

# NORTHERN TERRITORY OF AUSTRALIA

## JUSTICES ACT

As in force at 4 May 1997

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## **Schedule 3**

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 4 May 1997

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## JUSTICES ACT

### An Act relating to Justices of the Peace

#### Part I Preliminary

##### 1 Short title

This Act may be cited as the *Justices Act*.

##### 2 Commencement

This Act shall commence on a date to be fixed by the Government Resident by notice in the *North Australia Gazette*.

##### 4 Interpretation

In this Act, unless the contrary intention appears:

**Clerk** means the Registrar referred to in section 42.

**Complaint** includes a charge of minor indictable offence, if, and when, a Court of Summary Jurisdiction proceeds to dispose of the charge summarily.

**Court of Summary Jurisdiction** or **Court** means Justices forming the Court for the purposes of hearing and adjudicating upon any case or matter which they have power to determine in a summary manner, and whether they are acting under this Act or under any other Act incorporated herewith, or by virtue of their commissions, or under the common law.

**Defendant** means person charged with any offence or against whom relief is sought.

**Fine** includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable upon a finding of guilt.

**Gaol** includes any prison or other place in which imprisonment or detention is authorized by law according to the circumstances of the case.

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**Guardian** in relation to a child includes any person who, in the opinion of the Justices having cognizance of any case in which a child is concerned, has, for the time being, the charge of, or control over, the child.

**Keeper of a gaol** includes any superintendent, keeper, or other chief officer of a gaol.

**Minor indictable offence** means indictable offence which is capable of being, and is, in the opinion of the Justice before whom the case comes, fit to be heard and determined in a summary way under the provisions of Division 2 of Part V.

**Simple offence** means offence or act for which a person is liable by law, upon a finding of guilt before a Justice or Justices, to be imprisoned or fined or both or to be otherwise punished. but does not include an indictable offence which can only be heard and determined in a summary way as a minor indictable offence.

**Special Act** means statute, Act rule, regulation, or by-law authorizing the making of the finding of guilt or order, or the determination or adjudication in question, or otherwise specially applicable to the case.

**Sum adjudged to be paid by a finding of guilty** and **Sum adjudged to be paid by an order** respectively include any costs adjudged to be paid by the finding of guilt or order (as the case may be) of which the amount is ascertained by the finding or order.

## 9 Incorporation with past and future Acts and Ordinances

- (1) Wherever any Ordinance or Act, past or future, or any rule, regulation, or by-law made under or by virtue of any Ordinance or Act:
  - (a) constitutes any act or omission a simple offence; or
  - (b) provides that any sum may be recovered, by summary proceedings or summarily, before a Court of Summary Jurisdiction or before a Justice or Justices; or
  - (c) provides that any order may be made by a Court of Summary Jurisdiction, or by a Justice or Justices in a summary way,

the Ordinance, Act, rule, regulation, or by-law shall, unless the contrary intention appears, be deemed to refer to this Act, and this Act shall for that purpose be incorporated with such other Ordinance or Act.

- (2) When in any other Ordinance or any Act the term **information** is used in relation to a simple offence or to any other matter determinable by a Justice or Justices in a summary way that term shall, for the purposes of this Act, be deemed to refer to and to mean a complaint under this Act.

## **Part II                    Justices**

### **14                    Issue of summons, &c.**

- (1) All summonses, warrants, findings of guilt, and orders (not being by law authorized to be made by word of mouth only) shall be under the hands of the Justices issuing or making them.
- (2) A Justice may receive any information or complaint and may grant or issue any warrant or summons on a Sunday as well as any other day.

## **Part III                    General procedure**

### **Division 1            Form of warrant and summons**

#### **20                    Form of warrant**

- (1) Every warrant for the apprehension of a defendant shall:
- (a) state shortly the matter of the information or complaint upon which it is founded;
  - (b) name or otherwise describe the defendant; and
  - (c) order the person or persons to whom it is directed to apprehend the defendant and bring him before the Justice issuing it, or before some other Justice, to answer the charge contained in the information or complaint, and to be further dealt with according to law.
- (2) The warrant may be directed specially to any constable or other person by name, or generally to all constables and peace officers of the Territory, or both specially and generally as aforesaid; and where the warrant is directed generally it shall be lawful for any constable or other peace officer to execute the warrant in like manner as if it had been specially directed to him by name.
- (3) It shall not be necessary to make the warrant returnable at any particular time, but it shall remain in force until it is executed.

- (4) Every warrant may be executed by apprehending the defendant at any place within the Territory.

## **22            Form of summons**

- (1) Subject to this section, every summons for the appearance of a defendant shall be in duplicate and shall:
- (a) be directed to the defendant charged by the information or complaint;
  - (b) state shortly the matter so charged;
  - (c) require the defendant to be and appear at a certain time and place therein mentioned, before such Justice as shall then be there, to answer to the charge contained in the information or complaint, and to be further dealt with according to law.
- (2) A summons issued under section 57(2) shall be in triplicate and in accordance with the form in Schedule 3.

## **22A          Description of offence in documents under this Act**

- (1) Any information, complaint, summons, warrant or other document under this Act in which it is necessary to state the matter charged against any person shall be sufficient if it contains a statement of the specific offence with which the accused person is charged, together with such particulars as are necessary for giving reasonable information as to the nature of the charge.
- (2) The statement of the offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and, if the offence charged is one created by any law of the Territory, shall contain a reference to the section of the law of the Territory creating the offence.
- (3) After the statement of the offence, necessary particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be required.
- (4) Any information, complaint, summons, warrant or other document to which this section applies, which is in such form as would have been sufficient in law if this section had not come into force, shall, notwithstanding anything contained in this section, continue to be sufficient in law.

## **Division 2      Witnesses**

### **23      Summons to witness**

If a Justice or the clerk is satisfied that any person is likely to give material evidence or to have in his possession or power any article (which term includes any document, writing, or thing) required for the purposes of evidence upon behalf of either party to any information or complaint, the Justice or clerk may issue a summons to the person requiring him to appear, at a time and place mentioned in the summons, before such Justices as shall then be there, to testify what he knows concerning the matter of the information or complaint, or to produce the article, or to testify and produce as aforesaid (as the case may be).

### **24      On refusal warrant to issue**

If any person summoned neglects or refuses to appear, and no just excuse is offered for such neglect or refusal, then any Justice before whom the person should have appeared may issue a warrant to bring and have such person, at a time and place therein mentioned, before such Justices as shall then be there, provided that it is proved to the satisfaction of the Justice:

- (a) that the summons was duly served; and
- (b) (if the summons relates to a complaint) that a reasonable sum was paid or tendered for the costs and expenses of attendance.

### **25      Warrant in first instance**

If a Justice is satisfied, by evidence upon oath, that it is probable that any person will not attend to give evidence or to produce any article without being compelled to do so, then, instead of issuing a summons as provided by section 23, he may issue his warrant in the first instance.

### **26      Witness refusing to give evidence may be committed to gaol**

Any Justice before whom any person appears or is brought upon summons or warrant, to give evidence or to produce any article may, if the person without offering any just excuse refuses:

- (a) to be examined upon oath concerning the premises;
- (b) to take the oath;

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(c) to answer after having taken an oath such questions concerning the premises as are then put to him; or

(d) to bring or produce any such article,

by warrant commit him to the nearest gaol, there to remain and be imprisoned for any time not exceeding 7 days, unless in the meantime he consents to be examined and to answer concerning the premises, or to produce the article (as the case may be): Provided that no person shall be bound to produce any article not specified or otherwise sufficiently described in the summons, or any document or writing which he would not be bound to produce upon a subpoena duces tecum in the Supreme Court.

## **26A Power to require evidence from persons present in court**

- (1) Any Justice may, on the application of any party to the proceedings, require any person in the court room or other place where he is sitting for the hearing of any complaint or information to take an oath and give evidence concerning the matter of that complaint or information.
- (2) If any person so required refuses to take an oath or without offering any just excuse refuses to answer any question put to him concerning the matter of the complaint or information, or if any person voluntarily appearing as a witness without offering any just excuse refuses to answer any such question, the Justice may by warrant commit him to the nearest gaol, there to remain and be imprisoned for any time not exceeding 7 days, unless in the meantime he consents to be examined and to answer the question put to him.

## **Division 3 Service**

### **27 Service of summonses and notices under this Act**

Subject to the provisions of this or any other enactment specially applicable to the particular case, any summons or notice required or authorized by this Act or the *Domestic Violence Act* to be served upon any person, may be served upon the person by:

- (a) delivering it to him personally; or
- (b) leaving it for him at his last or most usual place of abode or of business with some other person, apparently an inmate thereof or employed thereat, and apparently not less than 16 years of age.

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**27A Service of summons under section 57(2)**

- (1) A summons issued under section 57(2) to a person other than a corporation may be served on a defendant:
  - (a) by delivering 2 copies of the summons to the defendant personally;
  - (b) subject to subsection (2), by leaving 2 copies of the summons for the defendant at his last-known place of abode or business with a person apparently an inmate or employed at that place and apparently not less than 16 years of age; or
  - (c) subject to subsections (2) and (3), by posting by registered post service, as provided under the *Australian Postal Corporation Act 1989* of the Commonwealth, 2 copies of the summons to the defendant at his last-known place of abode or business.
- (2) If a certificate of the clerk given under section 57(3) is to be served on the defendant, the summons shall also be served on the defendant personally.
- (3) A summons served under subsection (1)(c) on a defendant shall be served:
  - (a) if the offence alleged in the summons is an offence in respect of which a traffic infringement notice, within the meaning of Part XIV of the *Traffic Regulations*, may be served – not later than 90 days after the date of the alleged offence; or
  - (b) in any other case – not later than 60 days after the date of the alleged offence,and not earlier than one month before the date shown on the summons as the date for the hearing of the charge to which that summons relates.
- (4) A summons issued under section 57(2) to a corporation may be served on the corporation:
  - (a) by delivering 2 copies of the summons to a director, secretary, or other responsible officer of the corporation; or
  - (b) by posting by registered post service, as provided under the *Australian Postal Corporation Act 1989* of the Commonwealth, 2 copies of the summons to the principal place of business of the corporation in the Territory.

- (5) In the absence of evidence to the contrary, the address appearing on the summons shall be deemed to be the defendant's last-known place of abode or business.
- (6) Where a summons has not been served personally, the Court or a Justice may, if it or he is of the opinion that there is a reasonable probability that the summons has not come to the notice of the defendant, refuse to adjudicate upon the complaint and direct that a fresh summons be issued and served personally on the defendant.

**28      Proof by affidavit of service of process, handwriting, &c.**

- (1) In any proceeding within the jurisdiction of Justices, without prejudice to any other mode of proof:
  - (a) the service on any person of any summons, notice, process, or document required or authorized to be served;
  - (b) the handwriting of any Justice or other officer or person on any warrant, summons, notice, process, or document; or
  - (c) the payment or tender, to any person summoned to attend as a witness, of any sum in respect of the costs or expenses of attendance,

may be proved by an affidavit taken before a Justice or before a commissioner for taking affidavits in the Supreme Court: Provided that the Justices may require the person making the affidavit to be called as a witness, or may require further evidence of the facts.

- (2) Any document purporting to be an affidavit under this section shall (subject to the proviso to subsection (1)) be received in evidence in any Court or legal proceeding as sufficient proof of the statements contained therein, without proof of the signature or of the official character of the person or persons taking or signing it.
- (3) If any affidavit made under this section is untrue in any material particular, the person wilfully making the false affidavit shall be guilty of wilful and corrupt perjury, and shall be punishable accordingly.
- (4) Service of a summons issued under section 57(2) may, without prejudice to any other mode of proof, be proved by a receipt for registered post service issued under the *Australian Postal Corporation Act 1989* of the Commonwealth and bearing the serial number referred to in evidence as the number relating to the summons sent by that registered post service and by a written receipt under those Regulations purporting to be duly completed and acknowledging receipt of that registered post service article.



- (5) The receipt and returned receipt of registered post service are admissible at the hearing of the summons as prima facie evidence that the summons was received by the address of the article and of the matters set out in them.

#### **Division 4            Assistance of counsel**

##### **29            Parties to have assistance of counsel**

Every party to any proceeding before Justices shall be at liberty to conduct his case or to make his application or his full answer to the charge or complaint (as the case may be) and to have the witnesses examined and cross-examined, by a legal practitioner: Provided that nothing herein contained shall be deemed:

- (a) to dispense with the personal attendance before the Justice of any defendant who is charged with an indictable offence; or
- (b) to authorize Justices to proceed to hear or to hear and determine any charge of an indictable offence in the absence of the defendant.

#### **Division 5            Recognizances**

##### **31            Discretion of justices as to amount and sureties**

Every recognizance shall be for such amount and with such surety or sureties as the Justice taking the recognizance thinks fit to ensure the due fulfilment of the conditions thereof: Provided that, in the case of a recognizance taken under section 33 it shall be for such amount, and with such surety or sureties, as the Justice authorizing the taking thereof thinks fit.

##### **32            Justice may fix amount of recognizance and sureties**

Where a Justice is authorized to take a recognizance, or when any recognizance is required to be entered into before a Justice, the Justice may fix the amount or amounts in which the principal and sureties are to be bound, and the recognizances may then be entered into as provided in section 33.

##### **33            Recognizances taken out of Court**

- (1) A recognizance need not be entered into before a Justice but may be entered into before any clerk or before an inspector of police or other officer of police of equal or superior rank or any member of the police force in charge of any police station, or where any of the parties is in gaol before the keeper of the gaol: Provided that no

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Justice, and no clerk, officer of police, member of the police force or keeper of a gaol shall take the recognizance of any person proposed as a surety unless the person so proposed first makes an affidavit or declaration of justification in the prescribed form.

- (2) Where, as a condition of the release of any person, he is required to enter into a recognizance with sureties, the recognizance of the sureties may be taken separately, and either before or after the recognizance of the defendant; and, if so taken, the recognizances of the principal and sureties shall be as binding as if they had been taken together and at the same time.

### **33A Extension of provisions for taking recognizance out of Court**

Section 32 and 33 shall apply and be deemed always to have applied in any case where the Court of Summary Jurisdiction is authorized to take a recognizance or where any recognizance is required to be entered into before the Court of Summary Jurisdiction.

## **Division 6 Security**

### **34 Security under this act to be given by deposit with or acknowledgment to Clerk of the Court**

Any security required or permitted to be given under this Act shall be given, whether by principal or surety, either:

- (a) by the deposit of money with a clerk; or
- (b) by a written acknowledgement given to a clerk of the undertaking or condition by which, and of the sum for which, the principal or surety is bound:

Provided that the security shall be given in such of the modes aforesaid as the Court or person authorizing the taking of the security may order or direct.

### **35 Entry of security and evidence thereof**

- (1) Every clerk shall keep a security book, and shall enter therein, with respect to each security given in relation to any proceeding before the Court, the name and address of each person bound, showing whether he is bound as principal or as surety, the sum in which each person is bound, the undertaking or condition by which he is bound, the date of the security, and the person before whom it is taken.

- (2) The security book, and also any extract therefrom certified by the clerk, shall be prima facie evidence of the several matters hereby required to be entered therein.

**36                      Indemnity of surety by principal**

Any sum paid by a surety on behalf of his principal in respect of a security under this Act, together with all costs, charges, and expenses incurred by the surety in respect of that security, shall be deemed a debt due to him from the principal, and shall be recoverable either summarily under this Act, or in any civil court of competent jurisdiction.

**37                      Security to be enforced in substitution of other remedies**

Where security is given under this Act for payment of a sum of money, the payment of the sum shall be enforced by means of the security in substitution for any other means of enforcing the payment.

**Division 7                  Enforcement of recognizances and securities**

**38                      Justice's certificate of non-compliance with conditions, prima facie evidence of forfeiture**

- (1) Whenever the conditions, or any of the conditions, mentioned in any recognizance or security are not complied with, any Justice may certify in what respect the conditions have not been observed, and the certificate shall be prima facie evidence of the non-compliance, and of the recognizance or security having been forfeited.

**39                      Enforcement of recognizances**

- (1) Upon proof of any breach of the condition, or of any of the conditions, of any recognizance or security, or upon other proof of the forfeiture thereof, any 2 Justices may make an order adjudging the recognizance or security to be forfeited and for payment of any amount due thereunder.
- (2) No order shall be made under this section in the absence of any person sought to be bound thereby unless it is proved, to the satisfaction of the Court, that a summons was duly served upon the person at least 7 clear days before the return thereof.
- (3) Every order under this section may be enforced by distress and imprisonment, as in other cases.

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**40            Suspension or mitigation of forfeiture**

- (1) Upon an application for an order adjudging a recognizance or security to be forfeited, the Justices to whom the application is made may order that the liability of all or any of the persons liable upon or in respect of the recognizance or security shall be remitted, suspended, or reduced.
- (2) Where an order has been made adjudging a recognizance or security to be forfeited, any 2 Justices may at any time, whether goods have or have not been sold under a warrant of distress issued to enforce the order, make any of the following orders which they deem just:
  - (a) that the forfeiture and any order for payment of any amount due under the recognizance or security be cancelled or suspended; and
  - (b) that the liability of all or any of the persons liable upon or in respect of the recognizance or security shall be remitted, suspended or reduced.
- (3) The Justices making an order under subsection (2) may:
  - (a) impose any terms and conditions which they deem just; and
  - (b) make any order consequential on or incidental to any such order.
- (4) An order made under this section shall not affect the validity of any thing done to enforce the forfeiture of the recognizance or security before making the order.

**41            Application of moneys received on enforcement**

- (1) The order for payment of any amount due under any recognizance or security shall direct that the amount be paid to the clerk, and the Court may further direct that the sum paid, or such portion thereof as may be just, be paid by the clerk, upon receipt thereof, to any person in whose interest the recognizance or security was taken.
- (2) Subject to any direction under subsection (1) the clerk of the Court shall apply any amount paid under any order made under section 39 in the manner in which fines are applied of which no special appropriation is made.

## **Part IV      Summary jurisdiction**

### **Division 1      Courts of Summary Jurisdiction**

#### **41A      The Court of Summary Jurisdiction**

There is hereby established a court to be known as the Court of Summary Jurisdiction.

#### **42      Clerk of Court**

A Registrar of the Local Court is a clerk of the Court of Summary Jurisdiction.

#### **43      Constitution of courts of petty sessions**

- (1) Subject to this section, every matter of complaint shall (unless the provisions of some Act otherwise require) be heard and determined by:
  - (a) a Magistrate, if there is any Magistrate present who is competent and willing to act; or
  - (b) if there is no such Magistrate present, then by 2 or more Justices.
- (2) A single Justice may hear and determine a matter of complaint where:
  - (a) the matter of complaint is that the defendant has committed an offence against a law in force in the Territory;
  - (b) the offence is an offence that is not punishable by a term of imprisonment;
  - (c) the penalty that may be imposed for the offence is a pecuniary penalty not exceeding \$100; and
  - (d) the complainant and the defendant consent in writing to a single Justice hearing and determining the matter.

#### **44      Powers of a single Justice**

In any case, whether the matter of complaint is or is not directed or required to be heard by 2 or more Justices, a single Justice may:

- (a) receive the complaint;
- (b) grant a summons or warrant thereon;

- (c) issue his summons or warrant to compel the attendance of any witness;
- (d) by consent of the parties expedite the date of hearing;
- (e) either upon the return of the summons, or at any other time before the completion of the hearing, adjourn the hearing as hereinafter provided;
- (f) do all other acts and matters preliminary to the hearing; and
- (g) issue any warrant of distress or commitment upon any finding of guilt or order.

#### **45 Interlocutory proceedings need not be before same Justices**

It shall not be necessary for any Justice who acts before or after the hearing to be the Justice, or one of the Justices, by whom the case is heard; but wherever it is necessary for any matter of complaint to be heard and determined or for a finding of guilt or order to be made by 2 or more Justices, such 2 or more Justices must be present and acting together during the whole of the hearing and determination of the case.

#### **46 Contempt of Court**

- (1) Any person who:
  - (a) wilfully interrupts the proceedings of the Court;
  - (b) conducts himself disrespectfully to the Justice or Justices during the sittings thereof;
  - (c) obstructs or assaults any person in attendance, or any officer thereof, in the execution of his duty, in view of the Court; or
  - (d) wilfully disobeys any order made by the Court under section 61(2),

shall be guilty of an offence.

Penalty: \$20 or imprisonment for one month.

- (2) Any person who in the opinion of the Justice or Justices wilfully prevaricates in giving evidence to the Court of Summary Jurisdiction shall be guilty of an offence.

Penalty: \$20 or imprisonment for one month.

- (3) The Justice or Justices constituting the Court in whose presence any offence under this section is committed may forthwith convict the person guilty of the offence, either on their own view or on the oath of some credible witness, and may issue their warrant of commitment accordingly.
- (4) Every warrant of commitment under this section shall be good and valid in law without any other order, summons, or adjudication whatsoever.
- (5) If any person found guilty of any offence under subsection (1) makes to the convicting Justices, before the rising of the Court, such an apology for the interruption or misbehaviour as they in their uncontrolled discretion deem satisfactory the Justices may, if they think fit, remit the penalty either wholly or in part.

#### **47 Proceedings to be brought in most convenient Court**

- (1) Upon the hearing of any complaint or application before the Court the defendant may, before any evidence is given, object that there is a proper place at which the Court might be held more easy of access than the place where the Court is then sitting, not only from the place of abode of the defendant, but also from the place where the subject-matter of the complaint or application arose.
- (2) The Court may hear any evidence adduced and, if it appears to the Court that the objection is well founded, it may hear the complaint or application at that other place.

#### **48 Compensation may be awarded in vexatious cases**

Whenever any objection under section 47 is established to the satisfaction of the Court, and the person making the objection complains at once to the Court that he has been brought to the place where the Court is held vexatiously and oppressively, the Court shall forthwith, and without any further summons or notice, proceed to hear and determine the matter of the objection in a summary way, and if the Court is of opinion that such is the fact it may order the complainant or the applicant to pay to the person making the objection, by way of compensation or amends, such sum not exceeding \$10 as it may think fit, and in default of payment the sum so awarded may be enforced by imprisonment for any period not exceeding 7 days.

## **Division 2                The complaint and the proceedings thereon**

### **49                Complaint**

A complaint may be made to a Justice in any case where:

- (a) any person has committed, or is suspected to have committed, any simple offence; or
- (b) a Justice or Justices has, or have, authority by law to make any order for the payment of money or otherwise.

### **50                How laid**

- (1) A complaint may be made by the complainant in person or by his counsel or solicitor, or by any other person authorized in that behalf.
- (2) No complaint need be in writing unless it is required to be so by some Special Act.
- (3) A complaint may be made without any oath being made of the truth thereof, except in any case:
  - (a) where some Special Act otherwise requires; or
  - (b) where the Justice issues his warrant in the first instance.

### **51                Joinder of charges**

- (1) Charges for any number of offences may be joined in the same complaint, if the charges arise out of the same set of circumstances.
- (2) Where a provision constituting an offence states the offence to be the doing of or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities, or intentions, or other matters stated in the alternative in the provision, may be stated in the alternative in the complaint.
- (3) The Court may, if it thinks just, deal with any charge so joined, separately.
- (4) This section shall apply notwithstanding anything inconsistent therewith contained in the Special Act.



**52            Limitation of time for laying information, &c.**

Where no time is specially limited for making the complaint by any statute or law relating to the particular case, the complaint shall be made within 6 months from the time when the matter of the complaint arose.

**53            Punishment of aiders and abettors in the commission of offences**

Every person who aids, abets, counsels, or procures the commission of any simple offence may be proceeded against and found guilty of the offence, either together with the principal offender, or before or after the finding of guilt, and shall be liable upon the finding of guilt to any penalty to which the principal offender is or was liable, or would be liable if he were found guilty.

**54            Allegations as to ownership**

- (1) Whenever in any complaint, or the proceedings thereon, it is necessary to state the ownership of any property belonging to, or in the possession of, partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of those persons, and to state the property to belong to the person so named and another or others (as the case may be).
- (2) Whenever in any complaint or the proceedings thereon it is necessary to mention for any purpose whatsoever any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in the same manner.
- (3) Whenever in any complaint or the proceedings thereon it is necessary to describe the ownership of any work or building made, maintained, or repaired at the expense of any public board of commissioners or trustees, or of any materials for the making, altering, or repairing of the work or building, it shall be sufficient to describe the work or building or materials as the property of the commissioners or trustees without naming them.

**55            Description of offence**

In any complaint and in any proceedings thereon the description of any offence in the words of the Special Act or other document creating the offence, or in similar words, shall be sufficient in law.

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**56 Exceptions or exemptions need not be specified or disproved by the complainant**

- (1) No exception, exemption, proviso, excuse, or qualification (whether it does or does not accompany in the same section the description of the offence in the Special Act or other document creating the offence) need be specified or negated in the complaint.
- (2) Any exception, exemption, proviso, excuse, or qualification referred to in subsection (1) may be proved by the defendant, but, whether it is or is not specified or negated in the complaint, no proof in relation to it shall be required on the part of the complainant.

**57 Upon complaint summons to issue**

- (1) Whenever a complaint is made in accordance with this Part any Justice may issue his summons for the appearance of any person charged by the complaint or against whom the order is thereby sought to be made: Provided that nothing herein mentioned shall oblige any Justice to issue his summons in any case where the application for any order of Justices is by law to be made ex parte.
- (2) Where a complaint is made by a public officer charging that an offence to which this subsection applies has been committed, the Justice may, upon the request of the complainant issue a summons in accordance with section 22(2).
- (3) Where the defendant to a complaint in a summons issued under subsection (2) has previously been found guilty of another offence, the clerk may give a certificate under his hand:
  - (a) alleging that the defendant has been so found guilty of that offence; and
  - (b) stating that the certificate is admissible at the hearing of the summons as prima facie evidence of the matters alleged.
- (4) The certificate is admissible as prima facie evidence of the matters alleged if a copy of the certificate is served on the defendant personally at the same time as the summons is served on him.
- (5) For the purposes of subsection (2):
  - (a) an offence to which that subsection applies is an offence:
    - (i) against the *Traffic Act* or the Regulations made under that Act;

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- (ii) against the *Motor Vehicles Act* or the Regulations made under that Act; or
  - (iii) punishable by a fine only; and
- (b) **public officer** means:
- (i) a member of the Police Force of the Northern Territory;
  - (ii) a person employed by an authority or corporation established under a law of the Territory and authorized by or under that law to make a complaint charging an offence against a law in force in the Territory; or
  - (iii) an officer or employee of the Public Service of the Commonwealth or of the Territory acting in the course of his employment as such an officer or employee.

**57A Plea of guilty may be made in writing if summons in form of Schedule 3**

- (1) A person upon whom is served a summons in the form in Schedule 3 may plead guilty to the charge specified therein by:
  - (a) completing the endorsement appearing on a copy of the summons;
  - (b) signing (whether within or without Australia) the endorsement, so completed, before a person entitled to administer an oath in any part of Australia or before a barrister or solicitor or member of the police force of the Commonwealth or of a State or Territory; and
  - (c) delivering or serving by post, not less than 3 days prior to the date on which he is required by the summons to appear, the copy of the summons so completed and signed to the complainant or the clerk of the Court of Summary Jurisdiction at the place at which he is required to appear.
- (2) Service of the copy of the summons duly completed and signed shall be deemed to have been effected under subsection (1) if it is left at the office of the clerk of the Court of Summary Jurisdiction before which the defendant is required to appear or if it is left at any police station within 80 kilometres of the place at which appearance is required by the summons.
- (3) A person who has pleaded guilty in the manner prescribed by this section is not required to appear in person or otherwise at the Court before which he is summoned to appear.

- (4) The Court may accept a plea of guilty made by endorsement as prescribed by this section without proof of any signature thereon or of the office or occupation of any person purporting to have signed the endorsement and, subject to section 57B, may proceed in such manner and make such adjudication and orders as it might have made if the defendant had appeared in answer to the summons in person or by counsel.

**57B Limits on power of Court where plea of guilty in writing**

Where a person has pleaded guilty in the manner prescribed by section 57A, the Court shall not:

- (a) impose a sentence of imprisonment in the first instance;
- (b) cancel or suspend a licence held by the defendant or otherwise disqualify him from holding a licence;
- (c) treat the offence as other than a first offence unless the Court is satisfied upon evidence that the defendant has been previously found guilty as stated in the certificate of the Clerk given under section 57(3);
- (d) fail to allow a reasonable time for payment of any sum adjudged to be paid by the defendant; and
- (e) order the defendant to pay any sum in respect of the attendance of any witness.

**57C Notice of finding of guilt or plea of guilty in writing to be first served**

Where a person has been found guilty of an offence to which he has pleaded guilty in the manner prescribed by section 57A, the clerk of the Court in which the finding of guilt was recorded shall forthwith serve, personally or by post, on the defendant notice of the finding of guilt and of any order or sentence made on that finding of guilt and no further proceedings upon the finding of guilt or order shall be taken until the expiry of 14 days after such service.

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**57D Court may refuse to accept plea of guilty in writing**

Where, upon its consideration of the subject matter of a complaint to which a defendant has pleaded guilty as prescribed by section 57A or of any explanation endorsed by a defendant upon a copy of a summons issued upon such a complaint, the Court is of the opinion:

- (a) that the offence may be one which merits punishment other than a fine;
- (b) that the defendant did not understand the consequences of his submitting a written plea of guilty; or
- (c) that for some other reason justice would be better served by requiring the appearance of the defendant in person,

the Court shall vacate the summons issued and shall order that a summons in the form prescribed by the regulations shall issue.

**57E Further consideration of complaint may be required**

- (1) Where a summons has been issued under section 57(2) and a finding of guilt has been recorded in the absence of the defendant, the defendant may, within 7 days after service upon him of a notice under section 57C, serve either personally or by post on the clerk of the Court in which the finding of guilt was recorded a notice requiring further consideration of the complaint upon which the finding of guilt was recorded.
- (2) Upon service of a notice under subsection (1), no proceedings shall be taken to enforce the finding of guilt or any order made thereon until after the proceedings consequent upon that notice have been completed.
- (3) As soon as is practicable after service on him of a notice under subsection (1), the clerk of the Court so served shall fix a time and place for the further consideration of the complaint and, by notice served personally or by post, notify the complainant and defendant of the time and place so fixed.
- (4) On the day fixed under subsection (3), the court (which need not be formed by the same persons who formed the Court which recorded the finding of guilt in the first place):
  - (a) may quash the finding of guilt and vacate any orders made thereon if it is satisfied that the summons first issued on the complaint did not come to the notice of the defendant a reasonable time before the date appointed by the summons

for the hearing; and

- (b) direct that the complaint shall be reheard at a time and place then fixed by the Court; or
  - (c) confirm the finding of guilt and any orders made thereon.
- (5) The Court before which a complaint is reheard in pursuance of a direction under subsection (4) has power to adjudicate thereon as if the rehearing was the first hearing of the complaint and the defendant had been personally served with a summons requiring his attendance on the day fixed by the direction.

## **58                      Issue of warrant**

- (1) No warrant to apprehend any defendant shall be issued unless the matter of the complaint is substantiated to the satisfaction of the Justice upon oath made before him.
- (2) When the matter of any complaint:
- (a) charging the defendant with the commission of a simple offence; or
  - (b) made for the purpose of having the defendant bound over to keep the peace or be of good behaviour; or
  - (c) under any Special Act which authorizes the issue of a warrant in the first instance,
- is substantiated as provided in this section a Justice may, instead of issuing his summons, issue his warrant in the first instance to apprehend the defendant.
- (3) If any defendant fails to appear in obedience to a summons any Justice may issue his warrant for the apprehension of the defendant, provided that:
- (a) the matter of the complaint is substantiated as provided in this section; and
  - (b) it is proved to the satisfaction of the Justice that the summons was duly served (what he deems) a reasonable time before the time appointed for the hearing.

## **59                      Defendant on apprehension to be brought before Justice**

When a defendant is apprehended under a warrant he shall be brought before a Justice, who shall thereupon commit him into custody or grant him bail in accordance with the *Bail Act*.

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**60 Remand or discharge on bail**

- (1) Where a defendant is apprehended under a warrant or where, from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer or adjourn the defendant's hearing, the Justice before whom that defendant is brought or appears may remand, and that Justice or another Justice may, from time to time, further remand that defendant for such period as that Justice thinks fit, but not exceeding 15 clear days at any one time unless both parties consent thereto.
- (2) Where a Justice remands under subsection (1) or (3) a defendant, the Justice shall, in respect of the defendant's period of remand or further period of remand, as the case may be, commit that defendant:
  - (a) by warrant to the nearest prison or to some place of security;
  - (b) orally to the custody of the constable or other person who apprehended him; or
  - (c) orally to such other safe custody as the Justice thinks fit,and that Justice shall order that defendant to be brought up at some stated time and placed before such Justice or Justices as shall then be there, of which order the clerk shall give the complainant due notice.
- (3) A Justice, on being satisfied that a defendant who has been remanded under subsection (1) and committed into custody in accordance with subsection (2) is, by reason of illness or accident, unable at the expiration of the period for which he was remanded under subsection (1) to appear personally before a Justice may, in the absence of the defendant, further remand that defendant for such period as the Justice thinks fit, but not exceeding 15 clear days at any one time.
- (4) Where a Justice, for the purposes of a further period of remand referred to in subsection (3), commits under subsection (2)(a) a defendant, the warrant required by that second-mentioned subsection may be issued by the Justice further remanding the defendant or by any other Justice.
- (5) A Justice may, instead of committing under subsection (2) a defendant, grant the defendant bail in accordance with the *Bail Act*.

## Division 2A      Territory Infringement Notices Enforcement Scheme

### 60A      Interpretation

In this Division, unless the contrary intention appears:

***appropriate officer*** means:

- (a) a person authorized by or under an Act to serve or issue an infringement notice; or
- (b) the holder of a prescribed office.

***certificate*** means a certificate referred to in section 60D.

***courtesy letter*** means a letter served under section 60C.

***enforcement agency***, in relation to an infringement notice, means a person or body authorized by or under an Act to take proceedings against a person for the offence for which the infringement notice was served or issued.

***enforcement order*** means an order made under section 60E.

***infringement notice*** means:

- (a) a traffic infringement notice served under regulation 87 of the *Traffic Regulations*;
- (b) a parking notice served under regulation 65 of the *Traffic Regulations*;
- (c) a traffic infringement notice or parking notice issued under the by-laws of a council made under, or continued in force by, the *Local Government Act*; or
- (d) a notice served or issued under a prescribed provision of an Act, regulations or by-laws.

***infringement penalty*** means the amount specified in an infringement notice as payable for the offence for which it was served or issued.

***notice of enforcement order*** means a notice in the prescribed form, served under section 60F.

***penalty*** means the amount payable, including for costs, under an enforcement order.



**60B            Application of Division**

- (1) The procedures set out in this Division may be used, in substitution for any other procedure under a law of the Territory, to enforce an infringement notice.
- (2) The procedures set out in this Division may be used to enforce an infringement notice whether issued before or after the commencement of this Division.

**60C            Courtesy letters**

- (1) If it appears to an appropriate officer that an infringement penalty has not been paid within the time for payment specified in an infringement notice, the appropriate officer may serve on the person on whom the infringement notice was served a letter stating:
  - (a) that the person has a further 28 days from the date of the letter in which to pay the infringement penalty together with the prescribed costs, if any (including, in the case of an infringement notice issued under the *Traffic Act* or the *Local Government Act*, any costs incurred in obtaining proof of the ownership of a motor vehicle under the *Motor Vehicles Act*);
  - (b) that in default of payment, the person may be dealt with under this Division; and
  - (c) such other information, if any, as is prescribed.
- (2) On the service on a person of a courtesy letter, the time for payment of the infringement penalty is extended until the expiration of the period of 28 days from the date of the courtesy letter and the infringement penalty, together with the prescribed costs, if any, may be paid within that extended period as if the law under which the infringement notice was served also required the payment of those costs.
- (3) A person served with a courtesy letter may, within 28 days from the date of the letter, decline to be dealt with under this Division for the offence alleged to have been committed, by serving on the relevant enforcement agency a written statement stating that the person declines to be so dealt with.
- (4) A statement under subsection (3) may be served by posting it to the address of the enforcement agency specified in the courtesy letter, or by leaving it at the enforcement agency's office or place of business with a person apparently employed at that office or place who has apparently attained the age of 18 years.

**60D                      Registration of infringement penalties**

(1) If a person served with a courtesy letter does not, within 28 days from the date of the letter:

- (a) pay the infringement penalty and prescribed costs, if any; or
- (b) decline to be dealt with under this Division,

an appropriate officer may lodge with the Clerk a certificate stating that:

- (c) an infringement notice has been served on the person or otherwise as permitted by law in relation to an offence referred to in the certificate;
- (d) a courtesy letter has been served on the person after the expiration of the time specified in the infringement notice for payment of the infringement penalty;
- (e) not less than 28 days from the date of the courtesy letter have elapsed;
- (f) the full amount of the infringement penalty and prescribed costs, if any, have not been paid at the date of the certificate;
- (g) the person has not, in accordance with section 60C(3), declined to be dealt with under this Division;
- (h) a complaint in relation to the offence has not been laid, and the time within which such a complaint may be laid has not expired; and
- (j) in the case of an infringement notice served under the *Local Government Act* in relation to a traffic or parking infringement or under regulation 65 of the *Traffic Regulations*, the person named in the certificate:
  - (i) was the person on whom the infringement notice was served;
  - (ii) was, at the time of the alleged offence, the owner of the motor vehicle within the meaning of the *Motor Vehicles Act*; or
  - (iii) was, at the time of the alleged offence, in control of the motor vehicle as shown in a statutory declaration furnished pursuant to regulation 64(3)(b) of the *Traffic Regulations* or a by-law made in pursuance of

section 212(c) of the *Local Government Act*,

and containing such other particulars, if any, as are prescribed.

- (2) The Clerk may, if satisfied that the facts as alleged in the certificate constitute the offence and that sufficient particulars of those facts are set out in the certificate, register the infringement penalty and the prescribed costs, if any, payable in relation to the courtesy letter and certificate, for the purpose of enforcement under this Division.
- (3) A certificate lodged under this section with the Clerk shall be:
  - (a) in the prescribed form; and
  - (b) signed by the appropriate officer or affixed with a facsimile of his or her signature by or at his or her direction.

#### **60E      Enforcement orders**

- (1) On registering an infringement penalty and prescribed costs, if any, the Clerk shall make an order:
  - (a) in the case of a natural person – that the person pay to the Court within 28 days after the date of a notice of enforcement order, the amount of the infringement penalty together with the prescribed amount for costs, and that in default of payment:
    - (i) the person be imprisoned for a period determined in accordance with the prescribed ratio; or
    - (ii) the amounts be recovered by a warrant of distress; and
  - (b) in the case of a corporation – that the corporation pay to the Court, within 28 days after the date of a notice of enforcement order, the amount of the infringement penalty together with the prescribed amount for costs, and that in default of payment that amount or those amounts, as the case may be, be recovered by a warrant of distress.
- (2) An enforcement order shall be deemed to be an order of the Court.
- (3) In this section ***the prescribed amount for costs*** is the sum of:
  - (a) the prescribed costs, if any, charged in relation to the relevant courtesy letter and certificate;
  - (b) the costs, if any, prescribed under the Motor Vehicles Act for obtaining proof of the ownership of a motor vehicle (in the case of an infringement notice issued under the *Local Government Act* or the *Traffic Act*);

- (c) the prescribed costs, if any, of the enforcement order; and
- (d) any other costs required to be charged in relation to the enforcement order under this or any other Act.

**60F      Notice of enforcement order**

- (1) On the making of an enforcement order, the Clerk shall issue a notice of enforcement order and cause:

- (a) the notice of enforcement order; and
- (b) a statement in writing, in the prescribed form, setting out a summary of the provisions of this Division and the Regulations relating to the allowance of time to pay and payment by instalments and applications for revocation of enforcement orders,

to be served on the person against whom the enforcement order is made.

- (2) The notice of enforcement order shall state that if the penalty is not paid within 28 days after the date of the notice:

- (a) in the case of a natural person – a warrant will be issued for the commitment of that person to prison for the period specified in the order or a warrant of distress will be issued; and
- (b) in the case of a corporation – a warrant of distress will be issued.

**60G      Applications**

- (1) A person against whom an enforcement order is made may apply to the Clerk personally or in writing, or in any other manner approved by the Clerk, for an order that:

- (a) the time within which the penalty is to be paid be extended; or
- (b) the penalty be paid by instalments.

- (2) On receipt of an application under subsection (1), the Clerk may, by order:

- (a) allow additional time for the payment of the penalty or the balance of the penalty; or
- (b) direct payment of the penalty to be made by instalments at specified times.

- (3) An order made under this section by the Clerk is deemed to be an order of the Court.

**60H            Warrants**

- (1) If within the time specified in a notice of enforcement order or an order under section 60G a person on whom the notice is served does not pay the full amount of a penalty or part of a penalty, as required by the notice or order:
- (a) in the case of a natural person – the Clerk shall issue a warrant of commitment or distress against the person; and
  - (b) in the case of a corporation – the Clerk may either issue a warrant of distress against the corporation or register the penalty with the Local Court as a debt.
- (2) A warrant issued under this section shall, when executed, recover the costs prescribed for its execution in addition to the penalty, or part thereof, which is unpaid.
- (3) A warrant issued under this section shall be in the prescribed form but otherwise shall be subject to the relevant provisions of this Act relating to warrants of commitment or distress as if the warrant were issued by a Court or Justice.

**60J            Effect of enforcement order**

- (1) Subject to section 60K, where an enforcement order is made in relation to an offence alleged to have been committed by a person:
- (a) the matter of the alleged offence shall be deemed to have been heard and determined according to law;
  - (b) the person shall not for that reason be taken to have been found guilty of the offence;
  - (c) the person shall not be proceeded against (except in respect of the enforcement order) for the alleged offence;
  - (d) the making of the order does not affect or prejudice a civil claim, action or proceeding arising out of the same occurrence; and
  - (e) payment pursuant to the enforcement order is not an admission of liability for the purpose of, and does not affect or prejudice, a civil claim, action or proceeding arising out of the same occurrence.

- (2) An amount recovered as a result of the making of an enforcement order shall be dealt with in the same way as an amount recovered as a result of a finding of guilt.

**60K            Revocation of enforcement order**

- (1) The relevant enforcement agency or a person against whom an enforcement order is made may apply to the Clerk in writing in the prescribed form for the revocation of the enforcement order, unless a warrant issued under this Division has been executed in enforcement of the order.
- (2) On receipt of an application under subsection (1) the Clerk shall revoke the enforcement order and on revocation it ceases to have effect.

**60L            Procedure after revocation**

Where an enforcement order is revoked under section 60K, the Clerk shall:

- (a) cause a notice of revocation to be delivered or sent to the enforcement agency and to the person against whom the enforcement order was made; and
- (b) not later than 14 days after the revocation, refer the relevant certificate to the Court for hearing of the offence, unless notice of withdrawal under section 60M has been received by the Clerk.

**60M            Withdrawal of certificate**

- (1) An enforcement agency may, by notice in writing in the prescribed form, request the Clerk to withdraw a certificate lodged under section 60D with the Clerk.
- (2) If a notice under subsection (1) is received by the Clerk before the referral of the certificate to the Court under section 60L, the Clerk shall withdraw the certificate and notify the relevant enforcement agency and person of that fact.
- (3) A certificate withdrawn under this section has no further effect under this Division.

**60N            Effect of certificate**

Where a certificate is referred under section 60L(b) to the Court, it shall be deemed to be a complaint in relation to the alleged offence, laid at the time the certificate was lodged under section 60D with

the Clerk, by the appropriate officer whose signature, or a facsimile of whose signature, appears on the certificate.

**60P                      Court may hear matter**

Where a certificate in relation to an alleged offence is referred under section 60L(b) to the Court, the Court may hear and determine the matter of the alleged offence even if a copy of the certificate has not been served on the defendant.

**60Q                      Notice of hearing**

- (1) The Clerk shall, as soon as practicable after a certificate is referred under section 60L(b) to the Court, give to the relevant enforcement agency and person notice of the time and place of the hearing relating to the alleged offence.
- (2) The hearing relating to the alleged offence may proceed despite an omission or error in a notice under subsection (1), or a failure to give notice, if the Court is satisfied that:
  - (a) the defendant and the enforcement agency had knowledge of the time and place of hearing and were not prejudiced by the omission, error or failure; or
  - (b) the defendant is avoiding service or cannot, after reasonable search and inquiry, be found.

**60R                      Service of documents**

- (1) Except where provided to the contrary under this Division, all notices or documents authorized or required under this Division to be delivered or served may be served personally or by post or in any other prescribed manner.
- (2) Where a courtesy letter is served by post, it shall be addressed:
  - (a) if served in relation to an infringement notice served under the *Local Government Act* in relation to a traffic or parking infringement or regulation 65 of the *Traffic Regulations*:
    - (i) to the last known residential or postal address of the owner of the motor vehicle within the meaning of the *Motor Vehicles Act*; or
    - (ii) where a statutory declaration has been furnished by the owner of the vehicle pursuant to regulation 64(3)(b) of the *Traffic Regulations* – to the last known residential or postal address of the person alleged in the declaration to

have been in charge of the vehicle; or

- (b) in any other case – to the last known residential or postal address of the person alleged to have committed the offence,

and shall be deemed to have been effected:

- (c) where the address to which it was sent is within a municipality – at the time it was posted by pre-paid post; and

- (d) where the address to which it was sent is not within a municipality – at the time it would be delivered in the ordinary course of post.

- (3) A notice or document, other than a courtesy letter, served by post under this Division shall be addressed:

- (a) to the address given by the person on whom the notice or document is required to be served; or

- (b) where no such address has been given – to the address shown in the certificate lodged under section 60D.

### **Division 3      The hearing**

#### **61      Sittings to be in open Court but witnesses and other persons may be ordered to leave the Court**

- (1) The room in which the Court sits shall be deemed an open and public Court, to which the public generally may have access so far as the room can conveniently contain them, and subject to this section.
- (2) The Court may, if it thinks fit, order that all witnesses (except the parties and any of their witnesses whom it sees fit to except) shall go and remain outside and beyond the hearing of the Court until required to give evidence.
- (3) Nothing contained in this section shall require any case to be heard in open Court if it is, by any Special Act, required or authorized to be heard in camera.



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**62 On non-appearance of defendant Court may issue warrant or proceed ex parte**

If the defendant fails to appear in obedience to the summons the Court may:

- (a) issue a warrant as provided by section 58, and adjourn the hearing until the defendant is apprehended; or
- (b) upon proof that the summons was served a reasonable time before the time thereby appointed for his appearance, subject to section 62AB proceed ex parte to the hearing of the complaint and to adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had personally appeared before it in obedience to the summons.

**62A Procedure where person granted bail fails to appear**

If a defendant who has been apprehended, whether under or without a warrant, and released on bail in accordance with the *Bail Act*, fails to appear in accordance with his bail undertaking, the Court, in addition to issuing a warrant under section 39 of that Act, may:

- (a) adjourn the hearing until the defendant is apprehended; or
- (b) subject to section 62AB, proceed ex parte to the hearing of the complaint and may adjudicate on the complaint as fully and effectually, to all intents and purposes, as if the defendant had appeared in accordance with his bail undertaking.

**62AB Ex parte proceedings**

- (1) Where the Court proceeds ex parte in pursuance of, and in accordance with, section 62(b) or 62A(b) to hear and adjudicate upon a complaint, it may in so doing, in respect of the complaint, regard:
  - (a) an allegation contained in the summons as served upon the defendant to which that complaint relates;
  - (b) an allegation contained in that complaint where that complaint is a complaint made on oath in accordance with the requirements of section 50(3)(b); or
  - (c) oral evidence,as evidence of the matter alleged.

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- (2) For the purposes of subsection (1)(a) and (b), an allegation is contained in a summons or complaint if it is contained in, annexed to, or accompanies the summons or complaint.
  - (3) An allegation referred to in subsection (1) may include particulars of the alleged offence and of the circumstances in which it is alleged to have been committed.
  - (4) Where the Court finds a charge proved in ex parte proceedings under section 62(b) or 62A(b), heard and adjudicated upon in accordance with this section, the prosecutor may recite to the Court a relevant matter alleged against the defendant to which those proceedings relate as if that defendant had personally appeared and pleaded guilty.

**63 If the complainant does not appear, Court to dismiss complaint, or at discretion adjourn hearing**

- (1) If the defendant appears in obedience to the summons, or is brought before the Court by virtue of any warrant, then if the complainant, having had due notice, does not appear in person or by his counsel or solicitor, the Court shall dismiss the complaint, unless for some reason it thinks proper to adjourn the hearing.
- (2) In any such case any single Justice shall be competent to dismiss the complaint, or to adjourn the hearing.

**63A Certain decisions of Court may be set aside on application by defendant or complainant**

- (1) Where the Court has:
  - (a) proceeded ex parte, under section 62(b) or 62A(b), to hear and adjudicate on a complaint and has found the defendant guilty of the offence or made an order against the defendant to which the complaint relates; or
  - (b) dismissed under section 63(1) a complaint,the defendant or complainant may, not later than one month after:
  - (c) in the case of that defendant – the finding of guilt or order referred to in paragraph (a) coming to that defendant's notice; and
  - (d) in the case of that complainant – the dismissal referred to in paragraph (b) coming to that complainant's notice,

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serve on the clerk of the Court by which that finding of guilt or order or dismissal was made, a written application to the Court to set aside that finding of guilt or order, or dismissal, as the case may be, and of the grounds of the application.

- (2) Where a clerk is served an application referred to in subsection (1), he shall appoint a time and place for the hearing by the Court of the application and shall give written notice to the defendant or complainant making that application of the time and place so appointed.
- (3) Where a defendant who has served an application referred to in subsection (1) is in custody pursuant to the finding of guilt or order to which the application relates, a Justice may, upon application by the defendant, if satisfied that that first-mentioned application has been duly served and that that defendant is not in custody for some other cause, grant the defendant bail in accordance with the *Bail Act*.
- (4) Where a defendant is in custody pursuant to a finding of guilt or order referred to in subsection (1)(a), the keeper of the gaol where the defendant is being held, or a person authorized by him in writing for that purpose, shall, upon the request of that defendant, as soon as practicable, make all necessary arrangements:
  - (a) for the purpose of allowing service of an application referred to in subsection (1); and
  - (b) for the purpose of allowing that defendant to make an application referred to in subsection (3).
- (5) A defendant who has served an application referred to in subsection (1) and who is not granted bail pursuant to subsection (3) shall, pending the determination under subsection (7) of the application and for so long as he is not in custody for some other cause, be treated in the same manner as a person who is in custody pursuant to section 60(1).
- (6) Where, as a result of a determination under subsection (7), a defendant is required to serve a term of imprisonment, the period, if any, during which the defendant is in custody pending the determination shall count as part of the whole term.
- (7) At the time and place appointed under subsection (2) for the hearing of an application referred to in subsection (1), the Court shall, unless the applicant to which the application relates was a defendant who was, under subsection (3), granted bail in accordance with the *Bail Act* and who fails to appear in accordance with his bail undertaking, proceed to hear and determine that

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application:

- (a) by refusing that application; or
- (b) by adjourning the hearing of that application to a time and place appointed by the Court, and giving to the other party written notice:
  - (i) of that time and place; and
  - (ii) that that other party may, if he thinks fit, at that time and place appear to oppose that application,

and the Court shall then and there set aside the finding of guilt or order, or dismissal, as the case may be, to which that application relates, on such terms and conditions as the Court thinks fit, or the Court may refuse to set aside that finding of guilt or order, or dismissal.

- (8) The Court may, in making a determination under subsection (7), make such order as to costs as it thinks fit.
- (9) Where an application referred to in subsection (1) relates to a finding of guilt or order against the applicant and the finding of guilt or order imposed a sentence of imprisonment but that applicant was, under subsection (3), granted bail in accordance with the *Bail Act* and the Court, in determining under subsection (7) the application:
  - (a) refuses, under subsection (7)(a), that application; or
  - (b) refuses, under subsection (7)(b), to set aside that finding of guilt or order,

it shall order the return of the applicant to custody according to the finding of guilt or order to which that application relates.

#### **64 If both parties appear, Court to hear and determine the case**

If both parties appear before the Court, either in person or by their respective counsel or solicitors, then the Court shall proceed to hear and determine the matter of the complaint.

#### **65 Power of the Court or a Justice to adjourn hearing**

- (1) The hearing of any complaint may be adjourned from time to time, and at any time before it is completed, either:
  - (a) by the Court before which the complaint comes for hearing; or

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- (b) if the Court is then sitting to hear the complaint, then by any Justice.
- (2) Every such adjournment shall be to a time and place appointed and stated by the Court or the Justice in the presence and hearing of the party or parties then present.
- (3) The adjournment shall be allowed upon such (if any) terms as the Court or the Justice thinks fit, and in the meantime the Court or the Justice may remand the defendant into custody, grant him bail in accordance with the *Bail Act*, or dispense with the requirements for bail pursuant to the *Bail Act*.
- (4) The Court or any Justice may, in any case where the defendant has been remanded into custody, order the defendant to be brought before the Court or Justice or any other Justice for the hearing or the continuation of the hearing at any time before the expiration of the period for which the hearing has been adjourned, and any keeper of the gaol or officer in whose custody the defendant is shall duly obey the order.
- (5) If a defendant, who has been released on bail in accordance with the *Bail Act* or in respect of whom the requirement of bail has been dispensed with pursuant to that Act, fails to appear at the time and place appointed under subsection (2):
- (a) the Court then sitting to hear the adjourned complaint or a Justice may issue a warrant for the apprehension of the defendant and further adjourn the hearing until he is apprehended; or
- (b) the Court then sitting to hear the adjourned complaint may proceed *ex parte* to the hearing of the complaint and may adjudicate on the complaint as fully and effectually, to all intents and purposes, as if the defendant had appeared at that time and place.
- (6) If the defendant is by virtue of a warrant issued under subsection (5) brought before the Court, the Court shall hear the case or continue the hearing as if there had been no adjournment.
- (8) Instead of issuing a warrant as provided in subsection (5), the Court sitting to hear the adjourned complaint or any Justice may issue a summons for the appearance of the defendant at the time and place mentioned in the summons.
- (9) If the defendant appears before the Court, the Court shall hear the case or continue hearing as if there had been no adjournment.

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- (11) If a defendant summoned under subsection (8) fails to appear in obedience to the summons, the Court before which he is summoned may proceed in the manner provided by section 62.
  - (12) If a defendant appears at the time and place appointed under subsection (2) and the complainant, having had due notice, does not appear in person or by his counsel or solicitor, the Court shall dismiss the complaint, unless for some reason it thinks it proper to further adjourn the hearing.
  - (13) The Court of Summary Jurisdiction, or a Justice, on being satisfied that a defendant who has been remanded into custody is by reason of illness or accident unable at the expiration of the period for which he was remanded to appear personally before the Court, may in the absence of the defendant order him to be kept in custody for such further period as the Court or Justice deems reasonable, but not exceeding 15 clear days at any one time, unless both parties consent to a longer period.
  - (14) The warrant for keeping the defendant in custody pursuant to any such order may be issued by the Justice who made the order, or any other Justice.

**66 Postponement of hearing where no component Court available**

- (1) If no Justice is present at the time and place at which any summons is returnable, or to which the hearing is adjourned or postponed, the clerk shall, at the request of the complainant, postpone the hearing until the next day on which a Justice or Justices (as the case may require) will attend at such place.
- (2) The postponement shall be made by delivering to the complainant and to the defendant, or such of them as are present, a memorandum in the prescribed form, and every defendant and witness to whom a copy of the memorandum is delivered shall be under the like obligation to attend at the time and place therein mentioned, and shall be subject to the same obligations and liabilities, as if the memorandum were a summons issued by a Justice.

**67 When defendant pleads guilty Court to find guilty or make an order**

- (1) 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 found guilty or why an order should not be made against him (as the case may be).

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- (2) If the defendant admits the truth of the complaint, and shows no sufficient cause why he should not be found guilty, or why an order should not be made against him, the Court shall find him guilty or make an order against him accordingly.

**68 If defendant pleads not guilty Court to hear parties and their evidence**

- (1) If the defendant does not admit the truth of the complaint the Court shall proceed to hear:
- (a) the complainant and his witnesses and any other evidence which he adduces in support of his complaint;
  - (b) the defendant and his witnesses and any other evidence which he adduces in his defence; and
  - (c) any evidence which the complainant adduces in reply if the defendant adduces any evidence other than as to his, the defendant's, general character.
- (2) Subject to any law for the time being in force in the Territory in regard to the evidence of aboriginals and children, every witness shall be examined upon oath.
- (3) The practice before the Court of Summary Jurisdiction upon the hearing of any complaint with respect to the examination, cross-examination and re-examination of witnesses and the right of addressing the Court in reply or otherwise shall be in accordance as nearly as may be with the practice for the time being of the Supreme Court upon trials at the criminal sittings of that Court.

**69 After hearing the parties Court to find guilty or dismiss**

When the parties and their evidence have been heard, the Court shall consider and determine the whole matter, and shall find the defendant guilty or make an order against the defendant or dismiss the complaint, as the case may require: Provided that the Court may, at any time before the matter has been finally determined, permit the complaint to be withdrawn, upon such terms (if any) as it thinks fit.

**Division 4 Judgment**

**70 Finding of guilt to be minuted**

- (1) When the Court finds the defendant guilty or makes an order against the defendant a minute or memorandum of the finding of guilt or order shall then be made.

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- (2) No fee shall be paid for any minute or memorandum under this section.

**70A Findings of guilt where charges joined in the complaint**

- (1) Where charges for more than one offence have been joined in the same complaint, pursuant to this Act, the Court may:
- (a) find the defendant guilty of such one or more of those offences as it finds proved; and
  - (b) include any number of offences in a minute or memorandum of a finding of guilt or in any formal finding of guilt.
- (2) This section shall apply notwithstanding anything contained in the Special Act.

**71 Order and certificate of dismissal**

- (1) If the Court dismisses the complaint a minute or memorandum of that fact shall be made and the Court may, on being required to do so and if it thinks fit, draw up an order of dismissal and give the defendant a certificate thereof.
- (2) A certificate of dismissal shall, upon production and without further proof, be a bar to any subsequent complaint for the same matter against the same party.

**72 Furnishing of copy of complaint and conviction or order to interested party**

Every party interested in any finding of guilt or order shall be entitled to demand and have copies of the complaint and of the finding of guilt order (as the case may be), and the clerk shall furnish the copies upon payment of the fees authorized in that behalf.

**73 For discouraging corrupt practices by common informers**

In order to discourage corrupt practices by common informers the Court may, upon any finding of guilt, and notwithstanding any Special Act to the contrary, adjudge that no part, or such part only of the penalty as it thinks fit, be paid to the informer.

**74 Penalties in discretion of Court**

In any case where the Special Act authorizes the imposition of a fine of uncertain amount – that is to say, a fine of not less than, or not exceeding, some certain amount or amounts in that behalf



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specified – the amount of every such fine, within the limits so prescribed, shall be in the discretion of the Court.

## **75 General power of courts to refrain from or mitigate punishment**

- (1) Upon the hearing of any complaint under this or any other Act, whether past or future, and notwithstanding the provisions of any other enactment to the contrary, the Court of Summary Jurisdiction shall have the powers conferred by this section: Provided that nothing herein contained shall:
  - (a) authorize the Court to reduce below the prescribed minimum the amount of any fine imposed under any Act passed for carrying into effect any treaty, convention, or agreement made with the Imperial Government of Great Britain, or with any British possession or with any foreign State, where such treaty, convention, or agreement stipulates for a fine of such minimum amount; or
  - (b) affect the powers conferred upon the Court by any Act in force in the Territory relating to first offenders.

## **Division 5 Costs**

### **77 Power to award costs to defendant**

- (1) Subject to subsection (2) and section 77A, where the Court finds a defendant not guilty of any offence on a complaint or a complaint is withdrawn, it may order the complainant to pay to the defendant such costs as it thinks fit.
- (2) The Court shall not make an order for costs under subsection (1) if:
  - (a) the defendant's actions or omissions in connection with the alleged offence were, in the opinion of the Court:
    - (i) unreasonable in the circumstances; and
    - (ii) contributed to the institution or continuation of the proceedings;
  - (b) the defendant's actions or omissions during the course of the proceedings or in the conduct of the defence were, in the opinion of the Court, calculated to unnecessarily prolong the proceedings or cause unnecessary expense; or
  - (c) in the opinion of the Court, there was sufficient evidence to support a finding of guilt but the defendant was entitled to an acquittal because of a minor procedural irregularity.

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**77A Power to award costs against defendant**

Subject to section 77C, where the Court finds a defendant guilty of an offence, it may order the defendant to pay to the complainant such costs as it thinks fit.

**77B Costs of adjournment**

Where a proceeding is adjourned, the Court may, whether or not the defendant is subsequently found guilty of the offence with which he or she is charged, make an order for costs against the party who requested the adjournment.

**77C Limitation on amount of costs**

The amount that the Court may order for costs under section 77, 77A or 77B shall not exceed the amount calculated in accordance with the prescribed scale.

**78 Manner of enforcing payment of costs**

The payment of any sum adjudged to be paid under section 77 shall be enforced as follows:

- (a) when the costs are included in any finding of guilt or order whereby any fine or other sum of money is also adjudged to be paid, the payment thereof shall be enforced in the same manner and under the same warrant as the fine or other sum;
- (b) in any other case, by distress or by imprisonment for any term not exceeding the time prescribed by section 81 with reference to the amount to be recovered, unless the costs are sooner paid.

**79 Enforcing costs payable by complainant**

Payment of any costs ordered to be paid by a complainant to a defendant shall be enforced as in other cases, and for that purpose the expression **defendant** as used in Division 6 shall be deemed to include a complainant against whom such an order has been made.

**Division 6 Execution**

**80 Findings of guilt or orders need not direct distress**

When any fine or sum of money is adjudged to be paid by a finding of guilt or order, it shall not be necessary for the finding of guilt or order to direct or provide for any levy of distress.

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**81 Term of imprisonment where none specifically prescribed**

- (1) Whenever the payment of any fine or sum of money adjudged to be paid by any finding of guilt or order is by this or any other Act authorized to be enforced by imprisonment with or without distress, but no term of imprisonment is prescribed by any Special Act, the imprisonment shall be for such period as the Court or Justice issuing the warrant of commitment in its or his discretion thinks fit, within the limits fixed by the following scale:

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| Where the sum adjudged to be paid including the costs: | The period of imprisonment shall be:                             |
|--|--|
| Does not exceed \$50                                   | One day  |
| Exceeds \$50   | One day and in addition one day for every \$50 in excess of \$50 |

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- (2) For the purposes of subsection (1) where the sum adjudged to be paid including the costs is not a multiple of \$50 that sum shall be deemed to be next highest multiple of \$50.

**82 Proof of default**

In any proceedings before the Court or upon any application made to a Justice to issue a warrant of distress or commitment to enforce the payment of any fine or sum of money adjudged by a finding of guilt or order to be paid by one person to another person, then:

- (a) if the person to whom the sum is ordered to be paid is a clerk, the production of a certificate purporting to be signed by that clerk that the fine or sum or any part thereof has not been paid to him; and
- (b) in any other case the production of a statutory declaration to a like effect purporting to be made by the person to whom the sum is ordered to be paid,

shall be sufficient evidence of the facts therein stated, unless the Court or the Justice requires the clerk or other person to be called as a witness, or requires further evidence of the facts.

**83 Warrants to enforce payment may be postponed and payment by instalments or security directed**

- (1) When any application is made to a Justice to issue a warrant of distress or commitment to enforce payment of any fine or sum of money adjudged or ordered to be paid by any finding of guilt or

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order, the Justice may, if he deems it expedient so to do, postpone the issue of the warrant for such time and on such conditions (if any) as he thinks fit.

- (2) In any such case the Justice may direct payment of the fine or sum by instalments, or that security be given therefor, in the manner provided by section 76.

**84 Findings of guilt and orders may be enforced by distress or imprisonment, as provided by this Act**

When any fine or sum of money is adjudged to be paid by a finding of guilt or order, payment of the fine or sum may, notwithstanding any other Act, be enforced as provided by this Act either:

- (a) by distress, and in default of sufficiency of distress by imprisonment; or
- (b) by imprisonment without distress.

**85 Finding of guilt or order may impose imprisonment in default of payment of fine, &c.**

- (1) When the Court adjudges the payment of any fine or sum of money, it may, in and by its finding of guilt or order, impose a term of imprisonment in default of payment.
- (2) If the Special Act upon which the finding of guilt or order is founded directs or appoints any manner or term of imprisonment, the finding of guilt or order shall be framed accordingly.
- (3) If no manner or term of imprisonment is so directed or appointed, imprisonment may be imposed and for any term which the Court thinks fit, not exceeding the time prescribed by section 81 with reference to the amount to be recovered.
- (4) Where a person has not, under Division 2A, paid the full amount of 2 or more penalties and prescribed costs, or part of them, and the Court or Justice imposes terms of imprisonment in default, the terms of imprisonment shall be cumulative unless the Court or Justice otherwise orders.

**86 On proof of default justice may issue warrant of distress or commitment**

Whenever a Justice is satisfied that default has been made in the payment of any fine or sum adjudged to be paid, he may issue a warrant of distress or of commitment.

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**87      Wearing apparel, &c., protected against distress**

The following articles shall not be taken under a warrant of distress issued under this Act, namely:

- (a) the wearing apparel and bedding of the defendant and his family, and the tools and implements of the defendant's trade, the whole not exceeding in value the sum of \$40; and
- (b) any sewing machine, type-writing machine, or mangle, the property of or under hire to the defendant.

**88      Money may be taken under warrant of distress**

A warrant of distress shall be deemed to authorize the person charged with the execution thereof to take any money as well as any goods of the person against whom the distress is levied, and any money so taken shall be treated as if it were the proceeds of sale of goods taken under the warrant.

**89      Justices to adjudicate on adverse claim to goods seized under warrant of distress**

- (1) If any claim is made to or in respect of any goods or chattels distrained under the warrant of any Justice, or in respect of the proceeds or value thereof, by:

- (a) any person not being the party against whom the warrant was issued; or
- (b) any defendant who claims that the goods or chattels are not distrainable under section 87,

any Justice, upon complaint of the constable charged with the execution of the warrant (before or after any action brought against the constable), may issue a summons in the prescribed form, directed to the party obtaining the warrant and to the party making the claim.

- (2) Thereupon any action which has been brought in respect of the claim shall be stayed, and the party bringing the claim may be ordered to pay the costs of any proceedings had therein after the service of the Justice's summons.
- (3) Any 2 or more Justices shall adjudicate on the claim, and their order shall, subject to any appeal under this Act, be final and conclusive upon all parties.

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**91            Form of warrant of commitment to enforce payment of money**

- (1) Every warrant of commitment to enforce the payment of any fine or sum adjudged to be paid by any finding of guilt or order shall order the imprisonment of the defendant, unless the sum or sums adjudged to be paid, and also the costs and charges of the warrant of commitment and of taking and conveying the defendant to prison (if the Justice thinks fit so to order), are sooner paid.
- (2) If the conviction or order directs or appoints any manner or term of imprisonment the warrant shall (subject to the provisions of section 94) be framed accordingly.
- (3) If no term of imprisonment is so directed or appointed the Justice issuing the warrant may commit the defendant to imprisonment for any term not exceeding the time prescribed by section 81 with reference to the amount to be recovered.
- (4) A warrant of commitment referred to in subsection (1) is null and void where, within a period of 10 years after it was issued, it has not been executed.

**93            Imprisonment for subsequent offence may commence at expiration of earlier sentence**

When a warrant of commitment is issued against a defendant who is then in prison, undergoing imprisonment upon a finding of guilt for any other offence, the warrant of commitment for the subsequent offence shall be forthwith delivered to the keeper of the gaol to whom it is directed, and the Justice issuing the warrant may, if he thinks fit, order that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant has been previously adjudged or sentenced.

**93A          Power to imprison person arrested under warrant of commitment in any gaol**

A warrant of commitment, notwithstanding that it is addressed to the keeper of some particular gaol, shall be deemed to be lawfully executed if the defendant is taken and conveyed to any other gaol, and there received into custody, and kept for the time mentioned in the warrant, and the keeper of any such other gaol to which the defendant is conveyed shall have the same power and authority under the warrant as if he were the keeper of the gaol named therein.

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**94            Reduction of imprisonment or part payment of sums adjudged to be paid**

- (1) When any finding of guilt or order adjudges the payment of any fine or sum of money, and any term of imprisonment is imposed upon the defendant in default of payment, the term of imprisonment so imposed shall, upon payment or satisfaction of any part of the fine or sum, be reduced by a number of days bearing, as nearly as possible, the same proportion to the total number of days in the term as the sum paid bears to the sum adjudged to be paid: Provided that in reckoning the number of days by which any term of imprisonment would be reduced under this section the first day of imprisonment shall not be taken into account, and that, in reckoning the sum which will secure the reduction of a term of imprisonment, fractions of a cent shall be omitted.
- (2) Payment under this section may be made to:
  - (a) the clerk; or
  - (b) the keeper of any gaol in which the defendant is imprisoned under a warrant of commitment issued in respect thereof.
- (3) When application is made to any Justice to issue a warrant of commitment to enforce any such finding of guilt or order, and it is made to appear to the Justice that any part of the fine or sum thereby adjudged to be paid has been paid, he shall issue his warrant of commitment accordingly for the term as reduced under this section.
- (4) When a warrant of commitment has been issued against any defendant in respect of the non-payment of any fine or sum of money, and payment is made of any part of the fine or sum to the clerk as aforesaid, the clerk shall give to the person making the payment a certificate thereof under his hand.
- (5) Upon receipt of the certificate or of any sum paid under this section, the keeper of any gaol in which the defendant is imprisoned under the warrant of commitment shall endorse a memorandum of the payment, and of the reduction thereby effected, upon the warrant of commitment, which shall thereupon be deemed to have been amended accordingly.

**95            Distress to be stayed on payment or tender**

If any defendant against whom a warrant of distress has issued pays or tenders to the constable having the execution of the warrant the sum or sums mentioned therein, together with the amount of the expenses of distress up to the time of the payment or

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tender, the constable shall cease to execute the warrant.

**96 Defendant to be released upon payment of fine, &c.**

When any defendant is imprisoned under any warrant of commitment for non-payment of any fine or other sum, he may pay or cause to be paid to the keeper of the gaol in which he is so imprisoned the sum mentioned in the warrant of commitment, together with the amount of the costs, charges, and expenses (if any) therein also mentioned, and the keeper shall receive the money, and shall thereupon discharge the defendant, if he is in his custody for no other matter.

**97 Regulations as to whom penalties, &c., to be paid**

- (1) Every warrant of distress shall order the constable, or other person to whom it is directed, to pay the amount of the sum to be levied thereunder to the clerk.
- (2) If any defendant who has been adjudged by any finding of guilt or order to pay any fine or sum of moneys pays the sum adjudged to any constable or other person, the constable or other person shall forthwith pay the amount to the clerk.
- (3) If any defendant who has been committed to prison for non-payment of any fine or sum of money pays the amount, or any part thereof, to the keeper of the gaol in which he is imprisoned, the keeper shall forthwith pay it to the clerk.

**98 Application by Clerk**

Subject to section 180C(6), upon receipt of any fine or sum of money adjudged to be paid by any finding of guilt or order, or of any part thereof, the clerk shall forthwith pay the amount received as follows:

- (a) in the first place, in or towards satisfaction of any costs incurred by any party in or about the execution of the finding of guilt or order, or otherwise payable to the party thereunder; and secondly
- (b) if the order is one for the payment of money to the complainant, then to the complainant; or
- (c) 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 Consolidated Fund.



## **Division 7                Sureties to keep the peace**

### **99                      This Act to apply to peace informations**

- (1) The power of the Court of Summary Jurisdiction, upon complaint of any person, to adjudge a defendant to enter into a recognizance, and find sureties to keep the peace, or be of good behaviour towards the complainant, shall be exercised by an order upon complaint, and this Act shall apply accordingly.
- (2) The complainant and defendant and their witnesses may be called and examined and cross-examined, and the complainant and defendant shall be subject to costs, as in the case of any other complaint.
- (3) The Court may order the defendant to enter into a recognizance, with or without sureties, to keep the peace, or be of good behaviour, and, in default of compliance with the order, to be imprisoned for any period not exceeding 6 months, and the recognizance if entered into forthwith upon the making of the order may be taken by the Court or any Justice or if entered into subsequently may be taken by any Justice.

### **100                    Power to vary order with regard to sureties**

- (1) When any defendant is committed to gaol in default of finding sureties, as in section 99, he may in person, or by any one acting on his behalf, apply for an order varying that under which he was committed.
- (2) The matter of the application shall be heard and determined by a Special Magistrate, who may inquire further into the case.
- (3) If it appears just, upon new evidence produced, or upon proof of a change of circumstances, the Magistrate, having regard to all the circumstances of the case, may make an order reducing the amount for which it is proposed the sureties should be bound, or dispensing with the sureties or surety, or otherwise dealing with the case as the Court thinks just.

## **Part V                      Indictable offences**

### **Division 1                Procedure to committal**

#### **100A            Definition**

In this Part, ***prosecutor*** means the informant, a solicitor or counsel acting for the informant or a solicitor or counsel acting for the Crown.

#### **101                Information on indictable offence**

An information may be laid before a Justice in any case where:

- (a) any person is suspected to have committed any treason, felony, or indictable misdemeanour, or other indictable offence whatsoever, within the Territory; or
- (b) any person suspected to be guilty of having committed any such offence out of the Territory (of which offence cognizance may be taken by the Courts of the Territory) is or is suspected to be within the Territory.

#### **101A            Joinder of charges**

- (1) Charges for any offences, whether felonies or misdemeanours, may be joined in the same information if the charges are founded on the same facts or form or are part of a series of offences of the same or a similar character.
- (2) The Justice may, if he thinks just, deal with any charge so joined separately.

#### **102                If warrant to issue information to be upon oath; otherwise oath not necessary**

- (1) If it is intended to issue a warrant in the first instance, as hereinafter provided, the information shall be in writing, and the matter thereof shall be substantiated by the oath of the informant or a witness.
- (2) In any other case the information may be by parol and without any oath.

#### **103                Issue of warrant in first instance**

Whenever an information is laid before a Justice against any person, and the matter thereof is substantiated by the oath of the informant or a witness, the Justice may, if the defendant is not then

in custody, issue his warrant, in the first instance, for the apprehension of the defendant.

**104            Issue of summons**

Whenever an information is laid before a Justice he may, if the defendant is not then in custody, issue his summons for the appearance of the defendant.

**105            Issue of warrant**

- (1) If after being duly served with a summons the defendant fails to appear in obedience thereto, and if the matter of the information is or has been substantiated by the oath of the informant or a witness, any Justice may issue his warrant to apprehend the defendant.
- (2) Notwithstanding anything herein contained any Justice may issue his warrant, before or after the time appointed in a summons, for the appearance of a defendant against whom an information for an indictable offence has been duly laid and substantiated as provided in this Act.

**105A          Procedure where prosecutor proposes to tender written statements to the Court**

- (1) Where a person is charged with an indictable offence, the prosecutor, not later than 14 days, or such shorter period as a Justice may approve, before the date fixed for the taking of the preliminary examination, may give to that person a notice in writing:
  - (a) informing him of the time and place of the preliminary examination;
  - (b) stating that the Justice conducting the preliminary examination will be asked to admit written statements as evidence without requiring the attendance of the persons who made the statements; and
  - (c) setting out the terms of this section and section 105B.
- (2) A notice under subsection (1) is not duly given unless it is accompanied by:
  - (a) a copy of the information;
  - (b) a list of persons who have made written statements which the prosecutor proposes to tender to the Justice at the preliminary examination;

- (c) a copy of each of those statements;
  - (d) a list of the documents and things (if any) referred to in those statements which the prosecutor proposes to tender to the Justice at the preliminary examination;
  - (e) where a thing, not being a document, cannot adequately be described in that list, a photograph of that thing; and
  - (f) a copy of each document mentioned in the list.
- (3) A notice and accompanying documents may be given to a defendant in any manner in which a summons issued in respect of an information may be served under this Act.
- (4) The giving of a notice under subsection (3) may be proved in the same manner as the service of a summons.
- (5) Where a notice has been given to a defendant under this section, the prosecutor, not later than 7 days, or such shorter period as a Justice may approve, before the date set down for the preliminary examination, shall file with the clerk a copy of the notice together with a copy of each document and photograph accompanying the notice.
- (6) Where copies are filed with the clerk under subsection (5), he shall transmit them before the preliminary examination to the Justice before whom the defendant will appear for the preliminary examination.
- (7) The prosecutor, if so requested by the defendant or his counsel or solicitor, shall, before the taking of the preliminary examination, permit the defendant or his counsel or solicitor to inspect the documents and things referred to in the list (if any) given to the defendant in pursuance of subsection (2)(d).

**105B      Written statements may be admitted in evidence**

- (1) Subject to this section, where a prosecutor has duly given notice to a defendant under section 105A, the Justice at the preliminary examination may admit a written statement, a copy of which accompanied that notice, as evidence of the matters stated and the statement shall thereupon constitute depositions of the person who made it.

- (2) A written statement shall not be admitted in evidence by the Justice unless:
- (a) the accuracy of the statement is verified by the person making the statement by statutory declaration made pursuant to the *Oaths Act*;
  - (b) it contains:
    - (i) a statement that the person who made it has attained the age of 18 years; or
    - (ii) if the person has not attained that age, a statement of the person's age;
  - (c) it contains a statement that, before he signed it, the person who made it read the statement or had it read to him; and
  - (d) if it contains a statement that, before he signed it, the person who made it had it read to him, it contains a further statement indicating whether that person is disabled so that he cannot read it and, if so, the nature of the disablement.
- (3) Where a person has made a written statement which, but for this subsection, would be admissible under subsection (1), that statement shall not be admissible where the defendant, not later than 5 days before the date set down for the preliminary examination, gives notice in writing to the prosecutor that he requires the attendance at the preliminary examination of the person who made the statement.
- (4) Where the defendant gives notice in writing to the prosecutor under subsection (3), he shall file a copy of that notice with the clerk.
- (5) Where the defendant has given notice under subsection (3), he may, at any time before the preliminary examination, notify the informant in writing that he withdraws that notice and this section shall apply as if the notice under subsection (3) had not been given.
- (6) Notwithstanding the failure by the defendant to give notice under subsection (3), he may object at the preliminary examination to a written statement being tendered in evidence and the Justice may, if he thinks fit, uphold the objection and require the person who made the statement to attend and give evidence before him.
- (7) Where, under this section, the Justice admits a written statement, he may, of his own motion, require the person who made the statement to attend before him to give evidence.

- (8) Where it appears to the Justice that any part of a written statement tendered in evidence under this section is inadmissible according to the rules of evidence, he may, where the statement is otherwise admissible under this section, admit that statement, but, where he does so, he shall identify the part that is inadmissible and shall, with reference to that part, write on the statement the words "ruled inadmissible" or words to that effect.
- (9) Where the Justice admits a written statement under this section, the prosecutor may call the person who made the statement to give oral evidence and that person and any other witnesses, not being witnesses called by the accused person, who attend before the Justice:
  - (a) shall be examined in the presence or hearing of the defendant and, if the defendant so desires, in the presence or hearing of his counsel or solicitor; and
  - (b) may be cross-examined by the defendant or his counsel or solicitor.
- (10) Where a Justice admits a written statement under this section, the statement:
  - (a) is, for the purposes of sections 116, 131, 139 and 175, a deposition of a witness; and
  - (b) is, for the purposes of section 152 a deposition of a witness notwithstanding the fact that the deposition was not taken in the presence of the defendant.

**106                      Preliminary examination where written statements not tendered**

Subject to section 106A, where a person appears or is brought before a Justice charged with an indictable offence and a notice has not been given to that person in accordance with section 105A, the Justice shall, in the presence or hearing of the defendant, and if the defendant so desires, in the presence or hearing of his counsel or solicitor, take the preliminary examination or statement on oath of any persons who know the facts and circumstances of the case, and the defendant or his counsel or solicitor may cross-examine those persons.

**106A                  Powers of Justices to take plea of guilty without evidence**

- (1) Where the defendant appears before a Magistrate and the information charges the defendant with an offence cognisable by a Magistrate under section 120 or 121A, or both, the defendant at any

stage of the proceedings, and whether any statement has been taken from any witness or not, may plead guilty to the offence or any of the offences charged against him or her, and the Magistrate at the commencement of the proceedings is to inform the defendant of his or her right so to plead.

- (2) If the defendant pleads guilty to such an offence:
- (a) the Magistrate shall, in relation to that offence, be the Court of Summary Jurisdiction within the meaning of this Act;
  - (b) the procedure and powers of the Court shall be the same, and the provisions of this Act shall apply, as if the charge were a complaint for a simple offence under this Act; and
  - (c) sections 130A, 131, 132 and 133 shall, so far as they are applicable, apply in respect of the offence,
- but the plea of guilty may be withdrawn as provided in subsection (3).
- (3) If after the defendant has so pleaded guilty to an offence, the Magistrate, on consideration of any facts stated by the prosecution or given in evidence, is of the opinion that the time for taking the plea should be postponed, the Magistrate may order that the plea of guilty be withdrawn and thereupon all further proceedings in respect of the offence are to be conducted in accordance with this Part; but if any such further proceedings are taken the defendant is not, by reason of his or her plea of guilty, entitled to plead *autrefois* convict.

**107                      Place where examination taken not to be deemed an open Court, and no person to remain without consent**

The room or building in which the examination is taken shall not be deemed an open Court for that purpose, and the Justice may, if it appears to him that the ends of justice will be best answered by so doing, order that no person shall have access to or be or remain in the room or building without his consent or permission: Provided that nothing herein contained shall authorize the exclusion of any counsel or solicitor for either party.

**108                      Evidence upon oath**

- (1) Subject to any law for the time being in force in the Territory in regard to the evidence of aboriginals and children, every witness shall have the usual oath administered to him before he is examined.

**108A        Contemptuous behaviour on preliminary examination**

Section 46 shall apply in relation to the preliminary examination before a Justice in the same way as it applies to proceedings before the Court of Summary Jurisdiction and shall be read and construed with all such modifications as are necessary to give effect to this section.

**109        Procedure on completion of the evidence for the prosecution**

- (1) When all the evidence offered upon the part of the prosecution has been taken, the Justice then present shall consider whether it is sufficient to put the defendant upon his trial for any indictable offence.
- (2) If the Justice is of opinion that the evidence is not so sufficient, he shall forthwith order the defendant, if in custody, to be discharged as to the information then under inquiry.
- (3) If the Justice is of opinion that the evidence is so sufficient, the Justice may:
  - (a) if the charge is one of a minor indictable offence, proceed in the manner directed and under the provisions in that behalf contained in Division 2;
  - (b) unless the defendant is charged with a capital offence, or with manslaughter, ask the defendant whether he wishes to plead to the charge as provided in Division 3, and proceed as thereby directed; or
  - (c) proceed with the examination as provided in the next succeeding sections.

**110        Evidence or statement by defendant**

- (1) Where the Justice proceeds with the examination, he shall say to the defendant these words, or words to the like effect:

"Having heard the evidence for the prosecution, do you wish to be sworn and give evidence on your own behalf, or do you desire to say anything in answer to the charge. You are not obliged to be sworn and give evidence, nor are you required to say anything unless you desire to do so; but whatever evidence you may give upon oath, or anything you may say, will be recorded, and may be given in evidence upon your trial.

"You are clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat, which



may have been held out to you to induce you to make any admission or confession of your guilt; but that whatever you now say may be given in evidence upon your trial, notwithstanding any such promise or threat."

- (2) Upon the trial of the defendant, any evidence given or statement made in pursuance of this section may be given in evidence.
- (4) Nothing herein contained shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the defendant made at any time, which by law would be admissible as evidence against him.

#### **111            Defendant may call witnesses**

- (1) When the defendant has given evidence or made his statement, or has declined to do so, the Justice, before he commits the defendant for trial or admits him to bail, shall ask the defendant whether he desires to call any witness.
- (2) Any witness whom the defendant desires to call shall then be called, and the statement of any such witness who knows anything relating to the facts and circumstances of the case, or any evidence tending to prove the innocence of the defendant, shall be taken.

#### **112            Procedure on completion of examination**

- (1) When the examination is completed the Justice then present shall consider whether the evidence is sufficient to put the defendant upon his trial for any indictable offence.
- (2) If, in the opinion of the Justice, it is not so sufficient, he shall forthwith order the defendant, if in custody, to be discharged as to the information then under inquiry.
- (3) If, in the opinion of the Justice, the evidence is sufficient, he shall:
  - (a) direct the defendant to be tried at the first sitting of the Supreme Court exercising its criminal jurisdiction next held after a period of 14 days after a date and at a place specified by the Justice;
  - (b) by his warrant, commit the defendant to a specified gaol or place to which by law he may be committed, to be kept there until delivered so to appear, or grant him bail in accordance with the *Bail Act*; and
  - (c) cause a record of the direction and the committal or admission to bail to be made in writing.

- (4) Where the defendant is so directed, he shall, subject to any order made by the Supreme Court, be tried accordingly.

**113            Power to remand defendant from time to time**

- (1) If from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer or adjourn the examination for any time, the Justice before whom the defendant appears or is brought may, from time to time, remand the defendant for such time as in his discretion he deems reasonable, but not exceeding 15 clear days at one time unless both parties consent thereto.
- (2) If the remand is for a time not exceeding 3 clear days, the Justice may verbally order the constable or other person in whose custody the defendant then is, or any other constable or person named by the Justice in that behalf, to continue or keep the defendant in custody, and to bring him before the same or any other Justice acting at the time appointed for continuing the examination.
- (3) If the remand is for any time exceeding 3 clear days the defendant shall be remanded by a warrant of the Justice to gaol, or to some other place of security.
- (4) Any Justice on being satisfied that a defendant who has been remanded into custody is, by reason of illness or accident, unable at the expiration of the period for which he was remanded to appear personally before a Justice, may in the absence of the defendant order him to be kept in custody for such further period as the Justice deems reasonable, but not exceeding 15 days at any one time unless both parties consent to a longer period.
- (5) The warrant for keeping the defendant in custody pursuant to any such order may be issued by the Justice who made the order, or any other Justice.

**114            Power to admit to bail in lieu of remand**

Instead of detaining the defendant in custody as provided in section 113, any Justice before whom the defendant appears or is brought may grant him bail in accordance with the *Bail Act*.

**115            Power to continue examination before expiry of remand**

The Justice who remanded the defendant or any other Justice may, notwithstanding that the defendant has been remanded, order the defendant to be brought before him or any other Justice, at any time before the expiration of the period for which the defendant has been remanded, and any keeper of the gaol or officer in whose

custody the defendant is shall duly obey the order.

**116                      Transmission of documents to Supreme Court upon committal for trial**

- (1) Whenever a defendant is committed for trial, the Justice shall forthwith deliver, or cause to be delivered, to the Director of Public Prosecutions the written information (if any), a copy, certified by writing under the hand of the clerk for the relevant district to be a true copy, of a transcript of the record or of the record, as the case requires, of the depositions of the witnesses in the relevant proceeding and all recognizances of witnesses, bail undertakings and conditions of bail entered into.
- (2) The Director of Public Prosecutions shall cause these documents to be delivered to the proper officer of the Court in which the trial is to be had, before or at the opening of the Court, on the first day of the sitting thereof, or at such other time as the Judge who is to preside in the Court at the trial order and appoints.
- (3) Whilst the documents are in the custody of the Director of Public Prosecutions, he shall have and be subject to the same duties and liabilities with respect to the several documents upon a certiorari directed to him, or upon a rule or order directed to him in lieu of that writ, as the Justice would have had, and been subject to, if the documents had not been transmitted to the Director of Public Prosecutions.

**117                      Binding witnesses by recognizances**

- (1) The Justice before whom any witness is examined, or by whom the written statement of any person was admitted in evidence under section 105B, may bind that witness or person, by recognizance, to appear at the Court at which the defendant is to be tried, then and there to give evidence.
- (2) Every witness called by the defendant (except a witness merely to the character of the accused) who, in the opinion of the Justice, gives evidence in any way material to the case, or tending to prove the guilt or innocence of the accused person, shall be bound as provided in subsection (1).
- (3) Any recognizance under this section may be entered into at any stage of the examination, although the defendant has not then been committed for trial; but a recognizance so entered into before committal shall be void if the defendant is not committed for trial.

**118            Form of recognizance of witness**

- (1) The recognizance shall specify:
  - (a) the Christian name and surname of the witness; and
  - (b) the place of his residence, and, if it is in a city or town, the name of the street and the number (if any) of the house, and whether he is the owner or tenant thereof, or a lodger therein; and
  - (c) his occupation.
- (2) The recognizance shall be entered into and duly acknowledged by the witness before, and be subscribed by, the Justice.
- (3) The recognizances in respect of all or any 2 or more witnesses who are bound in the same sum or penalty may be included in one form or document, and in respect of each witness the recognizance shall be as valid and effectual as if it had been entered into by a separate form or document.

**119            Witness refusing to enter into recognizance may be committed to gaol**

If any witness refuses to enter into or acknowledge the recognizance the Justice may, by his warrant, commit the witness to the gaol nearest to the place in which the defendant is to be tried, there to be imprisoned and safely kept until after the trial of the defendant, unless in the meantime the witness duly enters into and acknowledges the recognizance before some Justice; but if afterwards, from want of sufficient evidence in that behalf, or other cause, the Justice before whom the defendant is brought does not commit him or hold him to bail for the offence with which he is charged, any Justice may order and direct the keeper of the gaol to discharge any such witness from custody, and he shall be discharged accordingly.

**Division 2            Minor offences**

**120            Minor offences**

- (1) Subject to this Act, the Court constituted by a Magistrate has jurisdiction to hear and determine in a summary manner a charge in respect of an offence against section 210, 219, 221, 224, 227 or 229 of the Criminal Code, or an attempt to commit such an offence, where the value of the property involved does not exceed \$5,000.

- (2) The jurisdiction conferred by subsection (1) may be exercised whether or not the defendant consents to its exercise.

**121A      Offences that may be dealt with summarily**

- (1) Subject to section 122A, where:

- (a) a person is charged before the Court with an indictable offence;
- (b) the offence is either:
  - (i) punishable by not more than 10 years imprisonment; or
  - (ii) against sections 210, 213, 228, 229, 240, 241, 243, 245, 246, 247, 251 or 252 of the Criminal Code and punishable by not more than 14 years imprisonment;
- (c) in the opinion of the Court, the charge is not one that the Court has jurisdiction, apart from this section, to hear and determine in a summary manner;
- (d) the defendant consents to it being so disposed of;
- (e) the prosecutor consents to it being so disposed of; and
- (f) the Court is of the opinion that the case can properly be disposed of summarily,

the Court has jurisdiction to hear and determine the charge in a summary manner, and pass sentence on the person so charged.

- (1AA) The Court may seek from the prosecutor or, if the informant is appearing in person, from the informant, and the prosecutor or informant shall give to the Court, an outline of the evidence that will be presented for the prosecution, for the purpose of enabling the Court to determine whether to hear and determine the charge in a summary manner.

- (1AB) A statement made by the prosecutor or informant under subsection (1AA) is not admissible in evidence in a subsequent proceeding in respect of the charge.

- (1A) Subject to subsection (1B), a person the subject of a charge referred to in subsection (1)(a) being dealt with in the manner referred to in subsection (1) and who, in respect of the charge, is represented by a legal practitioner, may, at any stage of the proceedings relating to the hearing of that charge, plead guilty to that charge.

- (1B) The Court hearing a charge being dealt with in the manner referred to in subsection (1) shall not, in respect of that charge, accept a plea of guilty under and in accordance with subsection (1A) from the person the subject of that charge unless it is of the opinion that it is proper to do so.

- (3) In this section:

**Court** means the Court constituted by a Magistrate.

**122A      Serious or difficult matters not to be dealt with summarily**

If it appears to the Court that an offence being dealt with pursuant to section 120 or 121A, having regard to its seriousness, the intricacy of the facts or the difficulty of any question of law likely to arise at the trial or any other relevant circumstances, ought to be tried by the Supreme Court, the Court may conduct a preliminary examination under this Part in relation to the offence.

**123A      Charge against a child**

Where a child under the age of 18 years is charged with an offence, nothing in this Division shall authorize the Court to deal with the case in a summary way if the parent or guardian of the child objects to the offence being dealt with summarily.

**124      Justice or Justices not having jurisdiction may remand for hearing by a competent Court**

If the Justice or Justices before whom any defendant appears, charged with any offence cognizable under sections 120 or 121A, is or are not competent to hear and determine the case in a summary way, and it appears to him or them that the case is or may be one fit to be so heard and determined, he or they may remand the defendant, and adjourn the hearing to such time and place as he deems or they deem fit, then and there to be heard before a Magistrate or 2 or more Justices, as the case may require.

**125      Charge to be reduced into writing and defendant required to plead**

- (1) When a Magistrate proceeds to dispose of any case under section 120 or 121A, the charge shall, in the case of a parol information, be reduced into writing, and the defendant shall be asked whether he is guilty or not guilty of the charge.
- (2) Thereafter the Magistrate shall be the Court of Summary Jurisdiction within the meaning of this Act, and, subject to this Act, the procedure and the powers of the Court shall be the same, and

the provisions of this Act shall apply, as if the charge were a complaint for a simple offence under this Act.

**126            Witnesses for prosecution may be recalled for a cross-examination**

When the evidence of any witness has been taken before the Justices constituting the Court, his evidence need not be taken again, but any such witness shall, if the defendant so requires, be recalled for the purposes of cross-examination.

**128            Certificate of dismissal**

If the Court dismisses the charge, an order of dismissal shall be drawn up, and a certificate thereof granted to the defendant in the manner provided by section 71.

**130A          Application of certain provisions of Criminal Code to minor offences**

Sections 322, 324, 326 and 329 of the Criminal Code shall apply on the trial, under this Division of any offence to which they relate in the same manner as far as possible as they apply to the trial of similar offences in the Supreme Court.

**130B          Power of Court to order delivery of property**

(1) Where any property:

- (a) has come into the custody or possession of a member of the Police Force in connection with a charge or prosecution under a law in force in the Territory or otherwise in the course of his duty; or
- (b) has come into the custody or possession of the Court of Summary Jurisdiction, or a clerk of the Court, whether as an exhibit or otherwise in connection with a summary proceeding in the court,

the Court of Summary Jurisdiction may, on application either by a member of the Police Force of the Northern Territory or a clerk of the Court of Summary Jurisdiction or by a claimant of the property, make an order for the delivery of the property to the person appearing to the court to be the owner thereof, or, may make such order with respect to the property as to the Court may seem fit.

- (2) No order made under this section shall be a bar to the right of any person to recover the property by action from the person to whom it is delivered by virtue of the order where that action is brought within 6 months after the order is made.

**131                      Transmission of documents to Supreme Court and evidentiary value**

- (1) When any charge is heard and determined under this Division, the written charge, a copy, certified by writing under the hand of the clerk for the relevant district to be a true copy, of a transcript of the record or of the record, as the case requires, of the depositions of the witnesses in the relevant proceeding, and the finding of guilt, or the order of dismissal, shall be transmitted to the clerk of the Supreme Court, there to be kept among the records of that Court.
- (2) A copy of the finding of guilt, or of the order of dismissal, certified by the clerk of the Supreme Court, or proved to be a true copy, shall be sufficient evidence to prove a finding of guilt or dismissal for the offence mentioned therein, in any legal proceeding whatever.

**131A                   Summary jurisdiction in respect of bodily harm and aggravated assault**

- (1) The Court constituted by a Magistrate has jurisdiction to hear and determine in a summary manner a charge in respect of an offence against section 186, 188(2) or 189A(1) or (2)(a) of the Criminal Code.
- (2) The Court shall not hear and determine in a summary manner a charge referred to in subsection (1) if it is of the opinion that the charge should be prosecuted on indictment.

**132                      Effect of finding of guilt**

A finding of guilt under this Division shall have the same effect as a finding of guilt upon an indictment for the same offence would have had.

**133                      Proceedings to be a bar to further prosecution**

A defendant who obtains an order of dismissal, or is found guilty, under this Division, shall be released from all further or other criminal proceedings for the same cause.



## **Division 3                      Committal for sentence**

### **134                      Defendant may be asked to plead to the charge**

- (1) Unless the defendant is charged with an offence punishable upon conviction by imprisonment for life, the Justice may, when all the evidence offered upon the part of the prosecution has been heard, and if he thinks fit, ask the defendant whether he wishes to plead to the charge.
- (2) If the defendant thereupon signifies a desire to plead to the charge, the Justice shall reduce the charge into writing and read the same to the defendant, and say to him, "Are you guilty or not guilty of the offence with which you are charged?".

### **135                      On plea of not guilty examination to proceed**

If the defendant does not signify a wish to plead, or pleads not guilty, the Justice shall proceed to complete the preliminary examination in the manner provided in Division 1.

### **136                      On plea of guilty defendant to be committed or granted bail before sentence**

- (1) If the defendant pleads guilty, the Justice shall:
  - (a) direct the defendant to appear for sentence at the first sitting of the Supreme Court exercising its criminal jurisdiction next held after a period of 14 days after a date and at a place specified by the Justice;
  - (b) by his warrant commit the defendant to a specified gaol or place to which by law he may be committed to be kept there until delivered so to appear, or grant him bail in accordance with the *Bail Act*; and
  - (c) cause a record of the plea, the direction and the committal or grant of bail to be made in writing.
- (2) Where the defendant appears for sentence, he shall, subject to sections 141 and 142 and to any order made by the Supreme Court, be sentenced accordingly.

### **137                      Defendant may call witnesses as to character**

- (1) The defendant, upon pleading guilty, may, if he so desires, call any witnesses as to his character.

- (2) If any such witnesses are called, their depositions shall be recorded.
- (3) Nothing contained in this section shall be deemed to take away, or in any way limit, the power of the Judge before whom the defendant appears for sentence to hear witnesses as to his character, or to hear any statement by him or on his behalf.

**138                      Attendance of witnesses at the criminal Court**

- (1) The Justice may bind the prosecutor or any witness by recognizance to appear at the Court before which the defendant is to appear for sentence, in the same manner as if he had been committed for trial: Provided that, unless the Justice when binding the prosecutor or any witness otherwise directs, every such recognizance shall be void unless the defendant, within the time and in the manner prescribed by section 141, withdraws his plea of guilty and substitutes therefor a plea of not guilty.
- (2) Section 119 applies to any witness who refuses to enter into any such recognizance.

**139                      Transmission of documents to Supreme Court**

When the defendant is committed, or granted bail, the Justice shall forthwith deliver the record, or cause it to be delivered, with the written information or charge, a copy, certified by writing under the hand of the clerk for the relevant district to be a true copy, of a transcript of the record or of the record, as the case requires, of the depositions of the witnesses in the relevant proceeding, and the recognizances (if any), to the Director of Public Prosecutions, who shall cause it to be delivered to the proper officer of the Court at which the defendant is to appear for sentence, before or at the opening of that Court on the first sitting next held after a period of 14 days after a date specified for the purposes of section 112(3)(a) or 136(1)(a), or at such other time as the Judge who is to preside in the Court may order.

**141                      Withdrawal of plea and substitution of plea of not guilty**

- (1) When a defendant has been committed or granted bail to appear for sentence, he may, nevertheless, by notice in writing to the Director of Public Prosecutions, not less than 7 clear days before the day of the first sitting of the Court at which he is to appear, withdraw his plea of guilty and substitute therefor a plea of not guilty: Provided that in such case any Judge presiding over the Court may adjourn or postpone the trial to such day as he thinks proper.

- (2) Thereupon the defendant:
- (a) if committed to appear for sentence, shall be deemed to have been committed for trial and the warrant of committal shall be construed accordingly; or
  - (b) if granted bail to appear for sentence, shall be deemed to have been granted bail to appear for trial, and any bail undertaking or condition by whomsoever entered into in connection with the grant of bail, shall be construed accordingly.
- (3) Upon receipt of a notice under this section it shall be the duty of the Director of Public Prosecutions to cause the notice to be delivered to the proper officer mentioned in section 139.
- (4) At the trial of any person who has, under this section, substituted a plea of not guilty, the fact that he had pleaded guilty to the charge on which he is being tried shall not be put in evidence, nor be made the subject of any comment by the prosecution.

**142                      Court to sentence accordingly unless the Judge advises withdrawal of the plea**

Subject to section 141, upon the appearance for sentence of a defendant committed or granted bail to appear for sentence, the Court may pass sentence or otherwise deal with the defendant as if he had been arraigned and had pleaded guilty in the Court, and all the same consequences shall ensue as if he had been so arraigned and had so pleaded guilty: Provided that if, for any reason, it appears to the presiding Judge of the Court that the plea of guilty should be withdrawn, he may advise the person to withdraw that plea, and, if the plea be thereupon withdrawn, the defendant shall be deemed to have been committed for trial, and may forthwith, or after adjournment, and notwithstanding that no information has been filed in the Court, be arraigned, and the case shall proceed in the usual course.

**Division 5                      Miscellaneous**

**151                      Regulations for conveying prisoners to gaol**

Any constable or other person to whom a warrant of commitment is directed shall convey the person therein named or described to the gaol mentioned in the warrant, and there deliver him, together with the warrant, to the keeper of the gaol, who shall thereupon give the constable or other person so delivering the prisoner into his custody a receipt for the prisoner, setting forth the state and condition in

which the prisoner was when he was so delivered.

**152            Use of deposition of witness in certain cases**

The deposition of any witness, taken at the preliminary examination is admissible as evidence upon the trial of the defendant, upon proof:

- (a) that the witness is dead, or so ill as not to be able to travel; and
- (b) in the case of a witness for the prosecution, that the deposition was taken in the presence of the defendant, and that he, or his counsel or solicitor, had a full opportunity of cross-examining the witness,

and without further proof.

**153            Justice may take deposition of person dangerously ill and unable to attend preliminary examination**

- (1) Whenever it is made to appear to the satisfaction of any Justice that:
  - (a) any person is dangerously ill and is, in the opinion of a medical practitioner, not likely to recover from the illness;
  - (b) the person is able and willing to give material information relating to any indictable offence, or to any defendant accused of any such offence; and
  - (c) it is not practicable for any Justice to take the deposition of the person at the preliminary examination of the defendant,the Justice may take the statement upon oath of the person.
- (2) The Justice taking the deposition shall there-upon subscribe the deposition, and shall add thereto, by way of caption, a statement of his reason for taking it, and of the day and place when and where it was taken, and of the names of the persons (if any) present at the taking thereof.
- (3) If the deposition relates to any indictable offence for which any defendant is already committed or bailed to appear for trial the Justice shall transmit the deposition, with the addition mentioned in subsection (2), to the officer to whom the depositions are by law required to be transmitted, and that officer shall preserve it.

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**154 Use of such deposition at trial**

Afterwards, upon the trial of any defendant or defendants to whom the statement relates, the statement may be read in evidence, either for or against the accused, if:

- (a) the statement purports to be signed by the Justice by or before whom it purports to be taken;
- (b) it is proved that the person who made the statement is dead, or that there is no reasonable probability that the person will ever be able to travel or give evidence; and
- (c) it is proved, to the satisfaction of the Court, that reasonable notice of the intention to take the statement was served upon the person (whether prosecutor or defendant) against whom it is proposed to be read in evidence, and that that person, or his counsel or solicitor, had, or might have had if he had chosen to be present, full opportunity of cross-examining the person who made the statement.

**155 Provision for prisoner being present at the taking of deposition**

Whenever any prisoner in actual custody causes to be served, or receives notice of, an intention to take a statement under section 153, the Judge or Justice before whom the prisoner was committed, or a visiting Justice of the gaol in which he is confined, may, by an order in writing, direct the keeper of the gaol having the custody of the prisoner to convey him to the place mentioned in the notice for the purpose of being present at the taking of the statement, and the keeper shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the gaol from which the prisoner is conveyed.

**156 Manner of payment to prosecutor or witness**

Every order for payment to any prosecutor or other person under section 391 of the *Criminal Law Consolidation Act* shall be forthwith made out and delivered by the proper officer of the Court to the prosecutor or other person, and shall be paid by the Sheriff out of any funds he may have in his hands, or which may be granted to him for the purpose, to the person named therein; or if the order is endorsed with the words "Pay the bearer hereof," or words to that effect, signed by the person therein named, and witnessed by one disinterested person, then to the bearer thereof; and the Sheriff shall be allowed the sum paid in his accounts; and every payment made by him shall effectually discharge him from any claims made by the person named in the order for payment, or any person

claiming by, through, or under him.

**157                      Court may allow expenses to witnesses for the defence**

Any Judge of the Court before which any defendant is prosecuted or tried, or for trial before which he is committed or bailed to appear, for any felony, misdemeanour, or other indictable offence, is hereby authorized and empowered in his discretion, at the request of any person who appears before the Court to give evidence on behalf of the person accused, to certify that the witness so appearing ought to be paid his expenses, and in that case the amount to be paid to the witness shall be the same as if he had been a witness for the prosecution, and shall be ascertained in like manner, and shall be defrayed out of any moneys provided by the Legislative Assembly for allowances to witnesses.

**158                      Power to award payment of expenses of prosecution of a minor offence**

When any charge is summarily adjudicated upon under Division 2, the Justices or Magistrate, upon the request of any person who has preferred the charge, or appeared to prosecute or to give evidence against the person charged, may, if they or he thinks fit, grant a certificate to that person for the amount of the compensation for his reason-able expense, trouble, and loss of time therein, subject to the regulations for the time being in force in relation to the certificates to be granted by the examining Magistrates under the *Criminal Law Consolidation Act*: Provided that the amounts of fees payable in respect of the expenses of apprehending the defendant and detaining him in custody, and of such other expenses as are now by law payable when incurred before a commitment for trial, may be added to the certificate for compensation, and paid in the like manner.

**159                      Power to award costs of prosecution although charge dismissed**

Where any defendant is charged before a Justice with felony, or with any indictable misdemeanour, and in the opinion of the Justice the charge was bona fide made up on reasonable and probable cause, the Justice may, in his discretion, at the request of the prosecutor, grant a certificate of the expenses and of the amount to be allowed for the trouble and loss of time to the witnesses appearing and examined on the charge, notwithstanding that the parties may not be bound over by recognizance to prosecute and give evidence and although no committal for trial may take place: Provided that any certificate so granted shall be subject to the regulations for the time being in force with regard to certificates

granted by examining Magistrates under the *Criminal Law Consolidation Act*, and shall be payable in manner directed by section 160.

**160                      Manner of payment under sections 158 and 159**

Every certificate for compensation under section 158 or 159 shall be paid by the clerk, upon the certificate being presented to him, upon sight, out of any funds in his hands, or which may be granted to him for the purpose, to the person named therein; or if the certificate is endorsed with the words, "Pay the bearer hereof," or words to that effect, signed by the person named therein and witnessed by one disinterested person, then to the bearer thereof, and the clerk shall be allowed the sum paid in his accounts, and every payment made by him shall effectually discharge him from any claims made by the person named in the certificate, or any person claiming by, through or under him:

Provided that no payment shall be made on any certificate for compensation under section 158 or 159 unless the certificate is presented for payment within 6 months from the date when it was signed by the Justice or Magistrate who granted it.

**161                      Provisions for summary trial of children**

- (1) Where a child under the age of 18 years is charged before a Magistrate, or 2 or more Justices, with any indictable offence, other than homicide, the Magistrate or Justices, if he or they think it expedient so to do, and if the parent or guardian of the child so charged, when informed of his right to have the child tried by the Supreme Court, does not object to the child being dealt with summarily, may deal summarily with the offence.
- (2) For the purposes of a proceeding under this section the provisions of Division 2 shall be adopted so far as they are applicable thereto, and the Magistrate or Justices may, if he or they think it desirable, make a statement for the information of the parent or guardian of the meaning of the case being dealt with summarily, and of the Court at which the child would be tried if tried by a Judge.
- (3) Where the parent or guardian of a child is not present when the child is charged with an indictable offence, the Magistrate or Justices may, if he or they think it just so to do, remand the child for the purpose of causing notice to be served on the parent or guardian with a view, so far as practicable, of securing his attendance at the hearing of the charge, or the Magistrate or Justices may, if he or they think it expedient so to do, deal with the case summarily.

- (4) This section shall not render punishable for an offence any child who is not, in the opinion of the Magistrate or Justices before whom he is charged, above the age of 8 years, and of sufficient capacity to commit crime.

## **Part VI                    Appeals from Courts of Summary Jurisdiction**

### **Division 1                Special case**

#### **162                    Points of law may be reserved for the consideration of the Supreme Court**

- (1) The Court may, at discretion, reserve any question of law arising on or out of the hearing or determination of any information or complaint for the consideration of the Supreme Court, and state a special case or cases for the opinion of the Court.
- (1A) Any such question may be so reserved at any time during the hearing of the information or complaint, or at any time within one month after the Court of Summary Jurisdiction has finally determined the information or complaint.
- (2) The Supreme Court shall deal with every such special case according to the practice of the Supreme Court on special cases, and may make such order thereon (including any order as to the costs of the proceedings in that Court and in the Courts below) as to the Supreme Court appears just.
- (3) The Supreme Court may send any such special case back for amendment, or may itself amend it.
- (4) The Justices shall make a conviction or order in respect of the matters referred to the Supreme Court in conformity with the certificate of the Supreme Court.

#### **162A                  Case to be stated at request of counsel for Crown**

- (1) The Justice or Justices by whom an order is made dismissing a complaint or information shall, if so requested by counsel for the Crown upon or after the conclusion of the hearing, reserve for decision by the Supreme Court any question of law arising at or in connection with the hearing.
- (2) No such request shall be made without the written consent of the Director of Public Prosecutions.



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- (3) The question reserved shall be referred by the Justice or Justices to the Supreme Court for decision, together with a statement of the circumstances out of which the question arose and such further statement, if any, as the Supreme Court requires.
  - (4) The Supreme Court shall have power to determine the question reserved.
  - (5) The determination by the Supreme Court of the question reserved shall not in any way affect or invalidate any order at or after the conclusion of the hearing.
  - (6) Any person charged at the hearing or affected by the order shall be entitled to be heard before the Supreme Court upon the determination of the question reserved, and if it appears that no such person proposes to be represented upon the determination, the Director of Public Prosecutions shall instruct counsel to argue the question before the Supreme Court on behalf of the person so charged or affected.
  - (7) The reasonable costs of legal representation of any person heard before the Supreme Court as provided in this section shall be paid by the Crown.
  - (8) No report of any request made pursuant to subsection (1) shall be published.
  - (9) No report of proceedings under this section shall be published which discloses the name or identity of the person charged at the hearing or affected by the decision given at the hearing.
  - (10) Any publication in contravention of either of subsections (8) or (9) shall be punishable as contempt of the Supreme Court.

## **Division 2      Appeals generally**

### **163      Right of appeal to Supreme Court**

- (1) A party to proceedings before the Court may appeal to the Supreme Court from a conviction, order, or adjudication of the Court (including a conviction of a minor indictable offence but not including an order dismissing a complaint of an offence), on a ground which involves:
  - (a) sentence; or

- (b) an error or mistake, on the part of the Justices whose decision is appealed against, on a matter or question of fact alone, or a matter or question of law alone, or a matter or question of both fact and law,

as hereinafter provided, in every case, unless some Special Act expressly declares that such a conviction, order, or adjudication shall be final or otherwise expressly prohibits an appeal against it.

- (2) Any provision of any Special Act conferring a right of appeal to a Local Court against any conviction, order, or adjudication mentioned in subsection (1) shall be read as conferring a right of appeal to the Supreme Court under this Act in lieu of to a Local Court.

**164 No appeal on removal into Supreme Court to be allowed except under this Act**

No appeal shall be allowed from any conviction, order, determination, or adjudication of the kind mentioned in section 163(1), nor shall any such conviction, order, determination, or adjudication be removed into the Supreme Court, except as provided by this Act.

**165 Power of Supreme Court to dispense with conditions precedent to appeal where compliance impracticable**

The Supreme Court may dispense with compliance with any condition precedent to the right of appeal, as prescribed by this Act, if, in its opinion, the appellant has done whatever is reasonably practicable to comply with this Act.

**166 Amendment of notice of appeal**

No appeal shall be defeated merely by reason of any defect, whether of substance or of form, in any notice or statement of the grounds of appeal, but if upon the hearing thereof the Supreme Court is of opinion that any objection raised to the notice or statement is valid, it may cause the notice or statement to be forthwith amended:

Provided that if the notice or statement appears to have been misleading, or to have occasioned expense, or to have prejudiced the respondent, the amendment shall be allowed only upon such terms as to costs or postponement, or both, as the Supreme Court thinks just.

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**167 Recognizances on appeal**

- (1) Every recognizance on appeal shall be entered into before the Justices whose decision is appealed against, or some other Justice, and shall be conditioned duly to prosecute the appeal, and to abide the order of the Supreme Court thereon, and to pay such costs as may be awarded by that Court.
- (2) Subject to this section, the Justice or Justices taking the recognizance may in their discretion require one or more sureties to be bound by the recognizance for the due performance of the conditions thereof, in such sum or sums as the Justice or Justices think fit.
- (3) Where notice of appeal has been given and the respondent is a member of the Police Force of the Northern Territory, a Justice shall not take a recognizance on appeal unless he is satisfied that the appellant has given to the officer-in-charge of the police station nearest the Justice notice in writing of his intention to enter into a recognizance on appeal before the Justice on a date and at a time specified in the notice.
- (4) A member of the Police Force of the Northern Territory may appear before a Justice proposing to take a recognizance and be heard on the question of the amount of the bond, the necessity for sureties and the amount in which the sureties (if any) shall be bound.
- (5) In relation to an order dismissing a complaint, not being a complaint of any offence, the Court making the order may order that if the decision is appealed against no recognizance shall be entered into.
- (6) Where the Court so orders no recognizance on appeal shall be entered into.
- (7) When any fine or sum of money is adjudged to be paid by a conviction or order, a person appealing against the conviction or order may, at his option:
  - (a) enter into a recognizance on appeal; or
  - (b) pay into Court:
    - (i) the amount of the fine or sum of money adjudged to be paid; and
    - (ii) the amount of \$20, to abide the order of the Supreme Court on the appeal.

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- (8) Unless a recognizance on appeal is entered into before a Stipendiary Magistrate or a Special Magistrate, any surety bound by the recognizance shall make an affidavit as to his means of paying the sum in which he is bound.

**168 Release of appellant in custody**

- (1) Where the appellant is in custody pursuant to the conviction or order appealed against, a Special Magistrate or a Justice may, subject to this section, if satisfied that his appeal has been duly instituted, release him on bail in accordance with the *Bail Act*, subject to an undertaking that he appear before the Justice or Justices whose decision is appealed against, or if that is impracticable, before some other Justice or Justices, within 14 days of the day on which the Supreme Court announces its decision on the appeal, to abide the result of the decision, unless the conviction or order is reversed.
- (2) The appellant shall give the respondent reasonable notice of his intention to apply for release.
- (3) The respondent may object to the application for release.
- (4) An appellant who has instituted his appeal and is not released pursuant to this section shall, pending the determination of his appeal and for so long as he is not in custody for some other cause, be treated in the same manner as a person who is committed for trial and is in custody awaiting trial.
- (5) If as a result of his appeal the appellant is required to serve a term of imprisonment, subject to the direction of the Supreme Court, the time during which the appellant is in custody and is specially treated shall count as part of the whole of that term.

**169 Amendment of recognizances on appeal**

- (1) If any recognizance entered into as a condition of any appeal appears to the Supreme Court to have been insufficiently entered into, or to be otherwise defective or invalid, that Court may:
- (a) permit the substitution of a new and sufficient recognizance to be entered into before it, in the place of the insufficient, defective, or invalid recognizance; or
- (b) dispense with the recognizance,

and in either case upon such terms as to adjournment and costs as it thinks just.

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- (2) Every such substituted recognizance shall be as valid and effectual and may be enforced as if it had been duly entered into in the first instance.

**170 After decision on appeal Justices may enforce same**

- (1) When any finding of guilt or order has been affirmed, amended, or made upon any appeal, the Justices from whose decision the appeal has been brought, or any other Justice, shall have the same authority to enforce the finding of guilt or order as if it had not been appealed against, or had been made in the first instance.
- (1A) If a person found guilty and committed to gaol appeals and is released on bail under the *Bail Act* pending the outcome of his appeal, and the Court on appeal orders that the balance or some part of the balance of his sentence be served, the Justices from whose decision the appeal has been brought or any other Justice may by warrant remand the appellant to his former custody, there to serve the balance of the term to be served by him.
- (2) No action or proceeding whatsoever shall be commenced or had against any Justice for enforcing the finding of guilt or order by reason of any defect in the finding of guilt or order.

**171 Appeal to be instituted within one month**

- (1) The appeal shall be instituted by notice in accordance with section 172, by entering into such recognizance on appeal as is required under sections 167 and 168 and by payment of the fee specified in section 172.
- (2) Every appeal shall be instituted within one month from the time of the conviction, order, or adjudication appealed against: Provided that where the Judge of the Supreme Court is of opinion that, by reason of the remoteness from the seat of the Court of Appeal of the place at which the conviction, order, determination, or adjudication was effected or made, an extension of the time within which notice of appeal from the conviction, order, determination, or adjudication may be given is reasonable, he may extend that time for such further period, not exceeding 3 months, as he thinks fit.

**172 Notice of appeals**

- (1) The notice of appeal shall be in writing, and shall be served upon the respondent, and shall state:
- (a) that the appellant appeals to the Supreme Court at the sittings of the Supreme Court for hearing appeals under this Act commencing at Darwin or Alice Springs, as the case requires,

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on a day specified in the notice in accordance with subsection (2); and

- (b) the nature and grounds of the appeal.
- (2) The day specified in the notice shall be a day on which sittings of the Supreme Court for hearing appeals under this Act will, in accordance with the rules of the Supreme Court, if practicable, commence at Darwin or Alice Springs, whichever is nearer to the place at which the decision appealed against was made and shall be the first such day after the expiration of 21 days from the service of the notice.
- (3) Two copies of the notice of appeal shall be served upon the clerk of the Justices whose decision is appealed against, and shall be accompanied by the prescribed fee or, where there is no prescribed fee, a fee of \$3.

### **173 Hearing of appeals**

An appeal shall unless it has been summarily dismissed be heard at the sittings of the Supreme Court for hearing appeals under this Act commencing at Darwin or Alice Springs, as the case requires, on the day specified in the notice of appeal in accordance with section 172(1), or if sittings are not commenced there on that day, the first sittings commencing there after that day; but this section shall not affect the power of the Supreme Court to adjourn the hearing to any time or place it thinks fit.

### **174 Convictions, &c., to be transmitted to Supreme Court**

- (1) When notice of appeal is served pursuant to section 172 and the fee mentioned in that section is paid the Justices by whom the conviction, order, or adjudication is made shall cause the conviction, order, or adjudication to be forthwith transmitted to the clerk or other proper officer of the Supreme Court, there to be kept among the records of that Court.
- (2) In any subsequent proceeding relative thereto the conviction, order, or adjudication, or a copy thereof certified by the proper officer of the Supreme Court under his hand, shall be sufficient evidence thereof.

### **175 Transmission of copy of depositions to Supreme Court on appeal**

The Justices shall also cause a copy of the notice of appeal, together with the fee paid pursuant to section 172 and a copy, certified by writing under the hand of the clerk for the relevant

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district to be a true copy, of a transcript of the record or of the record, as the case requires, of the depositions of the witnesses or all exhibits tendered in the relevant proceeding to be transmitted with the conviction, order, or adjudication.

**175A      Transmission of documents to Supreme Court deemed to be a tendering in evidence to that Court**

Where, under section 174(1) or 175, a document or exhibit referred to in either of those sections is transmitted to the Supreme Court, the transmission of the document or exhibit shall be deemed to be a tendering in evidence to that Court of that document or exhibit.

**176      Evidence on appeal**

Subject to section 176A, no evidence shall be received on the hearing of the appeal other than such documents or exhibits as are mentioned in sections 174 and 175 and a record, made by means of sound-recording apparatus or shorthand, of the depositions of a witness in the relevant proceeding produced out of the custody of the clerk for the relevant district, except by consent of the parties.

**176A      Tendering of evidence to Supreme Court**

- (1) Where evidence is tendered to the Supreme Court, that Court shall, unless it is satisfied that the evidence, if received, would not afford a ground for allowing the appeal, admit that evidence if:
  - (a) it appears to it that that evidence is likely to be credible and would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal;
  - (b) it is satisfied that that evidence was not adduced in those proceedings and there is a reasonable explanation for the failure to adduce it; and
  - (c) it is satisfied that the appellant has complied with the requirements of subsections (2) and (3) in respect of that evidence.
- (2) An appellant shall not, under subsection (1), tender evidence to the Supreme Court unless he has, not less than 7 days before the hearing of the appeal to which the evidence relates is commenced by that Court, given, subject to subsection (3), written notice to the other party to the proceedings of the evidence to be so tendered including, where such evidence is to be given by a person, irrespective of whether it is to be given orally or by affidavit, the name, address and occupation of the person.

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- (3) For the purposes of subsection (2), an appellant shall give a notice referred to in that subsection by delivering or leaving it at, or by sending it by registered post service to, the last known residential or business address of:
- (a) the other party to the proceedings; or
  - (b) the solicitor, if any, of the other party to the proceedings.

### **177 Procedure and power of Supreme Court on appeal**

- (1) Every appeal shall be heard and determined by the Supreme Court in a summary way, and according to the rules of practice in force with reference to the proceedings of the Court in that behalf, and the Supreme Court shall have all the powers and duties, as to amendment and otherwise, of the Justices whose decision is appealed from.
- (2) Upon the hearing of the appeal the Supreme Court may:
- (a) adjourn the hearing from time to time;
  - (b) mitigate or increase any penalty, forfeiture, or sum;
  - (c) affirm, quash, or vary the conviction, order, or adjudication appealed from, or substitute or make any conviction, order, or adjudication which ought to have been made in the first instance;
  - (d) remit the case for hearing or for further hearing before the Court of Summary Jurisdiction;
  - (e) make such further or other order as to costs or otherwise as it thinks fit; or
  - (f) notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.
- (3) The Supreme Court may upon such terms as it thinks fit at any time before the order of dismissal is drawn up and sealed reinstate any appeal dismissed for want of prosecution.



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**178 If costs not paid according to order of Supreme Court, certificate to be granted**

- (1) When the Supreme Court makes any order as to the costs of the appeal it shall direct the costs to be paid to the Master or other proper officer of the Supreme Court, to be by him paid over to the party entitled thereto, and may state a time within which the costs are to be paid.
- (2) If the costs are not paid within the time so limited (or if no time is so limited, then within 7 days) the Master or other proper officer of the Supreme Court, upon application of the party entitled to the costs of any person on his behalf, and on payment of the fee of 10 cents, shall grant to the party so applying a certificate that the costs have not been paid.

**179 Enforcement of payment of costs of appeal**

- (1) Upon production of the certificate mentioned in section 178 to any Justice the payment of the costs may be enforced in the same manner as is provided by this Act for enforcing the payment of costs awarded by Justices, or by putting the recognizances (if any) in suit, or in both of those modes.
- (2) The payment of the costs may be enforced under the same warrant as any penalty or sum adjudged to be paid by any conviction or order affirmed or made upon the appeal.

**Part VIA Reciprocal enforcement of fines against bodies corporate****180A Definitions**

In this Part, unless the contrary intention appears:

**conviction** means a finding of guilt or order entered or made by a Court in the exercise of summary jurisdiction in proceedings for an offence.

**fine** includes:

- (a) a pecuniary penalty, pecuniary forfeiture and pecuniary compensation; and
- (b) fees, charges and costs payable by a body corporate under an order made in proceedings in which a conviction was entered in respect of the body corporate.

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**reciprocating court** means a court, or a court included in a class of courts, declared under section 180B to be a reciprocating court or a reciprocating court included in a class of reciprocating courts.

**relevant officer**, in relation to a reciprocating court, means the clerk or other corresponding officer of the Court.

**State** includes a Territory other than the Northern Territory.

**Territory fine** means a fine payable under a conviction of the Court.

### **180B Declaration of reciprocating court**

Where a State of the Commonwealth has laws providing for enforcement in the State of a Territory fine against a body corporate, the Minister may, by notice in the *Gazette*:

- (a) declare a court of summary jurisdiction in that State to be a reciprocating court; or
- (b) declare a class of courts of summary jurisdiction in that State to be a class of reciprocating courts.

### **180C Enforcement of fine**

- (1) Where, under a conviction of a reciprocating court, a fine is payable by a body corporate having or appearing to have property in the Territory and the clerk at or near to a place where the body corporate has or appears to have property receives a request in writing from the relevant officer of the reciprocating court for the enforcement of the conviction, accompanied by:

- (a) a copy, certified by the relevant officer to be correct, of the conviction; and
- (b) a certificate under the hand of the relevant officer specifying the amount of the fine that remains unpaid,

the clerk shall:

- (c) register the conviction by filing in the Court the certified copy of the conviction; and
- (d) note, on the certified copy referred to in paragraph (c), the date of the registration referred to in that paragraph relating to that certified copy.

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- (2) Upon the registration under subsection (1)(c) of a conviction:
- (a) the conviction shall, for the purposes of this Part, be deemed to be a conviction of the Court adjudging payment of a fine by the body corporate in the amount specified as unpaid in the certificate referred to in subsection (1)(b) relating to that conviction;
  - (b) the clerk shall issue a warrant of distress for the purpose of recovering the amount referred to in paragraph (a); and
  - (c) this Act shall, subject to this section, apply to and in relation to the warrant referred to in paragraph (b) and the execution of that warrant as if that warrant had been issued in connection with a conviction of the Court.
- (3) Where a request is made under subsection (1) in respect of a fine payable under a conviction of a reciprocating court and the clerk, after the request, receives a notification from the relevant officer of the reciprocating court of payment of an amount in satisfaction in whole or in part of the amount of the fine, the clerk shall note the particulars of the payment on the certified copy of the conviction filed in accordance with subsection (1)(c).
- (4) Where:
- (a) a warrant is issued under subsection (2)(b) in respect of a fine; and
  - (b) before execution of the warrant, the clerk receives a notification referred to in subsection (3) relating to the fine,
- the clerk shall arrange for the return of that warrant and, upon its return, he shall:
- (c) where the amount of the fine has been paid in full – withdraw that warrant; or
  - (d) where part of the amount of the fine remains unpaid – amend that warrant to show the amount still unpaid.
- (5) Where a warrant issued under subsection (2)(b) is amended in pursuance of subsection (4)(d), the warrant shall be enforced in respect of the amount of the fine for the time being shown in that warrant as unpaid.

- (6) Where a sum of money is paid to the clerk in satisfaction in whole or in part of a fine payable under a conviction registered under subsection (1)(c), the clerk shall remit the sum of money to the relevant officer of the reciprocating court by which the conviction was entered.
- (7) For the purposes of this section, a document that purports to have been signed by the relevant officer of a reciprocating court shall be taken to have been so signed unless the contrary is proved.

**180D        Effect of enforcement by reciprocating court**

A sum of money received by the clerk from a reciprocating court in satisfaction in whole or in part of a Territory fine shall be applied by the clerk as if the sum had been paid to him by the body corporate by which the fine was payable in satisfaction in whole or in part of the fine.

**180E        Clerk to notify payment of Territory fine**

Where:

- (a) a conviction of the Court under which a fine is payable is registered by the relevant officer of a reciprocating court; and
- (b) a sum of money is received by the clerk in satisfaction in whole or in part of the fine,

the clerk shall, as soon as practicable, notify the relevant officer of the amount of that payment.

**Part VII            Supplementary provisions**

**Division 1        Irregularities and amendment**

**181        Form of information or complaint**

It shall be sufficient in any information or complaint, if the information or complaint gives the defendant a reasonably clear and intelligible statement of the offence or matter with which he is charged.

**182        Information or complaint not to be objected to for irregularity**

No objection shall be taken or allowed to any information or complaint in respect of:

- (a) any alleged defect therein, in substance or in form; or

- (b) any variance between it and the evidence adduced in its support at the preliminary examination or at the hearing (as the case may be):

Provided that the Court shall dismiss the information or complaint, unless it is amended as provided by section 183, if it appears to him or to it:

- (a) that the defendant has been prejudiced by the defect or variance; or
- (b) that the information or complaint fails to disclose any offence or matter of complaint.

### **183 Amendment of information or complaint**

If it appears to the Court before whom any defendant comes or is brought to answer any information or complaint that the information or complaint:

- (a) fails to disclose any offence or matter of complaint, or is otherwise defective; and
- (b) ought to be amended so as to disclose an offence or matter of complaint, or otherwise to cure the defect,

the Court may amend the information or complaint upon such terms as may be just.

### **183A Complaint and information may be joined in certain circumstances**

Notwithstanding any other provision of this Act, where the Court has jurisdiction to deal with both:

- (a) a charge specified in a complaint; and
- (b) a charge specified in an information,

relating to the same defendant and arising from the same or associated circumstances, the Court may deal with both the complaint and information together.

### **184 Warrant or summons not to be objected to for irregularity**

No objection shall be taken or allowed to any warrant or summons in respect of:

- (a) any alleged defect therein, in substance or in form; or

- (b) any variance between it and the evidence adduced in support of the information or complaint at the preliminary examination or at the hearing (as the case may be):

Provided that the Court may adjourn the hearing, if it appears to him or to it that the defendant has been prejudiced by the defect or variance.

**185 Amendment of findings of guilt, warrants, &c.**

- (1) Any:

- (a) finding of guilt or order made by a Court of Summary Jurisdiction; or
- (b) warrant of committal, or other warrant or proceeding issued or had by or before any Justice,

may be amended, according to the evidence, by the Justices or Justice by or before whom the finding of guilt, order, or warrant was made, issued, or had, or by any Court before which it comes, on appeal or otherwise, at any time after it has been signed, and before it has been executed, upon such (if any) terms as to costs, or otherwise, as to the Justices or Justice or the Court seem fit.

- (2) Without limiting the generality of subsection (1), a Court of Summary Jurisdiction may at any time correct a clerical mistake in any of the terms of a judgment, finding of guilt or order, or an error arising in any such terms from an accidental slip or omission.

**186 Findings of guilt, &c., not voidable for want of form, &c.**

- (1) No finding of guilt or order of the Court, or other proceeding before Justices, shall be void or voidable, or liable to be quashed, annulled, or set aside in any manner, by reason of any deficiency in the statement of the offence therein described, if the offence is stated in the words of the Special Act, or if it appears that the offence was one against the true intent and meaning of the Special Act.
- (2) No judgment, finding of guilt, or order of the Court, or other proceeding before Justices, shall be quashed or set aside for any mere matter of form or technical error, or mistake in any name, date, or title, or in any matter of description only; but in all cases regard shall be had alone to the substantial merits and justice of the case.

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**187 Parties not to be discharged upon defects in warrants provided finding of guilt took place upon good grounds**

No warrant of commitment issued upon any finding of guilt of the Court shall be held void or invalid, or be quashed, for any defect in substance or in form, nor shall any party be entitled to be discharged out of custody on account of any such defect, provided:

- (a) it is alleged in the warrant that the party has been found guilty of an offence; and
- (b) it appears to the Court or Judge before whom the warrant is returned that the finding of guilt proceeded on good and valid grounds.

**187A Proof of findings of guilt by minute on complaint**

- (1) Any finding of guilt or order whatsoever made by the Court may be proved by a copy of the information or complaint on which the finding of guilt or order was made, and of the minute or memorandum thereof made by the Court and endorsed on the complaint. One copy shall be certified by the person or one of the persons constituting the Court by which the finding of guilt or order was made or by the clerk of the relevant district or by the deputy of the clerk.
- (2) No proof shall be required of the signature or judicial or official character of the person appearing to have signed any such copy as is referred to in subsection (1).
- (3) This section shall apply to any finding of guilt whether made before or after the commencement of this Act, and shall be in addition to and not in substitution for any other enactment providing a mode of proving findings of guilt or orders.

**Division 2 Habeas corpus**

**188 After summary finding of guilt or order habeas not to issue except on an affidavit writ to be returnable at least 4 days after issue, and notice to be given thereof**

- (1) No writ of habeas corpus shall issue to bring up the body of any person who has been found guilty by the Court, or adjudged by any such Court to pay any sum or perform any duty, unless the person or his solicitor or agent states in an affidavit, in writing and duly sworn, the ground of objection to the finding of guilt or proceedings.
- (2) Upon the return to the writ, no objection shall be taken or considered unless it has been so stated.

- (3) There shall be an interval of at least 4 clear days between the day upon which any such writ issues and the day upon which it is returnable, and no such writ shall issue without notice to the committing Justice, or to the Director of Public Prosecutions, and to the opposite party or his solicitor.
- (4) Such notice shall be in writing, and shall be given to them or left at their respective dwelling-places or offices at least 4 clear days before the return of the writ.
- (5) No return to any such writ shall be considered by any Court or Judge unless it is proved by affidavit that notice has been given as required by this section.
- (6) Any writ issuing without such notice, or not being in conformity to the directions contained in this section, shall be void to all intents and purposes whatsoever.

### **Division 3      Proceedings against and protection to Justices**

### **Division 4A      Rules and practice directions**

#### **201A      Rules and procedures**

- (1) For the purpose of the Court exercising the jurisdiction conferred on the Court by this or any other Act, the Chief Magistrate, within the meaning of the *Magistrates Act*, may make rules and give practice directions:
  - (a) regulating the practice and procedures of the Court;
  - (b) regulating the enforcement of an order of the Court; and
  - (c) regulating and prescribing all matters and things incidental or relating to court practice or procedure or enforcement,as the Chief Magistrate considers necessary or convenient for the conduct of the business of the Court.
- (2) Without limiting the generality of subsection (1), the Rules may:
  - (a) prescribe fees, costs and charges in respect of a proceeding in the Court;
  - (b) enable the hearing of a proceeding to be conducted by telephone or closed circuit television;



- (c) provide for officers of the Court and their functions and may confer a discretionary authority on an officer or class of officers; and
  - (d) provide for the exemption of a person or proceeding, or a class of persons or proceedings, from the application of the Rules or a particular rule.
- (3) The Rules may impose or confer on a clerk the functions and powers in relation to the Court and proceedings before the Court and a clerk is to perform those functions and may exercise those powers accordingly.
- (4) Subject to this Act and the Regulations, the practice and procedures of the Court in relation to a proceeding within its jurisdiction are in the discretion of the Court.

## **Division 4      Charges and regulations**

### **202      Penalty for extortion**

No clerk shall take, accept, or receive from any person any fee, gratuity, or reward not allowed by law, or greater in amount than is so allowed.

Penalty:      \$50.

### **203      Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act and in particular prescribing:

- (a) the places at which the Court shall or may sit, and the constitution and holding of the Court thereat;
- (b) the practice and procedure before Justices and the Court;
- (c) the fees to be paid for a matter or thing required or permitted to be done under this Act and the circumstances in which such fees may be waived by the clerk;
- (d) the forms to be used under this Act, including the form of any recognizance mentioned in this Act;

- (e) the duties of clerks and the form of any record or account required to be kept by them, and providing for the discontinuance of any existing record or account rendered unnecessary by those regulations.

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## Schedule 3

sections 22, 57 and 57A

### NORTHERN TERRITORY OF AUSTRALIA

#### *Justices Act*

#### SUMMONS TO A PERSON ON COMPLAINT

To \_\_\_\_\_ of \_\_\_\_\_

Whereas you have this day been charged by \_\_\_\_\_

of \_\_\_\_\_ before the undersigned, a Justice of the Peace for the Northern Territory of Australia, for that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, in the Northern Territory of Australia you did \_\_\_\_\_.

These are therefore to command you to be and appear on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at \_\_\_\_\_

in the said Territory before me or such other Justice or Justices of the Peace for the said Territory as may then be there, to answer the said charge, and to be further dealt with according to law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,

at \_\_\_\_\_ in the said Territory.

Justice of the Peace

You must either appear in Court on the date shown to plead guilty or not guilty or, if you prefer that the Court should take your plea of guilty without your going to Court, you must sign the "Endorsement" hereunder and deliver it to the Court where this summons requires you to appear or to the nearest police station in the Northern Territory.

#### Endorsement

I have read the terms of the charge against me herein specified and I acknowledge my commission of the offence charged and plead guilty thereto.

I offer the following explanation for the acts alleged in the summons to be an offence:

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AFFIDAVIT OF SERVICE

I \_\_\_\_\_ of \_\_\_\_\_

make oath and say [or affirm] that I did on the

day of \_\_\_\_\_ 19 , between the hours of

and \_\_\_\_\_ in the \_\_\_\_\_ noon, at

in the Northern Territory duly serve the within-named defendant with this summons by delivering 2 copies of the summons to him personally [or by leaving 2 copies of the summons with him at his last-known place of abode (or of business) with some other person apparently an inmate of that place (or employed in that place) and apparently not less than 16 years of age].

Sworn [or affirmed] before me

at

on \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Justice of the Peace

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## ENDNOTES

### 1 KEY

Key to abbreviations

|                       |                              |
|-----------------------|------------------------------|
| amd = amended         | od = order                   |
| app = appendix        | om = omitted                 |
| bl = by-law           | pt = Part                    |
| ch = Chapter          | r = regulation/rule          |
| cl = clause           | rem = remainder              |
| div = Division        | renum = renumbered           |
| exp = expires/expired | rep = repealed               |
| f = forms             | s = section                  |
| Gaz = Gazette         | sch = Schedule               |
| hdg = heading         | sdiv = Subdivision           |
| ins = inserted        | SL = Subordinate Legislation |
| lt = long title       | sub = substituted            |
| nc = not commenced    |                              |

### 2 LIST OF LEGISLATION

***Justices Ordinance 1928 (Act No. 26, 1928)***

|             |  |
|-------------|--|
| Assent date | 30 November 1928   |
| Commenced   | 1 August 1929 ( <i>North Australian Gaz</i> 26 April 1929) |

***Justices Ordinance 1929 (Act No. 17, 1929)***

|             |                |
|-------------|----------------|
| Assent date | 29 August 1929 |
| Commenced   | 1 August 1929  |

***Justices Ordinance 1931 (Act No. 2, 1931)***

|             |                  |
|-------------|------------------|
| Assent date | 26 February 1931 |
| Commenced   | 26 February 1931 |

***Justices Ordinance 1933 (Act No. 12, 1933)***

|             |                  |
|-------------|------------------|
| Assent date | 7 September 1933 |
| Commenced   | 7 September 1933 |

***Justices Ordinance 1939 (Act No. 6, 1939)***

|             |             |
|-------------|-------------|
| Assent date | 18 May 1939 |
| Commenced   | 18 May 1939 |

***Justices Ordinance 1952 (Act No. 31, 1952)***

|             |  |
|-------------|--|
| Assent date | 5 September 1952   |
| Commenced   | 23 February 1953 ( <i>North Australian Gaz</i> No. 7,<br>18 February 1953) |

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**Justices Ordinance 1957 (Act No. 16, 1957)**

Assent date 12 April 1957  
Commenced 12 April 1957

**Amending Legislation**

**Justices Ordinance 1961 (Act No. 31, 1961)**

Assent date 13 September 1961  
Commenced 13 September 1961

**Justices Ordinance 1961 (Act No. 31, 1961)**

Assent date 13 September 1961  
Commenced 13 September 1961

**Justices Ordinance 1964 (Act No. 69, 1964)**

Assent date 18 December 1964  
Commenced 18 December 1964

**Justices Ordinance 1965 (Act No. 60, 1965)**

Assent date 17 December 1965  
Commenced 14 February 1966 (s 2)

**Justices Ordinance (No. 2) 1970 (Act No. 67, 1970)**

Assent date 10 December 1970  
Commenced 10 December 1970

**Justices Ordinance 1970 (Act No. 76, 1970)**

Assent date 18 December 1970  
Commenced 18 December 1970 (s 2, s 2 *Records of Depositions Ordinance 1970* (Act No. 44, 1970) and *Gaz No. 50A*, 18 December 1970, p 365)

**Justices Ordinance 1973 (Act No. 19, 1973)**

Assent date 8 May 1973  
Commenced 14 June 1973 (*Gaz No. 24*, 14 June 1973, p 199)

**Justices Ordinance (No. 2) 1973 (Act No. 50, 1973)**

Assent date 18 July 1973  
Commenced 25 October 1973 (*Gaz No. 42*, 18 October 1973, p 377)

**Justices Ordinance (No. 3) 1973 (Act No. 86, 1973)**

Assent date 11 December 1973  
Commenced 16 May 1974 (*Gaz No. 20*, 16 May 1974)

**Ordinances Revision Ordinance 1973 (Act No. 87, 1973)**

Assent date 11 December 1973  
Commenced 11 December 1973 (s 12(2))

**Amending Legislation**

**Ordinances Revision Ordinance 1974 (Act No. 34, 1974)**

Assent date 26 August 1974  
Commenced 11 December 1973 (s 3(2))

**Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)**

Assent date 24 October 1974  
Commenced 11 December 1973 (s 3)

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***Ordinances Revision Ordinance 1976 (Act No. 27, 1976)***

Assent date 28 June 1976  
 Commenced ss 1, 2 and 6: 28 June 1976 (s 6(2));  
 ss 3 and 4: 11 December 1973; s 5: 24 October 1974

***Justices Ordinance 1974 (Act No. 54, 1974)***

Assent date 30 September 1974  
 Commenced 28 October 1974 (*Gaz No. 42*, 17 October 1974, p 475)

***Justices Ordinance (No. 2) 1974 (Act No. 63, 1974)***

Assent date 21 October 1974  
 Commenced 21 October 1974

***Justices Ordinance (No. 2) 1975 (Act No. 19, 1975)***

Assent date 30 July 1975  
 Commenced 30 July 1975

***Justices Ordinance 1975 (Act No. 20, 1976)***

Assent date 27 May 1976  
 Commenced 27 May 1976

***Ordinances Revision Ordinance 1976 (Act No. 27, 1976)***

Assent date 28 June 1976  
 Commenced ss 1, 2 and 6: 28 June 1976 (s 6(2));  
 ss 3 and 4: 11 December 1973; s 5: 24 October 1974

***Justices Ordinance 1976 (Act No. 5, 1977)***

Assent date 10 February 1977  
 Commenced 4 April 1977 (s 2, s 2 *Magistrates Ordinance 1976* (Act No. 4, 1977) and *Gaz No. 13A*, 4 April 1977, p 492)

***Transfer of Powers (Further Provisions) Ordinance 1977 (Act No. 51, 1977)***

Assent date 9 December 1977  
 Commenced 1 January 1978 (s 2)

***Justices Ordinance 1978 (Act No. 45, 1978)***

Assent date 29 June 1978  
 Commenced 1 July 1978 (s 3)

***Transfer of Powers (Self-Government) Ordinance 1978 (Act No. 54, 1978)***

Assent date 1 July 1978  
 Commenced 1 July 1978 (s 2)

***Law Officers Ordinance 1978 (Act No. 61, 1978)***

Assent date 1 July 1978  
 Commenced 1 July 1978

***Justices Act (No. 2) 1978 (Act No. 6, 1979)***

Assent date 17 January 1979  
 Commenced 17 January 1979

***Justices Act 1979 (Act No. 149, 1979)***

Assent date 12 December 1979  
 Commenced 12 December 1979

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**Statute Law Revision Act (No. 3) 1979 (Act No. 37, 1980)**

Assent date 24 April 1980  
Commenced 24 April 1980

**Limitation Act 1981 (Act No. 87, 1981)**

Assent date 21 September 1981  
Commenced 26 February 1982 (*Gaz G8*, 26 February 1982, p 2)

**Justices Amendment Act 1981 (Act No. 109, 1981)**

Assent date 21 December 1981  
Commenced 21 December 1981

**Amending Legislation**

**Justices Amendment Act 1983 (Act No. 2, 1983)**

Assent date 27 April 1983  
Commenced 10 June 1983 (*Gaz G23*, 10 June 1983, p 8)

**Statute Law Revision Act 1982 (Act No. 21, 1982)**

Assent date 27 April 1982  
Commenced 27 April 1982

**Justices Amendment Act 1982 (Act No. 62, 1982)**

Assent date 8 October 1982  
Commenced 29 June 1983 (s 2, s 2 *Bail Act 1982* (Act No. 57, 1982) and *Gaz S19*, 29 June 1983)

**Justices Amendment Act 1983 (Act No. 2, 1983)**

Assent date 27 April 1983  
Commenced 10 June 1983 (*Gaz G23*, 10 June 1983, p 8)

**Justices (Criminal Code) Amendment Act 1983 (Act No. 66, 1983)**

Assent date 28 November 1983  
Commenced 1 January 1984 (s 2, s 2 *Criminal Code Act 1983* (Act No. 47, 1983), *Gaz G46*, 18 November 1983, p 11 and *Gaz G8*, 26 February 1986, p 5)

**Justices Amendment Act 1984 (Act No. 2, 1984)**

Assent date 3 April 1984  
Commenced 3 April 1984

**Justices Amendment Act (No. 2) 1984 (Act No. 10, 1984)**

Assent date 29 June 1984  
Commenced 29 June 1984 (s 2 and s 2 *Criminal Code Amendment Act 1984* (Act No. 9, 1984))

**Justices Amendment Act 1985 (Act No. 10, 1985)**

Assent date 1 April 1985  
Commenced 1 May 1985 (*Gaz G17*, 1 May 1985, p 7)

**Law Officers Amendment Act (No. 2) 1986 (Act No. 48, 1986)**

Assent date 10 December 1986  
Commenced 19 December 1986 (*Gaz S87*, 17 December 1986)

**Justices Amendment Act 1988 (Act No. 33, 1988)**

Assent date 14 September 1988  
Commenced 14 September 1988



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***Justices Amendment Act (No. 3) 1988 (Act No. 55, 1988)***

Assent date 17 November 1988  
Commenced 1 August 1990 (*Gaz S47*, August 1990)

***Justices Amendment Act 1989 (Act No. 7, 1989)***

Assent date 28 March 1989  
Commenced 30 October 1989 (*Gaz S61*, 27 October 1989)

**Amending Legislation**

***Justices (Subsequential Amendments) Act 1989 (Act No. 54, 1989)***

Assent date 20 September 1989  
Commenced 20 September 1989

***Justices Amendment Act (No. 2) 1989 (Act No. 53, 1989)***

Assent date 20 September 1989  
Commenced 20 September 1989

***Director of Public Prosecutions (Consequential Amendments) Act 1990 (Act No. 29, 1990)***

Assent date 11 June 1990  
Commenced 21 January 1991 (s 2, s 2 *Director of Public Prosecutions Act 1990* (Act No. 35, 1990) and *Gaz G2*, 16 January 1991, p 9)

***Local Court (Consequential Amendments) Act 1990 (Act No. 31, 1990)***

Assent date 11 June 1990  
Commenced s 5: 11 June 1990; rem: 1 January 1991 (s 2, s 2 *Local Court Act 1989* (Act No. 31, 1990) and *Gaz G49*, 12 December 1990, p 2)

***Justices Amendment Act 1991 (Act No. 40, 1991)***

Assent date 26 September 1991  
Commenced s 7: 1 January 1992 (s 2(2), s 2 *Justices of the Peace Act 1991* (Act No. 42, 1991) and *Gaz G50*, 18 December 1991, p 3); rem: 1 November 1991 (*Gaz S58*, 1 November 1991)

***Justices Amendment Act (No. 2) 1991 (Act No. 41, 1991)***

Assent date 26 September 1991  
Commenced 1 January 1992 (*Gaz S65*, 20 December 1991)

***Statute Law Revision Act 1992 (Act No. 46, 1992)***

Assent date 7 September 1992  
Commenced 7 September 1992

***Justices Amendment Act 1992 (Act No. 68, 1992)***

Assent date 14 December 1992  
Commenced 1 January 1994 (s 2, s 2 *Domestic Violence Act 1992* (Act No. 67, 1992) and *Gaz G51*, 22 December 1993, p 3)

***Justices Amendment Act 1993 (Act No. 17, 1993)***

Assent date 16 June 1993  
Commenced 1 August 1993 (*Gaz G29*, 21 July 1993, p 3)

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**Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)**

Assent date 31 December 1993  
 Commenced 1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and *Gaz S35*, 20 May 1994)

**Justices Amendment Act 1994 (Act No. 14, 1994)**

Assent date 6 April 1994  
 Commenced 1 December 1994 (s 2)

**Amending Legislation**

**Statute Law Revision Act 1994 (Act No. 50, 1994)**

Assent date 20 September 1994  
 Commenced 20 September 1994 (s 10(2))

**Statute Law Revision Act 1995 (Act No. 14, 1995)**

Assent date 23 June 1995  
 Commenced 23 June 1995

**Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)**

Assent date 19 April 1996  
 Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz S15*, 13 June 1996)

**Justices Amendment Act 1996 (Act No. 35, 1996)**

Assent date 5 September 1996  
 Commenced 1 November 1996 (*Gaz G41*, 9 October 1996, p 4)

**Justices Amendment Act 1997 (Act No. 5, 1997)**

Assent date 26 March 1997  
 Commenced 4 May 1997 (*Gaz G17*, 30 April 1997, p 2)

**Statute Law Revision Act 1997 (Act No. 17, 1997)**

Assent date 11 April 1997  
 Commenced s 16: 10 December 1997; rem: 1 May 1997 (*Gaz G17*, 30 April 1997, p 2)

### 3 SAVINGS AND TRANSITIONAL PROVISIONS

s 17(2) *Justices Ordinance 1961* (Act No. 31, 1961)  
 ss 6(3) and 10(3) *Justices Ordinance 1973* (Act No. 19, 1973)  
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 s 4 *Justices Act (No. 2) 1978* (Act No. 6, 1979)  
 s 4 *Justices Amendment Act 1981* (Act No. 109, 1981)  
 s 5 *Justices Amendment Act 1983* (Act No. 2, 1983)  
 s 9 *Justices Amendment Act 1985* (Act No. 10, 1985)  
 s 4 *Justices Amendment Act 1993* (Act No. 17, 1993)

### 4 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Ordinances Revision Ordinance 1973* (Act No. 87, 1973) (as amended) to the following provisions: ss 4, 5, 8 – 11, 13, 17, 21, 25, 26, 26A, 27, 28, 31, 39, 40, 41, 43 – 46, 48, 52, 56, 57, 57A – 57E, 60, 62, 62A, 65, 75, 78, 79, 81, 83, 85, 87, 89, 91, 99, 100, 106A, 108A, 109, 113, 114, 117, 118, 120, 121, 123, 123A, 124, 128,

129, 130A, 130B, 131B – 131E, 135, 138, 141 – 144, 147, 153, 155, 156, 158 – 161, 162A, 163, 164, 167, 168, 171 – 175, 178 – 180, 182, 187A, 188, 194 – 197, 200, 202 and 203.

## 5 LIST OF AMENDMENTS

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| s 2        | amd No. 67, 1970, s 1; No. 21, 1982, s 2   |
| s 3        | amd No. 86, 1973, s 4<br>rep No. 54, 1974, s 4   |
| s 4        | amd No. 12, 1933, s 2; No. 16, 1957, s 2; No. 67, 1970, s 2; No. 19, 1973, s 4; No. 54, 1974, s 18; No. 27, 1976, s 6; No. 61, 1978, s 4; No. 21, 1982, s 2; No. 62, 1982, s 5; No. 10, 1985, s 4; No. 31, 1990, s 7; No. 40, 1991, s 7; No. 17, 1996, s 6 |
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| s 5        | amd No. 54, 1974, s 18; No. 21, 1982, s 2<br>rep No. 40, 1991, s 7   |
| ss 6 – 7   | amd No. 21, 1982, s 2<br>rep No. 40, 1991, s 7   |
| s 8        | amd No. 12, 1933, s 2; No. 21, 1982, s 2<br>rep No. 40, 1991, s 7  |
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| s 13       | amd No. 19, 1973, s 8<br>rep No. 5, 1977, s 7  |
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| ss 16 – 17 | rep No. 40, 1991, s 7  |
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| s 19       | amd No. 21, 1982, s 2; No. 2, 1983, s 6<br>rep No. 40, 1991, s 7   |
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| s 20       | amd No. 12, 1933, s 2; No. 21, 1982, s 2   |
| s 21       | rep No. 62, 1982, s 4  |
| s 22       | amd No. 50, 1973, s 4; No. 149, 1979, s 4; No. 21, 1982, s 2   |
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| s 27A        | ins No. 50, 1973, s 6<br>amd No. 54, 1974, s 18; No. 6, 1979, s 3; No. 149, 1979, ss 3 and 4; No. 21, 1982, s 2; No. 2, 1983, s 7; No. 33, 1988, s 3; No. 17, 1997, s 12 |
| s 28         | amd No. 50, 1973, s 7; No. 149, 1979, s 4; No. 17, 1997, s 12  |
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| s 30         | rep No. 62, 1982, s 4  |
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| s 57E        | ins No. 50, 1973, s 9<br>amd No. 149, 1979, s 4; No. 17, 1996, s 6   |
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| s 60B        | ins No. 55, 1988, s 3  |
| s 60C        | ins No. 55, 1988, s 3<br>amd No. 40, 1991, s 4   |
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| s 105A              | ins No. 63, 1974, s 4<br>amd No. 21, 1982, s 2  |
| s 105B              | ins No. 63, 1974, s 4<br>amd No. 149, 1979, s 4; No. 33, 1988, s 5  |
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| s 106A              | ins No. 31, 1961, s 12<br>amd No. 54, 1974, s 18; No. 21, 1982, s 2; No. 40, 1991, s 7; No. 5, 1997, s 3  |
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| s 109               | amd No. 12, 1933, s 21; No. 63, 1974, s 5   |
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| s 126        | amd No. 63, 1974, s 8; No. 5, 1997, s 8  |
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| s 131C       | ins No. 31, 1961, s 21<br>amd No. 60, 1965, s 13; No. 54, 1974, s 18; No. 20, 1976, s 9; No. 21, 1982, s 2<br>rep No. 66, 1983, s 7  |
| s 131D       | ins No. 31, 1961, s 21<br>amd No. 87, 1973, s 12<br>rep No. 66, 1983, s 7  |
| s 131E       | ins No. 31, 1961, s 21<br>rep No. 66, 1983, s 7  |
| ss 132 – 133 | amd No. 21, 1982, s 2; No. 17, 1996, s 6   |
| s 134        | amd No. 87, 1973, s 12; No. 54, 1974, s 7  |
| s 136        | sub No. 54, 1974, s 8<br>amd No. 62, 1982, s 13  |
| s 137        | amd No. 76, 1970, s 8  |
| s 138        | amd No. 21, 1982, s 2  |
| s 139        | amd No. 76, 1970, s 9; No. 54, 1974, ss 9 and 18; No. 61, 1978, s 4; No. 62, 1982, s 14; No. 48, 1986, s 9; No. 29, 1990, s 7  |
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| s 143        | amd No. 54, 1974, s 11<br>rep No. 62, 1982, s 4  |
| s 144        | amd No. 54, 1974, s 12<br>rep No. 62, 1982, s 4  |
| s 145        | amd No. 54, 1974, s 13<br>rep No. 62, 1982, s 4  |
| s 146        | amd No. 21, 1982, s 2<br>rep No. 62, 1982, s 4   |
| ss 147 – 148 | rep No. 62, 1982, s 4  |
| s 149        | amd No. 61, 1978, s 4<br>rep No. 62, 1982, s 4   |
| s 150        | rep No. 62, 1982, s 4  |
| s 152        | amd No. 76, 1970, s 10   |
| s 153        | amd No. 21, 1982, s 2  |
| ss 156 – 157 | amd No. 21, 1982, s 2  |
| s 158        | amd No. 21, 1982, s 2; No. 40, 1991, s 7   |
| s 159        | amd No. 21, 1982, s 2  |
| s 160        | amd No. 12, 1933, s 30; No. 87, 1973, s 12; No. 31, 1990, s 7  |
| s 161        | amd No. 31, 1961, s 22; No. 40, 1991, s 7  |
| s 162        | amd No. 12, 1933, s 31; No. 54, 1974, s 18   |
| s 162A       | ins No. 31, 1961, s 23<br>amd No. 87, 1973, s 12; No. 61, 1978, s 4; No. 48, 1986, s 9; No. 29, 1990, s 7                |
| s 163        | amd No. 12, 1933, s 32; No. 31, 1961, s 24; No. 54, 1974, s 18; No. 20, 1976, s 10; No. 21, 1982, s 2; No. 2, 1983, s 16 |
| s 164        | amd No. 21, 1982, s 2; No. 2, 1983, s 17   |
| s 165        | amd No. 21, 1982, s 2  |
| s 167        | amd No. 12, 1933, s 33; No. 16, 1957, s 4; No. 31, 1961, s 25; No. 60, 1965, s 14; No. 21, 1982, s 2                     |
| s 168        | amd No. 12, 1933, s 34<br>sub No. 31, 1961, s 26<br>amd No. 62, 1982, s 17   |
| s 170        | amd No. 12, 1933, s 35; No. 62, 1982, s 18; No. 17, 1996, s 6  |
| s 171        | amd No. 31, 1961, s 27; No. 21, 1982, s 2  |
| s 172        | sub No. 31, 1961, s 28<br>amd No. 60, 1965, s 15; No. 21, 1982, s 2; No. 2, 1983, s 18                                   |
| s 173        | amd No. 12, 1933, s 36<br>sub No. 31, 1961, s 28<br>amd No. 21, 1982, s 2  |
| s 174        | amd No. 31, 1961, s 29   |
| s 175        | amd No. 31, 1961, s 30; No. 76, 1970, s 11; No. 54, 1974, s 18; No. 2, 1983, s 19  |
| s 175A       | ins No. 2, 1983, s 20  |
| s 176        | amd No. 76, 1970, s 12; No. 87, 1973, s 12; No. 54, 1974, s 18; No. 20, 1976, s 11; No. 2, 1983, s 21                    |
| s 176A       | ins No. 20, 1976, s 12<br>sub No. 2, 1983, s 22<br>amd No. 17, 1997, s 12  |
| s 177        | amd No. 31, 1961, s 31; No. 54, 1974, s 18; No. 20, 1976, s 13; No. 2, 1983, s 23  |
| s 178        | amd No. 31, 1961, s 32; No. 60, 1965, s 16   |
| s 179        | amd No. 21, 1982, s 2  |
| s 180        | amd No. 20, 1976, s 14<br>rep No. 21, 1982, s 2  |
| pt VIA hdg   | ins No. 2, 1983, s 24  |
| s 180A       | ins No. 2, 1983, s 24<br>amd No. 17, 1996, s 6   |



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| ss 180B – 180E | ins No. 2, 1983, s 24  |
| ss 182 – 183   | amd No. 54, 1974, s 18   |
| s 183A         | ins No. 5, 1997, s 10  |
| s 184          | amd No. 54, 1974, s 18   |
| s 185          | amd No. 53, 1989, s 3; No. 17, 1996, s 6   |
| s 186          | amd No. 54, 1974, s 18; No. 21, 1982, s 2; No. 17, 1996, s 6   |
| s 187          | amd No. 54, 1974, s 18; No. 17, 1996, s 6  |
| s 187A         | ins No. 12, 1933, s 37   |
| s 188          | amd No. 54, 1974, s 18; No. 21, 1982, s 2; No. 17, 1996, s 6<br>amd No. 54, 1974, s 18; No. 61, 1978, s 4; No. 48, 1986, s 9; No. 29, 1990, s 7; No. 17, 1996, s 6 |
| ss 189 – 191   | rep No. 40, 1991, s 7  |
| s 192          | amd No. 21, 1982, s 2<br>rep No. 40, 1991, s 7   |
| s 193          | rep No. 40, 1991, s 7  |
| s 194          | amd No. 12, 1933, s 2<br>rep No. 87, 1981, s 3   |
| ss 195 – 196   | rep No. 87, 1981, s 3  |
| s 197          | amd No. 87, 1981, s 3<br>rep No. 40, 1991, s 7   |
| s 198          | amd No. 60, 1965, s 17<br>rep No. 40, 1991, s 7  |
| s 199          | rep No. 40, 1991, s 7  |
| s 200          | amd No. 21, 1982, s 2<br>rep No. 40, 1991, s 7   |
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| s 201          | sub No. 54, 1974, s 15<br>amd No. 21, 1982, s 2<br>rep No. 2, 1983, s 25   |
| s 202          | amd No. 60, 1965, s 18; No. 21, 1982, s 2; No. 12, 2010, s 3   |
| s 203          | amd No. 12, 1933, s 2; No. 54, 1974, ss 16 and 18; No. 37, 1980, s 22; No. 21, 1982, s 2; No. 2, 1983, s 26  |
| sch hdg        | om No. 87, 1973, s 12  |
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| sch 2          | sub No. 60, 1965, s 19<br>amd No. 76, 1970, s 13<br>rep No. 54, 1974, s 17   |
| sch 3          | ins No. 50, 1973, s 10<br>amd No. 87, 1973, s 12; No. 21, 1982, s 2  |