

Magistrates Courts

Practice Direction No. 22 of 2011

Commonwealth Criminal Matters

1. Commonwealth criminal prosecutions are heard in the Magistrates Courts of Queensland under the provisions of the Judiciary Act of 1903 (Commonwealth) which at section 68 sets out the jurisdiction of State and Territory courts in criminal cases. The Act provides that the laws of a State respecting the arrest and custody of offenders or persons charged with offences, and the procedure for their summary conviction and their examination and commitment for trial on indictment and for holding accused persons to bail, shall, subject to certain exceptions, apply and be applied so far as they are applicable to persons who are charged with offences against the laws of the Commonwealth in respect of whom jurisdiction is conferred on the several courts of that State or Territory by the section.
2. Whereas I have power under section 12(2)(b) of the Magistrates Act 1991 to make Practice Directions with respect to the practices and procedures of the Magistrates Courts, and also under the *Supreme Court of Queensland Act 1991* section 118D to make Practice Directions relating to case management, I make this Direction for the hearing of Commonwealth criminal matters commenced in a Queensland Magistrates Court.
3. This Practice Direction is intended to assist with case management of Commonwealth Criminal Matters in the Magistrates Court (“the Court”) by setting out the times within which certain events in Criminal Matters are to take place and the procedures to be adopted from the Commonwealth Callovers to the conclusion of the matters.
4. It applies to all Commonwealth Criminal matters where an originating step for the proceeding is taken on or after 1 November 2010.

Terms

5. For the purpose of this practice direction, the term:
 - 5.1. “Committal Proceedings” include all appearances in Magistrates Courts on Commonwealth Criminal Matters from and including the Commonwealth Callover where the matter is elected to or must by law proceed on indictment;
 - 5.2. “Commonwealth Criminal Matters” includes:
 - 5.2.1. matters that are exclusively Commonwealth offences and prosecuted by the CDPP;
 - 5.2.2. Matters that are State offences investigated by a Commonwealth investigating officer and prosecuted by the CDPP¹.
 - 5.3. “Case conference” means negotiations (including discussions as to whether or not negotiations will take place) between Prosecution and Defence to discuss

¹ Director of Public Prosecutions Regulations 1984 (C'th) reg 3.

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;

- 5.4. "Defence" means the defendant, and/or if represented his/her legal representative, and/or the Duty Lawyer;
- 5.5. "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;
- 5.6. "Investigating Officer" includes an Arresting Officer;
- 5.7. "Originating step" for a proceeding means the arrest of the defendant, the making of a complaint or the service of a Notice to Appear;
- 5.8. "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 of exhibits of substantial evidence for the purpose of a committal for sentence;
- 5.9. "Prosecution" means the CDPP or Police Prosecution Corps (PPC);
- 5.10. "Specified statements and/or exhibits" means statements of the prosecution witnesses who will provide the "substantial evidence" in the matter and of exhibits of substantial evidence as requested by the Defence or Prosecution for the purposes of finalising a case conference;
- 5.11. "Statement of Facts" means a summary of the evidence and witnesses relied upon by the Prosecution to prove the case against the defendant;
- 5.12. "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);²
- 5.13. Words in the singular in this Practice Direction include the plural and words in the plural include the singular;

Preparation, checking and delivery of court briefs

6. Prior to the initial appearance, and within a reasonable time of any request, the Statement of Facts is to be delivered to the Defence by the CDPP at the time of the request. If there has been no earlier request for the Statement of Facts, it is to be handed to the Defence at an appropriate time before the first appearance.

First Mentions to Callovers procedures

7. At the 1st Appearance, a matter may be:
 - 7.1. Determined by plea of guilty if it is, or if determined in accordance with the applicable law, to be, a summary matter;
 - 7.2. Remanded to the 2nd Appearance;
 - 7.3. Remanded to the Commonwealth Callover if it is, or if determined in accordance with the applicable law, to be, a summary matter and if a plea of not guilty is entered or by consent; or

² Examples – In say a stealing case the substantial evidence will be that of the store security officer who observed the theft together with any admission or confession; or in say an assault case the substantial evidence will be that of the complainant, any eye witness, any confession or admission and any medical evidence; or in say a drug 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. 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

- 7.4. Remanded to the Commonwealth Callover if it is indictable, or determined in accordance with the applicable law, to proceed on indictment or if indicated that the matter is to be a committal for sentence or by consent.
8. At the 2nd Appearance, a matter may be:
 - 8.1. Determined by plea of guilty if it is, or if determined in accordance with the applicable law, to be, a summary matter;
 - 8.2. Remanded to the Commonwealth Callover if it is, or if determined in accordance with the applicable law, to be, a summary matter and if a plea of not guilty is entered, or by consent; or
 - 8.3. Remanded to the Commonwealth Callover if it is indictable, and determined in accordance with the applicable law, to proceed on indictment.
9. At the 2nd Appearance, in those matters where the Prosecution and Defence must consent before a matter may be heard and determined summarily³, the Prosecution and Defence must, inform the Court whether they so consent.
10. Subsequent and different determinations may be made by the same or a different Magistrate in circumstances where a change or withdrawal of plea or a change of allegation dictates that a change in jurisdiction results.
11. The Prosecution and the Defence must enter into a case conference in all matters prior to the Commonwealth Callover.
12. At the Commonwealth Callover:
 - 12.1. 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 and delivered and for a second or adjourned conference to be held;
 - 12.2. In Summary matters, 1st Appearance (if the conference is concluded), or 2nd Appearance (after one adjournment for certain requested specified statements and/or copies of exhibits to be prepared 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 42 days away (or such shorter period consented to by both the Prosecution and the Defence).
 - 12.3. In matters which are to proceed on indictment, 1st Appearance (if the conference is concluded), or 2nd Appearance (after one adjournment for certain requested specified statements and/or exhibits to be prepared and a second or adjourned conference to be held) the Prosecution and the Defence:
 - 12.3.1. Are to advise the result of the case conferencing (changes of charges or of any change of consent to summary determination);
 - 12.3.2. Must advise the Court if they agree the matter is to proceed by way of a section 23EB⁴ *ex officio* indictment, or if the matter is to proceed pursuant to the provisions of section 110A⁵ or whether there is to be a section 114⁶ Registry Committal;
 - 12.3.3. may advise if there is to be a committal for sentence;

³ E.g. section 4J Crimes Act 1914 (C'th)

⁴ *Justices Act 1886*

⁵ *Justices Act 1886*

⁶ *Justices Act 1886*

- 12.4. In all summary and indictable matters, the defendant is to personally appear unless:
 - 12.4.1. The case conference has concluded and the defendant's legal representative has specific instructions on how the matter is to proceed;
 - 12.4.2. The case conference has been commenced and the Prosecution and the Defence agree to adjourn the matter to allow the Prosecution to deliver to the Defence any statement specifically requested by the Defence for the purpose of concluding the case conference; or
 - 12.4.3. Otherwise excused.
13. Callovers of matters in the committal and summary streams will be held in Court on a day or days determined by the court in consultation with the CDPP and LAQ, and may be held in the one callover.

Times and Procedures from Callovers to conclusion

14. If a defendant is arrested and not released on bail then the 1st Appearance will be that day or the next Court sitting day. In all other cases the 1st Appearance date will be at least 14 days after arrest and bail or service of the Complaint and Summons as the case may be unless the defendant agrees to a shorter time.
15. The 2nd Appearance will be 14 to 21 days after the 1st Appearance or such longer period as necessitated by the regular sitting days of the Court.
16. The Commonwealth Callovers will be between 14 and 21 days after the 2nd Appearance or between 14 and 21 days after the 1st Appearance if the 2nd Appearance is being bypassed or such longer period as necessitated by the regular sitting days of the Court.
17. Case conferencing must take place between the Prosecution and the defendant or the defendant's legal representatives (including Duty Lawyers representing defendants) prior to the Commonwealth Callover on the material contained in the Statement of Facts, but at or before such conference the Prosecution or the Defence may request that certain specified statements or copies of exhibits be prepared, copied and delivered.
18. The specified statements and/or exhibits must, where reasonably practicable, be made available to the Defence within 14 days of such request.
19. The Partial Brief of Evidence must be made available to the Defence within 14 days of the Defence advising the court at a Commonwealth Callover that it will be a committal for sentence or that the CDPP consents to an *ex officio* proceeding pursuant to section 23EB⁷.
20. At the Commonwealth Callover, in summary matters, if the defendant enters no plea or is pleading not guilty then:
 - 20.1. The trial is to be set down for hearing no earlier than 49 days after the Callover or such earlier time as is consented to by both the Prosecution and the Defence;
 - 20.2. the Full Brief of Evidence must be made available for collection within 35 days of the matter being set for trial and in any event at least 14 days prior to the date

⁷ *Justices Act 1886*

set for the hearing of the trial.

21. At the Commonwealth Callover, in matters which are to proceed on indictment:
- 21.1. If the matter is referred to the Clerk of the Court under section 23EB⁸ then the Clerk of the Court will review the matter 42 days after the referral and if no indictment has been presented the Clerk of the Court will list the matter in the Magistrates Court for a section 110A committal;
 - 21.2. If the Defence advises the Court that there may be a committal for sentence, the matter is to be adjourned for 28 days (or to the next Court sitting day to allow 14 days for the partial brief to be prepared and filed and 14 days for the Defence to give notice under section 114(1)(f), (g) and (h).
 - 21.3. If the Court is not advised that the matter is to proceed by way of ex officio indictment or of consent committal for sentence then a Full Brief of Evidence is to be prepared and delivered within 35 days and in that event:
 - 21.3.1. If there is consent to cross-examine all witnesses requested by the Defence then the matter is to be adjourned for committal hearing to a date no earlier than 49 days and the Prosecution and Defence are to advise the Court in writing as to the names of the witnesses to which the Prosecution is consenting to the giving of oral evidence and the specific areas in which each witness is to be questioned;
 - 21.3.2. In all other cases the matter is to be adjourned for a committal mention to a date no earlier than 49 days;
 - 21.3.3. If there is to be an application to cross-examine a witness then at the committal mention:
 - 21.3.3.1. The matter is to be adjourned for the application to be mentioned on a date no earlier than 21 days time; and
 - 21.3.3.2. The Court is to give directions that the Defence will serve upon the Prosecution a notice under section 110B(3)(a) within 7 days giving the Prosecution 7 days to respond under section 110(3)(a)(iv) and the Defence to file an application under section 110B(7) and section 83A⁹ in the form set out in Annexure A to this Practice Direction making it returnable for mention 7 days after the time given for the Prosecution to respond;
 - 21.3.3.3. The adjournment and directions times imposed by the 2 immediately preceding sub-paragraphs may be changed by the Court taking into account the courts next available sitting days for such applications, the complexities of the matter and any envisaged communication difficulties with the filing and serving of documents.
 - 21.3.3.4. If the application is proceeding it will be then set for hearing;
 - 21.3.3.5. upon the application being unsuccessful the matter is to proceed on that day as a section 110A committal;
 - 21.3.3.6. 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;

⁸ *Justices Act 1886*

⁹ *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.

22. If the matter is to proceed pursuant to the provisions of section 114 then the matter is to be adjourned for at least 28 days to allow for 14 days for the Prosecution to file pursuant to section 114(1)(b) and (c) the written statements which comprise the Full Brief of Evidence¹⁰ and a further 14 days for the Defence to give the notice under section 114(1)(f). In the event that the notice is not given then (subject to any application for a disclosure obligation direction) the matter will proceed pursuant to the provisions of section 110A.
23. Subsequent and interlocutory mentions remain a matter for the discretion of the Court. Further or lengthy adjournments will not be granted in the absence of sufficient reasons. Sufficient reasons may include:
- 23.1. Delays caused in preparing scientific, fingerprint or technical evidence;
 - 23.2. Forecasted difficulties in obtaining statements from intrastate, interstate and international witnesses;
 - 23.3. Matters which have a large number of witnesses;
 - 23.4. Delays in the Legal Aid office's assessment of an application for legal assistance; and
 - 23.5. Leave and courses for investigating officers (except where a defendant is in custody).
- It will be a matter for the Court to determine whether in the circumstances of each case, these reasons are sufficient to warrant the granting of an adjournment.
24. The Prosecution will notify the Defence upon becoming aware that it is impracticable to have the certain specified statements and/or exhibits, or the Partial or Full Brief of Evidence completed (as the case may be).

Brief of Evidence

25. The CDPP in liaison with the investigating officer will:
- 25.1. Ensure that both Partial and Full Briefs of Evidence and any specified statements and/or exhibits shall have the statements endorsed with original signatures;
 - 25.2. Ensure that the Partial Brief of Evidence shall include a copy of each electronically recorded interview including field taped conversations and, where applicable, copies of any relevant documentary evidence and where the interview, conversation or document is substantial evidence in the matter, a transcript of same; and
 - 25.3. Retain a copy of the brief of evidence with original signatures thereon; and
 - 25.4. Retain possession of original exhibits unless otherwise determined by the CDPP.
26. The Prosecution will advise the Defence that the brief of evidence is available for collection no later than the times referred to herein or upon receipt of the brief of evidence, whichever is the earlier.

Exhibits

27. Where necessary, arrangements between the CDPP and Defence will be made for the inspection of original exhibits through the prosecuting officer who has conduct of the matter and the investigating officer.

¹⁰ If the Registrar is to commit for trial it is to be on a full brief of evidence.

Ex-officio

28. Where a matter is positively identified as proceeding by ex officio indictment, the CDPD will immediately notify the arresting officer.
29. In each case involving a committal proceeding, it is directed that the date set by the Court for the committal mention or the committal hearing is the date to have effect under section 590AI(2)(a) of the Criminal Code as the date for the commencement of hearing of evidence in the proceeding even if it will or may be the case that no witness will appear at the proceeding to give oral evidence.¹¹
30. Both Partial and Full Briefs of Evidence and any specified statements and/or exhibits shall have the statements endorsed with original signatures.
31. In the event that the Defence wishes to apply to the court for a Disclosure Obligation Direction, then it will file in the Court the Application in the form set out in Annexure B to this Practice Direction and serve a copy of the same and any supporting material on the Prosecution at the earliest time and at least 2 clear days before the day nominated for the hearing of the Application for a Disclosure Obligation Direction.
32. In the event that a defendant wishes to apply to a Court for an order that a person file an affidavit or give evidence in Court explaining and justifying the failure to comply with a Disclosure Obligation Direction then the defendant shall apply for the same in the form set out in Annexure C to this Practice Direction.
33. If it appears to the Court, either on evidence or submissions that a person has failed to comply with a disclosure obligation direction the Court may order the person to file an affidavit and/or give evidence in Court explaining and justifying the failure to comply. In this event the Court will adjourn the matter to be mentioned on a date suitable to the Court, for the Court to determine whether or not the person's affidavit or evidence justifies the non-compliance and what further action is to be taken pursuant to section 83B of the Justices Act 1886.

Judge Brendan Butler
Chief Magistrate of Queensland
1 November 2011

¹¹ See section 590AI(5) of the "Criminal Code"

QUEENSLAND

JUSTICES ACT 1886

Section 83A, 110B(7)

Annexure A to Practice Direction 22 of 2011

Application for a Witness to attend before the Court in a Committal Proceeding

Magistrates Court: <place>
Applicant (*Defendant) : <insert name>
Respondent (*Complainant) : <insert name>
Complaint/Charge: <insert nature of complaint or charge>

I, <name of applicant> make application to the Court seeking a direction to examine and/or cross-examine <name of witness> under section 83A(5AA) of the *Justices Act 1886*.

1. The following documents are filed in support of this application:
 - * a copy of the Defendant’s communication to the prosecution.
2. The applicant estimates the hearing should be allocated
<insert time estimate> hours/minutes.

TAKE NOTICE that the application will be heard in the Magistrates Court at:

Place: <location>
Time: <time allocated by court/ court registry>
Date: <date allocated by court/ court registry>

PARTICULARS OF THE APPLICANT

Name:
Applicant’s address:
Applicant’s lawyer:
Firm name:
Lawyer’s business address:
Address for service:
DX (if any):
Telephone:
Fax:
Email address (if any):

Signed:
Designation:

Date:

.....

PARTICULARS OF THE RESPONDENT

Name/Organisation:

Respondent's address:

Respondent's lawyer:

Firm name:

Lawyer's business/business address of respondent:

Address for service:

DX (if any):

Telephone:

Fax:

Email address (if any):

Notice to Applicant

1. *You must have complied with the requirements of section 110B of the Justices Act 1886 before filing this application, including serving the prosecution with a notice of the defendants intention to examine and/or cross-examine a witness, which included the following details:*
 - a. The name of the maker of the written statement that is intended to be examined;
 - b. The general issues relevant to the making of the application;
 - c. The reasons relied on to justify the calling of the maker of the written statement to give oral evidence; and
 - d. A nominated time to respond to the notice.

2. *A copy of this application and other documents must be served on the respondent at least two (2) clear days or such other time as the Court has directed before the day on which the application is to be heard.*

Queensland
JUSTICES ACT 1886
Section 83A(5)(aa)

Annexure B to Practice Direction 22 of 2011

Application for Disclosure Obligation Direction

Magistrates Court: <place>
Applicant (*Defendant) : <insert name>
Respondent (*Complainant) : <insert name>
Complaint/Charge: <insert nature of complaint or charge>

I, <name of applicant> make application to the Court seeking a disclosure obligation direction pursuant to section 83A(5)(aa) of the *Justices Act 1886* namely, disclosure under the Criminal Code, Chapter 62, chapter division 3, for a direction that [*state precisely, the nature of the disclosure obligation direction/s sought*].

1. A written request for disclosure was made by the applicant on <insert date> and:

(* delete inapplicable option)

* an unsatisfactory response to the written request for disclosure was received from the respondent on <insert date>.

* no response was received by the applicant to the written request for disclosure within the nominated time allowed under chapter 9A of the *Criminal Practice Rules 1999*.

2. A written request for disclosure made on <insert date> and the response to the written request for disclosure (if any) received on <insert date> are attached hereto.

3. The applicant/respondent

(*delete inapplicable option)

* has requested

* has not requested

an oral hearing of this application in their Request for Disclosure/Response to Request for Disclosure.

TAKE NOTICE that the application will be heard in the Magistrates Court at:

Place: <location>

Time: <time allocated by court/ court registry>

Date: <date allocated by court/ court registry>

PARTICULARS OF THE APPLICANT

Name:

Applicant's address:

Applicant's lawyer:

Firm name:

Lawyer's business address:

Address for service:

DX (if any):

Telephone:

Fax:

Email address (if any):

Signed:

Designation:

Date:

PARTICULARS OF THE RESPONDENT

Name/Organisation:

Respondent's address:

Respondent's lawyer:

Firm name:

Lawyer's business/business address of respondent:

Address for service:

DX (if any):

Telephone:

Fax:

Email address (if any):

Notice to Applicant

1. *You must have complied with rule 43C of the Criminal Practice Rules 1999 before filing this application. You must attach to this application the following supporting documents:*
 - * A copy of the applicant's communication requesting disclosure (the Request for Disclosure).
 - * If a response was received by the prosecution, a copy of that response (the Response to Request for Disclosure).
 - * A copy of all relevant correspondence exchanged between parties after the response is received, if applicable.
2. *A copy of this application and other documents must be served on the respondent no later than the day before the date set by the court for the hearing of evidence in the proceeding.*
3. *At the Directions Hearing, you must present the Magistrate with a draft order containing the particulars of the order sought, including any particulars of the thing sought to be disclosed and/or timeframes for disclosure.*

Queensland
Justices Act 1886
Section 83A, 83B

Annexure C to Practice Direction 22 of 2011

**Application Alleging Non-compliance with Disclosure
Obligation Direction**

Magistrates Court: <place>

Applicant (*Defendant) : <insert name>

Respondent (*Complainant) : <insert name>

Complaint/Charge: <insert nature of complaint or charge>

I, <name of applicant> make application to the Court seeking an order that:

1. A person, namely <insert name>, file an affidavit and/or give evidence in court, explaining and justifying the failure to comply with a Disclosure Obligation Direction made on <insert date> in the Magistrates Court at <location>.
2. The applicant intends to seek an order as to costs (delete if not applicable)
3. The applicant estimates the hearing should be allocated <insert time estimate> hours/minutes (delete if not applicable).

**TAKE NOTICE that the application will be heard in the
Magistrates Court at:**

Place: <location>

Time: <time allocated by court/ court registry>

Date: <date allocated by court/ court registry>

PARTICULARS OF THE APPLICANT

Name:
Applicant's address:
Applicant's lawyer:
Firm name:
Lawyer's business address:
Address for service:
DX (if any):
Telephone:
Fax:
Email address (if any):

Signed:
Designation:
Date:

PARTICULARS OF THE RESPONDENT

Name/Organisation:
Respondent's address:
Respondent's lawyer:
Firm name:
Lawyer's business/business address of respondent:
Address for service:
DX (if any):
Telephone:
Fax:
Email address (if any):