

CRIMINAL JURISDICTION – A VERY BRIEF OUTLINE

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For the purposes of considering the issue of criminal jurisdiction to deal with various criminal charges, criminal offences will fall into one of the following four categories:

1. purely summary matters
2. Table 1 matters
3. Table 2 matters
4. strictly indictable matters

Purely Summary Matters

Purely summary matters are those which can ONLY be dealt with in the Local Court (i.e. the summary jurisdiction). They are not capable of being dealt with on indictment.

An indictable offence is one which is capable of being dealt with on indictment (i.e. by presentation of an indictment before a trial Judge in the District or Supreme Court).

Purely summary matters include all matters charged under the Summary Offences Act. Also included are matters which carry less than 2 years gaol as a maximum penalty that are not mentioned in Table 1 or Table 2.

Brief service provisions for most summary matters are dealt with in Criminal Procedure Act ss.182 – 188.

Table 2 matters

Table 2 matters are matters referred to in Table 2 of Schedule 1 of the Criminal Procedure Act.

A Table 2 matter will be dealt with summarily unless the prosecution elects to have the matters dealt with on indictment. For legislative provisions for election see Criminal Procedure Act Chapter 5 (ss.258-273). Election must be made within the time set by the Local Court (s.263) unless the Court is satisfied special reasons exist. Such discretion ceases once the Local Court has commenced taking evidence or facts have been presented on a plea.

Brief service provisions are governed by Criminal Procedure Act ss.182-188, unless an election is made in which case the committal provisions – (see Criminal Procedure Act Ch. 3 Div 3).

Table 1 matters

Table 1 matters are matters referred to in Table 1 of Schedule 1 of the Criminal Procedure Act.

Loose leaf commentaries will generally indicate whether an offence is Table 1 or Table 2 without having to rummage through the Criminal Procedure Act.

A Table 1 matter will be dealt with summarily, unless either the prosecution or the defence elect to have the matter dealt with on indictment. For legislative provisions for election see Criminal Procedure Act Chapter 5 (ss.258-273). Election must be made within the time set by the Local Court (s.263) unless the Court is satisfied special reasons exist. Such discretion ceases once the Local Court has commenced taking evidence or facts have been presented on a plea.

Brief service provisions are governed by Criminal Procedure Act ss.182-188, unless an election is made in which case the committal provisions – (see Criminal Procedure Act Ch. 3 Div 3).

Strictly Indictable Matters

These matters are more serious matters which, due to their seriousness, cannot at law be dealt with in the summary jurisdiction and must be dealt with on indictment.

These matters are indictable matters which are not mentioned in either Table 1 or Table 2.

Brief service provisions are covered by Criminal Procedure Act Ch.3 Div 3.

Children’s Court Jurisdiction

Note that the Children’s Court is subject to different jurisdictional provisions. Specifically, see Children (Criminal Proceedings) Act s.28 (hereinafter CCPA)

The Children’s Court can deal with most matters involving a child defendant (over 10 y.o. and less than 18y.o. at time of the offence and less than 21 y.o. when court deals with the matter).

The matters which the Children’s Court cannot deal with are offences which are “serious children’s indictable offences”.

“Serious Children’s Indictable Offences” are defined in the CCPA s.3. These include:

- homicide
- offences punishable by imprisonment for 25 years or life

- s.61J Agg Sex Assault (except where Agg is V under 16y.o.) or Assault Intent Sexual Intercourse s.61K
- Attempt s.61J or s.61K above
- Offences under the Firearms Act relating to the manufacture or sale of Firearms punishable by imprisonment of 20 years.
- Other offences prescribed to be serious children's indictable offences by the regulations.

All other matters commence summarily (CCPA s.31).

A child can elect to take his or her trial (proceed on indictment) by indicating to the court at any time up until and including the end of the prosecution case that they wish to do so providing that the matter is one which is punishable summarily without the consent of the accused (i.e. purely summary or Table 2) – see CCPA s.31(2)

A magistrate has a discretion at the end of the prosecution case to commit the child for trial for any indictable offence – see CCPA s.31(3).

I hope the above has been of some help.

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