

**Circular No. 26/2010**

**18/11/2010**

**File No.**

## **CRIMINAL JURISDICTION REFORM ADMINISTRATIVE ARRANGEMENT**

On 1 November 2010 the provisions of the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010* (the Act) commenced. As the title suggests, the Act amends relevant laws to reform and modernise civil and criminal jurisdiction.

To facilitate the efficient and timely resolution of proceedings under relevant laws relating to criminal procedure, the Criminal Jurisdiction Reform Administrative Arrangement was entered into between the QPS, the Chief Magistrate, Director of Public Prosecutions and Legal Aid Queensland pursuant to s. 706A: 'Development of administrative arrangements' of the Criminal Code.

As a result of the new administrative arrangement, a number of amendments have been made to the provisions of Chapter 3: 'Prosecution Process' of the Operational Procedures Manual (OPM) which are set out in this Circular in the format that will be used when incorporated into the OPM in due course.

### **3.3: Definitions**

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### **3.3 Definitions**

For other definitions see 'Definitions'.

In this chapter:

#### **Defence**

means the defendant, and/or if legally represented, the defendant's legal representative, and/or the Duty Lawyer.

#### **Delivered**

includes to make available by the prosecution for collection by the defence, or delivered electronically by the prosecution to the defence.

#### **Partial brief of evidence**

means a brief which contains copies of signed statements of the prosecution witnesses who will provide the substantial evidence in the

matter and of exhibits of substantial evidence for the purpose of a committal for sentence.

### **Prosecution**

means either the Director of Public Prosecutions or Police Prosecution Corps

### **Substantial evidence**

means 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 or issue in dispute).

### **To provide**

includes the same meaning as the term 'delivered'.

## **3.4.8 Requests by defence for copies of statements and documents**

### **ORDER**

Unless otherwise required by Service policy, or legislation, officers other than police prosecutors are not to provide copies of documents or witness statements to defendants or their legal representatives, unless authorised by a police prosecutor or a Crown prosecutor.

See also ss. 3.4.16: 'Supply of particulars, copies of Court Brief (QP9), statements and reports' and 3.8.16: 'Delivery of briefs of evidence to prosecutor' of this circular.

## **3.4.16 Supply of particulars, copies of Court Brief (QP9), statements and reports**

### **Supply of particulars**

#### **POLICY**

Police prosecutors, upon request, should provide particulars relating to charges against persons to the defence. These particulars should be obtained from details contained in the relevant brief of evidence.

Details of particulars supplied to the defence should be recorded by the prosecutor on the relevant prosecution file.

#### **PROCEDURE**

For the supply of particulars on request for a relevant proceeding see s. 3.14.5: 'Disclosure that must be made on request' of this Circular.

### **Supply of Court Brief (QP9)**

#### **POLICY**

Police prosecutors are to provide the defendant's copy of the Court Brief (QP9) to the defendant or legal representative in relation to all matters for mention before a magistrates court. Prosecutors should provide the defendant's copy of the Court Brief (QP9) to:

- (i) the defendant's legal representative within a reasonable time of any request by the legal representative, and after the prosecutor has made sufficient inquiries to establish the person making the request is a legal representative or is acting on behalf of a legal representative; or

(ii) an unrepresented defendant, by personally handing to the defendant at an appropriate time before the defendant's initial appearance and after suitable identification is shown.

Prosecutors are to note whether the defendant's copy of the Court Brief (QP9) has been provided and to whom it was provided on the relevant prosecution file.

#### ORDER

Police prosecutors are to ensure that information that relates to a person's personal particulars as contained in the Court Brief (QP9) are not provided to the defence; e.g. all information contained on the last page of that document, addresses and contact details of complainants or witnesses and any notes to prosecutors from police officers concerning operations or investigations.

For a relevant proceeding the prosecution is not required to disclose a witness contact detail (see s. 3.14.7: 'Disclosure of witness contact details in a relevant proceeding' of the Operational Procedures Manual).

#### **Copies of statements and documentary exhibits**

##### POLICY

If agreed by a police prosecutor during case conferencing in relation to a matter before the Magistrates Court, the police prosecutor is to provide the defence with a copy of statements or documentary exhibits requested by the defence, as soon as practicable but within 14 days of the request. If it is not reasonably practicable to provide the material within 14 days, the prosecutor is to advise the defence of such fact and provide the material as soon as possible.

Arresting officers are to provide the relevant prosecutor with a copy of statements or documentary exhibits requested by the prosecutor, as soon as practicable but within the time specified by the prosecutor.

##### ORDER

If it is impracticable to have a copy of a statement or relevant documentary exhibit requested by the police prosecutor or ODPP officer delivered within the required period of time, the arresting officer is to advise the relevant prosecutor forthwith.

##### PROCEDURE

For information on the provision of copies of witness statements or other things to the defendant or lawyer acting for the defendant in a relevant proceeding see s. 3.14: 'Disclosure of information to defence (relevant proceeding)' of the Operational Procedures Manual.

Also see ss. 3.4.8: 'Requests by defence for copies of statements and documents' and 3.8.16: 'Delivery of briefs of evidence to prosecutor' of this Circular.

#### **3.4.24 Ex officio indictment**

##### PROCEDURE

An ex officio indictment may be considered by the Office of the Director of Public Prosecutions (ODPP) (State), upon receiving, from the legal representative of an accused person (the defence), advice in writing that the accused requests the matter proceed by way of ex officio indictment provided the circumstances outlined in Guideline 11: 'Ex-officio indictments' of the Director of Public Prosecutions (State)

Guidelines, contained in Appendix 3.1 of the Operational Procedures Manual, exist. The ODPP will notify investigating police and the responsible police prosecutor of the ex officio indictment.

The ODPP will not entertain an ex officio request from an accused person who is not legally represented.

Exceptions to the requirement for a written request for ex officio indictment are where:

- (i) alternative procedures are established between police and the local office of the ODPP; or
- (ii) a matter is adjourned before a Magistrates Court to an ex officio mention date. In such cases the police prosecutor or ODPP prosecutor (in accordance with ODPP policy) involved should notify the arresting officer to forward the relevant information, as outlined below, to the ODPP. For police prosecutors, this notification can be made by forwarding a QPRIME task to the arresting officer through their organisational unit. Advice concerning the notification should also be provided to the ODPP ex officio clerk.

The ex officio or partial brief of evidence is to be forwarded to the ODPP within 14 days of being notified the matter is to proceed by way of ex-officio indictment. See Guideline 12: 'Ex-officio sentences' of the Director of Public Prosecutions (State) Guidelines contained in Appendix 3.1 of the Operational Procedures Manual, for a list of material required for an ex-officio brief.

#### ORDER

When a member of the Service receives a request for a matter to proceed by ex officio indictment, the inquirer is to be referred to the local office of the ODPP. Arresting officers are not to directly provide material to the defence for ex officio indictments.

#### POLICY

Upon receiving advice that an ex officio indictment will be presented:

- (i) the officer in charge of the Prosecution Corps handling the matter is to immediately forward a copy of the Court Brief (QP9) to the relevant DPP (State) Office and update the relevant QPRIME case file accordingly. The police prosecutor concerned is to retain the original Court Brief (QP9) for further appropriate action; and
- (ii) the arresting officer, in addition to complying with the provisions of s. 3.7.2: 'Documentation at first appearance' of this Circular, is to
  - (a) compile an ex officio or partial brief of evidence consisting of:
    - original signed witness statements containing direct evidence of the complainant or witnesses who observed the actions of the defendant in the commission of the offence;
    - any exhibits which support the substantial evidence in the matter including:
      - all recorded material, including CCTV footage, field taped conversations and records of interview; and

- any documentary exhibits including original signed certificates, photographs, scale plans, etc. relevant to the charge(s);

(b) attach to the ex officio or partial brief:

- if not listed on the Court Brief (QP9), the complainant's name and address (for compensation/restitution). Where the complainant is a company, the correct company name as on the certificate of incorporation is to be attached. Where the complainant is trading under a business name, the full name(s) of the trader(s) and the business name as it appears on the Certificate of Registration of Business Name is to be attached;
- the amount of compensation/restitution requested (see s. 3.7.3: 'Restitution/compensation' and Appendix 3.2: 'Factors for consideration in restitution/compensation' of the Operational Procedures Manual);
- the up to date offender/traffic history of the defendant;
- copies of notices to appear, summonses and/or bench charge sheets, in chronological order;
- victim impact statements which have been obtained;
- if there are multiple or complicated charges, where appropriate, a schedule of restitution/compensation requested (see Appendix 3.15: 'Schedule for restitution/compensation' of the Operational Procedures Manual); and
- if there are co-offenders for any charges, a list containing the:
  - names of all co-offenders;
  - charges each co-offender has been charged with;
  - amount of compensation/restitution sought from each offender; and
  - court results of co-offenders who have had their charges finalised; and

(c) deliver the ex officio or partial brief of evidence to the ODPP no later than 14 days of being notified that the matter is to proceed by way of ex-officio indictment; and

(iii) the relevant district officer or branch manager ensure local arrangements are put in place which ensure officers under their control deliver partial briefs of evidence to the ODPP, no later than the date set by the relevant prosecutor for that purpose.

Where an assault (including an assault of a sexual nature) is alleged the following are to be included in the ex officio or partial brief:

- (i) a statement outlining the facts of the assault by the complainant;
- (ii) statement(s) from doctor(s) noting any injuries; and
- (iii) photographs of injuries where appropriate.

Where a charge involves a covert police operative (CPO) the following are to be included in the ex officio or partial brief:

- (i) a statement from the CPO and the controller outlining their involvement; and
- (ii) a copy of all related CPO tapes.

Where drug charges are alleged, copies of all analysts' certificates are to be included in the ex officio or partial brief.

Where charges involve property the following are to be included in the ex officio or partial brief:

- (i) a quote for property unable to be returned to the owner(s); and
- (ii) an indication of offences which are related to one another (e.g. stealing and false pretence charges).

If additional information is required the ODPP will contact the arresting officer(s) direct. All additional information as requested is to be delivered to the ODPP as soon as practicable and in any event no later than 14 days from the original request for that additional information. If there are difficulties complying with the requirements of this section officers are to advise the relevant ODPP office.

The officer responsible for providing material for ex-officio indictments is:

- (i) in cases involving one arresting officer, that arresting officer;
- (ii) where there is more than one arresting officer from the same station/establishment, the most senior arresting officer;
- (iii) where the arresting officer is on leave, has resigned, or is suspended etc., the arresting officer's officer in charge immediately prior to the arresting officer commencing leave, resigning or being suspended etc.; and
- (iv) where an arresting officer has been transferred to another station/establishment, the arresting officer (in conjunction with the officer in charge of the arresting officer's previous station/establishment).

Where a request for an ex-officio indictment is rejected, the defence, the arresting officer and the police prosecutor (in centres where the police conduct the committal hearings) will be advised by the ODPP in writing. Once a request is rejected, the matter will be sent down for a committal hearing on the next available date.

#### ORDER

If it is impracticable to have the partial brief or any additional information requested by the ODPP delivered within 14 days of being notified that the matter is to proceed by way of ex officio indictment, the arresting officer is to advise the relevant ODPP officer forthwith.

#### **3.7.2 Documentation at first appearance**

#### ORDER

Prior to the time of the initial appearance of the defendant, the arresting officer is responsible for the completion of a Court Brief (QP9) on QPRIME (see 'Case File Court Briefs' of the QPRIME User Guide) and associated documentation and is to:

- (i) ensure that at the time of completion of the QP9:

(a) it is fully and professionally completed including the indigenous identifier provisions;

(b) all charges preferred are correctly worded and appropriate. Officers are to ensure the applicable legislation and the wording of charges is verified by reference to the specimen charges taken from QPRIME or the QPRIME Online Gateway on the QPS Bulletin Board (Intranet). See subsection titled 'Specimen charges' of s. 3.5.2: 'Responsibility to prefer all charges' of the Operational Procedures Manual;

(c) all material facts as outlined on the court brief are accurate and support all elements of the charge(s) in a logical order. That in the (honest and reasonable) opinion of the arresting officer all of the elements can be substantiated by:

- admissible testimony of witnesses; and/or
- a facilitation of proof provision, such as, averments, certificates, definitions, deeming provisions; and/or
- physical exhibits, such as tapes or compact discs containing field taped conversations, record of interviews or CCTV footage, analyst certificates, photographs, documents, weapons, etc.;

(d) include in the facts section of the QP9:

- a summary of the substantial evidence including:
  - direct evidence of the complainant or a witness (including a police officer) who observed the actions of the defendant in the commission of the offence;
  - any admission or confession of the defendant; and
  - medical evidence in relation to the complainant or victim's injuries;
- monetary value of the loss or damage relating to the offence (i.e. theft, fraud, damage, etc);
- any defence or exculpation raised by the defendant or which comes to the knowledge of the investigating police; and
- any evidence that is available to the investigating officer to negate any such exculpations or defences raised;

(e) separate court briefs are to be prepared when a defendant is charged with both State and Commonwealth offences. The offences on each court brief are to be cross-referenced so that the police prosecutor can make suitable arrangements for a joint hearing if the defendant pleads not guilty;

(f) separate court briefs are to be prepared when a defendant is charged with a number of offences where there are different complainants;

(g) all charges that can be lawfully joined are to be joined in accordance with s. 3.9.10: 'Joinder of charges' of the Operational Procedures Manual;

- (h) a separate court brief must be completed for each charge that cannot be lawfully joined;
  - (i) all defendants that can be lawfully conjointly charged are to be conjointly charged in accordance with s. 3.9.11: 'Charging conjointly' of the Operational Procedures Manual. Where defendants are lawfully conjointly charged each court brief must be cross referenced so that all matters are dealt with together;
  - (j) a separate court brief is to be completed for each defendant;
  - (k) all necessary documentary exhibits which may be required for a plea of guilty including traffic and offender history reports, certificates and quotations are attached to the Court Brief (QP9) or have been arranged to be attached;
  - (l) where the defendant has been arrested, QPRIME is checked to determine the initial appearance date of the defendant (see s. 16.8: 'QPRIME custody, search and property reports' of this Manual); and
  - (m) defendant's identification particulars (e.g. date of birth, scars, tattoos) required to be entered are relevant and current as at the date the prosecution is commenced;
- (ii) ensure that if QPRIME is unavailable, only the approved computerised formatted Court Brief (QP9) (available on QPS Form Select) is used when compiling court briefs;
- (iii) arrange for the Court Brief (QP9) completed in relation to the charge(s) to be forwarded to the shift supervisor or district duty officer/brief checker for review/approval:
- (a) as soon as practicable and prior to the initial appearance of the defendant; and
  - (b) in any case, prior to the end of the arresting officer's next three shifts subsequent to the defendant's arrest;
- (iv) attach copies of the following documentation to the original and each copy of the Court Brief (QP9):
- (a) all bench charge sheets or summonses relating to the defendant;
  - (b) the Offender History Report (Queensland Court Outcomes) of the defendant. In the case of traffic matters, such as dangerous operation of a vehicle, unlawful use of motor vehicle and charges under a transport Act attach a traffic history. Where a suspended sentence appears on the defendant's traffic history, attach that traffic history. Traffic histories are to show any history for the previous five years;
  - (c) where these are available, any written estimates supporting any claim for compensation or restitution. Factors which should be taken into account in determining compensation and restitution are included at Appendix 3.2: 'Factors for consideration in restitution/compensation' of the Operational Procedures Manual. See also s. 3.7.3: 'Restitution/Compensation' of the Operational Procedures Manual;

(d) where bail is opposed, a completed affidavit in quadruplicate using form QP 0215A: 'Objection to bail Affidavit' (available in QPRIME). The full name of the arresting officer is to be inserted in the left margin of the form under the words 'Affidavit of' and each page of the affidavit is to be sworn; and

(e) any certificates relating to the matter where these are available; and

(f) where a Form QP 0041A: 'Notice of Intention to Allege Previous Convictions' has been completed and served upon the defendant, an endorsed copy of the form. See also s. 3.5.18: 'Notices alleging previous criminal and traffic histories and circumstances of aggravation' of the Operational Procedures Manual.

## PROCEDURE

Officers should check whether defendants are wanted in relation to other matters.

Officers should obtain a copy of a person's Offender History Report (Queensland Court Outcomes) through QPRIME. Officers requesting copies of interstate criminal histories should send a computer message (SM) to HPIC01 on the QPS computer system. The message should include:

- (i) the date and place of the defendant's court appearance;
- (ii) the full name and date of birth of the defendant;
- (iii) the defendant's CRIMTRAC reference number, which should be obtained from QPRIME;
- (iv) the corresponding State from which the criminal history is sought; and
- (v) the fax number of the station or establishment where the interstate criminal history is to be sent.

## ORDER

Officers in charge are to provide sufficient time for officers under their control to complete court briefs within the required time frames.

Police prosecutors are to send by facsimile message a copy of bail affidavits to the bail section of the Office of the Director of Public Prosecutions (State) within twenty-four hours of defendants appearing in court if a court refuses bail.

In circumstances where a Field Arrest Sheet Form QP 0343 is completed and submitted it is to be treated as and replaces a Court Brief (QP9). See s. 3.7.14: 'Field Arrest Sheet' of the Operational Procedures Manual.

### **3.7.6 Possible outcomes in Magistrates or Childrens Courts**

## PROCEDURE

Upon the initial appearance of a defendant on charges of simple offences or breaches of duty a number of outcomes are possible. The first possibility is that the matter is adjourned to another date for mention. This simply means that the matter is stood over by the court to allow either the defence or the prosecution to seek further instructions. Reasons for which matters are commonly adjourned for mention include:

- (i) allowing the defendant to seek legal advice; or
- (ii) allowing the prosecution to obtain details of compensation or restitution.

The second possibility is that the defendant may plead guilty, at which time the matter will be dealt with by the court. In this case, the information supplied on the rear of the court brief will be used to inform the court of the circumstances surrounding the matter.

The third possibility is that the defendant may plead not guilty and a summary hearing will be conducted on a date set for such hearing.

In relation to indictable offences, some charges may be dealt with summarily at the election of the prosecution (see s. 552A Criminal Code) or defence (see s. 552B Criminal Code) or for 'relevant offences', must be dealt with summarily ( see s. 552BA Criminal Code). Despite an election by either the prosecution or a defendant or the offence being a 'relevant offence', the court will abstain from dealing summarily with charges which it is satisfied may not be adequately punished on summary conviction due to their nature or seriousness (see 552D Criminal Code). Where the court is unable to deal with an indictable offence summarily, committal proceedings will be conducted, unless the matter is dealt with by way of ex officio indictment. See s. 3.4.24: 'Ex officio indictment' of this Circular.

### **3.8.2 Format of briefs of evidence**

#### **POLICY**

A brief of evidence consists of the following:

- (i) an index to the brief;
- (ii) a précis;
- (iii) all original signed statements taken from every witness, including statements of a tied or negative nature;
- (iv) original signed or if applicable, copies of relevant documentary exhibits including certificates and photographs;
- (v) where required, the written report of an appropriately qualified expert to confirm that a child witness under the age of eight years of age is competent to give evidence (see Guideline 7: 'Competency of a child witness' of the Director of Public Prosecutions (State) Guidelines contained in Appendix 3.1 of the Operational Procedures Manual);
- (vi) a transcript of any recorded interview where a transcript has been prepared, and/or a copy of any written/typed record of interview. In the case of records of interview taken in a notebook, a photostat copy will suffice;
- (vii) a copy of any audio or video tape or compact disc. See also s. 3.8.13: 'Video/audio tapes in relation to sexual abuse investigations' of the Operational Procedures Manual;
- (viii) where the accused person has been interviewed and such interview has been electronically recorded, but the accused has stated only in effect that they decline to take part in the interview, then:
  - (a) a statement to such effect should be included in the witness statement of the arresting officer; and
  - (b) the electronic recording should not form part of the brief of evidence and, in any event, should not be tendered at the committal proceedings (see Guideline 27: 'Disclosure' subsection (ix):

‘Committal Hearings’ of the Director of Public Prosecutions (State) Guidelines contained in Appendix 3.1 of the Operational Procedures Manual);

- (ix) copies of relevant bench charge sheets, summonses or notices to appear;
- (x) copies of relevant Court Brief’s (QP9); and
- (xi) a completed Form QP 0323: ‘List/Non-Availability of witnesses (including police officers)’ (available in QPRIME).

In respect of District/Supreme Court hearings refer also to s. 3.7.9: ‘District/Supreme Court hearings’ of the Operational Procedures Manual.

### **3.8.9 Number of copies to be supplied**

#### **ORDER**

Arresting officers are to ensure the following occurs:

- (i) in the case of summary trials, the police prosecutor is supplied with the original plus two copies of the complete brief of evidence, as well as one copy for each additional defendant;
- (ii) in the case of committal proceedings, the police prosecutor is supplied with the original and three copies of the brief of evidence, as well as one copy for each additional defendant;
- (iii) in every case, one original witness statement or relevant documentary exhibit is retained by the arresting officer; and
- (iv) each brief of evidence is compiled according to whether the statements are originals or copies.

### **3.8.16 Delivery of briefs of evidence to prosecutor**

#### **POLICY**

A variety of factors affect when prosecution corps or Office of the Director of Public Prosecutions (State) (ODPP) must deliver a copy of a brief of evidence to the defence including the nature of the matter, Chapter 62, Division 3: ‘Disclosure by the prosecution’ of the Criminal Code, local Magistrate Court protocols and the Criminal Justice Reform Administrative Arrangement made between the QPS, ODPP, Chief Magistrate and Legal Aid Queensland.

Arresting officers are to:

- (i) complete briefs of evidence so that such briefs can be checked and delivered to the prosecution corps responsible for the presentation of the matter or, if the matter is to be prosecuted by the ODPP, the ODPP no later than the date set by the relevant prosecutor for that purpose; and
- (ii) comply with any reasonable instruction of the prosecutor to attend court to provide an explanation through the prosecutor to the court in cases where an adjournment of the matter is necessitated because the brief of evidence is late, not done or incomplete.

(See also s. 3.6.5: ‘Responsibilities of arresting officers’ of the Operational Procedures Manual.)

Notification of the date on which the delivery of the brief is required may be provided via the QPRIME task.

(See also s. 3.6.2: 'Responsibilities of police prosecutors' of the Operational Procedures Manual.)

District officers and where applicable, branch managers are to:

- (i) ensure local arrangements are put in place which ensure officers under their control deliver completed and checked briefs of evidence to the relevant prosecution corps or the ODPP, as appropriate, no later than the date set by the relevant prosecutor for that purpose; and
- (ii) investigate or cause to be investigated any failure of delivery of a brief of evidence by the date set by the relevant prosecution corps or ODPP, and ensure appropriate action is taken to address such failure; and
- (ii) notify or cause to be notified, the outcome of action taken to address such failure, to the relevant prosecution corps or ODPP office.

Officers in charge of prosecution corps, in relation to matters for which they have responsibility for prosecution, are to ensure:

- i) the ex officio or partial brief of evidence is made available to the defence within 14 days of the defence advising the court at a committal callover that;
  - (a) it will be a committal for sentence or
  - (b) the ODPP consents to an ex officio proceeding pursuant to s.23EB: 'Management by clerk of the court of charge pending finalisation of proceeding under ex officio indictment' of the Justices Act;
- (ii) the full brief of evidence is made available to the defence within 35 days of the matter being set for trial and in any event at least 14 days prior to the date set for hearing of the trial, if at a summary callover the defence enters no plea or pleads not guilty;
- (iii) the defence are advised:
  - (a) that the brief of evidence is available for collection no later than the timeframe referred to in (i) or (ii) above; or
  - (b) if it is impracticable to have the brief completed in the timeframes referred to in (i) or (ii) above, that the brief will not be available in relevant timeframe and a date the brief can be expected to be ready for collection;
- (iv) if required by the court, ensure the arresting officer attends court to provide an explanation through the prosecutor to the court in cases where an adjournment of the matter is necessitated because the brief of evidence is late, not done or incomplete; and
- (v) should report all instances of late submissions of briefs of evidence to the relevant district officers or commissioned officers in charge.

When a brief of evidence is received at a prosecution corps, the officer in charge of the prosecution corps is to ensure that:

- (i) the 'status field' in the QPRIME case file is changed to 'BOE received (pending review)';

(ii) depending on the level of completion of the brief of evidence, the ‘status field’ in the QPRIME case file is changed to indicate either ‘BOE received (complete)’ or ‘BOE received (partial)’; and

(iii) prior to the commencement of the trial or hearing a prosecutor:

(a) reads all parts of the brief of evidence; and

(b) checks that the brief of evidence complies with the provisions of the Operational Procedures Manual.

Where the provisions of this chapter have not been complied with, the prosecutor checking the brief of evidence is to take appropriate action to rectify any defects or errors.

### **3.14 Disclosure of information to defence (relevant proceeding)**

#### **3.14.5 Disclosure that must be made on request**

Section 590AJ: ‘Disclosure that must be made on request’ of the Criminal Code provides an obligation on the prosecution to disclose on request to the defendant or lawyer acting for the defendant in a relevant proceeding certain material to ensure the defendant is properly informed of the case against him or her.

The disclosure of material on request to the defendant or lawyer acting for the defendant in a relevant proceeding is subject to legislative limitations outlined in Chapter 62, Chapter division 3: ‘Disclosure by the prosecution’, Chapter subdivision D: ‘Limitations on disclosure’ (s. 590AN to s. 590AQ) of the Criminal Code.

#### **ORDER**

In a ‘relevant proceeding’ a police prosecutor, subject to any legislative limitations, must on request provide the following things to the defendant or lawyer acting for the defendant:

(i) particulars of a matter alleged in the bench charge sheet or complaint containing the charge against the defendant if a proposed witness for the prosecution is, or may be, an ‘affected child’ (see s. 21AC of the *Evidence Act*);

(ii) a copy of the criminal history, excluding spent convictions, of a proposed witness for the prosecution (see ss. 590AJ and 590AD of the Criminal Code);

(iii) a copy or notice of any thing in the possession of the prosecution that may reasonably be considered to be adverse to the reliability or credibility of a proposed witness for the prosecution;

(iv) notice of any thing in the possession of the prosecution that may tend to raise an issue about the competence of a proposed witness for the prosecution to give evidence in the proceeding;

(v) a copy of any statement of any person relevant to the proceeding and in the possession of the prosecution but on which the prosecution does not intend to rely on at the proceeding;

(vi) a copy or notice of any other thing in the possession of the prosecution that is relevant to the proceeding but on which the prosecution does not intend to rely on at the proceeding.

#### **PROCEDURE**

Where a request has been made for a criminal history of a proposed witness for the prosecution, and a police prosecutor identifies there is a criminal history and that spent convictions need to be removed in compliance with ss. 590AJ and 590AD of the Criminal Code, the police prosecutor may request the Release Unit, Police Information Centre, to produce the criminal history, excluding spent convictions.

### **How disclosure on request is to be made**

#### **POLICY**

Where the prosecution is requested to provide a copy of a thing under s. 590AJ(2) of the Criminal Code the police prosecutor should:

- (i) complete the relevant sections of the QP 0543: 'Disclosure on Request for a Relevant Proceeding' form (available from QPS Forms Select);
- (ii) where there is a lawyer acting for the defendant, serve a document on the lawyer advising that the copy of the thing requested is available for collection from a stated place. (Service of the document may be affected in accordance with s. 39: 'Service of documents' of the *Acts Interpretation Act*); or
- (iii) where the defendant is not represented, serve a document on the defendant to the defendant's place of business or residential address last known to the prosecution advising that the copy of the thing requested is available for collection from a stated place. (Service of the document may be effected in accordance with s. 39: 'Service of documents' of the *Acts Interpretation Act*);
- (iv) complete the appropriate sections of the 'Disclosure on Request in a Relevant Proceeding' form; and
- (v) attach a copy of all correspondence to the relevant prosecution file.

#### **PROCEDURE**

Where a police prosecutor is required to serve a document on the defendant or lawyer acting for the defendant advising that a copy of a thing is available for collection from a stated place (see s. 590AM of the Criminal Code), such document is to be in the form of a letter that is substantially in the same format as QP 0546: 'Document advising written notice/copy of thing for a Relevant Proceeding' (available from QPS Forms Select).

#### **POLICY**

Where the prosecution is required to give notice of a thing under s. 590AJ(2) of the Criminal Code the police prosecutor should:

- (i) where there is a lawyer acting for the defendant, give notice to the lawyer in writing using the QP 0543: 'Disclosure on Request for a Relevant Proceeding' (available from QPS Forms Select); or
- (ii) where the defendant is not represented, give notice in writing using the QP 0543: 'Disclosure on Request for a Relevant Proceeding' (available from QPS Forms Select) to the defendant's place of business or residential address last known to the prosecution; and
- (iii) attach a copy of the correspondence to the relevant prosecution file.

Where the prosecution gives notice of a thing under s. 590AJ(2) of the Criminal Code and such thing is not original evidence (i.e. is not a thing that may be tendered as an

exhibit in a relevant proceeding) the police prosecutor should advise the defendant or lawyer acting for the defendant using the QP 0543: 'Disclosure on Request for a Relevant Proceeding' (available from QPS Forms Select) that the thing may be viewed on request at a stated place.

Arresting officers should liaise with the police prosecutor responsible for the matter so as to keep informed of any disclosure made to the defendant or lawyer acting for the defendant. Arresting officers should ensure the victim/witness in a relevant proceeding is kept informed on the progress of the matter.

### **When requested disclosure is to be made**

#### ORDER

Police prosecutors are to provide to a defendant or lawyer acting for the defendant material requested under s. 590AJ(2) of the Criminal Code as soon as practicable but within 14 days after the request is made.

Where the material requested by a defendant or lawyer acting for the defendant is unable to be provided on request as it was not in the possession of the prosecution or it did not exist at the time of the request, the prosecution is to provide the material as soon as practicable after it comes into the possession of the prosecution (see s. 590AL of the Criminal Code).

### **Limitations on disclosure**

#### POLICY

Section 590AC: 'Chapter division does not have particular consequences' of the Criminal Code provides that the prosecution is not required to disclose a thing for a relevant proceeding if such disclosure is unlawful under the Criminal Code or another law (e.g. s. 6: 'Non-disclosure of convictions upon expiration of rehabilitation period' of the *Criminal Law (Rehabilitation of Offenders) Act*).

Section 590AN: 'Limit on disclosure of things accused person already has' of the Criminal Code, provides that the prosecution is not required to give the defendant or lawyer acting for the defendant any thing the defendant or lawyer acting for the defendant already possesses or has already been given by the prosecution.

Sections 590AOA: 'Evidence Act section 93A device statement' of the Criminal Code, provides that the prosecution is not, for a relevant proceeding, required to give the accused person a copy of an *Evidence Act* s. 93A device statement (the statement) other than as required under s. 590AOA of the Criminal Code.

#### PROCEDURE

Refer also to s. 3.14.6: 'Disclosure of sensitive evidence in a relevant proceeding', s. 3.14.7: 'Disclosure of witness contact details in a relevant proceeding', s. 3.14.8: 'Disclosure contrary to the public interest in a relevant proceeding' and s. 3.14.9: 'Disclosure of Evidence Act section 93A device statement in a relevant proceeding' of the Operational Procedures Manual.

### **Administration**

#### POLICY

The contents of this circular will be incorporated into Chapter 3: 'Prosecution Process' of the OPM in due course.

Sections 3.3: 'Definitions', 3.4.8: 'Contact with defence', 3.4.16: 'Supply of particulars, copies of Court Brief (QP9), statements and reports', 3.4.24: 'Ex officio indictment', 3.7.2: 'Documentation at first appearance', 3.7.6: 'Possible outcomes in Magistrates or Childrens Courts, 3.8.2: 'Format of briefs of evidence', 3.8.9: 'Number of copies to be supplied', 3.8.16; 'Delivery of briefs of evidence to prosecutor', and 3.14.5: 'Disclosure that must be made on request' of the OPM is hereby cancelled.

**ORDER**

Officers in charge are to note the contents of this circular and bring them to the notice of all members under their control.

**R E BARNETT  
DEPUTY COMMISSIONER  
(SPECIALIST OPERATIONS)**