

Magistrates Courts

Practice Direction No. 12 of 2010 (amended)

Issued: 1 November 2010
Amended: 21 September 2017

Witnesses giving Evidence in Committal Proceedings

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 setting out procedures for the communication between the Prosecution and Defence concerning whether or not there will be consent by the Prosecution to witnesses giving evidence in committal proceedings and the making of applications for orders requiring the same.
 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. The following terms bear their respective meanings:
 - 3.1. “Full Brief” means a brief which contains copies of signed statements of witnesses and exhibits upon which the prosecution proposes to rely on in the proceeding and all things in the possession of the prosecution, other than things the disclosure of which would be unlawful or contrary to public interest, that would tend to help the case for the defendant;
 - 3.2. “Defence” means the defendant, and/or if represented, his/her legal representative, and/or the Duty Lawyer.
 - 3.3. “Prosecution” means either the DPP or Police Prosecution Corps (PPC).
 - 3.4. “Specialist Courts and Programmes” include the Murri Court, the Drug Court, the Special Circumstances Court and Bail Programmes.
 4. Following a Case Conference unless the Court is advised at the committal callover that the matter is to proceed by way of *ex officio* indictment or that there will be a consent committal for sentence then:
 - 4.1. If the Prosecution agrees to the cross-examination of all witnesses requested by the Defence, the matter is to be adjourned for committal hearing to a date no earlier than 49 days and the Prosecution and Defence must advise the Court in writing as to the names of the witnesses to which the prosecution is consenting to the giving of oral
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- evidence and the specific areas in which each witness is to be questioned;
- 4.2. In all other cases the matter is to be adjourned for a committal mention to a date no earlier than 49 days.
 5. In each case referred to in Paragraph 4 a Full Brief of evidence is to be prepared, copied and delivered by the Prosecution to the Defence within 35 days of the callover;
 6. If at the Committal Mention the Court is not advised there is to be an Application to have a witness attend and give evidence at the committal hearing the matter is to proceed that day as a S 110A committal.
 7. If there is to be an application to have a witness attend and give evidence at a committal hearing then at the committal mention:
 - 7.1. The matter is to be adjourned for the application to be heard on a date no earlier than 21 days' time; and
 - 7.2. The Defence will serve upon the Prosecution a notice under S 110B (3)(a) within 7 days giving the Prosecution 7 days to respond under S 110 (3)(b); and
 - 7.3. The Defence is to file an application under S 110B (7) and S 83A in the form set out in Annexure A to this Practice Direction within 5 days of the last date for the Prosecution response.¹
 8. At the hearing of an application made in accordance with 7.3, the defence will provide to the Magistrate a draft order setting out:
 - (i) the names of the witness(es) directed to attend before the court as a witness to give oral evidence, or to be made available for cross-examination on a written statement; and
 - (ii) for each witness, the relevant issue(s) for cross-examination.
 - 8.1. Upon the application being successful, in the terms sought by defence then the draft order will be initialled by the Magistrate and placed on the court file;
 - 8.2. Upon the application being successful in substantially different terms to the original draft order, the draft order is to be amended by the parties to reflect the issue, or issues relevant to the reasons given by the Magistrate, and re-submitted to the Registry for the Magistrate to initial and place on the court file.
 9. Upon the application being unsuccessful the matter is to proceed on that day as a S 110A committal.
 10. Upon the application being successful then the matter is to be adjourned for committal hearing no earlier than 28 days or such shorter time as consented to by both the prosecution and the defence.

Judge Orazio Rinaudo AM
Chief Magistrate
21 September 2017

¹ *Justices Act 1886* – Directions Hearing for the Court to determine whether or not to require a person who has made a written statement to attend to give oral evidence (Applications for same must be served 2 days prior to the hearing).