

# Magistrates Courts

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## Practice Direction No. 9 of 2010

### Case Conferences and Callovers 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 encouraging the prosecution and defence to enter into a case conference in each case and setting out procedures to be adopted at the summary and committal callovers.
  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. “Case Conference” means negotiations, (including discussions as to whether or not negotiations will take place) between prosecutions and defence to discuss issues in dispute in order to bring about an early resolution to proceedings, which negotiations may result in, but are not limited to the amendment, substitution or withdrawal of charges and/or the agreement as to a factual basis of sentence and submissions on the sentence range;
    - 3.2. “Defence” means the defendant, and/or if represented, his/her legal representative and/or the Duty Lawyer;
    - 3.3. “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;
    - 3.4. “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 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 or continuity evidence or evidence of ownership (except where it is expected that
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such evidence will be a major point of the litigation).<sup>1</sup>

4. The Prosecution and the Defendant's legal representative (including a Duty Lawyer assigned to the Callover) may enter into a case conference in accordance with Queensland Police Service Policy or the Director's guidelines for charge negotiations in all matters prior to the Summary or Committal Callover as the case may be.
5. Case conferencing must take place between the Prosecution and the Defendant's legal representatives prior to the Committal or Summary Callover. That will occur generally on the material contained in the QP9, but at or before such conference the prosecution or the defence may request that copies of certain specified statements and/or exhibits be prepared, copied and delivered.
6. Copies of the specified statements and/or exhibits must, where reasonably practicable be delivered to the defence within 14 days of such request.
7. At the Summary Callover:
  - 7.1. The matter may be adjourned for a further 21 days (or such longer period as is necessitated by the regular sitting days of the Court) to enable any requested specified statements and/or copies of exhibits to be prepared, copied and delivered and for a second or adjourned conference to be held;
  - 7.2. On first appearance (if the conference is concluded), or on second appearance (after one adjournment for certain requested specified statements and/or exhibits to be prepared, copied and delivered and a second or adjourned conference to be held) the Prosecution and the Defence are to advise the result of the case conferencing (changes of charges or of factual basis of plea) and the defence is to enter a plea. If the plea is "guilty" then the matter may be dealt with as a sentence then and there or may be adjourned for sentence to another date for good reason. If the plea is "not guilty" then the matter is to be adjourned for summary trial at least 49 days away (or such shorter period consented to by both the Prosecution and the Defence).
  - 7.3. The defendant is to personally appear unless:
    - 7.3.1. The case conference has concluded and the defendant's legal representative has specific instructions on how the matter is to proceed;
    - 7.3.2. The case conference has been commenced and the prosecution and the defence agree to make an application to adjourn the matter to allow the prosecution to deliver to the defence a copy of any statement or exhibit specifically requested by the defence for the purpose of concluding the case conference; or
    - 7.3.3. Otherwise excused.

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<sup>1</sup> Examples –

(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

8. At the Committal Callover:
- 8.1. The matter may be adjourned for a further 21 days (or such longer period as is necessitated by the regular sitting days of the Court) to enable any requested specified statements and/or copies of exhibits to be prepared, copied and delivered and for a second or adjourned conference to be held;
  - 8.2. On first appearance (if the conference is concluded), or on second appearance (after one adjournment for certain requested specified statements and/or exhibits to be prepared, copied and delivered and a second or adjourned conference to be held) the Prosecution and the Defence:
    - 8.2.1 Are to advise the result of the case conference (changes of charges or of any change to the election from indictable to summary);
    - 8.2.2 Must advise the Court if they agree the matter is to proceed by way of a S23 EB<sup>2</sup> *ex officio* indictment, or if the matter is to proceed pursuant to the provisions of S110A<sup>3</sup> or whether there is to be a S 114 Registry Committal;
    - 8.2.3 May advise if there is to be a committal for sentence.
  - 8.3. The defendant is to personally appear unless:
    - 8.3.1. The case conference has concluded and the defendant's legal representative has specific instructions on how the matter is to proceed;
    - 8.3.2. The case conference has been commenced and the prosecution and the defence agree to make an application to adjourn the matter to allow the prosecution to prepare, copy and deliver to the defence any statement or exhibit specifically requested by the defence for the purpose of concluding the case conference; or
    - 8.3.3. Otherwise excused.
9. Callovers of matters in the committal and summary streams will be held on a day or days determined by the court in consultation with the DPP, QPS and LAQ.



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

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<sup>2</sup> Justices Act 1886

<sup>3</sup> Justices Act 1886