

# Criminal Procedure Act 1986 No 209

[1986-209]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Children and Young Persons Legislation \(Repeal and Amendment\) Act 1998 No 158](#) (not commenced)
- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 1999](#)

### Authorisation

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# Criminal Procedure Act 1986 No 209



New South Wales

An Act relating to the prosecution of indictable offences, the listing of criminal proceedings before the Supreme Court and the District Court and the giving of certain indemnities and undertakings; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Criminal Procedure Act 1986*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

### 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**committal proceedings** means a hearing before a Magistrate (or one or more justices) for the purpose of deciding whether a person charged with an indictable offence should be committed for trial or sentence.

**indictable offence** means an offence (including a common law offence) that may be prosecuted on indictment.

**offence** means an offence against the laws of the State.

**prescribed summary offence** has the same meaning as in the *Director of Public Prosecutions Act 1986*.

**prosecuting authority** means the Director of Public Prosecutions or other person responsible for the conduct of a prosecution.

**regulations** means regulations under this Act.

**summary offence** means an offence that is not an indictable offence.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

### **3A 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) Subsection (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 kind to the Clerk of the Peace shall be read as a reference to such person or persons as may be prescribed.

### **3B Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **3C Savings, transitional and other provisions**

Schedule 1 has effect.

## **Part 2 Indictable offences generally**

### **4 Prosecution of indictable offences**

- (1) All offences shall be punishable by information (to be called an indictment) in the Supreme Court or the District Court, on behalf of the Crown, in the name of the Attorney General or the Director of Public Prosecutions.
- (2) Such an indictment may be presented or filed whether or not the person to whom the indictment relates has been committed for trial in respect of an offence specified in the indictment.
- (3) This section does not apply to offences that may be heard and determined in a summary manner only.
- (4) This section does not affect any law or practice that provides for an indictable offence to be heard and determined in a summary manner.



## 5 Jurisdiction of courts

- (1) The Supreme Court has jurisdiction in respect of all indictable offences.
- (2) The District Court has jurisdiction in respect of all indictable offences, other than such offences as may be prescribed by the regulations for the purposes of this section.

## 6 Certain matters not affected

Nothing in this Part affects any law or practice relating to:

- (a) the laying of an information before a justice in respect of an indictable offence, or
- (b) committal proceedings for an indictable offence.

## Part 3 Listing

### 7 Definitions

In this Part:

**Criminal Listing Director** means the public servant holding or acting in the position of that name, and includes any public servant authorised by the Criminal Listing Director, or in accordance with the regulations, to exercise any functions of the Criminal Listing Director.

**criminal proceedings** means:

- (a) proceedings relating to the trial of a person before the Supreme Court or the District Court,
- (b) proceedings relating to the sentencing of a person by the Supreme Court or the District Court, or
- (c) proceedings relating to an appeal under the *Justices Act 1902* to the District Court in its criminal jurisdiction.

### 8 Listing

- (1) The Criminal Listing Director is, subject to the regulations, to make arrangements for the listing of criminal proceedings that are to be heard and determined before the Supreme Court or the District Court.
- (1A) In making such listing arrangements, the Criminal Listing Director is responsible to:
  - (a) the Chief Justice of the Supreme Court, in the case of criminal proceedings that are to be heard and determined before that Court, or
  - (b) the Chief Judge of the District Court, in the case of criminal proceedings that are to be heard and determined before that Court.

- (2) The regulations may make provision for or with respect to the practice and procedure to be adopted for the listing of criminal proceedings that are to be heard and determined before the Supreme Court or the District Court.
- (3) Regulations made under this section prevail over rules of court, or any direction or order of a court, to the extent of any inconsistency.

### **9 Listing for mention following committal for trial**

If, at the end of a period prescribed by the regulations for the purposes of this section (being a period that commenced to run when an accused person was committed for trial):

- (a) the Criminal Listing Director has not received a notice of readiness in respect of the proceedings that is accompanied by a draft indictment, and
- (b) the matter has not been terminated,

the Criminal Listing Director shall arrange for the matter to be listed for mention before the Supreme Court or the District Court as soon as practicable.

### **10 Authority of Criminal Listing Director**

It is the duty of all persons involved in criminal proceedings to abide, as far as practicable, by the arrangements made by the Criminal Listing Director in exercising functions under this Act.

### **11 Liaison**

For the purpose of exercising the functions conferred on the Criminal Listing Director, the Criminal Listing Director may liaise with the Judges and officers of the Supreme Court and the District Court, prosecuting authorities, accused persons and their lawyers, and other persons involved in criminal proceedings.

### **12 Certain matters not affected**

- (1) This Part does not authorise the Criminal Listing Director:
  - (a) to fix or change the venue of proceedings, except with the consent of the accused person and the prosecuting authority, or
  - (b) to determine when or where a court is to exercise its jurisdiction.
- (2) Nothing in this Part relating to the Criminal Listing Director affects:
  - (a) the power of the Attorney General to fix or change the venue of any matter,
  - (b) the power of a court to regulate proceedings before it,
  - (c) the power of a court to adjourn any matter,

- (d) proceedings in the Court of Criminal Appeal,
- (e) proceedings in the Supreme Court in its summary jurisdiction, or
- (f) proceedings under the *Bail Act 1978*.

## **Part 4 Indemnities and undertakings**

### **13 Indemnities**

- (1) The Attorney General may, if of the opinion that it is appropriate to do so, grant a person an indemnity from prosecution (whether on indictment or summarily):
  - (a) for a specified offence, or
  - (b) in respect of specified acts or omissions.
- (2) If the Attorney General grants such an indemnity, no proceedings may thereafter be instituted or continued against the person in respect of the offence or the acts or omissions.
- (3) Such an indemnity may be granted conditionally or unconditionally.
- (4) Such an indemnity may not be granted in respect of a summary offence that is not a prescribed summary offence, unless the Attorney General has consulted the Minister administering the enactment or instrument under which the offence is created.

### **14 Undertakings**

- (1) The Attorney General may, if of the opinion that it is appropriate to do so, give to a person an undertaking that:
  - (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in specified proceedings, or
  - (b) the fact that the person discloses or produces a document or other thing in specified proceedings,being proceedings for an offence against a law of the State (whether an indictable offence or a summary offence), will not be used in evidence against the person.
- (2) If the Attorney General gives such an undertaking:
  - (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in the specified proceedings, or
  - (b) the fact that the person discloses or produces a document or other thing in the specified proceedings,is not admissible in evidence against the person in any civil or criminal proceedings,

other than proceedings in respect of the falsity of evidence given by the person.

- (3) Such an undertaking may be given conditionally or unconditionally.
- (4) Such an undertaking may not be given in respect of a summary offence that is not a prescribed summary offence, unless the Attorney General has consulted the Minister administering the enactment or instrument under which the offence is created.

## **Part 5 Institution of proceedings**

### **15 Signing of indictments**

- (1) An indictment shall be signed:
  - (a) by the Attorney General, the Solicitor General or the Director of Public Prosecutions, or
  - (b) for and on behalf of the Attorney General or the Director of Public Prosecutions by:
    - (i) a Crown Prosecutor,
    - (ii) a Deputy Director of Public Prosecutions, or
    - (iii) a person authorised under subsection (2) to sign indictments.
- (2) The Director of Public Prosecutions may, by order in writing, authorise a person to sign indictments for and on behalf of the Director.
- (3) It shall be presumed, in the absence of evidence to the contrary, that an indictment signed by a person for and on behalf of the Attorney General or the Director of Public Prosecutions was signed by a person authorised to do so.
- (4) A certificate signed by the Director of Public Prosecutions to the effect that a specified person was authorised during a specified period to sign indictments for and on behalf of the Director is admissible in evidence in any legal proceedings and is evidence of the matters certified.

### **16 Name in which prosecutions may be instituted**

Any prosecution or proceedings instituted by the Attorney General or the Director of Public Prosecutions in respect of any offence (whether an indictable offence or a summary offence) may be instituted in either the official name or the personal name of the Attorney General or the Director of Public Prosecutions.

### **16A Directions as to indictments to be presented in the District Court**

- (1) The Chief Justice of the Supreme Court may issue a practice note on behalf of the Supreme Court giving directions to prosecuting authorities with respect to the classes of indictments that are to be presented to the District Court rather than the Supreme

Court.

- (2) The Chief Justice may exempt a particular indictment from any such direction.
- (3) The Supreme Court may reject an indictment:
  - (a) that is of a class to which any such direction applies, and
  - (b) that was presented after the direction was given, and
  - (c) that has not been exempted from the direction by the Chief Justice.
- (4) The rejection of an indictment does not preclude the presentation of a further indictment in accordance with any such direction.

#### **16B Institution of contempt proceedings**

- (1) Proceedings for contempt of court may be instituted in the Supreme Court in the name of the "State of New South Wales" by:
  - (a) the Attorney General, or
  - (b) the Solicitor General or Crown Advocate acting under a delegation from the Attorney General.
- (2) Nothing in subsection (1) prevents contempt of court being dealt with in any other manner, and in particular nothing in that subsection prevents proceedings for contempt of court from being instituted in any other manner.

#### **17 Supreme Court or District Court may require indictment to be presented**

- (1) In this section, ***court*** means the Supreme Court or District Court.
- (2) A court may order an indictment to be presented on the date fixed for the trial of a person in the court for an indictable offence, or on or before some other later date.
- (3) A court may order the presentation of an indictment whether or not the prosecutor is ready to proceed with the case.
- (4) A court may, if an indictment is not presented in accordance with its order, adjourn the proceedings or take such other action as it thinks appropriate in the circumstances of the case.
- (5) The prosecutor has no right to an adjournment merely because an indictment has not been presented.
- (6) A court must, in exercising any power under this section, have regard to the fact that the Crown does not have a right of appeal if the accused person is acquitted.
- (7) This section does not affect the powers of the court under section 365 of the *Crimes*

*Act 1900.*

- (8) This section extends to criminal proceedings commenced, but not concluded, before the commencement of this section.

**18 Common informer** (cf *Fines and Penalties Act 1901* sec 4)

A prosecution or proceeding in respect of any offence under an Act may be instituted by any person unless the right to institute the prosecution or proceeding is expressly conferred by that Act on a specified person or class of persons.

**19 Trial proceedings after presentation of indictment and before empanelment of jury**

- (1) In this section, **court** means the Supreme Court or District Court.
- (2) The court has jurisdiction with respect to the conduct of proceedings on indictment as soon as the indictment is presented and the accused is arraigned, and any orders that may be made by the court for the purposes of the trial in the absence of a jury may be made before a jury is empanelled for the trial.
- (3) If proceedings are held for the purpose of making any such orders after the indictment is presented to commence the trial and before the jury is empanelled:
- (a) the proceedings are part of the trial of the accused, and
  - (b) the accused is to be arraigned again on the indictment when the jury is empanelled for the continuation of the trial.
- (4) Nothing in this section requires a jury to be empanelled if the accused pleads guilty to an offence during proceedings to which this section applies.
- (5) This section applies to proceedings in respect of indictments presented after the commencement of this section.

**Part 6 Sentencing by reference to outstanding charges**

**20 Definitions**

- (1) In this Part:
- court** means:
- (a) the Court of Criminal Appeal,
  - (b) the Supreme Court,
  - (c) the Land and Environment Court,
  - (d) the District Court,

- (d1) the Drug Court, or
- (e) a Local Court, or
- (f) any other court which, or person who, exercises criminal jurisdiction.

**penalty** includes a sentence of imprisonment, an order for periodic detention, a fine and a community service order, but does not include an order or direction referred to in section 22.

- (2) In this Part, a reference to imposing a penalty on a person includes a reference:
  - (a) to making an order under section 556A of the *Crimes Act 1900* relating to the person, and
  - (b) to deferring the imposition of a penalty on the person, and
  - (c) to making a decision or an order requiring or permitting the person to enter into a recognizance, and
  - (d) to making a decision or an order to remand the person in custody or to remand or release the person (whether or not on conditions), and
  - (e) if the court concerned is the Children's Court—to dealing with the person under section 33 of the *Children (Criminal Proceedings) Act 1987*.
- (3) This Part applies:
  - (a) to a person who is found guilty of an offence committed before or after the commencement of this Part, and
  - (b) so as to allow an offence committed before or after that commencement to be taken into account under this Part.

## **21 Outstanding charges may be taken into account**

- (1) If a person is found guilty of an offence and the court is satisfied that:
  - (a) a document in the form prescribed for the purposes of this section is filed in the court, and
  - (b) the document contains a list of one or more other offences with which the person has been charged but of which the person has not been convicted, and
  - (c) the document has been signed by the person and:
    - (i) by the Director of Public Prosecutions, or
    - (ii) for and on behalf of the Director of Public Prosecutions, by a specified person, or a person of a specified class, authorised by order in writing by the Director

of Public Prosecutions to sign documents under this section, or

(iii) by a prescribed person or a person of a prescribed class, and

(d) a copy of the document has been given to the person found guilty, and

(e) in all the circumstances it is proper to do so,

the court may, with the consent of the prosecutor and before dealing with the person for the offence of which the person has been found guilty, ask the person whether the person admits guilt in respect of all or any of the offences specified in the list and wishes them to be taken into account by the court in so dealing with the person.

(2) If the person:

(a) admits guilt in respect of all or any of the offences specified in the list, and

(b) wishes to have them taken into account by the court in dealing with the person for the offence of which the person has been found guilty,

the court may, if it thinks fit, in imposing a penalty on the person for the offence of which the person has been found guilty, take into account all or any of the offences in respect of which the person has admitted guilt.

(3) If the court takes into account under this section all or any of the offences in respect of which the person has admitted guilt, the penalty imposed on the person for the offence of which the person has been found guilty shall not exceed the maximum penalty that the court would have been empowered to impose on the person for the offence if no offence had been so taken into account.

(4) A court may take any offence into account under this section if it is of a kind for which the court has jurisdiction to impose a penalty, whether or not that jurisdiction requires the consent of the accused.

(5) Despite subsection (4):

(a) an indictable offence punishable with penal servitude for life cannot be taken into account under this section, and

(b) the Court of Criminal Appeal, Supreme Court or District Court may take any summary offence into account under this section.

(6) This section applies in relation to a document:

(a) that is in or to the effect of the form contained, before the commencement of this Part, in the Ninth Schedule to the *Crimes Act 1900*, and

(b) that was, before that commencement, filed in a court in accordance with section 447B of the *Crimes Act 1900*,



in the same way as it applies to a document in the form prescribed for the purposes of this section and signed in accordance with subsection (1) (c) that has been filed in the court.

## **22 Orders and directions relating to offences taken into account**

(1) If an offence is taken into account under section 21 in a case in which a document in the form prescribed for the purposes of that section is filed in a court, the court may make such orders or give such directions under any Act or law with respect to:

- (a) restitution, and
- (b) compensation, and
- (c) costs, and
- (d) forfeiture, and
- (e) disqualification, and
- (f) loss or suspension of a licence or privilege,

as it would have been empowered to make or give if the person had been convicted by the court of the offence when the offence was taken into account, but shall not otherwise impose any separate punishment for the offence.

(2) If the court makes any such order or gives any such direction in respect of an offence taken into account, there shall be such rights of appeal in respect of the order or direction as there would have been if the order or direction had been made or given on the conviction of the person for that offence.

(3) Any such order or direction in respect of an offence taken into account lapses, by force of this subsection, if the decision in respect of which the offence was taken into account is quashed or set aside.

## **23 Consequences of taking offences into account**

(1) If an offence is taken into account under section 21, the court shall certify, on the document filed under that section, that the offence was so taken into account.

(2) Subsequently, no proceedings shall be taken or continued in respect of the offence unless the decision in respect of which the offence has been taken into account is quashed or set aside.

(3) This section does not prevent offences taken into account under section 21 in deferring the imposition of a penalty from being taken into account under that section when imposing the penalty the imposition of which was deferred.

(4) An admission of guilt made for the purposes of section 21 is not admissible in

evidence in any proceedings relating:

- (a) to the offence in respect of which the admission was made, or
  - (b) to any other offence specified in the list contained in the document filed in the court.
- (5) An offence taken into account under section 21 shall not, because of its being so taken into account, be regarded for any purpose as an offence of which a person has been convicted.
- (6) In or in relation to any criminal proceedings, reference may lawfully be made to, or evidence may lawfully be given of, the fact that an offence was taken into account under section 21 in imposing a penalty for an offence of which a person was found guilty if, in or in relation to those proceedings:
- (a) reference may lawfully be made to, or evidence may lawfully be given of, the fact that the person was found guilty or convicted of the lastmentioned offence, and
  - (b) had the person been found guilty or convicted of the offence so taken into account, reference could lawfully have been made to, or evidence could lawfully have been given of, the fact that the person had been found guilty or convicted of that offence.
- (7) The fact that an offence was taken into account under section 21 may be proved in the same manner as the decision in respect of which it was taken into account may be proved.
- (8) This section applies in relation to an offence certified under section 447B of the [Crimes Act 1900](#) as having been taken into account in the same way as it applies in relation to an offence certified under this section as having been taken into account.

## Part 6A Sentencing—victim impact statements

### 23A Definitions

In this Part:

**family victim**, in relation to an offence, means a person who is, at the time the offence was committed, a member of the immediate family of a primary victim of the offence who has died as a direct result of that offence (whether or not the person suffered personal harm as a result of the offence).

**member of the immediate family** of a primary victim means:

- (a) the victim's spouse, or
- (b) the victim's de facto spouse, or partner of the same sex, who has cohabited with the victim for at least 2 years, or

- (c) a parent, guardian, or step-parent of the victim, or
- (d) a child or step-child of the victim or some other child for whom the victim is the guardian, or
- (e) a brother, sister, step-brother or step-sister of the victim.

**personal harm** means actual physical bodily harm, mental illness or nervous shock.

**primary victim**, in relation to an offence, means a person:

- (a) against whom the offence was committed, or
- (b) who was a witness to the act of actual or threatened violence, the death or the infliction of the physical bodily harm concerned,

and who has suffered personal harm as a direct result of the offence.

**victim** means a primary victim or a family victim.

### **23AA Application of Part**

- (1) This Part applies only in relation to an offence that is being dealt with in the Supreme Court, the District Court, the Children's Court or a Local Court, and only as provided by this section.
- (2) This Part applies in relation to an offence that is being dealt with in the Supreme Court or the District Court only if the offence is being dealt with on indictment and is:
  - (a) an offence that involves:
    - (i) an act of actual or threatened violence (including sexual assault), or
    - (ii) the death of, or actual physical bodily harm to, any person, or
  - (b) an offence in respect of which any law provides, if the offence results in the death of, or actual physical bodily harm to, any person, for a higher maximum penalty than the maximum penalty that could be imposed if the offence did not have that result.
- (3) This Part applies in relation to an offence that is being dealt with in the Children's Court or a Local Court only if the offence is:
  - (a) an offence that involves the death of any person, or
  - (b) an offence in respect of which any law provides, if the offence results in the death of any person, for a higher maximum penalty than the maximum penalty that could be imposed if the offence did not have that result.
- (4) Nothing in this Part limits any other law by or under which a court may receive and

consider a victim impact statement in relation to any offence to which this Part does not apply.

### **23B What is a victim impact statement?**

A **victim impact statement** is a statement containing particulars of:

- (a) in the case of a primary victim—any personal harm suffered by the victim as a direct result of the offence, or
- (b) in the case of a family victim—the impact of the death of the primary victim on the members of the immediate family of the primary victim.

### **23C When victim impact statements may be received and considered by court**

- (1) The Supreme Court or the District Court may receive and consider a victim impact statement relating to an offence, if the court considers it appropriate to do so, after a person has been convicted of the offence and before the court determines the punishment for the offence.
- (2) A victim impact statement may also be received and considered by the Supreme Court when it determines an application under section 13A of the [Sentencing Act 1989](#) for the determination of a minimum term and an additional term for an existing life sentence referred to in that section.
- (3) The Supreme Court or the District Court must receive a victim impact statement given by a family victim under this section and acknowledge its receipt and may make any comment on it that the court considers appropriate. However, the court must not consider the statement in connection with the determination of the punishment for the offence unless the court considers that it is appropriate to do so.
- (4) This section applies, in relation to a victim impact statement given by a family victim, to the Children's Court and a Local Court in the same way as it applies to the Supreme Court and the District Court.

### **23D Victim impact statements discretionary**

- (1) The giving of a victim impact statement is not mandatory.
- (2) A victim impact statement may not be received or considered by a court if the victim or any of the victims to whom the statement relates objects to the statement being given to the court.
- (3) The absence of a victim impact statement is not to give rise to an inference that an offence had little or no impact on a victim.

### **23E Formal requirements for victim impact statements**

- (1) A victim impact statement must be in writing and comply with such other

requirements as may be prescribed by the regulations.

- (2) If a primary victim is incapable of providing information for or objecting to a victim impact statement about the personal harm suffered by the victim, a family member or other representative of the victim may, subject to the regulations, act on behalf of the victim for that purpose.
- (3) A court may only receive and consider a victim impact statement if it is given in accordance with and complies with the requirements prescribed by or under this Part.

## **Part 7 Correction and adjustment of sentences**

### **23F Definitions**

In this Part:

***court*** means:

- (a) the Court of Criminal Appeal, the Supreme Court, the Land and Environment Court, the Industrial Relations Commission, the District Court or a Local Court, or
- (b) any other court which, or person who, exercises criminal jurisdiction.

***cumulative sentence*** means a sentence of imprisonment that is imposed so as to commence at the end of another sentence to which the same person is subject, or at the end of the minimum term of any such other sentence.

***sentence of imprisonment*** includes sentence of penal servitude.

### **24 Court may reopen proceedings to correct sentencing errors**

- (1) If a court has, in or in connection with any criminal proceedings (including proceedings on appeal):
  - (a) imposed a penalty that is contrary to law, or
  - (b) failed to impose a penalty that is required to be imposed by law,the court (whether or not differently constituted) may reopen the proceedings and, after giving the parties an opportunity of being heard, impose a penalty that is in accordance with the law (and, if necessary, amend any relevant conviction or order).
- (2) The court may reopen the proceedings on its own motion or on the application of a party to the proceedings.
- (3) This section applies to criminal proceedings whether or not a person has been convicted of an offence in those proceedings.
- (4) Subject to subsection (5), nothing in this section affects any right of appeal.

- (5) For the purposes of an appeal under any Act in respect of a penalty imposed in exercise of the powers conferred by this section, the time within which such an appeal is required to be made shall commence from the date on which the penalty is so imposed.
- (6) This section applies to a penalty imposed, or required to be imposed, whether before or after the commencement of this section.
- (7) In this section:  
**penalty** includes a sentence of imprisonment, an order for periodic detention, a fine, a community service order, a forfeiture, a disqualification, a loss or suspension of a licence or privilege and an order to pay costs or compensation.

#### **24A Court may adjust commencement of cumulative sentence on quashing or variation of earlier sentence**

- (1) A court that quashes or varies a sentence of imprisonment imposed on a person (on appeal or otherwise) may adjust the date of commencement of any cumulative sentence that has been imposed on that person by that or any other court.
- (2) If a person is subject to more than one cumulative sentence, this section applies to each such sentence.
- (3) A court may adjust a cumulative sentence under this section on its own motion or on the application of a party to the proceedings on the quashing or variation of the other sentence.
- (4) An appeal does not lie merely because of an adjustment of the date of commencement of a cumulative sentence under this section. This subsection does not affect the operation of section 24.
- (5) The length of a sentence, or the minimum term of a sentence, cannot be adjusted under this section.
- (6) This section applies to sentences imposed whether before or after the commencement of this section.

## **Part 8 Sentencing guidelines**

### **Division 1 Interpretation**

#### **25 Definitions**

In this Part:

**Court** means the Court of Criminal Appeal.

**guideline judgment** means a judgment containing guidelines to be taken into account

by courts sentencing offenders.

## **Division 2 Applications for sentencing guidelines**

### **26 Guideline judgments on application of Attorney General**

- (1) The Court may give a guideline judgment on application of the Attorney General.
- (2) An application may be made with respect to sentencing of persons found guilty of a particular specified indictable offence or category of indictable offences and may include submissions with respect to the framing of the guidelines.
- (3) An application is not to be made in any proceedings before the Court with respect to a particular offender.
- (4) The powers and jurisdiction of the Court to give a guideline judgment in proceedings under this section are the same as the powers and jurisdiction that it has to give a guideline judgment in a pending proceeding apart from this section.
- (5) A guideline judgment under this section may be given separately or may be included in any judgment of the Court that it considers appropriate.
- (6) The Senior Public Defender, or a nominee of the Senior Public Defender who is a legal practitioner, may appear in proceedings under this section.
- (7) The Senior Public Defender or his or her nominee may do any one or more of the following:
  - (a) oppose or support the giving of the guideline judgment by the Court,
  - (b) make submissions with respect to the framing of the guidelines,
  - (c) assist the Court by advising it on any matter relevant to the application.
- (8) Nothing in the *Public Defenders Act 1995* or any other Act or law prevents, or in any way limits, the exercise of any function conferred on the Senior Public Defender or any nominee of the Senior Public Defender who is a Public Defender under this section.
- (9) Without limiting subsection (8), in exercising any function conferred on the Senior Public Defender under this section, the Senior Public Defender is not, despite section 4 (3) of the *Public Defenders Act 1995*, responsible to the Attorney General.

### **27 Alteration of guideline judgments**

A guideline judgment given on application under section 26 may be reviewed, varied or revoked in a subsequent guideline judgment of the Court whether made under that section or apart from it.

## **28 Discretion of Court preserved**

Nothing in this Part:

- (a) limits any power or jurisdiction of the Court to give a guideline judgment that the Court has apart from section 26, or
- (b) requires the Court to give any guideline judgment under section 26 if it considers it inappropriate to do so.

## **29 Rules of court**

Rules of court may be made under the *Supreme Court Act 1970* with respect to applications, and proceedings to determine applications, under section 26.

## **Division 3 Miscellaneous**

### **29A Use of evidence in giving guideline judgments**

- (1) Nothing in section 12 of the *Criminal Appeal Act 1912* limits the evidence or other matters that the Court may take into consideration in giving a guideline judgment (whether or not on application under section 26) and the Court may inform itself as it sees fit.
- (2) The Court must not increase a sentence in any appeal by reason of, or in consideration of, any evidence that is used by the Court in giving a guideline judgment in the appeal and that was not given at the trial.

## **Part 9 Trial by jury on indictment**

### **30 Definition and application**

- (1) In this Part:

***criminal proceedings*** means proceedings for the prosecution of persons on indictment.

- (2) This Part extends to criminal proceedings commenced, but not concluded, before the commencement of this Part.

### **31 Trial by jury in criminal proceedings**

Criminal proceedings in the Supreme Court or the District Court are to be tried by a jury, except as otherwise provided by this Part.

### **32 Trial by Judge in criminal proceedings**

- (1) An accused person in criminal proceedings in the Supreme Court or District Court must be tried by the Judge alone if:



- (a) the person so elects in accordance with this section, and
  - (b) the Judge is satisfied that the person, before making the election, sought and received advice in relation to the election from a barrister or solicitor.
- (2) An election may not be made unless:
- (a) all other accused persons in the trial also elect to be tried by the Judge alone, and
  - (b) each election is made in respect of all offences with which the accused persons in the trial are charged.
- (3) An election may be made only with the consent of the Director of Public Prosecutions.
- (4) An election must be made before the date fixed for the person's trial in the Supreme Court or District Court.
- (5) An accused person who elects to be tried by the Judge alone may, at any time before the date fixed for the person's trial, subsequently elect to be tried by a jury.
- (6) Rules of court may be made with respect to elections under this section.

### **33 Verdict of single Judge**

- (1) A Judge who tries criminal proceedings without a jury may make any finding that could have been made by a jury on the question of the guilt of the accused person. Any such finding has, for all purposes, the same effect as a verdict of a jury.
- (2) A judgment by a Judge in any such case must include the principles of law applied by the Judge and the findings of fact on which the Judge relied.
- (3) If any Act or law requires a warning to be given to a jury in any such case, the Judge is to take the warning into account in dealing with the matter.

## **Part 9A Summary disposal of indictable offences by Local Courts**

### **33A Objects of this Part**

The objects of this Part are:

- (a) to require the indictable offences listed in Table 1 to this Part to be dealt with summarily unless the prosecuting authority or the person charged with the offence concerned elects to have the offence dealt with on indictment, and
- (b) to require the indictable offences listed in Table 2 to this Part to be dealt with summarily unless the prosecuting authority elects to have the offence concerned dealt with on indictment.

### **33B Indictable offences to which this Part applies**

This Part applies to the indictable offences listed in Tables 1 and 2 to this Part.

### **33C Offences to be dealt with summarily unless election made to proceed on indictment**

- (1) An indictable offence listed in Table 1 to this Part is to be dealt with summarily by a Local Court unless the prosecuting authority or the person charged with the offence elects in accordance with this Part to have the offence dealt with on indictment.
- (2) An indictable offence listed in Table 2 to this Part is to be dealt with summarily by a Local Court unless the prosecuting authority elects in accordance with this Part to have the offence dealt with on indictment.

### **33D Procedure for dealing with offences summarily if no election made**

An indictable offence listed in Table 1 or 2 to this Part is, if no election is made in accordance with this Part, to be dealt with summarily in accordance with the relevant provisions of this Act, the relevant provisions of the *Justices Act 1902* and any other relevant law as if it were a summary offence.

### **33E Procedure for dealing with offences if election made**

- (1) An indictable offence listed in Table 1 or 2 to this Part is, if an election is made in accordance with this Part, to be dealt with on indictment in accordance with the relevant provisions of this Act, the relevant provisions of the *Justices Act 1902* and any other relevant law.
- (2) If an election is made in accordance with this Part and the person charged with the offence pleads guilty to the offence before a Local Court and the Court accepts the plea, the offence is to be dealt with in accordance with section 51A of the *Justices Act 1902* as if the person charged had pleaded guilty under that section to the offence.

### **33F Time for making election**

- (1) An election to have an offence dealt with on indictment must be made within the time fixed by the Local Court.
- (2) An election may, with the leave of the Local Court, be made after the time so fixed if the Court is satisfied that special circumstances exist.
- (3) However, an election may not be made after the following events:
  - (a) in the case of a plea of not guilty—the commencement of the taking of evidence for the prosecution in the summary trial,
  - (b) in the case of a plea of guilty—the presentation of the facts relied on by the prosecution to prove the offence.

### **33G Election may be withdrawn**

- (1) An election for an offence to be dealt with on indictment may be withdrawn by the party who made the election.
- (2) However, an election may not be withdrawn after the following events:
  - (a) in the case of a plea of not guilty—the commencement of the taking of evidence for the prosecution in the committal for trial proceedings,
  - (b) in the case of a plea of guilty—the committal of the person charged for sentence.
- (3) An offence is to be dealt with summarily in accordance with this Part if an election is withdrawn in accordance with this section.

### **33H Information to be given to person charged (Table 1 offences)**

- (1) When a person charged with an indictable offence listed in Table 1 to this Part first appears before a Local Court in respect of the offence, the Court:
  - (a) is to address the person about the person's right to make an election and the consequences of not making an election, and
  - (b) is to give to the person a statement about the person's right to make an election and the consequences of not making an election that is in the form of words prescribed by the regulations.
- (2) The prosecuting authority is to serve, or cause to be served, on the person charged with an indictable offence listed in Table 1 to this Part:
  - (a) a copy of the brief of evidence relating to the offence that complies with section 66D of the *Justices Act 1902*, and
  - (b) a copy of the person's criminal record (if any) known to the prosecuting authority, within the time fixed by the Local Court. The time so fixed must be before the time fixed by the Court for the making of an election in respect of the offence.
- (2A) Despite subsection (2) (a), the prosecuting authority 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 prosecuting authority must in that case comply with section 66C (2) of the *Justices Act 1902*.
- (3) Without limiting the powers of a Local Court to adjourn proceedings, the Local Court is to grant such adjournments as appear to be just and reasonable if a brief of evidence or a criminal record, or both, are not served in accordance with this section, and the Court is to extend accordingly the time fixed for the making of an election in respect of the offence.

- (4) In this section, a reference to a **brief of evidence** is a reference to a brief of evidence within the meaning of Subdivision 6A of Division 2 of Part 4 of the *Justices Act 1902*.

### 33I Regulations

- (1) Regulations may be made for or with respect to elections under this Part.
- (2) In particular, regulations may be made for or with respect to the following:
- (a) the form and manner in which an election is to be made,
  - (b) the form and manner in which the withdrawal of an election is to be made,
  - (c) the notification of the making or withdrawal of an election,
  - (d) the form and contents, and the service, of briefs of evidence and criminal records.

### 33J Maximum penalties for Table 1 offences

- (1) This section prescribes the maximum penalty that may be imposed for an indictable offence listed in Table 1 to this Part dealt with summarily under this Part in any case where the maximum penalty (when the offence is dealt with summarily) is not provided by law.
- (2) The maximum term of imprisonment that a Local Court may impose for an offence is, subject to this section, 2 years or the maximum term of imprisonment provided by law for the offence, whichever is the shorter term.
- (3) The maximum fine that a Local Court may impose for an offence is 100 penalty units or the maximum fine provided by law for the offence, whichever is the smaller fine.
- (4) The maximum term of imprisonment that a Local Court may impose for the following offences is:
- (a) for an offence under section 51A, 52A or 52B of the *Crimes Act 1900*—18 months,
  - (b) for an offence under section 53 or 54 of the *Crimes Act 1900*—12 months.
- (4A) The maximum penalty that a Local Court may impose for an offence under section 25 of the *Oaths Act 1900* is imprisonment for 12 months, or a fine of 50 penalty units, or both.
- (4B) The maximum penalty that a Local Court may impose for the offence of:
- (a) attempting to commit an offence, or
  - (b) being an accessory before or after the fact in relation to an offence that is a felony, or

(c) aiding, abetting, counselling or procuring the commission of an offence that is a misdemeanour, or

(d) conspiring to commit an offence, or

(e) inciting the commission of an offence,

is the same as the maximum penalty that a Local Court may impose for the offence concerned.

(5) A Local Court may, instead of imposing a term of imprisonment, impose a fine not exceeding 100 penalty units for an offence listed in Table 1 to this Part in any case where a fine is not otherwise provided by law for the offence.

(6) Nothing in this section affects an option provided by law to impose either a term of imprisonment, or a fine, or both.

(7) Nothing in this section affects section 444 of the *Crimes Act 1900*.

(7A) Nothing in this section prevents a Local Court from imposing the maximum term of imprisonment that may be imposed under section 33AA (2) (a) of the *Drug Misuse and Trafficking Act 1985*.

(8) In this section, **imprisonment** includes penal servitude.

### **33K Maximum penalties for Table 2 offences**

(1) This section prescribes the maximum penalty that may be imposed for an indictable offence listed in Table 2 to this Part dealt with summarily under this Part in any case where the maximum penalty (when the offence is dealt with summarily) is not provided by law.

(2) The maximum penalty that a Local Court may impose for the following offences is:

(a) for an offence under section 35A (2), 58, 59, 60 (1), 61L or 61O (1) or (1A) of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both,

(b) for an offence under section 56, 61 or 61N of the *Crimes Act 1900*—imprisonment for 12 months, or a fine of 20 penalty units, or both,

(c) for an offence listed in Part 2 of Table 2 to this Part (other than an offence under section 154A of the *Crimes Act 1900*)—imprisonment for 12 months, or a fine of 50 penalty units, or both, however, the maximum fine that a Local Court may impose if the value of the property, amount of money or reward concerned does not exceed \$2,000 is 20 penalty units,

(d) for an offence under section 154A of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both,

- (e) for an offence under section 93G or 93H of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both,
- (f) for an offence under section 562AB of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both,
- (i) for an offence under section 100 (1) of the *Rural Fires Act 1997*—imprisonment for 2 years, or a fine of 100 penalty units, or both,
- (j) for an offence under section 578C (2A) of the *Crimes Act 1900*—in the case of an individual, imprisonment for 2 years, or a fine of 100 penalty units (or both), or in the case of a corporation, 200 penalty units,
- (k) for an offence under section 10 or 20 of the *Liens on Crops and Wool and Stock Mortgages Act 1898*—imprisonment for 12 months, or a fine of 50 penalty units, or both.

(2A) The maximum penalty that a Local Court may impose for the offence of:

- (a) attempting to commit an offence, or
- (b) being an accessory before or after the fact in relation to an offence that is a felony, or
- (c) aiding, abetting, counselling or procuring the commission of an offence that is a misdemeanour, or
- (d) conspiring to commit an offence, or
- (e) inciting the commission of an offence,

is the same as the maximum penalty that a Local Court may impose for the offence concerned.

(3) Nothing in this section affects section 444 of the *Crimes Act 1900*.

### **33L Jurisdiction of Local Court**

- (1) The jurisdiction of a Local Court under this Part may be exercised only by a Local Court constituted by a Magistrate sitting alone.
- (2) Despite subsection (1), the jurisdiction of a Local Court under section 33F or 33H may also be exercised by an authorised justice.
- (3) In this section:

**authorised justice** means:

- (a) a justice of the peace who is a Clerk of a Local Court, or

- (b) a justice of the peace who is employed in the Local Courts Administration of the Attorney General's Department and who is declared (whether by name or by reference to the holder of a particular office), by the Attorney General by instrument in writing or by order published in the Gazette to be an authorised justice for the purposes of this section.

### **33M Offences by children**

Nothing in this Part confers jurisdiction on a Local Court to deal with an offence if the Children's Court has exclusive jurisdiction to hear and determine the matter.

### **33N No time limit for offences dealt with summarily under this Part**

Section 56 of the *Justices Act 1902*, and the provisions of any other Act limiting the time within which proceedings for summary offences may be instituted, do not apply to offences dealt with summarily under this Part.

### **33O Effect of conviction**

The conviction of a person of an offence dealt with summarily under this Part has the same effect as a conviction on indictment for the offence.

### **33P Application of Part and continued application of certain provisions**

- (1) This Part applies to proceedings for an offence with which a person is charged after (but not before) the commencement of this section irrespective of when the offence was committed.
- (2) Despite section 475C of the *Crimes Act 1900*, sections 476, 480, 481, 495, 496, 496A, 497 and 500 of that Act, and the provisions of any other Act or instrument referring to any of those sections, continue to apply to proceedings for offences with which a person was charged before the commencement of this section (irrespective of when the person is dealt with under those sections or provisions).
- (3) However, if a person is charged with more than one offence and proceedings for those offences are to be dealt with together, this Part applies to the proceedings despite the fact that the person was charged with one or more (but not all) of those offences before the commencement of this section.

### **Table 1 Indictable offences that are to be dealt with summarily unless prosecuting authority or person charged elects otherwise**

#### **Part 1 Offences against the person under *Crimes Act 1900***

##### **1 Offences against the person where victim 14 years of age or over**

An offence under section 61E, 66C (1), 66D, 71, 72, 76, 76A or 81 of the *Crimes Act 1900* where the person against whom the offence was committed was at

the time of the commission of the offence of or above the age of 14 years.

## **2 Other offences against the person**

An offence under section 31, 31C, 35, 35A (1), 39, 41, 41A, 43, 44, 49, 51A, 52A (other than an offence by which death was occasioned), 52B (other than an offence by which death was occasioned), 53, 54, 55, 57, 60 (2), 61M, 61O (2), 78Q, 80, 81A, 81B, 81C, 82, 83, 84, 85 (where the person charged is the mother of the child and is not charged with any other person), 90, 91, 91A, 91B, 92 or 93 of the *Crimes Act 1900*.

## **Part 2 Offences relating to property under *Crimes Act 1900* or common law**

### **3 Larceny and other offences exceeding \$5,000**

Any of the following offences where the value of the property, matter or thing, or the damage, or the amount of money or reward, in respect of which the offence is charged exceeds \$5,000:

- (a) larceny, or
- (b) an offence of stealing any chattel, money or valuable security from another person (eg section 94 of the *Crimes Act 1900*), or
- (c) an offence under section 3B, 125, 126, 131, 132, 133, 139, 140, 148, 150, 151, 152, 156, 157, 158, 159, 160, 178A, 178B, 178BA, 178BB, 178C, 179, 184, 185, 185A, 186, 188, 189, 189A, 190, 192 or 195 of the *Crimes Act 1900*.

### **4 Offences taken to be, or punishable as, larceny or stealing**

Any offence that under the *Crimes Act 1900* is taken to be, or is made punishable as, larceny or stealing (other than an offence under section 125, 139, 140 or 154A of that Act).

### **5 Breaking and entering place of Divine worship with intent to commit felony**

An offence under section 107 (1) of the *Crimes Act 1900*.

### **6 Entering with intent to commit felony, or commit felony, in dwelling-house and breaking out**

An offence under section 109 (1) of the *Crimes Act 1900* where:

- (a) the felony intended is stealing, or
- (b) the felony alleged is stealing and the value of the property stolen does not



exceed \$15,000.

**7 Entering dwelling-house in the night or breaking and entering any house or other building with intent to commit felony**

An offence under section 111 (1) or 113 (1) of the *Crimes Act 1900* where the felony intended is stealing.

**8 Breaking and entering into, or being in, any house or other building and committing felony**

An offence under section 112 (1) of the *Crimes Act 1900* where:

- (a) the felony alleged is stealing, and
- (b) the value of the property stolen does not exceed \$15,000.

**9 Other property offences**

An offence under section 99, 100, 100A, 102, 114 (1) (a), (c) and (d), 115, 135, 138, 153, 154AA, 154B (1), 165, 166, 168, 169, 170, 172, 173, 174, 175, 176, 176A, 181, 184A, 196, 197, 199, 200, 201, 202 or 203 of the *Crimes Act 1900*.

**Part 3 Other offences under *Crimes Act 1900* or the common law**

**10 Offences relating to public order**

An offence under section 93B or 93C of the *Crimes Act 1900*.

**10A Offences relating to contamination of goods**

An offence under section 93IB, 93IC or 93ID of the *Crimes Act 1900*.

**11 Offences relating to transport services**

An offence under section 207, 208 (4), 209, 210, 212 or 213 of the *Crimes Act 1900*.

**12 Corrupt practices**

- (1) An offence under section 249B, 249D or 249E of the *Crimes Act 1900*, or an offence under section 249F of that Act of aiding, abetting, counselling, procuring, soliciting or inciting such an offence, where the benefit in respect of which the offence is charged exceeds \$5,000.
- (2) An offence under section 249C of the *Crimes Act 1900* or an offence under section 249F of that Act of aiding, abetting, counselling, procuring, soliciting

or inciting such an offence.

### **13 False instruments**

An offence under section 300, 301 or 302 of the *Crimes Act 1900* (other than an offence listed in clause 4B of Table 2 to this Part) or an offence under section 302A of that Act.

### **14 Offences relating to computers**

An offence under section 309 (2), (3) or (4) or 310 of the *Crimes Act 1900*.

### **15 Public justice offences**

#### **(1) Public justice offences not involving intent to procure conviction or acquittal**

An offence under section 321, 322, 323 or 333 (1) of the *Crimes Act 1900* unless the person charged intended to procure the conviction or acquittal of any person of any serious offence.

#### **(2) Other public justice offences**

An offence under section 314, 315, 316, 317, 325, 326, 327, 330, 335, 336 or 337 of the *Crimes Act 1900*.

### **16 Escape from lawful custody**

(1) Escape from lawful custody.

(2) An offence under section 358C of the *Crimes Act 1900*.

## **Part 4 Offences under certain other Acts**

### **17 Bail Act 1978**

An offence under section 58 of the *Bail Act 1978*.

### **18 Children (Care and Protection) Act 1987**

An offence under section 20B (1) of the *Children (Care and Protection) Act 1987*.

### **18A Correctional Centres Act 1952**

An offence under the *Correctional Centres Act 1952* (other than an offence under section 32) for which a sentence of penal servitude may be imposed.

**19 Electricity Commission Act 1950**

An offence under section 76 or 81 of the *Electricity Commission Act 1950*.

**20 Financial Institutions Commission Act 1992**

An offence under section 21 of the *Financial Institutions Commission Act 1992*.

**20A Jury Act 1977**

An offence under section 68A of the *Jury Act 1977*.

**21 Justices Act 1902**

An offence under section 48H of the *Justices Act 1902*.

**21A Law Enforcement and National Security (Assumed Identities) Act 1998**

An offence under section 15 of the *Law Enforcement and National Security (Assumed Identities) Act 1998*.

**22 Oaths Act 1900**

An offence under section 13 (2), 20, 25, 25A, 29 or 30 of the *Oaths Act 1900*.

**23 Petroleum (Submerged Lands) Act 1982**

An offence under section 120 of the *Petroleum (Submerged Lands) Act 1982*.

**24 Unlawful Gambling Act 1998**

A second or subsequent offence under section 9, 11, 15, 19, 31, 32, 33, 35 or 36 of the *Unlawful Gambling Act 1998*.

**24A Witness Protection Act 1995**

An offence under section 32 of the *Witness Protection Act 1995*.

**25 Water Act 1912**

An offence under section 21 of the *Water Act 1912*.

**Part 5 Ancillary offences**

**26 Attempts**

Attempting to commit any offence mentioned in a preceding Part of this Table.

## **27 Accessories**

Being an accessory before or after the fact to any offence mentioned in a preceding Part of this Table (if the offence is a felony).

## **28 Abettors**

Aiding, abetting, counselling or procuring the commission of any offence mentioned in a preceding Part of this Table (if the offence is a misdemeanour).

## **28A Conspiracies**

Conspiring to commit any offence mentioned in a preceding Part of this Table.

## **28B Incitement**

Inciting the commission of any offence mentioned in a preceding Part of this Table.

## **Part 6 Offences under [Drug Misuse and Trafficking Act 1985](#)**

### **29 Offences involving more than small quantity but not more than indictable quantity**

An offence to which section 31 (1) of the [Drug Misuse and Trafficking Act 1985](#) applies where the number or amount of the prohibited plant or prohibited drug concerned is more than the applicable small quantity but not more than the applicable indictable quantity.

### **30 Offences involving more than indictable quantity but less than commercial quantity (cannabis plant and cannabis leaf)**

An offence referred to in 32 (1) (a)–(f) of the [Drug Misuse and Trafficking Act 1985](#) where the offence relates to cannabis plant or cannabis leaf and the quantity of cannabis plant or cannabis leaf concerned is more than the applicable indictable quantity but less than the applicable commercial quantity.

## **Table 2 Indictable offences that are to be dealt with summarily unless prosecuting authority elects otherwise**

### **Part 1 Offences against the person under [Crimes Act 1900](#)**

#### **1 Offences against the person**

An offence under section 35A (2), 56, 58, 59, 60 (1), 61, 61L, 61N or 61O (1) or (1A) of the [Crimes Act 1900](#).

## **2 Stalking and intimidation**

An offence under section 562AB of the *Crimes Act 1900*.

### **Part 2 Offences relating to property under *Crimes Act 1900* or common law**

#### **3 Larceny and certain other property offences**

Any of the following offences where the value of the property or the damage, or the amount of money or reward, in respect of which the offence is charged does not exceed \$5,000:

- (a) larceny,
- (b) an offence of stealing any chattel, money or valuable security from another person (eg section 94 of the *Crimes Act 1900*),
- (c) an offence under section 3B, 125, 126, 131, 132, 133, 139, 140, 148, 150, 151, 152, 156, 157, 158, 159, 160, 178A, 178B, 178BA, 178BB, 178C, 179, 184, 185, 185A, 186, 188, 189, 189A, 190, 192, 195, 249B, 249D or 249E of the *Crimes Act 1900*,
- (d) an offence under section 249F of the *Crimes Act 1900* of aiding, abetting, counselling, procuring, soliciting or inciting an offence under section 249B, 249D or 249E of that Act.

#### **3A Possession of implement of housebreaking**

An offence under section 114 (1) (b) of the *Crimes Act 1900*.

#### **4 Taking conveyance without consent of owner**

An offence under section 154A of the *Crimes Act 1900*.

#### **4B False instruments**

An offence under section 300, 301 or 302 of the *Crimes Act 1900* where the value of the property, or amount of remuneration, greater remuneration or financial advantage, in respect of which the offence is charged does not exceed \$5,000.

### **Part 3**

**(Renumbered as Part 8)**

**5(Renumbered as clause 16)**

### **Part 4 Offences relating to firearms and dangerous weapons**

**6 Crimes Act 1900**

An offence under section 93G or 93H of the *Crimes Act 1900*.

**7 Firearms Act 1996**

An offence under section 7, 36, 43, 50, 62, 63, 64, 66, 70 or 74 of the *Firearms Act 1996*.

**8 Weapons Prohibition Act 1998**

An offence under section 7, 20, 23, 31 or 34 of the *Weapons Prohibition Act 1998*.

**Part 5 Offences relating to fires**

**9 Rural Fires Act 1997**

An offence under section 100 (1) of the *Rural Fires Act 1997*.

**Part 6 Miscellaneous offences**

**10 Publishing of child pornography**

An offence under section 578C (2A) of the *Crimes Act 1900*.

**10A Frauds concerning liens on crops and wool or stock mortgages**

An offence under section 10 or 20 of the *Liens on Crops and Wool and Stock Mortgages Act 1898*.

**Part 7 Ancillary offences**

**11 Attempts**

Attempting to commit any offence mentioned in a preceding Part of this Table.

**12 Accessories**

Being an accessory before or after the fact to any offence mentioned in a preceding Part of this Table (if the offence is a felony).

**13 Abettors**

Aiding, abetting, counselling or procuring the commission of any offence mentioned in a preceding Part (other than Part 3) of this Table (if the offence is a misdemeanour).

## 14 Conspiracies

Conspiring to commit any offence mentioned in a preceding Part of this Table.

## 15 Incitement

Inciting the commission of any offence mentioned in a preceding Part of this Table.

## Part 8 Offences relating to drugs

### 16 Drug Misuse and Trafficking Act 1985

An offence to which section 30 (1) of the *Drug Misuse and Trafficking Act 1985* applies where the number or amount of the prohibited plant or prohibited drug concerned is not more than the applicable small quantity.

## Part 10 Supreme Court or District Court may deal with certain offences related to indictable offences

### 34 Definitions and application

(1) In this Part:

**back up offence**, in relation to an indictable offence, means an offence:

(a) that is:

(i) a summary offence, or

(ii) an indictable offence that is capable of being dealt with summarily by a Local Court in accordance with the provisions of Part 9A, and

(b) all the elements of which are elements that are necessary to constitute the first indictable offence, and

(c) that is to be prosecuted on the same facts as the first indictable offence.

**court** means the Supreme Court or District Court.

**related offence**, in relation to an indictable offence, means an offence:

(a) that is:

(i) a summary offence, or

(ii) an indictable offence that is capable of being dealt with summarily by a Local Court in accordance with the provisions of Part 9A, and

(b) that arises from substantially the same circumstances as those from which the

first indictable offence has arisen,

but does not include a back up offence.

- (2) This Part extends to proceedings commenced, but not concluded, before the commencement of this Part.

### **34A Certification of back up and related offences**

- (1) On committal for trial of a person charged with an indictable offence:
- (a) the prosecuting authority must inform the Magistrate (or justice or justices) as to whether or not the person has been charged with any back up offence or related offence, and
  - (b) if the person has been charged with any back up offence or related offence, the prosecuting authority is to produce to the court a certificate specifying each back up offence and related offence with which the person has been charged.
- (2) This section does not prevent the person referred to in subsection (1) being charged with any offence after committal.

### **35 Manner of dealing with certain offences related to indictable offences**

- (1) If at the conclusion of the trial of an accused person for an indictable offence, a court finds the accused person guilty of the offence, the court:
- (a) is (unless it considers it inappropriate in the circumstances to do so) to order that the charge in relation to each back up offence be dismissed, and
  - (b) may deal with any back up offence the charge for which is not dismissed under paragraph (a) and any related offence with which the accused person has been charged in accordance with this Part.
- (1A) If at the conclusion of the trial of an accused person for an indictable offence, a court finds the accused person not guilty of the offence, the court may deal with any back up offence or related offence with which the person has been charged in accordance with this Part.
- (2) A court may deal with any back up offence referred to in subsection (1) (b) or (1A) or a related offence on its own motion, or on the application of the accused person or the prosecutor, but may not do so unless both the accused person and the prosecutor have consented to the offence being dealt with under this Part.
- (3) Except as provided by subsection (1), nothing in this section requires a court to deal with a back up offence or related offence under this Part.
- (4) A court may deal with a back up offence or related offence with which an accused person has been charged even though it is not doing so in relation to a back up



offence or related offence with which another accused person in the same proceedings is charged.

### **36 Procedures for dealing with certain offences related to indictable offences**

- (1) The court is to deal with a back up offence or related offence under this Part without a jury and on the basis only of evidence given during the trial of the accused person for the relevant indictable offence in the same proceedings and additional evidence given under this section.
- (2) The prosecutor or accused person may, with the leave of the court, call additional evidence in relation to the back up offence or related offence.
- (3) In sentencing or otherwise dealing with a person for a back up offence or related offence, the court has the same functions, and is subject to the same restrictions and procedures, as a Local Court constituted by a Magistrate.
- (4) Rules of court may be made with respect to back up offences or related offences dealt with under this Part.

### **37 Remission of certain offences related to indictable offences to Local Courts**

A court which is dealing with a back up offence or related offence under this Part may, at any time, remit the matter to a Local Court.

## **Part 11 Police custody of property**

### **Division 1 General**

#### **38 Application of this Part**

- (1) This Part applies to property that is in police custody in connection with an offence whether punishable on indictment or summarily.
- (2) This Part does not apply to livestock to which section 19 of the [Stock Diseases Act 1923](#) (Power to seize stock) applies.

#### **39 Disposal of property on application**

A court may, on the application of any person, make an order that any property to which this Part applies be delivered to the person who appears to it to be lawfully entitled to the property.

#### **40 Disposal of property after determination of proceedings**

- (1) Property to which this Part applies that has not been delivered to the person lawfully entitled to it (by virtue of an order under section 39 or otherwise) within 1 month after determination of proceedings against a person for an offence concerning the property:

- (a) in the case of money, is to be paid to the Treasurer for payment into the Consolidated Fund, or
  - (b) in any other case, may be sold at public auction.
- (2) Expenses incurred in keeping the property in police custody may be deducted from the proceeds of sale of the property and paid to the Commissioner of Police.
- (3) The proceeds of sale of the property (after making any deductions under subsection (2)) are to be forwarded to the Treasurer for payment into the Consolidated Fund.

#### **41 Application to Treasurer for recovery of money or proceeds of sale**

A person who is lawfully entitled to any property that has been dealt with in accordance with section 40 may recover from the Treasurer the money or proceeds of sale held by the Treasurer. This Act authorises the Treasurer to pay the amount out of the Consolidated Fund (which is appropriated to the necessary extent).

#### **42 Which is the appropriate court for the purposes of this Part?**

The court to which an application under this Part may be made is:

- (a) a Local Court, constituted by a Magistrate sitting alone, for the district in which the property is held, if the estimated value of the property (or the amount of the money) does not exceed \$25,000, or
- (b) the District Court, if the estimated value of the property (or the amount of the money) exceeds \$25,000 but does not exceed \$250,000, or
- (c) the Supreme Court, if the estimated value of the property (or the amount of the money) exceeds \$250,000.

#### **43 No restriction on other orders of a court**

Except as provided by this Part, nothing in this Part prevents a court (on an application under this Part or in any other proceedings) from making a finding or order as to the ownership and delivery of property or as to the liability for and payment of expenses incurred in keeping property in police custody.

## **Division 2 Livestock**

#### **44 Definitions**

In this Division:

***livestock*** means animals (including birds and fish).

***ownership*** includes any form of lawful entitlement.

#### **45 What procedure applies if there is no dispute as to the ownership of the livestock and**

**the owner is known?**

- (1) A police officer may deliver livestock at any time before the determination of proceedings against a person for an offence concerning the livestock to a person who the officer believes on reasonable grounds is the owner of the livestock if there does not appear to the officer to be any dispute as to ownership of the livestock.
- (2) Livestock must not be delivered until a suitable record of the livestock has been made for evidentiary purposes. The record is to include a valuation of the livestock made by a competent valuer.
- (3) Expenses incurred in keeping the livestock in police custody, in making the record and in obtaining the valuation under subsection (2) are to be borne by the Commissioner of Police.

**46 What procedure applies if there is no dispute as to the ownership of the livestock but the owner is not known?**

- (1) A police officer may apply to a court at any time before the determination of proceedings against a person for an offence concerning livestock for an order to sell the livestock at public auction if, after making reasonable inquiries, there does not appear to the officer to be any dispute as to the ownership of the livestock but the officer does not know who or where the owner is.
- (2) The court may make an order for the sale of the livestock at public auction but must not make such an order unless it is satisfied that 28 days' notice of the intention to make the application for the order has been given:
  - (a) to any person who, in the court's opinion, may be an owner of the livestock, and
  - (b) in a newspaper circulating throughout the State.
- (3) In making an order for the sale of the livestock, the court must specify the amount which is to be deducted from the proceeds of sale and paid to the Commissioner of Police in reimbursement of the expenses incurred by the Commissioner in keeping the livestock in police custody. Expenses incurred in keeping the livestock in police custody for the first 28 days are to be borne by the Commissioner of Police.
- (4) Livestock must not be sold following an order of the court until a suitable record of the livestock has been made for evidentiary purposes. The record need not include a valuation of the livestock.
- (5) The proceeds of sale of the livestock (after deducting, to the extent of the funds available, and paying to the Commissioner of Police any amount specified by the court under subsection (3)) together with a copy of the record made under subsection (4) are to be forwarded to the Treasurer and the proceeds are to be paid into the Consolidated Fund.

**47 What procedure applies if there is a dispute as to the ownership of the livestock?**

- (1) A police officer may apply to a court at any time before the determination of proceedings against a person for an offence concerning livestock for an order to sell the livestock at public auction if there is a dispute as to the ownership of the livestock and:
  - (a) no party to the dispute undertakes to pay the expenses of keeping the livestock in police custody, or
  - (b) a party who has given such an undertaking fails to comply with the undertaking.
- (2) The court may make an order for the sale of the livestock at public auction or it may make an order that one or more of the parties disputing ownership pay the expenses of keeping the livestock in police custody in such proportions as it determines.
- (3) The court must not make an order for the sale of the livestock at public auction unless it is satisfied that 28 days' notice of the intention to make the application for the order has been given:
  - (a) to any person who, in the court's opinion, may be an owner of the livestock, and
  - (b) in a newspaper circulating throughout the State.
- (4) In making an order for the sale of the livestock, a court must specify the amount which is to be deducted from the proceeds of sale and paid to the Commissioner of Police in reimbursement of the expenses incurred by the Commissioner in keeping the livestock in police custody.
- (5) Livestock must not be sold following an order of the court until a suitable record of the livestock has been made for evidentiary purposes. The record need not include a valuation of the livestock.
- (6) The owner of the livestock is (except in so far as a court otherwise determines) entitled to recover, jointly or severally, from the other parties to the dispute the expenses incurred by the owner in keeping the livestock in police custody.
- (7) The proceeds of sale of the livestock (after deducting, to the extent of the funds available, and paying to the Commissioner of Police any amount specified by the court under subsection (4)) together with a copy of the record made under subsection (5) are to be forwarded to the Treasurer and the proceeds are to be paid into the Consolidated Fund.

**48 Disposition of benefit derived from livestock**

Any income or benefit derived from livestock while in police custody (such as offspring born during custody or, in the case of poultry, eggs) is to be held or applied on behalf of the owner of the livestock.

#### **49 Notification of right to recover proceeds of sale**

If, at the time at which livestock are sold in accordance with this Part:

- (a) the parties disputing ownership of the livestock have not resolved their dispute, and
- (b) a court has not determined who the owner of the livestock is,

a police officer is required to notify each such party of the rights of the owner under section 50.

#### **50 Application to Treasurer for recovery of proceeds of sale**

A person who was the owner of livestock immediately before they were sold under this Division may recover from the Treasurer the amount held by the Treasurer in respect of the proceeds of sale. This Act authorises the Treasurer to pay the amount out of the Consolidated Fund (which is appropriated to the necessary extent).

#### **51 Relationship with Division 1**

The provisions of this Division are in addition to the provisions of Division 1.

### **Part 12 Sentence indication hearings pilot scheme**

#### **52 Application**

- (1) The Chief Judge of the District Court may, by publication of a practice note or practice notes, give notice of the conduct by the District Court of a sentence indication hearings pilot scheme between 1 February 1993 and 31 January 1996 (both dates inclusive) and may determine the place or places at which and the conditions (if any) subject to which the pilot scheme is to be conducted.
- (2) This Part applies only to a sentence indication hearing pilot scheme so notified.
- (3) This Part applies to an offence whether committed before or after the commencement of this Part.

#### **53 Sentence indication hearings**

- (1) A judge of the District Court may, on or before the arraignment of an accused person and on that person's application, indicate at a sentence indication hearing what sentence the judge might give the person if, on arraignment, the person were to plead guilty to the offence with which the person has been charged or to another, or a lesser, offence arising out of the same circumstances.
- (2) For the purpose of conducting a sentence indication hearing, a judge is entitled to consider such material as would be available to the judge if the accused person had pleaded guilty and the judge were passing sentence on that person.

## 54 Suppression orders

- (1) The judge who conducts a sentence indication hearing may make one or more of the following orders:
  - (a) an order directing that no matter that might identify an accused person making an application for a sentence indication hearing be published,
  - (b) an order prohibiting publication of any other matter disclosed to the judge during a sentence indication hearing that might, in the judge's opinion, prejudice the right of the accused person to a fair trial, including prejudice of a potential jury,
  - (c) an order limiting the time during which an order made under this section operates until such time as the accused person has pleaded guilty to the offence concerned or a jury has returned its verdict in the matter.
- (2) Such an order may be made at or following a sentence indication hearing.

## 55 Breach of suppression orders

A breach of a suppression order may be dealt with by the District Court in accordance with the [District Court Act 1973](#) as if it were a contempt of the Court committed in the face, or in the hearing, of the Court.

## 56 Existing powers of District Court not limited

Nothing in this Part is taken to limit the powers that the District Court or a judge of the District Court has apart from this Part.

# Schedule 1 Savings, transitional and other provisions

(Section 3C)

## Part 1 Preliminary

### 1 Regulations

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the following Acts or provisions of Acts:
  - Schedule 1.4 to the [Crimes Legislation Amendment Act 1997](#)
  - Schedule 5 to the [Crimes Legislation Amendment Act 1998](#)
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on Schedule 1.4 to [Crimes Legislation Amendment Act 1997](#)**

### **2 Application of amendments to Part 10**

The amendments to this Act made by Schedule 1.4 [4]-[13] to the [Crimes Legislation Amendment Act 1997](#) do not apply in respect of a summary offence if the person charged with the indictable offence to which the summary offence is related is committed for trial for the indictable offence before the commencement of the amendments.

## **Part 3 Provisions consequent on Schedule 5 to [Crimes Legislation Amendment Act 1998](#)**

### **3 Application of amendments to Table 2 to Part 9A**

Table 2 to Part 9A, as amended by Schedule 5 [1] and [2] to the [Crimes Legislation Amendment Act 1998](#), applies to proceedings for an offence with which a person is charged after (but not before) the commencement of those amendments, irrespective of when the offence was alleged to have been committed.

### **4 Application of amendments to Part 10**

The amendments to this Act made by Schedule 5 [3]-[9] to the [Crimes Legislation Amendment Act 1998](#) do not apply in respect of a back up offence or a related offence if the person charged with the indictable offence to which the back up offence or the related offence is related is committed for trial for the indictable offence before the commencement of the amendments.