

BRISBANE MAGISTRATES COURT

PRACTICE DIRECTION 3 OF 2020 COURT ARRANGEMENTS (COVID-19) AMENDED

PRACTICE DIRECTION 4 OF 2020 COURT ARRANGEMENTS (COVID-19) IN THE CHILDRENS COURT WHEN CONSTITUTED BY A MAGISTRATE AMENDED GUIDELINE FOR CRIMINAL PROCEEDINGS

1. This Guideline is to be read with Practice Direction 3 of 2020 (amended) (PD 3), Practice Direction 4 of 2020 (amended) (PD 4) and the Designated Matters and Urgent Applications: Listing Procedures (Listing Procedures).
2. The Guideline will be in effect from 29 April 2020. The purpose is to put in place procedures that will ensure that time in Court is used in an efficient way so that the Court can hear as many matters as possible.

Work the Court will undertake

3. PD 3 and PD 4 set out the work the Court is presently undertaking.
4. The Listing Procedures set out the process of having a matter heard as an urgent or designated matter.
5. If no specific request is made to list a matter as an urgent or designated matter all matters will be adjourned pursuant to paragraph 14 of PD 3 or paragraph 11 of PD 4.

Appearances

6. A physical appearance of a party can only occur by prior leave of the Court in accordance with PD 3 and PD 4.
7. Should a party seek leave to physically appear, leave must be sought by email to the Magistrates Court Registry at least 1 clear day prior to the date of the hearing of the matter (except where paragraph 23 below applies). Where possible all other parties should be copied in that email.
8. A party may seek an adjournment of a matter by:
 - a. Telephone appearance
 - b. By email request if their adjournment is uncontroversial and no specific direction is sought
 - c. By utilising the electronic adjournment procedure in Practice Direction 5 of 2014 – Electronic Adjournments for committal and summary callovers.

9. Prosecutors will appear by telephone, subject to paragraph 12 below.
10. Chorus Call facilities will be available in all listed Courts.
11. The following link provides access to external user chorus call instructions:
<https://www.courts.qld.gov.au/courts/magistrates-court/covid-19-response-magistrates-court>.
12. Where a video link facility is available parties may appear by that facility. The following link provides access to external Pexip call instructions:
https://www.courts.qld.gov.au/data/assets/pdf_file/0011/646481/external-user-pexip-instruction-guide.pdf.
13. Parties appearing by video conferencing facilities should conduct themselves as if they are physically present in the Court room. Parties are encouraged to use a headset with microphone, appear in a quiet room, and use PDF scanned documents. Parties are reminded of the provisions of s71B of the *Justices Act 1886* and should not electronically record proceedings unless authorised.
14. Where a defendant is in custody and legally represented, the parties should consider whether the defendant's appearance is required. If it is not required, leave should be sought for the defendant's appearance to be excused. Such leave should be sought by email to the Court at least 1 clear day before the mention of the matter. Where possible, all parties should be copied in that email.

Long pleas

15. To ensure the efficient disposal of long/short pleas and having regard to the s.132C of the *Evidence Act 1977*, the Prosecution and Defence are to case conference sufficiently in advance:-
 - a. To identify the agreed facts on which the sentencing is to proceed; and
 - b. To produce an agreed written statement of facts to put before the sentencing Magistrate.
16. The written statement of facts should include particulars of any restitution or compensation sought on behalf of a victim(s). A written statement of agreed facts shall address the charges chronologically and per charge.
17. At least 2 clear days before the long plea, each party is to exchange the following material, prior to filing it with the Court –
 - a. A written statement of agreed facts
 - b. Any psychiatric/psychological/medical reports
 - c. Any photographs, audio or other media sought to be relied upon
 - d. Any victim impact statements or quotes for damage/injury suffered
 - e. Any character references or other similar material
 - f. Any material in respect of an application for restitution or compensation on behalf of a victim

- g. Copies of any relevant comparative sentencing decisions (including the appropriate case citation) which will assist the sentencing Magistrate to inform the exercise of the sentencing discretions
- h. Written submissions upon which the party proposes to rely
- i. Any draft orders.

18. Disclosure of this material by the party seeking to rely upon it will be undertaken to the Court by the party by forwarding electronic copies (PDF or Word format) of the material by email to BMClengthypleas@justice.qld.gov.au. The material should be provided by 12pm the day before the plea of guilty. The subject line of the email should name the defendant, the fact it is a long plea and the date of the matter (i.e. Davy Jones – Long Plea – 4 March 2020). Material for Childrens Court long pleas should not be sent to this address.

19. Material can only be sent to the Court with the consent of the other party. If the opposing party intends to object to the Court receiving the material then it must communicate this to the other party and that party must not provide that material to the Court prior to the sentence.

20. All electronic documents sent to the Court should be in PDF or Word format and the electronic file labelled with a clear indication as to what it is (for example “Agreed Statement of Facts” or “Dr Smith’s Report dated 18/3/20”). Any multimedia files sought to be relied upon should be less than 5MB in size and self-executable.

21. These Guidelines are to ensure the efficient disposition of Court business and may be subject to change by order of a Magistrate.

Application for directions pursuant to section 83A *Justices Act 1886*; full hand-up committals - no case submission; committal proceedings (cross-examination) police and expert witnesses

22. An Application to hear the matter as a designated matter will be dealt with in accordance with the Listing Procedures. If required, the matter will be listed for mention in the Committal Callover (Court 20) on the next available date for the listing of the matter and the making of directions.

23. Parties should be in a position at the mention to:

- a. Make any application for leave for physical appearance of themselves
- b. Indicate whether the defendant needs to appear
- c. Give an accurate indication of the time required for the application taking into account the reading time for the material to be filed in the matter
- d. Make submissions on how witnesses (if required) will appear and give evidence.

Full Hand-Up Committals - no case submission

24. Where a full hand up committal (with no case to answer submission) is listed, the following directions apply:

- a. The Prosecution must file a complete hard copy of the brief of evidence with the Registry in respect of any committal hearing referred to above, to comply with the provisions of the *Justices Act 1886*.
- b. At least three clear days before the hearing the Defence must file and serve (by email):
 - i. Written submissions upon which the defence proposes to rely
 - ii. Copies of any authorities to be relied upon
- c. The Prosecution must at least one clear day prior to the hearing file and serve (by email) the following:
 - i. Written submissions upon which the prosecution proposes to rely
 - ii. Copies of any authorities upon which the prosecution proposes to rely.

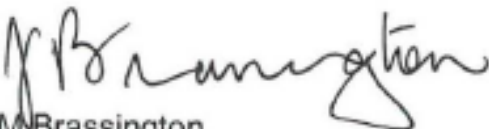
Committal proceedings (cross-examination) police and expert witnesses

25. Where consent orders have been filed pursuant to Practice Direction 12 of 2010 (amended) – Witnesses giving Evidence in Committal Proceedings, and the only witnesses to be cross-examined at a committal hearing are police or expert witnesses, the following directions apply:

- a. At least three clear days before the committal hearing the Prosecution must file a complete hard copy of the brief of evidence with the Registry in respect of any committal hearing referred to above, to comply with the provisions of the *Justices Act 1886*
- b. At least one day prior to the hearing the Prosecution must send to the court by email
 - i. A copy of the index of the brief of evidence
 - ii. Details of the witnesses
 - iii. A copy of the consent orders in relation to cross-examination
 - iv. Details of the police or expert witnesses to be cross-examined including their contact telephone/video link details.

26. The parties are to ensure that arrangements are made for the witness to have access to copies of documents/exhibits that may be shown to the witness.

27. If the Defence intend to make a no case submission at the conclusion of the committal hearing, the same directions as detailed in respect of hand-up committals- no case submissions above, apply.


J M Brassington
Brisbane Coordinating Magistrate
Deputy Chief Magistrate
29 April 2020