



Western Australia

Criminal Procedure Act 2004

**Incorporating the amendments proposed by
the *High Risk Offenders Bill 2019 Pt. 9 Div. 2*
(Bill No. 137-1)**

Criminal Procedure Act 2004

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Western Australia

Criminal Procedure Act 2004

An Act to provide procedures for dealing with alleged offenders and for related matters.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Criminal Procedure Act 2004*¹.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation¹.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used

- (1) In this Act, unless the contrary intention appears —
 - accused** means a person alleged in a prosecution notice or indictment to have committed an offence;
 - acquit**, in relation to a charge, has the meaning given by subsection (2)(b);
 - approved notice** means a notice approved by the chief executive officer of the department of the Public Service principally assisting in the administration of this Act;
 - arrest warrant** —
 - (a) for an accused, means a warrant that complies with section 31;
 - (b) for a witness, means a warrant that complies with section 160;
 - audio link** means facilities, including telephones, that enable, at the same time, a court at one place to hear a person at another place and vice versa;
 - authenticate** means authenticate in accordance with the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10;
 - case** means a prosecution, or any proceedings in a court that involve its criminal jurisdiction;
 - charge** means an allegation in a prosecution notice or indictment that a person has committed an offence;
 - convict**, in relation to a charge, has the meaning given by subsection (2)(a);
 - corporation** means any body corporate, whether incorporated in this State or elsewhere;
 - court** means a court of summary jurisdiction or a superior court;

court hearing notice means a document that complies with section 33(1);

court of summary jurisdiction means a court, or a person, acting in circumstances in which it, he or she is a court of summary jurisdiction by virtue of another written law;

courtroom includes any place where a court is sitting;

deal with a charge, includes to hear and determine it;

determine a charge, means —

- (a) to convict the accused of the charge; or
- (b) to acquit the accused of the charge; or
- (c) to enter judgment on the charge under section 128(2) or (3);

document means a record that is on paper or that is capable of being put on paper;

DPP means the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991* or any person performing the functions or acting in that office;

either way charge means an indictable charge that, by virtue of *The Criminal Code* section 5, or another written law, may be tried either on indictment or summarily;

electronic recording means an electronic or magnetic recording of sounds or moving images or both;

indictable charge means a charge of an indictable offence;

indictable offence means a crime or any other offence described by a written law as an indictable offence, irrespective of whether in some circumstances it may be dealt with summarily;

indictment means a document that contains one or more indictable charges, complies with section 85(2), and is lodged with a superior court;

legal practitioner means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

magistrate means a magistrate appointed under —

- (a) the *Children's Court of Western Australia Act 1988*; or
- (b) the *Magistrates Court Act 2004*; or
- (c) any other written law for the purpose of constituting a court of summary jurisdiction;

offence means an indictable offence or a simple offence;

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party, in relation to a charge, means the prosecutor or the accused;

post a document, means to send the document by pre-paid ordinary post;

prescribed court officer, in relation to a prosecution notice lodged with a court of summary jurisdiction, means an officer of that court who is prescribed by rules of court made by that court for the purposes of this Act;

prosecution means proceedings in a court that allege a person has committed an offence and that are taken for the purpose of having the person tried for the offence;

prosecution notice means a document that contains one or more charges, complies with section 23(2), and is lodged with a court of summary jurisdiction;

prosecutor means —

- (a) in a prosecution in a court of summary jurisdiction, the person who commenced the prosecution or a person who in court represents that person;
- (b) in a prosecution in a superior court, the authorised officer (as defined in section 80) who commenced the prosecution or a person who in court represents that person;

public authority means —

- (a) a Minister of the State; or
- (b) a department of the Public Service; or
- (c) a local government or a regional local government; or
- (d) a body, whether incorporated or not, or the holder of an office, being a body or office that is established for a public purpose under a written law and that, under the authority of a written law, performs a statutory function on behalf of the State;

record means any thing or process —

- (a) on or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

remand warrant means a warrant issued by a court under this Act or the *Sentencing Act 1995* that orders that an accused be kept in custody while a case is adjourned;

simple offence means an offence that is not an indictable offence;

statutory penalty for an offence, means the penalty specified by a written law for the offence;

summons, to an accused, means a document that complies with section 32(1);

superior court means the Supreme Court or the District Court;

trial date means the date set for the start of a trial;

vehicle has the meaning given by the *Road Traffic (Administration) Act 2008* section 4;

video link means facilities, including closed circuit television, that enable, at the same time, a court at one place to see and hear a person at another place and vice versa;

witness summons means a document that complies with section 161;

witness undertaking has the meaning given by Schedule 4 clause 1;

working day means a day other than a Saturday, a Sunday, or a public holiday throughout the State.

- (2) For the purposes of this Act —
- (a) a person is convicted of a charge if a court under section 147(1) enters a judgment of conviction of the offence charged in respect of the person;
 - (b) a person is acquitted of a charge if a court —
 - (i) under section 147(2) enters a judgment of acquittal of the offence charged on account of unsoundness of mind in respect of the person; or
 - (ii) under section 147(3) enters a judgment of acquittal of the offence charged in respect of the person.

[Section 3 amended: No. 21 of 2008 s. 657(2) ; No. 8 of 2012 s. 81; No. 20 of 2013 s. 47.]

4A. Courts and Tribunals (Electronic Processes Facilitation) Act 2013 Part 2 applies

The *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2 applies to this Act.

[Section 4A inserted: No. 20 of 2013 s. 48.]

Part 2 — Dealing with alleged offenders without prosecuting them

4. Terms used

In this Part, unless the contrary intention appears —

alleged offender means a person suspected of having committed a prescribed offence;

approved officer, in relation to an infringement notice, means a person appointed as an approved officer under regulations made under section 6(a) in relation to the notice;

authorised officer, in relation to an infringement notice, means a person appointed as an authorised officer under regulations made under section 6(b) in relation to the notice;

prescribed Act means an Act that is prescribed by the regulations made under this Act;

prescribed offence means an offence prescribed under section 5(1).

5. Prescribed offences and modified penalties for them

- (1) Regulations made under a prescribed Act may prescribe an offence under the prescribed Act, or under any regulations made under the prescribed Act, to be an offence for which an infringement notice may be issued under this Part.
- (2) An offence must not be prescribed under subsection (1) if the penalty for the offence is or includes imprisonment.
- (3) For each offence prescribed under subsection (1), the regulations made under the prescribed Act must prescribe —
 - (a) a modified penalty that is applicable in any circumstances in which the offence is committed; or
 - (b) a modified penalty that is applicable if the offence is committed in circumstances specified in the regulations.
- (4) Any modified penalty prescribed under subsection (3) for an offence —
 - (a) must be an amount of money; and
 - (b) must not exceed 20% of the statutory penalty for the offence.

6. Other matters to be prescribed by prescribed Acts

If under section 5 regulations are made under a prescribed Act and prescribe an offence, the regulations must also —

- (a) provide for the appointment of approved officers in relation to infringement notices that may be issued under this Part for the prescribed offence; and
- (b) provide for the appointment of authorised officers in relation to infringement notices that may be issued under this Part for the prescribed offence; and
- (c) provide for the means by which authorised officers can show they are authorised to issue infringement notices; and
- (d) prescribe the form of infringement notices that may be issued under this Part for the prescribed offence; and
- (e) prescribe any other forms required to be prescribed by this Part in relation to infringement notices that may be issued under this Part for the prescribed offence.

7. Authorised and approved officers

- (1) A person who is appointed as an approved officer under regulations made under a prescribed Act under section 6(a) is not eligible to be appointed as an authorised officer under regulations made under that Act under section 6(b).
- (2) If —
 - (a) an authorised officer is serving or is about to serve an infringement notice on an alleged offender in person for an offence under a prescribed Act; and
 - (b) the alleged offender requests the officer to do so,the officer must show, in a way prescribed by the regulations made under that Act under section 6(c), that he or she is authorised to issue infringement notices for offences under that Act.
- (3) Failure to comply with subsection (2) does not invalidate the infringement notice or its service.

8. Issuing infringement notices

- (1) An authorised officer who has reason to believe that a person has committed a prescribed offence may issue an infringement notice that complies with section 9 for the alleged offence.

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- (2) The infringement notice must be served under section 10 within 21 days after the day on which the alleged offence is believed to have been committed.

9. Form and content of infringement notices

- (1) An infringement notice must —
- (a) be in the prescribed form; and
 - (b) be addressed to the alleged offender by name, unless section 12(1) applies; and
 - (c) comply with Schedule 1 clause 5, which applies as if the alleged offence were a charge and the infringement notice were a prosecution notice; and
 - (d) state the modified penalty for the offence; and
 - (e) be dated with the date it is issued; and
 - (f) inform the alleged offender —
 - (i) that within 28 days after the date of the notice the alleged offender may elect to be prosecuted for the alleged offence; and
 - (ii) how to make such an election; and
 - (iii) that if the alleged offender does not want to be prosecuted for the alleged offence, the modified penalty for the offence may be paid to an approved officer within 28 days after the date of the notice; and
 - (iv) how and where the modified penalty may be paid;
- and
- (g) if the *Fines, Penalties and Infringement Notices Enforcement Act 1994* Part 3 applies to the notice, inform the alleged offender of the action that may be taken under that Act if the alleged offender does not act in accordance with the notice; and
 - (h) contain any information prescribed by the regulations made under the prescribed Act.
- (2) The amount stated in an infringement notice as the modified penalty must be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.
- (3) An infringement notice must not relate to more than one alleged offence.

10. Service of infringement notices

Unless section 12(1)(b)(i) applies, an infringement notice must be served on an alleged offender —

- (a) if the offender is an individual, in accordance with Schedule 2 clause 2 or 3; or
- (b) if the offender is a corporation, in accordance with Schedule 2 clause 3 or 4; or
- (c) if the offender's address is ascertained at the time of or immediately after the alleged offence was committed, by posting it to the offender at that address.

11. Terms used in s. 11 to 13

- (1) In this section and sections 12 and 13, unless the contrary intention appears —

corresponding law means a law of another State or a Territory or the Commonwealth that is prescribed by the regulations made under this Act to be a law that corresponds with the *Road Traffic (Vehicles) Act 2012* or the *Control of Vehicles (Off-road Areas) Act 1978*;

current licence holder of a vehicle at the time of a vehicle offence, means a person in whose name the vehicle is licensed at that time;

licensed means licensed or registered under a vehicle licensing law;

responsible person for a vehicle, means a person who under subsection (2) is responsible for the vehicle;

vehicle licensing law means the *Road Traffic (Vehicles) Act 2012* or the *Control of Vehicles (Off-road Areas) Act 1978* or a corresponding law;

vehicle offence means an alleged offence that has as an element of it the driving, parking, standing or leaving of a vehicle.

- (2) For the purposes of sections 12 and 13, a person responsible for a vehicle at the time of a vehicle offence is —

- (a) if at that time the vehicle is licensed —
 - (i) any current licence holder who has not given a notice as described in subparagraph (ii); or
 - (ii) any new owner specified in a notice given under the vehicle licensing law by a current licence holder of having ceased before that time to be the owner of the vehicle unless, under subsection (3),

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the new owner is not responsible for the vehicle;
or

- (iii) if, under subsection (3), no new owner specified in a notice described in subparagraph (ii) is responsible for the vehicle — the current licence holder who gave the notice;

or

- (b) if at that time the vehicle is not licensed but was previously licensed — a person responsible under paragraph (a) before the vehicle last ceased to be licensed; or
 - (c) in any other case —
 - (i) the person who at that time is entitled to immediate possession of the vehicle; or
 - (ii) if there are several persons entitled to its immediate possession at that time, the person whose entitlement is paramount.
- (3) A person is not responsible for a vehicle under subsection (2)(a)(ii) at the time of a vehicle offence if it can be shown —
- (a) that at that time the person had not agreed to becoming the owner of the vehicle; and
 - (b) that the person has given notice of that fact to the person who, under the relevant vehicle licensing law, is responsible for keeping the licensing records.

[Section 11 amended: No. 8 of 2012 s. 82.]

12. Vehicle offences, infringement notices for

- (1) If an alleged offence is a vehicle offence and the identity of the alleged offender is not known and cannot immediately be ascertained, an infringement notice for the alleged offence —
 - (a) despite section 9(1)(b), may be addressed to the responsible person for the vehicle without naming that person or the alleged offender; and
 - (b) may be served on the responsible person —
 - (i) despite section 10, by attaching it securely to the vehicle; or
 - (ii) in accordance with section 10(a) or (b).

-
- (2) An infringement notice that is served under subsection (1) must contain or be accompanied by a statement explaining the operation of section 13.
 - (3) If an infringement notice is served on a responsible person under subsection (1) and there are several responsible persons, the notice is to be taken to have been served on —
 - (a) if only one responsible person responds to the notice, that responsible person; or
 - (b) in any other case, not more than one responsible person chosen by an authorised officer.
 - (4) A person, other than a person in charge of the vehicle or a responsible person for the vehicle, must not interfere with an infringement notice that is left on a vehicle.
Penalty: \$1 000.

13. Vehicle offences, onus of responsible person

- (1) If under section 12(1) an infringement notice is served on a responsible person, the responsible person is to be presumed to have been the driver or person in charge of the vehicle at the time of the vehicle offence alleged in the notice unless, within 28 days after the date of the infringement notice —
 - (a) the modified penalty specified in the notice is paid; or
 - (b) the responsible person informs an authorised officer specified in the notice that the responsible person was not the driver or person in charge of the vehicle at the time of the alleged offence and supplies the officer —
 - (i) with the name and address of the driver or person in charge of the vehicle at that time; or
 - (ii) with information showing that at that time the vehicle had been stolen or unlawfully taken or was being unlawfully used.
- (2) If a responsible person complies with subsection (1)(b) the infringement notice may be withdrawn under section 15.
- (3) If a responsible person complies with subsection (1)(b) and an approved officer decides not to withdraw the infringement notice under section 15, the approved officer must advise the person of the decision.
- (4) The presumption in subsection (1) operates even if the responsible person is not an individual.

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- (5) The presumption in subsection (1) operates, in the absence of evidence to the contrary, for the purpose of enforcing the infringement notice and for the purpose of any prosecution of the responsible person for the alleged offence.
- (6) The presumption in subsection (1) does not affect the liability of the person who actually committed the offence but —
 - (a) the responsible person and the actual offender cannot both be issued an infringement notice or sentenced for the offence; and
 - (b) if one of them pays a modified penalty or is sentenced for the offence, a modified penalty paid by the other is to be refunded; and
 - (c) if one of them is sentenced for the offence, a sentence must not be imposed on the other for the offence.

14. Extensions of time

- (1) An approved officer may, in a particular case, extend the period in section 9(1)(f) or 13(1).
- (2) An extension may be allowed even if the period has elapsed.

[Section 14 amended: No. 2 of 2008 s. 14.]

15. Withdrawal of infringement notices

- (1) An approved officer may withdraw an infringement notice.
- (2) To withdraw an infringement notice an approved officer must give the alleged offender a notice in a form prescribed under the prescribed Act stating that the notice has been withdrawn.
- (3) An infringement notice may be withdrawn whether or not the modified penalty has been paid.
- (4) If an infringement notice is withdrawn after the modified penalty is paid, the amount of money paid is to be refunded.

16. Modified penalty, effect of paying

- (1) If the modified penalty stated in an infringement notice is paid within the period in section 9(1)(f) or any extension of it and the notice is not withdrawn, the bringing of proceedings and the imposition of sentences are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

- (2) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

17. Modified penalty, application of

- (1) Any money paid as a modified penalty is, subject to sections 13(6)(b) and 15(4), to be dealt with in accordance with the *Sentencing Act 1995* section 60 as if the money were a fine imposed for the offence concerned.
- (2) Subsection (1) applies unless a prescribed Act expressly provides to the contrary.

Part 3 — Prosecutions in courts of summary jurisdiction

Division 1 — Preliminary

18. Terms used

In this Part, unless the contrary intention appears —

adjourn means to adjourn under section 75;

authorised investigator means —

- (a) a person referred to in section 80(2)(a) to (e); or
- (b) a police officer; or
- (c) an officer of a prescribed public authority who is authorised by the public authority, or under a written law, to commence prosecutions; or
- (d) a person appointed under section 182 to prosecute offences who is acting in accordance with the terms of the appointment;

court means a court of summary jurisdiction;

court date, for a charge in a prosecution notice, means —

- (a) the first court date for the notice; or
- (b) if the charge has been adjourned to a new court date, the new court date; or
- (c) any other date set by a court as a date when it will deal with the charge;

first court date —

- (a) for an indictable charge in a prosecution notice, means —
 - (i) the date stated in the summons first served on the accused in relation to the notice as the date when the accused is required to appear before the court; or
 - (ii) the date when the accused first appears in the court in relation to the charge in accordance with a bail undertaking by the accused or by reason of being in custody;
- (b) for a charge of a simple offence in a prosecution notice, means —

- (i) the date stated in the court hearing notice first served on the accused in relation to the prosecution notice as the date when the charge will be dealt with by the court; or
- (ii) the date when the accused first appears in the court in relation to the charge in accordance with a bail undertaking by the accused or by reason of being in custody;

prescribed means prescribed by the regulations made under this Act;

prescribed public authority means a public authority that is prescribed for the purposes of this Part;

written plea, to a charge by an accused, means a plea of guilty or not guilty to the charge made in writing and —

- (a) if the accused is an individual, signed by the accused or on the accused's behalf by a legal practitioner;
- (b) if the accused is a corporation, made in accordance with section 154(1).

[Section 18 amended: No. 21 of 2008 s. 657(3).]

19. Application of this Part

This Part applies to and in relation to prosecutions in courts of summary jurisdiction.

Division 2 — Commencing and discontinuing a prosecution

20. Who can commence prosecution

- (1) In this section, unless the contrary intention appears —
authorised person in relation to an offence, means —
 - (a) if under another written law a person or class of person is authorised to commence a prosecution for the offence, that person or a person of that class; or
 - (b) in any other case, a person —
 - (i) who is a public authority or an employee of a public authority; or
 - (ii) who is authorised in writing by a public authority to commence a prosecution for the offence.
- (2) If another written law limits who may commence a prosecution for an offence, a prosecution for the offence may only be commenced in accordance with that law.

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- (3) Subject to subsection (2), a prosecution for an offence may be commenced by, and only by —
- (a) one of the following acting in the course of his or her duties —
 - (i) an authorised person in relation to the offence;
 - (ii) a person referred to in section 80(2)(a) to (e);
 - (iii) a police officer;
 - or
 - (b) a person who, acting in accordance with the terms of an appointment made under section 182, may prosecute the offence.
- (4) This section does not affect the operation of an enactment that requires a person's consent, approval or authority to be given for the commencement of a prosecution for an offence.
- (5) A person acting in his or her private capacity cannot commence a prosecution, unless another written law expressly provides otherwise.
- (6) This section does not limit the functions of the DPP under the *Director of Public Prosecutions Act 1991*.
- [Section 20 amended: No. 2 of 2008 s. 15.]*

21. When prosecution can be commenced

- (1) A prosecution of a person for an indictable offence may be commenced at any time, unless another written law provides otherwise.
- (2) A prosecution of a person for a simple offence must be commenced within 12 months after the date on which the offence was allegedly committed, unless another written law provides otherwise or the person consents to it being commenced at a later time.
- (3) A prosecution is commenced —
- (a) on the day on which a prosecution notice is signed under section 23 by the prosecutor and either a JP or a prescribed court officer; or
 - (b) in the case of a prosecution notice signed under section 23 by an authorised investigator alone — on the day on which the notice is lodged with the court in which the prosecution is being commenced,
- whether or not the notice has been served on the accused.

22. Where prosecution may be commenced

- (1) The court in which a prosecution of a person for an indictable offence is commenced must be a court that has jurisdiction over the person, notwithstanding that the court does not or may not have jurisdiction to determine a charge of the offence.
- (2) The court in which a prosecution of a person for a simple offence is commenced must be a court that has —
 - (a) jurisdiction over the person; and
 - (b) jurisdiction to determine a charge of the offence.
- (3) A prosecution may be commenced in any registry of a court referred to in subsection (1) or (2) unless the court's rules of court provide otherwise.
- (4) If a prosecution is commenced in a court that does not have jurisdiction as required by subsection (1) or (2), the court may send the prosecution to a court that does have such jurisdiction.
- (5) A prosecution that is sent to another court under subsection (4) is to be taken to have been commenced in the other court on the day on which it was commenced in the first court.
- (6) This section does not affect the operation of Part 4 Division 2.

23. Prosecution notice, formal requirements of

- (1) Schedule 1 has effect in relation to prosecution notices and charges in them.
- (2) A prosecution notice must —
 - (a) be in writing in a prescribed form; and
 - (b) comply with Schedule 1 Division 2; and
 - (c) contain any information prescribed; and
 - (d) be signed in accordance with subsection (3) and, if necessary, subsection (4).
- (3) A prosecution notice must —
 - (a) if the prosecution is being commenced by an authorised investigator, either —
 - (i) be signed by the investigator alone; or
 - (ii) be signed by the investigator in the presence of either a JP or a prescribed court officer;

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- (b) in any other case — be signed by the person who is commencing the prosecution in the presence of either a JP or a prescribed court officer.
- (4) If a prosecution notice is signed in the presence of a JP or a prescribed court officer, the JP or officer must also sign the notice.
- (5) The contents of a prosecution notice need not be verified on oath or affirmation before a JP or a prescribed court officer unless —
 - [(a) deleted]*
 - (b) they are required to be so verified for the purposes of another written law.

[Section 23 amended: No. 5 of 2008 s. 41.]

24. Prosecution notice, lodgment of

- (1) A prosecution notice must be lodged with the court in which the prosecution is being commenced —
 - (a) if the accused is in custody or is on bail, as soon as practicable after it is signed by the prosecutor;
 - (b) if an arrest warrant has been issued for the accused in relation to the notice, as soon as practicable after the accused is arrested under the warrant;
 - (c) in any other case —
 - (i) as soon as practicable after the accused is served with a summons or court hearing notice in relation to the prosecution notice; and
 - (ii) in any event, at least 3 working days before the court date stated in the summons or court hearing notice,
together with a copy of the summons or court hearing notice.
- (2) A prosecution notice must be lodged in a manner prescribed by rules of court.
- (3) A prescribed court officer may refuse to accept the lodgment of a prosecution notice if the prosecutor is not a person who can commence the prosecution or if the notice does not comply with section 23.
- (4) Section 184 applies to and in relation to a decision made under subsection (3).

- (5) If under section 184 the court sets aside the officer's decision, the prosecution notice is to be taken to have been lodged on the day on which the officer refused to accept its lodgment.

25. Discontinuing prosecution

- (1) If no evidence has been adduced in relation to a charge, the prosecutor may inform the court that the prosecutor is discontinuing the prosecution of the charge.
- (2) On being so informed, the court may consent or, if satisfied that the discontinuance would be an abuse of process, refuse to consent to the discontinuance of the prosecution concerned.
- (3) If a prosecution of a charge is discontinued, the court must dismiss the charge for want of prosecution.

Division 3 — Notifying the accused of a prosecution

26. Accused's general entitlement to prosecution notice

- (1) If an accused or an accused's legal practitioner asks a court for a copy of a prosecution notice containing a charge against the accused that has been lodged with the court and that has not been determined or dismissed, the court must provide one free of charge, unless the request is unreasonable.
- (2) Failure to comply with subsection (1) does not invalidate the prosecution notice or the commencement of the prosecution but may be grounds for adjourning the prosecution.

[Section 26 amended: No. 21 of 2008 s. 657(4).]

27. Accused in custody, entitlement to prosecution notice

- (1) This section applies if at the time of being charged with an offence an accused is under arrest or otherwise in custody, whether or not he or she is subsequently granted or released on bail for the charge.
- (2) The prosecutor must ensure that the accused is given a copy of the prosecution notice as soon as practicable after it is signed in accordance with section 23.
- (3) Failure to comply with subsection (2) does not invalidate the prosecution notice or the commencement of the prosecution but may be grounds for adjourning the prosecution.

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28. Accused not in custody, procedural options

- (1) This section applies if, at the time of being charged with an offence, an accused is not under arrest or otherwise in custody.
- (2) This section does not apply if an accused is a corporation.
- (3) If the prosecution notice alleges one or more indictable offences, the prosecutor —
 - (a) if he or she is an authorised investigator, must either personally issue a summons to the accused or apply —
 - (i) to a JP or a prescribed court officer for the issue of a summons to the accused; or
 - (ii) to a magistrate of the court that will deal with the notice for an arrest warrant for the accused;
 - (b) if he or she is not an authorised investigator, must apply —
 - (i) to a JP or a prescribed court officer for the issue of a summons to the accused; or
 - (ii) to a magistrate of the court that will deal with the notice for an arrest warrant for the accused.
- (4) If the prosecution notice alleges one or more simple offences, the prosecutor —
 - (a) if he or she is an authorised investigator, must either personally issue a court hearing notice to the accused or apply —
 - (i) to a JP or a prescribed court officer for the issue of a court hearing notice to the accused; or
 - (ii) to a magistrate of the court that will deal with the notice for an arrest warrant for the accused;
 - (b) if the prosecutor is not an authorised investigator, must apply —
 - (i) to a JP or a prescribed court officer for the issue of a court hearing notice to the accused; or
 - (ii) to a magistrate of the court that will deal with the notice for an arrest warrant for the accused.
- (5) The JP or prescribed court officer or magistrate who issues a summons or court hearing notice or warrant under this section in relation to a prosecution notice need not have been present when the prosecution notice was signed.

29. Corporation, procedural options

- (1) This section applies if an accused is a corporation.
- (2) Irrespective of what offence or offences the prosecution notice alleges, the prosecutor —
 - (a) if he or she is an authorised investigator, must either personally issue a court hearing notice to the accused or apply to a JP or a prescribed court officer for a court hearing notice to be issued to the accused; or
 - (b) if he or she is not an authorised investigator, must apply to a JP or a prescribed court officer for a court hearing notice to be issued to the accused.
- (3) The JP or prescribed court officer who issues a court hearing notice under this section in relation to a prosecution notice need not have been present when the prosecution notice was signed.

30. Summons, court hearing notice or warrant, issue of

- (1) An authorised investigator must not, under section 28 or 29, personally issue —
 - (a) a summons unless it complies with section 32(1); or
 - (b) a court hearing notice unless it complies with section 33(1),and unless the date stated in the summons or notice as the date when the court will deal with the prosecution notice is a date nominated by a prescribed court officer.
- (2) A JP or a prescribed court officer to whom an application is made under section 28 or 29 must not issue —
 - (a) a summons unless it complies with section 32(1); or
 - (b) a court hearing notice unless it complies with section 33(1).
- (3) Failure to comply with subsection (1) or (2) does not invalidate the summons or court hearing notice but may be grounds for adjourning the prosecution.
- (4) A magistrate to whom an application is made under section 28 for an arrest warrant for an accused for a charge of an indictable offence must not issue the warrant unless satisfied —
 - (a) that the prosecution notice containing the charge complies with section 23; and

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- (b) that there are reasonable grounds to suspect the accused committed the offence; and
 - (c) that —
 - (i) there are reasonable grounds to suspect that, if a summons were issued in relation to the prosecution notice, the accused would avoid service of the summons or would not obey the summons; or
 - (ii) the issue of the warrant is justified under subsection (5).
- (4a) A magistrate to whom an application is made under section 28 for an arrest warrant for an accused for a charge of a simple offence must not issue the warrant unless satisfied —
- (a) that the prosecution notice containing the charge complies with section 23; and
 - (b) that there are reasonable grounds to suspect the accused committed the offence; and
 - (c) that —
 - (i) there are reasonable grounds to suspect that if a court hearing notice were issued in relation to the prosecution notice, the accused would avoid service of the court hearing notice; or
 - (ii) the presence of the accused when the prosecution notice is dealt with is likely to be necessary for any reason or for sentencing purposes; or
 - (iii) the issue of the warrant is justified under subsection (5).
- (5) The issue of an arrest warrant for an accused is justified if —
- (a) there are reasonable grounds to suspect that if the accused were not arrested, the accused —
 - (i) would commit an offence; or
 - (ii) would continue or repeat an offence charged in the prosecution notice; or
 - (iii) would endanger another person's safety or property; or
 - (iv) would interfere with witnesses or otherwise obstruct the course of justice, whether in relation to the accused or any other person;
- or

- (b) the accused's whereabouts are not known to the prosecutor; or
 - (c) the accused is the subject of another warrant for his or her arrest, whether under this Act or otherwise; or
 - (d) for any other reason the magistrate is satisfied the issue of the warrant is justified.
- (6) An arrest warrant for an accused may be issued even if —
- (a) a summons or court hearing notice has been issued, or served on the accused; or
 - (b) the prosecution notice alleges an offence the statutory penalty for which is not or does not include imprisonment.
- (7) Section 184 applies to and in relation to a prescribed court officer's decision made under subsection (3) to refuse to issue a summons or court hearing notice.
- (8) If under section 184 the court sets aside the officer's decision, it may issue a summons or court hearing notice to the accused.

[Section 30 amended: No. 59 of 2006 s. 42.]

31. Warrant for accused's arrest, contents etc.

- (1) An arrest warrant for an accused must —
- (a) be in a prescribed form; and
 - (b) if issued in the first instance, form part of or be attached securely to a copy of the prosecution notice to which it relates; and
 - (c) if issued after the accused has been served with the prosecution notice, identify the prosecution notice or the charge or charges in it or be attached securely to a copy of it; and
 - (d) require the person who arrests the accused to bring the accused before the court as soon as is reasonably practicable after doing so; and
 - (e) contain any information prescribed; and
 - (f) be signed by the magistrate who issues it.
- (2) As soon as practicable after a person arrests an accused under an arrest warrant the person must give the person a copy of the prosecution notice to which the warrant relates.

[Section 31 amended: No. 6 of 2017 s. 7(2).]

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32. Summons to accused, contents and service of

- (1) A summons must —
 - (a) be in a prescribed form; and
 - (b) if issued in the first instance, form part of or be attached securely to a copy of the prosecution notice to which it relates; and
 - (c) if issued after the accused has been served with the prosecution notice, identify the prosecution notice or the charge or charges in it or be attached securely to a copy of it; and
 - (d) state when and where the court will deal with the prosecution notice; and
 - (e) require the accused to appear at that time and place; and
 - (f) contain any information prescribed; and
 - (g) be signed —
 - (i) if it is being issued by an authorised investigator, by the investigator; or
 - (ii) if it is being issued by a JP or a prescribed court officer, by the JP or officer.
- (2) A summons issued to an accused must be served on the accused in accordance with Schedule 2 clause 2.

[Section 32 amended: No. 6 of 2017 s. 7(2).]

33. Court hearing notice, contents and service of

- (1) A court hearing notice must —
 - (a) be in a prescribed form; and
 - (b) if issued in the first instance, form part of or be attached securely to a copy of the prosecution notice to which it relates; and
 - (c) if issued after the accused has been served with the prosecution notice, identify the prosecution notice or the charge or charges in it or be attached securely to a copy of it; and
 - (d) state where and when the prosecution notice will be dealt with by the court; and
 - (e) contain the information required by subsection (2); and
 - (f) contain any information prescribed; and

- (g) be signed —
 - (i) if it is being issued by an authorised investigator, by the investigator; or
 - (ii) if it is being issued by a JP or a prescribed court officer, by the JP or officer.
- (2) A court hearing notice must inform the accused —
 - (a) that the accused need not appear at the time when the prosecution notice to which it relates will be dealt with by the court; and
 - (b) that the accused may give the court written notice that the accused —
 - (i) pleads guilty to one or more of the charges in the prosecution notice;
 - (ii) pleads not guilty to one or more of the charges in the prosecution notice;and
 - (c) that if the accused pleads guilty in writing to a charge the accused may also, in writing —
 - (i) explain why the accused committed the offence;
 - (ii) provide information to the court that it may use when imposing a sentence for the offence;and
 - (d) that if the accused, in writing, pleads guilty or not guilty to a charge and does not appear, the charge may be dealt with in the accused's absence; and
 - (e) that if the accused does not enter a written plea to a charge in the prosecution notice and does not appear, the charge may be dealt with in the accused's absence.
- (3) A court hearing notice issued to an accused must be served on the accused in accordance with Schedule 2 clause 2, 3 or 4.

[Section 33 amended: No. 6 of 2017 s. 7(2).]

34. Summons etc., amendment of date if not served

- (1) If —
 - (a) a summons issued by a JP or a prescribed court officer is not served in accordance with section 32(2); or
 - (b) a court hearing notice issued by a JP or a prescribed court officer is not served in accordance with section 33(3),

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before the court date stated in the summons or court hearing notice, a prescribed court officer may amend the summons or notice by substituting a later date.

- (2) An amendment made under subsection (1) must be endorsed on the summons or notice.

[Section 34 amended: No. 20 of 2013 s. 49.]

35. Initial disclosure by prosecutor

- (1) In this section, unless the contrary intention appears —
confessional material of an accused charged with an offence, means —

- (a) any written statement signed by the accused;
- (b) any written record of interview with the accused (signed or unsigned by the accused);
- (c) any interview (as that term is defined in the *Criminal Investigation Act 2006* section 115) that has been electronically recorded,

that is relevant to the charge and that is in the possession of the organisation that investigated the offence;

police prosecutor means a prosecutor who is a member of the Police Force or who is employed in the department principally assisting in the administration of the *Police Act 1892*;

prescribed simple offence means a simple offence that is prescribed to be a prescribed simple offence for the purposes of this section;

serve an accused, means to serve the accused in accordance with Schedule 2 clause 2, 3 or 4.

- (2) The operation of this section is subject to any order made under section 138.
- (3) This section does not affect the operation of the *Criminal Investigation Act 2006* section 117.
- (4) When or as soon as practicable after a prosecution notice that contains one or more indictable charges is served on an accused, the prosecutor must serve the accused with the following —
- (a) a written statement of the material facts of each such charge;
 - (b) an approved notice of the existence or non-existence, as the case may be, of any confessional material of the accused that is relevant to each such charge;

-
- (c) an approved notice that the accused does or does not have a criminal record, as the case may be;
 - (d) any document that is prescribed.
- (5) When or as soon as practicable after a prosecution notice that contains one or more charges of prescribed simple offences is served on an accused, the prosecutor must serve the accused with the following —
- (a) a written statement of the material facts of each such charge;
 - (b) an approved notice of the existence or non-existence, as the case may be, of any confessional material of the accused that is relevant to each such charge;
 - (c) if the prosecutor is a police prosecutor, an approved notice that the accused does or does not have a criminal record, as the case may be;
 - (d) if the prosecutor is not a police prosecutor and intends to tender any of the accused's criminal record to the court, an approved notice of the criminal record and of the prosecutor's intention;
 - (e) any document that is prescribed.
- (6) When or as soon as practicable after a prosecution notice that contains one or more charges of simple offences that are not prescribed simple offences is served on an accused, the prosecutor must serve the accused with the following —
- (a) if the prosecutor is a police prosecutor, an approved notice that the accused does or does not have a criminal record, as the case may be;
 - (b) if the prosecutor is not a police prosecutor and intends to tender any of the accused's criminal record to the court, an approved notice of the criminal record and of the prosecutor's intention;
 - (c) any document that is prescribed.
- (7) An approved notice advising an accused of the existence of any confessional material of the accused must also advise the accused of the effect of subsection (11).
- (8) An approved notice advising an accused that the accused does have a criminal record must also advise the accused of the effects of subsections (11) and (12) and section 168.

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- (9) The material referred to in this section must be served before or at the time of the accused's first appearance in the court in relation to the prosecution notice unless it is impracticable to do so.
- (10) If material is not served in accordance with subsection (9) in respect of a charge, the court may —
- (a) adjourn the charge to a new court date that allows a reasonable time for the prosecutor to serve the material; and
 - (b) order the prosecutor to serve the material before that new court date; and
 - (c) if the prosecutor does not obey the order, adjourn the charge again or dismiss it for want of prosecution.
- (11) As soon as practicable after an accused is served with notice —
- (a) of the existence of confessional material of the accused that is relevant to a charge; or
 - (b) that the accused has a criminal record,
- the prosecutor must make available a copy of the material or the record or both (as the case may be) to the accused or the accused's legal practitioner.
- (12) If before or at an accused's first appearance in court in relation to a prosecution notice the accused requests the prosecutor to give the accused a copy of the accused's criminal record, the prosecutor must, if practicable, obey the request before or at the appearance.
- (13) If the prosecutor serves the accused with a written statement of the material facts of a charge, the prosecutor may serve the accused with another version of the statement —
- (a) if the charge —
 - (i) is an either way charge that is to be dealt with summarily; or
 - (ii) is of a simple offence,at any time before the accused is asked to plead to the charge by a court of summary jurisdiction or, with the court's leave, at any time after a plea of not guilty by the accused; or

- (b) in any other case — at any time before the accused is asked to plead to the charge by the court to which the accused is committed for sentence or trial, irrespective of whether the accused has pleaded before a court of summary jurisdiction.

[Section 35 amended: No. 59 of 2006 s. 43; No. 21 of 2008 s. 657(5).]

Division 4 — Procedure on charge of indictable offence

36. Terms used

In this Division, unless the contrary intention appears —
bail documents, for an accused, means —

- (a) any bail undertaking by the accused; and
- (b) any surety undertaking in respect of the accused;

disclosure/committal hearing means a hearing under section 44;

relevant authorised officer has the meaning given by section 80;

witness documents, in relation to a charge, means —

- (a) any witness undertaking entered into under Schedule 4 by a person who is or may be a witness in relation to the charge; and
- (b) any surety undertaking entered into under Schedule 4 by a person as a surety for such a witness.

37. Application of this Division

This Division applies if an accused is charged in a court of summary jurisdiction with an indictable offence.

38. No appearance by party

- (1) If on a court date for an indictable charge the prosecutor does not appear, the court may —
 - (a) adjourn the charge and notify the prosecutor of the new court date; or
 - (b) dismiss the charge for want of prosecution.
- (2) If on a court date for an indictable charge the accused does not appear the court must either —
 - (a) adjourn the charge and either —
 - (i) issue a summons to the accused that states the new court date; or

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- (ii) make an order under the *Bail Act 1982* section 31(2)(b) substituting the new court date, as the case requires; or
 - (b) issue an arrest warrant for the accused.
- (3) If an arrest warrant is issued under subsection (2)(b) the charge is to be taken to have been adjourned until the date when the accused next appears or is brought before the court in relation to the charge.

39. Initial procedure

When or as soon as practicable after an accused's first appearance in a court on an indictable charge, the court, before requiring the accused to plead to the charge, must —

- (a) be satisfied the accused has a copy of the prosecution notice containing the charge and has had time to consider the notice and seek legal advice about it; and
- (b) be satisfied the accused understands the charge and the purpose of the proceedings; and
- (c) cause the accused to be given an approved notice explaining the procedures in this Part; and
- (d) if the prosecutor has already served the accused with the material referred to in section 35(4) —
 - (i) if the charge is an either way charge — proceed in accordance with section 40; or
 - (ii) if the charge is not an either way charge — proceed in accordance with section 41;and
- (e) if the prosecutor has not served the accused with the material referred to in section 35(4) —
 - (i) proceed in accordance with section 35(10); and
 - (ii) if the material is subsequently served, proceed in accordance with paragraph (d).

40. Either way charges

- (1) This section applies if the charge is an either way charge.
- (2) If *The Criminal Code* section 5 applies to the charge, the court must give the prosecutor and the accused an opportunity to apply under that section for the charge to be tried on indictment.

- (3) If the court decides that the charge is to be tried on indictment, the court must proceed in accordance with section 41.
- (4) If the charge is to be tried summarily, the court must deal with the charge summarily under Division 6 and may do so —
 - (a) with the consent of the prosecutor and the accused, immediately; or
 - (b) otherwise, on a later date.

41. Charges that are to be tried on indictment

- (1) This section applies if —
 - (a) the charge must be tried on indictment; or
 - (b) under *The Criminal Code* section 5 or any other written law, the court has decided that the charge, being an either way charge, is to be tried on indictment.
- (2) The court must —
 - (a) tell the accused that he or she is not required to plead to the charge; and
 - (b) give the accused the opportunity to plead to the charge.
- (3) If the accused pleads guilty to the charge, the court, without convicting the accused, must commit the accused for sentence to a superior court with jurisdiction to deal with the charge, and comply with section 47(1).
- (4) If the accused enters any plea other than a plea of guilty or does not plead to the charge, the court must adjourn the charge to a disclosure/committal hearing on a new court date that allows a reasonable time for the prosecutor to comply with section 42.

42. Full disclosure by prosecutor

- (1) In this section, unless the contrary intention appears —
confessional material of an accused charged with an offence, means —
 - (a) a copy of any material referred to in the definition of *confessional material* in section 35; and
 - (b) a copy of any electronic recording, other than a recording that is part of the material referred to in paragraph (a), of a conversation between the accused and a person in authority that is relevant to the charge and that is in the possession of the organisation that investigated the offence; and

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- (c) if the accused said anything that is relevant to the charge to a person employed in the organisation that investigated the offence and that was not so recorded, a written version of the substance of what was said;

evidentiary material relevant to a charge, means —

- (a) a copy of —
 - (i) every statement that has been made in accordance with Schedule 3 clause 4 by; and
 - (ii) every recording that has been made in accordance with Schedule 3 clause 6 of evidence given by; and
 - (iii) every recording that has been made under the *Evidence Act 1906* of; and
 - (iv) every other recorded statement, whether oral or written, by,

any person who may be able to give evidence that is relevant to the charge, irrespective of whether or not it assists the prosecutor's case or the accused's defence; and

- (b) if there is no statement or recording referred to in paragraph (a) of a person who the prosecutor intends to call as a witness, a written summary of the evidence to be given by the person; and
- (c) a copy of any document or object to which a statement or recording referred to in paragraph (a) refers; and
- (d) a copy of every other document or object that the prosecutor intends to tender in evidence at trial; and
- (e) a copy of every other document or object that may assist the accused's defence,

that is in the possession of the organisation or person who investigated the offence;

serve an accused, means to serve the accused in accordance with Schedule 2 clause 2, 3 or 4.

- (2) A requirement under this section to serve evidentiary material includes a requirement —
 - (a) if it is not practicable to copy a document or object referred to in paragraph (c), (d) or (e) of the definition of **evidentiary material** in subsection (1) — to serve a notice that describes it and states where and when it can be inspected;

- (b) if a copy of a statement or recording of a person is served — to also serve a copy of any statement or recording of the person that contains material that is inconsistent with that statement or recording;
 - (c) to serve notice of the name and, if known, the address of any person from whom no statement or recording of the kind referred to in paragraph (a) of the definition of ***evidentiary material*** has been obtained but who the prosecutor thinks may be able to give evidence that may assist the accused's defence and a description of the evidence concerned.
- (3) The operation of this section is subject to section 137A and any order made under section 138, whether in relation to a requirement of this section or a requirement of section 35.
- (4) This section does not affect the operation of the *Criminal Investigation Act 2006* section 117.
- (5) As soon as practicable after a charge is adjourned under section 41(4), the prosecutor must serve the accused with the following —
- (a) any confessional material of the accused that is relevant to the charge and that the accused has not already received from the prosecutor;
 - (b) any evidentiary material that is relevant to the charge;
 - (c) any other document that is prescribed.
- (6) If, after complying with subsection (5) and before the charge is finally dealt with, the prosecutor receives or obtains —
- (a) confessional material or additional confessional material that is relevant to the charge; or
 - (b) additional evidentiary material that is relevant to the charge; or
 - (c) any statement or recording described in subsection (2)(b); or
 - (d) the name or address of a person described in subsection (2)(c),

the prosecutor must serve it or a copy of it on the accused as soon as practicable.

[Section 42 amended: No. 59 of 2006 s. 44; No. 5 of 2008 s. 42.]

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43. Administrative committals

- (1) If, under section 41(4), a court adjourns a charge, then when or at any time after the prosecutor complies with section 42 and before the new court date set under section 41(4) for the disclosure/committal hearing, the prosecutor may request the accused to consent to the court committing the accused for sentence or trial to a superior court with jurisdiction to deal with the charge without a disclosure/committal hearing.
- (2) The request must —
 - (a) be in writing in an approved form; and
 - (b) if the charge is one of 2 or more charges in one prosecution notice, relate to all of the charges in the prosecution notice; and
 - (c) if the accused is one of 2 or more accused named in one prosecution notice, relate to all of the accused; and
 - (d) be served on the accused in accordance with Schedule 2 clause 2, 3 or 4.
- (3) An accused who receives such a request may consent to it by —
 - (a) completing the approved form; and
 - (b) lodging the form with the court at least 5 working days before the date set for the disclosure/committal hearing.
- (4) An accused who is completing the approved form may state in it the accused's plea to the charge.
- (5) On receiving an approved form containing the accused's consent, the court may, in the absence of the prosecutor and the accused, commit the accused for trial or, if the accused has pleaded guilty in the form, for sentence (without convicting the accused) to a superior court with jurisdiction to deal with the charge.
- (6) If an accused is charged with 2 or more offences in one prosecution notice, the court may only commit the accused under subsection (5) if the accused's consent relates to each charge in the notice.
- (7) If 2 or more accused are charged in one prosecution notice, the court may only commit an accused under subsection (5) if the court has received consents from each of the accused.
- (8) If under subsection (5) a court commits an accused, the court must —
 - (a) comply with section 44(2); and

- (b) notify the parties in writing of the committal; and
 - (c) cancel the disclosure/committal hearing.
- (9) A party who is notified under subsection (8) is not required to appear at the disclosure/committal hearing.

44. Disclosure/committal hearing, procedure on

- (1) At a disclosure/committal hearing in relation to a charge, the court must —
- (a) if satisfied that the prosecutor has complied with section 42 —
 - (i) require the accused to plead to the charge; and
 - (ii) commit the accused for sentence or trial, as the plea requires, to a superior court with jurisdiction to deal with the charge; and
 - (iii) comply with subsection (2);
 - (b) if not so satisfied —
 - (i) adjourn the charge to another disclosure/committal hearing on a new court date that allows a reasonable time for the prosecutor to comply with section 42; and
 - (ii) order the prosecutor to comply with section 42 before that new court date; and
 - (iii) if the prosecutor does not obey the order, adjourn the charge again or dismiss it for want of prosecution.
- (2) As soon as practicable after committing the accused for sentence or trial to a superior court under subsection (1), the court of summary jurisdiction must —
- (a) give the superior court a copy of —
 - (i) the prosecution notice containing the charge and the information recorded under section 47(1); and
 - (ii) any remand warrant for the accused; and
 - (iii) any witness documents for the charge; and
 - (iv) any order made under section 138; and
 - (v) any other document prescribed;and
 - (b) if necessary, comply with the *Bail Act 1982* section 27; and

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- (c) give the relevant authorised officer a copy of —
 - (i) all documents that it has sent to the superior court under paragraph (a); and
 - (ii) any bail documents for the accused.

45. Committal, prosecutor's duties after

- (1) In this section, unless the contrary intention appears —
confessional material has the meaning given by section 42;
evidentiary material has the meaning given by section 42.
- (2) Within the prescribed period after an accused is committed for sentence under section 41(3) on a charge, the prosecutor must give the relevant authorised officer —
 - (a) a copy of the written statement of material facts last served on the accused under section 35; and
 - (b) any confessional material of the accused that is relevant to the charge; and
 - (c) a copy of the accused's criminal record; and
 - (d) a certificate under subsection (5).
- (3) Within the prescribed period after an accused is committed for sentence or trial under section 43(5) or 44(1)(a)(ii) on a charge, the prosecutor must give the relevant authorised officer —
 - (a) a copy of the written statement of material facts last served on the accused under section 35; and
 - (b) any confessional material of the accused that is relevant to the charge; and
 - (c) any evidentiary material that is relevant to the charge, including any thing referred to in section 42(2); and
 - (d) anything that has been served on the accused under section 42(6); and
 - (e) a copy of the accused's criminal record; and
 - (f) a certificate under subsection (5).
- (4) If at any time after a prosecutor complies with subsection (3) the prosecutor, under section 42(6), serves anything on the accused, the prosecutor must give the thing or a copy of it to the relevant authorised officer as soon as practicable.
- (5) The certificate required by subsection (2) or (3) must —
 - (a) be signed by a person who was involved in, and has knowledge of, the investigation of the charge; and

- (b) certify that —
 - (i) section 35 and, if the case requires, section 42 have been complied with; and
 - (ii) the relevant authorised officer is being given a copy of all confessional material and evidentiary material that is relevant to the charge and that has been served on or made available to the accused under this Part;and
 - (c) state the person's grounds for so certifying and any inquiries made by the person before so certifying, where inquiry has been necessary; and
 - (d) contain any information prescribed.
- (6) A person who knowingly or without reasonable diligence signs or authenticates a certificate under this section that is false in a material particular commits an offence.

Penalty: \$5 000.

[Section 45 amended: No. 20 of 2013 s. 50.]

46. Committal for sentence after conviction, procedure on

If a court of summary jurisdiction deals with an either way charge summarily, convicts the accused (whether after a plea of guilty or otherwise) and commits the accused for sentence to a superior court with jurisdiction to deal with the charge, the court of summary jurisdiction must —

- (a) give the superior court —
 - (i) a copy of the prosecution notice containing the charge and the information recorded under section 47(1); and
 - (ii) a summary of the court's findings of fact and reasons for committing the accused for sentence; and
 - (iii) any document that the court thinks is relevant to sentencing the accused for the offence; and
 - (iv) a copy of any remand warrant for the accused; and
 - (v) any other document prescribed;and
- (b) if necessary, comply with the *Bail Act 1982* section 27; and

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- (c) give the relevant authorised officer a copy of —
 - (i) all documents that it has sent to the superior court under paragraph (a); and
 - (ii) any bail documents for the accused; and
 - (iii) any other document prescribed;and
- (d) give the accused a copy of —
 - (i) any document sent to the superior court under paragraph (a)(i), (ii) or (iii); and
 - (ii) any other document sent under paragraph (a) or (c) that the court thinks fit; and
 - (iii) any other document prescribed.

47. Committal for sentence or trial, matters to be recorded

- (1) If a court of summary jurisdiction commits an accused to a superior court for sentence or trial on an indictable charge, whether or not it has convicted the accused of the charge, the court must record on the prosecution notice —
 - (a) the accused's plea before the court; and
 - (b) if the court convicted the accused, the fact that it did so; and
 - (c) whether the court has ordered a pre-sentence report in respect of the accused; and
 - (d) the date of the committal.
- (2) A copy of a prosecution notice containing the matters recorded under subsection (1) sent to a superior court is, in the absence of evidence to the contrary, evidence of its contents and of any matter recorded on it in under subsection (1).

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48. Application of this Division

This Division applies if an accused is charged in a court of summary jurisdiction with a simple offence.

49. Written plea, court to advise prosecutor

If a court receives a written plea from an accused to a charge, the court must advise the prosecutor of it as soon as practicable.

50. Written plea of not guilty

- (1) This section applies if on the first court date for a charge the prosecutor appears and the court has received a written plea of not guilty to the charge by the accused.
- (2) If on the first court date the accused appears, the court must proceed in accordance with Division 6.
- (3) If on the first court date the accused does not appear, the court must adjourn the charge to a new court date.
- (4) If on the new court date the accused appears, the court must proceed in accordance with section 54 or Division 6, as the case requires.
- (5) If on the new court date the accused does not appear, the court must proceed in accordance with section 53 or 55, as the case requires.

51. Written plea of guilty

- (1) This section applies if on a court date for a charge the prosecutor appears and the court has received a written plea of guilty to the charge by the accused.
- (2) If the written plea of guilty purports to be signed by the accused or on the accused's behalf by a legal practitioner or, if the accused is a corporation, by a representative appointed under section 152, it is admissible in evidence without proof that it was so signed, in the absence of evidence to the contrary.
- (3) On or as soon as practicable after the court date the court must hear and determine the charge as if the accused had pleaded guilty to the charge in person before the court.
- (4) Except as provided in subsection (5A), the hearing under subsection (3) may be conducted in the absence of the accused or, if the accused appears voluntarily or pursuant to a summons or warrant issued under section 139 or a representative of the accused appears pursuant to a section 155 notice, in the presence of the accused.
- (5A) On the hearing under subsection (3) of a charge under the [High Risk Offenders Act 2019 section 80\(1\)](#) ~~[Dangerous Sexual Offenders Act 2006 section 40A](#)~~ the accused is required to appear before the court —
 - (a) in person; or
 - (b) by means of a video link or audio link in accordance with section 77 or 141.

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- (5) Despite subsection (3), if the court, having considered any thing said by the accused to the court, whether orally or in writing, considers —
- (a) that the accused may have a defence to the charge; or
 - (b) that the accused's version of the material facts of the charge differs materially from those in the prosecution notice or stated by the prosecutor to the court,
- the court must —
- (c) strike out the written plea of guilty to the charge; and
 - (d) adjourn the charge to a new court date; and
 - (e) issue to the accused both —
 - (i) a court hearing notice that states the new court date; and
 - (ii) an approved notice that explains why the charge has not been dealt with.
- (6) An accused who has entered a written plea to a charge may notify the court before the charge is dealt with under subsection (3) that the accused wants to withdraw the plea.
- (7) If the court is notified under subsection (6) before the court date for the charge, the court must advise the prosecutor of it as soon as practicable.
- (8) If the court is notified under subsection (6), then on the court date for the charge, the court, despite subsection (3), must strike out the guilty plea and enter a plea of not guilty on the accused's behalf and —
- (a) if the accused does not appear on that date, may hear and determine the charge under section 55(4) or Division 6 in the absence of the accused if —
 - (i) the court is satisfied that the accused has been served under this Act with the prosecution notice containing the charge and either a summons, or a court hearing notice, notifying the accused of that date; and
 - (ii) the prosecutor appears and consents;
 - (b) otherwise, must —
 - (i) adjourn the charge to a new court date; and
 - (ii) issue an approved notice to both the prosecutor and the accused advising them of that date.

- (9) The approved notice must be served on the accused in accordance with Schedule 2 clause 2, 3 or 4.
- (10) On the new court date to which a charge is adjourned under subsection (5)(d) or (8)(b)(i) the court must proceed in accordance with section 52, 53, 54 or 55 or Division 6, as the case requires.

[Section 51 amended: No. 21 of 2008 s. 657(6); No. 17 of 2016 s. 46; [High Risk Offenders Bill 2019 cl. 97.](#)]

52. No appearance by any party and no plea received

- (1) If on a court date for a charge neither the prosecutor nor the accused appears and the accused has not pleaded to the charge, whether orally or by means of a written plea, the court must —
 - (a) adjourn the charge to a new court date and notify the prosecutor of that date; and
 - (b) issue a court hearing notice to the accused that states that date.
- (2) If on the new court date neither the prosecutor nor the accused appears, the court may dismiss the charge for want of prosecution.

53. No appearance by any party but plea received

- (1) If on a court date for a charge neither the prosecutor nor the accused appears but the accused has pleaded to the charge, whether orally or by means of a written plea, the court must —
 - (a) adjourn the charge to a new court date and notify the prosecutor of that date; and
 - (b) issue to the accused an approved notice that notifies the accused of that date and explains why the charge has not been dealt with.
- (2) If on the new court date the prosecutor does not appear, then whether or not the accused appears, the court may dismiss the charge for want of prosecution.
- (3) The approved notice must be served on the accused in accordance with Schedule 2 clause 2, 3 or 4.

54. No appearance by prosecutor

If on a court date for a charge the prosecutor does not appear but the accused does, then whether or not the court has received a written plea to the charge by the accused, the court may —

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- (a) adjourn the charge to a new court date and give the prosecutor and the accused approved notices that notify them of that date; or
- (b) dismiss the charge for want of prosecution.

55. No appearance by accused and no plea of guilty

- (1) This section applies if on a court date for a charge the prosecutor appears and the accused does not and the accused has not pleaded guilty to the charge, whether orally or by means of a written plea.
- (2) If on the court date the court is satisfied that the accused has been served under this Part with the prosecution notice containing the charge and a court hearing notice, or an approved notice, notifying the accused of that date and that the court may deal with the charge in the accused's absence if the accused does not appear on that date, the court may —
 - (a) adjourn the charge; or
 - (b) hear and determine the charge in the accused's absence.
- [(3) deleted]*
- (4) If under subsection (2) or section 51(8)(a) the court decides to hear and determine the charge in the accused's absence and the prosecution notice is signed by a person who in the notice purports to be a person acting under section 20(3), the court —
 - (a) must presume, in the absence of evidence to the contrary —
 - (i) that the prosecution notice was signed by a person who was acting under section 20(3); and
 - (ii) that the person had the authority to sign the prosecution notice;
 - and
 - (b) may take as proved any allegation in the prosecution notice containing the charge that was served on the accused.
- (5) If under subsection (4) the court convicts the accused —
 - (a) the prosecutor must state aloud to the court the material facts of the charge; and
 - (b) section 129(4) applies; and
 - (c) in the absence of evidence to the contrary, the court must take as proved any facts so stated.

[Section 55 amended: No. 2 of 2008 s. 16.]

56. Conviction of absent accused, sentencing procedure on

- (1) This section applies if under section 51 or 55 a court convicts an accused of a charge in the accused's absence.
- (2) If the court, though not required by law to disqualify the accused from holding or obtaining a licence under a written law, intends to do so, then —
 - (a) if at the time of the conviction the accused is already so disqualified, the court may make an order in the accused's absence that disqualifies the accused from holding or obtaining the licence; or
 - (b) if at the time of the conviction the accused is not already so disqualified, the court may either —
 - (i) make an order in the accused's absence that disqualifies the accused from holding or obtaining the licence and that comes into operation 7 days after the date of the order; or
 - (ii) under the *Sentencing Act 1995* section 14, compel the accused to appear before the court so that such an order can be made in the accused's presence.
- (3) The court must not, under subsection (2)(b)(ii), issue a warrant for the accused's arrest under the *Sentencing Act 1995* section 14 unless the court has first issued a summons under that section to the accused and the court is satisfied that either —
 - (a) the summons has not been able to be served after reasonable efforts; or
 - (b) the accused has not obeyed the summons.

Division 6 — Procedure for dealing summarily with any charge

57. Application of this Division

- (1) This Division applies if in a court of summary jurisdiction an accused is charged with —
 - (a) an either way charge that is to be tried summarily by the court; or
 - (b) a simple offence.
- (2) If under Division 5 a court proceeds in accordance with this Division, the court may nevertheless at any time exercise a

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power under Division 5, and in particular under section 55, in relation to any charge of a simple offence if the occasion to do so arises.

58. Appearance by both prosecutor and accused, procedure on

- (1) This section applies if on the first court date, or any new court date set under section 75, for a charge —
 - (a) both the prosecutor and the accused appear; and
 - (b) if the charge is of a simple offence, the court has not received a written plea to the charge by the accused.
- (2) If the date is the first court date for the prosecution notice, the court may only hear and determine the charge if the prosecutor consents but otherwise it must adjourn the charge.
- (3) Subject to subsection (2), the court must proceed to deal with the charge in accordance with this Division.

59. Initial procedure, pleading

- (1) This section must be complied with —
 - (a) if an accused is charged with an either way charge that is to be tried summarily — when or as soon as practicable after it is decided that the charge will be dealt with summarily;
 - (b) if an accused is charged with a simple offence — when or as soon as practicable after the accused first appears, unless the court has received a written plea of guilty to the charge that has not, under section 51(5) or (6), been struck out.
- (2) Before requiring the accused to plead to the charge, the court must —
 - (a) be satisfied the accused has a copy of the prosecution notice containing the charge and has had time to consider the notice and seek legal advice about it; and
 - (b) be satisfied the accused understands the charge and the purpose of the proceedings; and
 - (c) if section 35 requires the prosecutor to serve the accused with any material and the prosecutor has not done so, proceed in accordance with section 35(10).
- (3) After complying with subsection (2), the court must require the accused to plead to the charge.

- (4) Without limiting the operation of Part 5, Part 5 Division 2 applies when an accused is required to plead to a charge.
- (5) This section does not prevent a court from requiring an accused to plead to a charge at any subsequent time.

60. Plea of not guilty, procedure on

- (1) In this section and sections 61 and 62, unless the contrary intention appears —
listed simple offence means a simple offence that is prescribed to be a listed simple offence for the purposes of this section.
- (2) This section applies if an accused pleads not guilty to —
 - (a) an either way charge that is to be dealt with summarily; or
 - (b) a charge of a simple offence, whether orally or by means of a written plea,

and the court does not discharge the accused under section 128(2) or (3).

- (3) In the case of an either way charge, the court must adjourn the charge to a new court date that allows a reasonable time for —
 - (a) the prosecutor to comply with section 61; and
 - (b) the accused to comply with section 62.
- (4) In the case of a charge of a listed simple offence, the court —
 - (a) may order the accused to comply with section 62; and
 - (b) in any event must adjourn the charge to a new court date that allows a reasonable time for —
 - (i) the prosecutor to comply with section 61; and
 - (ii) the accused to comply with section 62 if ordered to do so under paragraph (a).
- (5) In the case of a charge of any other simple offence, the court —
 - (a) may order the prosecutor to serve the accused with any confessional material (as defined in section 42(1)) of the accused that is relevant to the charge and that the accused has not already received from the prosecutor; and
 - (b) if it makes an order under paragraph (a), may also order the prosecutor to comply with section 61; and

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- (c) in any event must adjourn the charge to a new court date that allows a reasonable time for the prosecutor to comply with any order made under paragraph (a) or (b).
- (6) The new court date to which a charge is adjourned under subsection (3), (4) or (5) may be the date for the trial of the charge or some date prior to that date, as the court decides.
- (7) On the date for the trial of the charge, the court may proceed to conduct a trial of the charge if all parties appear but otherwise may proceed under section 53, 54 or 55, as the case requires.

61. Disclosure by prosecutor

- (1) In this section, unless the contrary intention appears —
confessional material has the meaning given by section 42;
evidentiary material has the meaning given by section 42;
serve an accused, means to serve the accused in accordance with Schedule 2 clause 2, 3 or 4.
- (2) A requirement under this section to serve evidentiary material includes a requirement to serve the things that are required to be served under section 42(2).
- (3) The operation of this section is subject to section 137A and any order made under section 138, whether in relation to a requirement of this section or a requirement of section 35.
- (4) This section does not affect the operation of the *Criminal Investigation Act 2006* section 117.
- (5) If —
 - (a) an either way charge is adjourned under section 60(3);
or
 - (b) a charge of a listed simple offence is adjourned under section 60(4); or
 - (c) an order is made under section 60(5)(b) in respect of a charge of any other simple offence,the prosecutor must serve the accused with the following —
 - (d) any confessional material of the accused that is relevant to the charge and that the accused has not already received from the prosecutor;
 - (e) any evidentiary material that is relevant to the charge;
 - (f) a copy of the accused's criminal record, if the accused has not already received it from the prosecutor;

- (g) any document that is prescribed.
- (6) The requirements of subsection (5) must be complied with as soon as practicable after the case is adjourned under section 60(3), (4) or (5) and in any event at least 28 days before the trial date.
- (7) If, after complying with subsections (5) and (6) and before the charge is finally dealt with, the prosecutor receives or obtains —
- (a) confessional material or additional confessional material that is relevant to the charge; or
 - (b) additional evidentiary material that is relevant to the charge; or
 - (c) any statement or recording described in section 42(2)(b); or
 - (d) the name or address of a person described in section 42(2)(c),

the prosecutor must serve it or a copy of it on the accused as soon as practicable.

[Section 61 amended: No. 59 of 2006 s. 45; No. 5 of 2008 s. 43.]

62. Disclosure by accused of certain matters in certain cases

- (1) In this section, unless the contrary intention appears —
- alibi evidence***, in respect of an accused charged with an offence, means any evidence that tends to show that the accused was not present when the offence is alleged to have been committed, or when an act or omission material to the offence is alleged to have occurred;
- expert evidence material*** relevant to a charge, means —
- (a) a copy of every statement, recording or report obtained by the accused of any person who the accused intends to call to give expert evidence that is relevant to the charge; and
 - (b) written notice of the name and, if known, the address, of any person from whom no statement, recording or report has been obtained by the accused but who the accused intends to call to give expert evidence that is relevant to the charge; and
 - (c) a written description of the expert evidence referred to in paragraph (b);

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serve means serve on the prosecutor in accordance with Schedule 2 clause 2 or by post.

- (2) The operation of this section, other than subsection (4)(a), is subject to any order made under section 138.
- (3) This section applies —
 - (a) in the case of an either way charge that is to be dealt with summarily — if the prosecutor has complied with section 61;
 - (b) in the case of a charge of a listed simple offence, if —
 - (i) an order has been made under section 60(4)(a); and
 - (ii) the prosecutor has complied with section 61.
- (4) If this section applies, the accused, at least 14 days before the trial date, must serve the prosecutor with the following —
 - (a) if the accused intends to give or adduce any alibi evidence in relation to the charge, written notice of —
 - (i) the accused's intention to do so; and
 - (ii) the details of the nature of the evidence; and
 - (iii) the name of each person who the accused intends to call to give any such evidence and the person's address or other information sufficient to enable the person to be located;
 - (b) any expert evidence material that is relevant to the charge;
 - (c) written notice of the factual elements of the offence that the accused may contend cannot be proved;
 - (d) written notice of any objection by the accused to —
 - (i) any document that the prosecutor intends to adduce at the trial; or
 - (ii) any evidence to be given by a witness whom the prosecutor intends to call at the trial,and the grounds for the objection.
- (5) If, after complying with subsection (4), an accused receives or obtains evidence, information or material referred to in subsection (4), the accused must serve it on the prosecutor as soon as practicable.

[Section 62 amended: No. 2 of 2008 s. 17.]

63. Non-disclosure, consequences of

- (1) In this section, unless the contrary intention appears —
disclosure requirement means a requirement imposed on a party by section 61 or 62 and any order made under section 138.
- (2) If at the trial in a case the court is satisfied that a party has not obeyed a disclosure requirement, the court, on the application of a party affected by the breach, may adjourn the trial to a date that allows enough time —
 - (a) if necessary, for the party in breach of the requirement to obey it; and
 - (b) for a party affected by the breach to investigate properly any evidence or other matter disclosed in accordance with the requirement and to obtain any further evidence that may be necessary as a result of the disclosure.
- (3) On the resumption of a trial that is adjourned under subsection (2) a party affected by the breach —
 - (a) may require a person who has given evidence, including the accused, to be recalled as a witness; and
 - (b) may cross-examine or further cross-examine the person about the evidence or other matter disclosed in accordance with the disclosure requirement; and
 - (c) may adduce evidence in rebuttal of the evidence or other matter disclosed in accordance with the disclosure requirement.
- (4) If a party does not obey a disclosure requirement, the court, in making an order for costs under section 67 or the *Official Prosecutions (Accused's Costs) Act 1973* in favour of the party, may reduce the amount that would otherwise be ordered by the amount of the costs that a party affected by the breach incurred as a result of the breach.

64. Issues that may be dealt with before trial

- (1) At any time before an accused's trial begins in a court, the court may —
 - (a) determine any question of law or procedure, give any direction, or do any other thing, that is necessary or convenient in order to facilitate the preparation for, or the conduct of, the trial, or that is otherwise desirable;
 - (b) deal with any application made by a party under this Part, Part 5 or Schedule 3;

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- (c) exercise any power under this Act that may be exercised by the court on its own initiative;
 - (d) permit the accused to make an admission under the *Evidence Act 1906* section 32;
 - (e) make any order under section 137.
- (2) The person or persons constituting a court dealing with a matter under subsection (1) need not be the person or persons constituting the court when the trial of the accused takes place.
- (3) Any proceedings under subsection (1) are to be taken to be part of the accused's trial.
- (4) The powers of a court in a trial include, but are not limited to, the powers in this section.

65. Trials, procedure on

- (1) The procedure to be followed by a court of summary jurisdiction in a trial is in this Part and Part 5.
- (2) If there is an inconsistency between this Part and Part 5, this Part prevails.
- (3) To the extent that the procedure to be followed by a court of summary jurisdiction in a trial is not in this Part or Part 5, the procedure to be followed is to be the same as that followed in a criminal trial in the Supreme Court without a jury.
- (4) Without limiting subsection (3), the procedure to be followed in a court of summary jurisdiction in relation to —
 - (a) the order in which the parties present their cases; and
 - (b) the examination, cross-examination and re-examination of witnesses; and
 - (c) the admission of evidence; and
 - (d) any submission of no case to answer,

is to be the same as that followed in a criminal trial in the Supreme Court, unless this Act provides otherwise.

66. Trial on the papers

- (1) A court may —
 - (a) if a plea of not guilty is entered to a charge, determine the charge; or
 - (b) if a plea referred to in section 126(1)(a), (b) or (c) is entered to a charge, decide the issues raised by the plea,

on the evidence contained in documents lodged with the court by the prosecutor and the accused if —

- (c) the accused requests the court to do so; and
 - (d) the prosecutor consents to the court doing so; and
 - (e) both the accused and the prosecutor agree on which of the documents they have lodged the court is to consider to determine the charge or to decide the issues; and
 - (f) the court is satisfied that it is in the interests of justice to do so.
- (2) The court must admit into evidence any document on which the parties have agreed under subsection (1)(e).
- (3) The court must allow both parties to make oral or written submissions to the court on the charge or issues.

67. Costs

- (1) Subject to the *Official Prosecutions (Accused's Costs) Act 1973* and this section, a successful party to a prosecution is entitled to the party's costs.
- (2) If a court convicts an accused of a charge, the court may order the accused to pay all or a part of the prosecutor's costs.
- (3) The amount of costs ordered under subsection (2) may be determined in accordance with the relevant determination made under the *Legal Profession Act 2008* section 275 for the purposes of the *Official Prosecutions (Accused's Costs) Act 1973* and with the *Legal Profession Act 2008* section 280.
- (4) A court may reduce the costs that it would otherwise have awarded, or refuse to award costs, under this section to a party if —
- (a) any act or omission of or caused by the party (other than an act or omission that is the subject of a charge) was unreasonable in the circumstances and contributed to the institution or continuation of the case; or
 - (b) any act or omission of or caused by the party during or in the conduct of the case was calculated to prolong the case unnecessarily or cause unnecessary expense.
- (5) The court may adjourn an application for costs, or the determination of the amount of costs to be paid.
- (6) A question adjourned under subsection (5) is to be dealt with by a magistrate and may be dealt with in chambers.

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[Section 67 amended: No. 21 of 2008 s. 657(7).]

68. Court must record its decision

If a court determines a charge, or dismisses a charge for want of prosecution, it must record on the prosecution notice the determination or dismissal and any order it makes as a result of the determination or dismissal.

69. Conviction and sentence, accused to be notified of

- (1) As soon as practicable after a court convicts an accused of a charge, the court must issue to the accused an approved notice that states —
 - (a) the offence of which the accused has been convicted; and
 - (b) any sentence imposed for the offence and any other order made by the court as a result of the conviction; and
 - (c) any other information prescribed.
- (2) The approved notice need not include the reasons for the decision.
- (3) The approved notice must be served on the accused in accordance with Schedule 2 clause 2, 3 or 4.
- (4) A person who serves an approved notice under subsection (3) need not complete a service certificate in accordance with Schedule 2 clause 2, 3 or 4.

[Section 69 amended: No. 2 of 2008 s. 18.]

**Division 7 — Setting aside decisions made in the absence
of a party**

70. Term used: decision

In this Division, unless the contrary intention appears —
decision means a determination of a charge, or a dismissal of a charge for want of prosecution.

71. Making application to set aside

- (1) If in the prosecutor's absence a court makes a decision on a charge, the prosecutor may apply to the court for an order that sets aside the decision and orders the charge to be dealt with again on the grounds that the prosecutor —
 - (a) did not receive notice of the court date on which the decision was made; or
 - (b) did not receive such notice in enough time to enable the prosecutor to appear on the court date; or
 - (c) received such notice in enough time to enable the prosecutor to appear on the court date but did not appear for some good reason.
- (2) If in an accused's absence a court convicts the accused of a charge, the accused may apply to the court for an order that sets aside the decision and orders the charge to be dealt with again on the grounds that the accused —
 - (a) did not receive notice of the court date on which the conviction occurred; or
 - (b) did not receive such notice in enough time to enable the accused to appear on the court date; or
 - (c) received such notice in enough time to enable the accused to appear on the court date but did not appear for some good reason.
- (3) If in an accused's absence a court disqualifies the accused from holding or obtaining a licence under a written law, an application made under subsection (2) may include an application for an order that suspends the disqualification until the application made under subsection (2) is decided.
- (4) An application made under this section —
 - (a) may relate to 2 or more decisions made at one hearing; and

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- (b) must be made —
 - (i) to the court's registry at the place where the decision was made; and
 - (ii) in accordance with the regulations.
- (5) A court must refuse an application made under this section if —
 - (a) the application is made in respect of a decision after an appeal against the decision has been commenced under the *Criminal Appeals Act 2004*; or
 - (b) after the application is made in respect of a decision and before it is decided, an appeal against the decision is commenced under the *Criminal Appeals Act 2004*.

72. Dealing with application to set aside

- (1) If an application made under section 71(1) is made within 21 days after the date of the decision to which it relates, the court, without hearing the parties, may grant the application if it is satisfied that the grounds of the application are made out by the application and any supporting evidence.
- (2) If an application made under section 71(2) —
 - (a) is made within 21 days after the date of the decision to which it relates; and
 - (b) is not made by an accused who is in custody and who seeks to be released on bail until the hearing at which the charge is dealt with again,the court, without hearing the parties, may grant the application if it is satisfied that the grounds of the application are made out by the application and any supporting evidence.
- (3) If an application is made under section 71(3), then irrespective of whether the associated application made under section 71(2) was made within 21 days after the date of the decision to which it relates or not, the court, without hearing the parties, may grant the application if it is satisfied that there is a reasonable prospect of the application made under section 71(2) succeeding.
- (4) If an application made under section 71(1), (2) or (3) is not granted, respectively, under subsection (1), (2) or (3) of this section, the court must —
 - (a) as the case requires, set a date for the hearing of the application made under section 71(1) or (2); and

- (b) set a date for the hearing of the application made under section 71(3), if any, which may be a date before the date set under paragraph (a); and
 - (c) issue an approved notice to the parties advising them of the hearing date or dates, as the case requires.
- (5) At the hearing of an application made under section 71(1) or (2) the court may grant the application if it is satisfied that it is in the interests of justice to do so.
- (6) At the hearing of an application made under section 71(3) the court may grant the application if the court is satisfied —
 - (a) that there is a reasonable prospect of the application made under section 71(2) succeeding; and
 - (b) that it is in the interests of justice to do so.
- (7) The court dealing with an application made under section 71 need not be constituted by the same person or persons who constituted the court that made the decision to which the application relates.

73. Court may set aside decision on its own initiative

Whether or not an application is made under section 71, a court on its own initiative may make an order that sets aside a decision it has made in a party's absence on a charge and that orders that the charge be dealt with again, if it is satisfied that it is in the interests of justice to do so.

74. Effect of decisions under s. 72 or 73

- (1) If under section 72 or 73 a court sets aside a conviction —
 - (a) any sentence imposed or other order made as a result of the conviction is set aside; and
 - (b) any action to enforce the conviction must cease and the accused, if then in custody for non payment of any sum of money ordered to be paid as a result of the conviction, must be released; and
 - (c) if as a result of the conviction the accused was disqualified from holding or obtaining a licence under a written law, the court must notify the person responsible for issuing the licence of the fact that the disqualification is set aside; and
 - (d) any licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* Part 4 in respect of any fine imposed as a result

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of the conviction is to be taken as having been cancelled —

- (i) in the case of an application made under section 71(2)(a) or (b), as at the time the licence suspension order was made; or
- (ii) in the case of an application made under section 71(2)(c), as at the time the application was made; or
- (iii) if the conviction is set aside under section 73, as at the time the licence suspension order was made,

unless the court orders otherwise.

- (2) If a court grants an application made under section 71(3) and the application made under 71(2) is subsequently refused —
 - (a) the order suspending the disqualification ceases to have effect; and
 - (b) any period during which the disqualification was suspended must not be taken into account in calculating the period of the disqualification.
- (3) If under section 72 or 73 a court orders that a charge be dealt with again, the court —
 - (a) may deal with the charge again immediately if the parties consent; but
 - (b) otherwise, must set a court date when the charge will be dealt with again and may make any orders and issue any documents that are necessary as a consequence.
- (4) The court that deals with a charge again as a result of an order made under section 72 or 73 need not be constituted by the same person or persons who constituted the court that made the order or the decision to which the application relates.

Division 8 — Miscellaneous

75. Adjourning charges

- (1) This section does not apply to a charge if the accused has been convicted of it and is awaiting sentence.
- (2) A court has a general power to adjourn a charge at any time and may do so whether or not —
 - (a) the prosecutor or the accused is present; or
 - (b) the accused has pleaded to the charge; or

- (c) any evidence has been given.
- (3) Without limiting subsection (2), a court may adjourn a charge for any good reason including for the purpose of allowing —
 - (a) the accused to consider the prosecution notice or seek legal advice;
 - (b) the services of an interpreter to be obtained.
- (4) If a court adjourns a charge —
 - (a) it must adjourn it either to a later time of the day on which the charge is adjourned (*new time*) or to a date set by the court (*new court date*);
 - (b) it must ensure the parties are advised of the time and place to which the charge is adjourned and for that purpose may make any order and may issue a summons, court hearing notice or approved notice, as the case requires;
 - (c) it may make any order and issue any document needed (including a document referred to in section 139 or 155) to ensure that any person, including the accused, whose presence will be needed, appears at the time and place to which the charge is adjourned.
- (5) If a court adjourns a charge to a new time it may, subject to the *Bail Act 1982*, order that the accused be kept in custody until that time.
- (6) If a court adjourns a charge to a new court date it may, subject to the *Bail Act 1982*, order that the accused be kept in custody until that date.
- (7) If a court makes an order under subsection (6), the new court date must not be more than 8 days after the date on which the charge is adjourned, unless the accused consents.
- (8) If a court makes an order under subsection (6) it must issue a remand warrant that states the new court date.
- (9) A remand warrant may relate to more than one charge.
- (10) An approved notice issued to a person under this section must be served on the person in accordance with Schedule 2 clause 2, 3 or 4.

[Section 75 amended: No. 2 of 2008 s. 19.]

76. Staying prosecution permanently

- (1) A court may at any time order that the prosecution of a charge be stayed permanently, if it is satisfied that the charge is an abuse of the process of the court.
- (2) On making such an order the court —
 - (a) may discharge the accused from the charge; and
 - (b) may make any orders it thinks fit, including orders as to bail and orders under Schedule 4, to ensure the accused and any witness are amenable to justice until —
 - (i) the time for appealing against the stay order has expired; and
 - (ii) any appeal against the stay order is concluded.

77. Video or audio link, use of when accused in custody etc.

- (1) This section applies if —
 - (a) an accused is required to appear before a court in proceedings on a charge against the accused other than the trial of the charge or sentencing proceedings; and
 - (b) the accused is in custody or detention, whether in relation to the charge or not; and
 - (c) there is a video link or audio link between the place of custody or detention and the court.
- (2) If the accused's appearance will be his or her first in relation to the charge, the person in charge of the accused must ensure the accused is brought before the court in person unless the court has ordered that the accused be brought before the court by means of a video link or audio link.
- (3) If the accused's appearance will be his or her second or subsequent in relation to the charge, the person in charge of the accused must, despite any warrant that requires the accused be brought before the court, ensure the accused appears before the court by means of the video link or audio link, unless the court has ordered that the accused be brought before the court in person.
- (4) A court may make an order under subsection (2) or (3) at any time on its own initiative or on an application by a party to the case if it is satisfied it is in the interests of justice to do so.
- (5) An audio link must not be used under this section unless a video link is not available and cannot reasonably be made available.

(6) When the accused appears before the court by means of a video link or audio link, the court may, in relation to the charge, exercise any power in this Act and comply with the *Bail Act 1982* as if the accused were personally present before it.

(7) This section does not affect the operation of the *Sentencing Act 1995* section 14A.

[Section 77 amended: No. 2 of 2008 s. 20.]

[Section 77. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

78. Exceptions etc., proof of in simple offences

- (1) In this section, unless the contrary intention appears —
exception includes a condition, excuse, exemption, proviso and qualification.
- (2) An exception in respect of a simple offence need not be specified in a charge of the offence.
- (3) If a written law creates a simple offence and provides an exception in respect of the offence, the exception is to be taken not to apply unless the accused proves, on the balance of probabilities, that it does.
- (4) If an accused adduces evidence for the purpose of proving that an exception does apply, the court may allow the prosecutor to re-open his or her case in order to adduce evidence to rebut that evidence.

79. Dismissing charge for want of prosecution, consequences of

- (1) A court that dismisses a charge for want of prosecution —
 - (a) must not determine the charge; and
 - (b) may discharge the accused from the charge.
- (2) The dismissal of a charge for want of prosecution does not operate as an acquittal of the accused of the charge.
- (3) The dismissal of an indictable charge for want of prosecution does not affect the operation of Part 4 Division 2.

Part 4 — Prosecutions in superior courts

Division 1 — Preliminary

80. Terms used

- (1) In this Part, unless the contrary intention appears —
 - authorised officer* means a person listed in subsection (2);
 - committed*, in relation to an accused, means committed by a court of summary jurisdiction to the District Court or the Supreme Court, whether for trial or for sentence, on an indictable charge;
 - prescribed* means prescribed by rules of court;
 - relevant authorised officer*, in relation to an indictable charge, means the authorised officer who is responsible for the prosecution of the charge in a superior court.
- (2) For the purposes of this Part each of the following is an authorised officer —
 - (a) the Attorney General;
 - (b) the Solicitor-General;
 - (c) the State Solicitor;
 - [\(ca\) a member of the State Solicitor's staff appointed in writing by the State Solicitor as an authorised officer;](#)
 - (d) the DPP;
 - (e) a member of the DPP's staff appointed in writing by the DPP as an authorised officer;
 - (f) a person appointed under section 182 to prosecute indictable offences who is acting in accordance with the terms of the appointment.

[\[Section 80 amended: High Risk Offenders Bill 2019 cl. 98.\]](#)

81. Application of this Part

- (1) This Part operates in respect of prosecutions for indictable offences in the superior courts.
- (2) This Part does not operate in respect of prosecutions for indictable offences in the courts of summary jurisdiction.

82. Court may act on its own initiative etc.

- (1) A superior court's power under this Act to make an order in a case may be exercised by the court on its own initiative or on the application of any party unless —
 - (a) this Part provides that the power may be exercised on the application of a particular party or person; or
 - (b) the contrary intention otherwise appears.
- (2) An entitlement under this Part to apply for an order includes an entitlement to apply for an order that amends or cancels the order, unless the contrary intention appears.
- (3) A power under this Part to make an order includes a power to amend or cancel the order, unless the order finally concluded the case or the contrary intention appears.

Division 2 — Commencing and discontinuing a prosecution

83. How prosecution is commenced

- (1) A prosecution in a superior court against a person for an indictable offence may only be commenced by an authorised officer acting in the course of his or her duties.
- (2) To commence a prosecution in a superior court against a person for an indictable offence, an indictment that alleges the offence must be lodged with the court.
- (3) A prosecution in a superior court of a person for an indictable offence may be commenced at any time, unless another written law provides otherwise.
- (4) If in respect of an indictable charge (*charge A*) an accused is committed by a court of summary jurisdiction —
 - (a) for sentence, not having been convicted of charge A by that court; or
 - (b) for trial,then, either —
 - (c) an indictment containing charge A must be lodged; or
 - (d) proceedings against the accused on charge A must be discontinued; even if, instead of being charged with charge A, the accused is charged on indictment with some other offence that is alleged to arise from the acts or omissions that gave rise to charge A.

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- (5) If an accused is committed for sentence for an offence by a court of summary jurisdiction having been convicted of it by that court —
- (a) an indictment containing the charge must not be lodged, despite subsection (2); and
 - (b) the prosecution notice sent to the superior court under section 46 on which is recorded the matters required by section 47(1) is to be taken to be an indictment.
- (6) A prosecution for an indictable offence may be commenced in a superior court against a person even if the person has not been —
- (a) charged with the offence in a court of summary jurisdiction; or
 - (b) committed to a superior court on a charge of the offence.

84. Where prosecution may be commenced

- (1) A prosecution for an indictable offence may be commenced in any superior court that has jurisdiction to determine a charge of the offence, even if it is not the court to which the accused was committed.
- (2) An indictment must specify the place where it is to be dealt with by the superior court being —
- (a) Perth, or a circuit town proclaimed under the *Supreme Court Act 1935* section 46(1), if the prosecution is being commenced in the Supreme Court; or
 - (b) a place where the District Court is held, if the prosecution is being commenced in that court,
- but the place need not be the place to which the accused was committed.
- (3) Irrespective of where it is to be dealt with, an indictment must be lodged at Perth, unless the superior court concerned gives leave to lodge it at another place.
- (4) If —
- (a) a prosecution is commenced in a superior court that is not the court to which the accused was committed; or
 - (b) an indictment is to be dealt with at a place that is not the place to which the accused was committed,
- the superior court must ensure that written notice of the court in which, and the place where, the indictment will be dealt with is given to —

- (c) the accused and any surety for the accused; and
 - (d) any witness who is subject to a witness undertaking, and any surety for a witness.
- (5) On notice being given under subsection (4) to a person, any bail undertaking, witness undertaking or surety undertaking by the person is to be taken to have been amended to specify the court at the place specified in the notice instead of the court at the place specified in the undertaking.

[Section 84 amended: No. 2 of 2008 s. 21.]

85. Indictments, formal requirements and service of

- (1) Schedule 1 has effect in relation to indictments and charges in them.
- (2) An indictment must —
 - (a) be in writing in a prescribed form; and
 - (b) comply with Schedule 1 Division 2; and
 - (c) be signed by an authorised officer; and
 - (d) be lodged in the prescribed manner.
- (3) As soon as practicable after an indictment is lodged with a superior court, the prosecutor must serve it on the accused in accordance with Schedule 2 clause 2, 3 or 4.
- (4) An accused is entitled to receive from a court at no cost a copy of any indictment lodged with the court against the accused.

86. Accused not committed may be arrested etc.

- (1) This section applies if —
 - (a) a prosecution for an indictable offence is commenced in a superior court against an accused; and
 - (b) the accused has not been committed in respect of the offence; and
 - (c) the accused is not in custody or on bail in respect of the charge.
- (2) The superior court, on the application of the prosecutor and without requiring any evidence as to the charge, may issue —
 - (a) a summons to the accused and, if it is not obeyed, an arrest warrant for the accused; or
 - (b) an arrest warrant for the accused, even if a summons has not been issued previously.

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- (3) Sections 31 and 32, with any necessary changes, apply respectively to and in respect of such a warrant and summons.

86A. Remitting charges to summary courts

- (1) At any time after a court of summary jurisdiction commits an accused to a superior court on a charge and before an indictment is lodged that contains the charge, the accused or the relevant authorised officer may apply to the superior court to remit the charge to the court of summary jurisdiction.
- (2) The superior court may remit the charge if it is satisfied —
- (a) that the charge was committed to the superior court in error or before proceedings that should have occurred in the court of summary jurisdiction had been completed; or
 - (b) that for some other good reason the charge should be remitted.

[Section 86A inserted: No. 2 of 2008 s. 22.]

87. Discontinuing prosecution

- (1) At any time after a court of summary jurisdiction commits an accused —
- (a) for sentence on an indictable charge, not having convicted the accused of the charge; or
 - (b) for trial on an indictable charge,
- and before an indictment is lodged that contains the charge, the relevant authorised officer may lodge with the superior court concerned a notice discontinuing the prosecution of the charge.
- (2) If a court of summary jurisdiction commits an accused for sentence for an indictable offence, having convicted the accused of the offence, proceedings against the accused for the offence cannot be discontinued.
- (3) At any time after an indictment is lodged with a superior court, the relevant authorised officer may lodge with the court a notice discontinuing the prosecution of the charge, or of some or all of the charges, in the indictment, as the officer decides.
- (4) A notice under subsection (1) or (3) must be —
- (a) in writing in a prescribed form; and
 - (b) signed by the relevant authorised officer; and
 - (c) lodged in the prescribed manner.

- (5) When a notice is lodged under subsection (1) or (3), the court may consent or, in exceptional circumstances, refuse to consent to the discontinuance of the prosecution concerned.
- (6) If a prosecution of a charge is discontinued, the court must discharge the accused from the charge.
- (7) The fact that the prosecution of an accused for a charge is discontinued under this section does not prevent the accused from being charged later with the same offence, either in a court of summary jurisdiction or in a superior court.

Division 3 — General matters

88. Accused's presence, when required

- (1) In this section, unless the contrary intention appears —
proceedings includes proceedings under section 98, at trial, and under the *Bail Act 1982*, the *Evidence Act 1906*, the *Sentencing Act 1995* or the *Young Offenders Act 1994*.
- (2) This section applies whether an accused is being tried alone or with others.
- (3) Proceedings that relate to an accused must take place in his or her presence unless section 140 or the *Sentencing Act 1995* provides otherwise.
- (4) The court may order proceedings that relate to an accused to proceed in the accused's absence if it is satisfied —
 - (a) that the accused's interests will not be prejudiced by his or her absence; and
 - (b) that to do so will not be contrary to the interests of justice.
- (5) This section does not prevent a court from allowing an accused to be present before the court by means of a video link or audio link or from taking evidence from an accused by either such means.
- (6) If a corporation is an accused, then despite subsections (3) and (4) proceedings that relate to the accused may take place in the accused's absence and may do so whether or not the court has issued a section 155 notice to the accused.

89. Adjourning cases

- (1) A superior court to which an accused is committed on a charge or in which an accused is charged, may at any time adjourn proceedings on the charge whether or not —
 - (a) the prosecutor or the accused is present; or
 - (b) the accused has pleaded to the charge; or
 - (c) a jury has been sworn; or
 - (d) any evidence has been given.
- (2) A superior court that adjourns proceedings on a charge —
 - (a) may do so until a set date or until a date to be set by the court; and
 - (b) may discharge the jury, if any, from giving its verdict on the charge; and
 - (c) may, subject to the *Bail Act 1982*, order that the accused be kept in custody; and
 - (d) may make any order and issue any document needed to ensure that any person, including the accused, whose presence will be needed, appears at the time and place to which the proceedings are adjourned.
- (3) A remand warrant issued under subsection (2) may relate to more than one charge.

90. Staying prosecution permanently

- (1) A superior court to which an accused is committed on a charge or in which an accused is indicted on a charge may at any time order that the prosecution of the charge be stayed permanently, if it is in the interests of justice to do so.
- (2) On making such an order the court —
 - (a) may discharge the jury, if any, from giving its verdict on the charge; and
 - (b) may discharge the accused from the charge; and
 - (c) may make any orders it thinks fit, including orders as to bail and orders under Schedule 4, to ensure the accused and any witness are amenable to justice until —
 - (i) the time for appealing against the stay order has expired; and
 - (ii) any appeal against the stay order is concluded.

91. Accused may be required to plead at any time

- (1) A court may require an accused to plead to a charge in an indictment at any time after the indictment is lodged with the court.
- (2) Without limiting the operation of Part 5, Part 5 Division 2 applies when an accused is required to plead to a charge.

92. Plea of not guilty, consequences of

If an accused pleads not guilty to a charge, or such a plea is entered by a superior court on behalf of the accused, then unless —

- (a) the accused's plea is not accepted under section 99; or
- (b) an order is made under section 118 that the trial of the charge be by a judge alone without a jury,

the accused is entitled to have the issues of fact raised by the plea tried by a judge and jury.

93. Plea of not guilty on account of unsoundness of mind, dealing with

- (1) If an accused pleads not guilty to a charge on account of unsoundness of mind and the judge is satisfied —
 - (a) that the only fact in issue between the accused and the State is whether, under *The Criminal Code* section 27, the accused is not criminally responsible for an act or omission on account of unsoundness of mind; and
 - (b) that the prosecutor consents, and the accused does not object, to the judge doing so; and
 - (c) that it is in the interests of justice to do so,the judge —
 - (d) may decide the issue referred to in paragraph (a) on any evidence and in any manner the judge thinks just; and
 - (e) for that purpose, may ascertain any fact by the verdict of a jury or otherwise; and
 - (f) may find the accused not guilty of the charge on account of unsoundness of mind; and
 - (g) if such a finding is made and a jury has been sworn to give a verdict on the charge, must discharge the jury from giving its verdict on the charge.
- (2) Subsection (1) is in addition to and does not affect the operation of section 146.

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94. Court may order prosecutor to commence prosecution etc.

- (1) This section does not apply if an accused is committed by a court of summary jurisdiction for sentence for an offence having been convicted by the court of it.
- (2) An accused who is committed to a superior court on a charge may apply at any time to the court for an order that the relevant authorised officer act under Division 2 to commence or discontinue a prosecution against the accused.
- (3) On such an application, or on its own initiative, the court may order the authorised officer to act under Division 2 within a period set by the court.
- (4) If an authorised officer does not comply with such an order, the court may set aside the committal and discharge the accused from the charge.

95. Disclosure by prosecutor

- (1) In this section, unless the contrary intention appears —
confessional material has the meaning given by section 42;
evidentiary material has the meaning given by section 42;
lodge means to lodge with the superior court concerned;
serve, an accused, means to serve the accused in accordance with Schedule 2 clause 2, 3 or 4.
- (2) A requirement under this section to serve evidentiary material includes a requirement to serve the things that are required to be served under section 42(2).
- (3) The operation of this section is subject to section 137A and any order made under section 138, whether in relation to a requirement of this section or a requirement of section 35 or 42.
- (4) This section does not affect the operation of the *Criminal Investigation Act 2006* section 117.
- (5) Within the prescribed period after an accused is committed for sentence on a charge, the relevant authorised officer must lodge the following and, if any of the following has not already been served on or received by the accused, serve the accused with it —
 - (a) a statement of the material facts of the charge;
 - (b) any confessional material of the accused that is relevant to the charge;

- (c) a copy of the accused's criminal record;
 - (d) a copy of the certificate given to the officer under section 45;
 - (e) any other document that is prescribed.
- (6) Within the prescribed period after an accused is committed for trial on a charge, the relevant authorised officer must lodge the following and, if any of the following has not already been served on or received by the accused, serve the accused with it —
- (a) a statement of the material facts of the charge;
 - (b) any confessional material of the accused that is relevant to the charge;
 - (c) any evidentiary material that is relevant to the charge;
 - (d) a copy of the accused's criminal record;
 - (e) a copy of the certificate given to the officer under section 45;
 - (f) any other document that is prescribed.
- (7) If an accused is committed for sentence or trial and the indictment contains a charge on which the accused was not so committed, the prosecutor, within the prescribed period after the indictment is lodged, must lodge and serve the following and, if any of the following has not already been served on or received by the accused, serve the accused with it —
- (a) a statement of the material facts of the charge;
 - (b) any confessional material of the accused that is relevant to the charge;
 - (c) any evidentiary material that is relevant to the charge;
 - (d) a copy of the accused's criminal record;
 - (e) any other document that is prescribed.
- (8) If an indictment is lodged against a person who, when it is lodged, is not committed to the court for trial or sentence, the prosecutor, within the prescribed period after it is lodged, must lodge and serve —
- (a) a statement of the material facts of each charge in the indictment; and
 - (b) any confessional material of the accused that is relevant to each such charge; and
 - (c) any evidentiary material that is relevant to each such charge; and

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- (d) a copy of the accused's criminal record; and
 - (e) any other document that is prescribed.
- (9) If, after complying with subsection (6), (7) or (8) and before a charge is finally dealt with, a prosecutor receives or obtains —
- (a) confessional material or additional confessional material that is relevant to the charge; or
 - (b) additional evidentiary material that is relevant to the charge; or
 - (c) any statement or recording referred to in section 42(2)(b); or
 - (d) the name or address of a person described in section 42(2)(c),

the prosecutor must lodge it or a copy of it, and serve it or a copy of it on the accused, as soon as practicable.

[Section 95 amended: No. 59 of 2006 s. 46; No. 5 of 2008 s. 44.]

96. Disclosure by accused of certain matters

- (1) In this section, unless the contrary intention appears —
- alibi evidence* has the meaning given by section 62(1);
 - expert evidence material* has the meaning given by section 62(1);
 - lodge* means to lodge with the superior court concerned;
 - serve* has the meaning given by section 62(1).
- (2) The operation of this section, other than subsection (3)(a), is subject to any order made under section 138.
- (3) Within the prescribed period before the trial date for a charge in an indictment, the accused must lodge and serve the following —
- (a) if the accused intends to give or adduce any alibi evidence, written notice of —
 - (i) the accused's intention to do so; and
 - (ii) the details of the nature of the evidence; and
 - (iii) the name of each person who the accused intends to call to give any such evidence and the person's address or other information sufficient to enable the person to be located;
 - (b) any expert evidence material that relates to the charge;

- (c) written notice of the factual elements of the offence that the accused may contend cannot be proved;
 - (d) written notice of any objection by the accused to —
 - (i) any document that the prosecutor intends to adduce at the trial; or
 - (ii) any evidence to be given by a witness whom the prosecutor intends to call at the trial,and the grounds for the objection.
- (4) If, after complying with subsection (3), an accused receives or obtains evidence, information or material referred to in subsection (3), the accused must lodge and serve it as soon as practicable.

97. Non-disclosure, consequences of

- (1) In this section, unless the contrary intention appears —
disclosure requirement means a requirement imposed on a party by section 95 or 96 and any order made under section 138.
- (2) If before or at a trial on indictment the court is satisfied that a party has not obeyed a disclosure requirement, the court, on the application of a party affected by the breach, may adjourn the trial for a period that allows enough time —
- (a) if necessary, for the party in breach of the requirement to obey it; and
 - (b) for a party affected by the breach to investigate properly any evidence or other matter disclosed in accordance with the requirement and to obtain any evidence that may be necessary as a result of the disclosure,
- or, if the trial is a trial by jury, may discontinue the trial, discharge the jury from giving its verdict and adjourn the prosecution.
- (3) On any resumption of a trial adjourned under subsection (2) a party affected by the breach —
- (a) may require a person who has given evidence in the trial, including the accused, to be recalled as a witness; and
 - (b) may cross-examine or further cross-examine the person about the evidence or other matter disclosed in accordance with the disclosure requirement; and

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- (c) may adduce evidence in rebuttal of the evidence or other matter disclosed in accordance with the disclosure requirement.
- (4) The failure by a party to obey a disclosure requirement may be the subject of adverse comment to the jury by the judge, the accused or the prosecutor.

98. Issues that may be dealt with before trial

- (1) This section applies if an accused is committed to, or is charged on indictment in, a superior court.
- (2) At any time before the accused's trial begins, the court —
 - (a) may determine any question of law or procedure, give any direction, or do any other thing, that is necessary or convenient in order to facilitate the preparation for, or the conduct of, the trial, or that is otherwise desirable;
 - (b) may determine any question of fact that in a trial may be determined lawfully by a judge alone without a jury;
 - (c) if it is satisfied as a matter of law that the accused has no case to answer on a charge, may find the accused not guilty of the charge without requiring a jury to give its verdict on the charge;
 - (d) may, whether or not a party asks the court to do so, refer a question of law to the Court of Appeal in accordance with the *Criminal Appeals Act 2004* section 46;
 - (e) may deal with any application made by a party under this Part, Part 5 or Schedule 3;
 - (f) may exercise any power under this Act that may be exercised by the court on its own initiative;
 - (g) may permit the accused to make an admission under the *Evidence Act 1906* section 32;
 - (h) may make an order under the *Juries Act 1957* section 43A;
 - (i) may make any order under section 137.
- (3) If the accused is committed for sentence, the court may exercise the powers in subsection (2)(a) or (b) at any time before sentencing the accused.
- (4) If under subsection (2)(d) a court refers a question of law to the Court of Appeal, it must adjourn the trial until the Court of Appeal gives its judgment.

- (5) The judge constituting the court that deals with any matter under subsection (2) need not be the judge who constitutes the court when the trial of the accused takes place.
- (6) Any proceedings under subsection (2) are to be taken to be part of the accused's trial.
- (7) The powers of a judge in a trial include, but are not limited to, the powers in this section.

[Section 98 amended: No. 2 of 2008 s. 23.]

Division 5 — Committals for sentence

99. Unconvicted accused committed for sentence, procedure on

- (1) This section applies if —
 - (a) an accused pleads guilty to an indictable charge before a court of summary jurisdiction (the *lower court*); and
 - (b) the lower court, without convicting the accused, commits the accused to a superior court for sentence on the charge; and
 - (c) the accused is subsequently charged with the charge in an indictment.
- (2) The accused must be required to plead to the charge in the indictment in the same manner as other accused.
- (3) If the accused pleads guilty to the charge in the indictment then, unless subsection (5) applies, the superior court must accept the plea of guilty and deal with the accused according to law.
- (4) If the accused does not plead guilty to the charge in the indictment then, unless subsection (5) applies, the superior court must order the prosecutor to state aloud the material facts of the charge and —
 - (a) if it is satisfied that those facts do not differ materially from the material facts disclosed to the accused under section 35 at the time the accused pleaded guilty to the offence charged in the lower court, must enter a plea of guilty on behalf of the accused; or
 - (b) if it is not so satisfied, must enter a plea of not guilty on behalf of the accused,and deal with the accused according to law.
- (5) Irrespective of whether the accused does or does not plead guilty to the charge in the indictment, the court, despite

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subsections (3) and (4), may enter a plea of not guilty on behalf of the accused if —

(a) having considered —

(i) the material served on the accused under section 35 or 95; and

(ii) the facts stated by the prosecutor under section 129,

the court is satisfied that the accused could not have or may not have committed the offence charged; or

(b) having considered any evidence the court decides to admit, the court is satisfied that the plea before the lower court was made under a material misunderstanding as to the charge, the plea or the purpose of the proceedings.

(6) If under this section a superior court enters a plea of not guilty on behalf of an accused, the prosecutor must lodge and serve the material referred to in section 95(6) within such period as the court orders.

(7) A plea entered by a court under this section on behalf of an accused has the same effect as if it had been actually pleaded.

100. Convicted accused committed for sentence, procedure on

(1) This section applies if an accused is committed for sentence for an offence by a court of summary jurisdiction having been convicted of it by that court.

(2) The superior court —

(a) must not require the accused to plead to the charge in the prosecution notice sent to the superior court under section 46; and

(b) must proceed to sentence the accused having regard to the other material sent to the superior court under section 46 and any other information the court thinks fit.

(3) Subsection (2)(b) does not affect the operation of the *Sentencing Act 1995*.

(4) The sentence imposed on the accused is to be taken, for all purposes, to be a sentence imposed by the superior court on indictment.

Division 6 — Trial by jury

101. Application of this Division

- (1) This Division applies to any charge that is to be tried by a judge and jury.
- (2) This Division does not affect the operation of the *Juries Act 1957*.

102. When juror is sworn

For the purposes of this Division, a juror is to be taken to be sworn when —

- (a) the court officer who is administering the oath or affirmation to the juror begins to recite the words of it to the juror; or
- (b) the juror begins to recite the words of the oath or affirmation from a card.

103. Accused to be told of right to challenge jurors

Before any juror is sworn for an accused's trial, a prescribed officer must inform the accused in open court that the persons who will be called are the jurors who will be sworn for the trial and that if the accused wants to challenge any of them the accused must do so before the juror concerned is sworn.

104. Challenging jurors

- (1) An accused cannot object to the whole panel of jurors.
- (2) The right to challenge a juror under subsection (3), (4) or (5) may only be exercised before the juror is sworn.
- (3) The prosecutor may challenge peremptorily —
 - (a) if there is one accused, 3 jurors;
 - (b) if there are 2 or more accused, the number of jurors equal to 3 times the number of accused, whether or not any of the accused consent to join in their challenges.
- (4) The accused, or if there are 2 or more accused, each accused, may challenge 3 jurors peremptorily.
- (5) In addition to the rights in subsections (3) and (4), the prosecutor or an accused may challenge a juror on the ground —
 - (a) that under the *Juries Act 1957* section 5 the juror is not eligible or not qualified to serve as a juror; or

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- (b) that the juror is not indifferent as between the accused and the State of Western Australia.
- (6) If it is necessary to decide any fact for the purposes of determining a challenge made under subsection (5), the fact must be decided by the trial judge on any evidence and in any manner he or she thinks just.

[Section 104 amended: No. 13 of 2011 s. 4 and 38.]

105. Jurors to be sworn

Each juror must take an oath or make an affirmation to give a true verdict according to the evidence upon the issues to be tried by the juror.

106. Jury to be informed of certain matters

After a jury is sworn it must be informed in such manner as the judge decides is just —

- (a) of the charge or charges in the indictment; and
- (b) of their duty as jurors in the trial.

107. Plea of guilty after jury is sworn

- (1) At any time after a jury is sworn and before it gives its verdict on a charge against an accused, the accused may plead guilty to the charge or, with the prosecutor's consent, any other offence of which the accused might be convicted instead of the charge.
- (2) If such a plea is entered, the judge must discharge the jury from giving its verdict on the charge and deal with the accused in accordance with section 147.

108. No case to answer, judge may acquit accused

- (1) If at any time after the close of the prosecutor's case and before the jury gives its verdict on a charge the judge is satisfied that the accused has no case to answer on the charge, the judge —
 - (a) may find the accused not guilty of the charge without requiring the jury to give its verdict on the charge; and
 - (b) if such a finding is made —
 - (i) must not direct the jury to return a verdict of not guilty on the charge; and
 - (ii) must discharge the jury from giving its verdict on the charge.

- (2) The power in subsection (1) may be exercised whether or not the accused has submitted that there is no case to answer on the charge.
- (3) The power in subsection (1) may be exercised in relation to any offence of which the accused might be convicted instead of a charge.

109. View by jury

- (1) The judge may at any time order the jury to view a place or thing and may give any orders necessary for the view to take place.
- (2) If a person contravenes such an order —
 - (a) the judge may discharge the jury from giving its verdict, if it is in the interests of justice to do so; and
 - (b) the person is guilty of an offence and is liable to a fine of \$12 000 or imprisonment for 12 months.

110. Jury may be given records etc. to assist understanding

- (1) On the application of a party or on his or her own initiative, the judge may order that the jury be given, on any conditions the judge orders, any record (including any document in the court's record) or thing that may assist the jury to understand the issues or the law, or to understand and assess the evidence.
- (2) Such an order may be made at any time in a trial before the jury gives its verdict.

111. Jury not to separate or communicate with others

- (1) For the purposes of this section, a trial by jury begins when the first juror is sworn and ends when the jury gives or is discharged from giving its verdict and includes any period when the jury is considering its verdict and any period when the trial is adjourned.
- (2) During a trial by jury —
 - (a) the jury must not separate unless permitted to do so under subsection (4)(a); and
 - (b) the jury must not leave the charge of a court officer during any adjournment of the trial, unless it has been permitted to separate under subsection (4)(a); and

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- (c) there must not be any communication between a juror and a person who is not a juror, except as permitted under subsection (4)(b).
- (3) Subsection (2)(c) does not apply to any communication between a juror and the judge or the court officer in charge of the jury, or by a party to the trial to the jury as part of the ordinary course of the trial.
- (4) Despite subsection (2), the judge —
 - (a) may permit the jury to separate during any adjournment of a trial by jury subject to any condition that the judge thinks necessary to impose in the interests of justice; and
 - (b) may permit a juror and a person who is not a juror to communicate subject to any condition that the judge thinks necessary to impose in the interests of justice.
- (5) If subsection (2) or a condition imposed under subsection (4) is contravened, the judge may discharge the jury from giving its verdict, if it is in the interests of justice to do so.
- (6) A juror who contravenes subsection (2) or a condition imposed under subsection (4) is guilty of an offence and is liable to a fine of \$12 000 or imprisonment for 12 months.
- (7) A person who contravenes subsection (2)(c) or a condition imposed under subsection (4)(b) is guilty of an offence and is liable to a fine of \$12 000 or imprisonment for 12 months.

[Section 111 inserted: No. 2 of 2008 s. 24.]

112. Judge to address jury before it deliberates

After addresses have been made in accordance with section 145 and before the jury retires to consider its verdict, the judge must instruct the jury on the law applicable to the case and may make any observations about the evidence that the judge thinks necessary in the interests of justice.

113. Special verdict may be required

- (1) If in a trial the question arises whether, under *The Criminal Code* section 27, the accused was not criminally responsible for an act or omission on account of unsoundness of mind, the judge must direct the jury that if it finds the accused not guilty of the charge on account of unsoundness of mind, it must return a special verdict to that effect.

- (2) If the judge is of the opinion that the proper sentence or order to be imposed —
- (a) on an accused if convicted; or
 - (b) on an accused if found not guilty on account of unsoundness of mind,

may depend upon a specific fact, the judge may require the jury to give its verdict on that fact specifically.

114. Jury's verdict to be unanimous except in some cases

- (1) Subject to this section, the verdict of a jury must be the unanimous verdict of its members.
- (2) If a jury trying a charge has retired to consider its verdict and, having deliberated for at least 3 hours, has not arrived at a unanimous verdict, the decision of 10 or more of the jurors shall be taken as the verdict on the charge.
- (3) If a jury trying a charge has retired to consider its verdict and, having deliberated for at least 3 hours, 10 or more of the jurors have not agreed on a verdict, the judge may discharge the jury from giving its verdict on the charge.
- (4) Subsections (2) and (3) do not apply to a charge of murder.
- (5) Subsections (2) and (3) do not prevent a judge from requiring a jury to deliberate for more than 3 hours.

[Section 114 amended: No. 29 of 2008 s. 30.]

115. Discharging juror

- (1) The powers in this section may be exercised at any time before a jury gives its verdict.
- (2) The judge may discharge a juror from a jury if satisfied that the juror should not be required or allowed to continue in the jury and if the discharge will leave at least 10 jurors remaining.
- (3) If a juror is discharged under subsection (2) the verdict of the remaining 10 or more jurors has the same effect as if the whole jury had continued to be present.
- (4) The discharge of a juror from a jury does not affect any duty of the juror to attend under the *Juries Act 1957*.

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116. Discharging jury

- (1) The powers in this section may be exercised at any time before a jury gives its verdict.
- (2) The judge may discharge the jury from giving its verdict on a charge if the judge is satisfied it is in the interests of justice to do so.
- (3) If under subsection (2) or another enactment a jury is discharged from giving its verdict in a trial of a charge, the trial is discontinued.
- (4) If under subsection (2) or another enactment, a judge discharges a jury from giving its verdict on a charge and another trial of the charge is or may be required, the judge —
 - (a) may order the other trial to begin immediately or at a later time or date set by the judge; or
 - (b) may adjourn the prosecution of the charge.
- (5) Subsection (4) does not affect a judge's powers under section 93 or 108 or to determine the charge in accordance with this Act.
- (6) The discharge of a jury from giving its verdict in a trial does not affect any duty of the jurors to attend under the *Juries Act 1957*.

Division 7 — Trial by judge alone

117. Application of this Division

A reference in any written law to a person being tried or triable by or before a jury, or to the trial of a person taking place before a jury, is, unless the context otherwise requires, to be read as including a reference to a person being tried or triable by a judge alone, or to the trial of a person taking place before a judge alone, under this Division.

118. Trial by judge alone without jury may be ordered

- (1) If an accused is committed on a charge to a superior court or indicted in a superior court on a charge, the prosecutor or the accused may apply to the court for an order that the trial of the charge be by a judge alone without a jury.
- (2) Any such application must be made before the identity of the trial judge is known to the parties.
- (3) On such an application, the court may inform itself in any way it thinks fit.

- (4) On such an application the court may make the order if it considers it is in the interests of justice to do so but, on an application by the prosecutor, must not do so unless the accused consents.
- (5) Without limiting subsection (4), the court may make the order if it considers —
 - (a) that the trial, due to its complexity or length or both, is likely to be unreasonably burdensome to a jury; or
 - (b) that it is likely that acts that may constitute an offence under *The Criminal Code* section 123 would be committed in respect of a member of a jury.
- (6) Without limiting subsection (4), the court may refuse to make the order if it considers the trial will involve a factual issue that requires the application of objective community standards such as an issue of reasonableness, negligence, indecency, obscenity or dangerousness.
- (7) If an accused is charged with 2 or more charges that are to be tried together, the court must not make such an order in respect of one of the charges unless the court also makes such an order in respect of each other charge.
- (8) If 2 or more accused are to be tried together, the court must not make such an order in respect of one of the accused unless the court also makes such an order in respect of each other accused.
- (9) If such an order is made, the court cannot cancel the order after the identity of the trial judge is known to the parties.

119. Law and procedure to be applied

- (1) In a trial by a judge alone, the judge must apply, so far as is practicable, the same principles of law and procedure as would be applied in a trial before a jury.
- (2) In a trial by a judge alone, the judge may view a place or thing.
- (3) If any written or other law —
 - (a) requires information or a warning or instruction to be given to the jury in certain circumstances; or
 - (b) prohibits a warning from being given to a jury in certain circumstances,

the judge in a trial by a judge alone must take the requirement or prohibition into account if those circumstances arise in the course of the trial.

120. Judge's verdict and judgment

- (1) In a trial by a judge alone —
 - (a) the judge may make any findings and give any verdict that a jury could have made or given if the trial had been before a jury; and
 - (b) any finding or verdict of the judge has, for all purposes, the same effect as a finding or verdict of a jury.
- (2) The judgment of the judge in a trial by a judge alone must include the principles of law that he or she has applied and the findings of fact on which he or she has relied.
- (3) The validity of a trial judge's judgment is not affected by a failure to comply with subsection (2).

Division 8 — Miscellaneous

121. Sentences etc. may be stayed pending appeal

- (1) In this section, unless the contrary intention appears —

community order means —

 - (a) a community order within the meaning of the *Sentencing Act 1995*; or
 - (b) a youth community based order, or an intensive youth supervision order, within the meaning of the *Young Offenders Act 1994*;

convicted person means a person —

 - (a) who is convicted by a superior court; or
 - (b) who is committed to a superior court for sentence having been convicted by a court of summary jurisdiction;

stay order means an order that stays the operation of —

 - (a) an order imposing a fine on, or for the payment of compensation or another sum of money by, a convicted person; or
 - (b) a community order imposed on a convicted person; or
 - (c) a reparation order made under the *Sentencing Act 1995* Part 16; or
 - (d) an order for the restitution or delivery of any thing by a convicted person or any other person; or
 - (e) an order for the forfeiture, disposal or destruction of any thing; or

- (f) an order imposing a disqualification on a convicted person; or
 - (g) the *Sale of Goods Act 1895* section 24(1).
- (2) At any time after a person becomes a convicted person and before an appeal under the *Criminal Appeals Act 2004* Part 3 against the conviction or the sentence imposed on the person is commenced, an application for a stay order may be made to the superior court.
- (3) The application may be made by the convicted person, the relevant authorised officer or a person who is, or will be, affected by the order or statutory provision in relation to which the stay order is sought.
- (4) On such an application, the superior court may make a stay order on any terms and conditions it thinks fit, including terms and conditions for the purpose of —
- (a) ensuring that an appeal under the *Criminal Appeals Act 2004* Part 3 is commenced without delay;
 - (b) securing the safe custody of any record or thing while the stay order has effect;
 - (c) requiring security to be given in relation to any order imposing a fine or for the payment of compensation or another sum of money.

122. Incapacity of judge

- (1) If in a trial by jury the trial judge becomes incapable of continuing with the trial —
- (a) another judge may take over the conduct of the trial; but
 - (b) if that does not occur within a reasonable time, some other officer of the court must discharge the jury from giving its verdict.
- (2) If in a trial of an accused the trial judge becomes incapable of continuing with the trial and —
- (a) another judge does not take over the trial under subsection (1)(a); or
 - (b) the trial is being conducted without a jury,
- the accused, if in custody, must remain in custody until he or she can be brought before another judge who may adjourn the case.

123. No fees or costs

- (1) An accused must not be charged a fee by a court for or in respect of any act or proceeding that relates to the prosecution of the accused in a superior court.
- (2) A superior court cannot order a party to a case to pay another party's costs of or relating to proceedings in the court that relate to a charge in an indictment or a charge on which an accused has been committed to the court, except under section 166(2).

124. Rules of court

- (1) A superior court may make rules of court to regulate the practice and procedure to be followed in the court and its registries in relation to all or particular cases that involve the court's criminal jurisdiction.
- (2) Rules of court made by the Supreme Court under subsection (1) operate in respect of the practice and procedure in the District Court unless rules of court made by the District Court under subsection (1) expressly provide otherwise.
- (3) The *Supreme Court Act 1935* sections 168 and 170 apply to any such rules of court being made by the Supreme Court.
- (4) Any such rules of court made by the District Court must be made by a majority of the District Court judges and the *District Court of Western Australia Act 1969* section 89 applies to the rules.
- (5) Without limiting subsection (1) rules of court may —
 - (a) delegate to a registrar of the court any jurisdiction the court has, including under any written law, other than the following jurisdiction —
 - (i) to find a person guilty or not guilty of an offence;
 - (ii) to discharge an accused from a charge;
 - (iii) to consent to the discontinuance of a charge in a case where the accused does not consent to the discontinuance;
 - (iv) to stay a prosecution;
 - (v) to set aside a committal;
 - (vi) to find a person guilty of a contempt of the court;
 - (b) prescribe forms to be used in the court;
 - (c) authorise the chief judicial officer of the court to approve forms to be used in the court.

- (6) A person dissatisfied by a decision made by a registrar of the court under jurisdiction delegated under subsection (5)(a) may appeal to a judge of the court.
- (7) An appeal cannot be commenced more than 21 days after the date of the registrar's decision, unless a judge of the court gives leave to do so.
- (8) The appeal must be conducted in accordance with the rules of court.
- (9) The appeal is to be by way of a new hearing of the issue that was before the registrar.

[Section 124 amended: No. 43 of 2012 s. 4.]

Part 5 — Provisions applicable to any prosecution

Division 1 — Preliminary

125. Application of Part

This Part applies to any prosecution in any court.

Division 2 — Pleas and related matters

126. Pleas available to charges

- (1) If under this Act an accused may or must plead to a charge, the accused may —
 - (a) plead that the court does not have jurisdiction to deal with the accused or the charge;
 - (b) plead that the offence charged is not an offence under any of the provisions referred to in the *Criminal Code Act 1913* section 4;
 - (c) plead that the accused has a defence to the charge under *The Criminal Code* section 17;
 - (d) plead not guilty of the charge on account of unsoundness of mind under *The Criminal Code* section 27;
 - (e) plead not guilty to the charge;
 - (f) plead guilty to the charge or, with the prosecutor's consent, to some other offence of which the accused might be convicted instead of the charge.
- (2) An accused may enter a plea under subsection (1)(b) to a charge at any time before a judgment on the charge is entered against the accused under section 147.
- (3) For the purposes of entering a plea under subsection (1)(c), it is sufficient for the accused to describe the offence of which the accused has been convicted or acquitted in any way in which it is commonly known.
- (4) Unless the accused pleads guilty, 2 or more of the pleas in subsection (1) may be made together.
- (5) If an accused, on being required by a court to plead to a charge —
 - (a) enters a plea other than one permitted by subsection (1);
or
 - (b) does not plead in accordance with subsection (4); or

- (c) does not plead,
the court must enter a plea of not guilty on behalf of the accused, unless —
 - (d) the court, under section 99(4) or (5), enters a plea on behalf of the accused; or
 - (e) the accused is not mentally fit to stand trial under the *Criminal Law (Mentally Impaired Accused) Act 1996*.
- (6) A plea entered by a court under this Act on behalf of an accused has the same effect as if it had been entered by the accused.

127. Plea of no jurisdiction etc., dealing with

- (1) If an accused enters a plea under section 126(1)(b) to a charge, the court may amend the charge.
- (2) If an accused enters a plea under section 126(1)(a), (b) or (c) to a charge, the court must try any issue raised by the plea and, if the court is a superior court —
 - (a) may ascertain any fact by the verdict of a jury if it thinks fit;
 - (b) may refer a question of law to the Court of Appeal in accordance with the *Criminal Appeals Act 2004* section 46.
- (3) If under subsection (2)(b) a superior court refers a question of law to the Court of Appeal, it must adjourn the prosecution until the Court of Appeal gives its judgment.
- (4) If a court rejects a plea entered under section 126(1)(a), (b) or (c) to a charge, the court must require the accused to enter a different plea to the charge and —
 - (a) if any issue raised by the rejected plea was decided in a superior court by a jury, the judge may order any issue raised by the new plea to be tried by that same jury or by another jury; and
 - (b) if the judge orders that same jury to try the new issue, the oaths or affirmations already taken or made by the jurors are to be taken to extend to the new issue and fresh ones are not required.
- (5) Section 126(5) and (6), with any necessary changes, apply if an accused does not plead as required under subsection (4).

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Part 5 Provisions applicable to any prosecution

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128. Plea of no jurisdiction etc., consequences if upheld

- (1) If a court finds, whether or not on a plea by the accused, that it does not have jurisdiction to deal with an accused or a charge, the court must send the charge to a court that does have jurisdiction to deal with the accused and the charge.
- (2) If a court upholds a plea to a charge entered by an accused under section 126(1)(b) it must enter judgment accordingly and discharge the accused from the charge without convicting or acquitting the accused.
- (3) If a court upholds a plea to a charge entered by an accused under section 126(1)(c) it must enter judgment accordingly and discharge the accused from the charge without convicting or acquitting the accused.

129. Plea of guilty, procedure on

- (1) This section applies if an accused pleads guilty in a court but does not apply if the plea is made in a court of summary jurisdiction to a charge that is to be dealt with on indictment.
- (2) Unless the plea is a written plea given to a court of summary jurisdiction, the court must not accept the plea unless —
 - (a) the accused is represented by a legal practitioner; or
 - (b) if the accused is not so represented, the court is satisfied the accused understands the plea and its consequences.
- (3) Before the court sentences the accused, the prosecutor must state aloud to the court the material facts of the offence to which the accused has pleaded guilty.
- (4) If under this Act the accused has been served with one or more written statements of the material facts, the facts stated aloud must be those in the written statement that was last served.
- (5) This section does not affect a court's power to decide the material facts of an offence on the basis of such information as it thinks fit.

[Section 129 amended: No. 2 of 2008 s. 25; No. 21 of 2008 s. 657(8).]

Division 3 — General procedural matters

130. Mental fitness of accused to stand trial

Any question about an accused's mental fitness to stand trial must be dealt with under the *Criminal Law (Mentally Impaired Accused) Act 1996*.

131. Unclear charge, court may order particulars etc.

- (1) The powers in this section may be exercised by a court on its own initiative or on an application by an accused and may be exercised before or during a trial.
- (2) A court may amend or cancel an order made under this section.
- (3) A court may order a prosecutor to give the accused further particulars of a charge.
- (4) If a court is satisfied that a charge that complies with Schedule 1 clause 5(2)(b) is likely to prejudice the accused's defence of the charge, the court may —
 - (a) order the prosecutor to give the accused further particulars of the charge; or
 - (b) exercise a power to amend in section 132.
- (5) If the evidence led by the prosecutor in respect of one charge of an offence discloses that 2 or more of the offences may have been committed, the court may exercise any of the powers in section 132.

132. Amending charges etc.

- (1) The powers in this section may be exercised by a court in relation to a charge at any time before or during a trial.
- (2) The powers in this section may be exercised by a court on its own initiative or on the application of a prosecutor or an accused, unless the contrary intention appears.
- (3) A court, on the application of the prosecutor, may amend a charge.
- (4) Without limiting subsection (3) a court may amend a charge to correct any variance between the charge and the evidence led by the prosecutor in support of it.
- (5) If one charge alleges 2 or more offences and a court is satisfied that the one charge is not permitted by Schedule 1 clause 8, it may amend the prosecution notice or indictment containing the

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charge so that each of the offences is the subject of a separate charge.

- (6) If one charge alleges 2 or more offences and a court is satisfied —
- (a) that the one charge is permitted by Schedule 1 clause 8; and
 - (b) that the trial of the accused on the charge would be unfair because it alleges the 2 or more offences; and
 - (c) that it is reasonably practicable for any of those offences to be the subject of a separate charge; and
 - (d) that the separate charge would be in accordance with Schedule 1,

the court may amend the prosecution notice or indictment containing the charge so as to include one or more separate charges.

- (7) A court that amends a charge, prosecution notice or indictment must ensure the prosecutor and the accused are each given a copy of it.
- (8) If a court amends a charge, prosecution notice or indictment and is satisfied that the amendment prejudices the accused's defence of the prosecution notice or indictment or of a charge in it, the court must adjourn the prosecution notice, indictment or charge, as the case requires.
- (9) If a court amends a prosecution notice or indictment to include a separate charge and at the time of the amendment a trial of the prosecution notice or indictment is in progress, the court —
- (a) may discontinue the trial of all of the charges in, and adjourn, the prosecution notice or indictment; or
 - (b) may continue with the trial of any charge in the prosecution notice or indictment other than the charge that has been included, and adjourn that charge.
- (10) A court may refuse to amend a charge, prosecution notice or indictment if it is satisfied —
- (a) the amendment is material to the merits of the case; and
 - (b) the amendment would prejudice the accused's defence of the charge, prosecution notice or indictment; and
 - (c) an adjournment would not overcome the prejudice.

- (11) If one charge alleges 2 or more offences and a court refuses to amend the charge, the court may order the prosecutor to tell the court to which of the 2 or more offences the charge relates.

133. Separate trials, court may order

- (1) The powers in this section may be exercised by a court on its own initiative or on an application by an accused and may be exercised before or during a trial.
- (2) A court may amend or cancel an order made under this section.
- (3) If a court is satisfied that an accused is likely to be prejudiced in the trial of a prosecution notice or indictment because it contains 2 or more charges, the court may order —
- (a) that the accused be tried separately on one or more of the charges; and
 - (b) the prosecutor to tell the court the order in which the charges will be tried.
- (4) If a court is satisfied that an accused is likely to be prejudiced in the trial of a prosecution notice or indictment because it also charges one or more other accused, the court may order —
- (a) that one or more of the accused be tried separately from the other or others; and
 - (b) the prosecutor to tell the court the order in which the accused will be tried.
- (5) In deciding whether to make an order under subsection (3) or (4) in respect of an indictment to be tried by a jury, it is open to a superior court —
- (a) to decide that any likelihood of the accused being prejudiced can be guarded against by a direction to the jury; and
 - (b) to so decide irrespective of the nature of the offence or offences charged; and
 - (c) to so decide even if —
 - (i) the evidence on one of the charges is inadmissible on another; or
 - (ii) the evidence against one of the accused is not admissible against another,as the case requires.

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- (6) In considering, for the purposes of this section, the likelihood of an accused being prejudiced in the trial by a jury of an indictment that contains 2 or more charges of a sexual nature, the court must not have regard to the possibility that similar fact evidence, the probative value of which outweighs its potentially prejudicial effect, may be the result of collusion or suggestion.
- (7) If a superior court makes or refuses to make an order under subsection (3) or (4) before the day on which the accused's trial is listed to start, the court must not start the trial unless the court is satisfied —
 - (a) that no party who could commence an appeal against the order or refusal under the *Criminal Appeals Act 2004* section 26 intends to do so; or
 - (b) that —
 - (i) the time for commencing such an appeal has expired; and
 - (ii) any such appeal commenced before the time expired has been concluded.

[Section 133 amended: No. 2 of 2008 s. 26.]

134. Separate prosecutions may be dealt with together

- (1) A court may order that 2 or more charges against one accused that are contained in 2 or more separate prosecution notices or indictments be tried together if —
 - (a) the prosecutor consents; and
 - (b) the court has jurisdiction to deal with all of the charges; and
 - (c) the court is satisfied that it is in the interests of justice to do so.
- (2) A court may amend or cancel such an order.
- (3) This section does not permit the trial of a simple offence by a jury.

135. Venue, change of

- (1) The powers in this section may be exercised by a court on its own initiative or on an application by a party to a case.
- (2) If there is a good reason to do so, a court may order that the whole or a part of a case be conducted at another place in the State (whether or not there is a registry of the court or courtroom facilities at the place).

- (3) If there is a good reason to do so, an application for such an order by the prosecutor may be dealt with in the absence of the accused.
- (4) If a court makes such an order it may make any order and issue any document needed to ensure that any person, including the accused, whose presence will be needed, appears at the new place.

[Section 135. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

136. Trial date, court may set on application of party

- (1) If an accused is awaiting trial in a court, the accused or the prosecutor may apply at any time to the court for an order setting a trial date or, if a trial date has already been set, for an earlier trial date.
- (2) On such an application, the court, after hearing all parties to the prosecution, may set a trial date.
- (3) If the court sets a trial date, it may make any order and issue any document needed to ensure that any person, including the accused, whose presence will be needed, appears on the date.

137. Case management powers

- (1) This section does not limit a superior court's inherent powers.
- (2) A power in this section to make an order includes a power to amend or cancel the order.
- (3) Unless this Act or the rules of court or another written law provides otherwise, a court may do any or all of the following for the purposes of controlling and managing cases before it —
 - (a) order the parties to a case —
 - (i) to confer on a “without prejudice” basis or to take other measures before trial to try to identify those facts and issues in the case that are agreed between them and those that will be in issue at the trial of the case;
 - (ii) to attend before the court before trial for the purpose of dealing with case management and pre-trial issues;
 - (iii) to do anything that in the court's opinion will or may facilitate the case being conducted and

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concluded efficiently, economically and expeditiously;

- (b) order 2 or more witnesses who are to give expert opinion evidence, whether for the prosecutor or the accused, and whose evidence has been disclosed —
 - (i) to confer on a “without prejudice” basis before trial in order to identify the differences between them and to resolve as many of them as possible;
 - (ii) to each provide a report to the court that explains which aspects of the evidence to be given by the other are disputed and why.
- (4) Despite section 171(2) but without affecting the operation of the rest of section 171, the courtroom where proceedings ordered under subsection (3)(a) are conducted before a court is not to be regarded as an open court.
- (5) If a person publishes outside a court anything said orally or in writing, any admission made, anything done, or any document prepared, in or for the purpose of proceedings ordered under, or pursuant to an order made under, subsection (3)(a), the person commits an offence.

Penalty:

 - (a) for an individual, a fine of \$12 000 or imprisonment for 12 months;
 - (b) for a corporation, a fine of \$60 000.
- (6) A court of summary jurisdiction may make rules of court for the purposes of this section.

137A. Prosecution disclosure requirements, exceptions to

The operation of sections 42, 61 and 95 is subject to —

- (a) the *Evidence Act 1906* sections 19C and 106HB(3); and
- (b) any other written law that relates to the disclosure of specific information; and
- (c) the law on privilege; and
- (d) the law on public interest immunity.

[Section 137A inserted: No. 5 of 2008 s. 45.]

138. Disclosure requirements, orders as to

- (1) In this section, unless the contrary intention appears —
disclosure requirement means a requirement under section 35, 42, 61, 62, 95 or 96 to disclose material, other than a requirement under section 62(4)(a) or 96(3)(a).
- (2) The powers in this section may be exercised by a court on its own initiative or on an application by a party to a case.
- (3) A court may, in respect of a disclosure requirement, make an order —
 - (a) that dispenses with all or part of the requirement, if it is satisfied —
 - (i) there is a good reason to do so; and
 - (ii) no miscarriage of justice will result;or
 - (b) that shortens or extends the time for obeying the requirement; or
 - (c) that amends or cancels an order made previously under this section, whether by the court or some other court; or
 - (d) as to any other matter that the court considers is just.
- (4) An application for an order under this section may be made by a prosecutor without notice to the accused and may be dealt with in the absence of the accused.
- (4a) Despite section 171, an application by a prosecutor for an order under this section that is made without notice to the accused must not be dealt with in open court and the only people who may be present when it is dealt with are the applicant and those permitted by the court.
- (5) If an order is made under this section in the absence of an accused, the order must not be given or disclosed to the accused without the permission of the court that made it or, if it was made by a court of summary jurisdiction and the accused is committed for trial or sentence to a superior court, of the superior court.

[Section 138 amended: No. 5 of 2008 s. 46.]

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139. Accused's appearance, court's powers to compel

- (1) This section applies if an accused is an individual.
- (2) If a court dealing with a charge against an accused is satisfied that the accused's presence is needed, the court may compel the accused to appear before the court —
 - (a) by issuing a summons to the accused; or
 - (b) by issuing an arrest warrant for the accused; or
 - (c) if the accused is in custody, by issuing an order under the *Prisons Act 1981* section 85.
- (3) The power in subsection (2) may be exercised —
 - (a) whether or not a date for dealing with the charge has been set or a summons or warrant has previously been issued under this or another section; and
 - (b) in the case of an accused who is in custody pursuant to a remand warrant in respect of the charge, to compel the accused to appear on a date prior to the date stated in the warrant for his or her appearance.
- (4) If an accused absents himself or herself during proceedings without leave, the court may issue an arrest warrant for the accused.
- (5) Sections 31 and 32, with any necessary changes, apply respectively to and in respect of a warrant and summons issued under this section.

[Section 139 amended: No. 20 of 2013 s. 51.]

140. Accused may be excluded from proceedings

- (1) Despite sections 88(4) and 172(1), if an accused conducts himself or herself in a manner that makes it impracticable to continue proceedings in his or her presence, the court may order the accused to be removed and the proceedings to proceed in the accused's absence.
- (2) This section does not prevent a court from allowing an accused to be present before the court by means of a video link or audio link or from taking evidence from an accused by either such means.

141. Video and audio links, use of

- (1) This section applies if an accused is required to appear before a court in relation to a charge for any purpose other than to be sentenced.
- (2) Subject to section 77, the court may permit the accused to appear before the court by means of a video link or an audio link.
- (3) When the accused appears before the court by means of a video link or an audio link the court may deal with the charge as if the accused were personally present before it.

Division 4 — Trial matters

142. Accused required to plead at start of trial

Whether or not an accused has previously pleaded to a charge, the court trying the accused on the charge must, at the start of the trial and in such manner as the court decides is just —

- (a) inform the accused of the charge; and
- (b) require the accused to enter a plea in accordance with section 126(1) and (4).

143. Opening addresses

- (1) Before any evidence is given in a trial the prosecutor is entitled to give an opening address to the court about the prosecutor's case.
- (2) Whether or not an accused intends to give or adduce evidence, the accused is entitled to give an opening address to the court about the accused's case.
- (3) Any opening address by an accused must be given, at the accused's option, either —
 - (a) immediately after the prosecutor has given or declined to give an opening address; or
 - (b) if the accused intends to give or adduce evidence, after the close of the prosecutor's case and immediately before the accused gives or adduces the evidence.

144. Accused's entitlement to defend charges

- (1) In the trial of a charge, the accused is entitled to defend the charge and to cross-examine any witness called by the prosecutor and to call, examine and re-examine any witness.

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- (2) The entitlements in subsection (1) are subject to the powers of the court in the *Evidence Act 1906* to control the questioning of witnesses.
- (3) After the close of the prosecutor's case the court must ask the accused if the accused intends to give or adduce any evidence.
- (4) If the accused intends to give evidence as a witness, he or she must give evidence before any other witness is called by the accused, unless the court permits otherwise for a good reason.

145. Closing addresses

- (1) When the parties have finished giving or adducing evidence in a trial, the prosecutor is entitled to give a closing address to the court about the whole case.
- (2) Immediately after the prosecutor has given or declined to give a closing address, the accused is entitled to give a closing address to the court about the whole case.
- (3) If in an accused's closing address any fact is asserted that is not supported by evidence in the trial, the court may permit the prosecutor to give an address to the court in reply to the assertion.

Division 5 — Judgments and related matters

146. Acquittal on account of unsoundness of mind

If under *The Criminal Code* section 27 an accused is found not guilty of a charge on account of unsoundness of mind, whether by a court of summary jurisdiction or by a jury's special verdict or by a judge under section 93(1) or in a trial by the judge alone, the court must record the finding.

147. Judgment, entry of

- (1) If an accused pleads guilty to or is found guilty of a charge, the court, unless it enters judgment under section 128(2), may enter a judgment of conviction of the offence charged in respect of the accused.
- (2) If an accused is found not guilty of a charge on account of unsoundness of mind, the court, unless it enters judgment under section 128(2), may enter a judgment of acquittal of the offence charged on account of unsoundness of mind in respect of the accused.

- (3) If an accused is found not guilty of a charge, other than on account of unsoundness of mind, the court may enter a judgment of acquittal of the offence charged in respect of the accused.

148. Conviction, consequences of

If a court convicts an accused of an offence, then, subject to *The Criminal Code* section 5, the *Sentencing Act 1995* and the *Young Offenders Act 1994*, the court must sentence the accused for the offence and may make other orders in respect of the accused under those Acts or any other relevant written law, as the case requires.

[Section 148 amended: No. 2 of 2008 s. 27.]

149. Acquittal, consequences of

- (1) If a court acquits an accused of a charge on account of unsoundness of mind, the court must deal with the accused under the *Criminal Law (Mentally Impaired Accused) Act 1996*.
- (2) If a court otherwise acquits an accused of a charge, the court must discharge the accused from the charge.

150. Discharge of accused, effect of

- (1) If under this Act a court discharges an accused from a charge in a prosecution notice or indictment —
- (a) the discharge operates as a discharge of the accused from that prosecution of the charge; and
 - (b) the accused must not be kept in custody in relation to the charge in that prosecution notice or indictment; and
 - (c) any bail undertaking by the accused that relates to the charge, and any surety undertaking in respect of the accused in relation to the charge, that is then in effect ceases to be in effect in relation to the charge.
- (2) Subsection (1) does not affect any prosecution of the accused for the charge that may be commenced subsequently.

Division 6 — Prosecutions against corporations

151. Application of this Division

This Division applies if a corporation is charged with an offence before a court.

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Division 6 Prosecutions against corporations

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152. Corporation may appoint representative

- (1) A corporation may appoint an individual, who need not be a legal practitioner, to be its representative in proceedings before the court.
- (2) The appointment need not be under the seal of the corporation.
- (3) The following documents are proof of the appointment of an individual as a corporation's representative in the absence of evidence to the contrary —
 - (a) a document under the seal of the corporation that makes the appointment; or
 - (b) a certificate, signed by an officer (as defined in section 9 of the *Corporations Act 2001* of the Commonwealth) of the corporation, that the appointment has been made.
- (4) A corporation's representative is not, by reason only of the appointment, qualified or entitled to act on behalf of the corporation for any purposes other than those of this Division.

[Section 152 amended: No. 21 of 2008 s. 657(9).]

153. Representative's functions

- (1) A corporation may appear before a court by its representative who on behalf of the corporation may do all things that an accused who is an individual may do before the court.
- (2) If a corporation appears by its representative —
 - (a) a requirement to read, say, ask or do any thing in the presence of the accused is to be construed as a requirement to read, say, ask or do the thing in the presence of the representative; and
 - (b) any thing that must or may be done or said by an accused personally may be done or said by the representative; and
 - (c) any thing done or said or omitted to be said by the representative is to be taken as having been done or said or omitted to be said by the corporation.
- (3) If a corporation does not appear by its representative —
 - (a) it is not necessary for any requirement referred to in subsection (2)(a) to be complied with; and
 - (b) the court must enter a plea of not guilty on behalf of the corporation unless the corporation has entered a plea under section 154.

- (4) This section does not limit the operation of section 172.

154. Pleas by or on behalf of corporation

- (1) Any plea by a corporation to a charge must be in writing and either sealed with the corporation's seal or signed by a representative appointed under section 152.
- (2) A plea signed by the representative is for all purposes to be taken to be the plea of the corporation.

155. Compelling representative to appear

- (1) If a court is satisfied that the presence of a representative of a corporation is needed, the court may issue an approved notice to the corporation that requires it to appear before the court at the time and place specified in the notice by a representative appointed under section 152.
- (2) The approved notice must be served on the corporation in accordance with Schedule 2 clause 4.
- (3) In this Act an approved notice issued under this section is referred to as a *section 155 notice*.
- (4) If a corporation, without a reasonable excuse, does not obey a notice issued under subsection (1) and served on it under subsection (2), it commits an offence.

Penalty: \$60 000.

Division 7 — Witnesses

156. Term used: attendance date

In this Division, unless the contrary intention appears — *attendance date*, in relation to a witness summons, means the date specified in the summons as the date on which the person to whom it is issued is required to obey it.

157. Privilege, claims of not prevented

Nothing in this Division or Schedule 3 prevents a person from claiming privilege in respect of any oral evidence to be given or any record or thing to be produced.

158. Pre-trial statements and examinations of witnesses (Sch. 3)

Schedule 3 has effect.

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Division 7 Witnesses

s. 159

159. Compelling witness to attend court

- (1) On the application of a party to a case, a prescribed court officer may —
 - (a) issue one or both of the following to an individual (the *witness*) —
 - (i) a witness summons that requires the witness to attend the court to give oral evidence in the case;
 - (ii) a witness summons that requires the witness to attend the court and produce to the court a record or thing that is relevant to the case;
 - (b) issue to a corporation (the *witness*) a witness summons that requires the witness to produce to the court a record or thing that is relevant to the case.
- (2) On the application of a party to a case in a court of summary jurisdiction, a magistrate of the court may issue an arrest warrant for an individual (the *witness*) who may be able to give oral evidence, or to produce a record or thing, that is relevant to the case.
- (3) On the application of a party to a case in a superior court, a judge of the court may issue an arrest warrant for an individual (the *witness*) who may be able to give oral evidence, or to produce a record or thing, that is relevant to the case.
- (4) On an application made under subsection (2) or (3) for an arrest warrant the magistrate or judge must refuse to issue the warrant unless satisfied by evidence on oath or affirmation that —
 - (a) the witness is likely to be able to give oral evidence, or to produce a record or thing, that is relevant to the case; and
 - (b) there are reasonable grounds to suspect that the witness would not obey a witness summons if served with it.
- (5) A witness summons issued under subsection (1)(a)(ii) or (b) may require the witness to produce the record or thing concerned to the court on a date before the date of the trial of the case so that the applicant may inspect it before the trial.
- (6) Section 184 applies to and in relation to a prescribed court officer's decision made under subsection (1) to refuse to issue a witness summons.
- (7) If under section 184 the court sets aside the officer's decision, it may issue a witness summons to the witness concerned.

160. Arrest warrant for witness, content of

An arrest warrant for a witness must —

- (a) be in a form prescribed by the regulations; and
- (b) require the person who arrests the witness to bring the witness before the court concerned as soon as is reasonably practicable after doing so; and
- (c) contain any information prescribed by the regulations.

161. Witness summons, content of

- (1) A witness summons that requires the witness to attend to give oral evidence must be in a form prescribed by the regulations.
- (2) A witness summons that requires the witness to attend and produce a record or thing must —
 - (a) be in a form prescribed by the regulations; and
 - (b) describe in reasonable detail the record or thing that the witness is required to produce to the court.
- (3) A witness summons referred to in subsection (1) or (2) must —
 - (a) state where and when the witness is required to obey the summons; and
 - (b) contain any information prescribed by the regulations.

162. Witness summons, service of

- (1) A witness summons must be served on the witness in accordance with Schedule 2 clause 2 or, if the witness is a corporation, Schedule 2 clause 4.
- (2) A witness summons must be served a reasonable time before the attendance date.
- (3) At the time a witness is served with a witness summons, or at a reasonable time before the attendance date —
 - (a) an amount that is likely to be sufficient to meet the reasonable expenses of attending the court must be tendered to the witness; or
 - (b) arrangements to enable the witness to attend the court must be made with the witness; or
 - (c) the means to enable the witness to attend the court must be provided to the witness.
- (4) The person who applied for the witness summons must ensure that subsection (3) is complied with.

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- (5) The person who serves a witness with a witness summons must record how subsection (3) was complied with on a copy of the witness summons.
- (6) If a copy of a witness summons contains information recorded in accordance with subsection (5) it is to be presumed that the information is true, unless the contrary is proved.

163. Witness summons to produce material, procedure on

- (1) A person may obey a witness summons to produce a record or thing by producing the record or thing and delivering it into the custody of the court at the place specified in the summons —
 - (a) at least 2 days before the attendance date in the summons; or
 - (b) on that attendance date.
- (2) If a person obeys a witness summons to produce a record or thing in accordance with subsection (1), the person is released from the summons.
- (3) If a record or thing is produced to a court under a witness summons before the trial of the case concerned, the court must notify the parties and may, before the trial —
 - (a) give leave for any party or other person to inspect the record or thing or to take a copy of the record; or
 - (b) order the record or thing to be returned to the person who produced it on any just conditions; or
 - (c) make any other orders it thinks fit in relation to the record or thing.
- (4) If a record or thing is in the custody of the court when the trial of the case concerned commences, it must be produced at the trial by a court officer and in the absence of the jury, if any.
- (5) A witness who has been served with a witness summons to produce a record or thing must not, in the presence of a jury, be called on to answer the summons or to produce the record or thing unless the witness is in the course of giving oral evidence before the jury.

164. Witnesses, securing further attendance of (Sch. 4)

- (1) When a witness who has been arrested under an arrest warrant is brought before a court, the court may issue a witness summons or make any order under Schedule 4 in order to ensure the witness attends at the hearing concerned.

- (2) Schedule 4 has effect.

165. Witness not attending, procedure on

If a witness who is an individual does not attend to give oral evidence, or does not attend and produce a record or thing, in accordance with —

- (a) a witness summons that has been served on the witness in accordance with section 162; or
- (b) a witness undertaking entered into by the witness,

and the court before which the witness was required to attend is satisfied that —

- (c) the summons was so served or that the undertaking was entered into, as the case requires; and
- (d) the witness is likely to be able to give oral evidence, or to produce a record or thing, that is relevant to the case,

the court may issue an arrest warrant for the witness.

166. Witness summons, cancelling

- (1) On an application by the witness, a party to the case or a person who has a sufficient interest in the witness summons, the court that issued a witness summons may cancel it, wholly or in part and on any terms it thinks fit.
- (2) On such an application the court may order a party to the application to pay all or some of another such party's costs.

167. Discharging witness

- (1) If under this Act a court discharges an accused from a charge the court may also discharge any witness who has been summonsed or who is subject to any witness undertaking in respect of the charge.
- (2) If under this Act a court discharges a witness in a case, any summons to the witness, any witness undertaking by the witness, and any surety undertaking in respect of the witness, that relates to the case and that is then in effect ceases to be in effect.

Division 8 — Miscellaneous

168. Criminal records, proof of

- (1) If an accused is served with a criminal record at least 5 working days before the accused is to be sentenced, the record is

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admissible in the sentencing proceedings as evidence of its contents unless the accused objects.

- (2) If an accused objects to the admission of a criminal record, the court, if requested to do so by the prosecutor, must adjourn the case to allow the prosecutor to prove the criminal record.
- (3) This section does not prevent a court from admitting into evidence, with the accused's consent, a criminal record that has not been served on the accused.
- (4) Subsection (1) does not affect the operation of the *Evidence Act 1906* sections 23 and 47.

169. Prosecution determined by court without jurisdiction

- (1) In this section, unless the contrary intention appears —
jurisdictional error, in relation to a charge against a person being dealt with by a court, means an error of fact or law that is material to whether the court has jurisdiction to deal with the charge.
- (2) If a court that does not have jurisdiction to deal with a charge against a person determines the charge as a result of a jurisdictional error —
 - (a) the court's determination has full force and effect; and
 - (b) anything done as a result of the determination is lawful.
- (3) If a court that does not have jurisdiction to deal with a charge against a person determines a charge as mentioned in subsection (2), a party to the prosecution or the Attorney General may apply to —
 - (a) that court; or
 - (b) if the determination is subject to an appeal, the court dealing with the appeal,for an order varying or setting aside the determination.
- (4) The court to which such an application is made may either —
 - (a) refuse the application; or
 - (b) vary the determination and any sentence imposed or other order made as a result of the determination; or
 - (c) set aside the determination and any sentence imposed or other order made as a result of the determination and order the prosecution to be sent to and dealt with by a

court that does have jurisdiction to deal with the charge
against the person,

and may make any necessary consequential orders.

- (5) If a court is dealing with an appeal in relation to the determination, subsection (4) is in addition to the court's powers on the appeal.

[Section 169 inserted: No. 2 of 2008 s. 28.]

170. Exhibits, retention of etc.

- (1) Every exhibit tendered in evidence to a court in a case must not be released by the court to any person until at least 31 days after the day on which the case is determined or dismissed except —
- (a) to the Supreme Court for the purposes of an appeal against the decision; or
 - (b) under an order made by the Supreme Court; or
 - (c) under subsection (2).
- (2) Despite subsection (1), the court —
- (a) may dispose of an exhibit that it considers is dangerous to retain; or
 - (b) may release an exhibit to a person who is entitled to custody of it if the court considers that —
 - (i) it is dangerous, impracticable or inconvenient for it to be retained under this section; or
 - (ii) it is necessary for that person to have the use of the exhibit.
- (3) A court that under subsection (2)(b) releases an exhibit to a person may require the person, as a condition of being given the exhibit, to give a written undertaking to the court as to the care, maintenance and custody of the exhibit and its re-delivery to the court.
- (4) A person who, without a reasonable excuse, fails to carry out such an undertaking commits an offence.
Penalty: a fine of \$12 000 or imprisonment for 12 months.
- (5) After the 31 days the court may release an exhibit to a person who in the court's opinion is entitled to custody of it or may require the party who tendered it in evidence to collect it.

171. Court to be open, publicity

- (1) In this section, unless the contrary intention appears —
proceedings means proceedings on or in relation to a case.
- (2) Subject to this section, all proceedings in a court are to be in open court and the courtroom where the court sits is to be open to the public unless this Act or the rules of court or another written law provides otherwise.
- (3) On an application by a party to the case, or on its own initiative, a court may order a person who may be called as a witness in proceedings, other than the accused —
 - (a) to leave the courtroom and to remain out of hearing of the courtroom until called to give evidence;
 - (b) not to discuss his or her evidence with a person or persons specified by the court.
- (4) On an application by a party to the case, or on its own initiative, a court may, if satisfied it is in the interests of justice to do so —
 - (a) order any or all persons, or any class of persons, to leave or be excluded from the courtroom during the whole of the proceedings, or a part of them specified by the court;
 - (b) make an order that prohibits the publication outside the courtroom of the whole of the proceedings, or a part or particular of them specified by the court;
 - (c) make an order that prohibits or restricts the publication outside the courtroom of any matter that is likely to lead members of the public to identify a victim of an offence.
- (5) The powers in subsection (4) may be exercised by a court at any time after an accused is charged with an offence and before or after the accused first appears in the court on the charge.
- (6) An order made under subsection (4) may be made subject to conditions specified by the court.
- (7) If a court of summary jurisdiction makes an order under subsection (4)(b) or (c) in a case that involves an indictable charge in respect of which the accused is committed to another court for trial or sentence, the court to which the accused is committed may set aside the order, whether or not it also makes an order under this section.
- (8) A person who, under section 172(3), is entitled to act on behalf of a party to the proceedings must not be excluded from the courtroom under this section.

- (9) If a person contravenes an order to leave the courtroom, the court may order the person to be removed from the courtroom.
- (10) A person who contravenes an order made under this section commits an offence.
- Penalty:
- (a) for an individual, a fine of \$12 000 or imprisonment for 12 months;
 - (b) for a corporation, a fine of \$60 000.
- (11) In proceedings for a contravention of an order made under subsection (4)(c) it is a defence to prove —
- (a) that prior to the publication of the matter the victim, in writing, authorised the publication; and
 - (b) that at the time the victim authorised the publication, the victim had reached 18 years of age and was not a person who, because of mental impairment (as defined in *The Criminal Code*), was incapable of making reasonable judgments in respect of the publication of such matter.

172. Representation of parties

- (1) A party to a case is personally entitled to appear before the court in order to present and conduct the party's case and to call, examine, cross-examine and re-examine witnesses.
- (2) The entitlements in subsection (1) are subject to the powers of the court in the *Evidence Act 1906* to control the questioning of witnesses.
- (3) Unless this Act or another written law expressly provides otherwise, any entitlement of a party under this Act may be performed —
- (a) on a prosecutor's behalf in a court of summary jurisdiction —
 - (i) if the prosecutor is the State or a police officer acting in the course of duty, by a police officer acting in the course of duty; or
 - (ii) if the prosecutor is acting for or on behalf of a public authority, by an officer or employee of the public authority acting in the course of duty, despite the *Legal Profession Act 2008*;
 - (b) on any party's behalf in any court —

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- (i) by a legal practitioner; or
 - (ii) with the court's leave, by a person who is undertaking approved practical legal training requirements (as defined in the *Legal Profession Act 2008* section 21(1)); or
 - (iii) with the court's leave, by a person who is neither a legal practitioner nor a person referred to in subparagraph (ii).
- (4) The court may only give leave under subsection (3)(b)(iii) in exceptional circumstances.
- (5) A person who, having been given leave under subsection (3)(b)(iii), performs any act referred to in subsection (1) or (3) on behalf of a party is not entitled to claim, receive or recover, directly or indirectly, money or other remuneration for doing so.

[Section 172 amended: No. 21 of 2008 s. 657(10); No. 20 of 2013 s. 52.]

[Section 172. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

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173. Unauthorised documents

A person must not —

- (a) sign or authenticate a prosecution notice, indictment, summons, court hearing notice or witness summons, knowing that he or she is not authorised to do so; or
- (b) lodge a prosecution notice or an indictment knowing —
 - (i) that it has been signed by a person who is not authorised to sign it; or
 - (ii) that it has been authenticated by a person who is not authorised to authenticate it.

Penalty: imprisonment for 12 months or a fine of \$12 000.

[Section 173 inserted: No. 20 of 2013 s. 53.]

174. Presumptions as to signatures

If a document that —

- (a) under Part 3 is required to be signed by a person who is an authorised investigator; or
- (b) under Part 4 is required to be signed by a person who is an authorised officer,

purports to be signed by such a person, it is to be taken to have been signed by such a person unless the contrary is proved.

175. Service and proof of service

- (1) Schedule 2 has effect for the purposes of this Act.
- (2) A signed service certificate that contains service information recorded in accordance with Schedule 2 may be tendered in evidence without calling the person who signed the certificate.
- (3) When a service certificate is tendered under subsection (2), it is to be presumed, unless the contrary is proved —
 - (a) that the signature is that of the person who made the certificate; and
 - (b) that the information in the certificate is true.

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- (4) This Act does not prevent a person on whom a document or other thing is required to be served from consenting to being served by some means not in accordance with this Act including by serving it on the person's legal practitioner.
- (5) A person who is served with a document or other thing in a way that is not in accordance with this Act but to which the person has consented is to be taken to have been served in accordance with this Act.

[Section 175 amended: No. 21 of 2008 s. 657(11).]

175A. Served documents, additional copies may be requested

- (1) If a person is served with a document under this Act and the document is subsequently lost, damaged or destroyed, the person may ask the person who was required to serve the document for another copy of the document.
- (2) A person asked for another copy under subsection (1) must give the person another copy if satisfied the document has been lost, damaged or destroyed.
- (3) A person who under subsection (2) gives another copy to a person may charge the person a fee prescribed by the regulations for the copy.

[Section 175A inserted: No. 5 of 2008 s. 47.]

176. Effect of court documents

- (1) In this section, unless the contrary intention appears —
court document means a summons, court hearing notice, section 155 notice, witness summons, warrant or an order or other document issued by a court.
- (2) A court document has effect according to its wording.
- (3) In the absence of evidence to the contrary, it is to be presumed that —
 - (a) a court document that purports to have been issued by a court was in fact issued by the court; and
 - (b) the person who issued a court document was empowered to do so; and
 - (c) any signature on a court document is that of the person who issued it.
- (4) The validity of a court document is not affected by the death of the person who issued it.

177. Warrants, effect of and procedure on

- (1) An arrest warrant for a person issued by a court —
 - (a) remains in effect until the person concerned is brought before the court under the warrant or appears voluntarily in the court, whichever happens first; and
 - (b) is itself sufficient authority to any person to whom it is directed to act according to it.
- (2) A police officer must obey any warrant or other order or direction of a court.
- (3) A police officer who contravenes subsection (2) is to be dealt with under the *Police Act 1892* section 23.
- (4) If an arrest warrant issued under this Act or another written law requires a person to be brought before a court, the person —
 - (a) must be brought before the court as soon as practicable; and
 - (b) may be brought before the court at any place where it is sitting; and
 - (c) despite section 77, must be brought before the court in person or, if that is not practicable, by means of a video link or audio link between the court and the place where the person is in custody.
- (5) An audio link must not be used under subsection (4) unless a video link is not available and cannot reasonably be made available.
- (6) A person who is brought to a court under a warrant may be held in custody under the warrant until —
 - (a) the court releases the person or issues another warrant that authorises the person to be held in custody; or
 - (b) the person, in accordance with a grant of bail, or an order made under Schedule 4 clause 2(4), by the court, is released.
- (7) If a warrant says that a person (the *detainee*) must be brought before a court at a time and on a day stated in the warrant and due to exceptional circumstances a person to whom a warrant is directed is unable to do so, the warrant authorises the person to keep the detainee in custody —
 - (a) until the end of that day; or

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- (b) until another remand warrant is issued in respect of the detainee,

whichever happens first.

- (8) If an accused is not brought before a court in accordance with a remand warrant, the court, on its own initiative or on the application of the prosecutor and in the absence of the accused, may adjourn the case.

178. Defects etc. in court documents

- (1) In this section, unless the contrary intention appears —
court document means a prosecution notice, indictment, summons, court hearing notice, section 155 notice, witness summons, warrant, or an order or other document issued by a court in a case.
- (2) Any objection by an accused to a prosecution notice or indictment on the ground that it is defective must be made before the prosecutor's opening address.
- (3) If a court document is defective in substance or form, the court, on an application by a party or on its own initiative —
 - (a) must order that the document be corrected if the defect is not material to the merits of the case;
 - (b) may order that the document be corrected in any other case.
- (4) If a court makes an order under this section —
 - (a) the court document must be amended accordingly by the court or some person ordered to do so by the court; and
 - (b) each party is entitled to a copy of the amended court document; and
 - (c) the court may adjourn the case.
- (5) This section is in addition to and does not affect the operation of section 132.

179. Errors in court records due to use of wrong or false name

- (1) If as a result of an accused using a false name, address or date of birth, a record of a court does not record the accused's correct name, address or date of birth, the court may correct the record and make any ancillary orders needed to give effect to the correction.

- (b) that the officer took all measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.

181. Disobeying summons, offence

- (1) If an accused, without a reasonable excuse, does not obey a summons that has been served on the accused in accordance with section 32(2), the accused commits an offence.
Penalty: a fine of \$12 000 or imprisonment for 12 months.
- (2) If a person, without a reasonable excuse, does not obey a witness summons that has been served on the person in accordance with section 162, the witness commits an offence.
Penalty:
 - (a) for an individual, a fine of \$12 000 or imprisonment for 12 months;
 - (b) for a corporation, a fine of \$60 000.
- (3) A prosecution for an offence under this section may be commenced at any time.
- (4) A court that convicts a person of an offence under this section may, in addition to the sentence it imposes, order the person to pay a sum set by the court in or towards meeting any costs and expenses that were incurred in arresting and bringing the person before the court after his or her failure to appear or attend as required by the summons.
- (5) An order made under subsection (4) —
 - (a) must specify how and to whom the sum is to be paid; and
 - (b) may be enforced as if the sum were a fine imposed for an offence.

Division 3 — General

182. Appointment of people to prosecute offences

- (1) The Governor may appoint a person who is not otherwise authorised under this Act to do so, including an officer of another jurisdiction in Australia, to prosecute offences.
- (2) Such an appointment may be made subject to any terms the Governor thinks fit including restrictions as to which offences

or classes of offences it applies and as to the circumstances in which the power to prosecute may be exercised.

- (3) The Governor's power in subsection (1) may be exercised in relation to any offence and despite any enactment that limits who may commence or conduct a prosecution for the offence.
- (4) Any such appointment must be in writing and must specify any such terms.
- (5) In the absence of evidence to the contrary, a court must presume that a person appointed under subsection (1) is acting in accordance with any terms applicable to it.

183. Contempts, summary punishment of not prevented

This Act does not affect the authority of a court to deal with and punish a person summarily for an act or omission that is a contempt of the court, but a person cannot be so punished and also punished for an offence under this Act constituted by the same act or omission.

184. Decisions by court officer, review of

- (1) This section only applies to a decision made by a prescribed court officer under a provision of this Act if the provision says this section applies to and in relation to the decision.
- (2) A person who is dissatisfied with the decision may apply to the court for a review of the decision.
- (3) The application must —
 - (a) be made on a form prescribed by the regulations; and
 - (b) be made within 7 days after the date of the decision.
- (4) The court may allow an application to be made out of time and may do so even if the 7 days have elapsed.
- (5) If the application is made to a court of summary jurisdiction or the Children's Court, the court must be constituted by a magistrate.
- (6) The court may confirm the officer's decision or set it aside and make any decision that the officer could have made, and may do so on any just conditions.

185. Enforcing orders to pay money, other than fines etc.

- (1) In this section, unless the contrary intention appears —
payment order means an order requiring a person to pay money, other than —
- (a) a fine within the meaning of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 28; or
 - (b) compensation to be paid under a compensation order made under the *Sentencing Act 1995* Part 16; or
 - (c) a sum the payment of which is enforceable under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* Part 5; or
 - (d) any costs ordered to be paid under the *Official Prosecutions (Accused's Costs) Act 1973*.
- (2) This section applies if a court makes a payment order.
- (3) If the court is a superior court it may also make an order under the *Sentencing Act 1995* section 59 which, for that purpose, applies with any necessary changes as if the money to be paid under the payment order were a fine imposed on the person.
- (4) If —
- (a) the court is not a superior court or the court is a superior court but does not make an order under the *Sentencing Act 1995* section 59; and
 - (b) the money to be paid under the payment order is not paid within 28 days after the date of the order,
- the person to whom the money is to be paid may enforce the order by lodging a copy of it, certified as a true copy by the court, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.
- (5) When lodged with the court of competent jurisdiction, the order is to be taken to be a judgment of that court and may be enforced accordingly.
- (6) This section does not prevent the recovery of the money by means expressly provided by a written law.

186. Regulations

- (1) The Governor may make regulations prescribing any matter that is required or permitted by this Act to be prescribed, or that is necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may —
 - (a) prescribe the fees to be paid in courts of summary jurisdiction;
 - (b) prescribe forms to be used in courts;
 - (c) prescribe how applications to a court under this Act or another written law must be made and conducted;
 - (d) prescribe requirements relating to the lodging of documents with a court under this Act or another written law.

[Section 186 amended: No. 20 of 2013 s. 54.]

Schedule 1 — Prosecution notices and indictments

[s. 23, 85]

Division 1 — Preliminary

1. Terms used

In this Schedule, unless the contrary intention appears —
receiving means the offence under *The Criminal Code* section 414;
stealing means the offence under *The Criminal Code* section 378.

Division 2 — Contents of prosecution notices and indictments

2. General rules

- (1) A prosecution notice or indictment must not allege both an indictable offence and a simple offence.
- (2) A prosecution notice or indictment must relate to one accused only, unless clause 7 or another written law permits otherwise.
- (3) A prosecution notice or indictment must contain one charge only, unless clause 7 or another written law permits otherwise.
- (4) A charge must allege one offence only, unless clause 8 or another written law permits otherwise.
- (5) If a prosecution notice or indictment contains more than one charge, each charge must be in a separate and consecutively numbered paragraph.
- (6) An indictment must list the witnesses who the prosecutor intends to summons to give evidence in any trial of the indictment.

3. Prosecutor to be identified

- (1) A prosecution notice must identify the prosecutor.
- (2) For the purposes of subclause (1) it is sufficient for a prosecution notice —
 - (a) if a prosecution is being commenced by a police officer, to name the “WA Police” as the prosecutor;
 - (b) if a prosecution is being commenced by a person who is acting in the course of his or her duties as a public authority or as an employee of a public authority, or who is authorised by a public authority to commence the prosecution, to name the public authority as the prosecutor,

if the prosecution notice identifies the individual who issues the notice and is signed in accordance with section 23(3).

- (3) An indictment must be commenced in the name of the State of Western Australia.

4. Accused to be identified

- (1) A prosecution notice or indictment must identify the accused —
- (a) if the accused is an individual, by means of the accused's full name and, if known, date of birth and usual place of residence;
 - (b) if the accused is a corporation, by means of its name and, if it has one, the ACN given to it under the *Corporations Act 2001* of the Commonwealth.
- (2) If the circumstances so require, an accused who is an individual may be identified, additionally or alternatively to the requirements of subclause (1)(a), by one or more of the following —
- (a) a photograph of the accused, attached to the prosecution notice or indictment;
 - (b) a print of the accused's hands (including fingers), feet (including toes), or ears, that will identify him or her, attached to the prosecution notice or indictment;
 - (c) a reference to the accused's DNA profile in the prosecution notice or indictment.

5. Alleged offence to be described

- (1) A charge in a prosecution notice or indictment must inform the accused of the alleged offence in enough detail to enable the accused to understand and defend the charge, and in particular must —
- (a) describe the offence with reasonable clarity; and
 - (b) identify the written law and the provision of it that creates the offence; and
 - (c) identify with reasonable clarity —
 - (i) the date when the offence was committed or, if the date is not known, the period in which the offence was committed; and
 - (ii) where the offence was committed;
- and
- (d) if the offence is one against a person, identify the person concerned in accordance with clause 6(2); and
 - (e) if the offence relates to property, comply with clause 6(4) and (5).
- (2) For the purposes of subclause (1) —
- (a) it is sufficient to describe an offence in the words of the written law that creates it; and

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Division 2 Contents of prosecution notices and indictments

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- (b) if that written law states that alternative acts, omissions, capacities, or intentions, constitute the offence, the alternatives may be set out; and
- (c) a charge is not defective only because an element of the offence is not stated; and
- (d) it is not necessary to allege —
 - (i) any matter, or any particulars as to a person or thing, that need not be proved; or
 - (ii) the means or thing used to do an act constituting an offence unless the means or thing is an element of the offence.

6. Alleging particular matters and offences

- (1) In a charge, figures and abbreviations may be used to express anything if they are usually used to do so.
- (2) If in a charge it is necessary to identify a person other than the accused, it is sufficient to refer to —
 - (a) the person by any means that adequately identifies the person; and
 - (b) “a person unknown” if the person’s identity has not been able to be ascertained; and
 - (c) the Commonwealth of Australia by “the Commonwealth”; and
 - (d) a State of the Commonwealth by the name of the State; and
 - (e) a Territory by the name of the Territory; and
 - (f) the holder of a statutory office by the name of the office and not the holder.
- (3) In a charge that relates or refers to a document, it is sufficient to describe the document by any name by which it is usually known or by reference to its subject matter or effect.
- (4) If in a charge it is necessary to mention money, it is sufficient to mention the currency and the amount without specifying whether it is in the form of coins, bank notes, a cheque, or some other form.
- (5) In a charge that alleges an offence relating to property —
 - (a) it is not necessary to allege the value of the property unless the value —
 - (i) is an element of the offence; or
 - (ii) is relevant for the purposes of deciding whether the offence must or may be dealt with on indictment or summarily; or
 - (iii) is relevant for the purposes of a written law; or
 - (iv) is relevant to the offence’s statutory penalty;

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- (11) A charge that alleges an offence involving the giving of false evidence, false information or a false statement (whether those words or others are used) to a person or body need not allege the jurisdiction of the person or body.
- (12) In a charge that alleges an offence involving the giving of false evidence, false information or a false statement (whether those words or others are used) —
 - (a) it is sufficient to allege the effect of the evidence, information or statement, or as much of the effect as is material, without alleging the actual evidence, information or statement given; and
 - (b) the charge may allege that in the evidence, information or statement the accused said 2 or more things that conflict irreconcilably, without specifying which of them is false.

7. Multiple charges and multiple accused

- (1) A prosecution notice or indictment may charge 2 or more offences as alternatives to one another.
- (2) Unless 2 or more charges are expressly said by a prosecution notice or indictment to be alternatives to one another, they are not.
- (3) A prosecution notice or indictment may charge one or more persons with 2 or more offences if the offences —
 - (a) form or are a part of a series of offences of the same or a similar character; or
 - (b) are alleged to arise substantially out of the same or closely related acts or omissions; or
 - (c) are alleged to arise from a series of acts or omissions done or omitted to be done in the prosecution of a single purpose,and may do so without alleging a connection between the offences.
- (4) A prosecution notice or indictment may charge 2 or more persons with —
 - (a) committing the one offence; or
 - (b) aiding another person in committing the one offence, although at different times; or
 - (c) counselling or procuring the commission of the one offence, although at different times; or
 - (d) being accessories after the fact to the one offence, although at different times,

and may do so whether or not the principal offender is one of the persons so charged or is charged in the same prosecution notice or indictment.

- (5) A prosecution notice or indictment may charge one or more persons with any 2 or more of these offences, as alternatives to one another —
- (a) an offence under *The Criminal Code* section 401(2) where the offence alleged to have been committed is stealing;
 - (b) stealing;
 - (c) receiving,

if the property concerned in each offence charged is the same or partly the same.

- (6) A prosecution notice or indictment may charge 2 or more persons with receiving the same property, although at different times, and notwithstanding that the person who obtained the property is not charged in the same prosecution notice or indictment.

8. Multiple offences may be charged as one in some cases

- (1) If it is alleged that a person committed more than one assault on one other person during one incident, the person may be charged with one offence of assault, or of which assault is an element, in respect of the other person.
- (2) If in the case of an offence of being illegally in possession of a thing (whether material or non-material) it is alleged that a person was illegally in possession of more than one of the things at one time, the person may be charged with one offence of possessing all of the things.
- (3) If it is alleged that on more than one occasion over a period a person stole property, the person may be charged with one offence of stealing all of the property as a general deficiency comprised of various quantities of various property stolen over the period.
- (4) If —
- (a) it is alleged that on more than one occasion over a period a person stole identifiable property; and
 - (b) it is not reasonably practicable to identify —
 - (i) which of the property or what quantity of the property was stolen on each occasion; or
 - (ii) from whom the property was stolen on each occasion,

the person may be charged with one offence of stealing all of the property.

- (5) If —
- (a) it is alleged that on more than one occasion over a period a person committed receiving in relation to identifiable property; and

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- (b) it is not reasonably practicable to identify which of the property or what quantity of the property was received on each occasion,

the person may be charged with one offence of receiving all of the property.

Division 3 — Effect of certain charges

9. Joined charges and accused to be tried together

- (1) If one prosecution notice or indictment contains 2 or more charges the charges must be tried together unless a court orders otherwise under this Act.
- (2) If one charge charges 2 or more accused, they must be tried together unless a court orders otherwise under this Act.

10. Charge of offence relating to property

If it is necessary to prove the ownership of property and a charge complies with clause 6(5)(d), it is sufficient to prove that the property was owned by one or other of the persons at the relevant time without proving which was the owner.

11. Charge of burglary, stealing or receiving

- (1) In this clause, unless the contrary intention appears —
court means —
 - (a) if a charge is being tried by a court of summary jurisdiction or by a superior court constituted by a judge without a jury, the court;
 - (b) if a charge is being tried by a superior court constituted by a judge and a jury, the jury instructed by a judge.
- (2) On a charge against one accused that complies with clause 7(5) —
 - (a) the accused may be found guilty of any one of the offences;
 - (b) if the court is satisfied that the accused committed one of the offences but is unable to say which one, the court may find the accused guilty of the offence that, in the court's opinion based on the facts of the case, is the least serious offence.
- (3) On a charge against 2 or more accused that complies with clause 7(5) —
 - (a) each accused may be found guilty of any one of the offences charged;
 - (b) any accused who is found guilty need not be found guilty of the same offence as any other accused who is found guilty;
 - (c) if the court is satisfied that an accused committed one of the offences but is unable to say which one, the court may find

Schedule 2 — Service of documents and other things

[s. 175]

1. Term used: service information

In this Schedule, unless the contrary intention appears —
service information, in relation to the service of a document or other thing under this Schedule, means information about the service that is required by the document or the regulations.

2. Personal service on individuals

- (1) This clause does not apply in relation to serving a corporation.
- (2) To serve a document or other thing on an individual (the *named person*) in accordance with this clause, another person must —
 - (a) hand it to the named person in person; or
 - (b) if the named person refuses to accept it, leave it near the named person and orally draw his or her attention to it; or
 - (c) hand it to another person who appears to have reached 16 years of age and who appears to be —
 - (i) residing at; or
 - (ii) in charge of, or employed by the person in charge of, the place where the named person is known to reside or work; or
 - (d) if the named person is in a prison (as that term is defined in the *Prisons Act 1981* section 3), hand it to the chief executive officer (as that term is defined in that section).
- (3) A person who serves a named person with a document or other thing under this clause must record the service information in a service certificate signed by the person.
- (4) A document or other thing that is served under this clause is to be taken to have been served on the named person on the day on which it is handed to or left near a person under this clause.

[Clause 2 amended: No. 2 of 2008 s. 29.]

3. Postal service on individuals and corporations

- (1) This clause applies in relation to serving an individual or a corporation.
- (2) To serve a document or other thing on a person (the *named person*) in accordance with this clause, a person referred to in subclause (4) or (5) must post it to the named person at —

- (a) the address where the named person was last known to reside, work or conduct a business; or
 - (b) if subclause (6), (7) or (8) applies, the address deemed by that subclause to be the named person's last known address, unless there is any reason for the person referred to in subclause (4) or (5) to believe that that address is not where the named person resides, works or conducts a business,
- and, if necessary, in accordance with subclause (3).
- (3) If the document is a court hearing notice, it must be posted under subclause (2) at least 14 days before the court date stated in the notice.
 - (4) If the document is an infringement notice issued under Part 2, the person who posts it must be an authorised officer (as defined in section 4).
 - (5) If the thing being served is or relates to a prosecution notice, the person who posts the thing must be —
 - (a) an officer of the court concerned; or
 - (b) the prosecutor; or
 - (c) a person authorised in writing to do so by the prosecutor.
 - (6) If the thing being served is or relates to an infringement notice or a prosecution notice that alleges the named person committed an offence arising from the driving or use of a vehicle, the address of the named person in a driver's licence produced by the person during the investigation of the offence is deemed to be the named person's last known address.
 - (7) If the thing being served is or relates to an infringement notice or a prosecution notice that alleges the named person committed an offence as the owner of a vehicle, the address of the named person that is recorded as the address of the owner on the vehicle licence for the vehicle that is in force at the time of the alleged offence is deemed to be the named person's last known address.
 - (8) If the thing being served is or relates to an infringement notice or a prosecution notice that alleges the named person committed an offence under a written law, the address of the named person, or of any premises of which the person is the owner or occupier, in any licence, permit or similar document that is in force at the time of the alleged offence under that law or a law connected to that law is deemed to be the named person's last known address.
 - (9) For the purposes of subclause (8) a law is connected to a written law if it is —
 - (a) subsidiary legislation made under that written law; or
 - (b) the law that empowers the making of that written law as subsidiary legislation; or

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- (c) a code or similar provision adopted or enacted by that written law; or
 - (d) the law that adopted or enacted that written law as a code or similar provision.
- (10) A person who serves a named person with a document or other thing under this clause must record the service information in a service certificate signed by the person.
- (11) A document or other thing that is posted under this clause is to be taken to have been served on the named person on the fourth working day after the date on which it was posted unless the postal service returns it to the sender or the contrary is proved.

[Clause 3 amended: No. 5 of 2008 s. 48(1).]

4. Service on corporations

- (1) This clause does not apply in relation to serving an individual.
- (2) To serve a document or other thing on a corporation (the ***named person***) in accordance with this clause, it must be served on the named person in accordance with —
- (a) section 109X of the *Corporations Act 2001* of the Commonwealth if the named person is a company within the meaning of that Act; or
 - (b) section 601CX of the *Corporations Act 2001* of the Commonwealth if the named person is a registered body within the meaning of that Act; or
 - (c) the *Associations Incorporation Act 2015* section 176 if the named person is an incorporated association under that Act; or
 - (d) by leaving it at, or posting it to, the corporation's principal place of business if the named person is any other corporation,
- and, if necessary, in accordance with subclause (3).
- (3) If the document is a court hearing notice, it must be posted under subclause (2) at least 14 days before the court date stated in the notice.
- (4) A person who serves a named person with a document or other thing under this clause must record the service information in a service certificate signed by the person.
- (5) A document or other thing that is posted under this clause is to be taken to have been served on the named person on the fourth working day after the date on which it was posted unless the postal service returns it to the sender or the contrary is proved.

[Clause 4 amended: No. 5 of 2008 s. 48(2); No. 30 of 2015 s. 214.]

5. False service information, offence

A person who records any service information in a service certificate that is false in a material particular commits an offence.

Penalty: a fine of \$12 000 or imprisonment for 12 months.

**Schedule 3 — Pre-trial statements and examinations
of witnesses**

[s. 158]

1. Term used: relevant court

In this Schedule, unless the contrary intention appears —

relevant court, in relation to a charge against an accused, means —

- (a) if the accused is committed to a superior court on the charge, or if an indictment containing the charge is lodged in a superior court, the superior court;
- (b) otherwise, the court of summary jurisdiction in which the accused is charged.

2. Evidence Act 1906 not affected

This Schedule is in addition to and does not limit the operation of the *Evidence Act 1906*.

3. Admissibility of dying declarations not affected

This Schedule does not affect the law as to the admissibility of dying declarations.

4. Witness statements, formalities of

- (1) A written statement containing the evidence of a witness that is or may be relevant to a charge is made in accordance with this clause if the statement complies with the conditions in subclause (3).
- (2) An electronically recorded statement containing the evidence of a witness that is or may be relevant to a charge is made in accordance with this clause if the statement complies with the conditions in subclause (4).
- (3) The conditions with which a written statement must comply are as follows —
 - (a) the statement identifies the person making it (the *maker*); and
 - (b) if the maker is under 18 years of age, it states his or her age; and
 - (c) unless the maker is under 12 years of age, it contains a declaration in accordance with subclause (5); and
 - (d) the statement purports to be signed by the maker; and
 - (e) if the statement is made by a person who cannot read, it is read aloud to the maker before the maker signs it, and it is accompanied by a declaration of the person who read the statement to the effect that it was so read.

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- (4) The conditions with which an electronically recorded statement must comply are as follows —
- (a) the statement identifies the person making it (the *maker*); and
 - (b) if the maker is under 18 years of age, it states his or her age; and
 - (c) unless the maker is under 12 years of age, it contains a declaration in accordance with subclause (5).
- (5) A declaration is in accordance with this subclause if it contains words to the following effect —
- This statement is true to the best of my knowledge and belief. I have made this statement knowing that, if it is tendered in evidence, I will be guilty of a crime if I have wilfully included in the statement anything that I know to be false or that I do not believe is true.
- (6) A statement is deemed to be tendered in evidence under this clause at the time that the statement is tendered to the court.
- (7) Any document or object referred to as an exhibit and identified in a statement tendered in evidence under this clause is deemed to have been produced before the court and identified by the maker of the statement.
- (8) If the maker of a statement that is tendered in evidence under this clause wilfully includes anything in it that he or she knows is false or that he or she does not believe is true, he or she is guilty of a crime and is liable to imprisonment for 7 years.

5. Examination of witness, court may order

- (1) At any time after a person is charged with an offence and before the trial of the charge, the prosecutor may apply to the relevant court for an order that a person who is or may be able to give evidence that is or may be relevant to the charge (the *witness*) be examined and recorded under clause 6 before the trial of the charge.
- (2) The application must be served on the accused and must be dealt with in the presence of the accused unless the relevant court orders otherwise.
- (3) A relevant court may only make an order under subclause (2) if it is satisfied that the order is necessary —
- (a) to protect the safety or welfare of a person, including the witness; or
 - (b) to prevent interference with the course of justice; or
 - (c) for any other good reason.
- (4) On an application made under subclause (1) the relevant court may make the order if it is satisfied that the witness —

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- (a) is or may be able to give evidence that is or may be relevant to the charge; and
 - (b) despite a request to do so from the person in charge of investigating the alleged offence or the prosecutor, has refused to make a statement that complies with clause 4 and that contains the witness's evidence in relation to the charge.
- (5) If a court makes an order under subclause (1) it may also issue a witness summons, or an arrest warrant, under Part 5 Division 7, or make any order under Schedule 4, in respect of the witness to ensure the witness appears before the court to be examined under clause 6.

[Clause 5 amended: No. 2 of 2008 s. 30.]

6. Examination of witness, conduct of

- (1) When a witness appears or is brought before a court on a summons or arrest warrant issued under clause 5(5), the witness is to be examined on oath or affirmation, and his or her evidence is to be recorded, in accordance with this clause.
- (2) At the examination —
 - (a) the prosecutor is entitled to examine, and if necessary, re-examine the witness; and
 - (b) the accused is entitled to be present and to cross-examine the witness, unless an order has been made under clause 5(2); and
 - (c) the court must conduct proceedings as if the witness were giving evidence in a trial of the charge concerned but must not allow the witness to be cross-examined on any matter —
 - (i) that relates solely to his or her credibility; or
 - (ii) that does not relate directly to evidence given by him or her when being examined by the prosecutor.
- (3) A court conducting an examination of a witness under this clause is not prevented from making orders under the *Evidence Act 1906* sections 106A to 106T in relation to the witness.
- (4) The court must ensure that the evidence of the witness is —
 - (a) electronically recorded; or
 - (b) if electronically recording it is not practicable, recorded directly in writing.
- (5) If the evidence of a witness is electronically recorded, the court may order the evidence to be transcribed, in which case the transcript must be checked and certified as correct in accordance with the regulations.
- (6) If the evidence of a witness is recorded directly in writing, the evidence must be read to or by the witness, signed by the witness and signed by the judicial officer constituting the court.

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- (7) The court must give a copy of the recording of a witness's evidence and any transcript of it to the prosecutor and, if the accused was present at the examination of the witness, the accused.
- (8) If a person publishes any evidence given by a witness on an examination under this clause before the evidence is given in open court in a trial or in sentencing proceedings, or before its substance is stated aloud under section 129, the person commits an offence.
- Penalty:
- (a) for an individual, a fine of \$12 000 or imprisonment for 12 months;
- (b) for a corporation, a fine of \$60 000.
- (9) Subclauses (7) and (8) do not affect any legal obligation that a prosecutor has in the course of a prosecution to lodge or disclose the evidence of a witness.

7. Witness's pre-trial evidence, use of at trial

- (1) A court dealing with a charge may admit into evidence a statement of a witness or a recording of a witness's evidence if the court is satisfied that the statement complies with clause 4 or the recording was made in accordance with clause 6 and —
- (a) that the witness is dead; or
- (b) that the witness's medical or mental condition is such that the witness is unable to give evidence, or to give evidence satisfactorily, notwithstanding that the witness might recover at some future time; or
- (c) that the witness is out of the State and is not able to give evidence at the proceeding by means of a video link or an audio link, notwithstanding that the witness might return at some future time; or
- (d) that the witness is being kept out of the way by the accused; or
- (e) that all the parties consent and that the interests of justice do not require the presence of the witness.
- (2) If there is a prospect that the witness might recover or return, the court need not admit the statement or recording but may adjourn the trial.
- (3) A party who intends to apply to a court for the admission under subclause (1) of a statement or recording must give each other party written notice of the application.
- (4) A party who has received at least 14 days' notice under subclause (3) must not allege —
- (a) that a statement sought to be tendered in evidence does not comply with clause 4; or

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- (b) that a recording sought to be tendered in evidence was not made in accordance with clause 6,

unless the party has given the party who intends to tender it at least 7 days' written notice of the allegation.

- (5) A court may refuse to admit a statement or recording under this clause if the court is satisfied that the admission of the statement or recording would be unfair to the party.
- (6) If a statement or a recording in a written form is admitted in evidence under this clause in a case being tried by a jury, it must be read aloud to the jury but, unless the court orders otherwise, must not be given to the jury.
- (7) If a recording in the form of an electronic recording is admitted in evidence under this clause in a case being tried by a jury, it must be played to the jury but, unless the court orders otherwise, must not be given to the jury.

Schedule 4 — Securing the further attendance of witnesses

[s. 164]

1. Terms used

In this Schedule, unless the contrary intention appears —

relevant court, in relation to a charge, means —

- (a) if the accused is committed to a superior court in relation to the charge, or if an indictment containing the charge is lodged in a superior court, the superior court;
- (b) otherwise, the court of summary jurisdiction in which the accused is charged;

witness undertaking means a written undertaking entered into by a witness in accordance with an order made under clause 2(4).

2. Witness may be imprisoned until trial

- (1) When a witness in relation to a charge attends a court (whether or not having been arrested) the court may order that the witness be imprisoned until released at the trial of the charge by the relevant court.
- (2) A court must not make an order under subclause (1) unless satisfied that —
 - (a) the witness is likely to be able to give oral evidence, or to produce a record or thing, that is relevant to the case; and
 - (b) there are reasonable grounds to suspect that the witness would not obey a witness summons if served with it.
- (3) If a court makes an order under subclause (1) the court must issue a warrant for the witness's imprisonment.
- (4) If an order is made under subclause (1), the relevant court may order that the witness be released before the trial of the case concerned if —
 - (a) he or she enters into a written undertaking to attend at the trial of the case or at some other date set by the court —
 - (i) to give oral evidence; or
 - (ii) to produce to the court a record or thing specified in the order;and
 - (b) any order made under subclause (5) is complied with.
- (5) For the purposes of ensuring a witness attends in accordance with his or her undertaking or in the meantime does not obstruct, prevent, pervert or defeat the course of justice, a court that makes an order under subclause (4) may make an order that requires any or all of the following —

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- (a) the witness to agree in his or her witness undertaking —
 - (i) to forfeit a sum of money specified in the order if the witness does not attend in accordance with his or her undertaking;
 - (ii) to do or not to do anything specified by the court;
- (b) the witness to deposit with the court as a security —
 - (i) the sum of money specified under paragraph (a)(i);
 - (ii) a record or thing and the means by which it can be realised if the witness does not attend in accordance with his or her undertaking;
- (c) one or more sureties to each enter into a surety undertaking under which he or she agrees to forfeit a sum of money specified in the order if the witness does not attend in accordance with the witness's undertaking;
- (d) one or more sureties to deposit with the court as a security —
 - (i) the sum of money specified under paragraph (c);
 - (ii) a record or thing and the means by which it can be realised if the witness does not attend in accordance with the witness's undertaking.
- (6) On the application of the witness or on its own initiative, the relevant court may at any time cancel a warrant to imprison a witness or amend or cancel an order made under subclause (4) or (5).
- (7) If a witness is no longer required to give oral evidence or to produce a record or thing, the relevant court must cancel the warrant to imprison the witness and make any consequential orders needed in relation to anything done under an order made under subclause (5).

3. Witness undertakings, provisions about

- (1) A witness undertaking may be entered into before the judicial officer who made the order requiring the undertaking or any person referred to in the *Bail Act 1982* section 29.
- (2) The person before whom a witness undertaking is entered into must comply with the *Bail Act 1982* section 30 which applies, with any necessary changes, as if the witness were an accused and the witness undertaking were a bail undertaking.
- (3) The *Bail Act 1982* sections 31, 31A and 32 apply, with any necessary changes, in relation to a witness undertaking as if the witness were an accused and the witness undertaking were a bail undertaking.
- (4) If the party that applied for a witness summons or an arrest warrant for a witness, or a police officer, has reasonable grounds to believe that the witness —
 - (a) will not attend in accordance with a witness undertaking that the witness has made; or

(b) has contravened such a witness undertaking,

the party or police officer may apply to the relevant court for an arrest warrant for the witness.

- (5) If the relevant court is satisfied there are reasonable grounds for the belief of the party or police officer, the court may issue an arrest warrant for the witness.
- (6) When the witness is brought before the relevant court under the arrest warrant, the court may make an order under this Schedule or order the witness to be released from custody.

[Clause 3 amended: No. 6 of 2008 s. 45(2); No. 47 of 2011 s. 15.]

4. Witness undertaking, contravention of

- (1) A witness who, without a reasonable excuse, contravenes his or her witness undertaking commits an offence.
Penalty: a fine of \$12 000 or imprisonment for 12 months.
- (2) Section 181(3), (4) and (5), with any necessary changes, apply in relation to an offence under subclause (1).
- (3) The *Bail Act 1982* sections 51A, 52 and 53 apply, with any necessary changes, in relation to an offence under subclause (1), a witness, and a witness undertaking, in the same way as they apply respectively in relation to an offence under section 51(1) of that Act, an accused, and a bail undertaking.
- (4) If a witness is convicted of an offence under subclause (1), the *Bail Act 1982* section 57 applies, with any necessary changes, in relation to the witness, and the witness undertaking, in the same way as it applies respectively in relation to an accused, and a bail undertaking.

[Clause 4 amended: No. 6 of 2008 s. 45(3); No. 47 of 2011 s. 15.]

5. Surety undertakings, application of Bail Act provisions to

The *Bail Act 1982* Part VI (other than section 35(1)) applies, with any necessary changes, in relation to any surety undertaking required by an order made under clause 2(5)(c) in the same way as it applies in relation to a surety undertaking required by a grant of bail under that Act.

6. Application of other Bail Act provisions

The *Bail Act 1982* sections 60, 62, 64 and 65 apply, with any necessary changes, in relation to a witness, a surety required under an order made under clause 2(5), and a witness undertaking, in the same way as they apply respectively in relation to an accused, a surety required by a grant of bail under that Act, and a bail undertaking.

[Clause 6 amended: No. 47 of 2011 s. 15.]

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Notes

¹ This is a compilation of the *Criminal Procedure Act 2004* and includes the amendments made by the other written laws referred to in the following table ^{1M}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Criminal Procedure Act 2004</i>	71 of 2004	8 Dec 2004	s. 1 and 2: 8 Dec 2004; Act other than s. 1 and 2: 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Investigation (Consequential Provisions) Act 2006 Pt. 8</i>	59 of 2006	16 Nov 2006	1 Jul 2007 (see s. 2 and <i>Gazette</i> 22 Jun 2007 p. 2838)
<i>Criminal Law and Evidence Amendment Act 2008 Pt. 3</i>	2 of 2008	12 Mar 2008	27 Apr 2008 (see s. 2 and <i>Gazette</i> 24 Apr 2008 p. 1559)
<i>Acts Amendment (Justice) Act 2008 Pt. 9</i>	5 of 2008	31 Mar 2008	30 Sep 2008 (see s. 2(d) and <i>Gazette</i> 11 Jul 2008 p. 3253)
<i>Bail Amendment Act 2008 s. 45</i>	6 of 2008	31 Mar 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Legal Profession Act 2008 s. 657</i>	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Criminal Law Amendment (Homicide) Act 2008 s. 30</i>	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(d) and <i>Gazette</i> 22 Jul 2008 p. 3353)
Reprint 1: The <i>Criminal Procedure Act 2004</i> as at 2 Jan 2009 (includes amendments listed above except those in the <i>Bail Amendment Act 2008</i> and the <i>Legal Profession Act 2008</i>)			
<i>Juries Legislation Amendment Act 2011 Pt. 2 Div. 1 and Pt. 3 Div. 2</i>	13 of 2011	2 May 2011	1 Jul 2011 (see s. 2(b) and <i>Gazette</i> 30 Jun 2011 p. 2613)
<i>Statutes (Repeals and Minor Amendments) Act 2011 s. 15</i>	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))
<i>Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 15</i>	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and <i>Gazette</i> 17 Apr 2015 p. 1371)
<i>Courts Legislation Amendment Act 2012 Pt. 2</i>	43 of 2012	22 Nov 2012	30 Jan 2013 (see s. 2(b) and <i>Gazette</i> 29 Jan 2013 p. 323)
Reprint 2: The <i>Criminal Procedure Act 2004</i> as at 24 May 2013 (includes amendments listed above except those in the <i>Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 15</i>)			
<i>Courts and Tribunals (Electronic Processes Facilitation) Act 2013 Pt. 3 Div. 8</i>	20 of 2013	4 Nov 2013	25 Nov 2013 (see s. 2(b) and <i>Gazette</i> 22 Nov 2013 p. 5391)
Reprint 3: The <i>Criminal Procedure Act 2004</i> as at 11 Mar 2016 (includes amendments listed above)			

Criminal Procedure Act 2004

Short title	Number and year	Assent	Commencement
<i>Associations Incorporation Act 2015</i> s. 214	30 of 2015	2 Nov 2015	1 Jul 2016 (see s. 2(b) and <i>Gazette</i> 24 Jun 2016 p. 2291-2)
<i>Dangerous Sexual Offenders Legislation Amendment Act 2016</i> Pt. 3	17 of 2016	11 Jul 2016	10 Sep 2016 (see s. 2(b) and <i>Gazette</i> 9 Sep 2016 p. 3871)
<i>Statutes (Minor Amendments) Act 2017</i> s. 7	6 of 2017	12 Sep 2017	13 Sep 2017 (see s. 2(b))
<u>High Risk Offenders Bill 2019</u> Pt. 9 Div. 2	<u>Current Bill</u> <u>No. 137-1</u>		

^{1M} Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 10 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.