



**THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA**

Project No 6

**Summary Trial of
Indictable Offences**

WORKING PAPER

DECEMBER 1968

INTRODUCTION

As part of its first programme the Law Reform Committee has been asked to consider the need for further legislation to provide for summary trial of certain indictable offences.

The Committee having completed its first consideration of this matter now issues this working paper. The paper does not represent the final views of the Committee.

Comments and criticisms on the paper are invited. The Committee requests that they be submitted by 1 March, 1969.

Copies of the paper are being forwarded to -

The Chief Justice and Judges of the Supreme Court,

The Law Society,

The Law School,

The Magistrates Institute,

The Justices' Association of Western Australia,

The Commissioner of Police,

The Under Secretary for Law,

Other Law Reform Commissions and Committees with which this Committee is in correspondence.

The Committee may add to the above list.

The research material on which this paper is based is at the offices of the Committee and may be made available on request.

WORKING PAPER

SUMMARY TRIAL OF INDICTABLE OFFENCES

TERMS OF REFERENCE

1. "To consider the need for further legislation to provide for summary trial of certain indictable offences".

THE MOVEMENT FOR REFORM

2. Trials by jury on indictment undeniably take longer and are more costly than summary trials. This would be so even if reforms were introduced into the methods and procedure of committal for trial (see Working Paper on Project No. 4). In principle, particularly on more serious charges, an accused's right to trial by jury is unquestionable. But an accused himself in many instances prefers summary trial because of its practical advantages. The summary trial is more speedy and his anxieties are thus resolved sooner. It is less expensive. And the maximum penalty that may be imposed is generally less. While it may be arguable in principle that a lesser penalty should not be made an inducement to persuade election for summary trial, in practice it must often carry considerable weight.

3. In most jurisdictions there have been movements for the extension of the summary jurisdiction of courts to deal with indictable offences.

4. In Western Australia courts of petty sessions already have jurisdiction to deal summarily with certain cases of petty stealing (see paragraph 10 below). The most pressing need seems to have been for an extension of this jurisdiction to include petty cattle and stock stealing. There is at present a Bill before Parliament to amend the *Criminal Code* to confer this extended jurisdiction.

5. The bulk of the offences dealt with on indictment in this State are the offences shortly referred to as "breaking and entering". It has been suggested that some limited jurisdiction to deal summarily with such offences should also be introduced.

6. There have been suggestions also that provision should be made to enable charges of gross indecency, and forgery and uttering to be dealt with summarily.

THE PRESENT LAW IN WESTERN AUSTRALIA

7. Offences in Western Australia are of three kinds, crimes, misdemeanours and simple offences. Any offence not otherwise designated is a simple offence. All simple offences are triable summarily. Crimes and misdemeanours are triable on indictment "unless otherwise expressly stated" (Code s.3).

8. The following are the indictable offences for which express provisions for summary trial have been made.

9. **Assault** (Code ss. 319-323) - unless "accompanied by an attempt to commit a crime, or if for any reason the justices are of opinion that the charge is a fit subject for prosecution on indictment". Penalty (which was amended in 1966) - \$100 or six months: if aggravated, \$200 or one year.

Note that the accused has no election. The question is in the discretion of the court. Statistics indicate that it is very much the exception for an assault to be tried on indictment.

Note also that an assault with intent to interfere with freedom of trade or work is a simple offence triable summarily: Penalty - three months (s.324).

Common assault is a misdemeanour: Penalty - one year (s.313).

10. **Stealing and the like offences** (Code ss. 426-427) - subject to the following conditions:

- (a) the offence must be one specified in s.426 which includes stealing where the penalty does not exceed three years (hence the exclusion of cattle and stock stealing for which under s.378(3) the penalty has been seven years), stealing from the person, stealing by a clerk or servant, obtaining by false pretences or by a fraudulent trick;
- (b) either (i) the value of the property involved must not exceed \$100 (to be increased to \$300 by the Bill at present before Parliament referred to in

paragraph 4 above) , or (ii) the offender must admit his guilt **and** it must appear to the justices that the nature of the offence is such that the offender could be adequately punished on summary conviction; and

- (c) the offender must have elected summary trial after he had been informed of his right to trial by jury.

Penalty - six months or \$100 (in the Bill at present before Parliament it is proposed to increase this amount to \$500).

Note: Statistics indicate that it is the exception for stealing and related indictable offences which are triable summarily to be dealt with on indictment.

Note also offences analogous to stealing, relating to animals and branding, possession and offering for sale of shipwrecked goods, and unlawful catching and taking of oysters and fish, which are triable summarily (ss. 428-440).

Stealing is a crime: penalty - (except in special cases) three years (s.378).

11. **Malicious damage to property** (Code ss. 465-468. Note also ss. 671-672) - i.e. Wilful and unlawful destruction of or damage or injury to property or animals - subject to the same conditions as summary trial of stealing and like offences.

Penalty - six months or a fine equal to amount of injury done plus \$50 (in the Bill at present before Parliament it is proposed to delete reference to the amount of the injury done and increase the amount which may be imposed as a fine to \$500).

Arson is a crime: penalty - life imprisonment (s.444). Malicious injuries generally, a misdemeanour: penalty, two years (s.453).

12. **Defamation** ("Unlawful publication of defamatory matter", Code s.369) - "if the justice is of opinion ...that the case is of a trivial nature" and the accused "consents to the charge being dealt with summarily". Penalty - \$100.

Defamation is a misdemeanour: penalty - twelve months or \$600. If the offender knows the matter to be false - two years or \$1,000 (s. 360).

13. **Attempted suicide** (Code s.289) - if accused admits guilt, the justices in their discretion may deal with the matter summarily: penalty - six months.

Attempted suicide is a misdemeanour: penalty - one year (s.289).

14. Apart from the offences referred to in paragraphs 9-13 above, note also the following.

15. Forgery is a crime: penalty - three years (s.473). But ss. 490-491 create as simple offences - forgery of seamen's tickets, fraudulent use of adhesive stamps, false warranties and labels relating to the sale of food.

16. Intimidation or violence to compel a person to do or abstain from doing an act is a simple offence: penalty - three months or \$40 (s.550). But an accused "may on appearing before such Court (i.e. of summary jurisdiction) declare that he objects to being tried for such offence by a Court of summary jurisdiction" and he then becomes entitled to a trial as if the offence was indictable (s.551).

17. There are a number of instances of simple offences and indictable offences covering similar situations. The following are examples:

- (a) Keeping places for purposes of prostitution: Code s.209; *Police Act*. s.76F.
- (b) Keeping gaming-houses and betting-houses: Code ss.210, 211; *Police Act* ss.84A-84C.
- (c) Unlawful use of motor vehicles: Code s.390; *Traffic Act* s.60.

18. Under the *Child Welfare Act* (s.20B) an accused charged with specified offences (sexual offences with children) may elect to be dealt with summarily by the Children's Court. The maximum penalty the Court may impose is eighteen months imprisonment.

THE LAW IN OTHER JURISDICTIONS

19. An outline of the statutory provisions (relating primarily to offences against property) in other jurisdictions appears as an Appendix to this paper. The following are brief statements of how the matter is dealt with in each jurisdiction.

20. **Australian Capital Territory.** The *Crimes Ordinance 1951* amends s.476 of the *Crimes Act 1900* (N.S.W.), which otherwise applies. Under the amending ordinance the jurisdiction of the summary court may be exercised without the consent of the accused unless the offence, "having regard to its seriousness or the intricacy of the facts or the difficulty of any questions of law likely to arise at the trial, or any other relevant circumstance, ought to be tried by the Supreme Court." This summary jurisdiction extends over the wide range of offences listed in s.477 of the N.S.W. *Crimes Act* (and see Appendix to this paper), provided the value of the subject matter or property involved does not exceed \$100. Penalty - twelve months or \$50.

21. **Commonwealth Crimes Act.** Except for charges of treason, treachery, sabotage, espionage and breaches of official secrecy (i.e. the offences introduced by Act No. 84 of 1960) the court may deal summarily with any charges with the consent of the accused, or with charges of offences relating to property not exceeding \$100 on the request of the prosecutor. Penalty - one year, \$100, or both.

22. **New South Wales.** Under the *Crimes Act 1900* the Court may, unless the accused otherwise elects, deal summarily with the large number of offences (including "breaking and entering") listed in s.477 (and see Appendix to this paper) provided the value of "the subject matter does not amount to \$250." Penalty - twelve months, or \$100.

23. **Queensland.** The Western Australian *Criminal Code* is based on the Queensland Criminal Code under which the provisions are similar to those at present existing in Western Australia.

24. **South Australia.** The *Justices Act, 1921-1967* gives the court summary jurisdiction (without the accused's consent but subject to the same proviso regarding seriousness, intricacy of facts, questions of law and other relevant circumstances applicable under the A.C.T.

Ordinance) to deal with simple larceny and the like, other felonies for which the penalty is no more than that for simple larceny, and with misdemeanours (other than libel, abduction, procuring defilement, indecent assaults, attempted rape or unnatural offences, concealment of child birth, conspiracy) punishable with not more than two years imprisonment. On charges relating to property the jurisdiction of justices is limited to cases in which the subject matter does not exceed \$20 (in some cases \$10); that of magistrates to cases in which the subject matter does not exceed \$400. Penalty - two years, or \$200.

25. **Tasmania.** The 1963 amendment to the *Justices Act 1959* introduced extensive changes. The court now has power to deal summarily with stealing and similar offences against property without the consent of the accused provided the value of the subject matter does not exceed \$20. If the value does not exceed \$400 the court may proceed summarily if the accused elects summary trial. The jurisdiction extends to "breaking and entering" provided the building was not a dwelling-house, no violence or explosives were used, the accused was unarmed, and there was no intent to commit a crime other than stealing. Penalty - one year; two years for a subsequent offence, or for breaking and entering.

26. We have been given a reliable opinion that the jurisdiction without consent, which had been regarded by some practitioners as unjustified, has been successful and that up to the time when the opinion was given (May 1968) no complaints had been made against the operation of the amendment. Indeed it was predicted that the system has worked so well that the jurisdiction of magistrates will be extended further.

27. **Victoria.** Under the *Justices Act* (No. 6282, 1958, and No. 6958, 1962), the court may, unless the accused otherwise elects or the court is of opinion that the charge should be tried on indictment, deal with the charge summarily provided the value of the subject matter of the charge does not exceed \$1,000. Breaking and entering, other than house-breaking, is included in the summary jurisdiction. Penalty - one year.

28. **New Zealand.** Under the *Summary Proceedings Act 1957*, magistrates are given jurisdiction to deal summarily without the consent of the accused with a large number of offences (including robbery and burglary) listed in a schedule (for list see Appendix to this paper). If the offence is punishable with more than three months imprisonment, the accused must be put to his election. Penalty - three years, £200, or both.

29. **England.** The *Magistrates' Courts Act 1952*, s.19, empowers the court to deal summarily with indictable offences specified in the schedule with the consent of the accused, provided the punishment that the court may inflict is adequate and the circumstances do not make the offence serious or one for other reasons requiring trial on indictment (see Appendix for particulars of s.19). Penalty-six months, £100 or both.

POSSIBLE REFORMS IN WESTERN AUSTRALIA

30. Summary trial of property offences without election

- (a) Courts of Petty Sessions could be given jurisdiction in their discretion and without putting the accused to his election, to deal summarily with certain offences against property.
- (b) These could be limited with reference to the penalty applicable (as in New Zealand, or with reference to the value of the property involved - say \$100 or \$50 or \$20. The latter limitation could be readily introduced by omitting from s.426 of the Code the election requirement (see paragraph 10(b) above).
- (c) Possibly the list of the offences to which such jurisdiction is to apply could be further limited - e.g. by excluding breaking and entering (assuming jurisdiction is to be given on such charges).
- (d) General indications of the considerations to be taken into account by the court could be laid down, as in the A.C.T. Ordinance, and South Australian *Justices Act* (see paragraph 20 and 24 above), or the English *Magistrates' Courts Act* (see paragraph 29 above; compare the formula used in the *Criminal Code* s.320 (Summary trial of assaults); and see also the formula used in Victoria (see Appendix to this paper)).
- (e) The jurisdiction without election could be limited to magistrates, or the accused could be given the right to elect that the charge be dealt with by a magistrate (i.e. not by justices).

31. **The list of offences triable summarily could be extended**

- (a) The amendment to the Code now before Parliament is making some extension (see paragraph 4 above).
- (b) The most obvious further addition to the list of offences against property is perhaps "breaking and entering", the most prevalent of the offences now tried on indictment. It has been reliably estimated that 60% of all committals for trial are for breaking and entering premises other than dwelling-houses. It might be considered advisable to exclude charges involving dwelling-houses, the use of explosives or arms or violence, or where the intent is other than to steal (as e.g. in Tasmania - see paragraph 25 above).
- (c) Under the Code s.378 (12) the penalty for stealing after a previous conviction (or two previous summary convictions) is seven years. Such offences are therefore not triable summarily, though it is possible in practice that such offences are sometimes so tried, the penalty provision (see paragraph 10(a) above) being overlooked. It may be desirable to make subsequent offences triable summarily in certain circumstances, perhaps subject to the considerations referred to in paragraph 30(d) above.
- (d) Other indictable offences to which it has been suggested summary jurisdiction may be extended, are:
 - (i) forgery and uttering (Code ss.469-489) - subject presumably to limitations similar to those imposed on other offences relating to property, and possibly limited to, or excluding, particular types of documents;
 - (ii) gross indecency (Code s.184) - possibly subject to limitations, though once again, the general considerations referred to in paragraph 30 (d) may suffice. The question of whether or not the accused should be allowed to elect trial by jury would also have to be considered. The accused has no election when charged with assault (see paragraph 9 above).

- (e) Other specific offences could perhaps also be included. The New Zealand *Summary Jurisdiction Act* for example covers a very extensive area (see Appendix to this paper for list).

32. The value of the property involved may be increased

The value selected (as indicated above) varies from jurisdiction to jurisdiction, from \$100 in South Australia to \$1,000 in Victoria. In the Bill at present before the Western Australian Parliament \$300 has been selected. The selection of any amount would be more or less arbitrary but if jurisdiction as referred to in paragraph 30 is to be given, some relationship between the two figures would seem desirable. Without making any policy decision and merely to afford a starting-point for criticism and comment the Committee suggests that the limits be \$100 for cases in which the accused is not given an election (other than perhaps an election to be tried by a magistrate - see paragraph 30(e) above), and \$500 in other cases.

33. The penalties could be increased

The maximum fines for assaults triable summarily were increased in 1966 to \$100 for common assaults and \$200 for aggravated assaults (see paragraph 9 above). It is proposed in the Bill at present before Parliament to increase the maximum fines for stealing and similar offences triable summarily from \$100 to \$500. If breaking and entering and other offences are to be included, perhaps further increases in penalties, particularly the terms of imprisonment, may be desirable.

34. Awards of Compensation

Under s.719 of the *Criminal Code* a court may order a person convicted to pay "any person aggrieved" compensation for loss of property or expenses incurred through or by means of the offence. The sum awarded may not exceed \$50 in the case of "a summary conviction" or \$200 in other cases. A summary conviction would include conviction after summary trial of an indictable offence (see also s.673). It has been suggested that these amounts should be increased.

APPENDIX

to

WORKING PAPER

on

SUMMARY TRIAL OF INDICTABLE OFFENCES (Project No. 6)

**OUTLINE OF STATUTORY PROVISIONS IN
OTHER JURISDICTIONS**

- A AUSTRALIAN CAPITAL TERRITORY
- B COMMONWEALTH
- C NEW SOUTH WALES
- D QUEENSLAND
- E SOUTH AUSTRALIA
- F TASMANIA
- G VICTORIA
- H NEW ZEALAND
- I ENGLAND

A. AUSTRALIAN CAPITAL TERRITORY

Crimes Ordinance, 1951, amending *Crimes Act, 1900*, (of New South Wales)

Section 476 - Certain indictable offences punished summarily

- (1) Where a person is charged before a court of summary jurisdiction with an offence mentioned in the next section, and the evidence for the prosecution is, in the opinion of the court, sufficient to put the accused on his trial, but it appears to the court that the case may properly be disposed of summarily, the court shall, if the subject matter of the charge, or the value of the property involved, does not exceed \$200, have jurisdiction to hear and determine the charge in a summary manner, and pass sentence upon the person so charged.
- (2) This jurisdiction may be exercised without the consent of the accused, but the court shall not have jurisdiction to hear and finally determine a charge if the offence, having regard to its seriousness or the intricacy of the facts or the difficulty of any questions of law likely to arise at the trial, or any other relevant circumstances, ought to be tried by the Supreme Court.

Section 477 - List of offences

(as in New South, q.v. infra, at C)

Section 478 - Punishment

Not exceeding 12 months' imprisonment or \$100 fine;
OR 3 months, imprisonment or \$20 fine if accused is under 16 years.

B. COMMONWEALTH

Crimes Act, 1914-1960 (1961)

Section 12A - Certain offences may be dealt with summarily

(1) Any proceeding under this Act, although declared indictable, may, with the consent of the defendant, be heard and determined by a Court of Summary Jurisdiction.

(2) A court of Summary Jurisdiction may, if it thinks fit, upon the request of the prosecutor, hear and determine any proceeding in respect of an offence against this Act, although declared to be indictable, if the offence relates to property the value of which does not exceed one hundred dollars.

(3) **Punishment** Where an offence is dealt with under this section the court may impose a sentence of imprisonment not exceeding one year and, in its discretion, impose a pecuniary penalty not exceeding two hundred dollars in addition to or in lieu of a sentence of imprisonment.

(4) Notwithstanding the preceding provisions of this section, an offence against -

section 24 = Treason,

section 24AA = Treachery,

section 24AB = Sabotage,

section 78 = Espionage ,

section 79

(2) & (5) = Official Secrets,

of this Act is punishable only on indictment.

C. NEW SOUTH WALES

Crimes Act, 1900, as amended to date

Section 476 - Where a person is charged before one or more than one Justice with an offence mentioned in the next section, the court shall have jurisdiction to hear and determine the charge in a summary manner, with the consent of the accused, and when the subject matter does not amount to \$500.

Section 477 - List of offences

- (a) attempting to commit suicide
- (b) concealment of birth where accused is the mother of the child and is not charged jointly with any other person
- (c) committing simple larceny
- (d) escaping from legal custody
- (e) stealing any chattel, money or valuable security from the person of another
- (f) offences mentioned **in list appended**
- (g) attempting to commit any of above offences

(f) **above - LIST APPENDED** with reference to *Crimes Act, 1900*, of New South Wales.

Section 81A -	Procuring an act of indecency on a male
81B -	Soliciting by a male person in a public place to commit an act of indecency
113 -	Breaking and entering
114 -	Being found at night with intent to commit a felony
125 -	Larceny by bailee
126 -	Stealing cattle or killing with intent steal
131-134 -	Unlawfully using another person's cattle
	Stealing dog
	Taking money to restore dog
	Stealing or destroying valuable security
139 -	Stealing etc., metal, glass, wood, etc., fixed to house or land
140 -	Stealing trees in pleasure grounds
144 -	Stealing minerals
147 -	Defrauding partners in mines
148 -	Stealing in a dwelling to ten dollars or more
150-152 -	Stealing goods in process of manufacture
154 -	Tenants, etc., stealing articles let to hire
156-160 -	Larceny by servants
	Embezzlement by servants
	Falsification of accounts by servants
	Larceny by Public Servants
	Embezzlement by Public Servants

165 -	Misappropriation by agent
166 -	Misappropriation of goods by servant
168 -	Fraudulent sale of property by agent
169 -	Fraudulent sale of property by attorney
Section 178A -	Fraudulent misappropriation of moneys collected or received
178B -	Valueless cheque
178C -	Obtaining credit by false pretences
179 -	False pretences
186 -	Taking reward for helping to recover stolen property
188-189A -	Receiving where principal is guilty of felony Receiving where principal is guilty of misdemeanour Receiving goods stolen outside New South Wales
190 -	Receiving cattle feloniously killed
192 -	Receiving material or tools entrusted for manufacturer
208 -	Tenants maliciously injuring house
216-220 -	Injuring trees in a pleasure ground Injuring trees elsewhere than pleasure ground After one summary conviction for above After two summary convictions for above
244-248 -	Injuring works of art Killing or maiming cattle other than pig or goat Wounding cattle
273-275 -	Forgery
Section 478 -	Punishment
	Imprisonment not exceeding twelve months or fine not exceeding one hundred dollars.

D. QUEENSLAND

Criminal Code Act, 1899-1964

Section 443 - Indictable offences which may be dealt with summarily

When a person is charged before two justices with any of the indictable offences following -

- (a) Stealing, when punishment does not exceed imprisonment for three years with hard labour
- (b) Killing animal with intent to steal skin or carcass when maximum punishment does not exceed imprisonment for three years with hard labour
- (c) Stealing anything from the person of another
- (d) Stealing by clerk or servant employer's property on account of his employment
- (e) Making thing movable with intent to steal
- (f) Procuring delivery of anything by false pretence with intent to defraud
- (g) Obtaining by means of a trick goods or money
- (h) Attempting to commit any offence aforesaid
- (i) Receiving when principal liable under above
- (j) Counselling or procuring any offence above, then, if -

age of accused is twelve or above, and

- (1) value of subject matter is less than \$40
- or (2) age of accused is less than seventeen
- or (3) accused pleads guilty and whatever the value of the subject matter is appears to the justices that he may be adequately upon summary conviction,

the justices may deal with the case summarily.

Punishment

Imprisonment with hard labour not exceeding six months or fine not exceeding two hundred dollars.

Section 444 - Procedure

The justices may deal with the case summarily if accused, or his parent or guardian if he is less than sixteen years, does not object to summary process after the justices have explained the position.

If accused objects, justices must proceed by way of indictment.

Justices are required to abstain from summary process if accused is less than sixteen and his parent objects, or if accused is over sixteen years and has already been convicted for some offence on indictment and is now liable to imprisonment for more than three years, OR the justices are of opinion that the charge is a fit subject for prosecution by indictment.

Justices may also commit accused for sentence.

Section 480 - Offences which may be dealt with summarily

When a person is charged before two justices with any of the indictable offences following -

- (a) Wilful damage to property when punishment does not exceed imprisonment for three years with hard labour,
- (b) Killing, maiming or wounding any animal capable of being stolen,

then, if -

age of accused is twelve years or above, and

- or (1) value of subject matter is less than \$20
- or (2) age of accused is less than seventeen years
- (3) accused etc., as above for section 443

(also - Common Assaults
- Aggravated Assaults)

E. SOUTH AUSTRALIA

Justices Act, 1921-1957 - as amended by Justices Act Amendment Acts, 1956 and 1957

Section 120 -

- (1) A Special Magistrate or two or more justices may determine in a summary way -
 - i simple larcenies (not of cattle or other animals), larcenies from the person without violence, larcenies from ships, docks, etc. when the amount involved is less than \$20.
 - ii larcenies and embezzlements by clerks and servants when the amount is less than \$10
 - iii obtaining by false pretences less than \$20
 - iiia knowingly receiving less than \$20
 - iiib certain felonies in ss.143, 150 and 152 of *Criminal Law Consolidation Act 1935* when value is \$20 or less
 - iv felonies punishable as in the case of simple larceny
 - v misdemeanours not punishable by more than two years imprisonment, except libel, abduction, procuring defilement of women, indecent assaults, attempt at rape or unnatural offences, concealment of childbirth, conspiracy.

- (2) A Special Magistrate may hear summarily -
 - (a) charges in i, ii, iii, iiia above when the sum involved does not exceed \$400
 - (a.i.) when value does not exceed \$400
 - (b) fraudulent conversion by trustees, agents, etc., when amount involved is less than \$400

Section 122 -

Consent of the accused is not necessary, but there is no summary jurisdiction as above if it appears to the justices that the offence having regard to its seriousness or the intricacy of the facts or the difficulty of any questions of law likely to arise or any other relevant circumstances ought to be tried by the Supreme Court.

Section 129 (2) - Punishment

Imprisonment not exceeding 2 years or fine not exceeding \$200.

Criminal Law Consolidation Act, 1935

Sections 260-265

Under the sub-heading "Conspiracy and Protection of Property" these sections deal with certain minor offences punishable with a light fine or with imprisonment varying from three to six months. The offences are triable summarily unless the accused demands indictment whereupon the Court must proceed as though the offences were originally triable on indictment only.

F. TASMANIA

Section 71 The indictable offences hereunder described with reference to sections of the *Criminal Code Act*, 1924, are triable under summary jurisdiction, provided that the defendant is asked by the justices if he is willing to be tried by justices instead of by a jury and the defendant (or his responsible party if he is under sixteen years) does not object.

LIST of offences, with reference to sections of Criminal Code

- Section 234 - Stealing
- 237 - Killing an animal with intent to steal
- 239 - Unlawfully branding an animal
- 250 - Obtaining goods by false pretences
- 252 - Cheating
- 253 - Fraud in respect of payment for work
- 258 - Receiving stolen property

When the value of the subject matter does not exceed \$20, the justices proceed in their own discretion;

but for the same offences, where the value exceeds \$20, but does not exceed \$400, the defendant is entitled **to elect**.

Similarly, defendant may elect in respect of the following offences -

- Section 106 - Escaping from lawful custody
- Rescuing from lawful custody
- Section 107 - Facilitating escape of prisoner
- 108 - Assisting escape of criminal lunatic
- 109 - Rescuing goods legally seized
- 113 - Making a false declaration or statement
- 247 - Breaking a building other than a dwelling-house except where property involved worth more than \$400 is stolen; **or** violence is used to any person, **or** defendant's armed; or explosive is used; **or** there is intent to commit crime other than stealing
- 278 - Forgery for not more than \$400 on cheque
- 279 - Uttering such forgery

Section 71(4) - Punishment

Imprisonment not exceeding 1 year for first offence and 2 years for subsequent offences and for offences under section 247.

G. VICTORIA

Justices Act, 1958 (No. 6282), amended by Justices amendment Act, 1962 (No. 6958)

Section 102 A -

(1) Where any person is charged before justices assembled in petty sessions (NOT "a justice") with any of the offences hereunder described with reference to the *Crimes Act, 1958* -

- (a)
 - (i) simple larceny
 - (ii) larceny from the person
 - (iii) larceny in a dwelling-house
 - (iv) larceny as a clerk or servant
 - (v) larceny as a bailee
 - (vi) embezzlement as a clerk or servant

and the subject matter is not greater than \$1,000

- (b) breaking and stealing (except house-breaking) not more than \$1,000
- (c) breaking with intent to commit a felony (except house-breaking)
- (d) false pretences, not more than \$1,000
- (e) obtaining delivery of property to another person by false pretences, not more than \$1,000
- (f) receiving stolen property, not more than \$1,000
- (g) illegal pawning, not more than \$1,000
- (h) wounding
- (i) assault occasioning bodily harm
- (j) indecent assault
- (k) attempt to commit any of above offences

- the charge shall be heard and determined by summary jurisdiction, unless the accused objects or the justices are of opinion "that the charge is from any circumstances fit to be prosecuted by proceedings as for an indictable offence rather than to be disposed of summarily".

Punishment -

Imprisonment not exceeding 1 year.

H. NEW ZEALAND

Summary Proceedings Act, No. 87 of 1957- 1961

Section 6 - Summary jurisdiction in respect of indictable offences

(1) A Court presided over by a Magistrate shall have summary jurisdiction in respect of the indictable offences described in the enactments specified in the First Schedule of this Act, and proceedings in respect of any such offence may accordingly be taken in a summary way in accordance with this Act.

(2) The same jurisdiction is applied to conspiracy, attempt and complicity (accessory after the fact) in respect of any offence mentioned in subsection (1) above.

Section 7 - Punishment

Imprisonment not exceeding three years or fine not exceeding four hundred dollars or both -
Provided that imprisonment may not exceed that to which accused would be liable for that offence on direct indictment procedure;
-fine may not exceed that on indictment;
-no imprisonment may be inflicted if the offence is punishable only by fine on indictment.

Section 44 - Power of Court to decline summary jurisdiction

The Court may decline to proceed by way of summary jurisdiction and commit defendant for sentence, or proceed as for an indictment.

Section 66 - Defendant's right to elect trial by jury where offence punishable by more than three months imprisonment.

When the offence charged is punishable by imprisonment for a term exceeding three months, the defendant may, before the charge is gone into but not afterwards, elect to be tried by a jury. Before he elects, the substance of charge shall be stated to him.

Before the charge is gone into, the Court will address defendant as follows:

"You are charged with an offence for which you are entitled to be tried by a jury if you desire instead of being dealt with by this Court. Do you desire to be tried by a jury or by this Court?"

FIRST SCHEDULE – (references are to sections of *New Zealand Crimes Act, 1961*)

Section PART V - Crimes Against Public Order

- 86 - Unlawful assembly
- 87 - Riot
- 91 - Forcible entry and detainer

- 107 - **PART VI - Crimes Affecting Administration of Law and Justice**
Contravention of statute

- 110, 111 - Making false oath or statement or declaration
- 114 - Use of purported affidavit or declaration
- 118 - Assisting escape of prisoners of war, internees
- 119 - Breaking penal institution
- 120 - Escape from legal custody
- 121 - Assisting escape from legal custody
- 122 - Assisting escape of lunatic under detention

PART VII - Crimes Against Religion, Morality and Public Welfare

- 124 - Distribution or exhibition of indecent matter
- 125-126 - Indecent acts
- 130 - Incest
- 131 - Sexual intercourse with girl under care or protection
- 132 - Sexual intercourse with girl under twelve
- 133 - Indecency with girl under twelve
- 134 - Sexual intercourse or indecency with girl between twelve and sixteen
- 135 - Indecent assault on woman or girl
- 136 - Conspiracy to induce sexual intercourse
- 137 - Inducing sexual intercourse under pretence of marriage
- 138 - Sexual intercourse with idiot or imbecile woman or girl
- 139 - Indecent act between woman and girl
- 140,141 - Indecency between males (and boy)
- 144 - Indecency with animal
- 145 - Criminal nuisance
- 146 - Keeping place of resort for homosexual acts
- 147 - Brothel-keeping
- 148 - Living on earnings of prostitution
- 149 - Procuring sexual intercourse
- 150 - Misconduct in respect of human remains

PART VIII - Crimes Against the Person

- 151-153 - Neglect to provide necessaries of life
- 154 - Abandoning child under six
- 181 - Concealing dead body of child
- 185 - Procuring own miscarriage
- 186 - Supplying means of procuring abortion
- 189 - Injuring with intent
- 190 - Injuring by unlawful act
- 192 - Aggravated assault
- 193 - Assault with intent to injure
- 194 - Assault on a child, or by a male on a female
- 195 - Cruelty to a child
- 196 - Common assault
- 200(2) - Poisoning with intent to cause inconvenience or annoyance
- 202 - Setting traps, etc.
- 203(2) - Endangering transport without intent to injure
- 206 - Bigamy
- 207 - Feigned marriage
- 208,210 - Girls abduction

PART X – Crimes Against Rights of Property

- 227 - Theft
- 228 Conversion or attempted conversion of car, etc.
- 229 - Being in possession of instrument for conversion
- 230 - Criminal breach of trust
- 231 - Fraudulently destroying document
- 232 - Fraudulent concealment
- 233 - Bringing stolen property into New Zealand
- 234 - Robbery
- 236 - Compelling execution of document by fraud
- 237 - Assault with intent to rob
- 238 - Extortion by threats
- 239 - Demanding with intent to steal
- 241 - Burglary
- 242 - Entering with intent
- 243 - Being armed with intent to break or enter
- 244 Being disguised or possessing instruments for burglary
- 246 - Obtaining by false pretences
- 247 - Obtaining credit fraudulently
- 248 - Personation
- 249 - Acknowledging instrument in false name
- 250 - False statement by promoter
- 251 - Falsifying accounts relating to public funds
- 252-254 - Falsifying accounting or statement by officer, etc.
- 255 - Issuing false dividend warrants
- 256 - Concealing deeds and encumbrances
- 257 - Conspiracy to defraud
- 258 - Receiving property dishonestly obtained
- 262 - Taking reward for recovery of stolen goods
- 265 - Forgery
- 266 - Uttering forged document
- 267,268 - Counterfeiting public or corporate seal
- 269 - Sending false telegram
- 270 - Procuring execution of document by fraud
- 271 - Possessing forged banknote
- 272 - Drawing document without authority
- 273 - Using probate obtained by forgery or perjury
- 274 - Paper or implements for forgery
- 275 - Counterfeiting stamp
- 276-277 - Falsifying registers or extract therefrom
- 278 - Uttering false certificate
- 280-281 - Imitating authorised or customary mark
- 283-292 - Counterfeiting coin and connected offences
- 294,295 - Arson or attempted arson
- 296,297 - Damage or attempted damage to property by fire or explosive
- 298 - Wilful damage
- 299 - Wilful waste or diversion of water, gas, electricity
- 300 - Interfering with means of transport
- 301,302 - Wrecking or attempting to wreck
- 303 - Interfering with signals
- 304 - Interfering with mines

305 Providing explosive to commit a crime

PART XI - Threatening, Conspiracy, and Attempting to Commit Offence

306 - Threatening to kill or do grievous bodily harm

307 - Threatening to destroy property

308 - Threatening acts

309 - Conspiracy to prevent collection of rates or taxes.

I. ENGLAND

The principle of the *Criminal Justice Act, 1925*, has remained substantially the same, but has been revised and enlarged in its application.

Relevant amendments have been enacted, inter alia, by-

The Magistrates' Courts Act, 1952
The Criminal Justice Administration Act, 1962
The Criminal Justice Act, 1967.

The following extracts relate -

The Magistrates' Courts Act, 1952 (c.55)

Section 19 Summary Trial of information against adult for certain indictable offences

- (1) The following provisions of this section shall have effect where a person who has attained the age of seventeen appears or is brought before a magistrates' court on an information charging him with any of the indictable offences specified in the First Schedule to this Act. (q.v. infra)
- (2) If at any time during the inquiry into the offence it appears to the Court, having regard to any representations made in the presence of the accused by the prosecutor or made by the accused, and to the nature of the case, that the punishment that the court has power to inflict under this section would be adequate and that the circumstances do not make the offence one of serious character and do not for other reasons require trial on indictment, the court may proceed with a view to summary trial.
- (6) A person summarily convicted of an indictable offence under this section shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding one hundred pounds or both.

Section 29 - Committal for sentence for indictable offence tried summarily -

Where on the summary trial under subsection (3) of section eighteen or section nineteen of this Act of an indictable offence triable by quarter sessions a person who is not less than seventeen years old is convicted of the offence, then, if on obtaining information about his character and antecedents the court is of opinion that they are such that greater punishment should be inflicted for the offence than the court has power to inflict, the court may, instead of dealing with him in any other manner, commit him in custody to quarter sessions for sentence in accordance with the provisions of section twenty-nine of the *Criminal Justice Act 1948*.

The Criminal Justice Administration Act, 1962 (c.15).

Section 13 - Power to discontinue summary trial of indictable offence and resume committal proceedings - Where, under subsection (5) of section nineteen or subsection (4) of section twenty of the *Magistrates' Courts Act, 1952* (which relate to the summary trial of certain indictable offences) a magistrates' court

has ceased to inquire into an information as examining justices and begun to try the information summarily, the court may, at any time before the conclusion of the evidence for the prosecution discontinue the summary trial and resume the inquiry as examining justices.

FIRST SCHEDULE

Description of Indictable Offences by Adults Triable summarily by consent

1. *Larceny Act, 1861*, s.27 -
Fraudulent destruction of bonds, bills, notes, etc.
2. *Malicious damage Act, 1861*, ss.16, 20, 21, 51 –
Setting fire to corn
Destroying or damaging trees in pleasure grounds, etc. Similar malicious injury to property not otherwise provided for
3. *Offences against the Person Act, 1861*, ss.20, 47 –
Inflicting bodily injury
Assaults
4. *Telegraph Act, 1868*, s.20 -
Disclosing or intercepting messages (by officials)
5. *Debtors Act, 1869*, s.13(1) -
Obtaining credit (by bankrupt)
6. *Falsification of Accounts Act, 1875* -
Falsification of accounts by clerks, officers, servants, etc.
7. *Stamp Duties Management Act, 1891*, s.13 –
Offences in relation to dies and stamps
8. *Post Office Act, 1908*, ss.50-56 -
Stealing, opening or receiving mail bags
Diversion of letters
Opening or delaying postal packet
9. *Perjury Act, 1911*, s.5 –
False statutory declarations
False statements not on oath
10. *Forgery Act, 1913*, s.2(2) (a) and s.7(a) -
Forgery with intent to defraud of valuable securities
Demanding property on a forged document when value or subject matter does not exceed £20.
11. *Larceny Act, 1916*, certain sections relating to –
Simple larceny – Killing animals with intent to steal - Stealing dogs - Abstraction of electricity - Larceny in dwelling-house - Larceny from the person - Larceny by tenants or lodgers - Larceny and embezzlements by clerks or servants - Obtaining by false pretences - Receiving stolen property or stolen mail bags - etc: when value or subject matter does not exceed £20.
12. *Criminal Justice Act, 1925*, s.36 –
Forgery of passport

Making false statement to procure passport

13. *Agricultural Credits Act, 1928*, s.11 -
Certain frauds by farmers under obligation by the Act.
14. *Coinage Offences Act, 1936* -
Defacing coin, uttering defaced coin, importing or exporting defaced coin
15. Attempting suicide
16. Publishing (etc.) indecent or obscene book (etc.)
17. Indecent assault on male or female under the age of sixteen
18. Offences relative to stamps of National Insurance
19. Aiding, procuring, (etc.) or attempting any of above
20. Any offence consisting in the incitement to commit a summary offence, and the offence of inciting to commit any indictable offence which may be dealt with summarily

N.B. (1) figure "£20" in items 10 and 11 above has been **increased to £100** by paragraphs 7 and 8 of PART II of the THIRD SCHEDULE to the *Criminal Justice Administration Act, 1962*.

(2) The words "under the age of sixteen" have been deleted from item 17 above by paragraph 9 of the said PART II.

ADDITIONS TO FIRST SCHEDULE

- I. The following have been included in the above First Schedule by the *Criminal Justice Administration Act, 1962*, and *Criminal Justice Act, 1967*.
 - (a) Abandoning or exposing a child (i.e. offences under *Offences against the Person Act, 1861*, s.27);
 - (b) Concealing the birth of a child (i.e. offences under *ibid*, s.60);
 - (c) Sacrilege (i.e. offences under *Larceny Act, 1916*, s.24), where the felony alleged is included in Schedule 1 of the 1952 Act;
 - (d) Housebreaking and committing, or with intent to commit, felony (i.e. offences under *Larceny Act*, s.26 or *ibid*, s.27) where the place is neither a dwelling-house nor a building within the curtilage of or occupied with a dwelling-house and the felony alleged to have been committed or intended is included in Schedule 1 of the 1952 Act;
 - (e) In certain circumstances, being found at night armed or in possession of housebreaking implements or with intent to commit a felony (i.e. offences under *Larceny Act, 1916*, s.28); in the case of an offence under s.28(4), that the building is

neither a dwelling-house nor a building within the curtilage of or occupied with a dwelling-house.

- (f) Forging a valuable security etc. (i.e. offences under *Forgery Act 1913*, s.2 (2)(a)) where the document is an accountable receipt, release or discharge, or any receipt or other instrument evidencing the payment of money, or the delivery of any chattel personal;
 - (g) Forging documents in general (i.e. offences under *Forgery Act 1913*, s.4);
 - (h) Uttering any forged document the forgery of which is an offence triable summarily with the defendant's consent.
- III. Certain Offences under the *Criminal Law Act 1967*.
- III. Certain Offences under the *Sexual Offences Acts, 1956 and 1967*.