execution of a computer warrant**

- (1) A computer warrant may be executed by using—
  - (a) a written version of the warrant; or
  - (b) information about the warrant in another document made under the approved procedures.
- (2) A document mentioned in subsection (1)(b) used to execute a computer warrant must include information prescribed under a regulation.
- (3) The execution of a computer warrant by using a document mentioned in subsection (1)(b) has the same effect as if the document were the computer warrant.

- (4) If anyone is arrested on execution of a computer warrant using a document mentioned in subsection (1)(b), a written version of the warrant, made before or after the execution, must then be dealt with as if the written version of the warrant had been used.
- (5) In a proceeding before a court in which execution of a computer warrant is relevant—
  - (a) a document purporting to be a written version of the warrant certified by the person who made it under the approved procedures is admissible as proof of the warrant it purports to be; and
  - (b) unless the court requires a written version to be produced, a document purporting to be a document mentioned in subsection (1)(b), certified under a regulation, is admissible as proof of a warrant it purports to contain information about.

### **69C Further procedure on execution of warrant**

- (1) If a particular type of warrant is required on execution to be endorsed, returned, filed or otherwise dealt with, the requirement may be complied with for a computer warrant of that type in a way stated in the approved procedures.

*Example—*

The approved procedures may provide for a return or endorsement to be made by—

- (a) storing information in a computer in a way stated in the procedures; or
  - (b) using, in a way stated in the procedures, a document used to execute the warrant or another document.
- (2) The endorsement, return, filing or other dealing under the procedures has the same effect as if the warrant were endorsed, returned, filed or otherwise dealt with in the way a written warrant would have been dealt with.

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## **Division 6B                    Execution of written warrants using electronic copies or a computer document**

### **69D    Application of division**

- (1) This division applies to a written warrant issued by a justice or anyone else under any Act.
- (2) The purpose of this division is to facilitate the execution of written warrants.

### **69E    Facilitation of execution of written warrant**

- (1) A written warrant may be executed by using—
  - (a) a copy of the warrant printed from a fax machine or computer; or
  - (b) a document prescribed under a regulation containing information about outstanding warrants.
- (2) The warrant copy mentioned in subsection (1)(a) must contain, in the text printed from the fax machine or computer—
  - (a) a certificate of a person using the fax machine or computer to send or make available the copy that the person has seen the original warrant and the copy is a copy of the original warrant; and
  - (b) a statement specifying the time the copy was sent or made available.
- (3) The copy may be used to execute the original warrant for only 8 hours after the specified time.
- (4) In a proceeding before a court in which execution of the warrant is relevant—
  - (a) a document purporting to be a warrant copy mentioned in subsection (1)(a) certified by the person receiving the copy is admissible as proof of the warrant it purports to be; and

- (b) a document purporting to be a prescribed document mentioned in subsection (1)(b), certified under a regulation, is admissible as proof of the warrants it purports to contain information about.
- (5) However, the court may require the original warrant to be produced as soon as practicable or at a later specified time.

## **Division 7                      When courts open**

### **70            Open court**

- (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 defendant's lawyer.

### **71            Exclusion of strangers**

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.

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**71B Prohibition on taking photographs, producing pictures or other optical effects**

- (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; or
  - (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; or
  - (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 1 month's imprisonment.

- (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 1 month's imprisonment.

## **Division 8                      Right to conduct own case or have lawyer**

### **72            Lawyer**

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 lawyer, 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 lawyer.

## **Division 9                      Evidence**

### **73            Evidence how taken**

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.

### **74            Prosecutor's and complainant's witnesses**

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.

### **76            Proof of negative etc.**

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.

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## **77 Taking of evidence**

- (1) The deposition of a witness must be—
  - (a) written; and
  - (b) read to the witness or, if the defendant consents, by the witness; and
  - (c) then signed by the witness and the presiding judicial officer.
- (2) Subsection (1) applies subject to the *Recording of Evidence Act 1962* or any other Act.

## **77A Views and inspections**

In any proceeding, justices may make an inspection or conduct a view.

## **Division 10 Witnesses in general**

### **78 Power to issue summons to witness**

- (1) If a justice is satisfied that a person 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) However, if a doctor is summonsed to give evidence of a professional nature, the summons may be served on the doctor by leaving a copy of it at a place where the doctor practises with a person apparently employed at the place.

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

## **79 After summons warrant**

- (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.

## **81 Warrant in the first instance**

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.

## **82 Witness not answering**

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



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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 prison, 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.

### **83 Production of documents before justices**

- (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 10A Direction hearing**

### **83A Direction hearing**

- (1) This section applies to a proceeding for an offence.
- (2) A magistrate, on his or her own initiative, may direct the parties to the proceeding to attend at a direction hearing.
- (3) A party to the proceeding may apply to a court, in the approved form, for a direction hearing.
- (4) The party must serve a copy of the filed application on each other party at least 2 clear days before the day nominated for the direction hearing, unless the court directs otherwise.

- (5) At a direction hearing, a magistrate may give a direction he or she is entitled to make at law about any aspect of the conduct of the proceeding, including, for example, about any of the following—
- (aa) disclosure under the Criminal Code, chapter 62, chapter division 3;
  - (a) a party providing a copy of—
    - (i) a medical, psychiatric or other expert report; or
    - (ii) a statement, report or other stated information relevant to the proceeding;
  - (b) psychiatric or other medical examination of the defendant;
  - (c) joining complaints;
  - (ca) hearing complaints that have been ordered to be heard together under section 43A;
  - (d) receiving evidence or submissions by telephone, video link or other form of communication;
  - (e) issuing a summons or warrant;
  - (f) changing the usual practice of the court in a way that helps an alleged victim of the offence to give evidence in the proceeding;
  - (g) if the proceeding is a committal proceeding—
    - (i) the arrangements necessary for the giving of evidence by a special witness or an affected child under the *Evidence Act 1977*, part 2, division 4 or 4A; or
    - (ii) matters relating to the *Evidence Act 1977*, part 2, division 4C; or
    - (iii) cross-examining a protected witness under the *Evidence Act 1977*, part 2, division 6;
  - (h) matters relating to protected counselling communications under the *Evidence Act 1977*, part 2, division 2A.

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- (5AA) A magistrate may also, at a direction hearing, give a direction under this section requiring the prosecution to call the maker of a written statement tendered or to be tendered by the prosecution under section 110A(3)—
- (a) to attend before the court as a witness to give oral evidence; or
  - (b) to be made available for cross-examination on the written statement.
- (5AB) Subsection (5AA)—
- (a) applies subject to section 110B; and
  - (b) does not apply to a written statement given by an affected child under the *Evidence Act 1977*, part 2, division 4A, subdivision 2.
- (5AC) Also, a direction can not be given under subsection (5AA) if it would provide for a cross-examination that is not otherwise permitted.
- Example—*
- The *Evidence Act 1977*, section 21N provides that a person charged may not cross-examine a protected witness in person.
- (5A) In a summary proceeding, a magistrate may give a direction under subsection (5)(a) about prosecution disclosure, despite subsection (5)(aa) and section 41.
- (6) A direction is binding unless a magistrate, for special reason, gives leave to reopen the direction.
  - (7) A direction must not be subject to interlocutory appeal but may be raised as a ground of appeal against conviction or sentence.
  - (8) To remove any doubt, it is declared that costs are not payable on a direction hearing in relation to an offence dealt with by way of committal proceeding, except to the extent they are awarded under section 83B arising out of noncompliance with a direction given under subsection (5)(aa).
  - (9) A direction hearing for a disclosure obligation direction under division 10B, or for a direction under subsection (5AA), may

be held on the date set by the court for the commencement of the hearing of evidence in the proceeding the subject of the direction.

(10) In this section—

*direction hearing* means a hearing before the court for a direction about the conduct of the proceeding.

### **83B Noncompliance with direction about disclosure**

- (1) If it appears to the court that a person has not complied with a direction given under section 83A(5)(aa), the court may order the person to file an affidavit, or give evidence in court, explaining and justifying the failure to comply.
- (2) If the court requires the person to file an affidavit, a copy of the affidavit must be served on the defendant.
- (3) An order under subsection (1) may be made—
  - (a) on the court’s own initiative; or
  - (b) on the application of the defendant.
- (4) If the court is not satisfied the person’s affidavit or evidence satisfactorily explains and justifies the noncompliance, the court may—
  - (a) adjourn the proceeding to allow enough time for—
    - (i) the person to comply with the disclosure direction; and
    - (ii) the defendant to consider anything disclosed under the disclosure direction and obtain any necessary further evidence; and
  - (b) if the court is satisfied that the noncompliance was unjustified, unreasonable or deliberate—make, in relation to the adjournment, an award in favour of the defendant of an amount of costs the court considers just and reasonable; and
  - (c) if an award of costs is made under paragraph (b)—fix a time for the amount to be paid.

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- (5) This section does not limit the court's power otherwise to deal with a failure to comply with a direction of any kind given under section 83A, including, for example, any power in the court to punish for contempt.
  - (6) A person is not excused from failing to file an affidavit or give evidence under this section on the ground that an affidavit or evidence explaining and justifying a failure to comply with the direction given under section 83A(5)(aa) might tend to incriminate the person because the person would be required to admit to the failure to comply.
  - (7) However, the affidavit or evidence is not admissible against the person in a criminal proceeding or a proceeding for contempt.
  - (8) Subsection (7) does not stop the affidavit or evidence from being admissible against the person—
    - (a) in a perjury proceeding in relation to the affidavit or evidence; or
    - (b) for the purposes of making an order under subsection (4).
  - (9) In this section—

*perjury proceeding*, in relation to an affidavit or evidence, means a proceeding in which the falsity or misleading nature of the affidavit or evidence is relevant.

## **Division 10B      Disclosure obligation directions**

### **83C      Purpose and scope of div 10B**

- (1) This division makes particular provision for disclosure obligation directions.
- (2) This division does not affect—
  - (a) any other power a court has in relation to a failure to comply with a disclosure obligation, including, for

- example, the court's power to exclude evidence if it would be unfair to a defendant to admit the evidence; or
- (b) any other action that may be taken against the prosecution in relation to a failure to comply with a disclosure obligation.
- (3) This division does not limit the making of practice directions by the Chief Magistrate about disclosure in a proceeding.

### **83D Definitions for div 10B**

In this division—

***arresting officer*** has the same meaning it has in the Criminal Code, chapter 62, chapter division 3.

***disclosure obligation*** means the obligation of the prosecution, for the purposes of a relevant proceeding under the Criminal Code, chapter 62, chapter division 3, to comply with the requirements of that chapter division for disclosure to a defendant, other than the obligation to comply with a disclosure direction as defined in the Criminal Code, section 590AV.

***disclosure obligation direction*** means a direction under section 83A, to the extent it relates to compliance with a disclosure obligation.

***party***, to a proceeding, includes—

- (a) a defendant who is charged with an offence the subject of the proceeding; and
- (b) the prosecution in relation to an offence the subject of the proceeding.

***prosecution*** has the same meaning it has in the Criminal Code, chapter 62, chapter division 3.

### **83E Subject matter for disclosure obligation direction**

- (1) A disclosure obligation direction may provide for any of the following—

- (a) whether the prosecution has a disclosure obligation in relation to a defendant;
  - (b) requiring that a particular thing must be disclosed;
  - (c) allowing the court to inspect a particular thing to decide whether the court should further direct that the prosecution has a disclosure obligation in relation to the thing;
  - (d) allowing the court to examine the arresting officer to decide whether the prosecution has a disclosure obligation in relation to a particular thing;
  - (e) requiring that the arresting officer file an affidavit to allow the court to decide whether the prosecution has a disclosure obligation in relation to a particular thing;
  - (f) allowing the defendant or a lawyer acting for the defendant to cross-examine the arresting officer on an affidavit mentioned in paragraph (e) to allow the court to decide whether the prosecution has a disclosure obligation in relation to a particular thing;
  - (g) how a disclosure obligation is to be complied with in a particular case;
  - (h) setting a timetable for compliance with a disclosure obligation.
- (2) Subsection (1) does not limit section 83A(5)(aa).
- (3) The court may make a disclosure obligation direction on the conditions, whether about the circumstances of disclosure or otherwise, it considers appropriate.
- (4) Any examination or cross-examination allowed for in a disclosure obligation direction—
- (a) must be conducted before the date set for the commencement of the hearing of evidence in the proceeding; and
  - (b) can not affect any restrictions applying under part 5, division 5 on the calling and cross-examination of witnesses at a committal proceeding.

- (5) If a person is examined by the court as provided for in subsection (1)(d), required to file an affidavit as provided for in subsection (1)(e) or cross-examined as provided for in subsection (1)(f), the person is not excused from failing to answer a question or file an affidavit on the ground that the answer or affidavit might tend to incriminate the person because the person would be required to admit to a failure to comply with a disclosure obligation.
- (6) However, the answer or affidavit is not admissible against the person in a criminal proceeding, other than a perjury proceeding in relation to the answer or affidavit.
- (7) In this section—  
*perjury proceeding*, in relation to an answer or affidavit, means a proceeding in which the falsity or misleading nature of the answer or affidavit is relevant.

### **83F Application for disclosure obligation direction**

- (1) The procedures applying in relation to a defendant seeking, at a direction hearing under section 83A, a disclosure obligation direction are stated in the *Criminal Practice Rules 1999*, chapter 9A.
- (2) To the greatest practicable extent, the procedures apply in addition to, and do not limit, the procedures applying under section 83A.
- (3) The existence of the procedures mentioned in subsection (1) is not intended to stop a party to a proceeding from writing to, or otherwise communicating information to, another party to resolve issues arising over a disclosure obligation.

## **Division 11 Remand and adjournment**

### **84 Remand of defendant**

- (1) 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 from time to time remand the defendant to some prison, 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.

- (2) However, if the defendant is represented by a lawyer, the defendant need not be present at the further hearing unless—
  - (a) the justices before whom the defendant appears order otherwise; or
  - (b) a charge is being heard and determined, an examination of a witness is being conducted or a penalty is being imposed.

## **85 Verbal remand**

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.

## **86 Bringing up during remand**

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.

## **88 Adjourning of the hearing**

- (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 lawyers or agents then present; or
  - (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 subsection (1) 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*.
- (1C) Also, the power to adjourn a hearing under subsection (1) includes power to adjourn the hearing on an application to which all the parties consent, made to the justice or justices.
- (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 grant the defendant 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.

## **88A Use of verdict and judgment record**

An order under section 84(1) providing for the remand of a defendant, or under section 88(2)(a) providing for the committal of a defendant, may be issued by a clerk of the court, acting as a proper officer under the *Criminal Practice Rules 1999*, in the form of a verdict and judgment record as provided for under the rules.

## **88B Continuation of remand on registry committal**

- (1) This section applies if—
  - (a) under a registry committal, the clerk of the court at a place orders a defendant to be committed to be tried or sentenced for an indictable offence; and
  - (b) immediately before the registry committal, the defendant is subject to an order made under section 84(1) (the *remand order*) providing for the remand of the defendant.
- (2) The remand order is continued, and is taken to have been made by the court (the *receiving court*) to which the defendant is committed for trial or sentence on the terms recorded for the order in the verdict and judgment record as required under the *Criminal Practice Rules 1999*.
- (3) However, the remand order is taken to be varied to require the defendant to be brought before the receiving court as required by the receiving court.
- (4) Also, if the clerk of the court amends the charges under section 115(6), the remand order is taken to be made in relation to the charges on which the defendant is committed for trial or sentence under the registry committal.

## **Division 12                      Committal and recognisance**

### **89            Place of committal or detention**

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 prison 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.

### **90            Place to which committal to be made**

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 prison or lockup.

### **91            Notice to witness**

- (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; and
  - (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.

### **93            Adjournment on non-appearance**

Where any witness, defendant or other person does not appear at any time and place to which the hearing is adjourned or that

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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.

## **94 Recognisances taken out of court**

- (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 a corrective services facility—the chief executive (corrective services).
- (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.

## **94A Non-acceptance of sureties**

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.

## **95 Forfeited recognisances how to be enforced**

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.

## **97 Conveying prisoners to prison**

The person to whom a warrant of commitment is directed shall convey the person therein named or described to the prison or other place mentioned in the warrant, or to some other prison or place of legal detention which is more accessible or convenient, and there deliver the person together with the warrant to the chief executive (corrective services) or person in charge of the 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 person's custody.

## **Division 13 Records of court**

### **98A Records of court**

- (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.

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## **Part 5**                      **Proceedings in case of indictable offences**

### **Division 1**                **Procedure on presentation of information**

#### **99**        **Certificate where information is presented**

Where an information is presented in the Supreme Court or the 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.

#### **100**       **Warrant thereon**

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.

#### **101**       **Committal of person who has been apprehended**

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 the 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 prison or grant the person bail and the provisions of this part relating to the committal to prison 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.

## **102 Detainer of prisoner in corrective services facility**

If the person so informed against is at the time of such application and production of the certificate to the justice confined in any corrective services facility 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 chief executive (corrective services) to detain the person in the custody of the chief executive (corrective services) 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 custody of the chief executive (corrective services) by due course of law.

## **Division 2 Procedure for private complaint**

### **102A Application of provisions**

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.



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## **102B Service of summons and particulars on private complaint**

- (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.

## **102C Application for dismissal of frivolous or vexatious complaints**

- (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 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 magistrate before whom is the matter of the complaint, or in writing filed 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 magistrate at the place where the application is filed or at the nearest place at which a 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 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 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 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; and
  - (b) the magistrate shall consider all relevant evidence led before the magistrate, and all relevant written material duly exhibited or otherwise produced before the magistrate, and the submissions made before the magistrate by the complainant and the defendant or either of them; and
  - (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 magistrate dismisses a private complaint or orders that a private complaint be struck out pursuant to subsection (2A) the magistrate may award to the defendant such costs as to the magistrate seem just and reasonable but, if the magistrate does not dismiss the complaint or order it to be struck out as aforesaid, the magistrate may award to the complainant such costs as to the 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.

## **102D Appeal to Supreme Court from magistrate's decision**

- (1) A person aggrieved by the decision of a 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 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.

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**102E Further proceedings on a dismissed or struck out complaint prohibited**

- (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 magistrate orders that a private complaint be struck out pursuant to section 102C(2A), 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 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; or
  - (b) if it be that of a 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; or
  - (c) if it be that of a judge of the Supreme Court—shall take effect according to the rules of the Supreme Court.

**102F Publication prohibited**

- (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

[s 102FA]

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(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—4 penalty units or 6 months imprisonment.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 102FA, to have also committed the offence.

(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.

### **102FA Executive officer may be taken to have committed offence against s 102F(1)**

(1) If a corporation commits an offence against section 102F(1), each executive officer of the corporation is taken to have also committed the offence if—

(a) the officer authorised or permitted the corporation's conduct constituting the offence; or

(b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.

(2) The executive officer may be proceeded against for, and convicted of, the offence whether or not the corporation has been proceeded against for, or convicted of, the offence.

(3) This section does not affect either of the following—

(a) the liability of the corporation for the offence;

(b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence.

(4) In this section—

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*executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

### **102G Dismissal for want of prosecution**

- (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 if summons is disobeyed**

### **103 Disobedience of summons**

- (1) This section applies if—
  - (a) a defendant is charged with an indictable offence; and
  - (b) a summons is issued against the defendant; and
  - (c) the defendant does not appear before the justices at the time and place mentioned in the summons when called.
- (2) However, this section does not apply if—
  - (a) the defendant is charged on a private complaint; and
  - (b) the charge—
    - (i) can not be dealt with summarily; or
    - (ii) can be dealt with summarily without the defendant's consent.

- (3) If the justices—
- (a) are satisfied, on oath or by deposition as provided in section 56, that the summons was properly served on the defendant a reasonable time before the time appointed for the defendant's appearance; and
  - (b) are satisfied, from information given on oath, that the matter of complaint is substantiated;
- the justices 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.

## **Division 4                      Defendant's appearance on private complaint**

### **103A Defendant's appearance upon private complaint**

- (1) Where a person is charged upon a private complaint with an indictable offence and the charge is one that can not 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; and
  - (b) the defendant is entitled to appear at the hearing of the matter of complaint by the defendant's lawyer 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 or justice may order that the defendant appear in person at the further hearing of the matter



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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 lawyer; 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**

### **103B Magistrate supervisory role**

- (1) A magistrate has an overall supervisory responsibility for any committal proceeding coming before a Magistrates Court at a place where the magistrate is appointed to constitute a Magistrates Court.

- (2) The supervisory responsibility includes setting timetables for the committal proceeding to the extent not otherwise provided for under an Act or practice direction.
- (3) Subsections (1) and (2) do not affect—
  - (a) the powers of a justice or justices to act in relation to the examination of witnesses in relation to an indictable offence; or
  - (b) any other power of the court to control a proceeding or of a magistrate to give a direction under section 83A; or
  - (c) the operation of the provisions of this division relating to registry committals; or
  - (d) the duty of a magistrate to comply with directions or requirements given or made by the Chief Magistrate.

#### **104 Proceedings upon an examination of witnesses in relation to an indictable offence**

- (1) The examination of witnesses in relation to an indictable offence—
  - (a) may be conducted by a single justice; and
  - (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 lawyer (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; and
  - (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 for the defence. 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 director of public prosecutions written notice in the prescribed form of that alibi and of those witnesses within the time prescribed by the Criminal Code, section 590A.

#### **104A Defendant may be excused from certain attendances**

- (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 lawyer 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; and
  - (b) the defendant or defendants against whom the evidence is admissible; and
  - (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*.

#### **105 Statement may be put in evidence at trial**

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.

## **106 Saving**

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.

## **108 Procedure upon a consideration of all the evidence**

- (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 prison, to be there safely kept until the defendant is delivered by due course of law or granted 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; or

- (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.

### **109 One justice**

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.

### **110 Justices need not be present during whole examination**

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.

### **110A Use of tendered statements in lieu of oral testimony in committal proceedings**

- (1) This section applies if justices are conducting a proceeding with a view to determining whether a defendant should be committed for trial or sentence for an indictable offence.

*Note—*

The provisions about the sexual assault counselling privilege in the *Evidence Act 1977*, part 2, division 2A apply in relation to committal proceedings.

- (2) If a written statement of a witness is tendered to them by the defence, the justices may, subject to the provisions of this section being satisfied, admit the statement as evidence without the witness appearing before them to give evidence or make a statement.
- (3) If a written statement of a witness is tendered to them by the prosecution, the justices—
  - (a) must, subject to the provisions of this section being satisfied, admit the statement as evidence; and
  - (b) must not require the witness to appear before them to give evidence or make a statement unless the witness is required to be called by the prosecution because a direction has been issued under section 83A(5AA).
- (4) However, if the defendant is not represented by a lawyer, subsection (3) does not apply unless the justices are satisfied that all of the following are true—
  - (a) the defendant understands what the proceeding is about and the possible consequences for the defendant arising out of the proceeding;
  - (b) the defendant is aware that the defendant—
    - (i) is entitled to be legally represented; and
    - (ii) may apply for legal assistance;
  - (c) the defendant has been made aware that the defendant has a right to apply for a direction under section 83A(5AA) that the witness attend the proceeding to give oral evidence;
  - (d) the defendant has been given an explanation of the requirements that apply under this division for making an application as mentioned in paragraph (c).
- (5) Subsection (3)(b) does not stop the prosecution and the defence agreeing that the witness will be present to be cross-examined.

*Note—*

It is open to the director of public prosecutions to issue guidelines for the giving of agreement under subsection (5). (See the *Director of Public Prosecutions Act 1984*, section 11 (Powers of director).)

- (6) If a witness is cross-examined because of an agreement under subsection (5) or because of a direction given under section 83A(5AA), the justices must consider both the witness's written statement and the oral evidence given by the witness.
- (6A) If a written statement is admitted as evidence under subsection (2) or (3), the statement—
  - (a) is taken to be evidence given or a statement made under section 104 upon an examination of witnesses in relation to an indictable offence; and
  - (b) is admissible as evidence to the same extent as it would be if the contents of the statement had been given by the oral evidence of the person who made the written statement.
- (6B) A written statement tendered by the defence must not be admitted unless—
  - (a) the prosecution agrees to its admission; and
  - (b) no other party to the proceeding objects, before the written statement is admitted in evidence, to the statement being admitted under this section.
- (6C) A written statement tendered by the defence or the prosecution must not be admitted unless—
  - (a) a copy of it has been made available, by or on behalf of the party proposing to tender it, to the other party or parties; and
  - (b) when the copy was made available, the party proposing to tender it advised that the copy was being made available with the intention that the written statement be admitted under this section; and
  - (c) it is signed by the person making it and contains a declaration by the person under the *Oaths Act 1867*, or a



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written acknowledgement by the person, to the effect that—

- (i) the statement is true to the best of the person's knowledge and belief; and
- (ii) the person made the statement knowing that the person may be liable to prosecution for stating in it anything that the person knew was false.

(6D) Subsections (6E) and (6F) apply if—

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

(6E) The justices must, without deciding under section 104(2) whether the evidence is sufficient to put the defendant upon trial for an indictable offence, but subject otherwise to section 104 with necessary changes—

- (a) formally charge the defendant; and
- (b) order the defendant to be committed for trial or for sentence.

(6F) Subsection (6E) may be applied to commit the defendant for trial or sentence even if, before the lawyer for the defendant consented under subsection (6D)(b), 1 or more unsuccessful applications were made to the court for a direction under section 83A(5AA) to require a person to attend a proceeding to give oral evidence.

*Note—*

Subsection (6E) could not be applied if any application of the type mentioned in this subsection were successful because in that case, the requirement stated in subsection (6D)(a) would not be satisfied.

(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 tendered by the defence 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 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 the defendant's lawyer 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, or the defendant is not legally represented, 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 the 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 the *Criminal Law Amendment Act 1892*, section 4 apply for the purposes of subsection (13) 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 (6C) 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.
- (16) For a law about taking certain children's evidence for committal proceedings for certain offences, see the *Evidence Act 1977*, part 2, division 4A, subdivision 2.

### **110B Special provisions applying to a direction under s 83A(5AA)**

- (1) A magistrate at a direction hearing must not give a direction under section 83A(5AA) in relation to the maker of a written statement unless the magistrate is satisfied there are substantial reasons why, in the interests of justice, the maker should attend to give oral evidence or be made available for cross-examination on the written statement.

*Note—*

Under section 83A a magistrate, on the magistrate's own initiative, may direct the parties to a proceeding to attend at a direction hearing. Also, under that section, a party to the proceeding may apply to a court, in the approved form, for a direction hearing.

- (2) An application in relation to the maker of a particular written statement may be made only once unless a magistrate gives leave for a subsequent application to be made on the basis of special reasons considered by the magistrate to exist.
- (3) An application for a direction under section 83A(5AA) may be made only if—
  - (a) the defendant has, by letter, or by email or some other electronic form of written communication (the *defendant's communication*), advised the prosecution of the following—
    - (i) the name of the maker of the written statement the subject of the application;

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- (ii) the general issues relevant to the making of the application;  
*Examples of general issues—*
    - identification evidence, expert opinion evidence
  - (iii) the reasons to be relied on to justify the calling of the maker of the written statement to give oral evidence;
  - (iv) a time (the *nominated time*) for the prosecution to respond to the defendant's communication; and
  - (b) the prosecution's response to the defendant's communication (the *prosecution's response*) has been received, or it has not been received within the nominated time; and
  - (c) there is filed with the application—
    - (i) a copy of the defendant's communication; and
    - (ii) the prosecution's response, if it has been received.
  - (4) The nominated time must be—
    - (a) the time set by the court or by a practice direction; or
    - (b) if there is no time set by the court or by a practice direction—a time that is reasonable in the circumstances, but in any event not less than 7 days.
  - (5) The prosecution's response may state whether the prosecution agrees to the calling of the maker of the statement, and any conditions attaching to the prosecution's agreement.

*Note—*

Section 110A(5) (Use of tendered statements in lieu of oral testimony in committal proceedings) allows for agreement between the prosecution and defence about the maker of a written statement being present for cross-examination.

- (6) A magistrate must give reasons for the magistrate's decision at a direction hearing about an application for a direction under section 83A(5AA).
- (7) An application for a direction under section 83A(5AA) must be filed and served on the other party or parties before the date

set by the court or by practice direction, and in any event, if the court sets a date for the commencement of the hearing of evidence in the committal proceeding, not later than that date.

- (8) A direction given under section 83A(5AA) on the application of the defendant may be withdrawn, on the application of the prosecution, if the defendant or the defendant's lawyer does not appear at the hearing.

### **110C Limitation on cross-examination**

- (1) If a witness attends before the justices because of a direction given, on application by the defendant, under section 83A(5AA) requiring the prosecution to call the witness, the justices must not allow the person to be cross-examined about an issue that is not relevant to the reasons given by the magistrate for requiring the person to attend.
- (2) However, the justices may allow cross-examination that is otherwise not permitted under subsection (1) if the justices are satisfied there are substantial reasons why, in the interests of justice, the cross-examination should be allowed.
- (3) The prosecution may re-examine a witness who is cross-examined.
- (4) The limitations on cross-examination provided for in subsections (1) and (2) are additional to, and do not affect the operation of, any other law limiting cross-examination.

*Examples of other laws that operate to limit cross-examination—*

- 1 The *Evidence Act 1977*, section 9E states principles for dealing with child witnesses.
- 2 The *Evidence Act 1977*, section 20 provides for the court to disallow particular questions as to credit.
- 3 The *Evidence Act 1977*, section 21 provides for the court to disallow questions the court considers improper.
- 4 The *Evidence Act 1977*, part 2, division 6 provides for the cross-examination of protected witnesses.

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## 111 Depositions of persons dead, absent etc.

- (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*, 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*, 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 the *Criminal Law Amendment Act 1892*, section 4 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 lawyer and that the accused or the accused's lawyer 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



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certificate, that the certificate was not in fact signed by the justices or clerk of the court or person acting as such by whom it purports to have been signed.

## **Division 6                      Defendant admitting guilt**

### **113      Procedure if defendant pleads guilty**

- (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 prison to be there safely kept until the defendant is delivered by due course of law or granted 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; or
  - (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**

### **113A Committal proceedings where defendant is a corporation**

- (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 do either or both of the following—
  - (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 prison or granting bail following such committal.

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- (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 7A            Registry committals

### 114    Registry committal by clerk of court

- (1) The clerk of the court at a place may order a defendant to be committed to be tried or sentenced for an indictable offence, if all of the following apply—
- (a) the indictable offence is not to be heard and decided summarily;
  - (b) all evidence of witnesses for the prosecution (including the evidence of any affected child under the *Evidence*

*Act 1977*, part 2, division 4A, given under the requirements of that division) is intended to be given in written statements;

- (c) the written statements have been filed in the court and copies given to the defendant by the prosecution;
  - (d) the defendant, if an individual—
    - (i) is not in custody, and is not in breach of any condition of the undertaking on which the defendant was granted bail; or
    - (ii) is remanded in custody for the indictable offence;
  - (e) the defendant is represented by a lawyer;
  - (f) the lawyer has, by written notice, or by email or some other electronic form of written communication, given a notice to the clerk of the court—
    - (i) stating that the defendant does not intend to give evidence or call any witness in relation to the defendant's committal for the indictable offence; and
    - (ii) acknowledging that the functions of the clerk of the court for a registry committal do not include considering or deciding whether the evidence before the clerk of the court is sufficient to put the defendant on trial for the indictable offence; and
    - (iii) stating whether the defendant wishes to be committed for trial, or to be committed for sentence;
  - (g) the notice given under paragraph (f) is given to the clerk of the court not later than the date set by the court or by practice direction;
  - (h) the defendant has served on the prosecution a copy of the notice given under paragraph (f) not later than the day it is given to the clerk of the court.
- (2) If the notice under subsection (1)(f) states that the defendant wishes to be committed for sentence, the defendant's lawyer

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must also have filed with the clerk of the court a written statement signed by the defendant stating that the defendant pleads guilty to the offence and that the defendant acknowledges that the defendant is not obliged to enter any plea and has nothing to hope from any promise, and nothing to fear from any threat, that may have been held out to induce the defendant to make any admission or confession of guilt.

- (3) After the defendant is ordered to be committed to be tried or sentenced, there must not be any examination of any person in relation to the committal of the defendant for trial or sentence for the indictable offence.
- (4) A document required to be served under subsection (1)(h) may be served electronically.
- (5) An order under subsection (1) has effect as if it were an order of justices.
- (6) For subsection (1)—
  - (a) it is not necessary for the written statements to have been filed in the court as mentioned in subsection (1)(c) if the defendant's lawyer has, in the notice mentioned in subsection (1)(f), included a statement consenting to the written statements not being filed; and
  - (b) it is not necessary for the written statements to have been given to the defendant as mentioned in subsection (1)(c) if the defendant's lawyer has, in the notice mentioned in subsection (1)(f), included a statement consenting to the written statements not being given.

## **115 Process of clerk of the court for registry committal**

- (1) The functions of the clerk of the court for a registry committal do not include considering or deciding whether the evidence before the clerk of the court is sufficient to put the defendant on trial for the indictable offence.
- (2) However, if under a registry committal a clerk of the court orders a defendant who is an individual to be committed to be

tried for an indictable offence, the clerk of the court must give notice to the defendant to the same effect as the warning required to be given to a defendant under section 104(5).

- (3) The notice under subsection (2) may be given electronically.
- (4) Nothing in this part is taken to require the defendant or any other party to appear at a registry committal.
- (5) A registry committal must be conducted by the clerk of the court on the basis of the charges of indictable offences as agreed to by the prosecution and the defence.
- (6) For the purposes of subsection (5), the clerk of the court has the same power a magistrate would have to amend, including to withdraw, charges to ensure the defendant is committed for trial or for sentence on charges as agreed, rather than charges on which the defendant may have initially been brought before the court.
- (7) Subsection (8) applies if the parties agree that circumstances applying in relation to a registry committal are circumstances that—
  - (a) for a committal for trial under section 108, would permit the making of an order under section 108(2); or
  - (b) for a committal for sentence under section 113, would permit the making of an order under section 113(4).
- (8) The clerk of the court must make an order for committal for trial or sentence of the type mentioned in subsection (7).
- (9) An order under subsection (8) has effect as if it were an order of justices ordering the committal of the defendant for trial or sentence under section 108 or 113 as appropriate.
- (10) The functions of the clerk of the court for a registry committal do not include remanding the defendant in custody, or any function in relation to bail.

*Notes for subsection (10)—*

- 1 If, immediately before the registry committal, the defendant is subject to an order made under section 84(1) providing for the remand of the defendant, section 88B provides for the automatic continuation of the order.

- 2 If, immediately before the registry committal, the defendant is on bail, the *Bail Act 1980*, section 34BA provides for the automatic continuation of the defendant's bail.

## 116 Limited application of divs 5 to 7 for registry committals

- (1) If there is a registry committal, subject to subsection (2), it takes the place of the procedures relating to committal for trial or sentence that would otherwise apply, or would otherwise continue to apply, under divisions 5, 6 and 7.
- (2) Section 110A(12) to (15), and any other provision of this or another Act directly or indirectly referred to in section 110A(12) to (15), have effect for a registry committal, to the greatest practicable extent, as if a reference to a written statement admitted in accordance with section 110A were a reference to a written statement given in evidence for the registry committal (other than the evidence of any affected child under the *Evidence Act 1977*, part 2, division 4A, given under the requirements of that division).

## 117 Application of registry committals to indictable offences under other Acts

- (1) This section applies to an offence against a provision of another Act if—
  - (a) the Act (the *other Act*) provides that the offence is an indictable offence; and
  - (b) whether or not the other Act allows for the summary conviction of a person charged with the offence, it makes provision, whether or not by reference to this Act, for the court to proceed by way of a committal proceeding in relation to the offence.

*Example—*

Under the *Property Occupations Act 2014*, section 225, a charge for an indictable offence under that Act, depending on circumstances as provided for in the section, at the level of a Magistrates Court, either could be heard and decided summarily, or could be the subject of a committal proceeding, effectively as provided for under this Act.

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- (2) To remove any doubt, it is declared that if a person is charged with the offence, and the offence is not to be heard and decided summarily, the person may be committed for trial or sentence on the basis of a registry committal.
- (3) If there is a registry committal, it takes the place of any committal proceeding otherwise provided for in the other Act.

## **Division 8                      Action on committal for trial**

### **121      Transmission of undertaking as to bail**

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.

### **126      Transmission of depositions**

- (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 and undertakings as to bail relating to such committal, in the following manner—
  - (a) if the committal is to a court to be held within the Northern Region or Far Northern Region—to a crown prosecutor stationed in that region; or
  - (b) in all other cases—to the Attorney-General or director of public prosecutions.
- (2) In this section—

*Far Northern Region* means the Far Northern Region of the Supreme Court.

*Northern Region* means the Northern Region of the Supreme Court.



*Editor's note—*

The Far Northern Region and the Northern Region are declared under the *Supreme Court of Queensland Act 1991*.

## **127 Duty of Attorney-General etc.**

The Attorney-General, director of public 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.

## **128 Authority of judge**

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.

## **129 Recommittal in case of error**

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 granted 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, grant the defendant bail or enlarge the defendant's bail, if the defendant has been already granted 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, grant the defendant bail or enlarge the defendant's bail if the defendant has been already granted bail.

### **130 Division applies also to registry committals**

- (1) This division applies to registry committals, to the greatest practicable extent, in the same way it applies to committals by justices for trial or sentence.
- (2) For applying subsection (1), a reference in section 126, 127 or 129 to the committing justices, however described, is taken to include a reference to a clerk of the court who, under division 7A, ordered a defendant to be committed to be tried or sentenced for an indictable offence.

## **Division 9 Examination of witnesses in another court district**

### **132 Examination by justices for an offence committed in another Magistrates Court district**

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 prison or grant the defendant bail; or
- (b) proceed in accordance with the provisions of section 133.

### **133 Remand to another place**

- (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 may adjourn the hearing—
  - (a) to the place where the offence is alleged to have been committed; or
  - (b) to a place where any of the witnesses to be examined are; or
  - (c) to a place convenient to a place mentioned in paragraph (a) or (b).
- (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) grant the defendant 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 and undertaking as to bail taken and 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 granted bail pursuant to subsection (2), the justices shall deliver the complaint, or a copy thereof, and every deposition, statement and undertaking as to bail taken and 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.

#### **134 Effect of depositions and undertakings as to bail taken or given elsewhere than at place of committal**

- (1) Every deposition and undertaking as to bail delivered to justices in accordance with section 133 shall be deemed to have been taken or 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 and undertakings as to bail as are taken or 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 lastmentioned 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 so given and delivered shall be of no force or effect.

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## **Part 6 Proceedings in case of simple offences and breaches of duty**

### **Division 1 Venue**

#### **139 Where summary cases to be heard**

- (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 35km 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 grant the defendant 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 or electronically 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

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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.

## **140 Adjourment to different place**

- (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 grant the defendant 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 lawyer 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 subsections (2) and (2A) in a case to which the subsections apply.
- (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 firstmentioned 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 firstmentioned 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



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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**

### **141      Dismissal or adjournment in absence of complainant**

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 lawyer, 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 grant the defendant bail.

### **142      Proceedings in absence of defendant**

- (1) If at the time and place so appointed the defendant does not appear when called and the justices are satisfied, on oath or by deposition as provided in section 56, that the summons was properly served on 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) if satisfied, from information given on oath, that the matter of the complaint is substantiated, 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.

*Note—*

See section 150A for when the justices may, instead of dealing with the complaint under this division, make an order ending the complaint.

- (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.

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- (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.
- (3B) Also, if section 146A applies to the proceeding, a notice required under subsection (3) may be given electronically.
- (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.

- (5A) If, under subsection (3B), the defendant is given a notice electronically, the clerk of the court may endorse a copy of the notice with a certificate stating the following—
  - (a) that the document is a copy of the notice given to the defendant named in the document;
  - (b) that the notice was given to the defendant electronically;
  - (c) the way in which notice was given electronically to the defendant;
  - (d) the day on which the notice was given electronically to the defendant.
- (5B) A document purporting to be a copy of the notice given to the defendant electronically, signed by the clerk and endorsed with a certificate under subsection (5A), is evidence that the notice was given to the defendant and of the matters stated in the certificate.
- (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 the defendant's lawyer within 2 months after such determination, may, for such reason as it thinks proper, grant a rehearing of the complaint upon such terms and subject to the payment of such costs as it thinks fit.
- (7) When a rehearing 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; and

- (b) the court may proceed with the rehearing forthwith or may set down the rehearing for a later date; and
  - (c) on such rehearing, the court shall have the same powers and shall follow the same procedures as if the rehearing 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 rehearing is set down, the court may, if it thinks fit, without rehearing 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.

#### **142A Permissible procedure in absence of defendant in certain cases**

- (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 police officer 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) other than so far as this section is inconsistent with the other provisions of this Act.
- (4) Where—
  - (a) a complaint of a simple offence or breach of duty is made by a public officer or a police officer; and
  - (b) the defendant is required to appear at a time and place fixed for the hearing of the complaint—
    - (i) by a summons issued on the complaint and served at least 14 days before the date on which the defendant is required by the summons to appear; or
    - (ii) under a condition of the defendant's bail or by a notice given to the defendant under the *Bail Act 1980*; or

(iii) by a notice of adjournment given to the defendant a reasonable time before the date previously fixed for the hearing of the complaint; 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 or as stated by the complainant 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 or are stated by the complainant, 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 at the time and place fixed for the hearing of the complaint.

(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

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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.
- (7B) Also, if section 146A applies to the proceeding, a notice required under subsection (7) may be given electronically.
- (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.

- (9A) If, under subsection (7B), the defendant is given a notice electronically, the clerk of the court may endorse a copy of the notice with a certificate stating the following—
  - (a) that the document is a copy of the notice given to the defendant named in the document;
  - (b) that the notice was given to the defendant electronically;
  - (c) the way in which notice was given electronically to the defendant;
  - (d) the day on which the notice was given electronically to the defendant.
- (9B) A document purporting to be a copy of the notice given to the defendant electronically, signed by the clerk and endorsed with a certificate under subsection (9A), is evidence that the notice was given to the defendant and of the matters stated in the certificate.
- (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.



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- (10AA) Also, despite subsection (10) and section 150(3), if the justices convict a person in a proceeding to which section 146A applies, notice of the conviction or order may be given to the person electronically.
- (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 2 months 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 the defendant's lawyer within 2 months after such determination may, for such reason as it thinks proper, grant a rehearing of the complaint upon such terms and subject to the payment of such costs as it thinks fit.
- (12A) When a rehearing is granted—
- (a) the conviction or order made in the first instance shall, subject to subsection (12B), forthwith cease to have effect; and
  - (b) the court may proceed with the rehearing forthwith or may set down the rehearing for a later date; and
  - (c) on such rehearing, 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 rehearing is set down, the court may, if it thinks fit, without rehearing 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 magistrate.

- (14) For the purposes of this section, a complaint that purports to have been laid by a public officer or by a police officer, shall, until the contrary is proved, be presumed to have been so laid.
- (15) To remove any doubt, it is declared that this section also applies if a person fails to appear before a court after the person is granted bail, or permitted to go at large without bail, under the *Bail Act 1980*.

### **143 Adjourment of hearing if warrant to apprehend defendant issued**

- (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**

### **144 Both parties appearing**

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

*Note—*

See section 150A for when the justices may, instead of dealing with the complaint under this division, make an order ending the complaint.

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## **145 Defendant to be asked to plead**

- (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 is legally represented and there is more than 1 complaint before the Magistrates Court, a plea to any number of the complaints may, with the consent of the defendant, be taken at the same time on the basis that the plea to 1 complaint will be treated as a plea to any number of the complaints if the court is satisfied—
  - (a) the defendant has obtained legal advice in relation to each of the complaints; and
  - (b) the defendant is aware of the substance of each of the complaints.
- (3) If the Magistrates Court takes a plea under subsection (2), the court is not required to state the substance of any complaint before the court to the defendant.
- (4) 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.

## **146 Where defendant pleads not guilty**

- (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.

#### **146A Proceeding at the hearing on defendant's confession in absentia**

- (1) This section applies if a defendant, under a summons or a condition of the defendant's bail or by a notice given to the defendant under the *Bail Act 1980*, is required to appear before a Magistrates Court or justices to answer a complaint, other than a complaint of—
  - (a) an indictable offence; 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 (a ***defendant's plea notification***) in writing purporting to be given by the defendant or by a lawyer 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—

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- (a) the justices may proceed to hear and determine the case in the absence of—
- (i) the defendant in the same way as if the defendant had appeared and pleaded guilty; and
  - (ii) if the complainant consents to the justices hearing and determining the matter in the complainant's absence—the complainant; 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 defendant's plea notification 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 defendant's plea notification, the justices shall deal with the complaint as if this section had not been passed; and
  - (b) before accepting the plea of guilty and convicting the defendant in the defendant's absence under subsection (2), the justices must—
    - (i) if the complainant has consented to the justices hearing and determining the matter in the complainant's absence under subsection (2)(a)(ii), consider—
      - (A) the defendant's plea notification and any submission given with the notification by or on behalf of the defendant that the defendant wishes to be brought to the justices' attention in relation to mitigation of penalty; and
      - (B) any other written information with respect to the facts relating to the offence to be made by or on behalf of the complainant; or
    - (ii) otherwise—

- (A) cause the defendant's plea notification and any submission given with the notification by or on behalf of the defendant that the defendant wishes to be brought to the justices attention in relation to mitigation of penalty to be read out before the court; and
  - (B) require a statement with respect to the facts relating to the offence to be made by or on behalf of the complainant.
- (2B) Also, if the clerk of the court receives a defendant's plea notification, the clerk may change the time appointed for the hearing of the complaint to which the notification relates to an earlier time not less than 7 business days after the day on which the clerk gives the parties notice of under subsection (2C).
- (2C) If the clerk of the court changes the time appointed for the hearing of the complaint under subsection (2B), the clerk must, as soon as practicable, give written notice of the new time appointed for the hearing to the complainant and defendant.
- (2D) The clerk may give a notice required under subsection (2C) electronically.
- (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.
- (3C) Also, if the defendant's plea notification was received electronically, the defendant is taken to have had adequate

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notice of the adjourned hearing if the defendant has been given notice of the adjournment electronically.

- (3D) If, under subsection (3C), the defendant is given notice of the adjournment electronically, the clerk may endorse a copy of the notice with a certificate stating the following—
- (a) that the document is a copy of the notice given to the defendant named in the document;
  - (b) that the notice was given to the defendant electronically;
  - (c) the way in which notice was given electronically to the defendant;
  - (d) the day on which the notice was given electronically to the defendant.
- (3E) A document purporting to be a copy of the notice of the adjournment given to the defendant electronically, signed by the clerk and endorsed with a certificate under subsection (3D), is evidence that the notice was given to the defendant and of the matters stated in the certificate.
- (3F) Also, despite section 150(3), if the justices convict a person in the person's absence under subsection (2), notice of the conviction or order may be given to the person electronically.
- (3G) If subsection (3F) applies, section 150(5) applies to a warrant of commitment or execution in relation to the conviction or order as if the reference in that subsection to subsection (3) were a reference to subsection (3F) of this section.
- (4) Where justices convict a person in the person's absence under subsection (2) for an offence upon conviction wherefore 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.

#### **146B Payment to clerk of the court of money recoverable in a summary way**

- (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



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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.

*Note—*

Now see the *Uniform Civil Procedure Rules 1999*—see the *Magistrates Courts Act 1921*, section 61.

- (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.

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

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 a lawyer, 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.

## **147A Power of justices to reopen proceedings and rectify orders**

- (1) This section does not apply to an error in a sentence, or to an error consisting of a failure to impose a sentence, for which a court may reopen a proceeding under the *Penalties and Sentences Act 1992*, section 188.
- (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.

*Example—*

An order may be varied to correct the defendant's name.

- (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; or
  - (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; or
  - (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; or

- (d) the conviction or order recorded or made against the person was incorrectly ordered or made because of someone's deceit.
- (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 (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.

## **148 Conduct of summary proceedings regulated**

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.

## **148A Admissions of fact**

- (1) This section applies in relation to a complaint of—
    - (a) a simple offence, other than a simple offence that is an indictable offence punishable on summary conviction; or
- Note—*
- See the Criminal Code, section 644 in relation to the admission of a fact on the hearing of a complaint that relates to an indictable offence being heard and decided summarily.
- (b) a breach of duty.
- (2) On the hearing of the complaint—
    - (a) the defendant may, personally or by the defendant's lawyer, admit any fact alleged against the defendant; and

- (b) the complainant may, personally or by the complainant's lawyer, admit any fact relevant to the hearing, but only if the defendant consents to the making of the admission.
- (3) An admission of a fact made under subsection (2) is sufficient proof of the fact without other evidence.

## **Division 4                      Dismissal**

### **149      Dismissal of complaint**

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.

### **150      Minute of decision to be made and advice sent by post**

- (1) This section applies if justices convict or make an order against a person.
- (2) The justices must make a minute or memorandum of the conviction or order and sign it.
- (3) If neither the person nor the person's lawyer or agent is present when the conviction is pronounced or the order is made, the clerk of the court must give written notice of the conviction or order by post to the person at the person's last address known to the clerk.
- (4) A minute or memorandum made under this section does not form part of the warrant of commitment or execution.
- (5) If subsection (3) applies, a warrant of commitment or execution must not issue for at least 2 months from the day of the conviction or order, unless the adjudicating justices otherwise direct.

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## **Division 4A                      Ending of complaint if police cash bail granted**

### **150A Justices may order that complaint is ended**

- (1) This section applies if—
  - (a) a defendant has been granted bail under the *Bail Act 1980*, section 14 in relation to the matter of a complaint; and
  - (b) any of the following applies—
    - (i) the defendant fails to appear before the justices in accordance with the bail and the justices, under the *Bail Act 1980*, section 14(5), order the forfeiture of the deposit of money made by the defendant in connection with the bail;
    - (ii) the defendant does not appear before the justices in accordance with the bail, but the defendant's lawyer applies to the justices for an adjournment of the hearing of the complaint;
    - (iii) the defendant appears before the justices in accordance with the bail.
- (2) The justices may, instead of dealing with the complaint under division 2 or 3, order that the complaint is ended.
- (3) On making an order under subsection (2)—
  - (a) the complaint ends; and
  - (b) the justices must take no further action in relation to the complaint.
- (4) To remove any doubt, it is declared that subsection (3) does not affect the making of an order under the *Bail Act 1980*, section 14(6).

## **Division 5                      Convictions and orders**

### **151      Formal convictions and orders**

- (1) The conviction or order must afterwards, if required under section 152, be drawn up in proper form by the justices or the clerk of the court.
- (2) The formal conviction or order must be filed with or by the clerk of the court.
- (3) Whether or not a requirement is made under section 152, the clerk of the court must make a record of the conviction or order and any other matter (a *verdict and judgment record*) as required under the *Criminal Practice Rules 1999*.

*Editor's note—*

See the *Criminal Practice Rules 1999*, rule 62.

- (4) A verdict and judgment record relating to a conviction or order is a sufficiently proper form of the conviction or order for subsection (1).

### **152      Formal record of conviction not necessary, except for special purposes**

Subject to the *Criminal Practice Rules 1999*, it is unnecessary for justices or a clerk of the court 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.

### **153      No certiorari order**

No conviction shall be quashed for want of form or be removed by certiorari order (within the meaning of the *Judicial Review Act 1991*) 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

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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

### 154      Copies of record

- (1) This section applies if, in any proceeding before justices, the justices—
  - (a) make an order; or
  - (b) commit the defendant to be tried; or
  - (c) commit the defendant for sentence; or
  - (d) discharge the defendant.

(1A) The clerk of the court must on—

- (a) the application in writing of any person; 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, 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) Except where an application is made under subsection (1A), or a request is made under the *Recording of Evidence Act 1962* for a transcription of a record under that Act of the proceeding, 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 the Childrens 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 or 71; or
- (c) any part of the record of a proceeding that has been made while the court is closed under a provision of an Act, or an order made under a provision of an Act, requiring the court to be closed; or
- (d) any part of the record of a proceeding if—
  - (i) a court makes an order prohibiting access to, or the disclosure or publication of, the record, or a document or information that is part of the record; or
  - (ii) in relation to a part of the record that is an exhibit—
    - (A) the clerk of the court considers giving the record, or a part of the record, may risk a person's safety; or
    - (B) the record contains confidential or sensitive information; or

*Examples of confidential or sensitive information—*

- a person's date of birth, financial account number, social security or tax file number
  - a person's criminal history
  - medical records, including information about a person's health or drug use
  - commercially confidential information
  - a victim impact statement
- (iii) a provision of an Act, other than a provision mentioned in subsection (3), prohibits the disclosure of the record, or a document or information that is part of the record.
- (3) A person is not entitled under this section to a copy of—
    - (a) sensitive evidence as defined under the Criminal Code, section 590AF; or



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- (b) a section 93A criminal statement as defined under the *Evidence Act 1977*, section 93AA; or
  - (c) a recording as defined under the *Evidence Act 1977*, section 21AY.
- (4) The provisions of this section shall not be construed to prejudice the provisions of the Criminal Code, sections 705 and 706.
  - (5) Subsections (2) and (3) do not prevent the giving of access to a record or information under the *Childrens Court Act 1992*, section 28A.
  - (6) The Minister may delegate the Minister's power under subsection (2) to the chief executive.
  - (7) The chief executive may subdelegate the Minister's power delegated to the chief executive under subsection (6) to an appropriately qualified officer or employee of the department.
  - (8) In this section—  
***appropriately qualified***, for an officer or employee to whom the Minister's power may be subdelegated, includes having the qualifications, experience or standing appropriate for the power.

*Example of standing for an officer or employee of a department—*

the officer or employee's classification level in the department

***exhibit*** includes a document that—

- (a) was given to a drug court under the repealed *Drug Court Act 2000*; and
- (b) is about an offender who had appeared before a magistrate who was allocated the functions of a drug court magistrate under section 10 of that Act.

## **Division 8                      Costs**

### **157      Costs on conviction or order**

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.

### **158      Costs on dismissal**

- (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.

### **158A    Exercise of discretion in relation to an award of costs**

- (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 there was a failure to comply with a direction given under section 83A; and
  - (h) whether the defendant conducted the defence in a way that prolonged the proceeding unreasonably; and
  - (i) 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 an appeal against an order for costs is made under section 222—

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

### **158B Costs for division**

- (1) In deciding the costs that are just and reasonable for this division, the justices may award costs only—
  - (a) for an item allowed for this division under a scale of costs prescribed under a regulation; and
  - (b) up to the amount allowed for the item under the scale.
- (2) However, the justices may allow a higher amount for costs if the justices are satisfied that the higher amount is just and reasonable having regard to the special difficulty, complexity or importance of the case.

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

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.

### **160 Costs how recoverable**

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

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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**

### **161      Mode of enforcement where no express provision made**

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*.

### **161A    Mode of levying penalties, moneys or costs**

- (1) This section applies if 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.

- (2) This section also applies if 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.
- (3) The justices may order that—
  - (a) the amount to be paid or levied may be recovered by execution against the goods and chattels of the person liable to make the payment under a warrant of execution issued by the adjudicating justices; or
  - (b) the clerk of the court may, under the *State Penalties Enforcement Act 1999*, section 34, give particulars of the amount to be paid or levied to the State Penalties Enforcement Registry for registration under that section.

## **162 Power to detain until return of warrant**

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.

## **163 Commitment in default of execution**

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

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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 prison (the amount thereof being ascertained and stated in the warrant of commitment), are sooner paid.

### **163A When court may order imprisonment in default of execution**

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.

### **164 Payment by instalments of, or security taken for payment of, money**

- (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.

### **166A Power to issue or postpone warrant**

- (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.



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**167 Commitment where execution would be ruinous**

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 prison (the amount thereof being ascertained and stated in the warrant of commitment), are sooner paid.

**169 To whom payments to be made**

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.

**171 Effect thereof**

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.

## **172 Procedure on execution**

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

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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.

### **173 Mitigation of punishment by justices**

- (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.

#### **174A Police officer to execute warrant of commitment when full sum not tendered**

- (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

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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.

## **175 Transfer of jurisdiction as to enforcement of fines etc.**

- (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.

### **175A Allocation of part payments**

- (1) An amount received by a clerk of the court from a person under a decision must be applied in the following order—
  - (a) compensation;
  - (b) restitution;
  - (c) damages;
  - (d) a fixed portion of a penalty ordered to be paid to an individual;
  - (e) court fees paid by the complainant or defendant;
  - (f) court fees ordered to be paid and not already paid by the complainant or defendant mentioned in paragraph (e);

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- (g) costs and charges of taking and conveying the person making payment to prison, if known and stated in the decision;
  - (h) witnesses' expenses;
  - (i) professional costs;
  - (j) other fees or costs;
  - (k) any other amount ordered to be paid, including a fine.
- (1A) Subsection (1B) applies if the person is also liable to pay an amount for an offender levy under the *Penalties and Sentences Act 1992*, section 179C.
- (1B) For section 175A or 175B, the amount of the levy must be satisfied—
- (a) after an amount in the category mentioned in subsection (1)(d); and
  - (b) before an amount in the category mentioned in subsection (1)(e).
- (2) For subsection (1)(k), subject to any direction given in relation to the amount, the amount must be applied in the way in which fines, penalties or forfeitures are applied.
- (3) This section applies subject to any direction under the Act under which the complaint was made.

### **175B Order of satisfaction if amounts payable under more than 1 decision**

- (1) This section applies if—
- (a) a clerk of the court receives an amount from a person in part satisfaction of an amount payable by the person under a decision; and
  - (b) the person is liable to pay amounts under 2 or more decisions.
- (2) The amount must first be applied to satisfy all outstanding amounts under the decisions in the first relevant category in section 175A(1) in the order in which they became payable.

- (3) After all amounts in the first relevant category are satisfied, any remaining amount must be applied to satisfy unpaid amounts under the decisions in the next relevant category and then to each other relevant category in the same way until each relevant category is satisfied.

*Example for subsection (3)—*

If a person has been ordered to pay the following amounts—

- (a) under a decision made on 2 January 1999—\$200 for a fine, \$80 costs of court, \$50 witness expenses, \$250 professional fees and \$300 restitution;
- (b) under a decision made on 4 January 1999—\$500 for a fine, \$80 costs of court, \$50 witness expenses, \$600 professional fees and \$350 restitution;

any part payments must first satisfy the restitution amounts ordered on 2 January 1999 and 4 January 1999 in that order before any other part payments may be applied to satisfy amounts outstanding in the next relevant category.

## **177 Remission of penalty**

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.

## **178 Power to withhold fines payable to informers**

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.



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## Division 10                      Charge for issuing certain warrants

### 178AA Warrant may include charge for its issue

- (1) The amount recoverable under a warrant of execution issued under this or another Act for the non-payment of a penalty is increased by the amount of a charge that may be prescribed under a regulation for issuing the warrant.
- (2) If a warrant under this or another Act authorises a person's imprisonment for the non-payment of a penalty, the amount of the penalty recoverable under the warrant is increased by the amount of a charge that may be prescribed under a regulation for issuing the warrant.
- (3) The amount of a charge under subsection (2) is to be disregarded in working out a term of imprisonment under the *Penalties and Sentences Act 1992*, section 185.

## Part 6A                              Use of video link facilities or audio link facilities

### 178A Purpose of part

The purpose of this part is to provide for the use of video link facilities or audio link facilities for certain proceedings before a Magistrates Court.

### 178B Definitions for part

In this part—

*associated place*, in relation to a person using video link facilities or audio link facilities for a proceeding in a Magistrates Court, means—

- (a) a correctional institution where the person is in custody;  
or

- (b) another place where the person is present that the presiding magistrate considers suitable for the conduct of a proceeding under this part.

*Examples—*

- a place appointed for the holding of a Magistrates Court
- a place in a State government or local government building

***correctional institution*** includes the following—

- (a) a corrective services facility within the meaning of the *Corrective Services Act 2006*;
- (b) a watch-house;
- (c) a holding cell at a police station;
- (d) a court cell.

***court cell*** means a place attached to or near a court that is used for detaining prisoners of the court.

***facility user***, in relation to a proceeding, means someone who is a party to the proceeding.

***primary court***, in a proceeding, means the Magistrates Court conducting the proceeding.

***proceeding*** for a provision of this part, other than section 178C(1), means a proceeding to which section 178C(1) applies.

## **178C Use of video link facilities or audio link facilities in proceedings**

- (1) This section applies to a proceeding if—
- (a) a person is entitled or required to be present before a Magistrates Court for the proceeding; and
- (b) the proceeding is about an offence with which the person is charged, including a proceeding for the person's bail or remand, other than a proceeding for the sentencing of the person; and

*Note—*

See the *Penalties and Sentences Act 1992*, section 15A in relation to the use of audiovisual link or audio link facilities for a sentencing proceeding.

- (c) the person is—
  - (i) in custody at a correctional institution that has video link facilities or audio link facilities linking it and the primary court; or
  - (ii) represented by a lawyer and present at another place that—
    - (A) the presiding magistrate considers suitable for the conduct of a proceeding under this part; and
    - (B) has video link facilities or audio link facilities linking it and the primary court.
- (2) If—
  - (a) the person is in custody in a correctional institution that is a corrective services facility within the meaning of the *Corrective Services Act 2006*; and
  - (b) the proceeding is for the person's bail or remand;the proceeding must be conducted using the video link facilities, unless the primary court, in the interests of justice, otherwise orders.
- (3) In a proceeding other than a proceeding to which subsection (2) applies, the primary court may, in the interests of justice, order the proceeding be conducted using the video link facilities or audio link facilities.
- (4) However, the primary court may not make an order under subsection (3) if facilities mentioned in section 178F(1) are not available at the primary court or the associated place.
- (5) The video link facilities or audio link facilities may only be used to link the proceeding before the primary court with the person, or the person and the person's representative, at the associated place.

### **178D Facility user taken to be before the court**

- (1) A person present at the part of the associated place used for the conduct of a proceeding, when the proceeding is being conducted, is taken to be in the presence of the primary court for all purposes.
- (2) The part of the associated place used for the proceeding is taken to be part of the primary court for the conduct of the proceeding.
- (3) Any entitlement of, or requirement for, the facility user under a law or court order to be present before the primary court in the proceeding is taken to be satisfied by the facility user's use of video link facilities or audio link facilities for the proceeding.

### **178E Way video link facilities or audio link facilities must be operated**

- (1) Video link facilities, when used for a proceeding, are to be operated in a way that ensures two-way audio and visual communication between the facility user and the primary court.
- (1A) Audio link facilities, when used for a proceeding, must be operated in a way that ensures two-way audio communication between the facility user and the primary court.
- (2) If video link facilities or audio link facilities fail during a proceeding, the primary court may adjourn the proceeding or make another appropriate order, as if the facility user were still in the presence of the primary court.

### **178F Facilities for private communication**

- (1) The primary court and the associated place must make facilities available for private communication between the facility user and the facility user's representative in a proceeding if the facility user's representative is at the place where the primary court is sitting.

- (2) A communication between the facility user and the facility user's representative is as confidential and as inadmissible in any proceeding as it would be if it took place between the facility user and the facility user's representative while in each other's presence.
- (3) Subsection (2) does not limit any other protection applying to the communication.

### **178G Variation or revocation of order**

A Magistrates Court may, at any time, vary or revoke an order made under section 178C.

## **Part 7 Reciprocal enforcement of fines against bodies corporate**

### **179 Meaning of terms**

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 be a reciprocating State or Territory.

### **180 Reciprocating States and Territories and reciprocating courts**

- (1) The Governor in Council may declare another State or a Territory, 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.

## **181 Enforcement by Magistrates Court**

- (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.

## **182 Enforcement by reciprocating court**

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 to a District Court judge**

### **221 Definitions for div 1**

In this division—

*appealed order* means the order against which an appeal is made under section 222.

*general manager* of a prison, for a place where a person is held in lawful custody other than a prison under the *Corrective Services Act 2006*, means the person in charge of the place.

*notice of appeal* means a notice of appeal under section 222(3), (4) or (5).

*prison* includes any place in which a person is held in lawful custody.

*relevant clerk of the court* means the clerk of the court of the relevant Magistrates Court.

*relevant Magistrates Court* means the Magistrates Court at the place where the appealed order was made.



**relevant registrar** means the registrar of the District Court at the place where the appeal under section 222 will be heard.

**respondent** means the person concerned in upholding the appealed order.

## 222 Appeal to a single judge

- (1) If a person feels aggrieved as complainant, defendant or otherwise by an order made by justices or a justice in a summary way on a complaint for an offence or breach of duty, the person may appeal within 1 month after the date of the order to a District Court judge.

*Notes—*

- 1 Under the Criminal Code, section 669A(6), an appeal against a decision by a person under this section to a District Court judge is removed directly to the Court of Appeal if the Attorney-General also appeals against the decision under section 669A.
- 2 This division applies in relation to an order made by justices dealing summarily with a child charged with an offence, but appeals must be made to a Childrens Court judge—see the *Youth Justice Act 1992*, section 117.

- (2) However, the following exceptions apply—

- (a) a person may not appeal under this section against a conviction or order made in a summary way under the Criminal Code, section 651;
- (b) if the order the subject of the proposed appeal is an order of justices dealing summarily with an indictable offence, a complainant aggrieved by the decision may appeal under this section only against sentence or an order for costs;
- (c) if a defendant pleads guilty or admits the truth of a complaint, a person may only appeal under this section on the sole ground that a fine, penalty, forfeiture or punishment was excessive or inadequate.

- (2A) The Attorney-General may appeal against an order made by justices or a justice in a summary way on a complaint for an

offence or breach of duty within 1 month after the date of the order to a District Court judge.

- (3) To start the appeal, the appellant must file a notice of appeal in the District Court registry.
- (4) For this section, an appellant is taken to have filed the notice of appeal in the District Court registry—
  - (a) if the District Court registry is more than 50km from the place where the order was made; and
  - (b) the appellant gives the notice of appeal to the relevant clerk of the court.
- (5) Also, for this section, an appellant is taken to have filed the notice of appeal in the District Court registry if the appellant is in custody in prison and gives the notice of appeal to the prison's general manager.
- (6) A clerk of the court or general manager of a prison who receives a notice of appeal under subsection (4)(b) or (5) must immediately give the appellant a receipt of the notice of appeal in the approved form stating the date of receipt.
- (7) If—
  - (a) an issue arises in a proceeding about whether the appellant gave a notice of appeal under subsection (4)(b) or (5); and
  - (b) the receipt under subsection (6) is not produced in evidence;the onus of proof is on the appellant to prove the giving of the notice of appeal under subsection (4)(b) or (5).
- (8) The notice of appeal must be in the approved form and state—
  - (a) the appeal grounds; and
  - (b) the details required under section 222C; and
  - (c) the name and address of the respondent.
- (9) If the appellant is in custody, the notice of appeal must be filed in the District Court district where the appellant is in custody.

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## **222A Stay of particular matters**

- (1) This section applies to the following—
  - (a) an order made under an Act for the payment of restitution or compensation that may be appealed against under section 222;
  - (b) the operation of the *Sale of Goods Act 1896*, section 26(1) in relation to a conviction that may be appealed against under section 222.
- (2) Unless otherwise expressly provided, the order or operation is stayed—
  - (a) until the end of 1 month after the making of the order or conviction; and
  - (b) if an appeal against the order or conviction is started under section 222—until the end of the appeal.

*Note—*

For what happens on the filing of an appeal against a conviction in relation to a resulting disqualification from holding or obtaining a Queensland driver licence, see the *Transport Operations (Road Use Management) Act 1995*, section 131(3A).

## **222B Appeal documents must be sent to the relevant registrar**

- (1) If a notice of appeal is given to a clerk of the court under section 222(4), the clerk of the court, within 7 days afterwards, must send to the relevant registrar—
  - (a) the notice of appeal; and
  - (b) the file of the Magistrates Court relating to the order.
- (2) If a notice of appeal is given to the general manager of a prison under section 222(5), the general manager, within 7 days afterwards, must send the notice of appeal to the relevant registrar.
- (3) If a notice of appeal is filed in a District Court registry other than under section 222(4), the relevant registrar, within 7 days after receiving the notice of appeal, must send a request to the

relevant clerk of the court asking for any court file relevant to the appealed order or the appeal to be sent to the registrar.

- (4) The clerk of the court must comply with the request within 7 days.

## **222C Contact details and address for service**

- (1) An appellant must ensure—
- (a) if the appellant intends to act personally, the following details are on the notice of appeal before it is filed or taken to be filed under section 222(3), (4) or (5)—
    - (i) the residential or business address of the appellant;
    - (ii) if the appellant has a telephone number—the telephone number;
    - (iii) if the appellant does not have a telephone number—a way of contacting the appellant by telephone;
    - (iv) the fax number (if any) of the appellant; or
  - (b) if a solicitor is appointed to act for the appellant, the following details are on the notice of appeal before it is filed or taken to be filed under section 222(3), (4) or (5)—
    - (i) the residential or business address of the appellant;
    - (ii) the name of the solicitor and, if the solicitor practises in a firm of solicitors, the name of the firm;
    - (iii) the address of the solicitor's place of business;
    - (iv) the solicitor's telephone number;
    - (v) the solicitor's fax number.
- (2) To change the address for service or any other contact details, the appellant must file in the District Court registry a notice of address for service stating the new address for service.
- (3) The *address for service* of an appellant is—

- 
- (a) for a party acting personally—the address specified under subsection (1)(a)(i); and
  - (b) for a party for whom a solicitor acts—the address specified under subsection (1)(b)(iii).

### **222D Duty of relevant registrar to give notice of appeal and appeal hearing**

- (1) The relevant registrar must give notice of the appeal to the respondent—
  - (a) if the notice of appeal was given under section 222(4) or (5)—within 7 days of the notice being received by the registrar under section 222B; or
  - (b) otherwise—within 7 days of the filing of the notice of appeal in the District Court registry.
- (2) Notice under subsection (1) must include a copy of the notice of appeal.
- (3) Also, at least 10 days before the District Court hears an appeal, the relevant registrar must give notice of the hearing to the appellant and respondent.
- (4) If a respondent is a police officer, notice under subsection (1) or (3) may be sufficiently given to that respondent by giving notice to the commissioner of the police service.
- (5) If a respondent is an officer of a public sector unit, notice under subsection (1) or (3) may be sufficiently given to that respondent by giving notice to the chief executive officer of the unit.
- (6) Subsections (1) and (3) do not stop the relevant registrar from giving any notice about the appeal at any time to anyone.

### **222E Duty of relevant registrar to give notice when particular issues arise**

- (1) This section applies for an appealed order or operation of a provision stayed under section 222A, (the *order* and *operation*).

- (2) At least 10 days before a District Court judge hears the appeal, the relevant registrar must give notice of the hearing of the appeal to each interested person.
- (3) In this section—  
*interested person* means the person in whose favour the order was made or who benefited from the operation.

### **223 Appeal generally a rehearing on the evidence**

- (1) An appeal under section 222 is by way of rehearing on the evidence (*original evidence*) given in the proceeding before the justices.
- (2) However, the District Court may give leave to adduce fresh, additional or substituted evidence (*new evidence*) if the court is satisfied there are special grounds for giving leave.
- (3) If the court gives leave under subsection (2), the appeal is—
  - (a) by way of rehearing on the original evidence; and
  - (b) on the new evidence adduced.

### **224 Powers of judge incidental to appeal**

- (1) For an appeal, a District Court judge may, on the application of a party or the judge's own initiative—
  - (a) extend the time for filing a notice of appeal; or
  - (b) make orders and give directions about service of any notice and about any procedure; or
  - (c) amend the notice of appeal or the statement of grounds of the appeal; or
  - (d) adjourn the appeal for the time decided by the judge.
- (2) For anything under subsection (1), the judge may impose conditions the judge considers appropriate, including, for example, ordering 1 or both of the following—
  - (a) subject to section 232(4), payment of costs;

- (b) for anything other than an adjournment—an adjournment.
- (3) If a District Court judge is exercising a power under this section on the judge's own initiative, then, if the parties are not before the court, the judge must direct the parties to attend the court.
- (4) If a party is applying to a District Court judge to exercise a power under this section against another party, then, unless the other party is before the court, the party must serve a copy of the application on the other party.
- (5) Subsection (1) has no effect on the responsibility or power of the Chief Judge under the *District Court of Queensland Act 1967*, section 28A.

#### **224A Right of appellant to be present**

- (1) An appellant is entitled to be present on the hearing of the appellant's appeal, unless it is on a ground involving a question of law alone.
- (2) Subsection (1) applies even if the appellant is in custody.
- (3) On an appeal, or application for leave to appeal, on a ground involving a question of law alone, and on any proceeding preliminary or incidental to an appeal, the appellant is entitled to be present only with the leave of the District Court.
- (4) The power of the District Court to pass any sentence may be exercised even though the appellant is not present.

#### **225 Powers of judge on hearing appeal**

- (1) On the hearing of an appeal, the judge may confirm, set aside or vary the appealed order or make any other order in the matter the judge considers just.
- (2) If the judge sets aside an order, the judge may send the proceeding back to whoever made the order or to any Magistrates Court with directions of any kind for the further

conduct of the proceedings including, for example, directions for rehearing or reconsideration.

- (3) For subsection (1), the judge may exercise any power that could have been exercised by whoever made the order appealed against.
- (4) An order made under subsection (1) has effect, and may be enforced in the same way, as if it had been made by whoever made the appealed order.

## **226 Costs**

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

## **227 Judge may state case**

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.

## **228 Appeal not to be defeated for defect in notice etc.**

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.

## **228A Discontinuance of appeal**

- (1) An appellant may discontinue an appeal before it is heard by filing a notice in the approved form with the relevant registrar.
- (2) If, under the appealed order, the appellant is liable to serve a term of imprisonment and was released from custody pending the appeal, the registrar must issue a warrant to arrest the



appellant and commit the appellant to prison to serve the term of imprisonment.

(3) In this section—

*term of imprisonment* includes the unexpired portion of a term of imprisonment.

## **229 Appeal may be struck out**

- (1) If the appellant delays in prosecuting the appeal or fails to take a necessary step to present the appeal, a District Court judge may strike out the appeal on application in the approved form by a party to the appeal.
- (2) For subsection (1), the applicant must send a copy of the application and notice of the hearing of the application to the appellant's address for service at least 10 days before the date of the hearing of the application.
- (3) Also, if the appellant fails to appear on a day the appeal is to be heard, the judge may strike out the appeal on proof that notice of the hearing, informing the appellant the appeal may be struck out if the appellant fails to appear, was sent to the appellant's address for service at least 10 days before the date of the hearing.

## **230 Memorandum of judge's determination**

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.

## **231 Enforcement of decision**

- (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) Despite subsection (1), 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 prison.
- (3) A warrant directed to be issued in accordance with subsection (2) shall be issued by the registrar of the court.

## **232 Costs of appeal**

- (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.
- (4) No order as to costs may be made on—
  - (a) the hearing or determination of an appeal in relation to an indictable offence that was dealt with summarily by justices; or

- (b) any proceeding preliminary or incidental to an appeal mentioned in paragraph (a).

### **232A Costs for division**

- (1) In deciding the costs that are just for this division, the judge may award costs only—
  - (a) for an item allowed for this division under a scale of costs prescribed under a regulation; and
  - (b) up to the amount allowed for the item under the scale.
- (2) However, the judge may allow a higher amount for costs if the judge is satisfied that the higher amount is just having regard to the special difficulty, complexity or importance of the appeal.

## **Division 2                    General provisions**

### **233 Control of Supreme Court over summary convictions**

- (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.

## **234 Amendment**

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.

## **235 In cases of certiorari order**

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 certiorari order (within the meaning of the *Judicial Review Act 1991*) 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.

## **236 Notice dispensed with**

- (1) The notice hereby prescribed may be given either before or after the issue of the writ of habeas corpus or a certiorari order (within the meaning of the *Judicial Review Act 1991*).
- (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.

## **237 Power of court or judge to grant bail**

- (1) When any person committed to prison 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 grant the person 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.

### **238 Respecting the amendment of convictions etc.**

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.

### **239 Want of summons or complaint**

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.

## **240 Distribution of penalty**

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

# **Part 10 Miscellaneous**

## **265 Forms**

- (1) The chief executive may approve forms for use under the Act.
- (2) A form approved by the chief executive is the prescribed or approved form for its purpose.

## **266 Regulations**

- (1) The Governor in Council may make regulations for the purposes of this Act.
- (2) A regulation may make provision with respect to—
  - (a) 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
  - (b) 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.

- (4) The power to make a regulation about costs includes power to provide for a scale of costs.

## Part 11                      Validations, savings and transitional

### Division 1                      References

#### 268      References to certain former offices etc.

- (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 (however constituted); or
  - (c) a place for holding Courts of Petty Sessions (however constituted); 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.

#### 272      Decentralisation of Magistrates Courts Act 1965 references

In an Act or document, a reference to the *Decentralization of Magistrates Courts Act 1965*, or the *Decentralisation of*

*Magistrates Courts Act 1965* may, if the context permits, be taken to be a reference to this Act.

## **Division 2                      Evidence (Protection of Children) Amendment Act 2003**

### **273      Previous recognisance to appear on appeal hearing**

- (1) This section applies to a person who, before the commencement of the *Evidence (Protection of Children) Amendment Act 2003*, section 75 (the **commencement**) started an appeal under section 222.
- (2) If, at the commencement, the appeal has not ended, then, from the commencement—
  - (a) the appeal continues to be valid; and
  - (b) each step taken for the appeal under this Act before the commencement continues to be effectual for the purpose for which it was taken; and
  - (c) subject to paragraph (b), the provisions of this Act as they exist after the commencement apply to the appeal, including for any step that must or may be taken after the commencement.
- (3) If, immediately before the commencement, a recognisance entered by the person under section 222 is in effect, from the commencement—
  - (a) the recognisance continues to have effect; and
  - (b) despite the repeal of sections 231(2) and 241, those sections continue to apply, as if they had not been repealed, to the person until the recognisance is discharged.



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**Division 3                      Justice and Other Legislation  
Amendment Act 2007**

**274      Appointment of clerks of the court and assistants  
continues**

A person appointed as a clerk of the court or assistant clerk of the court under section 22C, as in force immediately before the commencement, continues to hold the appointment after the commencement as if the appointment had been made by the chief executive.

**Division 4                      Justice and Other Legislation  
Amendment Act 2008, part 17**

**275      Notices to witness**

- (1) This section applies if, before the commencement of this section, a witness is given a notice in the prescribed form mentioned in section 123(1) in relation to the committal of a defendant.
- (2) The notice continues to have effect as if it were a summons to the witness issued out of the court that the witness was by the notice required to attend until—
  - (a) the proceeding in relation to the defendant is concluded;  
or
  - (b) the court otherwise directs; or
  - (c) 3 years after the commencement of this section;whichever happens first.

## **Division 5**                      **Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010**

### **276**    **Definitions for div 5**

In this division—

*amending Act* means the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*.

*originating step*, for a proceeding, means—

- (a) the arrest of the defendant in the proceeding; or
- (b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or
- (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.

### **277**    **Particular amendments apply only to charges originated after commencement**

- (1) The relevant provisions, as amended or inserted by the amending Act, apply in relation to a charge for an offence only if an originating step for the proceeding for the charge is taken on or after the commencement of this section.
- (2) For subsection (1), it does not matter when the offence was committed.
- (3) For applying this section to section 52(2) as inserted by the amending Act—
  - (a) the complaint that must be made within 2 years from the time when the matter of the complaint arose, as mentioned in the inserted section 52(2), is, for this section, the originating step that must be taken on or after the commencement of this section; but

- 
- (b) it does not matter if the commencement of the previously commenced proceeding, as mentioned in the inserted section 52(2), happened before or after the commencement of this section.
- (4) In this section—  
*relevant provisions* means—
- (a) section 23EB; and
  - (b) section 52; and
  - (c) section 83A; and
  - (d) section 83B; and
  - (e) part 4, division 10B; and
  - (f) the provisions of this Act relating to committals of persons for trial or sentence for indictable offences, including part 5, division 7A.

**278 Particular provisions apply to proceeding whenever commenced**

On the commencement of this section, sections 23EC, 84 and 88A, as amended or inserted by the amending Act, have effect in relation to a proceeding, regardless of when the proceeding was commenced.

**279 Existing appointment as principal clerk of courts continues**

If immediately before the commencement of this section a person held appointment under the *Public Service Act 2008* as Court Administrator, Magistrates Courts Branch, Department of Justice and Attorney-General, the person—

- (a) without further appointment, is taken to hold the appointment of the principal clerk of courts under the *Justices Act 1886*, section 22D; and

*Note—*

Because of the person's appointment as principal clerk of courts as provided for in paragraph (a), the person will also be the principal registrar of Magistrates Courts as provided for in the *Magistrates Courts Act 1921*, section 3A.

- (b) continues to hold the appointment in accordance with the terms of the person's appointment under the *Public Service Act 2008*.

## **Division 6                      Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013**

### **280      Application of provisions about use of video link facilities or audio link facilities**

- (1) The amended provisions apply to a proceeding for an offence, whether the proceeding started before, on or after the commencement of this section.

- (2) In this section—

*amended provisions* means the following provisions as amended or inserted by the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*—

- (a) sections 4, 23EC and 139;  
(b) part 6A.

## **Division 7                      Criminal Law Amendment Act 2014**

### **281      Application of s 47**

Section 47(7) and (8) applies to the sentencing of an offender for an offence whether the proceeding for the offence was started before, on or after the commencement of this section.

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## **Division 8                      Criminal Law Amendment Act 2017**

### **282      Orders for particular complaints made before commencement to be heard together**

Section 43A, as inserted by the *Criminal Law Amendment Act 2017*, applies to a complaint of a simple offence or breach of duty, whether the complaint was made before or after the commencement.

### **283      Admissions of fact in hearings of complaints made before commencement**

Section 148A, as inserted by the *Criminal Law Amendment Act 2017*, applies to the hearing of a complaint mentioned in that section, whether the complaint was made before or after the commencement.