

# Magistrates Courts

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## Practice Direction No. 13 of 2010

### Disclosure

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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 setting out procedures for the full and early disclosure by the prosecution to the defence of all evidence the prosecution proposes to rely on in the proceedings, all information, including knowledge, or material in the possession of the prosecution capable of rebutting the prosecution case or advancing the defence case 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. “Partial Brief” 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. “Specialist Courts and Programmes” include the Murri Court, the Drug Court, the Special Circumstances Court and Bail Programmes;
    - 3.6. “Specified statements and/or exhibits” means statements of the prosecution witnesses who will provide the “substantial evidence” in the matter and copies of exhibits of substantial evidence as requested by the defence or prosecution for the purposes of finalising a case conference;
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- 3.7. "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).<sup>1</sup>
4. Prior to the initial appearance, and within a reasonable time of any request, the QP9 (with the exception of the last page which has the personal details of the complainant and other confidential/privileged material) is to be delivered to the Defence by the prosecuting agency which has carriage of the matter at the time of the request. If there has been no earlier request for the QP9, it is to be handed personally to a defendant, who is not legally represented, at an appropriate time before his/her first appearance.
  5. Written Notices which may be given pursuant to Chapter 62 Chapter Division 3 may, in addition to hard copy documents, be given by means of electronic communication.
  6. In the event that the Defence requests the Prosecution to provide to it certain specified statements and/or exhibits then the Prosecution will make copies of the same available for collection by the Defence (and advise the Defence of same) within 14 days of the request or such longer time as directed by the Court.
  7. In the event that at a committal callover the Defence advises the court that it will be a committal for sentence or that the Prosecution consents to an *ex officio* proceeding pursuant to S23 EB, the Prosecution will make a copy of the Partial Brief of Evidence available for collection by the Defence (and advise the Defence of same) within 14 days or such longer time as directed by the court.
  8. 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 where the interview, conversation or document is substantial evidence in the matter
  9. In summary matters the Full Brief of Evidence must be made available by the Prosecution for collection within 35 days of the matter being set for trial and at least 14 days prior to the date set for the hearing of the trial.
  10. In Committal proceedings the Full Brief of Evidence must be made available by the Prosecution for collection within 35 days of the committal callover which set the matter down for a committal hearing or a committal mention.

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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

11. 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 Ss 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.<sup>2</sup>
12. Both Partial and Full Briefs of Evidence and any specified statements and/or exhibits shall have the statements endorsed with original signatures.
13. 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 A 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.
14. 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 B to this Practice Direction.
15. 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 S 83B of the *Justices Act 1886*.



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

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<sup>2</sup> See Ss 590AI(5) of the "*Criminal Code*"