

# Magistrates Courts

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## Practice Direction No. 10 of 2010

### Times, and Procedures from Callovers to Conclusion in Criminal Matters

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- 1 This Practice Direction is intended to assist with case management of Criminal Matters in the Magistrates Court (“the Court”) by giving effect to the Criminal Jurisdiction Reform Administrative Arrangement (made pursuant to S 706A of the *Criminal Code*) by setting out the times within which certain events in Criminal Matters are to take place and the procedures to be adopted from the summary and committal callovers to the conclusion of the matters.
- 2 It applies to all matters where an originating step for the proceeding is taken on or after the commencement of the relevant sections of the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010* (“the Act”); but does not apply to:
  - 2.1. Matters which are exclusively Commonwealth offences;
  - 2.2. Matters in the Childrens Court; and
  - 2.3. Matters referred to the Specialist Courts and programmes.
- 3 For the purpose of this Practice Direction:
  - 3.1. “Full Brief” means a brief which contains copies of signed statements of witnesses and exhibits upon which the prosecution proposes to rely on in the proceeding and all things in the possession of the prosecution, other than things the disclosure of which would be unlawful or contrary to public interest, that would tend to help the case for the defendant;
  - 3.2. “Delivered” in reference to a brief or prosecution statements or other documents to be disclosed to the defence means made available by the prosecution for collection by the defence, or delivered electronically by the prosecution to the defence;
  - 3.3. “Partial Brief” means a brief which contains copies of signed statements of the prosecution witnesses who will provide the “substantial evidence” in the matter and copies of exhibits of substantial evidence for the purpose of a committal for sentence;
  - 3.4. “Specialist Courts and Programmes” include the Murri Court, the Drug Court, the Special Circumstances Court and Bail Programmes;
  - 3.5. “Specified statements and/or exhibits” means signed statements of the prosecution witnesses who will provide the “substantial evidence” in the matter and exhibits of substantial evidence as requested by the defence or prosecution for the purposes of finalising a case conference;
  - 3.6. “Substantial evidence” means the evidence which tends to prove an offence but does not include corroborative evidence, continuity evidence or evidence of ownership (except where it is expected that such evidence will be a major point of the litigation).<sup>1</sup>

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<sup>1</sup> Examples –

- 4 If a defendant is arrested and not released on bail then the 1<sup>st</sup> Appearance will be that day or the next Court sitting day. In all other cases the 1<sup>st</sup> Appearance date will be at least 14 days after arrest and bail or service of the Notice to Appear or complaint and Summons (as the case may be) unless the defendant agrees to a shorter time.
- 5 The 2<sup>nd</sup> Appearance will be 14 to 21 days after the 1<sup>st</sup> Appearance or such longer period as necessitated by the regular sitting days of the Court.
- 6 The Committal or Summary Callovers will be between 14 and 21 days after the 2<sup>nd</sup> Appearance or, if the 2<sup>nd</sup> Appearance is being bypassed, between 14 and 21 days after the 1<sup>st</sup> Appearance, or such longer period as necessitated by the regular sitting days of the Court.
- 7 The Partial Brief of evidence must be made available to the Defence within 14 days of the Defence advising the court at a committal callover that it will be a committal for sentence or that the DPP consents to an *ex officio* proceeding pursuant to S 23 EB.
- 8 At the Summary Callover, if the defendant enters no plea or is pleading not guilty then:
  - 8.1. The trial is to be set down for hearing no earlier than 49 days after the Callover or such earlier time as is consented to by both the Prosecution and the Defence;
  - 8.2. The Full Brief of evidence must be made available for collection within 35 days of the matter being set for trial and in any event at least 14 days prior to the date set for the hearing of the trial.
- 9 If the matter is referred to the Clerk of the Court under S 23EB<sup>2</sup> then the Clerk of the Court will review the matter 42 days after the referral and if no indictment has been presented, the Clerk of the Court will list the matter in the Magistrates Court for a S 110A committal (or for a mention of the matter with a view to a Registry Committal being undertaken).
- 10 At the Committal Callover:
  - 10.1. If the Defence advises the Court that there may be a committal for sentence, the matter is to be adjourned for 28 days (or to the next Court sitting day in order to allow 14 days for the partial brief to be prepared and filed and 14 days for the Defence to give notice under S 114(1)(e), (f) and (g));

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- (a) In a shop stealing case the substantial evidence will be that of the store security officer who observed the theft together with any admission or confession; or
  - (b) in an assault case the substantial evidence will be that of the complainant, any eye witness, any confession or admission and any medical evidence; or
  - (c) in a drug supply case it will be the evidence of the covert police operative if there be one or if not then the evidence of the police who observed the acts upon which the court will ultimately be asked to draw an adverse inference.
  - (d) Examples of exhibits of substantial evidence are records of interview where admissions are alleged, copies of CCTV footage of the incident and a drug analyst's certificate where defence have said they require the same.

<sup>2</sup> *Justices Act 1886*

- 10.2. If the Court is not advised that the matter is to proceed by way of *ex officio* indictment or by way of consent committal for sentence then a Full Brief of evidence is to be prepared and delivered within 35 days and the matter is to be adjourned for a committal mention to a date no earlier than 49 days;
  - 10.3. If the matter is to proceed pursuant to the provisions of S 114 then the matter is to be adjourned for at least 28 days to allow for 14 days for the Prosecution to file pursuant to S 114(1)(b) and (c) the written statements which comprise the Full Brief of evidence<sup>3</sup> and a further 14 days for the Defence to give the notice under S 114(1)(f)<sup>4</sup>. In the event that the notice is not given then (subject to any application for a disclosure obligation direction) the matter will proceed pursuant to the provisions of S 110A.
- 11 Subsequent and interlocutory mentions remain a matter for the discretion of the Court. Further or lengthy adjournments will not be granted in the absence of sufficient reasons. Sufficient reasons may include:
- 11.1. Delays caused in preparing scientific, fingerprint or technical evidence;
  - 11.2. Foreshadowed difficulties in obtaining statements from intrastate, interstate and international witnesses;
  - 11.3. Matters which have a large volume of witnesses;
  - 11.4. Delays in the Legal Aid office's assessment of an application for legal assistance; and
  - 11.5. Leave and courses for investigating officers (except where a defendant is in custody).
- 12 It will be a matter for the Court to determine whether in the circumstances of each case, these reasons are sufficient to warrant the granting of an adjournment.
- 13 Where the investigating officer and/or his or her superior officer subsequently becomes aware that it is impracticable to have the certain specified statements and/or exhibits, or the Partial or Full Brief of evidence completed (as the case may be) in accordance with this Arrangement, the DPP officer or Police Prosecutor who has conduct of the matter and the Brisbane Committals Brief Manager, if applicable, shall be notified forthwith. The prosecution will notify the defence of the problem upon becoming aware of the same.



**Judge Butler AM SC  
Chief Magistrate  
1 November 2010**

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<sup>3</sup> If the Registrar is to commit for trial, and if statements are to be filed, then the committal is to be on a full brief of evidence.

<sup>4</sup> Stating that the defendant does not intend to give evidence or call any witnesses in relation to the defendant's committal and acknowledging that the functions of the clerk of the court for a registry committal do not include considering or deciding whether the evidence before the clerk of the court is sufficient to put the defendant on trial for the indictable offence and stating whether the defendant wishes to be committed for trial or for sentence.