

# **Childrens Court (Magistrates Court)**

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## **Practice Direction No. 2 of 2017**

### **Case Conferences and Callovers to conclusion in Criminal Matters in the Childrens Court**

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1. This Practice Direction is intended to assist with case management of Criminal Matters in the Magistrates Childrens Court ("the Court") by encouraging the Prosecution and Defence to enter into a case conference in each case and setting out procedures to be adopted at the Summary and Committal Callovers.
2. This Practice Direction applies to matters where the defendant is legally represented.
3. For the purpose of this Practice Direction:
  - 3.1. "Case Conference" means negotiations, (including discussions as to whether or not negotiations will take place) between prosecutions and defence to discuss 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;
  - 3.2. "Defence" means the defendant's legal representative and/or the Duty Lawyer;
  - 3.3. "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;
  - 3.4. "Specialist Courts and Programmes" include the Murri Court, the Drug Court, the Special Circumstances Court and Bail Programmes;
  - 3.5. "Specified statements and/or exhibits" means statements of the prosecution witnesses who will provide the "substantial evidence" in the matter and exhibits of substantial evidence as requested by the defence or prosecution for the purposes of finalising a case conference;
  - 3.6. "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>

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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.

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4. The Prosecution and the Defendant's legal representative (including a Duty Lawyer assigned to the Callover) may enter into a case conference in accordance with Queensland Police Service Policy or the Director's guidelines for charge negotiations in all matters prior to the Summary or Committal Callover as the case may be.
5. Case conferencing must take place between the Prosecution and the Defendant's legal representatives prior to the Committal or Summary Callover. That will occur generally on the material contained in the QP9, but at or before such conference the prosecution or the defence may request that copies of certain specified statements and/or exhibits be prepared, copied and delivered.
6. Copies of the specified statements and/or exhibits must, where reasonably practicable be delivered to the defence within 14 days of such request.
7. If the matter is to proceed summarily:
  - 7.1. 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, copied and delivered and for a second or adjourned conference to be held;
  - 7.2. On first appearance (if the conference is concluded), or on second appearance (after one adjournment for certain requested specified statements and/or exhibits to be prepared, copied and delivered 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.
  - 7.3. 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.
  - 7.4. If the plea is "not guilty":
    - 7.4.1. Then the matter is to be adjourned for summary trial at least 49 days away (or such shorter period consented to by both the Prosecution and the Defence).
    - 7.4.2. The Full Brief of evidence must be made available for collection within 35 days of the matter been set for trial and in any event at least 14 days prior to the date set for the hearing of the trial.
  - 7.5. The Defendant is to personally appear unless:
    - 7.5.1. The case conference has concluded and the defendant's legal representative has specific instructions on how the matter is to proceed;
    - 7.5.2. The case conference has been commenced and the Prosecution and the Defence agree to make an application to adjourn the matter to allow the Prosecution to deliver to the Defence a copy of any statement or exhibit specifically requested by the Defence for the purpose of concluding the case conference; or
    - 7.5.3. Otherwise excused.
8. If the matter is to proceed as a committal:

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(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

- 8.1. 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, copied and delivered and for a second or adjourned conference to be held;
- 8.2. On first appearance (if the conference is concluded), or on second appearance (after one adjournment for certain requested specified statements and/or exhibits to be prepared, copied and delivered and a second or adjourned conference to be held) the Prosecution and the Defence:
  - 8.2.1 Are to advise the result of the case conference (changes of charges or of any change to the election from indictable to summary) and must advise the Court if the matter is to proceed as a committal proceeding;
  - 8.2.2 May advise if there is to be a committal for sentence.
- 8.3. 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 in order to allow 14 days for the partial brief to be prepared and filed and 14 days for the Defence to give notice under s 114(1)(e), (f) and (g));
- 8.4. If the Court is not advised that the matter is to proceed by way of consent committal for sentence then a Full Brief of Evidence is to be prepared and delivered within 35 days and the matter is to be adjourned for a committal mention to a date no earlier than 49 days;
- 8.5. If there is a possibility of an application being made to have a witness attend and give evidence at a committal hearing then at the committal mention:
  - 8.5.1. The matter is to be adjourned for the application to be mentioned on a date no earlier than 21 days' time; and
  - 8.5.2. The Defence will serve upon the prosecution a notice under s 110B(3)(a) within 7 days giving the Prosecution 7 days within which to respond under s 110B(3)(b); and
  - 8.5.3. The Defence is to file and serve an Application under s 110B(7) and s 83A in the form set out in Annexure A to PD 12/2010 by a date fixed by the Court listing the Application to be mentioned on a date fixed by the Court;
  - 8.5.4. At such mention the Court will fix a date for argument of the Application.
- 8.6. Upon the Application being wholly unsuccessful the matter is to proceed on that day as a s 110A committal.
- 8.7. Upon the Application being partially successful then the matter is to be adjourned for a committal hearing no earlier than 28 days or such shorter time agreed to by the Court as is consented to by the Prosecution and Defence.
- 8.8. The Defendant is to personally appear at all mentions unless:
  - 8.8.1. The Defendant is legally represented;
  - 8.8.2. The case conference has concluded and the Defendant's legal representative has specific instructions on how the matter is to proceed;
  - 8.8.3. The case conference has been commenced and the Prosecution and the Defence agree to make an Application to adjourn the matter to allow the prosecution to prepare, copy and deliver to the

Defence any statement or exhibit specifically requested by the Defence for the purpose of concluding the case conference; or

8.8.4. Otherwise excused.

9. Mentions will be held on a day or days determined by the court in consultation with the DPP, QPS and LAQ.
10. 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:
  - 10.1. Delays caused in preparing scientific, finger print or technical evidence;
  - 10.2. Foreshadowed difficulties in obtaining witness statements from intrastate, interstate and international witnesses;
  - 10.3. Matters which have a large volume of witnesses;
  - 10.4. Delays in the Legal Aid Office's assessment of an application for legal assistance; and
  - 10.5. Leave and courses for investigating officers (except where a Defendant child is in custody).
11. 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.
12. Where the investigating officer and/or his or her superior officer subsequently becomes 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) in accordance with this Practice Direction, the DPP officer or Police Prosecutor who has conduct of the matter shall be notified forthwith. The Prosecution will notify the Defence of the problem upon becoming aware of the same.



**Judge Orazio Rinaudo  
Chief Magistrate  
17 March 2017**