

# Criminal Procedure Act 1986 No 209

[1986-209]



New South Wales

## Status Information

### Currency of version

Historical version for 15 November 2010 to 6 December 2010 (accessed 24 April 2024 at 7:04)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Industrial Relations Amendment \(Jurisdiction of Industrial Relations Commission\) Act 2009 No 32](#) (not commenced)
  - [Courts and Crimes Legislation Amendment Act 2009 No 77](#) (not commenced — to commence on the commencement of the [Industrial Relations Amendment \(Jurisdiction of Industrial Relations Commission\) Act 2009 No 32](#))
  - [Court Information Act 2010 No 24](#) (not commenced)
  - [Court Suppression and Non-publication Orders Act 2010 No 106](#) (not commenced)
- **See also**
  - [Courts and Crimes Legislation Further Amendment Bill 2010](#)
  - [Greenhouse Gas Storage Bill 2010](#)

### Authorisation

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File last modified 29 November 2010

# Criminal Procedure Act 1986 No 209



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, committal proceedings and proceedings for summary offences and the giving of certain indemnities and undertakings; and for other purposes.

## Chapter 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:

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

**apprehended violence order** has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

**authorised officer** means:

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

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

**Chief Magistrate** means the Chief Magistrate of the Local Court appointed under the [Local Court Act 2007](#).

**committal proceedings** means a hearing before a Magistrate 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 the 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.

**Court of Coal Mines Regulation** means the Court of Coal Mines Regulation established under the [Coal Mines Regulation Act 1982](#).

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

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

**Industrial Magistrate** means an Industrial Magistrate appointed under the [Industrial Relations Act 1996](#).

**Industrial Relations Commission in Court Session** means the Industrial Relations Commission constituted as referred to in section 151 of the [Industrial Relations Act 1996](#).

**intervention plan**—see section 346.

**intervention program**—see section 346.

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

**prescribed sexual offence** means:

- (a) an offence under section 61B, 61C, 61D, 61E, 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 63, 65, 65A, 66, 66A, 66B, 66C, 66D, 66EA, 66EB, 66F, 67, 68, 71, 72, 72A, 73, 74, 76, 76A, 78A, 78B, 78H, 78I, 78K, 78L, 78M, 78N, 78O, 78Q, 79, 80, 80A, 80D, 80E, 81, 81A, 81B, 86, 87, 89, 90, 90A, 91, 91A, 91B, 91D, 91E, 91F or 91G of the [Crimes Act 1900](#), or

- (b) 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
- (c) an offence that includes the commission of, or an intention to commit, an offence referred to in paragraph (a) or (b), 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*.

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

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

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

**regulations** means regulations under this Act.

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

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

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

**trial Judge** means the Judge before whom trial proceedings, following empanelment of a jury in proceedings on indictment, are heard.

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

- (3) In the absence of evidence to the contrary, a person specified in paragraphs (a)–(f) of the definition of **public officer** who purports to exercise a function as a public officer under this Act is presumed to be acting in an official capacity.
- (4) In this Act, a reference to the **empanelment of a jury** is, in the case of a trial by a Judge alone, taken to be a reference to the point in time when the Judge first assumes the role of the tribunal of fact.

#### **4 Regulations and rules**

- (1) 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.
- (2) The Rule Committee for a court may make rules, not inconsistent with this or any other Act, for or with respect to the following matters:
  - (a) any matter that is required or permitted to be prescribed by rules, or that is necessary or convenient to be prescribed by rules, in relation to the practice or procedure to be followed to give effect to this Act,
  - (b) any matter incidental to, or relating to, any such practice or procedure.
- (3) The rules are to be made in accordance with the Act under which the court is constituted.

#### **4A Fees**

- (1) The regulations may make provision for or with respect to the following matters:
  - (a) the fees payable to a court in relation to the conduct of criminal proceedings in the court, including fees for the following:
    - (i) the filing or registration of any document in the court,
    - (ii) the sealing or other authentication of any document that has been filed in the court,
    - (iii) the issue of any document out of the court,
  - (b) the fees payable in relation to the functions exercised by the Sheriff in relation to criminal proceedings,
  - (c) the fees payable for administrative services provided by a registrar or other officer of the court, whether in connection with the administration of this Act or otherwise,
  - (d) the waiver, postponement and remittal of fees.

- (2) Fees of the kind referred to in subsection (1) (a) or (b) are not payable by the Crown, or by any person acting on behalf of the Crown, with respect to any criminal proceedings prosecuted by:
  - (a) the Crown,
  - (b) any Minister of the Crown,
  - (c) any person or body prescribed by the regulations or belonging to a class of persons or bodies so prescribed.
- (3) Subsection (2) does not prevent the recovery by the Crown or any such person or body of any fees that would, had they been paid by the Crown or any such person or body, have been so recoverable.
- (4) Unpaid fees may be recovered by the person to whom they are payable, as a debt, in any court of competent jurisdiction.
- (5) In this section, ***criminal proceedings*** means proceedings for an offence (whether summary or indictable), and includes the following:
  - (a) committal proceedings,
  - (b) proceedings relating to bail,
  - (c) proceedings relating to sentence,
  - (d) proceedings on an appeal against conviction or sentence.

## **Chapter 2 General provisions**

### **Part 1 Offences**

#### **5 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.

#### **6 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 for which the maximum penalty that may be imposed is not, and does



not include, imprisonment for more than 2 years, excluding the following offences:

- (i) an offence that under any other Act is required or permitted to be dealt with on indictment,
- (ii) an offence listed in Table 1 or 2 to Schedule 1.

(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.

#### **7 Certain summary offences may be dealt with by Local Court**

- (1) An offence that is permitted or required to be dealt with summarily is to be dealt with by the Local Court.
- (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 the Local Court.

#### **8 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.

#### **9 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.

#### **10 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.

### **11 Description of offences**

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

### **12 Short description of certain offences**

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

### **13 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.

### **14 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.

## Part 2 Indictments and other matters

### 15 Application of Part

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

(2) In this Part:

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

### 16 Certain defects do not affect indictment

(1) 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,
- (i) if the indictment was signed by an Australian legal practitioner who has been instructed to prosecute the proceedings to which the indictment relates on behalf of the Director of Public Prosecutions—for failure by the Director to authorise the Australian legal practitioner by order in writing under section 126 (2) to sign

indictments for and on behalf of the Director.

- (2) No objection may be taken, or allowed, to any indictment by which criminal proceedings (including committal proceedings) in the Local Court or for any other offence that is to be dealt with summarily are commenced, or to any warrant issued for the purposes of any such proceedings, on the grounds of:
  - (a) any alleged defect in it in substance or in form, or
  - (b) any variance between it and the evidence adduced at the proceedings for the offence charged in the indictment or warrant.

**Note—**

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

**17 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.

**18 Judgment on demurrer to indictment**

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

**19 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.

**20 Amendment of indictment**

- (1) An indictment may not be amended after it is presented, except by the prosecutor:
  - (a) with the leave of the court, or
  - (b) with the consent of the accused.
- (2) This section does not affect the powers of the court under section 21.
- (3) For the purposes of this section, an amendment of an indictment includes the substitution of an indictment.

## **21 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.

## **22 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.

### **23 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.

### **24 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.

### **25 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.

### **26 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.

## **27 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.

## **Part 3 Criminal proceedings generally**

### **28 Application of Part and definition**

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

**Judge** includes a Magistrate, a Children's Court Magistrate, an Industrial Magistrate, the President or a judicial member of the Industrial Relations Commission and any other person of a class prescribed by the regulations for the purposes of this definition.

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

- (1) A court may hear and determine together proceedings related to 2 or more offences alleged to have been committed by the same accused person in any of the following circumstances:
  - (a) the accused person and the prosecutor consent,
  - (b) the offences arise out of the same set of circumstances,
  - (c) the offences form or are part of a series of offences of the same or a similar character.
- (2) A court may hear and determine together proceedings related to offences alleged to have been committed by 2 or more accused persons in any of the following circumstances:
  - (a) the accused persons and the prosecutor consent,
  - (b) the offences arise out of the same set of circumstances,
  - (c) the offences form or are part of a series of offences of the same or a similar

character.

- (3) Proceedings related to 2 or more offences or 2 or more accused persons may not be heard together if the court is of the opinion that the matters ought to be heard and determined separately in the interests of justice.

### **30 Change of venue**

In any criminal proceedings, if it appears to the 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.

### **31 Abolition of 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.

### **32 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.

### **33 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.

### **34 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.

### **35 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.

### **36 Representation and appearance**

(1) A prosecutor or accused person may appear personally or by an Australian legal practitioner or other person empowered by an Act or other law to appear for the prosecutor or accused person.

(2) A prosecutor who is a police officer may appear personally or by a person permitted by subsection (1) or by a police prosecutor.

### **36A Representation and appearance in penalty notice matters**

(1) In any criminal proceedings relating to an offence for which a penalty notice was

issued under this or any other Act, the prosecutor of the offence may be represented and appear by a police prosecutor.

(2) Nothing in this section:

- (a) requires a police prosecutor to represent or appear for any person, or
- (b) prevents any person from appearing personally, or being represented and appearing by an Australian legal practitioner or other person empowered by an Act or other law to appear for the person, in any proceedings.

### **37 Conduct of case**

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

### **38 Hearing procedures to be as for Supreme Court**

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

### **39 Recording of evidence**

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

### **40 Adjournments generally**

- (1) A court may at any stage of criminal proceedings adjourn the proceedings generally, or to a specified day, if it appears to the court necessary or advisable to do so.
- (2) An adjournment may be in such terms as the court thinks fit.
- (3) A matter that is adjourned generally must be listed before the court or a registrar not later than 2 years after the adjournment.
- (4) Without limiting subsection (1), a court may, at the request of an accused person, adjourn criminal proceedings if it appears to the court that a variance between any

process or document by which the proceedings were commenced and the evidence adduced in respect of the offence charged in that process or document is such that the accused person has been misled by the variance.

#### **41 How accused person to be dealt with during adjournment**

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

#### **42 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.

#### **43 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.

#### **44 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.

## **Chapter 3 Indictable procedure**

### **Part 1 Preliminary**

#### **45 Application of Chapter and definitions**

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

**Judge** includes a Magistrate.

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

**registrar** means, for the purposes of Part 2:

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

#### **46 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.

### **Part 2 Committal proceedings**

#### **Division 1 Commencement of proceedings**

##### **47 Commencement of committal proceedings by court attendance notice**

- (1) Committal proceedings for an offence are to be commenced by the issue and filing of a court attendance notice in accordance with this Division.
- (2) A court attendance notice may be issued in respect of a person if the person has committed or is suspected of having committed an offence.
- (3) A court attendance notice may be issued in respect of any offence for which proceedings may be taken in this State, including an offence committed elsewhere

than in this State.

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

#### **48 Commencement of proceedings by police officer or public officer**

If a police officer or public officer is authorised under section 14 of this Act or under any other law to commence committal proceedings, the officer may commence committal proceedings for an offence against a person by issuing a court attendance notice and filing the notice in accordance with this Division.

#### **49 Commencement of private prosecutions**

- (1) If a person other than a police officer or public officer is authorised under section 14 of this Act or under any other law to commence committal proceedings against a person for an offence, the person may commence the proceedings by issuing a court attendance notice, signed by a registrar, and filing the notice in accordance with this Division.
- (2) A registrar must not sign a court attendance notice if:
  - (a) the registrar is of the opinion that the notice does not disclose grounds for the proceedings, or
  - (b) the registrar is of the opinion that the notice is not in the form required by or under this Act, or
  - (c) the registrar is of the opinion that a ground for refusal set out in the rules applies to the notice.
- (3) If a registrar refuses to sign a court attendance notice proposed to be issued by any such person, the question of whether the court attendance notice is to be signed and issued is to be determined by a Magistrate on application by the person.

#### **50 Form of court attendance notice**

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

- (a) describe the offence,
- (b) briefly state the particulars of the alleged offence,
- (c) contain the name of the prosecutor,
- (d) require the accused person to appear before the Magistrate at a specified date, time and place, unless a warrant is issued for the arrest of the person or the person is refused bail,
- (e) state, unless a warrant is issued for the arrest of the person or the person is refused bail, that failure to appear may result in the arrest of the person or in the matter being dealt with in the absence of the person.

- (4) The rules may prescribe additional matters to be included in court attendance notices.
- (5) A court attendance notice may describe an offence, act or other thing in any way that is sufficient under this Act for the purposes of an indictment or an averment in an indictment.

#### **51 (Repealed)**

#### **52 Service of court attendance notices**

- (1) A court attendance notice issued by a police officer must be served by a police officer or prosecutor in accordance with the rules.
- (2) A court attendance notice issued by a public officer must be served by a police officer, public officer or other person prescribed by the rules, in accordance with the rules.
- (3) A court attendance notice issued by a person other than a police officer or public officer must be served by a person prescribed by the rules in accordance with the rules.
- (4) A copy of a court attendance notice must be filed in the registry of a court in accordance with the rules.
- (5) (Repealed)

#### **53 When proceedings commence**

- (1) All proceedings are taken to have commenced on the date on which a court attendance notice is filed in the registry of a relevant court in accordance with this Division.
- (2) (Repealed)
- (3) Nothing in this section affects any other Act or law under which proceedings are taken to have commenced on another date.

#### **54 Attendance of accused person at proceedings**

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

### **Division 2 Committal proceedings generally**

#### **55 Magistrate to conduct proceedings**

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

#### **56 Committal proceedings to be heard in open court**

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

### **57 Part does not affect nature of committal proceedings**

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

### **58 Place of hearing**

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

### **59 Application of other procedural provisions to committal proceedings**

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

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

### **60 Time for taking prosecution evidence**

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

#### **Note—**

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

- (2) The registrar must notify the accused person of the date, time and place, and any



other time set by the Magistrate, if the accused person is not present.

(3) A registrar may exercise the Magistrate's functions under this section.

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

(1) If the prosecutor fails to appear on the day and at the time and place set for taking prosecution evidence in any committal proceedings, the Magistrate must:

- (a) discharge the accused person as to the offence the subject of the proceedings, or
- (b) if the Magistrate thinks it appropriate, adjourn the hearing to a specified time and place.

(2) The adjournment must not exceed 8 days or such longer period as the accused person may consent to.

(3) Subsection (2) does not apply if the accused person is refused bail (as referred to in section 25 of the *Bail Act 1978*).

#### **Note—**

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

#### **62 Prosecution evidence and initial determination**

(1) The Magistrate must take the prosecution evidence in accordance with Division 3 and must determine whether the prosecution evidence is capable of satisfying a jury, properly instructed, beyond reasonable doubt that the accused person has committed an indictable offence.

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

#### **63 Where prosecution evidence sufficient to satisfy jury**

(1) If in any committal proceedings, after all the prosecution evidence is taken and after considering all the evidence before the Magistrate, the Magistrate is of the opinion that, having regard to all the evidence before the Magistrate, the evidence is capable of satisfying a reasonable jury, properly instructed, beyond reasonable doubt that the accused person has committed an indictable offence, the Magistrate must give the accused person an opportunity to answer the charge and a warning in the form prescribed by the rules.

(2) The Magistrate must proceed to take any statement by or any evidence adduced by the accused person in accordance with Division 4.

- (3) If the accused person is not present, the Magistrate may make a decision under section 64 without complying with subsection (2).
- (4) If the accused person is a corporation and the corporation appears by a representative, the representative may answer the charge on behalf of the corporation.

#### **64 Decision about committal**

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

#### **65 Committal**

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

#### **66 Discharge**

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

#### **67 Committal may be set aside by Magistrate**

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

### **68 Accused person may waive committal hearing**

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

### **69 Magistrate may end witnesses' evidence**

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

### **70 Certain evidence may not be excluded**

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

## **Division 3 Prosecution evidence**

### **71 Evidence to be taken in presence of accused person**

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

### **72 Magistrate may excuse accused person from attending**

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

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

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

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

#### **74 Prosecution evidence to be in written form**

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

#### **75 Written statements to be served on accused person**

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

#### **76 Recordings of interviews with vulnerable persons**

- (1) A written statement may be in the form of a transcript of a recording made by an investigating official of an interview with a vulnerable person, during which the

vulnerable person was questioned by the investigating official in connection with the investigation of the commission or possible commission of the offence (as referred to in section 306R), but only if this section is complied with.

- (2) The copy of the transcript of the recording must be certified by an investigating official as an accurate transcript of the recording and served on the accused person in accordance with section 75.
- (3) The accused person must be given, in accordance with the regulations under section 306V (2), a reasonable opportunity to listen to and, in the case of a video recording, to view, the recording.
- (4) However, if the requirements of the regulations under section 306V (2) have not been complied with, the recording may be admitted if the court is satisfied that:
  - (a) the parties consent to the recording being admitted, or
  - (b) the accused person and his or her Australian legal practitioner (if any) have been given a reasonable opportunity otherwise than in accordance with such regulations to listen to or view the recording and it would be in the interests of justice to admit the recording.
- (5) Nothing in this Division requires the prosecutor to serve on the accused person a copy of the actual recording made by an investigating official of an interview with the vulnerable person (other than a transcript of the record).
- (6) This section does not affect section 306V (2).
- (7) Section 79 (3) does not apply to or in relation to a written statement certified under this section.
- (8) In this section:

***investigating official*** has the same meaning as it has in Part 6 of Chapter 6.

***vulnerable person*** has the same meaning as it has in Part 6 of Chapter 6.

**Note—**

Part 6 of Chapter 6 allows vulnerable persons (children and cognitively impaired persons) to give evidence of a previous representation in the form of a recording made by an investigating official of an interview with the vulnerable person. Section 306V (2) (which is contained in that Part) provides that such evidence is not to be admitted unless the accused person and his or her Australian legal practitioner have been given a reasonable opportunity to listen to or view the recording.

## **77 When prosecution evidence may be given in other ways**

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

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

#### **78 Evidentiary effect of written statements**

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

#### **79 Form and requirements for written statements**

- (1) A written statement may be in the form of questions and answers.
- (2) A written statement must specify the age of the person who made the statement.
- (3) A written statement must be endorsed in accordance with the rules by the maker of the statement as to the truth of the statement and any other matter required by the rules.
- (4) A written statement or such an endorsement on a statement must be written in a language of which the person who made the statement has a reasonable

understanding.

- (5) If the written statement, or part of it, is in a language other than English, a document purporting to contain an English translation of the statement or part must be annexed to the statement.

#### **80 Rules relating to written statements**

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

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

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

#### **82 Written statement must be signed by witness**

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

#### **83 Presumptions about written statements**

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

#### **84 Presumptions about signatures**

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

#### **85 False statements**

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

Maximum penalty:

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

#### **86 Evidence not to be admitted**

- (1) The Magistrate must refuse to admit evidence sought to be adduced by the prosecutor in respect of an offence in committal proceedings if, in relation to that evidence, this Division or any rules made under this Division, have not been complied with by the prosecutor.
- (2) Despite subsection (1), the Magistrate may admit the evidence sought to be adduced if the Magistrate is satisfied that:
  - (a) the non-compliance with this Division or the rules is trivial in nature, or
  - (b) there are other good reasons to excuse the non-compliance, and admit the evidence, in the circumstances of the case.



**87 Inadmissible written statements or parts of statements to be rejected**

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

**88 Death of person who made statement**

- (1) A written statement is not admissible if, on evidence produced during committal proceedings, the Magistrate is satisfied that the person who made the statement is dead.
- (2) If it is found after a written statement is admitted in evidence in committal proceedings that the person who made the statement died before the statement was admitted, the statement is taken not to have been admitted in evidence.
- (3) This section does not apply to a deposition that is admissible under section 284.

**89 Notice of rights to unrepresented accused person**

- (1) In any committal proceedings in which an accused person is not represented by an Australian legal practitioner, a written statement is not admissible unless the Magistrate:
  - (a) has explained to the accused person the effect of this Division and the accused person's rights in relation to this Division, and
  - (b) is satisfied that the accused person understands his or her rights under this Division.
- (2) The explanation by the Magistrate must be in the form of words prescribed by the rules.

**90 Magistrate may set aside requirements for written statements**

- (1) In any committal proceedings, the Magistrate may dispense with all or any of the following requirements of this Act relating to written statements or exhibits:
  - (a) service of documents on the accused person, as required by section 75,
  - (b) provision to the accused person of a reasonable opportunity to inspect proposed exhibits,

- (c) specification of the age of the person who made a statement,
- (d) any requirement specified by the regulations, if the rules do not prohibit the Magistrate from dispensing with the requirement.

(2) A requirement may be dispensed with under this section only on an application by the accused person or with the consent of the accused person.

#### **91 Witness may be directed to attend**

- (1) The Magistrate may direct the attendance at the committal proceedings of the person who made a written statement that the prosecution intends to tender as evidence in the committal proceedings. The direction may be given on the Magistrate's own motion or on the application of the accused person or the prosecutor.
- (2) The Magistrate must give the direction if an application is made by the accused person or the prosecutor and the other party consents to the direction being given.
- (3) In any other circumstance, the Magistrate may give a direction only if satisfied that there are substantial reasons why, in the interests of justice, the witness should attend to give oral evidence.
- (3A) A direction may not be given for the reasons referred to in subsection (3) if the written statement has already been admitted in evidence. This does not prevent a direction being given merely because the written statement is tendered to the Magistrate for the purpose of determining an application for a direction under this section.
- (4) The written statement may be admissible in evidence in the proceedings after the direction is given if:
  - (a) the accused person and the prosecutor consent to the statement being admitted, or
  - (b) the Magistrate is satisfied that there are substantial reasons why, in the interests of justice, the statement should be admitted.
- (5) A direction given on the application of the accused person or the prosecutor may be withdrawn only:
  - (a) on the application, or with the consent, of the applicant, or
  - (b) if the applicant fails to appear, on the application of the other party.
- (6) The regulations may make provision for or with respect to the determination of substantial reasons under subsections (3) and (4).
- (7) If a person attends to give oral evidence because of a direction under this section, the Magistrate must not allow the person to be cross-examined in respect of matters that

were not the basis of the reasons for giving the direction, unless the Magistrate is satisfied that there are substantial reasons why, in the interests of justice, the person should be cross-examined in respect of those matters.

(7A) A direction may not be given under this section so as to require the attendance of the complainant in proceedings for a prescribed sexual offence if the complainant is a cognitively impaired person (within the meaning of Part 6 of Chapter 6).

(8) A direction may not be given under this section so as to require the attendance of the complainant in proceedings for a child sexual assault offence if the complainant:

(a) was under the age of 16 years:

(i) on the earliest date on which, or

(ii) at the beginning of the earliest period during which,

any child sexual assault offence to which the proceedings relate was allegedly committed, and

(b) is currently under the age of 18 years.

(9) For the purposes of subsection (8):

**child sexual assault offence** means:

(a) a prescribed sexual offence, or

(b) an offence that, at the time it was committed, was a child sexual assault offence for the purposes of subsection (8), or

(c) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a) or (b).

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

(a) in relation to an offence under section 80E of the *Crimes Act 1900*, the person who is alleged to have been the subject of sexual servitude, and

(b) 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

(c) 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 the production of child abuse material.

## 92 When accused person may apply to have witness attend

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

## 93 Victim witnesses generally not to be directed to attend

- (1) Despite section 91 (other than subsection (8) of that section), in any committal proceedings in which the accused person is charged with an offence involving violence, the Magistrate may not, under that section, direct the attendance of an alleged victim of the offence who made a written statement (even if the parties to the proceedings consent to the attendance) unless the Magistrate is satisfied that there are special reasons why the alleged victim should, in the interests of justice, attend to give oral evidence.
- (2) The regulations may make provision for or with respect to the determination of any such special reasons.

## 94 Meaning of “offence involving violence”

- (1) The following offences are **offences involving violence** for the purposes of section 93:
  - (a) a prescribed sexual offence,
  - (b) an offence under sections 27–30 of the *Crimes Act 1900* (attempts to murder),
  - (c) an offence under section 33 of the *Crimes Act 1900* (wounding etc with intent to do grievous bodily harm or resist arrest),
  - (d) an offence under section 35 (b) of the *Crimes Act 1900* (infliction of grievous bodily harm),
  - (e) an offence under sections 86–91 of the *Crimes Act 1900* (abduction or kidnapping),
  - (f) an offence under sections 94–98 of the *Crimes Act 1900* (robbery),

- (f1) an offence the elements of which include the commission of, or an intention to commit, an offence referred to in any of the above paragraphs,
  - (g) an offence that, at the time it was committed, was an offence involving violence for the purposes of section 93,
  - (h) any other offence that involves an act of actual or threatened violence that is prescribed by the regulations for the purposes of this section.
- (2) An offence that may be dealt with summarily under Chapter 5 is not an offence involving violence for the purposes of section 93.

**95 Use of previous statements in cases involving prescribed sexual offences**

- (1) In proceedings in relation to a prescribed sexual offence, if:
- (a) the offence is alleged to have been committed in the course of a connected set of circumstances in which another prescribed sexual offence is alleged to have been committed, and
  - (b) the accused person has been committed for trial in respect of, or has been convicted of, the other offence, and
  - (c) each of the offences is alleged to have been committed on the same person,
- transcripts of evidence of the person on whom the offence is alleged to have been committed at the proceedings in which the accused person was committed or tried in respect of the other offence may, in so far as they are relevant to the offence the subject of the hearing, be included in a brief of evidence.
- (2) A copy of the transcript must be certified by a registrar in accordance with the rules and served on the accused person in accordance with section 183.
- (3) A brief of evidence that includes a transcript of a deposition of a person is not required also to include a written statement from the person concerned in respect of any matter covered by the transcript.
- (4) The transcript of the deposition is taken, for the purposes of this Act, to be a written statement taken from the person. Accordingly, any document or other thing identified in the transcript as a proposed exhibit forms part of the brief of evidence.

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

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

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

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

## **Division 4 Defence evidence**

### **97 Evidence for accused person**

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

#### **Note—**

For other provisions applying to evidence in committal proceedings, see the [Evidence Act 1995](#).

### **98 Other evidence about accused person**

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

## **Division 5 Procedure if accused person pleads guilty**

### **99 Effect of guilty plea**

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

### **100 Guilty plea may be accepted or rejected**

The Magistrate may accept or reject the guilty plea.

### **101 Effect of rejection of guilty plea**

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

### **102 Effect of acceptance of guilty plea**

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

**103 Procedure applicable after committal for trial**

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

**104 Higher court may refer accused person back to Magistrate**

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

**105 Disposal of proceedings by higher court**

- (1) The District Court or the Supreme Court may proceed to sentence or otherwise deal with an accused person brought before the Court under this Division as if the accused person had on arraignment at any sittings of the Court pleaded guilty to the offence on an indictment filed or presented by the Attorney General or the Director of Public Prosecutions.
- (2) An accused person who is sentenced or otherwise dealt with under this section is for the purposes of any Act or law (whether enacted before or after the commencement of this section) taken to be convicted on indictment of the offence concerned.

**106 Change to not guilty plea in higher court**

- (1) If an accused person brought before the District Court or the Supreme Court under this Division changes to not guilty the plea to the offence on which the accused person was committed to the Court, the Judge must direct that the accused person be put on trial for the offence.
- (2) On the direction being given, the accused person is taken to have been committed for trial for the offence. The Judge may make the same orders and do the same things (including dealing with the accused person) as a Magistrate can on committing an

accused person for trial.

- (3) The Judge may give directions as to matters preliminary to the trial as the Judge thinks just.
- (4) A direction may not be given under subsection (1) if the offence is punishable by imprisonment for life, but the Judge may make an order under section 104.
- (5) Despite subsection (1), the Judge may make an order under section 104 instead of giving a direction under subsection (1), if of the opinion that such an order should be made.

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

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

**Note—**

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

**108 Meaning of “accused person”**

In this Division:

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

**Division 6 Procedure after committal for trial or sentence**

**109 Accused person to be committed to correctional centre**

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



warrant issued under this section may issue a warrant:

- (a) committing the accused person to a correctional centre or other place of security, and
- (b) ordering the accused person to be brought before a court at the time and place specified in the order.

**Note—**

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

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

**110 Bail undertakings and conditions to be notified**

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

- (a) the bail undertaking, and
- (b) any cash or other thing deposited under the bail undertaking, and
- (c) the instrument by which any bail conditions were imposed on the grant of bail, and
- (d) any agreement or acknowledgment entered into or made pursuant to any such bail condition.

**111 Papers to be sent to officer of higher court**

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

**112 Responsibilities of appropriate officer**

After the documents are transmitted and before the day of trial or the day on which the accused person is to be dealt with, the appropriate officer has, in relation to the documents, the same duties and is subject to the same liabilities as the Magistrate would

have or be subject to before the transmission in relation to an order in the nature of certiorari or a rule or order instead of certiorari directed to the Magistrate.

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

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

### **114 Copies of transcripts of evidence and witnesses' statements**

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

### **115 Meaning of "accused person"**

In this Division:

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

## **Division 7 Costs**

### **116 When costs may be awarded to accused persons**

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

discharging the accused person.

(5) In this section:

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

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

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

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

### **118 Costs on adjournment**

- (1) A Magistrate may in any committal proceedings, at his or her discretion or on the application of the prosecutor or an accused person, order that one party pay costs if the matter is adjourned.
- (2) An order may be made only if the Magistrate is satisfied that the other party has incurred additional costs because of the unreasonable conduct or delay of the party against whom the order is made.
- (3) An order may be made whatever the result of the proceedings.

### 119 Content of costs orders

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

### 120 Enforcement of costs orders

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

## Part 3 Trial procedures

### Division 1 Listing

#### 121 Definitions

In this Part:

**Criminal Listing Director** means:

- (a) in relation to the Supreme Court—the public servant employed in the Supreme Court to make arrangements for the listing of criminal proceedings that are to be heard and determined before the Supreme Court, and
- (b) in relation to the District Court—the public servant employed in the District Court to make arrangements for the listing of criminal proceedings that are to be heard and determined before the District Court, and
- (c) any public servant authorised by a person referred to in paragraph (a) or (b), 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 [Crimes \(Local Courts Appeal and Review\) Act 2001](#) to the District Court in its criminal jurisdiction.

#### 122 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.

### **123 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.

### **124 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, prosecutors, accused persons and their Australian legal practitioners, and other persons involved in criminal proceedings.

### **125 Certain matters not affected**

- (1) This Division 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 prosecutor, or
  - (b) to determine when or where a court is to exercise its jurisdiction.
- (2) Nothing in this Division 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 Commencement and nature of proceedings**

## **126 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.

## **127 Manner of presenting indictments**

The regulations and (subject to the regulations) the rules of court may make provision for or with respect to the manner of presenting indictments (including by the filing of the indictment in a court registry).

## **128 Directions as to indictments to be presented in District Court**

- (1) The Chief Justice of the Supreme Court may issue a practice note on behalf of the Supreme Court giving directions to prosecutors 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.

### **129 Time within which indictment to be presented**

- (1) In this section, **relevant court**, in relation to a matter, means the Supreme Court or the District Court before which the matter has been listed for trial or mention.
- (2) An indictment is to be presented within 4 weeks after the committal of the accused person for trial, except as provided by this section.
- (3) The time within which the indictment is to be presented may be extended:
  - (a) by the regulations or (subject to the regulations) the rules of the relevant court, or
  - (b) by order of the relevant court.
- (4) If an indictment is not presented within the time required by this section, the relevant court may:
  - (a) proceed with the trial if an indictment has been presented, or
  - (b) adjourn the proceedings, or
  - (c) 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) The relevant 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 relevant court under section 21.

### **130 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 person 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 person, and
  - (b) the accused person 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 person 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.

### **130A Pre-trial orders and orders made during trial bind trial Judge**

- (1) A pre-trial order made by a Judge in proceedings on indictment is binding on the trial Judge in those proceedings unless, in the opinion of the trial Judge, it would not be in the interests of justice for the order to be binding.
- (2) If, on an appeal against a conviction for an offence in proceedings on indictment, a new trial is ordered, a pre-trial order made by a Judge, or an order made by the trial Judge, in relation to the proceedings from which the conviction arose is binding on the trial Judge hearing the fresh trial proceedings unless:
  - (a) in the opinion of the trial Judge hearing the fresh trial proceedings, it would not be in the interests of justice for that order to be binding, or
  - (b) that order is inconsistent with an order made on appeal.
- (3) If proceedings on indictment before a trial Judge are discontinued for any reason, a pre-trial order made by a Judge, or an order made by the trial Judge, in relation to those proceedings is binding on a trial Judge hearing any subsequent trial proceedings relating to the same offence as the discontinued proceedings unless, in the opinion of the trial Judge hearing the subsequent trial proceedings, it would not be in the interests of justice for the order to be binding.
- (4) In this section, **pre-trial order** means any order made after the indictment is first presented but before the empanelment of a jury for a trial.

### **131 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.

### **132 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 an Australian legal practitioner.



- (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.

### **133 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 Case management provisions and other provisions to reduce delays in proceedings**

### **134 Purpose**

- (1) The purpose of this Division is to reduce delays in proceedings on indictment by:
  - (a) requiring certain pre-trial disclosure by the prosecution and the defence, and
  - (b) enabling the court to undertake case management where suitable in those proceedings, whether on its own motion or on application by a party to the proceedings.
- (2) Case management measures that are available to the court under this Division include the ordering of pre-trial hearings, pre-trial conferences and further pre-trial disclosure. The court has a discretion in determining which (if any) of those measures are suitable in the proceedings concerned.

### 135 Definitions

(1) In this Division:

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

**pre-trial conference** means a conference held under section 140.

**pre-trial hearing** means a hearing held under section 139.

(2) In this Division, a reference to the **accused person** is to be read as including a reference to the Australian legal practitioner representing the accused person.

### 136 Directions for conduct of proceedings

At the first mention of proceedings in the court before which the trial is proposed to be heard, the presiding Judge is to give directions with respect to the future conduct of the trial, including a direction as to the time by which notice of the prosecution case is to be given under section 137 and notice of the defence response is to be given under section 138.

### 137 Notice of prosecution case to be given to accused person

(1) The prosecutor is to give to the accused person notice of the prosecution case that includes the following:

- (a) a copy of the indictment,
- (b) a statement of facts,
- (c) a copy of a statement of each witness whose evidence the prosecutor proposes to adduce at the trial,
- (d) a copy of each document, evidence of the contents of which the prosecutor proposes to adduce at the trial,
- (e) if the prosecutor proposes to adduce evidence at the trial in the form of a summary, a copy of the summary or, where the summary has not yet been prepared, an outline of the summary,
- (f) a copy of any exhibit that the prosecutor proposes to adduce at the trial,
- (g) a copy of any chart or explanatory material that the prosecutor proposes to adduce at the trial,
- (h) if any expert witness is proposed to be called at the trial by the prosecutor, a copy of each report by the witness that is relevant to the case,
- (i) a copy of any information, document or other thing provided by police officers to the prosecutor, or otherwise in the possession of the prosecutor, that may

reasonably be regarded as relevant to the prosecution case or the defence case, and that has not otherwise been disclosed to the accused person,

(j) a list identifying:

(i) any information, document or other thing of which the prosecutor is aware and that would reasonably be regarded as being of relevance to the case but that is not in the prosecutor's possession and is not in the accused person's possession, and

(ii) the place at which the prosecutor believes the information, document or other thing is situated,

(k) a copy of any information in the possession of the prosecutor that is relevant to the reliability or credibility of a prosecution witness.

(2) The regulations may make provision for or with respect to the form and content of a statement of facts for the purposes of subsection (1) (b).

### **138 Notice of defence response to be given to prosecutor**

The accused person is to give the prosecutor notice of the defence response that includes the following:

(a) the name of any Australian legal practitioner proposed to appear on behalf of the accused person at the trial,

(b) notice of any consent that the accused person proposes to give at the trial under section 190 of the *Evidence Act 1995* in relation to each of the following:

(i) a statement of a witness that the prosecutor proposes to adduce at the trial,

(ii) a summary of evidence that the prosecutor proposes to adduce at the trial,

(c) a statement as to whether or not the accused person intends to give any notice under section 150 (Notice of alibi),

(d) a statement as to whether or not the accused person intends to give any notice under section 151 (Notice of intention to adduce evidence of substantial mental impairment).

### **139 Pre-trial hearings**

(1) At the first mention of proceedings in the court before which the trial is proposed to be heard or at any other time, the court may order the prosecutor and the accused person to attend one or more pre-trial hearings before the court so long as the time appointed for any such hearing occurs after the indictment has been presented or filed.

- (2) During a pre-trial hearing, the court may make such orders, determinations or findings, or give such directions or rulings, as it thinks appropriate for the efficient management and conduct of the trial.
- (3) Without limiting subsection (2), the court may take any or all of the following action under that subsection:
  - (a) hear and determine an objection to the indictment,
  - (b) order the holding of a pre-trial conference under section 140,
  - (c) order pre-trial disclosure by the prosecutor or the accused person under section 141,
  - (d) give a direction under section 145 (3),
  - (e) give a ruling or make a finding under section 192A of the *Evidence Act 1995* as if the trial had commenced,
  - (f) hear and determine a submission that the case should not proceed to trial,
  - (g) give a ruling on any question of law that might arise at the trial.
- (4) Despite any other provision of this Act, the court may make any order, determination or finding, or give any ruling, under this section on application by a party to the proceedings or on the court's own initiative.
- (5) Any order, determination or finding made, or ruling given, by the court under this section is binding on the trial Judge in the proceedings unless, in the opinion of the trial Judge, it would not be in the interests of justice for the order, determination, finding or ruling to be binding.
- (6) Except with the leave of the court, a party to proceedings may not raise a matter referred to in subsection (3) (a) or (e) at trial if a pre-trial hearing was held in the proceedings and the matter was not raised at the pre-trial hearing.
- (7) Leave is not to be granted under subsection (6) unless the court is of the opinion that it would be contrary to the interests of justice to refuse leave to raise the matter concerned.

#### **140 Pre-trial conferences**

- (1) At the first mention of proceedings in the court before which the trial is proposed to be heard or at any other time, the court may order that a pre-trial conference is to be held so long as the time appointed for any such conference occurs after the indictment has been presented or filed.
- (2) The court may order the holding of a pre-trial conference under this section on

application of any party or on the court's own initiative.

- (3) The court may make such an order only if the accused person will be represented by an Australian legal practitioner at the pre-trial conference.
- (4) The purpose of the pre-trial conference is to determine whether the accused person and the prosecutor are able to reach agreement regarding the evidence to be admitted at the trial.
- (5) The following persons must be present during the pre-trial conference:
  - (a) the prosecutor,
  - (b) the Australian legal practitioner representing the accused person.
- (6) If the accused person has been charged jointly with any other person with the offence concerned, a joint pre-trial conference may be held in respect of two or more co-accused, but only with the consent of the prosecution and each of the co-accused concerned.
- (7) A requirement under this section that a person be present for the purposes of a pre-trial conference is taken to be satisfied if the person is present or available by way of an audio visual link or telephone.
- (8) Within 7 days after the holding of a pre-trial conference:
  - (a) the prosecutor and the Australian legal practitioner who represented the accused person at the pre-trial conference must complete a pre-trial conference form, and
  - (b) the prosecutor must file the pre-trial conference form with the court.
- (9) The pre-trial conference form:
  - (a) is to indicate the areas of agreement and disagreement between the accused person and the prosecutor regarding the evidence to be admitted at the trial, and
  - (b) is to be signed by the prosecutor and the Australian legal practitioner representing the accused person.
- (10) Except with the leave of the court, a party to proceedings may not object to the admission of any evidence at trial if the pre-trial conference form indicates that the parties have agreed that the evidence is not in dispute.
- (11) Leave is not to be granted under subsection (10) unless the court is of the opinion that it would be contrary to the interests of justice to refuse leave.

#### **141 Court may order pre-trial disclosure in particular case**

- (1) After the indictment is presented or filed in proceedings, the court may make any or

all of the following orders, but only if the court is of the opinion that it would be in the interests of the administration of justice to do so:

- (a) order that the prosecutor is to give notice in accordance with section 142,
  - (b) order that the accused person is to give notice of the defence response to the prosecution's notice in accordance with section 143,
  - (c) order that the prosecution is to give notice of the prosecution response to the defence response in accordance with section 144.
- (2) The court may order pre-trial disclosure under this section on application of any party or on the court's own initiative.
  - (3) The court may order pre-trial disclosure only if the court is satisfied that the accused person will be represented by an Australian legal practitioner.
  - (4) The court may limit pre-trial disclosure to any specified aspect of the proceedings.
  - (5) Pre-trial disclosure required by an order under this section is to be made in accordance with a timetable determined by the court.

#### **142 Prosecution notice—court-ordered pre-trial disclosure**

For the purposes of section 141 (1) (a), the prosecution's notice is to contain the following:

- (a) the matters required to be included in the notice of the prosecution case under section 137,
- (b) a copy of any information, document or other thing in the possession of the prosecutor that would reasonably be regarded as adverse to the credit or credibility of the accused person,
- (c) a list identifying the statements of those witnesses who are proposed to be called at the trial by the prosecutor.

#### **143 Defence response—court-ordered pre-trial disclosure**

For the purposes of section 141 (1) (b), the notice of the defence response is to contain the following:

- (a) the matters required to be included in a notice under section 138,
- (b) a statement, in relation to each fact set out in the statement of facts provided by the prosecutor, as to whether the accused person considers the fact is an agreed fact (within the meaning of section 191 of the *Evidence Act 1995*) or the accused person disputes the fact,
- (c) a statement, in relation to each matter and circumstance set out in the statement of

facts provided by the prosecutor, as to whether the accused person takes issue with the matter or circumstance as set out,

- (d) notice as to whether the accused person proposes to dispute the admissibility of any proposed evidence disclosed by the prosecutor and the basis for the objection,
- (e) if the prosecutor disclosed an intention to adduce expert evidence at the trial, notice as to whether the accused person disputes any of the expert evidence and which evidence is disputed,
- (f) a copy of any report, relevant to the trial, that has been prepared by a person whom the accused person intends to call as an expert witness at the trial,
- (g) if the prosecutor disclosed an intention to adduce evidence at the trial that has been obtained by means of surveillance, notice as to whether the accused person proposes to require the prosecutor to call any witnesses to corroborate that evidence and, if so, which witnesses will be required,
- (h) notice as to whether the accused person proposes to raise any issue with respect to the continuity of custody of any proposed exhibit disclosed by the prosecutor,
- (i) if the prosecutor disclosed an intention to tender at the trial any transcript, notice as to whether the accused person accepts the transcript as accurate and, if not, in what respect the transcript is disputed,
- (j) notice as to whether the accused person proposes to dispute the authenticity or accuracy of any proposed documentary evidence or other exhibit disclosed by the prosecutor,
- (k) notice of any significant issue the accused person proposes to raise regarding the form of the indictment, severability of the charges or separate trials for the charges,
- (l) notice of any consent the accused person proposes to give under section 184 of the [Evidence Act 1995](#).

#### **144 Prosecution response to defence response—court-ordered pre-trial disclosure**

For the purposes of section 141 (1) (c), the notice of the prosecution response to the defence response is to contain the following:

- (a) if the accused person has disclosed an intention to adduce expert evidence at the trial, notice as to whether the prosecutor disputes any of the expert evidence and, if so, in what respect,
- (b) if the accused person has disclosed an intention to tender any exhibit at the trial, notice as to whether the prosecutor proposes to raise any issue with respect to the continuity of custody of the exhibit,

- (c) if the accused person has disclosed an intention to tender any documentary evidence or other exhibit at the trial, notice as to whether the prosecutor proposes to dispute the accuracy or admissibility of the documentary evidence or other exhibit,
- (d) notice as to whether the prosecutor proposes to dispute the admissibility of any other proposed evidence disclosed by the accused person, and the basis for the objection,
- (e) a copy of any information, document or other thing in the possession of the prosecutor, not already disclosed to the accused person, that might reasonably be expected to assist the case for the defence,
- (f) a copy of any information, document or other thing that has not already been disclosed to the accused person and that is required to be contained in the notice of the case for the prosecution.

#### **145 Dispensing with formal proof**

- (1) If a fact, matter or circumstance was alleged in a notice required to be given to the accused person by the prosecutor in accordance with this Division and the accused person was required to give a defence response under section 143 but did not disclose in the response an intention to dispute or require proof of the fact, matter or circumstance, the court may order that:
  - (a) a document asserting the alleged fact, matter or circumstance may be admitted at the trial as evidence of the fact, matter or circumstance, and
  - (b) evidence may not, without the leave of the court, be adduced to contradict or qualify the alleged fact, matter or circumstance.
- (2) If evidence was disclosed by the prosecution to the accused person in accordance with this Division and the accused person was required to give a defence response under section 143 but did not include notice in that response under section 143 (d) in relation to that evidence, the court may, by order, dispense with the application of any one or more of the following provisions of the *Evidence Act 1995* in relation to the adducing of the evidence at trial:
  - (a) Division 3, 4 or 5 of Part 2.1,
  - (b) Part 2.2 or 2.3,
  - (c) Parts 3.2–3.8.
- (3) The court may, on the application of a party, direct that the party may adduce evidence of 2 or more witnesses in the form of a summary if the court is satisfied that:
  - (a) the summary is not misleading or confusing, and
  - (b) admission of the summary instead of evidence from the witnesses will not result in



unfair prejudice to any party to the proceedings.

- (4) The court may, in a direction under subsection (3), require that one or more of the witnesses whose evidence is to be adduced in the form of a summary are to be available for cross-examination.
- (5) The opinion rule (within the meaning of the *Evidence Act 1995*) does not apply to evidence adduced in accordance with a direction under subsection (3).
- (6) The provisions of this section are in addition to the provisions of the *Evidence Act 1995*, in particular, section 190.

#### **146 Sanctions for non-compliance with pre-trial disclosure requirements**

- (1) **Exclusion of evidence not disclosed** The court may refuse to admit evidence in proceedings that is sought to be adduced by a party who failed to disclose the evidence to the other party in accordance with requirements for pre-trial disclosure imposed by or under this Division.
- (2) **Exclusion of expert evidence where report not provided** The court may refuse to admit evidence from an expert witness in proceedings that is sought to be adduced by a party if the party failed to give the other party a copy of a report by the expert witness in accordance with requirements for pre-trial disclosure imposed by or under this Division.
- (3) **Adjournment** The court may grant an adjournment to a party if the other party seeks to adduce evidence in the proceedings that the other party failed to disclose in accordance with requirements for pre-trial disclosure imposed by or under this Division and that would prejudice the case of the party seeking the adjournment.
- (4) **Application of sanctions** Without limiting the regulations that may be made under subsection (5), the powers of the court may not be exercised under this section to prevent an accused person adducing evidence unless the prosecutor has complied with the requirements for pre-trial disclosure imposed on the prosecution by or under this Division.
- (5) **Regulations** The regulations may make provision for or with respect to the exercise of the powers of a court under this section (including the circumstances in which the powers may not be exercised).

#### **147 Disclosure requirements are ongoing**

- (1) The obligation to comply with the requirements for pre-trial disclosure imposed by or under this Division continues until any of the following happens:
  - (a) the accused person is convicted or acquitted of the charges in the indictment,
  - (b) the prosecution is terminated.

- (2) Accordingly, if any information, document or other thing is obtained or anything else occurs after pre-trial disclosure is made by a party to the proceedings, that would have affected that pre-trial disclosure had the information, document or thing been obtained or the thing occurred before pre-trial disclosure was made, the information, document, thing or occurrence is to be disclosed to the other party to the proceedings as soon as practicable.

#### **148 Court may waive requirements**

- (1) A court may, by order, waive any of the pre-trial disclosure requirements that apply under this Division.
- (2) The court may make such an order on its own initiative or on the application of the prosecutor or the accused person.
- (3) An order may be made subject to such conditions (if any) as the court thinks fit.

#### **149 Requirements as to notices**

- (1) A notice under this Division is to be in writing.
- (2) Any notice purporting to be given under this Division on behalf of the accused person by his or her Australian legal practitioner is, unless the contrary is proved, taken to have been given with the authority of the accused person.
- (3) A notice under this Division that is required to be given to a prosecutor may be given to the prosecutor in the following manner, or as otherwise directed by the court:
  - (a) by delivering it to the prosecutor,
  - (b) by leaving it at the office of the prosecutor,
  - (c) by sending it by post or facsimile to the prosecutor at the office of the prosecutor,
  - (d) by sending it by electronic mail to the prosecutor, but only if the prosecutor has agreed to notice being given in that manner.
- (4) A notice under this Division that is required to be given to an accused person may be given to the accused person in the following manner, or as otherwise directed by the court:
  - (a) by delivering it to the accused person,
  - (b) by leaving it at the office of the Australian legal practitioner representing the accused person,
  - (c) by sending it by post or facsimile to the Australian legal practitioner representing the accused person at the office of the Australian legal practitioner,

(d) by sending it by electronic mail to the Australian legal practitioner, but only if the Australian legal practitioner has agreed to notice being given in that manner.

(5) A party required to give a notice under this Division must file a copy of the notice with the court as soon as practicable after giving it, or as otherwise required by the court.

**149A Copies of exhibits and other things not to be provided if impracticable**

(1) A copy of a proposed exhibit, document or thing is not required to be included in a notice under this Division if it is impossible or impractical to provide a copy.

(2) However, the party required to give the notice:

(a) is to specify in the notice a reasonable time and place at which the proposed exhibit, document or thing may be inspected, and

(b) is to allow the other party to the proceedings a reasonable opportunity to inspect the proposed exhibit, document or thing referred to in the notice.

**149B Personal details not to be provided**

(1) The prosecutor is not to disclose in any notice under this Division the address or telephone number of any witness proposed to be called by the prosecutor, or of any other living person, unless:

(a) the address or telephone number is a materially relevant part of the evidence, or

(b) the court makes an order permitting the disclosure.

(2) An application for such an order may be made by the accused person or the prosecutor.

(3) The court must not make such an order unless satisfied that the disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice (including the accused person's right to prepare properly for the hearing of the evidence for the prosecution) outweigh any such risk.

(4) This section does not prevent the disclosure of an address if the disclosure does not identify it as a particular person's address, or it could not reasonably be inferred from the matters disclosed that it is a particular person's address.

(5) An address or telephone number that must not be disclosed may, without reference to the person who made the statement being disclosed, be deleted from that statement, or rendered illegible, before the statement is given to the accused person.

**149C Requirements as to statements of witnesses**

(1) A statement of a witness that is included in a notice under this Division may be in the form of questions and answers.

- (2) If a notice includes a statement that is, wholly or in part, in a language other than English, there must be annexed to it a document purporting to contain a translation of the statement, or so much of it as is not in the English language, into the English language.

**149D Exemption for matters previously disclosed**

- (1) The prosecutor is not required to include in a notice under this Division anything that has already been included in a brief of evidence in relation to the matter served on the accused person in accordance with this or any other Act or that has otherwise been provided or disclosed to the accused person.
- (2) The accused person is not required to include in a notice under this Division anything that has already been provided or disclosed to the prosecutor.

**149E Court powers to ensure efficient management and conduct of trial**

- (1) On or after the commencement of the trial in proceedings, the court may make such orders, determinations or findings, or give such directions or rulings, as it thinks appropriate for the efficient management and conduct of the trial.
- (2) Without limiting subsection (1), the court may order that any of the parties to the proceedings disclose any matter that was, or could have been, required to be disclosed under this Division before the commencement of the trial.

**149F Miscellaneous provisions**

- (1) A statement about any matter that is made by or on behalf of the accused person for the purposes of complying with requirements for pre-trial disclosure imposed by or under this Division does not constitute an admission of that matter by the accused person.
- (2) The court may make orders to resolve any dispute between the parties to criminal proceedings about:
  - (a) the requirements for pre-trial disclosure imposed by or under this Division, or
  - (b) the use of anything disclosed under this Division (including restrictions on publication or further disclosure).
- (3) This Division does not affect the obligations or powers under Division 4 (Pre-trial disclosure—general).
- (4) Nothing in this Division prevents any voluntary pre-trial disclosure by the accused person to the prosecutor of any information, document or other thing that the accused person proposes to adduce in evidence in the proceedings.
- (5) This Division does not limit any obligation (arising otherwise than under this Division)

for pre-trial disclosure that is capable of being complied with concurrently with requirements imposed by or under this Division, but this Division prevails to the extent of any inconsistency with any such obligation. Any such obligation extends to obligations imposed by the common law, the rules of court, the legal profession rules made under Part 7.5 of the *Legal Profession Act 2004* and prosecution guidelines issued by the Director of Public Prosecutions.

- (6) However, this Division does not affect any immunity that applies by law to the disclosure of any information, document or other thing, including, for example, legal professional or client legal privilege, public interest immunity and sexual assault communications privilege under Division 2 of Part 5 of Chapter 6.
- (7) Nothing in this Division limits any powers that a court has apart from this Division in relation to proceedings.
- (8) The provisions of this Division prevail over the provisions of the *Evidence Act 1995* to the extent of any inconsistency with those provisions.

## **Division 4 Pre-trial disclosure—general**

### **150 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 to the Director of Public Prosecutions and files a copy of the notice with the court.
- (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 Magistrate of the requirements of subsections (2), (3) and (7) and, for that purpose, a statement in writing by the committing Magistrate 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 Australian 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 commencing at the time of the accused person's committal for trial and ending 42 days before the trial is listed for hearing.

### **151 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 to the Director of Public Prosecutions and files a copy of the notice with the court.
- (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 Australian 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 5 Pleadings on trial

### 152 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.

### 153 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.

#### **154 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.

#### **155 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”.

#### **156 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.

#### **157 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.

### **Division 6 Other provisions relating to trials**

#### **158 Transcript of statement in committal proceedings**

A transcript of a record of a statement made by an accused person may, unless the court otherwise orders, be given in evidence at the trial of the accused person if it is proved on



oath that the record is a true record of the statement made by the accused person and that the transcript is a correct transcript of the record.

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

- (1) An accused person or his or her Australian legal practitioner may address the jury immediately after the opening address of the prosecutor.
- (2) Any such opening address is to be limited generally to an address on:
  - (a) the matters disclosed in the prosecutor'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 Australian legal practitioner is entitled to open the case for the defence before calling evidence, whether or not an address has been made to the jury.

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

- (1) An accused person or his or her Australian legal practitioner may address the jury after the close of the evidence for the defence and any evidence in reply by the Crown and after the prosecutor 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.

### **161 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.

### **162 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.

**163 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.

**164 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.

**Division 7 Certain summary offences may be dealt with**

**165 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 the Local Court in accordance with the provisions of Chapter 5, 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 the Local Court in accordance with the provisions of Chapter 5, 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.

### **166 Certification and transfer of back up and related offences**

- (1) On committal for trial or sentence of a person charged with an indictable offence:
  - (a) the prosecutor must inform the Magistrate 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:
    - (i) the prosecutor is to produce to the court a certificate specifying each back up offence and related offence with which the person has been charged, and
    - (ii) the proceedings on each back up offence and related offence with which the person has been charged are to be transferred to the court in which the person has been committed to trial or sentence (along with the certificate).
- (2) This section does not prevent the person referred to in subsection (1) being charged with any offence after committal.
- (3) Proceedings on a back up offence or related offence that are laid after committal for trial or sentence of a person charged with an indictable offence are to be transferred to the court in which the person has been committed to trial or sentence.

### **167 Manner of dealing with back up and related offences**

- (1) If, following a plea of guilty by an accused person to an indictable offence or 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) is to 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, unless to do so would not be in the interests

of justice.

- (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 is to deal with any back up offence or related offence with which the person has been charged in accordance with this Part, unless to do so would not be in the interests of justice.
- (2) If a court is dealing with an accused person for an indictable offence following the person's committal for sentence, 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, unless to do so would not be in the interests of justice.
- (3) (Repealed)
- (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.

#### **168 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 the Local Court.
- (4) Rules of court may be made with respect to back up offences or related offences dealt with under this Part.

#### **169 Remission of certain offences related to indictable offences to Local Court**

- (1) A court that is dealing with a back up offence or related offence under this Part may, if it is in the interests of justice to do so, remit the matter to the Local Court.
- (2) Any back up offence or related offence that is not dealt with by a court in accordance

with this Part is to be remitted back to the Local Court.

## **Chapter 4 Summary procedure**

### **Part 1 Preliminary**

#### **170 Application**

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

#### **171 Definitions**

In this Chapter:

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

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

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

**registrar** means:

- (a) in the case of proceedings before the Local Court, the relevant registrar of the Local Court,
- (b) (Repealed)
- (c) in the case of proceedings before an Industrial Magistrate, the relevant registrar of the Local Court,
- (d) (Repealed)
- (e) in the case of proceedings before any other court to which Parts 2-4 apply, the person prescribed by the regulations for the purposes of this definition.

## **Part 2 Trial procedures in lower courts**

### **Division 1 Commencement of proceedings**

#### **172 Commencement of proceedings by court attendance notice**

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

#### **173 Commencement of proceedings by police officer or public officer**

If a police officer or public officer is authorised under section 14 of this Act or under any other law to commence proceedings for an offence against a person, the officer may commence the proceedings by issuing a court attendance notice and filing the notice in accordance with this Division.

#### **174 Commencement of private prosecutions**

- (1) If a person other than a police officer or public officer is authorised under section 14 of this Act or under any other law to commence proceedings for an offence against a person, the person may commence the proceedings by issuing a court attendance notice, signed by a registrar, and filing the notice in accordance with this Division.
- (2) A registrar must not sign a court attendance notice if:
  - (a) the registrar is of the opinion that the notice does not disclose grounds for the proceedings, or
  - (b) the registrar is of the opinion that the notice is not in the form required by or under this Act, or
  - (c) the registrar is of the opinion that a ground for refusal set out in the rules applies to the notice.
- (3) If a registrar refuses to sign a court attendance notice proposed to be issued by any such person, the question of whether the court attendance notice is to be signed and issued is to be determined by the court on application by the person.

#### **175 Form of court attendance notice**

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

indictment.

**176 (Repealed)**

**177 Service of court attendance notices**

- (1) A court attendance notice issued by a police officer must be served by a police officer or prosecutor in accordance with the rules.
- (2) A court attendance notice issued by a public officer must be served by a police officer, public officer or other person of a class prescribed by the rules, in accordance with the rules.
- (3) A copy of a court attendance notice issued by a person other than a police officer or a public officer must be served by a person of a class prescribed by the rules in accordance with the rules.
- (4) A copy of a court attendance notice must be filed in the registry of a court in accordance with the rules.
- (5) (Repealed)

**178 When proceedings commence**

- (1) All proceedings are taken to have commenced on the date on which a court attendance notice is filed in the registry of a relevant court in accordance with this Division.
- (2) (Repealed)
- (3) Nothing in this section affects any other Act or law under which proceedings are taken to have been commenced on another date.

**179 Time limit for commencement of summary proceedings**

- (1) Proceedings for a summary offence must be commenced not later than 6 months from when the offence was alleged to have been committed.
- (2) Subsection (1) does not apply:
  - (a) to an offence for which an Act or law specifies another period within which proceedings must be commenced, or
  - (b) to an indictable offence that is being dealt with summarily, or
  - (c) to an offence involving the death of a person that is or has been the subject of a coronial inquest.
- (3) Proceedings for a summary offence that relate to the death of a person that is or has been the subject of a coronial inquest must be commenced:



- (a) not later than 6 months after the conclusion of the inquest, or
  - (b) not later than 2 years from when the offence is alleged to have been committed,
- whichever occurs first.

### **180 Relationship to other law or practice**

- (1) Nothing in this Part affects any law or practice relating to indictments presented or filed in the Supreme Court or the District Court by the Attorney General or the Director of Public Prosecutions.
- (2) If an Act or a statutory rule provides for proceedings for an offence which may be taken in a court to be commenced otherwise than by issuing a court attendance notice, the proceedings may be commenced in accordance with this Act.
- (3) Nothing in this Part affects the operation of the provisions of the *Crimes (Domestic and Personal Violence) Act 2007* relating to the commencement of proceedings under that Act.

### **181 Attendance of accused person at proceedings**

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

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

(5) The Magistrate or authorised officer must give notice of the date, time and place set to the prosecutor. Part 4 of this Chapter sets out procedures for arrest warrants and warrants of commitment generally.

## **Division 2 Pre-trial procedures**

### **182 Written pleas**

- (1) An accused person served with a court attendance notice may lodge with the registrar a notice in writing that the accused person will plead guilty or not guilty to the offence or offences the subject of the court attendance notice concerned.
- (2) The notice is to be in the form prescribed by the rules and, in the case of a guilty plea, may be accompanied by additional written material containing matters in mitigation of the offence.
- (3) An accused person who lodges a notice under this section with the registrar not later than 7 days before the date on which the person is required to first attend before the Local Court:
  - (a) is not required to attend the Court on that date, and
  - (b) is taken to have attended the Court on that date.
- (4) This section does not apply to an accused person who has been granted or refused bail or in relation to whom bail has been dispensed with.

### **183 Brief of evidence to be served on accused person where not guilty plea**

- (1) If an accused person pleads not guilty to an offence, the prosecutor must, subject to section 187, serve or cause to be served on the accused person a copy of the brief of evidence relating to the offence.
- (2) The brief of evidence is, unless the regulations otherwise provide, to consist of documents regarding the evidence that the prosecutor intends to adduce in order to prove the commission of the offence and is to include:
  - (a) written statements taken from the persons the prosecutor intends to call to give evidence in proceedings for the offence, and
  - (b) copies of any document or any other thing, identified in such a written statement as a proposed exhibit.
- (3) The copy of the brief of evidence is to be served at least 14 days before the hearing of the evidence for the prosecution.

- (4) The Magistrate may set a later date for service with the consent of the accused person or if of the opinion that the circumstances of the case require it.

#### **184 Exhibits**

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

#### **185 Recording of interviews with vulnerable persons**

- (1) If the prosecutor intends to call a vulnerable person to give evidence in proceedings, the brief of evidence may include a transcript of a recording made by an investigating official of an interview with the vulnerable person, during which the vulnerable person was questioned by the investigating official in connection with the investigation of the commission or possible commission of the offence (as referred to in section 306R).
- (2) A copy of the transcript of the recording must be certified by an investigating official as an accurate transcript of the recording and served on the accused person in accordance with section 183.
- (3) A brief of evidence that includes a transcript of a recording of an interview with a vulnerable person is not required also to include a written statement from the vulnerable person concerned.
- (4) The transcript of the recording is taken, for the purposes of this Division, to be a written statement taken from the vulnerable person. Accordingly, any document or other thing identified in the transcript as a proposed exhibit forms part of the brief of evidence.
- (5) Nothing in this Division requires the prosecutor to serve on the accused person a copy of the actual recording made by an investigating official of an interview with the vulnerable person.
- (6) This section does not affect section 306V (2).
- (7) In this section:

***investigating official*** has the same meaning as it has in Part 6 of Chapter 6.

***vulnerable person*** has the same meaning as it has in Part 6 of Chapter 6.

**Note—**

Part 6 of Chapter 6 allows vulnerable persons (children and cognitively impaired persons) to give evidence of a previous representation in the form of a recording made by an investigating official of an interview with the vulnerable person. Section 306V (2) (which is contained in that Part) provides that such evidence is not to be admitted unless the accused person and his or her Australian legal practitioner have been given a reasonable opportunity to listen to or view the recording.

**186 Form of copy of brief of evidence**

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

**187 When brief of evidence need not be served**

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

**188 Evidence not to be admitted**

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

### **189 False statements**

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

Maximum penalty:

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

## **Division 3 Hearings**

### **190 Time for hearing**

- (1) On the first return date for a court attendance notice in any summary proceedings, or at such later time as the court determines, the court must set the date, time and place for hearing and determining the matter.
- (2) The court must notify the accused person of the date, time and place, if the accused person is not present.
- (3) However, if the accused person is not present at the first return date and has not lodged a written plea of not guilty in accordance with section 182, the court may proceed to hear the matter on that day at its discretion.

#### **Note—**

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

### **191 Proceedings to be open to public**

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

### **192 Procedures where both parties present**

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

- (2) The court must state the substance of the offence to the accused person and ask the accused person if the accused person pleads guilty or not guilty.
- (3) Instead of hearing and determining the matter, the court may, if it thinks that the matter should not proceed on the specified day, adjourn the hearing to another day for mention or hearing.

**193 Procedure if offence admitted**

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

**194 Procedure if offence not admitted**

- (1) If the accused person pleads not guilty or fails or refuses to make a plea or the court does not accept the accused person's guilty plea, the court must proceed to hear and determine the matter.
- (2) The court must hear the prosecutor, any witnesses and other evidence of the prosecutor and must hear the accused person and any witnesses and other evidence of the accused person.

**195 How evidence is taken**

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

**196 Procedure if accused person not present**

- (1) If the accused person is not present at the day, time and place set for the hearing and determination of the matter (including a day to which the hearing has been adjourned), the court may proceed to hear and determine the matter in the absence of the accused person in accordance with this Division.
- (2) If:
  - (a) a penalty notice enforcement order is annulled under Division 5 of Part 3 of the

*Fines Act 1996* and the order (together with any annexure) is taken to be a court attendance notice in relation to the offence, and

- (b) the accused person has been given notice of the hearing of the matter of the court attendance notice, and
- (c) the accused person does not appear on the day and at the time and place specified by the court attendance notice,

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

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

#### **197 Adjournment when accused person not present**

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

**Note—**

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

#### **198 Absent accused person taken to have pleaded not guilty**

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

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

- (1) The court may determine proceedings heard in the absence of the accused person on the basis of the court attendance notice without hearing the prosecutor's witnesses or any other additional evidence of the prosecutor, if it is of the opinion that the matters set out in the court attendance notice are sufficient to establish the offence.

- (2) Before determining the matter, the court must consider any written material given to the court by the prosecutor, or lodged by the accused person under section 182.

### **200 When court may require prosecution to provide additional evidence**

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

### **201 Procedure if prosecutor or both parties not present**

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

### **202 Determination by court**

- (1) The court must determine summary proceedings after hearing the accused person, prosecutor, witnesses and evidence in accordance with this Act.
- (2) The court may determine the matter by convicting the accused person or making an order as to the accused person, or by dismissing the matter.
- (3) In the case of a matter heard in the absence of the accused person, the court may adjourn the proceedings to enable the accused person to appear or be brought before the court for sentencing.

**Note—**



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

### **203 Additional powers to adjourn summary proceedings**

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

### **204 Record of conviction or order to be made**

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

### **205 Order dismissing matter to be made**

- (1) A court may make an order of dismissal and give the accused person a certificate certifying that a matter has been dismissed if it decides to dismiss the matter.
- (2) A court must make an order of dismissal and give the accused person a certificate certifying that a matter has been dismissed if requested to do so by an accused person against whom a matter has been dismissed or by the prosecutor.
- (3) This section does not apply to a matter that is taken to be dismissed because of section 208.

### **206 Effect of certificate that matter has been dismissed**

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

### **207 Power to set aside conviction or order before sentence**

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

### **208 Dismissal of matter if matter withdrawn**

- (1) If a matter is withdrawn by the prosecutor, the matter is taken to be dismissed and

the accused person is taken to be discharged in relation to the offences concerned.

- (2) The dismissal of a matter because of its withdrawal by the prosecutor does not prevent any later proceedings in any court for the same matter against the same person.

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

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

### **210 Penalties applying to traffic offences committed by children**

- (1) The Local Court may deal with a child found guilty of a traffic offence in accordance with Division 4 of Part 3 of the *Children (Criminal Proceedings) Act 1987*.
- (2) In so dealing with a child, the Local Court has and may exercise the functions of the Children's Court under that Division as if the Local Court were the Children's Court and the offence were an offence to which the Division applies.
- (3) The Local Court must not impose a sentence of imprisonment on a child found guilty of a traffic offence.
- (4) In this section:

**child** means a person who was under 18 years when the traffic offence was committed and under 21 years when summary proceedings for the offence were commenced,

**traffic offence** means an offence arising under a provision of:

- (a) the road transport legislation within the meaning of the *Road Transport (General) Act 2005*, or
- (b) the *Roads Act 1993*, or
- (c) the *Motor Vehicles (Third Party Insurance) Act 1942*, or
- (d) the *Recreation Vehicles Act 1983*, or
- (e) the *Motor Accidents Compensation Act 1999*,

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

#### **Note—**

Division 4 of Part 3 of the *Children (Criminal Proceedings) Act 1987* sets out the penalties which the Children's

Court may impose on a child who has been found guilty of a summary offence.

## **Division 4 Costs**

### **211 Definition**

In this Part:

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

### **212 When costs may be awarded**

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

**Note—**

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

### **213 When professional costs may be awarded to accused persons**

- (1) A court may at the end of summary proceedings order that the prosecutor pay professional costs to the registrar of the court, for payment to the accused person, if the matter is dismissed or withdrawn.
- (2) The amount of professional costs is to be the amount that the Magistrate considers to be just and reasonable.
- (3) Without limiting the operation of subsection (1), a court may order that the prosecutor in summary proceedings pay professional costs if the matter is dismissed because:
  - (a) the prosecutor fails to appear or both the prosecutor and the accused person fail to appear, or
  - (b) the matter is withdrawn or the proceedings are for any reason invalid.
- (4) (Repealed)
- (5) The order must specify the amount of professional costs payable.

### **214 Limit on award of professional costs to accused person against prosecutor acting in public capacity**

- (1) Professional costs are not to be awarded in favour of an accused person in summary proceedings unless the court is satisfied as to any one or more of the following:
  - (a) that the investigation into the alleged offence was conducted in an unreasonable

or improper manner,

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

- (2) This section does not apply to the awarding of costs against a prosecutor acting in a private capacity.
- (3) An officer of an approved charitable organisation under the *Prevention of Cruelty to Animals Act 1979* is taken not to be acting in a private capacity if the officer acts as the prosecutor in any proceedings under that Act or section 9 (1) of the *Veterinary Practice Act 2003*.

## **215 When costs may be awarded to prosecutor**

- (1) A court may at the end of summary proceedings order that the accused person pay the following costs to the registrar of the court, for payment to the prosecutor, if the accused person is convicted or an order is made against the accused person:
  - (a) such professional costs as the court considers just and reasonable,
  - (b) court costs, to be paid to the registrar for payment to the prosecutor if the costs have been paid by the prosecutor or, if they have not been so paid, to be paid to the registrar of the court.
- (1A) The court may not order the accused person to pay professional costs referred to in subsection (1) (a) if the conviction or order concerned relates to an offence:
  - (a) for which a penalty notice, within the meaning of section 20 of the *Fines Act 1996*, has been issued, and
  - (b) in respect of which the person has elected to have the matter dealt with by a court, and
  - (c) in respect of which the person has lodged a written plea of guilty, in accordance with section 182, not later than 7 days before the date on which the person is required to first attend before the court.
- (1B) Subsection (1A) does not apply in relation to proceedings for an offence against the

*Occupational Health and Safety Act 2000*, the regulations under that Act or the associated occupational health and safety legislation within the meaning of that Act.

- (2) The amount that may be awarded under subsection (1) (b) for court costs is:
  - (a) the filing fee for a court attendance notice, or
  - (b) such other amount as the court considers to be just and reasonable in the circumstances of the case.
- (3) The order must specify the amount of costs payable.
- (4) For the purposes of this section, an accused person is taken to have been convicted if an order is made under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. The order for costs may be in the order under that section.
- (5) This section applies to all summary proceedings, including orders made in proceedings conducted in the absence of the accused person.

#### **216 Costs on adjournment**

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

#### **217 Enforcement of costs orders**

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

#### **218 Public officers and police officers not personally liable for costs**

- (1) A public officer or a police officer is entitled to be indemnified by the State for any costs awarded against the officer personally as the prosecutor in any criminal proceedings in a court in which the officer is acting in his or her capacity as a public officer or a police officer.
- (2) In this section:  
**public officer** does not include a councillor or an employee of a council or any other person prescribed by the regulations for the purposes of this section.

## Division 5 Rules

### 219 Rules

- (1) The Rule Committee may make rules for or with respect to the following matters:
  - (a) service of court attendance notices, briefs of evidence and other documents,
  - (b) endorsement of service of court attendance notices and other documents,
  - (c) procedures for adjourning, relisting and notifying accused persons about alternative offences,
  - (d) additional requirements for the form of warrants,
  - (e) the circumstances in which a person may obtain copies of documents relating to criminal proceedings,
  - (f) assessment of costs on adjournment,
  - (g) the form of submissions to a court about disputed costs,
  - (h) forms to be used under this Act.
- (2) A court may in proceedings for a summary offence, if of the opinion that it is in the interests of justice to do so, dispense with or vary a requirement of the rules.
- (3) For the purposes of subsection (2), the Local Court may make directions as to the conduct of proceedings.
- (4) The power conferred by subsection (2) does not extend to any rule declared by the rules to be mandatory.

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

### 220 Application

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

### 221 Definitions

In this Part:

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

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

**subpoena** includes any of the following:

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

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

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

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

## 222 Issue of subpoenas

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

## 223 Time for service of subpoenas

- (1) A subpoena must be served within a reasonable time and at least 5 days before the last day on which it must be complied with.
- (2) A registrar may, on application by the party concerned, permit a subpoena to be

served later than the time permitted by subsection (1). The later time must be endorsed on the subpoena by the registrar.

- (3) A subpoena may be served by delivering a copy of the subpoena to the person named or in any other manner prescribed by the rules.

#### **224 Conduct money**

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

#### **225 Limits on obligations under subpoenas**

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

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

#### **226 Production by non-party**

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

#### **227 Subpoena may be set aside**

- (1) A court may, on application by the person named in a subpoena, set aside the subpoena wholly or in part.
- (2) Notice of an application under this section is to be filed and served as prescribed by the rules on the party on whose request, or by whom, the subpoena was issued.



## **228 Inspection of subpoenaed documents and things**

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

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

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

### **Note—**

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

## **230 Application of [Bail Act 1978](#)**

The [Bail Act 1978](#) applies to a person who is brought before a court after having been

arrested under a warrant referred to in section 229 in the same way as it applies to an accused person, and for that purpose, bail may be granted to the person with respect to the period between:

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

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

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

**Note—**

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

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

arrested under a warrant after failing to comply with a subpoena includes a reference to a person in respect of whom the requirement for bail has been dispensed with after being so apprehended.

### **232 Rules relating to subpoenas**

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

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

## **Part 4 Warrants**

### **Division 1 Preliminary**

#### **233 Application**

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

#### **234 Definition**

In this Part:

***named person*** means the person named in a warrant.

### **Division 2 Arrest warrants**

#### **235 When arrest warrants may be issued for accused persons**

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

#### **236 Form of arrest warrant**

- (1) A warrant to arrest a person must be in the form prescribed by the rules.
- (2) Without limiting subsection (1), the warrant must be directed to a person permitted by this Division to execute the warrant and must do the following things:
  - (a) name or describe the person to be arrested,
  - (b) briefly state the subject-matter of the court attendance notice or reason for the

arrest,

(c) order that the person be arrested and brought before the Judge, Magistrate or authorised officer to be dealt with according to law or to give evidence or produce documents or things, as appropriate.

(3) A warrant to arrest a person must be signed by the person issuing it and sealed with the seal of the court to which the person issuing it is attached.

(4) However, an authorised officer may sign a warrant issued under this Act if a Judge or Magistrate has directed in writing that the warrant be issued.

### 237 Duration of arrest warrants

(1) A warrant to arrest an accused person need not be returnable at any particular time. If it is not, the warrant continues in force until it expires.

(1A) A warrant to arrest an accused person in respect of an offence specified in the Table below expires at the end of the period specified in the Table in relation to the offence.

| <b>Offence</b>   | <b>Period</b> |
|--|---------------|
| Indictable offences (punishable by imprisonment for life or 25 years or more)                                    | 50 years      |
| Indictable offences (punishable by imprisonment for less than 25 years and not less than 5 years)                | 30 years      |
| Indictable offences not punishable by imprisonment for 5 years or more (where the accused person is not a child) | 15 years      |
| Summary offences (where the accused person is not a child)   | 10 years      |
| Indictable offences not punishable by imprisonment for 5 years or more (where the accused person is a child)     | 10 years      |
| Summary offences (where the accused person is a child)   | 5 years       |

(1B) A warrant issued for the arrest of a convicted person to bring that person before a court for sentencing expires at the end of 30 years after it is issued.

(1C) Nothing in subsection (1A) or (1B) prevents a new warrant for arrest from being issued in respect of the same offence or offences as a previous arrest warrant.

(2) A warrant to arrest a witness must be returnable at a stated date, time and place.

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

### **238 Persons who may execute arrest warrant**

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

### **239 Procedure after arrest**

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

### **240 Revocation of warrants**

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

## **Division 3 Warrants of commitment**

### **241 Power to commit person to correctional centre subject to [Bail Act 1978](#)**

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

**Note—**

The [Bail Act 1978](#) sets out the circumstances when bail must or may be granted or may be dispensed with by a Magistrate.

## **242 Form of warrants of commitment**

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

## **243 Procedure for taking person to correctional centre or other place**

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

## **244 Defects in warrants of commitment**

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

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

# **Part 5 Summary jurisdiction of Supreme Court and other higher courts**

## **Division 1 Jurisdiction**

## **245 Summary jurisdiction of Supreme Court**

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

### **Note—**

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

## **Division 2 Appearance of accused persons**

### **246 Orders for appearance or apprehension of accused persons**

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

### **247 Notices to be given to prosecutor**

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

## **Division 3 Trial procedure**

### **248 Pre-trial procedure**

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

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

- (1) If the prosecutor does not appear on the day and at the time and place set by an order under Division 2 (or on a day to which a hearing has been adjourned), but the accused person attends, the court, if satisfied that the prosecutor was notified of the day, time and place:
  - (a) must discharge the accused person as to the offence the subject of the proceedings, with or without costs, or
  - (b) if the court thinks it appropriate, adjourn the hearing to a specified time and place.
- (2) Subsection (1) does not empower the court to order costs to be paid in proceedings for an offence referred to in section 475A of the *Crimes Act 1900*.
- (3) Division 4 applies to any award of costs arising from proceedings being dealt with under subsection (1).

### **250 Procedure where accused person does not obey order to appear**

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

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



### **251 Procedure where both parties do not appear**

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

### **252 Procedure where both parties appear**

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

### **253 (Repealed)**

### **254 Enforcement of fines and orders**

The payment of any money ordered by a court exercising summary jurisdiction under this Part to be paid as a penalty or for costs under Division 4 is taken to be a fine within the meaning of the [Fines Act 1996](#).

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

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

### **256 Effect of conviction under this Part**

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

### **257 Rules for summary criminal procedure**

- (1) The Rule Committee may make rules for or with respect to the practice and procedure of a court in the exercise of summary jurisdiction under this Part.
- (2) Without limiting the generality of subsection (1), the rules may make provision for or with respect to:
  - (a) the service of orders under Division 2,
  - (b) pre-trial procedures and related practices,
  - (c) the attendance or apprehension of witnesses,
  - (d) the examination of witnesses on oath, affirmation or declaration,

- (e) the production by witnesses of books, documents and writings,
- (f) the execution of warrants for the apprehension of any person,
- (g) any matter that by this Part is required to be prescribed by rules or that is necessary or convenient for the carrying out of or giving effect to the provisions of this Act relating to the summary jurisdiction of a court.

(3) Nothing in this section limits the rule-making powers conferred on the Supreme Court by the [Supreme Court Act 1970](#).

## Division 4 Costs

### 257A Definition

In this Division:

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

### 257B When costs may be awarded to prosecutor

A court may, in and by a conviction or order, order an accused person to pay to the registrar of the court, for payment to the prosecutor, such costs as the court specifies or, if the conviction or order directs, as may be determined under section 257G, if:

- (a) the court convicts the accused person of an offence, or
- (b) the court makes an order under section 10 of the [Crimes \(Sentencing Procedure\) Act 1999](#) in respect of an offence.

### 257C When professional costs may be awarded to accused person

- (1) A court may at the end of proceedings under this Part order that the prosecutor pay professional costs to the registrar of the court, for payment to the accused person, if the matter is dismissed or withdrawn.
- (2) The amount of professional costs is to be such professional costs as the court specifies or, if the order directs, as may be determined under section 257G.
- (3) Without limiting the operation of subsection (1), a court may order that the prosecutor in proceedings under this Part pay professional costs if:
  - (a) the accused person is discharged as to the offence the subject of the proceedings,  
or
  - (b) the matter is dismissed because the prosecutor fails to appear, or
  - (c) the matter is withdrawn or the proceedings are for any reason invalid.

**257D Limit on award of professional costs against a prosecutor acting in a public capacity**

- (1) Professional costs are not to be awarded in favour of an accused person in proceedings under this Part unless the court is satisfied as to one or more of the following:
  - (a) that the investigation into the alleged offence was conducted in an unreasonable or improper manner,
  - (b) that the proceedings were initiated without reasonable cause or in bad faith or were conducted by the prosecutor in an improper manner,
  - (c) that the prosecutor unreasonably failed to investigate (or to investigate properly) any relevant matter of which it was aware or ought reasonably to have been aware and which suggested either that the accused person might not be guilty or that, for any other reason, the proceedings should not have been brought,
  - (d) that, because of other exceptional circumstances relating to the conduct of the proceedings by the prosecutor, it is just and reasonable to award professional costs.
- (2) This section:
  - (a) does not apply to the awarding of costs against a prosecutor acting in a private capacity, and
  - (b) does not apply in relation to proceedings for an offence against the *Occupational Health and Safety Act 2000*, the regulations under that Act or the associated occupational health and safety legislation within the meaning of that Act.
- (3) An officer of an approved charitable organisation under the *Prevention of Cruelty to Animals Act 1979* is taken not to be acting in a private capacity if the officer acts as the prosecutor in any proceedings under that Act or section 9 (1) of the *Veterinary Practice Act 2003*.

**257E Public officers and police officers not personally liable for costs**

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

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

### **257F Costs on adjournment**

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

### **257G Calculation of costs**

The professional or other costs payable by a prosecutor or accused person in accordance with an order directing that the amount of costs is to be determined under this section are to be determined:

- (a) by agreement between the prosecutor and accused person, or
- (b) if no such agreement can be reached, in accordance with Division 11 of Part 3.2 of the [Legal Profession Act 2004](#) (with or without modifications prescribed by the regulations).

## **Chapter 5 Summary disposal of indictable offences by Local Court**

### **258 Objects of this Chapter**

The objects of this Chapter are:

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

### **259 Offences to which this Chapter applies**

- (1) This Chapter applies to the offences listed in Tables 1 and 2 to Schedule 1.
- (2) All the offences listed in Tables 1 and 2 to Schedule 1 are indictable offences, subject to the provisions of this Chapter.

### **260 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

the Local Court unless the prosecutor or the person charged with the offence elects in accordance with this Chapter 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 the Local Court unless the prosecutor elects in accordance with this Chapter to have the offence dealt with on indictment.

### **261 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 Chapter, to be dealt with summarily in accordance with the relevant provisions of this Act and any other relevant law as if it were a summary offence.

### **262 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 Chapter, to be dealt with on indictment in accordance with the relevant provisions of this Act and any other relevant law.
- (2) If an election is made in accordance with this Chapter and the person charged with the offence pleads guilty to the offence before the Local Court and the Court accepts the plea, the offence is to be dealt with in accordance with Division 5 of Part 2 of Chapter 3 as if the person charged had pleaded guilty under that Division to the offence.

### **263 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.
- (4) An election may be made on behalf of a corporation by a person appearing as a representative of the corporation.
- (5) The jurisdiction of the Local Court under this section may be exercised by a registrar.

### **264 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 Chapter if an election is withdrawn in accordance with this section.

### **265 Criminal record 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 the 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.
- (1A) Subsection (1) does not apply if the person charged with an indictable offence is represented by an Australian legal practitioner.
- (2) The prosecutor is to serve, or cause to be served, on a person charged with an indictable offence listed in Table 1 to Schedule 1 a copy of the person's criminal record (if any) known to the prosecutor, 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.
- (3) Without limiting the powers of the Local Court to adjourn proceedings, the Local Court is to grant such adjournments as appear to be just and reasonable if a criminal record is 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) (Repealed)
- (5) The jurisdiction of the Local Court under this section may also be exercised by a registrar.

### **266 Regulations**

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

## **267 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 Chapter 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 the 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 the 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 the Local Court may impose for the following offences is:
  - (a) for an offence under section 51A, 52A, 52AB 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 the 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) (Repealed)
- (4B) The maximum penalty that the 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 the Local Court may impose for the offence concerned.

- (5) The 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 the 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)

#### **268 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 Chapter in any case where the maximum penalty (when the offence is dealt with summarily) is not provided by law.
- (1A) The maximum term of imprisonment that the 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.
- (2) The maximum penalty that the Local Court may impose for the following offences is:
  - (a) for an offence under section 35A (2), 49A, 58, 59, 59A, 60 (1), 60A (1), 60B, 60C, 60E (1) and (4), 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 or 3 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 the 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, 93H or 93I of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both,
  - (e1) for an offence under section 7, 7A, 36, 43, 44A, 50, 50AA, 50A (1), 51 (1) or (2), 51A, 51BA, 51D (1), 51E, 58 (2), 62, 63, 64, 66, 70, 71A, 72 (1) or 74 of the *Firearms Act 1996*—imprisonment for 2 years, or a fine of 50 penalty units, or both,
  - (e2) for an offence under section 7, 20, 23 (1), 23A (1), 25A (1), 31 or 34 of the *Weapons Prohibition Act 1998*—imprisonment for 2 years, or a fine of 100 penalty units, or both,
  - (f) for an offence under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* or section 545AB or 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,
  - (l) for an offence under Part 2 or 5 (other than section 40 (2)) of the *Surveillance Devices Act 2007*—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,
  - (m) for an offence under section 17 or 18 of the *Child Protection (Offenders Registration) Act 2000*—imprisonment for 2 years, or a fine of 100 penalty units, or both,
  - (n) for an offence under section 65 of the *Electricity Supply Act 1995*—in the case of an individual, imprisonment for 2 years, or a fine of 100 penalty units (or both),
  - (o) for an offence under section 66 of the *Gas Supply Act 1996*—in the case of an individual, imprisonment for 2 years, or a fine of 100 penalty units (or both).
- (2A) The maximum penalty that the 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 the 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*.

## **269 Offences by children**

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

## **270 No time limit for offences dealt with summarily under this Chapter**

Section 179, 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 Chapter.

## **271 Effect of conviction**

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

## **272 Application of Chapter**

(1) This Chapter 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), (3) (Repealed)

## **273 Jurisdiction of Magistrates in respect of offences arising under Part 4AD of Crimes Act 1900**

If, by virtue of this Chapter, the Local Court has jurisdiction to deal with a charge arising under Part 4AD 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.

# **Chapter 6 Evidentiary matters**

## **Part 1 Preliminary**

## 274 Application

This Chapter 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.

### Note—

Certain provisions of Part 6 (Giving of evidence by vulnerable persons) of this Chapter extend to evidence given in proceedings of a civil nature arising from certain offences (for example, see section 306ZA (c)).

## 275 Definitions

In this Chapter:

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

## Part 2 General

### 275A (Repealed)

### 275B Witness with communication difficulty entitled to assistance from person or communication aid

- (1) In any criminal proceedings, a witness who has difficulty communicating is entitled to use a person or persons who may assist the witness with giving evidence, but only if the witness ordinarily receives assistance to communicate from such a person or persons on a daily basis.
- (2) In any criminal proceedings, a witness who has difficulty communicating is entitled to use a communication aid to assist the witness with giving evidence, but only if the witness ordinarily uses such an aid to assist him or her to communicate on a daily basis.
- (3) To the extent that the court considers it reasonable to do so, the court must make whatever direction is appropriate to give effect to a witness’ right to use a person or persons, or to use a communication aid, under this section when the witness is giving evidence.
- (4) The provisions of the *Evidence Act 1995* apply to and in respect of a person who gives a witness assistance under this section in the same way as they apply to and in respect of an interpreter under that Act.
- (5) In this section:

**communication aid** includes any thing, whether electronic or otherwise, that can be used to assist in communication.

## **276 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) an Australian legal practitioner or Australian 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.

## **277 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.

## **278 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.

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

(1) In this section:

- (a) a reference to the spouse of an accused person includes a reference to the de facto partner of an accused person, and

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

- (b) a reference to a domestic violence offence is a reference to a domestic violence offence within the meaning of the [Crimes \(Domestic and Personal Violence\) Act 2007](#), and
- (c) a reference to a domestic violence offence committed on the spouse 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 spouse 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 spouse 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 spouse, 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 spouse,
- 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 spouse of an accused person is not compellable to give evidence for the prosecution as referred to in subsection (2) if the spouse has applied to, and been excused by, the court.
- (4) A court may excuse the spouse 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 spouse 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 spouse 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 spouse 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 spouse 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 Australian legal practitioner.
- (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 spouse 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.

**280 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) (Repealed)

(8) In this section:

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

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

### **281 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.

## Part 2A Sensitive evidence

### 281A Definitions

(1) In this Part:

**accused person** means a person who stands, or any of the persons who stand, charged with an offence (whether summary or indictable), and includes the following:

- (a) in relation to proceedings for a summary offence, a defendant,
- (b) in relation to sentencing proceedings, a person who has been committed for sentence to the District Court or Supreme Court,
- (c) in relation to proceedings on an appeal against a conviction or sentence, the person convicted or sentenced.

**criminal investigation** means the investigation of an offence or alleged offence.

**criminal proceedings** means proceedings against a person for an offence (whether summary or indictable), and includes the following:

- (a) committal proceedings,
- (b) proceedings relating to bail,
- (c) proceedings relating to sentencing,
- (d) proceedings on an appeal against conviction or sentence.

**prosecuting authority** means:

- (a) in relation to criminal proceedings, the Director of Public Prosecutions, a delegate of the Director of Public Prosecutions, a police officer, or any other person acting in a public official capacity, who is responsible for the institution or conduct of a prosecution, and
- (b) in relation to a criminal investigation, a police officer or any other person acting in a public official capacity who is responsible for the conduct of a criminal investigation.

**sensitive evidence** has the meaning given by section 281B.

- (2) In this Part, a reference to an **accused person** or a **prosecuting authority** includes a reference to an Australian legal practitioner representing the accused person or the prosecuting authority.

#### **281B Sensitive evidence—meaning**

- (1) For the purposes of this Part, anything that contains or displays an image of a person (the **protected person**) is **sensitive evidence** if:
  - (a) the image is obscene or indecent, or
  - (b) providing a copy of the image to another person without the protected person's consent would interfere with the protected person's privacy, or
  - (c) the image was taken after the death of the protected person.
- (2) Without limiting subsection (1), the following are examples of sensitive evidence:
  - (a) a photograph of an alleged sexual assault victim, taken in connection with a criminal investigation or criminal proceedings, that shows the person's genitalia or otherwise shows the person in a state of undress,
  - (b) a video, held or seized by a prosecuting authority, showing a person committing a sexual offence,
  - (c) a computer hard drive, held or seized by a prosecuting authority, containing images of child pornography or child abuse material (within the meaning of Division 15A of Part 3 of the *Crimes Act 1900*),
  - (d) a photograph of a deceased person taken in connection with a post mortem examination,
  - (e) a photograph of a deceased person taken at a crime scene.
- (3) In determining whether a thing is obscene or indecent, the fact that the thing was brought into existence, or is in the possession of a prosecuting authority, for the

purpose of providing evidence of an offence is to be disregarded.

**281C Accused person not entitled to copy of sensitive evidence**

- (1) A prosecuting authority is not required and cannot be required (whether by subpoena or any other procedure), in or in connection with any criminal investigation or criminal proceedings, to give an accused person a copy of anything the prosecuting authority reasonably considers to be sensitive evidence.
- (2) This section applies despite anything to the contrary in this or any other Act, or any other law.

**281D Procedures for giving access to sensitive evidence to accused person**

- (1) If, but for this Part, a prosecuting authority would be required, in or in connection with any criminal investigation or criminal proceedings, to provide a copy of a thing to an accused person, and the prosecuting authority does not give a copy of the thing to the accused person as a result of this Part, the prosecuting authority must give the accused person a written notice (a **sensitive evidence notice**) that complies with this section.
- (2) The sensitive evidence notice must:
  - (a) describe the thing that the prosecuting authority considers to be sensitive evidence, and
  - (b) indicate that, as the prosecuting authority considers the thing to be sensitive evidence, the prosecuting authority is not required to give the accused person a copy of the thing, and
  - (c) indicate that the accused person will not be given a copy of the thing, and
  - (d) contain information to the effect that the accused person is entitled to view the thing at a place nominated by the prosecuting authority and under the supervision of the prosecuting authority, and
  - (e) set out the name and contact details of the person who is responsible for arranging such a viewing on behalf of the prosecuting authority.
- (3) After receiving a sensitive evidence notice, the accused person may give the prosecuting authority a written notice (an **access request notice**) that indicates that the accused person requires access to the thing.
- (4) The prosecuting authority must, as soon as practicable after receiving an access request notice, give the accused person, and any other person who has been engaged to assist with the accused person's case, reasonable access to the thing so as to enable them to view (but not copy) the thing. This may require access to be given on more than one occasion.

- (5) The prosecuting authority may require any such access to take place subject to such conditions as the prosecuting authority considers appropriate to ensure that there is no unauthorised reproduction or circulation of the thing and that the integrity of the thing is protected.
- (6) Without limiting subsection (5), the prosecuting authority may require any such access to take place under the supervision of the prosecuting authority or a person assisting the prosecuting authority.
- (7) A person who is given access to a thing by a prosecuting authority under this section must not, without the authority of the prosecuting authority:
  - (a) copy, or permit a person to copy, the thing, or
  - (b) give the thing to another person, or
  - (c) remove the thing from the custody of the prosecuting authority.Maximum penalty: 100 penalty units, or 2 years imprisonment, or both.
- (8) The Attorney General may approve the form of any notice to be used for the purposes of this section.

**281E Prosecuting authority entitled to retain possession of sensitive evidence**

- (1) If during any criminal proceedings an accused person is given sensitive evidence, or a copy of sensitive evidence, by the prosecuting authority in the proceedings, the court must, on application by the prosecuting authority, direct the accused person to return the sensitive evidence or copy to the custody of the prosecuting authority at or before the end of each day during which the proceedings are heard.
- (2) At the completion of any criminal proceedings in which sensitive evidence is tendered by the prosecuting authority, or sensitive evidence given to the accused person by the prosecuting authority is tendered by the accused person, the court must, on application by the prosecuting authority, direct that the sensitive evidence, and any copies of the sensitive evidence made for the purposes of the proceedings, be returned to the custody of the prosecuting authority.

**281F Improper copying or circulation of sensitive evidence**

- (1) A person who has possession of sensitive evidence that is prosecution evidence must not copy, or permit a person to copy, the sensitive evidence, or give possession of the sensitive evidence to another person, except:
  - (a) for the legitimate purposes of a criminal investigation or criminal proceedings, or
  - (b) if the person is a public official, in the proper exercise of the person's public official functions (including any functions relating to education or training).

Maximum penalty: 100 penalty units, or 2 years imprisonment, or both.

- (2) For the purposes of this section, any sensitive evidence in the possession of a person is **prosecution evidence** if:
- (a) the person was given possession of the sensitive evidence by a prosecuting authority in or in connection with a criminal investigation or criminal proceedings, or
  - (b) the person is a public official who created, or obtained possession of, the sensitive evidence in the exercise of, or as a result of an opportunity that arose in the exercise of, public official functions in or in connection with a criminal investigation or criminal proceedings.

- (3) In this section:

**public official** has the same meaning as in the [Independent Commission Against Corruption Act 1988](#).

## Part 3 Medical examinations and law enforcement devices

### 282 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 prosecutor, a court may not dispose of the case summarily except with the consent of the accused person.

### 283 Law enforcement devices

- (1) A certificate:
- (a) that would, by virtue of section 33, 33D, 35, 46, 47, 47B, 57 or 57B 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 clause 27 or 29 of Schedule 1 to the [Marine Safety Act](#)

1998, 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 average speed detection device, approved traffic lane camera device, 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 average speed detection device, approved traffic lane camera device, 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, 47B, 57 or 57B 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 average speed detection device**, **approved camera detection device**, **approved camera recording device**, **approved speed measuring device**, **approved traffic lane camera device**, and **breath analysing instrument** have the same meanings as they have in the *Road Transport (Safety and Traffic Management) Act 1999*.

## Part 4 Depositions and written statements

### 284 Depositions by persons dangerously ill

- (1) If it appears to an authorised person 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 authorised person 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 a court.

- (2) The deposition must be in the form prescribed by the regulations and must be signed by the authorised person.
- (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 prosecutor or the accused person.

- (6) In this section:

**authorised person** means any of the following:

- (a) a Judge,
- (b) a justice of the peace who is a registrar of the Local Court or the Drug Court,
- (c) a justice of the peace who is an employee of the Attorney General's Department authorised in writing by the Attorney General to be an authorised person for the purposes of this section.

## **285 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 Judge 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 72) was absent,

(c) that the accused person, or his or her Australian legal practitioner, had full opportunity to cross-examine the witness, or that the accused person (having been excused under section 72) was absent when the deposition was taken and was not represented by an Australian legal practitioner.

(2) The deposition:

(a) must be in writing, signed by the Judge 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 Australian legal practitioner, 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 Australian legal practitioner, 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 72) was absent, and

(b) that the accused person was not represented by an Australian legal practitioner at that time,

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



(6) In this section:

**Judge** includes a coroner holding office under the [Coroners Act 2009](#).

### **286 Depositions tendered by accused person**

(1) The deposition of any witness called and examined before a judge 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 Magistrate has certified, before committing the accused person for trial, that in the opinion of the Magistrate:

(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:

**Judge** includes a coroner holding office under the [Coroners Act 2009](#).

### **287 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 rules.

### **288 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.

### **289 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 Division 3 of Part 2 of Chapter 3, including any part of the statement that has been rejected under that Division,
- (b) a written statement the whole or any part of which has been tendered as evidence under Division 5 of Part 2 of Chapter 3,

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 Magistrate has certified, before committing the person for trial, that in the opinion of the Magistrate:
  - (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.

## **Part 4A Use of random sample evidence**

### **289A Definitions**

In this Part:

**authorised analyst** means any person, or person of a class, authorised by the Attorney General or the Director of Public Prosecutions to exercise the functions of an authorised analyst under this Part.

**child abuse material** and **material** have the same meanings as they have in Division 15A of Part 3 of the [Crimes Act 1900](#).

**child abuse material offence** means an offence under Division 15A of Part 3 of the [Crimes Act 1900](#).

### **289B Use of random sample evidence in child abuse material cases**

- (1) An authorised analyst may, in connection with any proceedings for a child abuse material offence, conduct an examination of a random sample of the child abuse material or alleged child abuse material that is the subject of the proceedings concerned.
- (2) In proceedings for the child abuse material offence concerned, evidence adduced by the prosecutor of any findings of the authorised analyst as to the nature and content of the random sample is admissible as evidence of the nature and content of the whole of the material from which the random sample was taken.
- (3) Accordingly, it is open to a court to find that any type of child abuse material found by an authorised analyst to be present in a particular proportion in the random sample is present in the same proportion in the material from which the random sample was taken.

- (4) A certificate of an authorised analyst, that certifies any of the following matters, is admissible in proceedings for a child abuse material offence as evidence of the matters certified:
  - (a) that the authorised analyst conducted an examination of a random sample of the material the subject of the proceedings,
  - (b) that the random sample was taken, and the examination conducted, in accordance with any requirements of the regulations,
  - (c) the findings of the authorised analyst as to the nature and content of the random sample.
- (5) A certificate signed by a person purporting to be an authorised analyst is taken to be a certificate of an authorised analyst, in the absence of evidence to the contrary.
- (6) Evidence is admissible under this section only if the court is satisfied that the accused person, or an Australian legal practitioner representing the accused person, has been given a reasonable opportunity to view all of the child abuse material or alleged child abuse material the subject of the proceedings concerned.
- (7) This section does not affect the provisions of Part 2A, which restrict the access of an accused person to sensitive evidence.
- (8) The regulations may make further provision for or with respect to the taking and admissibility of random sample evidence under this section, including by providing for:
  - (a) the circumstances or types of cases in which the prosecutor may adduce evidence of the findings of an authorised analyst under this section, and
  - (b) the procedure for taking and examining random samples of material, and
  - (c) any further requirements as to the content and service of a certificate of an authorised analyst.

## **Part 5 Evidence in sexual offence proceedings**

### **Division 1 Evidence in certain sexual offence proceedings**

#### **290 Application**

- (1) This Division applies to proceedings in respect of a prescribed sexual offence, including committal proceedings.
- (2) This Division applies to 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 alternative or additional count) and whether or not the person is liable, on the charge, to be found guilty of any other offence.

## 290A Definitions

(1) In this Division:

**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, against whom a prescribed sexual offence with which the accused person stands charged is alleged to have been committed.

(2) In this Division, a reference to a person against whom a prescribed sexual offence is alleged to have been committed includes:

(a) in relation to an offence under section 80E of the *Crimes Act 1900*, a reference to the person who is alleged to have been the subject of sexual servitude, and

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

(c) in relation to an offence under section 91G of the *Crimes Act 1900*, a reference to the person under the age of 18 years who is alleged to have been used for the production of child abuse material.

## 291 Proceedings must be held in camera when complainant gives evidence

(1) Any part of any proceedings in respect of a prescribed sexual offence in which evidence is given by a complainant is to be held in camera, unless the court otherwise directs.

(2) This section applies even if the complainant gives evidence by means of closed-circuit television or other technology or under any alternative arrangements available to the complainant under section 294B or under Part 6.

(3) The court may direct that the part of proceedings in which evidence is given by the complainant be held in open court only at the request of a party to the proceedings and only if the court is satisfied that:

(a) special reasons in the interests of justice require the part of the proceedings to be held in open court, or

(b) the complainant consents to giving his or her evidence in open court.

(4) The principle that proceedings for an offence should generally be open or public in nature, or that justice should be seen to be done, does not of itself constitute special reasons in the interests of justice requiring the part of the proceedings to be held in

open court.

- (5) If the court directs that the part of the proceedings in which evidence is given by the complainant be held in open court, that does not affect the entitlement of the complainant to give evidence in the manner provided for by section 294B or by Part 6.
- (6) If the proceedings are proceedings in which a record of the original evidence of the complainant is tendered by the prosecutor under Division 3, this section does not require the record to be tendered in camera or, if the record is an audio visual or audio recording, heard by the court in camera.
- (7) This section does not affect the entitlement of a complainant to have a person or persons present when giving evidence under section 294C.

**291A Other parts of proceedings may be heard in camera**

- (1) The court may direct that any other part of any proceedings in respect of a prescribed sexual offence, or the entire proceedings, be held in camera.
- (2) The court may make a direction under this section on its own motion or at the request of any party to the proceedings.
- (3) 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.
- (4) The requirement under section 291 that any part of the proceedings in which evidence is given by a complainant be held in camera unless the court otherwise directs still applies whether or not a direction is made under this section.
- (5) 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.
- (6) This section does not affect:
  - (a) the entitlement of a complainant to have a person or persons present when giving evidence under section 294C, or
  - (b) the entitlement of a vulnerable person (within the meaning of Part 6) to have a person present when giving evidence under section 306ZK.

**291B Incest offence proceedings to be held entirely in camera**

- (1) Any proceedings in respect of an offence under section 78A or 78B of the *Crimes Act 1900* are to be held entirely in camera, despite any other provision of this Division.
- (2) The court may (either absolutely or subject to conditions) exempt any person from the requirement that the proceedings be held in camera 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) This section does not affect:
  - (a) the entitlement of a complainant to have a person or persons present when giving evidence under section 294C, or
  - (b) the entitlement of a vulnerable person (within the meaning of Part 6) to have a person present when giving evidence under section 306ZK.

**291C Media access to proceedings held in camera**

- (1) If a complainant gives evidence in proceedings in respect of a prescribed sexual offence from a place other than the courtroom by means of closed-circuit television facilities or other technology that enables communication between that place and the courtroom (whether under section 294B or Part 6), and the proceedings, or the part of the proceedings concerned, are held in camera under this Division, a media representative may, unless the court otherwise directs, enter or remain in the courtroom while the evidence is given from that other place. This subsection does not apply to proceedings in respect of an offence under section 78A or 78B of the *Crimes Act 1900*.
- (2) The fact that proceedings in respect of a prescribed sexual offence, or any part of such proceedings, are held in camera under this Division does not prevent the court from making such arrangements as the court considers reasonably practicable to allow media representatives to view or hear the evidence while it is given, or to view or hear a record of that evidence, as long as the media representatives are not present in the courtroom or other place where the evidence is given during the in camera proceedings.

**Note—**

For example, the court may permit media representatives to view the proceedings from a place other than the courtroom by means of closed-circuit television facilities.

- (3) In this section:

**media representative**, in relation to any proceedings, means a person engaged in preparing a report of the proceedings for dissemination through a public news medium.

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

- (1) In any proceedings against a person for a prescribed sexual offence, 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 prosecutor or the accused person (or his or her Australian legal practitioner, if any) 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.
- (5) A reference in subsection (1) or (2) to publication of evidence or any report or account of that evidence includes a reference to:
  - (a) the broadcast of evidence or any report or account of that evidence by radio or television, or
  - (b) the dissemination of evidence or any report or account of that evidence by any other electronic means such as the internet.
- (6) An order under this section must not be made unless the court concerned:
  - (a) has sought and considered any views of the complainant, and
  - (b) is satisfied that the publication is not in the public interest.
- (7) In making an order under this section, the court may specify that the order continues to have effect after the relevant proceedings have been finally disposed of. However, the court may, on application by any person, vary or revoke the order at any time.

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

- (1) This section applies to proceedings in respect of a prescribed sexual offence.
- (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) (Repealed)

**294 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, and
- (c) must not warn the jury that delay in complaining is relevant to the victim's credibility unless there is sufficient evidence to justify such a warning.

(3)-(5) (Repealed)

**294AA Warning to be given by Judge in relation to complainants' evidence**

- (1) A judge in any proceedings to which this Division applies must not warn a jury, or make any suggestion to a jury, that complainants as a class are unreliable witnesses.
- (2) Without limiting subsection (1), that subsection prohibits a warning to a jury of the danger of convicting on the uncorroborated evidence of any complainant.
- (3) Sections 164 and 165 of the *Evidence Act 1995* are subject to this section.

**294A Arrangements for complainant in prescribed sexual offence proceedings giving evidence when accused person is unrepresented**

- (1) This section applies to proceedings in respect of a prescribed sexual offence during which the accused person is not represented by an Australian legal practitioner.
- (2) The complainant cannot be examined in chief, cross-examined or re-examined by the accused person, but may be so examined instead by a person appointed by the court.
- (3) The person appointed by the court is to ask the complainant only the questions that the accused person requests that person to put to the complainant.
- (4) Any such person, when acting in the course of an appointment under this section, must not independently give the accused person legal or other advice.
- (5) The court does not have a discretion to decline to appoint a person under this section, despite anything to the contrary in section 306ZL or any other Act or law.
- (6) This section applies whether or not closed-circuit television facilities or other similar technology (or alternative arrangements) are used by the complainant to give evidence.
- (7) If such a person is appointed in proceedings before a jury, the judge must:
  - (a) inform the jury that it is standard procedure in such cases to appoint the person to put the questions to the complainant, and

(b) warn the jury not to draw any inference adverse to the accused person or to give the evidence any greater or lesser weight because of the use of that arrangement.

(8) This section extends to proceedings instituted before the commencement of this section, including proceedings that have been partly heard.

(9) Any thing done or omitted to be done by a person who:

(a) is appointed under this section, and

(b) is an Australian lawyer,

when acting in the course of the appointment or otherwise in accordance with this section does not, if the thing was done or omitted to be done in good faith, subject the person personally to any action, liability, claim or demand.

**294B Giving of evidence by complainant in prescribed sexual offence proceedings—alternative arrangements**

(1) This section applies to evidence given in proceedings (including a new trial) in respect of a prescribed sexual offence.

(1A) This section applies (with any necessary modifications) to the giving of evidence in apprehended violence order proceedings (within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*) by a protected person in the same way as it applies to the giving of evidence in criminal proceedings by a complainant but only if:

(a) the defendant in the proceedings is a person who is charged with a prescribed sexual offence, and

(b) the protected person is the alleged victim of the offence.

(2) This section does not apply to or in respect of the giving of evidence by a vulnerable person (within the meaning of Part 6) if Division 4 of that Part applies to the giving of that evidence.

(3) A complainant who gives evidence to which this section applies is entitled (but may choose not):

(a) to give that evidence from a place other than the courtroom by means of closed-circuit television facilities or other technology that enables communication between that place and the courtroom, or

(b) to give that evidence by use of alternative arrangements made to restrict contact (including visual contact) between the complainant and the accused person or any other person or persons in the courtroom, including the following:

(i) use of screens,

- (ii) planned seating arrangements for people who have an interest in the proceedings (including the level at which they are seated and the people in the complainant's line of vision).
- (4) If, to enable evidence to be given as referred to in subsection (3), the court considers it appropriate to do so, the court may adjourn the proceeding or any part of the proceeding from the courtroom to another court or place.
- (5) Despite subsection (3) (a), a complainant must not give evidence as referred to in that paragraph if a court, on its own initiative or on application by a party to the proceeding, orders that such means not be used.
- (6) A court may make an order under subsection (5) only if it is satisfied that there are special reasons, in the interests of justice, for the complainant's evidence not to be given by such means.
- (7) In any proceedings in which evidence is given as referred to in subsection (3), the judge must:
  - (a) inform the jury that it is standard procedure for complainants' evidence in such cases to be given by those means or use of those arrangements, and
  - (b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because it is given by those means or by use of those arrangements.
- (8) Any place outside the courtroom from which a complainant gives evidence under this section is taken to be part of the courtroom in which the proceeding is being held.
- (9) If a complainant gives evidence as referred to in subsection (3) in a place other than a courtroom, the court may order that a court officer be present at that place.
- (10) This section extends to evidence given in proceedings instituted before the commencement of this section, including a new trial that was ordered to take place before that commencement and proceedings that have been partly heard.
- (11) (Repealed)

**294C Complainant entitled to have support person or persons present when giving evidence**

- (1) A complainant is entitled to have a person or persons chosen by the complainant present near the complainant, and within the complainant's sight, when the complainant is giving evidence in proceedings in respect of a prescribed sexual offence.
- (2) The entitlement applies:

- (a) even if the complainant gives evidence by means of closed-circuit television or other technology or under any alternative arrangements available to the complainant under section 294B or Part 6, and
  - (b) even if the proceedings, or the part of the proceedings in which the complainant gives evidence, are held in camera.
- (3) Without limiting the entitlement of a complainant under this section, the person or persons chosen by the complainant to be with the complainant when he or she gives evidence may include a parent, guardian, relative, friend or support person of the complainant, or a person assisting the complainant in a professional capacity.
- (4) An accused person is not entitled to object to the suitability of the person or persons chosen by a complainant to be with the complainant when giving evidence, and the court is not to disallow the complainant's choice of person or persons on its own motion, unless the complainant's choice is likely to prejudice the accused person's right to a fair trial (for example, because the person chosen by the complainant is a witness or potential witness in the proceedings).
- (5) During any part of the proceedings in which the complainant gives evidence, the person or persons chosen by the complainant to be present when the complainant gives evidence are taken to be exempt from any requirement or direction under this Division that requires the proceedings, or the part of the proceedings concerned, to be held in camera.
- (6) This section applies to a complainant giving evidence in proceedings in respect of a prescribed sexual offence regardless of the complainant's age.
- (7) If the complainant is a vulnerable person (within the meaning of Part 6) when the evidence is given, section 306ZK does not apply.
- (8) Nothing in this section affects any entitlement a complainant has under section 275B.

**Note—**

This section applies to proceedings before the Children's Court because of section 27 of the [Children \(Criminal Proceedings\) Act 1987](#).

**294D Protections afforded to complainants extend to witnesses against whom accused person is alleged to have committed sexual offence**

- (1) In proceedings in respect of a prescribed sexual offence, this Division applies to a sexual offence witness in the proceedings in the same way as it applies to a complainant in the proceedings.
- (2) A **sexual offence witness** is any witness in the proceedings against whom a prescribed sexual offence is alleged to have been committed by the accused person, being a prescribed sexual offence that is not the subject of the proceedings

concerned.

- (3) Accordingly, a reference in this Division to a complainant includes a reference to a sexual offence witness.
- (4) In addition, the court may make an order directing that the identity of a sexual offence witness is not to be publicly disclosed.
- (5) If the court makes such an order, the sexual offence witness is taken to be a complainant for the purposes of section 578A of the *Crimes Act 1900* and that section applies accordingly.

**Note—**

Section 578A of the *Crimes Act 1900* prohibits the publication of any matter which identifies the complainant in prescribed sexual offence proceedings or any matter which is likely to lead to the identification of the complainant.

- (6) A witness is to be treated as a sexual offence witness, even if the witness has not yet given evidence in the proceedings, if the court is satisfied that the prosecutor has given notice to the accused person that the prosecutor intends to adduce evidence that the accused person committed a prescribed sexual offence against the witness.

## Division 2 Sexual assault communications privilege

### 295 Interpretation

- (1) **Definitions** In this Division:

***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 the *Crimes (Domestic and Personal Violence) Act 2007*.

***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 296.

**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) a prescribed sexual offence, or
- (b) any other offence prescribed by the regulations for the purposes of this definition.

- (2) **Document recording a protected confidence** In this Division, 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 Division, 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.

## 296 What is a protected confidence?

- (1) In this Division:

**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 Division 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**) who is counselling the person in relation to any harm the person may have suffered, or
- (b) made in confidence to or about the counselled person by the counsellor in the course of that counselling, 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 has at any time counselled, the person.

(5) For the purposes of this section, a person **counsels** another person if:

- (a) the person has undertaken training or study or has experience that is relevant to the process of counselling persons who have suffered harm, and
- (b) the person:
  - (i) listens to and gives verbal or other support or encouragement to the other person, or
  - (ii) advises, gives therapy to or treats the other person,whether or not for fee or reward.

**297 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.

**298 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 Division 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.

### **299 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 instituted proceedings for the offence.

### **300 Effect of consent**

- (1) This Division 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 Division or would be so privileged except for a limitation or restriction imposed by this Division.

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

- (1) This Division 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.

### **302 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.

### **303 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 Division, 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.

### **304 Court may inspect documents**

If a question arises under this Division 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.

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

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

### **306 Application of common law**

- (1) This Division 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 Division provides otherwise expressly or by necessary intendment.
- (2) Without limiting subsection (1), this Division 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.

## **Division 3 Special provisions relating to retrials of sexual offence proceedings**

### **306A Definitions**

In this Division:

**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, against whom a prescribed sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed, and includes:

- (a) in relation to an offence under section 80E of the *Crimes Act 1900*, the person who is alleged to have been the subject of sexual servitude, and
- (b) 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
- (c) 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 the production of child abuse material.

**original evidence** of the complainant has the meaning given by section 306B.

### **306B Admission of evidence of complainant in new trial proceedings**

- (1) If a person is convicted of a prescribed sexual offence and, on an appeal against the conviction, a new trial is ordered, the prosecutor may tender as evidence in the new trial proceedings a record of the original evidence of the complainant.
- (2) For the purposes of this Division, the **original evidence** of the complainant means all

evidence given by the complainant in the proceedings from which the conviction arose (referred to in this Division as the **original proceedings**), including the evidence given by the complainant on examination in chief in the original proceedings and any further evidence given on cross-examination or re-examination in those proceedings.

- (3) Despite anything to the contrary in the *Evidence Act 1995*, or any other Act or law, a record of the original evidence of the complainant is admissible in the new trial proceedings if:
  - (a) the prosecutor gives written notice to the accused person, in accordance with the regulations, of the prosecutor's intention to tender the record under this section, and
  - (b) the prosecutor gives written notice to the court of the prosecutor's intention to tender the record under this section, and
  - (c) the notices referred to in paragraphs (a) and (b) are given no less than 21 days before the court commences hearing the new trial proceedings or within such other period as the court may allow.
- (4) The hearsay rule (within the meaning of the *Evidence Act 1995*) does not prevent the admission of a record of the original evidence of the complainant under this Division or the use of that record to prove the existence of a fact that the complainant intended to assert by a representation made in the original evidence.
- (5) The court hearing the new trial proceedings does not have any discretion to decline to admit a record of the original evidence of the complainant if it is admissible under this Division.
- (6) However, the court may give directions requiring a record of the original evidence of the complainant to be altered or edited for the purpose of removing any statements that would not be admissible if the original evidence of the complainant had been given orally before the court hearing the new trial proceedings in accordance with the usual rules and practice of the court.
- (7) In addition, a record of the original evidence of the complainant may be altered or edited in accordance with an agreement between the prosecutor and the accused person or his or her Australian legal practitioner (if any).
- (8) This Division applies in respect of proceedings for a new trial in which a person stands charged with a prescribed sexual offence whether or not 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.
- (9) This Division extends to proceedings for a new trial ordered before the commencement of this Division, including new trial proceedings that have been

commenced or partly heard.

### **306C Complainant not compellable to give further evidence**

If a record of the original evidence of the complainant (or any part of the record) is admitted in proceedings under this Division, the complainant is not compellable to give any further evidence in the proceedings (despite anything to the contrary in this Act or the *Evidence Act 1995*), including for the purpose of any examination in chief, cross-examination or re-examination by or at the request of the accused person or his or her Australian legal practitioner.

### **306D Complainant may elect to give further evidence**

- (1) If a record of the original evidence of the complainant (or any part of the record) is admitted in proceedings under this Division, the complainant may, with leave of the court hearing the proceedings, and only if the complainant so chooses, give further oral evidence in the proceedings.
- (2) The court is to give leave to the complainant to give such further evidence in the proceedings only if the court is satisfied, on application by one of the parties to the proceedings, that it is necessary for the complainant to give further oral evidence:
  - (a) to clarify any matters relating to the original evidence of the complainant, or
  - (b) to canvas information or material that has become available since the original proceedings, or
  - (c) in the interests of justice.
- (3) The court is to ensure that the complainant is questioned by any party to the proceedings only in relation to matters that are relevant to the reasons for the grant of leave by the court.
- (4) Subject to subsection (3), if a complainant gives any further oral evidence under this section, the complainant is compellable (for the prosecution or the accused person) to give evidence. This applies despite section 306C.

### **306E Form in which record of original evidence of complainant is to be tendered**

- (1) A record of the original evidence of the complainant tendered by the prosecutor under this Division must be the best available record, or be comprised of the best available records, of the original evidence of the complainant, and the record or records concerned must be properly authenticated.
- (2) For the purposes of this section, the **best available record** of the evidence, or any part of the evidence, given by a complainant is:
  - (a) an audio visual recording of the evidence, or



- (b) if an audio visual recording of the evidence is not available, an audio recording of the evidence, or
  - (c) if neither an audio visual recording nor an audio recording of the evidence is available, a transcript of the evidence.
- (3) If the whole or part of the evidence given by the complainant in the original proceedings was given in the form of a recording made by an investigating official, as provided for by Part 6, the best available record of that evidence is the recording viewed or heard by the court in those original proceedings.
- (4) A record of any evidence given by a complainant is **properly authenticated** for the purposes of this section if:
- (a) the record has been authenticated by the court before which the evidence concerned was given or by the registrar or other proper officer of that court in accordance with any directions of the court, or
  - (b) the record has been authenticated by the person or body responsible for producing the record, or
  - (c) the record has been authenticated in any other manner prescribed by the regulations.

### **306F Access to audio visual or audio recording**

- (1) If a record of the original evidence of the complainant tendered or proposed to be tendered by the prosecutor under this Division is an audio visual recording or audio recording, the accused person, and his or her Australian legal practitioner (if any), are not entitled to be given possession of the record or a copy of it (despite anything to the contrary in this Act or the [Evidence Act 1995](#)).
- (2) However, the accused person and his or her Australian legal practitioner (if any) are to be given reasonable access to the recording to enable them to listen to it and, if the record is an audio visual recording, view it.
- (3) This may require access to be given on more than one occasion.
- (4) The regulations may make provision for the procedures to be followed in connection with the giving of access under this section, and may provide for the giving of access to other persons assisting the accused person or his or her Australian legal practitioner.

### **306G Exhibits may also be tendered**

- (1) If a record of the original evidence of a complainant is tendered by the prosecutor under this Division, any exhibits tendered in the original proceedings on the basis of the original evidence of the complainant and admitted in the original proceedings are

also admissible in the new trial proceedings as if the original evidence of the complainant had been given orally before the court hearing the new trial proceedings in accordance with the usual rules and practice of the court.

- (2) This section does not prevent any other exhibits tendered in the original proceedings from being tendered and admitted in the new trial proceedings in accordance with the usual rules and practice of the court hearing the new trial proceedings.

## **Division 4 Special provisions relating to subsequent trials of sexual offence proceedings**

### **Note—**

Division 3 of this Part applies in relation to a retrial of proceedings that follows an appeal against a conviction for a prescribed sexual offence. This Division, on the other hand, applies when a trial for a prescribed sexual offence has been discontinued and a new trial is listed.

### **306H Definitions**

In this Division:

**accused person** has the same meaning as in section 306A.

**complainant** has the same meaning as in section 306A.

**original evidence** of the complainant has the meaning given by section 306I.

### **306I Admission of evidence of complainant in new trial proceedings**

- (1) If the trial of an accused person is discontinued following the jury being discharged because the jurors could not reach a verdict, or discontinued for any other reason, and, as a result, a new trial is listed, the prosecutor may tender as evidence in the new trial proceedings a record of the original evidence of the complainant.
- (2) For the purposes of this Division, the **original evidence** of the complainant means all evidence given by the complainant in the discontinued trial (referred to in this Division as the **original proceedings**), including the evidence given by the complainant on examination in chief in the original proceedings and any further evidence given on cross-examination or re-examination in those proceedings.
- (3) Despite anything to the contrary in the [Evidence Act 1995](#), or any other Act or law, a record of the original evidence of the complainant is admissible in the new trial proceedings if:
  - (a) the prosecutor gives written notice to the accused person, in accordance with the regulations, of the prosecutor's intention to tender the record under this section, and
  - (b) the prosecutor gives written notice to the court of the prosecutor's intention to

tender the record under this section, and

- (c) the notices referred to in paragraphs (a) and (b) are given no less than 21 days before the court commences hearing the new trial proceedings or within such other period as the court may allow.
- (4) The hearsay rule (within the meaning of the *Evidence Act 1995*) does not prevent the admission of a record of the original evidence of the complainant under this Division or the use of that record to prove the existence of a fact that the complainant intended to assert by a representation made in the original evidence.
- (5) Despite subsection (3), the court hearing the new trial proceedings may decline to admit a record of the original evidence of the complainant if, in the court's opinion, the accused would be unfairly disadvantaged by the admission of the record, having regard to the following:
  - (a) the completeness of the original evidence, including whether the complainant has been cross-examined on the evidence,
  - (b) the effect of editing any inadmissible evidence from the original evidence,
  - (c) the availability or willingness of the complainant to attend to give further evidence and to clarify any matters relating to the original evidence,
  - (d) the interests of justice,
  - (e) any other matter the court thinks relevant.
- (6) If the court allows a record of the original evidence of the complainant to be admitted, the court may give directions requiring the record to be altered or edited for the purpose of removing any statements that would not be admissible if the original evidence of the complainant had been given orally before the court hearing the new trial proceedings in accordance with the usual rules and practice of the court.
- (7) In addition, a record of the original evidence of the complainant may be altered or edited in accordance with an agreement between the prosecutor and the accused person or his or her counsel (if any).
- (8) This Division applies in respect of proceedings for a new trial in which a person stands charged with a prescribed sexual offence whether or not 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.
- (9) This Division extends to proceedings for a new trial listed before the commencement of this Division, including new trial proceedings that have been commenced or partly heard.

**306J Whether complainant compellable to give further evidence**

- (1) If a record of the original evidence of the complainant (or any part of the record) is admitted in proceedings under this Division, the complainant is not compellable to give further evidence in the proceedings unless the court is satisfied that it is necessary for the complainant to give further evidence:
  - (a) to clarify any matters relating to the original evidence of the complainant, or
  - (b) to canvas information or material that has become available since the original proceedings, or
  - (c) in the interests of justice.
- (2) Subsection (1) applies despite anything to the contrary in this Act or the *Evidence Act 1995*.
- (3) The court is to ensure that the complainant is questioned by any party to the proceedings only in relation to matters that are relevant to the matters mentioned in subsection (1).
- (4) Subject to subsection (3), if a complainant gives any further oral evidence under this section, the complainant is compellable (for the prosecution or the accused person) to give evidence.

**306K Complainant may elect to give further evidence**

- (1) If a record of the original evidence of the complainant (or any part of the record) is admitted in proceedings under this Division, the complainant may, with leave of the court hearing the proceedings, and only if the complainant so chooses, give further oral evidence in the proceedings.
- (2) The court is to give leave to the complainant to give such further evidence in the proceedings only if the court is satisfied, on application by one of the parties to the proceedings, that it is necessary for the complainant to give further oral evidence:
  - (a) to clarify any matters relating to the original evidence of the complainant, or
  - (b) to canvas information or material that has become available since the original proceedings, or
  - (c) in the interests of justice.
- (3) The court is to ensure that the complainant is questioned by any party to the proceedings only in relation to matters that are relevant to the reasons for the grant of leave by the court.
- (4) Subject to subsection (3), if a complainant gives any further oral evidence under this section, the complainant is compellable (for the prosecution or the accused person) to

give evidence.

**306L Application of provisions dealing with form of record of original evidence, access to recordings and exhibits**

Sections 306E–306G (including any regulations made for the purposes of those sections) apply for the purposes of this Division with such modifications as are necessary.

**Part 6 Giving of evidence by vulnerable persons**

**Division 1 Preliminary**

**306M Definitions**

(1) In this Part:

**child protection prohibition order** means a prohibition order within the meaning of the *Child Protection (Offenders Prohibition Orders) Act 2004*, and includes an interim child protection prohibition order made under that Act.

**cognitively impaired person** means a person who has a cognitive impairment.

**court**, in relation to a proceeding referred to in section 306ZA (d), includes the Victims Compensation Tribunal.

**courtroom**, in relation to a proceeding referred to in section 306ZA (d), includes the place where the Victims Compensation Tribunal is sitting.

**investigating official** means:

- (a) a police officer (other than a police officer who is engaged in covert investigations), or
- (b) in relation to the questioning of a child—a person who is engaged, in conjunction with an investigating official described in paragraph (a), in an investigation caused to be made by the Director-General of the Department of Community Services under section 27 of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (c) any other person prescribed by the regulations for the purposes of this definition.

**personal assault offence** means any of the following offences:

- (a) an offence under Part 3 of the *Crimes Act 1900*,
- (b) an offence under section 545AB or 562AB of the *Crimes Act 1900*,
- (c) an offence under section 562ZG, or section 562I as in force before its substitution, of the *Crimes Act 1900*,

- (d) an offence under section 227 of the *Children and Young Persons (Care and Protection) Act 1998*,
- (e) an offence that includes the commission of, or an intention to commit, any of the above offences,
- (f) an offence of attempting, or of conspiracy or incitement, to commit any of the above offences.

**recording** means:

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

**vulnerable person** means a child or a cognitively impaired person.

- (2) For the purposes of this Part, a **cognitive impairment** includes any of the following:
  - (a) an intellectual disability,
  - (b) a developmental disorder (including an autistic spectrum disorder),
  - (c) a neurological disorder,
  - (d) dementia,
  - (e) a severe mental illness,
  - (f) a brain injury.

**Note—**

See section 306P as to the application of this Part to the giving of evidence by cognitively impaired persons.

**306N Words and expressions used in Evidence Act 1995**

- (1) Words and expressions that are defined in the *Evidence Act 1995* and that are used in this Part have the same meanings in this Part as they have in the *Evidence Act 1995*.
- (2) This section applies except so far as the context or subject-matter otherwise indicates or requires.
- (3) However, this section does not apply to a word or expression defined in section 306M.

**306O Relationship to Evidence Act 1995**

The provisions of this Part are in addition to the provisions of the *Evidence Act 1995* and

do not, unless a contrary intention is shown, affect the operation of that Act.

### **306P Application of Part**

- (1) To the extent that this Part applies to children, this Part applies (unless a contrary intention is shown) in relation to evidence given by a child who is under the age of 16 years at the time the evidence is given.
- (2) To the extent that this Part applies to cognitively impaired persons, this Part applies (unless a contrary intention is shown) in relation to evidence given by a cognitively impaired person in the manner provided by this Part only if the court is satisfied that the facts of the case may be better ascertained if the person's evidence is given in such a manner.

## **Division 2 Recording of out of court statements**

### **306Q Regulations may require interviews with vulnerable persons to be recorded**

If the regulations so require, an investigating official who questions a vulnerable person in connection with the investigation of the commission or possible commission of an offence by the person or any other person is, in accordance with any such regulations, to record any representation made by the vulnerable person in the course of the interview during which the vulnerable person is questioned.

## **Division 3 Giving evidence of out of court representations**

### **306R Evidence to which this Division applies**

- (1) This Division applies to evidence of a previous representation of a vulnerable person made in the course of an interview during which the person is questioned by an investigating official in connection with the investigation of the commission or possible commission of an offence.
- (2) To the extent that this Division applies to cognitively impaired persons, this Division does not apply to evidence of a previous representation made before the commencement of this Division.

### **306S Ways in which evidence of vulnerable person may be given**

- (1) Subject to this Part, a vulnerable person may give evidence of a previous representation to which this Division applies made by the person in any criminal proceeding wholly or partly:
  - (a) in the form of a recording of the previous representation made by an investigating official of the interview in the course of which the previous representation was made and that is viewed or heard, or both, by the court, or
  - (b) orally in the courtroom, or

- (c) if the evidence is given in any proceeding to which Division 4 applies—in accordance with alternative arrangements made under section 306W.

**Note—**

See section 306ZA.

- (2) Evidence in the form of a recording given by a vulnerable person under subsection (1) (a) is not required to be served on a party to any proceeding (including proceedings in relation to apprehended violence commenced under the *Crimes (Domestic and Personal Violence) Act 2007*).
- (3) Nothing in this section affects the giving of evidence by means of a written statement for the purposes of Division 3 of Part 2 of Chapter 3.

**Note—**

See also section 306ZN.

**306T Wishes of vulnerable person to be taken into account**

- (1) A person must not call a vulnerable person to give evidence of a previous representation to which this Division applies made by the vulnerable person by means other than a recording made by an investigating official of the interview in the course of which the previous representation was made unless the person has taken into account any wishes of the vulnerable person, considered in the light of:
- (a) in the case of a child—the child’s age and understanding, or
- (b) in the case of a cognitively impaired person—the person’s cognitive impairment.
- (2) However, subsection (1) does not permit a person to require a vulnerable person to express the vulnerable person’s wishes in relation to the matter.

**306U Vulnerable person entitled to give evidence in chief in form of recording**

- (1) A vulnerable person is entitled to give, and may give, evidence in chief of a previous representation to which this Division applies made by the person wholly or partly in the form of a recording made by an investigating official of the interview in the course of which the previous representation was made and that is viewed or heard, or both, by the court. The vulnerable person must not, unless the person otherwise chooses, be present in the court, or be visible or audible to the court by closed-circuit television or by means of any similar technology, while it is viewing or hearing the recording.
- (2) Subject to section 306Y, a person is entitled to give, and may give (no matter what age the person is when the evidence is given), evidence as referred to in subsection (1) in the form of a recording of a previous representation to which this Division applies made by the person when the person was less than 16 years of age.

**Note—**



Under section 306Y, a court may order that a vulnerable person not give evidence in the form of a recording if it is satisfied that it is not in the interests of justice for the evidence to be given by a recording.

- (3) If a vulnerable person who gives evidence as referred to in subsection (1) is not the accused person in the proceeding, the vulnerable person must subsequently be available for cross-examination and re-examination:
  - (a) orally in the courtroom, or
  - (b) if the evidence is given in any proceeding to which Division 4 applies—in accordance with alternative arrangements made under section 306W.
- (4) Subsection (3) does not apply in relation to committal proceedings.
- (5) Section 5BA of the *Evidence (Audio and Audio Visual Links) Act 1998* does not apply to evidence given as referred to in subsection (1).

### **306V Admissibility of recorded evidence**

- (1) The hearsay rule and the opinion rule (within the meaning of the *Evidence Act 1995*) do not prevent the admission or use of evidence of a previous representation to which this Division applies given by a vulnerable person under this Division in the form of a recording made by an investigating official.
- (2) Evidence of a previous representation to which this Division applies of a vulnerable person who is not the accused person in a proceeding that is given by the vulnerable person in the form of a recording made by an investigating official is not to be admitted unless it is proved that the accused person and his or her Australian legal practitioner (if any) were given, in accordance with the regulations, a reasonable opportunity to listen to and, in the case of a video recording, view the recording.
- (3) However, if the requirements of any regulations made under subsection (2) have not been complied with, the recording may be admitted if the court is satisfied that:
  - (a) the parties consent to the recording being admitted, or
  - (b) the accused person and his or her Australian legal practitioner (if any) have been given a reasonable opportunity otherwise than in accordance with such regulations to listen to or view the recording and it would be in the interests of justice to admit the recording.
- (4) The court may rule as inadmissible the whole or any part of the contents of a recording adduced as evidence under this Division.

### **306W Alternative arrangements for giving evidence**

The court may order that alternative arrangements be made in accordance with Division 4 for the giving of evidence by the vulnerable person in any proceeding to which that Division applies.

### **306X Warning to jury**

If a vulnerable person gives evidence of a previous representation wholly or partly in the form of a recording made by an investigating official in accordance with this Division in any proceedings in which there is a jury, the judge must warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the evidence being given in that way.

### **306Y Evidence not to be given in form of recording if contrary to interests of justice**

- (1) A vulnerable person must not give evidence by means of a recording made by an investigating official in accordance with this Division if the court orders that such means not be used.
- (2) The court may only make such an order if it is satisfied that it is not in the interests of justice for the vulnerable person's evidence to be given by a recording.

### **306Z Transcripts of recordings**

The court may order that a transcript be supplied to the court or, if there is a jury, to the jury, or both, of all or part of evidence of a previous representation to which this Division applies made by a vulnerable person that is given in the form of a recording if it appears to the court that a transcript would be likely to aid its or the jury's comprehension of the evidence.

## **Division 4 Giving of evidence by closed-circuit television**

### **306ZA Application of Division**

This Division applies to the following proceedings:

- (a) a proceeding in which it is alleged that a person has committed a personal assault offence,
- (b) a proceeding in relation to an application for an apprehended violence order, or a variation or revocation of such an order,
- (c) a civil proceeding arising from the commission of a personal assault offence,
- (d) a proceeding before the Victims Compensation Tribunal in respect of the hearing of a matter arising from the commission of a personal assault offence that is the subject of an appeal or a reference to it,
- (e) a proceeding in relation to an application for a child protection prohibition order or to vary or revoke any such order or a proceeding in relation to a contravention of any such order.

**306ZB Vulnerable persons have a right to give evidence by closed-circuit television**

- (1) Subject to this Part, a vulnerable person who gives evidence in any proceeding to which this Division applies is entitled to give that evidence by means of closed-circuit television facilities or by means of any other similar technology prescribed for the purposes of this section.
- (2) Subject to subsections (4) and (5), a child who is 16 or more but less than 18 years of age at the time evidence is given in a proceeding to which this Division applies is entitled to give the evidence as referred to in subsection (1) if the child was under 16 years of age when the charge for the personal assault offence to which the proceedings relate was laid.
- (3) A vulnerable person may choose not to give evidence by the means referred to in subsection (1).
- (4) A vulnerable person must not give evidence by means of closed-circuit television facilities or any other prescribed technology if the court orders that such means not be used.
- (5) The court may only make such an order if it is satisfied that there are special reasons, in the interests of justice, for the vulnerable person's evidence not to be given by such means.
- (6) This section does not apply to a vulnerable person:
  - (a) who is the accused or defendant in any proceeding referred to in section 306ZA (a), (b) or (c), or
  - (b) who is or was accused of committing the offence that gave rise to a proceeding referred to in section 306ZA (d).
- (7) Nothing in this section affects the operation of section 13 of the *Evidence Act 1995*.

**306ZC Accused vulnerable persons may be allowed to give evidence by closed-circuit television**

- (1) This section applies to a vulnerable person who is the accused person, or person against whom a complaint is made, in any proceeding to which this Division applies.
- (2) The court may make an order permitting a vulnerable person's evidence in a proceeding to which this Division applies to be given by means of closed-circuit television facilities or any other similar technology prescribed for the purposes of this section.
- (3) Such an order may be made in relation to a child only if the court is satisfied:
  - (a) that the child may suffer mental or emotional harm if required to give evidence in

the ordinary way, or

(b) that the facts may be better ascertained if the child's evidence is given in accordance with such an order.

- (4) A court may make an order under this section permitting a vulnerable person to whom this section applies who is an accused detainee within the meaning of the *Evidence (Audio and Audio Visual Links) Act 1998* to give evidence in a proceeding to which this Division applies by means of closed-circuit television facilities or any other similar technology prescribed for the purposes of this section despite Part 1B of that Act.
- (5) A vulnerable person may choose not to give evidence by means of closed-circuit television facilities or other similar technology.

### **306ZD Giving evidence by closed-circuit television**

- (1) If the evidence of a vulnerable person who is entitled or permitted to give evidence by means of closed-circuit television facilities or any other similar technology under this Division is given from a location outside a court, that location is taken to be part of the court in which the proceeding is being held.
- (2) If the evidence of a vulnerable person who is entitled or permitted to give evidence by means of closed-circuit television facilities or any other similar technology under this Division is given from a location outside a court, the court may order:
- (a) that a court officer be present at that other location, and
- (b) that any other person be present with the vulnerable person as an interpreter, for the purpose of assisting the vulnerable person with any difficulty in giving evidence associated with an impairment or a disability, or for the purpose of providing the vulnerable person with other support.
- (3) Any such order does not limit the entitlement that a vulnerable person has under section 306ZK to choose another person to be present with him or her when giving evidence.
- (4) Nothing in this section affects any entitlement a vulnerable person has under section 275B.

### **306ZE Giving identification evidence when closed-circuit television is used**

- (1) Subject to subsection (4), if a vulnerable person is entitled to give evidence by means of closed-circuit television facilities or any other similar technology, that person may not give identification evidence by those means.
- (2) However, such a person is entitled to refuse to give identification evidence until after the completion of the person's other evidence (including examination in chief, cross-

examination and re-examination).

- (3) In addition, the court must ensure that such a person is not in the presence of the accused for any longer than is necessary for the vulnerable person to give identification evidence.
- (4) Subsection (1) does not prevent the giving of identification evidence by means of closed-circuit television facilities or any other similar technology that relates to evidence that is not a fact in issue.

**Note—**

**Identification evidence** is defined in the [Evidence Act 1995](#).

**306ZF Proceedings may be moved to allow use of closed-circuit television facilities**

- (1) This section applies if a vulnerable person is entitled or permitted to give evidence by means of closed-circuit television facilities or any other similar technology under this Division.
- (2) If the court is not equipped with such facilities or technology, or it otherwise considers it appropriate to do so, the court may adjourn the proceeding or any part of the proceeding to a court or place that is equipped with such facilities or technology so that the vulnerable person's evidence may be given by such means.

**306ZG Use of closed-circuit television or similar technology**

Closed-circuit television facilities or similar technology used under this Division for the giving of evidence by a vulnerable person are to be operated in such a manner that the persons who have an interest in the proceeding are able to see the vulnerable person (and any person present with the vulnerable person) on the same or another television monitor.

**306ZH Vulnerable persons have a right to alternative arrangements for giving evidence when closed-circuit television facilities not available**

- (1) This section applies to any proceeding in which a vulnerable person is entitled or permitted to give evidence by means of closed-circuit television facilities or other similar technology (by virtue of section 306ZB or an order made under section 306ZC) but does not do so because:
  - (a) such facilities and such technology are not available (and the court does not move the proceeding under section 306ZF), or
  - (b) the vulnerable person chooses not to give evidence by those means, or
  - (c) the court orders that the vulnerable person may not give evidence by those means (or, in the case of a vulnerable person to whom section 306ZC applies, the court does not order that the vulnerable person may give evidence by those

means).

- (2) In such a proceeding, the court must make alternative arrangements for the giving of evidence by the vulnerable person, in order to restrict contact (including visual contact) between the vulnerable person and any other person or persons.
- (3) Those alternative arrangements may include any of the following:
  - (a) the use of screens,
  - (b) planned seating arrangements for people who have an interest in the proceeding (including the level at which they are seated and the people in the vulnerable person's line of vision),
  - (c) the adjournment of the proceeding or any part of the proceeding to other premises.
- (4) A vulnerable person may choose not to use any such alternative arrangements. In that case, the court must direct that the vulnerable person be permitted to give evidence orally in the courtroom.
- (5) Any premises to which a proceeding is adjourned under this section are taken to be part of the court in which the proceeding is being heard.

### **306ZI Warning to jury**

- (1) In any criminal proceeding in which the evidence of a vulnerable person is given by means of closed-circuit television facilities or any other similar technology (by virtue of section 306ZB), the judge must:
  - (a) inform the jury that it is standard procedure for the evidence of vulnerable persons in such cases to be given by those means, and
  - (b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those facilities or that technology.
- (2) In any criminal proceeding in which the evidence of a vulnerable person is given by means of closed-circuit television facilities or any other similar technology (by virtue of section 306ZC), the judge must warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those facilities or that technology.
- (3) In any criminal proceeding in which arrangements are made for a person to be with a vulnerable person giving evidence (by virtue of section 306ZD or 306ZK), the judge must:
  - (a) inform the jury that it is standard procedure in such cases for vulnerable persons

to choose a person to be with them, and

(b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the presence of that person.

(4) In any criminal proceeding in which alternative arrangements for the giving of evidence by a vulnerable person are made (by virtue of section 306ZH or 306ZL), the judge must:

(a) inform the jury that it is standard procedure in such cases for alternative arrangements to be used when vulnerable persons give evidence, and

(b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those alternative arrangements.

## **Division 5 Miscellaneous**

### **306ZJ Validity of proceedings not affected**

- (1) The failure of a vulnerable person to give evidence in accordance with a provision of this Part does not affect the validity of any proceeding or any decision made in connection with that proceeding.
- (2) The failure of an investigating official to record a representation of a child in accordance with any regulations made under section 306Q does not affect the validity of any proceeding in which evidence of the representation is given.

### **306ZK Vulnerable persons have a right to presence of a supportive person while giving evidence**

- (1) This section applies to:
  - (a) a criminal proceeding in any court, and
  - (b) a civil proceeding arising from the commission of a personal assault offence, and
  - (c) apprehended violence order proceedings within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*, and
  - (d) a proceeding before the Victims Compensation Tribunal in respect of the hearing of a matter arising from the commission of a personal assault offence that is the subject of an appeal or a reference to it, and
  - (e) a proceeding in relation to an application for a child protection prohibition order or to vary or revoke any such order.
- (2) A vulnerable person who gives evidence in a proceeding to which this section applies is entitled to choose a person whom the vulnerable person would like to have present

near him or her when giving evidence.

- (3) Without limiting a vulnerable person's right to choose such a person, that person:
  - (a) may be a parent, guardian, relative, friend or support person of the vulnerable person, and
  - (b) may be with the vulnerable person as an interpreter, for the purpose of assisting the vulnerable person with any difficulty in giving evidence associated with an impairment or a disability, or for the purpose of providing the vulnerable person with other support.
- (4) To the extent that the court or tribunal considers it reasonable to do so, the court or tribunal must make whatever direction is appropriate to give effect to a vulnerable person's decision to have such a person present near the vulnerable person, and within the vulnerable person's sight, when the vulnerable person is giving evidence.
- (5) The court or tribunal may permit more than one support person to be present with the vulnerable person if the court or tribunal thinks that it is in the interests of justice to do so.
- (6) This section extends to a vulnerable person who is the accused or the defendant in the relevant proceeding.

**Note—**

This section does not apply if a child or cognitively impaired person giving evidence is a complainant in proceedings for a prescribed sexual offence. In that case, section 294C sets out the entitlements of the child or cognitively impaired person to have one or more support persons present when giving evidence.

**306ZL Vulnerable persons have a right to alternative arrangements for giving evidence when accused is unrepresented**

- (1) This section applies to a criminal proceeding in any court, or a civil proceeding arising from the commission of a personal assault offence, in which the accused or defendant is not represented by an Australian legal practitioner.
- (2) A vulnerable person who is a witness (other than the accused or the defendant) in a proceeding to which this section applies is to be examined in chief, cross-examined or re-examined by a person appointed by the court instead of by the accused or the defendant.
- (3) If any such person is appointed, that person is to ask the vulnerable person only the questions that the accused or the defendant requests the person to put to the vulnerable person.
- (4) A person appointed under this section, when acting in the course of his or her appointment, must not independently give the accused or the defendant legal or other advice.



- (5) The court may choose not to appoint such a person if the court considers that it is not in the interests of justice to do so.
- (6) This section applies whether or not closed-circuit television facilities or other similar technology is used to give evidence, and whether or not alternative arrangements under section 306ZH are used in the proceedings.
- (7) Anything done or omitted to be done by a person who:
  - (a) is appointed under this section, and
  - (b) is an Australian legal practitioner,when acting in the course of the appointment or otherwise in accordance with this section does not, if the thing was done or omitted to be done in good faith, subject the person personally to any action, liability, claim or demand.

### **306ZM Court orders**

The court may make, vary or revoke an order under a provision of this Part either on its own motion or on application by a party to the proceeding or by the vulnerable person giving evidence.

### **306ZN General discretion of court not affected**

Unless a contrary intention is shown, nothing in this Part limits any discretion that a court has with respect to the conduct of a proceeding.

**Note—**

See, for example, Part 3.11 (Discretions to exclude evidence) of the [Evidence Act 1995](#).

### **306ZO Regulations**

Without limiting any regulations made under section 4, the regulations may make provision for or with respect to the use of closed-circuit television facilities or other similar technology for the giving of evidence by vulnerable persons in accordance with this Part.

### **306ZP Rules of court**

- (1) Rules of court may (subject to any regulations made under this Act) be made in respect of the giving of evidence under this Part.
- (2) In particular, rules of court may (subject to the regulations) also make provision for or with respect to the use of closed-circuit television facilities or other similar technology for the giving of evidence by vulnerable persons in accordance with this Part.

## **Chapter 7 Miscellaneous**

### **Part 1 General**

### **307 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.

### **308 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 authorised officer for his or her appearance at the trial.

### **309 Certificate as to indictment**

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

#### **309A Certificate may be issued to victim of identity crime**

- (1) The Local Court may issue a certificate under this section if satisfied, on the balance of probabilities, that:

- (a) an identity offence has been committed, and
  - (b) the certificate may assist with problems the offence has caused in relation to the victim's personal or business affairs.
- (2) For the purposes of this section, the **victim** of an identity offence is any person whose identification information is the subject of the offence.
- (3) A certificate under this section is to:
- (a) identify the victim of the offence, and
  - (b) describe the manner in which identification information relating to the victim was used to commit the offence.
- (4) The certificate may contain such other information as the Local Court considers appropriate.
- (5) The certificate is not to identify the perpetrator or any alleged perpetrator of the offence.
- (6) The Local Court may issue a certificate under this section whether or not:
- (a) the perpetrator of the offence is identifiable, or
  - (b) any criminal proceedings have been or can be taken against a person in respect of the offence, or are pending.
- (7) The Local Court may issue a certificate under this section on the court's own initiative or on application by the victim of the offence.
- (8) The certificate is not admissible in any criminal proceedings in relation to the offence.
- (9) The powers conferred by this section on the Local Court may also be exercised by the Supreme Court or the District Court during any proceedings before that Court for the alleged identity offence concerned or on the disposal of any such proceedings.
- (10) In this section:

**identification information** has the same meaning as it has in Part 4AB of the [Crimes Act 1900](#).

**identity offence** means an offence against Part 4AB of the [Crimes Act 1900](#).

### **310 Warrants that may be issued on production of certificate**

- (1) If the certificate under section 309 is produced to a Magistrate or an authorised officer, the Magistrate or authorised officer may issue a warrant under this section.
- (2) If the person who has been indicted is imprisoned or otherwise in custody in relation

to another offence, the Magistrate or authorised officer may issue a warrant directed to the person who has custody of the person requiring the person to be detained until the person is removed from custody for trial or otherwise lawfully removed or discharged from custody.

- (3) The warrant must not be issued unless proof on oath is given that the person who is in custody is the person who has been indicted.
- (4) If the person who has been indicted is not in custody, the Magistrate or authorised officer may issue a warrant to arrest the person.
- (5) Part 4 of Chapter 4 applies to a warrant issued under this section.

### **311 Procedure after arrest**

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

### **312 Persons arrested under bench warrants**

- (1) A Magistrate, an authorised officer or authorised justice (within the meaning of the [Bail Act 1978](#)) before whom a person is brought after having been arrested under a bench warrant issued by a Judge in criminal proceedings must, if bail is not dispensed with or granted:
  - (a) by warrant commit the person to a correctional centre or other place of security, and
  - (b) order the person to be brought before the court out of which the bench warrant was issued in accordance with the terms of the warrant.
- (2) The [Bail Act 1978](#) applies to the person (not being an accused person) in the same way as it applies to an accused person and, for that purpose, bail may be granted to the person with respect to the period between:
  - (a) the person's being committed under this section, and

(b) the person's being brought before the court out of which the bench warrant was issued.

(3) In this section:

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

### **313 Warrants**

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

### **314 Media access to court documents**

- (1) On application to the registrar, a media representative is entitled to inspect any document relating to criminal proceedings, at any time from when the proceedings commence until the expiry of 2 working days after they are finally disposed of, for the purpose of compiling a fair report of the proceedings for publication.
- (2) The documents that a media representative is entitled to inspect under this section are copies of the indictment, court attendance notice or other document commencing the proceedings, witnesses' statements tendered as evidence, brief of evidence, police fact sheet (in the case of a guilty plea), transcripts of evidence and any record of a conviction or an order.
- (3) The registrar is not required to make documents available for inspection if the documents are not in the possession or control of the registrar.
- (4) The registrar must not make documents available for inspection if:
  - (a) the proceedings are subject to an order prohibiting their publication or a suppression order, or
  - (b) the documents are prohibited from being published or disclosed by or under any other Act or law.
- (4A) This section does not limit the operation of any other Act or law under which a person may be permitted to inspect documents relating to criminal proceedings.

(5) (Repealed)

**314A Review of pre-trial disclosure provisions enacted by [Criminal Procedure Amendment \(Case Management\) Act 2009](#)**

- (1) The Attorney General is to review the provisions of Division 3 of Part 3 of Chapter 3 as enacted by the [Criminal Procedure Amendment \(Case Management\) Act 2009](#) to determine:
  - (a) whether they have been effective in reducing delays in proceedings on indictment, and
  - (b) the cost impacts of the procedures.
- (2) The review is to be undertaken as soon as possible after the period of 24 months after the commencement of this section.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of that 24-month period.

**315 Savings, transitional and other provisions**

Schedule 2 has effect.

**316 Provisions relating to offences**

Schedule 3 has effect.

**317 [Bail Act 1978](#) to prevail**

Except where expressly provided, the [Bail Act 1978](#) prevails to the extent of any inconsistency between that Act and this Act.

**317A Courts to deal expeditiously with persons arrested for sentencing**

A court that issues a warrant for the arrest of a person to be brought before the court for sentencing must, after the person is arrested and brought before the court, deal with the proceedings as expeditiously as possible.

**Part 2**

**318-331 (Repealed)**

**Part 3 Penalty notice offences**

**332 Definitions**

(1) In this Part:

***penalty notice offence*** means an offence prescribed by the regulations under this Part as a penalty notice offence.

**senior police officer** means:

- (a) a Local Area Commander of Police, or
- (b) a Duty Officer for a police station, or
- (c) any other police officer of the rank of Inspector or above.

(2) (Repealed)

### **333 Police may issue penalty notices for certain offences**

A police officer may serve a penalty notice on a person if it appears to the officer that the person has committed a penalty notice offence.

**Note—**

This Part does not require a police officer to serve a penalty notice rather than taking any other action (see section 342 (3)).

### **334 Penalty notices**

- (1) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this Part.
- (2) A penalty notice may be served personally or by post.

### **335 Penalty notices may not be issued to children**

- (1) A penalty notice may not be issued under this Part to a person who is under the age of 18 years.
- (2) If a penalty notice is issued under this Part to a person who is under the age of 18 years, the following provisions have effect:
  - (a) The amount that was payable under the notice is not payable.
  - (b) Any amount that is paid under the notice is repayable to the person by whom it is paid.
  - (c) Further proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served) as if the notice had never been served.
- (3) Nothing in this section requires further proceedings to be taken in respect of an alleged offence if a penalty notice is issued to a person who is under the age of 18 years.

### **336 Penalty notice offences**

- (1) The regulations may prescribe an offence under any Act or statutory rule made under an Act as a penalty notice offence for the purposes of penalty notices served by police officers under this Part.
- (2) Any such regulation may specify the offence or refer to the provision creating the offence.

### **337 Penalties**

- (1) The regulations may:
  - (a) prescribe the penalty payable for a penalty notice offence dealt with under this Part, and
  - (b) prescribe different penalties for different offences or classes of offences, and
  - (c) prescribe different penalties for the same penalty notice offence.
- (2) The amount of a penalty prescribed for a penalty notice offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.

### **338 Effect of payment of penalty**

- (1) If the amount of penalty prescribed for an alleged penalty notice offence is paid, no person is liable to any further proceedings for the alleged offence.
- (2) Payment of a penalty under this Part is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (3) This section is subject to sections 335 and 340.

**Note—**

The [Fines Act 1996](#) sets out the procedures if a person fails to pay a penalty under a penalty notice and for the annulment of resulting fine enforcement orders.

### **339 Limitation on exercise of penalty notice powers**

This Part does not authorise a police officer to serve a penalty notice in relation to:

- (a) an industrial dispute, or
- (b) an apparently genuine demonstration or protest, or
- (c) a procession, or
- (d) an organised assembly.



### **340 Withdrawal of penalty notice**

- (1) A senior police officer may at any time withdraw a penalty notice issued by a police officer under this Part.
- (2) A senior police officer must withdraw a penalty notice immediately if directed to do so by the Director of Public Prosecutions.
- (3) The following provisions have effect in relation to an alleged offence if a penalty notice for the alleged offence is withdrawn in accordance with this section:
  - (a) The amount that was payable under the notice ceases to be payable.
  - (b) Any amount that has been paid under the notice is repayable to the person by whom it was paid.
    - (b1) Any subsequent action already taken in relation to the notice, including any enforcement action, is to be reversed.
    - (b2) Any costs relating to that subsequent action are not payable and, if paid, are repayable.
  - (c) Further proceedings in respect of the alleged offence may, subject to any time limit within which such proceedings are required to be commenced, be taken against any person (including the person on whom the notice was served) as if the notice had never been served.
- (4) Nothing in this section requires further proceedings to be taken in respect of an alleged offence if a penalty notice is withdrawn.
- (5) For the purposes of section 39 of the *Fines Act 1996*, the appropriate officer is a senior police officer.

### **341 Powers relating to identity**

- (1) A police officer who intends to issue a penalty notice, under this Part, to a person whose name or address is, or name and address are, unknown to the officer may request the person to state his or her name or address (or both).
- (2) A police officer may make a request under subsection (1) only if at the time of making the request the police officer:
  - (a) provides evidence to the person that he or she is a police officer (unless the police officer is in uniform), and
  - (b) provides his or her name and place of duty, and
  - (c) informs the person of the reason for the request, and

(d) warns the person that failure to comply with the request may be an offence.

(3) A person must not, without reasonable excuse, (proof of which lies on the person), in response to a request made by a police officer in accordance with subsections (1) and (2):

(a) fail or refuse to comply with the request, or

(b) state a name that is false in a material particular, or

(c) state an address other than the full and correct address of his or her residence.

Maximum penalty: 2 penalty units.

(4) A police officer may request a person to provide proof of the person's name and address.

(5) Nothing in this section limits any functions that police officers may have apart from this section.

#### **342 Effect of Part on other procedures and powers**

(1) This Part (except as provided by section 338) does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

(2) Nothing in this Part limits any functions that police officers have apart from this Part (including the power to issue a penalty notice under any other Act or statutory rule).

(3) Nothing in this Part requires a police officer to issue a penalty notice instead of taking any other proceeding or action a police officer may take in respect of an alleged offence.

#### **343 Limited implementation of penalty notice provisions**

(1) The regulations may limit the application of the provisions of this Part to offences dealt with in a specified part or parts of New South Wales for a specified period or periods.

(2) If a regulation is made under this section, the application of the Part is limited as specified by the regulation even though the specified provisions of this Part have commenced.

#### **344 Monitoring of Part by Ombudsman**

(1) For the period of 12 months after the commencement of this section, the Ombudsman is to keep under scrutiny the operation of the provisions of this Part and the regulations made under this Part and sections 138A and 138C (in so far as it relates to the exercise of powers under section 138A) of the *Law Enforcement (Powers and*

*Responsibilities) Act 2002.*

- (2) For that purpose, the Ombudsman may require the Commissioner of Police or any public authority to provide information about police or the public authority's participation in the operation of the provisions referred to in subsection (1).
- (3) The Ombudsman must, as soon as practicable after the expiration of that 12-month period, prepare a report on the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister, the Minister for Police and the Commissioner of Police.
- (4) The Ombudsman may identify, and include recommendations in the report to be considered by the Minister about, amendments that might appropriately be made to this Act with respect to the operation of the provisions referred to in subsection (1).
- (5) The Minister is to lay (or cause to be laid) a copy of the report furnished to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.
- (6) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.
- (7) The report:
  - (a) on presentation and for all purposes is taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

**344A Further review by Ombudsman—Aboriginal and Torres Strait Islander communities**

- (1) The Ombudsman is to review the operation of the provisions of:
  - (a) this Part, and
  - (b) the regulations made under this Part, and

- (c) sections 138A and 138C (in so far as it relates to the exercise of powers under section 138A) of the *Law Enforcement (Powers and Responsibilities) Act 2002*, in so far as those provisions impact on Aboriginal and Torres Strait Islander communities.
- (2) For the purposes of carrying out any such review, the Ombudsman may require the Commissioner of Police or any public authority to provide information about police or the public authority's participation in the operations of the provisions referred to in subsection (1).
- (3) A report in relation to the review is to be provided to the Minister and the Minister for Police by 31 August 2009.
- (4) The Minister is to lay (or cause to be laid) a copy of the report provided to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.
- (5) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.
- (6) The report:
- (a) on presentation and for all purposes is taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

## Part 4 Intervention programs

### Note—

This Part provides for the recognition and operation of certain programs for dealing with accused persons and offenders, known as **intervention programs**. An accused person or offender may be referred for participation in an intervention program at several points in criminal proceedings against the person, as follows:

- (a) a court that grants bail to a person may impose a condition of bail under section 36A of the *Bail Act 1978* that the person enter into an agreement to subject himself or herself to an assessment of the person's capacity and prospects for

participation in an intervention program or other program for treatment or rehabilitation, or that the person enter into an agreement to participate in an intervention program (and to comply with any plan arising out of the program) or other program for treatment or rehabilitation,

- (b) a court may adjourn criminal proceedings against a person before any finding as to guilt is made and grant bail to the person for the purpose of assessing the person's capacity and prospects for participation in an intervention program or to allow the person to participate in an intervention program (and to comply with any plan arising out of the program) under this Act,
- (c) a court that finds a person guilty of an offence may make an order requiring the person to participate in an intervention program (and to comply with any plan arising out of the program) under section 10 of the *Crimes (Sentencing Procedure) Act 1999*,
- (d) participation in an intervention program (and compliance with any plan arising out of the program) may be made a condition of a good behaviour bond under section 9 or 10 of the *Crimes (Sentencing Procedure) Act 1999*, or of a suspended sentence under section 12 of that Act,
- (e) sentencing of an offender may be deferred for the purpose of assessing an offender for participation in an intervention program, or for allowing an offender to participate in an intervention program (and to comply with any plan arising out of the program) under section 11 of the *Crimes (Sentencing Procedure) Act 1999*.

## Division 1 Preliminary

### 345 Objects

(1) The objects of this Part are:

- (a) to provide a framework for the recognition and operation of programs of certain alternative measures for dealing with persons who have committed an offence or are alleged to have committed an offence, and
- (b) to ensure that such programs apply fairly to all persons who are eligible to participate in them, and that such programs are properly managed and administered, and
- (c) to reduce the likelihood of future offending behaviour by facilitating participation in such programs.

(2) In enacting this Part, Parliament recognises that:

- (a) the rights of victims should be protected and maintained in accordance with the Charter of Victims Rights set out in the *Victims Rights Act 1996*, and
- (b) the successful rehabilitation of offenders contributes to the maintenance of a safe, peaceful and just society.

### 346 Definitions

(1) In this Part:

**intervention plan** means a plan, agreement or arrangement arising out of the participation of an offender or an accused person in an intervention program.

**intervention program** means a program of measures declared to be an intervention

program under section 347.

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

## **Division 2 Intervention programs**

### **347 Declaration and regulation of intervention programs**

- (1) The regulations may declare that a program of measures for dealing with offenders or accused persons that is described in the regulations is an ***intervention program*** for the purposes of this Part.
- (2) The purposes of such a program may include any of the following:
  - (a) promoting the treatment or rehabilitation of offenders or accused persons,
  - (b) promoting respect for the law and the maintenance of a just and safe community,
  - (c) encouraging and facilitating the provision by offenders of appropriate forms of remedial actions to victims and the community,
  - (d) promoting the acceptance by offenders of accountability and responsibility for their behaviour,
  - (e) promoting the reintegration of offenders into the community.
- (3) The regulations may make provision for or with respect to the following matters:
  - (a) subject to section 348, the offences in respect of which an intervention program may be conducted,
  - (b) subject to section 349, eligibility to participate in an intervention program,
  - (c) the nature and content of the measures constituting an intervention program,
  - (d) the purposes and objectives of an intervention program, and the principles guiding an intervention program,
  - (e) assessment of the suitability of a person to participate in an intervention program, or of a person's capacity or prospects for participation in an intervention program,
  - (f) the conduct of investigations and the preparation of reports as to a person's suitability, capacity or prospects for participation in an intervention program,
  - (g) the provision of reports as to a person's suitability, capacity or prospects for participation in an intervention program,
  - (h) the persons, bodies or organisations who may participate in an intervention program or intervention plan (in addition to the offender or accused person),

- (i) the role of particular persons, bodies or organisations in the conduct of an intervention program or intervention plan,
  - (j) restrictions or conditions on participation in an intervention program (including legal representation of offenders or accused persons who participate in an intervention program),
  - (k) the development and implementation of intervention plans arising out of an intervention program, including restrictions or conditions on intervention plans,
  - (l) procedures for notification of courts or other persons, bodies or organisations of a decision of a person not to participate in, or to continue to participate in, an intervention program or intervention plan,
  - (m) the content and keeping of records in connection with an intervention program or intervention plan,
  - (n) the monitoring and evaluation of, or research into, the operation and effect of an intervention program or intervention plan,
  - (o) the issuing of guidelines with respect to the conduct or operation of an intervention program or intervention plan,
  - (p) authorising the participation of persons who are in custody in an intervention program or intervention plan,
  - (q) any other matter relating to the conduct or operation of an intervention program or intervention plan.
- (4) The operation of an intervention program may be limited by the regulations to a specified part or parts of New South Wales, or for a specified period or periods (or both).
- (5) Nothing in this section prevents the development, conduct or operation of programs of measures for the treatment or rehabilitation of offenders or accused persons that are not intervention programs.

### **348 Offences in respect of which an intervention program may be conducted**

- (1) The offences in respect of which an intervention program may be conducted are, except as provided by subsection (2):
- (a) summary offences, and
  - (b) indictable offences that may be dealt with summarily under this Act or another law prescribed by the regulations for the purposes of this subsection.
- (2) An intervention program may not be conducted in respect of any of the following

offences:

- (a) an offence under section 35 (Malicious wounding or infliction of grievous bodily harm) or 35A (1) (Maliciously cause dog to inflict grievous bodily harm) of the *Crimes Act 1900*,
- (b) an offence under Division 10 (Offences in the nature of rape, offences relating to other acts of sexual assault etc) or 15 (Child prostitution and pornography) of Part 3 of the *Crimes Act 1900*,
- (c) an offence under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* or section 545AB or 562AB of the *Crimes Act 1900* (Stalking or intimidation with intent to cause fear of physical or mental harm),
- (d) an offence under section 91H (Production, dissemination or possession of child pornography or child abuse material), 578B (Possession of child pornography) or 578C (2A) (Publishing child pornography) of the *Crimes Act 1900*,
- (e) any offence involving the use of a firearm, or an imitation firearm, within the meaning of the *Firearms Act 1996*,
- (f) an offence under section 23 (1) (b) or (2) (b) (Offences with respect to prohibited plants), 25 (Supply of prohibited drugs) or 25A (Offence of supplying prohibited drugs on an ongoing basis) of the *Drug Misuse and Trafficking Act 1985*,
- (g) any other offence prescribed by the regulations for the purposes of this subsection.

#### **349 Eligibility of certain persons to participate in intervention program**

A person is not eligible to participate in an intervention program in respect of an offence while the person is being dealt with for the offence:

- (a) by the Children's Court under Part 3 (Criminal proceedings in the Children's Court) of the *Children (Criminal Proceedings) Act 1987* (including after the person has been remitted to the Children's Court under section 20 of that Act), or
- (b) by any other court in accordance with Division 4 of Part 3 of that Act.

### **Division 3 Adjournment of criminal proceedings in connection with intervention program**

#### **350 Court may adjourn proceedings to allow accused person to be assessed for or to participate in intervention program**

- (1) Before a finding as to the guilt of an accused person in respect of an offence is made, a court may make an order adjourning proceedings against the accused person to a specified date, and granting bail to the person in accordance with the *Bail Act 1978*,



for either or both of the following purposes:

- (a) assessing the person's capacity and prospects for participation in an intervention program,
- (b) allowing the person to participate in an intervention program.

**Note—**

Section 36A of the *Bail Act 1978* enables a court to grant bail to a person on either or both of the following conditions:

- (a) that the person enter into an agreement to subject himself or herself to an assessment of the person's capacity and prospects for participation in an intervention program or other program for treatment or rehabilitation,
  - (b) that the person enter into an agreement to:
    - (i) participate in an intervention program and to comply with any intervention plan arising out of the program, or
    - (ii) participate in any other program for treatment or rehabilitation.
- (2) The maximum period for which proceedings may be adjourned under this section is 12 months from the date of the making of the order.
- (3) This section does not limit any power that a court has, apart from this section, to adjourn proceedings or to grant bail in relation to any period of adjournment.
- (4) This section does not limit the kinds of purposes for which a court may adjourn proceedings or grant bail, so that an order adjourning proceedings may be made for the purpose of allowing an offender to participate in a program for treatment or rehabilitation that is not an intervention program.

## **Division 4 Miscellaneous**

### **351 Regulations with respect to the provision or disclosure of information in connection with intervention programs**

- (1) The regulations may make provision for or with respect to the provision or disclosure of information in connection with an intervention program or intervention plan to a court or other person, body or organisation.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following matters:
  - (a) the admissibility of such information in evidence in any criminal or civil proceedings, including the admissibility in evidence of any statement, confession, admission or information made or given by an offender or accused person during participation in, or for the purposes of participation in, an intervention program or intervention plan,

- (b) the protection of a person, body or organisation from civil or criminal liability or disciplinary proceedings resulting from the provision of such information,
  - (c) the compellability of a person, body or organisation to disclose such information or to produce a document containing such information before a court, tribunal or committee.
- (3) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent the provision of information referred to in subsection (1) in accordance with the regulations.
- (4) The regulations made under this section may create offences punishable by a penalty not exceeding 50 penalty units.

### **352 Relationship with other legislation**

- (1) The *Bail Act 1978* prevails in the event of an inconsistency between that Act and this Part.
- (2) This Part does not affect any jurisdiction conferred on any court under any other Act or law.
- (3) This Part does not derogate from the functions of any person or court dealing with an offence or alleged offence to take any other action in relation to an offence or alleged offence, under any other Act or law.

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

### **Table 1A General provisions**

#### **1A Interpretation: value of property**

For the purposes of this Schedule, a reference to the amount of damage to property in connection with a charge for an offence against section 195 or 197 of the *Crimes Act 1900* is a reference to the total value of the property where the damage consists of removing, obliterating, defacing or altering the unique identifier of the property.

### **Table 1 Indictable offences that are to be dealt with summarily unless prosecutor 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) (as in force before the commencement of Schedule 1 [9] to the *Crimes Amendment (Sexual Offences) Act 2003*), 66C (3) (as in force after the commencement of Schedule 1 [9] to the *Crimes Amendment (Sexual Offences) Act 2003*), 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, 33B (1), 35, 35A (1), 39, 41, 41A, 43, 43A, 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) or (2A), 60A (2), 60E (2), 61M, 61O (2) or (2A), 66EB, 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, 91H, 91J (3), 91K (3), 91L (3), 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).

#### **4A Fraud and related offences**

An offence under Part 4AA of the *Crimes Act 1900*.

### **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 maliciously destroying or damaging property, or
- (b) the serious indictable offence alleged is stealing or maliciously destroying or damaging property and the value of the property stolen or destroyed, or the value of the damage to the property, 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 or maliciously destroying or damaging property.

**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 or maliciously destroying or damaging property, and
- (b) the value of the property stolen or destroyed, or the value of the damage to the property, does not exceed \$60,000.

**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), 154C, 154D, 154F, 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*.

**9A Bushfires**

An offence under section 203E 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 (or section 93K, 93L or 93M) of the *Crimes Act 1900*.

**10B Offences relating to bomb and other hoaxes**

An offence under section 93IH or 93II (or section 93Q or 93R) of the *Crimes Act 1900*.

### **10C Offences relating to participation in criminal groups**

An offence under section 93IK (2) or (3) (or section 93T (2) or (3)) of the *Crimes Act 1900*.

### **10D Identity offences**

An offence under Part 4AB of the *Crimes Act 1900* (other than under section 192L).

### **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.

### **12A Blackmail**

An offence under section 249K of the *Crimes Act 1900*.

### **12B Forgery and related offences**

An offence under Part 5 of the *Crimes Act 1900* (other than under section 256 (2) or (3)).

### **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 Schedule) or an offence under section 302A of that Act.

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

An offence under section 308C (where the serious indictable offence to be committed is punishable by imprisonment for 10 years or less), 308D, 308E, 308F or 308G 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 indictable offence.

- (2) **Other public justice offences** An offence under section 314, 315, 315A, 316, 317, 325, 326, 327, 330, 335, 336 or 337 of the *Crimes Act 1900*.

**15A Offence relating to recruiting children**

An offence under section 351A 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*).

**16A Failing to stop and assist after road accident**

An offence under section 52AB of the *Crimes Act 1900*.

**16B Impersonating police officers**

An offence under section 546D (2) of the *Crimes Act 1900*.

**16C False imprisonment**

The common law offence of false imprisonment.

**Part 4 Offences under certain other Acts**

**17 Bail Act 1978**

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

**18 Children and Young Persons (Care and Protection) Act 1998**

An offence under section 105 (2) or 175 (1) of the *Children and Young Persons (Care and Protection) Act 1998*.

**18A Crimes (Criminal Organisations Control) Act 2009**

An offence under section 26 or 26A of the *Crimes (Criminal Organisations Control) Act 2009*.

**19 Electricity Commission Act 1950**

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

**19A Electricity Supply Act 1995**

An offence under section 64 of the *Electricity Supply Act 1995* committed by an individual.

**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 2010**

An offence under section 33 (1) or (2) of the *Law Enforcement and National Security (Assumed Identities) Act 2010*.

**22 Oaths Act 1900**

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

**23 Petroleum (Offshore) Act 1982**

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

**23A Police Powers (Drug Premises) Act 2001**

A second or subsequent offence under section 12, 13 or 14 of the *Police Powers (Drug Premises) Act 2001*.

**23AA Royal Commissions Act 1923**

An offence under section 21, 22 or 23A of the *Royal Commissions Act 1923*.

**23AB Special Commissions of Inquiry Act 1983**

An offence under section 27, 28 or 30 of the *Special Commissions of Inquiry Act 1983*.

**23B Sydney Opera House Trust Act 1961**

An offence under section 28B of the *Sydney Opera House Trust Act 1961*, or an offence under section 28C of that Act where the value of the damage exceeds \$5,000.

**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 Legal Profession Act 2004**

An offence under section 643 (Improperly destroying property etc) or 675 (Destruction of evidence) of the *Legal Profession Act 2004*.

## **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.

### **30A Offence involving possession of precursors for manufacture or production of prohibited drugs**

An offence referred to in section 24A of the *Drug Misuse and Trafficking Act 1985*.



### **30B Offences involving possession of prohibited drug precursors**

An offence referred to in section 24B of the *Drug Misuse and Trafficking Act 1985*.

## **Part 7 Offences relating to mining**

### **31 Mining Act 1992**

- (1) An offence of mining or carrying out a mining purpose in contravention of a provision of Division 1 of Part 2 of the *Mining Act 1992*.
- (2) An offence under Division 2 of Part 2 of the *Mining Act 1992*, where the value of the minerals to which the alleged offence relates is \$5,000 or more.

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

### **Part 1 Offences against the person under Crimes Act 1900 or Crimes (Domestic and Personal Violence) Act 2007**

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

An offence under section 35A (2), 49A, 51B, 56, 58, 59, 59A, 60 (1) or (1A), 60A (1), 60B, 60C, 60E (1) and (4), 61, 61L, 61N or 61O (1) or (1A) of the *Crimes Act 1900*.

#### **2 Stalking and intimidation**

An offence under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* or section 545AB or 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 Other property offences**

An offence under section 154A, 154H, 154I or 154J of the *Crimes Act 1900*.

### **4A Identity offences**

An offence under section 192L of the *Crimes Act 1900*.

### **4AA Offences related to forgery**

An offence under section 256 (2) or (3) 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 2A Other offences under *Crimes Act 1900***

### **4C Animal cruelty**

An offence under section 530 or 531 of the *Crimes Act 1900*.

### **4D Offences relating to participation in criminal groups**

An offence under section 93IK (1) (or section 93T (1)) of the *Crimes Act 1900*.

## **Part 3 Offences under *Sydney Opera House Trust Act 1961***

### **5 Offence of damaging Opera House**

An offence under section 28C of the *Sydney Opera House Trust Act 1961* where the value of the damage does not exceed \$5,000.

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

### **6 *Crimes Act 1900***

An offence under section 93FA (1) or (2), 93G, 93H or 93I of the *Crimes Act 1900*.

### **7 *Firearms Act 1996***

An offence under section 7, 7A, 36, 43, 44A, 50, 50AA, 50A (1), 51 (1) or (2), 51A, 51BA,

51D (1), 51E, 58 (2), 62, 63, 64, 66, 70, 71A, 72 (1) or 74 of the *Firearms Act 1996*.

#### **8 Weapons Prohibition Act 1998**

An offence under section 7, 20, 23 (1), 23A (1), 25A (1), 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*.

#### **10B Unauthorised disclosure of information**

An offence under section 20R (2) of the *Law Enforcement (Controlled Operations) Act 1997*.

#### **10C Trafficking in fish**

An offence under section 21B of the *Fisheries Management Act 1994*.

### **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.

### **Part 9 Offences relating to mining**

#### **17 Mining Act 1992**

- (1) (Repealed)
- (2) An offence under Division 2 of Part 2 of the *Mining Act 1992*, where the value of the minerals to which the alleged offence relates is less than \$5,000.
- (3) (Repealed)

#### **18 Petroleum (Onshore) Act 1991**

- (1) An offence of mining petroleum in contravention of section 7 of the *Petroleum (Onshore) Act 1991*, where the value of the petroleum to which the alleged offence relates is less than \$5,000.
- (2) An offence, under section 136A of the *Petroleum (Onshore) Act 1991*, of contravening a condition of a petroleum title that is identified in the title as a condition related to environmental management.

### **Parts 10, 11**

#### **19, 20 (Repealed)**

### **Part 12 Offences relating to underground electricity power lines and gas pipelines**

#### **21 Electricity Supply Act 1995**

An offence under section 65 of the *Electricity Supply Act 1995* committed by an individual.

## **22 Gas Supply Act 1996**

An offence under section 66 of the *Gas Supply Act 1996* committed by an individual.

## **Part 13 Offences under certain other Acts**

### **23 Child Protection (Offenders Registration) Act 2000**

An offence under section 17 or 18 of the *Child Protection (Offenders Registration) Act 2000*.

### **24 Health Services Act 1997**

An offence under section 67J (2) of the *Health Services Act 1997*.

### **25 Surveillance Devices Act 2007**

An offence under Part 2 or 5 (other than section 40 (2)) of the *Surveillance Devices Act 2007*.

## **Schedule 2 Savings, transitional and other provisions**

(Section 315)

## **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*

*Criminal Procedure Amendment (Pre-trial Disclosure) Act 2001*

*Criminal Legislation Amendment Act 2001*, to the extent that it amends this Act

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

*Justices Legislation Repeal and Amendment Act 2001*

*Crimes Legislation Amendment (Penalty Notice Offences) Act 2002*

*Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002*

*Criminal Procedure Amendment (Sexual Offence Evidence) Act 2003*

*Road Transport Legislation Amendment (Public Transport Lanes) Act 2004*, but only in relation to the amendments made to this Act

*Criminal Procedure Amendment (Evidence) Act 2005*

*Criminal Procedure Further Amendment (Evidence) Act 2005*

*Criminal Procedure Amendment (Prosecutions) Act 2005*

*Criminal Procedure Amendment (Sexual Offence Case Management) Act 2005*

*Courts Legislation Amendment Act 2006*, to the extent that it amends this Act

*Criminal Procedure Amendment (Sexual and Other Offences) Act 2006*, to the extent that it amends this Act

*Crimes and Courts Legislation Amendment Act 2006*, but only to the extent to which it amends this Act.

*Criminal Procedure Amendment (Vulnerable Persons) Act 2007*

*Criminal Procedure Amendment (Local Court Process Reforms) Act 2007*

*Evidence Amendment Act 2007*, to the extent that it amends this Act

*Criminal Legislation Amendment Act 2007*

*Crimes Amendment (Cognitive Impairment—Sexual Offences) Act 2008*, but only to the extent to which it amends this Act

*Crimes Amendment (Sexual Offences) Act 2008*

*Criminal Procedure Amendment (Case Management) Act 2009*

*Crimes Amendment (Child Pornography and Abuse Material) Act 2010*

- (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.

## **Part 5 Provisions consequent on enactment of *Criminal Procedure Amendment (Pre-trial Disclosure) Act 2001***

### **21 Application of Division 2A of Part 3 (Pre-trial disclosure—case management)**

Division 2A of Part 3 extends to proceedings for an offence that were instituted before the commencement of that Division, but does not apply to any such proceedings if the accused person was committed for trial before that commencement.

### **22 Application of amendments to section 48 (Notice of alibi)**

The amendment made to section 48 by the *Criminal Procedure Amendment (Pre-trial Disclosure) Act 2001* applies to proceedings in which the accused person is committed for trial after the commencement of the amendment.

### **23 Application of substituted section 54 (Time within which indictment to be presented)**

Section 54, as substituted by the *Criminal Procedure Amendment (Pre-trial Disclosure) Act 2001*, does not apply to proceedings in which the accused person was committed for trial before the substitution of that section.

### **24 Application of section 63A (Amendment of indictment)**

Section 63A applies to indictments presented after the commencement of that section.

## **Part 6 Provisions consequent on *Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 2002***

### **25 Application of Part 7**

- (1) The amended Part does not apply in relation to criminal proceedings the hearing of

which began before it was amended. The Part, as in force before it was amended, continues to apply in relation to such proceedings.

- (2) The amended Part applies in relation to a requirement (whether by subpoena or other procedure) to produce a document on or after its amendment even if the requirement was issued before it was amended.
- (3) The amended Part applies in respect of a protected confidence whether made before or after it was amended.
- (4) In this clause:

**amended Part** means Part 7 as amended by the amending Act.

**amending Act** means the *Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 2002*.

**protected confidence** has the meaning it has in Part 7.

## **Part 7 Provisions consequent on enactment of *Criminal Procedure Amendment (Justices and Local Courts) Act 2001* and *Justices Legislation Repeal and Amendment Act 2001***

### **26 Definitions**

In this Part:

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

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

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

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

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

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

### **27 Consequences of abolition of office of Clerk of the Peace**

- (1) The registry functions of the abolished office of the Clerk of the Peace are the functions of the registrars and other officers of the Supreme Court or the District

Court.

- (2) Subclause (1) has effect subject to this Act and any other Act and, in particular, does not affect the functions of the Criminal Listing Director.
- (3) A reference in any other Act, in any instrument made under any Act or in any other instrument of any other kind to the Clerk of the Peace is to be read as a reference to such person or persons as may be prescribed.

## **28 General saving relating to proceedings**

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

## **29 Construction of certain references**

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

- (2) The regulations may provide that a reference in any other Act or instrument or a specified instrument to a repealed provision or a renumbered provision is to be read as a reference to another specified instrument (or a specified provision of such an instrument).

### **30 Functions of justices conferred on Magistrates or Local Courts**

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

### **31 Previous acts done by justices**

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

### **32 Offences committed before commencement of clause**

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

### **33 Provisions about appearances and service of documents**

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

- (a) requiring the appearance of accused persons, witnesses and other persons at proceedings relating to offences to which the old Act and the [Justices Act 1902](#)

continue to apply, and

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

#### **34 Previous warrants**

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

#### **35 Costs**

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

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

#### **36 Protection and immunities of justices**

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

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

#### **37 Depositions**

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

### 38 Translation of old references to new references

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

#### Table

| Old expression   | New expression  |
|--|---|
| justices in petty sessions   | Local Court   |
| summary proceedings before justices  | summary proceedings before a Local Court  |
| Act regulating summary proceedings before justices   | <i>Criminal Procedure Act 1986</i> , if the reference relates to proceedings for an offence<br><i>Local Courts Act 1982</i> , if the reference relates to any other proceedings |
| clerk of courts of petty sessions or clerk of petty sessions   | registrar of a Local Court  |
| clerk of a Local Court   | registrar of a Local Court  |
| laying an information for an offence, if the reference is to an offence required to be dealt with by a Local Court   | issuing and filing a court attendance notice  |
| making a complaint or issuing a summons, if the reference is to an offence to be dealt with by a Local Court (other than under the <i>Local Courts (Civil Claims) Act 1970</i> )                   | issuing and filing a court attendance notice  |
| making a complaint or issuing a summons, if the reference is to a matter required to be dealt with by a Local Court (other than an offence under the <i>Local Courts (Civil Claims) Act 1970</i> ) | issuing and filing an application notice  |
| issue of an attendance notice for an offence, if the reference is to an offence required to be dealt with by a Local Court   | issuing and filing a court attendance notice  |
| warrant of apprehension or warrant to apprehend, if the reference is to a warrant issued under the <i>Justices Act 1902</i>  | arrest warrant  |
| deposition, if the reference is to evidence given by a witness before a Magistrate or Local Court  | transcript of evidence  |

### 39 Authorised justices under [Search Warrants Act 1985](#)

- (1) Nothing in the 2001 amending Acts affects the appointment of any existing authorised justice and any such person is taken to have been appointed under the [Search Warrants Act 1985](#), as amended by the [Justices Legislation Repeal and Amendment Act 2001](#).
- (2) In this clause:

**existing authorised justice** means a person who was, immediately before the commencement of the amendments made to section 3 of the [Search Warrants Act 1985](#) by the [Justices Legislation Repeal and Amendment Act 2001](#), an authorised justice within the meaning of the [Search Warrants Act 1985](#).

## Part 8 Provisions consequent on enactment of [Criminal Procedure Further Amendment \(Evidence\) Act 2005](#)

### 40 Definition

In this Part:

**amending Act** means the [Criminal Procedure Further Amendment \(Evidence\) Act 2005](#).

### 41 Extension of definition of “prescribed sexual offence”

- (1) The amendments made by the amending Act to the definitions of **prescribed sexual offence** in section 3 (1), **child sexual assault offence** in section 91 and **sexual assault offence** in section 295 extend to proceedings in respect of an offence, and to civil proceedings (insofar as the amendments are relevant to civil proceedings), that were instituted or partly heard before the commencement of the amendments.

#### Note—

Division 1B of Part 3.10 of Chapter 3 of the [Evidence Act 1995](#) applies the definition of **sexual assault offence** in section 295 to certain civil proceedings.

- (2) Subclause (1) does not affect the admissibility of any evidence admitted in proceedings before the commencement of those amendments or otherwise affect the validity of anything done, or omitted to be done, before that commencement.
- (3) In particular, the application, as a result of an amendment referred to in subclause (1), of section 91 (8) or 93 to proceedings to which it did not apply before the commencement of Schedule 1 [1] to the amending Act does not affect the validity of any direction given under section 91 before that commencement. However if, as a result of an amendment referred to in subclause (1), section 91 (8) or 93 applies in respect of a person directed to attend committal proceedings, and the person has not yet attended, the Magistrate must, on application by the prosecutor, revoke the direction.



- (4) The amendments made to Division 3 of Part 5 of Chapter 6 by the amending Act extend to proceedings for a new trial ordered before the commencement of the amendments, including new trial proceedings that have been instituted or partly heard.

#### **42 Improper questions**

- (1) Section 275A, as inserted by the amending Act, extends to proceedings instituted or partly heard before the commencement of that section.
- (2) However, that section does not affect the admissibility of any evidence admitted in any proceedings before that commencement or otherwise affect the validity of anything done, or omitted to be done, before that commencement.

#### **43 Sensitive evidence**

Part 2A of Chapter 6, as inserted by the amending Act, extends to a criminal investigation instituted, or criminal proceedings instituted or partly heard, before the commencement of that Part.

#### **44 Evidence of complainant to be given in camera**

- (1) New section 291, and sections 291A, 291B and 291C as inserted by the amending Act, extend to proceedings instituted or partly heard before the commencement of new section 291, subject to this clause.
- (2) The replacement of former section 291 by the amending Act does not affect the validity of any direction made under that section before the replacement of that section that requires the proceedings to be held partly or entirely in camera.
- (3) However, unless the court has already directed under former section 291 that the evidence of the complainant be given in camera, new section 291 applies in respect of any evidence given by the complainant after the commencement of new section 291. That is, such evidence must be given in camera unless the court otherwise directs under new section 291.
- (4) In this clause:

**former section 291** means section 291, as in force before its replacement by the amending Act.

**new section 291** means section 291, as inserted by the amending Act.

#### **45 Other amendments relating to giving of evidence by complainant**

The amendments made by the amending Act to section 294B and section 294C, as inserted by the amending Act, extend to proceedings instituted or partly heard before the commencement of those amendments.

## **Part 9 Provisions consequent on enactment of [Criminal Procedure Amendment \(Prosecutions\) Act 2005](#)**

### **46 Definitions**

In this Part:

**applicable signing provision** means section 126 or any corresponding provisions of this Act previously in force that applied to the signing of indictments at the time concerned.

**introduction day** means the day on which the Bill for the [Criminal Procedure Amendment \(Prosecutions\) Act 2005](#) was first introduced into Parliament.

**relevant period** means the period commencing on 13 July 1987 and ending immediately before the introduction day.

### **47 Validation of certain indictments**

- (1) This clause applies to an indictment signed by a legal practitioner during the relevant period that purports to be signed for and on behalf of the Director of Public Prosecutions in circumstances where:
  - (a) the legal practitioner was instructed to prosecute the criminal proceedings to which the indictment related on behalf of the Director of Public Prosecutions, and
  - (b) the legal practitioner was not authorised by or under the applicable signing provision to sign the indictment for and on behalf of the Director of Public Prosecutions.
- (2) Any indictment to which this clause applies that, but for this subclause, would have been invalid only because it had not been signed by a person authorised to sign it under the applicable signing provision, is taken at the time it was signed and at all relevant times after it was signed to have been a valid indictment.
- (3) Without limiting subclause (2), any criminal proceedings (including any conviction or acquittal of the defendant or sentence imposed on the defendant) that would otherwise have been invalid or a nullity only because the proceedings related to an indictment validated by subclause (2) are taken to be, and always to have been, valid.
- (4) However, nothing in this clause affects the validity of a particular indictment to which this clause applies or criminal proceedings relating to such an indictment if the indictment or proceedings (or both) were held to be invalid or a nullity before the introduction day in a judgment, order or other decision of a court.

## **Part 10 Provisions consequent on enactment of [Criminal Procedure](#)**

## **Amendment (Sexual Offence Case Management) Act 2005**

### **48 Application of section 130A**

- (1) Section 130A, as inserted by the amending Act, applies only to pre-trial orders made after the commencement of that section (irrespective of when the relevant sexual offence proceedings commenced).
- (2) In this clause, **amending Act** means the *Criminal Procedure Amendment (Sexual Offence Case Management) Act 2005*.

## **Part 11 Provisions consequent on enactment of Courts Legislation Amendment Act 2006**

### **49 Definition**

In this Part:

**amending Act** means the *Courts Legislation Amendment Act 2006*.

### **50 Amendments**

- (1) An amendment made to this Act by the amending Act does not extend to proceedings instituted before the commencement of that amendment.
- (2) Such proceedings may be dealt with as if the amendment had not commenced.

## **Part 12 Provisions consequent on enactment of Criminal Procedure Amendment (Sexual and Other Offences) Act 2006**

### **51 Amendments**

- (1) The amendments made by the *Criminal Procedure Amendment (Sexual and Other Offences) Act 2006* do not extend to any proceedings commenced before the commencement of the amendments and any such proceedings may continue as if that Act had not been enacted.
- (2) This clause does not apply to the amendments inserted by Schedule 1 [10] to the *Criminal Procedure Amendment (Sexual and Other Offences) Act 2006*.

## **Part 13 Provisions consequent on enactment of Crimes and Courts Legislation Amendment Act 2006**

### **52 Changes to limitation period**

Section 179 (3), as inserted by the *Crimes and Courts Legislation Amendment Act 2006*, extends to a summary offence that relates to the death of a person before the commencement of that subsection, but only if the period for commencement of

proceedings in relation to the offence under section 179 (1) has not expired on the commencement of section 179 (3).

### **53 Existing warrants**

Section 237 (1A)-(1C), as inserted by the *Crimes and Courts Legislation Amendment Act 2006*, does not apply to a warrant issued before the commencement of those provisions and any such warrant expires at the end of 20 years from the date of issue.

## **Part 14 Provisions consequent on enactment of Criminal Procedure Amendment (Vulnerable Persons) Act 2007**

### **54 Definition**

In this Part:

**amending Act** means the *Criminal Procedure Amendment (Vulnerable Persons) Act 2007*.

### **55 Amendments**

The amendments made to this Act by the amending Act do not extend to any proceedings commenced before the commencement of the amendments and any such proceedings are to be dealt with as if the amending Act had not been enacted.

### **56 Effect of repeal of Evidence (Children) Act 1997**

Any proceedings to which the *Evidence (Children) Act 1997* applied that were pending immediately before the repeal of that Act by the amending Act are to continue to be dealt with as if that Act had not been repealed.

## **Part 15 Provisions consequent on enactment of Criminal Procedure Amendment (Local Court Process Reforms) Act 2007**

### **57 Pending proceedings**

The amendment made to section 265 by the *Criminal Procedure Amendment (Local Court Process Reforms) Act 2007* does not extend to proceedings commenced before the commencement of the amendment and such proceedings may continue as if that amendment had not been enacted.

## **Part 16 Provisions consequent on enactment of Evidence Amendment Act 2007**

### **58 Improper questions and certain warnings**

(1) An amendment made to section 275A or 294 by the *Evidence Amendment Act 2007* does not apply in relation to any proceeding the hearing of which began before the commencement of the amendment.

- (2) Sections 275A and 294, as in force immediately before the commencement of the amendment, continue to apply to proceedings the hearing of which began before that amendment.

## **Part 17 Provisions consequent on enactment of [Criminal Legislation Amendment Act 2007](#)**

### **59 Changes to pre-trial disclosure requirements**

- (1) The amendments made to Division 3 of Part 3 of Chapter 3 by the [Criminal Legislation Amendment Act 2007](#) do not apply in respect of any pre-trial disclosure that is carried out pursuant to an order made by the court under section 136 before the commencement of the amendments.
- (2) The amendments made to sections 150 and 151 by the [Criminal Legislation Amendment Act 2007](#) do not apply in respect of a trial that was listed for hearing before the commencement of the amendments.

### **60 Withdrawal of matter by prosecutor**

The amendments made to sections 205 and 208 by the [Criminal Legislation Amendment Act 2007](#) apply only to the dismissal of a matter on or after the commencement of the amendments.

## **Part 18 Provisions consequent on enactment of [Courts and Crimes Legislation Further Amendment Act 2008](#)**

### **61 Proceedings for offences**

Section 170, as amended by Schedule 7 to the [Courts and Crimes Legislation Further Amendment Act 2008](#), does not apply to proceedings commenced before the commencement of that Schedule.

## **Part 19 Provisions consequent on enactment of [Criminal Procedure Amendment \(Case Management\) Act 2009](#)**

### **62 Section 130A**

The substitution of section 130A by the [Criminal Procedure Amendment \(Case Management\) Act 2009](#) applies only in respect of proceedings in which the indictment was presented or filed on or after that substitution.

### **63 Case management provisions**

- (1) Division 3 of Part 3 of Chapter 3, as substituted by the [Criminal Procedure Amendment \(Case Management\) Act 2009](#), applies only in respect of proceedings in which the indictment was presented or filed on or after that substitution.

- (2) Division 3 of Part 3 of Chapter 3, as in force before its substitution by the *Criminal Procedure Amendment (Case Management) Act 2009*, continues to apply in respect of proceedings in which the indictment was presented or filed before that substitution.

## **Part 20 Provisions consequent on enactment of Crimes Amendment (Child Pornography and Abuse Material) Act 2010**

### **64 Use of random sample evidence**

- (1) Part 4A of Chapter 6, as inserted by the *Crimes Amendment (Child Pornography and Abuse Material) Act 2010*, extends to proceedings instituted or partly heard before the commencement of that Part, which were not finally disposed of before that commencement.
- (2) Accordingly, that Part extends to offences under Division 15A of Part 3 of the *Crimes Act 1900* alleged to have been committed before the commencement of Part 4A of Chapter 6.

### **65 References to child abuse material**

A reference in this Act to child abuse material includes a reference to child pornography within the meaning of section 91H of the *Crimes Act 1900* (as in force before that section was replaced by the *Crimes Amendment (Child Pornography and Abuse Material) Act 2010*).

### **66 Extension of protections afforded to complainants to other witnesses**

- (1) Section 294D, as inserted by the *Crimes Amendment (Child Pornography and Abuse Material) Act 2010*, extends to proceedings instituted or partly heard before the commencement of that section, which were not finally disposed of before that commencement.
- (2) However, section 294D does not affect the admissibility of any evidence given in proceedings before the commencement of that section or otherwise affect the validity of anything done, or omitted to be done, before that commencement.

## **Part 21 Provision consequent on enactment of Courts and Crimes Legislation Amendment Act 2010**

### **67 Changes to the definition of “offence involving violence”**

The amendment made by the *Courts and Crimes Legislation Amendment Act 2010* to the definition of **offence involving violence** in section 94 applies in respect of committal proceedings that a Magistrate first starts to hear after the commencement of the amendment.

## Schedule 3 Provisions relating to offences

(Section 316)

### Part 1 Contempt

#### 1 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 subclause (1) prevents contempt of court being dealt with in any other manner, and in particular nothing in that subclause prevents proceedings for contempt of court from being instituted in any other manner.

### Part 2 Treason and treason-related offences

#### 2 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.

#### 3 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 a Magistrate or an authorised officer within 6 days after the words were spoken, and
  - (b) a warrant for the arrest 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.

#### **4 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.

#### **5 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.

#### **6 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 3 Stealing offences**

#### **7 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 prosecutor is not to be put to election as to those charges.

#### **8 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.

### **9 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.

### **10 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.

### **11 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.

## **12 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.

## **Part 4 Other offences**

### **13 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.

### **14 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.

### **15 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.

### **16 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.

#### **17 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.

#### **18 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.

#### **19 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.

#### **20 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.

## **21 Indictment for conspiracy**

- (1) This clause 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 prosecutor may be put to election as to the one on which to proceed.

## **22 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 subclause (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.