



Western Australia

Criminal Procedure (Summary) Act 1902

This Act was repealed by the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 4(1) (No. 84 of 2004) as at 2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 and 7 Jan 2005 p. 53).

Criminal Procedure (Summary) Act 1902

Contents

Part I — Preliminary

1.	Short title	2
3.	Commencement of Act	2
4.	Interpretation	2
4A.	<i>Bail Act 1982</i> to prevail over this Act	5
5.	General saving of powers of justices	5

Part IV — General procedure

42.	Complaint, by whom laid	7
43.	One matter only in complaint	7
44.	Description of persons and property in complaint	8
45.	Description of offence in complaints	8
46.	Want of form or variance in warrant, etc.	8
47.	Amendment	8
48.	Minute of amendment	9
49.	Complaint to be on oath if warrant required	9
50.	Complaint where summons issued	9
51.	Limitation period for commencing prosecutions	9
52.	When a summons may be issued	10
54.	Contents of summons	10
55.	<i>Ex parte</i> proceedings	11
56.	Mode of service	11
56A.	Power to serve some summonses by post	12
57.	Proof of service	14
57A.	Summons, amendment of time following non-service	15
58.	Warrant and summons, in what cases issued	15
59.	Warrant in the first instance for simple offence	16

Contents

60.	Direction of warrant	16
61.	Contents of warrants	16
62.	Warrant in force until executed	16
65.	Court to be open: Publicity	17
66.	Committal proceedings are not open court	18
67.	Counsel or solicitor not to be excluded	18
68.	Representation in court	19
69.	Evidence of witnesses, statements may be admitted on indictable charges	20
70.	Prosecutor or complainant a competent witness	22
71.	Mental fitness to stand trial	23
72.	Proof of negative etc.	23
73.	Depositions of witnesses for indictable charges	23
73A.	Offences in respect of recording of depositions	25
74.	Summoning witnesses	25
75.	After summons, warrants may issue	26
76.	Warrant in the first instance	26
78.	Production of documents	27
79.	Remand of defendant on charge of indictable offence	27
80.	Verbal remand	28
81.	Bringing up during remand	28
86.	Adjournment of hearing	28
86A.	Video or audio link may be used for remands and adjournments when defendant in custody	29
86B.	Video or audio link generally	30
87.	Place of committal or detention	30
88.	Committal to be made to a gaol	31
89.	Witness may be discharged on recognisance	31
90.	Recognisances	31
91.	Issue of warrant for non-appearance	31
92.	Recognisances taken out of court	31
93.	Forfeited recognisances, how to be enforced	32
95.	Conveying prisoners to gaol	32
96.	Regulations, forms, and fees	33

**Part V — Proceedings in case of
indictable offences**

Division 1 — Preliminary

97.	Application	34
-----	-------------	----

97A.	Defendant not appearing may be arrested	34
	Division 2 — General procedure	
97B.	Interpretation	35
98.	Procedure on first appearance	35
99.	Either way charges	35
100.	Charges that are to be tried on indictment	36
101.	Expedited committal if defendant pleads guilty	38
101A.	If no expedited committal, defendant to be informed of procedures	38
102.	Compulsory examination by the prosecution	39
103.	Disclosure by the prosecution	40
104.	Procedure on committal mention	41
105.	Liability of body corporate for contempt offences	42
106.	Saving	42
107.	Committal for sentence, matters to be recorded	43
109.	Depositions of persons dead or absent	43
110.	Witness dangerously ill, statement from	44
111.	How the statement to be taken	45
112.	Statement, when admissible in evidence	45
113.	Prisoner to be present when statement taken	46
114.	Prosecution may change statement of facts	46
123.	Defendant may be granted bail or kept in custody	47
124.	Witness may be required to enter recognisance	47
125.	Recognisance, form and notice of	47
126.	Witness refusing to enter recognisance may be imprisoned	47
127.	On committal, complaint etc. to be sent to Attorney General	48
128.	Duty of Attorney General	48
129.	Judge may direct delivery of complaint etc. to court	49
130.	Recommittal in case of committal to wrong court	49
	Part VI — Proceedings in case of simple offences and other matters	
134.	Absence of complainant, procedure on	51
135.	Absence of defendant or defendant's written plea of guilty, procedure on	51

Contents

136.	Defendant's written plea of not guilty, procedure on	53
136AA.	Absence of defendant, evidentiary presumptions	55
136A.	Decisions given in default of appearance of any party may be set aside	56
136B.	Proceedings against children	59
137.	Appearance of both parties, procedure on	59
138.	Proceedings at the hearing on defendant's confession	60
138A.	Defendants who will not or do not plead	60
139.	Where defendant does not admit the case	61
140.	Non-appearance of party or parties at adjourned hearing	61
141.	Practice as to examination etc. of witnesses	61
142.	Dismissal of complaint, procedure on	62
143.	Acquittal on account of unsoundness of mind	62
146.	Formal record of conviction not necessary, except for special purposes	63
147.	No <i>certiorari</i>	63
150.	Sentence	63
151.	Costs	64
154A.	Enforcing recognisances	65
155.	Enforcing the payment of money, other than fines etc.	66
159.	Imprisonment may be ordered	67
160.	Correcting errors caused by use of false name etc.	67

Part VIII — Appeals

Division 1 — Appeals from courts of summary jurisdiction

183.	Definitions	69
184.	Right of appeal	69
185.	Who may appeal	70
186.	Grounds	70
191.	Notice to other parties	71
192.	Amendment of grounds of appeal	71
193.	Judge may make order as to stay of execution	71
194.	General provisions as to stay of execution	72
195.	Revival of sentence or order on disposition of appeal	73

195A.	Single Judge to hear appeal unless case warrants Full Court	73
196.	Evidence	74
197.	Unrepresented person may present case in writing	74
198.	Presence at appeal of party in custody	74
199.	Powers of Court	75
200.	Enforcement	76
201.	Want of form	77
202.	Notification of result of appeal to clerk of petty sessions	77
203.	Notification relating to sentence of imprisonment	77
204.	Discontinuance of appeal	78
205.	Dismissal for want of prosecution	79
206.	Application for re-instatement of appeal	79
	Division 2 — Appeals from single Judges' decisions on appeal	
206A.	Appeal to Court of Appeal	80
	Division 3 — General	
206B.	Retention of exhibits	81
206C.	Time may be extended or shortened	83
206D.	Orders for costs	83
206E.	Enforcement of order for costs	83
207.	Control of Supreme Court over summary convictions	84
208.	Amendment	84
209.	Notice dispensed with	85
215.	Service by or upon solicitor acting for party	85
219.	No order for costs to be made against justices or police officers	86
	Part IX — Miscellaneous	
222.	Effect of court documents	87
223.	Warrants of commitment, time for issuing	87
	Ninth Schedule	
	Notes	
	Compilation table	90

Western Australia

Criminal Procedure (Summary) Act 1902

**An Act relating to the functions of courts of summary jurisdiction
and to the procedures to be followed in such courts.**

[Long title amended by No. 59 of 2004 s. 22.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Criminal Procedure (Summary) Act 1902*¹.

[Section 1 inserted by No. 27 of 1988 s. 4; amended by No. 59 of 2004 s. 23.]

[2. *Omitted under the Reprints Act 1984 s. 7(4)(f).]*

Commencement of Act

3. Commencement of Act

This Act shall commence and take effect on and from 1 January 1903.

Interpretation

4. Interpretation

In the interpretation of this Act, unless the context otherwise requires —

“**agent**”, in respect of a person who is a party to proceedings before a court of summary jurisdiction, means the solicitor or counsel for the person, or any other person who lawfully appears for the person;

“**charge of an indictable offence**” means charge of an indictable offence as such and in order to a committal for trial therefor;

“**complaint**” includes the terms “**information**”, “**information and complaint**”, and “**charge**”, and, unless the contrary appears, means an information and complaint before a court of summary jurisdiction;

“**court of summary jurisdiction**” means —

- (a) the Children’s Court;
- (b) the Magistrates Court; or

(c) any other court to which this Act applies;

“decision” means —

(a) a conviction or a finding whether made following a plea of guilty or an admission of the truth of any matter or following trial;

[(b) deleted]

(c) the dismissal of a complaint;

(d) any other final determination of a proceeding, including a determination by a court of summary jurisdiction that it had no jurisdiction to deal with a proceeding; and

(e) a sentence imposed or order made consequent on any such conviction, finding, dismissal or determination,

but does not include any decision relating to bail under the *Bail Act 1982*;

“defendant” means a person complained against before a court of summary jurisdiction for an indictable offence, simple offence or other matter;

“DPP” means the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991*;

“gaol” includes prison and police gaol;

“hearing” includes the examination of a person charged with an indictable offence;

“indictable offence” means an offence which may be prosecuted before the Supreme Court, or other court having jurisdiction in that behalf, by information in the name of the Attorney General, the DPP or other authorised officer;

“indictment” means an information for an indictable offence presented to a court having jurisdiction to try the accused person by the Attorney General, the DPP or other authorised officer;

“judicial officer”, in relation to a court of summary jurisdiction, means the person who constitutes the court and, where the court is constituted by more than one person, means each of those persons;

s. 4

“justice” means a Justice of the Peace appointed under the *Justices of the Peace Act 2004*;

“keeper of a gaol” includes superintendent of a prison;

“magistrate” means a magistrate appointed under —

- (a) the *Children’s Court of Western Australia Act 1988*;
- (b) the *Magistrates Court Act 2004*; or
- (c) any other written law for the purpose of constituting a court to which this Act applies;

“matter” means any act, omission, fact, or event (except an indictable offence not punishable summarily) upon complaint whereof a court of summary jurisdiction may give any decision against or in respect of any person;

“order” means an order made upon a complaint of any matter (not being a simple offence);

“prescribed investigator” means —

- (a) a police officer; or
- (b) an officer of a prescribed public authority who is authorised by the public authority, or under a written law, to commence prosecutions;

“prescribed public authority” means a public authority that is prescribed by the regulations;

“public authority” means —

- (a) a Minister of the Crown;
- (b) a department of the Public Service;
- (c) a local government or a regional local government; or
- (d) a body, whether incorporated or not, 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;

“registrar” means a registrar of a court of summary jurisdiction;

“simple offence” means any offence (indictable or not) punishable, on summary conviction, by fine, imprisonment or otherwise;

“summary conviction” or **“conviction”** means a conviction for a simple offence.

When one word or phrase includes another, the derivatives of the one include those of the other.

[Section 4 amended by No. 19 of 1919 s. 2 and 4; No. 22 of 1968 s. 2; No. 17 of 1972 s. 4; No. 72 of 1975 s. 4; No. 33 of 1976 s. 3; No. 87 of 1982 s. 4; No. 38 of 1988 s. 7; No. 33 of 1989 s. 4; No. 33 of 1991 s. 4; No. 92 of 1994 s. 20; No. 78 of 1995 s. 61; No. 36 of 1996 s. 34; No. 27 of 2002 s. 4; No. 59 of 2004 s. 24 and 50.]

4A. Bail Act 1982 to prevail over this Act

Nothing in this Act empowering the detention in, or committal to, custody of any person (however the power may be expressed) shall be read as limiting the operation of section 4 of the *Bail Act 1982*.

[Section 4A inserted by No. 87 of 1982 s. 5.]

5. General saving of powers of justices

Nothing in this Act shall be construed to diminish or affect any power or authority conferred on Justices of the Peace or a court of summary jurisdiction by any other Act, except so far as the provisions of this Act are inconsistent with the existence or exercise of such power or authority.

[Section 5 amended by No. 59 of 2004 s. 50.]

[Part II (s. 6-19):

s. 11 repealed by No. 22 of 1968 s. 3;

balance repealed by No. 59 of 2004 s. 25.]

Criminal Procedure (Summary) Act 1902

Part I Preliminary

s. 5

[Part III (s. 20-41):

s. 28 repealed by No. 33 of 1989 s. 5;

balance repealed by No. 59 of 2004 s. 26.]

Part IV — General procedure

[Heading deleted by No. 59 of 2004 s. 51(1).]

42. Complaint, by whom laid

- (1) Unless otherwise provided, proceedings before a court of summary jurisdiction shall be commenced by a written complaint, which may be made or laid by the complainant in person, or by his counsel or solicitor or other person authorised in that behalf.
- (2) A complaint being made on oath shall be signed and sworn before a magistrate, justice or registrar.
- (3) A complaint not being made on oath shall be signed before a magistrate, justice or registrar, unless the person making it is a prescribed investigator.

[Section 42 amended by No. 19 of 1997 s. 80(1); No. 59 of 2004 s. 27.]

43. One matter only in complaint

Every complaint shall be for one matter only, and not for 2 or more matters:

Provided that —

- (1) in the case of indictable offences, if the matters of complaint are such that they may be charged in one indictment; and
- (2) in other cases, if the matters of complaint are substantially of the same act or omission on the part of the defendant,

such matters may be joined in the same complaint.

Provided also, that when several simple offences are alleged to be constituted of the same acts or omissions or by a series of acts done or omitted to be done in the prosecution of a single purpose, charges of such offences may be joined in the same

s. 44

complaint against the same person; but if in any such case it appears to a court of summary jurisdiction that the defendant is likely to be prejudiced by such joinder, it may require the complainant to elect upon which of the charges he will proceed or may direct that the defendant shall be tried separately on each or any of the charges.

[Section 43 amended by No. 19 of 1919 s. 7; No. 59 of 2004 s. 50.]

44. Description of persons and property in complaint

Such description of persons or things as would be sufficient in an indictment shall be sufficient in complaints.

45. Description of offence in complaints

The description of any offence in the words of the Act, order, local law, by-law, regulation, or other instrument creating the offence, or in similar words, shall be sufficient in law.

[Section 45 amended by No. 14 of 1996 s. 4.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

46. Want of form or variance in warrant, etc.

No objection shall be taken or allowed to any complaint, or to any summons or warrant to apprehend a defendant issued upon any complaint, for any alleged defect therein, in substance or in form, or for any variance between it and the evidence in support thereof, and any such variance shall be amended by order of a court of summary jurisdiction at the hearing.

[Section 46 amended by No. 59 of 2004 s. 50.]

47. Amendment

If any such variance appears to a court of summary jurisdiction to be such that the defendant has been thereby deceived or misled, it may, and at the request of the defendant shall, upon such terms as it thinks fit, adjourn the hearing of the case to

some future day, and in the meantime may commit the defendant for his appearance at the time and place to which the hearing is adjourned.

[Section 47 amended by No. 87 of 1982 s. 6; No. 59 of 2004 s. 50.]

48. Minute of amendment

Every order for the amendment of a variance shall be entered on the proceedings of a court of summary jurisdiction, and a minute thereof, if required, shall be given to the party against whom it was made.

[Section 48 amended by No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

49. Complaint to be on oath if warrant required

When it is intended to issue a warrant in the first instance against the party charged, the complaint must be in writing and on oath, which oath may be made either by the complainant or some other person.

50. Complaint where summons issued

When it is intended to issue a summons instead of a warrant in the first instance, the complaint need not be on oath.

[Section 50 inserted by No. 59 of 2004 s. 28.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

51. Limitation period for commencing prosecutions

- (1) Proceedings before a court of summary jurisdiction for a simple offence must be commenced within 12 months from the time when the matter for complaint arose, unless another written law provides otherwise.
- (2) Proceedings before a court of summary jurisdiction are commenced —

s. 52

- (a) on the day on which a complaint is signed under section 42 by the person making it before a magistrate, justice or registrar; or
- (b) if a complaint is made by a prescribed investigator and is not signed before a magistrate, justice or registrar — on the day on which it is lodged with the court.

[Section 51 inserted by No. 59 of 2004 s. 29.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

52. When a summons may be issued

- (1) If a complaint is made before a magistrate, justice or registrar that any person is guilty of, or is suspected of having committed or is liable to be dealt with in respect of an offence, then that officer may issue his summons.
- (2) If a complaint is made by a prescribed investigator and is not signed before a magistrate, justice or registrar, the investigator may issue a summons which shall have the same force and effect as if issued by a magistrate, justice or registrar.

[Section 52 inserted by No. 59 of 2004 s. 30.]

[53. Repealed by No. 59 of 2004 s. 30.]

54. Contents of summons

A summons issued under this Act shall —

- (a) be directed to the defendant;
- (b) state shortly the offence or matter of the complaint as a result of which it was so issued;
- (c) in the case of a summons for an indictable offence, require the defendant to appear at a time and place appointed by that summons, before a court of summary jurisdiction that has jurisdiction to deal with the complaint, to be dealt with according to law; and

- (d) in the case of a summons for a simple offence that is not an indictable offence —
 - (i) require the defendant, subject to sections 135 and 136, to appear at a time and place appointed by that summons, before a court of summary jurisdiction that has jurisdiction to deal with the complaint, to be dealt with according to law; and
 - (ii) advise the defendant of the procedures which may be followed under sections 135, 136 and 136AA in the circumstances described in those sections.

[Section 54 inserted by No. 120 of 1981 s. 3; amended by No. 10 of 1999 s. 5; No. 59 of 2004 s. 50.]

55. Ex parte proceedings

Nothing herein contained shall oblige any magistrate, justice or registrar to issue a summons in any case where the application for an order to a court of summary jurisdiction is by law to be made *ex parte*.

[Section 55 amended by No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

56. Mode of service

- (1) Subject to section 56A, a summons must be served upon the person to whom it is directed by delivering a duplicate thereof to him personally, or, if he cannot be found, by leaving it with some person for him at his last known place of abode.

Provided that a magistrate or registrar may, if satisfied that to effect service in the manner above prescribed would involve undue expense, and that the offence is not an indictable offence, and that its nature is such that personal service might reasonably be dispensed with, and that the hearing will not be unduly delayed thereby, allow service by post.

s. 56A

- (2) Service by post shall be effected by a registrar properly addressing and posting (by prepaid post) the summons as a letter to the person to be served at his last known place of residence or business.
- (3) A summons that is served by post is to be taken to have been served at the time when the letter would have been delivered in the ordinary course of post.
- (4) A certificate by the registrar that the summons was posted in accordance with subsection (2) is proof of service, in the absence of evidence to the contrary.

[Section 56 amended by No. 11 of 1936 s. 2; No. 83 of 1965 s. 3; No. 22 of 1968 s. 15; No. 59 of 2004 s. 31.]

56A. Power to serve some summonses by post

- (1) Notwithstanding section 56, a summons requiring a person to appear before a court of summary jurisdiction at a stated time and place to answer the complaint for —
 - (a) an offence under a written law, or under a code or similar provision adopted or enacted by a written law, which is not an indictable offence; or
 - (b) an offence under a law, or under a code or similar provision adopted or enacted by a law, of the Commonwealth that is a summary offence,

may be served upon the person by posting by prepaid post, not less than 14 days before the date stated in the summons for his appearance, a true copy of the summons in an envelope addressed to that person at his last known place of residence or business.

- (2) Without prejudice to the operation of subsection (1), in the absence of any circumstances making it appear that the person to whom the summons is directed resides or carries on business elsewhere, where the offence specified in the summons —

- (a) arises out of the driving or use of a motor vehicle, the address appearing as the address of that person in the driver's licence, if any, produced by him at the time of the alleged offence or upon any investigation thereof;
- (b) is an offence alleged to have been committed by the person to whom the summons is directed as the owner of a motor vehicle, the address appearing as the address of that person as owner in the vehicle licence for the motor vehicle, for the time being in force;
- (c) is an offence of a type set out in subsection (1)(a) or (b), the address appearing as the address of that person, or of any premises of which he is the owner or occupier, in any licence, permit or similar document issued and in force under —
 - (i) the law under which the offence is alleged to have been committed; or
 - (ii) a law connected with the law under which the offence is alleged to have been committed,(whether a law of this State or of the Commonwealth),

shall be deemed and taken to be the last known place of residence or business of the person to whom the summons is directed.

- (2a) For the purposes of subsection (2)(c), a law is connected with the law under which the offence is alleged to have been committed if —
 - (a) it is subsidiary legislation made under that law;
 - (b) it is the law empowering the making of that law as subsidiary legislation;
 - (c) it is a code or similar provision adopted or enacted by that law; or
 - (d) it is the law that adopted or enacted that law as a code or similar provision.

s. 57

- (3) A summons posted to a person to whom it is directed pursuant to this section shall be posted —
 - (a) by an officer of the court before which the person is required by the summons to appear; or
 - (b) by the person who made the complaint in respect of which the summons is issued or by a person authorised in writing to post the summons by the first mentioned person.
- (4) The court hearing the complaint to which the summons relates may accept as proof of service a certificate of the officer or any person referred to in subsection (3)(a) or (b) of the due posting by him of the summons in accordance with this section.

[(5)-(8) repealed]

[Section 56A inserted by No. 83 of 1965 s. 4; amended by No. 24 of 1967 s. 2; No. 92 of 1994 s. 20; No. 78 of 1995 s. 61; No. 14 of 1996 s. 4; No. 36 of 1996 s. 35; No. 59 of 2004 s. 50.]

57. Proof of service

- (1) The service of any summons where service has not been effected by post may be proved by an endorsement on the summons, signed by the person by whom it was served, setting forth the day, place, and mode of service; or such person may depose to the service on oath at the hearing.
- (2) The signature to an endorsement of service shall be *prima facie* evidence that the endorsement was signed by the person whose signature it purports to be.
- (3) Any false statement in an endorsement of service shall render the person making the same liable, on summary conviction, to a fine of \$6 000.

[Section 57 amended by No. 11 of 1936 s. 3; No. 51 of 1992 s. 16(1); No. 50 of 2003 s. 74(2).]

57A. Summons, amendment of time following non-service

- (1) If a summons issued under this Act on the making of a complaint is not served before the time stated in the summons for the appearance of the defendant, any justice or a registrar of the court concerned, on being satisfied that the complaint was made, may amend the summons by substituting a later time for the appearance of the defendant.
- (2) An amendment under subsection (1) must be initialled by the justice or registrar making the amendment.
- (3) An amendment of the time mentioned in a summons under subsection (1) does not recommence proceedings.

[Section 57A inserted by No. 36 of 1996 s. 36; amended by No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

58. Warrant and summons, in what cases issued

- (1) When a complaint is made before a magistrate or justice that any person is guilty of, or is suspected of having committed or is liable to be dealt with in respect of an indictable offence, that officer may issue his warrant to apprehend the defendant and to cause him to be brought before a court of summary jurisdiction to be further dealt with according to law.
- (2) Provided that the magistrate or justice, if he thinks fit, instead of issuing his warrant in the first instance to apprehend the person charged, may proceed by summons, and issue a summons against him accordingly.
- (3) Notwithstanding the issue of a summons, any magistrate or justice may issue his warrant at any time before or after the time mentioned in the summons for the appearance of the defendant.

[Section 58 amended by No. 59 of 2004 s. 32.]

59. Warrant in the first instance for simple offence

When complaint is made before a magistrate or justice of a simple offence, the officer may, upon oath being made before him substantiating the matter of the complaint, instead of issuing a summons, issue in the first instance his warrant to apprehend the defendant, and to cause him to be brought before a court of summary jurisdiction to answer the complaint and to be further dealt with according to law.

[Section 59 amended by No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

60. Direction of warrant

- (1) A warrant to apprehend a defendant that he may answer a complaint may be directed either to any police officer or officers by name, or generally to all police officers within the State, without naming them, or to both.
- (2) Any police officer may execute any warrant as if it was directed specially to him by name.

[Heading deleted by No. 59 of 2004 s. 51(1).]

61. Contents of warrants

A warrant shall state shortly the offence or matter of the complaint on which it is founded, and shall name or otherwise describe the person against whom it is issued, and it shall order the police officers to whom it is directed to apprehend the defendant, and to bring him before a court of summary jurisdiction that has jurisdiction to deal with the complaint to answer the complaint and to be further dealt with according to law.

[Section 61 amended by No. 59 of 2004 s. 50.]

62. Warrant in force until executed

A warrant need not be returnable at any particular time, but may remain in force until executed, and may be executed by apprehending the defendant at any place within the State.

[Heading repealed by No. 49 of 1997 s. 5.]

[63. Repealed by No. 49 of 1997 s. 5.]

[64. Repealed by No. 87 of 1982 s. 7.]

[Heading repealed by No. 14 of 1992 s. 19.]

65. Court to be open: Publicity

- (1) Unless expressly provided otherwise, the court-room or place of hearing where justices sit to hear and determine any complaint is an open and public court to which all persons may have access so far as is practicable.
- (2) If satisfied that it is necessary for the proper administration of justice to do so, justices may —
 - (a) order any or all persons or any class of persons to be excluded from the court-room or place of hearing during the whole or any part of the trial or other criminal proceeding;
 - (b) make an order prohibiting the publication outside the court-room or place of hearing of the whole or any part of the evidence or proceedings;
 - (c) make an order prohibiting the publication outside the court-room or place of hearing of the whole or any part of the evidence or proceedings except in accordance with directions by the justices.
- (3) On an application by the prosecution or an accused person justices may order any person who may be called as a witness in the trial or other criminal proceeding to leave the court-room or place of hearing and to remain outside and beyond the hearing of the court until called to give evidence.
- (4) Counsel or a solicitor engaged in the trial or other criminal proceeding shall not be excluded from the court-room or place of hearing under this section.

s. 66

- (5) A person who contravenes or fails to comply with an order made under this section commits an offence punishable —
 - (a) by the Supreme Court as for contempt; or
 - (b) after summary conviction, by imprisonment for 12 months or a fine of \$10 000.
- (6) Only the Attorney General or a person on his behalf may take proceedings for a contravention of or a failure to comply with an order made under this section.

[Section 65 inserted by No. 14 of 1992 s. 19.]

66. Committal proceedings are not open court

- (1) Where for the purposes of the committal for trial or sentencing of a person charged with an indictable offence —
 - (a) a witness is examined before a court of summary jurisdiction; or
 - (b) a written statement or other evidence is tendered to a court of summary jurisdiction,

the room or place in which that occurs is not to be regarded as an open court, and the court may order that no person is to be in the room or place without its permission.

- (2) A court of summary jurisdiction is not to make an order under subsection (1) unless it appears to it that the ends of justice require them to do so.

[Section 66 inserted by No. 27 of 2002 s. 5; amended by No. 59 of 2004 s. 50.]

67. Counsel or solicitor not to be excluded

The power to exclude any person shall not be exercised for the purpose of excluding any counsel or solicitor engaged in the case.

[Heading deleted by No. 59 of 2004 s. 51(1).]

68. Representation in court

- (1) In this section —
“**complainant**” includes applicant;
“**lawyer**” means a person who is admitted and entitled to practise as a barrister and solicitor of the Supreme Court.
- (2) A party to a proceeding before a court of summary jurisdiction 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.
- (3) Unless another written law expressly provides otherwise, the entitlement under subsection (2) may be performed —
 - (a) on a complainant’s behalf by a person permitted under subsection (4); or
 - (b) on any party’s behalf —
 - (i) by a lawyer; or
 - (ii) with the court’s leave by a person who is not a lawyer.
- (4) Despite the *Legal Practice Act 2003*, in a proceeding before a court of summary jurisdiction —
 - (a) the State, or a complainant who is a police officer acting in the course of duty, may be represented by a police officer acting in the course of duty;
 - (b) a complainant who is acting for or on behalf of a public authority may be represented by an officer or employee of the public authority acting in the course of duty.
- (5) The court may only give leave under subsection (3)(b)(ii) in exceptional circumstances.
- (6) A person who is not a lawyer and who, having been given leave under subsection (3)(b)(ii), performs any act referred to in subsection (2) on behalf of a party is not entitled to claim,

receive or recover, directly or indirectly, money or other remuneration for doing so.

[Section 68 inserted by No. 59 of 2004 s. 33.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

69. Evidence of witnesses, statements may be admitted on indictable charges

- (1) Every witness shall be examined upon oath, or in such other manner as is prescribed or allowed by the Acts in force for the time being relating to giving evidence in courts of justice.
- (2) Subject to subsection (3) and despite any other Act, where a person is charged with an indictable offence and the charge is not dealt with summarily, a written statement of any person may be tendered by the prosecution to a court of summary jurisdiction for use in any resulting trial or sentencing of the defendant if —
 - (a) the statement complies with the conditions in subsection (4);
 - (b) before the statement is so tendered, it has been filed and served in accordance with section 103(1); and
 - (c) where the statement refers to any other document or exhibit, the copy of the statement served under paragraph (a) is accompanied by a copy or description of the other document or exhibit.
- (3) Despite any other written law, where a person is charged with an indictable offence and the charge is not dealt with summarily, a statement of an affected child, as defined in section 106A of the *Evidence Act 1906* may be tendered to a court of summary jurisdiction for use in any resulting trial or sentencing of the defendant if —
 - (a) in the case of a written statement, it complies with the conditions in subsection (4);

- (b) in the case of an electronically recorded statement, it complies with the conditions in subsection (5);
 - (c) before the statement is so tendered, it has been filed and served in accordance with section 103(1); and
 - (d) where the statement refers to any other document or exhibit, the copy of the statement served under paragraph (c) is accompanied by a copy or description of the other document or exhibit.
- (4) The conditions with which a written statement must comply are as follows —
- (a) where the statement is made by a person under the age of 18 years, it gives his age;
 - (b) unless the statement is made by a person under the age of 12 years, it contains a declaration by the person who made it to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be guilty of a crime if he has wilfully included in the statement anything which he knew to be false or did not believe to be true;
 - (c) the statement purports to be signed by the person who made it; and
 - (d) where the statement is made by a person who cannot read, it is read aloud to him before he signs it, and it is accompanied by a declaration of the person who read the statement to the effect that it was so read.
- (5) The conditions with which an electronically recorded statement must comply are as follows —
- (a) the statement identifies the person making it;
 - (b) the statement gives the age of the person making it; and
 - (c) unless the statement is made by a person under the age of 12 years, it contains a declaration by the person who made it to the effect that —

s. 70

- (i) the recording of the statement (without this declaration) has been played back to him; and
 - (ii) the statement is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be guilty of a crime if he has wilfully included in the statement anything which he knew to be false or did not believe to be true.
- (6) A statement is deemed to be tendered in evidence under this section 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 section is deemed to have been produced before the court and identified by the maker of the statement.
- (7a) A written statement tendered under this section to a court of summary jurisdiction need not be signed by the judicial officer constituting the court.
- (8) A statement tendered in evidence under this section is admissible as evidence before any court of competent jurisdiction, to the like extent that a deposition of the person who made the statement would be so admissible.
- (9) Any person who, in a statement tendered in evidence under this section, has wilfully included anything which he knew to be false or did not believe to be true is guilty of a crime and is liable to imprisonment for 7 years.

[Section 69 inserted by No. 71 of 2000 s. 32; amended by No. 27 of 2002 s. 6.]

70. Prosecutor or complainant a competent witness

Upon any complaint of an indictable offence, or simple offence or other matter, the prosecutor or complainant shall be a competent witness to support such complaint.

[Section 70 amended by No. 19 of 1919 s. 4.]

71. Mental fitness to stand trial

If a question about a defendant's mental fitness to stand trial arises before a court of summary jurisdiction on the hearing of a complaint for an offence, it is to be dealt with under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

[Section 71 inserted by No. 69 of 1996 s. 49; amended by No. 59 of 2004 s. 50.]

72. Proof of negative etc.

If the complaint in any case of a simple offence or other matter negatives any exemption, exception, proviso, or condition contained in the Act on which the same is framed, it shall not be necessary for the complainant to prove such negative, but the defendant shall be called upon to prove the affirmative thereof in his defence.

[Section 72 amended by No. 19 of 1919 s. 4.]

73. Depositions of witnesses for indictable charges

- (1) When a person is charged with an indictable offence, the depositions of the witnesses shall be —
 - (a) reduced to writing; or
 - (b) recorded by means of sound-recording apparatus in the manner prescribed⁴.
- (1a) A deposition reduced to writing under subsection (1)(a) shall, if the charge is not dealt with summarily, be read over to and signed by the witness who has given the evidence and shall be signed also by the judicial officer by or before whom it is taken.
- (1b) Where a recording made under subsection (1)(b) is transcribed, the person by whom the transcript is prepared or, if the transcript is checked by a person other than the person by whom the transcript is prepared, the person by whom the transcript is checked shall certify that the transcript is a correct transcript of that recording.

s. 73

- (1c) The Governor may make regulations —
- (a) prescribing the procedures to be adopted in relation to the taking and recording of depositions under this section and the reproduction and transmission of such depositions;
 - (b) with respect to the appointment of persons to record or transcribe depositions, or to check transcripts, for the purposes of this section;
 - (c) prescribing the functions and duties of persons appointed to record or transcribe depositions, or to check transcripts;
 - (d) requiring a person appointed to record or transcribe depositions, or to check transcripts, to take an oath that he will faithfully discharge his functions and duties and prescribing the form of such an oath;
 - (e) requiring a person appointed to record or transcribe depositions, or to check transcripts, to make a statutory declaration in any circumstances prescribed in the regulations;
 - (f) with respect to the preparation and checking of transcripts of recorded depositions and the form and manner of certification of such transcripts;
 - (g) with respect to the custody and destruction of recordings and transcripts made under this section and the period for which, or the circumstances in which, they are to be retained;
 - (h) with respect to such other matters necessary or expedient to be prescribed for the purpose of ensuring that a transcript of a recording is correct.

[(2)-(5) repealed]

[Section 73 amended by No. 33 of 1976 s. 5; No. 81 of 1986 s. 8; No. 71 of 2000 s. 33; No. 27 of 2002 s. 7; No. 59 of 2004 s. 50.]

73A. Offences in respect of recording of depositions

Any person who —

- (a) personates a person appointed under this Act to record or transcribe depositions, or to check transcripts, on an occasion when the latter is required to do any act or attend in any place by virtue of his appointment;
- (b) falsely represents himself to be a person appointed under this Act to record or transcribe depositions, or to check transcripts, and assumes to do any act, or attend in any place for the purposes of doing any act, by virtue of his pretended appointment;
- (c) falsifies or, except in accordance with the prescribed procedures, interferes with, alters, adds to, or causes any omission in a transcript of any recording made under section 73;
- (d) having the duty of transcribing a recording made under section 73 or checking a transcript of that recording, provides a certificate in respect of any transcript so made, which certificate that person knows to be false in a material particular,

commits an offence.

Penalty: \$5 000 or imprisonment for 2 years.

[Section 73A inserted by No. 81 of 1986 s. 9.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

74. Summoning witnesses

- (1) A magistrate, justice or registrar may issue his summons to any person requiring him to be and appear as a witness at a time and place mentioned in the summons before a court of summary jurisdiction to testify what he knows concerning the matter of the complaint.
- (2) A summons to a witness must be served, and proof of service may be given in the same manner as hereinbefore prescribed in

s. 75

the case of a summons to a defendant except that the provisions relating to service by post shall not apply to a summons to a witness.

[Section 74 amended by No. 11 of 1936 s. 4; No. 59 of 2004 s. 50.]

75. After summons, warrants may issue

- (1) If a person summoned as a witness does not appear at the time and place appointed by the summons then, after proof that the summons was duly served on the person and, except in the case of indictable offences, that a reasonable sum was paid or tendered to the person for the person's costs and expenses of attendance, the court of summary jurisdiction may issue a warrant to have the person arrested and brought before the court.
- (2) A person arrested under such a warrant is to be brought before the court as soon as practicable.
- (3) No payment or tender of expenses shall be necessary in the case of indictable offences.

[Section 75 amended by No. 113 of 1965 s. 8; No. 59 of 2004 s. 34.]

76. Warrant in the first instance

If a magistrate or justice is satisfied by evidence upon oath that it is probable that a person whose evidence is desired will not attend to give evidence without being compelled so to do, then, instead of issuing a summons he may issue his warrant in the first instance.

[Section 76 amended by No. 59 of 2004 s. 50.]

[77. Repealed by No. 59 of 2004 s. 50.]

78. Production of documents

When a magistrate, justice or registrar has authority to summon any person as a witness, he shall have the like authority to require and compel him to bring and produce, for the purpose of evidence, all documents and writings in his possession or power, and to proceed against the person in case of neglect or refusal so to do in the same manner as in case of neglect or refusal to attend or refusal to be examined.

Provided that no person shall be bound to produce any document or writing not specified or otherwise sufficiently described in the summons, or which he would not be bound to produce upon a subpoena *duces tecum* in the Supreme Court.

[Section 78 amended by No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

79. Remand of defendant on charge of indictable offence

- (1) In any case of a charge of an offence, if from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer the hearing of the case, the court of summary jurisdiction before whom the defendant appears or is brought may adjourn such hearing to the same or some other place, and may, by a warrant, from time to time remand the defendant to some gaol, or other place of security, for such period, subject to subsection (2), as it may in its discretion deem reasonable to be there kept, and to be brought before the court at the time or place appointed for continuing the hearing.
- (2) If under subsection (1) a court remands a defendant, it must not do so for a period that exceeds 8 clear days, unless the defendant consents.

[(3) repealed]

[Section 79 amended by No. 19 of 1919 s. 4; No. 15 of 1985 s. 2; No. 59 of 2004 s. 35 and 50.]

80. Verbal remand

If the remand is for a time not exceeding 3 clear days, the court of summary jurisdiction may verbally order the person in whose custody the defendant then is, or any other person named by the court in that behalf, to keep the defendant in his custody, and to bring him before the court at the time and place appointed for continuing the hearing.

[Section 80 amended by No. 59 of 2004 s. 50.]

81. Bringing up during remand

A magistrate, justice or registrar may order the defendant to be brought before the court of summary jurisdiction at any time before the expiration of the time for which he was so remanded, and the person in whose custody he then is shall duly obey such order.

[Section 81 amended by No. 47 of 1999 s. 18; No. 59 of 2004 s. 50.]

[82. Repealed by No. 87 of 1982 s. 7.]

[83-85. Repealed by No. 59 of 2004 s. 50.]

86. Adjournment of hearing

Subject to section 136, in any case of a charge of a simple offence or other matter, a court of summary jurisdiction may adjourn the hearing to a certain time and place to be then appointed and stated, in the presence and hearing of the party or parties, or their respective agents then present, and in the meantime may commit the defendant to appear at the time and place appointed for continuing the hearing.

[Section 86 amended by No. 19 of 1919 s. 4; No. 120 of 1981 s. 4; No. 87 of 1982 s. 9; No. 59 of 2004 s. 50.]

86A. Video or audio link may be used for remands and adjournments when defendant in custody

- (1) This section applies if —
 - (a) a defendant is charged with an offence before a court of summary jurisdiction;
 - (b) the defendant is in custody, whether in relation to the charge or not;
 - (c) the defendant is required to appear before the court in relation to the charge for purposes other than the hearing or determination of the charge; and
 - (d) there is a video link or audio link (within the meaning of section 120 of the *Evidence Act 1906*) between the place where the defendant is in custody and the court.
- (2) If the defendant's appearance will be his first in relation to the charge, the person in whose custody the defendant is shall bring the defendant before the court in person, unless the court has ordered that the defendant be brought before the video link or audio link.
- (3) If the defendant's appearance will be his second or subsequent in relation to the charge, the person in whose custody the defendant is shall, notwithstanding any warrant that commands that the defendant be brought before the court, bring the defendant before the video link or audio link, unless the court has ordered that the defendant be brought before the court in person.
- (4) A court may make an order under subsection (2) or (3) on its own initiative or on the application of a party to the proceeding, at any time, if satisfied it is necessary for the proper administration of justice to do so.
- (5) The defendant shall not be brought before an audio link unless a video link is not available and cannot reasonably be made available.

s. 86B

- (6) When a defendant is brought before a video link or audio link in accordance with this section, the court may, in relation to the charge, exercise the powers in sections 79, 80 and 86 and comply with the *Bail Act 1982* as if the defendant were personally present before it.

[Section 86A inserted by No. 59 of 2004 s. 36.]

86B. Video or audio link generally

- (1) This section applies if —
- (a) a defendant is charged with an offence before a court of summary jurisdiction; and
 - (b) the defendant is required to appear before the court in relation to the charge for any purpose.
- (2) On an application by the defendant, the court may permit the defendant to appear before a video link (within the meaning of section 120 of the *Evidence Act 1906*) with the court.
- (3) When a defendant appears before a video link as permitted by the court, the court may deal with the charge as if the defendant were personally present before it.
- (4) This section is in addition to and does not affect the operation of sections 120 to 132 of the *Evidence Act 1906*.

[Section 86B inserted by No. 59 of 2004 s. 36.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

87. Place of committal or detention

When a court of summary jurisdiction commits a defendant by way of remand or upon an adjournment, or at any time before the decision, it may commit to the gaol, or any other place of security, or to such other safe custody as it thinks fit.

[Section 87 amended by No. 59 of 2004 s. 50.]

88. Committal to be made to a gaol

When a court of summary jurisdiction commits a witness or person sought to be made a witness, and when it commits a defendant after the decision, it must commit to a gaol.

[Section 88 amended by No. 59 of 2004 s. 50.]

89. Witness may be discharged on recognisance

A witness or person sought to be made a witness may be discharged upon recognisance.

90. Recognisances

When a court of summary jurisdiction is authorised to discharge a witness or other person upon recognisance it may order his discharge upon his entering into a recognisance, with or without a surety or sureties at its discretion, conditioned for his appearance at the time and place to which the hearing is adjourned, or which is named in the recognisance.

[Section 90 amended by No. 87 of 1982 s. 10; No. 59 of 2004 s. 50.]

91. Issue of warrant for non-appearance

If a witness or other person, does not appear at the time and place mentioned in the recognisance, then the court may adjourn the hearing, and may issue a warrant for his apprehension as hereinbefore provided.

[Section 91 amended by No. 87 of 1982 s. 11; No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

92. Recognisances taken out of court

When a court of summary jurisdiction has fixed, as regards any recognisance, the amount in which the principal and sureties (if any) are to be bound, the recognisance, notwithstanding anything in this or any other Act, may be entered into by the

parties before any magistrate, justice or registrar, or before an inspector or sub-inspector of police or other police officer who is of equal or superior rank, or who is in charge of a police station, or, where any one of the parties is in gaol, before the keeper of such gaol; and thereupon all the consequences of law shall ensue, and the provisions of this Act with respect to recognisances taken before a justice shall apply.

[Section 92 amended by No. 59 of 2004 s. 50.]

93. Forfeited recognisances, how to be enforced

When the conditions, or any of them, in any recognisance that is referred to in section 154A(1) are not complied with, any magistrate, justice or registrar may certify upon the back of the recognisance in what respect the conditions have not been observed, and transmit the same to the proper officer, to be proceeded upon in like manner as other recognisances, and such certificate shall be deemed sufficient *prima facie* evidence of the recognisance having been forfeited.

[Section 93 amended by No. 19 of 1919 s. 8; No. 17 of 1972 s. 9; No. 59 of 2004 s. 50.]

[94, 94A. Repealed by No. 87 of 1982 s. 12.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

95. Conveying prisoners to gaol

The person to whom a warrant of commitment is directed shall convey the person therein named or described to the gaol or other place mentioned in the warrant, and there deliver him, together with the warrant, to the keeper of such gaol or place, who shall thereupon give the person delivering the prisoner into his custody a receipt for such prisoner, setting forth the state and condition in which such prisoner was when he was delivered into the custody of such keeper.

[Heading deleted by No. 59 of 2004 s. 51(1).]

96. Regulations, forms, and fees

- (1) The Governor may make regulations for carrying out this Act, including prescribing the forms to be used in and the fees to be taken in a court of summary jurisdiction and appeals and providing for procedural matters relating thereto.
- (2) Regulations may authorise the chief executive officer to approve forms for the purposes of this Act.

[(3) repealed]

- (4) Regulations made under subsection (1) may provide for the waiver, reduction, refund or deferral of payment of the prescribed fees.
- (5) Where provision for the reduction, waiver, refund or deferral of payment of a prescribed fee is made in the regulations, such reduction, waiver, refund or deferral of payment may be expressed to apply or be applicable either generally or specifically —
 - (a) when an event happens or ceases to happen;
 - (b) in respect of certain persons or classes of person; or
 - (c) in respect of a combination of such events and persons,

and may be expressed to apply or to be applicable subject to such conditions as may be specified in the regulations or in the discretion of any person specified in the regulations.

[Section 96 amended by No. 24 of 1967 s. 3; No. 119 of 1976 s. 4; No. 69 of 1984 s. 4; No. 53 of 1992 s. 17; No. 59 of 2004 s. 37.]

Part V — Proceedings in case of indictable offences

Division 1 — Preliminary

[Heading inserted by No. 53 of 1992 s. 25.]

97. Application

- (1) This Part applies where a defendant is charged before a court of summary jurisdiction with an indictable offence (“**the charge**”).

[(2) repealed]

[Section 97 inserted by No. 53 of 1992 s. 25; amended by No. 82 of 1994 s. 13(5); No. 59 of 2004 s. 50.]

97A. Defendant not appearing may be arrested

- (1) If a defendant —
- (a) is served with a summons; and
 - (b) does not appear before the court at the time and place stated in the summons,

the court, if satisfied the summons was served a reasonable time before that time, may issue —

- (c) another summons, and if that is not obeyed, a warrant to apprehend the defendant; or
 - (d) a warrant to apprehend the defendant.
- (2) A summons issued under subsection (1)(c) may be served by post on the defendant.

[Section 97A inserted by No. 36 of 1996 s. 37; amended by No. 59 of 2004 s. 50.]

Division 2 — General procedure

[Heading inserted by No. 53 of 1992 s. 25.]

97B. Interpretation

In this Division —

“committal mention” means any hearing to which the complaint is adjourned under section 101A(g);

“contempt offence” means an offence under section 102(4) or 104(5);

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

[Section 97B inserted by No. 27 of 2002 s. 8; amended by No. 4 of 2004 s. 52.]

98. Procedure on first appearance

When the defendant appears for the first time before the court on the charge, the court shall —

- (a) read the charge to the defendant; and
- (b) if necessary, explain to the defendant the meaning of the charge,

and then —

- (c) if the charge is an either way charge — proceed in accordance with section 99; or
- (d) if the charge must be dealt with on indictment — proceed in accordance with section 100.

[Section 98 inserted by No. 4 of 2004 s. 53; amended by No. 59 of 2004 s. 50.]

99. Either way charges

- (1) This section applies if the charge is an either way charge.

Criminal Procedure (Summary) Act 1902

Part V Proceedings in case of indictable offences

Division 2 General procedure

s. 100

- (2) If section 5 of *The Criminal Code* applies to the charge, the court must give the prosecutor and the defendant an opportunity to apply under that section for the charge to be tried on indictment.
- (3) Unless the court decides that the charge is to be tried on indictment, the court shall deal with the charge summarily either —
 - (a) subject to subsection (5), on the day the defendant appears for the first time; or
 - (b) on another day.
- (4) If the court decides that the charge is to be tried on indictment, the court shall proceed in accordance with section 100.
- (5) If, in relation to a charge referred to in subsection (3), the defendant, having been served with a summons for the charge —
 - (a) appears at the time and place appointed by the summons; and
 - (b) pleads not guilty to the charge,

the court shall not proceed to hear and determine the charge at the time referred to in paragraph (a) unless the prosecutor consents to it doing so.

[Section 99 inserted by No. 4 of 2004 s. 53; amended by No. 59 of 2004 s. 50.]

100. Charges that are to be tried on indictment

- (1) This section applies if —
 - (a) the charge must be tried on indictment; or
 - (b) the court has decided that the charge, being an either way charge, is to be tried on indictment.
- (2) The court shall —

- (a) tell the defendant that he or she is not required to plead to the charge;
 - (b) cause the defendant to be given a notice in the prescribed form explaining the procedures in this Part; and
 - (c) adjourn the complaint.
- (3) As soon as practicable after the complaint is adjourned, the prosecution shall, unless an order is made under subsection (4), file with the court and serve on the defendant —
- (a) a statement of the material facts relevant to the charge;
 - (b) a copy of —
 - (i) any statement signed by the defendant;
 - (ii) any record of interview with the defendant (signed or unsigned by the defendant),that is in the possession of the prosecution;
 - (c) notice of any tape or videotape recording of conversations between the defendant and a person in authority that is in the possession of the prosecution; and
 - (d) if the defendant said anything to a member of the Police Force that is material to the charge, a written version of the substance of what was said.
- (4) If, on the application of the prosecution, the court is satisfied that at that stage of proceedings —
- (a) the prosecution is unable to comply with subsection (1); or
 - (b) it is not practicable for the prosecution to prepare a statement of the material facts,

the court may order that compliance with subsection (3) by the prosecution be dispensed with.

[Section 100 inserted by No. 4 of 2004 s. 53; amended by No. 59 of 2004 s. 50.]

[Heading repealed by No. 53 of 1992 s. 25.]

101. Expedited committal if defendant pleads guilty

- (1) On the resumption of the hearing of the complaint following the service by the prosecution of the material referred to in section 100(3), the court shall —
 - (a) tell the defendant he or she is not required to plead to the charge; and
 - (b) give the defendant the opportunity to plead to the charge.
- (2) If the defendant pleads guilty to the charge, the court shall, without convicting the defendant, commit the defendant to a court of competent jurisdiction for sentence.
- (3) If the defendant is committed for sentence under subsection (2), the court shall, as soon as possible after the committal, transmit to the Attorney General, DPP, or some other person duly appointed or authorised to present indictments, the complaint and the material filed by the prosecution under section 100(1).

[Section 101 inserted by No. 53 of 1992 s. 25; amended by No. 27 of 2002 s. 9; No. 4 of 2004 s. 54; No. 59 of 2004 s. 50.]

101A. If no expedited committal, defendant to be informed of procedures

If —

- (a) an order is made under section 100(4);
- (b) under section 101 the defendant —
 - (i) pleads not guilty to the charge;
 - (ii) does not plead; or
 - (iii) enters any other plea other than a plea of guilty;or
- (c) the complaint is remitted under section 618(3) of *The Criminal Code*,

the court shall —

- (d) address the defendant in the form of words prescribed in the Ninth Schedule, or in words to the like effect;
- [(e) deleted]*
- (f) give or cause to be given to the defendant a copy of the Ninth Schedule suitably adapted to the circumstances of the charge against the defendant; and
- (g) adjourn the complaint.

[Section 101A inserted by No. 53 of 1992 s. 25; amended by No. 71 of 2000 s. 34; No. 27 of 2002 s. 10; No. 4 of 2004 s. 55; No. 59 of 2004 s. 50.]

[101B-101F. Repealed by No. 27 of 2002 s. 11.]

102. Compulsory examination by the prosecution

- (1) At any time before the committal mention a person may, without notice to the defendant, be summoned under section 74 or 78 to attend before the court for the purpose of being examined by or on behalf of the prosecution or producing a document or thing.
- (2) The defendant —
 - (a) is not a party to an examination under subsection (1);
 - (b) is not to cross-examine a witness attending an examination under subsection (1); and
 - (c) is not to address the court on an examination under subsection (1).
- (3) The evidence of a witness under this section must be taken in the form of a deposition under section 73(1).
- (4) A person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public any evidence taken on an examination under subsection (1), or attempts to do so, commits a contempt of the Supreme Court and is punishable accordingly by that court.

*[Section 102 inserted by No. 27 of 2002 s. 11; amended by
No. 59 of 2004 s. 50.]*

103. Disclosure by the prosecution

- (1) The prosecution is required to serve on the defendant and file with the court —
 - (a) a copy of every statement or deposition, obtained by the prosecution, of any person who may be able to give relevant evidence at any resulting trial;
 - (b) notice of the name and, if known, the address of any person from whom no statement, report or deposition has been obtained but who the prosecution thinks may be able to give relevant evidence at any resulting trial and a description of the relevant evidence concerned;
 - (c) a copy of every other relevant document or exhibit or, if it is not practicable to copy the document or exhibit, a description of it and notice of where and when it can be inspected;
 - (d) a copy of the criminal history of the accused; and
 - (e) any other prescribed document.
- (2) The requirements of subsection (1) must be complied with not later than 14 days before the day of the committal mention.
- (3) If a statement or deposition is recorded on video-tape, it is sufficient for the purposes of subsection (1)(a) to provide notice of the video-tape.
- (4) The court may order that a particular requirement of subsection (1) be dispensed with if, on an application by the prosecution, the court is satisfied that —
 - (a) there is a good reason for doing so; and
 - (b) no miscarriage of justice will result.

- (5) An application under subsection (4) may be made by the prosecution without notice to the defendant and may be heard and determined in the absence of the defendant.
- (6) The room or place in which the court hears and determines an application under subsection (4) is not to be regarded as an open court, and the court may order that no person is to be in the room or place without its permission.
- (7) If the prosecution does not comply with a requirement of subsection (1) and that requirement has not been dispensed with under subsection (4), the court may discharge the defendant or adjourn the hearing of the complaint to enable compliance with that subsection, as the court thinks fit.

[Section 103 inserted by No. 27 of 2002 s. 11; amended by No. 59 of 2004 s. 50.]

104. Procedure on committal mention

- (1) On the committal mention the court is to —
 - (a) require the defendant to plead to the charge;
 - (b) require that all written statements that are, under section 69, to be tendered to it are tendered, and it is to receive those statements which are not to be read in court; and
 - (c) require that any video-tape of evidence that is, under section 106T of the *Evidence Act 1906*, to be admitted is tendered, and it is to receive the video-tape which is not to be played in court.
- (2) The defendant is not to —
 - (a) give or tender any evidence; or
 - (b) submit to the court that there is insufficient evidence before it to put the defendant on his or her trial for the offence.

- (3) Unless the defendant pleads guilty to the charge, the court is to commit the defendant to a court of competent jurisdiction for trial.
- (4) If the defendant pleads guilty to the charge, the court is, without convicting the defendant, to commit the defendant to a court of competent jurisdiction for sentence.
- (5) A person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public any evidence tendered on a committal mention, or attempts to do so, commits a contempt of the Supreme Court and is punishable accordingly by that court.

[Section 104 inserted by No. 27 of 2002 s. 11; amended by No. 59 of 2004 s. 50.]

105. Liability of body corporate for contempt offences

Without affecting any other liability of any person for a contempt offence or otherwise —

- (a) a company or other body corporate is liable to any punishment or penalty for a contempt offence as if it were an individual so far as the punishment or penalty is enforceable against a company or body corporate; and
- (b) if any director, manager, secretary, or officer of a company, or any member of the managing body of a body corporate commits, or knowingly authorises or permits, a contempt offence, he or she is liable to the punishment or penalty for the offence.

[Section 105 inserted by No. 27 of 2002 s. 11.]

106. Saving

Nothing in section 102(4) or 104(5) applies to the publication of information —

- (a) with regard to any proceedings, punishment or penalty for a contempt offence; or

- (b) after the information is, at the trial or sentencing of the defendant, admitted into evidence or stated aloud under section 617A of *The Criminal Code*.

[Section 106 inserted by No. 27 of 2002 s. 11.]

107. Committal for sentence, matters to be recorded

- (1) Upon committing a defendant to a court of competent jurisdiction for sentence the court must record the following matters on the complaint —
 - (a) the defendant's plea before the court;
 - (b) if the court convicted the defendant, the fact that it did so;
 - (c) the date of the committal.
- (2) A copy of a complaint certified as a true copy by a registrar is, in the absence of evidence to the contrary, evidence of its contents and of any matter recorded on it in accordance with subsection (1).

[Section 107 inserted by No. 4 of 2004 s. 56; amended by No. 59 of 2004 s. 50.]

[108.] *Repealed by No. 27 of 2002 s. 11.]*

109. Depositions of persons dead or absent

- (1) When a person has been charged with an indictable offence, as such, and has been committed for trial, then if, upon the subsequent trial of the person so charged, it is proved that any person whose deposition has been taken in accordance with section 73 at the hearing of such charge is dead, or out of the State, or so ill as not to be able to travel and if —
 - (a) the deposition was reduced to writing under section 73(1)(a) and purports to be signed by the judicial officer by or before whom it purports to have been taken; or

- (b) the deposition was recorded under section 73(1)(b) and a transcript of the recording has been made and certified in the prescribed manner to be a correct transcription of the recording,

the deposition may, subject to subsection (2), be read as evidence on the trial without further proof thereof.

- (2) A deposition referred to in —
 - (a) subsection (1)(a) shall not be read as evidence on the trial without further proof thereof if it is proved that it was not in fact signed by the judicial officer by whom it purports to be signed;
 - (b) subsection (1)(b) shall not be read as evidence on the trial without further proof thereof if it is proved that the transcript to be used is not a correct transcription of the recording.
- (3) A person shall not allege that a deposition intended to be read as evidence on a trial is an incorrect transcription of a recording unless, not less than 7 days before the commencement of the trial, that person has given the prosecutor notice in the prescribed form of his intention to raise that allegation.

[Section 109 inserted by No. 81 of 1986 s. 13; amended by No. 59 of 2004 s. 50.]

110. Witness dangerously ill, statement from

If a person dangerously ill and unable to travel is believed to be able to give material and important information relating to an indictable offence, or to a person accused thereof, and it is desirable, in the interests of truth and justice, that means should be provided for perpetuating such testimony and rendering the same available in the event of the death of the person giving the same, the proceedings described in the next section may take place.

111. How the statement to be taken

Whenever it is made to appear to the satisfaction of a magistrate, justice or registrar that any such person is dangerously ill and not likely to recover from such illness, and that it is not practicable for that officer to take a deposition, in accordance with the provisions of Part IV, of such person, the officer may take, in writing, the statement on oath or affirmation of such person, and the officer shall thereupon subscribe the same, and add thereto a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons (if any) present at the taking thereof, and if the same relates to any indictable offence for which any accused person is already committed, shall transmit the same with the said addition to the proper officer of the court for trial at which the accused person has been committed; and in all other cases he shall transmit the same to the registrar of the relevant court of summary jurisdiction, who shall preserve the same and file it of record.

[Section 111 amended by No. 22 of 1968 s. 17; No. 87 of 1982 s. 14; No. 59 of 2004 s. 50.]

112. Statement, when admissible in evidence

A statement taken as described in sections 110 and 111 may be read in evidence either for or against the accused upon his trial, if the person who made the same is proved to be dead, or if it is proved that there is no reasonable probability that such person will ever be able to travel or to give evidence, without further proof thereof, if the same purports to be signed by the officer by or before whom it purports to be taken, and if it is proved to the satisfaction of the court that reasonable notice of the intention to take such statement has been served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person or his agent had, or might have had if he had chosen to be present, full opportunity of cross-examining the person who made the same, unless it is proved that any of the requisitions of the Act were not complied with.

[Section 112 amended by No. 59 of 2004 s. 50.]

113. Prisoner to be present when statement taken

Whenever a prisoner in actual custody has served or received notice of an intention to take a statement as mentioned in sections 110 and 111, the court by whom the prisoner was committed, or the visiting justices of the prison in which he is confined may, by an order in writing, direct the gaoler having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statement; and such gaoler shall convey the prisoner or cause him to be conveyed accordingly and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison.

[Section 113 amended by No. 59 of 2004 s. 50.]

[Heading repealed by No. 53 of 1992 s. 31.]

114. Prosecution may change statement of facts

If under section 100(1) the prosecution serves the defendant with a statement of the material facts relevant to the charge, the prosecution may serve the defendant with an amended statement —

- (a) at any time before the defendant is given the opportunity to plead under section 101;
- (b) if the defendant has pleaded guilty under section 101 and been committed for sentence — at any time before the defendant is called on to plead before the court to which he or she has been committed for sentence.

[Section 114 inserted by No. 53 of 1992 s. 30.]

[115-122. Repealed by No. 87 of 1982 s. 16.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

123. Defendant may be granted bail or kept in custody

On committing the defendant for sentence or trial under this Part, the court may —

- (a) grant the defendant bail under the *Bail Act 1982*; or
- (b) by a warrant, order the defendant to be kept in custody,

until the sittings of the court before which the defendant is committed.

[Section 123 inserted by No. 53 of 1992 s. 31; amended by No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

124. Witness may be required to enter recognisance

The court of summary jurisdiction before whom any witnesses are examined may bind every such witness by recognisance, in such sum as it thinks fit, to appear at the court at which the defendant is to be tried, then and there to give evidence, and shall so bind over all witnesses called for the prosecution if so required by the defendant.

[Section 124 amended by No. 27 of 2002 s. 12; No. 59 of 2004 s. 50.]

125. Recognisance, form and notice of

Every such recognisance shall be duly acknowledged by every person who enters into it, and shall be subscribed by the judicial officer before whom it is acknowledged; and a notice thereof, signed by the judicial officer, shall at the same time be given to every person bound thereby.

[Section 125 amended by No. 59 of 2004 s. 50.]

126. Witness refusing to enter recognisance may be imprisoned

If a witness refuses to enter into such recognisance, the court of summary jurisdiction may, by warrant, commit him to gaol, there to be safely kept until after the trial of the defendant,

unless in the meantime such witness duly enters into such recognisance before a justice.

Provided that, if afterwards, from want of sufficient evidence in that behalf or other cause, the court of summary jurisdiction before which the defendant has been brought do not commit him or admit him to bail for the offence with which he is charged, or if the Attorney General, DPP or person appointed or authorised to present indictments declines to file an information against the defendant for the offence, any magistrate or justice, upon being duly informed of the fact, may, by his order in that behalf, order and direct the keeper of the gaol where such witness is in custody to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly as to that warrant.

[Section 126 amended by No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

127. On committal, complaint etc. to be sent to Attorney General

If the defendant is committed for trial under section 104(3) or for sentence under section 104(4), the registrar shall, as soon as possible after the committal, transmit to the Attorney General, DPP, or some other person duly appointed or authorised to present indictments, the complaint and all statements, depositions, exhibits and recognisances other than any statement of the material facts served under section 100(1) or 114.

[Section 127 inserted by No. 53 of 1992 s. 32; amended by No. 27 of 2002 s. 13; No. 59 of 2004 s. 50.]

128. Duty of Attorney General

The Attorney General, DPP, and the person appointed or authorised to present indictments shall, respectively, after such transmission and before the day of trial, have and be subject to

the same duties and liabilities in respect of the said several documents upon a *certiorari* directed to them respectively, or upon a rule or order directed to them in lieu of that writ, as the registrar of the court of summary jurisdiction would have had and been subject to upon a *certiorari* to them if such documents had not been so transmitted.

[Section 128 amended by No. 59 of 2004 s. 50.]

129. Judge may direct delivery of complaint etc. to court

The Attorney General, DPP, and the person appointed or authorised to present indictments respectively, and any officer prosecuting for the Attorney General or DPP shall, at any time after the opening of the court at the sittings or sessions at which the trial is to be held, or the sentence passed, deliver the said documents, or any of them, to the proper officer of the court, if and when the presiding judge so directs.

[Section 129 amended by No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

130. Recommittal in case of committal to wrong court

If in any case a defendant is committed to take his trial or for sentence before a court (the “**superior court**”) which has not jurisdiction to try the case or pass sentence upon him, or before which he ought not to be committed to take his trial, or for sentence, or the judge whereof is by reason of interest or otherwise incapacitated from trying the case or passing sentence, the committing court may, at any time before the time appointed for holding the superior court, direct the defendant and the warrant of commitment, if any, to be brought before the committing court and may, upon production of the depositions and without further evidence, cancel the warrant of commitment, and may commit the defendant afresh to take his trial, or for sentence, before another and the proper court; or if the defendant is brought before the superior court at the time appointed for holding the same, the superior court may, notwithstanding such

Criminal Procedure (Summary) Act 1902

Part V Proceedings in case of indictable offences

Division 2 General procedure

s. 130

defect of jurisdiction or incapacity, remand him to take his trial, or for sentence, before another and the proper court.

When a fresh commitment or remand has been so made, the committing court or the superior court may bind the witnesses by fresh recognisance to appear and give evidence at the court to which the defendant is so committed or remanded, and for that purpose may summon and compel the attendance of the witnesses before it in the manner hereinbefore provided for compelling the attendance of witnesses to give evidence.

Every direction of a court of summary jurisdiction to bring a defendant before it under this section shall be reduced into writing and signed and have effect as a warrant, and shall be obeyed and carried into effect by all constables, gaolers, and other persons to whom it is directed, according to its tenor.

[Section 130 amended by No. 19 of 1919 s. 9; No. 87 of 1982 s. 17; No. 59 of 2004 s. 50.]

[131, 132. Repealed by No. 119 of 1985 s. 31.]

[133. Repealed by No. 22 of 1968 s. 22.]

Part VI — Proceedings in case of simple offences and other matters

[Heading deleted by No. 59 of 2004 s. 51(1).]

134. Absence of complainant, procedure on

Subject to section 136, if, upon the day and at the time and place appointed by the summons for hearing and determining a complaint of a simple offence or other matter, the defendant attends voluntarily in obedience to the summons, or is brought before the court of summary jurisdiction by virtue of a warrant, and the complainant (having had notice of such day, time, and place) does not appear by himself or his agent, the court shall dismiss the complaint, unless for some reason it thinks proper to adjourn the hearing of the same to some other day, in which case it may adjourn the hearing accordingly, upon such terms as it thinks fit, and may commit the defendant in the meantime for his appearance at the time and place to which the hearing is so adjourned.

[Section 134 amended by No. 19 of 1919 s. 4; No. 120 of 1981 s. 5; No. 87 of 1982 s. 18; No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

135. Absence of defendant or defendant's written plea of guilty, procedure on

- (1) Subject to section 136, if, at the time and place appointed by a summons for the hearing and determining of a complaint of a simple offence that is not an indictable offence, the defendant does not appear when called and due service of that summons, within a reasonable time before that appointed for his appearance, is proved as provided by section 56, 56A or 57, the court of summary jurisdiction may —
 - (a) proceed to hear and determine the complaint to which that summons relates, in the absence of the defendant; or

s. 135

- (b) adjourn the hearing of the complaint to which that summons relates and may issue —
 - (i) a summons and, if it is not obeyed, a warrant; or
 - (ii) a warrant,to apprehend the defendant and to bring him before the court to answer that complaint and to be dealt with further according to law,

but if the defendant has by written notification notified the court that he wishes to plead guilty to the charge the court shall, subject to subsection (1a), proceed to hear and determine the complaint as though the defendant were present and pleaded guilty thereto.

- (1a) Where a defendant has notified the court that he wishes to plead guilty to a charge in the manner referred to in subsection (1) and by further notification received by the court before the hearing the defendant or his agent intimates to the court that the defendant wishes to withdraw the plea then, if the defendant does not appear when called and due service of the summons, within a reasonable time before that appointed for his appearance, is proved as provided by section 56, 56A or 57, the court may —
 - (a) proceed to hear and determine the complaint in the absence of the defendant; or
 - (b) adjourn the hearing of the complaint and may issue a warrant to apprehend the defendant and to bring him before the court to answer the complaint and to be further dealt with according to law.
- (1b) For the purposes of this section any notification signed or purporting to be signed by the defendant or by his agent on his behalf shall be receivable in evidence and shall, unless the contrary is proved, be deemed to have been signed by the defendant or by his agent on his behalf, as the case requires.
- (1c) A summons issued under subsection (1)(b)(i) may be served by post on the defendant.

[(2) repealed]

- (3) Where a person is apprehended under a warrant issued pursuant to this section, he shall be detained in safe custody, until he can be brought before the court at a time and place of which the complainant has had due notice.

[Section 135 inserted by No. 22 of 1968 s. 23; amended by No. 48 of 1971 s. 3; No. 6 of 1979 s. 4; No. 120 of 1981 s. 4; No. 33 of 1991 s. 5; No. 78 of 1995 s. 61; No. 36 of 1996 s. 38; No. 10 of 1999 s. 6; No. 59 of 2004 s. 50.]

136. Defendant's written plea of not guilty, procedure on

- (1) A person on whom a summons for a simple offence that is not an indictable offence is served (in this section called "**the defendant**") may, if he wishes to plead not guilty to the charge set out in that summons —

- (a) state —
- (i) that he wishes to plead not guilty to that charge; and
 - (ii) the address for service on him of notices;
- and
- (b) write his signature,

in the place provided for the purpose in the duplicate of that summons received by him and, as soon as possible after receiving that duplicate, transmit it to the court of summary jurisdiction before which that summons is returnable.

- (2) Subject to subsection (3), if the court to whom a duly completed duplicate of the summons referred to in subsection (1) has been transmitted under the latter subsection receives that duplicate before the time appointed by that summons for the hearing and determining of the complaint to which that summons relates —

s. 136

- (a) the registrar of the court or an officer authorised by him in writing for the purpose shall forthwith notify the complainant concerned of that receipt;
 - (b) it shall not be necessary for the defendant or the complainant or for the witnesses, if any, or the agent, if any, of the defendant or the complainant to appear before the court at that time;
 - (c) that complaint shall not be heard at that time; and
 - (d) the court shall fix a time and place for the hearing and determining of that complaint.
- (3) If, notwithstanding the receipt by the court of a duly completed duplicate of the summons concerned before the time appointed by that summons for the hearing and determining of the complaint to which that summons relates, both the defendant and the complainant —
- (a) appear at that time before the court concerned; and
 - (b) consent to the hearing and determining of that complaint at that time,

the court may hear and determine that complaint at that time.

- (4) The registrar referred to in subsection (2) or an officer authorised by him in writing for the purpose shall, as soon as the court has fixed under that subsection a time and place for the hearing and determining of the complaint concerned —
- (a) serve on the defendant notice in the prescribed form that he is required to attend at that time and place —
 - (i) at the address for service on the defendant of notices stated by the defendant under subsection (1)(a)(ii); or
 - (ii) if the defendant has not stated an address for service referred to in subparagraph (i), at the address at which the summons referred to in subsection (1) was served on the defendant,

- by posting that notice to that address by prepaid post in an envelope addressed to the defendant; and
- (b) notify the complainant that he is required to attend at that time and place.
- (5) The court hearing the complaint concerned at the time and place fixed under subsection (2) —
- (a) may accept as proof of the service on the defendant of notice of that time and place the certificate in the prescribed form of the registrar concerned, or of an officer authorised by him in writing for the purpose, of the due posting by him of that notice under subsection (4);
- (b) may, if the defendant does not appear at that time and place when called and due service of notice referred to in paragraph (a) is proved —
- (i) proceed to hear and determine that complaint in the absence of the defendant; or
- (ii) adjourn the hearing of that complaint and may issue a warrant to apprehend the defendant and to bring him before the court to answer that complaint and to be dealt with further according to law.
- (6) In this section —
- “officer”** means officer of the court of summary jurisdiction by which the defendant is dealt with under this section.

[Section 136 inserted by No. 120 of 1981 s. 7; amended by No. 78 of 1995 s. 61; No. 59 of 2004 s. 50.]

136AA. Absence of defendant, evidentiary presumptions

- (1) If —
- (a) a complaint has been made or sworn by a person who is a public officer acting in the course of the officer’s duties; and

s. 136A

- (b) the court, under section 135(1)(a), 135(1a)(a) or 136(5)(b)(i), proceeds to hear and determine the complaint in the absence of the defendant,

the court in doing so may take as proved any allegation in the summons served on the defendant in relation to the complaint.

- (2) For the purposes of this section, if a complaint is made or sworn by a person who in the complaint purports to be a public officer, it shall be presumed, in the absence of evidence to the contrary —
 - (a) that the person is such an officer;
 - (b) that the complaint was made or sworn by the person acting in the course of his or her duties as such an officer; and
 - (c) that the person had the authority to make or swear the complaint.

- (3) In this section —

“public officer” has the same definition as in section 1 of *The Criminal Code*.

[Section 136AA inserted by No. 10 of 1999 s. 7.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

136A. Decisions given in default of appearance of any party may be set aside

- (1) Where a decision is given by a court of summary jurisdiction in default of appearance by the complainant or by the defendant, the party who did not appear may, within 21 days after the party becomes aware of the decision, or within such further period as the court at the place where the decision was given may allow, serve on the registrar of the court notice in writing of his intention to apply to the court to set the decision aside, and of the grounds of the application.
- (2) On service of the notice referred to in subsection (1) and payment by the applicant of such fee, if any, as is required by or

under this Act to be paid, the registrar shall appoint a time and place for the hearing of the application by the court and shall in writing notify the applicant of the time and place.

- (3) If the registrar so decides, the applicant shall, within the prescribed time, or, if no time is prescribed, within 3 days after the day on which he serves notice under subsection (1) enter into a recognisance before a magistrate, justice or registrar conditioned —
- (a) to appear before the court to which the application is made;
 - (b) to submit to the judgment of that court; and
 - (c) to pay such costs as that court may award.
- (3a) A recognisance referred to in subsection (3) shall be in such sum as the registrar thinks fit and the registrar may in addition require either —
- (a) that there be a surety or sureties approved by it; or
 - (b) that the applicant deposit a sum of money with the registrar by way of security,
- for the compliance by the applicant with the conditions of his recognisance.
- (3b) On an application being made under this section execution shall be stayed until the application is disposed of or the court otherwise orders, and the applicant, if then in custody for non-payment of any sum of money, shall be released upon presentation of the recognisance to the person by whom he is held in custody.
- (4) At the time and place appointed by the registrar for the hearing of the application, the court shall, if the applicant does not appear, strike out the application and, if he does appear, proceed to hear the application and may —
- (a) refuse the application to set aside the decision; or

s. 136B

- (b) adjourn the hearing of the application to a time and place appointed by the court, and direct that the applicant give to the other party written notice of the time and place so appointed by the court and that the other party may, if he thinks fit, then and there appear to oppose the application, and the court may at the time and place appointed by the court set aside the decision in respect of which the application is made on such terms as the court thinks fit, or the court may refuse to set aside the decision; and
 - (c) in any case, make such order as to costs as the court thinks fit.
- (5) If the court to which the application to set aside the decision is made, refuses the application pursuant to subsection (4)(a), or refuses to set aside the decision pursuant to subsection (4)(b), and if the appellant was released from custody on recognisance pending the decision of the application, the court may order the return of the applicant to custody according to the decision in respect of which the application was made.
- (5a) If the court sets aside the decision, any licence suspension order made under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* in respect of any fine imposed by the decision is to be taken as having been cancelled as at the time the application under subsection (1) was made.
- (6) The provisions of this section are in addition to, and not in derogation of, any of the provisions of Part VIII, which latter provisions, if applicable in the circumstances of the case, may be applied in respect of a decision of justices in respect of an application made under this section.

[Section 136A inserted by No. 9 of 1957 s. 3; amended by No. 22 of 1968 s. 25; No. 17 of 1972 s. 10; No. 87 of 1982 s. 19; No. 69 of 1984 s. 5; No. 33 of 1989 s. 6; No. 92 of 1994 s. 20; No. 59 of 2004 s. 38.]

136B. Proceedings against children

- (1) Notwithstanding the provisions of any other Act, where a court of summary jurisdiction, other than the Children's Court, proceeds to hear and determine a complaint against a person who is, or at the material time was, under the age of 18 years, in the belief that the person is, or at the material time was, of or over that age, the proceedings are not on that account invalidated, the determination shall, subject to subsection (2), be and remain of full force and effect and anything done pursuant to the determination is lawful.
- (2) Where a court makes such a determination, a party to the complaint or the Minister may apply to the court, or if the determination is the subject of an appeal under Part VIII, apply to the Supreme Court for an order setting aside the determination; and the court hearing the application under this subsection shall, if satisfied that the application is well founded, set aside the determination, remit any penalty that may have been imposed and transmit the complaint for hearing and determination to the Children's Court.

[Section 136B inserted by No. 22 of 1968 s. 26; amended by No. 49 of 1988 s. 52; No. 33 of 1989 s. 7; No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

137. Appearance of both parties, procedure on

- (1) If both the defendant and the complainant appear before a court of summary jurisdiction —
 - (a) personally; or
 - (b) by an agent,then the court may, subject to section 136 and this section, proceed to hear and determine the complaint.
- (2) If the defendant has not, prior to the time of the appearance referred to in subsection (1), being the time appointed by a summons for a simple offence that is not an indictable offence, notified the the court concerned —

s. 138

- (a) under section 135 of his wish to plead guilty; or
- (b) under section 136 of his wish to plead not guilty,

to the charge concerned, the court shall not proceed to hear and determine the complaint at that time unless the complainant consents thereto.

[(3) repealed]

[Section 137 inserted by No. 120 of 1981 s. 8; amended by No. 4 of 2004 s. 57; No. 59 of 2004 s. 50.]

138. Proceedings at the hearing on defendant's confession

When the defendant is present at the hearing, the substance of the complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him; and if he has no cause to show, then the court may convict him, or make an order against him accordingly.

[Section 138 amended by No. 59 of 2004 s. 50.]

138A. Defendants who will not or do not plead

- (1) If a defendant, on being called on to plead to a complaint, will not or does not —
 - (a) plead in a manner provided in section 138; or
 - (b) answer directly to the complaint,

the court shall enter a plea of not guilty on behalf of the defendant unless the defendant is not mentally fit to stand trial under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

- (2) A plea so entered has the same effect as if it had been actually pleaded.

[Section 138A inserted by No. 69 of 1996 s. 50; amended by No. 59 of 2004 s. 50.]

139. Where defendant does not admit the case

But if he does not admit the truth of the complaint, then the court shall proceed to hear the complainant and his witnesses, and also the defendant and his witnesses, and also such witnesses as the complainant may examine in reply, if the defendant has given any evidence other than as to his general character; and the court, having heard the evidence so adduced, shall consider the whole matter and determine the same, and shall convict or make an order upon the defendant or dismiss the complaint, as justice may require.

[Section 139 amended by No. 59 of 2004 s. 50.]

140. Non-appearance of party or parties at adjourned hearing

If at the time or place to which a hearing or further hearing is adjourned, either or both of the parties does not or do not appear personally or by an agent, the court may proceed to such hearing or further hearing as if such party or parties were present; or if the complainant does not appear the court may dismiss the complaint with or without costs.

[Section 140 amended by No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

141. Practice as to examination etc. of witnesses

The practice before a court of summary jurisdiction upon the hearing of a complaint of a simple offence or other matter shall, in respect of the examination and cross-examination of witnesses be in accordance as nearly as may be with the practice for the time being of the Supreme Court upon the trial of an issue of fact in an action at law. But the complainant or his agent shall not, without the leave of the court, be entitled to make any observations in reply upon the evidence given by the defendant; nor shall the defendant or his agent without such leave be entitled to make any observations in reply upon any evidence given by the complainant in reply.

s. 142

[Section 141 amended by No. 19 of 1919 s. 4; No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

142. Dismissal of complaint, procedure on

If a court of summary jurisdiction dismisses a complaint, it may, if required so to do, and if it thinks fit, make an order of dismissal, and give the defendant a certificate thereof, which certificate shall, upon production and without further proof, be a bar to any subsequent complaint for the same matter against the same person.

[Section 142 amended by No. 59 of 2004 s. 50.]

143. Acquittal on account of unsoundness of mind

- (1) If on the hearing of a complaint for an offence the question arises whether the defendant was not criminally responsible for an act or omission on account of unsoundness of mind, a court of summary jurisdiction shall, if it finds the defendant not guilty, make a special finding as to —
 - (a) whether it found the person not guilty on account of unsoundness of mind at the time of the act or omission; and
 - (b) if it so acquitted the person, the offence the person was acquitted of.
- (2) If the court finds a defendant not guilty on account of unsoundness of mind the defendant is to be dealt with under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

[Section 143 inserted by No. 69 of 1996 s. 51; amended by No. 59 of 2004 s. 50.]

[144. Repealed by No. 92 of 1994 s. 20.]

[145. Repealed by No. 78 of 1995 s. 61.]

146. Formal record of conviction not necessary, except for special purposes

- (1) It shall not be necessary for a court of summary jurisdiction formally to draw up a conviction or order or any other record of a decision, except on summary conviction for an indictable offence, unless the same is required by a party to the proceedings for the purpose of an appeal against the decision, or is required for the purpose of a return to a writ of *habeas corpus* or other writ from the Supreme Court.
- (2) Notwithstanding subsection (1) a court of summary jurisdiction shall record its reasons for a decision if required to do so under the *Sentencing Act 1995*.

[Section 146 amended by No. 27 of 1988 s. 6; No. 92 of 1994 s. 20; No. 78 of 1995 s. 61; No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

147. No certiorari

No conviction or order shall be quashed for want of form and no warrant of commitment on a conviction shall be held void by reason of any formal defect therein; provided it is therein alleged that the party had been duly convicted, and there is a good and valid conviction to sustain it.

[Section 147 amended by No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

[148. Repealed by No. 59 of 2004 s. 50.]

[149 and heading. Repealed by No. 78 of 1995 s. 61.]

150. Sentence

If a court of summary jurisdiction convicts a person, whether after a plea of guilty or otherwise, the court may sentence and make other orders in respect of the offender under the

s. 151

Sentencing Act 1995 or under the *Young Offenders Act 1994* as the case requires.

[Section 150 inserted by No. 78 of 1995 s. 61; amended by No. 59 of 2004 s. 50.]

[150A. Repealed by No. 78 of 1995 s. 61.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

151. Costs

(1) In this section —

“**dismiss**”, in relation to a charge in a complaint, means to dismiss the charge without considering its merits;

“**official prosecution**” has the meaning given by the *Official Prosecutions (Defendants’ Costs) Act 1973*;

“**OPDC determination**” means a determination made under section 210 of the *Legal Practice Act 2003* for the purposes of the *Official Prosecutions (Defendants’ Costs) Act 1973*.

(2) Subject to the *Official Prosecutions (Defendants’ Costs) Act 1973* and this section, a successful party to a matter is entitled to the party’s costs.

(3) In any proceedings on a complaint, if a court of summary jurisdiction convicts a defendant, the court may order the defendant to pay all or a part of the complainant’s costs.

(4) In any proceeding that is not an official prosecution, if a court of summary jurisdiction acquits a defendant or dismisses a charge, the court may order the complainant to pay all or a part of the defendant’s costs.

(5) Subsection (4) does not affect the operation of the *Official Prosecutions (Defendants’ Costs) Act 1973*.

(6) In a matter that is not a prosecution, a court of summary jurisdiction may make any orders as to costs that it thinks fit.

- (7) If subsection (3), (4) or (6) applies the costs are to be assessed in accordance with the relevant OPDC determination and section 215 of the *Legal Practice Act 2003*.
- (8) If subsection (3), (4) or (6) applies, the court may reduce the costs that it would otherwise have awarded, or refuse to award costs, to the party concerned 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.
- (9) The court may adjourn an application for costs, or the determination of the amount of costs to be paid, if there is good reason to do so.
- (10) A question adjourned under subsection (9) is to be dealt with by a magistrate and may be dealt with in chambers.

[Section 151 inserted by No. 59 of 2004 s. 39.]

[152, 153. Repealed by No. 59 of 2004 s. 39.]

[154. Repealed by No. 92 of 1994 s. 20.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

154A. Enforcing recognisances

- (1) If a person bound by —
 - (a) a recognisance to appear before a court of summary jurisdiction;
 - (b) a recognisance entered into pursuant to an order made under a written law by a magistrate or a justice; or
 - (c) a recognisance entered into in respect of any matter cognisable by a court of summary jurisdiction,

s. 155

fails in any condition of the recognisance, a court of summary jurisdiction may, on the application of the State and on the production of the recognisance, order that the recognisance be forfeited and that any person bound by the recognisance (including any surety) pay the amount that he or she is so bound to pay to the State.

- (2) The amount to be paid must be paid, and its payment may be enforced, under Part 5 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.
- (3) Subsection (2) does not prejudice the recovery of the amount as a civil debt due to the State.

[Section 154A inserted by No. 78 of 1995 s. 59; amended by No. 65 of 2003 s. 128(2), (3); No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

155. Enforcing the payment of money, other than fines etc.

- (1) In this section —
“**payment order**” means an order requiring a person to pay money, other than —
 - (a) a fine as defined in section 28 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*;
 - (b) compensation to be paid under a compensation order made under Part 16 of the *Sentencing Act 1995*; or
 - (c) the sum to be paid on the forfeiture of a recognisance under section 154A.
- (2) This section applies where a court of summary jurisdiction makes a payment order.
- (3) If the money is not paid within 28 days after the date of a payment order, the money may be recovered as a judgment debt in a court of competent jurisdiction.
- (4) For the purposes of subsection (3), a registrar of a court of summary jurisdiction may issue a certified copy of a payment

order and that copy may be registered as a judgment in a court of competent jurisdiction.

- (5) Subsection (3) does not prejudice the recovery of the money by means expressly provided by a written law.

[Section 155 inserted by No. 78 of 1995 s. 60; amended by No. 59 of 2004 s. 50.]

[155A-155D. Repealed by No. 109 of 1965 s. 4.]

[156-158. Repealed by No. 92 of 1994 s. 18.]

[Heading deleted by No. 59 of 2004 s. 50.]

159. Imprisonment may be ordered

- (1) If a court of summary jurisdiction makes an order for the doing of an act, other than an order requiring the payment of money it may direct that if the defendant contravenes the order, the defendant is to be imprisoned for a period set by the court.
- (2) If a defendant contravenes an order made under subsection (1), the court that made the order may issue a warrant of commitment accordingly.

[Section 159 inserted by No. 92 of 1994 s. 19; amended by No. 59 of 2004 s. 50.]

160. Correcting errors caused by use of false name etc.

- (1) If as a result of a defendant using a false name, address or date of birth, a record of a court of summary jurisdiction does not record the defendant's correct name, address or date of birth, the court may correct the records and make any ancillary orders it thinks fit to give effect to the correction.
- (2) The powers in subsection (1) may be exercised by the court on its own initiative or on an application by a person who the court is satisfied has a proper interest in the proceedings.

s. 160

- (3) Without limiting the power to make ancillary orders, the court may —
- (a) set aside a conviction or order made by the court;
 - (b) order a rehearing and, if necessary, adjourn proceedings;
 - (c) order that records other than the court's records be corrected.

[Section 160 inserted by No. 59 of 2004 s. 40.]

[161-165A and headings. Repealed by No. 92 of 1994 s. 19.]

[166 and heading, 166A, 166B. Repealed by No. 78 of 1995 s. 61.]

[167, 168 and heading. Repealed by No. 92 of 1994 s. 20.]

[169. Repealed by No. 22 of 1968 s. 33.]

[170 and heading, 171. Repealed by No. 78 of 1995 s. 61.]

[Parts VI AA, VI BA and VI A repealed by No. 92 of 1994 s. 20.]

[Parts VII and VII A repealed by No. 19 of 1997 s. 80(2).]

Part VIII — Appeals

[Heading inserted by No. 33 of 1989 s. 15.]

Division 1 — Appeals from courts of summary jurisdiction

[Heading inserted by No. 59 of 2004 s. 51(2).]

183. Definitions

In this Part unless the contrary intention appears —

“**Court**” means the Supreme Court;

“**legal practitioner**” means a legal practitioner as defined in the *Legal Practice Act 2003*;

“**lower court registrar**” means the registrar of the court of summary jurisdiction that made the decision that is the subject of an appeal under this Part;

“**Registrar**” has the meaning assigned to it by section 4 of the *Supreme Court Act 1935*.

[Section 183 inserted by No. 33 of 1989 s. 16; amended by No. 65 of 2003 s. 43; No. 45 of 2004 s. 36(2) and (5); No. 59 of 2004 s. 41.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

184. Right of appeal

- (1) The only appeal that can be made against a decision of a court of summary jurisdiction is to the Supreme Court in accordance with this Part and rules of court made by the Supreme Court.
- (2) A decision that is declared by an Act to be final may not be the subject of an appeal under this Part.
- (3) A decision by a court of summary jurisdiction to commit a defendant for trial may not be the subject of an appeal under this Part.
- (4) Subsection (1) is subject to any other Act and in particular to Part 5 of the *Children’s Court of Western Australia Act 1988*.

[Section 184 inserted by No. 33 of 1989 s. 16; amended by No. 36 of 1996 s. 39; No. 59 of 2004 s. 42.]

185. Who may appeal

- (1) An appeal may be made by any or all of the following —
 - (a) a person who is aggrieved by a decision;
 - (b) the Attorney General.
- (2) An appeal may be made by a person against 2 or more decisions made at the same hearing and in such a case the appeals are to be consolidated unless, or except to the extent that, the Court orders otherwise.
- (3) If more than one appeal against a decision is made, the Court may determine 2 or more of them at the same time.

[Section 185 inserted by No. 59 of 2004 s. 43.]

186. Grounds

- (1) An appeal may only be made on a ground or grounds coming within the following —
 - (a) that the court of summary jurisdiction —
 - (i) made an error of law or fact, or of both law and fact;
 - (ii) acted without or in excess of jurisdiction;
 - (iii) imposed a sentence that was inadequate or excessive;
 - (b) that there is some other reason that is sufficient to justify a review of the decision.
- (2) An appeal may be made against a decision notwithstanding that the decision was made following a plea of guilty or an admission of the truth of any matter.

[Section 186 inserted by No. 33 of 1989 s. 16; amended by No. 78 of 1995 s. 61; No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

[187-190. Repealed by No. 59 of 2004 s. 50.]

191. Notice to other parties

The appellant shall give notice of the appeal to —

- (a) the other party or other parties to the proceedings before the court of summary jurisdiction; and
- (b) any other person to whom the Judge may direct that notice be given.

[Section 191 inserted by No. 33 of 1989 s. 16; amended by No. 59 of 2004 s. 50.]

192. Amendment of grounds of appeal

The Court may, on such terms and conditions as it thinks fit —

- (a) on application made by the appellant before the hearing of the appeal; or
- (b) on the hearing of the appeal,

amend or add to, or grant leave to the appellant to amend or add to, the grounds of the appeal.

[Section 192 inserted by No. 33 of 1989 s. 16.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

193. Judge may make order as to stay of execution

- (1) At any time after an appeal is commenced, the Court may make any order that it thinks fit touching the stay or continuation in effect of any sentence imposed or order made by the court of summary jurisdiction, or of any statutory consequence of the decision that is subject to appeal.
- (2) The Court may subsequently make any order of the kind referred to in subsection (1) or may vary or revoke any previous order under this section.

- (3) The provisions of an order under this section have effect notwithstanding anything in section 194.
- (3a) If an appeal is commenced against a decision involving or giving rise to the imposition of a fine (as defined in section 28(1) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*), an order under this section is not to be made.
- (4) Notwithstanding subsections (1) and (2), where an appellant or respondent is in custody, his sentence of imprisonment shall not be stayed unless he is granted bail under the *Bail Act 1982* and he shall not be released from custody until he becomes entitled to be released under that Act.

[Section 193 inserted by No. 33 of 1989 s. 16; amended by No. 78 of 1995 s. 61; No. 8 of 1996 s. 11; No. 59 of 2004 s. 50.]

194. General provisions as to stay of execution

- (1) Subject to any order under section 193, the provisions of subsections (2), (3), (4) and (5) have effect on the commencement of an appeal.
- (2) After notice of an appeal against a decision is received by a lower court registrar, no warrant or order to enforce the decision shall be issued, and no action to enforce the decision shall be taken, under this Act until the appeal is disposed of.
- (3)
 - (a) Any disqualification from holding or obtaining a licence to drive a vehicle under the *Road Traffic Act 1974*, or under Part 15 of the *Sentencing Act 1995*, in respect of a conviction that is the subject of an appeal is suspended until the appeal is disposed of.
 - (b) Any period during which the disqualification is so suspended shall not be taken into account in determining the period of the disqualification.
- (4) Subject to subsection (5) and section 101B of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, any

sentence imposed, or any other order made, under the *Sentencing Act 1995*, the *Young Offenders Act 1994*, or any other law, is suspended until the appeal is disposed of.

- (5) Subsection (4) does not apply to —
- (a) a sentence of imprisonment, whether or not it is suspended under Part 11 or is indefinite imprisonment imposed under Part 14, of the *Sentencing Act 1995*;
 - (b) a sentence of detention under the *Young Offenders Act 1994*; and
 - (c) an order of forfeiture.
- (6) In this section “**disposed of**” means determined, dismissed or discontinued.

[Section 194 inserted by No. 33 of 1989 s. 16; amended by No. 92 of 1994 s. 20; No. 78 of 1995 s. 61; No. 8 of 1996 s. 12; No. 29 of 1998 s. 9; No. 59 of 2004 s. 50.]

195. Revival of sentence or order on disposition of appeal

Upon the determination, dismissal or discontinuance of an appeal, any thing the doing or operation of which is suspended under section 193 or 194 has effect, but subject to any order of the Court.

[Section 195 inserted by No. 33 of 1989 s. 16.]

195A. Single Judge to hear appeal unless case warrants Full Court

- (1) The Court constituted by one Judge sitting in the General Division of the Supreme Court shall hear and determine an appeal unless an order has been made under subsection (2).
- (2) On its own initiative, or on the application of a party made before or during the hearing of the appeal, the Court may order that the appeal be heard and determined by the Court of Appeal.

[Section 195A inserted by No. 59 of 2004 s. 44; amended by No. 45 of 2004 s. 31(3) and (5).]

[Heading deleted by No. 59 of 2004 s. 51(1).]

196. Evidence

- (1) The Court shall determine the appeal —
 - (a) on the material that was before the court of summary jurisdiction; and
 - (b) on such further evidence either oral or by affidavit as the Court thinks fit to receive.
- (2) For the purposes of subsection (1) the Court may ascertain what material was before the court of summary jurisdiction on such evidence, statement or record of what occurred before that court as the Court considers sufficient.

[Section 196 inserted by No. 33 of 1989 s. 16; amended by No. 59 of 2004 s. 50.]

197. Unrepresented person may present case in writing

A party to an appeal who is not represented by a legal practitioner is entitled to present his case in writing instead of orally.

[Section 197 inserted by No. 33 of 1989 s. 16.]

198. Presence at appeal of party in custody

- (1) At the hearing of, or at any proceedings relating to, an appeal, a party to the appeal who is in custody is entitled —
 - (a) to be present if he is not represented by a legal practitioner; or
 - (b) if he is so represented, to be present if the Court so orders.
- (2) Where it appears to the person for the time being in charge of any prison that a person in his custody is entitled to be present at any proceedings referred to in subsection (1) he shall cause that person to be taken to the Court.

[Section 198 inserted by No. 33 of 1989 s. 16.]

199. Powers of Court

- (1) Upon the hearing of an appeal, the Court may do one or more of the following —
 - (a) dismiss the appeal, or set aside, quash or vary the decision of the court of summary jurisdiction and any order made or thing done as a result of the decision;
 - (ab) dismiss the appeal if it considers the appeal is frivolous or vexatious;
 - (b) dismiss the appeal notwithstanding that any point raised on the appeal might be decided in favour of the appellant, if it considers that no substantial miscarriage of justice has occurred;
 - (c) substitute a decision that ought to have been made by the court of summary jurisdiction;
 - (d) remit the case for hearing by a court of summary jurisdiction, with or without directions —
 - (i) as to how or by whom that court is to be constituted;
 - (ii) as to the hearing of the case by that court;
 - (e) refer the case for hearing and determination by the Court of Appeal;
 - (f) exercise any power that the Court may exercise on an application for *certiorari*, *mandamus*, prohibition or *habeas corpus*;
 - (g) make such other order as it thinks fit, including an order as to the costs of the appeal and the costs of the proceedings in the court of summary jurisdiction.
- (2) Nothing in subsection (1) shall affect the powers of the Court under section 136B(2).
- (3) The Court is not required to set aside, quash or vary a decision of a court of summary jurisdiction because that court omitted to make any necessary finding if the facts or evidence —
 - (a) in substance support the decision; or

(b) justify the finding,

and the Court may instead under subsection (1) either vary the decision or substitute another decision for it.

- (4) The Court may also vary the decision of a court of summary jurisdiction or substitute another decision for it where, in a conviction, there is some excess which may, consistently with the merits of the case, be corrected.
- (5) Upon the hearing of an appeal against sentence the Court may have regard to whether or not the appellant or a convicted person has failed wholly or partly to fulfil an undertaking to assist law enforcement authorities that caused the sentencing court to reduce the sentence that it would otherwise have passed.

[Section 199 inserted by No. 33 of 1989 s. 16; amended by No. 29 of 1998 s. 10; No. 45 of 2004 s. 36(5); No. 59 of 2004 s. 45.]

200. Enforcement

- (1) The decision of the Court, or the decision of the court of summary jurisdiction as varied by the Court, other than a decision under section 199(1)(d), (e) or (f), shall take effect as if it were the decision of the court of summary jurisdiction, and may be enforced accordingly.
- (2) Upon the determination, dismissal or discontinuance of an appeal, any warrant or other process that was suspended under section 193 or 194 has effect, subject to any order of the Court.
- (3) Nothing in subsection (2) limits the operation of section 203(3).
- (4) If the appeal is dismissed by the Court, any justice may, subject to section 223, issue any warrant that may be necessary to enforce or give effect to the decision.
- (5) The Court may issue any warrant or process that may be necessary to give effect to its decision.

- (6) The court of summary jurisdiction may take all such steps as are necessary to give effect to any decision of the Court of a kind mentioned in section 199(1)(d).

[Section 200 inserted by No. 33 of 1989 s. 16; amended by No. 59 of 2004 s. 50.]

201. Want of form

- (1) Notwithstanding anything in section 186, no decision of, or proceedings before, a court of summary jurisdiction, nor any document in such proceedings, shall be held to be bad for want of form.
- (2) Without limiting subsection (1), a person may not appeal against a decision on the ground that there was no complaint or summons, or any amendment thereof, if he was present at the hearing at which the decision was made and did not then make an objection on that ground.

[Section 201 inserted by No. 33 of 1989 s. 16; amended by No. 59 of 2004 s. 50.]

202. Notification of result of appeal to clerk of petty sessions

- (1) The Registrar shall send a memorandum of the determination of the Court on an appeal, or of the dismissal of an appeal under section 205, to the court of summary jurisdiction.
- (2) A copy of the memorandum shall be entered in the records of the court of summary jurisdiction and shall be sufficient evidence of the matters stated therein.

[Section 202 inserted by No. 33 of 1989 s. 16; amended by No. 59 of 2004 s. 50.]

203. Notification relating to sentence of imprisonment

- (1) Where the Court in determining an appeal —
- (a) quashes a sentence of imprisonment;

- (b) varies a sentence of imprisonment, or amends a conviction in respect of which a sentence of imprisonment was imposed; or
- (c) confirms a sentence of imprisonment,

the Registrar shall send to the person in charge of the prison in which the person sentenced is in custody, or if he is at liberty on bail would be in custody, a memorandum setting out the result of the appeal.

- (2) Where the Court has quashed a sentence of imprisonment imposed on a person and has not imposed another sentence of imprisonment on him, he shall be released by the person in charge of the prison on receipt of a memorandum under subsection (1) unless the person is required to be in custody for some other matter.
- (3) Where subsection (1)(b) applies, the warrant of the court of summary jurisdiction has effect as if it were amended in accordance with the memorandum.
- (4) A copy of the memorandum shall be entered in the records of the person in charge of the prison and shall be sufficient evidence of the matters stated therein.

[Section 203 inserted by No. 33 of 1989 s. 16; amended by No. 47 of 1999 s. 20; No. 59 of 2004 s. 50.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

204. Discontinuance of appeal

- (1) An appellant may at any time discontinue an appeal by giving notice of discontinuance to the Court and serving a copy of the notice on the other parties to the appeal and on the court of summary jurisdiction.
- (2) A party on whom a notice of discontinuance is served may within 60 days after service apply to the Court for an order as to costs or as to any other matter relating to the discontinued appeal, and the Court may make such order as to costs or otherwise as it thinks fit.

- (3) The Court may issue any warrant that may be necessary as a result of the discontinuance of the appeal.

[Section 204 inserted by No. 33 of 1989 s. 16; amended by No. 59 of 2004 s. 50.]

205. Dismissal for want of prosecution

- (1) If the appellant is in default in entering the appeal for hearing within the required time or taking any necessary step in connection therewith, the Attorney General or any party to the appeal may apply to the Court by summons served on the appellant for an order dismissing the appeal.
- (2) If the appellant does not appear, either personally or by a legal practitioner, at the hearing of the appeal, or if the Court is satisfied on an application under subsection (1) that the appellant is in default as mentioned in that subsection, the Court may do one or more of the following —
- (a) dismiss the appeal;
 - (b) require the appellant to take any specified step within a specified time, and dismiss the appeal if he fails to comply with that requirement;
 - (c) require the appellant to pay costs;
 - (d) make such other order as the Court thinks fit.
- (3) The Court may issue any warrant that may be necessary as a result of the dismissal of the appeal.
- (4) An application by way of summons under subsection (1) may be heard and determined in the absence of the appellant if it is proved that he was served with the summons.

[Section 205 inserted by No. 33 of 1989 s. 16.]

206. Application for re-instatement of appeal

- (1) Where an appeal is dismissed under section 205 in the absence of the appellant, he may apply to a Judge in chambers for an order re-instating the appeal.

- (2) The Judge shall make an order re-instating the appeal only if he is satisfied that there was reasonable cause for the failure of the applicant to appear at the hearing of the appeal or the application under section 205(1), as the case may be.
- (3) The appellant shall give notice of an application under subsection (1) to the other party or other parties to the proceedings before the court of summary jurisdiction.
- (4) Upon the making of an application under subsection (1), sections 191, 193, 194 and 195, with all necessary changes, apply as if an appeal had been commenced.

[Section 206 inserted by No. 33 of 1989 s. 16; amended by No. 59 of 2004 s. 46.]

Division 2 — Appeals from single Judges' decisions on appeal

[Heading inserted by No. 59 of 2004 s. 51(3).]

206A. Appeal to Court of Appeal

- (1) Subject to any other Act, an appeal lies to the Court of Appeal, by leave as provided in this section, from a decision under section 199, 205 or 206C of the Court constituted by one Judge.
- (2) An application for leave to appeal may be made by —
 - (a) a party to an appeal; or
 - (b) the Attorney General.
- (3) An application for leave to appeal must be made to the Court of Appeal constituted by a single judge of appeal.
- (3a) If a single judge of appeal refuses an application for leave to appeal, the applicant may apply to the Court of Appeal to set aside the refusal and determine the application afresh.
- (4) Subject to this section, the provisions of this Part (other than section 186) and the relevant rules of court apply, with all necessary changes, to —

- (a) an application for, and an order granting, leave under this section;
- (b) proceedings relating to the application and the appeal;
- (c) the discontinuance, failure to prosecute, or re-instatement of the appeal;
- (d) the disposition of the appeal; and
- (e) the consequences thereof,

as if they were respectively —

- (f) the commencement of an appeal under section 185;
 - (g) proceedings relating to such an appeal;
 - (h) the discontinuance, failure to prosecute or re-instatement of such an appeal;
 - (i) the disposition of such an appeal; and
 - (j) the consequences thereof.
- (5) Without limiting subsection (4), the powers in section 193(1) may be exercised at any time after an application for leave to appeal is made under this section.
- (6) In subsection (2) “**party to an appeal**” includes, where an application has been made under section 206C to extend or shorten the time allowed under rules of court for filing an appeal under this Part, a person who is aggrieved by a decision on that application.

[Section 206A inserted by No. 33 of 1989 s. 16; amended by No. 45 of 2004 s. 36(4) and (5); No. 59 of 2004 s. 47.]

Division 3 — General

[Heading inserted by No. 59 of 2004 s. 51(4).]

206B. Retention of exhibits

- (1) Any exhibit in proceedings before —
 - (a) a court of summary jurisdiction; or

- (b) the Court in respect of an appeal commenced under Division 1,

shall, unless otherwise ordered by the Court, be retained by the lower court registrar or the Registrar, as the case may require, for not less than 31 days after the day on which any decision is given in those proceedings.

- (2) Where a notice of an appeal against a decision is received by a lower court registrar, he shall continue to retain any exhibit until he is required to send the exhibit to the Court for the purposes of the appeal or until the appeal is determined, dismissed or discontinued.
- (3) If an application for leave to appeal is made under section 206A, the Registrar shall continue to retain any exhibit until the matter is determined, dismissed or discontinued.
- (4) In addition to the requirements of subsections (1), (2) and (3) the lower court registrar or the Registrar, as the case may require, shall, unless otherwise ordered by the Court, retain any exhibit until the time allowed for filing any application under section 206A has expired.
- (5) Notwithstanding anything in this section, a magistrate, the lower court registrar or the Registrar may —
- (a) hand over any exhibit to a person who in his opinion is entitled to custody of it if he 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;
 - (b) otherwise dispose of any exhibit that comes within paragraph (a)(i) but that is not handed over to a person under paragraph (a);
 - (c) require a person as a condition of any delivery to him under paragraph (a) to give an undertaking in writing to the lower court registrar or the Registrar as to the care,

maintenance and custody of the exhibit and its re-delivery to the lower court registrar or to the Court.

- (6) A person who, without reasonable excuse, fails to carry out an undertaking given to the lower court registrar or the Registrar commits a contempt of the Supreme Court.

[Section 206B inserted by No. 33 of 1989 s. 16; amended by No. 59 of 2004 s. 50.]

206C. Time may be extended or shortened

- (1) The Court may, on such terms as it thinks fit, extend or shorten the time allowed under this Part or by rules of court for doing any act.
- (2) An application under subsection (1) shall be made *ex parte* unless it is ordered that the application be served on any person.

[Section 206C inserted by No. 33 of 1989 s. 16.]

206D. Orders for costs

Where the Attorney General is an appellant and costs are ordered to be paid by him to another person, such costs are not recoverable from the Attorney General; but the Registrar shall give to that person a certificate sealed with the seal of the Court showing the amount of such costs and the person may recover the amount shown in the certificate as a debt due by the State.

[Section 206D inserted by No. 33 of 1989 s. 16; amended by No. 65 of 2003 s. 128(4).]

206E. Enforcement of order for costs

- (1) If any costs ordered under this Part to be paid by a party are not paid, the Registrar shall, upon application made by the party entitled to such costs, grant to him a certificate specifying the amount of such costs and certifying that such costs have not been paid.

- (2) The payment of the costs may be enforced under section 155 as if the order under this Part as to the payment of costs were a payment order and for that purpose the Supreme Court Registrar's certificate may be registered as a judgment in a court of competent jurisdiction.

[(3) repealed]

[Section 206E inserted by No. 33 of 1989 s. 16; amended by No. 74 of 2003 s. 71; No. 59 of 2004 s. 48.]

[206F-206I. Repealed by No. 33 of 1989 s. 16.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

207. Control of Supreme Court over summary convictions

No person brought before the Supreme Court, or a Judge thereof, on *habeas corpus* shall be discharged from custody by reason of any defect or error in a warrant of commitment of a court of summary jurisdiction unless the court and the prosecutor or other party interested in supporting the warrant have received reasonable and sufficient notice of the intention to apply for such discharge. Such notice shall require them to transmit or cause to be transmitted to the Court or Judge the conviction or order, if any, on which the commitment was founded, together with the depositions and complaint, if any, intended to be relied on in support of such conviction or order, or certified copies thereof.

[Section 207 amended by No. 59 of 2004 s. 50.]

208. Amendment

If any such conviction or order, complaint, and depositions, or certified copies, are so transmitted, and the offence charged or intended to be charged thereby appears to have been established, and the judgment of the court of summary jurisdiction thereupon to have been in substance warranted, and the defects or errors appear to be defects of form only, or mistakes not affecting the substantial merits of the proceedings

before that court, the Court or Judge shall allow the warrant of commitment, and the conviction or order, to be forthwith amended in all necessary particulars in accordance with the facts, and the person committed shall thereupon be remanded to his former custody.

[Section 208 amended by No. 59 of 2004 s. 50.]

209. Notice dispensed with

The notice hereby prescribed may be given either before or after the issue of the writ of *habeas corpus*: Provided that when the copies of the conviction or order and depositions are produced at the time of applying for the writ, the Court or Judge may dispense with such notice.

[210. Repealed by No. 87 of 1982 s. 26.]

[211-214. Repealed by No. 33 of 1989 s. 17.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

215. Service by or upon solicitor acting for party

Where a party acts or is represented by an agent, any document, notice, or proceeding required under this Part to be served by or upon such party may be served by or upon such agent, and service of any such document, notice, or proceeding upon such agent or delivery of the same at his office or sending the same to him properly addressed by post prepaid shall be deemed to be good service upon the party whom such agent represents, or for whom he acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered.

[Section 215 inserted by No. 19 of 1919 s. 22-3; amended by No. 59 of 2004 s. 50.]

[216. Repealed by No. 33 of 1989 s. 17.]

[217. Repealed by No. 87 of 1982 s. 28.]

[218. Repealed by No. 33 of 1989 s. 17.]

[Heading deleted by No. 59 of 2004 s. 51(1).]

219. No order for costs to be made against justices or police officers

No costs shall be allowed against any justice or police officer in respect or by reason of any appeal under this Act, or of any proceeding in the Supreme Court in its control over summary convictions.

Provided that where, on an appeal brought by a police officer, the decision appealed against is confirmed, or, if not confirmed, has involved, in the opinion of the Court or Judge hearing the appeal, a point of law of exceptional public importance, costs may be allowed to the respondent. Such costs shall not be recoverable from the police officer, but the Registrar of the Supreme Court shall, in any case where costs are so allowed, give to the respondent a certificate sealed with the seal of the Supreme Court showing the amount of such costs, and, on production of the certificate to the Treasurer, the respondent shall be paid such amount which shall be charged to the Consolidated Fund.

[Section 219 amended by No. 29 of 1948 s. 12; No. 6 of 1993 s. 11; No. 49 of 1996 s. 64.]

[220, 221. Repealed by No. 33 of 1989 s. 17.]

Part IX — Miscellaneous

[Heading inserted by No. 59 of 2004 s. 49.]

222. Effect of court documents

- (1) A summons, warrant, order or other document issued by a court of summary jurisdiction (“**court document**”) has effect according to its wording.
- (2) In the absence of evidence to the contrary, it is to be presumed that —
 - (a) the person who issued a court document was empowered to do so; and
 - (b) the signature on a court document is that of the person who issued it.
- (3) The validity of a court document is not affected by the death of a person who issued it.
- (4) A warrant itself is sufficient authority to the person to whom it is directed to act according to it.
- (5) A member of the Police Force of Western Australia must obey any warrant or other order or direction of a court of summary jurisdiction or a judicial officer of it.
- (6) A member of the Police Force of Western Australia who contravenes subsection (5) is to be dealt with under section 23 of the *Police Act 1892*.

[Section 222 inserted by No. 59 of 2004 s. 49.]

223. Warrants of commitment, time for issuing

- (1) If a warrant of commitment is not issued within 12 months after the final hearing and determination of a case, such a warrant shall not issue without the leave of a magistrate.

- (2) Subsection (1) does not apply in respect of a warrant of commitment that may be issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

[Section 223 inserted by No. 59 of 2004 s. 49.]

[224-226. Repealed by No. 59 of 2004 s. 49.]

[227-229. Repealed by No. 73 of 1954 s. 5.]

[230. Repealed by No. 59 of 2004 s. 49.]

[231. Repealed by No. 73 of 1954 s. 5]

[232. Repealed by No. 59 of 2004 s. 49.]

[Part X repealed by No. 53 of 2000 s. 11.]

[First, Second and Third Schedules repealed by No. 59 of 2004 s. 50.]

[Fourth and Fifth Schedules repealed by No. 53 of 1992 s. 17(3) and (4).]

[Sixth Schedule repealed by No. 53 of 1992 s. 24.]

[Seventh Schedule repealed by No. 22 of 1968 s. 39.]

[Eighth Schedule repealed by No. 92 of 1994 s. 20.]

Ninth Schedule

[s. 101A]

The hearing is going to be adjourned to enable the prosecution to make available to you copies of statements of its witnesses or notice of statements recorded on video-tape. With these you will be given copies of any other relevant documents or exhibits or, if it is not practicable to copy a document or exhibit, a description of it and notice of where and when it can be inspected.

The prosecution may apply to have witnesses examined in court before the hearing resumes. The evidence of any witnesses so examined will be recorded in depositions and you will be provided with copies of those depositions or notice of depositions recorded on video-tape.

The statements, depositions and any other papers will be served on you or your solicitor at least 14 days before the resumption of the hearing.

When the hearing is resumed you will be required to plead to the charge [charges]. The prosecution will then be required to tender certain statements and video-tapes.

You will be committed to the Supreme Court [or District Court] for trial, or sentence, as the case requires. The evidence will be sent to the Supreme Court [or District Court] and will not be publicised before the trial.

The hearing will now be adjourned for . . . days.

Remand/Bail.

[Ninth Schedule inserted by No. 27 of 2002 s. 14.]

Notes

- ¹ This is a compilation of the *Criminal Procedure (Summary) Act 1902* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Justices Act 1902</i> ¹⁸	2 Edw. VII No. 11	18 Nov 1902	1 Jan 1903 (see s. 3)
Untitled regulations (see <i>Gazette</i> 9 Oct 1914 p. 4140)			9 Oct 1914
<i>Justices Act Amendment Act 1919</i>	19 of 1919	28 Oct 1919	28 Oct 1919
<i>Justices Act Amendment Act 1920</i>	28 of 1920	31 Dec 1920	31 Dec 1920
Reprint of the <i>Justices Act 1902</i> in Appendix to Session Volume 1920 (includes amendments listed above)			
<i>Justices Act Amendment Act 1926</i>	34 of 1926	8 Dec 1926	8 Dec 1926
Reprint of the <i>Justices Act 1902</i> in Appendix to Session Volume 1927 (includes amendments listed above)			
<i>Justices Act Amendment Act 1932</i>	26 of 1932	15 Dec 1932	15 Dec 1932
<i>Justices Act Amendment Act 1936</i>	11 of 1936	3 Dec 1936	3 Dec 1936
Reprint of the <i>Justices Act 1902</i> in Appendix to Session Volume 1936 (includes amendments listed above)			
Untitled regulations (see <i>Gazette</i> 24 Dec 1937 p. 2183)			24 Dec 1937
<i>Justices Act Amendment Act 1942</i>	14 of 1942	26 Nov 1942	26 Nov 1942
Untitled regulations (see <i>Gazette</i> 17 Sep 1948 p. 2097-8)			17 Sep 1948
<i>Justices Act Amendment Act 1948</i>	29 of 1948	9 Dec 1948	9 Dec 1948
Untitled regulations (see <i>Gazette</i> 26 Aug 1949 p. 2147-8)			26 Aug 1949

Short title	Number and year	Assent	Commencement
<i>Limitation Act 1935</i> s. 48A(1)	35 of 1935 (as amended by No. 73 of 1954 s. 8)	14 Jan 1955	Relevant amendments (see s. 48A and Second Sch. ⁶) took effect on 1 Mar 1955 (see No. 73 of 1954 s. 2 and <i>Gazette</i> 18 Feb 1955 p. 343)
<i>Justices Act Amendment Act 1957</i>	9 of 1957	29 Aug 1957	25 Oct 1957 (see s. 2 and <i>Gazette</i> 25 Oct 1957 p. 2965)
Reprint of the <i>Justices Act 1902</i> approved 1 Dec 1958 in Volume 13 of Reprinted Acts (includes amendments listed above)			
<i>Justices Act Amendment Act 1959</i>	7 of 1959	7 Sep 1959	7 Sep 1959
<i>Justices Act Amendment Act 1961</i>	29 of 1961	11 Jun 1962	11 Jun 1962
<i>Justices Act Amendment Act 1962</i>	24 of 1962	4 Oct 1962	1 Dec 1962 (see s. 2 and <i>Gazette</i> 30 Nov 1962 p. 3833)
<i>Justices Act Amendment Act 1964</i>	10 of 1964	2 Oct 1964	2 Oct 1964
<i>Justices Act Amendment Act (No. 2) 1964</i>	77 of 1964	14 Dec 1964	14 Dec 1964
<i>Justices Act Amendment Act 1965</i>	83 of 1965	7 Dec 1965	1 May 1966 (see s. 2 and <i>Gazette</i> 4 Mar 1966 p. 589)
<i>Married Persons and Children (Summary Relief) Act 1965</i> s. 4	109 of 1965 (Erratum in <i>Gazette</i> 4 Mar 1966 p. 589)	17 Dec 1965	1 Mar 1966 (see s. 2 and <i>Gazette</i> 25 Feb 1966 p. 550)
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<i>Justices Act Amendment Act 1967</i>	24 of 1967	27 Oct 1967	27 Oct 1967
Reprint of the <i>Justices Act 1902</i> approved 30 Nov 1967 in Volume 21 of Reprinted Acts (includes amendments listed above)			
<i>Justices Act Amendment Act 1968</i>	22 of 1968	16 Oct 1968	16 Oct 1968

Criminal Procedure (Summary) Act 1902

Short title	Number and year	Assent	Commencement
<i>Justices Act Amendment Act 1971</i>	48 of 1971	10 Dec 1971	10 Dec 1971
<i>Justices Act Amendment Act 1972</i>	17 of 1972	26 May 1972	1 Jul 1972 (see s. 2 and <i>Gazette</i> 30 Jun 1972 p. 2098)
Reprint of the <i>Justices Act 1902</i> approved 17 Nov 1972 (includes amendments listed above)			
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 19 of 1973 s. 4)	4 Dec 1972	Relevant amendments (see Second Sch. ⁷) took effect on 1 Jan 1974 (see s. 4(2) and <i>Gazette</i> 2 Nov 1973 p. 4108)
<i>Justices Act Amendment Act 1975</i>	72 of 1975	7 Nov 1975	1 Dec 1976 (see s. 2 and <i>Gazette</i> 12 Nov 1976 p. 4265)
<i>Justices Act Amendment Act 1976</i>	33 of 1976	9 Jun 1976	3 Sep 1976 (see s. 2 and <i>Gazette</i> 3 Sep 1976 p. 3271)
<i>Justices Act Amendment Act (No. 2) 1976</i>	119 of 1976	1 Dec 1976	1 Dec 1976
<i>Justices Act Amendment Act 1977</i>	41 of 1977	7 Nov 1977	7 Nov 1977
Reprint of the <i>Justices Act 1902</i> approved 30 Nov 1977 (includes amendments listed above)			
<i>Justices Act Amendment Act 1979</i>	6 of 1979	17 May 1979	s. 3: 7 Nov 1977 (see s. 2(1)); balance: 7 Dec 1979 (see s. 2(2) and <i>Gazette</i> 7 Dec 1979 p. 3770)
<i>Acts Amendment (Master, Supreme Court) Act 1979 Pt. VII</i>	67 of 1979	21 Nov 1979	11 Feb 1980 (see s. 2 and <i>Gazette</i> 8 Feb 1980 p. 383)
<i>Justices Amendment Act 1980</i>	67 of 1980	26 Nov 1980	24 Dec 1980 (see s. 2)
<i>Justices Amendment Act 1981</i>	120 of 1981	14 Dec 1981	1 Sep 1982 (see s. 2 and <i>Gazette</i> 13 Aug 1982 p. 3105)
<i>Acts Amendment (Criminal Penalties and Procedures) Act 1982 Pt. IV</i>	20 of 1982	27 May 1982	27 May 1982

Criminal Procedure (Summary) Act 1902

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Bail) Act 1982 Pt. II</i>	87 of 1982	17 Nov 1982	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Justices Amendment Act 1982</i>	124 of 1982	10 Dec 1982	10 Dec 1982
<i>Justices Amendment Act (No. 2) 1982</i>	125 of 1982	10 Dec 1982	20 May 1983 (see s. 2 and <i>Gazette</i> 20 May 1983 p. 1521)
<i>Justices Amendment Act 1984</i>	44 of 1984	5 Sep 1984	3 Oct 1984
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984 Pt. VII</i>	52 of 1984	5 Sep 1984	3 Oct 1984
Reprint of the <i>Justices Act 1902</i> approved 9 Nov 1984 (includes amendments listed above except those in the <i>Acts Amendment (Bail) Act 1982</i>)			
<i>Acts Amendment (Court Fees) Act 1984 Pt. I</i>	69 of 1984	26 Nov 1984	28 Jun 1985 (see s. 2 and <i>Gazette</i> 28 Jun 1985 p. 2291)
<i>Justices Amendment Act 1985</i>	15 of 1985	28 Mar 1985	25 Apr 1985
<i>Criminal Law Amendment Act 1985 Pt. III</i>	119 of 1985	17 Dec 1985	1 Sep 1986 (see s. 2 and <i>Gazette</i> 8 Aug 1986 p. 2815)
<i>Acts Amendment (Penalties for Contempt of Court) Act 1986 Pt. IV</i>	71 of 1986	4 Dec 1986	4 Dec 1986 (see s. 2)
<i>Acts Amendment (Recording of Depositions) Act 1986 Pt. IV</i>	81 of 1986	9 Dec 1986	1 Aug 1987 (see s. 2 and <i>Gazette</i> 10 Jul 1987 p. 2607)
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987 Pt. VI</i>	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and <i>Gazette</i> 12 Feb 1988 p. 397)
<i>Justices Amendment Act 1988</i>	27 of 1988	3 Nov 1988	s. 10-14: 1 Dec 1988 (see s. 2(2)); balance: 1 Jan 1989 (see s. 2(1) and <i>Gazette</i> 16 Dec 1988 p. 4865)

Criminal Procedure (Summary) Act 1902

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Community Corrections Centres) Act 1988 Pt. 3</i>	38 of 1988	24 Nov 1988	1 Mar 1989 (see s. 2 and <i>Gazette</i> 24 Feb 1989 p. 505)
<i>Acts Amendment (Children's Court) Act 1988 Pt. 6</i>	49 of 1988	22 Dec 1988	1 Dec 1989 (see s. 2 and <i>Gazette</i> 24 Nov 1989 p. 4327)
<i>Criminal Law Amendment Act 1988 Pt. 8</i>	70 of 1988	15 Dec 1988	1 Feb 1989 (see s. 2 and <i>Gazette</i> 20 Jan 1989 p. 110)
<i>Justices Amendment Act 1989</i>	33 of 1989	22 Dec 1989	1 Jun 1991 (see s. 2 and <i>Gazette</i> 17 May 1991 p. 2455)
<i>Justices Amendment Act 1990</i>	8 of 1990	16 Jul 1990	16 Jul 1990 (see s. 2)
<i>Community Corrections Legislation Amendment Act 1990 Pt. 4</i>	61 of 1990	17 Dec 1990	3 Apr 1991 (see s. 2 and <i>Gazette</i> 22 Mar 1991 p. 1209)
<i>Criminal Law Amendment Act 1990 Pt. 5</i>	101 of 1990	20 Dec 1990	14 Feb 1991 (see s. 2(1))
<i>Justices Amendment Act 1991</i>	33 of 1991	4 Dec 1991	s. 5: 4 Dec 1991 (see s. 2(1)); balance: 13 Mar 1992 (see s. 2(2) and <i>Gazette</i> 13 Mar 1992 p. 1181)
<i>Acts Amendment (Evidence) Act 1991 Pt. 4⁸</i>	48 of 1991	17 Dec 1991	31 Mar 1992 (see s. 2 and <i>Gazette</i> 24 Mar 1992 p. 1317)
Reprint of the <i>Justices Act 1902</i> as at 1 Apr 1992 (includes amendments listed above)			
<i>Road Traffic Amendment Act 1992 s. 15</i>	13 of 1992	16 Jun 1992	16 Jun 1993 (see s. 2)
<i>Acts Amendment (Sexual Offences) Act 1992 Pt. 6</i>	14 of 1992	17 Jun 1992	1 Aug 1992 (see s. 2 and <i>Gazette</i> 28 Jul 1992 p. 3671)
<i>Acts Amendment (Evidence of Children and Others) Act 1992 Pt. 3⁹</i>	36 of 1992	22 Sep 1992	16 Nov 1992 (see s. 2 and <i>Gazette</i> 6 Nov 1992 p. 5415)
<i>Criminal Law Amendment Act (No. 2) 1992 Pt. 5 and s. 16(1) and (4)</i>	51 of 1992	9 Dec 1992	6 Jan 1993

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992 Pt. 4</i>	53 of 1992	9 Dec 1992	s. 14-16, and 24-33: 1 Mar 1993 (see s. 2(1) and <i>Gazette</i> 26 Jan 1993 p. 823); s. 17: 25 Sep 1999 (see s. 2(1) and <i>Gazette</i> 24 Sep 1999 p. 4651); s. 18-23 not proc. ¹⁰
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Ministry of Justice) Act 1993 Pt. 12¹¹</i>	31 of 1993	15 Dec 1993	1 Jul 1993 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Justices Amendment Act 1994</i>	77 of 1994	13 Dec 1994	1 Apr 1995 (see s. 2 and <i>Gazette</i> 31 Mar 1995 p. 1149)
<i>Criminal Law Amendment Act 1994 s. 13(5)</i>	82 of 1994	23 Dec 1994	20 Jan 1995 (see s. 2)
<i>Pawnbrokers and Second-hand Dealers Act 1994 s. 100</i>	88 of 1994	5 Jan 1995	1 Apr 1996 (see s. 2 and <i>Gazette</i> 29 Mar 1996 p. 1495)
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 9</i>	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2 and <i>Gazette</i> 30 Dec 1994 p. 7211)
Reprint of the <i>Justices Act 1902</i> as at 21 Jun 1995 (includes amendments listed above except those in the <i>Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992</i> s. 17 and the <i>Pawnbrokers and Second-hand Dealers Act 1994</i>)			
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 43¹²</i>	78 of 1995 (amended by No. 10 of 1998 s. 64(1))	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)

Criminal Procedure (Summary) Act 1902

Short title	Number and year	Assent	Commencement
<i>Fines, Penalties and Infringement Notices Enforcement Amendment Act 1996 Pt. 3</i>	8 of 1996	28 May 1996	6 Jul 1996 (see s. 2 and <i>Gazette</i> 5 Jul 1996 p. 3215)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Criminal Law Amendment Act 1996 Pt. 4</i>	36 of 1996	10 Oct 1996	s. 33 and 35-38: 10 Oct 1996 (see s. 2(1)); s. 34 and 39: 1 Jan 1997 (see s. 2(2) and <i>Gazette</i> 27 Dec 1996 p. 7153)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Firearms Amendment Act 1996 s. 51</i>	59 of 1996	11 Nov 1996	6 Dec 1996 (see s. 3(1) and <i>Gazette</i> 6 Dec 1996 p. 6699)
<i>Mental Health (Consequential Provisions) Act 1996 Pt. 11</i>	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
Reprint of the <i>Justices Act 1902</i> as at 4 Jun 1997 (includes amendments listed above except those in the <i>Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992</i> s. 17 and the <i>Mental Health (Consequential Provisions) Act 1996</i>)			
<i>Restraining Orders Act 1997 s. 80</i> ¹³	19 of 1997	28 Aug 1997	15 Sep 1997 (see s. 2 and <i>Gazette</i> 12 Sep 1997 p. 5149)
<i>Sunday Observance Laws Amendment and Repeal Act 1997 s. 5</i>	49 of 1997	10 Dec 1997	10 Dec 1997 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 77</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2)
<i>Criminal Law Amendment Act (No. 2) 1998 Pt. 4</i>	29 of 1998	6 Jul 1998	3 Aug 1998
<i>Acts Amendment (Video and Audio Links) Act 1998 Pt. 4</i>	48 of 1998	19 Nov 1998	18 Jan 1999 (see s. 2 and <i>Gazette</i> 15 Jan 1999 p. 109)

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Criminal Procedure) Act 1999 Pt. 3</i>	10 of 1999	5 May 1999	1 Oct 1999 (see s. 2 and <i>Gazette</i> 17 Sep 1999 p. 4557)
Reprint of the <i>Justices Act 1902</i> as at 2 Oct 1999 (includes amendments listed above)			
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999 s. 16-20</i> ¹⁴	47 of 1999 (as amended by No. 74 of 2003 s. 43)	8 Dec 1999	18 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p. 6175-6)
<i>State Records (Consequential Provisions) Act 2000 Pt. 5</i>	53 of 2000	28 Nov 2000	1 Dec 2001 (see s. 2 and <i>Gazette</i> 30 Nov 2001 p. 6067)
<i>Acts Amendment (Evidence) Act 2000 Pt. 3</i>	71 of 2000	6 Dec 2000	3 Jan 2001
Reprint of the <i>Justices Act 1902</i> as at 8 Oct 2001 (includes amendments listed above except those in the <i>State Records (Consequential Provisions) Act 2000 Pt. 5</i>)			
<i>Criminal Law (Procedure) Amendment Act 2002 Pt. 2</i> ¹⁵	27 of 2002	25 Sep 2002	27 Sep 2002 (see s. 2 and <i>Gazette</i> 27 Sep 2002 p. 4875)
Reprint 14: The <i>Justices Act 1902</i> as at 16 May 2003 (includes amendments listed above)			
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 74</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 43, 128</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 71 and 140(2)</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Criminal Code Amendment Act 2004 Pt. 7 Div. 2</i>	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Acts Amendment (Court of Appeal) Act 2004 s. 31 and 36</i>	45 of 2004	9 Nov 2004	s. 36: 1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163) s. 31: 2 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)

Short title	Number and year	Assent	Commencement
<i>Courts Legislation Amendment and Repeal Act 2004</i> Pt. 6 ¹⁷	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

This Act was repealed by the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 4(1) (No. 84 of 2004) as at 2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 and 7 Jan 2005 p. 53)

- ² The amendments in the *Acts Amendment (Court of Appeal) Act 2004* s. 31(2) and (4) and s. 31(5) (the amendment relating to s. 199(1)(e) and 206A(1)) are not included because the sections they purported to amend had already been amended by s. 36 of this Act.
- ³ Magisterial districts proclaimed in *Gazette* 8 Nov 1940 p. 1981-6.
- ⁴ See the *Justices (Recording of Depositions) Regulations 1987*.
- ⁵ Repealed by the *Crown Suits Act 1947* s. 2.
- ⁶ *Limitation Act 1935* s. 8 and Second Schedule were inserted by No. 73 of 1954 s. 8.
- ⁷ The Second Schedule was inserted by the *Metric Conversion Act Amendment Act 1973* s. 4.
- ⁸ *Acts Amendment (Evidence) Act 1991* s. 3 is a transitional provision.
- ⁹ *Acts Amendment (Evidence of Children and Others) Act 1992* s. 13 is a transitional provision.
- ¹⁰ The *Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992* s. 18-23 did not come into operation and were repealed by the *Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994* s. 3.
- ¹¹ *Acts Amendment (Ministry of Justice) Act 1993* Pt. 19 contains savings and transitional provisions.
- ¹² *Sentencing (Consequential Provisions) Act 1995* s. 62 (as amended by the *Statutes (Repeals and Minor Amendments) Act (No. 2) 1998* s. 64(1)) reads as follows:
- “

62. Transitional Provisions

- (1) In this section “**commencement**” means the commencement of the *Sentencing Act 1995*.
- (2) If immediately before commencement a person is bound by a recognisance to which section 154A of the principal Act applies but to which that section as re-enacted by section 59 would not apply on and after commencement, then on and after commencement section 154A of the principal Act as it was

immediately before commencement continues to apply to that person in respect of the recognisance.

[Section 62 amended by No. 10 of 1998 s. 64(1).]

”.

¹³ The *Restraining Orders Act 1997* s. 80(3) reads as follows:

“

- (3) Notwithstanding subsection (1), Parts VII and VIIA of the *Justices Act 1902* are taken to remain in force to the extent necessary for the purposes of Part 9.

”.

¹⁴ The *Court Security and Custodial Services (Consequential Provisions) Act 1999* s. 21 was repealed by No. 74 of 2003 s. 43.

¹⁵ The *Criminal Law (Procedure) Amendment Act 2002* s. 15 reads as follows:

“

15. Transitional and savings

- (1) In this section —
“**commencement**” means the coming into operation of this Part;
“**new provisions**” means the *Justices Act 1902* as amended by this Part;
“**old provisions**” means the *Justices Act 1902* as it was immediately before commencement.
- (2) If immediately before commencement a complaint stands adjourned under section 101A(g) of the old provisions, then on and from commencement the new provisions operate in respect of the complaint and the complaint is to be regarded as having been adjourned to a committal mention under the new provisions.
- (3) If immediately before commencement proceedings had commenced but not been completed (whether or not they then stand adjourned) under section 101B of the old provisions in relation to a complaint, then —
- (a) on and from commencement the new provisions operate in respect of the complaint; and
- (b) at the first opportunity after commencement the justices must adjourn those proceedings to a committal mention under the new provisions.
- (4) If immediately before commencement a complaint stands adjourned under the old provisions to a date for a preliminary hearing but that hearing has not commenced, then —

- (a) on and from commencement the new provisions operate in respect of the complaint; and
 - (b) on the date set for a preliminary hearing the justices must either —
 - (i) if both the prosecution and the defendant consent — conduct a committal mention under the new provisions in respect of the complaint; or
 - (ii) otherwise — adjourn the complaint to a committal mention under the new provisions.
- (5) If under subsection (4)(b)(i) the justices conduct a committal mention in respect of a complaint, section 103 of the new provisions does not operate in respect of the complaint.
- (6) If immediately before commencement a preliminary hearing had commenced but not been completed (whether or not the hearing then stands adjourned) under the old provisions in relation to a complaint, then on and from commencement the hearing is to be conducted and the complaint dealt with under the old provisions.

¹⁶ Footnote no longer applicable.

¹⁷ The *Courts Legislation Amendment and Repeal Act 2004* Pt. 6 Div. 2 reads as follows:

“

Part 6 — *Justices Act 1902* amended and transitional provisions

Division 2 — Transitional provisions

52. Interpretation

In this Division —

“**commencement**” means the commencement of this Division.

53. Justices of the Peace

- (1) If immediately before commencement a person is a Justice of the Peace appointed under the *Justices Act 1902* section 6, then on commencement the person is to be taken to have been appointed as a Justice of the Peace under the *Justices of the Peace Act 2004* section 10 —
 - (a) for the whole State if he or she, immediately before commencement, was appointed for the whole State; or
 - (b) for the part of the State for which he or she, immediately before commencement, was appointed,

as the case may be.

- (2) If immediately before commencement a person is a Justice of the Peace by virtue of the *Justices Act 1902* section 9, then on commencement the person continues to be a Justice of the Peace until the person's term of office as the mayor of a city or town or as the president of a shire, as the case may be, ends under the *Local Government Act 1995* or until the person otherwise ceases to hold that office of mayor or president, whichever happens first.

54. Clerks of petty sessions

- (1) If immediately before commencement a person holds office under the *Justices Act 1902* section 25A as a clerk of petty sessions, then on commencement the person is to be taken to have been appointed —
- (a) in the case of a person who immediately before commencement —
 - (i) is an employee of the department principally assisting the Minister with the administration of the *Justices Act 1902*; and
 - (ii) does not hold office under the *Local Courts Act 1904* section 13 as a clerk, under the *Magistrates Court Act 2004* section 26(2) as a Deputy Registrar of the Magistrates Court;
 - (b) in the case of a person who immediately before commencement is a police officer — under the *Magistrates Court Act 2004* section 26(2) and (5) as a Deputy Registrar of the Magistrates Court; and
 - (c) in any other case — under the *Magistrates Court Act 2004* section 26(2) and (6) as a Registrar of the Magistrates Court.
- (2) A reference in a written law or book, document or writing to a clerk of petty sessions is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to a registrar of the Magistrates Court.

55. Pending proceedings

If immediately before commencement proceedings are pending before justices or a court of petty sessions, then on commencement the proceedings —

- (a) are to be taken to be proceedings before the Magistrates Court; and
- (b) shall be heard and determined by the Magistrates Court in accordance with —

- (i) if immediately after commencement the proceedings are within the criminal jurisdiction of the court, the law governing the procedure for cases within that jurisdiction;
- (ii) if immediately after commencement the proceedings are within the civil jurisdiction of the court, the law governing the procedure for cases within that jurisdiction.

56. Existing summonses and warrants

- (1) If immediately before commencement a summons or warrant issued under the *Justices Act 1902* is in force, then on commencement the summons or warrant is to be taken to be a summons or warrant issued by the Magistrates Court under the *Criminal Procedure (Summary) Act 1902*.
- (2) If immediately before commencement a summons or warrant is in force and requires a person to attend or to be brought before justices or a court of petty sessions, then on commencement the summons or warrant is to be taken to require the person to attend or to be brought before the Magistrates Court at the place specified in the summons or warrant.

57. References to *Justices Act 1902* to be read as references to *Criminal Procedure (Summary) Act 1902*

A reference in a written law or book, document or writing to the *Justices Act 1902* is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the *Criminal Procedure (Summary) Act 1902*.

58. References to ‘court of petty sessions’ to be read as references to the ‘Magistrates Court’

A reference in a written law or book, document or writing to a court of petty sessions is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the Magistrates Court.

”.

¹⁸ Now known as the *Criminal Procedure (Summary) Act 1902* short title changed (see note under s. 1).

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
agent.....	4
charge.....	4
charge of an indictable offence	4
committal mention	97B
complainant.....	68(1)
complaint	4
contempt offence.....	97B
conviction	4
Court	183
court of summary jurisdiction	4
decision	4
defendant.....	4
dismiss	151(1)
disposed of	194(6)
DPP	4
gaol	4
hearing	4
indictable offence.....	4
indictment	4
information	4
information and complaint.....	4
judicial officer.....	4
justice.....	4
keeper of a gaol.....	4
lawyer	68(1)
legal practitioner	183
lower court registrar	183
magistrate.....	4
matter	4
officer.....	136(6)
official prosecution	151(1)
OPDC determination.....	151(1)
order.....	4
party to an appeal.....	206A(6)
payment order	155(1)
prescribed investigator	4
prescribed public authority	4
public authority	4
public officer.....	136AA(3)
registrar	4

Defined terms

Registrar.....	183
simple offence.....	4
summary conviction.....	4
the charge.....	97(1)
the defendant.....	136(1)