

Magistrates Courts

Practice Direction No. 15 of 2010

Ex officio Indictments

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 S706A of the *Criminal Code*) by:
 - 1.1. Providing a procedure for informing the Court that there is agreement by the Prosecution and the Defence that a matter is to proceed by way of *ex officio* indictment;
 - 1.2. Referring the matter to the Clerk of the Court; and
 - 1.3. Requiring its review by the Clerk of the Court.
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. “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 of Evidence” 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. “Prosecution” means either the DPP or Police Prosecution Corps (PPC);
 - 3.5. “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 such evidence will be a major point of the litigation).¹

¹ 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.

- 3.6. "Specialist Courts and Programmes" include the Murri Court, the Drug Court, the Special Circumstances Court and Bail Programmes
4. If the Prosecution and the defendant's lawyer advises the Court that they agree that an indictment has been or is to be presented under S 561 *Criminal Code* for the offence the subject of the relevant charge or for another offence or offences arising out of the same set of circumstances alleged in relation to the relevant charge :
- 4.1. The Court may refer the charge to the Clerk of the Court; and then
- 4.2. The Prosecution is directed to make a copy of the Partial Brief of Evidence available to the Defence within 14 days.
5. If the matter is referred to the Clerk of the Court under S 23EB² then the Clerk of the Court will review the matter after the elapse of 42 days after the referral. If no indictment has been presented, the Clerk of the Court will list the matter in the Magistrates Court for a section 110A committal (or for the matter to be mentioned with a view to a Registry Committal being undertaken) to ensure the hearing of the relevant charge is not unnecessarily delayed.
6. If at any time the defendant or the prosecution asks the Clerk of the Court to refer the relevant charge to the Court then the Clerk of the Court will do so.
7. Nothing contained in this Practice Direction interferes with the discretion in the Court to extend the times herein where sufficient reason is shown, which reasons may include:
- 7.1. Delays caused in preparing scientific, fingerprint or technical evidence;
- 7.2. Foreshadowed difficulties in obtaining statements from intrastate, interstate and international witnesses;
- 7.3. Matters which have a large number of witnesses;
- 7.4. Delays in the Legal Aid Office's assessment of an application for legal assistance.



Judge Butler AM SC
Chief Magistrate of Queensland
1 November 2010

(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

² *Justices Act 1886*