

**Chapter 4**  
Indictable offences  
that can be dealt  
with summarily

# Chapter 4—Indictable offences that can be dealt with summarily

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## A. Introduction

### 4-1 What is an indictable offence?

Under the [Criminal Code Act 1899](#) (Qld), there are criminal offences and regulatory offences. Criminal offences are crimes, misdemeanours and simple offences (s 3). Crimes and misdemeanours are indictable offences and cannot be dealt with summarily unless expressly stated in s 552 of the Criminal Code. A simple offence can be dealt with summarily.

Regulatory offences can only be dealt with summarily.

### 4-2 Who can elect summary jurisdiction?

Sections 552A and 552B of the Criminal Code set out the indictable offences that can be dealt with summarily.

There are no matters that can be dealt with summarily at the magistrate's election.

The [Drugs Misuse Act 1986](#) (Qld) sets out the matters that can be dealt with summarily at the prosecutor's election.

### 4-3 Summary jurisdiction—time

There are no time limits on when prosecution for an indictable offence must commence for it to be dealt with summarily.

## B. The defendant's election

### 4-4 Defendant's election under the Criminal Code

Section 552B of the Criminal Code refers to indictable offences that must be heard and decided summarily unless the defendant elects for jury trial. Your client will be able to choose whether to have a trial before a magistrate, or be committed for trial to the higher courts. All specific sections are listed.

### 4-5 Magistrate to advise as to right of election

Section 552I of the Criminal Code applies to all offences under s 552B. If the defendant is not legally represented, the magistrate must state the substance of the charge, and explain to the defendant that they are entitled to be tried

by a jury and not obliged to make any defence in the magistrates court. The magistrate must then ask whether the defendant wishes the charge to be dealt with summarily.

Magistrates follow this procedure strictly. If the defendant does elect summary jurisdiction, this should be fully explained to the defendant before they appear in court so they are prepared when the magistrate questions them.

#### **4-6 Determining value where there are multiple charges**

For jurisdictional purposes, the value of property under which charges can be dealt with summarily relates to the value of property associated with each individual charge. It does not relate to the total value of all property referred to in several charges being heard at one hearing.

### **C. The prosecutor's election**

#### **4-7 Prosecutor's election under the Criminal Code**

Section 552A of the Criminal Code refers to indictable offences that must be heard and decided summarily on the prosecution's election. You can use this section to determine whether a prosecutor has the power to keep a charge in the magistrates court. All such specific sections are listed.

The right of election exists under the Drugs Misuse Act (ss 13(1) and (2)). The election applies only for certain offences listed under this section.

### **D. Matters for which there are no elections**

#### **4-8 Matters for which there are no elections**

Section 552BA of the Criminal Code refers to indictable offences that must be heard and decided summarily. You can use this section to determine whether an indictable offence must be finalised in the magistrates court.

Note that s 552BA is subject to the excluded offences listed in s 552BB of the Criminal Code.

### **E. When Magistrates Court must abstain from jurisdiction**

#### **4-9 Adequate punishment**

The above provisions are subject to s 552D of the Criminal Code, which states that a 'Magistrates Court must abstain from dealing summarily with [any indictable offence] if satisfied, at any stage...[that] the defendant, if convicted, may not be adequately punished on summary conviction'. If the court abstains from jurisdiction, the charge must be committed to a higher court.

#### **4-10 Defence application in exceptional circumstances**

Where there are 'exceptional circumstances' the defence may apply to have a charge dealt with on indictment. Exceptional circumstances could include a sufficient connection between the charges; an important issue of law; or public interest.

## F. Appellate jurisdiction

### 4-11 Appellate jurisdiction

If a defendant is convicted summarily of an indictable offence, the right of appeal is to a District Court under s 222 of the [Justices Act 1886](#) (Qld).