



New South Wales

Criminal Procedure Amendment (Justices and Local Courts) Act 2001 No 119

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Criminal Procedure Amendment (Justices and Local Courts) Act 2001 No 119

Act No 119, 2001

An Act to amend the *Criminal Procedure Act 1986* with respect to committal proceedings before Magistrates, proceedings for summary offences and indictable offences and related matters and to consequentially re-order provisions; and for other purposes. [Assented to 19 December 2001]

See also *Crimes (Local Courts Appeal and Review) Act 2001* and *Justices Legislation Repeal and Amendment Act 2001*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Long title

Insert “, committal proceedings and proceedings for summary offences” after “District Court”.

[2] Chapter 1, heading

Insert before section 1:

Chapter 1 Preliminary

[3] Section 3 Definitions

Omit “(or one or more justices)” from the definition of *committal proceedings* in section 3 (1).

[4] Section 3 (1)

Insert in alphabetical order:

accused person includes, in relation to summary offences, a defendant and, in relation to all offences (where the subject-matter or context allows or requires), a barrister or solicitor representing an accused person.

authorised officer means:

- (a) a registrar of a court, or
- (b) an employee of the Attorney General’s Department authorised by the Attorney General as an authorised officer for the purposes of this Act.

bail has the same meaning as it has in the *Bail Act 1978*.

Chief Magistrate means the Chief Magistrate of the Local Courts appointed under the *Local Courts Act 1982*.

Court of Coal Mines Regulation means the Court of Coal Mines Regulation established under the *Coal Mines Regulation Act 1982*.

exercise a function includes perform a duty.

function includes a power, authority or duty.

Industrial Magistrate means an Industrial Magistrate appointed under the *Industrial Relations Act 1996*.

Industrial Relations Commission in Court Session means the Industrial Relations Commission constituted as referred to in section 151 of the *Industrial Relations Act 1996*.

Licensing Court means a Licensing Court established under the *Liquor Act 1982*.

Licensing Magistrate means a licensing magistrate appointed under the *Liquor Act 1982*.

Local Court means a Local Court established under the *Local Courts Act 1982*.

Magistrate means a Magistrate appointed under the *Local Courts Act 1982*.

public officer means any of the following persons, if acting in an official capacity:

- (a) an employee in the Public Service or the Police Service,
- (b) an officer or employee of a statutory body representing the Crown,
- (c) an employee of a council within the meaning of the *Local Government Act 1993*,
- (d) an officer or employee of a rural lands protection board within the meaning of the *Rural Lands Protection Act 1998*,
- (e) the Director of Public Prosecutions, Deputy Director of Public Prosecutions or Solicitor for Public Prosecutions,
- (f) an officer or employee of a body declared by the regulations to be a public body for the purposes of this definition.

Rule Committee for a court means a person or body having power to make rules for the court.

rules means rules made for the purposes of a court to which the relevant provision applies.

Warden's Court means a Warden's Court constituted under the *Mining Act 1992*.

[5] Section 3 (1), definition of “prosecuting authority”

Omit the definition. Insert instead:

prosecutor means the Director of Public Prosecutions or other person who institutes or is responsible for the conduct of a prosecution and includes (where the subject-matter or context allows or requires) a barrister or solicitor representing the prosecutor.

[6] Section 3 (2)

Omit the subsection. Insert instead:

- (2) Notes included in this Act are explanatory notes and do not form part of this Act.

[7] Section 4 Consequences of abolition of office of Clerk of the Peace

Omit the section.

[8] Section 5 Regulations and rules

Re-number as section 4.

[9] New section 4 (2) and (3)

Insert at the end of new section 4:

- (2) The Rule Committee for a court may make rules, not inconsistent with this or any other Act, for or with respect to the following matters:
- (a) any matter that is required or permitted to be prescribed by rules, or that is necessary or convenient to be prescribed by rules, in relation to the practice or procedure to be followed to give effect to this Act,
 - (b) any matter incidental to, or relating to, any such practice or procedure.
- (3) The rules are to be made in accordance with the Act under which the court is constituted.

[10] Section 6 Savings, transitional and other provisions

Omit the section.

[11] Chapter 2, headings

Insert after new section 4:

Chapter 2 General provisions

Part 1 Offences

[12] Sections 7–10

Re-number as sections 5–8.

[13] New section 7

Omit “constituted by a Magistrate sitting alone” from new section 7 (1) and (2) wherever occurring.

[14] Section 51 Name in which prosecutions may be instituted

Re-number as section 9 and transfer to Chapter 2.

[15] Section 59 Indictment of bodies corporate

Re-number as section 10 and transfer to Chapter 2.

[16] Section 12 Certain matters not affected

Omit the section.

[17] New sections 11 and 12

Insert after new section 10:

11 Description of offences

The description of any offence in the words of an Act or statutory rule or other document creating the offence, or in similar words, is sufficient in law.

12 Short description of certain offences

- (1) For the purposes of this or any other Act, a summary offence, or an indictable offence that may be dealt with summarily, is taken to be sufficiently stated or described if it is stated or described by the use of a short expression that describes the offence in general terms.
- (2) This section applies to a statement or description of an offence in any court attendance notice, warrant, subpoena, notice, order or other document.
- (3) Nothing in this section affects any other method of stating or describing an offence.
- (4) Nothing in this section affects any requirement made by or under this Act in relation to the form of a court attendance notice or any other document.

[18] Section 14 Definition and application

Omit the section.

[19] Section 60 Venue in indictment

Re-number as section 13 and transfer to Chapter 2.

[20] Section 55 Common informer

Re-number as section 14 and transfer to Chapter 2.

[21] Chapter 2, Part 2, heading

Insert after new section 14:

Part 2 Indictments and other matters

[22] Section 57 Application of Part

Re-number as section 15 and transfer to Chapter 2.

[23] New section 15 (2)

Insert at the end of new section 15:

(2) In this Division:

indictment includes a court attendance notice or any other process or document by which criminal proceedings are commenced.

[24] Section 58 Certain defects do not affect indictment

Re-number as section 16 and transfer to Chapter 2.

[25] New section 16

Insert at the end of the section:

(2) No objection may be taken, or allowed, to any indictment by which summary criminal proceedings are commenced, or to any warrant issued for the purposes of any such proceedings, on the grounds of:

- (a) any alleged defect in it in substance or in form, or
- (b) any variance between it and the evidence adduced at the proceedings for the offence charged in the indictment or warrant.

Note. An adjournment may be obtained under section 40 where there is a variance between the evidence adduced and the offence charged in the application or order.

[26] Sections 61–69

Re-number as sections 17–26 and transfer to Chapter 2.

[27] Section 85 Supreme Court rules may prescribe forms of indictments

Re-number as section 27 and transfer to Chapter 2.

[28] Chapter 2, Part 3, heading

Insert after new section 27:

Part 3 Criminal proceedings generally

[29] New sections 28 and 29

Insert after the heading to Part 3, Chapter 2:

28 Application of Part and definition

- (1) This Part applies, to the extent that it is capable of being applied, to all offences, however arising (whether under an Act or at common law), whenever committed and in whatever court dealt with.
- (2) In this Part:
Judge includes a Magistrate, a Children's Court Magistrate, a Licensing Magistrate, a warden of a Warden's Court, an Industrial Magistrate, the President or a judicial member of the Industrial Relations Commission and any other person of a class prescribed by the regulations for the purposes of this definition.

29 When more than one offence may be heard at the same time

- (1) A court may hear and determine together proceedings related to 2 or more offences alleged to have been committed by the same accused person in any of the following circumstances:
 - (a) the accused person and the prosecutor consent,
 - (b) the offences arise out of the same set of circumstances,
 - (c) the offences form or are part of a series of offences of the same or a similar character.
- (2) A court may hear and determine together proceedings related to offences alleged to have been committed by 2 or more accused persons in any of the following circumstances:
 - (a) the accused persons and the prosecutor consent,
 - (b) the offences arise out of the same set of circumstances,
 - (c) the offences form or are part of a series of offences of the same or a similar character.
- (3) Proceedings related to 2 or more offences or 2 or more accused persons may not be heard together if the court is of the opinion that the matters ought to be heard and determined separately in the interests of justice.

[30] Section 13 Change of venue

Re-number as section 30 and transfer to Chapter 2.

[31] New section 30

Omit “Supreme Court or District Court”. Insert instead “court”.

[32] New section 30

Omit “Court” where thirdly and fourthly occurring. Insert instead “court”.

[33] Section 95 Abolition of accused person’s right to make unsworn statement or to give unsworn evidence

Re-number as section 31 and transfer to Chapter 2.

[34] Sections 46 and 47

Re-number as sections 32 and 33 and transfer to Chapter 2.

[35] Sections 93 and 94

Re-number as sections 34 and 35 and transfer to Chapter 2.

[36] Section 96 Accused person may be defended by counsel

Omit the section.

[37] New sections 36–41

Insert after new section 35:

36 Representation and appearance

- (1) A prosecutor or accused person may appear personally or by a barrister or solicitor or other person empowered by an Act or other law to appear for the prosecutor or accused person.
- (2) A prosecutor who is a police officer may appear personally or by a person permitted by subsection (1) or by a police prosecutor.

37 Conduct of case

- (1) The prosecutor's case may be conducted by the prosecutor or by the prosecutor's barrister or solicitor or any other person permitted to appear for the prosecutor (whether under this or any other Act).
- (2) The accused person's case may be conducted by the accused person or by the accused person's barrister or solicitor or any other person permitted to appear for the accused person (whether under this or any other Act).

38 Hearing procedures to be as for Supreme Court

In any proceedings for an offence (other than in the Supreme Court for an indictable offence), the procedures and practice for the examination and cross-examination of witnesses, and the right to address the court on the case in reply or otherwise, are, as far as practicable, to be conducted in accordance with Supreme Court procedure for the trial of an indictable offence.

39 Recording of evidence

- (1) The evidence of each witness in criminal proceedings must be recorded.
- (2) Rules may be made for or with respect to the manner in which the evidence may be recorded and the authentication of evidence or of transcripts of evidence given in proceedings.

40 Adjournments generally

- (1) A court may at any stage of criminal proceedings adjourn the proceedings generally, or to a specified day, if it appears to the court necessary or advisable to do so.
- (2) An adjournment may be in such terms as the court thinks fit.
- (3) A matter that is adjourned generally must be listed before the court or a registrar not later than 2 years after the adjournment.

- (4) Without limiting subsection (1), a court may, at the request of an accused person, adjourn criminal proceedings if it appears to the court that a variance between any process or document by which the proceedings were commenced and the evidence adduced in respect of the offence charged in that process or document is such that the accused person has been misled by the variance.

41 How accused person to be dealt with during adjournment

- (1) A court may, if bail is not dispensed with or granted to an accused person for the period of an adjournment, remand the accused person to a correctional centre or other place of security during the adjournment.
- (2) The warrant of commitment may be signed by any Judge or authorised officer.
- (3) A Judge may at any time, by written notice to the parties, shorten or end an adjournment if the accused person is not in custody.

[38] Section 100 Witnesses in mitigation

Re-number as section 42 and transfer to Chapter 2.

[39] Sections 126 and 127

Re-number as sections 43 and 44 and transfer to Chapter 2.

[40] Chapter 3, headings

Insert after new section 44:

Chapter 3 Indictable procedure

Part 1 Preliminary

[41] New section 45

Insert after the heading to Part 1 of Chapter 3:

45 Application of Chapter and definitions

(1) This Chapter applies to or in respect of proceedings for indictable offences (other than indictable offences being dealt with summarily).

(2) In this Chapter:

Judge includes a Magistrate.

Magistrate includes a Children's Court Magistrate, a warden of a Warden's Court and any other person of a class prescribed for the purposes of this definition.

registrar means, for the purposes of Part 2:

- (a) in the case of committal proceedings before a Local Court Magistrate, a registrar of a Local Court, or
- (b) in the case of committal proceedings before a Children's Court Magistrate, the Children's Registrar appointed under the *Children's Court Act 1987*.

[42] Section 11 Jurisdiction of courts

Re-number as section 46 and transfer to Chapter 3.

[43] Chapter 3, Part 2

Insert after new section 46:

Part 2 Committal proceedings

Division 1 Commencement of proceedings

47 Commencement of committal proceedings by court attendance notice

(1) Committal proceedings for an offence are to be commenced by the issue and filing of a court attendance notice in accordance with this Division.

- (2) A court attendance notice may be issued in respect of a person if the person has committed or is suspected of having committed an offence.
- (3) A court attendance notice may be issued in respect of any offence for which proceedings may be taken in this State, including an offence committed elsewhere than in this State.
- (4) Nothing in this Part affects any law or practice relating to indictments presented or filed in the Supreme Court or the District Court by the Attorney General or the Director of Public Prosecutions.
- (5) If an Act or a statutory rule provides for committal proceedings to be commenced otherwise than by issuing and filing a court attendance notice, the proceedings may be commenced in accordance with this Act.

48 Commencement of proceedings by police officer or public officer

If a police officer or public officer is authorised to commence committal proceedings, the officer may commence committal proceedings for an offence against a person by issuing a court attendance notice and filing the notice in accordance with this Division.

49 Commencement of private prosecutions

- (1) If a person other than a police officer or public officer is authorised to commence committal proceedings against a person for an offence, the person may commence the proceedings by issuing a court attendance notice, signed by a registrar, and filing the notice in accordance with this Division.
- (2) A registrar must not sign a court attendance notice if:
 - (a) the registrar is of the opinion that the notice does not disclose grounds for the proceedings, or
 - (b) the registrar is of the opinion that the notice is not in the form required by or under this Act, or
 - (c) the registrar is of the opinion that a ground for refusal set out in the rules applies to the notice.

- (3) If a registrar refuses to sign a court attendance notice proposed to be issued by any such person, the question of whether the court attendance notice is to be signed and issued is to be determined by a Magistrate on application by the person.

50 Form of court attendance notice

- (1) A court attendance notice must be in writing and be in the form prescribed by the rules.
- (2) The rules may prescribe one or more forms of court attendance notice.
- (3) A court attendance notice must do the following:
 - (a) describe the offence,
 - (b) identify the essential factual elements of the alleged offence,
 - (c) contain the name of the prosecutor,
 - (d) require the accused person to appear before the Magistrate at a specified date, time and place, unless a warrant is issued for the arrest of the person or the person is refused bail,
 - (e) state, unless a warrant is issued for the arrest of the person or the person is refused bail, that failure to appear may result in the arrest of the person or in the matter being dealt with in the absence of the person.
- (4) The rules may prescribe additional matters to be included in court attendance notices.
- (5) A court attendance notice may describe an offence, act or other thing in any way that is sufficient under this Act for the purposes of an indictment or an averment in an indictment.

51 Court attendance notice to be for one matter only

A court attendance notice may not relate to more than one offence.

52 Service of court attendance notices

- (1) A court attendance notice issued by a police officer must be served by a police officer in accordance with the rules.

- (2) A court attendance notice issued by a public officer must be served by a police officer, public officer or other person prescribed by the rules, in accordance with the rules.
- (3) A court attendance notice issued by a person other than a police officer or public officer must be served by a person prescribed by the rules in accordance with the rules.
- (4) A copy of a court attendance notice must, except with leave of the court, be filed in the registry of the relevant court not later than 7 days after it is served and must contain an endorsement as to service.

53 When proceedings commence

- (1) All proceedings are taken to have commenced on the date on which a court attendance notice is filed in the registry of a relevant court in accordance with this Division.
- (2) A court attendance notice may be filed even though it has not been served if:
 - (a) a warrant is sought under this Part for the arrest of the accused person, or
 - (b) the notice is not able to be served, despite reasonable attempts to do so, or
 - (c) the registrar gives leave to do so after forming the opinion that it is not reasonable in the circumstances of the case to require prior service of the notice.
- (3) Nothing in this section affects any other Act or law under which proceedings are taken to have commenced on another date.

54 Attendance of accused person at proceedings

- (1) A person who issues a court attendance notice may, at any time after the notice is issued and before the date on which the accused person is required to first attend before a Magistrate for the hearing of committal proceedings, apply for a warrant to arrest the accused person.

- (2) An authorised officer may, when a court attendance notice is issued by the registrar, or filed in the court, or at any time after then and before the matter is first before a Magistrate, issue a warrant to arrest the accused person if the authorised officer is satisfied there are substantial reasons to do so and that it is in the interests of justice to do so.
- (3) The rules may make provision for or with respect to matters that may be taken into account by an authorised officer in determining whether to issue a warrant under this section.
- (4) A Magistrate or authorised officer before whom an accused person is brought on arrest on a warrant issued under this section may, if bail is not dispensed with or granted, issue a warrant:
 - (a) committing the accused person to a correctional centre or other place of security, and
 - (b) ordering the accused person to be brought before a Magistrate at the date, time and place specified in the order.
- (5) The Magistrate or authorised officer must give notice of the date, time and place to the prosecutor.

Division 2 Committal proceedings generally

55 Magistrate to conduct proceedings

Committal proceedings are to be conducted and determined by a Magistrate.

56 Committal proceedings to be heard in open court

- (1) Committal proceedings are to be heard as if in open court.
- (2) This section is subject to any other Act or law.

57 Part does not affect nature of committal proceedings

Nothing in this Part alters the nature of a committal proceeding from that existing immediately before the commencement of this section.

58 Place of hearing

- (1) A Magistrate may transfer committal proceedings to another Magistrate in another place, if satisfied that:
 - (a) the principal witnesses to prove the offence live in another place where the offence is alleged to have been committed, or
 - (b) for any other reason, it is in the interests of justice to do so.
- (2) The Magistrate may, subject to the *Bail Act 1978*, make orders necessary to enable the accused person to be brought before the other Magistrate and to be dealt with according to law.

59 Application of other procedural provisions to committal proceedings

The following provisions of this Act apply, subject to any necessary modifications, to committal proceedings conducted by a Magistrate in the same way as they apply to proceedings for offences before a Local Court:

- (a) sections 30, 31, 36, 37, 38, 39, 40, 41 and 44,
- (b) Part 3 (Attendance of witnesses and production of evidence in lower courts) of Chapter 4,
- (c) Part 4 (Warrants) of Chapter 4.

60 Time for taking prosecution evidence

- (1) On the first return date for a court attendance notice in any committal proceedings, or at such later time or times as the Magistrate determines, the Magistrate must set:
 - (a) the date, time and place for taking the prosecution evidence and the time within which written statements, and copies of any proposed exhibits identified in the statements (or a notice relating to inspection of them), must be served on the accused person, and
 - (b) the time within which the accused person must serve on the prosecutor any notice requesting the attendance of a person who made a written statement.

Note. Prosecution evidence is to be given by written statements (see Division 3).

- (2) The registrar must notify the accused person of the date, time and place, and any other time set by the Magistrate, if the accused person is not present.
- (3) A registrar may exercise the Magistrate's functions under this section.

61 Discharge of accused person if prosecutor not present for taking of evidence

- (1) If the prosecutor fails to appear on the day and at the time and place set for taking prosecution evidence in any committal proceedings, the Magistrate must:
 - (a) discharge the accused person as to the offence the subject of the proceedings, or
 - (b) if the Magistrate thinks it appropriate, adjourn the hearing to a specified time and place.
- (2) The adjournment must not exceed 8 days or such longer period as the accused person may consent to.
- (3) Subsection (2) does not apply if the accused person is refused bail (as referred to in section 25 of the *Bail Act 1978*).

Note. Section 25 of the *Bail Act 1978* specifies the maximum period for adjournments if bail has been refused.

62 Prosecution evidence and initial determination

- (1) The Magistrate must take the prosecution evidence in accordance with Division 3 and must determine whether the prosecution evidence is capable of satisfying a jury, properly instructed, beyond reasonable doubt that the accused person has committed an indictable offence.
- (2) The Magistrate must discharge the accused person in relation to the offence if, in any committal proceedings, after all the prosecution evidence is taken and after considering all the evidence before the Magistrate, the Magistrate is not of the opinion that, having regard to all the evidence before the Magistrate, the evidence is capable of satisfying a reasonable jury, properly instructed, beyond reasonable doubt that the accused person has committed an indictable offence.

63 Where prosecution evidence sufficient to satisfy jury

- (1) If in any committal proceedings, after all the prosecution evidence is taken and after considering all the evidence before the Magistrate, the Magistrate is of the opinion that, having regard to all the evidence before the Magistrate, the evidence is capable of satisfying a reasonable jury, properly instructed, beyond reasonable doubt that the accused person has committed an indictable offence, the Magistrate must give the accused person an opportunity to answer the charge and a warning in the form prescribed by the rules.
- (2) The Magistrate must proceed to take any statement by or any evidence adduced by the accused person in accordance with Division 4.
- (3) If the accused person is not present, the Magistrate may make a decision under section 64 without complying with subsection (2).
- (4) If the accused person is a corporation and the corporation appears by a representative, the representative may answer the charge on behalf of the corporation.

64 Decision about committal

When all the prosecution evidence and any defence evidence have been taken in committal proceedings, the Magistrate must consider all the evidence and determine whether or not in his or her opinion, having regard to all the evidence before the Magistrate, there is a reasonable prospect that a reasonable jury, properly instructed, would convict the accused person of an indictable offence.

65 Committal

- (1) If the Magistrate is of the opinion that there is a reasonable prospect that a reasonable jury, properly instructed, would convict the accused person of an indictable offence, the Magistrate must commit the accused person for trial.
- (2) In the case of an accused person that is a corporation, the Magistrate may, if of that opinion, make an order authorising an indictment to be filed for the offence named in the order or for such other offence as the Attorney General or Director of Public Prosecutions considers proper.

- (3) The making of an order under subsection (2) is taken to be committal for trial.

66 Discharge

If the Magistrate is not of the opinion that there is a reasonable prospect that a reasonable jury, properly instructed, would convict the accused person of an indictable offence, the Magistrate must immediately order the accused person to be discharged in relation to the offence.

67 Committal may be set aside by Magistrate

- (1) An accused person who was not present and, if not present, was not represented when committed for trial may apply to a Magistrate to have an order for the accused person's committal for trial set aside.
- (2) The application must be made before the presentation or filing of an indictment against the accused person.
- (3) The Magistrate may set aside the order for committal for trial and any associated warrant to commit the accused person if the Magistrate is satisfied that good and proper reason is shown for the absence of the accused person or a representative of the accused person and that it is in the interests of justice to do so.

68 Accused person may waive committal hearing

Despite any other provision of this Part, the Magistrate may, at any time, on the application of the accused person, and with the consent of the prosecutor, commit the accused person for trial.

69 Magistrate may end witnesses' evidence

The Magistrate may end the examination or cross-examination on any particular matter of any witness giving evidence for the prosecution or the defence in any committal proceedings if he or she is satisfied that further examination or cross-examination on the matter will not help the Magistrate to make the initial determination under section 62 or a decision under section 64.

70 Certain evidence may not be excluded

A Magistrate in committal proceedings may not exclude evidence on any of the grounds set out in section 90 (Discretion to exclude admissions) or Part 3.11 (Discretions to exclude evidence) of the *Evidence Act 1995*.

Division 3 Prosecution evidence

71 Evidence to be taken in presence of accused person

The accused person must be present when prosecution evidence is taken, unless this Division or any other Act or law permits the evidence to be taken in the accused person's absence.

72 Magistrate may excuse accused person from attending

- (1) The Magistrate may excuse the accused person from attending during the taking of prosecution evidence if satisfied that the accused person will be represented by a barrister or solicitor while the evidence is taken or if satisfied that the evidence is not applicable to the accused person.
- (2) A period during which the accused person is so excused is taken to be an adjournment for the purposes of dealing with the accused person.

73 Other circumstances in which evidence may be taken in absence of accused person

Evidence may commence or continue to be taken in the absence of an accused person who has not been excused from attending if:

- (a) no good and proper reason is shown for the absence of the accused person, and
- (b) a copy of the relevant written statements, and copies of any proposed exhibits identified in the statements (or a notice relating to inspection of them) have been served on the accused person in accordance with this Act and the accused person has been informed of the time set by the Magistrate for taking prosecution evidence.

74 Prosecution evidence to be in written form

- (1) Evidence for the prosecution must be given by written statements that are admissible as evidence.
- (2) A written statement is not admissible as evidence unless this Division, and any applicable rules or regulations, are complied with in relation to the statement and any associated exhibits or documents.
- (3) A written statement that is inadmissible as evidence under this section may nevertheless be admitted as evidence if otherwise admissible in accordance with any rule or law of evidence.

75 Written statements to be served on accused person

- (1) The prosecutor must serve or cause to be served on the accused person a copy of the written statements relating to the offence, and copies of any proposed exhibits identified in the statement (or a notice relating to inspection of them), within the time set by the Magistrate under section 60.
- (2) The last date for service set by the Magistrate under that section must be at least 28 days before the date set by the Magistrate for taking the prosecution evidence in the committal proceedings.
- (3) The Magistrate may set a later date for service with the consent of the accused person or if of the opinion that the circumstances of the case require it.
- (4) A written statement served under this Division must contain a notice explaining the effect of this Division and the accused person's rights in relation to this Division and prosecution evidence under this Division. The notice must be in the form of words prescribed by the rules.
- (5) Despite subsection (1), the prosecutor is not required to include a copy of a proposed exhibit identified in the brief of evidence if it is impossible or impractical to copy the exhibit.
- (6) However, in that case the prosecutor is:
 - (a) to serve on the accused person a notice specifying a reasonable time and place at which the proposed exhibit may be inspected, and

- (b) to allow the accused person a reasonable opportunity to inspect each proposed exhibit referred to in the notice.

76 Recordings of interviews with children

- (1) A written statement may be in the form of a transcript of a recording made by an investigating official of an interview with a child, during which the child was questioned by the investigating official in connection with the investigation of the commission or possible commission of the offence (as referred to in the *Evidence (Children) Act 1997*), but only if this section is complied with.
- (2) The copy of the transcript of the recording must be certified by an investigating official as an accurate transcript of the recording and served on the accused person in accordance with section 75.
- (3) The accused person must be given, in accordance with the regulations under section 12 (2) of the *Evidence (Children) Act 1997*, a reasonable opportunity to listen to and, in the case of a video recording, to view, the recording.
- (4) Nothing in this Division requires the prosecutor to serve on the accused person a copy of the actual recording made by an investigating official of an interview with the child (other than a transcript of the record).
- (5) This section does not affect section 12 (2) of the *Evidence (Children) Act 1997*.
- (6) In this section:

investigating official has the same meaning as in the *Evidence (Children) Act 1997*.

Note. The *Evidence (Children) Act 1997* allows children to give evidence of a previous representation in the form of a recording made by an investigating official of an interview with the child. Section 12 (2) of that Act provides that such evidence is not to be admitted unless the accused person and his or her lawyer have been given a reasonable opportunity to listen to or view the recording.

77 When prosecution evidence may be given in other ways

- (1) A prosecutor may apply to have a Magistrate admit prosecution evidence that is not in the form of a written statement admissible in evidence under this Division.

- (2) The Magistrate may admit the evidence if satisfied that:
 - (a) the written statement was prepared but a copy could not reasonably be served on the accused person, or
 - (b) any other requirement could not reasonably be complied with, or
 - (c) the evidence is additional evidence of a person whose written statement has already been admitted in evidence and a further written statement is not appropriate.
- (3) If the Magistrate decides not to admit the evidence, the Magistrate may adjourn the committal proceedings to enable the appropriate written statement to be prepared and served on the accused person, or may proceed without taking the evidence.
- (4) Evidence for the prosecution may be given orally if the prosecutor obtains a subpoena to require a witness to attend to give evidence or to produce documents or things and to give evidence.
- (5) A prosecutor may, subject to this Division, give evidence and may examine and cross-examine the witnesses giving evidence for the prosecutor or for the accused person, respectively.

78 Evidentiary effect of written statements

- (1) A written statement by any person is, if tendered by the prosecutor, admissible in committal proceedings as evidence to the same extent as if it were oral evidence to the like effect given in those proceedings by the same person.
- (2) Any document or other thing identified in any written statement admitted as evidence under this Division is, if the document or other thing is produced as an exhibit in the committal proceedings, to be treated as if it had been identified before the Magistrate by the person who made the statement.
- (3) This section does not operate to make a written statement admissible if it is not admissible because of another provision of this Division.

79 Form and requirements for written statements

- (1) A written statement may be in the form of questions and answers.

- (2) A written statement must specify the age of the person who made the statement.
- (3) A written statement must be endorsed in accordance with the rules by the maker of the statement as to the truth of the statement and any other matter required by the rules.
- (4) A written statement or such an endorsement on a statement must be written in a language of which the person who made the statement has a reasonable understanding.
- (5) If the written statement, or part of it, is in a language other than English, a document purporting to contain an English translation of the statement or part must be annexed to the statement.

80 Rules relating to written statements

- (1) The rules may prescribe requirements for written statements.
- (2) Any such requirements may be of the same or a different kind to the requirements contained in this Division.
- (3) The rules may provide that a requirement prescribed under subsection (2) may not be dispensed with by a Magistrate.

81 Written statement must be signed by its maker or another person on the maker's behalf

- (1) A written statement must be signed by the person who made the statement.
- (2) If the person is unable to sign the written statement, the statement may be signed by another person with the consent of and in the presence of the person who made the statement.
- (3) The other person must sign an endorsement on the statement to the effect that the person signed the statement on behalf of, with the consent of and in the presence of the person who made the statement.

82 Written statement must be signed by witness

A written statement must be signed by another person as a witness to the signing of the statement by the person who made it or as a witness to the signing by another person on the maker's behalf (if applicable).

83 Presumptions about written statements

- (1) In any proceedings it is presumed, if there is no evidence to the contrary, that the age specified in the written statement is in fact the age of the person who made the statement at the time the statement was made.
- (2) In any proceedings it is presumed, if there is no evidence to the contrary, that the language in which a statement or an endorsement is written is a language of which the person who made the statement or endorsement has a reasonable understanding.
- (3) In any proceedings it is presumed, if there is no evidence to the contrary, that the English translation of the statement or part statement is an accurate translation of the statement or part.

84 Presumptions about signatures

- (1) In any proceedings it is presumed, if there is no evidence to the contrary, that a signature on a written statement purporting or appearing to be the signature of the person who made it, or a person who signed on behalf of the maker, or a witness to the signing of the statement, is the signature of the person concerned.
- (2) In any proceedings it is presumed, if there is no evidence to the contrary, that a statement purporting or appearing to be signed by another person on behalf of the person who made the statement in accordance with this Division has been so signed.

85 False statements

- (1) A person who made a written statement tendered in evidence in proceedings is guilty of an offence if the statement contains any matter:
 - (a) that, at the time the statement was made, the person knew to be false, or did not believe to be true, in any material respect, and
 - (b) that was inserted or caused to be inserted by the person in the statement.

Maximum penalty:

- (a) If the offence is dealt with summarily, 20 penalty units or imprisonment for 12 months, or both.

(b) If the offence is dealt with on indictment, 50 penalty units or imprisonment for 5 years, or both.

- (2) Chapter 5 of this Act (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under this section.

86 Evidence not to be admitted

The Magistrate must refuse to admit evidence sought to be adduced by the prosecutor in respect of an offence in committal proceedings if, in relation to that evidence, this Division or any rules made under this Division, have not been complied with by the prosecutor.

87 Inadmissible written statements or parts of statements to be rejected

- (1) The Magistrate must reject a written statement, or any part of a written statement, tendered in committal proceedings if the statement or part is inadmissible because of this Division.
- (2) The Magistrate must record the rejection of a part of a written statement and identify in the record the part rejected.
- (3) The rules may prescribe the manner of identifying a part of a written statement that has been rejected.

88 Death of person who made statement

- (1) A written statement is not admissible if, on evidence produced during committal proceedings, the Magistrate is satisfied that the person who made the statement is dead.
- (2) If it is found after a written statement is admitted in evidence in committal proceedings that the person who made the statement died before the statement was admitted, the statement is taken not to have been admitted in evidence.

89 Notice of rights to unrepresented accused person

- (1) In any committal proceedings in which an accused person is not represented by a barrister or a solicitor, a written statement is not admissible unless the Magistrate:

- (a) has explained to the accused person the effect of this Division and the accused person's rights in relation to this Division, and
 - (b) is satisfied that the accused person understands his or her rights under this Division.
- (2) The explanation by the Magistrate must be in the form of words prescribed by the rules.

90 Magistrate may set aside requirements for written statements

- (1) In any committal proceedings, the Magistrate may dispense with all or any of the following requirements of this Act relating to written statements or exhibits:
- (a) service of documents on the accused person, as required by section 75,
 - (b) provision to the accused person of a reasonable opportunity to inspect proposed exhibits,
 - (c) specification of the age of the person who made a statement,
 - (d) any requirement specified by the regulations, if the rules do not prohibit the Magistrate from dispensing with the requirement.
- (2) A requirement may be dispensed with under this section only on an application by the accused person or with the consent of the accused person.

91 Witness may be directed to attend

- (1) The Magistrate may direct the attendance at the committal proceedings of the person who made a written statement tendered as evidence under this Division. The direction may be given on the Magistrate's own motion or on the application of the accused person or the prosecutor.
- (2) The Magistrate must give the direction if an application is made by the accused person or the prosecutor and the other party consents to the direction being given.

- (3) In any other circumstance, the Magistrate may give a direction only if satisfied that there are substantial reasons why, in the interests of justice, the witness should attend to give oral evidence. A direction may not be given if the written statement has already been admitted in evidence.
- (4) The written statement is not admissible in evidence in the proceedings after the direction is given unless the Magistrate withdraws the direction. This does not affect a statement admitted in evidence before a direction is given.
- (5) A direction given on the application of the accused person or the prosecutor may be withdrawn only:
 - (a) on the application, or with the consent, of the applicant, or
 - (b) if the applicant fails to appear, on the application of the other party.
- (6) The regulations may make provision for or with respect to the determination of substantial reasons under subsection (3).

92 When accused person may apply to have witness attend

- (1) The accused person in any committal proceedings may not apply for a direction under section 91 unless the accused person has served on the prosecutor a notice requesting the attendance at the proceedings of the person who made the statement concerned.
- (2) The notice must be served within the time set by the Magistrate.
- (3) The last date for service of the notice set by the Magistrate must be at least 14 days before the time set by the Magistrate for taking the prosecution evidence in the committal proceedings.
- (4) The Magistrate may specify a later date with the consent of the accused person or if the circumstances of the case require it.

93 Victim witnesses generally not to be cross-examined

- (1) Despite section 91, in any committal proceedings in which the accused person is charged with an offence involving violence, the Magistrate may not, under that section, direct the attendance of an alleged victim of the offence who made a written statement unless the Magistrate is of the opinion that there are special reasons why the alleged victim should, in the interests of justice, attend to give oral evidence.
- (2) The regulations may make provision for or with respect to the determination of any such special reasons.

94 Meaning of “offence involving violence”

- (1) The following offences are *offences involving violence* for the purposes of section 93:
 - (a) a prescribed sexual offence,
 - (b) an offence under sections 27–30 of the *Crimes Act 1900* (attempts to murder),
 - (c) an offence under section 33 of the *Crimes Act 1900* (wounding etc with intent to do grievous bodily harm or resist arrest),
 - (d) an offence under section 35 (b) of the *Crimes Act 1900* (infliction of grievous bodily harm),
 - (e) an offence under sections 86–91 of the *Crimes Act 1900* (abduction or kidnapping),
 - (f) an offence under sections 94–98 of the *Crimes Act 1900* (robbery),
 - (g) an offence that, at the time it was committed, was an offence involving violence for the purposes of section 93,
 - (h) any other offence that involves an act of actual or threatened violence that is prescribed by the regulations for the purposes of this section.
- (2) An offence that may be dealt with summarily under Chapter 5 is not an offence involving violence for the purposes of section 93.

95 Use of previous statements in cases involving prescribed sexual offences

- (1) In proceedings in relation to a prescribed sexual offence, if:
- (a) the offence is alleged to have been committed in the course of a connected set of circumstances in which another prescribed sexual offence is alleged to have been committed, and
 - (b) the accused person has been committed for trial in respect of, or has been convicted of, the other offence, and
 - (c) each of the offences is alleged to have been committed on the same person,

transcripts of evidence of the person on whom the offence is alleged to have been committed at the proceedings in which the accused person was committed or tried in respect of the other offence may, in so far as they are relevant to the offence the subject of the hearing, be included in a brief of evidence.

- (2) A copy of the transcript must be certified by a registrar in accordance with the rules and served on the accused person in accordance with section 183.
- (3) A brief of evidence that includes a transcript of a deposition of a person is not required also to include a written statement from the person concerned in respect of any matter covered by the transcript.
- (4) The transcript of the deposition is taken, for the purposes of this Act, to be a written statement taken from the person. Accordingly, any document or other thing identified in the transcript as a proposed exhibit forms part of the brief of evidence.

96 Application of Division to proceedings where there is more than one accused person

In committal proceedings in which there are 2 or more accused persons, this Division applies:

- (a) in relation to each accused person to the extent only that a written statement is sought to be admitted as evidence against that accused person, and

- (b) in relation to each such accused person as if that accused person were the only accused person.

Division 4 Defence evidence

97 Evidence for accused person

- (1) The Magistrate must give the accused person an opportunity to give evidence in the committal proceedings or to call any witness on the accused person's behalf.
- (2) An accused person may make full answer and defence. An accused person may give evidence and may examine and cross-examine the witnesses giving evidence for the accused person or for the prosecution, respectively.

Note. For other provisions applying to evidence in committal proceedings, see the *Evidence Act 1995*.

98 Other evidence about accused person

Nothing in this Part prevents the prosecutor from giving in evidence any admission or confession or other statement by the accused person, made at any time, which is by law admissible as evidence against the accused person.

Division 5 Procedure if accused person pleads guilty

99 Effect of guilty plea

- (1) An accused person may at any time in committal proceedings plead guilty to the offence concerned. If a person pleads guilty, the provisions of this Division apply.
- (2) Rejection of a guilty plea does not prevent an accused person from pleading guilty at a later stage in the proceedings.

100 Guilty plea may be accepted or rejected

The Magistrate may accept or reject the guilty plea.

101 Effect of rejection of guilty plea

If the guilty plea is rejected, the committal proceedings continue as if the accused person had not pleaded guilty.

102 Effect of acceptance of guilty plea

If the guilty plea is accepted, the Magistrate must commit the accused person to the District Court or the Supreme Court, to be dealt with in accordance with this Division.

103 Procedure applicable after committal for trial

- (1) All proceedings (whether under this or any other Act) relating to a committal for trial apply, so far as practicable, to a committal of an accused person after the guilty plea is accepted.
- (2) For the purposes of the venue or change of venue of consequent proceedings, a committal is taken to be a committal for trial.

104 Higher court may refer accused person back to Magistrate

- (1) A Judge of the District Court or the Supreme Court before whom an accused person is brought under this Division may order that the committal proceedings be continued before a Magistrate if:
 - (a) it appears to the Judge from the information or evidence given to or before the Judge that the facts in respect of which the court attendance notice was issued do not support the offence to which the accused person pleaded guilty, or
 - (b) the prosecutor requests the order be made, or
 - (c) for any other reason, the Judge thinks fit to do so.
- (2) On the resumption of the committal proceedings, the committal proceedings continue as if the person had not pleaded guilty.

105 Disposal of proceedings by higher court

- (1) The District Court or the Supreme Court may proceed to sentence or otherwise deal with an accused person brought before the Court under this Division as if the accused person had on arraignment at any sittings of the Court pleaded guilty to the offence on an indictment filed or presented by the Attorney General or the Director of Public Prosecutions.

- (2) An accused person who is sentenced or otherwise dealt with under this section is for the purposes of any Act or law (whether enacted before or after the commencement of this section) taken to be convicted on indictment of the offence concerned.

106 Change to not guilty plea in higher court

- (1) If an accused person brought before the District Court or the Supreme Court under this Division changes to not guilty the plea to the offence on which the accused person was committed to the Court, the Judge must direct that the accused person be put on trial for the offence.
- (2) On the direction being given, the accused person is taken to have been committed for trial for the offence. The Judge may make the same orders and do the same things (including dealing with the accused person) as a Magistrate can on committing an accused person for trial.
- (3) The Judge may give directions as to matters preliminary to the trial as the Judge thinks just.
- (4) A direction may not be given under subsection (1) if the offence is punishable by imprisonment for life, but the Judge may make an order under section 104.
- (5) Despite subsection (1), the Judge may make an order under section 104 instead of giving a direction under subsection (1), if of the opinion that such an order should be made.

107 Attorney General or Director of Public Prosecutions may direct that no further proceedings be taken

- (1) If a guilty plea is accepted under this Division, the Attorney General or the Director of Public Prosecutions may, at their discretion, direct in writing that no further proceedings be taken against the accused person under this Division for the offence concerned.
- (2) No further proceedings may be taken against the accused person under this Division for the offence if a direction is given.

Note. Section 44 requires the release of the accused person once a certificate is delivered to the Supreme Court after a direction is given.

108 Meaning of “accused person”

In this Division:

accused person includes a person who has been committed for sentence to the District Court or Supreme Court.

Division 6 Procedure after committal for trial or sentence

109 Accused person to be committed to correctional centre

- (1) An accused person who is committed for trial or sentence in any committal proceedings must be committed to a correctional centre by the Magistrate until the sittings of the court at which the person is to be tried or dealt with or until the accused person is otherwise released by operation of law.
- (2) A Magistrate may order the issue of a warrant under this section.
- (3) An authorised officer may, for the purposes of this section, issue a warrant to arrest the accused person.
- (4) An authorised officer before whom an accused person is brought on arrest on a warrant issued under this section may issue a warrant:
 - (a) committing the accused person to a correctional centre or other place of security, and
 - (b) ordering the accused person to be brought before a court at the time and place specified in the order.

Note. Part 4 of Chapter 4 sets out procedures for arrest warrants and warrants of commitment generally.

The *Bail Act 1978* provides for the circumstances when such a person must or may be granted bail rather than be held in prison.

110 Bail undertakings and conditions to be notified

If an accused person committed to a correctional centre on committal for trial or sentence is released on bail, the person to whom the bail undertaking is given must transmit to the registrar of the relevant court:

- (a) the bail undertaking, and
- (b) any cash or other thing deposited under the bail undertaking, and

- (c) the instrument by which any bail conditions were imposed on the grant of bail, and
- (d) any agreement or acknowledgment entered into or made pursuant to any such bail condition.

111 Papers to be sent to officer of higher court

- (1) The registrar must, as soon as possible after the end of committal proceedings, give to the appropriate officer of the court to which an accused person is committed for trial or sentence the documents required by the rules.
- (2) The appropriate officer if an accused person is committed to the Supreme Court is the registrar of the Criminal Division of the Supreme Court.
- (3) The appropriate officer if an accused person is committed to the District Court is a registrar of the District Court.
- (4) The appropriate officer must deliver the documents to the proper officer of the Court at which the trial is to be held or the accused person dealt with, if the Judge presiding so directs.

112 Responsibilities of appropriate officer

After the documents are transmitted and before the day of trial or the day on which the accused person is to be dealt with, the appropriate officer has, in relation to the documents, the same duties and is subject to the same liabilities as the Magistrate would have or be subject to before the transmission in relation to an order in the nature of certiorari or a rule or order instead of certiorari directed to the Magistrate.

113 Copies of trial papers to be given to Director of Public Prosecutions

- (1) The appropriate officer must, as soon as practicable after receiving a document transmitted by the registrar after an accused person is committed for trial or sentence, transmit a copy of the document to the Director of Public Prosecutions.
- (2) The copy must be transmitted by the most convenient method, having regard to the necessity to maintain the security of the document.

114 Copies of transcripts of evidence and witnesses' statements

- (1) An accused person who is committed for trial or sentence is entitled to obtain one copy of the transcript of evidence taken at the committal proceedings, and any written statements tendered at the proceedings.
- (2) The rules may make provision for or with respect to the provision of a copy to the person and fees for the provision of a copy.

115 Meaning of "accused person"

In this Division:

accused person includes a person who has been committed for trial or sentence to the District Court or Supreme Court.

Division 7 Costs

116 When costs may be awarded to accused persons

- (1) A Magistrate may at the end of committal proceedings order that the prosecutor pay professional costs to the registrar, for payment to the accused person, if:
 - (a) the accused person is discharged as to the subject-matter of the offence or the matter is withdrawn, or
 - (b) the accused person is committed for trial or sentence for an indictable offence which is not the same as the indictable offence the subject of the court attendance notice.
- (2) The amount of professional costs is to be the amount that the Magistrate considers to be just and reasonable.
- (3) The order must specify the amount of professional costs payable.
- (4) If the accused person is discharged, the order for costs may form part of the order discharging the accused person.

(5) In this section:

professional costs means costs (other than court costs) relating to professional expenses and disbursements (including witnesses' expenses) in respect of proceedings before a Magistrate.

117 Limit on circumstances when costs may be awarded against a public officer

(1) Professional costs are not to be awarded in favour of an accused person in any committal proceedings unless the Magistrate is satisfied as to any one or more of the following:

- (a) that the investigation into the alleged offence was conducted in an unreasonable or improper manner,
- (b) that the proceedings were initiated without reasonable cause or in bad faith or were conducted by the prosecutor in an improper manner,
- (c) that the prosecution unreasonably failed to investigate (or to investigate properly) any relevant matter of which it was aware or ought reasonably to have been aware and which suggested either that the accused person might not be guilty or that, for any other reason, the proceedings should not have been brought,
- (d) that, because of other exceptional circumstances relating to the conduct of the proceedings by the prosecutor, it is just and reasonable to award costs.

(2) This section does not apply to the awarding of costs against a prosecutor acting in a private capacity.

(3) In this section:

professional costs means costs (other than court costs) relating to professional expenses and disbursements (including witnesses' expenses) in respect of proceedings before a Magistrate.

118 Costs on adjournment

(1) A Magistrate may in any committal proceedings, at his or her discretion or on the application of the prosecutor or an accused person, order that one party pay costs if the matter is adjourned.

- (2) An order may be made only if the Magistrate is satisfied that the other party has incurred additional costs because of the unreasonable conduct or delay of the party against whom the order is made.
- (3) An order may be made whatever the result of the proceedings.

119 Content of costs orders

The order must specify the amount of costs payable or may provide for the determination of the amount at the end of the proceedings.

120 Enforcement of costs orders

An order made by a Magistrate under this Division for the payment of costs is taken to be a fine within the meaning of the *Fines Act 1996*.

[44] Chapter 3, Part 3, Division 1, headings

Insert after new section 120:

Part 3 Trial procedures

Division 1 Listing

[45] Sections 40, 41, 43, 44 and 45

Renumber as sections 121, 122, 123, 124 and 125 and transfer to Chapter 3.

[46] New section 121

Omit “*Justices Act 1902*” from the definition of *criminal proceedings*.
Insert instead “*Crimes (Local Courts Appeal and Review) Act 2001*”.

[47] New section 124

Omit “prosecuting authorities”. Insert instead “prosecutors”.

[48] New section 125

Omit “Part” wherever occurring. Insert instead “Division”.

[49] New section 125 (1) (a)

Omit “prosecuting authority”. Insert instead “prosecutor”.

[50] Chapter 3, Part 3, Division 2, heading

Insert after new section 125:

Division 2 Commencement and nature of proceedings

[51] Section 50 Signing of indictments

Re-number as section 126 and transfer to Chapter 3.

[52] Section 53A Manner of presenting indictments

Re-number as section 127 and transfer to Chapter 3.

[53] Section 52 Directions as to indictments to be presented in District Court

Re-number as section 128 and transfer to Chapter 3.

[54] New section 128 (1)

Omit “prosecuting authorities”. Insert instead “prosecutors”.

[55] Section 54 Time within which indictment to be presented

Re-number as section 129 and transfer to Chapter 3.

[56] New section 129 (7)

Omit “section 64”. Insert instead “section 21”.

[57] Section 56 Trial proceedings after presentation of indictment and before empanelment of jury

Re-number as section 130 and transfer to Chapter 3.

[58] New section 130

Omit “accused” wherever occurring. Insert instead “accused person”.

[59] Sections 15–17

Renumber as sections 131–133 and transfer to Chapter 3.

[60] Chapter 3, Part 3, Division 3, heading

Insert after new section 133:

Division 3 Pre-trial disclosure—case management

[61] Sections 47A–47P

Renumber as sections 134–149 and transfer to Chapter 3.

[62] New section 135

Omit the definition of *criminal proceedings*.

[63] New sections 136 (1), 137 (1), 138, 139, 140, 142 (2), 143 (3), 145, 147, 148 (5) and 149 (4)

Omit “prosecuting authority” wherever occurring.

Insert instead “prosecutor”.

[64] Chapter 3, Part 3, Division 4, heading

Insert after new section 149:

Division 4 Pre-trial disclosure—general

[65] Sections 48 and 49

Renumber as sections 150 and 151 and transfer to Chapter 3.

[66] New section 150

Omit “justice” wherever occurring in new section 150 (4).

Insert instead “Magistrate”.

[67] Chapter 3, Part 3, Division 5, heading

Insert after new section 151:

Division 5 Pleadings on trial

[68] Sections 86–91

Re-number as sections 152–157.

[69] Section 92 Application of Part

Omit the section.

[70] Chapter 3, Part 3, Division 6, heading and section 158

Insert after new section 157:

Division 6 Other provisions relating to trials

158 Transcript of statement in committal proceedings

A transcript of a record of a statement made by an accused person may be given in evidence at the trial of the accused person if:

- (a) it is certified in the manner prescribed by the rules, and
- (b) it is proved on oath that the record is a true record of the statement made by the accused person and that the transcript is a correct transcript of the record.

[71] Sections 97–99

Re-number as sections 159–161 and transfer to Chapter 3.

[72] New sections 159 (1) and 160 (1)

Omit “prosecuting authority” wherever occurring.
Insert instead “prosecutor”.

[73] New section 159 (2) (a)

Omit “prosecuting authority’s”. Insert instead “prosecutor’s”.

[74] Sections 124 and 125

Re-number as sections 162 and 163 and transfer to Chapter 3.

[75] Section 123 Joint trial in case of perjury

Re-number as section 164 and transfer to Chapter 3.

[76] Chapter 3, Part 3, Division 7, heading

Insert after new section 164:

Division 7 Certain summary offences may be dealt with

[77] Sections 35–39

Re-number as sections 165–169 and transfer to Chapter 3.

[78] New section 165 (1)

Omit “Division 3” wherever occurring. Insert instead “Chapter 5”.

[79] New section 166 (1)

Omit “prosecuting authority” wherever occurring.
Insert instead “prosecutor”.

[80] New section 166 (1) (a)

Omit “(or justice or justices)”.

[81] New section 168 (3)

Omit “constituted by a Magistrate”.

[82] Chapter 4

Insert after new section 169:

Chapter 4 Summary procedure

Part 1 Preliminary

170 Application

- (1) This Chapter applies to or in respect of proceedings for summary offences, including proceedings for indictable offences that are being dealt with summarily.
- (2) Parts 2–4 apply to the following proceedings:
 - (a) proceedings before a Local Court,
 - (b) proceedings before a Licensing Court,
 - (c) proceedings before an Industrial Magistrate,
 - (d) proceedings before a Warden’s Court,
 - (e) any other proceedings prescribed by the regulations.
- (3) Part 5 applies to the following proceedings:
 - (a) proceedings before the Supreme Court,
 - (b) proceedings before the Industrial Relations Commission in Court Session,
 - (c) proceedings before the Land and Environment Court,
 - (d) proceedings before the Court of Coal Mines Regulation,
 - (e) any other proceedings prescribed by the regulations.

171 Definitions

In this Chapter:

court means a court to which the relevant provision of this Chapter applies and includes (where applicable) an Industrial Magistrate.

Judge includes a judge of the Supreme Court, the Land and Environment Court and the Court of Coal Mines Regulation and the President or a judicial member of the Industrial Relations Commission and any other person of a class prescribed by the regulations for the purposes of this definition.

Magistrate includes a Licensing Magistrate, a Mining Warden, and an Industrial Magistrate and any other person of a class prescribed by the regulations for the purposes of this definition.

registrar means:

- (a) in the case of proceedings before a Local Court, the registrar of the Local Court,
- (b) in the case of proceedings before a Licensing Court, a registrar of the Licensing Court appointed under the *Liquor Act 1982*,
- (c) in the case of proceedings before an Industrial Magistrate, the registrar of the Local Court constituted by the Industrial Magistrate,
- (d) in the case of proceedings before a Warden's Court, the mining registrar for the relevant mining division under the *Mining Act 1992*,
- (e) in the case of proceedings before any other court to which Parts 2–4 apply, the person prescribed by the regulations for the purposes of this definition.

Part 2 Trial procedures in lower courts

Division 1 Commencement of proceedings

172 Commencement of proceedings by court attendance notice

- (1) Proceedings for an offence are to be commenced in a court by the issue and filing of a court attendance notice in accordance with this Division.
- (2) A court attendance notice may be issued in respect of a person if the person has committed or is suspected of having committed an offence.

- (3) A court attendance notice may be issued in respect of any offence for which proceedings may be taken in this State, including an offence committed elsewhere than in this State.

173 Commencement of proceedings by police officer or public officer

If a police officer or public officer is authorised to commence proceedings for an offence against a person, the officer may commence the proceedings by issuing a court attendance notice and filing the notice in accordance with this Division.

174 Commencement of private prosecutions

- (1) If a person other than a police officer or public officer is authorised to commence proceedings for an offence against a person, the person may commence the proceedings by issuing a court attendance notice, signed by a registrar, and filing the notice in accordance with this Division.
- (2) A registrar must not sign a court attendance notice if:
- (a) the registrar is of the opinion that the notice does not disclose grounds for the proceedings, or
 - (b) the registrar is of the opinion that the notice is not in the form required by or under this Act, or
 - (c) the registrar is of the opinion that a ground for refusal set out in the rules applies to the notice.
- (3) If a registrar refuses to sign a court attendance notice proposed to be issued by any such person, the question of whether the court attendance notice is to be signed and issued is to be determined by the court on application by the person.

175 Form of court attendance notice

- (1) A court attendance notice must be in writing and be in the form prescribed by the rules.
- (2) The rules may prescribe one or more forms of court attendance notice.
- (3) A court attendance notice must do the following:
- (a) describe the offence,

Schedule 1 Amendments

- (b) identify the essential factual elements of the alleged offence,
 - (c) contain the name of the prosecutor,
 - (d) require the accused person to appear before the court at a specified date, time and place, unless a warrant is issued for the arrest of the person or the person is refused bail,
 - (e) state, unless a warrant is issued for the arrest of the person or the person is refused bail, that failure to appear may result in the arrest of the person or in the matter being dealt with in the absence of the person.
- (4) The rules may prescribe additional matters to be included in court attendance notices.
- (5) A court attendance notice may describe an offence, act or other thing in a way that is sufficient under this Act for the purposes of an indictment or an averment in an indictment.

176 Court attendance notice to be for one offence only

A court attendance notice may not relate to more than one offence.

177 Service of court attendance notices

- (1) A court attendance notice issued by a police officer must be served by a police officer in accordance with the rules.
- (2) A court attendance notice issued by a public officer must be served by a police officer, public officer or other person of a class prescribed by the rules, in accordance with the rules.
- (3) A copy of a court attendance notice issued by a person other than a police officer or a public officer must be served by a person of a class prescribed by the rules in accordance with the rules.
- (4) A copy of a court attendance notice must, except with the leave of the court, be filed in a court not later than 7 days after it is served and must contain an endorsement as to service.

178 When proceedings commence

- (1) All proceedings are taken to have commenced on the date on which a court attendance notice is filed in the registry of a relevant court in accordance with this Division.
- (2) A court attendance notice may be filed even though it has not been served if:
 - (a) a warrant is sought under this Part for the arrest of the accused person, or
 - (b) the notice is not able to be served, despite reasonable attempts to do so, or
 - (c) the registrar gives leave to do so after forming the opinion that it is not reasonable in the circumstances of the case to require prior service of the notice.
- (3) Nothing in this section affects any other Act or law under which proceedings are taken to have been commenced on another date.

179 Time limit for commencement of summary proceedings

- (1) Proceedings for a summary offence must be commenced not later than 6 months from when the offence was alleged to have been committed.
- (2) This section does not apply:
 - (a) to an offence for which an Act or law specifies another period within which proceedings must be commenced, or
 - (b) to an indictable offence that is being dealt with summarily.

180 Relationship to other law or practice

- (1) Nothing in this Part affects any law or practice relating to indictments presented or filed in the Supreme Court or the District Court by the Attorney General or the Director of Public Prosecutions.
- (2) If an Act or a statutory rule provides for proceedings for an offence which may be taken in a court to be commenced otherwise than by issuing a court attendance notice, the proceedings may be commenced in accordance with this Act.

- (3) Nothing in this Part affects the operation of the provisions of Part 15A of the *Crimes Act 1900* relating to the commencement of proceedings under that Part.

181 Attendance of accused person at proceedings

- (1) A person who issues a court attendance notice may, at any time after the notice is issued and before the date on which the accused person is required to first attend at the court for the hearing of proceedings, apply for a warrant to arrest the accused person.
- (2) An authorised officer may, when a court attendance notice is issued by the registrar, or filed in the court, or at any time after then and before the matter is first before a court, issue a warrant to arrest the accused person if the authorised officer is satisfied there are substantial reasons to do so and that it is in the interests of justice to do so.
- (3) The rules may make provision for or with respect to matters that may be taken into account by an authorised officer in determining whether to issue a warrant under this section.
- (4) A Magistrate or an authorised officer before whom an accused person is brought on arrest on a warrant issued under this section may, if bail is not dispensed with or granted, order the issue of a warrant:
- (a) committing the accused person to a correctional centre or other place of security, and
 - (b) ordering the accused person to be brought before a court at the date, time and place specified in the order.
- (5) The Magistrate or authorised officer must give notice of the date, time and place set to the prosecutor. Part 4 of this Chapter sets out procedures for arrest warrants and warrants of commitment generally.

Division 2 Pre-trial procedures

182 Written pleas

- (1) An accused person served with a court attendance notice may lodge with the registrar a notice in writing that the accused person will plead guilty or not guilty to the offence or offences the subject of the court attendance notice concerned.
- (2) The notice is to be in the form prescribed by the rules and, in the case of a guilty plea, may be accompanied by additional written material containing matters in mitigation of the offence.
- (3) An accused person who lodges a notice under this section with the registrar not later than 5 days before the date on which the person is required to first attend before a Local Court is not required to attend the court on that date.

183 Brief of evidence to be served on accused person where not guilty plea unless otherwise ordered

- (1) If an accused person pleads not guilty to an offence, the prosecutor must, unless the court otherwise orders in accordance with section 187, serve or cause to be served on the accused person a copy of the brief of evidence relating to the offence.
- (2) The brief of evidence is to consist of documents regarding the evidence that the prosecutor intends to adduce in order to prove the commission of the offence and is to include:
 - (a) written statements taken from the persons the prosecutor intends to call to give evidence in proceedings for the offence, and
 - (b) copies of any document or any other thing, identified in such a written statement as a proposed exhibit.
- (3) The copy of the brief of evidence is to be served at least 14 days before the hearing of the evidence for the prosecution.
- (4) The Magistrate may set a later date for service with the consent of the accused person or if of the opinion that the circumstances of the case require it.

184 Exhibits

- (1) Despite section 183, the prosecutor is not required to include a copy of a proposed exhibit identified in the brief of evidence if it is impossible or impractical to copy the exhibit.
- (2) However, in that case the prosecutor is:
 - (a) to serve on the accused person a notice specifying a reasonable time and place at which the proposed exhibit may be inspected, and
 - (b) to allow the accused person a reasonable opportunity to inspect each proposed exhibit referred to in the notice.

185 Recording of interviews with children

- (1) If the prosecutor intends to call a child to give evidence in proceedings, the brief of evidence may include a transcript of a recording made by an investigating official of an interview with the child, during which the child was questioned by the investigating official in connection with the investigation of the commission or possible commission of the offence (as referred to in the *Evidence (Children) Act 1997*).
- (2) A copy of the transcript of the recording must be certified by an investigating official as an accurate transcript of the recording and served on the accused person in accordance with section 183.
- (3) A brief of evidence that includes a transcript of a recording of an interview with a child is not required also to include a written statement from the child concerned.
- (4) The transcript of the recording is taken, for the purposes of this Division, to be a written statement taken from the child. Accordingly, any document or other thing identified in the transcript as a proposed exhibit forms part of the brief of evidence.
- (5) Nothing in this Division requires the prosecutor to serve on the accused person a copy of the actual recording made by an investigating official of an interview with the child.
- (6) This section does not affect section 12 (2) of the *Evidence (Children) Act 1997*.

(7) In this section:

investigating official has the same meaning as in the *Evidence (Children) Act 1997*.

Note. The *Evidence (Children) Act 1997* allows children to give evidence of a previous representation in the form of a recording made by an investigating official of an interview with the child. Section 12 (2) of that Act provides that such evidence is not to be admitted unless the accused person and his or her lawyer have been given a reasonable opportunity to listen to or view the recording.

186 Form of copy of brief of evidence

- (1) The copy of the brief of evidence is to comply with any requirement applicable to it prescribed by the rules.
- (2) A written statement contained in the brief of evidence is to comply with this Act and any requirement applicable to it prescribed by the rules.

187 Discretion to order copy of brief of evidence need not be served

- (1) The court may order that all or part of the copy of the brief of evidence need not be served if it is satisfied:
 - (a) that there are compelling reasons for not requiring service, or
 - (b) that it could not reasonably be served on the accused person.
- (2) The court may make an order under this section on its own initiative or on the application of any party.
- (3) An order may be made subject to any conditions that the court thinks fit.
- (4) Without limiting any other power to adjourn proceedings, the court may grant one or more adjournments, if it appears to it to be just and reasonable to do so, if the copy of the brief of evidence is not served in accordance with this Division. For that purpose, the court may extend the time for service of the brief of evidence.

188 Evidence not to be admitted

- (1) The court must refuse to admit evidence sought to be adduced by the prosecutor in respect of an offence if, in relation to that evidence, this Division or any rules made under this Division have not been complied with by the prosecutor.
- (2) The court may, and on the application of or with the consent of the accused person must, dispense with the requirements of subsection (1) on such terms and conditions as appear just and reasonable.

189 False statements

- (1) A person who made a written statement tendered in evidence in proceedings is guilty of an offence if the statement contains any matter that, at the time the statement was made, the person knew to be false, or did not believe to be true, in any material respect.

Maximum penalty:

- (a) If the offence is dealt with summarily, 20 penalty units or imprisonment for 12 months, or both.
 - (b) If the offence is dealt with on indictment, 50 penalty units or imprisonment for 5 years, or both.
- (2) Chapter 5 (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under this section.

Division 3 Hearings

190 Time for hearing

- (1) On the first return date for a court attendance notice in any summary proceedings, or at such later time as the court determines, the court must set the date, time and place for hearing and determining the matter.
- (2) The court must notify the accused person of the date, time and place, if the accused person is not present.

- (3) However, if the accused person is not present at the first return date and has not lodged a written plea of not guilty in accordance with section 182, the court may proceed to hear the matter on that day at its discretion.

Note. The powers of a court to adjourn proceedings generally are set out in section 40.

191 Proceedings to be open to public

- (1) Summary proceedings before a court are to be heard in open court.
- (2) This section is subject to the provisions of any other Act or law.

192 Procedures where both parties present

- (1) If both the accused person and the prosecutor are present at the day, time and place set for the hearing and determination of proceedings for an offence (including a day to which the hearing has been adjourned) the court must proceed to hear and determine the matter.
- (2) The court must state the substance of the offence to the accused person and ask the accused person if the accused person pleads guilty or not guilty.
- (3) Instead of hearing and determining the matter, the court may, if it thinks that the matter should not proceed on the specified day, adjourn the hearing to another day for mention or hearing.

193 Procedure if offence admitted

- (1) If the accused person pleads guilty, and does not show sufficient cause why he or she should not be convicted or not have an order made against him or her, the court must convict the accused person or make the order accordingly.
- (2) This section does not apply if the court does not accept the accused person's guilty plea.

194 Procedure if offence not admitted

- (1) If the accused person pleads not guilty or the court does not accept the accused person's guilty plea, the court must proceed to hear and determine the matter.

- (2) The court must hear the prosecutor, any witnesses and other evidence of the prosecutor and must hear the accused person and any witnesses and other evidence of the accused person.

195 How evidence is taken

- (1) A prosecutor may give evidence and may examine and cross-examine the witnesses giving evidence for the prosecution or the accused person, respectively.
- (2) An accused person may make full answer and defence. An accused person may give evidence and may examine and cross-examine the witnesses giving evidence for the accused person or the prosecution, respectively.
- (3) If the accused person gives any evidence or examines any witness as to any matter other than as to the witness's general character, the prosecutor may call and examine witnesses in reply.

196 Procedure if accused person not present

- (1) If the accused person is not present at the day, time and place set for the hearing and determination of the matter (including a day to which the hearing has been adjourned), the court may proceed to hear and determine the matter in the absence of the accused person in accordance with this Division.
- (2) If:
 - (a) a penalty notice enforcement order is annulled under Division 5 of Part 3 of the *Fines Act 1996* and the order (together with any annexure) is taken to be a court attendance notice in relation to the offence, and
 - (b) the accused person has been given notice of the hearing of the matter of the court attendance notice, and
 - (c) the accused person does not appear on the day and at the time and place specified by the court attendance notice,

the court may proceed to hear and determine the matter in the absence of the accused person in accordance with this Division.

- (3) The court may not proceed to hear and determine the matter unless it is satisfied that the accused person had reasonable notice of the first return date or the date, time and place of the hearing.
- (4) If an offence is an indictable offence that may be dealt with summarily only if the accused person consents, the absence of the accused person is taken to be consent to the offence being dealt with summarily and the offence may be dealt with in accordance with this Division.

197 Adjournment when accused person not present

- (1) Instead of hearing and determining a matter in the absence of the accused person, the court may, if it thinks that the matter should not proceed on the specified day or without the accused person, adjourn the hearing to another day for mention or for hearing.
- (2) If a warrant is issued for the arrest of the accused person, the Magistrate or authorised officer before whom the accused person is brought after arrest may specify the date, time and place to which the proceedings are adjourned.

Note. The court may at any time issue a warrant for the arrest of an absent accused person (see Division 2 of Part 4 which sets out procedures for warrants).

198 Absent accused person taken to have pleaded not guilty

An accused person in proceedings who is absent from the proceedings and who has not lodged a written plea of guilty in accordance with section 182 is taken to have pleaded not guilty.

199 Material to be considered when matter determined in absence of accused person

- (1) The court may determine proceedings heard in the absence of the accused person on the basis of the court attendance notice without hearing the prosecutor's witnesses or any other additional evidence of the prosecutor, if it is of the opinion that the matters set out in the court attendance notice are sufficient to establish the offence.
- (2) Before determining the matter, the court must consider any written material given to the court by the prosecutor, or lodged by the accused person under section 182.

200 When court may require prosecution to provide additional evidence

- (1) The court may, in proceedings heard in the absence of the accused person, require the prosecution to provide additional evidence if it is of the opinion that the matters set out in the court attendance notice are not sufficient to establish the offence.
- (2) The additional evidence is not admissible unless:
 - (a) it is in the form of written statements that comply with Division 3 of Part 2 of Chapter 3, and
 - (b) a copy of any such statement has been given to the accused person a reasonable time before consideration of the additional evidence by the court.
- (3) However, the court may require evidence to be given orally if it is not practicable to comply with subsection (2) or if the court thinks it necessary in the particular case.
- (4) The court must reject a written statement, or any part of a written statement, tendered in summary proceedings if the statement or part is inadmissible because of this section.

201 Procedure if prosecutor or both parties not present

- (1) If the prosecutor is not present, or both the prosecutor and the accused person are not present, at the day, time and place set for the hearing and determination of the matter (including a day to which the hearing has been adjourned) the court must dismiss the information.
- (2) Despite subsection (1), the court may, if it thinks fit, instead of dismissing the information, adjourn the hearing to a specified day, time and place for mention or hearing.

202 Determination by court

- (1) The court must determine summary proceedings after hearing the accused person, prosecutor, witnesses and evidence in accordance with this Act.
- (2) The court may determine the matter by convicting the accused person or making an order as to the accused person, or by dismissing the matter.

- (3) In the case of a matter heard in the absence of the accused person, the court may adjourn the proceedings to enable the accused person to appear or be brought before the court for sentencing.

Note. Section 25 of the *Crimes (Sentencing Procedure) Act 1999* provides for the issue of warrants of arrest for absent defendants so that they may be brought before the Court for sentencing. Section 62 of that Act also provides for the issue of warrants of commitment after sentencing.

203 Additional powers to adjourn summary proceedings

A court may adjourn summary proceedings before or at any stage of proceedings to enable the matter to be the subject of a mediation session under the *Community Justice Centres Act 1983*.

204 Record of conviction or order to be made

- (1) A court must make a record of any conviction or order made against the accused person in summary proceedings when the accused person is convicted or the order is made.
- (2) The court must give the accused person a copy of the record on request by the accused person.

205 Order dismissing matter to be made

- (1) A court may make an order of dismissal and give the accused person a certificate certifying that a matter has been dismissed if it decides to dismiss the matter.
- (2) A court must make an order of dismissal and give the accused person a certificate certifying that a matter has been dismissed if requested to do so by an accused person against whom a matter has been dismissed or by the prosecutor.

206 Effect of certificate that matter has been dismissed

A certificate certifying that a matter has been dismissed, if produced and without any further proofs being required, prevents any later proceedings in any court for the same matter against the same person.

207 Power to set aside conviction or order before sentence

- (1) An accused person may, at any time after conviction or an order has been made against the accused person and before the summary proceedings are finally disposed of, apply to the court to change the accused person's plea from guilty to not guilty and to have the conviction or order set aside.
- (2) The court may set aside the conviction or order made against the accused person and proceed to determine the matter on the basis of the plea of not guilty.

208 Dismissal of matter if matter withdrawn

If a matter is withdrawn by the prosecutor, the matter is taken to be dismissed and the accused person is taken to be discharged in relation to the offences concerned.

209 Application of section 10 of the Crimes (Sentencing Procedure) Act 1999

The provisions of section 10 of the *Crimes (Sentencing Procedure) Act 1999* apply to any proceedings heard in the absence of the accused person under this Part as if the accused person had been charged before the court with the offence to which the proceedings relate.

210 Penalties applying to traffic offences committed by children

- (1) A Local Court may deal with a child found guilty of a traffic offence in accordance with Division 4 of Part 3 of the *Children (Criminal Proceedings) Act 1987*.
- (2) In so dealing with a child, the Local Court has and may exercise the functions of the Children's Court under that Division as if the Local Court were the Children's Court and the offence were an offence to which the Division applies.
- (3) A Local Court must not impose a sentence of imprisonment on a child found guilty of a traffic offence.
- (4) In this section:
child means a person who was under 18 years when the traffic offence was committed and under 21 years when summary proceedings for the offence were commenced,

traffic offence means an offence arising under a provision of:

- (a) the road transport legislation within the meaning of the *Road Transport (General) Act 1999*, or
- (b) the *Roads Act 1993*, or
- (c) the *Motor Vehicles (Third Party Insurance) Act 1942*, or
- (d) the *Recreation Vehicles Act 1983*,

in respect of the use, standing or parking of a motor vehicle within the meaning of that provision.

Note. Division 4 of Part 3 of the *Children (Criminal Proceedings) Act 1987* sets out the penalties which the Children's Court may impose on a child who has been found guilty of a summary offence.

Division 4 Costs

211 Definition

In this Part:

professional costs means costs (other than court costs) relating to professional expenses and disbursements (including witnesses' expenses) in respect of proceedings before a court.

212 When costs may be awarded

- (1) A court may award costs in criminal proceedings only in accordance with this Act.
- (2) This Act does not affect the payment of costs under the *Costs in Criminal Cases Act 1967*.

Note. The *Costs in Criminal Cases Act 1967* contains procedures by which an accused person may obtain payment of costs from Government funds after acquittal or discharge or the quashing of a conviction.

213 When costs may be awarded to accused persons

- (1) A court may at the end of summary proceedings order that the prosecutor pay costs to the registrar of the court, for payment to the accused person, if the matter is dismissed or withdrawn.
- (2) The amount of professional costs is to be the amount that the Magistrate considers to be just and reasonable.

- (3) Without limiting the operation of subsection (1), a court may order that the prosecutor in summary proceedings pays costs if the matter is dismissed because the prosecutor fails to appear or both the prosecutor and the accused person fail to appear.
- (4) Without limiting the operation of subsection (1), a court may order that the prosecutor in summary proceedings pay costs if the matter is dismissed because the matter is withdrawn or the proceedings are for any reason invalid.
- (5) The order must specify the amount of professional costs payable.

214 Limit on circumstances when costs may be awarded against a public informant

- (1) Professional costs are not to be awarded in favour of an accused person in summary proceedings unless the court is satisfied as to any one or more of the following:
 - (a) that the investigation into the alleged offence was conducted in an unreasonable or improper manner,
 - (b) that the proceedings were initiated without reasonable cause or in bad faith or were conducted by the prosecutor in an improper manner,
 - (c) that the prosecutor unreasonably failed to investigate (or to investigate properly) any relevant matter of which it was aware or ought reasonably to have been aware and which suggested either that the accused person might not be guilty or that, for any other reason, the proceedings should not have been brought,
 - (d) that, because of other exceptional circumstances relating to the conduct of the proceedings by the prosecutor, it is just and reasonable to award costs.
- (2) This section does not apply to the awarding of costs against a prosecutor acting in a private capacity.
- (3) An officer of an approved charitable organisation under the *Prevention of Cruelty to Animals Act 1979* is taken not to be acting in a private capacity if the officer acts as the prosecutor in any proceedings under that Act.

215 When costs may be awarded to prosecutor

- (1) A court may at the end of summary proceedings order that the accused person pay the following costs to the registrar of the court, for payment to the prosecutor, if the accused person is convicted or an order is made against the accused person:
 - (a) such professional costs as the court considers just and reasonable,
 - (b) court costs, to be paid to the registrar for payment to the prosecutor if the costs have been paid by the prosecutor or, if they have not been so paid, to be paid to the registrar of the court.
- (2) The amount that may be awarded under subsection (1) (b) for court costs is:
 - (a) the filing fee for a court attendance notice, or
 - (b) such other amount as the court considers to be just and reasonable in the circumstances of the case.
- (3) The order must specify the amount of costs payable.
- (4) For the purposes of this section, an accused person is taken to have been convicted if an order is made under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. The order for costs may be in the order under that section.
- (5) This section applies to all summary proceedings, including orders made in proceedings conducted in the absence of the accused person.

216 Costs on adjournment

- (1) A court may in any summary proceedings, at its discretion or on the application of a party, order that one party pay costs if the matter is adjourned.
- (2) An order may be made only if the court is satisfied that the other party has incurred additional costs because of the unreasonable conduct or delays of the party against whom the order is made.
- (3) The order must specify the amount of costs payable or may provide for the determination of the amount at the end of the proceedings.

- (4) An order may be made whatever the result of the proceedings.

217 Enforcement of costs orders

An order made by a court under this Division for the payment of costs is taken to be a fine within the meaning of the *Fines Act 1996*.

218 Public officers not personally liable for costs

- (1) A public officer is entitled to be indemnified by the State for any costs awarded against the officer personally as the prosecutor in any criminal proceedings in a court in which the officer is acting in his or her capacity as a public officer.

- (2) In this section:

public officer does not include a councillor or an employee of a council or any other person prescribed by the regulations for the purposes of this section.

Division 5 Rules

219 Rules

- (1) The Rule Committee may make rules for or with respect to the following matters:
- (a) service of court attendance notices, briefs of evidence and other documents,
 - (b) endorsement of service of court attendance notices and other documents,
 - (c) procedures for adjourning, relisting and notifying accused persons about alternative offences,
 - (d) additional requirements for the form of warrants,
 - (e) the circumstances in which a person may obtain copies of documents relating to criminal proceedings,
 - (f) assessment of costs on adjournment,
 - (g) the form of submissions to a court about disputed costs,
 - (h) forms to be used under this Act.

- (2) A court may in proceedings for a summary offence, if of the opinion that it is in the interests of justice to do so, dispense with or vary a requirement of the rules.
- (3) For the purposes of subsection (2), a Local Court may make directions as to the conduct of proceedings.
- (4) The power conferred by subsection (2) does not extend to any rule declared by the rules to be mandatory.

Part 3 Attendance of witnesses and production of evidence in lower courts

220 Application

In addition to any other proceedings to which this Part applies, this Part applies to any proceedings prescribed by the regulations for the purposes of this section.

221 Definitions

In this Part:

party means a prosecutor or an accused person in, or any other party to, proceedings to which this Part applies.

person named in a subpoena means the person to whom the subpoena is addressed.

subpoena includes any of the following:

- (a) a subpoena to give evidence,
- (b) a subpoena for production,
- (c) a subpoena both to give evidence and for production.

subpoena both to give evidence and for production means a written order requiring the person named to attend as directed by the order as a witness to give evidence and to produce a document or thing.

subpoena for production means a written order requiring the person named to attend as directed by the order and produce a document or thing.

subpoena to give evidence means a written order requiring the person named to attend as directed by the order as a witness to give evidence.

222 Issue of subpoenas

- (1) A registrar, if requested to do so by a party to proceedings, is, subject to and in accordance with the rules, to issue to the person named any of the following subpoenas:
 - (a) a subpoena to give evidence,
 - (b) a subpoena for production,
 - (c) a subpoena both to give evidence and for production.
- (2) If the prosecutor in proceedings is a public officer, the public officer may, subject to and in accordance with the rules, issue any such subpoena. The subpoena is to be filed in accordance with the rules.
- (3) A subpoena to give evidence and a subpoena for production may be issued to the same person in the same proceedings.
- (4) A party may require a subpoena for production to be returnable:
 - (a) on any day on which the proceedings are listed before a court, or any day not more than 21 days before any such day, or
 - (b) with the leave of the court or a registrar, on any other day.

223 Time for service of subpoenas

- (1) A subpoena must be served within a reasonable time and at least 5 days before the last day on which it must be complied with.
- (2) A registrar may, on application by the party concerned, permit a subpoena to be served later than the time permitted by subsection (1). The later time must be endorsed on the subpoena by the registrar.
- (3) A subpoena may be served by delivering a copy of the subpoena to the person named or in any other manner prescribed by the rules.

224 Conduct money

Unless a court otherwise orders, a subpoena issued at the request of a party other than a prosecutor who is a public officer is not to require the person named to attend or produce any document or thing on any day on which his or her attendance is required unless an amount prescribed by the rules for the expenses of complying with the subpoena in relation to that day is paid or tendered to the person at the time of service of the subpoena or not later than a reasonable time before that day.

225 Limits on obligations under subpoenas

The person named is not required to produce any document or thing if:

- (a) it is not specified or sufficiently described in the subpoena, or
- (b) the person named would not be required to produce the document or thing on a subpoena for production in the Supreme Court.

226 Production by non-party

- (1) If the person named in a subpoena for production is not a party to the proceedings, the subpoena is, unless a court otherwise orders, to permit the person to produce the document or thing to the court specified in the subpoena not later than the day before the first day on which the person's attendance is required, instead of attending and producing the document or thing as required by the subpoena.
- (2) The rules may make provision for or with respect to the production of documents or things produced to a court under subsection (1), and the return of the document or thing, and any related matters.
- (3) Nothing in this Part affects the operation of Division 1 of Part 4.6 of the *Evidence Act 1995* (Requests to produce documents or call witnesses).

227 Subpoena may be set aside

- (1) A court may, on application by the person named in a subpoena, set aside the subpoena wholly or in part.

- (2) Notice of an application under this section is to be filed and served as prescribed by the rules on the party on whose request, or by whom, the subpoena was issued.

228 Inspection of subpoenaed documents and things

- (1) A party may, if a court so orders:
 - (a) inspect documents or things produced in compliance with a subpoena, and
 - (b) take copies of any documents so inspected.
- (2) Any such order may be made on such terms and conditions as the court thinks fit.
- (3) A registrar may exercise the function of a court to make an order under this section unless:
 - (a) the court otherwise orders, or
 - (b) a party, the person named in the subpoena or a person claiming privilege in respect of the document has notified the court in the manner prescribed by the rules that the party or person objects to the making of an order under this section.

229 Action that may be taken if person does not comply with subpoena

- (1) A party who requested, or issued, a subpoena may apply to the court for the issue of a warrant under Part 4 for the arrest of the person named if the person named has not complied with the subpoena.
- (2) The court may issue the warrant if satisfied that:
 - (a) the person named has not complied with the subpoena, and
 - (b) the requirements of this Part for subpoenas were complied with and no just or reasonable excuse has been offered for the failure to comply.
- (3) A Magistrate or an authorised officer before whom a person is brought on arrest on a warrant issued under this section may, if bail is not dispensed with or granted, issue a warrant:
 - (a) committing the person to a correctional centre or other place of security, and

(b) ordering the person to be brought before a court at the date, time and place specified in the order.

(4) The Magistrate or authorised officer must give notice of the date, time and place set to the party who issued or requested the subpoena.

Note. Division 2 of Part 4 sets out procedures for arrest warrants generally.

230 Application of Bail Act 1978

The *Bail Act 1978* applies to a person who is brought before a court after having been arrested under a warrant referred to in section 229 in the same way as it applies to an accused person, and for that purpose, bail may be granted to the person with respect to the period between:

- (a) the person's being brought before a court under a warrant for the purpose of being examined as a witness or producing a document or thing, and
- (b) the person's being examined as a witness or producing the document or thing.

231 Action that may be taken if witness refuses to give evidence

- (1) This section applies to a person who:
 - (a) appears before a court on a subpoena, or
 - (b) appears before a court on bail after being arrested under a warrant after failing to comply with a subpoena, or
 - (c) is brought before a court under a warrant of commitment after being so arrested,to give evidence, or produce any document or thing, or both.
- (2) The court may order that a warrant be issued for the committal of a person to whom this section applies to a correctional centre for a period not exceeding 7 days if the person refuses, without offering any just cause or reasonable excuse:
 - (a) to be examined on oath, or
 - (b) to take an oath, or
 - (c) to answer, after having taken an oath, any questions that are put to the person concerning the subject-matter of the proceedings, or

(d) to produce the document or thing.

Note. Division 3 of Part 4 sets out procedures for warrants of commitment generally.

- (3) However, the person is to be released before the expiration of those 7 days if the person:
- (a) consents to be examined on oath and to answer questions concerning the subject-matter of the proceedings, or
 - (b) produces the document or thing.
- (4) This Part applies in relation to a subpoena to the exclusion of section 194 (Witnesses failing to attend proceedings) of the *Evidence Act 1995*.
- (5) In this section, a reference to a person who appears before a court on bail after being arrested under a warrant after failing to comply with a subpoena includes a reference to a person in respect of whom the requirement for bail has been dispensed with after being so apprehended.

232 Rules relating to subpoenas

The Rule Committee may make rules for or with respect to the following matters:

- (a) the form of subpoenas,
- (b) the production of documents or things to the registrar and the inspection of the documents or things,
- (c) the return of subpoenas to parties,
- (d) conduct money,
- (e) hearing of objections to subpoenas.

Part 4 Warrants

Division 1 Preliminary

233 Application

In addition to warrants issued in, or in connection with, proceedings to which this Part applies because of section 170, this Part applies to warrants that may be issued under Part 3.

234 Definition

In this Part:

named person means the person named in a warrant.

Division 2 Arrest warrants

235 When arrest warrants may be issued for accused persons

A warrant to arrest a person may be issued on any day of the week.

236 Form of arrest warrant

- (1) A warrant to arrest a person must be in the form prescribed by the rules.
- (2) Without limiting subsection (1), the warrant must be directed to a person permitted by this Division to execute the warrant and must do the following things:
 - (a) name or describe the person to be arrested,
 - (b) briefly state the subject-matter of the court attendance notice or reason for the arrest,
 - (c) order that the person be arrested and brought before the Magistrate or authorised officer to be dealt with according to law or to give evidence or produce documents or things, as appropriate.
- (3) A warrant to arrest a person must be given under the seal of the person issuing it.
- (4) However, an authorised officer may sign a warrant issued under this Act if a Magistrate has directed in writing that the warrant be issued.

237 Duration of arrest warrants

- (1) A warrant to arrest an accused person need not be returnable at any particular time. If it is not, the warrant continues in force until it is carried out.
- (2) A warrant to arrest a witness must be returnable at a stated date, time and place.

- (3) The warrant to arrest a witness may be returned and cancelled, and a further warrant may be obtained, if the witness is not arrested before the warrant must be returned.

238 Persons who may execute arrest warrant

- (1) A warrant to arrest a person must be directed to:
- (a) a named police officer, or
 - (b) a person authorised by law to execute a warrant to arrest, or
 - (c) the senior police officer of the area where the court is located, or
 - (d) the senior police officer and all other police officers, or
 - (e) generally all police officers.
- (2) A warrant to arrest a person may be carried out by arresting the accused or witness at any place in New South Wales.

239 Procedure after arrest

A person who is arrested under a warrant must be brought before a Magistrate or an authorised officer as soon as practicable.

240 Recall of warrants

- (1) Any warrant to arrest a person may be recalled and cancelled by a Magistrate or authorised officer if:
- (a) the party who requested the warrant applies to the Magistrate or authorised officer to cancel the warrant, or
 - (b) the Magistrate or authorised officer is of the opinion that it is appropriate to do so.
- (2) A Magistrate or an authorised officer may recall a warrant even though it was issued by another Magistrate or authorised officer. An authorised officer may not recall a warrant issued by a Magistrate.

Division 3 Warrants of commitment

241 Power to commit person to correctional centre subject to Bail Act 1978

A power to issue a warrant to commit a person to a correctional centre or other place under this Act is subject to the provisions of the *Bail Act 1978*.

Note. The *Bail Act 1978* sets out the circumstances when bail must or may be granted or may be dispensed with by a Magistrate.

242 Form of warrants of commitment

- (1) A warrant to commit a person must be in the form prescribed by the rules.
- (2) Without limiting subsection (1), the warrant must be directed to a person permitted by the rules to execute the warrant and must do the following things:
 - (a) name or describe the person to be committed,
 - (b) direct and authorise the person to take and safely convey the named person to the correctional centre or other place,
 - (c) direct the person to deliver the named person to the officer in charge of the place,
 - (d) direct and authorise the officer in charge of the place to receive the named person in custody and to keep the named person in custody for the period specified, or in the circumstances specified, or until the named person is otherwise lawfully released from custody.
- (3) A warrant to commit a witness to a correctional centre, lock-up or a place of security must not require the witness to be kept in custody for more than 7 days.
- (4) An authorised officer may sign a warrant to commit a person if a Magistrate has directed in writing that the warrant be issued.

243 Procedure for taking person to correctional centre or other place

- (1) The person to whom a warrant issued under this Division to commit a person to a correctional centre or other place is directed must take the named person to the correctional centre or other place specified in the warrant and deliver the named person to the person in charge of the place.
- (2) The person executing the warrant must obtain a receipt for the delivery of the named person setting out the condition of the named person when delivered into the custody of the person in charge.

244 Defects in warrants of commitment

A warrant to commit an accused person to a correctional centre or other place may not be held void because of any defect in the warrant if the warrant states that:

- (a) the accused person has been convicted or ordered to do or abstain from doing any act or thing required to be done or not done, and
- (b) there is a good and valid conviction or order to sustain the warrant.

Part 5 Summary jurisdiction of Supreme Court and other higher courts

Division 1 Jurisdiction

245 Summary jurisdiction of Supreme Court

- (1) If, under any Act, proceedings may be taken before the Supreme Court in its summary jurisdiction, the Court has jurisdiction to hear and determine those proceedings in a summary manner.
- (2) The summary jurisdiction conferred on the Supreme Court by subsection (1), or under any other Act on any other court to which this Part applies, is to be exercised by a Judge sitting alone, and not otherwise.

Note. Section 170 sets out the courts to which this Part applies.

Division 2 Appearance of accused persons

246 Orders for appearance or apprehension of accused persons

- (1) A prosecutor may apply for an order:
 - (a) that a person alleged in the application to have committed an offence that may be dealt with summarily by the court must appear at a time and place specified in the order to answer to the offence charged in the order, or
 - (b) for the apprehension of any such person for the purpose of being brought before a Judge to answer to the offence charged in the order.
- (2) The application must be in accordance with the rules.
- (3) The order may be made in the absence of one or both parties.
- (4) An order for the apprehension of a person may be made whether or not an order has been made under subsection (1) (a).
- (5) An order for the apprehension of a person:
 - (a) must be addressed to all police officers, and
 - (b) may be addressed to any other person specified in the order, and
 - (c) may be executed by any police officer or by any person to whom it is addressed at any place at which, had the offence specified in the order been committed at that place, that offence would be triable in the court.
- (6) A Judge before whom a person apprehended under an order made under this section is brought may, if bail is not dispensed with or granted, issue a warrant:
 - (a) committing the person to a correctional centre or other place of security, and
 - (b) ordering the person to be brought before a court at the date, time and place specified in the order.

247 Notices to be given to prosecutor

- (1) The registrar must, as soon as practicable after the making of any order under section 246, cause notice of the order to be given to the prosecutor.
- (2) The registrar must, as soon as practicable after a notice is given or sent (as referred to in section 34 of the *Bail Act 1978*) to a person referred to in section 246, cause a copy of the notice to be given to the prosecutor.

Division 3 Trial procedure

248 Pre-trial procedure

A Judge is not required to proceed to hear and determine a case if any pre-trial procedures required by the rules to be completed before the trial of the case commences have not been completed.

249 Procedure where prosecutor does not, but accused person does, appear

- (1) If the prosecutor does not appear on the day and at the time and place set by an order under Division 2 (or on a day to which a hearing has been adjourned), but the accused person attends, the court, if satisfied that the prosecutor was notified of the day, time and place:
 - (a) must discharge the accused person as to the offence the subject of the proceedings, with or without costs, or
 - (b) if the court thinks it appropriate, adjourn the hearing to a specified time and place.
- (2) Subsection (1) does not empower the court to order costs to be paid in proceedings for an offence referred to in section 475A of the *Crimes Act 1900*.

250 Procedure where accused person does not obey order to appear

If the accused person does not appear on the day and at the time and place set by an order under Division 2 (or on a day to which a hearing has been adjourned), the court may, if satisfied that the order was served on the accused person:

- (a) proceed to hear and determine the matter in the absence of the accused person, or
- (b) if the court thinks the matter should not proceed on that day or without the accused person, adjourn the hearing to a specified time and place and make an order for the apprehension of the accused person under Division 2.

251 Procedure where both parties do not appear

If both the prosecutor and the accused person are not present, on a day and at the time and place to which a hearing has been adjourned, the court may proceed to hear and determine the matter in the absence of the parties.

252 Procedure where both parties appear

If both the prosecutor and the accused person are present on a day and at the time and place set for the hearing and determination of proceedings for a summary offence (including a day, time and place to which a hearing has been adjourned) the court must proceed to hear and determine the matter.

253 Court may order payment of costs

- (1) A court may, in and by a conviction or order, order an accused person to pay to the prosecutor such costs as the court specifies or, if the conviction or order directs, as may be determined under subsection (2), if:
 - (a) the court convicts the accused person of an offence, or
 - (b) the court makes an order dismissing the charge for an offence, or
 - (c) the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of an offence.
- (2) The costs payable by a prosecutor or accused person in accordance with a direction under this section are to be determined:
 - (a) by agreement between the prosecutor and accused person, and
 - (b) if no such agreement can be reached, in accordance with the rules.

- (3) Rules made for the purposes of this section may, without limitation, adopt all or any specified provisions of Division 6 of Part 11 of the *Legal Profession Act 1987*, with or without specified modifications.
- (4) Any such rule may:
 - (a) confer or impose, or have the effect of conferring or imposing, jurisdiction or functions on any court or judicial officer, or
 - (b) confer or impose, or have the effect of conferring or imposing, functions on any officer or costs assessor.

254 Enforcement of fines and orders

The payment of any money ordered by a court exercising summary jurisdiction under this Part to be paid as a penalty or for costs is taken to be a fine within the meaning of the *Fines Act 1996*.

255 Termination of lower court proceedings on commencement of proceedings under this Part

Any proceedings in a court to which Parts 2–4 apply for an offence for which proceedings may be taken under this Part or before that court are to be terminated on the court being notified, in accordance with the rules, of the commencement of proceedings under this Part for the offence.

256 Effect of conviction under this Part

A conviction under this Part for an offence that is of a kind that may be tried either on indictment or under this Part is taken for all purposes, except the *Crimes (Local Courts Appeal and Review) Act 2001*, to be a conviction on indictment.

257 Rules for summary criminal procedure

- (1) The Rule Committee may make rules for or with respect to the practice and procedure of a court in the exercise of summary jurisdiction under this Part.
- (2) Without limiting the generality of subsection (1), the rules may make provision for or with respect to:

- (a) the service of orders under Division 2,
 - (b) pre-trial procedures and related practices,
 - (c) the attendance or apprehension of witnesses,
 - (d) the examination of witnesses on oath, affirmation or declaration,
 - (e) the production by witnesses of books, documents and writings,
 - (f) the execution of warrants for the apprehension of any person,
 - (g) any matter that by this Part is required to be prescribed by rules or that is necessary or convenient for the carrying out of or giving effect to the provisions of this Act relating to the summary jurisdiction of a court.
- (3) Nothing in this section limits the rule-making powers conferred on the Supreme Court by the *Supreme Court Act 1970*.

[83] Chapter 5, heading

Insert after new section 257:

Chapter 5 Summary disposal of indictable offences by Local Courts

[84] Sections 18–28

Re-number as sections 258–268 and transfer to Chapter 5.

[85] New sections 258, 259, 260, 261, 262, 264 (3), 266 (1), 267 (1) and 268 (1) and headings

Omit “Division” wherever occurring. Insert instead “Chapter”.

[86] New section 258 and 265 (2)

Omit “prosecuting authority” wherever occurring.
Insert instead “prosecutor”.

[87] New sections 261 and 262 (1)

Omit “, the relevant provisions of the *Justices Act 1902*” wherever occurring. Insert instead “this Act”.

[88] New section 262 (2)

Omit “section 51A of the *Justices Act 1902*”.
Insert instead “Division 5 of Part 2 of Chapter 3”.

[89] New section 263

Insert at the end of the section:

- (4) An election may be made on behalf of a corporation by a person appearing as a representative of the corporation.
- (5) The jurisdiction of a Local Court under this section may be exercised by a registrar.

[90] New section 265 (2) (a)

Omit “section 66D of the *Justices Act 1902*”.
Insert instead “section 186”.

[91] New section 265 (2A)

Omit the subsection. Insert instead:

- (2A) Despite subsection (2) (a), the prosecutor is not required to include a copy of a proposed exhibit identified in a brief of evidence if it is impossible or impractical to copy the exhibit. However, the prosecutor must in that case comply with section 184 (2).

[92] New section 265 (4)

Omit “Subdivision 6A of Division 2 of Part 4 of the *Justices Act 1902*”.
Insert instead “section 183 (2)”.

[93] New section 265 (5)

Insert at the end of new section 265:

- (5) The jurisdiction of the Local Court under this section may also be exercised by a registrar.

[94] Section 29 Jurisdiction of Local Court

Omit the section.

[95] Sections 30–34

Re-number as sections 269–273 and transfer to Chapter 5.

[96] New sections 269, 270, 271, 272 and 273

Omit “Part” wherever occurring. Insert instead “Chapter”.

[97] New section 270

Omit “Section 56 of the *Justices Act 1902*”.
Insert instead “Section 187”.

[98] Chapter 6, headings and sections 274 and 275

Insert after new section 273:

Chapter 6 Evidentiary matters

Part 1 Preliminary

274 Application

This Part applies, to the extent that it is capable of being applied, to all offences, however arising (whether under an Act or at common law), whenever committed and in whatever court dealt with.

275 Definitions

In this Part:

Judge includes a Magistrate, a Children’s Court Magistrate, a Licensing Magistrate, a warden of a Warden’s Court, the President or a judicial member of the Industrial Relations Commission and an Industrial Magistrate and any other person of a class prescribed for the purposes of this definition.

Part 2 General

[99] Sections 101–104

Re-number as sections 276–279 and transfer to Chapter 6.

[100] Section 106 Disclosure of address or telephone number of witness

Re-number as section 280 and transfer to Chapter 6.

[101] New section 280 (7)

Omit the subsection.

[102] Section 108 Admissions by suspects

Re-number as section 281 and transfer to Chapter 6.

[103] Chapter 6, Part 3, heading

Insert after new section 281:

Part 3 Medical examinations and law enforcement devices

[104] Sections 109 and 110

Re-number as sections 282 and 283 and transfer to Chapter 6.

[105] New section 282 (3)

Omit “prosecuting authority”. Insert instead “prosecutor”.

[106] Chapter 6, Part 4, heading

Insert after new section 283:

Part 4 Depositions and written statements

[107] Sections 111–116

Renumber as sections 284–289 and transfer to Chapter 6.

[108] New sections 284 and 285

Omit “justice” wherever occurring. Insert instead “Judge”.

[109] New section 284 (5)

Omit “prosecuting authority”. Insert instead “prosecutor”.

[110] New section 285

Omit “section 41 (1B) of the *Justices Act 1902*” wherever occurring.
Insert instead “section 72”.

[111] New section 285 (6)

Omit the subsection. Insert instead:

(6) In this section:

Judge includes a coroner holding office under the *Coroners Act 1980*.

[112] New section 286 (1)

Omit “justice” where firstly occurring. Insert instead “judge”.

[113] New section 286 (1) (b)

Omit “justice” wherever occurring. Insert instead “Magistrate”.

[114] New section 286 (3)

Omit the subsection. Insert instead:

(3) In this section:

Judge includes a coroner holding office under the *Coroners Act 1980*.

[115] New section 287 (2) (b)

Omit “regulations made under the *Justices Act 1902*”. Insert instead “rules”.

[116] New section 289 (1) (a)

Omit “section 48A of the *Justices Act 1902*”.

Insert instead “Division 3 of Part 2 of Chapter 3”.

[117] New section 289 (1) (a)

Omit “section 48F of that Act”. Insert instead “that Division”.

[118] New section 289 (1) (b)

Omit “section 51A of the *Justices Act 1902*”.

Insert instead “Division 5 of Part 2 of Chapter 3”.

[119] New section 289 (3) (b)

Omit “justice” wherever occurring. Insert instead “Magistrate”.

[120] Chapter 6, Part 5, headings

Insert after new section 289:

Part 5 Evidence in sexual offence proceedings

Division 1 Evidence in certain sexual offence proceedings

[121] Sections 117–119

Re-number as sections 290–292 and transfer to Chapter 6.

[122] New section 292 (2)

Omit “prosecuting authority”. Insert instead “prosecutor”.

[123] Section 105 Admissibility of evidence relating to sexual experience

Re-number as section 293 and transfer to Chapter 6.

[124] Section 107 Warning to be given by Judge in relation to lack of complaint in certain sexual offence proceedings

Re-number as section 294 and transfer to Chapter 6.

[125] Chapter 6, Part 5, Division 2, heading

Insert after new section 294:

Division 2 Sexual assault communications privilege

[126] Sections 147–157 and 159

Re-number as sections 295–306 and transfer to Chapter 6.

[127] New section 295 (1), definition of “protected confidence”

Omit “148”. Insert instead “296”.

[128] New section 295 (1), definition of “sexual assault offence”

Omit “Division 6 of Part 4”. Insert instead “Division 1”.

[129] New sections 295 (2) and (3), 296, 298 (1), 300, 301, 303, 304, 305 and 306

Omit “Part” wherever occurring. Insert instead “Division”.

[130] New section 299 (6)

Omit “laid the information”. Insert instead “instituted proceedings”.

[131] Section 158 Application of Part

Omit the section.

[132] Chapter 7, headings

Insert after new section 306:

Chapter 7 Miscellaneous

Part 1 General

[133] Sections 120 and 121

Re-number as sections 307 and 308 and transfer to Chapter 7.

[134] New section 308

Omit “justice”. Insert instead “authorised officer”.

[135] Sections 309–316

Insert after new section 308:

309 Certificate as to indictment

- (1) If an indictment has been filed in the Supreme Court or the District Court against any person not in custody, the proper officer of the Court must, if the person indicted fails to appear and plead to the indictment at any time during the sittings of the Court, issue a certificate that the indictment has been filed.
- (2) The certificate may only be issued on the application of the prosecutor or a person applying on the prosecutor’s behalf.

310 Warrants that may be issued on production of certificate

- (1) If the certificate under section 309 is produced to a Magistrate or an authorised officer, the Magistrate or authorised officer may issue a warrant under this section.

- (2) If the person who has been indicted is imprisoned or otherwise in custody in relation to another offence, the Magistrate or authorised officer may issue a warrant directed to the person who has custody of the person requiring the person to be detained until the person is removed from custody for trial or otherwise lawfully removed or discharged from custody.
- (3) The warrant must not be issued unless proof on oath is given that the person who is in custody is the person who has been indicted.
- (4) If the person who has been indicted is not in custody, the Magistrate or authorised officer may issue a warrant to arrest the person.
- (5) Part 4 of Chapter 4 applies to a warrant issued under this section.

311 Procedure after arrest

- (1) A person who is arrested under a warrant issued under section 310 must be brought before a Magistrate or an authorised officer as soon as practicable.
- (2) The Magistrate or authorised officer must, if bail is not dispensed with or granted:
 - (a) by warrant commit the accused person to a correctional centre or other place of security, and
 - (b) order the person to be brought before the Supreme Court or District Court for trial.
- (3) The Magistrate or authorised officer must give notice of the specified time and place to the prosecutor.
- (4) Part 4 of Chapter 4 applies to a warrant of commitment issued under this section.

312 Persons arrested under bench warrants

- (1) A Magistrate, an authorised officer or authorised justice (within the meaning of the *Bail Act 1978*) before whom a person is brought after having been arrested under a bench warrant issued by a Judge in criminal proceedings must, if bail is not dispensed with or granted:

Schedule 1 Amendments

- (a) by warrant commit the person to a correctional centre or other place of security, and
 - (b) order the person to be brought before the court out of which the bench warrant was issued in accordance with the terms of the warrant.
- (2) The *Bail Act 1978* applies to the person (not being an accused person) in the same way as it applies to an accused person and, for that purpose, bail may be granted to the person with respect to the period between:
- (a) the person's being committed under this section, and
 - (b) the person's being brought before the court out of which the bench warrant was issued.
- (3) In this section:
- judge* includes a Magistrate, a Children's Court Magistrate, a Licensing Magistrate, a warden of a Warden's Court, the President or a judicial member of the Industrial Relations Commission and an Industrial Magistrate and any other person of a class prescribed for the purposes of this definition.

313 Warrants

- (1) A printed representation of a seal on a warrant issued under this Act is sufficient to comply with a requirement under this or any other Act that a warrant be sealed.
- (2) A copy of a warrant issued under this Act (being a copy produced by means of a photographic process or facsimile transmission) is:
 - (a) as valid and effectual as the original warrant, and
 - (b) confers the same functions as the original warrant.

314 Media access to court documents

- (1) A media representative is entitled to inspect documents set out in subsection (2) relating to criminal proceedings if an application to do so is made to the registrar not later than 2 working days after the proceedings are finally disposed of and the inspection is for the purpose of compiling a fair report of the proceedings for publication.

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- (2) The documents are copies of the indictment, court attendance notice or other document commencing the proceedings, witnesses' statements tendered as evidence, brief of evidence, police fact sheet (in the case of a guilty plea), transcripts of evidence and any record of a conviction or an order.
 - (3) The registrar is not required to make documents available for inspection if the documents are not in the possession or control of the registrar.
 - (4) The registrar must not make documents available for inspection if:
 - (a) the proceedings are subject to an order prohibiting their publication, a suppression order or are held in closed court, or
 - (b) the documents are prohibited from being published or disclosed by or under any other Act or law.
 - (5) The registrar must ensure that, if documents are made available, that the name or address of a witness is not disclosed.

315 Savings, transitional and other provisions

Schedule 2 has effect.

316 Provisions relating to offences

Schedule 3 has effect.

317 Bail Act 1978 to prevail

Except where expressly provided, the *Bail Act 1978* prevails to the extent of any inconsistency between that Act and this Act.

[136] Chapter 7, Part 2, headings

Insert after new section 317:

Part 2 Police custody of property

Division 1 General

[137] Sections 133–138

Renumber as sections 318–323 and transfer to Chapter 7.

[138] New section 322 (a)

Omit “, constituted by a Magistrate sitting alone,”.

[139] Chapter 7, Part 3, Division 2, heading

Insert after new section 323:

Division 2 Livestock

[140] Sections 139–146

Renumber as sections 324–331 and transfer to Chapter 7.

[141] Existing Part and Division headings

Omit the headings to existing Parts 1–7, including any Division headings in those Parts.

[142] Schedule 2 Savings, transitional and other provisions

Omit “3C”. Insert instead “315”.

[143] Schedule 2, clause 1 (1)

Insert at the end of clause 1 (1):

*Criminal Procedure Amendment (Justices and Local Courts)
Act 2001*

Justices Legislation Repeal and Amendment Act 2001

[144] Schedule 2

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Criminal Procedure Amendment (Justices and Local Courts) Act 2001 and Justices Legislation Repeal and Amendment Act 2001

Definitions

In this Part:

amended Criminal Procedure Act means this Act, as amended by the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*.

amended Local Courts Act means the *Local Courts Act 1982*, as amended by the *Justices Legislation Repeal and Amendment Act 2001*.

old Act means this Act, as in force before its amendment by the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*.

renumbered provision means a provision of this Act that is renumbered by the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*.

repealed provision means a provision of an Act that is repealed by one of the 2001 amending Acts.

2001 amending Acts means the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001* and the *Justices Legislation Repeal and Amendment Act 2001*.

Consequences of abolition of office of Clerk of the Peace

- (1) The registry functions of the abolished office of the Clerk of the Peace are the functions of the registrars and other officers of the Supreme Court or the District Court.
- (2) Subclause (1) has effect subject to this Act and any other Act and, in particular, does not affect the functions of the Criminal Listing Director.

- (3) A reference in any other Act, in any instrument made under any Act or in any other instrument of any other kind to the Clerk of the Peace is to be read as a reference to such person or persons as may be prescribed.

General saving relating to proceedings

- (1) If any proceedings commenced, or any other thing commenced or done, under a repealed provision still having effect or not completed immediately before the repeal could have been done or commenced under the corresponding provision of the amended Criminal Procedure Act or the amended Local Courts Act:
 - (a) the thing done continues to have effect, or
 - (b) the proceedings or other thing commenced may be completed.
- (2) A decision, order or a sentence made by a Local Court, or any other person or body, that is completed under subclause (1) may be enforced as if the provisions of the old Act and the *Justices Act 1902* and any repealed instruments under those Acts were still in force.
- (3) Any act, matter or thing done or omitted to be done under a repealed provision or renumbered provision, and having force immediately before the commencement of a provision of an Act that replaces the repealed provision or renumbers the provision, is on that commencement taken to be done under the corresponding provision of the amended Criminal Procedure Act or Local Courts Act (as the case requires).

Construction of certain references

- (1) Except as provided by this clause, a reference in any other Act or instrument:
 - (a) to a repealed provision for which there is a corresponding provision in the amended Criminal Procedure Act, or to a renumbered provision, extends to the corresponding provision of the amended Criminal Procedure Act, and

- (b) to a repealed provision for which there is a corresponding provision in the amended Local Courts Act extends to the corresponding provision of the amended Local Courts Act, and
 - (c) to any act, matter or thing referred to in a repealed provision or a renumbered provision extends to the corresponding act, matter or thing referred to in the corresponding provision of the amended Criminal Procedure Act or amended Local Courts Act.
- (2) The regulations may provide that a reference in any other Act or instrument or a specified instrument to a repealed provision or a renumbered provision is to be read as a reference to another specified instrument (or a specified provision of such an instrument).

Functions of justices conferred on Magistrates or Local Courts

In any Act or statutory rule under which a function is conferred on one or more justices (other than an authorised justice), a reference to a justice in connection with the function is taken to be a reference to a Magistrate or Local Court, if the function is, because of the 2001 amending Acts, instead conferred on a Magistrate or Local Court.

Previous acts done by justices

An act, matter or thing done or omitted to be done by a justice (other than a Magistrate or an authorised justice within the meaning of the *Search Warrants Act 1985*) before the commencement of this clause in accordance with a provision of an Act or a statutory rule continues to have effect after that commencement as if the Act, matter or thing were done by an authorised officer or a Magistrate (as the case requires).

Offences committed before commencement of clause

- (1) The provisions of the amended Criminal Procedure Act, and any instruments made under that Act, apply to or in relation to proceedings for an offence committed before the commencement of this clause, if proceedings for the offence were not commenced before the commencement of this clause.

- (2) The provisions of the old Act and the *Justices Act 1902*, and any instruments made under those Acts, continue to apply to or in relation to proceedings for an offence committed before the commencement of this clause, if proceedings for the offence were commenced before the commencement of this clause.
- (3) For the purposes of this clause, proceedings are taken to have been commenced in respect of an offence if an information was laid or a complaint made, or an attendance notice issued, in relation to the offence, before the commencement of this clause.
- (4) This clause applies to all proceedings for offences (including committal proceedings).
- (5) This clause does not apply to or in respect of Parts 4A, 5, 5A and 5B of the *Justices Act 1902*.

Provisions about appearances and service of documents

Without limiting the generality of any other provision of this Part, the provisions of the old Act and any instrument made under that Act continue to apply to or in relation to:

- (a) requiring the appearance of accused persons, witnesses and other persons at proceedings relating to offences to which the old Act and the *Justices Act 1902* continue to apply, and
- (b) the issue and enforcement of and requirements for warrants of apprehension and commitment relating to offences to which the old Act and the *Justices Act 1902* continue to apply, and
- (c) the service of process and other documents relating to offences to which the old Act and the *Justices Act 1902* continue to apply.

Previous warrants

A warrant issued under the *Justices Act 1902* before the commencement of this clause and in force before that commencement continues to have effect, and may be executed and enforced, as if that Act were still in force.

Costs

Without limiting the generality of any other provision of this Part, the provisions of the *Justices Act 1902* and any instrument made under that Act continue to apply to or in relation to:

- (a) orders for, and the payment of, costs by accused persons or other persons in any proceedings commenced under that Act before the commencement of this clause, and
- (b) the enforcement of any such order.

Protection and immunities of justices

A provision of an Act or a statutory instrument that confers on a person or body the same protection and immunities as a justice of the peace (however expressed) is taken to confer on the person or body:

- (a) the same protection and immunities as are conferred on a Magistrate, if the protection and immunities are conferred in respect of the exercise of judicial functions or functions required to be exercised judicially, or
- (b) the same protection and immunities as are conferred on a registrar of a Local Court, if the protection and immunities are conferred in respect of the exercise of any other function.

Depositions

A provision of an Act or a statutory rule relating to the making or use (including the admissibility) of a deposition of a witness made before the commencement of this clause, and in force immediately before that commencement, continues to apply to a deposition made in accordance with any applicable law before the commencement of this clause.

Translation of old references to new references

References in an Act (other than this Act), in any instrument made under an Act or in any other instrument, to an expression listed in Column 1 of the Table to this clause are taken to be references to the expression listed next to that expression in Column 2 of the Table.

Table**Old expression****New expression**

justices in petty sessions	Local Court
summary proceedings before justices	summary proceedings before a Local Court
Act regulating summary proceedings before justices	<i>Criminal Procedure Act 1986</i> , if the reference relates to proceedings for an offence <i>Local Courts Act 1982</i> , if the reference relates to any other proceedings
clerk of courts of petty sessions or clerk of petty sessions	registrar of a Local Court
clerk of a Local Court	registrar of a Local Court
laying an information for an offence, if the reference is to an offence required to be dealt with by a Local Court	issuing and filing a court attendance notice
making a complaint or issuing a summons, if the reference is to an offence to be dealt with by a Local Court (other than under the <i>Local Courts (Civil Claims) Act 1970</i>)	issuing and filing a court attendance notice
making a complaint or issuing a summons, if the reference is to a matter required to be dealt with by a Local Court (other than an offence under the <i>Local Courts (Civil Claims) Act 1970</i>)	issuing and filing an application notice
issue of an attendance notice for an offence, if the reference is to an offence required to be dealt with by a Local Court	issuing and filing a court attendance notice

Old expression	New expression
warrant of apprehension or warrant to apprehend, if the reference is to a warrant issued under the <i>Justices Act 1902</i>	arrest warrant
deposition, if the reference is to evidence given by a witness before a Magistrate or Local Court	transcript of evidence

Authorised justices under Search Warrants Act 1985

- (1) Nothing in the 2001 amending Acts affects the appointment of any existing authorised justice and any such person is taken to have been appointed under the *Search Warrants Act 1985*, as amended by the *Justices Legislation Repeal and Amendment Act 2001*.
- (2) In this clause:
existing authorised justice means a person who was, immediately before the commencement of the amendments made to section 3 of the *Search Warrants Act 1985* by the *Justices Legislation Repeal and Amendment Act 2001*, an authorised justice within the meaning of the *Search Warrants Act 1985*.

[145] Schedule 3, headings

Insert after Schedule 2:

Schedule 3 Provisions relating to offences

(Section 316)

Part 1 Contempt

[146] Section 53 Institution of contempt proceedings

Renumber as clause 1 and transfer to Schedule 3.

[147] Schedule 3, new clause 1 (2)

Omit “subsection” wherever occurring. Insert instead “subclause”.

[148] Schedule 3, Part 2, heading

Insert after new clause 1:

Part 2 Treason and treason-related offences

[149] Sections 128–132

Re-number as clauses 2–6 and transfer to Schedule 3.

[150] Schedule 3, new clause 3 (1) (a)

Omit “one or more justice or justices”.

Insert instead “a Magistrate or an authorised officer”.

[151] Schedule 3, new clause 3 (1) (b)

Omit “apprehension”. Insert instead “arrest”.

[152] Schedule 3, Part 3, heading

Insert after new clause 6:

Part 3 Stealing offences

[153] Sections 74–79

Re-number as clauses 7–12 and transfer to Schedule 3.

[154] Schedule 3, new clause 7 (2)

Omit “prosecuting authority”. Insert instead “prosecutor”.

[155] Schedule 3, Part 4, heading

Insert after new clause 12:

Part 4 Other offences

[156] Sections 70–73

Re-number as clauses 13–16 and transfer to Schedule 3.

[157] Section 122 On trial for perjury: presumption of authority to administer oath

Re-number as clause 17 and transfer to Schedule 3.

[158] Sections 80–84

Re-number as clauses 18–22 and transfer to Schedule 3.

[159] Schedule 3, new clause 21 (1)

Omit “section”. Insert instead “clause”.

[160] Schedule 3, new clause 21 (6)

Omit “prosecuting authority”. Insert instead “prosecutor”.

[161] New clause 22 (3), Schedule 3

Omit “subsection”. Insert instead “subclause”.

[Minister's second reading speech made in—
Legislative Assembly on 4 December 2001
Legislative Council on 13 December 2001]