



JUSTICES AMENDMENT ACT 1991

No. 72 of 1991

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ANNO QUADRAGESIMO

ELIZABETHAE II REGINAE

A.D. 1991

No. 72 of 1991

An Act to amend the Justices Act 1921.

[Assented to 12 December 1991]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Justices Amendment Act 1991*.
- (2) The *Justices Act 1921* is referred to in this Act as “the principal Act”.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of long title

3. The long title to the principal Act is amended by striking out “to consolidate and amend certain statutes relating to justices of the peace,” and substituting “to make provision for the procedures of the Magistrates Court in criminal proceedings;”.

Substitution of s. 1

4. Section 1 of the principal Act is repealed and the following section is substituted:

Short title

1. This Act may be cited as the *Summary Procedure Act 1921*.

Repeal of ss. 2 and 3

5. Sections 2 and 3 of the principal Act are repealed.

Interpretation

6. Section 4 of the principal Act is amended—

- (a) by striking out from subsection (1) the definition of “clerk”;
- (b) by striking out “a court of summary jurisdiction” from the definition of “complaint” in subsection (1) and substituting “the Magistrates Court”;
- (c) by striking out from subsection (1) the definitions of “court of summary jurisdiction” and “court” and substituting the following definition:

“Court” means the Magistrates Court of South Australia;

- (d) by striking out from subsection (1) the definitions of “district”, “District Criminal Court”, “group I offence”, “group II offence” and “group III offence” and substituting the following definition:

“fourth schedule offence” means—

(a) an offence against a section of the *Criminal Law Consolidation Act 1934* listed in the fourth schedule;

(b) an offence of attempting to commit such an offence;

(c) an offence of aiding, abetting, counselling or procuring such an offence;

(d) an offence of conspiring to commit such an offence;

or

(e) an offence of being an accessory after the fact to such an offence;

- (e) by striking out from subsection (1) the definition of “industrial offence” and substituting the following definition:

“industrial offence” means a summary offence declared by regulation under this Act to be an industrial offence;

- (f) by striking out from subsection (1) the definition of “justices”;

- (g) by striking out from subsection (1) the definition of “major offence” and substituting the following definition:

“major indictable offence” means any indictable offence except a minor indictable offence;

- (h) by striking out from subsection (1) the definition of “minor indictable offence” and substituting the following definitions:

“minor indictable offence”—*See section 5:*

“offence of violence” means an offence where the offender—

(a) uses a weapon, or threatens to use a weapon, against another;

or

(b) inflicts serious injury on another, or threatens to inflict serious injury on another,

for the purpose of committing the offence, or escaping from the scene of the offence;

- (i) by striking out from subsection (1) the definition of “the Registrar”;

- (j) by inserting the following definitions in subsection (1) after the definition of “personal service”:

“the Principal Registrar” means the Principal Registrar of the Magistrates Court;

“Registrar” means the Principal Registrar or any other Registrar of the Magistrates Court;

“rules” means the rules of the Magistrates Court;

- (k) by striking out from subsection (1) the definition of “Senior Judge”;

- (l) by striking out from subsection (1) the definition of “simple offence”;

- (m) by striking out from subsection (1) the definition of “special justice”;
- (n) by striking out from subsection (1) the definition of “special magistrate” and substituting the following definition:
- “summary offence”—*See section 5*;
- (o) by inserting the following definition in subsection (1) after the definition of “the Industrial Court”:
- “third schedule offence” means—
- (a) an offence against a section of the *Criminal Law Consolidation Act 1934* listed in the third schedule;
- (b) an offence of attempting to commit such an offence;
- (c) an offence of aiding, abetting, counselling or procuring such an offence;
- (d) an offence of conspiring to commit such an offence;
- or
- (e) an offence of being an accessory after the fact to such an offence;
- and
- (p) by striking out from subsection (1) the passage following the definition of “the Industrial Court”.

Repeal of s. 4a

7. Section 4a of the principal Act is repealed.

Substitution of s. 5

8. Section 5 of the principal Act is repealed and the following section is substituted:

Classification of offences

5. (1) Offences are divided into the following classes:

- (a) summary offences;
- (b) indictable offences—comprising minor indictable offences and major indictable offences.
- (2) A summary offence is—
- (a) an offence that is not punishable by imprisonment;
- (b) an offence for which a maximum penalty of, or including, imprisonment for two years or less is prescribed;
- (c) a third schedule offence involving \$2 000 or less not being—
- (i) an offence of violence;
- or
- (ii) an offence that is one of a series of offences of the same or a similar character involving more than \$2 000 in aggregate,

but an offence for which a maximum fine exceeding twice a Division 1 fine is prescribed is not a summary offence.

- (3) All offences apart from summary offences are indictable and of these—
- (a) the following are minor indictable offences:

- (i) those not punishable by imprisonment but for which a maximum fine exceeding twice a Division 1 fine is prescribed;
- (ii) those for which the maximum term of imprisonment does not exceed 5 years;
- (iii) those for which the maximum term of imprisonment exceeds 5 years and which fall into one of the following categories:
 - a third or fourth schedule offence (not being an offence of violence) involving \$25 000 or less;
 - an offence involving interference with, damage to or destruction of property where the loss resulting from commission of the offence does not exceed \$25 000;
 - an offence against section 23 (malicious wounding) or 40 (assault occasioning actual bodily harm) of the *Criminal Law Consolidation Act 1935*;
 - an offence against section 56 of the *Criminal Law Consolidation Act 1935* (indecent assault);
 - an offence against section 169, 170, 171 or 172 of the *Criminal Law Consolidation Act 1935* (breaking and entering, etc.) where—

- the intended felony is an offence of dishonesty (not being an offence of violence) involving \$25 000 or less or an offence of interference with, damage to or destruction of property involving \$25 000 or less;

and

- the defendant is not alleged to have been armed with an offensive weapon or in company with a person so armed;

and

(b) all other indictable offences are major indictable offences.

(4) For the purposes of the above classifications, an offence will be taken to involve a particular sum of money if that sum represents—

(a) the amount or value of the benefit that the offender would have gained through commission of the offence;

or

(b) the amount of the loss that would have resulted from commission of the offence,

assuming that the offence had been successfully completed and the offender had escaped detection.

(5) If a law prescribes differential maximum penalties, then for the purposes of classifying the offence in accordance with the above rules, it will be taken to create separate offences which are (where necessary) to be separately classified in accordance with the above rules.

(6) Where an offence may be either a summary offence or an indictable offence according to the circumstances surrounding its commission and the offence is designated as a summary offence in a complaint charging the offence, then, subject to subsection

(8), the circumstances will be conclusively presumed to be such as to make the offence a summary offence.

(7) Where an offence may be either a minor indictable offence or a major indictable offence according to the circumstances surrounding its commission and the offence is classified as a minor indictable offence in an information charging the offence, then, subject to subsection (8), the circumstances will be conclusively presumed to be such as to make the offence a minor indictable offence.

(8) A defendant may, in accordance with the rules, challenge the classification of an offence in the complaint or information charging the offence and for the purposes of such a challenge the above presumptions do not apply.

(9) Where a summary offence is erroneously dealt with as an indictable offence or a minor indictable offence is erroneously dealt with as a major indictable offence, the proceedings are not invalid but any penalties imposed should conform with what would be appropriate if the offence had been correctly classified at the inception of the proceedings.

(10) If the Act under which an offence is created classifies an offence in a manner inconsistent with this section, that classification prevails.

Substitution of s. 7

9. Sections 7 and 7a of the principal Act are repealed and the following section is substituted:

Abolition of rule as to disputed title

7. The Court is not prevented from trying an offence by reason of the fact that the trial involves a dispute as to the title to property.

Repeal of ss. 8 to 9a

10. Sections 8, 9 and 9a of the principal Act are repealed.

Repeal of Part II

11. Part II of the principal Act (comprising sections 10 to 19) is repealed.

Form of warrant

12. Section 20 of the principal Act is amended by striking out from subsection (1) (c) "the justice issuing it, or before some other justice," and substituting "the Court".

Form of summons

13. Section 22 of the principal Act is amended by striking out from paragraph (c) "at a certain time and place therein mentioned, before such justice as shall then be there," and substituting "before the Court at a specified time and place".

Description of offence

14. Section 22a of the principal Act is amended by striking out subsection (4).

Repeal of ss. 23 to 26a

15. Sections 23 to 26a of the principal Act are repealed.

Service

16. Section 27 of the principal Act is amended by striking out from subsection (3) "a court or justice" and substituting "the Court".

Service of summons by post

17. Section 27a of the principal Act is amended by striking out from subsection (1) "simple offence" and substituting "summary offence".

Hearing where defendant fails to appear**18. Section 27c of the principal Act is amended—**

(a) by striking out subsection (2) and substituting the following subsection:

(2) Where a hearing is adjourned under subsection (1) (b), it is not necessary for the Court to be constituted of the same judicial officer at the adjourned hearing.;

(b) by striking out from subsection (4) “the clerk of the court which so convicted the defendant shall” and substituting “the Registrar must”;

and

(c) by striking out from subsection (5) “the clerk of the court which so convicted the defendant shall” and substituting “the Registrar must”.

Proof by affidavit of service, etc.**19. Section 28 of the principal Act is amended—**

(a) by striking out from subsection (1) “within the jurisdiction of justices”;

(b) by striking out from subsection (1) (b) “justice or other”;

(c) by striking out from the proviso to subsection (1) “the justices” and substituting “the Court”;

and

(d) by striking out subsections (2) and (3) and substituting the following subsections:

(2) Service may also be proved by tender of a certificate of service signed by the person who effected service.

(3) A document appearing to be an affidavit or certificate under this section may be accepted, without further evidence, as proof of the matters stated in it.

(4) A person who gives a false certificate under this section is guilty of an offence.

Penalty: Imprisonment for two years.

Substitution of s. 29**20. Section 29 of the principal Act is repealed and the following section is substituted:****Assistance of counsel**

29. A party to proceedings before the Court is entitled to the assistance of counsel in the presentation of his or her case.

Repeal of Part IV Division I**21. Division I of Part IV (comprising sections 42 to 48) is repealed.****Substitution of ss. 49 and 50**

22. Sections 49 and 50 of the principal Act are repealed and the following section is substituted:

Complaint

49. (1) Where a person is suspected of having committed a summary offence, a complaint may be laid in accordance with the rules charging that person with the offence.

(2) A complaint may be laid by the complainant personally or by a legal practitioner or other person duly authorized to make the complaint on the complainant's behalf.

(3) If the complaint is made orally, it must be reduced to writing.

(4) A complaint need not be made on oath unless—

(a) some Special Act requires the complaint to be made on oath;

or

(b) a warrant for the arrest of the defendant is to be issued.

(5) A complaint must be filed in the Court as soon as practicable after it is made.

Substitution of s. 51

23. Section 51 of the principal Act is repealed and the following section is substituted:

Joinder and separation of charges

51. (1) A person may be charged with any number of summary offences in the same complaint (either cumulatively or in the alternative) if the charges arise from the same set of circumstances or from a series of circumstances of the same or a similar character.

(2) The Court may direct that—

(a) charges contained in a single complaint be dealt with in separate proceedings;

or

(b) charges contained in separate complaints be dealt with together in the same proceedings.

Repeal of s. 55

24. Section 55 of the principal Act is repealed.

Substitution of s. 57

25. Section 57 of the principal Act is repealed and the following section is substituted:

Issue of summons

57. (1) When a complaint has been made and filed in the Court, the Court must, subject to subsection (2), issue a summons for the appearance of the defendant.

(2) No summons need be issued—

(a) where the relevant law under which the complaint is made provides for the matter to be dealt with *ex parte*;

(b) where the defendant is already before the Court;

or

(c) where a warrant is issued to have the defendant arrested and brought before the Court.

(3) If when a complaint is filed in the Court the whereabouts of the defendant is unknown, the Court may defer issuing a summons until informed of a place at which service might be effected.

Procedure enabling written plea of guilty

26. Section 57a of the principal Act is amended—

- (a) by striking out from subsection (1) “simple offence” and substituting “summary offence”;
 - (b) by striking out from subsection (1) “rules made by the Governor under section 203 of this Act” and substituting “the rules”;
 - (c) by striking out subsections (4) and (5) and substituting the following subsection:
 - (4) The completed form must be returned to the Registrar—
 - (a) by delivering it at an office of the Court;
 - or
 - (b) by sending it by post to the Principal Registrar at an address shown on the form.;
 - (d) by striking out from subsection (6) “serves” and substituting “returns”;
 - (e) by striking out from subsection (7) “serve” and substituting “return”;
 - (f) by striking out from subsection (7a) (a) “the clerk of the court specified in the summons” and substituting “the Registrar”;
 - (g) by striking out from subsection (7a) (b) “clerk” wherever it occurs and substituting, in each case, “Registrar”;
 - (h) by striking out from subsection (8) “rules made by the Governor under section 203 of this Act” and substituting “the rules”;
 - (i) by striking out from subsection (9) “simple offence” and substituting “summary offence”;
- and
- (j) by striking out from subsection (9) “serving” and substituting “returning”.

Substitution of s. 58

27. Section 58 of the principal Act is repealed and the following section is substituted:

Issue of warrant

58. The Court may issue a warrant to have the defendant arrested and brought before the Court if—

- (a) the allegations in the complaint are substantiated on oath;
- or
- (b) the defendant fails to appear in obedience to a summons and the Court is satisfied that the summons was served a reasonable time before the time appointed for the hearing.

Substitution of s. 59

28. Section 59 of the principal Act is repealed and the following section is substituted:

Defendant to be brought before Court

59. (1) A defendant who has been arrested under a warrant must be brought before the Court.

(2) If it is not practicable to deal immediately with the matter for which the defendant has been brought before the Court, the Court may remand the defendant in custody, or on bail, to appear before the Court at a time and place fixed in the order for remand.

Forms of custody, etc.

29. Section 60 of the principal Act is amended—

- (a) by striking out from subsection (1) “the justice shall commit” and substituting “the Court may commit”;
- (b) by striking out from subsection (1) (c) “the justice” and substituting “the Court”;
- (c) by striking out from subsection (1) “the justice shall order the defendant to be brought up” and substituting “the Court must order the defendant to be brought before the Court”;
- (d) by striking out from subsection (1) “before such justice or justices as shall then be there”;

and

- (e) by striking out from subsection (2) “justice” and substituting “Court”.

Proceedings on non-appearance of defendant

30. Section 62 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

- (3) Where a hearing is adjourned under subsection (1), the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

Powers of court on written plea of guilty

31. Section 62b of the principal Act is amended by striking out the first sentence of subsection (8) and substituting “Where a defendant is convicted under this section, the Principal Registrar must forthwith, either personally or by post, give the defendant written notice of the conviction and of any fine or other monetary sum to be paid and of the time allowed for payment”.

***Ex parte* proceedings**

32. Section 62c of the principal Act is amended—

- (a) by striking out from subsection (2) “clerk of the court” and substituting “Registrar”;
- (b) by striking out from subsection (2) “rules made by the Governor under section 203 of this Act” and substituting “the rules”;
- (c) by striking out from subsections (3a) and (5) “clerk of the court” wherever it occurs, and substituting in each case, “Registrar”;

and

(d) by striking out subsection (6) and substituting the following subsection:

(6) Where a hearing is adjourned under subsection (1), the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

Non-appearance of complainant

33. Section 63 of the principal Act is amended by striking out subsection (2).

Repeal of s. 65

34. Section 65 of the principal Act is repealed.

Repeal of s. 66

35. Section 66 of the principal Act is repealed.

Procedure on plea of not guilty

36. Section 68 of the principal Act is amended by striking out from subsection (3) “a court of summary jurisdiction” and substituting “the Court”.

Examination of defendant

37. Section 69a of the principal Act is amended by striking out from subsection (1) “a court of summary jurisdiction” and substituting “the Court”.

Conviction for attempt where full offence charged

38. Section 70b of the principal Act is amended by striking out “simple offence” and substituting “summary offence”.

Copies of various documents relating to proceedings

39. Section 72 of the principal Act is amended—

(a) by striking out from subsection (1) “The clerk” and substituting “The Principal Registrar”;

and

(b) by striking out “special” wherever it occurs in subsections (1) and (2).

Substitution of s. 76a

40. Section 76a of the principal Act is repealed and the following sections are substituted:

Power to set aside conviction or order

76a. (1) The Court may, on its own initiative or on the application of any party, set aside a conviction or order.

(2) An application to set aside a conviction or order under this section must be made within 14 days after the applicant receives notice of the conviction or order.

(3) The Court may set aside a conviction or order under this section if satisfied—

(a) that the parties consent to have it set aside;

(b) that the conviction or order was made in error;

or

(c) that it is in the interests of justice to set aside the conviction or order.

(4) Where the Court sets aside a conviction or order under this section it may, without further formality—

- (a) proceed to re-hear the proceedings in which the conviction or order was made;
- or
- (b) adjourn the proceedings for subsequent re-hearing.

Correction of conviction or order

76b. The Court may, on its own initiative or on the application of any party, correct an error in a conviction or order.

Repeal of s. 77

41. Section 77 of the principal Act is repealed.

Substitution of s. 79a

42. Section 79a of the principal Act is repealed and the following section is substituted:

Payment to Principal Registrar of fines, etc.

79a. (1) Where a fine or other monetary sum is to be paid to a person other than the Principal Registrar, the fine or sum must not be paid directly to that person but to the Principal Registrar for payment to that person.

(2) Upon receipt of a fine or other monetary sum, or of any part of it, the Principal Registrar must pay the amount received as follows:

- (a) firstly, if any costs are payable to a party to the proceedings, then in or towards satisfaction of those costs;

and

- (b) secondly—

- (i) if the order is one for the payment of money to the complainant, then to the complainant;

or

- (ii) in any other case, according to the direction of the Special Act, or, if the Special Act contains no directions for payment to any person or persons, then to the Treasury.

Orders to keep the peace

43. Section 99 of the principal Act is amended—

- (a) by striking out from subsection (1) “a court of summary jurisdiction” and substituting “the Court”;
- (b) by striking out from subsection (3) “was summoned to appear” and substituting “was required by summons or conditions of bail to appear”;
- (c) by inserting after subsection (4) the following subsection:

(4a) The Court may make an order under subsection (4) on the basis of evidence received in the form of an affidavit but, in that case—

- (a) the deponent must, if the defendant so requires, appear personally at the proceedings for confirmation of the order to give oral evidence of the matters referred to in the affidavit;

and

- (b) if the deponent does not appear personally to give evidence in pursuance of such a requirement, the Court may not rely on the evidence contained in the affidavit for the purpose of confirming the order.;
- (d) by striking out from subsection (5) "A court of summary jurisdiction" and substituting "The Court";
- (e) by striking out from subsection (8) "a court of summary jurisdiction" and substituting "the Court";
- (f) by striking out subsection (10) and substituting the following subsection:
- (10) The Court may, at any time, on application by—
- (a) a member of the police force;
- (b) a person for whose benefit the order was made;
- or
- (c) a person against whom the order was made,
- vary or revoke an order under this section.;
- (g) by striking out from subsection (11) "by a court of summary jurisdiction, the clerk of the court" and substituting "the Principal Registrar";
- and
- (h) by striking out subsection (12) and substituting:
- (12) Where an order under this section is varied or revoked, the Principal Registrar must notify the Commissioner of Police and, where the complainant is not a member of the police force, the complainant of the variation or revocation.

Substitution of Part V

44. Part V of the principal Act (comprising sections 101 to 156) is repealed and the following Part is substituted:

PART V

INDICTABLE OFFENCES

DIVISION I—CHARGES OF INDICTABLE OFFENCES

Information of indictable offence

101. (1) Where a person is suspected of having committed an indictable offence triable in this State, an information may be laid, in accordance with the rules, charging that person with that offence.

(2) If the information is laid orally, it must be reduced to writing.

(3) An information must be filed in the Court as soon as practicable after it is laid.

Joinder and separation of charges

102. (1) A person may be charged with any number of offences in the same information (either cumulatively or in the alternative) if the charges arise from the same set of circumstances or from a series of circumstances of the same or a similar character.

(2) The charges joined in the same information under subsection (1) may include charges of the following three classes or any two of those classes:

- (a) major indictable offences;
- (b) minor indictable offences;
- (c) summary offences.

(3) If an information contains a charge of a major indictable offence, all charges of minor indictable or summary offences included in the same information will be dealt with according to the procedures applicable to major indictable offences and if the information includes a charge of a minor indictable offence, but no charge of a major indictable offence, all charges of summary offences included in the same information will be dealt with according to the procedures applicable to minor indictable offences (but the penalty that may be awarded for an offence is unaffected by the fact that the offence is dealt with according to procedures applicable to offences of a more serious class).

(4) The Court may direct that—

(a) charges contained in a single information be dealt with in separate proceedings;

or

(b) charges contained in separate informations be dealt with together in the same proceedings.

Procedure in the Magistrates Court

103. (1) Where an information charging an indictable offence has been filed in the Court—

(a) if the defendant is in custody—the Court may remand the defendant in custody or on bail to appear before the Court at a nominated time and place to answer the charge;

(b) if the defendant is not in custody—

(i) the Court may, if the charge has been substantiated on oath, issue a warrant to have the defendant arrested and brought before the Court and then, on the appearance of the defendant, remand him or her in custody or on bail to appear at a nominated time and place to answer the charge;

or

(ii) the Court may appoint a time and place for the defendant to appear to answer the charge and issue a summons requiring the defendant to appear at the time and place so appointed.

(2) The defendant must be provided with a copy of the information and, if the defendant is charged with a minor indictable offence, the appropriate form for electing for trial in a superior court.

(3) If a defendant charged with a minor indictable offence does not elect, in accordance with the rules, for trial in a superior court, the charge will be dealt with in the same way as a charge of a summary offence.

DIVISION II—PRELIMINARY EXAMINATION OF CHARGES

Preliminary examination of charges of indictable offence

104. (1) Where a charge of an indictable offence is to proceed to a preliminary examination, the prosecutor must at least 14 days before the date appointed for the defendant's appearance to answer the charge—

(a) file in the Court in accordance with the rules—

- (i) statements of witnesses for the prosecution on which the prosecutor relies as tending to establish the guilt of the defendant;
- (ii) copies of any documents on which the prosecutor relies as tending to establish the guilt of the defendant;
- (iii) a document describing any other evidentiary material on which the prosecutor relies as tending to establish the guilt of the defendant together with a statement of the significance that the material is alleged to have;

and

- (iv) any other material relevant to the charge that is available to the prosecution;

and

(b) give personally or by post to the defendant or a legal practitioner representing the defendant copies of all documentary material filed under paragraph (a).

(2) If material of the kind referred to above comes into the prosecutor's possession after the time appointed for filing in the Court and giving copies to the defendant or the defendant's legal representative, the material must be filed and copies given as soon as practicable after it comes into the prosecutor's possession.

(3) A statement filed in the Court must conform with the following requirements:

(a) it must, subject to paragraph (b), be in the form of a written statement verified by a declaration in the form prescribed by the rules;

(b) if the witness is a child under the age of 12 years or a person who is illiterate or mentally retarded, it may be—

- (i) in the form of a written statement taken down by a police officer at an interview with the witness and verified by the police officer as an accurate record of the witness's oral statements at the interview insofar as they are relevant to the subject matter of the charge;

or

- (ii) in the form of a videotape or audiotape record of an interview with the witness that is accompanied by a written transcript verified by a police officer who was present at the interview as a complete record of the interview.

(4) Where a videotape or audiotape is filed in the Court, the prosecutor must—

(a) provide the defendant with a copy of the verified written transcript of the tape at least 14 days before the date appointed for the defendant's appearance to answer the charge, or, if the tape comes into the prosecutor's possession on a later date, as soon as practicable after the tape comes into the prosecutor's possession;

and

- (b) inform the defendant of the defendant's right to have the tape played over to the defendant or his or her legal representative and propose a time and place for the tape to be played over.

(5) The time proposed for playing the tape must be at least 14 days before the date appointed for the defendant's appearance to answer the charge, or, if the tape comes into the prosecutor's possession at a later date, as soon as practicable after the tape comes into the prosecutor's possession, but the proposed time and place may be modified by agreement.

Procedure at preliminary examination

105. (1) In cases where the defendant does not appear personally at a preliminary examination to answer the charge, the Court will proceed with a preliminary examination as follows:

- (a) if the defendant has, in accordance with the rules, returned a written plea admitting the charge, the Court will commit the defendant to a superior Court for sentence;
- (b) if the defendant neither returns a written plea in accordance with the rules nor appears personally to answer the charge, the Court may—
- (i) issue a summons requiring the defendant to appear at a nominated time and place to answer the charge (and if the defendant then fails to appear, issue a warrant to have the defendant arrested and brought before the Court);
 - (ii) issue a warrant to have the defendant arrested and brought before the Court to answer the charge;
- or
- (iii) if there is reason to believe that the defendant has absconded, or there is some other good reason for proceeding in the absence of the defendant—proceed with the preliminary examination as if the defendant had appeared and denied the charge.

(2) In cases where the defendant appears personally at a preliminary examination to answer the charge, the Court will proceed as follows:

- (a) the charge will be read and the defendant will be asked how he or she pleads to it;
- (b) the defendant may then—
- (i) admit the charge;
 - (ii) deny the charge;
 - (iii) assert previous conviction or acquittal of the charge,
- and if the defendant refuses or fails to plead to the charge, he or she will be taken to have denied the charge;
- (c) the Court will then proceed as follows:
- (i) if the defendant admits the charge—the defendant will be committed to a superior Court for sentence;
 - (ii) if the defendant denies the charge—the Court will consider the evidence for the purpose of determining whether it is sufficient to put the defendant on trial for an offence;
 - (iii) if the defendant asserts previous conviction or acquittal, the Court will reserve the questions raised by the plea for consideration by the Court of trial and proceed with the preliminary examination as if the defendant had denied the charge.

(3) The Court may exclude a defendant from a preliminary examination if his or her conduct is disruptive and may excuse a defendant from attendance at a preliminary examination for any proper reason.

(4) A defendant who has elected for trial of a minor indictable offence by a superior court may at any time before the conclusion of the preliminary examination withdraw the election and in that event—

(a) the charge will be dealt with in the same way as a charge of a summary offence;

and

(b) the Court may, if the defendant agrees, admit evidence given or tendered at the preliminary examination.

(5) A defendant who has pleaded to a charge at or before a preliminary examination may withdraw the plea and substitute some other plea before the conclusion of the preliminary examination.

Taking of evidence at preliminary examination

106. (1) Where a charge is not admitted by a defendant at a preliminary examination, the following procedure applies:

(a) the prosecutor will tender the statements and other material filed in the Court and the Court will, subject to any objections as to admissibility upheld by the Court, admit them in evidence;

(b) the prosecutor will call a witness whose statement has been filed in the Court for oral examination if—

(i) the defence has given notice, in accordance with the rules, that it requires production of that witness;

and

(ii) the Court grants leave to call that witness for oral examination;

(c) the prosecutor may, by leave of the Court, call oral evidence in support of the case for the prosecution;

(d) the defendant may give or call evidence;

(e) the prosecutor may call evidence in rebuttal of evidence given for the defence.

(2) The Court will not grant leave to call a witness for oral examination under subsection (1) unless it is satisfied that there are special reasons for doing so.

(3) In determining whether special reasons exist for granting leave to call a witness for oral examination, the Court must have regard to—

(a) the need to ensure that the case for the prosecution is adequately disclosed;

(b) the need to ensure that the issues for trial are adequately defined;

(c) the Court's need to ensure (subject to this Act) that the evidence is sufficient to put the defendant on trial;

and

(d) the interests of justice,

but if the witness is the victim of an alleged sexual offence or a child under the age of 12 years, the Court must not grant leave unless satisfied that the interests of justice cannot be adequately served except by doing so.

(4) If a witness is called for oral examination the usual oath will be administered (unless the witness is not liable to the obligation of an oath) and the witness will be examined, cross-examined and re-examined in the usual manner.

Evaluation of evidence at preliminary examination

107. (1) The following principles govern the Court's approach to evidence at a preliminary examination:

- (a) evidence will be regarded as sufficient to put the defendant on trial for an offence if, in the opinion of the Court, the evidence, if accepted, would prove every element of the offence;
- (b) although the Court may reject evidence if it is plainly inadmissible, the Court will, if it appears that arguments of substance can be advanced for the admission of evidence, admit the evidence for the purpose of the preliminary examination, reserving any dispute as to its admissibility for determination by the Court of trial.

(2) If the Court, after completing its consideration of the evidence, is of the opinion that the evidence is not sufficient to put the defendant on trial for any offence, the Court will—

- (a) reject the information;

and

- (b) if the defendant is in custody on the charges contained in the information (and for no extraneous reason)—order that the defendant be discharged from custody.

(3) If, after completing consideration of the evidence, the Court is of the opinion that the evidence is sufficient to put the defendant on trial for an offence—

- (a) the Court will review the charges, as laid in the information, in order to ensure that they properly correspond to the offences for which there is, in the opinion of the Court, sufficient evidence to put the defendant on trial and make any necessary amendment to the information;

and

- (b) following the review of the charges—

- (i) if the defendant stands charged with a major indictable offence—the Court will commit the defendant to a superior Court for trial;

- (ii) if the defendant stands charged with a minor indictable offence but with no major indictable offence—the Court will, if the defendant has not previously elected for trial by a superior court on that charge, allow the defendant a reasonable opportunity to do so and, if the defendant does so elect (or has previously so elected), will commit the defendant to a superior Court for trial but otherwise will proceed to deal with the charge in the same way as a charge of a summary offence;

- (iii) if the defendant stands charged with a summary offence but with no indictable offence—the Court will proceed to deal with the

charge in the same way as if the proceedings had been commenced on complaint.

(4) The Court will not proceed to deal with a charge of a minor indictable offence in the same way as a charge of a summary offence unless it has satisfied itself that the defendant fully understands that he or she is entitled to elect for trial by jury.

(5) Where the Court commits a defendant for trial the Court must inform the defendant of his or her obligation to give notice of evidence of alibi that the defendant may desire to adduce at the trial and provide the defendant with a written statement explaining that obligation.

(6) If in any legal proceedings the question arises whether a defendant has been provided with the information and statement required by subsection (5), it will be presumed, in the absence of proof to the contrary, that the defendant has been provided with that information and statement.

DIVISION III—FORUM FOR TRIAL OR SENTENCE

Forum for sentence

108. Where the Court is to commit a defendant to a superior Court for sentence, the following principles govern the choice of forum:

(a) the defendant should be committed for sentence in the Supreme Court if—

(i) the admitted offence is treason, murder, or an attempt or conspiracy to commit, or assault with intent to commit, either of those offences;

or

(ii) the gravity of the offences justifies, in the opinion of the Magistrates Court, committal to the Supreme Court;

and

(b) in any other case, the defendant should be committed to the District Court for sentence.

Forum for trial

109. Where the Court is to commit a defendant to a superior Court for trial, the following principles govern the choice of forum:

(a) the defendant should be committed for trial in the Supreme Court in the following cases:

(i) where the charge is treason or murder, or an attempt or conspiracy to commit, or an assault with intent to commit, either of those offences;

(ii) where a major indictable offence is charged and the circumstances of its alleged commission are of unusual gravity;

(iii) where a major indictable offence is charged and trial of the charge is likely to involve unusually difficult questions of law or fact;

(b) in any other case, the defendant should be committed for trial in the District Court.

Change of forum

110. (1) Where the Supreme Court is of the opinion that a defendant committed for trial or sentence in the Supreme Court (not being a defendant committed for trial or sentence on a charge of treason or murder, or an attempt or conspiracy to commit or an assault with intent to commit either of those offences) should be tried or sentenced in the District Court, the Supreme Court may order that the case be referred to the District Court.

(2) Where the Supreme Court is of the opinion that a defendant committed for trial or sentence in the District Court should be tried or sentenced in the Supreme Court, the Court may remove the case into the Supreme Court.

(3) Where the District Court is of the opinion that a defendant committed for trial or sentence in the District Court should be tried or sentenced in the Supreme Court, the Court may order that the case be referred to the Supreme Court.

(4) Where a case is referred to the District Court or removed or referred to the Supreme Court under this section, the case will proceed as if the committal had been to the Court to which the case is referred or removed.

(5) In deciding whether to exercise its powers under this section, the Supreme Court or the District Court will have regard to—

(a) the gravity of the case;

(b) the difficulty of any questions of law or fact;

(c) the views (insofar as they have been expressed) of the prosecutor and defendant;

and

(d) any other relevant factor.

Change of plea following committal for sentence

111. (1) A person who has been committed to a superior court for sentence may, on appearing before that court, withdraw the admission of guilt and plead not guilty to the charge.

(2) In such a case, the superior court may, if satisfied that the interests of justice require it to do so, remit the case to the Magistrates Court for preliminary examination of the charge.

(3) The change of plea must not be made the subject of any comment to the jury at a subsequent trial of the charge.

DIVISION IV—PROCEDURE FOLLOWING COMMITTAL FOR TRIAL OR SENTENCE**Remand of defendant**

112. Where the Court commits a defendant to a superior court for trial or sentence, the Court will remand the defendant in custody or release the defendant on bail to await trial or sentence.

Material to be forwarded by Registrar

113. Where a person is committed for trial or sentence, the Principal Registrar must forward to the Attorney-General—

(a) a copy of the order for committal;

(b) a copy of any documentary material filed in the Court in connection with the preliminary examination;

(c) a transcript of the oral evidence (if any) taken at the preliminary examination.

DIVISION V—CASES WHERE COURT ITSELF DEALS WITH MINOR INDICTABLE OFFENCES

Procedural provisions of Criminal Law Consolidation Act

114. The rules may provide that specified provisions of the *Criminal Law Consolidation Act 1934* apply with necessary adaptations and modifications to the trial or sentencing by the Court of a person charged with a minor indictable offence.

Repeal of Part VI

45. Part VI of the principal Act (comprising sections 162 to 179) is repealed.

Substitution of ss. 181 to 187

46. Sections 181 to 187 of the principal Act are repealed and the following sections are substituted:

Charges

181. (1) An information or complaint is not invalid because of a defect of substance or of form.

(2) The Court may—

(a) amend an information or complaint to cure a defect of substance or form (but if the defendant has been substantially prejudiced by the defect, no amendment may be made);

or

(b) dismiss an information or complaint if the defect cannot appropriately be cured by amendment.

Orders, warrants, etc.

182. (1) An order, summons, warrant or other process of the Court is not invalid by reason of any defect of substance or form.

(2) The Court may—

(a) amend an order, summons, warrant or other process of the Court in order to correct a defect of substance or form;

or

(b) if the person against whom an order, summons, warrant or other process has been made or issued has been, or may be, substantially prejudiced by the defect—revoke the order, summons, warrant or other process.

Proof of convictions or orders

47. Section 187a of the principal Act is amended—

(a) by striking out from subsection (1) “a court of summary jurisdiction” and substituting “the Court”;

and

(b) by striking out subsection (1a) and substituting the following subsection:

(1a) The copy must be certified by—

(a) the person, or one of the persons, constituting the Court by which the conviction or order was made;

or

(b) a Registrar.

Substitution of ss. 187ab to 203

48. Sections 187ab to 203 (inclusive) of the principal Act are repealed and the following sections are substituted:

Registration of orders for the purpose of enforcement

188. (1) This section applies to an order for payment of a fine or other monetary sum made against a body corporate by a Court of summary jurisdiction established under the law of some other State, or of a Territory of the Commonwealth.

(2) The Principal Registrar may, subject to the order, register an order to which this section applies in the Court.

(3) Subject to the rules, proceedings may be taken for the enforcement of an order registered under this section as if it were an order of the Court.

Costs

189. (1) Subject to subsection (2), the Court may award such costs for or against the prosecutor or the defendant in proceedings commenced on information or complaint as the Court thinks fit.

(2) Costs will not be awarded against a party to a preliminary examination of an indictable offence unless the Court is satisfied that the party has unreasonably obstructed the proceedings.

(3) If proceedings are delayed through the neglect or incompetence of a legal practitioner, the Court may—

(a) disallow the whole or part of the costs as between the legal practitioner and his or her client (and, where appropriate, order the legal practitioner to repay costs already paid);

(b) order the legal practitioner to indemnify his or her client or any other party to the proceedings for costs resulting from the delay;

(c) order the legal practitioner to pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted.

(4) If proceedings are delayed through the neglect or incompetence of a prosecutor who is not a legal practitioner, the Court may order the Crown, or, where the prosecution is brought on behalf of a body that does not represent the Crown, that body, to indemnify any party to the proceedings for costs resulting from the delay.

(5) If a person who is summoned to appear as a witness in any proceedings fails, without reasonable excuse, to appear in obedience to the summons, the Court may order that person—

(a) to indemnify the parties to the proceedings for costs resulting from failure to obey the summons;

(b) to pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted in consequence of the witness's failure to obey the summons.

(6) Before making an order under subsection (3), (4) or (5), the Court must inform the person against whom the order is proposed of the nature of the proposed order and allow that person a reasonable opportunity to give or call evidence and make representations on the matter.

(7) A person against whom an order for costs is made under subsection (3), (4) or (5) has the same rights of appeal as a party to a civil action.

Witness fees

190. Witness fees and expenses in respect of proceedings under this Act are payable in accordance with the regulations.

Fees

191. (1) Fees are payable in respect of proceedings under this Act in accordance with the regulations.

(2) The Court may, if satisfied that proper grounds exist to remit a fee payable under the regulations, remit the fee wholly or in part.

Regulations

192. The Governor may make regulations for the purposes of this Act.

Insertion of third and fourth schedules

49. The following schedules are inserted after the second schedule of the principal Act:

THIRD SCHEDULE

Summary of Indictable Offences of Dishonesty

The description of the offence is given for ease of reference only.

Section of Criminal Law Consolidation Act 1934	Description
131	Simple larceny
132	Larceny by bailee
135	Larceny after a previous conviction for misdemeanour
136	Stealing cattle
137	Killing animals with intent to steal the carcass
138	Stealing deer, llama or alpaca in enclosed land
144	Stealing or fraudulently destroying, cancelling or obliterating valuable security
145	Stealing or fraudulently destroying, cancelling, obliterating or concealing title to land or a will
146	Stealing or fraudulently taking or unlawfully and maliciously cancelling, obliterating, injuring or destroying a court record
147	Stealing or attempting to steal fixtures or parts of a building
148	Stealing or attempting to steal vegetation in any pleasure ground, garden or other enclosed land
152a	Stealing or attempting to steal precious stones
153	Fraudulently removing or concealing precious stones or ore from mine
154	Stealing electricity
173	Larceny in dwelling houses
174	Stealing goods in process of manufacture
175	Stealing from ships or docks

Section of Criminal Law Consolidation Act 1934	Description
183	Larceny by tenants and lodgers
184	Fraudulent misappropriation
189	Fraudulent appropriation of company property
192	Director, public officer or manager publishing fraudulent statements
195	False pretences
196	Receiving where principal guilty of felony
197	Receiving where principal guilty of misdemeanour
197a	Receiving goods stolen outside the State
202	Corruptly taking reward for recovery of stolen property
204	Impersonation in order to obtain property
205	Impersonating the owner of stock
214 except an offence against paragraph (a) (i), (ii), or (iii)	Forgery of deeds, wills, bills of exchange, etc.
215	Forgery in relation to transfer of stock
216	Forgery of power of attorney in relation to transfer of stock
234	Demanding property under forged instruments
235	Forgery of other instrument or matter

FOURTH SCHEDULE

Indictable Offences of Dishonesty

The description of the offence is given for ease of reference only.

Section of Criminal Law Consolidation Act 1934	Description
134	Larceny after a previous conviction for felony
176	Larceny and embezzlement by clerks and servants
177	Larceny and embezzlement in the Public Service
178	Falsification of accounts
182	Larceny by partners
185	Fraudulent sales under powers of attorney
186	Fraud by factors or agents
190	Fraudulent company accounts
191	Fraudulent destruction or alteration of company books, etc.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor