



## **PROSECUTOR'S AGREEMENT TO SUMMARY DISPOSAL UNDER SECTION 333 OF THE *CRIMES ACT 1900* – ACCUSED UNABLE BECAUSE OF MENTAL IMPAIRMENT TO ELECT TO HAVE THE CASE HEARD SUMMARILY STATEMENT OF POLICY**

### **BACKGROUND**

Division 13.6 of the Crimes Act 1900 creates a particular regime in respect of indictable offences that may be heard and determined summarily where the Magistrates Court is satisfied that the accused is **unable**, because of **mental impairment**, to **elect** to have the case heard summarily. In such a situation, the Magistrates Court may deal with the matters **but only if the prosecution agrees to the offence being heard and determined summarily** (see section 333).

If the prosecution agrees under section 333 to the offence being heard and determined summarily, the Magistrates Court:

- can determine the matter in accordance with the general law;
- dismiss the charge under section 334; or
- determine that an accused person is unfit to plead under section 335, and deal with the person under the section.

### **THE POLICY - RELEVANT MATTERS TO THE PROSECUTION AGREEING UNDER SECTION 333(b) TO THE OFFENCE BEING HEARD AND DETERMINED SUMMARILY**

There are two matters to take into account in deciding whether to agree to the matter being heard and determined summarily:

- The **jurisdictional limits** of the Magistrates Court; and
- The availability of the **outcomes** provided for in section 334 and 335.

In terms of the **jurisdictional limits**, the issue is essentially the same issue as arises under section 375. Generally the prosecution would only submit that a matter should be dealt with in the Supreme Court if it were so serious that the jurisdictional limits of the Magistrates Court would not suffice.

However, there is a further element that has to be considered by the prosecution in considering whether it agrees under section 333(b) – that is the availability of the **outcomes** provided for in section 334 and 335. Even if a matter should normally be dealt with in the Supreme Court, given that the court is dealing with a person with a mental impairment, there may be some cases where an outcome under section 334 or section 335 will be more efficacious. This would be a reason to agree to the matter being determined summarily.