

# Magistrates Courts

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## Practice Direction No. 3 of 2023

Issued: 1 August 2023

Amended: 3 October 2023

### Summary proceedings under the *Justices Act 1886* for domestic violence offence

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This Practice Direction applies to summary proceedings under the *Justices Act 1886* for a domestic violence offence.

1. Section 21L (2) of the *Evidence Act 1977* applies division 6 of that Act to summary proceedings for a domestic violence offence.
2. A summary proceeding for a domestic violence offence is defined in schedule 3 of the *Evidence Act 1977* by reference to s.103B of the *Act* to mean:
  - (a) *an offence against the Domestic and Family Violence Protection Act 2012, part 7;<sup>1</sup> or*
  - (b) *an offence against another Act committed by a person where the act or omission that constitutes the offence is also—*
    - (i) *domestic violence or associated domestic violence under the Domestic and Family Violence Protection Act 2012 committed by the person; or*
    - (ii) *a contravention of the Domestic and Family Violence Protection Act 2012, section 177(2).<sup>2</sup>*
3. For a summary proceeding for a domestic violence offence a **Protected Witness** is:
  - (a) An **alleged victim** of an offence.<sup>3</sup> An alleged victim of an offence means a person, other than the person charged, who is (a) alleged to be a person in relation to whom the offence was committed; or (b) alleged to have been subject to violence in relation to the offence;<sup>4</sup>

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<sup>1</sup> Sections 177 (Contravention of domestic violence order), 178 (Contravention of police protection notice), 179 (Contravention of release conditions).

<sup>2</sup> Annexure A

<sup>3</sup> Section 21M(1)(c) of the *Evidence Act 1977*.

<sup>4</sup> Section 21M(3) of the *Evidence Act 1977*.

- (b) A witness under 16 years of age;<sup>5</sup>
  - (c) A witness who is a person with an impairment of the mind;<sup>6</sup>
  - (d) For a proceeding for a domestic violence order–related offence a person who:
    - (i) is named as the aggrieved, or a relative or associate of the aggrieved, in the domestic violence order; and
    - (ii) the court considers would be likely to be disadvantaged as a witness, or to suffer severe emotional trauma, unless treated as a protected witness.<sup>7</sup>
4. **A domestic violence order-related offence**, in relation to a domestic violence order, means - (a) an offence for the contravention of the domestic violence order under the *Domestic and Family Violence Protection Act 2012*, section 177(2); or (b) an offence for an act or omission that also constitutes an offence mentioned in paragraph (a).<sup>8</sup>
5. Where a person charged with a domestic violence offence does not have legal representation for a summary proceeding for a domestic violence offence and pleads “not guilty” or declines to enter a plea, the following process will apply.
6. The Court will make directions for the delivery of a Brief of Evidence in accordance with **Annexure B** of this direction. The review mention of the proceedings will be seven weeks after the making of the directions.
7. At the review mention the Court will consider whether any witness is a protected witness. If a witness is a protected witness the Court will consider making orders in accordance with **Annexure C** of this direction. If no orders are required a trial date will be set at the review mention and the matter will progress in the ordinary way.
8. The Court at review mention will also consider whether any special arrangements requested for the aggrieved or witness including, for example: whether the protected witness is a special witness and how the witness will give evidence.
9. If an order is made ruling a person is a protected witness and requiring the defendant to advise the Court of the matters in s. 21O (3) the Court will adjourn the proceeding for 14 days.
10. If on this next date the court does not receive advice from the defendant that they have arranged for a legal representative or do not want the protected witness cross-examined, the court will make an order that the defendant be given free legal

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<sup>5</sup> Section 21M(1)(a) of the *Evidence Act 1977*.

<sup>6</sup> Section 21M(1)(b) of the *Evidence Act 1977*.

<sup>7</sup> Section 21M(1)(e) of the *Evidence Act 1977*.

<sup>8</sup> Section 21M(3) of the *Evidence Act 1977*.

assistance by Legal Aid for the cross-examination of the protected witness by a lawyer (**Annexure D**) and direct that the Legal Aid be so advised.<sup>9</sup>

11. At this time the Magistrate will confirm with the defendant contact details (including telephone number, address and email) and whether the defendant will require an interpreter to assist Legal Aid in the provision of free legal assistance.
12. A trial date will be set for the matter. Where an order under s. 21O(4) is made any trial date will be (at least) 6 weeks from the date of the review mention to permit Legal Aid to provide free legal assistance for the cross-examination of the protected witness/s.
13. If Legal Aid has not been able to contact the defendant, or the defendant refuses legal assistance Legal Aid will notify the Court as soon as they become aware of either instance. Upon notification the Court will further hear the matter to permit it to determine whether the defendant is refusing legal assistance under s. 21Q of the *Evidence Act 1977*.
14. Where the summary proceeding is a contested sentence, this direction will apply when a witness required for cross-examination is a protected witness.
15. While it is recognised that local conditions may require adjustment to the practices and procedures set out in this Practice Direction, adherence to this Practice Direction is encouraged, wherever possible.
16. Nothing in this Practice Direction is to be taken as removing or limiting the discretion of a Magistrate.



Judge Janelle Brassington  
Chief Magistrate  
3 October 2023

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<sup>9</sup> Section 21O(4) of the *Evidence Act 1977*.

# ANNEXURE A to Practice Direction 3 of 2023

## Cross-Examination of Protected Witnesses Part 2 Division 6 (ss211L-215)

Applies to **summary proceedings** under Justices Act 1886 for a “**domestic violence offence**”

Is the charge a **domestic violence offence**?

s103B Evidence Act  
(a) an offence against the DFVP Act 2012, part 7:  
• s177 Contravene DVO  
• S178 Contravene PPN  
• S179 Contravene Release Condition

s103B Evidence Act

(b) an offence **against another Act** committed by a person where the **act or omission** that constitutes the offence is also—  
(i) **domestic violence** or associated domestic violence under the DFVP Act committed by the person (s103AB)

s103B Evidence Act

(b) an offence **another Act** committed by a person where the **act or omission** that constitutes the offence is also:  
(ii) a contravention of the DFVP Act, section 177(2)

S8 DFVP Act

(1) **Domestic violence** means behaviour, or a pattern of behaviour, by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that—  
(a) is physically or sexually abusive; or  
(b) is emotionally or psychologically abusive; or  
(c) is economically abusive; or  
(d) is threatening; or  
(e) is coercive; or  
(f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.  
.....

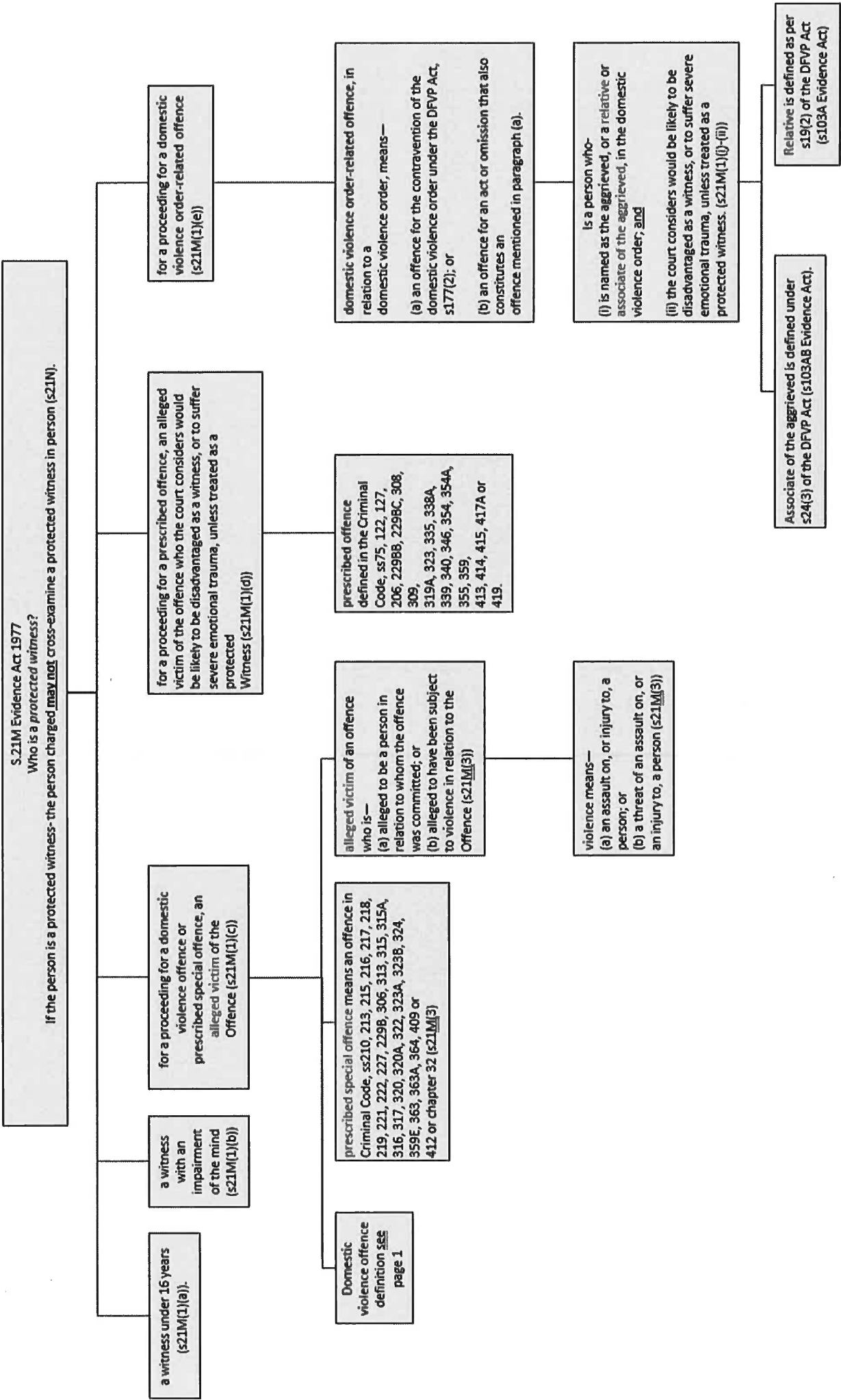
S9 DFVP Act

**Associated domestic violence** means behaviour mentioned in section 8(1) by a respondent towards—  
(a) a child of an aggrieved; or  
(b) a child who usually lives with an aggrieved; or  
(c) a **relative** of an aggrieved; or  
(d) an **associate** of an aggrieved

**Associate** of the aggrieved is defined under s24(3) of the DFVP Act (s103AB Evidence Act).

**Relative** is defined as per s19(2) of the DFVP Act (s103A Evidence Act)

# Cross-Examination of Protected Witnesses Part 2 Division 6 (ss21L-21S)



## ANNEXURE B to Practice Direction 3 of 2023

### TRIAL DIRECTIONS AND ADVICE FOR SELF REPRESENTED DEFENDANT

Your charge/s are being prepared for a Trial because you have said that you are pleading not guilty or have declined to enter a plea.

The police must prepare a **Brief of Evidence** for your charge/s. The Brief of Evidence contains a copy of the witness statements as well as other evidence the police intend to use at the Trial (e.g., photographs etc). This will help you to prepare for the Trial.

### YOU MUST COLLECT THE BRIEF OF EVIDENCE FROM QUEENSLAND POLICE PROSECUTIONS AFTER ..... *[5 weeks from today]*

When the Brief of Evidence is prepared, you must go to the *[Insert instructions for picking up the Brief of Evidence]*. You will need to show some form of identification before the Brief will be given to you. If you send someone else to collect the Brief on your behalf, that person will need to have written permission, **signed by you**, to collect the Brief.

You should read the Brief of Evidence and consider seeking legal advice before returning to Court for a Review Mention.

**On / / 20 at *[Insert time]* THE CHARGE(S) AGAINST YOU HAVE BEEN LISTED FOR REVIEW MENTION IN *[Insert Location of Review]*. THIS IS A REVIEW DATE NOT YOUR TRIAL DATE. YOU MUST APPEAR PERSONALLY UNLESS YOU ARE LEGALLY REPRESENTED.**

A Duty Lawyer may be available to assist you and you should bring the Brief of Evidence if you want their assistance. They will not be available to represent you at trial. *[Delete if inapplicable]* You must attend the **REVIEW MENTION** unless you are legally represented. You will be asked if you have received all of the Brief of Evidence and if you are ready for your Trial. If you still intend to plead not guilty the trial will be listed at the review mention or later. If you want to plead guilty the Court may deal with your sentence on that date or adjourn it to another date.

#### If you do not attend the Review Mention:

1. A matter may be heard and determined in your absence. You may be convicted and a penalty imposed in your absence; or
2. A warrant may issue for your arrest.

## **IMPORTANT NOTICE – OVER THE PAGE**

### **- INFORMATION ABOUT PROTECTED WITNESSES-**

**A PERSON WHO IS NOT REPRESENTED BY A LAWYER MAY NOT BE ABLE TO CROSS-EXAMINE A PROTECTED WITNESS AT A HEARING UNDER SECTION 210 OF THE EVIDENCE ACT 1977.**

**For a summary proceeding for a domestic violence offence a *Protected Witness* is:**

- a. An alleged victim of an offence. An alleged victim of an offence means a person, other than you, who is (a) alleged to be a person in relation to whom the offence was committed; or (b) alleged to have been subject to violence in relation to the offence;**
- b. A witness under 16 years of age;**
- c. A witness who is a person with an impairment of the mind;**
- d. For a proceeding for a domestic violence order – related offence a person who:
  - i. is named as the aggrieved, or a relative or associate of the aggrieved, in the domestic violence order; and**
  - ii. the court considers would be likely to be disadvantaged as a witness, or to suffer severe emotional trauma, unless treated as a protected witness.****

**If a person is a protected witness you may not cross-examine the protected witness in person and the court will arrange for you to be given free legal assistance by Legal Aid for the cross-examination unless you —**

- (i) arrange for legal representation; or**
- (ii) do not want the protected witness to be cross-examined.**

**AT THE REVIEW MENTION THE COURT WILL CONSIDER MAKING ORDERS ABOUT PROTECTED WITNESSES**

## ANNEXURE C to Practice Direction 3 of 2023

### Orders for Protected Witnesses made under ss. 21M, 21N and 21O *Evidence Act 1977*

- I am satisfied that this is a summary proceeding for a domestic violence offence.
- I am satisfied that the following person/s is/are protected witnesses for the proceeding:
  - ..... an alleged victim of a domestic violence offence.
  - .....a child under the age of 16 years of age
  - A witness who is a person with an impairment of the mind;
  - ..... who is named as the aggrieved, or a relative or associate of the aggrieved [*strike out those that do not apply*], in the domestic violence order and who I consider would be likely to be disadvantaged as a witness, or to suffer severe emotional trauma, unless treated as a protected witness.

**Therefore, under s. 21N of the *Evidence Act 1977*.....,the defendant, may not cross-examine a protected witness in person.**

- I advise the defendant who is present before the court that—
  - (a) they may not cross-examine the protected witness(s) in person; and
  - (b) the court will arrange for them to be given free legal assistance by Legal Aid for the cross-examination unless the person charged—
    - (i) arranges for legal representation; or
    - (ii) does not want the protected witness to be cross-examined.
- I require the person charged to advise the Court by .....[14 days] whether s/he has:
  - Arranged a legal representative to act for them
  - Arranged a lawyer to act for them for cross-examination of the protected witness
  - Has decided not to cross-examine the protected witness.

I adjourn the proceeding to ..... [14 days]



**ANNEXURE D to Practice Direction 3 of 2023**

**ORDER UNDER S. 210 (4) OF THE EVIDENCE ACT 1977**

Having not received advice from the person charged by .....[date specified at review mention] I order that:

- .....[the defendant] be given free legal assistance by Legal Aid for the cross-examination of the following protected witness/s by a lawyer:

.....

.....

.....

- The date of the trial is .....[At least 6 weeks from today]

I further request:

- The Registrar of this Court to give to the Director of Grants Legal Aid this order.

Magistrate  
Date