Examinable excerpts of

Criminal Procedure Act 2009

as at 11 April 2019

CHAPTER 2—COMMENCING A CRIMINAL PROCEEDING

PART 2.1—WAYS IN WHICH A CRIMINAL PROCEEDING IS COMMENCED

5 How a criminal proceeding is commenced

A criminal proceeding is commenced by—

(a) filing or signing a charge-sheet in accordance with section 6; or

(b) filing a direct indictment in accordance with section 159; or

(c) a direction under section 415 that a person be tried for perjury.

Note

A proceeding may also be commenced under section 83AL of the **Sentencing Act 1991**.

PART 2.2—CHARGE-SHEET AND LISTING OF MATTER

6 Commencement of a criminal proceeding in the Magistrates' Court

(1) A criminal proceeding is commenced—

(a) by filing a charge-sheet containing a charge with a registrar of the Magistrates' Court; or

(b) if the accused is arrested without a warrant and is released on bail, by filing a charge-sheet containing a charge with a bail justice; or

(c) if a summons is issued under section 14, at the time the charge-sheet is signed.

Note

A criminal proceeding against a child is commenced in the same manner in the Children's Court: section 528 of the **Children, Youth and Families Act 2005**.

(2) If a charge-sheet is filed in accordance with the method prescribed by the rules of court for electronic filing, the requirements of sections 8(1) and 9(1) of the **Electronic Transactions (Victoria) Act 2000** are taken to have been met.

(3) A charge-sheet must—

(a) be in writing; and

(b) be signed by the informant personally; and

(c) comply with Schedule 1.

Note

Section 18 requires an informant to nominate an address for service of documents and other details. That information may be included on a charge-sheet.

(4) The informant may include a request for a committal proceeding in a charge-sheet containing a charge for an indictable offence that may be heard and determined summarily.

7 Time limits for filing a charge-sheet

(1) A proceeding for a summary offence must be commenced within 12 months after the date on which the offence is alleged to have been committed except where—

(a) otherwise provided by or under any other Act; or

(b) the accused gives written consent, and the DPP or a Crown Prosecutor consent, to the proceeding being commenced after the expiry of that period.

Note

See Part 5.1A of Chapter 5 of the **Children, Youth and Families Act 2005** for a shorter time limit in relation to children.

(2) A proceeding for an indictable offence—

(a) may be commenced at any time, except where otherwise provided by or under this or any other Act; and

(b) may be heard and determined summarily even though the proceeding may have been commenced more than 12 months after the date on which the offence is alleged to have been committed.

…

8 Order for amendment of charge-sheet

(1) The Magistrates' Court at any time may order that a charge-sheet be amended in any manner that the court thinks necessary, unless the required amendment cannot be made without injustice to the accused.

(2) If a charge-sheet is amended by order under this section, the charge-sheet is to be treated as having been filed in the amended form for the purposes of the hearing and all proceedings connected with the hearing.

(3) An amendment of a charge-sheet that has the effect of charging a new offence cannot be made after the expiry of the period, if any, within which a proceeding for the offence may be commenced.

(4) If a limitation period applies to the offence charged in the charge-sheet, the charge-sheet may be amended after the expiry of the limitation period if—

(a) the charge-sheet before the amendment sufficiently disclosed the nature of the offence; and

(b) the amendment does not amount to the commencement of a proceeding for a new offence; and

(c) the amendment will not cause injustice to the accused.

9 Errors etc. in charge-sheet

(1) A charge-sheet is not invalid by reason only of a failure to comply with Schedule 1.

(2) A charge on a charge-sheet is not invalid by reason only of—

(a) omitting to state the time at which the offence was committed unless time is an essential element of the offence; or

(b) incorrectly stating the time at which the offence was committed; or

(c) stating the offence to have been committed on an impossible day or on a day that never happened.

10 Listing of matter for mention hearing or filing hearing in the Magistrates' Court

(1) If a charge-sheet contains a charge for a summary offence, the proceeding must be listed for a mention hearing.

(2) Subject to subsection (3), if a charge-sheet contains a charge for an indictable offence that may be heard and determined summarily, the proceeding may be listed for a mention hearing or a filing hearing, having regard to any request for a committal proceeding included on the charge-sheet.

(3) If a notice to appear is served under section 21 and a charge-sheet is filed in accordance with section 22, the proceeding must be listed for a mention hearing on the date specified in the notice to appear.

(4) Despite subsections (1) and (2), if a charge-sheet contains a charge for an indictable offence that is not an indictable offence that may be heard and determined summarily, the proceeding must be listed for a filing hearing.

Notes

1 A mention hearing is the first hearing for a charge that will be heard and determined summarily.

2 A filing hearing is the first stage in a committal proceeding under Chapter 4.

3 Section 28(1) sets out the indictable offences that may be heard and determined summarily.

11 Place of hearing

(1) A criminal proceeding in the Magistrates' Court is to be heard at the venue of the court that is nearest to—

(a) the place where the offence is alleged to have been committed; or

(b) the place of residence of the accused—

except where otherwise provided by this or any other Act or by a nomination under subsection (2).

Note

Part 2 of the **Magistrates' Court Act 1989** sets out the special requirements for matters that may be heard in the various Divisions of the Magistrates' Court: the Drug Court Division, the Koori Court Division, the Family Violence Court Division and the Neighbourhood Justice Division.

(2) The Chief Magistrate may from time to time, by notice published in the Government Gazette, nominate a venue of the Magistrates' Court as a venue for the hearing of a specified criminal proceeding or a specified class of criminal proceeding.

(3) A criminal proceeding in the Magistrates' Court is not invalid only because it was conducted at a venue of the court other than the venue referred to in subsection (1) or nominated under subsection (2).

PART 2.3—NOTIFYING ACCUSED OF COURT APPEARANCE

Division 1—Summons or warrant to arrest

12 Court may issue summons or warrant to arrest

(1) On the filing of a charge-sheet under section 6, an application may be made to a registrar of the Magistrates' Court for the issue of—

(a) a summons to answer to the charge directed to the accused; or

(b) a warrant to arrest in order to compel the attendance of the accused—

unless a notice to appear has been served on the accused under Division 2.

…

(2) An application under subsection (1)(b) must be made by the informant personally but an application under subsection (1)(a) may be made by the informant or a person on behalf of the informant.

(3) An application under subsection (1) may be made by the applicant in person or by post.

(4) On an application under subsection (1), the registrar must, if satisfied that the charge discloses an offence known to law, issue—

(a) a summons to answer to the charge; or

(b) subject to subsection (5), a warrant to arrest.

(5) A registrar of the Magistrates' Court must not issue in the first instance a warrant to arrest unless satisfied by sworn or affirmed evidence, whether oral or by affidavit, that—

(a) it is probable that the accused will not answer a summons; or

(b) the accused has absconded, is likely to abscond or is avoiding service of a summons that has been issued; or

(c) a warrant is required or authorised by any other Act or for other good cause.

Notes

1 If an accused fails to appear in answer to a summons, sections 80 and 81 provide for the issue of a warrant to arrest the accused. Section 330 provides for the issue of a warrant to arrest a person who has been remanded in custody or granted bail to attend a hearing but fails to attend.

2 Section 29 of the **Magistrates' Court Act 1989** enables a magistrate to exercise the powers of a registrar to issue a summons or warrant.

13 Summons or warrant to be accompanied by charge-sheet and notice when served

A summons to answer to a charge issued under section 12 or 14 or a warrant to arrest issued under section 12, on service or execution on the accused, must be accompanied by—

(a) a copy of the charge-sheet; and

(b) a notice, in the form prescribed by the rules of court, containing—

(i) if the charge is for an indictable offence that may not be heard and determined summarily or the charge-sheet contains a request for a committal proceeding, a summary of Part 4.4; and

(ii) if the charge is for any other indictable offence or a summary offence, a summary of Division 2 of Part 3.2; and

(iii) advice that the accused should seek legal advice and that the accused has the right, if eligible, to legal aid under the **Legal Aid Act 1978**; and

(iv) details of how to contact Victoria Legal Aid.

14 Police or public official may issue summons

(1) Without limiting the power of a registrar of the Magistrates' Court in any way—

(a) a police officer; or

(b) a public official acting in the performance of his or her duty (whether the power to commence the proceeding is conferred on him or her by or under an Act or at common law)—

may, after signing a charge-sheet containing a charge, issue a summons to answer to the charge.

…

(2) If a police officer or a public official issues a summons under subsection (1), he or she must file the charge-sheet and summons with the appropriate registrar within 7 days after signing the charge-sheet.

(3) If it appears to the Magistrates' Court that subsection (2) has not been complied with in relation to a proceeding, the court may strike out the charge.

Note

Section 401(3) allows the court to award costs if a charge is struck out.

15 Contents of summons

(1) A summons to answer to a charge must direct the accused to appear at the venue of the Magistrates' Court referred to in section 11 on a specified date and at a specified time to answer the charge.

(2) A summons to answer to a charge for an indictable offence that is to be served on a corporate accused must state that, if the accused does not appear in answer to the summons, the Magistrates' Court may proceed—

(a) in the case of an indictable offence that may be heard and determined summarily, to hear and determine the charge in the absence of the accused in accordance with Division 10 of Part 3.3; or

(b) in any case, to conduct a committal proceeding in the absence of the accused in accordance with Chapter 4.

Notes

1 See sections 80, 81 and 82 for consequences of failing to appear in answer to a summons.

2 Section 28(1) sets out the indictable offences that may be heard and determined summarily.

16 Personal service of summons

Except where otherwise expressly enacted, every summons to answer to a charge must be served personally on the accused in accordance with section 391—

(a) subject to paragraph (b), at least 14 days before the return date;

(b) in the case of a charge for an indictable offence in respect of which a registrar of the Magistrates' Court has fixed a date for a filing hearing, at least 7 days before that date or any other time before that date that is prescribed by the rules of court.

Note

See section 399(4) for filing in court of affidavit or declaration of service.

…

CHAPTER 3—SUMMARY PROCEDURE

PART 3.1—WHEN A SUMMARY HEARING MAY BE HELD

27 Summary offences

A charge for a summary offence is to be heard and determined summarily in accordance with this Chapter or, if the case requires, Division 1 of Part 5.8.

Note

The procedure set out in the **Infringements Act 2006** may be used instead of commencing a proceeding for certain offences. See section 99 of the **Magistrates' Court Act 1989**.

28 Indictable offences that may be heard and determined summarily

(1) A charge for any of the following indictable offences may be heard and determined summarily by the Magistrates' Court, if section 29 is satisfied—

(a) an offence referred to in Schedule 2;

(b) an indictable offence under an Act or subordinate instrument or an offence at common law if the offence is described by an Act or subordinate instrument as being—

(i) a level 5 offence or level 6 offence; or

(ii) punishable by level 5 or level 6 imprisonment or fine or both; or

(iii) punishable by a term of imprisonment not exceeding 10 years or a fine not exceeding 1200 penalty units or both—

unless the contrary intention appears in this or any other Act or in any subordinate instrument.

Note

A level 5 offence is punishable by 10 years imprisonment maximum and a level 6 offence is punishable by 5 years imprisonment maximum: section 109 of the **Sentencing Act 1991**.

(2) If an indictable offence is described as being punishable in more than one way or in one of 2 or more ways, all of those ways must be referred to in subsection (1) for subsection (1) to apply.

(3) If an indictable offence referred to in Schedule 2 is qualified by reference to a specified amount or value or a specified kind of property, that qualification is not affected by subsection (1)(b) or (2).

29 When an indictable offence may be heard and determined summarily

(1) The Magistrates' Court may hear and determine summarily a charge for an offence to which section 28(1) applies if—

(a) the court considers that the charge is appropriate to be determined summarily, having regard to the matters in subsection (2); and

(b) the accused consents to a summary hearing.

Notes

1 Section 82 provides for a summary hearing without consent in the case of a corporate accused which fails to appear in answer to a summons.

2 Section 168(3) provides that a charge transferred by order under that section must be heard and determined summarily.

(2) For the purposes of subsection (1)(a), the Magistrates' Court must have regard to—

(a) the seriousness of the offence including—

(i) the nature of the offence; and

(ii) the manner in which the offence is alleged to have been committed, the apparent degree of organisation and the presence of aggravating circumstances; and

(iii) whether the offence forms part of a series of offences being alleged against the accused; and

(iv) the complexity of the proceeding for determining the charge; and

(b) the adequacy of sentences available to the court, having regard to the criminal record of the accused; and

(c) whether a co-accused is charged with the same offence; and

(d) any other matter that the court considers relevant.

(3) A legal practitioner appearing for an accused may, on behalf of the accused, consent to a summary hearing of a charge for an indictable offence.

(4) Nothing in subsection (2) applies to a proceeding in the Children's Court.

(5) If a body corporate and a natural person are jointly charged with an indictable offence which may be heard and determined summarily, the Magistrates' Court must not hear and determine the charge summarily against either of the accused unless—

(a) each of them consents to a summary hearing; or

(b) if the body corporate fails to appear in the proceeding, the natural person consents to a summary hearing and the court proceeds under section 82 to hear and determine the charge in the absence of the body corporate.

30 Procedure for indictable offences that may be heard and determined summarily

(1) The informant or the accused may apply for a summary hearing under section 29(1).

(2) Without any application under subsection (1), the Magistrates' Court may offer a summary hearing under section 29(1).

(3) An application for, or an offer of, a summary hearing may be made at any time before the Magistrates' Court determines whether to commit the accused for trial.

Note

Section 6(4) provides that an informant may include a request for a committal proceeding in a charge-sheet containing a charge for an indictable offence that may be heard and determined summarily.

(4) If an application for a summary hearing is made before the hearing of any evidence, the Magistrates' Court may seek from the prosecutor or, if the informant is appearing in person, the informant and he or she must give—

(a) an outline of the evidence which will be presented for the prosecution; and

(b) any other information which the court considers relevant—

for the purpose of enabling the court to determine whether to grant a summary hearing.

(5) Any statement made by the prosecutor or informant under subsection (4) is not admissible in evidence in any subsequent proceeding in respect of the charge.

(6) If the Magistrates' Court grants a summary hearing, the hearing and determination of the charge must be conducted in accordance with Part 3.3.

Note

Sections 112A to 113D of the **Sentencing Act 1991** provide for maximum penalties in the Magistrates' Court.

(7) Subject to subsection (8), if—

(a) a committal hearing commences; and

(b) the Magistrates' Court subsequently grants a summary hearing—

the court may, with the consent of the accused, admit as evidence in the summary hearing—

(c) the oral evidence of any witness; and

(d) the statement of any witness; and

(e) any document or exhibit—

given or tendered during the committal hearing.

(8) If evidence is admitted under subsection (7)—

(a) the Magistrates' Court must, at the request of the informant or the accused, call or recall (as the case requires) any witness for examination or cross-examination; and

(b) the hearing must otherwise be conducted in the same manner as a proceeding for a summary offence.

PART 3.2—PROCEDURE BEFORE SUMMARY HEARING

Division 1—General

31 Court may change place of hearing

If the Magistrates' Court considers that—

(a) a fair hearing in a criminal proceeding cannot otherwise be had; or

(b) for any other reason it is appropriate to do so—

the court may order that the hearing be held at another place or venue of the court that the court considers appropriate.

32 Accused entitled to copy of charge-sheet and particulars

(1) An accused is entitled to receive free of charge a copy of the charge-sheet from the informant or the appropriate registrar.

(2) An accused is entitled to receive from the informant reasonable particulars of the charge.

…

Division 2—Pre-hearing disclosure of prosecution case

35 When preliminary brief is to be served

(1) If required to do so by section 24, the informant must serve a preliminary brief on the accused.

(2) At any time after the commencement of a proceeding, the accused, by written notice to the informant, may request that a preliminary brief be served.

(3) If the accused gives notice under subsection (2), the informant must serve on the accused a preliminary brief within 14 days after receipt of the notice.

(4) Nothing in this section prevents the informant from serving a preliminary brief on the accused at any other time.

…

37 Contents of preliminary brief

(1) A preliminary brief must include—

(a) a copy of the charge-sheet in respect of the alleged offence; and

(b) a notice in the form prescribed by the rules of court—

(i) explaining this section and section 84; and

(ii) explaining the importance of the accused obtaining legal representation; and

(iii) advising that the accused has the right, if eligible, to legal aid under the **Legal Aid Act 1978**; and

(iv) providing details of how to contact Victoria Legal Aid; and

(c) a statement made by the informant personally that complies with subsection (2) and section 38; and

(d) any evidentiary certificate issued under any Act that is likely to be relevant to the alleged offence and is available at the time the preliminary brief is served; and

(e) a copy of the criminal record of the accused that is available at the time the preliminary brief is served or a statement that the accused has no previous convictions or infringement convictions known at that time; and

(f) if the informant refuses to disclose any information, document or thing that is required to be included in the preliminary brief, a written notice that the informant refuses disclosure under section 45, identifying the ground for refusing disclosure; and

(g) a list of any other orders that are or will be sought, as known at the time of preparation of the preliminary brief.

(2) A statement by the informant in a preliminary brief must be a complete and accurate statement of the material available to the prosecution at the time the statement is sworn or affirmed, signed or attested and must include—

(a) a statement of the alleged facts on which the charge is based, including reference to the material available to the prosecution to support the alleged facts; and

(b) a description of the background to and consequences of the alleged offence, if known; and

(c) a summary of any statements made by the accused concerning the alleged offence, including any confession or admission; and

(d) a list of the names of all persons who, at the time the statement is signed, may be called by the prosecution as witnesses at the hearing of the charge, indicating whether those persons have made statements; and

(e) a list of any things the prosecution may tender as exhibits, indicating whether they are in the possession of the prosecution at the time the statement is signed.

(3) A preliminary brief may include any other information, document or thing that is relevant to the alleged offence and may assist the accused in understanding the evidence against the accused that is available to the prosecution.

Example

Statements of key witnesses may be included in the preliminary brief.

Notes

1 If the Magistrates' Court hears and determines a charge in the absence of the accused, section 84 provides that certain documents in a preliminary

brief served on the accused at least 14 days before the hearing date are admissible in evidence.

2 See section 86 as to proof of criminal record in the absence of the accused.

38 Requirements for informant's statement in preliminary brief

A statement by the informant in a preliminary brief must be—

(a) in the form of an affidavit; or

(b) signed by the informant and contain an acknowledgment signed in the presence of a person referred to in Schedule 3 that the statement is true and correct and is made in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury; or

(c) in a form, and attested to in a manner, prescribed by the rules of court.

* * * * *

Note

Section 414 provides for acknowledgment of false statements.

39 When full brief must be served

(1) The accused, by written notice to the informant, may request that a full brief be served.

(1A) A request under subsection (1) may be made—

(a) if a preliminary brief is served within 21 days after the day on which the charge-sheet is filed, at any time after a summary case conference is held; or

(b) in any other case, at any time after the criminal proceeding has commenced.

(2) If the accused gives a notice under subsection (1), the informant must serve a full brief on the accused at least 14 days before—

(a) the contest mention hearing; or

(b) if a contest mention hearing is not held, the summary hearing.

(3) The Magistrates' Court, by order, may vary the date for service of a full brief to a specified date that is earlier or later than the date for service required by subsection (2).

(4) Nothing in this section prevents agreement between the informant and the accused to more limited disclosure than is required in a full brief.

…

41 Contents of full brief

(1) Unless earlier disclosed to the accused, whether in a preliminary brief, at a summary case conference or otherwise, a full brief must contain—

(a) a notice in the form prescribed by the rules of court—

(i) explaining this section and section 83; and

(ii) explaining the importance of the accused obtaining legal representation; and

(iii) advising that the accused has the right, if eligible, to legal aid under the **Legal Aid Act 1978**; and

(iv) providing details of how to contact Victoria Legal Aid; and

(b) a copy of the charge-sheet relating to the alleged offence; and

(c) a copy of the criminal record of the accused or a statement that the accused has no previous convictions or infringement convictions; and

(d) any information, document or thing on which the prosecution intends to rely at the hearing of the charge including—

(i) a copy of any statement relevant to the charge signed by the accused, or a record of interview of the accused, that is in the possession of the informant; and

(ii) a copy, or a transcript, of any audio-recording or audiovisual recording required to be made under Subdivision (30A) of Division 1 of Part III of the **Crimes Act 1958**; and

(iii) a copy or statement of any other evidentiary material that is in the possession of the informant relating to a confession or admission made by the accused relevant to the charge; and

(iv) a list of the persons the prosecution intends to call as witnesses at the hearing, together with a copy of each of the statements made by those persons; and

Note

See section 47 for requirements for statements.

(v) a legible copy of any document which the prosecution intends to produce as evidence; and

(vi) a list of any things the prosecution intends to tender as exhibits; and

(vii) a clear photograph, or a clear copy of such a photograph, of any proposed exhibit that cannot be described in detail in the list; and

(viii) a description of any forensic procedure, examination or test that has not yet been completed and on which the prosecution intends to rely as tending to establish the guilt of the accused; and

(ix) any evidentiary certificate issued under any Act that is likely to be relevant to the alleged offence; and

(e) any other information, document or thing in the possession of the prosecution that is relevant to the alleged offence including—

(i) a list of the persons (including experts) who have made statements or given information relevant to the alleged offence but who the prosecution does not intend to call as witnesses at the hearing; and

(ii) a copy of every statement referred to in subparagraph (i) made by each of those persons or, if the person has not made a statement, a written summary of the substance of any evidence likely to be given by that person or a list of those statements or written summaries; and

(iii) a copy of every document relevant to the alleged offence that the prosecution does not intend to tender as an exhibit at the hearing or a list of those documents; and

(iv) a list containing descriptions of any things relevant to the alleged offence that the prosecution does not intend to tender as exhibits at the hearing; and

(v) a clear photograph, or a clear copy of such a photograph, of any thing relevant to the alleged offence that cannot be described in detail in the list; and

(vi) a copy of—

(A) records of any medical examination of the accused; and

(B) reports of any forensic procedure or forensic examination conducted on the accused; and

(C) the results of any tests—

carried out on behalf of the prosecution and relevant to the alleged offence but on which the prosecution does not intend to rely; and

(vii) a copy of any other information, document or thing required by the rules of court to be included in a full brief; and

(f) if the informant refuses to disclose any information, document or thing that is required to be included in the full brief, a written notice that the informant refuses disclosure under section 45, identifying the ground for refusing disclosure.

(2) Section 48 applies to information and other material supplied in a full brief.

Notes

1 See section 416 as to the prosecution's general obligation of disclosure.

2 Section 39(4) enables an informant and an accused to agree to the provision of less material in the full brief than is required by section 41.

3 If the Magistrates' Court hears and determines a charge in the absence of the accused, section 83 provides that certain documents in a full brief served on the accused are admissible in evidence.

4 See section 86 as to proof of criminal record in the absence of the accused.

42 Continuing obligation of disclosure

(1) This section applies to any information, document or thing that—

(a) comes into the informant's possession or comes to the informant's notice after the service of a preliminary brief or a full brief, as the case may be; and

(b) would have been required to be listed, or a copy of which would have been required to be served, in the preliminary brief or the full brief.

(2) The informant must serve on the accused a copy of the document or list as soon as practicable after the information, document or thing comes into the informant's possession or comes to the informant's notice.

(3) If the informant refuses to disclose any information, document or thing that is required to be disclosed under this section, the informant must serve on the accused as soon as practicable a written notice that the informant refuses disclosure under section 45, identifying the ground for refusing disclosure.

Note

See section 416 as to the prosecution's general obligation of disclosure.

43 Accused may make request for material etc. not provided

(1) The accused may give to the informant a written request for—

(a) a copy of any statements made or information given by persons listed in a full brief;

(b) a copy of any things listed in a full brief;

(c) subject to section 43A, inspection of the exhibits at a time and place agreed between the accused and the informant;

(d) a copy of any information, document or thing specified by the accused that is required by or under this Act to be included in a preliminary brief or a full brief, as the case may be, and was not so included;

(e) particulars of previous convictions of any witness who the prosecution intends to call at the hearing.

(2) Subject to subsection (3), a request under subsection (1) may be made at any time after service of the preliminary brief or the full brief, whichever first occurs.

(3) Unless the Magistrates' Court otherwise orders, a request under subsection (1) must be made at least 7 days before—

(a) the contest mention hearing; or

(b) if a contest mention hearing is not held, the summary hearing.

44 Informant must comply with request or state grounds of refusal

(1) Within 7 days after the informant receives a request under section 43, the informant must comply with the request or serve on the accused a written notice that the informant refuses to comply with the request, identifying the grounds for refusing disclosure.

(2) The Magistrates' Court may vary a time limit referred to in this section.

45 Grounds on which informant may refuse disclosure

(1) The informant may refuse to disclose any information, document or thing that is required by this Division to be disclosed to the accused if the informant considers that disclosure would, or would be reasonably likely to—

(a) prejudice the investigation of a contravention or possible contravention of the law or prejudice the enforcement or proper administration of the law in a particular instance; or

(b) prejudice the fair hearing of the charge against a person or the impartial adjudication of a particular case; or

(c) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law; or

(d) disclose methods or procedures for preventing, detecting, investigating or dealing with matters arising out of contraventions or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or

(e) endanger the lives or physical safety of persons engaged in, or in connection with, law enforcement or persons who have provided confidential information in relation to the enforcement or administration of the law; or

(f) endanger the life or physical safety of a person referred to in section 43(1)(a) or of a family member, as defined in the **Family Violence Protection Act 2008**, of such a person; or

(g) result in the disclosure of child abuse material to the accused personally.

...

(2) The informant may refuse to disclose any information, document or thing that is requested under section 43(1)(d) on any ground on which the informant would be entitled to refuse to produce the information, document or thing under a witness summons.

(3) The informant may refuse to disclose the particulars of any previous conviction of any witness who the informant intends to call at the hearing if the previous conviction is, because of its character, irrelevant to the proceeding but the informant must advise the accused of the existence of any undisclosed previous convictions.

Notes

1 See section 14 of the **Victims' Charter Act 2006** as to victims' privacy.

2 See section 416 as to the prosecution's general obligation of disclosure.

46 Accused may apply for order requiring disclosure

(1) The accused may apply to the Magistrates' Court for an order under subsection (2) requiring disclosure if—

(a) the informant has served on the accused under section 45 a statement of grounds for refusing disclosure; or

(b) the informant has failed to give disclosure in accordance with this Division.

(2) On application under subsection (1), the Magistrates' Court may order that the informant disclose to the accused any information, document or thing in accordance with a request under section 43 or a requirement of this Division.

...

47 Rules with respect to statements

(1) Subject to subsection (3), a statement referred to in section 41 which the informant intends to tender at the hearing of the charge if the accused does not appear must be—

(a) in the form of an affidavit; or

(b) signed by the person making the statement and contain an acknowledgment signed in the presence of a person referred to in Schedule 3 that the statement is true and correct and is made in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury; or

(c) in a form, and attested to in a manner, prescribed by the rules of court.

(2) If a person under the age of 18 years makes a statement which the informant intends to tender as mentioned in subsection (1), the statement must include the person's age.

(3) If a person who cannot read makes a statement which the informant intends to tender as mentioned in subsection (1)—

(a) the statement must be read to the person before he or she signs it; and

(b) the acknowledgment must state that the statement was read to the person before he or she signed it.

* * * * *

Note

Section 414 provides for acknowledgment of false statements.

…

Division 3—Preliminary disclosure of case of accused

50 Expert evidence

(1) If the accused intends to call a person as an expert witness at the hearing of the charge, the accused must serve on the informant in accordance with section 392 and file in court a copy of the statement of the expert witness in accordance with subsection (2)—

(a) at least 7 days before the day on which the contest mention hearing is to be held; or

(b) if there is no contest mention hearing, at least 7 days before the summary hearing; or

(c) if the statement is not then in existence, as soon as possible after it comes into existence.

(2) The statement must—

(a) contain the name and business address of the witness; and

(b) describe the qualifications of the witness to give evidence as an expert; and

(c) set out the substance of the evidence it is proposed to adduce from the witness as an expert, including the opinion of the witness and the acts, facts, matters and circumstances on which the opinion is formed.

Note

Section 177 of the **Evidence Act 2008** provides for certificates of expert evidence.

51 Alibi evidence

(1) This section applies to an accused on a summary hearing, if the accused is represented by a legal practitioner.

(2) An accused must not, without leave of the court—

(a) give evidence personally; or

(b) adduce evidence from another witness—

in support of an alibi unless the accused has given notice of alibi within the period referred to in subsection (3).

(3) A notice of alibi is given by serving the notice on the prosecutor or the informant—

(a) at least 7 days before the day on which the contest mention hearing is to be held; or

(b) if there is no contest mention hearing, at least 7 days before the summary hearing; or

(c) if the notice is not then in existence, as soon as possible after it comes into existence.

(4) A notice of alibi must be served in accordance with section 392.

(5) A notice of alibi must contain—

(a) particulars as to time and place of the alibi; and

(b) the name and last known address of any witness to the alibi; and

(c) if the name and address of a witness are not known, any information which might be of material assistance in finding the witness.

(6) If the name and address of a witness are not included in a notice of alibi, the accused must not call that person to give evidence in support of the alibi unless the court is satisfied that the accused took reasonable steps to ensure that the name and address would be ascertained.

(7) If the accused is notified by the informant that a witness named or referred to in a notice of alibi has not been traced, the accused must give written notice to the informant, without delay, of any further information which might be of material assistance in finding the witness.

(8) The court must not refuse leave under subsection (2) if it appears to the court that the accused was not informed of the requirements of this section.

(9) If—

(a) an accused gives notice of alibi under this section; and

(b) the prosecutor requests an adjournment—

the court must grant an adjournment for a period that appears to the court to be necessary to enable investigation of the alibi unless it appears that to do so would prejudice the proper presentation of the case of the accused.

52 Offence to communicate with alibi witness

(1) If a person (other than a person referred to in subsection (2)) has been named or referred to as a proposed witness in a notice of alibi given under section 51—

(a) a person acting for the prosecution; or

(b) a police officer—

must not communicate with that person directly or indirectly with respect to the charge or any related matter before the conclusion of the proceeding, including any rehearing, without the consent and presence during the communication of—

(c) the legal practitioner representing the accused; or

(d) if not legally represented, the accused.

Penalty: Level 8 imprisonment (1 year maximum)

(2) Subsection (1) does not apply to a person who the accused has been notified may be called as a witness for the prosecution at the summary hearing.

Division 4—Mention hearing, summary case conference and contest mention hearing

53 Mention hearing

At a mention hearing, the Magistrates' Court may—

(a) if the offence is an indictable offence that may be heard and determined summarily, grant a summary hearing;

(b) proceed immediately to hear and determine the charge;

(c) fix a date for a contest mention hearing;

(d) fix a date for a summary hearing of the charge;

(e) make any other order or give any direction that the court considers appropriate.

53A Documents to be provided by police at first mention hearing

(1) This section applies if the informant is a police officer.

(2) At the first mention hearing, the informant must have the following documents available for provision to the accused or the legal practitioner representing the accused—

(a) a copy of the preliminary brief (if prepared);

(b) a copy of the full brief (if prepared);

(c) if neither a preliminary brief nor a full brief has been prepared—

(i) a copy of the charge-sheet in respect of the alleged offence; and

(ii) a statement of the alleged facts on which the charge is based; and

(iii) either—

(A) a copy of the criminal record of the accused that is available at the time of the first mention hearing; or

(B) a statement that the accused has no previous convictions or infringement convictions known at that time.

(3) This section does not apply to a proceeding for a traffic camera offence.

54 Summary case conference

(1) A summary case conference is a conference between the prosecution and the accused for the purpose of managing the progression of the case including—

(a) identifying and providing to the accused any information, document or thing in the possession of the prosecution that may assist the accused to understand the evidence available to the prosecution; and

(b) identifying any issues in dispute; and

(c) identifying the steps required to advance the case; and

(d) any other purpose prescribed by the rules of court.

(2) If a preliminary brief is served within 21 days after the day on which the charge-sheet is filed, a summary case conference must be conducted before—

(a) the charge is set down for a contest mention hearing or a summary hearing; or

(b) a request for a full brief is made under section 39(1).

(3) The Magistrates' Court may direct the parties to attend a summary case conference.

(4) Nothing in this section prevents a summary case conference from being conducted at any other time, if the parties agree.

(5) If an accused is not legally represented, the Magistrates' Court may dispense with the requirement under subsection (2) to conduct a summary case conference.

(6) A summary case conference must be conducted in accordance with the rules of court.

(7) Evidence of—

(a) anything said or done in the course of a summary case conference; or

(b) any document prepared solely for the purposes of a summary case conference—

is not admissible in any proceeding before any court or tribunal or in any inquiry in which evidence is or may be given before any court or person acting judicially, unless all parties to the summary case conference agree to the giving of the evidence.

55 Contest mention hearing

(1) This section applies to a proceeding for—

(a) a summary offence; or

(b) an indictable offence that may be heard and determined summarily.

(2) The Magistrates' Court may, between the return date and the day on which the charge is heard, from time to time conduct a contest mention hearing.

(3) At a contest mention hearing, the Magistrates' Court may—

(a) require the parties to provide an estimate of the time expected to be needed for the hearing of the charge;

(b) require the parties to advise as to the estimated number and the availability of witnesses (other than the accused) for the hearing of the charge and whether any witnesses are from interstate or overseas;

(c) request each party to indicate the evidence that party proposes to adduce and to identify the issues in dispute;

(d) require the accused to advise whether the accused is legally represented and has funding for continued legal representation up to and including the hearing of the charge;

(e) require the parties to advise whether there are any particular requirements of, or facilities needed for, witnesses and interpreters;

(f) order a party to make, file in court or serve (as the case requires) any written or oral material required by the court for the purposes of the proceeding;

(g) allow a party to amend a document that has been prepared by or on behalf of that party for the purposes of the proceeding;

(h) if the court considers that it is in the interests of justice to do so, dispense with or vary any requirement imposed on a party by or under this Part;

(i) require or request a party to do anything else for the case management of the proceeding.

(4) The accused must attend all contest mention hearings.

Notes

1 Section 3 defines ***attend***.

2 See section 334 in relation to a corporate accused.

3 Section 330 gives the court power to excuse an accused from attending a hearing.

PART 3.3—SUMMARY HEARING

Division 1—Joint or separate hearing of charges

56 Multiple charges on single charge-sheet or multiple accused named on single charge-sheet

(1) If a charge-sheet contains more than one charge, the charges must be heard together unless an order is made under section 58.

(2) If a charge-sheet names more than one accused, whether in the same charge or separate charges, the charge or charges against all accused must be heard together unless an order is made under section 58.

(3) A separate charge-sheet must be filed against each accused.

57 Joint hearing of charges on separate charge-sheets

On the application of the prosecutor or the accused, the Magistrates' Court may order that any number of charges in separate charge-sheets be heard together.

58 Order for separate hearing

(1) If a charge-sheet contains more than one charge, the Magistrates' Court may order that any one or more of the charges be heard separately.

(2) If a charge-sheet names more than one accused, the Magistrates' Court may order that charges against a specified accused be heard separately.

(3) The Magistrates' Court may make an order under subsection (1) or (2) if the court considers that—

(a) the case of an accused may be prejudiced because the accused is charged with more than one offence in the same charge-sheet; or

(b) a hearing with co-accused would prejudice the fair hearing of the charge against the accused; or

(c) for any other reason it is appropriate to do so.

(4) The Magistrates' Court may make an order under subsection (1) or (2) before or during the hearing.

(5) If the Magistrates' Court makes an order under subsection (1) or (2), the prosecutor may elect which charge is to be heard first.

(6) The procedure on the separate hearing of a charge is the same in all respects as if the charge had been set out in a separate charge-sheet.

(7) If the Magistrates' Court makes an order for a separate hearing under subsection (1) or (2), the court may make any order for or in relation to the bail of the accused that the court considers appropriate.

Division 2—Diversion program

59 Adjournment to undertake diversion program

(1) This section does not apply to—

(a) an offence punishable by a minimum or fixed sentence or penalty, including cancellation or suspension of a licence or permit to drive a motor vehicle and disqualification under the **Road Safety Act 1986** or the **Sentencing Act 1991** from obtaining such a licence or permit or from driving a motor vehicle on a road in Victoria but not including the incurring of demerit points under the **Road Safety Act 1986** or regulations made under that Act; or

(b) an offence against section 49(1) of the **Road Safety Act 1986** not referred to in paragraph (a).

(2) If, at any time before taking a formal plea from an accused in a criminal proceeding for a summary offence or an indictable offence that may be heard and determined summarily—

(a) the accused acknowledges to the Magistrates' Court responsibility for the offence; and

(b) it appears appropriate to the Magistrates' Court, which may inform itself in any way it considers appropriate, that the accused should participate in a diversion program; and

(c) both the prosecution and the accused consent to the Magistrates' Court adjourning the proceeding for this purpose—

the Magistrates' Court may adjourn the proceeding for a period not exceeding 12 months to enable the accused to participate in and complete the diversion program.

(3) An accused's acknowledgment to the Magistrates' Court of responsibility for an offence is inadmissible as evidence in a proceeding for that offence and does not constitute a plea.

(4) If an accused completes a diversion program to the satisfaction of the Magistrates' Court—

(a) no plea to the charge is to be taken; and

(b) the Magistrates' Court must discharge the accused without any finding of guilt; and

(c) the fact of participation in the diversion program is not to be treated as a finding of guilt except for the purposes of—

(i) Division 1 of Part 3 and Part 10 of the **Confiscation Act 1997**; and

(ii) section 9 of the **Control of Weapons Act 1990**; and

(iii) section 151 of the **Firearms Act 1996**; and

(iv) Part 4 of the **Sentencing Act 1991**; and

(d) the fact of participation in the diversion program and the discharge of the accused is a defence to a later charge for the same offence or a similar offence arising out of the same circumstances.

(5) If an accused does not complete a diversion program to the satisfaction of the Magistrates' Court and the accused is subsequently found guilty of the charge, the Magistrates' Court must take into account the extent to which the accused complied with the diversion program when sentencing the accused.

(6) Nothing in this section affects the requirement to observe the rules of natural justice.

(7) This section does not affect the incurring of demerit points under the **Road Safety Act 1986** or regulations made under that Act.

Division 3—Sentence indication

60 Court may give sentence indication

(1) At any time during a proceeding for a summary offence or an indictable offence that may be heard and determined summarily, the Magistrates' Court may indicate that, if the accused pleads guilty to the charge for the offence at that time, the court would be likely to impose on the accused—

(a) a sentence of imprisonment that commences immediately; or

(b) a sentence of a specified type.

Note

Section 126 of the **Magistrates' Court Act 1989** enables the court to close a proceeding to the public.

(2) Without limiting its discretion under subsection (1), the Magistrates' Court may decide not to give a sentence indication under subsection (1) if the Magistrates' Court considers there is insufficient information before it of the impact of the offence on any victim of the offence.

Note

Under section 5(2)(daa) of the **Sentencing Act 1991**, in sentencing an offender a court must have regard to the impact of the offence on any victim of the offence.

61 Effect of sentence indication

(1) If—

(a) the Magistrates' Court gives a sentence indication under section 60; and

(b) the accused pleads guilty to the charge for the offence at the first available opportunity—

the court, when sentencing the accused for the offence, must not impose a more severe type of sentence than the type of sentence indicated.

(2) If—

(a) the Magistrates' Court gives a sentence indication under section 60; and

(b) the accused does not plead guilty to the charge for the offence at the first available opportunity—

the court that hears and determines the charge must be constituted by a different magistrate, unless all the parties otherwise agree.

(3) A sentence indication does not bind the Magistrates' Court on any hearing before the court constituted by a different magistrate.

(4) A decision to give or not to give a sentence indication is final and conclusive.

(5) An application for a sentence indication and the determination of the application are not admissible in evidence against the accused in any proceeding.

(6) This section does not affect any right to appeal against sentence.

Division 4—Entering a plea

…

63 Legal practitioner may enter plea on behalf of accused

A legal practitioner appearing for an accused may, on behalf of the accused, enter a plea.

64 Refusal to plead

(1) If, when an accused is asked to plead to a charge, the accused will not answer directly to the charge, the Magistrates' Court may order that a plea of not guilty be entered on behalf of the accused.

(2) A plea of not guilty entered under subsection (1) has the same effect as if the accused in fact had pleaded not guilty.

Note

See the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** when an accused is or may be unfit to stand trial.

Division 5—Opening addresses

65 Parties may give opening addresses

(1) With the leave of the Magistrates' Court and before any evidence is given—

(a) the prosecutor may give an opening address to the court on the prosecution case against the accused; and

(b) the accused may give an opening address to the court in response to the prosecutor's opening address.

(2) The Magistrates' Court may limit the length of the opening addresses.

Division 6—Case for the accused

66 Accused entitled to respond after close of prosecution case

After the close of the case for the prosecution, an accused is entitled—

(a) to make a submission that there is no case for the accused to answer;

(b) to answer the charge by choosing to give evidence or call other witnesses to give evidence or both;

(c) not to give evidence or call any witnesses.

67 Election when accused is legally represented

If the accused is represented by a legal practitioner, at the close of the case for the prosecution, the Magistrates' Court may question the legal practitioner to determine which of the options referred to in section 66 the accused elects to take.

68 Election when accused is not legally represented

(1) If the accused is not represented by a legal practitioner, immediately after the close of the case for the prosecution the Magistrates' Court must inform the accused, in a manner that is likely to be understood by the accused that—

(a) the accused has the right to answer the charge and must choose either—

(i) to give sworn or affirmed evidence, that is, to enter the witness box, take the oath or make an affirmation and say what the accused wants to say in answer to the charge and

then to respond to any questions from the prosecution or the court about the evidence of the accused; or

(ii) to say nothing in answer to the charge; and

(b) in either case, the accused may call any witnesses to give sworn or affirmed evidence for the accused.

(2) After giving the information referred to in subsection (1), the Magistrates' Court must ask the accused what the accused wants to do.

69 Procedure for joint hearings if no-case submission made

(1) After the close of the case for the prosecution, an accused who wishes to make a submission that there is no case for the accused to answer must do so at that time.

(2) If, after the Magistrates' Court has ruled on all no-case submissions, charges against 2 or more accused remain to be determined, each accused must advise the court, in response to questioning under section 67 or 68, which of the options referred to in section 66(b) or (c) the accused elects to take.

70 Questioning to determine proper course of proceeding

(1) If the accused intends to call witnesses to give evidence at the hearing, the accused must indicate, when called on by the Magistrates' Court to do so—

(a) the names of those witnesses (other than the accused); and

(b) the order in which those witnesses are to be called.

(2) The accused must not present the case of the accused differently to the way indicated to the Magistrates' Court under subsection (1) without the leave of the court.

71 Opening address of accused at beginning of case for the accused

(1) If the accused intends to give evidence, or to call other witnesses on behalf of the accused, or both, the Magistrates' Court may grant leave to the accused to open the case for the accused if the court considers it appropriate to do so.

(2) If the accused gives an opening address, it must be given before the accused gives evidence or calls any other witnesses.

(3) The Magistrates' Court may limit the length of the opening address of the accused.

(4) The accused is not required to give evidence before any other witness is called on behalf of the accused.

72 Evidential burden on accused for exceptions etc.

(1) If—

(a) an Act or subordinate instrument creates an offence and provides any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence; and

(b) the accused wishes to rely on the exception, exemption, proviso, excuse or qualification—

the accused must present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the exception, exemption, proviso, excuse or qualification.

(2) No proof in relation to an exception, exemption, proviso, excuse or qualification is required on the part of the informant unless the accused has presented or pointed to evidence in accordance with subsection (1).

(3) If satisfied that it is in the interests of justice to do so, the Magistrates' Court may allow the prosecutor to re-open the case for the prosecution in order to adduce evidence in rebuttal of evidence presented or pointed to by the accused in accordance with subsection (1).

Division 7—Closing addresses

73 Prosecutor's closing address

(1) In a hearing under this Part—

(a) after the close of all evidence; and

(b) before the closing address of the accused, if any, under section 74—

the Magistrates' Court may grant leave, if it is appropriate to do so, to the prosecutor to address the court for the purpose of summing up the evidence.

(2) The Magistrates' Court may limit the length of the closing address of the prosecutor.

74 Closing address of the accused

(1) In a hearing under this Part—

(a) after the close of all evidence; and

(b) after the closing address of the prosecutor, if any, under section 73—

the Magistrates' Court may grant leave, if it is appropriate to do so, to the accused to address the court for the purpose of summing up the evidence.

(2) The Magistrates' Court may limit the length of the closing address of the accused.

75 Supplementary address by prosecutor

(1) If, in the closing address of the accused under section 74, the accused asserts facts which are not supported by any evidence that is before the Magistrates' Court, the court may grant leave to the prosecutor to make a supplementary address to the court.

(2) A supplementary address must be confined to replying to the assertion referred to in subsection (1).

(3) The Magistrates' Court may limit the length of a supplementary address.

Division 8—Determination of charge

76 Option of finding of attempt

In a summary hearing under section 29(1) of a charge for an indictable offence, if the Magistrates' Court finds the accused not guilty of the offence charged, the court may find the accused guilty of having attempted to commit the offence charged.

Division 9—Criminal record

77 Criminal record

(1) A criminal record must contain, in relation to each previous conviction—

(a) the date of the previous conviction; and

(b) the court in which the previous conviction took place; and

(c) the place of sitting of that court; and

(d) the offence committed; and

(e) the sentence imposed.

Note

Previous conviction is defined by section 3 to refer only to a conviction or finding of guilt made by a court and does not include an infringement conviction.

(2) If other offences were taken into account when a sentence was imposed in respect of a previous conviction, a criminal record may contain a statement to that effect and the offences taken into account, including the number of offences.

(2A) A criminal record must contain, in relation to each infringement conviction—

(a) the date on which the infringement notice took effect as a conviction; and

(b) the offence specified in the notice; and

(c) the amount specified in the notice as the penalty for the infringement; and

(d) any other penalty that results from the operation of the notice.

Example

A period of cancellation, disqualification or suspension of a licence or permit.

(3) A criminal record is inadmissible as evidence against the person to whom it relates in a proceeding for an offence unless the criminal record is signed by—

(a) a police officer; or

(b) a Crown Prosecutor; or

(c) a member of staff of the Office of Public Prosecutions who is a legal practitioner; or

(d) in the case of a proceeding commenced by an informant—

(i) a person who is entitled to represent the informant and is a legal practitioner; or

(ii) a public official.

78 Proof of previous convictions and infringement convictions by criminal record

(1) If a person is found guilty of an offence in a summary hearing, the prosecution may provide to the court the criminal record, if any, of the person.

(2) The court must ask the person whether the person admits the previous convictions and infringement convictions set out in the criminal record.

(3) If the person admits to a previous conviction or infringement conviction, the court may sentence the person accordingly.

(4) If the person does not admit to a previous conviction or infringement conviction, the prosecution may lead evidence to prove the previous conviction or infringement conviction.

(5) A legal practitioner appearing for the person may, on behalf of the person, admit a previous conviction or infringement conviction set out in the criminal record.

Notes

1 Section 178 of the **Evidence Act 2008** provides for proof of previous convictions by the filing of a certificate.

2 Section 86 of this Act provides for proof of a criminal record in the absence of the accused.

Division 10—Non-appearance of party

79 Non-appearance of informant

If the informant in a criminal proceeding does not appear on the date on which the proceeding is listed for hearing, the Magistrates' Court may—

(a) dismiss the charge; or

(b) adjourn the proceeding on any terms that it considers appropriate.

Note

Section 328 sets out who may appear on behalf of an informant.

80 Non-appearance of accused charged with summary offence

(1) If an accused does not appear in answer to a summons to answer to a charge for a summary offence, the Magistrates' Court may—

(a) if the summons was served in accordance with section 394 (ordinary service), direct that the accused be served personally with the summons; or

(b) issue a warrant to arrest the accused; or

(c) proceed to hear and determine the charge in the absence of the accused in accordance with this Part; or

(d) adjourn the proceeding on any terms that it considers appropriate.

Note

Section 328 sets out who may appear on behalf of an accused.

(2) If an accused has been charged with a summary offence and fails to attend in answer to bail, the Magistrates' Court may—

(a) proceed to hear and determine the charge in the absence of the accused in accordance with this Part; or

(b) adjourn the proceeding on any terms that it considers appropriate—

without prejudice to any right of action arising out of the breach of the bail undertaking.

(3) If the Magistrates' Court proceeds to hear and determine a charge under subsection (1)(c) or (2)(a), the court may dispense with or vary any requirement imposed by or under this Part.

Note

See section 25 for consequences of failing to appear in answer to a notice to appear.

81 Non-appearance of accused charged with indictable offence

If an accused does not appear in answer to a summons to answer to a charge for an indictable offence which has been served in accordance with this Act, the Magistrates' Court may issue a warrant to arrest the accused.

Notes

1 Section 25 sets out the consequences of failing to appear in answer to a notice to appear.

2 Section 328 sets out who may appear on behalf of an accused.

82 Non-appearance of corporate accused charged with indictable offence

(1) If a corporate accused does not appear in answer to a summons to answer to a charge for an indictable offence that may be heard and determined summarily, the Magistrates' Court may hear and determine the charge summarily in the absence of the accused if—

(a) the court is satisfied that the charge and the return date in relation to it have been brought to the notice of the accused; and

(b) the court considers that the charge is appropriate to be determined summarily—

even though the accused has not consented to a summary hearing.

(2) If the Magistrates' Court proceeds to hear and determine a charge summarily in accordance with subsection (1), the court may dispense with or vary any requirement imposed by or under this Part.

(3) If the Magistrates' Court finds a corporate accused guilty in its absence, the court must cause written notice of any sentence imposed by it to be served on the accused.

83 Admissibility of evidence in absence of accused where full brief served

(1) If—

(a) under section 25(1) or 80 the Magistrates' Court proceeds to hear and determine a charge in the absence of the accused; and

(b) the informant has served a full brief on the accused in accordance with Division 2 of Part 3.2—

the following are, subject to subsections (2) and (3), admissible as if their contents were a record of evidence given orally—

(c) any statement a copy of which has been served in the full brief;

(d) any exhibit or document referred to in a statement which is admissible.

(2) The Magistrates' Court may rule as inadmissible the whole or any part of a statement or of any exhibit or document referred to in a statement.

(3) The criminal record of the accused or a statement that the accused has no previous convictions or infringement convictions, when served in a full brief, is only admissible for the purpose of sentencing in accordance with section 86.

(4) Subsection (1) does not limit the power of the Magistrates' Court to proceed to hear and determine the charge in the absence of the accused under section 25(1) or 80 on the basis of sworn or affirmed evidence given by or on behalf of the informant if the informant has not served a full brief on the accused.

84 Admissibility of evidence in absence of accused where preliminary brief served

(1) If—

(a) under section 25(1) or 80 the Magistrates' Court proceeds to hear and determine a charge in the absence of the accused; and

(b) the informant has served a preliminary brief on the accused in accordance with Division 2 of Part 3.2 at least 14 days before the date of the hearing under paragraph (a); and

(c) the Magistrates' Court considers that the matters set out in the preliminary brief disclose the offence charged—

the following are, subject to subsections (4) and (5), admissible in evidence, despite the rule against hearsay—

(d) the informant's statement in the preliminary brief;

(e) any exhibit referred to in the informant's statement.

(2) Without limiting any other power conferred on the Magistrates' Court, if the court considers that the matters set out in a preliminary brief do not disclose the offence charged, the court may require the informant to provide additional evidence.

(3) The additional evidence referred to in subsection (2) is inadmissible unless—

(a) it is in the form of written statements that comply with section 38; and

(b) a copy of each statement has been served on the accused at least 14 days before the Magistrates' Court considers the additional evidence.

(4) The Magistrates' Court may rule as inadmissible the whole or any part of a preliminary brief, a statement or an exhibit.

(5) The criminal record of the accused or a statement that the accused has no previous convictions or infringement convictions, when served in a preliminary brief, is only admissible for the purpose of sentencing in accordance with section 86.

(6) This section does not limit the power of the Magistrates' Court to proceed to hear and determine the charge in the absence of the accused under section 25(1) or 80 on the basis of sworn or affirmed evidence given by or on behalf of the informant if the informant has not served a preliminary brief on the accused.

…

87 Limitations on sentencing in absence of accused

(1) If the Magistrates' Court proceeds to hear and determine a charge in the absence of the accused and finds the accused guilty, the court must not make a custodial order under Division 2 of Part 3 of the **Sentencing Act 1991**.

(2) If the Magistrates' Court finds an accused guilty in the absence of the accused on the basis of a preliminary brief—

(a) the court must not make an order under Part 3B of the **Sentencing Act 1991** for a fine exceeding 20 penalty units and the total sum of orders for fines must not exceed in the aggregate 50 penalty units; and

(b) the total sum of orders made under Divisions 1 and 2 of Part 4 of the **Sentencing Act 1991** for the payment of restitution or compensation must not exceed $2000.

Note

In addition to this section, the court cannot make an order that requires the consent of the accused to its making, for example, a community correction order.

(3) If, at any time during the hearing, the Magistrates' Court considers that the charge, if proven, is likely to result in an order prohibited by subsection (1) or (2) or an order that requires the consent of the accused, the court—

(a) must adjourn the proceeding to enable the accused to attend or to be brought before the court to answer to the charge; and

(b) may issue a warrant to arrest the accused.

(4) If the Magistrates' Court finds a charge against a person proved and imposes a sentence in the absence of the person, the court must serve written notice on the person, at the address of the person on the register kept under section 18 of the **Magistrates' Court Act 1989**, of—

(a) the order of the court; and

(b) their right to apply for a rehearing of the charge.

Note

Part 3.4 provides for a rehearing in certain circumstances. In particular, section 94 provides for automatic rehearing in certain cases.

CHAPTER 4—COMMITTAL PROCEEDING

PART 4.1—PRELIMINARY

96 When a committal proceeding must be held

A committal proceeding must be held in all cases in which the accused is charged with an indictable offence, except cases where—

(a) a direct indictment is filed; or

(b) the charge is heard and determined summarily.

97 Purposes of a committal proceeding

The purposes of a committal proceeding are—

(a) to determine whether a charge for an offence is appropriate to be heard and determined summarily;

(b) to determine whether there is evidence of sufficient weight to support a conviction for the offence charged;

(c) to determine how the accused proposes to plead to the charge;

(d) to ensure a fair trial, if the matter proceeds to trial, by—

(i) ensuring that the prosecution case against the accused is adequately disclosed in the form of depositions;

(ii) enabling the accused to hear or read the evidence against the accused and to cross-examine prosecution witnesses;

(iii) enabling the accused to put forward a case at an early stage if the accused wishes to do so;

(iv) enabling the accused to adequately prepare and present a case;

(v) enabling the issues in contention to be adequately defined.

98 When a committal proceeding commences

A committal proceeding commences on the commencement of a filing hearing.

Notes

1 See section 6(1) as to when a criminal proceeding is commenced.

2 Section 102 provides for the fixing of a date for a filing hearing.

…

100 Hearings in a committal proceeding and attendance of accused

(1) The hearings that may be held in a committal proceeding are—

(a) a filing hearing;

(b) a special mention hearing;

(c) a compulsory examination hearing;

(d) a committal mention hearing;

(e) a committal case conference;

(f) a committal hearing.

(2) An accused must attend all hearings in the committal proceeding against the accused unless excused under—

(a) section 135, in the case of a committal hearing; or

(b) section 330, in any other case.

PART 4.2—FILING HEARING

101 Filing hearing

At a filing hearing, the Magistrates' Court may—

(a) fix a date for a committal mention hearing;

(b) fix a period of time for service of a hand-up brief;

(c) make any order or give any direction that the court considers appropriate.

102 Time limit for filing hearing

The date fixed for a filing hearing must be—

(a) within 7 days after the charge-sheet is filed, if the accused has been arrested and either remanded in custody or granted bail; or

(b) within 28 days after the charge-sheet is filed, if a summons to answer to a charge is issued in respect of the accused.

———————

…

PART 4.4—PRE-HEARING DISCLOSURE OF PROSECUTION CASE

107 Informant must serve hand-up brief

(1) Subject to subsection (2), the informant must serve on the accused a hand-up brief that complies with section 110.

(2) The informant is not required to serve a hand-up brief if he or she has served a plea brief under section 116 and the accused pleads guilty to the charge.

(3) At the same time as the hand-up brief is served, the informant must serve on the accused a copy of the criminal record of the accused or a statement that the accused has no previous convictions or infringement convictions.

108 How hand-up brief must be served

(1) A hand-up brief must be served at least 42 days before the committal mention hearing unless—

(a) the Magistrates' Court fixes another period for service; or

(b) the accused gives written consent to a lesser period for service.

(2) A hand-up brief must be served personally on the accused in accordance with section 391 unless the informant is satisfied that ordinary service is appropriate in all the circumstances.

Note

Section 394 provides for ordinary service.

(3) In considering whether to effect service of the hand-up brief by ordinary service, the informant must consider whether it is an appropriate method of service in all the circumstances as known by the informant including—

(a) the nature and gravity of the alleged offence;

(b) whether the accused has previously been found guilty or convicted of any similar offence;

(c) the period of time that has elapsed since the accused's address for service was ascertained.

109 Copy hand-up brief to be filed and forwarded to DPP

The informant must file a copy of the hand-up brief with the registrar, and, if the DPP is conducting the committal proceeding, forward another copy to the DPP, within 7 days after service of the brief on the accused.

110 Contents of hand-up brief

A hand-up brief must contain—

(a) a notice in the form prescribed by the rules of court—

(i) specifying the date of the committal mention hearing; and

(ii) explaining the nature of a committal proceeding and the purpose of the various stages; and

(iii) explaining the importance of the accused obtaining legal representation; and

(iv) advising that the accused has the right, if eligible, to legal aid under the **Legal Aid Act 1978**; and

(v) providing details of how to contact Victoria Legal Aid; and

(vi) describing the effect of section 125(2); and

(b) a copy of the charge-sheet relating to the alleged offence; and

(c) a statement of the material facts relevant to the charge; and

(d) any information, document or thing on which the prosecution intends to rely in the committal proceeding including—

(i) a copy of any statement relevant to the charge signed by the accused, or a record of interview of the accused, that is in the possession of the informant; and

(ii) a copy, or a transcript, of any audio-recording or audiovisual recording required to be made under Subdivision (30A) of Division 1 of Part III of the **Crimes Act 1958**; and

(iii) a copy or statement of any other evidentiary material that is in the possession of the informant relating to a confession or admission made by the accused relevant to the charge; and

(iv) a list of the persons who have made statements that the informant intends to tender at the committal hearing, together with copies of those statements; and

(v) if a person has been examined under section 106 and the informant intends to tender a record of that examination at the committal hearing, a transcript of the recording of the examination; and

(va) if a person has been examined under Part 4 of the **Major Crime (Investigative Powers) Act 2004** and the informant intends to tender a record of that examination at the committal hearing, a transcript of the recording of the examination; and

(vi) if the committal proceeding relates (wholly or partly) to a charge for—

(A) a sexual offence; or

(B) an offence which involves an assault on, or injury or a threat of injury to, a person—

a transcript of any audio or audiovisual recording of a kind referred to in section 367, if the informant intends to tender the transcript at the committal hearing; and

(vii) a legible copy of any document which the prosecution intends to produce as evidence; and

(viii) a list of any things the prosecution intends to tender as exhibits; and

(ix) a clear photograph, or a clear copy of such a photograph, of any proposed exhibit that cannot be described in detail in the list; and

(x) a description of any forensic procedure, examination or test that has not yet been completed and on which the prosecution intends to rely as tending to establish the guilt of the accused; and

(e) any other information, document or thing in the possession of the prosecution that is relevant to the alleged offence including—

(i) a list of the persons (including experts) who have made statements relevant to the alleged offence which the prosecution does not intend to tender at the committal hearing; and

(ii) a copy of every statement referred to in subparagraph (i) made by each of those persons or, if the person has not made a statement, a written summary of the substance of any evidence likely to be given by that person or a list of those statements or written summaries; and

(iii) a copy of every document relevant to the alleged offence that the prosecution does not intend to tender as an exhibit or a list of those documents; and

(iv) a list containing descriptions of any things relevant to the alleged offence that the prosecution does not intend to tender as exhibits; and

(v) a clear photograph, or a clear copy of such a photograph, of any thing relevant to the alleged offence that cannot be described in detail in the list; and

(vi) a copy of—

(A) records of any medical examination of the accused; and

(B) reports of any forensic procedure or forensic examination conducted on the accused; and

(C) the results of any tests—

carried out on behalf of the prosecution and relevant to the alleged offence but on which the prosecution does not intend to rely; and

(f) if the committal proceeding relates (wholly or partly) to a charge for a sexual offence, a copy of every statement made by the complainant to any police officer that relates to the alleged offence and contains an acknowledgment of its truthfulness; and

(g) a copy of, or a list of, any other information, documents or things required by the rules of court to be included in a hand-up brief.

Note

See section 416 as to the prosecution's general obligation of disclosure.

111 Continuing obligation of disclosure

(1) This section applies to any information, document or thing that—

(a) comes into the informant's possession or comes to the informant's notice after the service of the hand-up brief; and

(b) would have been required to be listed, or a copy of which would have been required to be served, in the hand-up brief.

(2) The informant must—

(a) serve on the accused a copy of the document or list; and

(b) file a copy with the registrar; and

(c) if the DPP is conducting the committal proceeding, forward another copy to the DPP—

as soon as practicable after the information, document or thing comes into the informant's possession or comes to the informant's notice.

(3) This section does not apply to a plea brief.

Note

See section 416 as to the prosecution's general obligation of disclosure.

112 Rules with respect to statements

(1) A statement that the informant intends to tender in a committal proceeding must be—

(a) in the form of an affidavit; or

(b) signed by the person making the statement and must contain an acknowledgment signed by that person in the presence of a person referred to in Schedule 3 that the statement is true and correct and is made in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury; or

(c) in a form, and attested to in a manner, prescribed by the rules of court.

(2) If a person under the age of 18 years makes a statement that the informant intends to tender in a committal proceeding, the statement must include the person's age.

(3) If a person who cannot read makes a statement that the informant intends to tender in a committal proceeding—

(a) the statement must be read to the person before he or she signs it; and

(b) the acknowledgment must state that the statement was read to the person before he or she signed it.

* * * * *

Note

Section 414 provides for acknowledgment of false statements.

PART 4.5—CASE DIRECTION

118 Case direction notice

(1) If a hand-up brief is served under section 107, the accused and the DPP or, if the DPP is not conducting the committal proceeding, the informant must jointly file with the registrar a case direction notice at least 7 days before the committal mention hearing.

(2) If the accused is not represented by a legal practitioner and does not sign a case direction notice, the DPP or, if the DPP is not conducting the committal proceeding, the informant must file the case direction notice, despite—

(a) it not being signed by or on behalf of the accused; and

(b) the accused not having participated in any discussion or other activity connected with its preparation.

(3) If the Magistrates' Court at any time fixes another date for a committal mention hearing, the court may—

(a) direct that another case direction notice is to be jointly filed with the registrar by the accused and the DPP or, if the DPP is not conducting the committal proceeding, the informant at least 7 days before that date or within any other period that is fixed by the court; and

(b) give any direction that it considers appropriate as to the matters to be dealt with by that case direction notice.

119 Contents of case direction notice

A case direction notice—

(a) must be in the form prescribed by the rules of court;

(b) must specify the procedure by which it is proposed that the matter be dealt with or indicate whether an adjournment of the committal mention hearing would assist the parties in determining how the matter should be dealt with;

(c) must state the names of any witnesses that the accused intends to seek leave to cross-examine, and for each witness the accused must specify—

(i) each issue for which leave to cross-examine is sought; and

(ii) the reason why the evidence of the witness is relevant to the issue; and

(iii) the reason why cross-examination of the witness on the issue is justified;

Notes

1 At a committal mention hearing, the Magistrates' Court may grant leave to cross-examine a witness on one or more issues. If the Magistrates' Court grants leave to cross-examine a witness, the court must identify each issue on which the witness may be cross-examined. See section 124(6).

2 If leave to cross-examine a witness is granted under section 124, the Magistrates' Court may grant leave, during the committal hearing, for the accused to cross-examine the witness on other issues. See section 132A.

(d) must state, in respect of each issue specified in accordance with paragraph (c)—

(i) whether the informant consents to or opposes leave being granted in respect of that issue; and

(ii) if the informant opposes leave being granted, the reason why leave is opposed;

(e) may include a statement that the accused requires—

(i) specified items listed in the hand-up brief to be produced for inspection or a copy given to the accused on or before the committal mention hearing;

(ii) a copy of any information, document or thing specified by the accused that the accused considers ought to have been included in the hand-up brief;

(iii) particulars of previous convictions of any witness on whose evidence the prosecution intends to rely in the committal proceeding;

(f) may include a statement that the accused is prepared, or is not prepared, to proceed or proceed further with the committal hearing while a forensic procedure, examination or test described in the hand-up brief remains uncompleted;

(g) must be signed by or on behalf of the accused and the DPP or, if the DPP is not conducting the committal proceeding, the informant.

120 Late application for leave to cross-examine witness

(1) The Magistrates' Court may permit an accused to apply for leave to cross-examine a witness after the expiry of the period for filing a case direction notice if the court is satisfied that it is in the interests of justice

to do so, having regard to the reason why the application was not made before the expiry of the period.

(2) If the Magistrates' Court allows an accused to apply for leave to cross-examine a witness in the circumstances referred to in subsection (1), the accused and the DPP or, if the DPP is not conducting the committal proceeding, the informant must jointly file with the registrar another case direction notice—

(a) at least 7 days before the next committal mention hearing; or

(b) within any other period that is fixed by the court.

(3) Section 119(b) does not apply to a case direction notice required to be filed under subsection (2).

…

124 Leave required to cross-examine other witnesses

(1) A witness (other than a witness referred to in section 123) cannot be cross-examined without leave being granted under this section.

(2) In determining whether to grant leave to cross-examine a witness, the Magistrates' Court may have regard to whether the informant consents to or opposes leave being granted.

(3) The Magistrates' Court must not grant leave to cross-examine a witness unless the court is satisfied that—

(a) the accused has identified an issue to which the proposed questioning relates and has provided a reason why the evidence of the witness is relevant to that issue; and

(b) cross-examination of the witness on that issue is justified.

(4) In determining whether cross-examination is justified, the Magistrates' Court must have regard to the need to ensure that—

(a) the prosecution case is adequately disclosed; and

(b) the issues are adequately defined; and

(c) the evidence is of sufficient weight to support a conviction for the offence with which the accused is charged; and

(d) a fair trial will take place if the matter proceeds to trial, including that the accused is able adequately to prepare and present a defence; and

(e) matters relevant to a potential plea of guilty are clarified; and

(f) matters relevant to a potential discontinuance of prosecution under section 177 are clarified; and

(g) trivial, vexatious or oppressive cross-examination is not permitted; and

(h) the interests of justice are otherwise served.

Notes

1 Section 102 of the **Evidence Act 2008** provides that credibility evidence about a witness is not admissible (the ***credibility rule***).

2 Section 103(1) of the **Evidence Act 2008** provides that the credibility rule does not apply to evidence adduced in cross-examination of a witness if the evidence could substantially affect the assessment of the credibility of the witness.

(5) In addition to the requirements of subsection (4), if the witness is under 18 years of age, the Magistrates' Court must have regard to—

(a) the need to minimise the trauma that might be experienced by the witness in giving evidence; and

(b) any relevant condition or characteristic of the witness, including age, culture, personality, education and level of understanding; and

(c) any mental, intellectual or physical disability to which the witness is or appears to be subject and of which the court is aware; and

(d) the importance of the witness to the case for the prosecution; and

(e) the existence or lack of evidence that corroborates the proposed evidence of the witness; and

(f) the extent of any proposed admissions; and

(g) the probative value of the proposed evidence of the witness; and

(h) the issues in dispute; and

(i) the weight of the proposed evidence of the witness; and

(j) any statements of other witnesses that contradict the proposed evidence of the witness.

(6) If the Magistrates' Court grants leave to cross-examine a witness, the court must identify each issue on which the witness may be cross-examined.

PART 4.6—COMMITTAL MENTION AND CASE CONFERENCE

125 Committal mention hearing

(1) At a committal mention hearing, the Magistrates' Court may—

(a) immediately determine the committal proceeding in accordance with section 141, 142 or 143;

(b) offer a summary hearing or determine an application for a summary hearing in accordance with section 30;

(c) hear and determine an application for leave to cross-examine a witness;

(d) fix a date for a committal hearing;

(e) hear and determine any objection to disclosure of material;

(f) fix another date for a committal mention hearing;

(g) make any other order or give any direction that the court considers appropriate.

(2) In considering whether to fix another date for a committal mention hearing to enable the accused to obtain legal representation, the Magistrates' Court must have regard to whether the accused has made reasonable attempts to obtain legal representation.

...

126 Time for holding committal mention hearing

(1) A committal mention hearing must be held—

(a) in the case of a sexual offence, within 3 months after the commencement of the criminal proceeding for the offence; or

(b) in the case of any other offence, within 6 months after the commencement of the criminal proceeding for the offence—

or any other period fixed by the Magistrates' Court under subsection (2).

Note

Section 6(1) sets out how a criminal proceeding is commenced.

(2) The Magistrates' Court may fix a longer period for the holding of a committal mention hearing if the court is satisfied that it is in the interests of justice that another period should be fixed having regard to—

(a) the seriousness of the offence; and

(b) the reason a longer period is required.

(3) Subsection (1) does not apply—

(a) if the accused has failed to attend in accordance with the conditions of his or her bail; or

(b) if a warrant to arrest the accused has been issued and at the end of the period referred to in subsection (1)(a) or (b) (as the case requires) the accused has not been arrested; or

(c) if the accused requests that a committal mention hearing be held after the period referred to in subsection (1)(a) or (b) (as the case requires) and the Magistrates' Court is satisfied that in the interests of justice the request should be granted.

(4) If a committal mention hearing has not been held before the expiry of the period referred to in subsection (1)(a) or (b) (as the case requires), or any longer period fixed under subsection (2), the Magistrates' Court, on the application of the accused, may order the accused to be discharged.

127 Committal case conference

(1) The Magistrates' Court may direct the parties to a committal proceeding to appear at a committal case conference to be conducted by a magistrate.

(2) Wherever practicable, a committal case conference should be conducted on the date of the committal mention hearing.

(3) Evidence of—

(a) anything said or done in the course of a committal case conference; or

(b) any document prepared solely for the purposes of a committal case conference—

is not admissible in any proceeding before any court or tribunal or in any inquiry in which evidence is or may be given before any court or person acting judicially, unless all parties to the committal case conference agree to the giving of the evidence.

PART 4.7—COMMITTAL HEARING

128 Committal hearing

At a committal hearing, the Magistrates' Court—

(a) may offer a summary hearing or determine an application for a summary hearing in accordance with section 30;

(b) may hear evidence in accordance with section 130;

(c) if the committal hearing proceeds, must determine, in accordance with section 141, whether there is evidence of sufficient weight to support a conviction;

(d) may make any order or give any direction that the court considers appropriate.

129 Attendance of witnesses

(1) If leave is granted to cross-examine a witness referred to in section 124 or to call such a witness to give oral evidence-in-chief, the witness must attend on the date to which the committal hearing is adjourned for the witness to give evidence.

(2) The informant must ensure that the witness attends at the time and place fixed for the giving of evidence by the witness.

(3) A witness who is required to attend a committal hearing must attend on any date to which the hearing is adjourned unless excused from attendance by the Magistrates' Court.

Note

See section 134 for powers of the Magistrates' Court and inadmissibility of statement etc. when a witness who is required to attend a committal hearing fails to do so.

130 Giving of evidence by witnesses

(1) In this section—

recording means an audio or audiovisual recording of—

(a) the evidence-in-chief of a witness; or

(b) the compulsory examination of a person under section 106—

a transcript of which was served in the hand-up brief;

statement means a statement of a witness, a copy of which was served in the hand-up brief.

(2) A witness may be called to give evidence at a committal hearing if—

(a) the Magistrates' Court grants leave under section 124 for the cross-examination of the witness; or

(b) having regard to the interests of justice, the Magistrates' Court grants leave to the prosecution to call the witness to give oral evidence-in-chief.

(3) If the Magistrates' Court grants leave under section 124 to cross-examine a witness, the evidence-in-chief of the witness must be confined to the witness identifying himself or herself (in a manner consistent with section 131) and attesting to the truthfulness of the statement or the contents of the recording, unless the Magistrates' Court gives leave under subsection (4) or (5).

(4) If it is in the interests of justice, the Magistrates' Court may give leave for a witness referred to in subsection (3) to give oral evidence-in-chief supplementary to the statement or recording.

(5) If exceptional circumstances exist, the Magistrates' Court may give leave for a witness referred to in subsection (3) to give the whole of his or her evidence-in-chief orally.

(6) On application by a party, the Magistrates' Court may permit a statement or the transcript of a recording to be read aloud before the witness is asked to attest to its truthfulness or is cross-examined.

(7) Subject to section 124, a witness who gives evidence-in-chief may be cross-examined and re-examined.

(8) Evidence given at a committal hearing must be recorded in accordance with Part VI of the **Evidence (Miscellaneous Provisions) Act 1958**.

…

132 Cross-examination of witnesses

(1) An accused who obtains leave to cross-examine a witness is limited to cross-examining the witness on—

(a) the issues identified under section 124(6); and

(b) the issues, if any, in relation to which leave has been obtained under section 132A.

(2) Without limiting any other power that it has to forbid or disallow questions, the Magistrates' Court may disallow any question asked of a witness in the course of cross-examination in a committal hearing if it appears to the court that—

(a) the question does not relate to an issue in relation to which leave has been obtained under section 124 or 132A; or

(b) the question is not justified.

(3) In determining whether a question is justified, the Magistrates' Court must have regard to the matters referred to in section 124(4) and (5).

132A Leave to cross-examine witness on different issue

(1) This section applies if the Magistrates' Court grants leave for the accused to cross-examine a witness under section 124.

(2) The Magistrates' Court may grant leave for the accused to cross-examine the witness on an issue that was not identified under section 124(6).

(3) In determining whether to grant leave, the Magistrates' Court may have regard to whether the informant consents to or opposes leave being granted.

(4) The Magistrates' Court must not grant leave unless the court is satisfied that—

(a) the accused has identified an issue to which the proposed questioning relates and has provided a reason why the evidence of the witness is relevant to that issue; and

(b) cross-examination of the witness on that issue is justified.

(5) In determining whether cross-examination on an issue is justified, the Magistrates' Court must have regard to the matters referred to in section 124(4) and (5).

…

PART 4.9—DETERMINATION OF COMMITTAL PROCEEDING

141 Determination of committal proceeding where hand-up brief used

(1) After the evidence for the prosecution is concluded, the Magistrates' Court must enquire—

(a) except in a committal proceeding to which section 123 applies, whether the accused intends to call any witness; and

Note

Section 123 provides that there is to be no cross-examination in certain sexual offence cases.

(b) whether the accused intends to make any submission.

(2) If the accused is not represented by a legal practitioner, the Magistrates' Court must—

(a) inform the accused that the accused has the right to answer the charge and must choose either—

(i) to give sworn or affirmed evidence, that is, to enter the witness box, take the oath or make an affirmation and say what the accused wants to say in answer to the charge and then to respond to any questions from the prosecution or the court about the evidence of the accused; or

(ii) to say nothing in answer to the charge; and

(b) except in a committal proceeding to which section 123 applies, inform the accused that whatever choice referred to in paragraph (a) is made, the accused may call any witnesses to give sworn or affirmed evidence for the accused.

(2A) The Magistrates' Court is required to give information referred to in subsection (2) in a manner likely to be understood by the accused.

(3) After giving the information referred to in subsection (2), the Magistrates' Court must ask the accused what the accused wants to do.

(4) At the conclusion of all of the evidence and submissions, if any, the Magistrates' Court must—

(a) if in its opinion the evidence is not of sufficient weight to support a conviction for any indictable offence, discharge the accused; or

(b) if in its opinion the evidence is of sufficient weight to support a conviction for the offence with which the accused is charged, commit the accused for trial in accordance with section 144; or

(c) if in its opinion the evidence is of sufficient weight to support a conviction for an indictable offence other than the offence with which the accused is charged, adjourn the committal proceeding to enable the informant to file a charge-sheet in respect of that other offence and, if a charge-sheet is filed, must commit the accused for trial in accordance with section 144.

(5) If the informant does not file a charge-sheet for the other offence within the period of an adjournment under subsection (4)(c), the Magistrates' Court must discharge the accused.

…

143 Determination of committal proceeding where accused elects to stand trial

(1) Any time after the service on an accused of a hand-up brief, the accused may elect to stand trial.

(2) An election is made by—

(a) filing with the registrar a notice in the form prescribed by the rules of court and signed by the accused; and

(b) serving a copy of the notice on the informant in accordance with section 392.

(3) As soon as practicable after a notice is filed with the registrar under this section, the Magistrates' Court must—

(a) if the accused is in custody, direct that the accused be brought before the court; or

(b) if the accused is not in custody, direct that a summons to attend or warrant to arrest be issued.

(4) On the attendance of the accused before the Magistrates' Court, if the court considers that the accused understands the nature and consequence of the election, the court must commit the accused for trial in accordance with section 144.

144 Procedure before and on committing accused for trial

(1) Before committing an accused for trial, the Magistrates' Court must, in the manner prescribed by the rules of court, if any—

(a) ask the accused whether the accused pleads guilty or not guilty to the charge; and

(b) inform the accused that the sentencing court may take into account a plea of guilty and the stage in the proceeding at which the plea or an intention to plead guilty is indicated.

(2) On committing an accused for trial, the Magistrates' Court must—

(a) if the accused was not represented by a legal practitioner in the committal proceeding—

(i) explain to the accused the importance of obtaining legal representation for the trial; and

(ii) advise that the accused has the right, if eligible, to legal aid under the **Legal Aid Act 1978**; and

(iii) warn the accused that, if the accused wishes to be legally aided, it is the accused's responsibility to make application to Victoria Legal Aid as soon as possible; and

(b) explain to the accused, in a manner likely to be understood by the accused—

(i) the provisions of section 190 (alibi evidence), if relevant; and

(ii) the provisions of sections 342, 344 and 346, if relevant; and

(iii) any other information required to be given by the rules of court; and

(c) if the accused is a natural person, remand the accused in custody, or grant bail, until trial or a date before trial fixed by the court; and

Note

See section 333 where accused is undergoing a sentence of detention in a youth justice centre.

(d) in the case of a corporate accused, order the accused to appear, by a representative or a legal practitioner, on the day on which the trial of the accused is listed to commence or on any other day specified by the court.

Note

See section 252 (offence for corporate accused to fail to appear on day trial listed to commence etc.).

…

CHAPTER 5—TRIAL ON INDICTMENT

PART 5.1—INTRODUCTION

158 Application of Chapter

This Chapter applies if—

(a) an accused is committed for trial under Chapter 4; or

(b) a direct indictment is filed against an accused.

PART 5.2—INDICTMENT AND PLACE OF TRIAL

159 DPP or Crown Prosecutor may file an indictment

(1) Subject to the **Public Prosecutions Act 1994**, the DPP or a Crown Prosecutor in the name of the DPP may file an indictment.

(2) An indictment may be filed at any time, except where otherwise provided by or under this or any other Act.

Note

Section 163 provides time limits for the filing of certain indictments.

(3) An indictment must—

(a) be in writing; and

(b) be signed by the DPP or a Crown Prosecutor in the name of the DPP; and

(c) comply with Schedule 1.

Notes

1 Section 253 abolishes the common law procedure of calling a grand jury.

2 Section 172 permits the DPP to nominate an address for service of documents. That information may be included on an indictment.

160 Choice of Supreme Court or County Court for filing an indictment

(1) An indictment may be filed in—

(a) the Supreme Court; or

(b) the County Court, if all of the indictable offences alleged in the indictment are within the jurisdiction of that court.

Note

See section 36A of the **County Court Act 1958** for the criminal jurisdiction of the County Court.

(2) In determining whether to file an indictment in the Supreme Court or in the County Court, the DPP or a Crown Prosecutor must have regard to—

(a) the complexity of the case; and

(b) the seriousness of the alleged offence; and

(c) any particular importance attaching to the case; and

(d) any other consideration that the DPP or Crown Prosecutor considers relevant.

161 Direct indictment commences criminal proceeding

The filing of a direct indictment commences a criminal proceeding.

Notes

1 See the definition of ***direct indictment*** in section 3. This includes an indictment filed after the Magistrates' Court declines to commit an accused for trial in respect of the offence charged in the indictment or a related offence.

2 A criminal proceeding may also be commenced—

(a) in accordance with section 6; or

(b) by a direction under section 415 that a person be tried for perjury.

162 Filing of any other indictment does not commence criminal proceeding

The filing of an indictment other than a direct indictment does not commence a new criminal proceeding against the accused.

163 Time limits for filing certain indictments

(1) If a person is committed for trial in respect of an offence other than a sexual offence, the DPP or a Crown Prosecutor may file an indictment against the person—

(a) within 6 months after the date of committal; or

(b) if the period referred to in paragraph (a) or any extension of that period is extended under section 247, within the extended period.

(2) If a person is committed for trial in respect of a sexual offence in which the complainant was a child or a person with a cognitive impairment when the criminal proceeding was commenced, the DPP or a Crown Prosecutor may file an indictment against the person—

(a) within 14 days after the date of committal; or

(b) if the period referred to in paragraph (a) or any extension of that period is extended under section 247, within the extended period.

(3) If a person is committed for trial in respect of a sexual offence other than one referred to in subsection (2), the DPP or a Crown Prosecutor may file an indictment against the person—

(a) at least 28 days before the day on which the trial is listed to commence; or

(b) if the period referred to in paragraph (a), or any extension or abridgment of that period, is extended or abridged under section 247, within the extended or abridged period.

164 Filing of fresh indictment

(1) In this section—

fresh indictment means an indictment which includes a charge for the same offence as an offence charged in an indictment previously filed in court against that accused or a related offence.

(2) Nothing in section 163 prevents the filing of a fresh indictment.

(3) The filing of a fresh indictment does not commence a new criminal proceeding.

(4) On the filing of a fresh indictment against an accused, proceedings in relation to a charge for the same offence or a related offence in an indictment previously filed in court against that accused are discontinued.

Note

See the definition of ***related offences*** in section 3.

165 Order for amendment of indictment

(1) The court at any time may order that an indictment be amended in any manner that the court thinks necessary, unless the required amendment cannot be made without injustice to the accused.

(2) If an indictment is amended by order under this section, the indictment is to be treated as having been filed in the amended form for the purposes of the trial and all proceedings connected with the trial.

Note

Section 327Q provides a limitation on amendments in the case of direct indictments under Chapter 7A.

166 Errors etc. in indictment

(1) An indictment is not invalid by reason only of a failure to comply with Schedule 1.

(2) A charge on an indictment is not invalid by reason only of—

(a) omitting to state the time at which the offence was committed unless time is an essential element of the offence; or

(b) incorrectly stating the time at which the offence was committed; or

(c) stating the offence to have been committed on an impossible day or on a day that never happened.

167 Supreme Court may order that accused be tried in County Court or Supreme Court

(1) If—

(a) an indictment against an accused is filed in the Supreme Court; and

(b) the offence charged in the indictment may be tried by the County Court—

the Supreme Court may order that the accused be tried at a sitting of the County Court specified in the order.

(2) If an indictment against an accused is filed in the County Court, the Supreme Court may order that the accused be tried at a sitting of the Supreme Court specified in the order.

…

169 Place of hearing of criminal trial

(1) A criminal trial in the Supreme Court or the County Court is to be held in the court sitting at the place that is nearest to the place where the offence is alleged to have been committed, unless an order is made under section 192.

(2) A criminal trial is not invalid only because it was conducted at a place other than the place referred to in subsection (1).

170 Multiple charges or multiple accused on single indictment

(1) If an indictment contains more than one charge, the charges must be heard together unless an order is made under section 193 or 195.

(2) If an indictment names more than one accused, whether in the same charge or separate charges, the charge or charges against all accused must be tried together unless an order is made under section 193.

PART 5.3—NOTIFYING ACCUSED OF INDICTMENT

171 Copy indictment to be served

(1) The DPP must, as soon as practicable after an indictment is filed, serve on the accused—

(a) a copy of the indictment; and

(b) if the DPP does not have notice that the accused is represented by a legal practitioner, a notice in the form prescribed by the rules of court—

(i) advising that legal representation should be sought and that the accused has the right, if eligible, to legal aid under the **Legal Aid Act 1978**; and

(ii) providing details of how to contact Victoria Legal Aid.

(2) If a direct indictment is filed, the copy indictment referred to in subsection (1)(a) must be served personally on the accused in accordance with section 391.

….

PART 5.4—DISCONTINUING A PROSECUTION

177 DPP may discontinue a prosecution without adjudication

(1) The DPP may discontinue a prosecution for an offence against an accused by—

(a) announcing the discontinuance in court; or

(b) filing in court written notice of the discontinuance, signed by the DPP.

(2) A prosecution may be discontinued—

(a) at any time except during trial;

(b) whether or not an indictment against the accused has been filed.

(3) If an indictment has not been filed against the accused, the written notice referred to in subsection (1)(b) must be filed in the court to which the accused has been committed for trial.

(4) If a discontinuance of prosecution is announced in court, written notice of the discontinuance, signed by the DPP, must be filed in court as soon as practicable after the announcement.

(5) The DPP must serve a copy of a written notice of discontinuance that has been filed in court under subsection (1)(b) or (4) on—

(a) the accused; or

(b) if the accused is dead, on—

(i) the legal practitioner who last represented the accused, if that legal practitioner can reasonably be identified; or

(ii) the next of kin of the accused, if that person can reasonably be identified.

(6) A discontinuance of prosecution does not amount to an acquittal.

(7) An accused may be indicted on a charge in respect of which an earlier prosecution has been discontinued.

178 Release from custody on discontinuance of prosecution

(1) If—

(a) a prosecution for a charge against a person is discontinued under section 177; and

(b) the person is in custody in relation to that charge, irrespective of whether the person is in custody for any other reason—

the DPP must immediately notify the person who has legal custody of the person that the prosecution has been discontinued.

(2) On notification being given under subsection (1), the person in custody is to be released, if the person is not in custody for any other reason.

Note

See Part 1A of the **Corrections Act 1986** and section 483 of the **Children, Youth and Families Act 2005** as to who has legal custody.

PART 5.5—PRE-TRIAL PROCEDURE

Division 1—Directions hearings

179 Directions hearing

At any time except during trial, the court may conduct one or more directions hearings.

Note

Section 210 sets out when a trial commences.

180 Accused may be arraigned at a directions hearing

(1) The accused may be arraigned at a directions hearing, if an indictment has been filed against the accused.

Notes

1 Section 215 sets out how and when arraignment occurs.

2 Arraignment at a directions hearing does not commence a trial: see section 210.

(2) Despite subsection (1), if the accused pleads not guilty to one or more charges in the indictment and indicates an intention to plead not guilty to one or more remaining charges, it is not necessary for those remaining charges to be read to the accused and the accused must be taken to have pleaded not guilty to those charges.

181 Powers of court at directions hearing

(1) At a directions hearing, the court may make or vary any direction or order, or require a party to do anything that the court considers necessary, for the fair and efficient conduct of the proceeding.

(2) Without limiting subsection (1), the court may—

(a) require the accused to advise whether the accused is legally represented and has funding for continued legal representation up to and including the trial;

(b) without being limited by section 200, require the parties to notify the court of any pre-trial issues that the parties intend to raise or any orders under section 199(1) that the parties intend to seek;

(c) without being limited by section 200, set a timetable for the hearing of pre-trial issues or applications for orders under Division 3 or 4;

(d) in the case of a trial for a sexual offence in which the complainant was a child or a person with a cognitive impairment when the criminal proceeding was commenced—

(i) require the prosecutor to advise as to the availability of the complainant, and the accused to advise as to his or her own availability for the special hearing to be held under Division 6 of Part 8.2; and

(ii) give a direction under section 370(1A) that the special hearing is to be held before the trial or during the trial; and

(iii) if the special hearing is to be held during the trial, specify the date on which the special hearing is to commence;

Note

See section 5 as to the commencement of a criminal proceeding.

(e) require the parties to provide an estimate of the length of the trial;

(f) require the parties to advise as to the estimated number and the availability of witnesses (other than the accused) and any relevant requirements of witnesses and interpreters;

(g) order a party to make, file in court or serve (as the case requires) any written or oral material required by the court for the purposes of the proceeding;

(h) order the prosecution to file in court and serve on the accused a copy of any material on which the prosecution intends to rely at the trial;

(i) determine any objection relating to the disclosure of information or material by the prosecution;

(j) allow a party to amend a document that has been prepared by or on behalf of that party for the purposes of the proceeding;

(k) determine an application for a sentence indication.

(3) At a directions hearing, the court may make any order or other decision that can be made or decided before trial by or under this or any other Act.

Note

Section 199(1) indicates the issues that may be decided before trial under this Act.

Division 2—Pre-trial disclosure

182 Summary of prosecution opening and notice of pre-trial admissions

(1) Unless the court otherwise directs, at least 28 days before the day on which the trial of the accused is listed to commence, the DPP must serve on the accused and file in court—

(a) a summary of the prosecution opening; and

(b) a notice of pre-trial admissions.

(2) The summary of the prosecution opening must outline—

(a) the manner in which the prosecution will put the case against the accused; and

(b) the acts, facts, matters and circumstances being relied on to support a finding of guilt.

(3) The notice of pre-trial admissions must identify the statements of the witnesses whose evidence, in the opinion of the DPP, ought to be admitted as evidence without further proof, including evidence that is directed solely to formal matters including—

(a) continuity; or

(b) a person's age; or

(c) proving the accuracy of a plan, or that photographs were taken in a certain manner or at a certain time.

(4) If an accused has not received, under section 147, a copy of a statement identified in a notice of pre-trial admissions, the notice must contain a copy of the statement.

183 Response of accused to summary of prosecution opening and notice of pre-trial admissions

(1) After being served with a copy of the documents referred to in section 182, the accused must serve on the prosecution in accordance with section 392 and file in court, at least 14 days before the day on which the trial of the accused is listed to commence—

(a) a copy of the response of the accused to the summary of the prosecution opening; and

(b) a copy of the response of the accused to the notice of pre-trial admissions.

(2) The response of the accused to the summary of the prosecution opening must identify the acts, facts, matters and circumstances with which issue is taken and the basis on which issue is taken.

(3) The response of the accused to the notice of pre-trial admissions must indicate what evidence, as set out in the notice of pre-trial admissions, is agreed to be admitted as evidence without further proof and what evidence is in issue and, if issue is taken, the basis on which issue is taken.

(4) Despite subsections (2) and (3), the accused is not required to state—

(a) the identity of any witness (other than an expert witness) to be called by the accused; or

(b) whether the accused will give evidence.

184 Intention to depart at trial from document filed and served

If a party intends to depart substantially at trial from a matter set out in a document served and filed by that party under this Division, the party—

(a) must so inform the court and the other party in advance of the trial; and

(b) if the court so orders, must inform the court and the other party of the details of the proposed departure.

185 Continuing obligation of disclosure

(1) This section applies to any information, document or thing that—

(a) comes into the possession of the prosecution after an accused is committed for trial; or

(b) is in the possession of the prosecution when, or comes into the possession of the prosecution after, a direct indictment is filed against an accused—

and would have been required to be listed, or a copy of which would have been required to be served, in the hand-up brief.

Note

See section 110 for the contents of a hand-up brief.

(2) Subject to subsection (4) and section 185A, the prosecution must serve on the accused a copy of the document or list as soon as practicable after—

(a) the information, document or thing comes into the possession of the prosecution; or

(b) the direct indictment is filed against the accused—

as the case requires.

(3) If the information, document or thing cannot reasonably be copied, the prosecution must advise the accused of the existence of the information, document or thing and make it available for inspection at a time and place agreed between the accused and the prosecution.

(4) The prosecution need not provide any information, document or thing under this section if it has already been provided to the accused by the prosecution.

Notes

1 Section 188 requires the prosecution to serve a notice if additional evidence is to be given at trial.

2 See section 416 as to the prosecution's general obligation of disclosure.

…

188 Prosecution notice of additional evidence

(1) In this section—

additional evidence means any evidence that is not included in the depositions in the proceeding.

(2) If the DPP intends to call a witness at trial to give additional evidence, the DPP must serve on the accused and file in court—

(a) a notice of intention to call additional evidence; and

(b) a copy of the statement of the proposed witness containing the additional evidence or an outline of the additional evidence that the witness is expected to give.

Notes

1 See the definition of ***depositions*** in section 3.

2 Section 185 (Continuing obligation of disclosure) requires the prosecution to serve a copy of a document as soon as practicable after the document comes into the possession of the prosecution.

189 Expert evidence

(1) If the accused intends to call a person as an expert witness at the trial, the accused must serve on the prosecution in accordance with section 392 and file in court a copy of the statement of the expert witness in accordance with subsection (2)—

(a) at least 14 days before the day on which the trial of the accused is listed to commence; or

(b) if the statement is not then in existence, as soon as possible after it comes into existence.

(2) The statement must—

(a) contain the name and business address of the witness;

(b) describe the qualifications of the witness to give evidence as an expert;

(c) set out the substance of the evidence it is proposed to adduce from the witness as an expert, including the opinion of the witness and the acts, facts, matters and circumstances on which the opinion is formed.

Note

Section 177 of the **Evidence Act 2008** provides for certificates of expert evidence.

190 Alibi evidence

(1) An accused must not, without leave of the court—

(a) give evidence personally; or

(b) adduce evidence from another witness—

in support of an alibi unless the accused has given notice of alibi within the period referred to in subsection (2).

(2) A notice of alibi must be given by serving the notice on the DPP within 14 days after—

(a) the day on which the accused was committed for trial on the charge to which the alibi relates; or

(b) if paragraph (a) does not apply, the day on which the accused received a copy of the indictment.

(3) A notice of alibi must be served in accordance with section 392.

(4) A notice of alibi must contain—

(a) particulars as to time and place of the alibi; and

(b) the name and last known address of any witness to the alibi; and

(c) if the name and address of a witness are not known, any information which might be of material assistance in finding the witness.

(5) If the name and address of a witness are not included in a notice of alibi, the accused must not call that person to give evidence in support of the alibi unless the court is satisfied that the accused took reasonable steps to ensure that the name and address would be ascertained.

(6) If the accused is notified by the DPP that a witness named or referred to in a notice of alibi has not been traced, the accused must give written notice to the DPP, without delay, of any further information which might be of material assistance in finding the witness.

(7) The court must not refuse leave under subsection (1) if it appears to the court that the accused was not informed of the requirements of this section.

(8) If—

(a) an accused gives notice of alibi under this section; and

(b) the DPP requests an adjournment—

the court must grant an adjournment for a period that appears to the court to be necessary to enable investigation of the alibi unless it appears that to do so would prejudice the proper presentation of the case of the accused.

191 Offence to communicate with alibi witness

(1) If a person (other than a person referred to in subsection (2)) has been named or referred to as a proposed witness in a notice of alibi given under section 190—

(a) a person acting for the prosecution; or

(b) a police officer—

must not communicate with that person directly or indirectly with respect to the charge or any related matter before the conclusion of the proceeding, including any new trial or rehearing, without the consent and presence during the communication of—

(c) the legal practitioner representing the accused; or

(d) if not legally represented, the accused.

Penalty: Level 8 imprisonment (1 year maximum)

(2) Subsection (1) does not apply to a person who the accused has been notified may be called as a witness for the prosecution at the trial.

…

Division 4—Procedure for pre-trial orders and other decisions

199 Court may make orders and other decisions before trial

(1) At any time before trial, the court may hear and decide any issue with respect to the trial that the court considers appropriate, including—

(a) an issue of law or procedure that arises or is anticipated to arise in the trial, including an issue as to admissibility of evidence;

(b) an issue of fact, or mixed law and fact, that may be determined lawfully by a judge alone without a jury, including an issue as to admissibility of evidence;

(c) an application for an order that may be made in relation to the trial under this or any other Act or at common law, including an application to quash a charge in the indictment;

(d) any other issue with respect to the trial.

(2) Subsection (1) applies despite sections 181, 183, 184 and 200.

(3) An order or other decision made at a directions hearing or other pre-trial hearing has the same effect as if it had been made after the commencement of the trial.

(4) Nothing in this section limits the power of the court to make any order or other decision that it has power to make otherwise than under subsection (1).

Note

Section 192A of the **Evidence Act 2008** provides for advance rulings in relation to evidence proposed to be adduced in a proceeding.

200 Disclosure of pre-trial issues

(1) If a party intends to raise an issue referred to in section 199(1)(a), (b), (c) or (d), whether before or during trial, the party must—

(a) first, notify the other party of the issue or the order sought, in order to ascertain whether the issue will be in dispute or the order will be opposed; and

(b) secondly, notify the court of the issue or the order sought.

(2) Notification under subsection (1)(b) must include—

(a) confirmation that the other party has been notified of the issue or the order sought; and

(b) information, if available, as to whether the issue is in dispute or the order is opposed.

(3) Notification under subsection (1) must occur—

(a) as soon as possible after the party becomes aware of the issue and at least 14 days before the day on which the trial of the accused is listed to commence; or

(b) if the party is not aware of the issue within the period referred to in paragraph (a), as soon as possible after the party becomes aware of it.

…

PART 5.6—SENTENCE INDICATION

207 Court may give sentence indication

At any time after the indictment is filed, the court may indicate that, if the accused pleads guilty to the charge on the indictment at that time or

another charge, the court would or would not (as the case may be) be likely to impose on the accused a sentence of imprisonment that commences immediately.

Note

Section 18 of the **Supreme Court Act 1986** and section 80 of the **County Court Act 1958** enable the court to close a proceeding to the public.

208 Application for sentence indication

(1) A sentence indication under section 207—

(a) may be given only on the application of the accused; and

(b) may be given only once during the proceeding, unless the prosecutor otherwise consents.

(2) An application under subsection (1)(a) may be made only with the consent of the prosecutor.

(3) If an application under subsection (1)(a) is made in respect of a charge that is not on the indictment, the accused must specify the charge in the application.

(4) The court may refuse to give a sentence indication under section 207.

(5) Without limiting subsection (4), the court may refuse to give a sentence indication under section 207 if the court considers there is insufficient information before it of the impact of the offence on any victim of the offence.

Note

Under section 5(2)(daa) of the **Sentencing Act 1991**, in sentencing an offender a court must have regard to the impact of the offence on any victim of the offence.

209 Effect of sentence indication

(1) If—

(a) the court indicates that it would not be likely to impose on the accused a sentence of imprisonment that commences immediately; and

(b) the accused pleads guilty to the charge for the offence at the first available opportunity—

the court, when sentencing the accused for the offence, must not impose a sentence of imprisonment that commences immediately.

(2) If—

(a) the court gives a sentence indication under section 207; and

(b) the accused does not plead guilty to the charge for the offence at the first available opportunity—

at trial the court must be constituted by a different judge, unless all the parties otherwise agree.

(3) A sentence indication does not bind the court on any hearing before the court constituted by a different judge.

(4) A decision to give or not to give a sentence indication is final and conclusive.

(5) An application for a sentence indication and the determination of the application are not admissible in evidence against the accused in any proceeding.

(6) This section does not affect any right to appeal against sentence.

PART 5.7—TRIAL

Division 1—Preliminary

210 When trial commences

(1) A trial commences when the accused pleads not guilty on arraignment in the presence of the jury panel in accordance with section 217.

(2) If a jury panel is split into 2 or more parts under section 30(5) of the **Juries Act 2000**, the trial commences when the accused pleads not guilty on arraignment in the presence of the first part of the jury panel that is present in court.

Note

Section 215 sets out how and when arraignment occurs.

…

Division 2—Arraignment

215 Arraignment

(1) An accused is arraigned when the court—

(a) asks the accused whether the accused is the person named on the indictment; and

(b) reads out each charge on the indictment and asks the accused whether the accused pleads guilty or not guilty to the charge.

(2) An accused may be arraigned or re-arraigned at any time.

…

217 Arraignment in presence of jury panel

If an accused has not pleaded guilty to all of the charges on an indictment—

(a) the accused must be arraigned in the presence of the jury panel or, if a jury panel is split into 2 or more parts under section 30(5) of the **Juries Act 2000**, the first part of the jury panel that is present in court; and

(b) a jury for the trial must be empanelled from that jury panel.

Notes

1 A trial commences when arraignment under this section occurs: see section 210.

2 The **Juries Act 2000** sets out the process for empanelling a jury.

…

Division 3—Assisting the jury

222 Judge may address jury

At any time during a trial, the trial judge may address the jury on—

(a) the issues that are expected to arise or have arisen in the trial;

(b) the relevance to the conduct of the trial of any admissions made, directions given or matters determined prior to the commencement of the trial;

(c) any other matter relevant to the jury in the performance of its functions and its understanding of the trial process, including giving a direction to the jury as to any issue of law, evidence or procedure.

223 Jury documents

(1) For the purpose of helping the jury to understand the issues or the evidence, the trial judge may order, at any time during the trial, that copies of any of the following are to be given to the jury in any form that the trial judge considers appropriate—

(a) the indictment;

(b) the summary of the prosecution opening;

(c) the response of the accused to the summary of the prosecution opening and the response of the accused to the notice of pre-trial admissions of the prosecution;

(d) any document admitted as evidence;

(e) any statement of facts;

(f) the opening and closing addresses of the prosecution and the accused;

(g) any address of the trial judge to the jury under section 222;

(h) any schedules, chronologies, charts, diagrams, summaries or other explanatory material;

Note

See sections 29(4) and 50 of the **Evidence Act 2008**.

(ha) the transcript of the evidence in the trial;

(i) transcripts of evidence or audio or audiovisual recordings of evidence;

(j) transcripts of any audio or audiovisual recordings;

(k) the trial judge's directions to the jury under section 238;

(ka) a jury guide;

(l) any other document that the trial judge considers appropriate.

(1A) A jury guide referred to in subsection (1)(ka) may contain any of the following—

(a) a list of questions to assist the jury in reaching a verdict (including questions that are included in integrated directions within the meaning of section 67 of the **Jury Directions Act 2015**);

(b) directions on the evidence and how the evidence is to be assessed;

(c) references to the way in which the prosecution and the accused have put their cases in relation to the issues in the trial;

(d) any evidence identified under section 66 of the **Jury Directions Act 2015**;

(e) any other information.

(2) The trial judge may specify in an order under subsection (1) when any material is to be given to the jury.

Division 4—Opening addresses

224 Opening address by prosecutor

(1) The prosecutor must give an opening address to the jury on the prosecution case against the accused before any evidence is given in the trial.

(2) If documents have been served and filed by the prosecution under Part 5.5, the prosecutor must restrict himself or herself to the matters set out in those documents when opening the prosecution case, unless the trial judge considers that there are exceptional circumstances.

(3) For the purposes of subsection (2), a change of legal practitioner does not constitute exceptional circumstances.

(4) Despite subsection (2), the prosecutor is not restricted to a verbatim presentation of the summary of the prosecution opening as served and filed under Part 5.5.

(5) The trial judge may limit the length of the prosecution opening.

225 Response of accused to prosecution opening

(1) In all trials before a jury, immediately after the prosecutor's opening, the accused—

(a) if represented by a legal practitioner, must present;

(b) if not represented by a legal practitioner, may present—

to the jury the response of the accused to the prosecution opening prepared in accordance with Part 5.5.

(2) If documents have been served and filed by the defence under Part 5.5, the accused is restricted to the matters set out in those documents when

presenting the response of the accused to the prosecution opening, unless the trial judge considers that there are exceptional circumstances.

(3) For the purposes of subsection (2), a change of legal practitioner does not constitute exceptional circumstances.

(4) Despite subsection (2), the accused is not restricted to a verbatim presentation of the response of the accused to the summary of the prosecution opening as served and filed under Part 5.5.

(5) The trial judge may limit the length of the response of the accused.

Division 5—Case for the accused

226 Accused entitled to respond after close of prosecution case

(1) After the close of the case for the prosecution, an accused is entitled—

(a) to make a submission that there is no case for the accused to answer;

(b) to answer the charge by choosing to give evidence or call other witnesses to give evidence or both;

(c) not to give evidence or call any witnesses.

Note

Section 232A enables the trial judge, with the consent of the prosecution and the accused, to direct that expert witnesses give their evidence concurrently or consecutively. The trial judge may direct that this evidence be given at any stage of the trial, including before the prosecution has closed its case.

(2) When ruling on a no-case submission by an accused, the trial judge may take into account the evidence already given of an expert witness called on behalf of any accused in the trial.

…

231 Opening address of accused

(1) If the accused intends to give evidence, or to call other witnesses on behalf of the accused, or both, the accused is entitled to give an opening address to the jury outlining the evidence that the accused proposes to give or call.

(2) If the accused gives an opening address, it must be given before the accused gives evidence or calls any other witnesses.

Note

Section 232A enables the trial judge, with the consent of the prosecution and the accused, to direct that expert witnesses give their evidence concurrently or consecutively. The trial judge may direct that this evidence be given at any stage of the trial, including before the prosecution has closed its case.

(3) The trial judge may limit the length of the opening address of the accused.

(4) The accused is not required to give evidence before any other witness is called on behalf of the accused.

Division 6—Giving of evidence

232 Manner of giving evidence

(1) The trial judge may permit a person to give evidence—

(a) with the consent of the parties, by the witness reading from the statement of the witness prepared in advance of giving evidence;

(b) if the person is called in his or her capacity as an expert witness, by the presentation of audio or audiovisual material;

(c) by means of playing an audio or audiovisual recording;

(d) in any other manner that the trial judge considers may be of assistance.

(2) Nothing in subsection (1) precludes—

(a) in the case of subsection (1)(b), the questioning of an expert witness by cross-examination or otherwise before, during or after a presentation; or

(b) in the case of subsection (1)(c), if unanticipated issues arise during the trial, the trial judge making an order that the witness attend before the court.

(3) Nothing in this section affects the operation of Division 6 of Part 8.2 of this Act, Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958** and sections 29 and 50 of the **Evidence Act 2008**.

232 A Trial judge may give directions about the giving of concurrent or consecutive evidence by expert witnesses

(1) This section applies despite sections 226 and 231(2).

(2) The trial judge, with the consent of the prosecution and the accused, may direct that 2 or more expert witnesses give evidence concurrently or consecutively.

(3) In determining the procedure to be followed for the giving of evidence concurrently or consecutively, the trial judge may direct that any expert witness—

(a) give evidence at any stage of the trial, including after all factual evidence has been adduced on behalf of the prosecution and the accused; or

(b) give an oral exposition of the opinion of the expert witness on any issue; or

(c) give the opinion of the expert witness of any opinion given by another expert witness; or

(d) be examined, cross-examined or re-examined in a particular manner or sequence, including by putting to each expert witness in turn each question relevant to one matter or issue at a time; or

(e) be permitted to ask questions of any other expert witness who is concurrently giving evidence.

(4) The trial judge may question any expert witness to identify the real issues in dispute between 2 or more expert witnesses, including questioning more than one expert witness at the same time.

(5) Nothing in this section limits any other power the court may have in relation to case management, evidence or witnesses, including expert witnesses.

233 Introduction of evidence not previously disclosed

(1) If the trial judge gives leave to do so, the prosecutor or the accused may introduce at the trial evidence which was not disclosed in accordance with Part 5.5 and which represents—

(a) in the case of the prosecutor, a substantial departure from the summary of the prosecution opening, if any, as served on the accused and filed in court; or

(b) in the case of the accused, a substantial departure from—

(i) the response of the accused to the summary of the prosecution opening; or

(ii) the response of the accused to the notice of pre-trial admissions—

if any, as served on the prosecution and filed in court.

(2) If, after the close of the prosecution case, the accused gives evidence which could not reasonably have been foreseen by the prosecution having regard to—

(a) the response of the accused to the summary of the prosecution opening; and

(b) the response of the accused to the notice of pre-trial admissions—

as served on the prosecution and filed in court, the trial judge may allow the prosecutor to call evidence in reply.

(3) Nothing in this section limits any other power of the trial judge to allow the prosecutor to call evidence after the prosecutor has closed the prosecution case.

Division 7—Closing addresses and judge's directions to the jury

234 Prosecution closing address

(1) The prosecution is entitled to address the jury for the purpose of summing up the evidence—

(a) after the close of all evidence; and

(b) before the closing address of the accused, if any, under section 235.

(2) Subject to section 236, the prosecution is not entitled to any further or other right to address the jury following the close of evidence.

(3) The trial judge may limit the length of the closing address of the prosecution.

235 Closing address of the accused

(1) The accused is entitled to address the jury for the purpose of summing up the evidence—

(a) after the close of all evidence; and

(b) after the closing address of the prosecution, if any, under section 234.

(2) The trial judge may limit the length of the closing address of the accused.

236 Supplementary prosecution address

(1) If, in the closing address of the accused under section 235, the accused asserts facts which are not supported by any evidence that is before the jury, the trial judge may grant leave to the prosecution to make a supplementary address to the jury.

(2) A supplementary address must be confined to replying to the assertion referred to in subsection (1).

(3) The trial judge may limit the length of a supplementary address.

237 Comment on departure or failure

(1) Subject to subsection (2), the trial judge or, with the leave of the trial judge, a party may make any comment that the trial judge thinks appropriate on—

(a) a departure referred to in section 233(1); or

(b) a failure by a party to comply with a requirement of this Chapter or an order made under this Chapter.

(2) The trial judge may grant leave to a party to comment on a departure or failure only if satisfied that—

(a) the proposed comment is relevant; and

(b) the proposed comment is permitted by another Act or a rule of law; and

Note

See section 20 of the **Evidence Act 2008**.

(c) the proposed comment is not unfairly prejudicial to the party about whom the comment is made.

* * * * *

238 Judge's directions to the jury

At the conclusion of the closing address of the prosecution, the closing address of the accused and any supplementary prosecution address, the trial judge must give directions to the jury so as to enable the jury to properly consider its verdict.

Note

See the **Jury Directions Act 2015**.

……

Division 2—Criminal record

244 Criminal record

(1) A criminal record must contain, in relation to each previous conviction—

(a) the date of the previous conviction; and

(b) the court in which the previous conviction took place; and

(c) the place of sitting of that court; and

(d) the offence committed; and

(e) the sentence imposed.

Note

Previous conviction is defined by section 3 to refer only to a conviction or finding of guilt made by a court and does not include an infringement conviction.

(2) If other offences were taken into account when a sentence was imposed in respect of a previous conviction, a criminal record may contain a statement to that effect and the offences taken into account, including the number of offences.

(2A) A criminal record must contain, in relation to an infringement conviction—

(a) the date on which the infringement notice took effect as a conviction; and

(b) the offence specified in the notice; and

(c) the amount specified in the notice as the penalty for the infringement; and

(d) any other penalty that results from the operation of the notice.

Example

A period of cancellation, disqualification or suspension of a licence or permit.

(3) A criminal record is inadmissible as evidence against the person to whom it relates in a proceeding for an offence unless the criminal record is signed by—

(a) a police officer; or

(b) a Crown Prosecutor; or

(c) a member of staff of the Office of Public Prosecutions who is a legal practitioner; or

(d) in the case of a proceeding commenced by an informant—

(i) a person who is entitled to represent the informant and is a legal practitioner; or

(ii) a public official.

245 Proof of previous convictions and infringement convictions by criminal record

(1) If the prosecution intends to allege, in the event of a finding of guilt against a person, that the person has previous convictions or infringement convictions, the prosecution may file the criminal record of the person in court at any time after the indictment is filed and before the sentencing hearing commences.

(2) If the criminal record of the person is not available before the sentencing hearing commences, the prosecution may file it in court at any time before sentencing, if the court considers that it is in the interests of justice to do so.

(3) If a person is found guilty of an offence and the criminal record of the person has been filed in court, the court must ask the person whether the person admits the previous convictions and infringement convictions set out in the criminal record.

(4) A person may admit, orally or in writing on the criminal record, all or any of the previous convictions or infringement convictions set out in the criminal record.

(5) If the person admits to a previous conviction or infringement conviction, the court may sentence the person accordingly.

(6) If the person does not admit to a previous conviction or infringement conviction, the prosecution may lead evidence to prove the previous conviction or infringement conviction.

Note

Section 178 of the **Evidence Act 2008** provides for proof of previous convictions by the filing of a certificate.

Division 3—Powers and obligations

…

249 Counsel required to retain brief for trial

(1) A legal practitioner who has been briefed or otherwise agreed to appear for an accused at a trial must, at least 7 days before the day on which the trial is due to commence, advise the court of his or her intention to appear for the accused.

(2) A legal practitioner may only relinquish a brief to appear or withdraw from an agreement to appear for an accused within 7 days before the day on which the trial is due to commence with the leave of the court.

(3) On an application for leave under subsection (2), the court may make an order as to costs to be paid personally by the legal practitioner if the court considers that in the circumstances of the case—

(a) the agreement to appear at trial for the accused or the acceptance of a brief to appear for the accused at trial is unreasonable; or

(b) the withdrawal from an agreement to appear for the accused at trial or the relinquishment of a brief to appear for the accused at trial is unreasonable.

…

CHAPTER 6—APPEALS AND CASES STATED

PART 6.1—APPEAL FROM MAGISTRATES' COURT TO COUNTY COURT

Division 1—Appeal by offender

254 Right of appeal

(1) Subject to subsection (2), a person convicted of an offence by the Magistrates' Court in a criminal proceeding conducted in accordance with Part 3.3 may appeal to the County Court against—

(a) the conviction and sentence imposed by the court; or

(b) sentence alone.

Note

See the definitions of ***conviction*** and ***sentence*** in section 3.

(2) If the Magistrates' Court was constituted by the Chief Magistrate who is a dual commission holder, the appeal is to be made to the Trial Division of the Supreme Court.

255 How appeal is commenced

(1) An appeal under section 254 is commenced by filing a notice of appeal with a registrar of the Magistrates' Court at any venue of the Magistrates' Court within 28 days after the day on which the sentence of the Magistrates' Court is imposed.

(2) A copy of the notice of appeal must be served on the respondent in accordance with section 392 within 7 days after the day on which the notice is filed.

(3) A notice of appeal must—

(a) state whether the appeal is against conviction and sentence, or sentence alone; and

(b) be in the form prescribed by the rules of the County Court or the Supreme Court, as the case requires.

(4) A notice of appeal must include a statement in the form prescribed by the rules of the County Court or the Supreme Court, as the case requires and signed by the appellant to the effect that the appellant is aware that

on the appeal the court may impose a sentence more severe than that sought to be appealed.

(5) A notice of appeal must also include an undertaking signed by the appellant in the manner prescribed by the rules of the County Court or the Supreme Court, as the case requires—

(a) subject to paragraph (ab), to appear at the County Court to proceed with the appeal at a place and on a day fixed or to be fixed by the registrar of the County Court and to appear at the County Court for the duration of the appeal; and

(ab) in the case of an appeal referred to in section 254(2), to appear at the Supreme Court to proceed with the appeal at a place and on a day fixed or to be fixed by the Prothonotary of the Supreme Court and to appear at the Supreme Court for the duration of the appeal; and

(b) to give written notice without delay to the registrar of the County Court or the Prothonotary of the Supreme Court, as the case requires of any change of address of the appellant from that appearing in the notice of appeal.

(6) Before accepting a notice of appeal, a registrar of the Magistrates' Court must—

(a) give to the person seeking to file the notice of appeal a notice in the form prescribed by the rules of the County Court or the Supreme Court, as the case requires to the effect that on the appeal the court may impose a sentence more severe than that sought to be appealed against; and

(b) if the person seeking to file the notice of appeal is not the proposed appellant, be satisfied that the proposed appellant has signed the statement required to be included in the notice of appeal by subsection (4).

(7) A notice of appeal filed under this section must be transmitted to the County Court or the Supreme Court, as the case requires.

256 Determination of appeal

(1) An appeal under section 254 must be conducted as a rehearing and the appellant is not bound by the plea entered in the Magistrates' Court.

(2) On the hearing of an appeal under section 254, the County Court or the Supreme Court, as the case requires—

(a) must set aside the sentence of the Magistrates' Court; and

(b) may impose any sentence which the court considers appropriate and which the Magistrates' Court imposed or could have imposed; and

(c) may exercise any power which the Magistrates' Court exercised or could have exercised.

(3) On the hearing of an appeal under section 254, the court must warn the appellant, as early as possible during the hearing, that the appellant faces the possibility that a more severe sentence may be imposed than that imposed by the Magistrates' Court.

(4) The court may backdate a sentence imposed under subsection (2) to a date not earlier than the date of the sentence of the Magistrates' Court that was set aside on the appeal.

(5) A sentence imposed under subsection (2) is for all purposes to be regarded as a sentence of the County Court or the Supreme Court, as the case requires.

Note

See the definition of ***sentence*** in section 3. This includes the recording of a conviction and an order as to costs.

Division 2—Appeal by DPP against sentence

257 DPP's right of appeal against sentence

(1) Subject to subsection (1A), the DPP may appeal to the County Court against a sentence imposed by the Magistrates' Court in a criminal proceeding conducted in accordance with Part 3.3 if satisfied that an appeal should be brought in the public interest.

(1A) If the Magistrates' Court was constituted by the Chief Magistrate who is a dual commission holder, the appeal is to be made to the Trial Division of the Supreme Court.

(2) The DPP must not bring a further appeal against a sentence imposed by the County Court or the Trial Division of the Supreme Court, as the case requires.

258 How appeal is commenced

(1) An appeal under section 257 is commenced by filing a notice of appeal with a registrar of the Magistrates' Court at any venue of the Magistrates' Court within 28 days after the day on which the sentence of the Magistrates' Court is imposed.

(2) A copy of the notice of appeal must be served personally on the respondent in accordance with section 391 within 7 days after the day on which the notice is filed.

(3) A notice of appeal must—

(a) state the general grounds of appeal; and

(b) be in the form prescribed by the rules of the County Court or the Supreme Court, as the case requires.

(4) The DPP must provide a copy of the notice of appeal to the legal practitioner who last represented the respondent in the criminal proceeding to which the appeal relates, if that legal practitioner can reasonably be identified.

(5) A notice of appeal filed under this section must be transmitted to the County Court or the Supreme Court, as the case requires.

259 Determination of DPP's appeal

(1) An appeal under section 257 must be conducted as a rehearing and the respondent is not bound by the plea entered in the Magistrates' Court.

(2) On the hearing of an appeal under section 257, the County Court or the Supreme Court, as the case requires—

(a) must set aside the sentence of the Magistrates' Court; and

(b) may impose any sentence which the court considers appropriate and which the Magistrates' Court imposed or could have imposed; and

(c) may exercise any power which the Magistrates' Court exercised or could have exercised.

(3) In imposing a sentence under subsection (2), the court must not take into account the element of double jeopardy involved in the respondent being sentenced again, in order to impose a less severe sentence than the court would otherwise consider appropriate.

(4) The court may backdate a sentence imposed under subsection (2) to a date not earlier than the date of the sentence of the Magistrates' Court that was set aside on the appeal.

(5) A sentence imposed under subsection (2) is for all purposes to be regarded as a sentence of the County Court or the Supreme Court, as the case requires.

…

Division 4—Procedure

263 Late notice of appeal deemed to be application for leave to appeal

(1) A notice of appeal filed after the end of the period referred to in section 255(1) or 258 is deemed to be an application for leave to appeal on the grounds stated in the notice.

(2) The County Court or the Supreme Court, as the case requires, may grant leave to appeal under subsection (1) and the appellant may proceed with the appeal if—

(a) the court considers that the failure to file a notice of appeal within the period referred to in section 255(1) or 258 was due to exceptional circumstances; and

(b) the court is satisfied that the respondent's case would not be materially prejudiced because of the delay.

(3) If the court does not grant leave to appeal under subsection (2), the court must strike out the appeal.

(4) If—

(a) the County Court or the Supreme Court, as the case requires, strikes out an appeal under subsection (3); and

(b) the appellant had been sentenced to a term of imprisonment or detention by the Magistrates' Court—

the registrar of the County Court or the Prothonotary of the Supreme Court, as the case requires, may issue, in accordance with the **Magistrates' Court Act 1989**, a warrant to imprison the appellant and may recall and cancel that warrant.

(5) If an appeal is struck out under subsection (3)—

(a) the sentence of the Magistrates' Court is reinstated and may be enforced as if an appeal had not been commenced but, for the purposes of the enforcement of any penalty, time is deemed not to have run during the period of any stay; and

(b) the registrar of the County Court or the Prothonotary of the Supreme Court, as the case requires, must give to the respondent or to the respondent's legal practitioner a copy of the order striking out the appeal; and

(c) the making of an order striking out an appeal discharges the undertaking of the appellant to proceed with the appeal.

264 Stay of sentence

(1) If an appellant appeals against sentence and is not in custody because of that sentence, the appeal operates as a stay of the sentence (but not a conviction in respect of the sentence) when the appellant files the notice of appeal and signs the undertaking referred to in section 255(5).

(2) If an appellant appeals against sentence and is in custody because of that sentence, the appeal operates as a stay of the sentence (but not a conviction in respect of the sentence) when—

(a) the appellant files the notice of appeal and signs the undertaking referred to in section 255(5); and

(b) the appellant enters bail, if bail is granted under section 265.

(3) This section is subject to section 29 of the **Road Safety Act 1986**.

265 Bail pending appeal

(1) If an appellant is in custody because of the sentence appealed against and wishes to be released pending the appeal, the appellant—

(a) may apply to the Magistrates' Court to be released on bail; and

(b) if he or she makes an application under paragraph (a), must give reasonable notice of the application to the respondent to the appeal.

(2) If an application is made under subsection (1), the Magistrates' Court must either grant or refuse bail as if the appellant were accused of an offence and were being held in custody in relation to that offence and, for this purpose, the **Bail Act 1977** (with any necessary modifications) applies.

266 Abandonment of appeal

(1) Subject to subsections (2) and (3), an appeal to the County Court or the Supreme Court, as the case requires, may be abandoned by filing a notice of abandonment of appeal, in the form prescribed by the rules of the applicable court, with the applicable court.

(2) If an appellant appeals against both conviction and sentence but does not pursue the appeal against conviction, the appellant must give written notice to the court and the respondent that the appeal against conviction is abandoned.

(3) An appellant who has been sentenced to a term of imprisonment or detention but who is not in custody may abandon the appeal by—

(a) surrendering to the registrar of the County Court or the Prothonotary of the Supreme Court, as the case requires; and

(b) immediately filing a notice of abandonment of appeal in accordance with subsection (1).

(3A) If a person surrenders to the registrar of the County Court or the Prothonotary of the Supreme Court, as the case requires, in accordance with subsection (3), the registrar or Prothonotary may issue, in accordance with the **Magistrates' Court Act 1989**, a warrant to imprison the person.

(4) If an appellant abandons an appeal, the court must strike out the appeal.

(5) If an appeal is struck out under subsection (4)—

(a) the sentence of the Magistrates' Court is reinstated and may be enforced as if an appeal had not been made but, for the purposes of the enforcement of any penalty, time is deemed not to have run during the period of any stay; and

(b) the registrar of the County Court or the Prothonotary of the Supreme Court, as the case requires must give to the respondent or to the respondent's legal practitioner a copy of the order striking out the appeal; and

(c) the making of an order striking out an appeal discharges the undertaking of the appellant to proceed with the appeal.

(6) The court may not set aside an order under subsection (4) striking out an appeal.

267 Appellant's failure to appear

(1) If an appellant (other than the DPP) fails to appear at the time listed for the hearing of the appeal, the County Court or the Supreme Court, as the case requires, may—

(a) strike out the appeal; or

(b) adjourn the proceeding on any terms that it considers appropriate.

(1A) If—

(a) the County Court or the Supreme Court, as the case requires, strikes out an appeal under subsection (1)(a); and

(b) the appellant had been sentenced to a term of imprisonment or detention by the Magistrates' Court—

the registrar of the County Court or the Prothonotary of the Supreme Court, as the case requires may issue, in accordance with the **Magistrates' Court Act 1989**, a warrant to imprison the appellant and may recall and cancel that warrant.

(2) If an appeal is struck out under subsection (1)(a)—

(a) the sentence of the Magistrates' Court is reinstated and may be enforced as if an appeal had not been commenced but, for the purposes of the enforcement of any penalty, time is deemed not to have run during the period of any stay; and

(b) the registrar of the County Court or the Prothonotary of the Supreme Court, as the case requires must give to the respondent or to the respondent's legal practitioner a copy of the order striking out the appeal; and

(c) the making of an order striking out an appeal discharges the undertaking of the appellant to proceed with the appeal.

(3) The court, at any time, may set aside an order striking out an appeal because of the failure of the appellant to appear, if the appellant satisfies the court that the failure to appear was not due to fault or neglect on the part of the appellant.

(4) An application under subsection (3) to set aside an order may be made at any time on notice in writing to the respondent served a reasonable time before the making of the application.

(5) Notice under subsection (4) must be served in the same way as a notice of appeal.

(6) If the court grants an application under subsection (3), the court—

(a) must order the reinstatement of the appeal subject to the payment of any costs that the court considers appropriate; and

(b) may require the appellant to give a further undertaking to proceed with the appeal.

(6A) An application under section 265 for bail pending the reinstated appeal may be made to the County Court or the Supreme Court, as the case requires.

(7) On the reinstatement of an appeal under subsection (6), the appeal operates as a stay of the sentence (but not a conviction in respect of the sentence) when—

(a) if required, the appellant signs the undertaking referred to in subsection (6)(b); and

(b) if the appellant is in custody because of the sentence appealed against and bail is granted under section 265, the appellant enters bail.

(8) Subsection (7) is subject to section 29 of the **Road Safety Act 1986**.

268 Respondent's failure to appear on appeal by DPP

(1) If a respondent to an appeal under section 257 or 260 by the DPP fails to appear at the time listed for the hearing of the appeal, the County Court or the Supreme Court, as the case requires—

(a) may adjourn the proceeding on any terms that it considers appropriate; or

(b) if satisfied that notice of the appeal has been given in accordance with section 258 or 261, as the case may be, may hear and determine the appeal in the absence of the respondent.

Note

The County Court or the Supreme Court, as the case requires cannot impose a sentence that requires the consent of the respondent, for example a community correction order, in the absence of the respondent.

(2) If the County Court or the Supreme Court, as the case requires adjourns the proceeding and is satisfied that notice of the appeal has been given in accordance with section 258 or 261, as the case may be, the court may issue a warrant to arrest the respondent and to bring the respondent before the judge who issued the warrant or any other judge of the court.

…

PART 6.2—APPEAL FROM MAGISTRATES' COURT TO SUPREME COURT ON A QUESTION OF LAW

272 Appeal to Supreme Court on a question of law

(1) A party to a criminal proceeding (other than a committal proceeding) in the Magistrates' Court may appeal to the Supreme Court on a question of law, from a final order of the Magistrates' Court in that proceeding.

(2) If an informant who is a police officer wishes to appeal under subsection (1), the appeal may be brought only by the DPP on behalf of the informant.

(3) An appeal under subsection (1) is commenced by filing a notice of appeal in accordance with the rules of the Supreme Court within 28 days after the day on which the order complained of was made.

(4) A copy of the notice of appeal must be served on the respondent in accordance with subsection (5) within 7 days after the day on which the notice of appeal was filed.

(5) A copy of the notice of appeal must be served—

(a) personally on a respondent who was the accused in accordance with section 391; or

(b) on a respondent who was the informant in accordance with section 392.

(6) An appeal under subsection (1) does not operate as a stay of any order made by the Magistrates' Court unless the Supreme Court otherwise orders.

(7) An appeal commenced after the end of the period referred to in subsection (3) is deemed to be an application for leave to appeal under subsection (1).

(8) The Supreme Court may grant leave under subsection (7) and the appellant may proceed with the appeal if the Supreme Court—

(a) is of the opinion that the failure to commence the appeal within the period referred to in subsection (3) was due to exceptional circumstances; and

(b) is satisfied that the case of any other party to the appeal would not be materially prejudiced because of the delay.

(9) After hearing and determining the appeal, the Supreme Court may make any order that it thinks appropriate, including an order remitting the case for rehearing to the Magistrates' Court with or without any direction in law.

(10) An order made by the Supreme Court on an appeal under subsection (1), other than an order remitting the case for rehearing to the Magistrates' Court, may be enforced as an order of the Supreme Court.

(11) The Supreme Court may provide for a stay of the order or for admitting any person to bail as it considers appropriate.

273 Appeal on question of law precludes appeal to County Court

If a person appeals under this Part to the Supreme Court on a question of law, that person abandons finally and conclusively any right under this or any other Act to appeal to the County Court in relation to that proceeding.

PART 6.3—APPEAL AND CASE STATED FROM COUNTY COURT OR TRIAL DIVISION OF SUPREME COURT TO COURT OF APPEAL

Division 1—Appeal against conviction

274 Right of appeal against conviction

A person convicted of an offence by an originating court may appeal to the Court of Appeal against the conviction on any ground of appeal if the Court of Appeal gives the person leave to appeal.

Note

See the definitions of ***conviction***, ***originating court*** and ***original jurisdiction*** in section 3.

275 How appeal is commenced

(1) An application for leave to appeal under section 274 is commenced by filing a notice of application for leave to appeal in accordance with the rules of court within 28 days after the day on which the person is sentenced or any extension of that period granted under section 313.

(2) The Registrar of Criminal Appeals of the Supreme Court must provide to the respondent a copy of the notice of application for leave to appeal within 7 days after the day on which the notice of application is filed.

276 Determination of appeal against conviction

(1) On an appeal under section 274, the Court of Appeal must allow the appeal against conviction if the appellant satisfies the court that—

(a) the verdict of the jury is unreasonable or cannot be supported having regard to the evidence; or

(b) as the result of an error or an irregularity in, or in relation to, the trial there has been a substantial miscarriage of justice; or

(c) for any other reason there has been a substantial miscarriage of justice.

(2) In any other case, the Court of Appeal must dismiss an appeal under section 274.

277 Orders etc. on successful appeal

(1) If the Court of Appeal allows an appeal under section 274, it must set aside the conviction of the offence (***offence A***) and must—

(a) order a new trial of offence A; or

(b) enter a judgment of acquittal of offence A; or

(c) if—

(i) the appellant could have been found guilty of some other offence (***offence B***) instead of offence A; and

(ii) the court is satisfied that the jury or, in the case of a plea of guilty to offence A, the trial judge must have been satisfied of facts that prove the appellant was guilty of offence B—

enter a judgment of conviction of offence B and impose a sentence for offence B that is no more severe than the sentence that was imposed for offence A; or

(d) if the appellant could have been found guilty of some other offence (***offence B***) instead of offence A and the court is not

satisfied as required by paragraph (c)(ii), order a new trial for offence B;

(e) if the court is satisfied that the appellant should have been found not guilty of offence A because of mental impairment, enter a finding of not guilty because of mental impairment and make an order or declaration under section 23 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or

(f) if the appellant could have been found guilty of some other offence (***offence B***) instead of offence A and the court is satisfied—

(i) that the jury must have been satisfied of facts that prove the appellant did the acts or made the omissions that constitute offence B; and

(ii) that the appellant should have been found not guilty of offence B because of mental impairment—

enter a finding of not guilty of offence B because of mental impairment and make an order or declaration under section 23 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

(2) If the Court of Appeal orders a new trial, the court must order that the appellant attend on a specified date before the court in which the new trial will be conducted.

Note

Section 323 enables the Court of Appeal to remand the appellant in custody or grant bail pending a new trial.

(3) If the Court of Appeal sets aside the conviction of offence A, it may vary a sentence that—

(a) was imposed for an offence other than offence A at or after the time when the appellant was sentenced for offence A; and

(b) took into account the sentence for offence A.

(4) A power of the Court of Appeal under this section to impose a sentence in substitution for the sentence imposed by the originating court may still be exercised even if the sentence imposed by the originating court is an aggregate sentence of imprisonment.

(5) If at the conclusion of an appeal the appellant remains convicted of more than one offence, the Court of Appeal may either—

(a) impose a separate sentence in respect of each offence; or

(b) impose an aggregate sentence of imprisonment in respect of all offences or any 2 or more offences.

Division 2—Appeal by offender against sentence

278 Right of appeal against sentence imposed by originating court

A person sentenced for an offence by an originating court may appeal to the Court of Appeal against the sentence imposed if the Court of Appeal gives the person leave to appeal.

Note

See the definitions of ***originating court*** and ***original jurisdiction*** in section 3.

279 How appeal is commenced

(1) An application for leave to appeal under section 278 is commenced by filing a notice of application for leave to appeal in accordance with the rules of court within 28 days after the day on which the person is sentenced or any extension of that period granted under section 313.

(2) The Registrar of Criminal Appeals of the Supreme Court must provide to the respondent a copy of the notice of application for leave to appeal within 7 days after the day on which the notice of application is filed.

280 Determination of application for leave to appeal under section 278

(1) The Court of Appeal may refuse an application for leave to appeal under section 278 in relation to any ground of appeal if—

(a) there is no reasonable prospect that the Court of Appeal would impose a less severe sentence than the sentence first imposed; or

(b) there is no reasonable prospect that the Court of Appeal would reduce the total effective sentence despite there being an error in the sentence first imposed.

Note

Subsection (3) empowers the Court of Appeal to correct a sentence if an application is refused in the circumstances referred to in subsection (1)(b).

(2) An application may be refused under subsection (1) even if the Court of Appeal considers that there may be a reasonably arguable ground of appeal.

(3) On refusing an application by reason of subsection (1)(b), the Court of Appeal may, if it considers it appropriate to do so—

(a) amend the sentence first imposed by substituting a less severe sentence; and

(b) make any other order that the Court of Appeal considers ought to be made.

Note

If an application for leave to appeal is heard and refused by a single Judge of Appeal under section 315(1), section 315(2) entitles the applicant to have the application determined by the Court of Appeal.

281 Determination of appeal

(1) On an appeal under section 278, the Court of Appeal must allow the appeal if the appellant satisfies the court that—

(a) there is an error in the sentence first imposed; and

(b) a different sentence should be imposed.

(2) In any other case, the Court of Appeal must dismiss an appeal under section 278.

(3) If the Court of Appeal is considering imposing a more severe sentence than the sentence first imposed, the Court of Appeal must warn the appellant, as early as possible during the hearing of the appeal, that the appellant faces the possibility that a more severe sentence may be imposed than that first imposed.

282 Orders etc. on successful appeal

(1) If the Court of Appeal allows an appeal under section 278, it must set aside the sentence imposed by the originating court and either—

(a) impose the sentence, whether more or less severe, that it considers appropriate; or

(b) remit the matter to the originating court.

(2) If the Court of Appeal imposes a sentence under subsection (1)(a), it may make any other order that it considers ought to be made.

(3) If the Court of Appeal remits a matter to the originating court under subsection (1)(b)—

(a) it may give directions concerning the manner and scope of the further hearing by the originating court, including a direction as to whether the hearing is to be conducted by the same judge or a different judge; and

(b) the originating court, whether constituted by the same judge or a different judge, must hear and determine the matter in accordance with the directions, if any.

283 Right of appeal against sentence of imprisonment imposed by County Court on appeal from Magistrates' Court

(1) In this section—

imprisonment includes detention in a youth justice centre or youth residential centre but does not include imprisonment in default of payment of a fine.

(2) A person sentenced to a term of imprisonment by the County Court or the Supreme Court, as the case requires under section 256, 259 or 262 may appeal to the Court of Appeal against the sentence if—

(a) in the proceeding that is the subject of the appeal, the Magistrates' Court had not ordered that the person be imprisoned; and

(b) the Court of Appeal gives the person leave to appeal.

284 How appeal is commenced

(1) An application for leave to appeal under section 283 is commenced by filing a notice of application for leave to appeal in accordance with the rules of court within 28 days after the day on which the person is

sentenced by the court or any extension of that period granted under section 313.

(2) The Registrar of Criminal Appeals of the Supreme Court must provide to the respondent a copy of the notice of application for leave to appeal within 7 days after the day on which the notice of application is filed.

284A Determination of application for leave to appeal under section 283

(1) The Court of Appeal may refuse an application for leave to appeal under section 283 in relation to any ground of appeal if—

(a) there is no reasonable prospect that the Court of Appeal would impose a less severe sentence than the sentence imposed by the court; or

(b) there is no reasonable prospect that the Court of Appeal would reduce the total effective sentence despite there being an error in the sentence imposed by the court.

Note

Subsection (3) empowers the Court of Appeal to correct a sentence if an application is refused in the circumstances referred to in subsection (1)(b).

(2) An application may be refused under subsection (1) even if the Court of Appeal considers that there may be a reasonably arguable ground of appeal.

(3) On refusing an application by reason of subsection (1)(b), the Court of Appeal may, if it considers it appropriate to do so—

(a) amend the sentence imposed by the court by substituting a less severe sentence; and

(b) make any other order that the Court of Appeal considers ought to be made.

Note

If an application for leave to appeal is heard and refused by a single Judge of Appeal under section 315(1), section 315(2) entitles the applicant to have the application determined by the Court of Appeal.

285 Determination of appeal

(1) On an appeal under section 283, the Court of Appeal must allow the appeal if the appellant satisfies the court that—

(a) there is an error in the sentence imposed; and

(b) a different sentence should be imposed.

(2) In any other case, the Court of Appeal must dismiss an appeal under section 283.

(3) If the Court of Appeal is considering imposing a more severe sentence than the sentence imposed by the County Court or the Trial Division of the Supreme Court, as the case requires, the Court of Appeal must warn the appellant, as early as possible during the hearing of the appeal, that the appellant faces the possibility that a more severe sentence may be

imposed than that imposed by the County Court or the Trial Division of the Supreme Court.

286 Orders etc. on successful appeal

(1) If the Court of Appeal allows an appeal under section 283, it must set aside the sentence imposed by the Court and either—

(a) impose the sentence, whether more or less severe, that it considers appropriate; or

(b) remit the matter to the County Court or the Trial Division of the Supreme Court, as the case requires.

(2) If the Court of Appeal remits a matter under subsection (1)(b)—

(a) it may give directions concerning the manner and scope of the further hearing by the court, including a direction as to whether the hearing is to be conducted by the same judge or a different judge; and

(b) the court, whether constituted by the same judge or a different judge, must hear and determine the matter in accordance with the directions, if any.

Division 3—Crown appeal against sentence

287 Right of appeal—inadequate sentence

The DPP may appeal to the Court of Appeal against a sentence imposed by an originating court if the DPP—

(a) considers that there is an error in the sentence imposed and that a different sentence should be imposed; and

(b) is satisfied that an appeal should be brought in the public interest.

288 How appeal is commenced

(1) An appeal under section 287 is commenced by filing a notice of appeal in accordance with the rules of court within 28 days after the day on which the sentence is imposed or any extension of that period granted under section 313.

(2) A notice of appeal under subsection (1) must be signed by the DPP personally.

(3) A copy of the notice of appeal must be served personally on the respondent in accordance with section 391 within 7 days after the day on which the notice of appeal is filed.

(4) The DPP must provide a copy of the notice of appeal to the legal practitioner who last represented the respondent in the criminal proceeding to which the appeal relates, if that legal practitioner can reasonably be identified.

289 Determination of Crown appeal

(1) On an appeal under section 287, the Court of Appeal must allow the appeal if the DPP satisfies the court that—

(a) there is an error in the sentence first imposed; and

(b) a different sentence should be imposed.

(2) In considering whether an appeal should be allowed, the Court of Appeal must not take into account any element of double jeopardy involved in the respondent being sentenced again, if the appeal is allowed.

(3) In any other case, the Court of Appeal must dismiss an appeal under section 287.

290 Orders etc. on successful appeal

(1) If the Court of Appeal allows an appeal under section 287, it must set aside the sentence imposed by the originating court and impose the sentence, whether more or less severe, that it considers appropriate.

(2) If the Court of Appeal imposes a sentence under subsection (1), it may make any other order that it considers ought to be made.

(3) In imposing a sentence under subsection (1), the Court of Appeal must not take into account the element of double jeopardy involved in the respondent being sentenced again, in order to impose a less severe sentence than the court would otherwise consider appropriate.

291 Right of appeal—failure to fulfil undertaking

Without limiting any right of appeal under section 287, the DPP may appeal to the Court of Appeal against a sentence imposed on a person by an originating court if—

(a) the sentence was less severe because of an undertaking given by the person to assist, after sentencing, law enforcement authorities in the investigation or prosecution of an offence, whether or not proceedings for that offence had commenced at the time of sentencing; and

(b) the DPP considers that the person has failed, wholly or partly, to fulfil the undertaking.

292 How appeal is commenced

(1) An appeal under section 291 is commenced by filing a notice of appeal in accordance with the rules of court.

(2) A notice of appeal under subsection (1) must be signed by the DPP personally.

(3) A copy of the notice of appeal must be served personally on the respondent in accordance with section 391 within 14 days after the day on which the notice of appeal is filed.

(4) The DPP must provide a copy of the notice of appeal to the legal practitioner who last represented the respondent in the criminal proceeding to which the appeal relates, if that legal practitioner can reasonably be identified.

293 Determination of Crown appeal—failure to fulfil undertaking

On an appeal under section 291, if the Court of Appeal considers that the respondent has failed, wholly or partly, to fulfil the undertaking referred to in section 291(a), the Court of Appeal may allow the appeal.

294 Powers of Court of Appeal on successful appeal

(1) If the Court of Appeal allows an appeal under section 291, it may—

(a) set aside the sentence imposed by the originating court; and

(b) impose the sentence that it considers appropriate, having regard to the failure of the respondent to fulfil the undertaking.

(2) In imposing a sentence under subsection (1), the Court of Appeal must not take into account the element of double jeopardy involved in the respondent being sentenced again, in order to impose a less severe sentence than the court would otherwise consider appropriate.

* * * * *

Note

Section 321 provides for the effect on sentence of new evidence.

Division 4—Interlocutory appeal

295 Right of appeal against interlocutory decision

(1) This section applies to a proceeding in the County Court or the Trial Division of the Supreme Court for the prosecution of an indictable offence.

(2) Subject to this section, a party to a proceeding referred to in subsection (1) may appeal to the Court of Appeal against an interlocutory decision made in the proceeding if the Court of Appeal gives the party leave to appeal.

Note

See the definition of ***interlocutory decision*** in section 3.

(3) A party may not seek leave to appeal unless the judge who made the interlocutory decision certifies—

(a) if the interlocutory decision concerns the admissibility of evidence, that the evidence, if ruled inadmissible, would eliminate or substantially weaken the prosecution case; and

(b) if the interlocutory decision does not concern the admissibility of evidence, that the interlocutory decision is otherwise of sufficient importance to the trial to justify it being determined on an interlocutory appeal; and

(c) if the interlocutory decision is made after the trial commences, either—

(i) that the issue that is the subject of the proposed appeal was not reasonably able to be identified before the trial; or

(ii) that the party was not at fault in failing to identify the issue that is the subject of the proposed appeal.

(4) A request for certification under subsection (3) must be determined as soon as practicable after the request is made.

296 Review of refusal to certify

(1) If a judge refuses to certify under section 295(3), the party which requested certification may apply to the Court of Appeal, in accordance with the rules of court, for review of the decision.

(2) An application for review under subsection (1) is commenced by filing a notice of application for review in accordance with the rules of court—

(a) subject to paragraph (b), if the trial has not commenced when the judge refuses to certify, within 10 days after the day on which the judge refuses to certify or any extension of that period granted under section 313; or

(b) if the trial commences within 10 days after the day on which the judge refuses to certify, within 2 days after the day on which the trial commences or any extension of that period granted under section 313; or

(c) if the trial has commenced when the judge refuses to certify, within 2 days after the day on which the judge refuses to certify or any extension of that period granted under section 313.

(3) A copy of the notice of application for review must be served on the respondent in accordance with section 392 or 394, as the case requires, within the relevant period specified in subsection (2) for filing the notice.

(4) On a review under subsection (1), the Court of Appeal—

(a) must consider the matters referred to in section 295(3); and

(b) if satisfied as required by section 297, may give the applicant leave to appeal against the interlocutory decision.

297 When leave to appeal may be given

(1) Subject to subsection (2), the Court of Appeal may give leave to appeal against an interlocutory decision only if the court is satisfied that it is in the interests of justice to do so, having regard to—

(a) the extent of any disruption or delay to the trial process that may arise if leave is given; and

(b) whether the determination of the appeal against the interlocutory decision may—

(i) render the trial unnecessary; or

(ii) substantially reduce the time required for the trial; or

(iii) resolve an issue of law, evidence or procedure that is necessary for the proper conduct of the trial; or

(iv) reduce the likelihood of a successful appeal against conviction in the event that the accused is convicted at trial; and

(c) any other matter that the court considers relevant.

(2) The Court of Appeal must not give leave to appeal after the trial has commenced, unless the reasons for doing so clearly outweigh any disruption to the trial.

(3) If the Court of Appeal refuses leave to appeal under this section, the refusal does not preclude any other appeal on the issue that was the subject of the proposed appeal.

298 How interlocutory appeal is commenced

(1) An interlocutory appeal under section 295 is commenced by filing a notice of application for leave to appeal in accordance with the rules of court—

(a) subject to paragraph (b), if the trial has not commenced when the interlocutory decision is made, within 10 days after the day on which the interlocutory decision is made or any extension of that period granted under section 313; or

(b) if the trial commences within 10 days after the day on which the interlocutory decision is made, within 2 days after the day on which the trial commences or any extension of that period granted under section 313; or

(c) if the trial has commenced when the interlocutory decision is made, within 2 days after the day on which the interlocutory decision is made or any extension of that period granted under section 313.

(2) A copy of the notice of application for leave to appeal must be served on the respondent in accordance with section 392 or 394, as the case requires, within the relevant period specified in subsection (1) for filing the notice.

299 Adjournment of trial if leave to appeal given

If the Court of Appeal gives leave to appeal against an interlocutory decision after the trial has commenced, the trial judge must adjourn the trial without discharging the jury, if reasonably practicable, until the appeal has been determined.

300 Determination of appeal

(1) An appeal against an interlocutory decision is to be determined on the evidence, if any, given in the proceeding to which the appeal relates, unless the Court of Appeal gives leave to adduce additional evidence.

(2) On an appeal under section 295, the Court of Appeal—

(a) may affirm or set aside the interlocutory decision; and

(b) if it sets aside the interlocutory decision—

(i) may make any other decision that the Court of Appeal considers ought to have been made; or

(ii) remit the matter to the court which made the interlocutory decision for determination.

(3) If the Court of Appeal remits a matter under subsection (2)(b)(ii)—

(a) it may give directions concerning the basis on which the matter is to be determined; and

(b) the court to which the matter is remitted must hear and determine the matter in accordance with the directions, if any.

301 Determination of interlocutory appeal to be entered on record

The Registrar of Criminal Appeals of the Supreme Court must transmit the decision of the Court of Appeal to the court which made the interlocutory decision and that court must enter the decision on the court record.

Division 5—Case stated for Court of Appeal

302 Reservation of question of law

(1) This section applies to a proceeding in the County Court or the Trial Division of the Supreme Court for the prosecution of an indictable offence.

(2) In a proceeding referred to in subsection (1), if a question of law arises before or during the trial, the court may reserve the question for determination by the Court of Appeal if the court is satisfied that it is in the interests of justice to do so, having regard to—

(a) the extent of any disruption or delay to the trial process that may arise if the question of law is reserved; and

(b) whether the determination of the question of law may—

(i) render the trial unnecessary; or

(ii) substantially reduce the time required for the trial; or

(iii) resolve a novel question of law that is necessary for the proper conduct of the trial; or

(iv) reduce the likelihood of a successful appeal against conviction in the event that the accused is convicted at trial.

(3) The court must not reserve a question of law after the trial has commenced, unless the reasons for doing so clearly outweigh any disruption to the trial.

Note

Section 33 of the **Charter of Human Rights and Responsibilities Act 2006** also provides for the referral to the Supreme Court of questions of law that relate to the application of the Charter or the interpretation of a statutory provision in accordance with the Charter.

302A Reservation of question of law on appeal to County Court

If on the hearing of an appeal under Part 6.1 to the County Court from the Magistrates' Court or, if the Magistrates' Court was constituted by the Chief Magistrate who is a dual commission holder, to the Trial Division of the Supreme Court a question of law arises, the County Court or the Trial Division of the Supreme Court, as the case requires, may reserve the question for determination by the Court of Appeal if the court is satisfied that it is in the interests of justice to do so, having regard to—

(a) the extent of any disruption or delay to the hearing that may arise if the question of law is reserved; and

(b) whether the determination of the question of law may—

(i) render the hearing unnecessary; or

(ii) substantially reduce the time required for the hearing; or

(iii) resolve a novel question of law that is necessary for the proper conduct of the hearing.

303 Adjournment if question of law reserved

(1) If a court reserves a question of law under section 302 after the trial has commenced, the court must adjourn the trial without discharging the jury, if reasonably practicable, until the question of law has been determined.

(2) If a court reserves a question of law under section 302A, the court must adjourn the hearing, if reasonably practicable, until the question of law has been determined.

304 Refusal to reserve question of law

(1) If the Supreme Court or the County Court refuses an application under section 302 or 302A to reserve a question of law, the applicant may apply to the Court of Appeal for an order calling on—

(a) the court which dismissed the application; and

(b) the respondent—

to show cause why the question of law should not be reserved for determination by the Court of Appeal.

(2) On an application under subsection (1), the Court of Appeal may order that the question of law be reserved for its determination or refuse the application with or without costs.

(3) If the Court of Appeal orders that the question of law be reserved, the court to which the order is directed must reserve the question for determination by the Court of Appeal.

305 Case to be stated if question of law reserved

(1) If a court reserves a question of law under section 302, 302A or 304, it must state a case, setting out the question and the circumstances in which the question has arisen.

(2) The court must sign the case stated and transmit it within a reasonable time to the Court of Appeal.

(3) The Court of Appeal may return a case stated transmitted to it under subsection (2) for amendment and the court that stated the case must amend it as required.

306 General powers of Court of Appeal on case stated

(1) The Court of Appeal may hear and finally determine a question of law set out in a case stated.

(2) In the case of a question of law reserved under section 302, 302A or 304, the Court of Appeal may remit the question and the determination of the Court of Appeal back to the court which reserved the question.

(3) The applicant is not required to attend the hearing under subsection (1).

307 Judgment to be entered on record

The Registrar of Criminal Appeals of the Supreme Court must transmit the judgment and order (if any) of the Court of Appeal to the court that reserved the question of law and that court must enter the judgment and order (if any) on the court record.

308 DPP may refer point of law to Court of Appeal

(1) If a person is acquitted in respect of all or any charges—

(a) in a trial on indictment before the Supreme Court or the County Court; or

(b) on an appeal to the County Court from the Magistrates' Court or, if the Magistrates' Court was constituted by the Chief Magistrate who is a dual commission holder, to the Trial Division of the Supreme Court —

the DPP may refer to the Court of Appeal any point of law that has arisen in the proceeding.

(2) The Court of Appeal is to consider a point of law referred to it under subsection (1) and give its opinion on it.

(3) An acquitted person who appears in court in person or by a legal practitioner is entitled to reasonable costs as settled by the Costs Court.

(4) A reference under this section does not affect the trial or hearing in relation to which the reference is made or an acquittal in that trial or hearing.

…

CHAPTER 8—GENERAL

PART 8.1—CONDUCT OF PROCEEDING

328 Appearance

A party to a criminal proceeding may appear—

(a) personally; or

(b) by a legal practitioner or other person empowered by law to appear for the party; or

(c) in the Magistrates' Court, in the case of an informant who is a police officer or a protective services officer, by a police prosecutor; or

(d) if the proceeding was commenced by the filing, by a prescribed person or a member of a prescribed class of persons, of a charge-sheet containing a charge for an offence under—

(i) Division 1 of Part 3C or Schedule 3 of the **Sentencing Act 1991**; or

(ii) section 156 of the **Infringements Act 2006**—

by any other prescribed person or any other member of the prescribed class of persons within the meaning of the **Sentencing Act 1991** or the **Infringements Act 2006**, as the case requires.

329 When accused etc. is required to appear at hearing

(1) An accused must appear at every hearing in the criminal proceeding against the accused, unless otherwise provided by this Act or the rules of court.

(2) A party to an appeal who was the accused in the criminal proceeding to which the appeal relates must appear at every hearing in the appeal, unless otherwise provided by this Act or the rules of court.

(3) The court may excuse a person from appearing at a hearing.

Notes

1 See section 328 for the ways in which an accused may appear.

2 Division 3 of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958** authorises or requires the appearance of an accused before the court by audio visual link in certain circumstances.

330 When accused etc. is required to attend hearing

(1) An accused must attend a hearing in the criminal proceeding against the accused if—

(a) this Act or the rules of court require the attendance of the accused at the hearing; or

(b) the accused has been remanded in custody or granted bail to attend the hearing; or

(c) the court requires the attendance of the accused at the hearing.

(2) A party to an appeal who was the accused in the criminal proceeding to which the appeal relates must attend a hearing in the appeal if—

(a) this Act or the rules of court require the attendance of the party at the hearing; or

(b) the party has been remanded in custody or granted bail to attend the hearing; or

(c) the court requires the attendance of the party at the hearing.

(3) The court may excuse a person from attending a hearing.

(4) If a person fails to attend when required under subsection (1)(a), (1)(b), (2)(a) or (2)(b), the court may issue a warrant to arrest the person.

(5) If a person fails to attend when required under subsection (1)(c) or (2)(c), the court may issue a warrant to arrest the person if the court is satisfied that the person has had reasonable notice of the requirement to attend.

Notes

1 Section 3 defines ***attend***.

2 Section 100(2) provides for the attendance of an accused at hearings in a committal proceeding.

3 Section 246 provides for the attendance of an accused at hearings conducted under Chapter 5 (Trial on Indictment).

331 Power to adjourn proceeding

(1) A court may adjourn the hearing of a criminal proceeding before the court—

(a) to any time and place; and

(b) for any purpose; and

(c) on any terms as to costs or otherwise—

that it considers appropriate.

(2) If at any time a court adjourns the hearing of a criminal proceeding, the court may—

(a) allow the accused to go at large; or

(b) remand the accused in custody; or

(c) grant the accused bail or extend his or her bail.

…

(3) If a court has adjourned the hearing of a criminal proceeding to a particular time, it may order that the hearing be held or resumed before that time.

(4) A court may only make an order under subsection (3)—

(a) with the consent of all the parties; or

(b) on the application of a party who has given reasonable notice of the application to the other parties.

(5) If a court adjourns a criminal proceeding in which a jury has been sworn (by jurors taking an oath or making an affirmation), whether or not the accused is present, the court may discharge the jury from giving a verdict and order a new trial.

(6) If a court has adjourned the hearing of a criminal proceeding to a particular time and has remanded the accused in custody, the court may order that the accused be brought at any time before then—

(a) before the court; or

(b) to another place specified in the order where facilities exist to enable the accused to appear before the court by audio visual link (within the meaning of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**)—

in order that the hearing may be held or continued.

(7) The officer in charge of the prison or youth justice centre or other officer who has custody of the accused must obey an order under subsection (6).

…

PART 8.5—MISCELLANEOUS

…

412 Power to amend when there is a defect or error

For the purpose of correcting any defect or error in substance or in form, a court may amend any summons, warrant, plea, judgment or order.

…

SCHEDULE 1

Sections 6(3), 159(3)

CHARGES ON A CHARGE-SHEET OR INDICTMENT

1 Statement of offence

A charge must—

(a) state the offence that the accused is alleged to have committed; and

(b) contain the particulars, in accordance with clause 2, that are necessary to give reasonable information as to the nature of the charge.

2 Statement of particulars

(1) Subject to subclause (2), particulars of the offence charged must be set out in ordinary language and the use of technical terms is not necessary.

(2) If a rule of law or a statute limits the particulars that are required to be given in a charge, nothing in this clause requires any more particulars than those required.

3 Statutory offence

(1) In this clause—

statutory offence means an offence created by an Act or subordinate instrument, or by a provision of an Act or subordinate instrument.

(2) For the purposes of clause 1(a), a statement of a statutory offence is sufficient if it—

(a) identifies the provision creating the offence; and

(b) describes the offence in the words of the provision creating it, or in similar words.

(3) If a statutory offence states—

(a) the offence to be committed in alternative ways; or

(b) any element or part of the offence in the alternative—

a charge may state the commission of the offence or the element or part of the offence in the alternative.

4 Exceptions, exemptions etc.

Any exception, exemption, proviso, excuse or qualification need not be specified or negatived in a charge.

....

5 Joinder of charges

(1) A charge-sheet or indictment may contain charges for related offences, whether against the same accused or different accused.

(2) If more than one offence is charged in a charge-sheet or indictment, the particulars of each offence charged must be set out in a separate, consecutively numbered paragraph.

6 Charge against multiple accused

If an offence is alleged against more than one accused, regardless of their degree of participation in the offence, an indictment or charge-sheet may name each of those accused in the charge for the offence.

7 Descriptions generally

Subject to any other provision of this Schedule, if it is necessary to describe anything in a charge, it is sufficient to describe the thing in ordinary language in a manner that indicates with reasonable clarity the thing referred to.

8 Description of persons

(1) The description or designation in a charge of a person must be reasonably sufficient to identify the person.

(2) If it is impracticable to comply with subclause (1)—

(a) a description or designation must be given that is reasonably practicable in the circumstances; or

(b) the person may be described as "a person unknown".

9 Description of document

If it is necessary to refer to a document or instrument in a charge, it is sufficient to describe it by any name by which it is usually known or by its substance, without setting out a copy of it.

10 Description of property

(1) The description of property in a charge must—

(a) be in ordinary language; and

(b) indicate the property with reasonable clarity.

(2) If a description of property complies with subclause (1), it is not necessary to name the owner of the property or the value of the property, unless that information is required to describe an offence which depends on a special ownership of property or a special value of property.

(3) If property is vested in more than one person and the owners of the property are referred to in a charge, it is sufficient to describe the owners of the property—

(a) by naming one of those persons followed by the words "with others"; or

(b) if the owners are a body of persons with a collective name, by using the collective name alone.

11 Statement of intent to deceive, injure or defraud

In stating an intent to deceive, injure or defraud, it is not necessary to state an intent to deceive, injure or defraud any particular person if the statute creating the offence does not make an intent to deceive, injure or defraud a particular person an element of the offence.

12 Perjury, subornation of perjury, etc.

(1) In a charge for perjury or for an offence deemed to be perjury, it is sufficient to set out—

(a) the substance of the offence charged; and

(b) the court, tribunal or person before whom the accused falsely swore or falsely declared or affirmed the matter charged as false—

without setting out the commission or authority of the court, tribunal or person.

(2) In a charge for subornation of perjury and other similar offences where the offence of perjury has been actually committed, it is sufficient to allege the offence of the person who committed the offence of perjury in the manner referred to in subclause (1) and then to allege that the accused unlawfully caused and procured that person to commit the offence of perjury as alleged.

(3) In a charge for subornation of perjury and other similar offences where the offence of perjury or other offence has not been actually committed, it is sufficient to set out the substance of the offence charged against the accused, without setting out any of the matters referred to in subclause (1).

13 Names of witnesses to be included on indictment

The following information must be included on an indictment—

(a) the name of every witness who gave evidence at the committal proceeding, indicating whether the prosecution proposes to call the witness at the trial; and

(b) the names of any other witnesses the prosecution proposes to call at the trial.

14 Additional information to be included on indictment charging offence to which Chapter 7A applies

The following information must be included on a direct indictment charging an offence the prosecution of which may only proceed if the Court of Appeal gives authorisation under section 327O—

(a) a statement that the DPP will apply to the Court of Appeal to set aside the previous acquittal of the accused or to remove the previous acquittal as a bar to the accused being tried on the direct indictment (as the case requires); and

(b) identification of each charge on the indictment to which the statement is relevant.