

# 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](#) (amended by [Crimes Legislation Amendment \(Sentencing\) Act 1999 No 94](#)) (not commenced — to commence on 18.12.2000)
  - [Mining and Petroleum Legislation Amendment Act 2000 No 90](#) (not commenced)
  - [Water Management Act 2000 No 92](#) (not commenced)
  - [Crimes Legislation Further Amendment Act 2000 No 107](#) (not commenced)
- **See also**
  - [Criminal Procedure Amendment \(Pre-trial Disclosure\) Bill 2000](#)

### Authorisation

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New South Wales

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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:

**apprehended violence order** has the same meaning as it has in Part 15A of the *Crimes Act 1900*, and includes an interim apprehended violence order made under that Part.

**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.

**court** means:

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

but, subject to the *Children (Criminal Proceedings) Act 1987*, does not include the

Children's Court or any other court that, or person who, exercises the functions of the Children's Court.

**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 sexual offence** means:

- (a) an offence under section 61I, 61J, 61K, 61L, 61M, 61N, 61O, 65A, 66A, 66B, 66C, 66D, 66F, 78H, 78I, 78K, 78L or 80A of the [Crimes Act 1900](#), or
- (b) an offence that includes the commission, or an intention to commit, an offence referred to in paragraph (a), or
- (c) an offence that, at the time it was committed, was a prescribed sexual offence for the purposes of this Act or the [Crimes Act 1900](#), or
- (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b) or (c).

**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.

#### **4 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.

## **5 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.

## **6 Savings, transitional and other provisions**

Schedule 2 has effect.

# **Part 2 Disposal of offences**

## **Division 1 General**

### **7 Certain offences to be dealt with on indictment**

- (1) An offence must be dealt with on indictment unless it is an offence that under this or any other Act is permitted or required to be dealt with summarily.
- (2) An offence may be dealt with on indictment if it is an offence that under this or any other Act is permitted to be dealt with summarily or on indictment.

### **8 Certain offences to be dealt with summarily**

- (1) The following offences must be dealt with summarily:
  - (a) an offence that under this or any other Act is required to be dealt with summarily,
  - (b) an offence that under this or any other Act is described as a summary offence,
  - (c) an offence (not being an offence that under this or any other Act is required to be dealt with on indictment) for which the maximum penalty that may be imposed is not, and does not include, imprisonment for more than 2 years.
- (2) An offence may be dealt with summarily if it is an offence that under this or any other Act is permitted to be dealt with summarily or on indictment.

### **9 Certain summary offences may be dealt with by Local Courts**

- (1) An offence that is permitted or required to be dealt with summarily is to be dealt with by a Local Court constituted by a Magistrate sitting alone.
- (2) This section does not apply to an offence that, under this or any other Act, is required to be dealt with summarily otherwise than by a Local Court constituted by a Magistrate sitting alone.

## **10 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 is required to be dealt with summarily.
- (4) This section does not affect any law or practice that provides for an indictable offence to be dealt with summarily.

## **11 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.

## **12 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.

## **13 Change of venue**

In any criminal proceedings, if it appears to the Supreme Court or District Court:

- (a) that a fair or unprejudiced trial cannot otherwise be had, or
- (b) that for any other reason it is expedient to do so,

the Court may change the venue, and direct the trial to be held in such other district, or at such other place, as the Court thinks fit, and may for that purpose make all such orders as justice appears to require.

## **Division 2 Trial by jury**

### **14 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.

### **15 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.

### **16 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.

### **17 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.

## **Division 3 Summary disposal of indictable offences by Local Courts**

## **18 Objects of this Division**

The objects of this Division are:

- (a) to require the indictable offences listed in Table 1 to Schedule 1 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 Schedule 1 to be dealt with summarily unless the prosecuting authority elects to have the offence concerned dealt with on indictment.

## **19 Indictable offences to which this Division applies**

This Division applies to the indictable offences listed in Tables 1 and 2 to Schedule 1.

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

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

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

An indictable offence listed in Table 1 or 2 to Schedule 1 is, if no election is made in accordance with this Division, 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.

## **22 Procedure for dealing with offences if election made**

- (1) An indictable offence listed in Table 1 or 2 to Schedule 1 is, if an election is made in accordance with this Division, 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 Division 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.

## **23 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.

#### **24 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 Division if an election is withdrawn in accordance with this section.

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

- (1) When a person charged with an indictable offence listed in Table 1 to Schedule 1 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 Schedule 1:
  - (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*.

## 26 Regulations

- (1) Regulations may be made for or with respect to elections under this Division.
- (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.

## 27 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 Schedule 1 dealt with summarily under this Division 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.

(4AA) The maximum penalty that a Local Court may impose for an offence under section 310G of the *Crimes Act 1900* is 50 penalty units.

(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 Schedule 1 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 Division 2 of Part 4 of the *Crimes (Sentencing Procedure) Act 1999*.

(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) (Repealed)

## **28 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 Schedule 1 dealt with summarily under this Division 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 Schedule 1 (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 Division 2 of Part 4 of the *Crimes (Sentencing Procedure) Act 1999*.

### **29 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 23 or 25 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.

### **30 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.

### **31 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.

### **32 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.

### **33 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.

### **34 Jurisdiction of Magistrates in respect of offences arising under Division 2 of Part 4 of Crimes Act 1900**

If, by virtue of this Part, a Local Court has jurisdiction to deal with a charge arising under Division 2 of Part 4 of the *Crimes Act 1900*, the Local Court may hear the charge irrespective of whether, in order to determine the charge, it is necessary to determine title to any property.

## **Division 4 Supreme Court or District Court may deal with certain summary offences related to indictable offences**

### **35 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 Division 3, 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 Division 3, 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.

### **36 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.

### **37 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.

### **38 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.

### **39 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 3 Pre-trial matters**

### **Division 1 Listing**

#### **40 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.

#### **41 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.

#### **42 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.

#### **43 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.

#### **44 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.

#### **45 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*.

## **Division 2 Indemnities and undertakings**

### **46 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.

### **47 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.

## **Division 3 Pre-trial defence disclosure**

### **48 Notice of alibi**

- (1) This section applies only to trials on indictment.
- (2) An accused person may not, without the leave of the court, adduce evidence in support of an alibi unless, before the end of the prescribed period, he or she gives notice of particulars of the alibi.
- (3) Without limiting subsection (2), the accused person may not, without the leave of the court, call any other person to give evidence in support of an alibi unless:
  - (a) the notice under that subsection includes the other person's name and address or, if the other person's name or address is not known to the accused person at the time he or she gives notice, any information in his or her possession that might be of material assistance in finding the other person, and
  - (b) if the other person's name or address is not included in the notice, the court is satisfied that the accused person before giving notice took, and thereafter continued to take, all reasonable steps to ensure that the other person's name or address would be ascertained, and
  - (c) if the other person's name or address is not included in the notice, but the accused person subsequently discovers the other person's name or address or receives other information that might be of material assistance in finding the other person, he or she immediately gives notice of the name, address or other information, and

- (d) if the accused person is notified by or on behalf of the Crown that the other person has not been traced by the name or address given by the accused person, he or she immediately gives notice of any information that might be of material assistance in finding the other person and that is then in his or her possession or, on subsequently receiving any such information, immediately gives notice of it.
- (4) The court may not refuse leave under this section if it appears to the court that, on the committal for trial of the accused person, he or she was not informed by the committing justice of the requirements of subsections (2), (3) and (7) and, for that purpose, a statement in writing by the committing justice that the accused person was informed of those requirements is evidence that the accused person was so informed.
- (5) Any evidence tendered to disprove an alibi may, subject to any direction by the court, be given before or after evidence is given in support of the alibi.
- (6) Any notice purporting to be given under this section on behalf of the accused person by his or her legal practitioner is, unless the contrary is proved, to be taken to have been given with the authority of the accused person.
- (7) A notice under this section must be given in writing to the Director of Public Prosecutions, and may be given by delivering it to the Director, by leaving it at the Director's office or by sending it in a letter addressed to the Director at the Director's office.
- (8) In this section:

***evidence in support of an alibi*** means evidence tending to show that, by reason of the presence of the accused person at a particular place or in a particular area at a particular time, the accused person was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

***prescribed period*** means the period of 10 days commencing at the time of the accused person's committal for trial.

#### **49 Notice of intention to adduce evidence of substantial mental impairment**

- (1) On a trial for murder, the accused person must not, without the leave of the court, adduce evidence tending to prove a contention of substantial mental impairment unless the accused person gives notice, as prescribed by the regulations, of his or her intention to raise that contention.
- (2) Without limiting subsection (1), the accused person must not, without the leave of the court, call any other person to give evidence tending to prove a contention of substantial mental impairment unless the notice under this section includes:
- (a) the name and address of the other person, and

- (b) particulars of the evidence to be given by the other person.
- (3) Any evidence tendered to disprove a contention of substantial mental impairment may, subject to any direction of the court, be given before or after evidence is given to prove that contention.
- (4) Any notice purporting to be given under this section on behalf of the accused person by his or her legal practitioner is taken, unless the contrary is proved, to have been given with the authority of the accused person.
- (5) A notice under this section is to be given in writing to the Director of Public Prosecutions, and may be given by delivering it to the Director, by leaving it at the Director's office or by sending it in a letter addressed to the Director at the Director's office.
- (6) In this section, **contention of substantial mental impairment** means a contention by the accused person that the accused person is not liable to be convicted of murder by virtue of section 23A of the [Crimes Act 1900](#).

## Division 4 Institution of proceedings

### 50 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.

### **51 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.

### **52 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.

### **53 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.

### **54 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 64.
- (8) This section extends to criminal proceedings commenced, but not concluded, before the commencement of this section.

**55 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.

**56 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.

**Division 5 Form of indictments**

**57 Application of Division**

This Division 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.

### **58 Certain defects do not affect indictment**

An indictment is not bad, insufficient, void, erroneous or defective on any of the following grounds:

- (a) for the improper insertion or omission of the words “as appears by the record”, “with force and arms”, “against the peace”, “against the form of the statute” or “feloniously”,
- (b) for want of an averment of any matter unnecessary to be proved or necessarily implied,
- (c) for want of a proper or perfect venue or a proper or formal conclusion,
- (d) for want of any additional accused person or for any imperfection relating to any additional accused person,
- (e) for want of any statement of the value or price of any matter or thing, or the amount of damage or injury, if such value, price or amount is not of the essence of the offence,
- (f) for designating any person by the name of his or her office, or other descriptive appellation, instead of by his or her proper name,
- (g) except where time is an essential ingredient, for omitting to state the time at which an offence was committed, for stating the time wrongly or for stating the time imperfectly,
- (h) for stating an offence to have been committed on a day subsequent to the finding of the indictment, on an impossible day or on a day that never happened.

### **59 Indictment of bodies corporate**

- (1) Unless a contrary intention appears, a provision of an Act relating to an offence applies to bodies corporate as well as to individuals.
- (2) On arraignment, a body corporate may enter a plea of “guilty” or “not guilty” by means of writing signed by its representative.
- (3) If no such plea is entered the court is to enter a plea of “not guilty”, and the trial is to proceed as though the body corporate had pleaded “not guilty”.
- (4) A representative of a body corporate need not be appointed under the body’s seal.
- (5) A written statement that:

(a) purports to be signed by one of the persons having the management of the affairs of the body corporate, and

(b) contains a statement to the effect that a named person is the body's representative,

is admissible as evidence that the named person has been so appointed.

#### **60 Venue in indictment**

(1) New South Wales is a sufficient venue for all places, whether the indictment is in the Supreme Court or any other court having criminal jurisdiction.

(2) However, some district or place within, at or near which the offence is charged to have been committed must be mentioned in the body of the indictment.

(3) Any such district or place is to be taken to be in New South Wales, and within the jurisdiction of the court, unless the contrary is shown.

#### **61 When formal objections to be taken**

(1) An objection to an indictment for a formal defect apparent on its face must be taken, by demurrer or motion to quash the indictment, before the jury is sworn.

(2) The court before which the objection is taken may cause the indictment to be amended and, in that case, the trial is to proceed as if there had been no defect.

#### **62 Judgment on demurrer to indictment**

The judgment against the accused person on demurrer is to be that the person "answer over" to the charge.

#### **63 Traversing indictment**

(1) No traverse is to be allowed, or trial postponed, or time to plead to the indictment given, unless the court so orders.

(2) However, if the court is of the opinion that the accused person ought to be allowed time, either to prepare for his or her defence or for any other reason, the court is to postpone the trial on such terms as it considers fit.

#### **64 Orders for amendment of indictment, separate trial and postponement of trial**

(1) If of the opinion that an indictment is defective but, having regard to the merits of the case, can be amended without injustice, the court may make such order for the amendment of the indictment as it thinks necessary to meet the circumstances of the case.

(2) If of the opinion:

- (a) that an accused person may be prejudiced or embarrassed in his or her defence by reason of being charged with more than one offence in the same indictment, or
  - (b) that for any other reason it is desirable to direct that an accused person be tried separately for any one or more offences charged in an indictment,
- the court may order a separate trial of any count or counts of the indictment.
- (3) If of the opinion that the postponement of an accused person's trial is expedient as a consequence of it having amended an indictment or ordered a separate trial of a count, the court may make such order as appears necessary.
  - (4) An order under this section may be made either before trial or at any stage during the trial.
  - (5) The following provisions apply if an order is made under this section for a separate trial or for the postponement of a trial:
    - (a) if the order is made during the trial, the court may order that the jury be discharged from giving a verdict:
      - (i) on the count or counts in respect of which the trial is postponed, or
      - (ii) on the indictment,as the case may be,
    - (b) the procedure on the separate trial of a count, and the procedure on the postponed trial, are to be the same in all respects (if the jury has been discharged) as if the trial had not commenced,
    - (c) subject to the [Bail Act 1978](#), the court may commit the accused person to a correctional centre.
  - (6) Any power of the court under this section is in addition to and not in derogation of any other power of the court for the same or similar purposes.

## **65 Amended indictment**

- (1) If any indictment is amended, a note of the order for amendment is to be endorsed on the indictment, and the indictment in its amended form is to be treated as the indictment for the purposes of the trial and all proceedings in connection with or consequent on the trial.
- (2) Any verdict or judgment given after the amendment of an indictment is to have the same force and effect as if the indictment had originally been in its amended form.
- (3) If it is necessary at any time to draw up a formal record of an indictment, the record may be drawn up in the words and form of the amended indictment, without notice of



the fact of the amendment.

**66 Indictment may contain up to 3 similar counts**

- (1) Up to 3 counts may be inserted in the same indictment, against the same person, for distinct offences of the same kind committed against the same person.
- (2) This section does not apply if more than 6 months have elapsed between the first and last of the offences.
- (3) Nothing in this section affects the right of the Crown to insert alternative counts in any indictment.

**67 Accessories may be charged together in one indictment**

Any number of accessories (whether before or after the fact) may be charged with substantive serious indictable offences in the same indictment, and may be tried together, even though the principal offender is not included in the indictment, not in custody or not amenable to justice.

**68 Indictment charging previous offence also**

In an indictment against a person for an offence committed after the person was convicted of some previous offence (whether indictable or otherwise) it is sufficient, after charging the subsequent offence, to state that the accused person was (at a specified time and place) convicted of the previous offence, without particularly describing the previous offence.

**69 Description of written instruments**

If:

- (a) an indictment relates to an instrument that is written or printed, or partly written and partly printed, or
- (b) it is necessary to make an averment in an indictment with respect to an instrument that is written or printed, or partly written and partly printed,

it is sufficient to describe the instrument by any name or designation by which it is usually known, or by its purport, without setting out a copy of the instrument, or otherwise describing the instrument, and without stating the value of the instrument.

**70 General averment of intent to defraud or injure**

- (1) It is sufficient to allege that the accused person did an act with intent to defraud or injure without alleging an intent to defraud or injure any particular person.
- (2) In an indictment for doing an act fraudulently, or for a fraudulent purpose, it is not necessary to state the fraudulent intent or purpose.

## **71 Indecent assault**

In an indictment for an indecent assault, it is sufficient to state that the accused person (at a specified time and place) committed an indecent assault on the person alleged to have been assaulted, without stating the mode of assault.

## **72 Partners and partnership property**

(1) In an indictment:

- (a) it is sufficient to describe partners, joint tenants, parceners or tenants in common by naming one of them and referring to the others as “another” or “others”, as the case requires, and
- (b) it is sufficient to state the ownership of property belonging to partners, joint tenants, parceners or tenants in common by naming one of them and alleging the property to belong to the person so named and “another” or “others”, as the case requires.

(2) This section extends to all joint stock companies, executors, administrators and trustees.

## **73 Where not necessary to allege particular ownership**

In any indictment in respect of any of the following matters:

- (a) stealing, destroying or injuring any testamentary instrument, any document issued by a court or anything fixed or growing in any place set aside for public use,
- (b) any offence committed in or in relation to a place of divine worship,
- (c) any offence committed in relation to property in any public library or other public building,
- (d) anything mentioned in section 202 or 210 of the *Crimes Act 1900*,

it is not necessary to allege that the thing in respect of which the offence was committed is the property of any person.

## **74 Stealing and receiving in one indictment**

- (1) In an indictment containing a charge of stealing property, a further charge may be added against the same person for unlawfully receiving the property, or any part of the property, knowing it to have been stolen.
- (2) The prosecuting authority is not to be put to election as to those charges.

## **75 Separate receivers may be charged in one indictment**

If property has been stolen, taken, embezzled, obtained, fraudulently applied or disposed

of in such a manner as to amount to a serious indictable offence:

- (a) any number of receivers at different times of the property, and
- (b) any number of receivers of different parts of the property,

may be charged with substantive serious indictable offences in the same indictment, and be tried together, even if the principal offender is not included in the indictment, not in custody or not amenable to justice.

#### **76 Allegations in indictment as to money or securities stolen**

(1) In an indictment:

- (a) for stealing, taking, receiving, or embezzling any money or valuable security, or
- (b) for misappropriating, or fraudulently applying or disposing of, any money or valuable security, or
- (c) for obtaining any money or valuable security by any threat or false pretence, or partly by a false pretence and partly by a wilfully false promise,

it is sufficient to describe the property as a “certain amount of money” or a “certain valuable security”, without specifying any particular kind of money or security.

(2) Such a description may be sustained by proof of the stealing, taking, receiving, embezzling, appropriating, disposal or obtaining of any money or valuable security:

- (a) even if some part of its value was agreed to be, or was in fact, returned, and
- (b) even if, as regards money, the particular kind of money is not proved or provable.

#### **77 Indictment for stealing by tenants**

An indictment against a person for stealing property let to be used by the person as a tenant or lodger in relation to premises is sufficient:

- (a) in the case of a chattel, if it is in the common form for larceny, and
- (b) in the case of a fixture, if it is in the same form as if the person were not a tenant or lodger,

and in either case the property may be described as being owned by the owner of the premises or by the person letting the premises.

#### **78 Indictment for stealing deeds**

(1) In an indictment for stealing, embezzling, destroying, cancelling, obliterating or concealing any document of title to land, or any part of land, it is sufficient:

- (a) to allege that the document contains evidence of the title to the land, and

(b) to mention the person, or one of the persons, having an interest in the land or any part of the land.

(2) In this section:

**document of title to land** includes any deed, certificate of title, map, paper or parchment (whether written or printed, or partly written and partly printed) that is or contains evidence of the title, or part of the title, to any real estate or any interest in or out of real estate.

### **79 Indictment for larceny by public servant, property to be described as property of the State**

In an indictment for larceny or embezzlement as a public servant, the property may be described as the property of the State, from which it is taken to have been stolen.

### **80 Description in indictment for engraving**

In an indictment:

- (a) for engraving or making the whole or any part of any instrument or thing, or
- (b) for using or having possession of any plate or material on which the whole or any part of any instrument or thing is engraved or made, or
- (c) for having possession of paper on which the whole or any part of any instrument or thing is made or printed,

it is sufficient to describe any such instrument or thing by any name or designation by which it is usually known, without setting out a copy of it or any part of it.

### **81 Indictment for sale of counterfeit coin**

In an indictment with respect to the unlawful buying, selling, paying, putting off or receiving of counterfeit coin, it is not necessary to allege at what rate, or for what price, the coin was bought or sold or offered to be bought, sold, paid, put off or received.

### **82 Indictment for perjury**

(1) In an indictment for perjury, it is sufficient:

- (a) to allege that, on a certain day, at a certain place and before a named person, the accused person falsely swore, declared or affirmed the matter charged as false:
  - (i) stating only the substance of the matter, and
  - (ii) averring that the matter was falsely sworn, declared or affirmed on an occasion when the truth of the matter was material, and
- (b) to state generally that the matter charged as false was false in fact without

negating each or any aspect of the matter.

(2) Consequently, it is not necessary:

- (a) to specify the occasion on which the matter charged as false was falsely sworn, declared or affirmed, or
- (b) to show how the matter charged as false was material, or
- (c) to specify the proceedings in or in relation to which the matter charged as false was falsely sworn, declared or affirmed, or
- (d) to specify the judicial or official character of the person administering the oath, or taking the declaration or affirmation, charged as false.

### **83 Indictment for conspiracy**

- (1) This section applies to an indictment for conspiracy.
- (2) It is not necessary to state any overt act of conspiracy.
- (3) Each accused person, whether 2 or more are included in the same indictment or not:
  - (a) may be charged separately, in any count:
    - (i) as having conspired with other persons, of whom it is sufficient to name one only, or
    - (ii) as having conspired with one other named person only, and
  - (b) may be convicted on any such count on proof of having unlawfully conspired, for the purpose alleged in the indictment, with any one of the named persons.
- (4) No more than 3 counts against the same accused person may be inserted in one indictment.
- (5) In any case before a plea is entered, the court may order such particulars to be given as the court considers appropriate.
- (6) If substantially different conspiracies are charged in the same indictment, the prosecuting authority may be put to election as to the one on which to proceed.

### **84 Procedures regarding obscene or blasphemous libel**

- (1) In any indictment against the publisher of an obscene or blasphemous libel, it is not necessary to set out the obscene or blasphemous passages.
- (2) It is sufficient to tender the book, newspaper or other document containing the alleged libel with the indictment, together with particulars showing precisely, by reference to pages, columns and lines, in what part of the book, newspaper or other

document the alleged libel is to be found.

- (3) The particulars referred to in subsection (2) are taken to form part of the record of the proceedings.
- (4) All proceedings may be taken as though the passages complained of had been set out in the indictment.

#### **85 Supreme Court rules may prescribe forms of indictments**

- (1) Without limiting the rule-making powers conferred by the *Supreme Court Act 1970*, rules may from time to time be made under that Act prescribing forms of indictments, records, informations, depositions, convictions, warrants and processes in all courts for any offence.
- (2) Any form prescribed by those rules is taken to be sufficient for the purpose, and to sufficiently state the offence, for which it is prescribed.

### **Division 6 Pleadings**

#### **86 Arraignment on charge of previous conviction**

- (1) An accused person is not to be arraigned for any previous conviction charged in an indictment unless he or she is convicted of a subsequent offence charged in the indictment.
- (2) On the accused person's conviction of the subsequent offence:
  - (a) the accused person is to be arraigned, and
  - (b) the jury is to be charged, and
  - (c) the trial is to proceed,in relation to the previous conviction.
- (3) In the trial for the subsequent offence, evidence of the previous conviction may not be admitted, except in reply to evidence of character, unless the accused person is convicted of the subsequent offence.

#### **87 Guilty plea to offence not charged**

- (1) If an accused person:
  - (a) is arraigned on an indictment for an offence, and
  - (b) can lawfully be convicted on the indictment of some other offence not charged in the indictment,he or she may plead "not guilty" of the offence charged in the indictment, but "guilty"

of the other offence.

- (2) The Crown may elect to accept the plea of “guilty” or may require the trial to proceed on the charge on which the accused person is arraigned.

### **88 Plea of “not guilty”**

If an accused person arraigned on an indictment pleads “not guilty”, the accused person is taken to have put himself or herself on the country for trial, and the court is to order a jury for trial accordingly.

### **89 Refusal to plead**

If an accused person who is arraigned stands mute, or will not answer directly to the indictment, the court may order a plea of “not guilty” to be entered on behalf of the accused person, and the plea so entered has the same effect as if the accused person had actually pleaded “not guilty”.

### **90 Plea of autrefois convict**

- (1) In any plea of autrefois convict, or of autrefois acquit, it is sufficient for the accused person to allege that he or she has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment, without specifying the time or place of the previous conviction or acquittal.
- (2) The issue of autrefois convict or autrefois acquit is to be determined by the court without the presence of a jury.

### **91 Change to guilty plea during trial**

- (1) If an accused person pleads “guilty” to an offence at any time after having been given into the charge of a jury, and the court accepts the plea, the court is to discharge the jury from giving a verdict in the matter and to find the accused person guilty of the offence.
- (2) The finding has effect as if it were the verdict of the jury, and the accused person is liable to punishment accordingly.

## **Part 4 Criminal procedure generally**

### **Division 1 Application of Part**

#### **92 Application of Part**

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.

## **Division 2 General trial procedure**

### **93 Practice as to entering the dock**

The Judge may order the accused person to enter the dock or other place of arraignment or may allow him or her to remain on the floor of the court, and in either case to sit down, as the Judge considers appropriate.

### **94 Right to inspect depositions on trial**

An accused person is entitled on his or her trial to inspect, without fee, all depositions taken against the person and returned to, or held by, the court before which he or she is on trial.

### **95 Abolition of an accused person's right to make unsworn statement or to give unsworn evidence**

Any rule of law, procedure or practice that permits a person who is charged with the commission of a criminal offence to make an unsworn statement or to give unsworn evidence in answer to the charge is abolished.

### **96 Accused person may be defended by counsel**

An accused person is entitled to make full answer and defence by counsel.

### **97 Opening address to jury by accused person**

- (1) An accused person or his or her counsel may address the jury immediately after the opening address of the prosecuting authority.
- (2) Any such opening address is to be limited generally to an address on:
  - (a) the matters disclosed in the prosecuting authority's opening address, including those that are in dispute and those that are not in dispute, and
  - (b) the matters to be raised by the accused person.
- (3) If the accused person intends to give evidence or to call any witness in support of the defence, the accused person or his or her counsel is entitled to open the case for the defence before calling evidence, whether or not an address has been made to the jury.

### **98 Closing address to jury by accused person**

- (1) An accused person or his or her counsel may address the jury after the close of the evidence for the defence and any evidence in reply by the Crown and after the prosecuting authority has made a closing address to the jury or declined to make a closing address to the jury.
- (2) If, in the accused person's closing address, relevant facts are asserted that are not



supported by any evidence that is before the jury, the court may grant leave for the Crown to make a supplementary address to the jury replying to any such assertion.

### **99 Summary by Judge**

- (1) At the end of a criminal trial before a jury, a Judge need not summarise the evidence given in the trial if of the opinion that, in all the circumstances of the trial, a summary is not necessary.
- (2) This section applies despite any rule of law or practice to the contrary.
- (3) Nothing in this section affects any aspect of a Judge's summing up function other than the summary of evidence in a trial.

### **100 Witnesses in mitigation**

- (1) After convicting an accused person of an offence, and before passing sentence, the court may summon witnesses and examine them on oath in respect of any matter in mitigation of the offence.
- (2) The court may do so on application made by or on behalf of the Crown or by or on behalf of the accused person.

## **Division 3 Evidentiary provisions**

### **101 Proof of service of notice to produce**

An affidavit by:

- (a) the Director of Public Prosecutions or the Solicitor for Public Prosecutions, or
- (b) a member of the staff of the Director of Public Prosecutions, or
- (c) a legal practitioner or legal practitioner's clerk, or
- (d) the accused person, or
- (e) a police officer,

as to the service of any notice to produce and of the time when it was served, with a copy of the notice annexed to the affidavit, is sufficient evidence of the service of the original of the notice and of the time when it was served.

### **102 Stealing goods from vessel or wharf**

- (1) This section applies to the following offences:
  - (a) any offence involving the stealing of property:
    - (i) from any vessel, barge, boat or train, or

- (ii) from any dock, wharf, quay, railway yard or other railway premises, or
  - (iii) from any store or shed used in connection with and adjoining any such dock, wharf, quay, railway yard or other railway premises, or
  - (iv) in the course of transit from any vessel, barge, boat or train, or from any store or shed used in connection with and adjoining such wharf, dock, quay, railway yard or other railway premises, or
- (b) any offence involving the receiving of property so stolen knowing it to have been stolen.
- (2) On the prosecution of any person for an offence to which this section applies:
- (a) evidence may be given of any writing, printing, or marks on any property alleged to have been stolen or received, or on any package containing such property, without producing or giving notice to produce the original writing, printing or marks, and
  - (b) any document purporting to be a document of title to any property alleged to have been stolen or received:
    - (i) is admissible in evidence on production and without further proof, and
    - (ii) is evidence of the particulars contained in the document, and that the ownership of the property is in the consignee referred to in the document or his or her assignee.
- (3) In this section:
- document of title** to property includes:
- (a) any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant, or order for the delivery or transfer of any goods or valuable thing, and
  - (b) any bought and sold note or other document:
    - (i) used in the ordinary course of business as proof of the possession or control of goods, or
    - (ii) purporting to authorise, by endorsement or delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to.

**train** includes any railway carriage, railway truck or other railway vehicle that is on any railway.

### **103 Incriminating statements admissible though on oath**

An incriminating statement made voluntarily by an accused person before any charge has

been preferred against the accused person in respect of an indictable offence is not to be rejected merely because the statement was made on oath.

#### **104 Compellability of spouses to give evidence in certain proceedings**

(1) In this section:

- (a) a reference to the husband or wife of an accused person includes a reference to a person living with the accused person as the husband or wife of the accused person on a bona fide domestic basis although not married to the accused person, and
- (b) a reference to a domestic violence offence is a reference to a domestic violence offence within the meaning of the *Crimes Act 1900*, and
- (c) a reference to a domestic violence offence committed on the husband or wife of an accused person includes a reference to an offence of contravening a prohibition or restriction specified in an apprehended violence order that was made against the accused person and in respect of which the husband or wife was the protected person, and
- (d) a reference to a child assault offence is a reference to:
  - (i) a prescribed sexual offence committed on a child under the age of 18 years, or
  - (ii) an offence under, or mentioned in, section 24, 27, 28, 29, 30, 33, 33A, 35, 39, 41, 42, 43, 44, 46, 47, 48, 49, 58, 59 or 61 of the *Crimes Act 1900* committed on a child under the age of 18 years, or
  - (iii) an offence that, at the time it was committed, was a child assault offence for the purposes of this section or section 407AA of the *Crimes Act 1900*, or
  - (iv) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in subparagraph (i), (ii) or (iii), and
- (e) a reference to a child assault offence committed on a child includes a reference to an offence of contravening a prohibition or restriction specified in an apprehended violence order that was made against the accused person and in respect of which that child was the protected person.

(2) The husband or wife of an accused person in proceedings in any court:

- (a) for a domestic violence offence (other than an offence arising from a negligent act or omission) committed on the husband or wife, or
- (b) for a child assault offence (other than an offence arising from a negligent act or omission) committed on:
  - (i) a child living in the household of the accused person, or

(ii) a child who, although not living in the household of the accused person, is a child of the accused person and the husband or wife,

is compellable to give evidence in the proceedings, either for the prosecution or for the defence, without the consent of the accused person.

- (3) The husband or wife of an accused person is not compellable to give evidence for the prosecution as referred to in subsection (2) if the husband or wife has applied to, and been excused by, the court.
- (4) A court may excuse the husband or wife of an accused person from giving evidence for the prosecution as referred to in subsection (2) if satisfied:
  - (a) that the application to be excused is made by that husband or wife freely and independently of threat or any other improper influence by any person, and
  - (b) that it is relatively unimportant to the case to establish the facts in relation to which it appears that the husband or wife is to be asked to give evidence, or there is other evidence available to establish those facts, and
  - (c) that the offence with which the accused person is charged is of a minor nature.
- (5) When excusing the husband or wife of an accused person from giving evidence under subsection (4), the court:
  - (a) must state the reasons for doing so, and
  - (b) must cause those reasons to be recorded in writing in a form prescribed by the regulations.
- (6) An application under this section by the husband or wife of an accused person to be excused from giving evidence is to be made and determined in the absence of the jury (if any) and the accused person, but in the presence of the accused person's counsel.
- (7) A court may conduct the hearing of an application under this section in any manner it thinks fit, and is not bound to observe rules of law governing the admission of evidence but may obtain information on any matter in any manner it thinks fit.
- (8) The fact that the husband or wife of an accused person in proceedings for an offence has applied to be excused, or has been excused, from giving evidence in the proceedings is not to be made the subject of any comment by the court or by any party in the proceedings.

### **105 Admissibility of evidence relating to sexual experience**

- (1) This section applies to prescribed sexual offence proceedings.
- (2) Evidence relating to the sexual reputation of the complainant is inadmissible.

(3) Evidence that discloses or implies:

- (a) that the complainant has or may have had sexual experience or a lack of sexual experience, or
  - (b) has or may have taken part or not taken part in any sexual activity,
- is inadmissible.

(4) Subsection (3) does not apply:

(a) if the evidence:

- (i) is of the complainant's sexual experience or lack of sexual experience, or of sexual activity or lack of sexual activity taken part in by the complainant, at or about the time of the commission of the alleged prescribed sexual offence, and
- (ii) is of events that are alleged to form part of a connected set of circumstances in which the alleged prescribed sexual offence was committed,

(b) if the evidence relates to a relationship that was existing or recent at the time of the commission of the alleged prescribed sexual offence, being a relationship between the accused person and the complainant,

(c) if:

- (i) the accused person is alleged to have had sexual intercourse (as defined in section 61H (1) of the *Crimes Act 1900*) with the complainant, and the accused person does not concede the sexual intercourse so alleged, and
- (ii) the evidence is relevant to whether the presence of semen, pregnancy, disease or injury is attributable to the sexual intercourse alleged to have been had by the accused person,

(d) if the evidence is relevant to:

- (i) whether at the time of the commission of the alleged prescribed sexual offence there was present in the complainant a disease that, at any relevant time, was absent in the accused person, or
- (ii) whether at any relevant time there was absent in the complainant a disease that, at the time of the commission of the alleged prescribed sexual offence, was present in the accused person,

(e) if the evidence is relevant to whether the allegation that the prescribed sexual offence was committed by the accused person was first made following a realisation or discovery of the presence of pregnancy or disease in the complainant (being a realisation or discovery that took place after the commission

of the alleged prescribed sexual offence),

- (f) if the evidence has been given by the complainant in cross-examination by or on behalf of the accused person, being evidence given in answer to a question that may, pursuant to subsection (6), be asked,

and if the probative value of the evidence outweighs any distress, humiliation or embarrassment that the complainant might suffer as a result of its admission.

- (5) A witness must not be asked:

- (a) to give evidence that is inadmissible under subsection (2) or (3), or
- (b) by or on behalf of the accused person, to give evidence that is or may be admissible under subsection (4) unless the court has previously decided that the evidence would, if given, be admissible.

- (6) If the court is satisfied:

- (a) that it has been disclosed or implied in the case for the prosecution against the accused person that the complainant has or may have, during a specified period or without reference to any period:
- (i) had sexual experience, or a lack of sexual experience, of a general or specified nature, or
- (ii) had taken part in, or not taken part in, sexual activity of a general or specified nature, and
- (b) the accused person might be unfairly prejudiced if the complainant could not be cross-examined by or on behalf of the accused person in relation to the disclosure or implication,

the complainant may be so cross-examined, but only in relation to the experience or activity of the nature (if any) so specified during the period (if any) so specified.

- (7) On the trial of a person, any question as to the admissibility of evidence under subsection (2) or (3) or the right to cross-examine under subsection (6) is to be decided by the court in the absence of the jury.
- (8) If the court decides that evidence is admissible under subsection (4), the court must, before the evidence is given, record or cause to be recorded in writing the nature and scope of the evidence that is so admissible and the reasons for that decision.
- (9) In this section:

**accused person**, in relation to any proceedings, means the person who stands, or any of the persons who stand, charged in those proceedings with a prescribed sexual offence.

**complainant**, in relation to any proceedings, means the person, or any of the persons, on whom a prescribed sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed.

**prescribed sexual offence proceedings** means proceedings in which a person stands charged with a prescribed sexual offence, whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on the charge, to be found guilty of any other offence.

#### **106 Disclosure of address or telephone number of witness**

- (1) A witness in proceedings for an offence, or a person who makes a written statement that is likely to be produced in proceedings for an offence, is not required to disclose his or her address or telephone number, unless:
  - (a) the address or telephone number is a materially relevant part of the evidence, or
  - (b) the court makes an order requiring the disclosure.
- (2) An application for such an order may be made by the prosecution or the defence.
- (3) The court may make such an order only if it is satisfied that disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice outweigh any such risk.
- (4) An address or telephone number that is not required to be disclosed and that is contained in a written statement may, without reference to the person who made the written statement, be deleted from the statement, or rendered illegible, before the statement is produced in court or given to the accused person.
- (5) A written statement is not inadmissible as evidence on the ground that it either does or does not disclose any such address or telephone number as referred to in this section.
- (6) This section does not prevent the disclosure of an address in a written statement if the statement does not identify it as a particular person's address.
- (7) This section does not affect the operation of section 48BA of the *Justices Act 1902*.
- (8) In this section:

**address** includes a private, business or official address.

**telephone number** includes a private, business or official telephone number.

#### **107 Warning to be given by Judge in relation to lack of complaint in certain sexual offence**

**proceedings**

- (1) This section applies if, on the trial of a person for a prescribed sexual offence, evidence is given or a question is asked of a witness that tends to suggest:
  - (a) an absence of complaint in respect of the commission of the alleged offence by the person on whom the offence is alleged to have been committed, or
  - (b) delay by that person in making any such complaint.
- (2) In circumstances to which this section applies, the Judge:
  - (a) must warn the jury that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false, and
  - (b) must inform the jury that there may be good reasons why a victim of a sexual assault may hesitate in making, or may refrain from making, a complaint about the assault.

**108 Admissions by suspects**

- (1) This section applies to an admission:
  - (a) that was made by an accused person who, at the time when the admission was made, was or could reasonably have been suspected by an investigating official of having committed an offence, and
  - (b) that was made in the course of official questioning, and
  - (c) that relates to an indictable offence, other than an indictable offence that can be dealt with summarily without the consent of the accused person.
- (2) Evidence of an admission to which this section applies is not admissible unless:
  - (a) there is available to the court:
    - (i) a tape recording made by an investigating official of the interview in the course of which the admission was made, or
    - (ii) if the prosecution establishes that there was a reasonable excuse as to why a tape recording referred to in subparagraph (i) could not be made, a tape recording of an interview with the person who made the admission, being an interview about the making and terms of the admission in the course of which the person states that he or she made an admission in those terms, or
  - (b) the prosecution establishes that there was a reasonable excuse as to why a tape recording referred to in paragraph (a) could not be made.
- (3) The hearsay rule and the opinion rule (within the meaning of the [Evidence Act 1995](#))



do not prevent a tape recording from being admitted and used in proceedings before the court as mentioned in subsection (2).

(4) In this section:

**investigating official** means:

- (a) a police officer (other than a police officer who is engaged in covert investigations under the orders of a superior), or
- (b) a person appointed by or under an Act (other than a person who is engaged in covert investigations under the orders of a superior) whose functions include functions in respect of the prevention or investigation of offences prescribed by the regulations.

**official questioning** means questioning by an investigating official in connection with the investigation of the commission or possible commission of an offence.

**reasonable excuse** includes:

- (a) a mechanical failure, or
- (b) the refusal of a person being questioned to have the questioning electronically recorded, or
- (c) the lack of availability of recording equipment within a period in which it would be reasonable to detain the person being questioned.

**tape recording** includes:

- (a) audio recording, or
- (b) video recording, or
- (c) a video recording accompanied by a separately but contemporaneously recorded audio recording.

## **Division 4 Medical examinations and law enforcement devices**

### **109 Medical examinations**

- (1) Unless otherwise directed by the court, it is not necessary for a person who has made a scientific examination of any article or living person or dead body to give evidence of the result of the examination.
- (2) A certificate under the hand of any such person stating:
  - (a) that he or she has made the examination, and
  - (b) the nature of his or her scientific qualifications, and

(c) the facts and conclusions he or she has arrived at,  
is admissible as evidence of the matters stated in the certificate.

(3) If such a certificate is tendered by the prosecuting authority, a court may not dispose of the case summarily except with the consent of the accused person.

### 110 Law enforcement devices

(1) A certificate:

(a) that would, by virtue of section 33, 35, 46, 47 or 57 of the *Road Transport (Safety and Traffic Management) Act 1999*, be admissible in proceedings for an offence under that Act as evidence of the particulars certified in and by the certificate, or

(b) that would, by virtue of section 24, 25 or 26 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*, be admissible in proceedings for an offence under that Act as evidence of the particulars certified in and by the certificate,

is admissible in all criminal proceedings as evidence of those particulars.

(2) Despite subsection (1), such a certificate is not admissible in proceedings under the *Drug Misuse and Trafficking Act 1985* as evidence of the use or administration, by the person to whom the certificate relates, of any prohibited drug within the meaning of that Act.

(3) Evidence is not required in any criminal proceedings:

(a) as to the accuracy or reliability of any approved camera detection device, approved camera recording device, approved speed measuring device or breath analysing instrument to which such a certificate relates, or

(b) as to the manner in which any approved camera detection device, approved camera recording device, approved speed measuring device or breath analysing instrument to which such a certificate relates was operated,

unless evidence is adduced that the device or instrument was not accurate, was not reliable or was not properly operated.

(4) A photograph that would, by virtue of section 47 or 57 of the *Road Transport (Safety and Traffic Management) Act 1999*, be admissible in proceedings under that Act as evidence of the matters shown or recorded on the photograph is admissible in all criminal proceedings as evidence of those matters.

(5) In this section, **approved camera detection device**, **approved camera recording device**, **approved speed measuring device** and **breath analysing instrument** have the same meanings as they have in the *Road Transport (Safety and Traffic Management) Act 1999*.

## **Division 5 Depositions and written statements**

### **111 Depositions by persons dangerously ill**

- (1) If it appears to a justice that:
  - (a) a person who is able to give material information about an indictable offence is dangerously ill, and
  - (b) the person's evidence will probably be lost if not immediately taken,the justice may take the deposition of the person in connection with the offence in the same way as if a prosecution for the offence were then pending before the court.
- (2) The deposition must be in the form prescribed by the regulations and must be signed by the justice.
- (3) As soon as practicable after the deposition is taken, a copy of the deposition must be delivered to the Attorney General, to the Director of Public Prosecutions and to each person whom the deposition tends to incriminate.
- (4) If practicable, each person whom the deposition tends to incriminate is entitled, before being committed or placed on trial, to be given full opportunity to cross-examine the deponent.
- (5) If in proceedings against an accused person:
  - (a) for the offence to which the deposition relates, or
  - (b) for the murder or manslaughter of the deponent, in the case of his or her death or alleged death by reason of the offence,it is proved to the satisfaction of the court that the deponent is dead, or so ill as not to be able to travel or to give evidence without a risk of endangering the deponent's life, the deposition may be admitted as evidence for or against the accused person, whether or not it was taken in the presence or hearing of the prosecuting authority or the accused person.

### **112 Depositions tendered by prosecution**

- (1) A deposition may be admitted as evidence for the prosecution at the trial of an accused person on proof on oath of each of the following matters:
  - (a) that the deponent:
    - (i) is dead, or so ill as not to be able to travel or to give evidence without a risk of endangering the deponent's life, or
    - (ii) is absent from Australia,

(b) that the deposition was recorded:

- (i) by or in the presence of the justice before whom it was taken, and
- (ii) in the presence of the accused person or during any period when the accused person (having been excused under section 41 (1B) of the *Justices Act 1902*) was absent,

(c) that the accused person, or his or her counsel, had full opportunity to cross-examine the witness, or that the accused person (having been excused under section 41 (1B) of the *Justices Act 1902*) was absent when the deposition was taken and was not represented by counsel.

(2) The deposition:

- (a) must be in writing, signed by the justice by or before whom the deposition was taken, or
- (b) must be in the form of a written transcript of matter recorded by means, other than writing, authorised by law for the recording of depositions.

(3) If the deposition is in the form of a written transcript referred to in subsection (2) (b), it must be proved on oath:

- (a) that the record so made is a true record of the matter so deposed, and
- (b) that the transcript of the record is a correct transcript of that record.

(4) If it appears from the deposition:

- (a) that it was made in the presence of the accused person, and
- (b) that the accused person, or his or her counsel, had full opportunity to cross-examine the witness,

the deposition is taken to have been so made and the accused person, or his or her counsel, is taken to have had such an opportunity, unless proved to the contrary.

(5) If it appears from the deposition:

- (a) that it was made while the accused person (having been excused under section 41 (1B) of the *Justices Act 1902*) was absent, and
- (b) that the accused person was not represented by counsel at that time,

the deposition is taken to have been so made and the accused person is taken to have not been represented by counsel, unless proved to the contrary.

(6) In this section, **justice** includes a coroner holding office under the *Coroners Act 1980*.

### **113 Depositions tendered by accused person**

- (1) The deposition of any witness called and examined before a justice by and on behalf of the accused person may, if the accused person so requires, be admitted as evidence in his or her defence at the trial:
  - (a) if the witness:
    - (i) is dead, or so ill as not to be able to travel or to give evidence without a risk of endangering the witness's life, or
    - (ii) is absent from Australia, or
  - (b) if the committing justice has certified, before committing the accused person for trial, that in the opinion of the justice:
    - (i) the evidence of the witness is material, and
    - (ii) the witness is willing to attend the trial, but is unable to bear the expense of attendance.
- (2) A deposition may not be admitted as evidence on the ground referred to in subsection (1) (b) if the witness has, in due time before the trial, been subpoenaed by the Crown.
- (3) In this section, **justice** includes a coroner holding office under the [Coroners Act 1980](#).

### **114 Evidentiary effect of certain transcripts**

- (1) If a deposition referred to in section 112 or 113 is in the form of a written transcript of matter recorded by means, other than writing, authorised by law for the recording of depositions:
  - (a) the record so made is taken to be a true record of the matter so deposed, and
  - (b) the transcript of the record is taken to be a correct transcript of that record, unless proved to the contrary.
- (2) Subsection (1) applies only to:
  - (a) a transcript made in the form of shorthand notes, being a transcript identified by, and signed in the handwriting of, the person purporting to have made those notes, or
  - (b) a transcript made by other means (other than writing) authorised by law for the recording of depositions, being a transcript certified in the manner prescribed by the regulations made under the [Justices Act 1902](#).

### **115 Depositions taken during pre-trial investigations**

A deposition taken on the preliminary or other investigation of an indictable offence:

- (a) may be admitted as evidence on the trial of the accused person for any other offence, whether of the same or of a different kind, if it would be admissible on his or her trial for the offence in respect of which it was taken, and
- (b) may be proved in the same manner as if the accused person were on trial for that offence.

### **116 Written statements admitted in committal proceedings**

(1) This section applies to:

- (a) a written statement the whole or any part of which has been admitted as evidence under section 48A of the *Justices Act 1902*, including any part of the statement that has been rejected under section 48F of that Act,
- (b) a written statement the whole or any part of which has been tendered as evidence under section 51A of the *Justices Act 1902*,

referred to in this section as a ***prescribed written statement***.

(2) Except in so far as the court otherwise orders, a prescribed written statement may be admitted as evidence for the prosecution at the trial of the accused person on proof on oath that the person who made the statement:

- (a) is dead, or so ill as not to be able to travel or to give evidence without a risk of endangering the person's life, or
- (b) is absent from Australia.

(3) If the accused person so requires, a prescribed written statement may be admitted as evidence in the accused person's defence at the trial of the accused person whenever:

- (a) the person who made the statement:
  - (i) is dead, or so ill as not to be able to travel or to give evidence without a risk of endangering the person's life, or
  - (ii) is absent from Australia, or
- (b) the committing justice has certified, before committing the person for trial, that in the opinion of the justice:
  - (i) the evidence of the person who made the statement is material, and
  - (ii) the person is willing to attend the trial, but is unable to bear the expense of attendance.

- (4) A statement may not be admitted as evidence on the ground referred to in subsection (3) (b) if the person who made the statement has, in due time before the trial, been subpoenaed by the Crown.
- (5) A prescribed written statement made in respect of an indictable offence may be admitted as evidence on the trial of the accused person for any other offence, whether of the same or of a different kind, if it would be admissible on his or her trial for the offence in respect of which it was made.
- (6) If at a trial it appears to the court that the whole or any part of a prescribed written statement is inadmissible, the court may reject the statement or that part, as the case may be, as evidence.

## **Division 6 Restrictions on disclosure of evidence in certain sexual offence proceedings**

### **117 Application of Division**

This Division applies to and in respect of the following offences:

- (a) a prescribed sexual offence, or
- (b) an offence under section 66, 73, 74, 78A, 78B, 78N, 78O, 78Q, 79, 80, 86, 87, 89, 90, 91A, 91B, 91D, 91E, 91F or 91G of the *Crimes Act 1900*, or
- (c) an offence that, at the time it was committed, was an offence to which this Division, or section 77A or 578 of the *Crimes Act 1900*, applied, or
- (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b) or (c).

### **118 Proceedings in camera in certain cases**

- (1) Any proceeding, or any part of any proceeding, in respect of an offence to which this Division applies is, if the court so directs, to be held in camera.
  - (1A) The court must direct that any proceedings in respect of an offence under section 78A or 78B of the *Crimes Act 1900* be held in camera.
- (2) If the court makes a direction under this section, it may (either absolutely or subject to conditions) exempt any person from that direction to the extent necessary to allow that person to be present as a support for a person giving evidence or for any other purpose that the court thinks fit.
- (3) The court may make a direction under this section on its own motion or at the request of any party to the proceedings.
- (4) In determining whether to make a direction under this section the court is to consider

the following matters:

- (a) the need of the complainant to have any person excluded from those proceedings,
- (b) the need of the complainant to have any person present in those proceedings,
- (c) the interests of justice,
- (d) any other matter that the court thinks relevant.

(5) In this section:

**complainant**, in relation to any proceedings for an offence, means the person, or any of the persons, on whom the offence is alleged to have been committed and includes:

- (a) in relation to an offence under section 91D, 91E or 91F of the *Crimes Act 1900*, the person under the age of 18 years who is alleged to have participated in an act of child prostitution, and
- (b) in relation to an offence under section 91G of the *Crimes Act 1900*, the person under the age of 18 years who is alleged to have been used for pornographic purposes.

### **119 Publication of evidence may be forbidden in certain cases**

- (1) In any proceedings against a person for an offence to which this Division applies, the court may from time to time make an order forbidding publication of the whole or any part of the evidence tendered in the proceedings or of any report or account of that evidence.
- (2) If the prosecuting authority or the accused person indicates to the court that it is desired that any particular matter given in evidence should be available for publication, no such order is to be made in respect of that matter.
- (3) Any person who contravenes an order under this section is guilty of a summary offence and liable to a maximum penalty of 20 penalty units.
- (4) This section is subject to any Act or law under which evidence relating to a child under the age of 18 years, or a report or account of that evidence, may not be published.

## **Division 7 Miscellaneous**

### **120 No court fees to be taken from accused persons**

- (1) This section applies to criminal proceedings in any court in respect of any offence.
- (2) Despite subsection (1), this section does not apply to:
  - (a) proceedings for a summary offence for which a penalty notice has been issued as referred to in section 20 of the *Fines Act 1996*, but in respect of which the accused



person has elected to have the matter dealt with by a court under section 36 of that Act, or

(b) proceedings that are brought in a court for the purpose of appealing against, or obtaining a review of, some other court's order or decision in proceedings for a summary offence.

(3) No court fees are payable:

(a) for the issuing of any process on behalf of the accused person, or

(b) for the recording of any appearance or plea made by the accused person,

in connection with criminal proceedings to which this section applies.

### **121 Witnesses neglecting to attend trial captured under warrant may be admitted to bail**

If a person bound by a bail undertaking, or served with a subpoena, to attend as a witness in any court at a trial:

(a) fails to appear when called in open court, either at such trial, or on the day appointed for such trial, and

(b) is arrested under a warrant issued by the court,

bail may be taken before any justice for his or her appearance at the trial.

### **122 On trial for perjury: presumption of authority to administer oath**

On a trial for perjury, the person before whom the perjury is alleged to have been committed is presumed to have had authority to administer the oath, or take the declaration, or affirmation, unless the contrary is shown.

### **123 Joint trial in case of perjury**

If:

(a) a number of persons are severally indicted for perjury or false swearing, and

(b) the statements alleged to be false:

(i) are alleged to have been made on the same occasion, before the same court or tribunal and in respect of the same subject-matter, and

(ii) are in each case to the same effect, whether in identical terms or not,

all of those persons may be tried together, at the same time and before the same jury, provided that each person is to have his or her full right of challenge.

**124 Alternative verdict of attempt on trial for any indictable offence**

If, on the trial of a person for any indictable offence, the jury is not satisfied that the person is guilty of the offence, but is satisfied that he or she is guilty of:

- (a) an attempt to commit the offence, or
- (b) an assault with intent to commit the offence,

it may acquit the person of the offence charged and find the person guilty of the attempt or assault, and the person is liable to punishment accordingly.

**125 No further prosecution after trial for serious indictable offence where alternative verdict possible**

If under any Act a person who is tried for a serious indictable offence may be acquitted of that offence but found guilty of some other offence, the person is not liable to further prosecution on the same facts for that other offence.

**126 Restitution of property**

- (1) In any criminal proceedings in which it is alleged that the accused person has unlawfully acquired or disposed of property, the court may order that the property be restored to such person as appears to the court to be lawfully entitled to its possession.
- (2) Such an order may be made whether or not the court finds the person guilty of any offence with respect to the acquisition or disposal of the property.
- (3) Such an order may not be made in respect of:
  - (a) any valuable security given by the accused person in payment of a liability to which the person was subject when the payment was made, or
  - (b) any negotiable instrument accepted by the accused person as valuable consideration in circumstances in which the person had no notice, or cause to suspect, that the instrument had been dishonestly come by.

**127 When case not to be proceeded with: accused person to be released from custody**

- (1) On deciding that no further proceedings are to be taken with respect to a person who is in custody on remand, whether or not the person has been committed for trial, the Attorney General or Director of Public Prosecutions may cause a certificate to that effect, in the form prescribed by the regulations, to be delivered to the Supreme Court.
- (2) On receipt of such a certificate, the Supreme Court may, by order, direct that the person to whom the certificate relates be released from custody.

## Part 5 Proceedings for treason and related offences

### 128 Definitions

In this Part:

***expressed by spoken word***, in relation to treasonable sentiments, means expressed, uttered or declared by open and advised speaking, and in no other manner.

***treason-related offence*** means an offence arising under section 12 of the *Crimes Act 1900*.

***treason*** means any of the offences whose existence is saved by operation of section 11 of the *Crimes Act 1900*.

***treasonable sentiments*** means the compassings, imaginations, inventions, devices or intentions giving rise to a treason-related offence.

### 129 Time within which prosecution to be commenced and warrant issued for treason-related offence

- (1) No person is to be prosecuted for treasonable sentiments expressed by spoken word unless:
  - (a) information of those sentiments, and of the words by which they were so expressed, was given on oath to one or more justice or justices within 6 days after the words were spoken, and
  - (b) a warrant for the apprehension of the person was issued within 10 days after the information was given.
- (2) No person may be convicted in respect of treasonable sentiments expressed by spoken word unless:
  - (a) the person confesses to those sentiments in open court, or
  - (b) the words by which those sentiments were so expressed are proved by at least 2 witnesses.

### 130 More than one act may be charged in indictment for treason-related offence

In any indictment for a treason-related offence, any number of matters, acts or deeds by which treasonable sentiments have been expressed, uttered, or declared may be charged against the accused person.

### 131 Indictment for treason-related offence valid though facts may amount to treason

- (1) An indictment for a treason-related offence is not bad, insufficient, void, erroneous or defective merely because the facts or matters alleged in the indictment amount in law to treason.

- (2) A person is not entitled to be acquitted of a treason-related offence merely because the facts or matters proved on the person's trial amount in law to treason, but no person tried for a treason-related offence may subsequently be prosecuted on the same facts for treason.

### **132 Procedure for treason to be as for murder**

In all cases of treason, the person charged is to be arraigned and tried in the same manner, and according to the same course and order of trial, as if the person stood charged with murder.

## **Part 6 Police custody of property**

### **Division 1 General**

#### **133 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.

#### **134 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.

#### **135 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 134 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.

**136 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 135 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).

**137 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.

**138 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**

**139 Definitions**

In this Division:

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

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

**140 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.

**141 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.

**142 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.

#### **143 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.

#### **144 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 145.

#### **145 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).

#### **146 Relationship with Division 1**

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

### **Part 7 Sexual assault communications privilege**

#### **147 Interpretation**

(1) **Definitions** In this Part:

***criminal proceedings*** means:

- (a) proceedings relating to the trial or sentencing of a person for an offence (whether or not a sexual assault offence), other than preliminary criminal proceedings, or
- (b) proceedings relating to an order under Part 15A (Apprehended violence) of the [Crimes Act 1900](#).

***harm*** includes actual physical bodily harm, financial loss, stress or shock, damage to reputation or emotional or psychological harm (such as shame, humiliation and fear).

***preliminary criminal proceedings*** means any of the following:

- (a) committal proceedings,
- (b) proceedings relating to bail (including proceedings during the trial or sentencing of a person),

whether or not in relation to a sexual assault offence.

***principal protected confider*** means the victim or alleged victim of a sexual assault offence by, to or about whom a protected confidence is made.

***protected confidence***—see section 148.

***protected confider***, in relation to a protected confidence, means:

- (a) the principal protected confider, or
- (b) any other person who made the protected confidence.

***sexual assault offence*** means:

- (a) an offence to which Division 6 of Part 4 applies, or



(b) any other offence prescribed by the regulations for the purposes of this definition.

(2) **Document recording a protected confidence** In this Part, a reference to a document recording a protected confidence:

(a) is a reference to any part of the document that records a protected confidence or any report, observation, opinion, advice, recommendation or other matter that relates to the protected confidence made by a protected confider, and

(b) includes a reference to any copy, reproduction or duplicate of that part of the document.

(3) **Electronic documents** For the purposes of this Part, if a document recording a protected confidence is stored electronically and a written document recording the protected confidence could be created by use of equipment that is usually available for retrieving or collating such stored information, the document stored electronically is to be dealt with as if it were a written document so created.

#### 148 What is a protected confidence?

(1) In this Part:

**protected confidence** means a counselling communication that is made by, to or about a victim or alleged victim of a sexual assault offence.

(2) A counselling communication is a protected confidence for the purposes of this Part even if it:

(a) was made before the acts constituting the relevant sexual assault offence occurred or are alleged to have occurred, or

(b) was not made in connection with a sexual assault offence or alleged sexual assault offence or any condition arising from a sexual assault offence or alleged sexual assault offence.

(3) For the purposes of this section, a communication may be made in confidence even if it is made in the presence of a third party if the third party is present to facilitate communication or to otherwise further the counselling process.

(4) In this section:

**counselling communication** means a communication:

(a) made in confidence by a person (the **counselled person**) to another person (the **counsellor**) in the course of a relationship in which the counsellor is counselling, giving therapy to or treating the counselled person for any emotional or psychological condition, or

(b) made in confidence to or about the counselled person by the counsellor in the

course of that relationship, or

- (c) made in confidence about the counselled person by a counsellor or a parent, carer or other supportive person who is present to facilitate communication between the counselled person and the counsellor or to otherwise further the counselling process, or
- (d) made in confidence by or to the counsellor, by or to another counsellor or by or to a person who is counselling or otherwise treating, or has counselled or otherwise treated, the counselled person at any time for any emotional or psychological condition of the person.

**149 Evidence of sexual assault communications not to be required to be produced, or adduced in or in connection with, preliminary criminal proceedings**

- (1) A person cannot be required (whether by subpoena or any other procedure) to produce a document recording a protected confidence in, or in connection with, any preliminary criminal proceedings.
- (2) Evidence is not to be adduced in any preliminary criminal proceedings if it would disclose:
  - (a) a protected confidence, or
  - (b) the contents of a document recording a protected confidence.

**150 Evidence of sexual assault communications may be required to be produced in, or in connection with, criminal proceedings, or adduced, with leave**

- (1) A person who objects to production of a document recording a protected confidence on the ground that it is privileged under this Part cannot be required (whether by subpoena or any other procedure) to produce the document for inspection by a party in, or in connection with, any criminal proceedings unless:
  - (a) the document is first produced for inspection by the court for the purposes of ruling on the objection, and
  - (b) the court is satisfied (whether on inspection of the document or at some later stage in the proceedings) that:
    - (i) the contents of the document will, either by themselves or having regard to other evidence adduced or to be adduced by the party seeking production of the document, have substantial probative value, and
    - (ii) other evidence of the protected confidence or the contents of the document is not available, and
    - (iii) the public interest in preserving the confidentiality of protected confidences and protecting the principal protected confider from harm is substantially

outweighed by the public interest in allowing inspection of the document.

- (2) Without limiting the matters that the court may take into account for the purposes of subsection (1) (b) (iii), the court must take into account the likelihood, and the nature or extent, of harm that would be caused to the principal protected confider if the document is produced for inspection.
- (3) Evidence is not to be adduced in any criminal proceedings if it would disclose:
  - (a) a protected confidence, or
  - (b) the contents of a document recording a protected confidence,unless the court gives leave to adduce the evidence.
- (4) The court must not give leave to adduce evidence that discloses a protected confidence or the contents of a document recording a protected confidence unless the court is satisfied that:
  - (a) the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have substantial probative value, and
  - (b) other evidence of the protected confidence or the contents of the document recording the protected confidence is not available, and
  - (c) the public interest in preserving the confidentiality of protected confidences and protecting the principal protected confider from harm is substantially outweighed by the public interest in admitting into evidence information or the contents of a document of substantial probative value.
- (5) Without limiting the matters that the court may take into account for the purposes of subsection (4) (c), the court must take into account the likelihood, and the nature or extent, of harm that would be caused to the principal protected confider if the evidence that discloses the protected confidence or the contents of the document recording the protected confidence is adduced.
- (6) The court must state its reasons for requiring production or giving or refusing to give leave under this section.
- (7) A protected confider who is not a party to proceedings may, with the leave of the court, appear in the proceedings.
- (8) If there is a jury, the court is to hear and determine any objection or application referred to in subsection (1) or (3) in the absence of the jury.

### **151 Notice required before evidence is produced for inspection or adduced**

- (1) A document recording a protected confidence is not to be required to be produced for

inspection by a party in, or in connection with, any criminal proceedings unless the party seeking production of the document has given reasonable notice in writing that production has been sought to:

- (a) each other party, and
  - (b) if the protected confider is not a party—the protected confider.
- (2) Evidence disclosing a protected confidence or the contents of a document recording a protected confidence is not to be adduced in any criminal proceedings unless the party adducing the evidence has given reasonable notice in writing of the party's intention to adduce the evidence to:
- (a) each other party, and
  - (b) if the protected confider is not a party—the protected confider.
- (3) Notice given under this section to a protected confider who is not a party must:
- (a) advise the protected confider that he or she may, with the leave of the court, appear in the proceedings concerned, and
  - (b) in the case of notice given under subsection (1) (b)—advise the protected confider of the day on which the document is (by the subpoena or other procedure concerned) to be produced, and
  - (c) in the case of notice given under subsection (2) (b)—advise the protected confider of the day (if known) when the proceedings are to be heard.
- (4) It is sufficient compliance with a requirement under subsection (1) (b) or (2) (b) to give notice to a protected confider who is not a party and who is the principal protected confider if the party gives reasonable notice that the party has sought production, or of the party's intention to adduce the evidence, to the informant and the informant gives, or uses the informant's best endeavours to give, a copy of the notice to the principal protected confider within a reasonable time after the informant receives the notice.
- (5) Despite subsections (1) and (2), a document recording a protected confidence may, with the leave of the court, be required to be produced for inspection, or evidence disclosing a protected confidence or the contents of a document recording a protected confidence adduced, although notice has not been given to a protected confider who is not a party (not being the principal protected confider) as required by those subsections.
- (6) In this section:

**informant**, in relation to criminal proceedings with respect to an offence, means the police officer who preferred the charge or laid the information for the offence.

### **152 Effect of consent**

- (1) This Part does not prevent the production of any document recording a protected confidence or the adducing of evidence disclosing a protected confidence or the contents of a document recording a protected confidence, in, or in connection with, any proceedings, if the principal protected confider to whom the proceedings relate has consented to the production of the document or adducing of the evidence.
- (2) Consent is not effective for the purposes of this section unless:
  - (a) the consent is given in writing, and
  - (b) the consent expressly relates to the production of a document or adducing of evidence that is privileged under this Part or would be so privileged except for a limitation or restriction imposed by this Part.

### **153 Loss of sexual assault communications privilege: misconduct**

- (1) This Part does not prevent the adducing of evidence of a communication made, or the production or adducing of a document prepared, in the furtherance of the commission of a fraud or an offence or the commission of an act that renders a person liable to a civil penalty.
- (2) For the purposes of this section, if the commission of the fraud, offence or act is a fact in issue and there are reasonable grounds for finding that:
  - (a) the fraud, offence or act was committed, and
  - (b) a communication was made or document prepared in furtherance of the commission of the fraud, offence or act,the court may find that the communication was so made or document so prepared.

### **154 Ancillary orders**

- (1) Without limiting any action the court may take to limit the possible harm, or extent of the harm, likely to be caused by the disclosure of evidence of, or the contents of a document recording, a protected confidence, the court may:
  - (a) order that all or part of the evidence be heard or document produced in camera, and
  - (b) make such orders relating to the production and inspection of the document as, in the opinion of the court, are necessary to protect the safety and welfare of any protected confider, and
  - (c) make such orders relating to the suppression of publication of all or part of the evidence given before the court as, in its opinion, are necessary to protect the safety and welfare of any protected confider, and

(d) make such orders relating to disclosure of protected identity information as, in the opinion of the court, are necessary to protect the safety and welfare of any protected confider.

(2) Nothing in this section limits the power of a court to make an order under section 106 or 119 of this Act or section 578A of the *Crimes Act 1900*.

(3) In this section:

**protected identity information** means information about, or enabling a person to ascertain, the private, business or official address, email address or telephone number of a protected confider.

### **155 Court to inform of rights to make applications and objections**

If it appears to a court that a witness or a party may have grounds for making an application or objection under a provision of this Part, the court must satisfy itself (if there is a jury, in the absence of the jury) that the witness or party is aware of the effect of that provision.

### **156 Court may inspect documents**

If a question arises under this Part relating to a document, a court may order that the document be produced to it and may inspect the document for the purpose of determining the question.

### **157 Inadmissibility of evidence that must not be adduced or given**

Evidence that, because of this Part, must not be adduced or given in proceedings is not admissible in the proceedings.

### **158 Application of Part**

- (1) This Part does not apply in relation to criminal proceedings the hearing of which began before the commencement of this Part. Division 1B of Part 3.10 of the *Evidence Act 1995*, as in force immediately before the commencement of this subsection, continues to apply in relation to such proceedings.
- (2) This Part applies, subject to subsection (1), in relation to a requirement (whether by subpoena or other procedure) to produce a document on or after the commencement of this subsection even if the requirement was issued before that commencement.
- (3) This Part applies, subject to subsection (1), in respect of a protected confidence whether made before or after the commencement of this subsection.
- (4) The court may, subject to subsection (1), give leave under this Part in respect of a protected confidence whether or not the confidence is privileged under Part 3.10 of the *Evidence Act 1995* or would be so privileged except for a limitation or restriction

imposed by that Part.

### **159 Application of common law**

- (1) This Part does not affect the operation of a principle or rule of the common law in relation to evidence in criminal proceedings, except so far as this Part provides otherwise expressly or by necessary intendment.
- (2) Without limiting subsection (1), this Part does not affect the operation of such a principle or rule so far as it relates to the inspection of a document required to be produced in, or in connection with, criminal proceedings.

## **Parts 8-11**

### **160-180 (Repealed)**

## **Schedule 1 Indictable offences triable summarily**

### **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 serious indictable offence**

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

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

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

- (a) the serious indictable offence intended is stealing, or
- (b) the serious indictable offence 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 serious indictable offence**

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

#### **8 Breaking and entering into, or being in, any house or other building and committing serious indictable offence**

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

- (a) the serious indictable offence 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, 203 or 203C 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](#).

- (3) Any offence under Part 6A (other than an offence arising under section 310B 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 (Repealed)**

### **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 (1), 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 serious indictable offence).

**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 minor indictable offence).

**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 section 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 serious indictable offence).

### **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 minor indictable offence).

## **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.

## **Schedule 2 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*

*Crimes Legislation Amendment (Sentencing) Act 1999*

*Crimes (Sentencing Procedure) Act 1999*

*Crimes (Administration of Sentences) Act 1999*

(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.

## **Part 4 Provisions consequent on enactment of Crimes Legislation Amendment (Sentencing) Act 1999**

### **Division 1 Preliminary**

#### **5 Definitions**

In this Part:

**1999 amending Act** means the *Crimes Legislation Amendment (Sentencing) Act 1999*.

**amended legislation** means any Act or instrument amended by Schedule 2, 3, 4 or 5 to the 1999 amending Act, as so amended.

**appointed day** means:

- (a) in relation to a provision of the old legislation that has been repealed or amended by the 1999 amending Act, the day on which the repeal or amendment commences, or

- (b) in relation to a new provision inserted into the amended legislation by the 1999 amending Act, the day on which the new provision commences.

**old legislation** means:

- (a) any Act or instrument repealed by Schedule 1 to the 1999 amending Act, as in force immediately before its repeal, and
- (b) any Act or instrument amended by Schedule 2, 3, 4 or 5 to the 1999 amending Act, as in force immediately before its amendment.

## Division 2 Crimes Act 1900

### 6 Definitions

In this Division:

**1900 Act** means the [Crimes Act 1900](#), as in force immediately before the appointed day.

### 7 Certificates under section 358

A certificate prepared in accordance with section 358 of the 1900 Act is taken to have been prepared in accordance with section 127 of this Act.

### 8 Notices under section 405A and 405AB

A notice served on a person for the purposes of section 405A or 405AB of the 1900 Act is taken to have been served on the person for the purposes of section 48 or 49 of this Act, as the case requires.

### 9 Depositions under section 406

A deposition made in accordance with section 406 of the 1900 Act is taken to have been made in accordance with section 111 of this Act.

### 10 Certificate evidence under section 414A

Any certificate prepared for the purposes of a provision of section 414A of the 1900 Act is taken to have been prepared for the purposes of section 109 or 110 of this Act, as the case requires.

### 11 Operation of section 442A

Section 442A of the 1900 Act continues to have effect in relation to offences under section 61B, 61C and 61D of that Act, as in force before their repeal on 17 March 1991 by the [Crimes \(Amendment\) Act 1989](#).

### 12 Orders under section 578

Any order that, immediately before the appointed day, was in force under section 578 of



the 1900 Act is taken to be an order in force under section 119 of this Act, and may be amended and revoked accordingly.

## **Division 4 General**

### **15 Application of section 95**

- (1) Section 95 does not apply to the trial of a person charged with an offence before 10 June 1994 (the date on which the right to make unsworn dock statements was originally abolished).
- (2) The re-enactment by section 95 of section 404A of the *Crimes Act 1900* does not limit the operation of section 30 of the *Interpretation Act 1987* in relation to the repeal of section 404A by the 1999 amending Act.

### **16 Application of section 105**

Nothing in section 105 authorises the admission of evidence of a kind that was inadmissible immediately before 14 July 1981 (the date on which section 409B of the *Crimes Act 1900* commenced).

### **17 Continued operation of Forfeited Recognizances and Bail Act 1954**

The *Forfeited Recognizances and Bail Act 1954* continues to apply to a recognizance entered into before the commencement of this clause as if that Act had not been repealed.

### **18 Delegations**

Any delegation that was in force immediately before the commencement of the 1999 amending Act under a provision of the old legislation for which there is a corresponding provision in the amended legislation is taken to be a delegation in force under the corresponding provision of the amended legislation.

### **19 Construction of certain references**

Subject to the *Crimes (Sentencing Procedure) Act 1999*, the *Crimes (Administration of Sentences) Act 1999* and the regulations under this Act, in any Act or instrument:

- (a) a reference to a provision of the old legislation for which there is a corresponding provision in the amended legislation extends to the corresponding provision of the amended legislation, and
- (b) a reference to any act, matter or thing referred to in a provision of the old legislation for which there is a corresponding provision in the amended legislation extends to the corresponding act, matter or thing referred to in the corresponding provision of the amended legislation.

## **20 General saving**

Subject to the *Crimes (Sentencing Procedure) Act 1999*, the *Crimes (Administration of Sentences) Act 1999* and the regulations under this Act:

- (a) anything begun before the appointed day under a provision of the old legislation for which there is a corresponding provision in the amended legislation may be continued and completed under the old legislation as if the 1999 amending Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the old legislation for which there is a corresponding provision in the amended legislation (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of the amended legislation.