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# Update Summary

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## SUMMARY JUSTICE SOUTH AUSTRALIA

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## October 2022 Update Summary

### Informations

#### Updated commentary

- On a charge of an offence against s 20(3) of the Criminal Law Consolidation Act 1935 (dealing with assault and aggravated forms of assault) the Supreme Court sitting five judges held that s 20(3) of the Criminal Law Consolidation Act 1935 creates a single offence with four different maximum penalties. The single offence created may exist in its basic, or its aggravated form: see *Police (SA) v Hill* [2022] SASCA 22. See [3.120].
- When an information recites that a defendant was driving a vehicle with a particular registration number, and the registration number alleged is incorrect, this is an error of form and can be remedied pursuant to s 181 of the *Criminal Procedure Act 1921*. See [3.276].
- A single act may cause the commission of two or more offences. Multiple charges will not be duplicitous if the elements of an offence charged are not the same as another charge and provided the elements of one offence are not wholly included in another offence. See [3.330].

### Committal proceedings

#### Updated commentary

- Rule 82.3 of the *Joint Criminal Rules 2022* sets out the requirements for evidentiary material briefs generally. They must be filed (and served) in electronic form unless the court orders otherwise. See [6.70].
- Rule 83 of the *Joint Criminal Rules 2022* (SA) is relevant to a first appearance. In particular r 83.1 provides that the court expects there will only be one such “first appearance” at which the matter should be adjourned for a committal appearance pursuant to s 110CPA. See [6.80].
- The committal appearance envisaged by s 109(1)(a) of the *Criminal Procedure Act 1921* (CPA) – will be the second occasion on which the defendant appears in the committal process. Rule 84 of the *Joint Criminal Rules 2022* is relevant and in particular r 84.1 provides that the court expects a charge determination pursuant to s 106(1) CPA will generally have been made by the time of this (second) hearing. Naturally, it can be expected that things will not always go as planned and that the “committal appearance” may be delayed by additional

adjournments owing, for example, to unforeseen difficulties associated with the preparation of a preliminary brief or the making of a charge determination by the DPP. However, there is only one committal appearance. This has implications for a court discounting for a plea of guilty as the *Criminal Procedure Act 1921* and the *Sentencing Act 2017* are intended to operate at the same time on the same facts. See [6.90].

### **Sentencing**

#### **Updated commentary**

- The principle of totality addresses two separate but related principles. The first is that when an offender is sentenced for a number of offences, the court must ensure that the aggregation of the sentences appropriate for each offence properly reflects the measure of the criminality involved. The second aspect is that, although the term of imprisonment after applying the first principle may be appropriate, the aggregate of all of them will become so “crushing” as to call for a reduction so that the sentence does not leave the offender in a “state of despair” with no inclination to reform. See [9.435].

### **Intervention and restraining orders**

#### **Updated commentary**

- Hearing process in the Magistrates Court. See [13.75].

### **New legislation**

- Relevant extracts from the *Joint Criminal Rules 2022* and the *Uniform Special Statutory Rules 2022* have been included.

