

Processes and Procedures

Major Indictable Reform

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1 PURPOSE

This document provides a detailed guide to the processes and procedures to be implemented as a result of the major indictable reform initiative. This document should be referred to by the Office of the Director of Public Prosecutions (ODPP), Courts Administration Authority (CAA), South Australia Police (SAPOL), Defence Counsel and other relevant parties.

These processes and procedures will be operational as of the 5th March 2018.

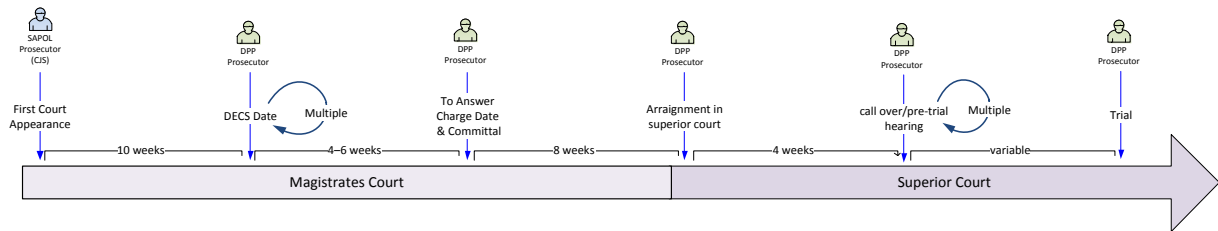
2 HIGH LEVEL PROCESS

The *Summary Procedure (Indictable Offences) Amendment Act 2017* was assented to on 14 June 2017 and aims to improve how major indictable matters commenced by SAPOL are managed within the criminal justice system. The amending Act:

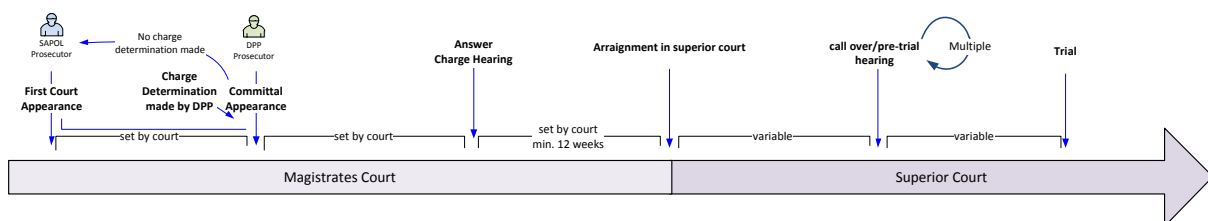
- renames the *Summary Procedure Act 1921* the *Criminal Procedure Act 1921*,
- introduces a staged disclosure scheme that will allow for earlier disclosure of primary evidence to defence: supporting earlier guilty pleas and negotiations with prosecution,
- requires major indictable matters to be the subject of a 'charge determination' by the Director of Public Prosecutions (the DPP) prior to the commencement of committal proceedings,
- gives the Court discretion to set realistic adjournment timeframes that reflect the needs of individual cases,
- requires case statements to be filed by prosecution and defence prior to a matter being arraigned in the Supreme Court or District Court to identify the matters that are genuinely in dispute,
- changes the way subpoenas are issued for major indictable matters; and
- refines the discounts on sentence that already exist where guilty pleas are entered early.

2.1 Current High-level Process

Current Process for Major Indictable Matters



2.2 New MIR High-level Process



3 DETAILED PROCESSES

3.1 Initial Arrest / Report

An accused is either arrested or reported and charged on Information with a major indictable offence. If the accused is arrested, the issue of police bail is determined by the police bail authority. If the accused is granted police bail they will be bailed to appear at the nearest metropolitan, circuit or country Magistrates Court. If the defendant does not apply for police bail, or is refused bail by the police bail authority, the matter will be listed at the nearest Magistrates Court for a bail hearing. In the instance the accused is reported for a major indictable offence, they will be summonsed on a Form 5 to attend the nearest Magistrates Court.

3.2 Section 105(1)(a) Information

In accordance with s105(1)(a), SAPOL will provide the defendant (or legal practitioner representing the defendant), at or before the defendant's first appearance in the Magistrates Court, information about sentencing reductions available in relation to guilty pleas and the process for having the matter called on in the Magistrates Court for the purpose of entering a guilty plea.

A copy of this information can be found in Attachment A of this document.

3.3 Early Guilty Pleas/Negotiations

SAPOL will have carriage of major indictable matters up until a charge determination has been made by the DPP, at which point the DPP will assume conduct of the matter.

All offers of resolution or other negotiations on major indictable matters prior to a charge determination being made by the DPP should be directed to the SAPOL Major Indictable Brief Unit SAPOLMajorIndictableBriefUnit@police.sa.gov.au.

All offers of resolution should be made by way of the *Notification of Defence Offer of Resolution/Early Guilty Plea* form and contain details as to the proposed charges and factual basis of the plea. The sentencing discount applicable at the time of the negotiations should also be identified.

A copy of the *Notification of Defence Offer of Resolution/Early Guilty Plea* form can be found in Attachment B of this document.

Once the form has been received by the SAPOL Major Indictable Brief Unit, the following procedure will apply:

- In the event that offers of resolution or early guilty pleas involving minor indictable or summary offences only, negotiations will be conducted by the SAPOL Major Indictable Brief Unit who will retain carriage of the matter.
- Should a defendant wish to plead guilty as charged, the matter can be called on in the relevant court at any time in accordance with the Court rules. It is not necessary for the *Notification of Defence Offer of Resolution/Early Guilty Plea* form to be submitted in these circumstances.
- Offers of resolution to major indictable offences involving amended major indictable charges, will be forwarded by SAPOL upon receipt of the *Notification of Defence Offer of Resolution/Early Guilty Plea* to the DPP.
 - In the event that a resolution has not been reached, the DPP will return the file to the SAPOL Major Indictable Brief Unit until such time as a charge determination is made.
 - In the event that a matter is successfully resolved to a major indictable offence(s), the DPP will retain conduct and appear on sentencing submissions.

Offers of resolution and/or negotiations after the making of a charge determination should be forwarded directly to the DPP who will have assumed conduct.

3.4 Guilty Pleas - Notice to Have Matter Called On - s110(3)

Pursuant to section 110(3), defence may request that the matter be called on in the Magistrates Court 4 weeks after the committal appearance for the purpose of entering a guilty plea. The court must be notified in writing using Form 9B of any such application (see Attachment C).

3.5 Notification of Legal Representation

Where a defendant is represented by a legal practitioner, defence counsel are to advise the SAPOL Major Indictable Brief Unit of their contact details and interest in the matter in order for a preliminary brief to be provided in due course.

SAPOL Major Indictable Brief Unit can be contacted at the following email address:

SAPOLMajorIndictableBriefUnit@police.sa.gov.au

3.6 First Court Appearance

A SAPOL Local Prosecution Unit prosecutor will appear at the first hearing at the nearest court whether that be in the metropolitan or regional area.

Pursuant to s105(5) and s106(1)(d), at the first hearing, the SAPOL prosecutor will inform the Magistrate of the time required to prepare and provide a preliminary brief taking into account the specific requirements of the case. The Magistrates Court will adjourn the matter for an appropriate amount of time to enable provision of the preliminary brief, allowing an additional period of not less than 4 weeks for the DPP to subsequently consider the brief and make a charge determination.

Where charges are severed from the original file, the severed charges will be adjourned to be heard within a specific severed file list in the relevant hub on a date beyond the next hearing for the major indictable file. This will allow for the status of the major indictable file to be known. **Any file containing charges which are not related to the original file will remain in the originating court for finalisation in that court.**

If however the severed file refers to a police interim intervention order that is not confirmed at the first hearing, the interim intervention order will be heard in the originating court's family violence/general list.

3.7 Preliminary Brief

Pursuant to s106(1), SAPOL must provide the DPP with a preliminary brief in relation to any information charging an indictable offence where SAPOL have been the investigating authority and the offending is to be subsequently prosecuted by the DPP.

The preliminary brief will contain the key evidence available to prove the elements of the offence alleged to have been committed, sufficient for the DPP to make a determination as to the appropriate charge or charges to be proceeded with (charge determination).

SAPOL will prepare the preliminary brief and will at least 4 weeks prior to the next appearance:

- provide it to the DPP,
- provide it to the defendant or legal practitioner representing the defendant should those details be known,
- file it with the Magistrates Court.

3.8 Charge Determination

The DPP is required to consider the preliminary brief and, providing that sufficient information is provided by SAPOL, a charge determination must be made as to the charge or charges to be proceeded with. In the event that the DPP declines to make a charge determination based on the preliminary brief provided, the matter will be returned to the SAPOL Major Indictable Brief Unit for them to retain conduct. SAPOL will then advise the defendant or their legal representative (if known) of that outcome.

If a charge determination is made, the DPP will advise the Court and SAPOL in writing of the charge determination no later than two working days prior to the defendant's second court appearance. SAPOL will then advise the defendant or their legal representative (if known) of the charge determination.

Pursuant to s106(1)(e) of the *Criminal Procedure Act 1921*, the Magistrates Court must not commence committal proceedings unless the Court has been advised by the DPP that a charge determination has been made.

3.9 Committal Hearing/Second Court Appearance

In the event that the DPP has made a charge determination, the DPP will assume conduct and a DPP prosecutor will appear on the next in court date. That date will therefore become the committal appearance as identified in s109(1) and s110 of the *Criminal Procedure Act 1921*.

If the defendant does not plead guilty at the committal appearance, the DPP prosecutor will inform the Magistrates Court of the time required to prepare and provide a committal brief, taking into account the specific requirements of the case. The Magistrates Court will adjourn

the matter to an answer charge date ensuring sufficient time is allowed for the completion of the committal brief (s110(2)(c)).

If the DPP has declined to make a charge determination after consideration of the preliminary brief, the matter will be returned to SAPOL who will retain conduct. A SAPOL prosecutor will then appear on the second appearance date. On that occasion, the Magistrates Court may:

- grant an application for an adjournment to allow additional time for the charge determination to be made, or
- dismiss the charge.

The committal appearance/second appearance will occur at the Adelaide Magistrates Court, or the relevant regional committal hub (Port Augusta Magistrates Court or Mount Gambier Magistrates Court).

3.10 Committal Brief

Where an offence is to proceed to an answer charge hearing, the DPP must, at least 4 weeks before the date appointed for that hearing, file a committal brief in the Magistrates Court. A copy of that brief must be provided to the defendant or their legal representative as soon as practicable after it is filed.

The content of the committal brief is set out in s111 of the *Criminal Procedure Act 1921*. Material already filed and served as part of the preliminary brief need not be included in the committal brief.

3.11 No Case To Answer Submissions

Pursuant to s112(1) a defendant may file in the Magistrates Court, and give to the DPP, a notice indicating that the defendant intends to argue that there is no case to answer with respect to the charge(s).

The notice must specify why the defendant asserts there is no case to answer s112(3)(b).

The notice must be filed and served before the date appointed for the answer charge hearing. If any such notice is served on the prosecution less than 2 weeks before the answer charge date, the Magistrates Court must, at the request of the DPP, adjourn the answer charge hearing for a period of up to 2 weeks (or such longer period as to the court thinks fit) to allow the prosecution time to prepare for the answer charge hearing – s112(4).

3.12 Rule 20 Notice

Pursuant to s 112(2) a defendant may file in the Magistrates Court, and give to the DPP, a notice requesting the oral examination of a witness or witnesses in committal proceedings.

The notice must specify why the defendant asserts there are special reasons for the oral examination - s112(3)(c).

The notice must be filed and served before the date appointed for the answer charge hearing. If any such notice is served on the prosecution less than 2 weeks before the answer charge date, the Magistrates Court must, at the request of the DPP, adjourn the answer charge hearing for a period of up to 2 weeks (or such longer period as to the court thinks fit) to allow the prosecution time to prepare for the answer charge hearing – s112(4).

Section 114 of the *Criminal Procedure Act 1921* sets out the procedure for taking evidence at committal proceedings.

3.13 Answer Charge Hearing

On the answer charge date, the defendant will be required to plead either guilty or not guilty to the charge(s) and will be committed for sentence or trial to the superior courts accordingly.

Where the defendant pleads guilty and a Form 9A has been submitted, the matter will be listed for sentencing submissions in the Magistrates Court.

The fixing of the arraignment date in the superior court is governed by s120 of the *Criminal Procedure Act 1921*. Where the defendant has been committed for trial, the DPP prosecutor will inform the Magistrates Court of the time required to prepare and provide a prosecution case statement. The Magistrates Court will set the arraignment date in the superior court allowing sufficient time for completion of both the prosecution and defence case statement but being no less than 12 weeks.

3.14 Case Statements

Where a matter has been committed to a superior court for trial, both prosecution and defence are to file and serve a case statement prior to arraignment, the contents of which is set out in section 123 of the *Criminal Procedure Act 1921*.

3.14.1 Prosecution File Case Statement

The DPP will prepare the prosecution case statement in relation to matters committed to the superior courts for trial and, not less than 6 weeks prior to the date of arraignment in the superior courts will:

- provide it to the defendant or legal practitioner representing the defendant, and
- file it with the superior court.

The content of the prosecution case statement is set out in s123(2) of the *Criminal Procedure Act 1921*.

3.14.2 Defence File Case Statement

A defendant committed for trial to a superior court must file a case statement in response to the prosecution case statement and not more than 4 weeks after receipt of prosecution case statement:

- provide it to the prosecution, and
- file it with the superior court.

The content of the defence case statement is set out in s123(4) of the *Criminal Procedure Act 1921*.

3.15 Application for Subpoena

3.15.1 Magistrates Court

Under section 107 of the *Criminal Procedure Act 1921* a subpoena may be issued by a Registrar if it is only to compel a witness to give oral evidence, or if each party to the proceedings and each person to whom the subpoena will apply consents to the issuing of the subpoena. In the absence of consent, a magistrate will determine an application for a subpoena. This is to ensure that subpoenas are only issued in cases where there is a legitimate basis for doing so.

3.15.2 Superior Courts

Under section 126 of the *Criminal Procedure Act 1921* a subpoena may be issued by the Registrar if it is only to compel a witness to give oral evidence, or if each party to the proceedings and each person to whom the subpoena will apply consents to the issuing of the subpoena. In the absence of consent a master or judge will determine an application for a subpoena. This is to ensure that subpoenas are only issued if it is in the interests of justice to do so.

3.16 Applications for Bail / Bail variations

All applications for bail or applications to vary bail prior to the making of a charge determination by the DPP should be forwarded by defence to the Court on the appropriate

form. The court will notify the SAPOL Major Indictable Brief Unit of the application by emailing SAPOLMajorIndictableBriefUnit@police.sa.gov.au.

Once a charge determination has been made, bail applications should be filed with the Court on the appropriate form. The Court will notify the DPP of the application by emailing dpp@sa.gov.au.

3.17 Warrant of Apprehension Issued

Unless excused, if a defendant on bail fails to appear at any Court hearing, the Court may issue a warrant for their apprehension.

If a defendant is apprehended on a warrant prior to a charge determination being made the SAPOL Major Indictable Brief Unit will have carriage of the matter and appear at the next hearing.

If a defendant is apprehended on a warrant after a charge determination has been made and the DPP has assumed conduct of a matter, both SAPOL and the Court should notify the DPP of the arrest, and the location, time and date of the hearing respectively. A DPP prosecutor will appear at the next hearing unless alternative arrangements are made with SAPOL.

3.18 Regional Major Indictable Prosecutions

Circuit and country major indictable matters follow the same preliminary brief process as metropolitan matters. The procedure is as follows:

1. The DPP will adjudicate all major indictable arrest files.
2. The first appearance after arrest will be held in the nearest regional Magistrates Court.
3. A SAPOL prosecutor will appear at the first appearance in the regional location. The matter will be adjourned to a second appearance at the relevant regional hub (Port Augusta, Mount Gambier or Adelaide Magistrates Courts) according to the time required for a preliminary brief to be prepared and provided to the DPP, and for the DPP to consider the preliminary brief and, if appropriate, to make a charge determination as per s106 (refer to section 3.8, above).
4. The regional SAPOL prosecution unit will transfer the file to the SAPOL Major Indictable Brief Unit to facilitate the preparation of the preliminary brief.
5. At the second appearance in the regional hub, the following will occur:

- i. If a charge determination has been made and the DPP has assumed conduct, a DPP prosecutor will appear via AVL as per current process; or
 - ii. If a charge determination has not been made by the DPP, a SAPOL prosecutor from the Major Indictable Brief Unit will appear via AVL from Adelaide.
6. After the second appearance, all processes under major indictable reform are the same as those for metropolitan matters.
7. Once the DPP has made a charge determination, the processes already established by the Circuit and Country committals initiative remain unchanged.

Circuit matters originating from the APY Lands or Yalata will also be subject to the preliminary brief process outlined above. However, as per the Circuit and Country committals processes already in place, the committal appearance and answer charge appearances will be listed to take place during the relevant Magistrates Court circuits to those locations. Whilst the DPP will have conduct of the matter, SAPOL may appear on those circuits on instructions from the DPP.

4 ATTACHMENT A: S105 INFORMATION



Government of
South Australia

IMPORTANT INFORMATION – EARLY GUILTY PLEA - SENTENCING REDUCTONS

(Section 105(2) *Criminal Procedure Act 1921*)

If you are thinking of pleading guilty, you may receive a sentencing discount of up to 40% if you plead guilty within 4 weeks of your first court date. Following that, sentence discounts still apply, however at reducing rates. See the tables below for more detail.

You should discuss the benefits of an early guilty plea with your lawyer as soon as possible. If you are applying for legal aid, get your application in immediately to take advantage of this possibility. If you require further information, contact the Legal Services Commission on 1300 366 424, or Aboriginal Legal Rights Movement on 1800 643 222.

If you are charged with a summary offence (or minor indictable offence to be dealt with as a summary offence) the following sentence discounts apply:

| | | | |
|---|--------------------------------------|--|----------------------------|
| From 1st court date up to 4 weeks after | Not less than 4 weeks prior to trial | Less than 4 weeks prior to trial, if the court is satisfied that you could not have pleaded sooner | In any other circumstances |
| Discount up to 40% | Discount up to 30% | Discount up to 30% | Discount up to 10% |

From 5 March 2018 - 30 April 2018: section 10B of the *Criminal Law (Sentencing) Act 1988*
From 30 April 2018: section 39 of the *Sentencing Act 2017*

If you are before a court upon a major indictable offence (or a minor indictable offence being dealt with in a higher court), the following sentence discounts apply:

| | | | | |
|---|--|--|---|--|
| From 1st court date up to 4 weeks after | More than 4 weeks after 1st court date but on or before committal appearance | Between committal appearance and answer charge hearing | After answer charge hearing but on or before first appearance in superior court (arraignment) | Between arraignment and the first day of trial |
| Discount up to 40% | Discount up to 30% ¹ | Discount up to 20% | Discount up to 15% | Discount up to 10% |

From 5 March 2018 - 30 April 2018: section 10C of the *Criminal Law (Sentencing) Act 1988*
From 30 April 2018: section 40 of the *Sentencing Act 2017*

If you wish to plead guilty after your first appearance and the next court hearing date is not within 4 weeks you will need to write to the court registry of your next appearance to have the matter called on.

¹A discount of up to 30% applies if at the committal appearance you advise the Court that negotiations are taking place with the prosecution and within a 4 week period after that committal appearance you have the matter called on in the Magistrates Court for the purpose of entering an early guilty plea.

5 ATTACHMENT B: NOTIFICATION OF DEFENCE OFFER OF RESOLUTION/EARLY GUILTY PLEA



NOTIFICATION OF DEFENCE OFFER OF RESOLUTION/EARLY GUILTY PLEA

(MAJOR INDICTABLE OFFENCE/S - PRE CHARGE DETERMINATION)

- ❖ To be forwarded to Officer In Charge - SAPOL Major Indictable Brief Unit
- ❖ 100 Angas Street, Adelaide 5000 or SAPOLMajorIndictableBriefUnit@police.sa.gov.au

Please note that there is no requirement to submit this form if you intend to plead guilty as charged.

I represent this defendant and this notice indicates an intention to enter an early guilty plea and/or commence negotiations with the prosecution on a without prejudice basis.

Name of defendant:

Date of birth:

Apprehension Report No.

Court File No.

The defendant is currently charged with the following offence/s:

1.
2.
3.
4.
5.
6.
7.

The defendant gives notice of intention to enter guilty pleas to the following offence/s:

1.
2.
3.
4.
5.
6.
7.

The proposed factual basis of the plea is:

- on full facts as contained in the affidavits and/or prosecution evidence; or
- as set out in the attached correspondence; or
- yet to be determined

The defendant seeks the following sentence reduction (*tick*);

- up to 40% as per Section 40(3)(a) of the Sentencing Act, 2017¹
- up to 30% as per Section 40(3)(b) of the Sentencing Act, 2017²

Next in court date:

Defence Counsel details:

Name:

Firm:

Signature:


Contact details: phone: email:

Further information for prosecution with respect to the offer of resolution/early guilty plea:

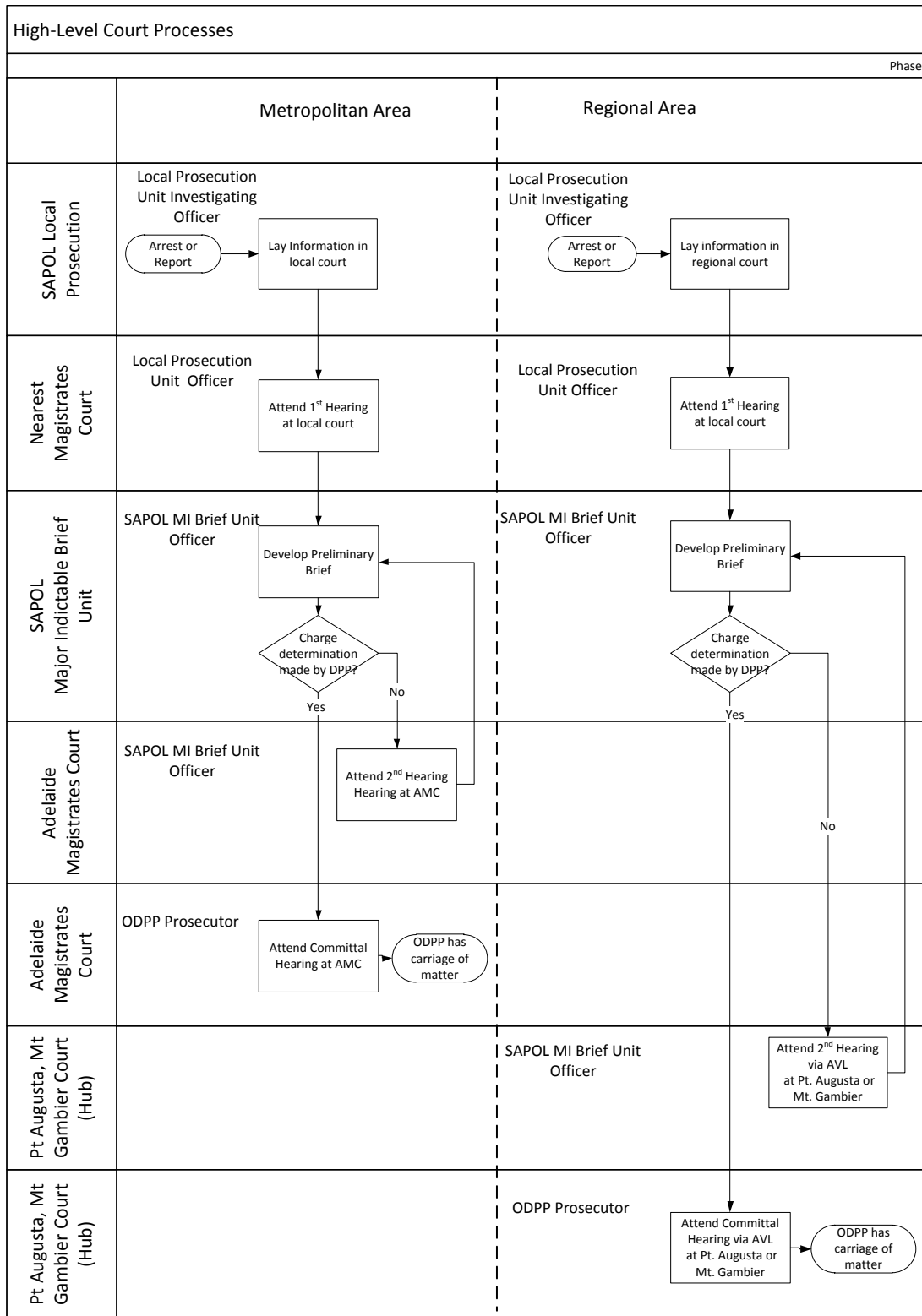
¹ From 5 March 2018 - 30 April 2018: as per Section 10C(3)(a) *Criminal Law (Sentencing) Act, 1988*

² From 5 March 2018 - 30 April 2018: as per Section 10C(3)(b) *Criminal Law (Sentencing) Act, 1988*

6 ATTACHMENT C: NOTICE TO HAVE MATTER CALLED ON

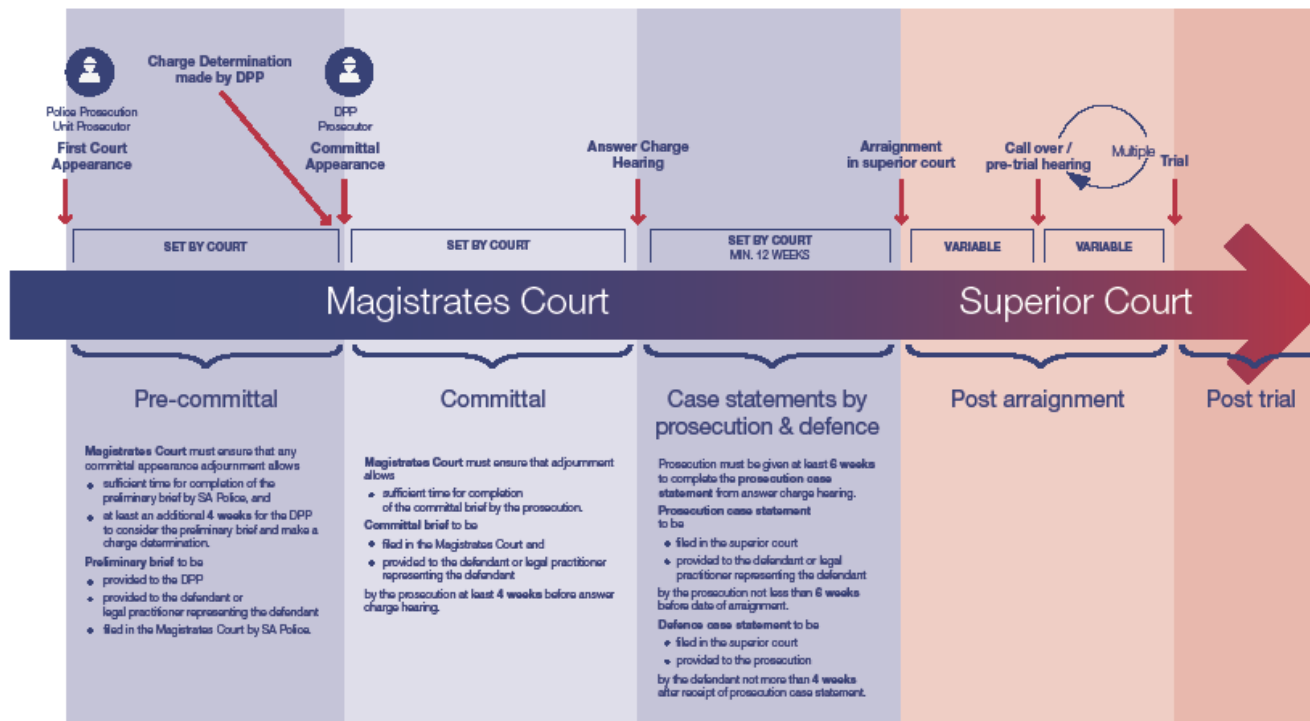
| | | | | | | |
|---|------------------|---|---------------|---------------|---------------------------------|------------|
| | | | | Form 9B | | |
|  | | NOTICE TO HAVE MATTER CALLED ON FOR GUILTY PLEA Magistrates Court of South Australia www.courts.sa.gov.au <i>Criminal Procedure Act 1921</i> Section 110(3) | | | Court Use Date Filed: | |
| Registry | | | | File No | | |
| Address | Street | | Telephone | | Facsimile | |
| | City/Town/Suburb | State | Postcode | Email Address | | |
| Informant | | | | | | |
| Defendant | | | | | | |
| Full Name | | | | | DOB | dd/mm/yyyy |
| Address (Registered Address, if Body Corporate) | Street | | DX | Telephone | | |
| | City/Town/Suburb | State | Postcode | Email Address | | |
| Defendant's Solicitor | | | | | | |
| Name | | | | | | |
| Address | Street | | Telephone | | Facsimile | |
| | City/Town/Suburb | State | Postcode | Email Address | | |
| <p>I advise the Court that negotiations are taking place with the prosecution. I wish to have this matter called on in the Magistrates Court for the purpose of entering a guilty plea in relation to the following charge(s):</p> <p style="text-align: center;">..... Date Defendant</p> | | | | | | |
| Next hearing | Registry | | | Date | | |
| | Address | | | Time am/pm | | |
| | Telephone | Facsimile | Email Address | | | |
| <p style="text-align: center;">..... Date MAGISTRATES COURT</p> | | | | | | |
| IMPORTANT NOTICE TO THE DEFENDANT | | | | | | |
| <ul style="list-style-type: none"> This form must be filed no later than 4 weeks after your committal appearance. | | | | | | |
| IMPORTANT NOTICE TO REGISTRY | | | | | | |
| <ul style="list-style-type: none"> The informant must be notified of the time and date of the hearing. | | | | | | |

7 ATTACHMENT D: COURT APPEARANCES



8 ATTACHMENT E: DOCUMENTATION REQUIREMENTS

Major Indictable Reform Documentation Requirements



9 ATTACHMENT F: SENTENCING REDUCTIONS

Major Indictable Reform Sentencing Reductions

