

# Magistrates Courts

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## Practice Direction No. 4 of 2021

Issued: 25 November 2021

### Intermediaries

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1. The purpose of this Practice Direction is to facilitate the operation of the Queensland Intermediary Scheme (QIS) Pilot Program, which commenced on 5 July 2021, in the Supreme, District and Magistrates Courts in Brisbane and Cairns. Legislative amendments to the *Evidence Act 1977* (Qld) provide the framework in which the scheme operates – in particular, the insertion of Division 4C.
2. This Practice Direction is to be read in conjunction with Magistrates Court Practice Direction 12 of 2010 (amended) – Witnesses giving Evidence in Committal Proceedings.

#### **Process: engaging an intermediary in criminal proceedings**

3. This Practice Direction applies to criminal proceedings and committal proceedings before the Magistrates Court ('the Court').
4. The court will appoint an intermediary for a witness, where appropriate, either on application of either party or of its own motion.
5. If there is to be an application to have a witness attend and give evidence at a committal hearing, then at the committal mention the party applying for an intermediary should inform the court that an application for appointment of an intermediary will be made if the defence is successful at the hearing of the application.
6. At the conclusion of a successful application to have a witness attend and give evidence, a date for the taking of evidence will be set and any application for appointment of an intermediary is to be made. The Court may hear the application then and there or adjourn the application to another date.
7. The party applying for an intermediary to be appointed for a witness may make submissions on any or all of the following:
  - 7.1 how the witness is eligible for such assistance;
  - 7.2 how an intermediary would be likely to improve the quality of the witness' evidence; and
  - 7.3 provide any other material on which the applicant relies, including an intermediary assessment report.

8. Upon an order being made appointing an intermediary, the Court will order that a directions hearing be held at least one week before the pre-record hearing and may:
  - a. direct the prosecution to complete and submit a QIS referral for each witness included in the court order within 24 hours, or another period as directed, of the order being made;
  - b. direct that the intermediary prepare a written report for the Court ('Court Report') outlining the communication needs of the witness and making recommendations about the most effective way to communicate with the witness;
  - c. direct that, in the event of the Queensland Intermediary Scheme (QIS) Program Team being unable to engage an intermediary, the Crown is to bring the matter on for mention no later than 4 weeks prior to a relevant proceeding (e.g. a directions hearing); and
  - d. make further or other orders as appropriate.
9. Where an intermediary has been appointed, the prosecution is to advise the QIS Program Team and intermediary of the case listing and the likely or fixed date of any hearing which the intermediary must attend.
10. Where an intermediary who has prepared a Court Report becomes unavailable to attend a hearing at which they are required the matter is to be brought on for further mention at the earliest possible opportunity for further directions.
11. If it becomes apparent that an intermediary's services will no longer be required, the party who applied for the intermediary is to advise, as soon as reasonably possible, the Court, the intermediary and the QIS Program Team.

#### **Directions hearing**

12. The Court Report will be distributed to the parties and placed on the court file by the Registry at least one week before the directions hearing.
13. Counsel briefed to appear at the hearing and the intermediary must attend the directions hearing.
14. At a directions hearing the Court may make or vary any direction for the fair and efficient conduct of the proceeding, in accordance with s.21AZS of the *Evidence Act*, including but not limited to a direction about:
  - a. The manner of questioning of a witness;
  - b. The duration of questioning of a witness;
  - c. The questions that may, or may not, be put to the witness;
  - d. If there is more than one defendant – the allocation among the defendants of the topics about which the witness may be questioned;
  - e. The use of models, plans, body maps or similar aids to help communication of a question or an answer; and
  - f. The use of an audio-visual link or another communication facility.

15. The Court will consider and made directions about how the intermediary is to participate in the relevant proceeding, including the appropriate way to intervene.

**Commencement**

16. This Practice Direction takes effect from 25 November 2021.

A handwritten signature in black ink, appearing to read 'T. Gardiner', with a stylized flourish at the end.

Judge Terry Gardiner  
Chief Magistrate  
25 November 2021

