

**MAGISTRATES COURT  
PRACTICE DIRECTION  
No. 2 of 2004**

COMMITTAL MATTERS REQUIRING EVIDENCE FROM CHILD AND  
INTELLECTUALLY IMPAIRED COMPLAINANTS OF SEXUAL ABUSE  
“FAST TRACKING”

The purpose of this Practice Direction is to clarify procedures in the **Brisbane Central Magistrates Court** for committal proceedings involving allegations of sexual abuse against children and intellectually impaired persons, and where persons in those categories will be called as witnesses. These persons are referred to as complainants.

An individual is a child witness if he/she is to give evidence for the proceeding at any time before turning 18 years.

An intellectually impaired person is an individual defined as an “intellectually impaired person” by s.3 of the *Evidence Act 1977* (the Act) and may be of any age.

While there are systems in place to help protect children and intellectually impaired witnesses when giving evidence, it is also accepted that long adjournments or constant adjournments may affect the wellbeing of these witnesses. For example the general principles which apply when dealing with a child witness under 16 years include under s.9E(2)(d) of the Act that the proceeding should be resolved as quickly as possible and s.21AG(8)(d) of the Act recognises the need for committal proceedings to be conducted expeditiously.

To ensure that matters where such persons are involved as witnesses are expedited the following procedure will apply:

1. The Director of Public Prosecutions (Qld) or other relevant prosecuting authority will provide a complete brief of evidence (including such disclosure as required by Ch 62, Ch div 3 of the Criminal Code) to the legal representatives for the defendant two (2) weeks prior to the first Committal Mention date.
2. When the matter is first mentioned at the Committal Mention Callover Court on a Monday, the representative of the Director of Public Prosecutions (Qld) or other relevant prosecuting authority will advise the court:
  - (a) whether a child or intellectually impaired complainant is required to give evidence at a forthcoming committal proceeding; or
  - (b) as required by s.21AS(1) of the Act, where the complainant is an “affected child” as defined by s.21AC of the Act, that such a child may give evidence in the proceeding.

3. If the defendant is unrepresented when the matter is first mentioned at the Committal Mention Callover Court, the following will apply:
  - (a) The representative of the Director of Public Prosecutions (Qld) or other relevant prosecuting authority will advise the court whether it is to be submitted a witness in the proceeding is a protected witness. If not the Directions at paragraph 4 will apply.
  - (b) If the court rules that a person is a protected witness for the proceeding, the court will inform the defendant as required under s.21O(2) and (3) of the Act and adjourn the case for mention one (1) week later;
  - (c) At the mention, if the defendant has obtained representation, the court will direct the Director of Public Prosecutions (Qld) or other relevant prosecuting authority to provide the complete brief of evidence to the legal representative and the matter will be adjourned for two (2) weeks. Thereafter, the Directions at paragraph 4 will apply.
  - (d) If the defendant is still unrepresented, the court will act pursuant to s.21O(4) of the Act and adjourn for 1 week. At the next mention the court will direct the Director of Public Prosecutions (Qld) or other relevant prosecuting authority to provide the complete brief of evidence to Legal Aid Queensland where it considers it necessary to do so in the interests of justice and adjourn the matter for two (2) weeks. Thereafter the Directions at paragraph 4 will apply.
4. The Magistrate will:
  - (a) set the committal hearing date down to take place as soon as possible to ensure an early hearing, generally for six (6) weeks ahead;
  - (b) if necessary set the matter down for a Direction Hearing under s.83A of the *Justices Act 1886* on a date that will generally be two (2) weeks ahead;
5. At the Direction Hearing in the case of a complainant other than an "affected child" the magistrate may make directions which include but are not limited to:
  - (a) Receiving evidence or submissions by telephone, audio visual link or other form of communication;
  - (b) If the witness is permitted to give evidence by audio visual link, setting the matter down for hearing in a court where audio visual link facilities are available.

6. In the case of a complainant who is an “affected child” such directions may include, but are not limited to, determining any application that the child be cross-examined and if so whether the child’s evidence is to be taken under Subdivision 3 or under Subdivision 4 of Part 2, Division 4A of the Act, and how it is to be taken.
7. Any summons for documents issued in respect of the matter is to be made returnable at the Direction Hearing.
8. The Prosecution and Defence must advise the Court in writing at the earliest possible time of any reasons why the matter cannot proceed on the date for which the committal proceeding is set down or the date on which the matter has been set down for a Direction Hearing under s83A of the *Justices Act*.

This Practice Direction will apply to all matters when the first Committal Mention Date is on or after 16 February 2004 and will operate until further notice.

Paragraphs 2(b) and 6 of the Practice Direction will only apply if an originating step as defined by s137 of the Act is taken on or after 5 January 2004.

**Judge MP Irwin  
Chief Magistrate  
2 April 2004**