

Magistrates Courts

Practice Direction No. 8 of 2010

Determination of Jurisdiction in Criminal Matters

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*) concerning the first appearances in all matters and in the determination of whether such matters are to proceed summarily or on indictment.
 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 Children’s Court; and
 - 2.3. Matters referred to the Specialist Courts and programmes.
 3. For the purpose of this Practice Direction:
 - 3.1. “Defence” means the defendant, and/or if represented, his/her legal representative and/or the Duty Lawyer.
 - 3.2. “Prosecution” means either the DPP or Police Prosecution Corps (PPC).
 - 3.3. “Specialist Courts and Programmes” include the Murri Court, the Drug Court, the Special Circumstances Court and Bail Programmes.
 4. At the 1st Appearance, a matter may be:
 - 4.1. Determined by plea of guilty if it is, or if elected by Prosecution or Defence as the case may be, to be, a summary matter;
 - 4.2. Remanded to the 2nd Appearance;
 - 4.3. Remanded to the summary stream (bypassing 2nd Appearance) for Summary Callover if it is, or if elected by Prosecution or Defence as the case may be, to be a summary matter and if a plea of not guilty is entered or by consent; or
 - 4.4. Remanded to the committal stream (bypassing 2nd Appearance) for Committal Callover if it is indictable or elected by Prosecution or Defence (as the case requires), to proceed on indictment or if indicated that the matter is to be a committal for sentence or by consent.
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5. At the 2nd Appearance, a matter may be:
 - 5.1. Determined by plea of guilty if it is, or if elected by Prosecution or Defence (as the case requires), to be, a summary matter;
 - 5.2. Remanded to the summary stream for Summary Callover if it is, or if elected by Prosecution or Defence (as the case requires), to be a summary matter and a plea of not guilty is entered, or by consent; or
 - 5.3. Remanded to the committal stream for Committal Callover if it is, indictable or elected by Prosecution or Defence (as the case requires), to proceed on indictment

6. At the 2nd Appearance, the Prosecution must:
 - 6.1. If it has the election¹, elect to either have the charge heard and decided summarily or on indictment; and
 - 6.2. Inform the Court as to which prosecuting entity will be prosecuting the matter.

7. At the 2nd Appearance, the Defence must:
 - 7.1. If it has the election², elect to either have the charge heard and decided summarily or on indictment;
 - 7.2. If the charge is one which requires a plea of guilty to be entered or no plea in order to determine whether or not the matter is to be heard and determined summarily³, enter a plea of guilty or enter no plea.

8. At the 2nd Appearance, if the matter is one in which neither the Prosecution nor the Defence has the election of jurisdiction, the Magistrate will determine whether or not the matter is to be heard and determined summarily.

9. Subsequent and different determinations may be made by the same or different magistrates in circumstances where a change or withdrawal of plea or a change of value of the alleged theft, fraud, damage etc., dictates that a change in election or jurisdiction results.



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

¹ Section 552A Criminal Code

² Section 552B Criminal Code

³ For instance if a defendant pleads guilty to an offence of a sexual nature without a circumstance of aggravation and the complainant is 14 years or older and the maximum imprisonment is greater then the matter may at the defendant's election be heard and determined summarily (Sec 552B (1)(a); or if a defendant does not plead guilty to a fraud of a value in excess of the prescribed amount (\$30,000) then the matter must proceed by way of indictment (Sec 552BA and Sec 552BB and the Table of Excluded Offences)