

PRACTICE DIRECTION

MAGISTRATES COURT NO. 3 OF 2000

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**TAKING EVIDENCE BY PHONE**

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Designating the following procedure is intended to streamline the taking of evidence by telephone, and in particular, to avoid delay and disruption and maintain the due solemnity of proceedings.

1. The party wishing to have the evidence taken by telephone should inform the other party accordingly 7 days before the trial, to determine whether there is any objection.
2. Any objection will be heard before the matter proceeds on the date of hearing. If an objection is upheld, or a Magistrate disallows telephone evidence by a witness, witnesses will have to be produced in person.
3. In anticipation of the taking of the evidence by telephone, the legal representative of the party calling the witness must attend to the following matters:
  - (a) arrange for the witness to have immediate access to the telephone;
  - (b) ascertain from the witness the form of oath to be taken and ensure that the witness is equipped to comply with the formalities of the oath, or confirm that it is appropriate to affirm;
  - (c) explain to the witness that the evidence is being given in formal court proceedings, and being recorded, and that the witness may be cross-examined by counsel and questioned by the Magistrate; and that the witness must be careful only to answer questions put.
4. It is most convenient if the witness telephones the court, rather than vice versa. The legal representative for the party calling the witness should in advance ascertain from the Registrar the telephone number of the trial courtroom, and inform the intended witness of that number, impressing upon the witness the need to telephone the courtroom precisely at the time designated by the Magistrate, and preferably to be in possession of a bible if an oath is to be taken, and that it must be the witness (rather than someone on his or her behalf) who actually calls in.
5. In the unusual event that arrangements cannot be made to have the witness call into the court, the following paragraphs 6 and 7 apply.

## Practice Direction

### Taking Evidence by Telephone

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6. This paragraph applies to proceedings being conducted in the Magistrates Court at Brisbane.
  - (a) Prior to the time the evidence is to be given, the Registrar will advise the Chief Clerk of the necessity to take telephone evidence. The Chief Clerk will then notify the Depositions Clerk of the following matters:
    - (i) the number of the courtroom, the name of the Magistrate, and the court phone number;
    - (ii) the name of the person required to give evidence;
    - (iii) the name of the organisation, if applicable, where that person is to be contacted;
    - (iv) the telephone number, including any STD area code;
    - (v) the time at which the court requires the evidence to be given.
  - (b) At the time the evidence is to be given, the Depositions Clerk (or other court officer, as the case may require) will place the call with the long distance operator, with a request for a "callback charge". When the call is connected, and it is clear the requested witness is waiting on the line, the Depositions Clerk will announce to the court that the required witness is on the line.
  - (c) The Chief Clerk will ensure that a call cost is received and passed on to Court Administration for collection.
7. Where the court sits at centres outside Brisbane, comparable arrangements suited to the particular centre are to be made.
8. Legal representatives for the parties are obliged to ensure the taking of evidence in this way does not detract unduly from the proper formality and solemnity of the proceedings.



**(D.M. Fingleton)**  
**CHIEF STIPENDIARY MAGISTRATE**  
**19 May 2000**