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## 3.1 Introduction

The requirements of officers when investigating an offence and identifying the person(s) responsible are dealt with in Chapter 2: 'Investigative Process' of this Manual. After an offender is identified the provisions of this chapter apply.

### 3.1.1 Consider all disposition and diversion options

After an offender is identified for an offence the investigating officer is to be satisfied of the following before taking action in response to the offence:

- (i) an offence has been committed;
- (ii) all elements of the charge(s) can be proven;
- (iii) any relevant defences can be negated; and
- (iv) admissible evidence to substantiate the charge(s) can be presented when necessary.

When deciding what action in response to an offence is appropriate, the investigating officer is to adopt the 'PLAN' approach (Proportionate, Lawful, Accountable, Necessary) to assess whether an action or decision is compatible with human rights (see s. 1.2: 'Human rights and policing' of this Manual).

Before deciding to commence proceedings against a person, the investigating officer is to first consider whether in the circumstances one of the following alternatives would be appropriate:

- (i) take no formal action;
- (ii) administer a caution (see s. 3.2: 'Cautioning adults' of this chapter);
- (iii) refer the offence for a restorative justice conference (see s. 3.3: 'Adult restorative justice conferencing' of this chapter);
- (iv) if the offence is a minor drugs offence and the person is eligible, offer the person an opportunity to participate in a drug diversion assessment program (see s. 2.22: 'Drug Diversion Assessment Program' of this Manual);
- (v) if the person is intoxicated in a public place, take the person to a place of safety (see s. 16.6.3: 'Intoxication' of this Manual);
- (vi) if the offence is an infringement notice offence (see s. 8.3: 'Offences for which infringement notices may be issued' of the Traffic Manual) and a caution is not appropriate, issue an infringement notice; or
- (vii) if another appropriate alternative to commencing a proceeding is available, utilise that alternative.

## 3.2 Cautioning adults

This policy does not extend to minor incidents where an officer would routinely verbally warn a person about general behaviour. It is relevant where an offence has been established, there is sufficient evidence to prove the offence and it is in the public interest for a formal outcome to be recorded in resolving the matter.

For Service policy in respect of cautioning adults for traffic offences, see s. 8.8: 'Verbal cautions and formal warning notices' of the Traffic Manual.

### 3.2.1 Purpose of an adult caution

An adult caution is a formal warning that may be administered by an officer to a person who is aged 18 years and over. Cautioning provides a means of dealing with lower-end, non-habitual offending without commencing a proceeding.

The purpose of adult cautioning is to:

- (i) manage lower-end offending in a manner that positively contributes to behaviour change and reduced recidivism;
- (ii) divert appropriate offenders from the criminal justice system; and
- (iii) reduce the disproportionate use of prosecution resources for minor matters by finalising matters in an efficient and effective manner.

### 3.2.2 Scope of offences

Officers are not to administer an adult caution for indictable offences that cannot be dealt with summarily.

An officer may administer an adult caution to a person for any offence that can be dealt with summarily, except for an offence:

- (i) involving domestic and family violence;
- (ii) involving drink or drug driving;

- (iii) against the *Drugs Misuse Act*;
- (iv) involving a victim, where:
  - (a) an injury to the victim constitutes or is more serious than bodily harm (see s. 1: 'Definitions' of the CC); or
  - (b) there is an outstanding financial loss to the victim because of the offending.

An officer is not to negotiate the payment of compensation or restitution on behalf of a victim.

A victim's consent is not required for an officer to administer an adult caution. In all cases involving a victim, the officer is to inform the victim of the intention to administer a caution and may consider the victim's views in the decision-making process.

### 3.2.3 Eligibility to be cautioned

To be eligible to be cautioned a person must:

- (i) not deny committing the offence; and
- (ii) provide informed consent to being cautioned for the offence.

In deciding whether it is appropriate to administer a caution, an officer should consider any aggravating or mitigating circumstances relevant to the offending behaviour including, but not limited to, the following factors:

- (i) if the person has recently been cautioned for a similar offence;
- (ii) characteristics of the person, such as age, mental health and special needs;
- (iii) seriousness of the offence;
- (iv) the person's willingness to consent to a referral to an available support service;
- (v) the relevance and recency of any criminal history of the person.

Dependent on the circumstances and seriousness of each offence, officers may administer a caution to a person on more than one occasion and in respect of similar offences. The above factors are considerations to guide officers in their decision-making and are not absolute barriers to eligibility for an adult caution.

#### Informed consent

To obtain informed consent an officer is to provide a person with:

- (i) the details of the offence committed; and
- (ii) an explanation of the implications of being cautioned for the offence.

An officer is to inform the person:

- (i) the person does not have to consent to be cautioned and may choose to have the matter dealt with by a court;
- (ii) the caution will be recorded in police records (Not-for-production history) but will not be included in the person's disclosable criminal history;
- (iii) the caution is a formal process and provides an opportunity for the person to consider and address the offending behaviour and avoid entering the criminal justice system;
- (iv) after being cautioned any further offending may result in the person appearing in court; and
- (v) once a caution is administered the matter is finalised.

If a person does not consent to being cautioned for the offence an officer should consider an alternative course of action.

### 3.2.4 Adult caution process

Officers are to:

- (i) investigate an offence in accordance with Chapter 2: 'Investigative Process' of this Manual prior to deciding to administer a caution to a person; and
- (ii) create and complete a QPRIME occurrence for the offence by:
  - (a) creating all necessary charge records against the person;
  - (b) creating a diversion record from the Disposition area of the Offence/Charge window;
  - (c) completing and uploading a QP 1150: 'Notice of Adult Caution' to the occurrence;
  - (d) updating the occurrence status to reflect the administration of a caution.

Before an officer can administer a caution to a person:



- (i) the person must sign the QP 1150; or
- (ii) the person's consent to being cautioned must be digitally recorded.

Where a QP 1150 is completed, officers are to provide the person with a copy.

### 3.2.5 Police referral

Where a support service is available, and it is appropriate in the circumstances of the offending behaviour, an officer should consider making a police referral (see s. 6.3.14: 'Police Referrals' of this Manual).

### 3.2.6 Disposal of property

Property relating to an offence, which is dealt with by way of a caution, is to be disposed of in accordance with Chapter 4: 'Property' of this Manual. Where reasonably practicable, any property is to be returned to the rightful owner and a QPB 32A: 'Field Property Receipt' is to be completed and uploaded to the relevant QPRIME occurrence.

## 3.3 Adult Restorative Justice Conferencing

Formerly referred to as the Criminal Justice Mediation Program, Adult Restorative Justice Conferencing (ARJC) is a restorative justice program for adult offenders and their victims.

A restorative justice conference (RJC) generally involves a face-to-face meeting between an offender and a victim to discuss the impact of the offender's actions and reach agreement in relation to reparation for the harm caused to the victim and/or community by the offence committed by the offender. The RJC provides an opportunity for the offender to take responsibility for the offender's actions, and for the victim to hold the offender accountable in a way that is meaningful for the victim.

Restorative justice approaches conceptualise crime as a violation of another (the victim) which causes harm, rather than a violation of the law to be punished by the State. This violation creates obligations for the person who caused the harm (the offender), including the responsibility to make amends for the harm caused by:

- (i) accepting responsibility for the offender's actions;
- (ii) providing a meaningful apology;
- (iii) other steps, such as the provision of restitution or compensation; and/or
- (iv) completing counselling or other programs.

Restorative justice has unique benefits including increased victim satisfaction, offender responsibility for actions and compliance with outcomes compared with prosecution.

The objectives of restorative justice are:

- (i) supporting victims and enabling them to participate in the resolution process;
- (ii) repairing relationships damaged by crime;
- (iii) denouncing criminal behaviour as unacceptable and reaffirming community values;
- (iv) encouraging offenders to take responsibility for their behaviour;
- (v) identifying restorative, forward-looking outcomes; and
- (vi) reducing recidivism.

Qualified mediators from the Dispute Resolution Branch (DRB) of the Department of Justice and Attorney-General (DJAG) provide ARJC under the *Dispute Resolution Centres Act* for criminal matters before the following Magistrates Courts:

- (i) Brisbane City;
- (ii) Holland Park;
- (iii) Ipswich;
- (iv) Gold Coast;
- (v) Coolangatta;
- (vi) Cleveland;
- (vii) Richlands;
- (viii) Townsville; and
- (ix) Cairns.

ARJC is provided from four offices in Southport, Brisbane, Townsville and Cairns. Additionally, the local Community Justice Groups from Mornington Island (Junkuri Laka) and Aurukun provide restorative justice services.

Matters may be referred to ARJC by:

- (i) investigating officers, as an alternative to commencing proceedings for the offence ('**police referral**'); or
- (ii) police prosecutors, after proceedings for the offence have been commenced ('**prosecutor referral**').

Referrals can also be made pre-sentence after a guilty finding in the Court, and post-sentence for an offender who is serving a term of imprisonment or who is being managed by Queensland Corrective Services in the community.

Further information regarding ARJC and other processes offered by the DRB can be obtained from the DJAG website.

ORDER

Officers and prosecutors are only to refer matters to the DRB or local Community Justice Groups (as relevant). The Service does not have agreements with private mediators or any other entities to provide this service.

### 3.3.1 Suitability of offences and eligibility of individuals for referral to Adult Restorative Justice Conferencing

Officers and prosecutors may refer a matter to Adult Restorative Justice Conferencing (ARJC) when the following criteria are met:

- (i) the offence(s):
  - (a) is an offence which is dealt with summarily or, where appropriate, an indictable offence which cannot be dealt with summarily;
  - (b) does not involve a breach of a domestic violence order and is not otherwise related to a domestic violence application; and
  - (c) can be substantiated by sufficient evidence;
- (ii) the offender:
  - (a) was an adult at the time of the offence;
  - (b) accepts the general circumstances of the matter and expresses a willingness for the matter to be referred for a restorative justice conference (RJC); and
  - (c) is not, at the time of the commission of the offence:
    - the subject of a community-based order;
    - serving a term of imprisonment and is not on parole; or
    - subject to a suspended sentence;
- (iii) the victim expresses a willingness for the matter to be referred for a RJC; and
- (iv) the parties to the RJC, including the victim and offender, are not prohibited from having contact with each other by a court order or otherwise.

Despite the above criteria, the OIC of the relevant police prosecution corps may authorise the referral of a matter to ARJC.

ORDER

Officers and prosecutors are not to refer a matter involving a victim, who is an officer and was in the performance of the officer's duties at the time of the offence, to ARJC.

#### Agreement required for referral

Where the victim or the offender does not indicate a willingness for the matter to be referred for a restorative justice conference (RJC), a police referral or prosecutor referral should not be made. If the offender is subsequently charged, the investigating officer should articulate in the QP9 the victim and/or offender does not support referral of the matter for a RJC.

Where the investigating officer or prosecutor does not support referral of the matter to ARJC, but the victim and/or offender requests the matter be dealt with via a RJC, a member should provide the requesting party with:

- (i) contact details for the DRB, DJAG; and
- (ii) advice contact can be made with the DRB, DJAG, to inquire whether a RJC can be arranged independent of the investigation or proceedings for the offence.

### 3.3.2 Responsibilities for Adult Restorative Justice Conferencing

An officer or prosecutor who refers a matter to Adult Restorative Justice Conferencing (ARJC), Dispute Resolution Branch (DRB), Department of Justice and Attorney-General (DJAG) is not required to attend and participate in the restorative justice conference (RJC). Involvement can be limited to the making of the referral.

#### Police referrals

Where appropriate, investigating officers may refer a matter to ARJC as an alternative to commencing proceedings for the offence. This includes where an adult is arrested for the offence but subsequently released in accordance with s. 377(4): 'Additional case when arrest may be discontinued' of the PPRA.

Shift supervisors and OICs are to support referral to ARJC to facilitate the participation of officers under their control in the police referral of matters for conferencing.

When making a police referral to ARJC, officers are not to commence proceedings in relation to the offence. Proceedings are only to be commenced if advice is received from the DRB, DJAG the matter is not suitable for a RJC or the RJC has not proceeded for some other reason.

Where a proceeding has already been commenced for an offence and the investigating officer considers it may be appropriate for the matter to be referred to ARJC, the officer is to contact the relevant police prosecution corps to request a prosecutor referral be considered.

Investigating officers are to note referral to ARJC may not result in the successful resolution of a matter and the officer may later be required to commence a proceeding and prepare and present a brief of evidence for the matter.

#### Prosecutor referrals

Where a proceeding has already been commenced for an offence, investigating officers are not to refer a matter directly to ARJC. Referral of the matter to ARJC is only to be progressed through the relevant police prosecutions corps and a referral made by a police prosecutor.

Prior to referring a matter to ARJC, prosecutors should consult with the investigating officer about the suitability of the matter for referral.

Where a proceeding has been commenced and an officer is involved in the RJC process, the officer should keep the relevant police prosecutions corps updated with the status of the RJC.

#### Referral procedure

Where a matter is to be referred to ARJC, an officer (police referral) or a prosecutor (prosecutor referral) is to complete a QP 1151: 'Adult Restorative Justice Conference Referral' (available in QPRIME), upload a copy to the relevant QPRIME occurrence and forward a copy to the DRB, DJAG via email.

Where a prosecutor referral is made, prosecutors should seek that the matter be adjourned until the outcome of the RJC, unless the DRB, DJAG advise the matter is unsuitable for referral to ARJC (see s. 88(1B) of the *Justices Act*).

### 3.3.3 Clerk or Magistrate order for referral for restorative justice conferencing after proceedings have been commenced

Where a summons or a notice to appear has been issued, the clerk of the court or a magistrate may order the officer who made the complaint to refer the matter to 'mediation' under the *Dispute Resolution Centres Act* (see s. 53A: 'Power, after summons issued, to order mediation' of the *Justices Act*).

Where such order is made:

- (i) the matter is referred to Adult Restorative Justice Conferencing, Dispute Resolution Branch, Department of Justice and Attorney-General, to be processed as a restorative justice matter; and
- (ii) service of the summons is stayed.

Where an officer receives notice such order has been made, the officer should:

- (i) update the relevant QPRIME occurrence; and
- (ii) advise the relevant police prosecutions corps.

Proceedings may be recommenced if a prescribed 'event' (e.g. the matter is assessed as unsuitable by the DRB) occurs (see s. 53B: 'Further provision for a summons after mediation is ordered' of the *Justices Act*).

Where an officer receives notice the restorative justice conference did not proceed, the officer should consult with the relevant police prosecutions corps to request an application be made to the relevant court for an order to proceed with the summons or notice to appear.

Once a matter is before the court, s. 53A of the *Justices Act* does not apply.

### 3.3.4 Disclosure of information to Adult Restorative Justice Conferencing

Officers and prosecutors who refer matters to Adult Restorative Justice Conferencing may disclose information about the offence to the Dispute Resolution Branch, Department of Justice and Attorney-General.

### 3.3.5 Recommending proceedings where matter cannot proceed through Adult Restorative Justice Conferencing

With the exception of court ordered referrals under s. 53A: 'Power, after summons issued, to order mediation' of the *Justices Act*, if circumstances arise where the Dispute Resolution Branch (DRB), Department of Justice and Attorney-General (DJAG) advise:

- (i) the matter is not suitable for a restorative justice conference (RJC);
- (ii) either party has withdrawn consent for participating in a RJC;
- (iii) the RJC has not resulted in an agreement between the parties; or
- (iv) the offender has not complied with undertakings in the Restorative Outcome Plan,

the investigating officer is to promptly consider if:

- (i) where proceedings have not been commenced:
  - (a) another diversion option would be appropriate; or
  - (b) a proceeding should be commenced; or
- (ii) where proceedings have been commenced, the proceeding should be recommenced and continued.

An officer or prosecutor may withdraw a referral to Adult Restorative Justice Conferencing in exceptional circumstances. Where this occurs the officer or prosecutor is to advise the DRB, DJAG the referral is withdrawn, and the Service does not support and will not be involved in the RJC. Where appropriate, an explanation for this determination should be provided.

Any concerns with the conduct of a RJC should be communicated to the investigating officer's OIC or the referring prosecutor's OIC.

### 3.3.6 Finalisation of an Adult Restorative Justice Conferencing referral

The completion of a restorative justice conference (RJC), including finalisation of all terms of the agreement, should result in the discontinuation of the investigation or prosecution of a matter. Continuation of an investigation or prosecution despite a successful RJC outcome may undermine the value of Adult Restorative Justice Conferencing.

Upon being notified by the Dispute Resolution Branch, Department of Justice and Attorney-General the restorative justice conference (RJC) has been successful, the investigating officer or prosecutor is to finalise the matter in the public interest (see s. 3.4.3: 'Factors to consider when deciding to prosecute' of this chapter).

Continuing the investigation or prosecution of the matter despite a successful restorative justice conference should only occur if there are exceptional circumstances.

If it is determined an investigation or prosecution should proceed despite the completion of a RJC and the successful fulfillment of the terms of the Restorative Outcome Plan, the participation of the defendant may be submitted as mitigating factors at the sentence hearing.

Where the RJC is successful and no exceptional circumstances exist that would justify the ongoing investigation or prosecution of the matter, in the case of a:

- (i) police referral, the investigating officer should finalise the matter; or
- (ii) prosecutor referral, a prosecutor should seek approval to have the charge(s) withdrawn (see s. 3.4.4: 'Withdrawal of charges' of this chapter).

## 3.4 General prosecution policy

### 3.4.1 Introduction

Service policy on when to commence proceedings against offenders is drawn from the Office of the Director of Public Prosecutions (State) (ODPP), Director's Guidelines ('**DPP Guidelines**') (see Guidelines 4: 'The decision to prosecute' and 5: 'The decision to prosecute particular cases' of the DPP Guidelines).

The decision to prosecute an offender is based on a two-tiered test:

- (i) is there sufficient evidence? and
- (ii) does the public interest require a prosecution?

This decision should be considered on a case by case basis as not all offences brought to the attention of the Service will be prosecuted. Where a minor offence is detected, and the offender is an otherwise law-abiding citizen, prosecution for the offence may be counterproductive. Diversionary alternatives, such as restorative justice process and cautioning, may be appropriate in the circumstances and may prevent a disproportionate use of prosecution resources (see ss. 3.3: 'Adult Restorative Justice Conferencing', 3.2: 'Cautioning adults' and 5.5: 'Cautioning process' of this Manual).

### 3.4.2 The decision to institute proceedings

The decision to commence proceedings against a person for an offence initially rests with the arresting officer. Generally, an officer may commence proceedings without seeking further advice or approval, upon being satisfied on reasonable grounds:

- (i) an offence has been committed;
- (ii) the person against whom prosecution is proposed has committed that offence;
- (iii) a statutory authority to prosecute for that offence exists, including any authority referred to under s. 3.5.1: 'Responsibility to establish authority to prosecute' of this chapter;
- (iv) any statutory limitation on proceedings has not expired; and
- (v) the elements of the intended charge can be proven.

Where investigating officers are satisfied an offence can be proven but it may not be in the public interest to commence proceedings, they are to update the relevant QPRIME occurrence by submitting an Occurrence Enquiry Log Entry, and include particulars of the offending conduct, results of any investigation and the reasons why proceedings should not be commenced. Officers are to submit a QPRIME task to their OIC seeking advice.

Arresting officers should select an offence which accurately reflects the nature and extent of the criminal behaviour under investigation and which is supported by the admissible evidence. Where the circumstances of a particular case indicate two or more alternative charges may be made out, the offence carrying the greater penalty should be preferred, subject to the Director of Public Prosecutions (State) Guidelines. Charges should not be laid with the intention of providing scope, for subsequent bargaining.

### 3.4.3 Factors to consider when deciding to prosecute

#### Sufficiency of Evidence

The primary test for the decision to prosecute is the 'sufficiency of evidence' test. This test will be satisfied if there is sufficient admissible evidence to prove the charge against the defendant. A prima facie case is essential but is not enough. There must be a reasonable prospect of the defendant being found guilty of the offence. A detailed evaluation of how strong the case will be when presented in court should be undertaken as part of this test.

In evaluating the sufficiency of evidence, it is necessary to consider all aspects of the evidence to be presented, including:

- (i) admissibility of evidence;
- (ii) reliability of evidence, including identification;
- (iii) possible defences;
- (iv) the extent of any contradictory evidence;
- (v) competency of witnesses;
- (vi) compellability of witnesses;
- (vii) credibility of witnesses;
- (viii) availability of witnesses;
- (ix) whether witnesses will be hostile, adverse, or cooperative; and
- (x) where the Court Brief (QP9) or Brief of Evidence is not provided to the relevant prosecution corps in the required time frame,

(see Guideline 4: 'The decision to prosecute' subsection (i): 'Sufficient evidence' of the Director of Public Prosecutions (State) Guidelines (DPPG)).

Before charging a person with an offence, the investigating officer is to ensure there is sufficient admissible evidence to prove the charge to the requisite standard. The admissible evidence must be clearly articulated in the QP9 to enable a prosecutor to deal effectively with the matter, including case conferencing, at the first appearance (see s. 3.7.2: 'Documentation at first appearance' of this chapter).

## Public Interest

Once the sufficiency of evidence test has been satisfied, the next test to be applied is the 'public interest'. This test involves determining whether, in light of the facts and the surrounding circumstances of the case, the public interest will be served in pursuing a prosecution.

The factors relevant to whether the public interest requires a prosecution will vary. In most cases there will be public interest factors supporting a prosecution and competing public interest factors supporting a decision not to prosecute. Generally, the more serious the offence the more likely the public interest will require a prosecution. The proper decision in most cases will be to proceed with the prosecution if there is sufficient evidence. Mitigating factors can be put to the court at sentence.

Factors which arise for consideration in determining whether the public interest requires a prosecution include:

- (i) the seriousness or, conversely, the triviality of the alleged offence or it is of a 'technical' nature only;
- (ii) any mitigating or aggravating circumstances;
- (iii) the youth, advanced age, intelligence, physical health, mental health or special infirmity of the alleged offender, a witness or a victim;
- (iv) the alleged offender's antecedents and background, including culture and ability to understand the English language;
- (v) the degree of culpability of the alleged offender in connection with the offence;
- (vi) whether the prosecution would be perceived as counter-productive to the interests of justice;
- (vii) the availability and efficacy of any alternatives to prosecution (including a restorative justice process)
- (viii) the prevalence of the alleged offence and the need for deterrence either personal or general;
- (ix) whether or not the alleged offence is of minimal public concern;
- (x) any entitlement or liability of the victim or other person or body to criminal compensation, reparation or forfeiture, if prosecution action is taken;
- (xi) the attitude of the victim of the alleged offence to a prosecution with regard to the seriousness of the alleged offence and whether the complainant's change of attitude has been activated by fear or intimidation;
- (xii) the cost of the prosecution relative to the seriousness of the alleged offence;
- (xiii) whether the alleged offender is willing to cooperate in the investigation or prosecution of others, or the extent to which the alleged offender has done so, subject to the DPPG, particularly Guideline 35: 'Immunities';
- (xiv) the necessity to maintain public confidence in such institutions as the Parliament and the courts;
- (xv) the effect on public order and morale;
- (xvi) pending the outcome of any other prosecution from the same circumstances (including in a civil jurisdiction);
- (xvii) whether the prosecution for the class or type of offence has been discouraged by the courts in the course of judicial comment;
- (xviii) whether the prosecution will result in hardship to any witness, particularly children; and
- (xix) vexatious, oppressive or malicious complaints.

(See Guideline 4: 'The decision to prosecute' subsection (ii): 'Public Interest Criteria' of the DPPG).

## Impartiality

### ORDER

When officers are making a decision to prosecute they are not to be influenced by matters such as:

- (i) race, religion, sex, national origin or political views;
- (ii) personal feelings concerning the offender or the victim;
- (iii) possible political advantage or disadvantage to the government or any political group or party; or
- (iv) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution,

(See Guideline 4(iii): 'Impartiality' of the DPPG).

### 3.4.4 Withdrawal of charges

Unless indicated otherwise, this section does not apply when action is taken under s. 3.16: 'Case conferencing' of this chapter.

## ORDER

When an officer determines the sufficiency of evidence test or the public interest test is no longer satisfied, the officer is to immediately complete:

- (i) a QP 0626: 'Request for authority to withdraw charges' in the relevant QPRIME case file and submit to the member's OIC; and
- (ii) a QPRIME 'For your information' task from the relevant case file via the member's OIC to the relevant prosecution corps.

Prior to withdrawing a charge, the victim is to be consulted whenever it is reasonably practicable (see s. 6B: 'Charter of victims' rights' of the *Victims of Crime Assistance Act*).

Officers are to consider s. 3.4.3: 'Factors to consider when deciding to prosecute' of this chapter (sufficiency of evidence test and the public interest test) when determining whether a prosecution should proceed.

The following officers have authority to approve the withdrawal of a charge:

- (i) a commissioned officer or senior sergeant:
  - (a) supervising the station or establishment to which the arresting officer is attached;
  - (b) supervising the police prosecution corps responsible for the prosecution of the particular charge (includes commissioned officers and senior sergeants attached to the Prosecution Services, Legal Division); and
  - (c) performing the role of district or command brief manager;
- (ii) a detective inspector or detective senior sergeant, operations leader, CIC exercising supervision over the work group responsible for the particular charge;
- (iii) where a defendant is not legally represented, and it is apparent a prosecution will not be successful having regard to the sufficiency of evidence test, authorised officers appointed under s. 3.16 of this chapter may approve the withdrawal or the offering of no evidence in relation to a charge;
- (iv) in the case of traffic infringement notices see s. 8.7: 'Waiving and cancellation of infringement notices' of the TM;
- (v) in the case of camera detected offences, the OIC, Road Safety Camera Office, Road Policing and Regional Support Command; and
- (vi) in the case of any other infringement notice (e.g. Marine Infringement Notice), whether or not that infringement notice has proceeded to SPER, the administering authority.

## ORDER

The officer in any of (i) to (iii) above authorising the withdrawal of a charge is to ensure the relevant QPRIME occurrence is amended recording the grounds for withdrawing the charge.

In the case of a withdrawal of a summons resulting from an infringement notice where a prosecutor is not involved, the officer approving the withdrawal of the summons is to:

- (i) arrange the necessary notifications to be made to the relevant court; and
- (ii) note the time, date and method of communicating such advice on the relevant prosecution file.

Where a type 1 or type 2 vehicle related offence is withdrawn the relevant flags are to be cancelled (see s. 16.18: 'Infringement notice or charges withdrawn or dismissed' of the TM).

A member of the Service performing prosecution duties, who receives authorisation to withdraw a charge, or who intends to withdraw a charge is to inform the defendant or their legal representative of the prosecution's intention to withdraw the matter at the earliest practicable time. The member is to note the time, date and method of communicating the advice on the relevant prosecution file.

A member of the Service performing prosecution duties does not require authorisation to amend a charge.

### 3.4.5 Director of Public Prosecutions (State) guidelines

Section 11: 'Powers of Director' of the *Director of Public Prosecutions Act* empowers the Director of Public Prosecutions (State) (DPP) to issue guidelines to the Commissioner in respect of:

- (i) prosecutions for particular offences; and
- (ii) offences or classes of offences to be referred to the DPP for the institution and conduct of proceedings.

The Director of Public Prosecutions (State) Guidelines (DPPG) should be complied with.

Members who have identified significant operational matters related to the DPPG or the standards of communication and assistance between the two organisations, should attempt to resolve those issues at a local level. Where such

attempts have not resolved the issue, members should refer the matter through their chain of command to their district officer or branch manager for consideration and referral to the ODPP Interdepartmental Liaison Committee via the Superintendent, Prosecution Services, Legal Division.

### 3.4.6 Swearing oaths and making affirmations

As part of the investigative and prosecution process, officers are regularly required to swear an oath or make an affirmation attesting to the truth of some matter. Section 5: 'Affirmation in lieu of Oath' of the *Oaths Act* allows officers, where appropriate, to make an affirmation rather than swear an oath.

### 3.4.7 Assisting court staff

Section 308: 'Powers of proper officer of a court' of the *Corrective Services Act* empowers the proper officer of a court to require the Commissioner to provide officers to assist in the safe custody and welfare of any prisoner of the court.

ORDER

An officer who receives a lawful request from any court for assistance in the safe custody and welfare of any prisoner before the court, is to provide assistance or arrange for another officer or officers to provide the assistance.

#### Assisting bailiffs to protect juries

Where a bailiff of the district or supreme court makes a reasonable request of a district officer for the provision of an officer to assist in protecting a jury during a trial, responsibility rests with the district officer to arrange for the attendance of an officer as required during the trial.

Staff members, watchhouse officers and police liaison officers are not to guard a jury.

An officer assigned to assist a bailiff with jury protection duties during a criminal trial should cooperate with the bailiff and the relevant court by assisting where lawful requests are made by the bailiff.

See also s. 16: 'Helping Public Officials exercise powers under other Acts' of the PPRA and s. 13.3: 'Public officials' of this Manual.

### 3.4.8 Deleted

### 3.4.9 Responsibility for the prosecution of charges

The responsibility to prosecute charges rests essentially with police prosecutors, although the ODPP is empowered to prosecute any charge. If an external prosecutor is used in summary prosecutions or committal proceedings, the Service will be responsible for the external prosecutor's fees and travel expenses.

Requests for the services of an external prosecutor are to be made to the Superintendent, Prosecution Services, Legal Division.

### 3.4.10 Drink driving offences

Persons apprehended for drink driving offences involving an alcohol concentration reading of equal to or less than 20 milligrams of alcohol in 100 millilitres of blood (0.02%) or 0.02 grams of alcohol in 210 litres of breath (0.02g/210L) should not be prosecuted.

### 3.4.11 Legal opinions

Legal opinions and advice are to be sought from the appropriate subject matter expert within Legal Division (LD). Generally, advice regarding operational matters is supplied by Operational Legal Advice, Prosecution Services, LD in accordance with s. 1.13: 'Operational Legal Advice' of this Manual.

Requests for advice from sources outside of LD including the Crime and Corruption Commission, Crown Law, ODPP or independent counsel should be made through the chain of command to QPS Legal Unit, Legal Services, LD.

When submitting requests for legal advice ensure the following issues are addressed:

- (i) all relevant documentation is included;
- (ii) requests are forwarded expeditiously, especially for court processes; and
- (iii) matters of privilege are clearly expressed and include reasons why privilege is claimed.

Additionally, the relevant provisions of Guideline 26: 'Advice to police' of the DPP Guidelines are to be complied with where the advice sought from the ODPP relates to the sufficiency of evidence and/or the appropriateness of charging an offender.

### 3.4.12 Drug exhibits

Officers are to comply with ss. 703-713: 'Dealing with controlled drugs, dangerous drugs etc.' of the PPRA.



Photographs are to be taken of drug matter and tendered as secondary evidence in court proceedings (see s. 4.2.6: 'Retention of exhibits' of this Manual).

ORDER

When a certificate of analysis under the DMA is required, prosecutors are to forward a task to the arresting officer advising a certificate of analysis under the DMA is required.

There are two types of analyst's certificates:

- (i) a quantitative certificate, showing the drug identity, weight and purity (necessary to prove the element of dangerous drug); and
- (ii) a qualitative certificate (known as a 'shop front' certificate and necessary to show only a dangerous drug was detected or absent).

Prosecutors are to indicate in the task which type of certificate is required.

Arresting officers should, where practicable, personally deliver all things requiring analysis to Forensic Chemistry, Queensland Health Forensic and Scientific Services to avoid calling multiple witnesses to prove continuity of possession.

Where personal delivery is not practicable due to geographical or operational considerations, arresting officers should ensure a QP 0694: 'Running Statement' and QP 0684: 'Evidentiary Certificate' are completed. Arresting officers should ensure the completed QP 0694 and QP 0684 are delivered to the relevant prosecution corps with the full brief of evidence no later than the date set by the relevant prosecutor (see s. 4.2.7: 'Continuity of possession' of this Manual).

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

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

Police prosecutors are to provide a copy of the QP9 to the defendant or legal representative in relation to all matters for mention before a magistrates court. Prosecutors should, upon request, provide a copy of the QP9 to:

- (i) the defendant's legal representative within a reasonable time; or
- (ii) an unrepresented defendant, by personally handing to the defendant at an appropriate time before the defendant's initial appearance.

Where practicable, prior to providing a copy of the QP9 to an unrepresented defendant or their legal representative, the prosecutor receiving the request should check the relevant case file to ensure that the QP9 has not already been disclosed via a portal.

Where a QP9 has been provided by a prosecutor to a defendant or to their legal representative, or when a prosecutor becomes aware that a QP9 has been disclosed via a portal, the relevant prosecution file is to be noted.

ORDER

Where a QP9 is to be disclosed via a manual disclosure process, prosecutors are to ensure:

- (i) a person's personal particulars (e.g. addresses and contact details of complainants and witnesses) are not provided to the defence, unless it relates to a material particular of the offence (see s. 3.14.7: 'Disclosure of witness contact details in a relevant proceeding' of this chapter); and
- (ii) any notes to prosecutors from officers concerning operations and investigations or of a confidential nature are not disclosed to the defence.

#### **Supply of particulars**

Prosecutors, upon request, should provide particulars of charges to the defence from the relevant brief of evidence.

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

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 chapter.

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

If a copy of statements or documentary exhibits is requested by defence and it is to be provided by a police prosecutor during case conferencing of a matter before the magistrates court, the material is to be provided to defence as soon as practicable but within 10 days of the request. If the material cannot be provided within 10 days, the prosecutor is to advise the defence and provide the material as soon as possible (see s. 3.14: 'Disclosure of information to defence (relevant proceeding)' of this chapter).

In all cases, arresting officers are to provide the relevant prosecutor or ODPP officer with a copy of statements or documentary exhibits requested by the prosecutor, as soon as practicable but within the time specified by the prosecutor or the ODPP officer.

ORDER

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

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

Unless otherwise required by Service policy, legislation, or approval is granted from a prosecutor or Crown prosecutor, officers are not to communicate directly with legal representatives once charges are before the court.

#### 3.4.14 Jurisdiction for Commonwealth offences

ORDER

Prosecutors are to elect summary jurisdiction whenever a Commonwealth statute allows.

#### 3.4.15 Supply of defendant's criminal or traffic history

Prior to manual disclosure of a defendant's criminal history, prosecutors should, where practicable, check the relevant QPRIME case file to ensure the disclosure has not already been made via a portal.

ORDER

For summary proceedings, and where a defendant's criminal history has not been disclosed via a portal, prosecutors are to manually disclose a copy of the defendant's criminal, traffic history and non TORUM history to the defence when requested.

For the disclosure of a defendant's previous criminal history in a relevant proceeding, see s. 3.14.4: 'Mandatory disclosure' of this chapter.

#### 3.4.16 Disclosure to courts of closed convictions

Under the provisions of the *Criminal Law (Rehabilitation of Offenders) Act* a prosecutor can disclose to a sentencing justice convictions in relation to which the rehabilitation period has elapsed and which have not been revived.

ORDER

Members are not to disclose the contents of offender history reports to any person except:

- (i) other members as part of the performance of their employment;
- (ii) where permissible and a relevant requirement exists; or
- (iii) prosecutors performing court duty bring to the notice of the presiding justice all convictions contained in the defendant's offender history report prior to sentencing.

#### 3.4.17 Submissions to be made by police prosecutors on the sentencing process

Prosecutors are to assist courts in the sentencing process by making appropriate submissions as to penalty. The prosecutor should address:

- (i) the seriousness of the offence;
- (ii) the circumstances under which the offence was committed;
- (iii) any circumstance(s) of aggravation;
- (iv) compensation/restitution;
- (v) the antecedents of the defendant;
- (vi) the antecedents of the complainant/victim;
- (vii) any previous convictions of the defendant;
- (viii) any remorse, sorrow or lack thereof shown by the defendant;
- (ix) comparative sentences if known;
- (x) any submission or application on sentence as required by Guideline 47: 'Sentence' of the Director of Public Prosecutions (State) Guidelines;
- (xi) whether a banning order should be imposed when the offence involved actual, attempted or threatened violence towards a person or property and occurred within, or in a public place in the vicinity of, a licensed premises (see s. 13.7.6: 'Court-issued banning orders' of this Manual); and
- (xii) whether a discretionary control order should be made when the prescribed circumstances exist (see s. 2.31.7: 'Control orders' of this Manual).

Prosecutors should not make concessions with the defendant or the defendant's legal representative for the imposition of a lenient sentence.

If the prosecutor is aware the court has imposed an incorrect penalty due to some statutory provision, the prosecutor should inform the court.

### **3.4.18 Supply of information where court outcome requires action by Queensland Corrective Services or Youth Justice Services**

Queensland Corrective Services (QCS) and Youth Justice Services (YJS) are supplied with copies of the appropriate court brief (QP9) and offender history report(s), to assist with security assessments of persons in custody and the risks and needs assessment of persons subject to other orders.

ORDER

The prosecutor is to deliver a copy of the relevant:

- (i) QP9; and
- (ii) Offender history report (Queensland court outcomes) (if any); and
- (iii) interstate criminal history (if any, where it has been obtained),

when a person is

(i) to be held in custody:

- (a) being an adult and sentenced to a term of imprisonment (unless wholly suspended);
- (b) being a child and sentenced to a period of detention; or
- (c) is remanded into custody for the first-time pending trial or sentence,

to the watchhouse manager prior to terminating duty. The watchhouse manager is to deliver the document(s) to the:

- (a) QCS; or
- (b) YJS,

representative taking custody of the person; or

(ii) released and:

- (a) being an adult subject to an intensive correction order;
- (b) being a child subject to an immediate release order;
- (c) ordered to perform community service;
- (d) placed on a probation order; or
- (e) subject to a pre-sentence report,

the representative present in court from:

- (a) QCS; or
- (b) YJS.

If the representative is not present in court and a copy of the document(s) cannot be personally delivered within two working days, the information is to be forwarded by email to the relevant local office (see SMCD).

If QCS or YJS request a copy of the QP9, an offender history report and/or an interstate criminal history, it may be supplied by:

- (i) a prosecutor;
- (ii) the OIC of a station or establishment; or
- (iii) the Manager, Police Information Centre.

See s. 13.5.6: 'Supply of information impacting on the security classification, protection or security of prisoners to Queensland Corrective Services' of this Manual for the provision of information impacting on the security classification, protection or security of prisoners.

Where a person meets the criteria of this section and s. 3.4.36: 'Notification of Chief Executive, Queensland Corrective Services, regarding committal, conviction, etc. of relevant person' of this chapter, both sections will need to be complied with, as the information is required by two different agencies.

### 3.4.19 Charges against prisoners

When it is proposed to prefer charges against a prisoner detained in a corrective services facility, wherever possible, officers are to:

- (i) ensure any such charges are preferred as soon as practicable and before the prisoner is released;
- (ii) commence proceedings by way of a notice to appear (see s. 3.5.3: 'Proceedings by way of notice to appear' of this chapter); and
- (iii) ensure the appearance date of the notice to appear coincides with the date of the first of any other court appearances the prisoner may have.

Where proceedings are to be commenced for an offence by way of a notice to appear against a child detained in a detention centre, officers are to refer to and comply with the procedures in s. 5.9: 'Commencing proceedings against a child' of this Manual.

### 3.4.20 Recording of court results

Court results entered on a QP9 may need to be interpreted and recorded by the Police Information Centre (PIC). Results must therefore be written legibly to ensure Offender History Reports and Traffic History Reports are updated accurately, see Appendix 3.13: 'Recording of court results' of this chapter.

Where officers or prosecutors identify an error with an entry in a person's Offender History Report, the member is to advise the PIC via an email [PIC Offender Histories] with sufficient information for the specific entry to be readily identified.

### 3.4.21 Ex officio indictment

An ex officio indictment may be considered by the ODPP, upon receipt of a written request from the legal representative of an accused person (the defence (see Guideline 11: 'Ex-officio indictments' of the Director of Public Prosecutions (State) Guidelines (DPPG)). The ODPP will not entertain an ex officio request from an accused person who is not legally represented.

The ODPP will notify investigating police and the responsible prosecutor of the ex officio indictment.

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 ODPP; or
- (ii) a matter is adjourned before a magistrates court to an ex officio mention date. In such cases the prosecutor or ODPP prosecutor (in accordance with their policy) involved should notify the arresting officer to forward the relevant information, as outlined below, to the ODPP. For 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.

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.

Upon receiving advice an ex officio indictment will be presented:

- (i) the OIC of the prosecution corps handling the matter is to immediately forward a copy of the QP9 to the relevant ODPP and update the relevant QPRIME case file accordingly. The prosecutor concerned is to retain the original QP9 for further appropriate action;
- (ii) the arresting officer, in addition to complying with the provisions of s. 3.7.2: 'Documentation at first appearance' of this chapter, is to:
  - (a) compile an ex officio or partial brief of evidence (see Guideline 12: 'Ex-officio sentences' of the DPPG, for a list of material required for an ex-officio brief);
  - (b) attach to the ex officio or partial brief:
    - the complainant's name and address;
    - the amount of compensation/restitution requested (see s. 3.7.3: 'Restitution/compensation' and Appendix 3.1: 'Factors for consideration in restitution/compensation' of this chapter);
    - the up to date offender/traffic history of the defendant;
    - copies of notices to appear, summonses and/or bench charge sheets, in chronological order;

- obtained victim impact statements;
- if there are multiple or complicated charges, where appropriate, a schedule of restitution/compensation requested (see Appendix 3.5: 'Schedule for restitution/compensation' of this chapter); and
- if there are co-offenders for any charges, a list containing the:
  - (i) names of all co-offenders;
  - (ii) charges each co-offender has been charged with;
  - (iii) amount of compensation/restitution sought from each offender; and
  - (iv) 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 within 14 days of being notified the matter is to proceed by way of ex-officio indictment; and

(iii) the relevant district officer or command equivalent is to 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.

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 operative, the following are to be included in the ex officio or partial brief:

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

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) directly. All requested additional information, is to be delivered to the ODPP as soon as practicable, and no later than 14 days from the original request. 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, the arresting officer;
- (ii) where there is more than one arresting officer from the same station/establishment, the senior arresting officer;
- (iii) where the arresting officer is on leave, has resigned, or is suspended etc., the arresting officer's OIC 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 OIC 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 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 set down for a committal hearing on the next available date.

ORDER

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

### 3.4.22 Conspiracy and other offences requiring the consent of the Attorney-General to prosecute

The CC provides offences for which a prosecution shall not be instituted without the Attorney-General's (AG) consent. These offences are:

- (i) s. 54A: 'Demands with menaces upon agencies of government';
- (ii) s. 131: 'Conspiracy to bring false accusation';
- (iii) s. 132: 'Conspiring to defeat justice';
- (iv) s. 541: 'Conspiracy to commit crime';

(v) s. 542: 'Conspiracy to commit other offences'; and

(vi) s. 543: 'Other conspiracies'.

Before providing consent, the AG requires the ODPP to assess the referred briefs of evidence.

ORDER

Prior to preferring a charge for which the AG consent is required, investigating officers are to:

- (i) fully investigate the matter;
- (ii) submit the completed brief of evidence to a brief checker for checking; and
- (iii) submit the brief of evidence and covering report to their OIC.

OIC are to forward the file, through the chain of command, to the Superintendent, Prosecution Services, Legal Division, who is to forward the file to the ODPP for assessment and approval where appropriate.

### 3.4.23 Notification of court results

#### Magistrates Courts

At the conclusion of most magistrates court proceedings, the results are transmitted from the DJAG QWIC information system via ETCR to QPRIME. More complex criminal matters require Police Information Centre (PIC) staff to manually enter information obtained from finalised QP9 into QPRIME.

ORDER

The OIC of police prosecutions corps (PPC) and prosecutors at stations where there is not a PPC, are to ensure the QP9 and recorded results for the following matters:

- (i) re-hearings and re-openings;
- (ii) Queensland state offences commenced by the Australian Federal Police;
- (iii) criminal matters which received a traffic licence disqualification;
- (iv) substituted charges; and
- (v) pre-QPRIME charges,

are forwarded to the Manager, PIC as soon as reasonably practicable, but within 2 working days of the date of finalisation.

#### Superior Courts

At the conclusion of superior court proceedings, superior court staff forward a Verdict and Judgment Record to the PIC for the purpose of updating offender histories.

ORDER

At the conclusion of superior court proceedings, the Superior Court Liaison Officer (or where there is no Superior Court Liaison Officer, the OIC of the station or establishment, where the superior court sits) is to return the full brief of evidence to the arresting officer. The brief of evidence is not to be forwarded to the Manager, PIC.

Exhibits are to be dealt with according to the provisions of s. 4.6: 'Disposal of property' of this Manual. Electronic recordings are to be dealt with according to the provisions of the DERIE Manual.

### 3.4.24 Members not to act as orderlies in civil proceedings

OIC who receive requests to provide officers to act as orderlies at civil proceedings of magistrates courts should not accede to such requests under normal court circumstances.

Where there are extraordinary circumstances which might justify the presence of an officer at civil proceedings of a magistrates court, the OIC receiving the request should refer the matter to the RDO or DDO for determination.

### 3.4.25 Advice to defendants of possible penalties

Officers who receive requests from defendants relating to possible penalties should only advise those defendants of the penalty provided by the relevant legislation. Officers should not comment on a specific penalty which may be incurred.

### 3.4.26 Prosecution of offences on behalf of Department of Transport and Main Roads

In circumstances where prosecutors from the Department of Transport and Main Roads (DTMR) are not available to appear on call over/first appearance matters initiated by members of DTMR, police prosecutors should appear on behalf of the DTMR. Police prosecutors should deal with all pleas of guilty, adjournments and matters to be listed for summary trial on behalf of the DTMR. Police prosecutors should not appear on the hearing of appeal matters or summary trials on behalf of the DTMR.

Police prosecutors should ensure the DTMR is immediately advised of trial dates and completed files with appropriate notations are returned to the DTMR within two working days.

### 3.4.27 Secret Commissions

A prosecution for an offence under Chapter 42A: 'Secret Commissions' of the CC will not commence without the consent of a crown law officer (see s. 442M(3): 'Custom of itself no defence' of the CC).

Guideline 14: 'Charges requiring Director's consent' subsection (ii): 'Chapter 42A Secret Commissions' of the Director of Public Prosecutions (State) (DPP) Guidelines provides the circumstances where a crown law officer will not give consent to prosecute an offence under Chapter 42A of the CC.

Officers proposing to commence a prosecution for an offence against Chapter 42A of the CC should submit a full brief of evidence with a covering report through the chain of command to the OIC, Prosecution Services, Legal Division, who should consider all the available evidence relating to the alleged offence and, where appropriate, refer the matter to the ODPP with a request for the consent of a crown law officer in accordance with s. 442M(3) of the CC to prosecute the offence. This request should be forwarded through the Executive Director, Legal Division to the Deputy Commissioner (Specialist Operations).

### 3.4.28 Notification of Queensland College of Teachers regarding an approved teacher

#### Notice to be given to the Queensland College of Teachers (QCT) about the progress of a prosecution

The prosecutor responsible for prosecuting an indictable offence against a person who:

- (i) is an approved teacher; or
- (ii) was an approved teacher at the time the offence is alleged to have been committed by the person,

is to notify the Director, Queensland College of Teachers (DQCT) within 7 days when the:

- (i) person was committed for trial;
- (ii) person was summarily convicted (whether or not a conviction is recorded);
- (iii) person is committed to stand trial but the district court directs the prosecution back to the magistrate court for completion;
- (iv) prosecution process has ended, whether as a result of an acquittal, a mistrial, the withdrawal of charges, no evidence being offered or, in some other way.

(see s. 80: 'Requirement for prosecuting authority to notify college about committal, conviction etc.' of the *Education (Queensland College of Teachers) Act* (EQCT)).

Where a matter has been finalised in the district court, the DPP (State) is responsible for notifying the DQCT of the outcome.

To assist in determining whether a person is an approved teacher, officers can search the electronic database at the QCT Internet page. If it is determined the person was an approved teacher, a notation should be made in the facts of the QP9 and the prosecutor is to forward a notification letter to the DQCT (see Appendix 3.10: 'Notification under s. 80 of the EQCT' of this chapter).

Prosecutors are to ensure copies of any correspondence or reports forwarded to and received from the DQCT are attached to the prosecutions copy of the QP9.

See also s. 7.8: 'Allegations of physical/sexual harm committed against a child which may amount to corrupt conduct by Government employees' of this Manual.

#### Application for information concerning a person's suitability to teach in a college

If a college becomes aware of an applicant seeking registration or permission to teach, being charged or convicted of an offence, the college may seek information from the Commissioner about the suitability of the applicant (see s. 15AA: 'Obtaining other information for commissioner of police' of the EQCT).

When a member receives a request for information concerning the suitability of an applicant seeking registration or permission to teach, the member should forward the request to the Police Information Centre, Information Management Services.

### 3.4.29 Notification of Office of Fair Trading regarding Debt Collectors (Field Agents and Collection Agents) Act and Security Providers Act

#### Debt Collectors (Field Agents and Collection Agents) Act

Holders of a licence or registration certificate under the *Debt Collectors (Field Agents and Collection Agents) Act* (DC(FACA)) are authorised to perform the following activities:

- (i) a debt collection activity;

- (ii) a repossession activity;
- (iii) a process serving activity (serving a writ, claim, application, summons or other process).

(See ss. 14: 'What a licence authorises' and 18: 'What a registration certificate authorises' of the DC(FACA)).

Under s. 68: 'Immediate cancellation' of the DC(FACA) the Office of Fair Trading (OFT) should cancel a licence held under the Act, for a number of reasons, including where the licensee is convicted of a serious offence.

Under s. 97: 'Immediate cancellation' of the DC(FACA) the OFT should cancel a registration certificate held by a subagent who is registered under the Act, if the subagent is convicted of a serious offence.

A serious offence is defined in Schedule 2: 'Dictionary' of the DC(FACA).

When an investigating officer believes, on reasonable grounds, a person against whom a prosecution has been commenced for a serious offence as defined in Schedule 2 of the DC(FACA) and the person is licensed or registered under the Act, the officer is to include relevant information in the 'Summary of Facts' of the QP9.

The prosecutor responsible for the prosecution relating to the person concerned is to ensure the OFT (see SMCD) is advised, upon a finding of guilt against the person for a serious offence.

### Security Providers Act

Section 4: 'Who is a Security Provider' of the *Security Providers Act* (SPA) states a security provider is a:

- (i) body guard
- (ii) crowd controller;
- (iii) private investigator;
- (iv) security adviser
- (v) security equipment installer
- (vi) security officer; or
- (vii) security firm.

A licence granted under the SPA may be suspended, cancelled or not renewed by the OFT under s. 21: 'Grounds for suspension, cancellation or refusal to renew' of the Act for a number of reasons, including where a licensee:

- (i) has contravened the SPA, including a code of practice;
- (ii) has committed an offence against the SPA;
- (iii) is not, or is no longer, an appropriate person; or
- (iv) has been charged with a disqualifying offence listed in Schedule 1: 'Disqualifying offence provisions under the Criminal Code' of the SPA.

A licence granted under the SPA may be cancelled by the OFT under s. 24: 'Automatic cancellation on conviction' of the Act where a licensee or another person who would have been required to be an appropriate person for the grant of the licence, is convicted of a disqualifying offence listed in the Schedule contained in the Act.

When an investigating officer believes, on reasonable grounds a person against whom a prosecution has been commenced for any offence outlined above is:

- (i) an applicant for a licence; or
- (ii) the holder of a licence;

under the SPA, the officer is to include information in the 'Summary of Facts' of the relevant QP9 and include where possible the person's Security Providers Number.

The prosecutor responsible for the prosecution relating to the person concerned is to ensure the OFT (see SMCD) is advised after the person's first appearance in court.

See also s. 13.4.6: 'Security Providers' of this Manual.

### 3.4.30 Supply of information to the Parole Board Queensland

The Parole Board Queensland (PBQ) is an independent statutory body appointed by the Governor in Council to:

- (i) makes decisions on parole and resettlement leave programs for prisoners; and
- (ii) monitor the progress of prisoners granted parole and make decisions regarding the amendment, suspension or cancellation of these orders.



### Providing court brief (QP9) to the Parole Board Queensland

Breaches of parole orders may result in the offender's parole being rescinded. If the breach involves the commission of any new offences, the parole board's assessment is aided by having information about the offence(s) readily available.

Where a request from the PBQ is received, those parts of the relevant QP9 regarding the:

- (i) wording of the charge;
- (ii) offender details; and
- (iii) facts of the offence,

may be supplied to the PBQ by:

- (i) a prosecutor;
- (ii) the OIC of a station or establishment; or
- (iii) the members of the PIC.

This section is to be read in conjunction with s. 5.6.14: 'Requests for information from other government departments, agencies or instrumentalities' and Appendix 5.2: 'Example of caveat when responding to requests for information by government departments, agencies or instrumentalities' of the MSM.

### Proposed submission on an officer's initiative

ORDER

Where an officer:

- (i) believes it is appropriate to provide information to the PBQ, other than a QP9, on the officer's own initiative (e.g. because of the assistance the prisoner has provided to law enforcement or because the prisoner's behaviour suggests he will re-offend); or
- (ii) has been requested by the PBQ to provide information, other than a QP9,

the relevant officer is to seek the approval of their district officer before providing the additional information. (Note – officer's opinions alone or their guarantees as to the future likelihood of prisoner's reoffending are not considered relevant by the PBQ. Consequently, any submission in this regard is to be limited to known facts relating to the prisoner's behaviour or actions).

Approval is to be sought by completing a report addressing:

- (i) if the information to be provided is to support the prisoner's early release:
  - (a) whether the prisoner has been registered as a human source in accordance with the Human Source Management Policy, and if not, why;
  - (b) the nature of the assistance given by the prisoner;
  - (c) the truthfulness, completeness and reliability of the information provided;
  - (d) the value of such assistance, e.g. arrests made, offences detected, and seizures made;
  - (e) the timelines of the assistance or undertaking to assist;
  - (f) whether the information could have been obtained from any other source;
  - (g) whether the safety of the prisoner or any member of the prisoner's family was compromised by their actions and, if so, to what degree;
  - (h) any reward paid to the prisoner by the Service;
  - (i) any involvement of the prisoner in offences for which the prisoner provided information;
  - (j) any ongoing assistance being provided by the prisoner;
  - (k) whether the prisoner is going to give any evidence or not. If the prisoner is not prepared to give evidence clearly state the reasons (e.g. fear of physical repercussions); and
  - (l) how the prisoner's early release on parole may benefit a criminal investigation; or
- (ii) if the information is to be provided to support the prisoner's re-imprisonment, the report is to outline the intelligence in possession of the Service.

The district officer is to consider the application and if approved, forward the file to the Detective Superintendent, State Intelligence Group so the intelligence may be forwarded to the Queensland Corrective Services Intelligence Group (QCSIG) via the QPS/QCSIG electronic interface.

### Officer's attendance at hearing required by Parole Board Queensland

Despite the power of a parole board under s. 219: 'Power to require attendance' of the *Corrective Services Act*, as a general rule, the PBQ will not require an officer to attend a parole hearing and give the board relevant information or produce a stated document containing relevant information.

In the event an officer's attendance is required at a parole hearing, the relevant officer is to notify their district officer as soon as practicable after receiving the attendance notice. If the information likely to be sought by PBQ is known by the relevant officer, they are to advise their district officer of the information.

The relevant district officer is to appoint a commissioned officer to accompany the officer to the parole hearing.

Where the information or documentation likely to be sought by PBQ may compromise a current investigation, the relevant assistant commissioner should be advised. The assistant commissioner may consider:

- (i) seeking approval from the PBQ President to instead provide the required information through the QPS/QCSIG interface; or
- (ii) referring the matter to Right to Information and Privacy Unit, Information and Discipline Support Services (RTIPU).

For the provision of information to a Queensland Corrective Services (QCS) officer, see:

- (i) s. 3.4.18: 'Supply of information where court outcome requires action by QCS or Youth Justice Services';
- (ii) s. 3.4.36: 'Notification of Chief Executive, QCS, regarding committal, conviction, etc. of relevant person'; and
- (iii) s. 13.5.6: 'Supply of information impacting on the security classification, protection or security of prisoners and/or the security and good order of correctional facilities to QCS',

of this Manual.

Requests from a parole board for information about a current criminal investigation of an employee of the PBQ are to be directed to the RTIPU (see s. 5.6.14: 'Requests for information from other government departments, agencies or instrumentalities' of the MSM).

#### 3.4.31 Supply of information under Mental Health Act

Under s. 96: 'Information from prosecuting authority' of the *Mental Health Act* (MHA), an administrator of a treating health service, authorised psychiatrist or chief psychiatrist may, in relation to a person for which s. 92: 'Application of pt 3' of the MHA applies, ask the prosecuting authority, which includes the Commissioner (see Schedule 3: 'Dictionary' of the MHA) to give them copies of documents which have been included as part of the brief of evidence (see Schedule 3 of the MHA). Section 96(3) provides the Commissioner must comply with the request as soon as practicable.

All statutory requests for documents in possession of the Service under s. 96 of the MHA are to be addressed to the Commissioner of the QPS. Generally, these requests will be forwarded electronically by way of a proforma to the relevant police prosecution corps.

The Commissioner's power under s. 96 of the MHA has been delegated to officers in charge of police prosecution corps and stations and establishments (see Delegation D 82.2).

Members receiving a request under s. 96 of the MHA should forward it to the OIC of the responsible police prosecution corps. If the documents requested are not available from the relevant prosecution corps, the request is to be referred to the OIC of the arresting officer's station or establishment.

In complying with a request, members should complete the form and return it, together with the available documents of the brief of evidence as defined under Schedule 3 of the MHA, by way of facsimile or email to the treating health service or authorised psychiatrist. If the requested documents are not available at the prosecution corps or station or establishment, or will become available at a later date, or will be provided by other means, members are to indicate this on the form and return the form as soon as practicable.

Members are to act on a request as soon as practicable but within fourteen days to allow the administrator, authorised psychiatrist or chief psychiatrist to fulfil their obligations under the MHA.

The request under s. 96 of the MHA does not apply:

- (i) to information as defined by subsections (4) and (5) of the section; or
- (ii) Commonwealth offences (see s. 92 of the MHA).

Where the request relates to information covered in (i) to (ii) above, the OIC should ensure information is not provided, or is removed from the relevant documents prior to delivery.

Where a defendant has been committed for trial or sentence, the requesting administrator is to be referred to the relevant ODPP.

See also s. 5.6.14: 'Requests for information from other government departments, agencies or instrumentalities' of the MSM.

### 3.4.32 Prosecuting authority to notify Chief Executive about committal, conviction etc. under the Public Sector Act

When the arresting officer is aware a person charged with a relevant offence is a Queensland public service employee (i.e. a person employed in a Queensland Government department or public service office), the officer is to include relevant information in the 'Summary of Facts' of the QP9. Queensland public service employees include professionals and non-professionals at all levels and examples may include but not limited to directors, managers, administration officers, technicians, field staff, legal officers, medical practitioners, nurses, and cleaners.

Section 74: 'Prosecuting authority must disclose to chief executive committals, convictions and other information' of the *Public Sector Act* (PSA), provides when a prosecuting authority is aware a person is a public service employee in a department and is charged with a relevant offence, the prosecutor must give notice to the chief executive or director of the relevant department within 7 days of:

- (i) the person being committed to a court for trial for a relevant offence; or
- (ii) the person being convicted before a court; or
- (iii) the prosecution process otherwise ending.

Where a prosecutor is required to notify the chief executive of the relevant department within 7 days in accordance with s. 74 of the PSA, the prosecutor is to provide the information by mail or Service email to the relevant department (see SMCD).

The notification is to be provided to the relevant department on Service letterhead (see Appendix 3.11: 'Notification under s. 74 of the Public Sector Act' of this chapter for a sample letter).

### 3.4.33 Notification of Queensland Parks and Wildlife Service of convictions of conservation related offences

Investigation of offences in relation to Queensland parks and wildlife matters is generally conducted by Queensland Parks and Wildlife Services (QPWS).

Officers may be appointed as:

- (i) conservation officers pursuant to s. 127: 'Appointment of conservation officers' of the *Nature Conservation Act* (NCA);
- (ii) inspectors pursuant to s. 52: 'Appointment and qualifications' of the *Marine Parks Act*; or
- (iii) authorised officers pursuant to s. 143: 'Appointment and qualifications' of the *Recreation Areas Management Act*.

Information concerning convictions for offences, including where no conviction is recorded, are used by QPWS to assess the suitability of applicants for licences, permits and authorities under the NCA. Offences under the following legislation are relative to applications in these circumstances:

- (i) *Great Barrier Reef Marine Park Act* (Cwlth);
- (ii) *Marine Parks Act*;
- (iii) Marine Parks (Great Sandy) Zoning Plan;
- (iv) Marine Parks (Moreton Bay) Zoning Plan;
- (v) Marine Parks Regulation;
- (vi) *Nature Conservation Act*;
- (vii) Nature Conservation (Koala) Conservation Plan;
- (viii) Nature Conservation (Macropod) Conservation Plan;
- (ix) Nature Conservation (Protected Areas Management) Regulation; and
- (x) *Recreation Areas Management Act*.

Additionally, under s. 135(2)(a): 'Chief executive may inquire into applications' of the NCA the Chief Executive may obtain a report from the Commissioner regarding the criminal history of such applicants.

The prosecutor responsible for the prosecution of a person charged with an offence under the above legislation is to forward a copy of the QP9 (or infringement notice where appropriate), including details of the penalty imposed, to the Compliance Coordinator, QPWS, after the court appearances are finalised and the person is found guilty of the offence (see SMCD). Parts of the QP9 which may identify complainants or other witnesses are to be deleted prior to release.

When information of a successful appeal against a conviction for an offence under the legislation listed above is received, the office of QPS Legal Unit, Legal Services is to forward advice to the Compliance Coordinator, QPWS (see SMCD).

Where an infringement notice fine is paid, no further action is necessary (see also s. 13.25: 'Queensland Parks and Wildlife Service' of this Manual).

### **3.4.34 Notification of Chief Executive (Employment Screening) regarding committal, conviction, etc. of persons employed by Blue Card Services, Department of Justice and Attorney General**

Under s. 357Q: 'Prosecuting authority to notify chief executive about committal, conviction etc.' of the *Working with Children (Risk Management and Screening) Act (WCRMSA)*, the prosecuting authority is required to give written notice about a person employed by Blue Card Services, DJAG when aware the person is charged with a relevant offence to the Chief Executive (Employment Screening), DJAG within 7 days of the:

- (i) person being committed to a court for trial;
- (ii) person being convicted before a court;
- (iii) appeal by the person being ended; or
- (iv) prosecution process ending without the person being convicted.

For the purpose of this policy, a person employed by Blue Card Services, DJAG includes a person who is or who proposes to be a member of the agency's staff.

When the arresting officer is aware a person charged with a relevant offence is employed by Blue Card Services, DJAG, the officer is to include relevant information in the 'Summary of Facts' section of the QP9.

Where a prosecutor is required to notify the Chief Executive (Employment Screening) within 7 days in accordance with s. 357Q of the WCRMSA, the prosecutor is to provide the information on Service letterhead by mail or Service email to the Chief Executive (Employment Screening), Blue Card Services, DJAG (see SMCD).

An example letter is contained in Appendix 3.12: 'Notification under s. 357Q of the Working with Children (Risk Management and Screening) Act 2000' of this chapter.

A request for information from the Blue Card Services, DJAG about a criminal investigation involving a current employee is to be referred to the Principal Right to Information Officer, Right to Information and Privacy Unit, Information and Discipline Support Services (see s. 1.10.14: 'Requests for information from other government departments, agencies or instrumentalities' of the MSM).

### **3.4.35 Animal Valuations – Criminal Code (Animal Valuers) Regulation**

In all cases where a provision of the CC relates the amount of a fine to the value of an animal determined in accordance with the provisions of the Criminal Code (Animal Valuers) Regulation, and a prosecutor from the ODPP is involved, the prosecutor will arrange the inspection or valuing of the animal pursuant to s. 450F: 'Animal valuers and valuations' of the CC.

In cases where a provision of the CC relates the amount of a fine to the value of an animal (e.g. s. 398(2): 'Punishment of Stealing' and s. 444A: 'Killing animals with intent to steal' of the CC), the matter is being dealt with summarily and a prosecutor is involved in the prosecution, the prosecutor is to notify the Manager, Operations and Administration, ODPP and request for the selection of a tribunal to value the animal or inspect it. The request is to be in writing and contain:

- (i) the basis of the need for a tribunal to:
  - (a) inspect the animal; or
  - (b) value the animal under s. 450F of the CC for the charge; and
- (ii) the details required by s. 8(3): 'When appointment as animal valuer ends' of the Criminal Code (Animal Valuers) Regulation.

Investigating officers are not to directly arrange with animal valuers for a tribunal of animal valuers to be convened.

### **3.4.36 Notification of Chief Executive, Queensland Corrective Services, regarding committal, conviction, etc. of relevant person**

Under s. 335: 'Prosecuting authority to notify chief executive about committal, conviction etc.' of the *Corrective Services Act (CSA)*, the Commissioner or the DPP (State) is required to give written notice about a relevant person, charged with an indictable offence, to the Chief Executive, Queensland Corrective Services (QCS) within seven days of:

- (i) a person being committed to a court for trial for a relevant offence;
- (ii) a person being convicted before a court;
- (iii) any appeal by the person being ended; or
- (iv) the prosecution process ending without the person being convicted.

When the arresting officer is aware a person charged with an indictable offence is a relevant person under the CSA, the officer is to include relevant information in the 'Summary of Facts' of the QP9.

Where a prosecutor is required to notify the Chief Executive, QCS within 7 days in accordance with s. 335: 'Prosecuting authority to notify chief executive about committal, conviction etc.' of the CSA, the prosecutor is to provide the information on Service letterhead by email to the Executive Director, Ethical Standards Unit, DJAG (see SMCD).

QCS may request information about a current criminal investigation of a QCS employee for disciplinary purposes. Such requests are to be directed to the Principal Right to Information Officer, Right to Information and Privacy Unit, Information and Discipline Support Services (see s. 5.6.14: 'Requests for information from other government departments, agencies or instrumentalities' of the MSM).

### **3.4.37 Prosecuting authority to notify chief executive officer about committal, conviction etc. under the Crime and Corruption Act**

When the arresting officer is aware a person charged with a relevant offence is a relevant commission officer (generally persons employed by or seconded to the Crime and Corruption Commission (C&CC) as set out in the *Crime and Corruption Act* (CCA)), the officer is to identify the fact and include relevant information in a note to the prosecutor in the 'Summary of Facts' of the QP9.

Section 273H: 'Relevant prosecuting authority to notify chief executive officer of prosecution proceeding' of the CCA provides when a prosecuting authority is aware a relevant commission officer is charged with a relevant offence, the prosecutor must give notice and certain information to the chief executive officer (CEO) of the C&CC within 7 days of:

- (i) the person being committed to a court for trial for a relevant offence;
- (ii) the person being convicted before a court;
- (iii) an appeal against conviction ending; or
- (iv) the prosecution process otherwise ending.

Where a prosecutor has carriage of a matter that requires the CEO of the C&CC to be notified in accordance with the legislation, the prosecutor is to email the CEO via email (see SMCD). The email must be sent within 7 days of the event and include a copy of the QP9 and any other information required by the CCA.

### **3.4.38 Supply of information to the department responsible for education regarding State school students**

The release of information as required of the Commissioner, pursuant to the *Education (General Provisions) Act* (EGPA) to the Chief Executive for education has been delegated to the Manager, Police Information Centre (PIC), Legal Division in accordance with:

- (i) Delegation D 75.4; and
- (ii) Delegation D 75.6.

Members receiving requests for information under the EGPA:

- (i) s. 175E: 'Mature age State school's principal may make request about mature age student'; or
- (ii) s. 280C: 'Chief executive may ask police commissioner about student charge or conviction',

are to direct the inquirer or inquiry to the Manager, PIC.

#### **Notification to a mature age school of a mature age student charged with an offence**

When an arresting officer reasonably suspects a person charged with an offence is a relevant mature age student, the officer is to forward an email to the Manager, PIC, including:

- (i) the person's full name and address;
- (ii) the person's date of birth;
- (iii) the offence the person is charged with;
- (iv) brief particulars of the alleged offence;
- (v) the date of the charge;
- (vi) the school they attend; and
- (vii) the relevant QPRIME occurrence number(s),

to enable the school's principal to be advised of the charge in accordance with s. 175J: 'Notice of change in criminal history' of the EGPA.

## 3.5 Commencing proceedings

The *Youth Justice Act* imposes particular requirements on arresting officers who commence a prosecution against a child, and provides alternative means for dealing with juvenile offenders. These are dealt with in Chapter 5: 'Children' of this Manual.

Where a person has been identified as being responsible for an offence, there are four methods available to commence proceedings namely:

- (i) service of a notice to appear
- (ii) service of a complaint and summons;
- (iii) arrest without warrant; or
- (iv) make a complaint and apply for an arrest warrant.

The issue of an infringement notice is a further method which may lead to the commencement of a prosecution (see ss. 13.15: 'Issue of infringement notices generally' and 13.15.1: 'Issuing infringement notices for public nuisance, public urination and associated offences' of this Manual and Chapter 8: 'Infringement Notices' of the Traffic Manual).

### 3.5.1 Responsibility to establish authority to prosecute

#### ORDER

Where the authority of any person is required before proceedings are to be commenced, the investigating officer is to obtain the stipulated authorisation.

### 3.5.2 Responsibility to prefer all charges

#### POLICY

Officers should prefer all known charges against a defendant at or about the same time where possible. There should be only one arresting officer for multiple charges preferred at the same time, unless compelling reasons exist for the use of different arresting officers.

#### Specimen charges

#### POLICY

Officers are to use QPRIME when creating charges. When QPRIME is unavailable, specimen charges are available from the QPRIME Online Gateway on the Service Intranet. If officers wish to conduct research as to what charges can be preferred, there is a search facility in the QPRIME Online Gateway specimen charge menu.

### 3.5.3 Proceedings by way of notice to appear

Officers may commence proceedings for an offence by issuing and serving a QP 0699: 'Notice to appear' (NTA) on a person (see s. 382: 'Notice to appear may be issued for offence' of the PPRA. Officers issuing a NTA to a child should refer to s. 5.9.2: 'Proceedings against a child by notice to appear' of this Manual.

A NTA may be issued by an officer who:

- (i) discontinues an arrest;
- (ii) reasonably suspects a person has committed or is committing an offence;
- (iii) is requested by another police officer, who reasonably suspects a person has committed or is committing an offence, to issue and serve a NTA; or
- (iv) is a prescribed police officer (see ss. 394: 'Duty of officer receiving custody of person arrested for offence' of the PPRA and 7: 'Power of police officer to grant bail' of the *Bail Act*).

Where a NTA has been issued by:

- (i) a police officer at the request of another officer; or
- (ii) by a prescribed police officer,

the officer who arrested the person or made the request, and not the police officer who issued the notice, is taken to have commenced the proceeding against the person (see s. 388(3) & (4): 'Notice to appear equivalent to a complaint and summons' of the PPRA).

Wherever practicable, proceedings should be commenced by means of a NTA, unless:

- (i) an infringement notice can be issued for the offence (see s. 13.15: 'Issuing infringement notices generally' of this Manual); or
- (ii) an arrest can be justified (see s. 3.5.9: 'Justification for arrest' of this chapter).

## ORDER

Officers (including a prescribed or requested police officer) issuing a NTA are to:

- (i) identify the correct court jurisdiction and ascertain a suitable first mention date and time. Wherever practicable, the date and time stated in a NTA to appear for the person to appear before the court should not exceed 21 days after the notice is served;
- (ii) ensure the date the person is required to appear is a sitting court day by conferring with the relevant police prosecution corps or check the court's calendar at [www.courts.qld.gov.au](http://www.courts.qld.gov.au);
- (iii) fully and accurately complete a QP 0699 ensuring:
  - (a) the time and place at which the person is to appear before a court is at least 14 days or, with the person's written agreement, a shorter time after the NTA is served;
  - (b) if the NTA was issued at the request of another officer, the requesting officer's particulars are stated in the NTA; and
  - (c) for an offence against s. 6: 'Public nuisance' of the *Summary Offences Act* (SOA), the NTA also states the type of behaviour the person committed (e.g. disorderly behaviour) as provided for in s. 6(2)(a)(i) to (iv) of the SOA;
- (iv) cause the NTA to be personally served on the person, unless exempted as below, and ensure the 'Service' portion on the bottom section of the NTA is completed and signed by the serving officer;
- (v) where a hard copy NTA is issued and served, ensure the station copy is filled with the OIC; and
- (vi) ensure the NTA is filed with the relevant magistrates court where the person is to appear within three days of service of the notice and in any case before the date set for the person's date of appearance on the notice.

If a NTA is issued by:

- (i) a prescribed police officer; or
- (ii) an officer at the request of another officer,

the officer is to advise the arresting officer the NTA has been served and forward a copy of the NTA to the arresting officer.

Officers commencing proceedings by way of NTA, including officers taken to have started the proceedings, are to ensure a Court Brief (QP9) and all necessary documentation in relation to the matter is completed and approved in accordance with ss. 3.7.2: 'Documentation at first appearance' and 3.7.5: 'Checking of Court Briefs (QP9)' of this chapter.

OICs are to monitor and ensure Court Briefs (QP9) relating to proceedings commenced by way of NTA are completed to allow sufficient time for checking as required by s. 3.7.5 of this chapter.

### Service of a notice to appear

A NTA must be personally served on a person unless it is for an offence against the TO(RUM)A. A NTA for an offence against the TO(RUM)A may be served on a person by registered post if it is served as provided for in s. 56(1) or (2)(a), (b) or (c): 'Service of summonses' of the *Justices Act*.

An officer may enter a place, which is not a dwelling, without the consent of the occupier and stay on the place for a reasonable time to serve a NTA (see ss. 19: 'General power to enter to make inquiries, investigations or serve summons' and 20: 'What is a reasonable time to stay on a place' of the PPRA).

Authority to take fingerprints and other identifying particulars of persons served with a NTA are contained in s. 2.26: 'Identifying particulars' of this Manual.

Where a NTA is to be served personally on a person, the serving officer is to:

- (i) hand the person a copy or a copy of the QPRIME generated NTA;
- (ii) explain the offence for which the NTA has been issued;
- (iii) advise the time, date and court at which the person is to appear;
- (iv) provide the officer's details (see s. 637: 'Supply police officer's details' of the PPRA); and
- (v) when explaining the availability of 'plea of guilty' information, ensure any conversation with the person cannot be construed as an inducement or threat.

Where a person refuses to accept a copy of the NTA, officers are to:

- (i) ensure the time, date and court at which the person is to appear are given to the person where possible, and the copy left in a conspicuous place where the person named therein is likely to see it; or
- (ii) if the person's actions raise a reasonable suspicion the person will not appear before the nominated court, the officer concerned may consider arresting the person under s. 365(1)(c): 'Arrest without warrant' of the PPRA.

### 3.5.4 Proceedings by way of complaint and summons

#### ORDER

Proceedings are only to be commenced by way of complaint and summons, where it is impractical to serve a notice to appear on a defendant.

#### PROCEDURE

A summons is simply a direction to the defendant to appear before a court to answer a charge(s). A complaint or information laid before a magistrate or justice is the basis for issuing the summons (see s. 53: 'When justice may issue summons' of the *Justices Act*). The 'complaint' or 'information', as the case may be and the 'summons', although separate legal instruments, are included on one form and are generally referred to as a complaint and summons. The date nominated for the defendant to appear is referred to as the return date of the complaint and summons.

#### POLICY

To institute proceedings by way of complaint and summons, officers should:

- (i) select an appropriate court having jurisdiction over the matter and ascertain a suitable return date;
- (ii) ensure the date the defendant is required to appear is a sitting court day by conferring with the relevant police prosecution corps or check the court's calendar at [www.courts.qld.gov.au](http://www.courts.qld.gov.au);
- (iii) complete a Form 003: 'Complaint, Sworn and Summons' (available on QPRIME). Particulars are to be provided for simple offences so such matters can be dealt with ex-parte (see s. 142A: 'Permissible procedure in absence of defendant in certain cases' of the *Justices Act*). The form should be completed in original and three copies. In all cases, the statute and section under which the charge is alleged should be indicated on the top left hand corner of the complaint and summons form. Officers should ensure the following information is clearly indicated on the summons form:
  - (a) the date of birth of the defendant;
  - (b) the full address of the court, and where appropriate, the number of the court, before which the defendant is to appear; and
  - (c) the indigenious identifier provision;
- (iv) ensure the officer in charge is advised of the issuing of and/or service of the complaint and summons;
- (v) attend before a clerk of the court or a justice of the peace and swear out the information contained in the complaint. The same person before whom the complaint is sworn must issue the summons, otherwise the summons is invalid. A summons may not be issued by a commissioner for declarations;
- (vi) lodge every complaint and summons, where the summons has been issued on a complaint in writing, with the clerk of the court at the place at which the defendant is required by the summons to appear;
- (vii) serve, or arrange for the service of, a copy of the summons on the defendant. Allow at least fourteen days between the date of service and the date of the appearance. Such a period of time will enable a court to deal with simple offences ex-parte under the provisions of s. 142A of the *Justices Act*;
- (viii) complete the appropriate oath/memorandum of service on the summons but do not sign;
- (ix) include the defendant's address for service in the appropriate space;
- (x) attend before a justice of the peace or commissioner for declarations and sign and swear out the oath/memorandum of service;
- (xi) return the endorsed copy to the clerk of the court at the courthouse at which the defendant is to appear and at which the relevant complaint and summons were lodged;
- (xii) update QPRIME; and
- (xiii) prepare a Court Brief (QP9) in relation to the matter and have it approved as prescribed in s. 3.7.5: 'Checking of Court Briefs (QP9)' of this chapter, irrespective of whether the summons has been served. Wherever practical, a Court Brief (QP9) is to be completed immediately following the issue of a complaint and summons. A copy of the endorsed summons is to be attached to the copies of the Court Brief (QP9) and forwarded or delivered to the police prosecutor.

Officers in charge are to monitor and ensure Court Briefs (QP9) relating to proceedings commenced by way of complaint and summons are completed to allow sufficient time for checking as required by s. 3.7.5 of this chapter.

### 3.5.5 Service of a summons

#### PROCEDURE

It is the responsibility of the police officer who serves a summons to ensure the summons is served in accordance with the provisions of this chapter.



When a summons has been served on a defendant and they fail to appear, it is open to the court, after hearing evidence of proper service and facts to substantiate the charge, to issue a warrant subject to the provisions of s. 59: 'Warrant in the first instance' of the *Justices Act*.

There are three methods by which a summons may be properly served:

- (i) postal service;
- (ii) personal service, where the summons is served personally on the defendant; or
- (iii) substituted service, where the summons is served on another person who will later give the summons to the defendant.

### Postal service

#### POLICY

Postal service of summonses is often a more convenient means of securing service. This method should always be considered and used where appropriate. The responsibility to post a summons rests with the arresting officer who swears out the summons.

#### ORDER

Arresting officers are to ensure:

- (i) any summons sent by post is sent by 'Registered Post' and posted no later than twenty-eight days before the return date of the summons;
- (ii) a summons intended for postal service is addressed to the defendant at the place of business or place of residence of the defendant last known to an arresting officer. Where arresting officers are aware the defendant no longer works or resides at one or other of those two places they are to send the summons to the appropriate address pursuant to s. 56: 'Service of summons' of the *Justices Act*; and
- (iii) an envelope containing a summons for service by post is endorsed on the front with the words 'Not to be re-addressed. If addressee has left the address hereon, return to' followed by the address of the station or establishment from which the summons originated.

Where appropriate, prosecutors and officers performing duty as prosecutors are to seek an order from the court for the cost of postage, in addition to other costs.

Officers are to record on the brief of evidence, for the information of the prosecutor, any costs incurred for the postage of the summons.

### Personal service

An officer may enter a place, which is not a dwelling, without the consent of the occupier and stay on the place for a reasonable time to serve a summons (see ss. 19: 'General power to enter to make inquiries, investigations or serve summons' and 20: 'What is a reasonable time to stay on a place' of the PPRA).

#### POLICY

An officer who serves a summons on a defendant should:

- (i) hand a copy of the summons to the defendant;
- (ii) explain the offence for which the summons has been issued;
- (iii) advise the time, date and court at which the defendant is to appear;
- (iv) where necessary, obtain the home address of the defendant if this is not already correctly shown on the summons for inclusion in the 'address for service' section of the summons; and
- (v) provide the officer's details (see s. 637: 'Supply police officer's details' of the PPRA).

#### ORDER

Where the defendant refuses to accept a copy of the summons, officers are to, wherever possible, verbally advise the defendant of the time, date and court at which the defendant is to appear and leave a copy of the summons in a conspicuous place where the defendant is likely to see it.

### Substituted service

#### POLICY

Substituted service may occur when a defendant cannot reasonably be located at the time of service. It simply involves leaving the summons with another person, who is in a position to later give the summons to the defendant.

An officer should only serve a summons by substituted service, after the officer has first made reasonable inquiries to locate the defendant in an attempt to serve the summons personally.

## ORDER

An officer who elects to serve a summons by means of substituted service is not to serve a summons on another person unless the other person is:

- (i) sixteen years of age or over;
- (ii) at the last known place of residence or business of the defendant;
- (iii) willing to accept the summons; and
- (iv) in a position and willing to later give the summons to the defendant in reasonable time before the return date of the summons.

When these conditions are met, the officer is to ensure the summons is served on the person in the same manner as indicated for personal service. When completing the oath/memorandum of service, the officer is to ensure the full name of the person accepting the summons is included, as well as any comments made in reference to the acceptance of the summons.

### Service of summonses and subpoenas for interstate agencies

Interstate Police and other Government Agencies may request Service members to serve summonses and subpoenas on witnesses and accused persons who reside in Queensland.

## POLICY

Members should assist interstate agencies by serving summonses and subpoenas where service can only be effected via personal service.

The use of Service resources to serve summonses and subpoenas for other jurisdictions where postal service is an option is not supported.

If a member receives a summons or subpoena for service and postal service is an option, the member should forward a report regarding the matter to their officer in charge who will assess the request and determine the appropriate action.

For service of NSW Court Attendance Notices, see s. 14.29.5: 'Service of NSW court attendance notices' of this Manual.

### 3.5.6 Responsibilities after serving a summons

## ORDER

An officer who serves a summons is to:

- (i) complete the appropriate oath/memorandum of service on the summons without signing;
- (ii) insert the defendant's address for service in the appropriate space;
- (iii) attend before a justice of the peace or commissioner of declarations and sign and swear out the oath/memorandum of service;
- (iv) complete a QP 0076: 'Summons report' showing the summons has been served;
- (v) update QPRIME; and
- (vi) submit the QP 0076 and the endorsed summons to their officer in charge.

### 3.5.7 Unserved summons

## ORDER

An officer who attempts to serve a summons and:

- (i) is unable to locate the defendant after all avenues of inquiry have been exhausted; or
- (ii) locates information to suggest the defendant is residing in another division;

is to complete a QP 0076: 'Summons report' briefly indicating the inquiries made and the results of those inquiries, and submit a report with the unserved summons to their OIC.

## POLICY

A flag indicating a 'Warrant or document service req'd' entry against the defendant should be made in QPRIME. The flag should have an expiry date of the same day as the defendant is due to appear in court.

Summonses eligible for input into QPRIME are those which originate from within the Service and:

- (i) which are meant for personal service;
- (ii) which are not the result of an unpaid traffic offence notice; or
- (iii) where the whereabouts of the defendant is unknown.

An officer who has the responsibility for the service of a summons, but has been unable to locate the defendant, should flag the defendant's details in QPRIME, if:

- (i) a genuine effort has been made to effect service;
- (ii) all avenues for ascertaining a positive forwarding address of the person named have been exhausted; and
- (iii) the seriousness of the matter, and/or the likelihood of eventual service justifies inclusion of the summons on the system.

#### ORDER

Where all inquiries to locate a defendant have been exhausted, the arresting officer is to seek a direction from their OIC as to whether:

- (i) the complaint should be withdrawn on a 'public interest' basis (see s. 3.4.3: 'Factors to consider when deciding to prosecute' of this chapter); or
- (ii) an arrest warrant should be obtained and a full brief of evidence compiled.

### 3.5.8 Responsibilities of officers in charge of stations or establishments in respect of summonses

#### POLICY

An OIC of a station or establishment who receives a summons and a QP 0076: 'Summons report' from officers attached to their station or establishment should ensure:

- (i) the QP 0076 is properly completed;
- (ii) a genuine effort has been made to effect service where appropriate; and
- (iii) where appropriate the endorsement of service has been made correctly.

The OIC should then:

- (i) where the summons has been served, forward the original QP 0076 and the endorsed summons to the appropriate clerk of the court;
- (ii) where the return date on the summons requires extending, arrange for such extension;
- (iii) where the summons has not been served, and the last known address of the defendant is outside the division, forward the summons and the QP 0076 to the divisional OIC; or
- (iv) where the summons has not been served, and the current address of the defendant is unknown, forward the QP 0076 and the summons back to the station or establishment where the arresting officer is stationed.

An OIC of a station or establishment who receives a summons and a summons report from another station or establishment should check the return date on the summons. Where there is sufficient time for the summons to be served, the OIC should try to arrange for the service of the summons on the defendant.

### 3.5.9 Justification for arrest

#### POLICY

Prior to arresting a person in relation to an offence, officers are to consider whether another means of commencing proceedings may be more appropriate. For example, proceeding by way of:

- (i) notice to appear (see s. 3.5.3: 'Proceedings by way of notice to appear' of this chapter);
- (ii) an infringement notice (see ss. 13.5: 'Issue of infringement notices generally' and 13.4.11: 'Issuing infringement notices for public nuisance, public urination and associated offences' of this Manual and Chapter 8: 'Infringement Notices' of the Traffic Manual); or
- (iii) as a last resort, complaint and summons.

Officers should not commence proceedings against a person by way of arrest if an appropriate alternative exists.

Further, if a person is arrested, where appropriate, officers should consider releasing the person under Chapter 14, Part 4: 'Discontinuing arrest' of the PPRA (see s. 16.6: 'Discontinuing arrest' of this Manual).

### 3.5.10 Making an arrest

#### PROCEDURE

An officer is to clearly advise the person they are under arrest. Physical contact with a compliant person is not required to validate the arrest.

Where the arrested person may not understand English or may suffer from an impairment (e.g. deafness), the arresting officer should take all reasonable actions to inform the person they are under arrest (e.g. in writing, using an electronic translation program).

## ORDER

As soon as reasonably practicable officers must inform a person arrested of:

- (i) the officer's name, rank and station. If the officer is not in uniform they must advise they are a police officer and produce for inspection their identity card (see s. 637: 'Supplying police officer's details' of the PPRA; and
- (ii) the nature of the offence or warrant, and before release from custody, give the person in writing the name rank and station of the arresting or instructing officer (see s. 391: 'Information to be given to arrested person' of the PPRA).

If the person arrested is a child, see s. 5.9.6: 'Parent and other notification requirements' of this Manual.

## POLICY

The term 'as soon as reasonably practicable' will depend on the circumstances at the time of arrest e.g. multiple offenders, violence or an offender's capacity to understand. An officer in any proceeding may be required to justify their decision to apply this provision.

**Instructing another officer to make arrest**

When:

- (i) an officer (the instructing officer) decides to make an arrest but cannot personally arrest the person; and
- (ii) there is insufficient time for the other officer (the arresting officer) to form the required suspicion,

s. 365A: 'Arrest without warrant upon instruction of another police officer' of the PPRA allows the instructing officer to direct an officer to arrest a person on their behalf.

## ORDER

The instructing officer is to:

- (i) make a record in the relevant QPRIME occurrence of the:
  - (a) instruction to the arresting officer to arrest the person;
  - (b) reasons under s. 365A of the PPRA for instructing the arrest of the person; and
  - (c) reason why the person could not be personally arrested by the instructing officer,
- (ii) take reasonable steps to inform the arresting officer of the instruction and the reasons for the request; and
- (iii) inform the arresting officer if the instructing officer no longer reasonably suspects the person has committed or is committing an offence.

Prior to the release of the arrested person from custody, the name, rank and station of the arresting and instructing officers are to be provided to the person in writing.

## POLICY

The instructing officer may inform the arresting officer of the record required under s. 365A(3) of the PPRA by email, text message or any other electronic means (e.g. text the QPRIME number where the record is contained).

**3.5.11 Use of force in effecting arrest**

## POLICY

When making an arrest officers are to comply with the provisions of ss. 615: 'Power to use force against individuals' and 616: 'Power to use force against individuals in critical situations' of the PPRA.

Officers should also refer to s. 14.3: 'Use of force' of this Manual.

**3.5.12 Calling for assistance in making an arrest**

## POLICY

No criminal offence exists for a person who fails to assist a police officer in arresting a person.

## ORDER

Section 612: 'Assistance in exercising powers' of the PPRA permits a police officer to seek the assistance of another person when making an arrest. An officer utilising this section must, if practicable, tell the assistant of the:

- (i) action the assistant is authorised to take; and
- (ii) assistant's powers under s. 612.

An assistant cannot be authorised to arrest a person or demand a person's name and address.

### 3.5.13 Proceedings by way of an arrest warrant

An officer may apply to a justice for an arrest warrant for any offence (see s. 370: 'Arrest warrant application' of the PPRA). An arrest warrant may be issued by a justice, subject to the provisions of s. 371: 'Issue of arrest warrant' of the PPRA.

Obtaining an arrest warrant is appropriate when a notice to appear or complaint and summons cannot be served, and it is not possible to proceed by way of arrest.

Any justice has the authority to issue an arrest warrant. However, if time permits, arresting officers seeking the issue of such a warrant should do so by laying the complaint before a magistrate or a justice who is employed at a courthouse.

An officer seeking the issue of an arrest warrant should refer to s. 13.18.9: 'Obtaining and activating arrest warrants' of this Manual and:

- (i) complete a QP 0724: 'Arrest Warrant Application' (available on QPRIME);
- (ii) complete a QP 0725: 'Arrest Warrant' (available on QPRIME); and
- (iii) take the QP 0724 and QP 0725 forms before a justice or a magistrate and swear out the grounds.

(See s. 3.9.15: 'Use of justices of the peace and commissioners for declarations' of this chapter.)

For information on execution and other processes associated with arrest warrants see s. 13.18: 'Warrants' of this Manual.

### 3.5.14 Deleted

### 3.5.15 Deleted

### 3.5.16 Proceedings against solicitors and barristers (incidents in precincts of a court)

#### POLICY

When an officer is of the opinion proceedings should be commenced against a solicitor or barrister for an offence committed in the precincts of a court, the officer is to furnish a detailed report of the circumstances of the incident to their officer in charge, who will decide what action is to be taken in the matter and then forward a copy of the report to the relevant assistant commissioner.

If the relevant assistant commissioner authorises the commencement of proceedings, such proceedings should be initiated by way of notice to appear.

### 3.5.17 Commencement of proceedings against Members of Parliament

#### PROCEDURE

Where proceedings are commenced against a member of Parliament, the regional duty officer or district duty officer, who is notified in compliance with s. 2.4.2: 'Evaluation of incident' of this Manual, should ensure the relevant significant event message (see s. 1.18: 'Significant events' of this Manual) includes:

- (i) the member's name and the title of the House in which they sit;
- (ii) the time, date and place of the arrest, interview or service of the notice to appear;
- (iii) a brief description of the charge(s) preferred or allegations made;
- (iv) the time, date, name and place of the court where the Member is to appear; and
- (v) in the case of arrest on a warrant:
  - (a) brief particulars of the warrant; and
  - (b) the name of the correctional centre or watchhouse in which the member has been detained.

### 3.5.18 Notices alleging previous criminal and traffic histories and circumstances of aggravation

Officers should select the appropriate specimen charge from QPRIME or the QPRIME Online Gateway on the Service Intranet to ensure the correct legislation, section reference and charge wording is used (see s. 47(1): 'What is sufficient description of offence' of the *Justices Act*).

Where a defendant is liable to a greater penalty upon conviction for a simple offence with a circumstance of aggravation, the circumstance of aggravation is to be expressly stated within the charge (see s. 47(4) of the *Justices Act*). However, if the circumstance to be alleged is a previous conviction, it should not be included in the charge wording. If the defendant has one or more previous convictions which will render the defendant liable, upon conviction, to a greater penalty, the previous convictions are to be alleged in a QP 0041A: 'Notice of Intention to Allege Previous Convictions' (available on QPRIME), a copy of which is to be served on the defendant.

Where a matter before a magistrates court may be dealt with *ex parte*, the court may receive a copy of, and take into account, a defendant's history for the purpose of determining penalty, if:

- (i) a QP 0041A has been served upon the defendant;
- (ii) the QP 0041A is suitably endorsed to prove service; and
- (iii) the original or a certified copy of the QP 0041A is tendered to the court,

(see s. 47(2) and (3) of the *Justices Act*).

ORDER

Arresting officers are to complete and serve a QP 0041A upon a defendant where:

- (i) the defendant has previous criminal and/or traffic history:
  - (a) of a similar nature to charges for which proceedings are being commenced; and
  - (b) which is likely to render the defendant liable to a greater penalty upon conviction;
- (ii) the defendant is charged with a simple offence and the defendant has a previous offence which is intended to be relied upon as a circumstance of aggravation; or
- (iii) the defendant is charged with an indictable offence against s. 177: 'Contravention of domestic violence order' of the DFVPA,

in the same way as is provided for the service and documenting service of a notice to appear under s. 389(2): 'Notice to appear may be issued for offence' of the PPRA.

POLICY

Where practicable the QP 0041A should be served at the time of commencement of the prosecution, or a reasonable time before the defendant's first court appearance. The endorsed copy of the notice is to be attached to the Court Brief (QP9). The prosecutor is to tender the notice and any attachments to the court upon sentencing of the defendant.

Where it is not possible to serve the notice at the time, or a reasonable time before the defendant's first court appearance, officers should attach three copies of the QP 0041A to the Court Brief (QP9) to allow the prosecutor to:

- (i) give a copy to the defendant on the day appointed for the defendant's appearance; and
- (ii) tender the notice to the court.

Offences where notices should be served in appropriate circumstances under s. 47 of the *Justices Act* include:

- (i) *Transport Operations (Road Use Management) Act*, ss. 78: 'Driving of motor vehicle without a driver licence prohibited' and 79: 'Vehicle offences involving liquor or other drugs';
- (ii) DFVPA, s. 177: 'Contravention of domestic violence order';
- (iii) *Prostitution Act*, ss. 73: 'Public soliciting for purposes of prostitution' and 76: 'Nuisances connected with prostitution';
- (iv) *Racing Integrity Act*, ss. 221: 'Unlawful bookmaking other than by racing bookmakers etc.' and 223: 'Prohibition on opening, keeping, using or promoting an illegal betting place';
- (v) *Tobacco and Other Smoking Products Act*, ss. 10: 'Supplier must not supply smoking products to children', 12: 'When employee of supplier liable', 16: 'Supply of tobacco products from vending machines', and 17: 'Persons in charge of tobacco product vending machines may be prohibited from possessing tobacco product vending machines';
- (vi) *Liquor Act*, ss. 169: 'Authority for sale' and 171: 'Carrying or exposing liquor for sale'; and
- (vii) Criminal Code, ss. 328A(1) and (2)(c): 'Dangerous operation of a motor vehicle', 398: 'Punishment of stealing' and special case 11: 'Stealing after previous conviction' and 425(1) and (2): 'Possession of things used in connection with unlawful entry'.

### 3.5.19 Deleted

## 3.6 Status of charges

### 3.6.1 Introduction

Information concerning the status of charges before a magistrate or childrens court is available to members on QPRIME in the notes linked to a charge.

Information concerning the status of charges before superior courts is available to members via the above method where a Superior Court Liaison Officer has access to QPRIME. Otherwise, court results will not be captured in QPRIME until

the final court result is entered by Police Information Centre. In such cases the arresting officer may be advised of the status of the charges by the Office of the Director of Public Prosecution by other means in accordance with s. 3.7.9: 'District/Supreme Court hearings' of this chapter.

Any member may query information about any such charge.

The QPRIME Case Diary Log is used by officers and prosecutors to collate a record of information relevant to the progress and finalisation of a court matter.

Where a brief of evidence (BOE) is required, prosecutors will commence a 'QPS BOE Required' workflow to the arresting officer's station or establishment.

The OIC of a station or establishment receiving a 'QPS BOE Required' task from a prosecution corps are to forward the task to the arresting officer for completion of the BOE by the due date on the case file. The completion of required BOE is to be monitored by the OIC of the station or establishment to ensure the timely provision of all material for court.

All officers are able to access the 'QPS Court List (Defendant – Charges)' to assist in the ongoing management of BOE and court appearances on an individual or station level.

### 3.6.2 Responsibilities of police prosecutors

#### ORDER

Police prosecutors are to, as soon as possible after a charge has been presented in court, ensure:

- (i) QPRIME is updated with the outcome of the court appearance;
- (ii) if a brief of evidence is required, ensure a 'QPS BOE Required' workflow is commenced;
- (iii) if there was an order of the court relating to property, ensure an 'Expired Exhibit Disposal' workflow is initiated; and
- (iv) if the ODPP takes carriage of the matter, ensure the case file is updated accordingly.

In relation to arresting officers who do not have access to QPRIME (e.g. school based officers and officers attached to a PCYC), police prosecutors are to advise arresting officers in writing or electronically, including by way of email, when charges are set for hearing, the date on which a brief of evidence is required to be delivered to either the relevant prosecution corps or the ODPP, when defendants fail to appear or any other relevant information.

#### POLICY

Where a defendant has been committed to a superior court for trial or sentence, the relevant case diary log in QPRIME is to be updated advising the arresting officer the court matter has been committed to a superior court for trial or sentence and any other relevant details appropriate to the court matter.

### 3.6.3 Role of Superior Court Liaison Officer

#### PROCEDURE

Arresting officers will be advised of the ongoing status of charges presented to a superior court by modification of the court results in QPRIME, where a Superior Court Liaison Officer has access. Where the Superior Court Liaison Officer does not have this access, other notification will be forwarded to the arresting officer via the local office of the ODPP.

### 3.6.4 Responsibilities of officers in charge

#### ORDER

The officer in charge of a station or establishment should ensure arresting officers regularly monitor QPRIME, respond to QPRIME tasks and meet court commitments. It is the responsibility of the officer in charge to ensure arresting officers are provided sufficient time to prepare a brief of evidence, conduct other inquiries as are necessary for court and be rostered to attend court on the nominated court date.

### 3.6.5 Responsibilities of arresting officers

#### ORDER

The arresting officer is to monitor QPRIME and for matters being prosecuted by the ODPP, his or her email address for messages from the ODPP to ascertain the current status of charges instituted.

When an arresting officer is advised to prepare a full brief of evidence (see s. 3.8: 'Preparation and submission of briefs of evidence' of this chapter) or that other information or investigation is required, as far as reasonably practicable, such material shall be provided within the allocated period by that officer.

In cases where officers are stationed at, or transferred to, stations or establishments without access to QPRIME, it is the responsibility of that officer to ensure the relevant Office of the Director of Public Prosecutions (State) is advised of that fact.

### 3.6.6 Deleted

### 3.6.7 Deleted

### 3.6.8 Responsibilities of district or command brief managers

#### POLICY

District or command brief managers' responsibilities include:

- (i) providing advice to the relevant district officer on the development and review of district instructions for the management of briefs of evidence and Court Briefs (QP9);
- (ii) the development of organisational improvement strategies relating to the matters for which district instructions have been developed in (i);
- (iii) liaising with local prosecution corps and where applicable, the ODPP to identify and resolve issues affecting the quality and timely delivery of briefs of evidence and Court Briefs (QP9);
- (iv) the development and maintenance of a district or command brief checker network to maintain high quality briefs of evidence and Court Briefs (QP9) including, in consultation with education and training officers, assisting with the initial and ongoing training of brief checkers and ensuring sufficient numbers of brief checkers are maintained within the district or command;
- (v) in conjunction with education and training officers, the development and provision of training to officers within the district or command to maintain high quality briefs of evidence and Court Briefs (QP9);
- (vi) liaising with station and establishment officers in charge, to support effective supervision of the quality and timely delivery of materials to prosecution corps;
- (vii) undertaking duties as provided for in s. 3.12: 'Prosecution Review Committee' of this chapter.

Brief managers should not ordinarily be used in a manner likely to interpose an additional step in the brief submission process by requiring all briefs to be handled or checked by a brief manager.

Where no district or command brief manager is appointed, the district officer, in consultation with the officer in charge of the relevant prosecutions corps, is to assign brief management responsibilities to a suitably qualified officer having regard to the officer's current capacity.

## 3.7 Court processes

### 3.7.1 Introduction

All court proceedings will initially be mentioned in a magistrates or a childrens court. The jurisdiction in which a proceeding will be determined is dependent on whether the charge(s) is to be heard and decided:

- (i) summarily, in which case the magistrates or childrens court; or
- (ii) upon indictment, in which case the District, Supreme or Childrens Court of Queensland.

#### Summary proceedings

Matters to be heard and decided summarily include:

- (i) simple and regulatory offences (see s. 3: 'Division of offences' of the CC); and
- (ii) certain indictable offences (see ss. 552A: 'Charges of indictable offences that must be heard and decided summarily on prosecution election', 552B: 'Charges of indictable offences that must be heard and decided summarily unless defendant elects for jury trial', 552BA: 'Charges of indictable offences that must be heard and decided summarily' and 552D: 'When Magistrates Court must abstain from jurisdiction' of the CC).

Summary matters may proceed by way of:

- (i) a plea of guilty and sentence on the first or any subsequent court appearance;
- (ii) in certain circumstances, an ex parte hearing (see ss. 142: 'Proceedings in absence of defendant', 142A: 'Permissible procedure in absence of defendant in certain cases' and 146A: 'Proceeding at the hearing on defendant's confession in absentia' of the *Justices Act*);
- (iii) case conferencing (see s. 3.16: 'Case conferencing' of this chapter); or
- (iv) a summary trial.

#### Proceedings upon indictment

Matters to be heard and decided upon indictment will proceed by way of a committal proceeding in a magistrates or childrens court, unless an ex officio indictment is presented in a higher court (see s. 3.4.21: 'Ex officio indictment' of this chapter).



A committal proceeding is a preliminary examination of the prosecution case to determine if the defendant has a case to answer, and depending on the type of offence and plea entered, whether a defendant is to be committed for trial or sentence to either the district or Supreme Court or the Childrens Court of Queensland (see Part 5, Division 5: 'Examination of witnesses' and Division 6: 'Defendant admitting guilt' of the *Justices Act*).

### 3.7.2 Documentation at first appearance

As soon as practicable after commencing proceedings and prior to the first appearance, an arresting officer is to supply the court brief (QP9) to prosecution and defence with copies of all necessary documentation, including relevant criminal and traffic histories to the relevant prosecution corps. The arresting officer is to include a summary of facts and complete the evidence fields for each charge listed in the QP9. Where multiple QP9's are produced for a defendant, a summary of facts for each charge listed is to be included in the QP9.

For children's court matters, arresting officers are to refer to Chapter 5: 'Children' of this Manual.

The arresting officer is to complete a QP9 and associated documentation, and:

- (i) ensure when completing the QP9:
  - (a) it is fully and professionally completed, including the indigenous identifier provisions;
  - (b) all charges preferred are correctly worded and are appropriate (see s. 3.5.2: 'Responsibility to prefer all charges' of this chapter);
  - (c) all material facts are accurately and logically set out in the QP9 and support all elements of the charge(s). All of the elements are to be substantiated by:
    - admissible witness testimony;
    - physical exhibits, such as video recordings (including body worn camera footage), field recorded conversations, record of interviews, CCTV footage, analyst certificates, photographs, documents, weapons; and/or
    - a facilitation of proof provision, such as, averments, certificates, definitions, deeming provisions;
  - (d) a summary of the substantial evidence is presented within the facts section of the QP9, including:
    - direct evidence of any person (including an officer) who observed the actions of the defendant in the commission of the offence;
    - any admission or confession of the defendant;
    - medical evidence of a complainant or victim's injuries;
    - monetary value of the loss or damage relating to the offence (e.g. theft, fraud, damage, etc.);
    - any defence or exculpation raised by the defendant or known to investigating police; and
    - any evidence available to negate any exculpations or defences raised or apparent;
  - (e) the evidence fields include details of the available evidence to prove the charge;
  - (f) all charges that can be lawfully joined are joined (see s. 3.9.10: 'Joinder of charges' of this chapter);
  - (g) separate QP9s are to be prepared when:
    - a defendant is charged with both State and Commonwealth offences. The offences on each QP9 are to be cross-referenced so the prosecutor can make suitable arrangements for a joint hearing if the defendant pleads not guilty;
    - a defendant is charged with a number of offences involving different complainants; or
    - charges cannot be lawfully joined;
  - (h) defendants are conjointly charged in accordance with s. 3.9.11: 'Charging conjointly' of this chapter. The QP9 for each defendant and associated charges are to be cross referenced so all matters are dealt with together;
  - (i) all necessary documentary exhibits, which may be required for a plea of guilty, including victim impact statements (see s. 2.12.1: 'Victims of Crime Assistance Act' of this Manual), restitution quotations and breath, blood or drug analysis certificates, are uploaded to the relevant QPRIME Case File under the Documents tab;
  - (j) 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 QP9;
  - (k) the defendant's identification particulars (e.g. date of birth, scars, tattoos) are relevant and current at the date the prosecution is commenced; and

- (l) all police and civilian witness non-availability dates are recorded in QPRIME; and
- (ii) if QPRIME is unavailable, complete a QP 0009: 'Court Brief';
- (iii) arrange for the completed QP9 to be forwarded to the shift supervisor or 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 after the defendant's arrest;
- (iv) attach copies of the following documentation to the original and each copy of the QP9:
  - (a) all bench charge sheets or summonses relating to the defendant;
  - (b) where relevant, the defendant's:
    - Offender History Report (Queensland Court Outcomes);
    - Traffic Record; and/or
    - Non-TORUM history;
  - (c) where available, written estimates to support claims for compensation or restitution (see s. 3.7.3: 'Restitution/Compensation' and Appendix 3.1: 'Factors for consideration in restitution/compensation' of this chapter);
  - (d) where bail was refused by the prescribed police officer (PPO) on charging and where not otherwise directed by the PPO (see s. 16.20.1: 'Arresting officer's responsibilities' of this Manual), a completed QP 0215: 'Bail affidavit' and QP 0215A: 'Bail affidavit annexure (adult)' (or, where relevant, a QP 0215B: 'Bail affidavit annexure (child)'). Each page of the affidavit and annexure is to be sworn or affirmed;
  - (e) any certificates relating to the matter where these are available; and
  - (f) where a QP 0041A: 'Notice of intention to allege previous convictions' has been completed and served upon the defendant, an endorsed copy of the notice (see s. 3.5.18: 'Notices alleging previous criminal and traffic histories and circumstances of aggravation' of this chapter).

In circumstances where a QP 0343: 'Field arrest sheet' is completed and submitted it replaces a QP9 (see s. 3.7.14: 'Field arrest sheet' of this chapter).

When preparing the documentation for first appearances, officers are to check whether defendants are wanted in relation to other matters.

OICs are to provide sufficient time for officers under their control to complete QP9's within the required time frames. Where arresting officers are unable to complete and/or deliver the QP9 to the prosecution corps as soon as practicable after commencing proceedings and prior to the first appearance, the arresting officer and the arresting officer's supervisor are to advise the relevant prosecution corps why the QP9 cannot be delivered within the required time frame.

#### **Requesting interstate or New Zealand criminal histories**

Officers requesting copies of interstate or New Zealand (NZ) criminal histories are to send a QPRIME task to Release Unit Police [ORG Unit 3272]. The task is to 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 ACC database reference number, which is to be obtained from QPRIME;
- (iv) the corresponding state or country from which the criminal history is sought;
- (v) the name, rank and registration number of the arresting officer;
- (vi) in the case of a request for a NZ criminal history, a brief reason why a history is needed from NZ for that particular person; and
- (vii) the email address of the officer or email group where the interstate criminal history is to be sent.

On receipt of the NZ criminal history the receiving member of Release Unit Police is to forward a copy via email to PIC.OffenderHistory. The member of PIC receiving the email is to:

- (i) attached the criminal history to the relevant QPRIME Person Record;
- (ii) add a flag indicating the person has international criminal history; and
- (iii) inform the PIC team responsible for Blue Card Services that the history has been added.

#### **Requesting other international criminal histories**

Officers requesting criminal histories from international jurisdictions, apart from NZ, are to refer to s. 7.3.1: 'International inquiries through Interpol' of the MSM.

## Disposal of property

Officers are to ensure they include on the QP9 an instruction to prosecutor about the disposal of property. This will allow prosecutors to make submissions to the court, especially when a defendant makes application under s. 701: 'Disposal of seized things at end of proceeding' of the PPRA.

For property containing high risk data, see s. 4.6.12: 'Disposal of electronic devices and storage media' of this Manual.

### 3.7.3 Restitution/compensation

When restitution or compensation is sought the relevant information is to be attached to or included on the QP9 prior to the first appearance of the defendant(s). If this information is not available at the first appearance of the defendant(s) the reason for this and details of when the information will be available is to be included on the QP9. In instances where restitution or compensation is claimed on behalf of multiple complainants or from multiple defendants, a schedule of restitution/compensation is to be prepared (see Appendix 3.5: 'Schedule for restitution/compensation' of this chapter).

In calculating the amount of compensation or restitution to be claimed, officers are to calculate the loss incurred for each offence and divide equally among each defendant. When restitution/compensation is to be made to an insurance company the information is to be noted on the schedule.

A restitution/compensation schedule report can be generated in QPRIME against the person record, by setting the parameters of the restitution/compensation schedule report through completing the court result date field (this is the scheduled court appearance at which the restitution/compensation schedule report is to be presented).

In any case where restitution/compensation is to be sought, the prosecutor is to ensure the court has appropriate jurisdiction to deal with the matter. Consideration is to be given to the limitations of time, locality, and amount of restitution/compensation with reference to property stolen, damaged or destroyed, or to injury inflicted.

The *Victims of Crime Assistance Act* allows financial assistance to be paid to certain victims of acts of violence. See s. 5.6.25: 'Release of information under the Victims of Crime Assistance Act' of the MSM and s. 2.12.1: 'Victims of Crime Assistance Act' of this Manual. Officers are to familiarise themselves with the provisions of these sections and advise complainants accordingly. Even if restitution or compensation is awarded by the court, complainants may still be eligible for further assistance under this Act depending on the circumstances.

#### ORDER

Arresting officers are to ensure, in relation to cases involving an application for restitution/compensation, the prosecutor is advised of all the relevant circumstances as outlined in Appendix 3.1: 'Factors for consideration in restitution/compensation' of this chapter.

Prosecutors are to seek from the court on behalf of the complainant the amount of restitution/compensation nominated by the arresting officer. The prosecutor is not to reduce the amount of restitution/compensation requested to enable the matter to be dealt with summarily or alternately increase the amount to ensure the matter is dealt with in a superior court.

Arresting officers are not to apply for a moiety to be awarded.

Prosecutors are to:

- (i) apply for an order for compensation rather than a moiety; and
- (ii) advise the court of information concerning orders for compensation in respect to similar cases.

### 3.7.4 Suppressing child witness and victim identifying particulars

#### Child witnesses and victims

In this section 'proceeding' means:

a proceeding before a court in relation to an offence or before a justice taking an examination of witnesses for an indictable offence, but does not include a proceeding for a charge of an offence against a child.

In a proceeding for an offence of a sexual nature where a child is a witness or the person against whom the alleged offence has been committed is a child, s. 193: 'Restrictions on reporting certain court proceedings' of the *Child Protection Act* (CPA) places certain prohibitions on the release of information likely lead to the identification of the child.

In all other proceedings where a child is a witness or the person against whom the alleged offence has been committed is a child, s. 193 of the CPA provides a court may make an order prohibiting the release of information other than stipulated in the order.

In cases involving indictable offences committed against children, other than offences of a sexual nature, arresting officers are to request the prosecutor to apply to the court for an order under s. 193(2) of the CPA to prohibit the reporting of prescribed matters likely to lead to the identification of the child witness or victim concerned.

In proceedings for offences of a non-sexual nature, in which a child is concerned as either a witness or the victim of the offence, arresting officers may request the prosecutor to apply to the court for an order under s. 193(2) of the CPA to

prohibit the reporting of prescribed matters which are likely to lead to the identification of the child concerned. Such requests are to be made if the suppression of the child's identity would be of benefit to the child.

Section 193 of the CPA does not apply in the case of offences committed by children in which, other children are concerned as witnesses or as complainants. In such cases the provisions of s. 695A: 'Power to protect victim of violence by prohibiting publication of information about proceedings' of the CC and s. 6: 'Publication at large of complainants identity prohibited' of the *Criminal Law (Sexual Offences) Act* may be applied in certain circumstances to prevent the publication of a complainant child's identifying details.

Arresting officers are to include any request to the prosecutor to apply for an order under s. 193 of the CPA in the relevant QP9.

Prosecutors receiving such a request are to make a verbal application for such an order on the first occasion the matter is before a court.

For information on the disclosure of witness contact details in a relevant proceeding see s. 3.14.7: 'Disclosure of witness contact details in a relevant proceeding' of this chapter.

### 3.7.5 Checking of Court Briefs (QP9)

#### ORDER

An officer performing duty as a shift supervisor or brief checker, within two days of receiving a QP9 for review/approval is to:

- (i) read all parts of the QP9;
- (ii) ensure the prosecution of each charge satisfies the 'sufficiency of evidence' test and the 'public interest' test. If either test does not appear to be satisfied, a QP 0626: 'Request for Authority to Withdraw Charges' is to be completed in the relevant QPRIME case file as soon as practicable (see ss. 3.4.3: 'Factors to consider when deciding to prosecute' and 3.4.4: 'Withdrawal of charges' of this chapter);
- (iii) ensure as far as can be established and with reference to the QP 801A: 'Court Brief Aide-Mémoire', that the provisions of s. 3.7.2: 'Documentation at first appearance' of this chapter and relevant Service policy have been complied with and appropriate action is taken to rectify any defects or errors identified;
- (iv) ensure the contact details of any aggrieved, complainant, victim of crime or prosecution witnesses are not disclosed within the QP9 unless the contact details are materially relevant to the charge (see OPM s. 3.4.17);
- (v) if applicable, complete a QP 801: 'Court Brief Exception Report' and attach it to the QP9 for information of the prosecutor noting:
  - (a) any defects or errors (including if the matter does not satisfy the 'sufficiency of evidence' test or the 'public interest' test) unable to be rectified in a timely manner prior to the initial appearance of the defendant;
  - (b) action being taken, or that will be taken, to rectify any defects or errors identified; and
  - (c) any other information which is to be brought to the attention of the prosecutor; and
- (vi) sign/approve the QP9 in QPRIME and where reasonably practicable, sign the hardcopy. Where practicable, the QP9 is to be reviewed and signed together with the QPRIME charge sequencing report (CSR) prior to validating and transferring the charges to DJAG.

Where the shift supervisor or brief checker has received a QP9 for checking but is unable to inspect the QP9 the shift supervisor or brief checker is to arrange for a senior non-commissioned officer to review.

The shift supervisor or brief checker is to, prior to the initial appearance, deliver or cause to be delivered to the relevant prosecution corps the original QP9, plus a QP9 (Defendant Copy).

When a QP9 is received after inspection by a brief checker, the OIC of the prosecution corps responsible for prosecuting the matter is to ensure, prior to the first mention of the matter in a court, a prosecutor:

- (i) reads all parts of the QP9; and
- (ii) checks the provisions of s. 3.7.2: 'Documentation at first appearance' of this chapter have been complied with.

Where the provisions of s. 3.7.2 have not been complied with, the prosecutor checking the QP9 is to take appropriate action to rectify any defects or errors.

### 3.7.6 Rectification order

Where officers have commenced proceedings for an intimate image offence and there is no evidence that the image has been removed, retracted, recovered, deleted or destroyed, they are to consider requesting that the prosecutor make a submission for the issue of a rectification order (see s. 229AA: 'Rectification order—offence against s 223, 227A, 227B or 229A' of the CC).

To request an order, officers are to add a note to the end of the Facts of Charge tab in the Offence/Charge window of the QPRIME Charge Sequencing Report for any relevant charge using the following wording:

**Request for rectification order on conviction**

“The Order of the Court is that the offender is to:

Take reasonable action to remove, retract, recover, delete or destroy an intimate image or prohibited visual recording involved in the offence within a <stated period>”.

Where the matter is to be determined by a district court or higher, officers are to complete a Form 12: ‘General form of order’ under the Criminal Practice Rules (available on the Queensland Courts website) using the wording above and attaching it to the brief of evidence.

Where an application for a rectification order is requested by the investigating officer, the prosecutor is to inform the court as soon as practicable after the offender has entered a plea of guilty or the court has made a finding of guilt.

When a rectification order is made in a magistrate’s court, the OIC of the prosecution corps hearing the matter is to make suitable arrangements for:

- (i) the QPRIME occurrence to be updated, including uploading the relevant order into the occurrence; and
- (ii) flagging the offender in QPRIME,

on the same day the order is issued.

**3.7.7 Deleted****3.7.8 Deleted****3.7.9 District/Supreme Court hearings**

The ODPP is responsible for matters which have been committed to the district or Supreme Court or the Childrens Court of Queensland. In relation to charges under Commonwealth legislation, the Director of Public Prosecutions (Cwlth) is the responsible authority.

Where further input or investigation is required, ODPP officers will normally liaise directly with the investigating officer in person, depending on the urgency and nature of the matter. Investigating officers are to ensure requests for further input or investigation are complied with and the relevant ODPP officer is provided with a response as soon as practicable, and prior to the relevant due date.

If difficulties are experienced in complying with a request, the ODPP officer is to be advised as soon as practicable of the issue and the reason for the delay.

In cases where the ODPP has provided such request by email, officers are to print and file the hard copy of the message in accordance with s. 5.3: ‘Use of Service email’ of the MSM.

Information and documentation relating to an ex-officio indictment are to be provided to the ODPP in accordance with s. 3.4.21: ‘Ex officio indictment’ of this chapter.

The scheduling of district/supreme court hearings will be influenced by the:

- (i) availability of trial sitting periods;
- (ii) length of preceding trials within the sittings period; and
- (iii) availability of witnesses.

Trials which do not proceed during the scheduled sittings will be rescheduled to another sittings.

**Notification of hearing**

Once a trial or sittings date is known, the Superior Court Liaison Officer (where available), the crown prosecutor, or ODPP staff, will:

- (i) advise the arresting officer of the relevant sitting dates;
- (ii) contact the arresting officer approximately three weeks prior to the trial or sittings date (this procedure will be repeated if a trial is rescheduled to a later trial or sittings date);
- (iii) request the arresting officer to:
  - (a) contact all witnesses within the two weeks preceding the trial or sittings date;
  - (b) provide an updated QP 0323: ‘List/Non-Availability of Witness’ showing the availability of witnesses to give evidence at the forthcoming trial, and other required information; and
  - (c) provide details of all actions taken to contact a witness in instances where contact cannot be made; and
- (iv) advise the arresting officer prior to the week in which the case is to be heard of the witnesses to be called by the prosecution to give evidence at the trial.

## Availability of witnesses and other related matters

### ORDER

In every case where a defendant has been committed for trial, arresting officers are to complete and submit a QP 0323 in QPRIME and forward to:

- (i) the prosecutor on the date a committal proceeding concludes; and
- (ii) the ODPP as requested.

Police prosecutors appearing at committal proceedings at which a defendant is committed for trial or sentence are to complete a QP 1012: 'Prosecutor's Checklist' form and forward it, with the brief of evidence and the QP 0323 (if completed and provided by the arresting officer), to the ODPP.

Once the trial or sittings date is known, arresting officers are to advise all witnesses of this information. At this time, arresting officers are to ascertain the current availability of witnesses, and a new QP 0323 is to be completed. This completed form is to be provided to the ODPP not less than eight working days before the first day of the sittings or the week in which the trial is set for hearing or upon request.

Where contact cannot be made with a witness, the arresting officer is to provide full details of all attempts made to contact the witness to the ODPP upon request.

Where an arresting officer is aware a witness in a superior court trial becomes unavailable due to unforeseen circumstances, the officer is to advise the ODPP in writing (report or email).

To enable the ODPP to issue notices of trials, obtain victim impact statements and contact witnesses for further information, the QP 0323 is to accurately record the full addresses and contact telephone numbers of all witnesses, unless there are genuine security concerns, in which case the entry is to be 'address known to arresting officer'.

The Service telephone number and email address of the investigating officer and the investigating officer's supervisor is to be included on the form.

Where practicable, arresting officers are to maintain contact with witnesses during the time between the conclusion of the committal proceedings and the trial or sittings date. This will ensure the arresting officer is kept informed of witness availability and the witness is provided with any relevant information concerning the trial or sittings date.

For other issues relating to witnesses, see s. 3.10: 'Witnesses' of this chapter and Business Services Division policies and procedures on the 'Witness Expenses' webpage of the Service Intranet.

## Criminal histories

### ORDER

Where a written request for the supply of a current criminal history is received from an officer of the ODPP or the Director of Public Prosecutions (Cwlth), the Manager, PIC, is to ensure the relevant QPRIME Offender History Report (Queensland Court Outcomes) is sent directly to the requesting officer.

### 3.7.10 Victim impact statements

A victim impact statement (VIS) is a statement which details the impact an offence has had on a victim. The usual application of a VIS is on a plea of guilty and subsequent sentence of a defendant.

### ORDER

Investigating officers are to advise victims of violence or domestic violence offences they are eligible to provide a VIS, through a Police Referral.

For procedures relating to preparing a VIS, see also ss. 6.3.14: 'Police Referrals' and 7.12: 'Impact Statements' of this Manual. It is important to note that all VIS in the district and supreme courts are prepared by the ODPP.

A victim may submit a victim impact statement if they have suffered harm:

- (i) because a crime against the person was committed against them;
- (ii) because the person is a family member or dependant of a person who has died or suffered harm because a crime is committed against that person; or
- (iii) as a direct result of intervening to help a person who has died or suffered harm because a crime is committed against that person.

In accordance with Schedule 1AA of the *Victims of Crime Assistance Act (VOCAA)*, a victim of violence or domestic violence offences may prepare a statement providing details of the:

- (i) physical;
- (ii) psychological;
- (iii) social; and

(iv) financial,

harm they have suffered as a result of the offence, for the prosecutor to inform the sentencing court. The victim may elect to read their victim impact statement to the court.

Investigating officers are to ensure the prosecutor is fully informed of the effect of a crime on the victim. In compiling details of the harm caused to a victim, investigating officers are to refer to the provisions of s. 3.7.3: 'Restitution/compensation' of this chapter to allow the court to consider the full extent of the crime. Depending on the nature of the crime and its impact on the victim, this may be reflected in:

- (i) relevant details on the back of the QP9;
- (ii) the statement of the victim (see s. 2.13: 'Statements' of this Manual);
- (iii) a VIS; or
- (iv) the statement of an expert witness (e.g. a doctor's evidence regarding injuries caused to a victim).

Prosecutors are to assist the court in the sentencing process by making appropriate submissions in relation to penalty.

For a matter appearing before a magistrates court, and the victim of crime advises:

- (i) a prosecutor that they wish to prepare a VIS, the prosecutor will send a QPRIME task to the investigating officer; or
- (ii) the investigating officer that they wish to prepare a VIS,

the investigating officer is to:

- (i) advise the victim that DJAG has a 'Guide on how to prepare a VIS' on the 'Court support for victims of crime' section of their website; and
- (ii) where the victim requires further assistance and has provided consent, offer the victim a Police Referral (see s. 6.3.14: 'Police Referrals' of this Manual). Officers are to ensure the Police Referral includes the date the VIS is to be provided to the prosecutor.

A VIS may be provided to the prosecutor electronically.

For a matter appearing before a district or Supreme Court, officers from the ODPP will assist the victim in the process of preparing a VIS.

### 3.7.11 Investigation and contact with members of Judiciary and Magistracy

Prior to and during the course of any hearing:

- (i) members are not to discuss with a magistrate or judge any matter relevant to the proceedings about to or have commenced in any court;
- (ii) members are to ensure they are not alone, whether in chambers or elsewhere, with a magistrate or judge hearing the matter; and
- (iii) except with the prior consent of the defendant's legal representative, if it is necessary to discuss any matter with a magistrate or judge, such discussions are to only be in the company of the defendant's legal representative. If unrepresented, the defendant is to be present at any such discussion.

If an officer needs to interview a magistrate or a judge of the Supreme Court during an investigation, either as a witness or suspect in relation to any matter arising from a finalised case in which the magistrate or judge presided, the officer is to, prior to interviewing the judge of the Supreme Court or magistrate, contact the Chief Magistrate or the Chief Justice (Supreme Court), as the case may be, explaining:

- (i) the nature and purpose of the inquiry; and
- (ii) the necessity to interview the particular magistrate or judge.

Officers who need to interview a judge of the district court during an investigation are to contact the judge, prior to any interview, to explain the necessity and purpose of the inquiry.

The officer is to request advice as to whether the magistrate or judge would be prepared to speak to the officer.

This policy does not inhibit the right of judges or magistrates to make contact with members of the Service as necessary.

ORDER

Officers are not to contact, or attempt to contact, magistrates, judges of the district court or judges of the Supreme Court for the purpose of obtaining legal advice.

Officers who wish to make contact with the Chief Magistrate, a judge of the district court or Chief Justice is to forward a report to the OIC of their region, command or division, which identifies the magistrate or judge whom they seek to interview and outline the reason and need for an interview. This report may be attached to the relevant QPRIME occurrence.

Officers in charge of regions or commands who consider such an interview is appropriate are to refer the request to the relevant Chief Magistrate, judge of the district court or Chief Justice.

### 3.7.12 Attendance of arresting officer during court proceedings

For the purposes of this section, court proceedings include applications, committals, summary trials and superior court trials and sentencing proceedings.

Unless excused by a Crown or police prosecutor appearing for the prosecution, arresting officers are to be present and remain at court for the duration of the court proceedings. Where overtime may be incurred, officers are to immediately notify the prosecutor and seek a direction whether they are to attend and/or remain at the court.

OIC are to make all necessary arrangements to ensure arresting officers attend and remain at court for the duration of the court proceedings. Where this is not possible, the OIC is to advise the Crown or police prosecutor.

### 3.7.13 Comments by Magistracy concerning members of the Service

Where a magistrate or coroner makes comment, either adverse or favourable, concerning any member, the prosecutor is to:

- (i) apply to the relevant clerk of the court for a copy of the magistrate's or coroner's comments, where available; and
- (ii) furnish a report of the occurrence to their OIC.

Where such reports contain allegations of misconduct or breach of discipline, the OIC is to ensure the reporting requirements contained in 'Complaint Management' of the Ethical Standards Command Policies are complied with.

### 3.7.14 Field Arrest Sheet

The resolution of an incident may require a large numbers of arrests. To facilitate dealing with this type of incident, processing of persons arrested and first court appearances, the following forms may be approved for use:

- (i) QP 0343: 'Field Arrest Sheet' (available from Richlands Supply Services);
- (ii) QP 0343A: 'Watchhouse Receival Sheet'; and
- (iii) QP 0343B: 'Receival Sheet'.

Approving officers (RDO, patrol group inspectors or other officers authorised by the district officer) may approve the use of the QP 0343, QP 0343A and QP 0343B in appropriate situations. When approval is given to use the QP 0343, approving officers are to ensure sufficient quantities of forms and appropriate numbers of personnel and other equipment are available.

Whenever a QP 0343 is used, it is to be treated as and replaces the QP9.

Appendix 3.7: 'Field Arrest Sheet – Process Flow Chart' of this chapter is a flow chart outlining the process when a QP 0343 is approved and used.

In arresting and processing, the following procedure is to be followed subject to specific directions issued for the particular incident:

- (i) at least two officers are to be involved in making an arrest. The prisoner is to be taken to a designated receiving area and handed over into the custody of the officers responsible for receiving prisoners, at a receiving area prior to their transport to a watchhouse, station or establishment (the receiving officers);
- (ii) prior to handing over the prisoner, the arresting officer is to:
  - (a) search the prisoner; and
  - (b) be photographed with the prisoner (see s. 467(3): 'Taking identifying particulars of person in custody' of the PPRA);
- (iii) the arresting officer is to:
  - (a) at the receiving area:
    - ensure the custody status issues, including search and seizure issues are recorded on the QP 0343 prior to accepting a prisoner; and
    - sign the rear of the watchhouse cardboard copy of the QP 0343; and
  - (b) resume designated duties;
- (iv) the receiving officers are to ensure they have the following:
  - (a) QP 0343, QP 0343B and QP 0343A;
  - (b) a stapler;



- (c) clip seal plastic bags (property bags);
  - (d) a marker or permanent ink pen; and
  - (e) a digital camera;
- (v) the receiving officers are to:
- (a) complete the front of the QP 0343, including the relevant information required for the QPRIME custody report, the medical assessment on the rear and give the yellow copy of the QP 0343 to the arresting officer;
  - (b) capture an image of the arresting officer with the prisoner, which is to be retained for subsequent identification purposes. A previously prepared card showing in bold printing the name of the arresting officer and station and the name of the prisoner is to be held in front of the arresting officer for the photograph;
  - (c) take possession of things belonging to the prisoner found during the arresting officer's search and place them in a property bag, which is to be properly marked. All property taken is to be listed on the front of the QP 0343;
  - (d) place the watchhouse cardboard copy of the QP 0343 inside the prisoner's property bag, which is to be secured in the van/vehicle in which the prisoner is placed;
  - (e) give the prosecutions' white copy of the QP 0343, which includes a summary of facts section on its reverse side, and the collation officer's blue copy of the QP 0343 to the van coordinator;
  - (f) complete a QP 0343B. When completing the QP 0343B, receiving officers are to allocate a number to each prisoner. This number is to be transcribed onto the watchhouse cardboard copy of the QP 0343 for the prisoner and the prisoner's property bag. (e.g. van crew A, allocates the first prisoner the number A1 on the receiving sheet. Further prisoners are allocated consecutive numbers (A2, A3, A4 and so on). A similar process is to be used by other van crews such as van crew B, C etc.). The completed van receiving sheet is delivered to the van coordinator;
  - (g) when advised by the van coordinator, transport the prisoner and the person's property to a watchhouse. On arrival at the watchhouse relinquish custody of the prisoner(s) and hand over the prisoner's property and the watchhouse cardboard copy of the QP 0343. The watchhouse cardboard copy of the FAS is to be used by the processing officers and placed in the custody register in the relevant entry for the prisoner;
- (vi) the van coordinator, in accordance with instructions for a particular incident, is to remain at the incident scene to coordinate the movement of Service vehicles and ensure at least one Service vehicle is present at the incident scene at all times. Where practicable, a Service vehicle is to be dedicated for the isolation of prisoners who are violent, female or youth. The van coordinator is to deliver the:
- (a) prosecutions' white copy of the QP 0343 to the arresting officer for completion of the summary of facts section. When completed it is collected by the van coordinator and delivered to a collation officer; and
  - (b) collation officer's blue copy of the QP 0343 to the collation officer;
- (vii) processing officers are designated officers who perform the duties ordinarily performed by an arresting officer at the watchhouse. These officers are to perform duties as directed, which may include searching the prisoner, making computer inquiries, entering data into the QPRIME custody report, obtaining an occurrence number in QPRIME, checking for and requesting traffic and offender history reports, preparing bench charge sheets (BCS) and finger print forms. Processing officers are also responsible for ensuring the BCS is/are electronically forwarded to a brief checker;
- (viii) processing officers are to use the QP 0343A to record the arrival of prisoners. A paper copy of the BCS for tendering at the first court appearance is to be attached to a watchhouse receiving sheet and delivered to a collation officer by processing officers.
- The signature of the arresting officer on the watchhouse cardboard copy of the QP 0343 is sufficient and is to replace the required arresting officer's signature on the custody register.
- The provisions of the *Bail Act* are to be considered with respect to each prisoner;
- (ix) the collation officer is to:
- (a) verify the prisoners' records on the QP 0343 with the QP 0343A sheet;
  - (b) transcribe the QPRIME occurrence number assigned to each prisoner's name on the QP 0343A to the respective prosecution copies of the QP 0343 before photocopying. The prosecutions white copy of the QP 0343 is to be photocopied and distributed as if it is a QP9. The BCS and any traffic/offender history reports are to be attached to relevant copies of the QP 0343 for distribution by a brief checker; and
  - (c) deliver the original prosecutions white copy, other copies of the QP 0343 and attachments to a brief checker, who will check the contents of the QP 0343 in accordance with s. 3.7.2: 'Documentation at first appearance' of this chapter and record the QPRIME occurrence number on the FAS. The brief checker is to distribute the QP 0343 in accordance with s. 3.7.5: 'Checking of Court Briefs (QP9)' of this chapter;

(x) receiving and processing officers are to note the time and sign the rear of each watchhouse cardboard copy of the QP 0343; and

(xi) at the conclusion of the incident, all completed QP 0343s and QP 343As are to be attached to the station occurrence sheet for the division where the incident occurred or as directed by the OIC resolving the incident.

### Completing the summary of facts for a Field Arrest Sheet

When completing the summary of facts on the reverse side of the prosecutions' white copy of the QP 0343, arresting officers are to print in point form, using a felt tip or ink pen the elements of the offence(s) and ensure facts under each point are sufficient to prove each element.

The following format may be applied:

(i) time, date and place:

'1.30 p.m., 23/06/16 Port Drive, Lytton';

(ii) the task the arresting officer was performing:

'Crowd control at demonstration involving union members';

(iii) essential evidence and identification of the prisoner:

'Defendant was amongst a group of persons protesting against the dismissal of union labour and blocking Port Drive, Lytton';

'The defendant was situated at the front of this group'; and

(iv) police action:

'A direction was given by Inspector Jones for the crowd of people to remove themselves from the roadway. The direction was not obeyed and the defendant was arrested and charged'.

### 3.7.15 Breach of suspended sentence

A defendant breaches a suspended sentence ordered by a magistrates, district or Supreme Court if convicted of committing any other offence during the operational period of the suspended sentence, for which a term of imprisonment may be imposed. The conviction may activate the suspended sentence.

When an arresting officer is aware a defendant will breach a suspended sentence if convicted of an offence committed during the operational period of a suspended sentence, this information is to be included on the QP9. When a defendant is convicted of an offence, such conviction activating a suspended sentence, the prosecutor is to take appropriate action to advise the relevant court of the breach of the suspended sentence.

#### Magistrates, district or Supreme Court

If a suspended sentence was ordered by a:

(i) magistrates court, any magistrates court may deal with the breach of the suspended sentence in accordance with s. 147: 'Power of court mentioned in s 146' of the *Penalties and Sentences Act (PSA)*; or

(ii) district or supreme court, the prosecutor is to request the magistrate to commit the defendant to the next available sittings of the relevant court in accordance with s. 146(4): 'Consequences of committing offence during operational period' of the PSA. The prosecutor is to forward a copy of the QP9 which incurs the breach and a copy of the defendant's Offender History Report (Queensland Court Outcomes) to the relevant ODP.

An officer who becomes aware a person has breached a suspended sentence ordered by a magistrates, district or Supreme Court, by being convicted of either a Commonwealth or State offence in another state or territory, may apply to a magistrate to issue a summons or warrant pursuant to s. 146A: 'Summons or warrant for offender whose sentence of imprisonment has been suspended' of the PSA.

#### Childrens Court

A childrens court magistrate, Childrens Court judge, or district or Supreme Court, may order a conditional release order, including participation as directed by the chief executive in a program for a period not longer than three months. The order is to require the child abstain from violations of the law.

If, at any time while a condition imposed on a child under a conditional release order has effect, and the chief executive is satisfied the child has failed to comply with the condition, the chief executive may obtain a warrant for the arrest of the child. In this case the child, in accordance with the provisions of s. 238: 'Chief executive's application on contravention' of the YJA, is to be taken directly to a court of the same or higher jurisdiction which imposed the immediate release order.

If a child subject to a conditional release order is in breach of the order through being found guilty of an indictable offence then the court before which the child is appearing may commence action in relation to the breach. If an immediate release order was ordered by a childrens court magistrate, any childrens court magistrate may deal with the breach of the suspended sentence in accordance with s. 240(2): 'General options available on breach of order' of the YJA.

If a conditional release order was ordered by a district, supreme or childrens Court judge, the prosecutor is to request the childrens court Magistrate to commit the child to the next available sittings of the relevant court in accordance with s. 240(3) of the YJA. The prosecutor is to forward a copy of the QP9 which incurs the breach and a copy of the child's Offender History Report (Queensland Court Outcomes) to the ODDP.

An officer who becomes aware a child has breached a conditional release order issued by a childrens court magistrate, Childrens Court judge, or district or Supreme Court, by being convicted of either a Commonwealth or State offence in another state or territory, or by breaching any other condition of the order, may apply to the Chief Executive, Department of Justice and Attorney-General (see SMCD) for a warrant pursuant to s. 238 of the YJA.

### Federal suspended sentences

When a court, exercising federal jurisdiction, is sentencing a defendant charged with a Commonwealth offence the court may order the defendant be sentenced to imprisonment but be released immediately or after serving a portion of the sentence. The release is subject to the condition the defendant be of good behaviour for a specified period. If a person subject to such a sentence is convicted of any offence committed during the period which they were required to be of good behaviour they are liable to be brought before the original sentencing court. An information is laid before a magistrate and a summons or warrant issued requiring the person to appear before the original sentencing court, pursuant to s. 20A of the *Crimes Act* (Cwlth).

On becoming aware of a conviction during the period the person was required to be of good behaviour, contravening a federal suspended sentence, the prosecutor is to forward a copy of the QP9 for the offence constituting the breach and a copy of the person's Offender History Report (Queensland Court Outcomes) to the Commonwealth Director of Public Prosecutions (CDPP) (see SMCD). Action in relation to such matters will be commenced by the office of the CDPP.

### 3.7.16 Presentence Custody Certificates (Penalties and Sentences Act 1992)

Section 159A(1) of the *Penalties and Sentences Act* (PSA) provides if an offender is sentenced to a term of imprisonment for an offence, any time the offender was held in custody in relation to proceedings for the offence and for no other reason, this time is to be taken to be time already served under the sentence, unless the sentencing court otherwise orders.

Section 159A(2) of the PSA provides subsection (1) does not apply to:

- (i) a period of custody of less than 1 day;
- (ii) imprisonment of less than 1 day;
- (iii) imprisonment wholly suspended; or
- (iv) the suspended part of imprisonment partly suspended.

Section 159A(4A): 'Time held in presentence custody to be deducted' of the PSA requires the prosecuting authority to help the sentencing court in making declarations relating to presentence custody by giving the sentencing court a presentence custody certificate (PCC).

The provisions of s. 159A of the PSA do not apply to children (see s. 149: 'Jurisdiction to sentence child exclusive' of the *Youth Justice Act*).

A PCC is signed by an authorised Queensland Corrective Services (QCS) officer.

#### Presentence Custody Certificates issued by police

##### ORDER

Where an offender is in police custody for a period of 24 hours or more in relation to an offence, the completion of a Form 67: 'Presentence Custody Certificate' is to be arranged and signed by:

- (i) the watchhouse manager, where the offender was held in a watchhouse in relation to the offence (including where the offender has failed to appear in relation to the offence):
  - (a) on release of the offender from custody (not including where the offender is transferred to QCS custody); or
  - (b) when requested by a police prosecutor; or
- (ii) in other cases, the arresting officer's OIC:
  - (a) on release of the offender from custody; or
  - (b) when requested by a police prosecutor or the ODPP.

The member arranging for completion of the certificate is to ensure the completed certificate is forwarded directly to the relevant prosecutor responsible for prosecuting the matter.

### Responsibility of police prosecutors

When an offender is sentenced to a term of imprisonment for an offence by a magistrates court, the police prosecutor responsible for prosecuting the matter is to give the sentencing court a completed Form 67 if the offender was held in presentence custody in circumstances to which s. 159A(1) of the PSA applies.

Where a current Form 67 is not available, and a police prosecutor believes or has been advised by a sentencing court a PCC is or is likely to be required for the purposes of ss. 159A(3) or 159A(3B) of the PSA, the prosecutor is to, depending on where the offender has been held, request the watchhouse manager or the OIC to arrange for the completion of a PCC for any period of Service custody of 24 hours or more.

In cases of Corrective Services custody section titled 'Presentence Custody Certificates issued by Queensland Corrective Services' of this section.

Police prosecutors are to ensure:

- (i) any PCCs received in relation to outstanding matters are retained with the relevant prosecution file and given to a court when required; and
- (ii) an appropriate application under s. 159A subsections (3), (3B) or (5) of the PSA is made as the need arises (see s. 159A(6) of the PSA).

### Additional responsibilities of watchhouse managers

Where an offender has been remanded in custody by a court for an offence, the watchhouse manager is to forward details of Service custody in relation to the offence to the relevant correctional facility upon transfer of the offender from the watchhouse. Such details are to include the dates and times between which the offender was held in police custody. The details are to be forwarded by noting them in the QPS Person Report (Custody) prepared for the correctional facility.

### Presentence Custody Certificates issued by Queensland Corrective Services

QCS have agreed to prepare a PCC:

- (i) in relation to offenders held in QCS custody including offenders who have been received from Service custody;
- (ii) in cases where offenders are released from QCS custody prior to the date when the offender's appearance is required in court; and
- (iii) in relation to superior court matters, for the ODPP.

If the offender is in QCS custody, the correctional facility where the offender is held will routinely issue the PCC for the offender's appearance in a magistrates court. Where applicable, a copy of the certificate will be provided with the offender's transfer documentation (i.e. transfer/transport authority and remand warrant) accompanying the offender to court. The correctional facility will also forward a copy of the certificate to the relevant prosecution corps responsible for prosecution of the matter via facsimile at least one working day before the court or transfer date.

QCS will also provide a PCC when requested for offenders not in custody at the time of sentencing.

Where an offender is transferred to Service custody from QCS custody, the watchhouse manager responsible for the custody of the offender in the area where the offender is appearing in court is to ensure a copy of any PCC received in relation to the offender is forwarded directly to the prosecutor responsible for prosecuting the matter.

In cases where the offender appearing in court is in QCS custody and a PCC has not otherwise been provided, the police prosecutor is to in the first instance request a PCC from the QCS officers who have custody of the offender.

Where a current PCC is required or likely to be required but has not been received from QCS or is not available, the prosecutor responsible for prosecuting the matter is to, where the offender is in QCS custody, make a request for a PCC to the relevant correctional facility.

Where the offender is no longer in QCS custody, the prosecutor responsible for prosecuting the matter is to make a request, via email, for a PCC to Sentence Management Services (SMS), QCS (see SMCD).

The request is to include:

- (i) the offender's name and any aliases;
- (ii) the offender's date of birth;
- (iii) offence details including the offence date and short title;
- (iv) magistrates court file numbers (if known); and
- (v) details of police custody, including the date of arrest and date of transfer to QCS custody.

Where applicable, the request is to be made at least 3 days before the date of the offender's appearance in court.

It is to be noted SMS do not retain offender files on site and cannot always provide PCCs on the same day as requested.

Any inquiries regarding PCCs required to be issued by QCS, or an offender's custody details may be directed to SMS, where the offender is not in custody, or the relevant correctional facility at which the offender is accommodated if the offender is still in custody.

### Requirements of Presentence Custody Certificates

Members required to complete PCCs are to ensure such certificates comply with the relevant provisions of s. 159A of the PSA and ensure PCCs, or in cases where information is provided to QCS, details of presentence custody state the:

- (i) offence or offences for which the offender was held in custody;
- (ii) dates between which the offender was held in custody for each of those offences; and
- (iii) times the offender was held in custody.

Generally, this information is to be available in the relevant entry of the custody report or occurrence in QPRIME.

### Effect of changes to existing charges on presentence custody

Where:

- (i) an existing charge of an offence has been withdrawn and/or substituted for another charge of an offence during proceedings; or
- (ii) the ODPP prefers a different charge on indictment originally preferred against an offender;

the period of time in the PCC is to include the time from the arrest relating to the same, or same set of, circumstances as those giving rise to the charging of the original offence (see s. 159A(1) of the PSA).

### Multiple arrests

Where an offender is to be sentenced in a magistrates court for a number of offences for which there are multiple arrest dates and a PCC is required, one certificate is to be prepared in relation to all the offences for which the offender was held in custody. In the case of multiple arresting officers, the police prosecutor is to determine which member will arrange for the completion of the certificate consistent with the policy contained within this section.

### Presentence Custody Certificates provided by the Office of the Director of Public Prosecutions

By virtue of s. 159A(4A) of the PSA, the ODPP is responsible for giving a PCC to sentencing courts for all matters for which they are the prosecuting authority.

Members receiving requests from the ODPP for PCCs where the offender has been in police custody for more than 24 hours are to refer such requests to the arresting officer's OIC for preparation of such certificates.

### 3.7.17 Transcripts of court proceedings

The fees for transcripts of court proceedings are prescribed in the Schedule 1: 'Fees' of the Recording of Evidence Regulation.

Where the request for a transcript of court proceedings is required for official purposes, or a court has ordered the provision of the document to the Service, the prescribed fee may be waived.

The requesting officer's region or command to which the requesting officer was attached at the time of request is responsible for the payment of costs if the prescribed fee is not waived.

Requests for transcripts of court proceedings required for official purposes (e.g. to prepare an appeal, to assist the prosecutor with part heard matters, confirm a magistrate's adverse comments, etc.), are to be made by emailing a completed 'Request for Transcript – Parties' form (located on the Auscript webpage) to Auscript Services (see SMCD). Where an officer seeks a transcript of court proceedings for non-official purposes (e.g. to obtain a record of a favourable quote for use in a job application), the request is to be made as a private party in the approved form with the prescribed fee. The individual officer is responsible for the payment of the prescribed fee in such circumstances.

### 3.7.18 Cooperation in an investigation

The willingness of the offender to cooperate in the investigation or prosecution of others, or the extent to which the offender has done so, is a matter which impacts on sentencing and other prosecution processes. In accordance with ss. 9(2)(h): 'Sentencing guidelines', 13A: 'Cooperation with law enforcement authorities to be taken into account—undertaking to cooperate' and 13B: 'Cooperation with law enforcement authorities to be taken into account—cooperation given' of the *Penalties and Sentences Act* (PSA), an offender's sentence at the end of a hearing may be reduced to recognise any assistance provided to investigators (see also s. 3.9.14: 'Indemnities against prosecution' of this Manual).

ORDER

Where the offender or their legal representative raises cooperation with law enforcement authorities during case conferencing or otherwise, a prosecutor is to seek an adjournment where necessary and make contact with the arresting officer for instructions as to the extent of any cooperation and determine the appropriate course of action.

### Service recognition of assistance in an investigation

At times, officers may determine an offender's assistance in an investigation is to be considered as part of the sentencing process under s. 9(2)(h) of the PSA. Where an affidavit of assistance is submitted to a court, in accordance with ss. 13A and 13B of the PSA, evidence in relation to the affidavit is heard in a closed court.

Where the offender is a registered human source, officers are to comply with s. 8.3: 'Affidavit of assistance' of the Human Source Management Policy (HSMP) (available on the State Intelligence Group, Crime and Intelligence Command webpage on the Service Intranet).

Where an offender, who is a witness in a criminal matter, is not a registered human source, officers are to:

- (i) complete a
  - (a) draft affidavit, including the information in point 14 (a)-(j) (as appropriate) of s. 8.3 of the HSMP; and
  - (b) report outlining all relevant information to support the approval of an affidavit of assistance;
- (ii) submit the draft affidavit and supporting report to the officer's regional crime coordinator (RCC), or within CIC, the detective superintendent through the chain of command;
- (iii) where the affidavit of assistance is supported by the RCC or detective superintendent, the officer is to swear the affidavit; and
- (iv) deliver the sworn affidavit of assistance to the police prosecutor or the relevant officer at the ODPP at least five working days before the date of sentencing. The sworn affidavit is to be in an unsealed envelope addressed to the sentencing judge or magistrate.

Wherever practicable and relevant, officers are to comply with processes and timelines outlined in s. 8.3 of the HSMP.

### 3.7.19 Banning orders

Section 43J: 'Making a banning order' of the *Penalties and Sentences Act* provides a sentencing court with the authority to issue a banning order against the defendant in certain circumstances (see s. 13.7.6: 'Court-issued banning orders' of this Manual).

### 3.7.20 Making of control orders

Part 9D: 'Serious and organised crime' of the *Penalties and Sentences Act* (PSA) provides a sentencing court with the authority to make mandatory and discretionary control orders (see s. 2.31.5: 'Control orders' of this Manual).

Where an application for a discretionary control order is to be made because the offender was a participant in a criminal organisation (see s. 161N: 'Definitions' of the PSA), the prosecutor is to inform the court as soon as practicable after the offender has entered a plea of guilty or the court has made a finding of guilt, but before the sentencing process is complete (see s. 161W(4): 'When court may make order-offender who was participant in criminal organisation' of the PSA).

### 3.7.21 Restriction on the arrest of persons in and around a magistrates court precinct

Section 21: 'General power to enter to arrest or detain someone or enforce a warrant' of the PPRA provides the power for a police officer to enter and stay on a place to arrest a person.

The Chief Magistrate however has issued a protocol restricting instances where an offender or suspect can be arrested by officers within the confines of a magistrates court precinct.

A magistrates court precinct is any part of the land (property boundary) or building used for the purposes of the court. Where the building is also used by a higher court the precinct includes the space occupied by that court. It does not include:

- (i) a police station or watch-house that is part of a magistrate court precinct;
- (ii) instances when a magistrate is not sitting e.g. the registry is operating in regional areas;
- (iii) rented facilities occupied by a third party e.g. café within a magistrates court precinct; and
- (iv) another government entity within a precinct e.g. Transport and Main Roads.

When there is doubt as to the exact boundary location of land or a third party premises within a magistrates court precinct officers are to exercise s. 21 of the PPRA.

An offender or suspect can only be arrested in a court precinct where:

- (i) an offence has or is about to be committed in the vicinity of or in a precinct; or
- (ii) there are reasonable grounds a person in the precinct is at risk of being harmed; or
- (iii) consent has been obtained from a magistrate.

Officers who identify a wanted person is within a court precinct, including a person wanted for life imprisonment offences, and that person has not committed an offence in the court precinct and there is no risk of harm to any person, are not to arrest the person and are to notify the registrar of the court who will make application to a magistrate.

Officers are to:

- (i) advise the registrar of the details of the wanted person including the offences for which they are wanted for and any escape risk posed;
- (ii) advise if the wanted person is due to appear in court; and
- (iii) only commence an arrest within a court precinct once approval has been granted by a magistrate.

### Warrants

If an arrest or other warrant is in existence for a person identified to be within a court precinct, even though the warrant commands or directs an officer to forthwith arrest a person, including warrants issued by Federal or the supreme and district courts, officers are not to arrest the person.

The person is to be given the opportunity to surrender into the custody of the court. Officers are to direct the person to the registrar but not escort the person or give rise to the impression that the person is detained or in police custody. A warrant is to only be executed in the court precinct if the person refuses to surrender to the court or attempts to leave the court precinct.

In all other instances officers are to arrest a wanted person outside the court precinct. As a magistrate court precinct includes any land or building, the first opportunity to arrest a person will occur on the public footpath outside of a court precinct.

In such circumstances officers are to be cognisant of the greater risk of:

- (i) opportunity for escape by the wanted person;
- (ii) injury to members of the public if the wanted person takes flight through crowded pedestrians; and
- (iii) serious injury to officers or the wanted person if flight occurs into busy vehicular traffic.

Such risks are higher in major provincial magistrates court precincts e.g. Brisbane Magistrates Court.

If a person re-enters a court precinct they may be pursued and arrested.

## 3.8 Preparation and submission of briefs of evidence

### 3.8.1 Introduction

ORDER

When preparing a brief of evidence, arresting officers are to ensure all admissible and relevant information, including information which might be considered advantageous to the defence case, is compiled and provided to the relevant prosecution corps to allow for full disclosure.

Arresting officers are to ensure statements and other materials in the brief of evidence do not contain personal particulars (e.g. address, telephone, next of kin details) relating to a victim or witness unless the information is a material particular of the offence. Where necessary, arresting officers are to remove (e.g. black out) this information from documents in the brief of evidence to avoid inadvertent disclosure of the information to the defendant or the defendant's legal representative.

### 3.8.2 Format of briefs of evidence

POLICY

Members are to supply to the relevant police prosecutions corps briefs of evidence in the following format:

- (i) a QP 0541: 'Index to brief' (available on QPRIME), appearing as the first page of the brief of evidence;
- (ii) a QP 0323: 'List/Non-Availability of Witnesses (Including Police Officers)' (available in QPRIME) attached to the original (prosecution copy) only;
- (iii) where required, a precis (see s. 3.8.4: 'Precis' of this chapter);
- (iv) original signed statements taken from every witness;
- (v) copies of relevant documentary exhibits, including certificates and photographs;
- (vi) a copy of any records of interview (see s. 3.8.8: 'Records of interview and transcripts' of this chapter);
- (vii) a copy of any electronically recorded evidence (see also s. 3.8.13: 'Video/audio tapes in relation to sexual abuse investigations' of this chapter). Where evidence consists of audio, video or picture data files or other

electronic media, the investigating officer is to ensure the format is of a type able to be presented at the relevant court by prosecutions; and

(viii) where required, the written report of an appropriately qualified expert to confirm 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).

### 3.8.3 Deleted

### 3.8.4 Precis

A precis is a brief summary of the evidence to be adduced by the prosecution. A precis includes a brief summary of all witness statements and an explanation of all exhibits to be produced.

ORDER

All briefs of evidence which contain more than five statements are to include a precis, completed by the officer compiling the brief of evidence.

### 3.8.5 Presentation of statements

POLICY

Generally, witness statements should be placed in the brief in the order evidence is likely to be given. This should reflect the events surrounding the offence charged, in a chronological or otherwise logical order.

ORDER

Officers compiling briefs of evidence are to ensure:

- (i) when more than one statement is taken from any witness, all subsequent statements are included in the brief and are clearly marked 'Addendum' and dated to show each subsequent statement is an addendum to the original statement;
- (ii) any exhibits are to be clearly identified and referred to so there can be no doubt as to which exhibit the witness is referring. The words 'I am able to produce the (...exhibit to be produced...) which I have referred to in my evidence', are to be used;
- (iii) where difficulties have been or are expected to be encountered in respect of any witness, a notation to this effect is attached to the brief of evidence. This notation is to be provided on a separate page headed 'Notes for Prosecutor' and should contain all relevant information and reasons. Difficulties include criminal histories of witnesses (if any), any hostile reaction which may be anticipated from any witness and the reasons therefore, any facts believed to be within the knowledge of a witness which has not been disclosed, or any witness refusing to sign or provide a statement;
- (iv) when a scene of crime officer or other scientific officer makes an examination and/or test in relation to an investigation, their statement is included in the brief of evidence. Such a statement is to be included whether or not the results of the investigation by the crime scene/scientific officer are positive or negative; and
- (v) where an incomplete brief of evidence is forwarded to the prosecutor, a notation to this effect is attached to the brief of evidence outlining the reason(s) why the brief of evidence is not complete. Details of when the complete brief of evidence can reasonably be expected to be available for the prosecutor and a precis of the anticipated evidence are also to be included.

Statements obtained for the purposes of compiling a brief of evidence are to be typed on a QP 0125: 'Statement of Witness' (available on QPRIME) (see s. 2.13.1: 'Introduction' of this Manual).

### 3.8.6 Hand-up statements

Section 110A: 'Use of tendered statements in lieu of oral testimony in committal proceedings' of the *Justices Act* provides the process by which written statements of witnesses are admitted as evidence during committal proceedings without the need for witnesses to give oral evidence.

However, witnesses may still be required to attend court to give evidence or be cross-examined if the prosecution and defence agree (see ss. 83A(5AA) and 110A(5) of the *Justices Act*).

POLICY

Before any statement may be tendered, the following conditions are to be met:

- (i) each original statement is to be prepared in accordance with s. 110A(6C) of the *Justices Act*;
- (ii) the defendant is to be represented by a legal practitioner, unless the justices are satisfied the criteria in s. 110A(4) of the *Justices Act* have been met; and
- (iii) the defence is to be supplied with a copy of the statement.



Officers who prepare a 'hand-up' brief of evidence are to prepare a brief in the normal manner and ensure statements are signed in accordance with 'Declarations on statements' of s. 2.13.2: 'Information to be included in a statement' of this Manual.

The declaration or acknowledgement is to be placed on the last page of the statement. Where there is insufficient room on the final page, the declaration or acknowledgement is to be entered on the reverse of the final page.

Where police prosecutors have provided statements to the defence in this process, the defence legal representatives are entitled to retain all such copies, in all circumstances.

Officers involved in matters covered by this process should refer to and comply with the provisions as outlined in s. 3.4.5: 'Director of Public Prosecutions (State) Guidelines' and s. 3.4.8: 'Requests by defence for copies of statements and documents' of this chapter.

### 3.8.7 Copies of certificates

#### PROCEDURE

Originals of certificates should be retained by the arresting officer and produced in evidence by the relevant witness.

#### ORDER

Officers compiling a brief of evidence are to ensure where certificates are to be produced, copies of such certificates are attached to the brief of evidence.

### 3.8.8 Records of interview and transcripts

Officers compiling a brief of evidence are to ensure:

- (i) where a written record of interview has been taken in relation to a matter, a copy is attached to the brief of evidence;
- (ii) where a full transcript of a recorded interview:
  - (a) is required, it is prepared in accordance with s. 7.7: 'Transcription' of the DERIE Manual; and
  - (b) has been obtained, the transcription is attached to the brief of evidence and a label is affixed to the relevant recording indicating the:
    - interview has already been transcribed by the Police Service; and
    - name, registered number and station of the arresting officer; and
- (iii) where an electronically recorded record of interview has been conducted with the accused person, but the accused has stated in effect 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 29: 'Disclosure: Sections 590AB to 590AX of the Criminal Code' subsection (ix): 'Committal Hearings' of the Director of Public Prosecutions (State) Guidelines); and
- (iv) in all cases where a transcript of an audio recording made during an investigation has been prepared, a copy of the transcript is attached to the brief of evidence.

Police prosecutors are to, in respect of multiple offences of a sexual nature:

- (i) endorse on the appropriate copy of the transcript which questions relate to what charges;
- (ii) forward the copy of the transcript to the ODPP or Director of Public Prosecutions (Cwlth), as the case may be, with the complete brief of evidence following committal proceedings.

### 3.8.9 Number of copies to be supplied

#### ORDER

Arresting officers are to ensure:

- (i) for summary trials and committal proceedings, the relevant 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 every case, one original witness statement, relevant documentary exhibit(s) or all physical exhibit(s) are retained by the arresting officer;
- (iii) each brief of evidence is compiled according to whether the statements are originals or copies; and
- (iv) the completed QP 0323: 'List/Non-Availability of Witnesses (Including Police Officers)' (see s. 3.8.2: 'Format of briefs of evidence' of this chapter) is only attached to the prosecutor's copy of the brief of evidence.

### 3.8.10 Collation of briefs

ORDER

Officers compiling a hard copy brief of evidence are to ensure it is compiled in such a way so as to not hinder the copying of statements or exhibits. Originals of statements and documents are not to be bound in a manner which will prevent them being tendered as individual exhibits.

### 3.8.11 Deleted

### 3.8.12 Supply of prints and other prescribed articles to defence

Conditional authority for the defendant, or a lawyer acting for the defendant, to possess prints (including photographs and copies of audio records of interview), video recordings and transcripts of audio and video recordings is contained in s. 10.21A: 'Unlawful possession of prescribed articles' of the *Police Service Administration Act (PSAA)*.

Agreement between the Commissioner and the ODPP has been reached concerning the supply of three sets of photographic exhibits at committal proceedings (one as the court exhibit, one for the prosecutor and the third set for the defence lawyer).

However, agreement does not apply to:

- (i) requests by defence lawyers for replacement/additional sets of photographic exhibits; or
- (ii) marked photographic exhibits supplied by the Scientific Section and Fingerprint Bureau.

Replacement or additional sets of photographic exhibits may be obtained in accordance with the provisions of the *Financial and Performance Management Standard 2019* and the QPS Schedule of Fees and Charges on the Finance web page on the Service Intranet.

ORDER

Where photographs are intended for production as exhibits at committal proceedings, officers are to arrange for three sets of photographs for court. Prints or other prescribed articles are only to be supplied to a defendant, or a defendant's lawyer, by a police prosecutor or an ODPP prosecutor.

Where any photograph taken possession of as an exhibit which, in the opinion of the arresting officer may be 'sensitive evidence' (see s. 590AF of the Criminal Code), reference is to be made to s. 3.14.6: 'Disclosure of sensitive evidence for a relevant proceeding' of this chapter.

ORDER

Photographs tendered as exhibits are to be sequentially marked with numbers or letters. A description is to be included in the statement of a witness who produces or refers to photographs in their evidence, briefly explaining what is depicted in each photograph to which the witness refers.

### 3.8.13 Video/audio recordings in relation to sexual abuse investigations

Refer to Chapter 7: 'Child Harm' of this Manual (ss. 7.6.7 to 7.9.9).

ORDER

Police prosecutors are to make application to the court at the conclusion of committal proceedings for the return of the relevant video recording to the custody of the arresting officer pending use at any subsequent proceedings.

The arresting officer is to make arrangements to recover the original video recording and any edited version of the recording after proceedings in the Supreme or District Courts have been finalised. The Crown prosecutor is to be requested to seek an order from the presiding justice in this regard.

### 3.8.14 Comment sheet

ORDER

Upon the completion of a brief of evidence, officers are to complete a QP 0324: 'Full Brief of Evidence Comment Sheet' and submit it with the brief of evidence.

PROCEDURE

Refer to Appendix 3.2: 'Procedure to be adopted when accepting briefs of evidence' of this chapter in respect of the procedure to be followed when checking briefs of evidence.

### 3.8.15 Checking briefs of evidence

ORDER

All briefs of evidence are to be checked by a shift supervisor or brief checker prior to being delivered to a police prosecution corps.

When submitting a brief of evidence for checking, the investigating officer is to also submit any visual and/or audio recordings (including recordings of a suspect/offender interview) for checking.

A shift supervisor or a brief checker to whom a brief of evidence is delivered is to:

- (i) open the brief of evidence required task in the relevant QPRIME occurrence and where necessary, create an entry into the case diary log to record receipt of the brief of evidence;
- (ii) review the hard copy of the brief of evidence, ensuring the brief of evidence complies with the provisions of this chapter;
- (iii) consider whether the facts contained on the Court Brief (QP9) are consistent with those contained in the full brief of evidence, and ensure the:
  - (a) wording of all charges is correct and appropriate; and
  - (b) applicable current legislation and the wording of charges is verified by reference to legislation and the specimen charge system on the Service Intranet;
- (iv) check samples of audio/visual recordings to be tendered as evidence. If the quality of the recordings made by Service owned recording equipment is substandard, action is to be taken to ensure any recording equipment faults are rectified. Additionally, if the quality of the recordings is so poor it will affect its value as evidence, consideration is to be given to the enhancement of the recording or sufficiency of evidence test as contained in s. 3.4.3: 'Factors to consider when deciding to prosecute' of this chapter and whether further investigation is required; and
- (v) check evidence consisting of audio, video or picture data files or other electronic media is in a format capable of being presented to the relevant court. (See also s. 2.4.11: 'Video and photographic evidence recorded during the commission of offences' of this Manual.)

If the brief of evidence is either incomplete or requires further work, the shift supervisor or brief checker is to:

- (i) click on the rework button within the 'QPS BOE Required' task; and
- (ii) enter any remarks in the task log and close it (where necessary create an entry into the case diary log to record the physical movement of the documents).

Where the brief of evidence requires further work prior to delivery to the relevant prosecution corps, return the brief of evidence to the investigating officer advising of the additional work to be completed prior to resubmission for checking.

Where charges cannot be substantiated with further investigation, a report is to be immediately furnished through the appropriate channels to an officer who is authorised to withdraw charges or offer no evidence in relation thereto (see s. 3.4.4: 'Withdrawal of charges' of this chapter). Such reports are to clearly indicate, with a firm recommendation, what charge(s) cannot be substantiated and whether any charge(s) should be substituted.

If the brief of evidence is both complete and in compliance with the provisions of this chapter, the shift supervisor or brief checker is to:

- (i) complete the QP 0324: 'Full Brief of Evidence Comment Sheet', with any notations as relevant;
- (ii) approve the 'QPS BOE Required' task;
- (iii) close the brief of evidence task window (where necessary create an entry in the case diary log to record the brief of evidence has been forwarded to the relevant police prosecutions corps); and
- (iv) return the brief of evidence to the investigating officer for delivery to the relevant prosecution corps where required.

### 3.8.16 Delivery of briefs of evidence to prosecutor

#### POLICY

Arresting officers are to:

- (i) complete briefs of evidence so 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, no later than the date set by the relevant prosecutor (see s. 3.6.5: 'Responsibilities of arresting officers' of this chapter); 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.

Where a brief of evidence is delayed, the arresting officer is to provide timely advice to the relevant prosecution corps, specifically where:

- (i) a witness statement is not available, the arresting officer is to advise the prosecuting authority of:
  - (a) the witness' name;

- (b) a precis of anticipated evidence;
  - (c) the reason it is not available;
  - (d) what attempts have been made to obtain the statement;
  - (e) when these efforts commenced; and
  - (f) what date prosecutions will have the statement; or
- (ii) exhibits are not available, the arresting officer is to advise the prosecuting authority of:
- (a) the nature of the evidence;
  - (b) what action has been taken to obtain it;
  - (c) when this action commenced; and
  - (d) the date prosecutions should expect to receive it.

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 this chapter).

Officers in charge of stations or establishments are to:

- (i) ensure local arrangements are put in place to 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; and
- (ii) investigate or cause to be investigated any failure of delivery of a brief of evidence by the date set and ensure appropriate action is taken to address such failure; and
- (iii) 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 call-over;
  - (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 call-over the defence enters no plea or pleads not guilty;
- (iii) the defence are advised:
  - (a) 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, the brief will not be available in the relevant timeframe and a date the brief can be expected to be ready for collection; and
- (iv) if required by the court, ensure the arresting officer attends court to provide an explanation as to why the brief of evidence is late, not done or incomplete.

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

- (i) 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
- (ii) prior to the commencement of the trial or hearing a prosecutor:
  - (a) reads all parts of the brief of evidence; and
  - (b) checks the brief of evidence complies with the provisions of this Manual.

Where a prosecutor finds errors or defects, and the provisions of this chapter have not been complied with, the prosecutor is to request the arresting officer address the defect or error if possible or to consider discontinuing the charge.

### 3.8.17 Computer records (Evidence Act)

A brief of evidence may include a copy of computer records, which are to be relied upon as evidence in a proceeding (see s. 95: 'Admissibility of statements in documents or things produced by processes or devices' of the *Evidence Act*).

## PROCEDURE

Computer records are to be accompanied by a QP 0880: 'Section 95 Certificate', completed by a person who has been responsible for the device or process by which the records are wholly or partly produced.

### 3.8.18 Committals conducted by the Office of the Director of Public Prosecutions (State)

In a number of locations responsibility for committal proceedings rests with the ODPP. In such locations protocols exist in relation to preparation of full briefs of evidence. In some situations these protocols may be inconsistent with the provisions of this chapter.

## POLICY

Where there is an inconsistency between this Manual and the protocols in place for committals prosecuted by the ODPP, the requirements of the ODPP are to take precedence.

#### Duty of disclosure to the Office of the Director of Public Prosecutions (State)

Investigating officers have a duty to disclose to the ODPP all relevant information, documents or other things obtained during the investigation assisting the case for the prosecution or the defence (see s. 24C: 'Disclosures by police officers' of the *Director of Public Prosecutions Act*).

The duty of officers to disclose required information continues until the director decides the defendant will not be prosecuted or the prosecution is finalised.

## POLICY

Where the ODPP is deciding whether to institute a proceeding, or deciding whether to consent to the institution of a proceeding or is conducting a proceeding, officers are to disclose all relevant information, documents or other things obtained during the investigation.

### 3.8.19 Action where defendant fails to appear

Where a defendant fails to appear at a magistrates or children's court, and an arrest warrant is issued, the OIC of the relevant prosecution corps is to ensure:

- (i) the prosecution files and all court related documentation for each matter is retained for a period of 28 days;
- (ii) once the 28 days has lapsed:
  - (a) all associated documentation is uploaded into the QPRIME Case File Documents tab, including:
    - QP 0584: 'Court brief – cover sheet';
    - defence correspondence;
    - evidentiary certificates; and
    - restitution details.
  - (b) any exhibits are returned to the arresting officer;
  - (c) the court brief (QP9) is destroyed; and
  - (d) any completed full brief of evidence (FBOE) is forwarded to the Warrant Section, Police Information Centre (PIC),
- (iii) where a FBOE has not been completed, a QPRIME task is to be forwarded to the arresting officer, directing the officer to complete and forward to the Warrant Section, PIC, a full brief of evidence, within 60 days of the warrant being issued.

The OIC of the relevant prosecution corps is to ensure an appropriate system is in place for the handling, retention and disposal of court briefs (QP9).

Other than copies of photographs, officers are to ensure:

- (i) no physical evidence; or
- (ii) electronic media (e.g. CD, DVDR, etc.), is forwarded to the PIC.

Physical exhibits are to be returned to the arresting officer to be dealt with in accordance with this manual and the DERIE Manual.

#### Responsibilities of Police Information Centre

The Team Leader responsible for warrants at PIC is to ensure:

- (i) upon receipt of the warrant from a court, a flag 'Wanted on warrant' is entered against the person's details in QPRIME; and
- (ii) an appropriate system is in place for the retention of FBOE.

### 3.8.20 Delivery of documentary exhibits to the Office of the Director of Public Prosecutions

#### ORDER

Arresting officers are to ensure:

- (i) when documentary exhibits are delivered to the ODPP, all exhibits are to be clearly marked with:
  - (a) the defendant's name; and
  - (b) the QPRIME case file Id number;
- (ii) on delivery of documentary exhibits to the ODPP a receipt listing all documentary exhibits received is obtained from the receiving person; and
- (iii) if the documentary exhibit is removed from a property point, the ODPP exhibit receipt is scanned and uploaded into the relevant QPRIME occurrence.

Also see ss. 3.6.5: 'Responsibilities of arresting officers', 4.6.12: 'Temporary removal of property from property points' and 4.7: 'Storage and handling of property' of this Manual.

#### Non-documentary exhibits

#### POLICY

The ODPP does not have the facilities to securely store non-documentary exhibits. Secondary evidence should be delivered in lieu of the exhibit, unless specifically requested otherwise by the ODPP. These exhibits are to be retained and dealt with in accordance with Chapter 4: 'Property' of this Manual (see Guideline 53: 'Exhibits' of the Director of Public Prosecutions (State) Guidelines).

### 3.8.21 Supplying the Office of the Director of Public Prosecutions (State) with the names of persons involved in the investigation process

Section 4(3): 'Qualification to serve as a juror' of the *Jury Act* lists people who are not eligible for jury service.

This list does not currently exclude from jury service persons who have been involved in the investigation process of a matter before a court (such as the issuing justice of a search warrant).

In these cases, it is clearly inappropriate for such a person to be permitted to act as a jury member.

#### POLICY

Officers are to attach to a brief of evidence required to be delivered to the ODPP the name or names of any justice or other person who has been involved in the subject investigation and who is eligible to perform jury service.

## 3.9 Evidence

### 3.9.1 Introduction

#### PROCEDURE

This section provides a broad outline of the more common rules of evidence. Courts will admit or exclude evidence sought to be presented based on these rules. Officers should therefore consider the rules of evidence.

### 3.9.2 Relevance and admissibility

#### PROCEDURE

The principal test to be applied for the admissibility of any potential evidence is whether it is relevant to the matter before the court. If the fact tends to the proof or otherwise of the subject matter, or some part of it, then the fact is relevant and hence prima facie admissible.

### 3.9.3 Proof

#### PROCEDURE

The term 'proof' refers to the methods by which the existence or otherwise of a particular fact may be established to the satisfaction of the court. The term does not necessarily mean conclusive proof, but rather the evidence by which a court may find that the fact was proved.

### 3.9.4 Onus of proof

#### PROCEDURE

The term 'onus of proof' (sometimes termed 'burden of proof') refers to the obligation to prove the matter under consideration. In all criminal matters the onus of proof rests with the prosecution.

In respect to some offences, the onus shifts to the defence to prove some elements. This, however, occurs only in a limited number of instances, and does not affect the obligation on the prosecution to prove its case first.

### 3.9.5 Standard of proof

#### PROCEDURE

The standard of proof required in criminal cases in respect of the prosecution is 'beyond a reasonable doubt'. This means that the prosecution must prove its case to the point that there can be no reasonable doubt in the mind of the justice or jury, as the case may be.

This standard of proof differs from that required in civil matters where the proof required is the lesser standard of 'on the balance of probabilities'. This lesser standard is also applicable in certain criminal matters when the onus of proof rests with the defence. For example, in matters such as possession of property suspected of being stolen, it falls on the defence to prove that the possession of the property was not unlawful, but the standard to which this needs to be proved is only 'on the balance of probabilities'.

### 3.9.6 Circumstantial evidence

#### PROCEDURE

Circumstantial evidence has been defined as a fact from which the court may infer the existence of a fact in issue. Circumstantial evidence is admissible, subject to the rules of evidence.

### 3.9.7 Competence and compellability

#### PROCEDURE

A witness may be said to be competent if that person may lawfully be called to give evidence. A witness is compellable if that person may lawfully be obliged to give evidence. Generally, any person who has knowledge pertaining to the matter under investigation is competent and therefore, compellable. There are however, certain statutory and common law exceptions to this rule.

The *Evidence Act* deals with competence and compellability of witnesses. Officers should seek advice from the prosecutor assigned to a case if any doubt exists as to the competence or compellability of a witness intended to be called by the prosecution.

### 3.9.8 Dying declarations

#### PROCEDURE

A dying declaration is the oral or written declaration of a deceased person made shortly before death. The declaration may be admissible evidence of the cause of death at a subsequent trial for the murder or manslaughter of the person making the declaration.

The following conditions must be met before a court will allow the admission of a dying declaration:

- (i) the declarant must have died;
- (ii) the trial in which it is sought to admit the declaration must be for the murder or manslaughter of the declarant;
- (iii) the statement must relate to the cause of death of the declarant;
- (iv) the declarant must have a settled and hopeless expectation of death at the time of making the statement. This is of extreme importance and must extend beyond a grave concern, or even a knowledge of the possibility of death; and
- (v) the declarant must have been a competent witness at the time of making the declaration.

#### POLICY

When an officer intends to take a dying declaration from a victim of an unlawful killing, that officer should frame questions to the dying person which will support the conditions outlined above. An electronically recorded declaration is the best method of obtaining a dying declaration. Where an electronic recording is not possible, the chances of having the declaration admitted are improved by having an independent witness present, particularly a justice of peace or commissioner of declarations.

### Dying depositions

#### PROCEDURE

A deposition is the evidence of a witness examined upon oath or in such other manner as prescribed or allowed by the Acts in force. Such evidence is reduced in writing, read to or by the witness, and signed by the witness and the justice or justices constituting the court taking the examination. See ss. 73 and 77 of the *Justices Act*.

The object of taking depositions out of court is to ensure that if any of the witnesses whose evidence is given before the justice or justices constituting the court should be unable to attend at the relevant trial or die, there should not be reason for this be a failure of justice.

Section 111 of the *Justices Act* contains conditions which must be met for the deposition to be read as evidence at the trial by indictment of the accused person. The evidence must relate to the offence for which the person has been committed for trial or to any other offence for which an indictment shall be presented, arising out of the same transactions or set of circumstances as the offence for which the person has been committed for trial.

To satisfy the conditions in s. 111 of the *Justices Act*, the deposition must:

- (i) be the deposition of a witness who is proved at the trial by a credible witness to be dead, or so ill as not to be able to travel;
- (ii) have been taken in the presence of the accused accept in circumstances specifically prescribed in s. 111(3)(b) of the *Justices Act*; and
- (iii) purport to be signed by the justices before whom it purports to have been taken.

#### POLICY

Officers should immediately advise the relevant police prosecutor in circumstances where a matter is one for which a defendant may be committed by justices to be tried by indictment, and it is considered that a witness may:

- (i) die prior to initial court proceedings; or
- (ii) be so ill as not to be able to travel to initial court proceedings.

Police prosecutors who receive advice in accordance with the above policy are to determine whether the matter is one to which the provisions of s. 111 of the *Justices Act* apply. In circumstances where it is considered necessary and appropriate to obtain a deposition from a witness out of court, the police prosecutor is to contact the relevant clerk of the court and request that arrangements be made for a deposition to be obtained from the witness.

### 3.9.9 Expert evidence

#### PROCEDURE

The opinion of an expert on a particular matter is often used in evidence, even though the expert may have no knowledge of the case under consideration by the court. Whether a person will be accepted as an expert witness is a matter for the court and is a decision which will be made on the basis that the:

- (i) field of knowledge in which the witness intends to give evidence is outside the ordinary experience of the general population; and
- (ii) witness has sufficient expertise in the field to be considered as an expert.

#### POLICY

When preparing statements for a witness intended to be called as an expert, officers should include information which will support these two tests, including the experience and all educational and professional qualifications of the witness.

### 3.9.10 Joinder of charges

#### PROCEDURE

Charges can either be joined by virtue of a statutory provision or common law. Section 43 of the *Justices Act* and ss. 567 and 568 of the Criminal Code are such statutory provisions. Subject to the provisions of those sections:

- (i) indictable offences can be joined to other indictable offences;
- (ii) simple offences can be joined to either other simple offences or breaches of duty; and
- (iii) breaches of duty can be joined to other breaches of duty or simple offences.

However, simple offences or breaches of duty cannot be joined to indictable offences. An example of a breach of duty is a regulatory offence.

If charges are to be joined by virtue of a statutory provision, those charges must be joined when a defendant is charged, summonsed, or issued with a notice to appear (see s. 3.5.3: 'Proceedings by way of notice to appear' of this chapter).

Charges cannot be joined by virtue of a statutory provision after a defendant appears before a court. At that stage, the prosecution can only rely on the common law.

#### ORDER

When charges can be joined in cases where the defendant has been arrested, arresting officers are to:

- (i) prepare a separate bench charge sheet for each count;
- (ii) number each count consecutively by inserting the words 'Charge one', 'Charge two', and so forth on each bench charge sheet above the wording of the charge; and
- (iii) with the exception of the final charge, insert the words 'and further' or 'or alternatively' on each bench charge sheet below the wording of the charge depending on the charges.



In cases where it is proposed to summons an offender, it is not necessary to complete a separate complaint and summons form for each charge. Provided, however, that the charges are typed onto the complaint prior to the words 'contrary to the Acts in such case made and provided' appearing at the bottom of the complaint. Charges are not to be typed onto a blank sheet of paper and attached to the complaint and summons form. Complaint and summons forms are to be used. Charges are to be numbered and the words 'and further' or 'or alternatively' are to be typed immediately below, but separate to the wording of the charge.

In cases where it is proposed to issue a notice to appear, it is only necessary to provide general particulars of the offences to be joined on the notice. Each matter need not be set out in a separate paragraph.

### 3.9.11 Charging conjointly

#### PROCEDURE

Where more than one defendant is to be charged with the same offence or offences arising from the same facts, each defendant normally retains the right to a separate hearing. In the interests of justice, and to save the time of the court, s. 568(12) of the Criminal Code allows the defendants to be charged conjointly in relation to specific indictable offences. In respect of simple offences, the prosecution must rely on the common law. When defendants are charged conjointly, only one hearing is held subject to the discretion of the court.

#### ORDER

When an arresting officer elects to charge more than one defendant conjointly under the provisions of s. 568 of the Criminal Code, that officer is to enter immediately below, but separate to the wording of the charge, enter the words 'Charged conjointly with (name or names of other defendants)'.

### 3.9.12 Principal offenders

#### PROCEDURE

Section 7 of the Criminal Code defines a number of classes of persons, against whom criminal liability attaches when an offence is committed. These persons are referred to as principal offenders.

#### ORDER

Officers are to ensure that when investigating an offence, if it is revealed that there is more than one principal offender in relation to an offence, the decision to lay charges, and the discretion to continue or discontinue a prosecution in relation to each of them is exercised individually.

### 3.9.13 Use of regression therapy (hypnosis) and eye movement desensitisation and reprocessing in evidence

Regression therapy (hypnosis) and eye movement desensitisation and reprocessing (EMDR) to 'refresh' the memories of witnesses or victims of crime, particularly alleged victims of sexual abuse within the family, has been the focus of attention by scientific, professional and legal personnel.

#### POLICY

The Director of Public Prosecutions (State) has provided the criteria which should be applied by the prosecution in determining whether a case dependent on a memory said to be revived by regression therapy or EMDR should go forward. The criteria treat regression therapy and EMDR as being analogous with hypnosis and apply the same rules to evidence obtained or enhanced through any of these methods equally. Officers should adopt the following guidelines:

- (i) the hypnotically induced evidence must be limited to matters which the witness has recalled and related prior to the hypnosis – referred to as 'the original recollection'. In other words evidence will not be tendered by the Crown where its subject matter was recalled for the first time under hypnosis or thereafter. Essentially, hypnosis can be used only to enhance or clarify a recollection made and related prior to hypnosis and nothing else. The effect of that restriction is that no detail recalled for the first time under hypnosis or thereafter will be advanced as evidence;
- (ii) the substance of the original recollection must have been preserved in written, audio or video recorded form; and
- (iii) the hypnosis must be conducted in accordance with the following procedure;
  - (a) the witness must give informed consent to the hypnosis;
  - (b) the hypnosis is to be performed by a person who is experienced in its use and who is independent of the police, the prosecution and the accused;
  - (c) the original recollection of the witness and other information supplied to the hypnotist concerning the subject matter of the hypnosis is to be recorded in writing in advance of the hypnosis; and
  - (d) the hypnosis is to be performed in the absence of police, the prosecution and the accused, but is to be video recorded.

The fact that a witness has been hypnotised is to be disclosed by the prosecution to the defence, and all relevant transcripts and information provided to the defence well in advance of the trial. This will enable the defence, if it so chooses, to obtain expert witnesses in relation to that material.

See Guideline 27: 'Hypnosis and regression therapy' of the Director of Public Prosecutions (State) Guidelines.

### 3.9.14 Indemnities against prosecution

#### POLICY

The general rule is that an accomplice should be prosecuted regardless of whether he or she is to be called as a Crown witness. An accomplice who pleads guilty and agrees to testify against a co-offender may receive a sentencing discount for that co-operation. There will be cases, however, where the accomplice cannot be prosecuted. The issue of immunity most commonly arises where there is no evidence admissible against the accomplice, but he or she has provided an induced statement against the accused.

The Attorney-General has the prerogative power to grant immunity from prosecution. This will usually be in the form of a 'use-derivative-use undertaking' (an undertaking not to use the witness's evidence in a nominated prosecution against the witness, either directly or indirectly, to obtain other evidence), but may also be an indemnity (complete protection for nominated offences). Protection in either form will be dependent upon the witness giving truthful evidence. Any application to the Attorney-General should be through the Director or Deputy Director of Public Prosecutions (State). It is a last resort only to be pursued when the interests of justice require it.

An indemnity can only be considered in respect of completed criminal conduct. It cannot operate to cover future conduct.

The witness's statement must exist in some form before an application for an undertaking is made.

#### PROCEDURE

When, during an investigation, or subsequent to a person being charged with an offence(s), officers who identify a participant in the criminal activity under investigation as a person who is likely to be of more value as a prosecution witness than as a defendant, should at the earliest opportunity seek advice, through their regional crime coordinator, from the Director of Public Prosecutions (State) as to the appropriateness of such a course, unless for some reason this is not practicable.

Officers intending to make application for the granting of an indemnity against prosecution in favour of a defendant/suspect are to furnish a report through their officer in charge to their Assistant Commissioner, who will, if considered appropriate, refer the application to the Director of Public Prosecutions (State). Additionally, Guideline 35: 'Immunities' of the Director of Public Prosecutions (State) Guidelines provides that the report should summarise:

- (i) the witness's attitude to testifying without immunity;
- (ii) the existing prosecution case against the accused (without immunity for the witness);
- (iii) the evidence which the witness is capable of giving (including the significance of that evidence and independent support for its reliability);
- (iv) the involvement and culpability of the proposed witness; and
- (v) public interest issues including:
  - (a) the comparative seriousness of the offending as between the accused and the witness; and
  - (b) whether the witness could and should be prosecuted (i.e. what is the quality of the evidence admissible against the witness and what is the likely sentence).

In cases involving Commonwealth offences, a similar procedure should be followed except that the Director of Public Prosecutions (Cwlth) is involved.

### 3.9.15 Use of justices of the peace and commissioners for declarations

OICs of stations and establishments should ensure a list containing the names and addresses of justices of the peace (JPs) and commissioners for declarations (Cdec) within their area is made available to members under their control.

Members should utilise JPs and Cdec within their area in accordance with the provisions of s. 38(5): 'Publication of office holders' of the *Justices of the Peace and Commissioners for Declarations Act*. Selection should be on a rotational basis where possible.

#### Electronic list of JPs and Cdec

A list of JPs and Cdec for the State is available via the Queensland Government (QG) 'Justices of the Peace' webpage.

#### ORDER

Members are not to use the services of JPs or Cdec who may have close associations with the Service or in circumstances where bias or a conflict of interest may arise.

### 3.9.16 Use of justices of the peace and commissioners for declarations who are members of the Service

Members of the Service who are justices of the peace (JPs) or commissioners for declarations (Cdec) may exercise the powers and functions outlined in s. 29(1): 'Powers of justices of the peace and commissioners for declarations' of the *Justices of the Peace and Commissioners for Declarations Act* in limited circumstances.

ORDER

Members must disqualify themselves from acting if they are faced by a conflict of interest situation as identified by the 'Justice of the Peace and Commissioners for Declarations Code of Conduct' (available on the QG website). Members are not to authorise a power or authority such as:

- (i) the issue of any summons or subpoena;
- (ii) the issue of any warrant;
- (iii) acting as an independent person at interviews of suspects;
- (iv) authorising searches; or
- (v) authorising extensions of time,

except for:

- (i) traffic adjudication matters; and
- (ii) witnessing declarations, oaths of service and affidavits.

### 3.9.17 Use and limitations of senior police officers as affidavit witnesses for other officers

Senior police officers (SPO) as defined under the Oaths Regulation (OR) are authorised to witness a limited selection of affidavits sworn of affirmed by other officers. The listed relevant affidavits in s. 2: 'Definitions for regulations' of the OR and as detailed below are the only affidavits that a SPO can witness.

A SPO:

- (i) is a
  - (a) sergeant or above;
  - (b) a watchhouse manager; or
  - (c) an OIC of a station, establishment or watchhouse or an officer nominated in their absences,
 (see s. 2 of the OR);
- (ii) can witness a relevant affidavit, which is an affidavit made by another officer:
  - (a) under the *Bail Act*, i.e., QP 0215: 'Bail affidavit';
  - (b) under the YJA, i.e., QP 0215B: 'Bail affidavit annexure (child)';
  - (c) for service of documents under an Act; and
  - (d) for a sworn application under s. 801(4)(a): 'Steps after issue of prescribed authority' of the PPRA;
- (iii) can administer (take, receive and swear) an oath or affirmation for the affidavit (see s. 16A: 'Who may witness affidavits' of the *Oaths Act*), including by:
  - (a) the electronically signing in their physical presence (see s. 16C: 'Affidavit or declaration electronically signed in physical presence of witness' of the *Oaths Act*); and
  - (b) acting as a special witness and witnessing the affidavit by audio visual link, but only where it is not reasonably practicable by the other methods (see ss. 31S: 'Witness must be special witness or another prescribed person' of the *Oaths Act* and 10: 'Prescribed condition—Act, s 31S' of the OR); and
- (iv) is to include their rank on the signature block (see s. 3: 'Information witness must include on affidavit—Act, s 13E' of the OR).

For guidance on how to administer an oath or affirmation for an affidavit, SPO should consult Chapter 4.7: 'Witnessing affidavits' of the Commissioners for Declarations handbook available from the QG website.

OICs of stations and establishments, including watchhouses are to ensure they have a Bible available for use in the administering of Christian oaths.

### 3.9.18 Protection of methodologies

Members should be aware of the provisions of s. 803: 'Protection of methodologies' of the PPRA and s. 120: 'Source of information not to be disclosed' of the *Drugs Misuse Act*.

## 3.10 Witnesses

### 3.10.1 Introduction

#### POLICY

The Service is responsible for the costs in respect to civilian witnesses attending Magistrates, Childrens and Coroners Courts and for costs of police officers attending Magistrates, Childrens, Coroners, District and Supreme Courts.

The investigating officer or the officer delegated the responsibility is to arrange and facilitate the appearance of all witnesses who are required to give evidence in a matter. In so doing, all officers are to be mindful of the disruption caused to witnesses and are to make all arrangements in a manner designed to minimise that disruption, including considering the use of audio visual and audio links for witnesses to give evidence without travelling to the court.

Officers responsible for arranging the attendance of any witness in respect to any court should, whenever reasonably practicable, give the witness reasonable notification of the date and time the witness is required to appear.

#### ORDER

If a witness is unavailable, the investigating officer or the officer delegated the responsibility is to immediately advise the officer in charge of the police prosecutions corps which has carriage of the matter, or the Office of the Director of Public Prosecutions (State) or Director of Public Prosecutions (Cwlth), as the case may be.

Officers in charge of stations and establishments are to monitor the receipt and service of summonses/subpoenas to witnesses to ensure that such documents are served as soon as reasonably practicable.

#### Witnesses other than civilians

#### POLICY

For policy in relation to:

- (i) prisoners who attend court as witnesses see s. 2.5.6: 'Removal of prisoners/children from corrective services facilities and youth detention centres' of this Manual;
- (ii) police officers who attend court as witnesses see 'Court Attendance' within Personnel Administration of the Human Resources Policies; and
- (iii) staff members who attend court as witnesses see 'Court Attendance' within Personnel Administration of the Human Resources Policies and for allowances and travel arrangements see s. 1.3: 'Queensland Public Service Officer' within the 'Procedural Guidelines relating to Witnesses attending Magistrates, Childrens and Coroners Courts' of policies and procedures available on the Business Services Division webpage on the QPS Corporate Internet (Bulletin Board).

#### PROCEDURE

All travel arrangements for:

- (i) police officers; or
- (ii) staff members attending court as a result of the performance of their official duties;

are to be made with the Queensland Government Air (QGAir), where available, or alternatively with the Service-approved travel facility managed by Business Services Division.

### 3.10.2 Civilian witness arrangements and expenses for magistrates, childrens and coroners Courts

All costs associated with travelling, accommodation and meals for witnesses to attend magistrates, childrens and coroner's court are paid through Financial Operations, Business Services Division.

Where a witness is required to give evidence at a magistrates, childrens or coroners court, and would be required to undertake long distance travel or circumstances make personal attendance of the witness difficult, the investigating officer should consider making an application to the court under s. 83A: 'Direction hearing' of the *Justices Act (JA)* for the witness to give evidence by audio visual or audio link pursuant to s. 39R: 'Queensland courts may take evidence and submissions from external location' of the *Evidence Act (EA)*. Under these provisions and at the discretion of the court, evidence may be received by telephone, video link or other form of communication. The investigating officer, or the officer delegated the responsibility, is to seek the advice of the relevant prosecutor to help determine whether such an application should be made.

Additionally, consideration should be given to the comparison of costs associated with the witness's personal attendance as opposed to the witness giving evidence by telephone, video link, etc. The investigating officer should make inquiries as to the availability of audio visual or audio link equipment to the witness and the court. When an order allowing evidence of a witness by telephone is sought, see also Magistrates Court Practice Directions No. 3 of 2000.

All costs incurred by the Service as a result of such an application are to be met by the region or command to which the investigating officer was attached when the prosecution was commenced.

Where a prosecution witness would require an interpreter or translator during court proceedings, the investigating officer, or the officer delegated the responsibility, is to arrange and facilitate the service of the interpreter or translator. For policy in relation to interpreters and translators refer to s. 6.3.7: 'Interpreters' of this Manual. All costs incurred by the Service as a result of an application for the use of interpreters or translators are to be met by the region or command to which the investigating officer was attached when the prosecution was commenced.

### Responsibilities of investigating officers

For all civilian witnesses who are required to give evidence or attend magistrates, childrens or coroners court, the investigating officer or the officer delegated the responsibility is to ensure:

- (i) the witnesses are summonsed. However, not in the case of coronial inquests, as the Coroner's Office will issue summonses to required witnesses (members of the Service who are required as witnesses are to be appropriately notified, but not necessarily summonsed unless particular circumstances dictate that a summons is to be issued);
- (ii) a QP 0314: 'Witness Expenses' is completed and submitted, including the witness's 'Declaration in support of claim for expenses as Crown witness' section of the form. Witness expenses are paid or submitted for payment as soon as the witness's obligation to the court has been fulfilled. (In circumstances where a witness requires immediate payment of some or all expenses, contact Financial Operations, Business Services Division for details);
- (iii) all witnesses who are required to travel, have appropriate travel and accommodation arrangements made for them through regional booking officers;
- (iv) all witnesses who are required to travel are advised of their travel and accommodation arrangements as soon as reasonably practicable; and
- (v) the relevant police prosecutions corps or prosecuting authority is immediately informed of any witness who is unable to physically attend, or is required to travel to, the court, so the prosecution can consider making application to the court for the witness to give evidence by audio visual or audio link pursuant to s. 39R: 'Queensland courts may take evidence and submissions from external location' of the EA.

### Responsibilities of police prosecutors

When witnesses are required to attend a coronial inquest, the OIC of the relevant police prosecutions corps or the assistant to the Coroner who has been advised of the matter by the Coroner's Office is to ensure the investigating officer or the officer delegated the responsibility is informed of the names, addresses and date required for court of all witnesses who have been or will be summonsed to appear at the inquest.

When a witness has attended magistrates, children's or coroner's court and the investigating officer or officer delegated the responsibility is not present at court, the relevant prosecutor or assistant to the coroner is to ensure the requirements of paragraph (ii) under the heading 'Responsibilities of investigating officers' are fulfilled.

When any witness is not required for a proceeding, the police prosecutor responsible for prosecuting the matter or appearing as the assistant to the coroner is to advise the investigating officer or the officer delegated the responsibility for arranging and facilitating the appearance of witnesses. However, if those officers cannot be contacted, the police prosecutor is to contact their relevant OIC.

### Intrastate and interstate witnesses

Where an intrastate or interstate witness is required to undertake long distance travel to give evidence at a magistrates, childrens or coroner's court, consideration should be given to making an application to the court for a direction under s. 83A: 'Direction hearing' of the JA for the witness to give evidence by audio visual or audio link pursuant to s. 39R: 'Queensland courts may take evidence and submissions from external location' of the EA. This should be done in consultation with the relevant prosecutor.

Where a witness is required to undertake long distance intrastate travel to attend to give evidence at a magistrates, childrens or coroner's court, all travel and accommodation arrangements are to be made in accordance with 'Witness expenses' of the policies and procedures available on the QPS – Witness travel, Travel Management Services, Procurement Services Group Business Services Division webpage on the Service Intranet.

Section 78: 'Power to issue summons to witness' of the JA provides the power to issue a summons to witness. Officers seeking to summons a witness resident in Queensland are to:

- (i) complete a Form 010: 'Summons of a witness' (available on QPRIME) in original and three copies;
- (ii) attend before a justice and seek the issue of the summons;
- (iii) serve, or arrange for the service of a copy of the summons on the witness;
- (iv) complete the oath/memorandum of service on the summons without signing it when the summons has been served;
- (v) attend before a justice or commissioner of declarations, sign and swear out the oath/memorandum of service; and

(vi) register the summons by delivering a copy thereof to the clerk of the court at the courthouse at which the matter is to be heard.

The *Service and Execution of Process Act (Cwlth)* (SEPA(C)) enables a witness from interstate to be compelled to attend court, otherwise a warrant can be issued. Under SEPA(C), the process requiring that a person give oral evidence or produce a document before a court is referred to as a 'subpoena'.

In addition to relevant points above, officers seeking to subpoena an interstate witness are to:

- (i) arrange for any witness allowances to be paid and ensure travel and accommodation arrangements are made in order to comply with s. 32: 'Expenses' of SEPA(C);
- (ii) if the period between service and the date of hearing is less than 14 days, the court may approve such a period of service. When a court grants a period of less than 14 days for service, ensure a copy of the order granting the application is also attached to the subpoena;
- (iii) ensure a Form 002: 'Notice to witness' is also served with the subpoena, irrespective of the period of service;
- (iv) ensure any travel and accommodation arrangements necessary are made through the relevant regional booking officer; and
- (v) ensure the witnesses are advised of the travel and accommodation arrangements as soon as reasonably practicable.

In respect of a subpoena that only requires the production of a document or thing, such a subpoena may be complied with by the delivery of the document or thing not less than 24 hours prior to the date of hearing to the clerk of the court who issued the subpoena. However, witness expenses must still be paid.

In relation to a person who is under restraint and who is served with a subpoena to attend a court interstate, s. 36: 'Persons under restraint' of SEPA(C), imposes certain obligations on that person (the person under restraint) to ensure subsequent action is not taken against that person for failure to comply with the subpoena. The term 'a person under restraint' is defined in the SMD.

#### **Overseas witnesses**

As there is no legislative provision that can compel a witness from overseas to attend court, consideration should be given to making an application to the court for a direction under s. 83A: 'Direction hearing' of the JA for the witness to give evidence by audio visual or audio link pursuant to s. 39R: 'Queensland courts may take evidence and submissions from external location' of the EA. This should be done in consultation with the relevant prosecutor.

Travel and accommodation arrangements for witnesses from overseas to give evidence at a magistrates, childrens or coroner's courts are made in accordance with the travel arrangements available on the QPS – Witness travel, Travel Management Services, Procurement Services Group, Business Services Division webpage on the Service Intranet.

### **3.10.3 Officers travelling from interstate appearing as witnesses at Queensland Magistrates Courts**

#### **POLICY**

Travel costs for police officers travelling from interstate to appear as witnesses at Queensland Magistrates Courts are the responsibility of the Queensland Police Service. Arrangements are to be made by the arresting officer or delegated officer in the same manner as travel arrangements are made for interstate civilian witnesses (see s. 3.10.2: 'Civilian witness arrangements and expenses for Magistrates, Childrens and Coroners Courts' of this chapter).

Police officers travelling from interstate to appear as witnesses at Queensland Magistrates and Childrens Courts are not entitled to any allowances for loss of earnings, meals or accommodation. These allowances are the responsibility of the officer's home State or Territory.

### **3.10.4 Officers travelling interstate or overseas appearing as witnesses at Courts in other states or countries**

#### **POLICY**

Travel costs for Queensland police officers travelling interstate to appear as witnesses at a court are the responsibility of the Police Service of the relevant state. Travel arrangements are also the responsibility of the relevant state.

Allowances for Queensland police officers travelling interstate to appear as witnesses at a court will be met by the Queensland Police Service.

Travel costs and allowances for Queensland police officers travelling to another country to appear as witnesses are to be considered by the officer in charge of the region, command or corporate services division in consultation with the other country's representatives, prior to approving travel.

### 3.10.5 Civilian witness arrangements and expenses for the District, Supreme Courts and the Court of Appeal

#### POLICY

All costs incurred in respect to civilian witnesses attending to give evidence at a Queensland district, Supreme Court or the Court of Appeal are met by the Office of the Director of Public Prosecutions (State) (see Service Manuals Contact Directory) for State matters and the Director of Public Prosecutions (Cwlth) (see Service Manuals Contact Directory) for Commonwealth matters. All payments to Crown witnesses appearing in Queensland superior courts are processed by the Witness Coordinator Office of the Director Public Prosecutions (State).

The Crown Prosecutor who has carriage of the matter normally:

- (i) advises the arresting officer of the details of witnesses required;
- (ii) arranges for those witnesses to be subpoenaed; and
- (iii) in respect to interstate witnesses, arranges any witnesses entitlements to ensure compliance with s. 32: 'Expenses' of *Service and Execution of Process Act* (Cwlth).

For matters before the Queensland State jurisdictions, all travel and accommodation arrangements and any other witness allowances payable for civilian witnesses are overviewed and processed by the Office of the Director of Public Prosecutions (State) Witness Travel Team (State), and for Commonwealth matters are overviewed by the individual Crown prosecutor.

#### POLICY

After receiving confirmation from the Office of the Director of Public Prosecutions (State) to organise the attendance of their witnesses, investigating officers are required to contact the Office of the Director of Public Prosecutions (State) Witness Travel Team if travel or accommodation bookings are required for civilian witnesses attending superior courts. The investigating officers are to liaise with the Office of the Director of Public Prosecutions (State) Witness Travel Team (State) and make suitable travel and accommodation requirements for these witnesses.

The investigating officer is, however, required to make travel and accommodation bookings through their respective QPS Booking Officer for witnesses who are members of the Service. This includes serving police officers, those seconded to other agencies and other members who are required to attend and give evidence in their official capacity.

Travel bookings for interstate or Commonwealth police officers will be arranged through the Office of the Director of Public Prosecutions (State) Witness Travel Team. However, in accordance with the reciprocal arrangements between the State and Commonwealth police commissioners, interstate or Commonwealth police officers are required to arrange and pay for accommodation and meals in line with their own travelling allowance entitlements.

Any problems relating to travel, accommodation arrangements or other witness allowances payable may be referred to the Office of the Director of Public Prosecutions (State) Witness Travel Team or the relevant Crown prosecutor (Cwlth).

#### Responsibilities of officers notifying witnesses

##### PROCEDURE

Officers responsible for notifying a witness on behalf of the Office of the Director of Public Prosecutions (State) or the Director of Public Prosecutions (Cwlth) are to:

- (i) notify the witness as soon as reasonably possible; and
- (ii) advise the Crown Prosecutor (State), or the Crown Prosecutor (Cwlth), handling the matter by email or facsimile message of:
  - (a) the name of each witness notified;
  - (b) the date and time notified;
  - (c) the address at which notification was given;
  - (d) whether the witness is willing to attend or should be subpoenaed;
  - (e) whether a witness could not be notified/located and reasons why; and
  - (f) any foreseeable problem associated with the witness or the trial.

#### Responsibilities of investigating officers

In relation to State matters before superior courts, investigating officers or officers delegated the responsibility when required by the Crown Prosecutor (State) are to:

- (i) serve or arrange for the service of the subpoena;
- (ii) ensure any necessary travel and accommodation arrangements are made for any civilian witnesses through the Office of the Director of Public Prosecutions (State) Witness Travel Team using DPP form 'Witness Travel and Accommodation Request';

- (iii) ensure any necessary travel and accommodation arrangements are made for witnesses who are members of the Service through the relevant QPS Booking Officer; and
- (iv) ensure a 'Witness Expenses Claim Form' (including the 'Declaration in support of claim for expenses as a Crown witness' on page 2) is correctly completed and signed as soon as possible after the witness has attended a superior court and forwarded to the Witness Coordinator, Office of the Director of Public Prosecutions (State) together with any relevant receipts.

In relation to Commonwealth matters, investigating officers or officers delegated the responsibility when required by the Crown Prosecutor are to:

- (i) serve or arrange for the service of the subpoena; and
- (ii) provide any other reasonable assistance.

#### **Intrastate and interstate witnesses**

The Office of the Director of Public Prosecutions Witness Travel Team will make the necessary travel and accommodation booking upon request from the investigating officer where a civilian intrastate or interstate witness is required.

##### **PROCEDURE**

Investigating officers are to liaise with the Office of the Director of Public Prosecutions (State) Witness Travel Team and arrange suitable travel and accommodation for civilian witnesses. Once advised of the details of the bookings, the investigating officer is to inform the civilian witnesses of these details.

Any problems relating to travel or accommodation arrangements (e.g. changes, cancellations, refunds, lost tickets or account inquiries, etc.) are to be referred to the Office of the Director of Public Prosecutions (State) Witness Travel Team. In cases of emergency (e.g. outside normal office hours) where the Witness Travel Team cannot be contacted, the investigating officer may effect necessary changes to travel or accommodation bookings. The investigating officer must however advise the Witness Travel Team as soon as possible of the changes and any additional costs involved.

In relation to matters prosecuted by the Office of the Director of Public Prosecutions (Cwlth), investigating officers or officers delegated the responsibility are to contact the prosecutor handling the matter. The relevant prosecutor will make any necessary travel and accommodation arrangements.

#### **Overseas witnesses**

Overseas travel for a civilian witness required to give evidence in a superior court must be approved by the Executive Director, Office of the Director of Public Prosecutions (State) and requires a formal submission by the Crown prosecutor (State). After the Crown prosecutor (State) has obtained the requisite approval, the Witness Coordinator, Office of the Director of Public Prosecutions (State) will liaise with the investigating officer and coordinate suitable travel and accommodation bookings for the overseas witness. Finalised booking details will be supplied to the investigating officer (State) for delivery to the overseas witness.

##### **PROCEDURE**

In relation to overseas travel and accommodation arrangements for witnesses in matters prosecuted by the Director of Public Prosecutions (Cwlth), investigating officers or officers delegated the responsibility are to contact the prosecutor handling the matter. The relevant Commonwealth prosecutor will make any necessary travel and accommodation arrangements.

### **3.10.6 Special witnesses**

#### **Special witnesses**

Section 21A: 'Evidence of special witnesses' of the *Evidence Act* provides that a court in any proceeding may make certain orders that are intended to decrease the trauma associated with giving evidence in the proceeding. A special witness is defined in s. 21A of the *Evidence Act* and includes victims of domestic and family violence and victims of offences of a sexual nature.

Orders made by a court affect special witnesses when giving evidence as well as allowing persons approved by the court to be present while a special witness is giving evidence or is required to appear in court for any other purpose to provide emotional support to the special witness. In some situations, video recorded evidence by a special witness may be viewed instead of providing direct testimony in court.

Court support officers are persons who attend law courts on a voluntary basis to assist persons who may be appearing in court including, with the approval of the court, to support a special witness. Court support for victims and their families can be requested through Police Referrals (see s. 6.3.14: 'Police Referrals' of this Manual).

In addition to the provisions of s. 7.13: 'Preparation of child witnesses for court' of this Manual, arresting officers are to ensure that appropriate arrangements are made for special witnesses when attending court and giving evidence.

Where required, arrangements are to include the attendance at court of a suitable support person to accompany and support the special witness.



Additionally, the fact that a special witness is involved in the particular matter should be brought to the attention of the relevant prosecutor prior to the proceedings, with a view to making an application under s. 21A of the *Evidence Act*.

### Affected child witnesses

Part 2, Division 4A: 'Evidence of affected children' of the *Evidence Act* (s. 21AA to s. 21AX) provides for a witness to be classed as an affected child in a proceeding for a relevant offence.

An affected child witness is:

- (i) an individual who is under sixteen years when the first of the following happens:
  - (a) the defendant in the proceeding is arrested;
  - (b) a complaint is made under s. 42 of the *Justices Act* in relation to the defendant in the proceeding;
  - (c) a notice to appear is served on the defendant in the proceeding under s. 382 of the PPRA; or
- (ii) an individual who is sixteen or seventeen years when the first of the matters mentioned in subparagraph (i) happens and who is a special witness (see s. 21A of the *Evidence Act*); and
- (iii) who is a witness in a proceeding for a relevant offence and who is not a defendant in the proceeding (see s. 21AC of the *Evidence Act*).

A proceeding for a relevant offence is:

- (i) an offence of a sexual nature; or
- (ii) an offence involving violence, if there is a prescribed relationship between a child who is a witness in the proceeding and a defendant in the proceeding.

The term 'prescribed relationship' as it relates to an affected child witness is defined in s. 21AC of the *Evidence Act*.

The purpose of classifying a witness as an 'affected child' is to preserve the integrity of an affected child's evidence and to reduce the distress and trauma that might be suffered by the child in giving evidence. This purpose is to be achieved through the use of pre-recording of a child's evidence and audio-visual links that will limit the circumstances under which a child can be required to attend at and be cross-examined as a witness at a committal proceeding for a relevant offence (see Part 2, Division 4A: 'Evidence of affected children' s. 21AA to s. 21AX of the *Evidence Act*).

Where a police prosecutor is determining whether a witness in a relevant proceeding is, or may be an 'affected child', the police prosecutor should consult with the arresting officer.

Refer to s. 3.14.4: 'Mandatory disclosure' of this chapter for information on disclosure by the prosecution to the defendant or lawyer acting for the defendant for each proposed witness for the prosecution who is or may be an affected child.

#### ORDER

In accordance with s. 21AS of the *Evidence Act*, where an 'affected child' may give evidence in a relevant proceeding the police prosecutor responsible for the matter is to inform the court of this fact before the proceeding for a relevant offence starts.

### Witness in child sexual offences with communication difficulties

Intermediaries may be engaged by an officer at any time during the investigation phase in a child sexual offence matter (see s. 207A: 'Definition for this chapter' of the CC). The intermediary will assess the witness and provide recommendations to police on how best to communicate with the witness during the police interview. Interactions between a witness and an intermediary will be electronically recorded and disclosable in a court of law. An intermediary may also be requested by the prosecution to assist the witness in giving evidence during a court proceeding.

For policy in relation to Queensland Intermediary Scheme (QIS) eligibility and requesting process see s. 7.6.3: 'Procedure for interviewing a child' of this Manual.

### 3.10.7 Witnesses on stand-by

#### POLICY

In some cases the evidence of a witness may not be required in a proceeding, so it will only be necessary to have the witness on standby. Having a witness on standby means that arrangements are in place which ensure that the witness:

- (i) will be at a specific place or places;
- (ii) may be contacted at that place;
- (iii) has no other commitments of an urgent nature; and
- (iv) has reliable transport to the court and is able to attend the court within a reasonable time after notification.

These conditions apply to ordinary witnesses as well as to professional witnesses.

## ORDER

Arresting officers are not to arrange a witness to be on standby, unless directed to do so by a prosecutor.

**3.10.8 Prosecutor as a witness**

## ORDER

An officer who is required to appear as a witness in any matter is not to act as the prosecutor for that matter.

**3.10.9 Witnesses not to discuss evidence and to remain outside of court**

Discussing or communicating evidence to be given in judicial proceedings or at a trial between witnesses may diminish a witness' credibility and influence their memory of events. The evidence could be construed as the witness' recollection of what was agreed upon prior to a trial, rather than the witness' actual recollection of the events. If evidence given by a witness becomes discredited, its probative value is decreased.

## POLICY

Prior to or during the course of judicial proceedings and especially during a trial, officers should ensure that witnesses, including police witnesses, who:

- (i) are required to give evidence in those proceedings or trial;
- (ii) have not completed giving evidence; or
- (iii) have given evidence and are excused from further attendance;

do not discuss the evidence given or to be given, or questions asked in cross examination or re-examination with other witnesses required to give evidence in those proceedings or trial.

Officers should ensure that witnesses, including police witnesses, remain outside the precincts of the court and are not so situated that they may hear the court's proceedings, unless otherwise directed by the prosecutor.

**3.10.10 Returning witnesses to crime scenes**

## POLICY

Witnesses should, where necessary, be returned to a crime scene in order to refresh their memory prior to the obtaining of a statement and the giving of evidence to a court.

**3.10.11 Property in witnesses**

## PROCEDURE

There is no property in witnesses because a court has the primary duty to ascertain the truth. Therefore, neither the prosecution nor the defence are entitled to prevent the other party from ascertaining the truth by communicating with a witness before court. However, witnesses are not required to speak to that other party.

In relation to the disclosure of a witness contact detail in a relevant proceeding refer to s. 3.14.7: 'Disclosure of witness contact details in a relevant proceeding' of this chapter.

## ORDER

Officers are not to disclose the address of a witness to a third party without the prior approval of that witness.

**3.10.12 Disclosure of prosecution witnesses' previous convictions to the defence**

## POLICY

Subject to legislative provisions, in relation to a summary matter that is not a relevant proceeding as defined by s. 590AD: 'Definitions for ch div 3' of the Criminal Code, police prosecutors are to advise the defence of any previous convictions of prosecution witnesses provided such disclosure is:

- (i) relevant to an issue in the proceedings; or
- (ii) ordered by a court.

## ORDER

In all court matters, members are not to disclose an expired conviction of a witness in contravention of the *Criminal Law (Rehabilitation of Offenders) Act*.

## PROCEDURE

In relation to the disclosure of a prosecution witnesses' previous criminal history for a relevant proceeding refer to s. 3.14.5: 'Disclosure that must be made on request' of this chapter.

### 3.10.13 Obtaining medical records for presentation in court

#### PROCEDURE

Officers who subpoena medical records should:

- (i) address the subpoena to the Medical Superintendent of the hospital concerned; and
- (ii) advise such Medical Superintendent that the responsibility of attending the relevant court proceedings may be delegated to an officer of the medical records department of the hospital.

Officers should follow this procedure unless other advice is received from a police prosecutor or a Crown prosecutor.

### 3.10.14 Members as witness for the defence

#### POLICY

Members who are called to give evidence for the defence in criminal proceedings on any matter which has arisen from the member's performance of duty should notify, in writing, the prosecuting authority for the proceedings. Notification should be made as soon as practicable once members are advised by the defence that they are to be called as a defence witness.

In any such case the member called to give evidence for the defence is to inform the prosecuting authority of the evidence that member is to give in the proceedings and should supply the prosecuting authority with a copy of any statement, affidavit or materials supplied to the defence.

### 3.10.15 Person in witness protection program to appear in court

For the purposes of this policy a 'relevant person' means a person who is in or has been in a witness protection program.

The Crime and Corruption Commission (CCC) run the witness protection program to provide witness protection to relevant persons under the *Witness Protection Act*. This includes where the CCC runs a program for persons protected under a complimentary witness protection law.

Section 36: 'Offence of disclosure about particular person or program' of the *Witness Protection Act* makes it an offence to directly or indirectly disclose or record information regarding a relevant person or a witness protection program.

The following protocols apply where a relevant person is to appear in a magistrate's court:

- (i) When the CCC becomes aware a relevant person is to appear in court, they will conduct an assessment and where they consider it appropriate they will inform the Service by contacting the Superintendent, Prosecution Services.
- (ii) Where a member of the Service becomes aware that a relevant person is to appear in a magistrate's court, the member as soon as reasonably possible is to contact:
  - (a) the Superintendent, Prosecution Services;
  - (b) the relevant regional crime coordinator (or equivalent); and
  - (c) one of the following Crime and Corruption Commission (CCC) officers:
    - official solicitor;
    - deputy official solicitor; or
    - operations coordinator, operations support.

Where a member of the Service becomes aware during magistrate's court proceedings that an accused or a witness is a relevant person, the member is to seek an adjournment to allow the CCC to be informed.

In all situations the relevant Service prosecutor and the CCC officer will liaise to determine how the matter will be presented to the court.

## 3.11 Appeals

There are three main types of appeal concerning convictions, dismissals and sentences that may be lodged in relation to criminal matters. These are:

- (i) appeal to the Court of Appeal for indictable offences or appeal to the Court of Appeal by a person convicted of a summary offence under s. 651 of the Criminal Code (Chapter 67, ss. 668-677 of the Criminal Code);
- (ii) appeal to a District Court for simple offences (s. 222 of the *Justices Act*). (In relation to indictable offences dealt with summarily, the person convicted has a right to the District Court under s. 222 of the *Justices Act* however the complainant in these cases only has a right of appeal against the sentence and costs. Subsequent appeals from the decision of the District Court may be made to the Court of Appeal with the leave of that court

pursuant to s. 118 of the *District Court of Queensland Act*. Although there is no avenue under s. 222 of the *Justices Act* for the complainant to appeal against dismissal of an indictable offence dealt with summarily, a review of the magistrate's decision may be made in the Supreme Court if there are sufficient grounds for judicial review under the *Judicial Review Act* (see s. 20 of the *Judicial Review Act*); and

(iii) sentence review by a Childrens Court judge of a sentence order made by a Childrens Court magistrate (s. 117 of the *Youth Justice Act*) (see s. 3.11.3: 'Review of sentence order by a Childrens Court judge' of this chapter).

### Appeals to the Court of Appeal

Only the Attorney-General, a person convicted on indictment, or a person convicted of a summary offence by a court under s. 651 of the *Criminal Code* has the right of appeal to the Court of Appeal in accordance with the provisions of Part 8: 'Procedure', Chapter 67: 'Appeal-Pardon' of the *Criminal Code*.

The Office of the Director of Public Prosecutions (ODPP) (State) will represent the Attorney-General for appeals to the Court of Appeal.

There is no direct access to the Court of Appeal for persons dealt with before magistrates. The avenue of appeal from a Magistrates Court is to a District Court judge pursuant to s. 222 of the *Justices Act* and a subsequent appeal to the Court of Appeal is by leave under s. 118 of the *District Court of Queensland Act*. If leave is obtained the appeal is against the order of the District Court, not that of the magistrate.

### Appeals to the District Court

Generally, appeals on behalf of the Service are conducted by the ODPP (State), however the ODPP (State) will usually only represent the Service on appeals to the District Court involving a prosecution under the:

- (i) *Corrective Services Act*;
- (ii) *Criminal Proceeds Confiscation Act*;
- (iii) *Criminal Code*;
- (iv) *Domestic and Family Violence Protection Act*;
- (v) *Drugs Misuse Act*;
- (vi) *Peace and Good Behaviour Act*;
- (vii) *Regulatory Offences Act*;
- (viii) *Transport Operations (Road Use Management) Act* and related legislation;
- (ix) *Summary Offences Act*; or
- (x) *Weapons Act*.

The ODPP (State) may decline to accept the brief if it involves any issues of constitutional law. The ODPP (State) will not appear in respect of any other District Court Appeals (see Guideline 52: 'District Court Appeals' of the Director of Public Prosecutions (State) Guidelines).

QPS Legal Unit, Legal Services will act in those appeals in which the ODPP (State) has determined do not fall within its core business functions.

#### POLICY

Arresting officers, police prosecutors and other members are to liaise and cooperate with QPS Legal Unit, Legal Services and ODPP (State) Appeals Section in matters involving appeals.

### 3.11.1 Appeals by the defence

#### Appeals for offences dealt with in the District or Supreme Court

The convicted person or the person's representative may file the Notice of Appeal with the Registry of the Court of Appeal and serve a copy of the notice upon the Office of the Director of Public Prosecutions (ODPP) (State) in the first instance. There would be no liaison between the ODPP and QPS Legal Unit, Legal Services in these matters. The ODPP will contact arresting officers direct if further information is required.

#### Appeals for offences dealt with in the Magistrates Court

The convicted person or the person's representative may file the Notice of Appeal in the Registry of the District Court. The District Court Registry must then provide the respondent with the Notice of Appeal, pursuant to s. 222 of the *Justices Act* and where the respondent is a police officer, may serve the Notice of Appeal on the respondent who is the arresting officer or alternatively on the Commissioner.

#### ORDER

Where a member has been served with a Notice of Appeal, that member is to ensure that a copy of the Notice of Appeal is immediately forwarded to QPS Legal Unit, Legal Services by facsimile (see Service Manuals Contact Directory) and that an email message is sent to the Practice Manager, QPS Legal Unit requesting confirmation that the facsimile copy

of Notice of Appeal has been received. QPS Legal Unit, Legal Services will then liaise with the relevant office of the ODPP (State) to determine whether QPS Legal Unit, Legal Services or the ODPP (State) will act. Where it is determined that the ODPP (State) will act, QPS Legal Unit, Legal Services is to provide the ODPP (State) with a letter authorising that agency to act on behalf of the Service.

#### PROCEDURE

QPS Legal Unit, Legal Services or the ODPP (State) will forward any request for a report, and if required, an affidavit, of the:

- (i) arresting officer; and/or
- (ii) police prosecutor,

direct to the officer in charge of the station/establishment at which the arresting officer and/or police prosecutor concerned is stationed.

Officers in charge receiving such requests are to ensure that the required report and/or affidavit are promptly provided directly to the relevant party. A copy of the report and/or affidavit should also be forwarded to the officer in charge of the relevant region, command or directorate.

A QP 046 'Affidavit' is available on QPS Forms Select.

### 3.11.2 Appeals by the prosecution

#### POLICY

It should be noted that the Court of Appeal or District Court will not intervene in a prosecution appeal against sentence unless there is:

- (i) a material error of fact;
- (ii) a material error of law; or
- (iii) the sentence is manifestly inadequate.

Additionally, the Court will be reluctant to:

- (i) replace a non-custodial sentence with a term of actual imprisonment, particularly if the offender is young or if the proper period of imprisonment is short;
- (ii) interfere where the judge was led into error by the prosecutor, or the judge was unassisted by the prosecutor; and
- (iii) interfere with a finding of fact if it was reasonably open to the judge to find as he or she did.

See Guideline 50: 'Appeals against sentence' of the Director of Public Prosecutions (State) Guidelines.

#### PROCEDURE

A police request to commence an appeal against a summary hearing must be in writing and forwarded to the ODPP (State) by QPS Legal Unit, Legal Services. Direct requests from police officers to the ODPP (State) will not be considered.

QPS Legal Unit, Legal Services is the liaison point between the Service and the ODPP (State) who will conduct the appeal on behalf of the Service. The appeal from a summary hearing must be made within one (1) month of the magistrate's decision being delivered. In view of these points it is essential that submission of reports, service of documents and any other requests for police action be completed expeditiously.

In most cases, a police prosecutor will be in the best position to determine whether an appeal against the decision of a magistrate is appropriate. As such, most appeals will be initiated by a police prosecutor. When a decision is made to appeal the decision of a magistrate an application for a copy of the transcript of proceedings should be made by the prosecutor, regardless of whether the application to appeal is initiated by the prosecutor or arresting officer. The furnishing of such reports should not be delayed whilst awaiting the transcriptions and availability of transcripts of the proceedings. Where a transcript of the proceedings is not available, police prosecutors should complete a 'Police prosecutor's appeal report where a record or transcript of the proceedings is not available' (see Appendix 3.3: 'Police prosecutors appeal report where a record or transcript of the proceedings is not available' of this chapter).

#### POLICY

Where a police prosecutor who has prosecuted a matter is of the opinion that it is appropriate to lodge an appeal against the decision, and a record or transcript of the proceedings is available, that officer is to complete a brief report within two working days of the magistrate's decision being delivered.

### 3.11.3 Review of sentence order by a Childrens Court Judge

#### PROCEDURE

The normal procedure for a sentence review matter arising from a Childrens Court is that the District Court Registry advises the Office of the Director of Public Prosecutions (ODPP) (State) that an application for a sentence review has been made, and then the ODPP (State) requests the police prosecutor who presented the matter, through QPS Legal Unit, Legal Services, to furnish the relevant correspondence.

It can also occur, however, that the District Court Registry may notify the arresting officer directly.

In either case, these matters should be dealt with similarly to appeals by the defence to the District Court and consistent with the provisions of s. 3.11.1: 'Appeals by the defence' of this chapter.

### 3.11.4 Members inappropriately joined as respondents

#### ORDER

Where members are joined as respondents in an appeal matter and are of the opinion that they have been inappropriately joined (e.g. *Bail Act* offences, s. 87 applications under the *Transport Operations (Road Use Management) Act*), they are to:

- (i) comply with the requirements of s. 3.11.2: 'Appeals by the prosecution' of this chapter; and
- (ii) in the report specified in s. 3.11.2: 'Appeals by the prosecution' of this chapter, provide QPS Legal Unit, Legal Services with any reason(s) as to why they consider they have been inappropriately joined as respondents.

QPS Legal Unit, Legal Services will bring the information to the attention of the ODPP (State) and request that they bring the information to the attention of the Court.

### 3.11.5 Decision not to proceed with appeal – Service wide implications

#### POLICY

In some instances where police are involved in official proceedings whether as appellants or respondents, due to the unavailability of officers from the Office of the Director of Public Prosecutions (ODPP) (State) and QPS Legal Unit, Legal Services, the services of private counsel are employed to appear on behalf of the Service. This will result in expense to the relevant region or command.

Should such a situation arise, the assistant commissioner in line command of the officer involved in the official proceedings is to be advised accordingly by the officer concerned.

The assistant commissioner who is so advised may decide not to proceed with an appeal where an officer from the ODPP (State) or QPS Legal Unit, Legal Services is not available to represent the Service. However, if a decision is made not to proceed or contest an appeal in these circumstances, that assistant commissioner is to advise the Superintendent, Prosecution Services, Legal Division, of that fact and is to supply that officer with all the relevant documentation and applicable information relevant to that issue. These documents should be forwarded immediately by way of email, facsimile or, where possible, hand delivered on the same day.

The Executive Director, Legal Division, in consultation with the Director, Legal Services is to consider whether or not to proceed with or contest the appeal from a Service wide perspective. If a decision is reached that the particular appeal should either be proceeded with or contested, the Executive Director, Legal Division, is to advise the Deputy Commissioner (Strategy and Corporate Services) who may, if appropriate, issue a direction to the relevant assistant commissioner to proceed with or contest the particular appeal.

In cases where, as a result of advice from the Executive Director, Legal Division, a direction is issued by the Deputy Commissioner (Strategy and Corporate Services) to the relevant assistant commissioner not to proceed with or contest the particular appeal, that assistant commissioner is to notify the ODPP (State) accordingly. Reasons supporting such decision should be included in the notification.

In cases where the Deputy Commissioner (Strategy and Corporate Services) directs an assistant commissioner to either proceed with or contest an appeal, expenses incurred as a result of that direction will be met from central funding.

### 3.11.6 Review of bail decisions

In accordance with the *Bail Act* (BA), an application to review a decision about release of, or bail conditions imposed upon, a defendant may be made by the defendant, complainant or prosecutor, or person appearing on behalf of the Crown. Applications to review bail decisions are made under s. 19B: 'Review of particular decisions' of the BA.

Where the original bail decision is made by a police officer or justice who is not a magistrate, the reviewing court is a magistrate's court constituted by a magistrate. In all other cases, the reviewing court is the Supreme Court constituted by a single judge.

An application for bail review should be made when a decision to grant bail does not adequately protect the victim of the offence or other members of the community from further offences, or adequately ensure the defendant will appear in court when required. Applications are to be made in a timely manner.

Where a person in custody is granted bail by a magistrate, and there is no other lawful authority to keep the person in custody, the person is to be released as soon as practicable in compliance with s. 16.20: 'Bail' of this Manual. A person is not to be merely kept in detention whilst a bail review application is being prepared or filed.

Where necessary, an application under s. 19B of the BA may be made following the person's release from custody.

An application for bail review can only be made with approval of the Executive Director, Legal Division, a commissioned officer or a director, Legal Division.

Prosecutors are to comply with any prosecution instruction relating to an application to review bail.

### Stay of decision about release

There is no power to stay the magistrate's decision to grant bail unless s. 19CA: 'Stay of release decision relating to relevant domestic violence offence' of the BA applies for a person charged with a domestic violence offence.

An application may be made under s. 19CA: 'Stay of release decision relating to relevant domestic violence offence' of the BA to stay a magistrate's decision to release a defendant on bail when the defendant:

- (i) has been charged with a domestic violence offence(s) (see Schedule: 'Dictionary' of the DFVPA); and
- (ii) is still in custody at the time the application is submitted.

If an offender has been charged with a domestic violence offence and an application for review under s. 19CA of the BA has been made and filed in the Supreme Court Registry, the offender may be held in custody until:

- (i) the reviewing court makes an order under ss. 19B(6) or 19C(5): 'Review by Supreme Court of magistrate's decision on a review' of the BA;
- (ii) the application for review of the decision is discontinued; or
- (iii) 4pm on the day that is 3 business days after the day on which the decision about release was made,

(see s. 19CA(2) of the BA).

### Considerations in making an application for bail review

Every case is to be assessed on its merits by considering the alleged offence(s) and the information, evidence and circumstances known to police at the time, including the defendant's antecedents and criminal history. Without limiting matters where an application may be appropriate, an application to review should be considered if a magistrate granted bail where the defendant:

- (i) is charged with:
  - (a) a domestic violence offence where it is alleged there is substantial, prolonged, or escalating violence against an aggrieved or a number of aggrieved persons; or
  - (b) an offence under s. 315A: 'Choking, suffocation or strangulation in a domestic setting' of the CC;
- (ii) is charged with an offence which is alleged to have involved the use of a weapon, including any item used as a weapon or explosive resulting in any injury to a person;
- (iii) is charged with grievous bodily harm, unlawful wounding or any offence involving an attempt to kill or seriously injure a person;
- (iv) has threatened witnesses or threatened to attempt to pervert the course of justice; or
- (v) is in a show cause position pursuant to s. 16(3): 'Refusal of bail' of the BA.

### Application documents for an application for bail review

Bail review application documents are to comprise:

- (i) Form 005: 'Originating application to review bail' or 'Originating application (application to review bail – relevant DV offence)';
- (ii) QP 0215: 'Bail affidavit';
- (iii) QP 0215A: 'Bail affidavit annexure (Adult)' (or, where relevant, a QP 0215B: 'Bail Affidavit Annexure (Child)'); and
- (iv) any other supporting affidavits or documents (e.g. the defendant's criminal history, photographs, etc.).

### Making an application for bail review – generally

An arresting officer or a prosecutor who considers an application for bail review should be made (see 'Considerations in making an application for bail review' of this section) is to advise the OIC of the relevant police prosecutions corps (PPC) of the defendant's appearance in court. If the OIC PPC is not available, the prosecutor is to advise their Inspector, Prosecution Services.

The OIC PPC (or if unavailable, the prosecutor) is to:

- (i) contact the OIC of the arresting officer (or most senior officer at the arresting officer's station or establishment) to seek:
  - (a) any information that may be relevant to a decision whether to make the application to review; and
  - (b) if necessary, request an officer with knowledge of the charge/s provide assistance with making the submission and completion of the application documents; and
- (ii) determine whether an application for bail review is appropriate and if so make contact with the Inspector, Prosecution Services (or any commissioned officer of Legal Division) to seek approval to file the bail review application.

Where approval is given, the OIC PPC is to ensure the application documents are physically filed in the closest Supreme Court Registry in Brisbane, Townsville, Rockhampton or Cairns as soon as possible, but no later than the first business day after the decision, which is the subject of the review, is made.

If necessary, the OIC PPC may task the police station nearest to the Supreme Court Registry to assist in delivering the application documents.

Following filing of the documents, officers are to comply with 'Defendant to be notified' of this section.

#### **Making an application for bail review – domestic violence offence**

To have an offender kept in custody for a domestic violence offence (see 'Stay of decision about release' of this section), an application for bail review is to be:

- (i) made and signed by the prosecutor (or a person appearing for the Crown); and
- (ii) filed with the Supreme Court Registry,

prior to the defendant's release for the decision to grant bail to be stayed.

In addition to the procedures detailed above, where a bail decision review relates to a 'relevant domestic violence offence' and the defendant is still in custody, the OIC PPC is to ensure an application under s. 19CA of the BA is prepared and filed as soon as possible.

Where a magistrate releases a defendant on bail and a bail decision review is to be made, the OIC PPC is to ensure the application documents are filed:

- (i) on weekdays (between 09:00-16:00 hours): to the closest Supreme Court Registry in Brisbane, Townsville, Rockhampton or Cairns;
- (ii) if the defendant is still in custody outside of business hours and the application documents have been prepared, to the Supreme Court Registry, Brisbane. Where an 'out of hours' application is made, officers will need to contact the security officers at the Brisbane Supreme Court and request the Registry be opened.

Whenever practicable, an application to review under s. 19CA of the BA should be made by email. The officer submitting the application is to:

- (i) state 'URGENT – BAIL ACT 1980 s 19CA APPLICATION FOR REVIEW – DEFT [SURNAME]' in the email subject field and attach a scanned copy of the application documents to the email;
- (ii) telephone the Registry to confirm receipt and filing of the application (including any application made after hours to the Brisbane Supreme Court Registry). A confirmation email, including the Registry Filing number should be requested; and
- (iii) if the defendant is still in custody:
  - (a) immediately contact the watchhouse manager and advise that a bail review application has been filed with the Supreme Court Registry and the defendant is to be held in custody. The watchhouse manager is to record the confirmation from the Supreme Court Registry and hearing notification in the defendant's Custody Report (full) in QPRIME; and
  - (b) arrange for a copy of the application documents to be given to the defendant;
- (iv) record details of the receipt and filing at the Supreme Court Registry in the Documents tab of the relevant Case File in QPRIME.
- (v) ensure the original application documents are delivered to the Supreme Court Registry as soon as practicable and prior to the hearing of the application.

If the application documents have been sent to the Supreme Court Registry by email, the OIC PPC is to ensure that as soon as practicable and prior to the hearing of the application:

- (i) the original application documents are physically filed in the Supreme Court Registry; and
- (ii) a copy of the application documents is provided to the legal practitioner appearing for the Service at the hearing of the application.



If it is not possible for the OIC PPC to deliver the application documents to the relevant Supreme Court Registry (e.g. in another city), then the original documents are to be scanned and sent by email to the PPC closest to the relevant Supreme Court Registry for filing. If necessary, the OIC PPC may task the police station nearest to the Supreme Court Registry to assist in delivering the application documents.

#### **Documents to be recorded in QPRIME**

A member who prepares a document in an application for a bail review is to ensure the document is uploaded into the relevant QPRIME Case File Documents tab as soon as reasonably practicable after the application is filed.

#### **Defendant to be informed**

Section 19B of the BA requires reasonable steps to be taken to inform the defendant of the bail review application including the time and place of the hearing. Where the defendant has been released from custody, reasonable steps may include conducting inquiries at:

- (i) the address shown on the bail documents;
- (ii) the address supplied by the defendant;
- (iii) the address of the next of kin supplied by the defendant to police; or
- (iv) contacting the defendant's legal representative.

The hearing may proceed in the defendant's absence, if the reviewing court is satisfied that reasonable steps were taken to advise the defendant of the time and place for the hearing of the application.

The defendant is to be provided with a copy of the application documents as soon as practicable after the application has been filed.

#### **Subsequent assistance to be provided**

The OIC PPC is to cause a copy of the transcript of the bail application in the magistrates court to be ordered and forwarded with the application documents to the legal practitioner appearing for the Service.

The OIC of the arresting officer is to ensure all reasonable assistance is provided to the legal practitioner appearing for the Service in preparation of and at the hearing of the application for review of bail in the Supreme Court.

#### **3.11.7 Deleted**

## **3.12 Prosecution Review Committee**

### **3.12.1 Introduction – Prosecution Review Committee**

The role of the Prosecution Review Committee is to thoroughly and professionally examine the processes, policies and procedures involved in each relevant case and to identify areas in which Service or local procedures may be improved. The Prosecution Review Committee should review:

- (i) cases involving dismissal, withdrawal or offering no evidence (see s. 3.4.4: 'Withdrawal of charges' of this chapter). However, review does not extend to:
  - (a) sexual offences (see s. 3.15: 'Sexual offence prosecutions' of this chapter); or
  - (b) matters dealt with by ex officio indictment;
  - (c) a restorative justice process;
  - (d) through the Mental Health Court;
  - (e) the Attorney-General (see subsection 'Responsibilities of officers when proceedings are discontinued or stayed' of s. 6.6.8: 'Effect of mental illness on matter before the court' of this Manual);
  - (f) matters discontinued because the defendant is deceased; or
  - (g) where charges have been discontinued due to administrative purposes (i.e. duplicate files/charges);
- (ii) cases in which costs are awarded (see s. 3.13: 'Costs' of this chapter);
- (iii) successful prosecutions where a member of the Service identifies there are issues which require review, and
- (iv) cases where a magistrate makes adverse comment concerning any member of the Service (see s. 3.7.13: 'Comments by Magistracy concerning members of the Service' of this chapter).

In instances whereby, a prosecution requiring review was commenced from charges preferred by members of Operations Support Command (OSC), Specialist Services Group e.g. Railway Squad it is to be referred to the district Prosecution Review Committee for the area in which the case was heard.

The Prosecution Review Committee is not intended as a forum for assigning blame or as a disciplinary avenue against arresting officers. Arresting officers need have no fear of censure or castigation if a prosecution case is dismissed, provided that the prosecution has been instituted in accordance with prevailing law, policies and procedures.

### 3.12.2 Responsibilities of district officers

ORDER

District officers or commissioned officers delegated by the district officer ('delegates') are to establish and chair, within their area of control, a Prosecution Review Committee.

As a minimum this committee is to consist of:

- (i) a district brief manager or other member with sufficient policing experience who is prepared to undertake duty as a member of the committee;
- (ii) a district or establishment training officer;
- (iii) a police prosecutor and;
- (iv) if necessary a representative from OSC, Specialist Services Group.

It may also include a person nominated as an employee representative.

In appointing a person as an employee representative, the district officer or their delegate should provide an opportunity for the local union branch or branches to nominate such a representative.

ORDER

District officers or commissioned officers in charge or their delegates are to ensure that:

- (i) the Prosecution Review Committee meets at regular intervals, consistent with local needs but at least twice yearly;
- (ii) processes are in place which ensure that all relevant matters are referred to the Prosecution Review Committee for evaluation; and
- (iii) members who have been involved in the investigation of any case under evaluation by the Prosecution Review Committee are excluded from deliberations relating to that matter.

### 3.12.3 Duties and functions

ORDER

Members of a Prosecution Review Committee are to, on attending meetings of the committee, consider the facts of every case put before them, and in respect to each case:

- (i) attempt to identify:
  - (a) the reason or reasons the prosecution failed. In doing so, they should consider:
    - the effectiveness of brief checking management;
    - case conference outcomes;
    - progressive data on recurring systemic issues or those issues relevant to an investigating officer;
    - adherence to policy on delivery of Court Briefs (QP9) and briefs of evidence to Prosecutions (see ss. 3.7.2: 'Documentation at first appearance', 3.7.5: 'Checking of Court Briefs (QP9)' and 3.8.16: 'Delivery of briefs of evidence to prosecutor' of this Manual); and
    - timeliness of making required material available to the defence, including disclosure (see s. 3.4.12: 'Supply of particulars, copies of Court Brief (QP9), statements and reports' of this Manual); or
  - (b) in the case of a successful prosecution, any particular issue(s) requiring review;
- (ii) consider what action may be necessary to prevent the failure of future cases for the same reason, or to address the particular issue(s) identified;

- (iii) complete a Form QP496: 'Prosecution Review Committee Form' for maintaining of records at district level;
- (iv) if an issue identified has or is likely to have statewide implications, requires a change to Service policy or should be brought to the attention of the Executive Director, Legal Division, complete a report outlining the issue with a firm recommendation on suggested actions and containing supporting documents including a copy of the brief of evidence, and forward the report to the Executive Director, Legal Division; and
- (v) review actions taken as a result of previous Prosecution Review Committee meeting recommendations.

The member of the Prosecution Review Committee who is the district brief manager or training officer is to retain a copy of all documentation relating to the Prosecution Review Committee functions.

Where misconduct or a breach of discipline is identified in the process of reviewing an unsuccessful prosecution, not otherwise reported, officers are reminded of their obligations under 'Professional Conduct' of the Human Resources Policies.

### 3.12.4 Responsibilities of Police Prosecutors

#### ORDER

The prosecutor who has withdrawn or offered no evidence in respect of a charge, or has had a charge dismissed by a magistrate at a summary or committal hearing, is to forward the matter to the appropriate Prosecution Review Committee together with:

- (i) in the case of a withdrawal or offering no evidence, a copy of the completed Court Brief (QP9), and copies of the Brief of Evidence and a QP 0626 'Request For Authority To Withdraw Charges', if completed; and
- (ii) in the case of a dismissal at a summary or committal hearing, copies of the completed Court Brief (QP9), Brief of Evidence and a QP 0625: 'Report on Dismissal of Charge(s)' form (or equivalent)

## 3.13 Costs

### 3.13.1 Costs awarded against the Service

#### POLICY

Provisions under the *Justices Act* allow for costs to be awarded in the following circumstances:

- (i) upon adjournment:

Section 88: 'Adjournment of the hearing' provides that an order as to costs may be made when simple offences or breaches of duty are adjourned.

Upon adjourning a matter, a court may exercise its discretion to award costs incurred by the adjournment against either the defendant or the arresting officer. This decision is generally based on an assessment by the court of who was responsible for the adjournment and what costs appear to be just in the circumstances. No statutory provision enables costs to be awarded in respect to the adjournment of committal proceedings.

The Service will pay costs ordered as a result of an adjournment, unless the adjournment was the result of an act or omission by the arresting officer which constitutes a breach of discipline or misconduct.

- (ii) on summary convictions and orders:

Section 157: 'Costs on conviction or order' provides that justices may in making a summary conviction or order, including a conviction for an indictable offence, order the defendant pay to the complainant such costs that seem just and reasonable.

- (iii) on dismissal:

Sections 158: 'Costs on dismissal' and 158A: 'Exercise of discretion in relation to an award of costs' enable orders for costs to be made on dismissal of a complaint.

Section 158(1) provides that an order for costs may be made against a complainant police officer when, instead of convicting or making an order, justices dismiss the complaint.

Section 158(2) provides that when a complaint is before a Magistrates Court which the court has not jurisdiction to hear and determine the court shall order the complaint to be struck out for want of jurisdiction and may order that the complainant pay to the defendant such costs as to the court seem just and reasonable.

Section 158A provides that any such order under s. 158(1) can be made only if the justices are satisfied that it is proper that the order for costs should be made. Section 158A(2) of the *Justices Act* provides that

in deciding whether it is proper to make the order for costs, the justices must take into account all relevant circumstances and a number of examples are included therein.

Section 158A(3) provides that if an order for costs under s. 158 is made against a complainant who is a police officer, the clerk of the court is to give to the defendant a certificate signed by the clerk showing the amount of costs awarded. The defendant is entitled to be paid by the State the amount shown in the certificate within two months after payment is claimed, unless an appeal against an order for costs is made under s. 222 of the *Justices Act*, in which case payment of the amount shown in the certificate is stayed until the appeal is decided and then payment is to be made of the amount, if any, ordered or confirmed by further order made on the appeal.

#### **When costs cannot be awarded**

Section 127 of the *Drugs Misuse Act* provides that no costs shall be awarded with respect to any proceedings arising out of a charge of having committed an offence defined in the Act.

Section 61 of the DFVPA provides that a court may not award costs on an application for:

- (i) a protection order; or
- (ii) a revocation or variation of a domestic violence order (including a variation of conditions imposed by the order);

unless the court dismisses the application as malicious, deliberately false, frivolous or vexatious.

### **3.13.2 Costs awarded to the Service**

#### PROCEDURE

When the Service incurs costs in respect to witnesses, police prosecutors may make an application for costs.

### **3.13.3 Responsibilities of police prosecutors and arresting officers receiving notice of costs**

#### ORDER

A police prosecutor who presents a matter which results in the awarding of costs and in a matter not presented by a police prosecutor, an arresting officer receiving notice of costs, is to furnish a report in that regard. The report should contain:

- (i) the defendant's name;
- (ii) arresting officer's details;
- (iii) the date of hearing;
- (iv) prosecutor's details;
- (v) representation for the defence;
- (vi) details of the charge(s);
- (vii) reason for dismissal; and
- (viii) details of costs awarded.

The following documents should be attached to the report:

- (i) brief of evidence;
- (ii) relevant Court Brief (QP9); and
- (iii) certificate or order from the clerk of the court.

All reports are to be forwarded to the district officer responsible for the arresting officer.

### **3.13.4 Responsibilities of district officers**

#### ORDER

A district officer who receives a report outlined above is to, in respect of the awarding of costs as a result of:

- (i) an adjournment, forward the report to the officer in charge of the region or command; or
- (ii) the dismissal of charges or for any other reason, forward the report to the officer in charge of the region or command and cause a copy to be forwarded to the appropriate Prosecution Review Committee.

See s. 3.12: 'Prosecution review committee' of this chapter.

### **3.13.5 Responsibilities of officers in charge of regions or commands**

#### ORDER

An officer in charge of a region or command who receives a report from a district officer, as outlined above, is to:

- (i) in relation to costs awarded with respect to dismissals pursuant to s. 158 of the *Justices Act*, arrange payment of the costs awarded; or
- (ii) in relation to costs awarded for reasons other than dismissals pursuant to s. 158 of the *Justices Act*:
  - (a) examine all the circumstances surrounding the case and make a determination as to whether the costs awarded should be paid by the Service; and
  - (b) where the matter is one in which it is appropriate that the Service pays the costs awarded, arrange for the costs to be paid; or
  - (c) where the matter is not one in which it is appropriate that the Service pays the costs awarded, advise the officer against whom the costs were awarded, in writing, showing the reasons for the decision; and
 as soon as possible thereafter, cause the matter to be investigated in the manner outlined in 'Complaints Management' of the Human Resources Policies.

When a determination has been made to pay costs, the officer in charge of the region or command is to ensure the payment is made in accordance with the following provisions:

- (i) where costs are awarded against an officer who commenced proceedings for which the costs were awarded, payment is to be made from the budget of the region, command or division in which the officer was stationed at the time of commencing the relevant proceedings; and
- (ii) in all other cases, payment is to be made from the budget of the region, command or division in which the officer subject of the order for costs was stationed at the time of taking the action that resulted in the order for costs being made in respect of the officer.

### 3.13.6 Adjourment of the question of costs

#### ORDER

Police prosecutors are to advise magistrates that there is no statutory authority to adjourn the question of costs under the provisions of s. 159 of the *Justices Act*, when that situation arises.

### 3.13.7 Costs awarded against officers after a magistrate's decision is overturned on appeal

Pursuant to s. 15(3) of the *Appeal Costs Fund Act* (ACFA) when the decision of a magistrate is overturned on appeal on a question of law, the Court may grant an indemnity certificate to the respondent in respect of the appeal. However, s. 21(3) of the ACFA states an indemnity certificate shall not be granted in favour of the Crown.

Officers who act as complainants in summary prosecutions do so in their official capacity as police officers and as employees and agents of the Crown and not in their private capacity. In these circumstances, the ACFA prohibits the grant of an indemnity certificate to a police officer.

#### POLICY

The Service indemnifies officers who have costs awarded against them in the above situation based on the fact they are acting in the course of their official duties.

#### ORDER

Officers, acting in the course of their official duties, who have costs awarded against them after a magistrate's decision is overturned on appeal on a question of law are not to apply to the court to grant an indemnity certificate in respect of the appeal.

#### PROCEDURE

In situations where officers, acting in the course of their official duties, have costs awarded against them after a magistrate's decision is overturned on appeal, the provisions of ss. 3.13.3: 'Responsibilities of police prosecutors and officers receiving notice of costs', 3.13.4: 'Responsibilities of district officers' and 3.13.5: 'Responsibilities of officers in charge of regions or commands' of this chapter apply as if the costs had been awarded in a Magistrates Court.

### 3.13.8 Costs awarded as a result of proceedings against members of the Service

#### POLICY

Where proceedings are commenced against a member of the Service by an officer attached to Ethical Standards Command, any costs associated with the proceedings are to be met by the region or command in which the member against whom the proceedings were commenced was stationed or appointed at the time of commencing such proceedings.

#### PROCEDURE

Reports advising of costs awarded against an officer attached to Ethical Standards Command in respect of proceedings against a member of the Service, which are sent to the Assistant Commissioner, Ethical Standards Command in accordance with s. 3.13.5: 'Responsibilities of officers in charge of regions or commands' of this chapter, should be

forwarded by the Assistant Commissioner, Ethical Standards Command to the officer in charge of the relevant region or command for attention.

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

### 3.14.1 Introduction

Chapter 62, Chapter division 3: 'Disclosure by the prosecution' of the Criminal Code creates a comprehensive disclosure obligation on the prosecution to the defendant or a lawyer acting for the defendant for a relevant proceeding. These provisions provide that it is a fundamental obligation of the prosecution to ensure criminal proceedings are conducted fairly with the single aim of determining and establishing truth.

### 3.14.2 Definitions

The following terms are defined as below:

**'relevant proceeding'** means a committal proceeding, a prescribed summary trial or a trial on indictment, as defined in s. 590AD: 'Definitions for ch div 3' of the CC.

**'Prescribed summary trial'** means a summary trial of:

- (i) a charge for an indictable offence that is to be heard and decided summarily under s. 552BA;
- (ii) a charge for an indictable offence if, under s. 552A, the prosecution has elected that the charge be heard and decided summarily;
- (iii) a charge for an indictable offence to which s. 552B applies unless the defendant has informed the magistrates court that he or she wants to be tried by jury;
- (iv) a charge for an indictable offence against a provision of the DMA, if:
  - (a) under that Act, proceedings for the charge may be taken summarily; and
  - (b) the prosecution has elected that proceedings for the charge be taken summarily; or
- (v) a charge for an offence prescribed under a regulation for this definition,

as defined in s. 590AD: 'Definitions for ch div 3' of the CC.

**'Evidence Act section 93A device statement'** means a statement:

- (i) made to a person investigating an alleged offence;
- (ii) contained in:
  - (a) any disc, tape, sound track or other device mentioned in paragraph (e) of the definition 'document' in Schedule 3 of the *Evidence Act* (EA) capable of reproducing sounds (a **'sound device'**); or
  - (b) any film, negative, tape or other device mentioned in paragraph (f) of the definition 'document' in Schedule 3 of the EA (a **'visual image device'**);
- (iii) given in, or in anticipation of, a criminal proceeding about the alleged offence; and
- (iv) that is potentially admissible under s. 93A of the EA,

as defined in s. 590AFA: 'Meaning of Evidence Act section 93A device statement' of the CC.

**'recorded statement'** means a videorecording or audio recording of a statement made by a complainant in relation to an alleged domestic violence offence, as defined in s. 103A: 'Definitions for part' of the *Evidence Act*.

For a relevant proceeding the **'arresting officer'** means the person who arrested or brought the charge against the person.

Under the provisions of s. 4.10: 'Delegation' of the PSAA and s. 590AD: 'Definitions for ch div 3' of the CC, an arresting officer's supervising commissioned officer is hereby authorised to, when the arresting officer is unavailable, designate another officer as the arresting officer for the relevant proceeding.

Where it comes to the attention of a member that:

- (i) a disclosure is required under s. 590AH of the CC or has been requested under s. 590AJ of the CC; and
- (ii) the arresting officer is unavailable;

the member is to refer the matter to the prosecutor responsible for the matter.

If the prosecutor requires contact with an arresting officer who is unavailable, the prosecutor is to contact the arresting officer's OIC. The arresting officer's OIC is to contact the arresting officer's supervising commissioned officer to discuss the designation of another officer as the arresting officer for the relevant proceeding.

## ORDER

The OIC is to notify the prosecutor responsible for the matter where another officer has been designated as the arresting officer for the relevant proceeding.

**3.14.3 Forms**

**QP 0541: 'Index to brief/notice for a relevant proceeding'** (available on QPRIME or on QPS Forms Select if QPRIME is unavailable). This form is to be used by arresting officers and attached to the brief of evidence. This form is also to be used by prosecutors when providing a copy of a thing or a written notice to the defendant or lawyer acting for the defendant for a relevant proceeding under the mandatory disclosure provisions in s. 590AH of the CC.

**QP 0542: 'Supplementary notice for a relevant proceeding'**. Prosecutors are to use this form when written notice is required to be given for any subsequent mandatory disclosure under s. 590AH of the CC (see s. 590AL: 'Ongoing obligation to disclose' of the CC).

**QP 0543: 'Disclosure on request for a relevant proceeding'**. Prosecutors are to use this form when a copy of a thing or notice of a thing in the possession of the prosecution is to be provided to a defendant or lawyer acting for the defendant as requested under s. 590AJ(2) of the CC.

**QP 0544: 'Notice of sensitive evidence in a relevant proceeding'**. Prosecutors are to use this form when written notice is required to be given to a defendant or lawyer acting for the defendant when evidence in a relevant proceeding has been determined 'sensitive evidence' and a copy is not to be provided to the defendant or lawyer acting for the defendant in accordance with s. 590AO(2) of the CC.

**QP 0545: 'Notice of disclosure contrary to the public interest in a relevant proceeding'**. Prosecutors are to use this form when written notice is required to be provided to a defendant or lawyer acting for the defendant when it has been determined that disclosure of evidence in a relevant proceeding would be contrary to the public interest in accordance with s. 590AQ of the CC.

**QP 0546: 'Document advising written notice/copy of thing for a relevant proceeding'**. This document has been developed as a guide for prosecutors when compiling a letter to be sent to a defendant or lawyer acting for the defendant advising that a copy of a thing or written notice under s. 590AH, s. 590AJ, s. 590AO or s. 590AQ of the CC is available for collection from a stated place. This document is required under s. 590AM of the CC.

**QP 0547: 'Notice of Evidence Act section 93A device statement in a relevant proceeding'**. Prosecutors are to use this form when written notice is required to be provided to an accused person when it is determined that a statement in the prosecution's possession is an Evidence Act s. 93A device statement. This form provides the accused with information required by s. 590AOA of the CC.

**QP 1207: 'Notice of recorded statement in a relevant proceeding'**. Prosecutors are to use this form when written notice is required to be provided to an accused person when it is determined that a statement in the prosecution's possession is a 'recorded statement'. This form provides the accused with information required by s. 590AOB of the CC.

**Distribution of forms**

Where a 'relevant proceeding' (committal) is to be handled by the ODPP, officers are to send by email or arrange for an electronic copy of the QP 0541: 'Index to Brief/Notice for a Relevant Proceeding' to be sent by email to the relevant office of the ODPP (see SMCD).

In all other areas, the OIC of the police prosecutions corps is to develop appropriate local procedures for the receipt of the QP 0541.

**3.14.4 Mandatory disclosure**

Section 590AH: 'Disclosure that must always be made' of the CC provides an obligation on the prosecution to disclose to a defendant or lawyer acting for the defendant for a 'relevant proceeding' certain material to ensure a defendant is properly informed of the case against him or her.

The disclosure of material 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 CC. For example the disclosure of a 'Evidence Act s. 93A device statement' and 'recorded statement' are controlled by ss. 590AOA and 590AOB of the CC respectively.

## ORDER

For a 'relevant proceeding' and subject to any legislative limitations, the following things must be provided to the defendant or lawyer acting for a defendant:

- (i) a copy of the bench charge sheet, complaint or indictment containing the charge against the person;
- (ii) a copy of the accused person's criminal history in the possession of the prosecution;
- (iii) a copy of any statement of the accused person in the possession of the prosecution;

- (iv) for each proposed witness for the prosecution who is, or may be, an affected child – a written notice naming the witness and describing why the proposed witness is, or may be, an affected child; and
- (v) for each proposed witness for the prosecution other than a proposed witness mentioned in paragraph (iv):
  - (a) a copy of any statement of the witness in the possession of the prosecution; or

*Example –*

*a statement made by a proposed witness for the prosecution in an audio recording of an interview*

- (b) if there is no statement of the witness in the possession of the prosecution – a written notice naming the witness;
- (vi) if the prosecution intends to adduce evidence of a representation under s. 93B of the *Evidence Act* (EA), a written notice stating that intention and the matters mentioned in s. 590C(2)(b) to (d) of the CC;
- (vii) a copy of any report of any test or forensic procedure relevant to the proceeding in the possession of the prosecution.
 

*Examples of a forensic procedure –*

*DNA, fingerprint or another scientific identification procedure*

  - (viii) a written notice describing any test or forensic procedure, including a test or forensic procedure that is not yet completed, on which the prosecution intends to rely at the proceeding;
  - (ix) a written notice describing any original evidence on which the prosecution intends to rely at the proceeding;
  - (x) a copy of anything else on which the prosecution intends to rely at the proceeding; and
  - (xi) a written notice or copy of anything else in possession of the prosecution prescribed under a regulation.

#### **How mandatory disclosure is to be made**

Where a copy of a thing is required to be given to the defendant or lawyer acting for a defendant under s. 590AH of the CC and:

- (i) an arresting officer gives a copy of a thing mentioned in s. 590AH of the CC (i.e. copy of bench charge sheet, record of interview or criminal history) to the defendant or lawyer acting for the defendant, the arresting officer is to:
  - (a) make a record in the officer's official police notebook of the time, date and to whom the thing was given; and
  - (b) make an entry of these facts on the QP 0541: 'Index to Brief/Notice for a Relevant Proceeding' (available on QPRIME) which is to accompany the brief of evidence; or
- (ii) a police prosecutor is to provide a copy of a thing or provide written notice to the defendant or lawyer acting for the defendant as required under s. 590AH of the CC the police prosecutor is to:
  - (a) complete the relevant section(s) of the QP 0541;
  - (b) where there is a lawyer acting for the defendant, serve a document on the lawyer advising that the copy of the thing or written notice (QP 0541) is available for collection from a stated place (see s. 39: 'Service of documents' of the *Acts Interpretation Act* (AIA)); or
  - (c) 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 or written notice (QP 0541) is available for collection from a stated place (see s. 39 of the AIA); and
  - (d) attach a copy of the completed QP 0541 and any other correspondence to the relevant prosecution file.

Where a police prosecutor is required to serve a document on a defendant or lawyer acting for the defendant advising that a copy of a thing or written notice is available for collection from a stated place (see s. 590AM of the CC), such document should 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'.

Arresting officers should liaise with the prosecutor responsible for the matter and keep the prosecutor 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 mandatory disclosure is to be made**

ORDER

Where the prosecution is required to give a defendant or lawyer acting for the defendant a written notice or copy of a thing in a 'relevant proceeding' being a committal proceeding or prescribed summary trial, such material is to be provided at least 14 days before the commencement of the relevant proceeding.



Where the material required to be provided to the defendant or lawyer acting for the defendant is unable to be provided within the specified time frame as it was not in the possession of the prosecution at the time or it did not exist, 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 CC).

Where a thing the prosecution intends to rely upon in a relevant proceeding comes into the possession of the prosecution after the initial mandatory disclosure under s. 590AH of the CC has been made, the prosecutor is to:

- (i) complete a QP 0542: 'Supplementary Notice for a Relevant Proceeding'; and
- (ii) where there is a lawyer acting for the defendant, serve a document on the lawyer advising that written notice (QP 0542) is available for collection from a stated place (see s. 39 of the AIA); 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 written notice (QP 0542) is available for collection from a stated place (see s. 39 of the AIA); and
- (iv) attach a copy of the QP 0542 and any other correspondence to the relevant prosecution file.

### Limitations on disclosure

Section 590AC: 'Chapter division does not have particular consequences' of the CC provides that the prosecution is not required to disclose a thing for a 'relevant proceeding' if such disclosure is unlawful under the CC or another law.

Section 590AN: 'Limit on disclosure of things accused person already has' of the CC provides that the prosecution is not required to give the defendant or lawyer acting for the defendant in a 'relevant proceeding' anything the defendant or lawyer acting for the defendant already possesses or has already been given by the prosecution.

Section 590AOA: 'Evidence Act section 93A device statement' of the CC 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 CC.

Section 590AOB: 'Disclosure of recorded statement' of the CC provides that the prosecution is not, for a 'relevant proceeding', required to give the accused person a copy of a recorded statement (as defined under s. 103A: 'Definitions for part' of the EA) other than as required under s. 590AOB of the CC.

Section 590APA: 'Protected counselling communications' of the CC provides that the prosecution is not required to give the accused person a copy of a document if they reasonably consider the document is a protected counselling communication.

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', s. 3.14.9: 'Disclosure of Evidence Act section 93A device statement or recorded statement in a relevant proceeding' of this chapter, and s. 3.14.11: 'Disclosure of protected sexual assault counselling communications' of this chapter.

### 3.14.5 Disclosure that must be made on request

Section 590AJ: 'Disclosure that must be made on request' of the CC 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 them.

The disclosure of material is subject to legislative limitations (see ss. 590AN: 'Disclosure by the prosecution' to s. 590AQ: 'Limitations on disclosure' of the CC).

#### ORDER

In a 'relevant proceeding' a prosecutor, subject to any legislative limitations, is to, on request provide the following 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 prosecution witness 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 CC);
- (iii) a copy or notice of anything 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 anything 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.

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 CC, the police prosecutor may request the Police Information Centre (PIC), produce the criminal history, excluding spent convictions.

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

Where the prosecution is requested to provide a copy of a thing under s. 590AJ(2) of the CC, the prosecutor is to:

- (i) complete the relevant sections of the QP 0543: 'Disclosure on request for a relevant proceeding';
- (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. (see s. 39: 'Service of documents' of the *Acts Interpretation Act* (AIA)); or
- (iii) where the defendant is not represented, serve a document on the defendant to the defendant's place of business or last known residential address advising that the copy of the thing requested is available for collection from a stated place. (see s. 39 of the AIA);
- (iv) complete the appropriate sections of the QP 0543; and
- (v) attach a copy of all correspondence to the relevant prosecution file.

Where a 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 CC), 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'.

Where the prosecution is required to give notice of a thing under s. 590AJ(2) of the CC, the prosecutor is to:

- (i) where there is a lawyer acting for the defendant, give notice to the lawyer in writing using the QP 0543; or
- (ii) where the defendant is not represented, give notice in writing using the QP 0543 to the defendant's place of business or last known residential address; 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 CC 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 prosecutor is to advise the defendant or lawyer acting for the defendant using the QP 0543 that the thing may be viewed on request at a stated place.

Arresting officers are to liaise with the prosecutor responsible for the matter to keep informed of any disclosure made to the defendant or lawyer acting for the defendant. Arresting officers are to 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

Prosecutors are to provide to a defendant or lawyer acting for the defendant material requested under s. 590AJ(2) of the CC 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 CC).

#### Limitations on disclosure

The prosecution is not required to:

- (i) disclose a thing for a relevant proceeding if such disclosure is unlawful under the CC or another law (e.g. s. 6: 'Non-disclosure of convictions upon expiration of rehabilitation period' of the *Criminal Law (Rehabilitation of Offenders) Act*) (see s. 590AC: 'Chapter division does not have particular consequences' of the CC);
- (ii) give the defendant or lawyer acting for the defendant anything the defendant or lawyer acting for the defendant already possesses or has already been given by the prosecution (see s. 590AN: 'Limit on disclosure of things accused person already has' of the CC); and
- (iii) for a relevant proceeding, give the accused person a copy of:
  - (a) an Evidence Act s. 93A device statement other than as required under s. 590AOA: 'Evidence Act section 93A device statement' of the CC; and
  - (b) a 'recorded statement' other than as required under s. 590AOB: 'Disclosure of recorded statement' of the CC.

Refer also to:

- (i) s. 3.14.6: 'Disclosure of sensitive evidence in a relevant proceeding';

- (ii) s. 3.14.7: 'Disclosure of witness contact details in a relevant proceeding';
- (iii) s. 3.14.8: 'Disclosure contrary to the public interest in a relevant proceeding'; and
- (iv) s. 3.14.9: 'Disclosure of Evidence Act section 93A device statement or recorded statement in a relevant proceeding',

of this chapter.

### 3.14.6 Disclosure of sensitive evidence in a relevant proceeding

For the purpose of this section:

- (i) '**sensitive evidence**' is defined in s. 590AF of the CC as:

Anything containing or displaying an image of a person (the '**imaged person**')

- (a) that, disregarding the fact the thing was brought into existence, or is in the possession of the prosecution, for the purpose of providing evidence of an offence, is obscene or indecent; or
- (b) the disclosure of which to another person, without the imaged person's consent, would interfere with the imaged person's privacy.

Examples:

- a computer hard drive containing obscene or indecent images
- a photo of a naked rape victim taken to preserve evidence of the victim's condition at a particular time.

- (ii) '**original evidence**' is defined in s. 590AD of the CC as:

a thing that may be tendered as an exhibit in a relevant proceeding.

In a relevant proceeding, prosecutors are not required to give the defendant or lawyer acting for the defendant a copy of a thing that is sensitive evidence other than as directed by a court under s. 590AO: 'Limit on disclosure of sensitive evidence' of the CC.

ORDER

When determining whether evidence in a relevant proceeding is sensitive evidence, a prosecutor is to consult with the arresting officer.

Where it is determined by a prosecutor that evidence in a relevant proceeding is sensitive evidence and a copy is not to be provided to the defendant or lawyer acting for the defendant, the prosecutor is to give the defendant or lawyer written notice of these facts.

Where a prosecutor is required to give written notice of a thing that is sensitive evidence to the defendant or lawyer acting for the defendant under s. 590AO(2) of the CC the prosecutor is to:

- (i) complete the relevant sections of the Form QP 0544: 'Notice of Sensitive Evidence in a Relevant Proceeding';
- (ii) where there is a lawyer acting for the defendant, serve a document on the lawyer advising that the written notice QP 0544 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* (AIA)); 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 written notice 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 AIA); and
- (iv) attach a copy of the completed QP 0544 and any other correspondence to the relevant prosecution file.

Prosecutors completing a written notice (QP 0544) in relation to sensitive evidence as required under s. 590AO of the CC are to ensure that details of the place where an appropriate person may view the 'sensitive evidence on request are contained on the written notice.

Arresting officers are to liaise with the prosecutor responsible for the matter so as to keep informed of any viewing of the sensitive evidence by the defendant or lawyer acting for the defendant. Arresting officers are to ensure the victim/witness in a relevant proceeding is kept informed on the progress of the matter.

Where a prosecutor is required to serve a document on a defendant or lawyer acting for a defendant advising that a written notice is available for collection from a stated place (see s. 590AM of the CC), such document is to be in the form of a letter that is substantially in the same format as Form QP 0546: 'Document Advising Written Notice/Copy of Thing for a Relevant Proceeding'.

### 3.14.7 Disclosure of witness contact details in a relevant proceeding

In a relevant proceeding (see s. 590AD of the CC) the prosecution is not required to give a defendant or lawyer acting for the defendant a 'witness contact detail' unless it is materially relevant as part of the evidence for the relevant proceeding'.

A 'witness contact detail' includes details of the address, telephone and facsimile number of a proposed witness for the prosecution or a person who has provided a statement that the prosecution does not intend to rely upon but which has been provided to the defendant or lawyer acting for the defendant. In a relevant proceeding a court may in certain circumstances direct that another witness contact detail be provided to the defendant or lawyer acting for the defendant.

In a relevant proceeding where the defendant or lawyer acting for the defendant is to be provided with or able to view material containing a witness contact detail, the prosecutor is to delete or render illegible the witness contact detail prior to providing the material to the defendant or lawyer acting for the defendant. This policy does not apply where the witness contact detail is contained in a QP9 disclosed via a portal to a defence representative acting for the defendant.

The provisions of the CC relating to the release of witness contact details in a relevant proceeding do not prohibit the prosecution from voluntarily giving a witness a request from the defence for a witness to contact the defence.

Where a witness contact detail is materially relevant as evidence in a relevant proceeding (see s. 590AP of the CC for examples of when evidence is materially relevant) and the witness contact detail is to be disclosed to the defendant or a lawyer acting for the defendant (other than disclosure made in a QP9 via a portal), the prosecutor responsible for the matter is to make a record of the disclosure on the relevant prosecution file. The record is to include such information as:

- (i) the time, date and place disclosure was made;
- (ii) the person to whom the disclosure was made; and
- (iii) the witness contact details that were disclosed.

Where a witness contact detail is to be disclosed in a relevant proceeding other than disclosure made in a QP9 via a portal, the prosecutor is to advise the arresting officer. The arresting officer is to ensure the witness, whose contact detail is to be disclosed, is informed of this fact.

### 3.14.8 Disclosure contrary to the public interest in a relevant proceeding

Section 590AQ: 'Limit on disclosure contrary to the public interest' of the CC provides that the prosecution in a relevant proceeding is not required to disclose a thing to the defendant or lawyer acting for the defendant if such disclosure is not in the public interest unless directed by a court.

Where a prosecutor believes the disclosure of a thing in a relevant proceeding falls within the provisions of s. 590AQ of the CC, the matter is to be referred to the prosecutor's supervising commissioned officer for consideration.

Commissioned officers that require advice regarding the disclosure of material for a relevant proceeding that may fall under s. 590AQ of the CC are to refer the matter to Operational Legal Advice.

Where it has been determined by the supervising commissioned officer that the disclosure of a thing for a relevant proceeding is not in the public interest, the prosecutor is to:

- (i) complete the relevant sections of the Form QP 0545: 'Notice of Disclosure Contrary to the Public Interest for a Relevant Proceeding';
- (ii) where there is a lawyer acting for the defendant, serve a document on the lawyer advising that the written notice QP 0545 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 (AIA)*); 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, advising that the written notice QP 0545 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 AIA); and
- (iv) attach a copy of the completed QP 0545 and any other correspondence to the relevant prosecution file.

Where a prosecutor is required to serve a document on the defendant or lawyer acting for the defendant advising that a written notice is available for collection from a stated place (see s. 590AM of the CC), such document is to be in the form of a letter that is substantially in the same format as Form QP 0546: 'Document Advising Written Notice/Copy of Thing for a Relevant Proceeding'.

### 3.14.9 Disclosure of Evidence Act section 93A device statement or recorded statement in a relevant proceeding

In a relevant proceeding prosecutors are not required to give the defendant a copy of:

- (i) an Evidence Act s. 93A device statement other than as required under s. 590AOA: 'Evidence Act section 93A device statement' of the CC; or

(ii) a recorded statement other than as required under s. 590AOB: 'Disclosure of recorded statement' of the CC.

ORDER

Where it is determined by a police prosecutor that a statement is an Evidence Act s. 93A device statement or recorded statement, the prosecutor is to give the defendant a written notice by:

(i) completing the relevant form, either a:

(a) QP 0547: 'Notice of Evidence Act section 93A device statement in a relevant proceeding'; or

(b) QP 1207: 'Notice of recorded statement in a relevant proceeding';

(ii) where there is a lawyer acting for the defendant, serve an appropriately completed relevant form on the lawyer; or

(iii) where the defendant is not represented, give the relevant form to the defendant at the defendant's place of business or residential address last known to the prosecution (giving of the document may be effected in accordance with s. 39: 'Service of documents' of the *Acts Interpretation Act*); and

(iv) attach a copy of the completed relevant form and any other correspondence to the relevant prosecution file.

Prosecutors completing a QP 0547 or QP 1207 to give to an unrepresented defendant are to ensure that details of where a request to allow an appropriate person to view the statement are contained on the written notice.

Arresting officers are to liaise with the responsible prosecutor to remain informed of any viewing or provision of a copy of the statement. Arresting officers are to ensure the victim/witness in a relevant proceeding is kept informed on the progress.

### 3.14.10 Viewing of evidence in relation to a relevant proceeding

#### Evidence Act section 93A device statements, recorded statements and evidence that is not original evidence

Where a prosecutor gives advice under s. 590AJ(3) or notice under ss. 590AO(2)(e), 590AOA(6) or 590AOB(5) of the CC that a thing may be viewed on request by an appropriate person, and a viewing is requested, the prosecutor is to make arrangements with the appropriate person for the viewing of the thing for the purposes of the relevant proceeding (see s. 590AR of the CC).

For the viewing of an Evidence Act s. 93A device statement, the meaning of 'appropriate person' is defined in s. 590AOA(11) of the CC.

For the viewing of a recorded statement, the meaning of 'appropriate person' is defined in s. 590AOB(11) of the CC.

For the viewing of other evidence that is not original evidence, the meaning of 'appropriate person' is defined in s. 590AS(6) of the CC.

#### Original evidence that is not sensitive evidence or an Evidence Act section 93A device statement

For the purpose of this subsection, the meaning of 'appropriate person' is defined in s. 590AS(6) of the CC.

Section 590AS of the CC relates to the viewing of evidence in a relevant proceeding that is disclosed to the defendant or lawyer acting for the defendant under s. 590AH(2)(i) or s. 590AJ of the CC. Such evidence being original evidence (i.e. a thing that may be tendered as an exhibit in a relevant proceeding) and which is not sensitive evidence or an Evidence Act s. 93A device statement.

Under s. 590AS of the CC, the prosecution is not required to allow the defendant or lawyer acting for the defendant to view or examine a thing that has been disclosed under s. 590AH(2)(i) or s. 590AJ of the CC. However, a prosecutor may, on request, allow an appropriate person to view and examine the thing for the purpose of the relevant proceeding under the supervision of the prosecution and subject to any other conditions the prosecution considers necessary to protect the integrity of the thing. Under this provision, a court may also direct that the prosecution allow an appropriate person to view and examine the thing for the purpose of the 'relevant proceeding'.

### 3.14.11 Disclosure of protected sexual assault counselling communications

Prosecutors are not to give the defendant a copy of protected counselling communications where the counselled person has not waived the sexual assault counselling privilege (SACP) (see s. 2.5.15: 'Sexual assault counselling privilege' of this Manual and s. 14I: Waiver of privilege by counselled person of the *Evidence Act* (EA)).

Where a waiver has been issued, investigating officers are responsible for ensuring any potential SACP is clearly identified and placed in an envelope clearly marked SACP before being submitted in a brief to the prosecutor and only provided to prosecutions (see 'Brief of evidence preparation' in s. 2.5.15 of this Manual). Prosecutors should satisfy themselves the SACP has been waived before disclosing counselling communications.

ORDER

This order only applies to a document that the Service would otherwise be obliged to disclose (see ss. 590AH: 'Disclosure that must always be made', 590AJ: 'Disclosure that must be made on request' and 590APA(3): 'Protected counselling communications' of the CC).

If, on commencement of a relevant proceeding (see s. 590AD: 'Definitions for ch div 3' of the CC) or domestic violence application (see s. 14P: 'Application of privilege in civil proceedings' of the EA) an officer becomes aware:

- (i) of documents in their possession or that exist which may be protected counselling communications; and
- (ii) that the counselled person has not waived the SACP to allow disclosure of the document/s to the defendant or respondent,

the officer is to, as soon as reasonably practicable, notify the relevant prosecution corps.

Members are to ensure compliance with s. 2.5.15 of this Manual.

If a prosecutor, responsible for a relevant criminal proceeding, reasonably considers document/s are a protected counselling communication and the SACP has not been waived, the prosecutor is to, as soon as reasonably practicable or in accordance with the timeframes set out in s. 590AI(2): 'When mandatory disclosure must be made' of the CC, give the defendant or their legal representative a completed QP 1070: 'Protected counselling communication' Notice (see ss. 590APA and 590AM: 'How disclosure may be made' of the CC).

If protected counselling communication documents are in the possession of the prosecution, a prosecutor is to only disclose the documents in a relevant proceeding, or rely upon the documents in an application for a domestic violence order, if the:

- (i) counselled person has waived privilege (see s. 14I of the EA);
- (ii) court has granted leave under Part 2, Division 2A, Subdivision 3: 'Other proceedings' of the EA; or
- (iii) SACP has been lost (see s. 14J: 'Loss of privilege if communication made in commission of offence' of the EA).

If the proceeding is a bail hearing or a committal proceeding the SACP is absolute (see Part 2, Division 2A, Subdivision 3 of the EA) and a prosecutor is to only disclose the documents if the counselled person has waived the privilege to keep the document/s confidential.

Where a counselled person has waived privilege by consenting to the release of protected counselling communications, the written notification of waiver is to be recorded in the relevant QPRIME occurrence prior to the release of any such information by the prosecutor.

If notice under s. 14G(2): 'Application for leave' of the EA is provided to the Service by the defendant, the prosecutor is to, as soon as practicable, arrange for the counselled person to be given a copy of this notice.

## 3.15 Sexual offence prosecutions

### 3.15.1 Definitions

For the purpose of this chapter:

**Failed sexual offence prosecution** means a person is charged with a sexual offence by the Service and:

- (i) the charge or count relating to the offence is discontinued by the Service or the ODPP either by offering no evidence in the Magistrates Court, a no true bill or a nolle prosequi;
- (ii) the Magistrates Court finds that there is no prima facie case disclosed with respect to the charge;
- (iii) magistrate or judge returns a not guilty verdict with respect to the charge;
- (iv) court finds there is no case to answer;
- (v) court instructs the jury to return a directed verdict of not guilty with respect to the charge;
- (vi) court stays the charge and the judge makes some adverse comments about the quality of the police investigation and/or prosecution; or
- (vii) Court of Appeal quashes the charge and the Court of Appeal makes some adverse comments about the quality of the police investigation and/or prosecution.

**'Sexual offence'** means an offence against the following sections and chapter of the Criminal Code:

- s. 210: 'Indecent treatment of children under 16';
- s. 213: 'Owner etc. permitting abuse of children on premises';
- s. 215: 'Carnal knowledge with or of children under 16';
- s. 216: 'Abuse of persons with an impairment of the mind';
- s. 217: 'Procuring young person etc. for carnal knowledge';
- s. 218: 'Procuring sexual acts by coercion etc.';

- s. 218A: 'Using internet etc. to procure children under 16';
- s. 219: 'Taking child for immoral purposes';
- s. 221: 'Conspiracy to defile';
- s. 222: 'Incest';
- s. 227: 'Indecent acts';
- s. 227A: 'Observations or recordings in breach of privacy';
- s. 228: 'Obscene publications and exhibitions';
- s. 228A: 'Involving child in making child exploitation material';
- s. 228B: 'Making child exploitation material';
- s. 228C: 'Distributing child exploitation material';
- s. 228D: 'Possessing child exploitation material';
- s. 229B: 'Maintaining a sexual relationship with a child';
- s. 323A: 'Female genital mutilation';
- s. 323B: 'Removal of child from State for female genital mutilation';
- s. 363A: 'Abduction of child under 16'; or
- Chapter 32: 'Rape and sexual assaults'.

A matter is not a failed sexual offence prosecution if:

- (i) the prosecution is discontinued because of the death of the accused, complainant or vital witness;
- (ii) the prosecution is discontinued because of a finding of the Mental Health Court that the accused is of unsound mind or permanently unfit for trial unless the Judge makes some adverse comments about the quality of the police investigation and/or prosecution;
- (iii) a jury acquits the defendant or is unable to decide upon a verdict unless the Judge makes some adverse comments about the quality of the police investigation and/or prosecution;
- (iv) a charge or indictment is amended without altering the substance of the criminal allegations unless the ODPP considers that a training issue should be brought to the attention of the Service;
- (v) an alternative charge or indictment is substituted that substantially covers the elements of the previous charge or indictment unless the ODPP considers that the amendment raises a training issue for the Service;
- (vi) the prosecution is discontinued following a successful mediation; or
- (vii) a plea of guilty is accepted to some charges and other charges are discontinued and/or a plea of guilty is accepted to amended or substituted charges.

### 3.15.2 Memorandum of Understanding – Sexual offence prosecutions

The Service and the Office of the Director of Public Prosecutions (State) (ODPP) have entered into a memorandum of understanding with regard to communications between the two organisations in relation to sexual offence prosecutions. This document outlines the minimum standards of communication and assistance that the Service and the ODPP can expect of each other. Additionally, the memorandum of understanding refers to the 'QPS and ODPP Seeking Justice Committee' and the 'QPS and ODPP Failed Sexual Offence Prosecutions Working Party'. The Service's obligations under the memorandum of understanding have been incorporated into policies and procedures in this chapter and Chapter 2: 'Investigative Process' of this Manual.

#### QPS and ODPP Seeking Justice Committee

The QPS and ODPP Seeking Justice Committee is comprised of members from the Child Abuse and Sexual Crime Group; Crime and Intelligence Command; Prosecution Services, Legal Division and the ODPP. The committee meets regularly to discuss the investigation and/or prosecution of sexual offence matters. The committee seeks to identify and acknowledge good practice and to discuss and resolve identified problems in a timely manner.

#### QPS and ODPP Failed Sexual Offence Prosecutions Working Party

The QPS and ODPP Failed Sexual Offence Prosecutions Working Party is comprised of members from the Service and the ODPP. The responsibilities of the Working Party include:

- (i) to gather information about failed sexual offence prosecutions;
- (ii) to meet regularly to discuss failed sexual offence prosecutions;
- (iii) to identify systemic issues that need to be addressed by the Service and/or the ODPP; and

(iv) to provide the QPS and ODPP Seeking Justice Committee with brief statistical reports every three months and a written report every 12 months containing:

- (a) an analysis of all failed sexual offence prosecutions for that period; and
- (b) where appropriate, recommendations to prevent future failed sexual offence prosecutions and to enhance service delivery in both the Service and the ODPP.

#### POLICY

Where an officer has identified:

- (i) a failure to comply with an obligation or expectation imposed by the memorandum of understanding between the Service and the ODPP; or
- (ii) an issue that should be addressed by the QPS and ODPP Seeking Justice Committee,

the officer should attempt to have the matter resolved at the local level. Where such attempts have been unsuccessful, the officer should obtain permission from their officer in charge and send an email identifying the issue to 'QPS ODPP SEX OFFENCE COMMITTEE'.

### 3.15.3 Failed sexual offence prosecutions

A failed sexual offence prosecution can occur at a Magistrates Court (see s. 3.15.1: 'Definitions' of this chapter).

#### PROCEDURE

##### Police prosecutor

Where a police prosecutor withdraws a charge or offers no evidence or a magistrate dismisses a charge for a sexual offence prosecution, the prosecutor is to forward:

- (i) the completed Court Brief (QP9); and
- (ii) a copy of the QP 0626: 'Request for Authority to Withdraw Charge(s)' form (or equivalent), or a copy of the QP 0625: 'Report on Dismissal of Charge(s)' form (or equivalent);

to the QPS and ODPP Failed Sexual Offence Prosecutions Working Party by email to 'Failed Sexual Prosecutions'.

See also s. 3.4.4: 'Withdrawal of charges' of this chapter.

## 3.16 Case conferencing

#### POLICY

Section 7(u)&(v): 'Particular matters within scope of prescribed responsibility' of the Police Service Administration Regulation provides that in relation to a proceeding against a person charged by an officer for an offence, the Commissioner may take part in conferences (case conferencing) with the person's legal representative about the conduct of the proceeding in order to narrow issues or help in the timely resolution of the proceeding.

Case conferencing only applies to a charge that will be dealt with summarily in a court.

The purpose of a case conference is to resolve issues in dispute in order to achieve a just and early resolution. Generally, the public interest is in the conviction of the guilty. Case conferencing supports early pleas of guilty resulting in benefits to the prosecution, victim and the community.

Early case conferencing is encouraged, though should not be based on expediency alone or a desire to avoid prosecuting a summary trial.

Each case will depend on its own circumstances, but case conferencing may be appropriate where:

- (i) minor amendment of the summary of facts will result in the defendant entering a plea of guilty;
- (ii) the prosecution has to choose between a number of appropriate alternate charges;
- (iii) the defendant offers to plea to a specific charge that is appropriate and encompasses all of the defendant's criminal conduct; or
- (iv) witness availability is an issue.

Case conferencing may result in:

- (i) the provision of additional information, e.g. a statement and audio/video recording;
- (ii) agreement being reached on the facts to be presented to a court;
- (iii) a reduction in the level, or the number of charges, through the amendment, substitution, withdrawal or offering of no evidence to charges; or
- (iv) agreement being reached concerning appropriate penalty submissions to be made to a court.



The prosecutor in a matter in which case conferencing has occurred should proceed on those charges which fairly represent the conduct that can be reasonably proved.

### 3.16.1 Responsibilities for case conferencing

#### Members permitted to take part in case conferencing

##### POLICY

A member assigned to perform prosecution duties (police prosecutor) may take part in case conferencing with a defendant's legal representative.

Case conferencing may be instigated by either the defendant's legal representative or the prosecutor at any stage after the Court Brief (QP9) is delivered to prosecutions.

Police prosecutors should participate in case conferences with a defence legal representative for summary court matters.

##### ORDER

Where case conferencing results in an agreement being reached that there should be a substitution, withdrawal or offering of no evidence to a charge, only an authorised officer can approve the substitution, withdrawal or offering of no evidence to the charge.

#### Officers permitted to authorise the substitution, withdrawal of or offering no evidence to a charge

##### POLICY

The following officers (authorised officers) have the authority to approve the substitution, withdrawal or the offering of no evidence to a charge as a result of case conferencing:

- (i) the officer in charge of a police prosecution corps, including prosecutors at Charleville, Kingaroy, Roma and Murgon;
- (ii) a prosecutor of the rank of or above senior sergeant; or
- (iii) a prosecutor who is authorised in writing by the Executive Director, Legal Division

#### Withdrawing or offering no evidence to a charge

##### POLICY

Where a prosecutor, taking part in case conferencing, intends to withdraw or offer no evidence in relation to a charge, the prosecutor responsible for the prosecution of the charge is to ensure, prior to withdrawing the charge or offering no evidence on the charge, that:

- (i) the sufficiency of evidence test has been applied;
- (ii) if the prosecutor is of the view there is insufficient evidence the prosecutor is to consult with the arresting officer, or their supervisor or OIC prior to withdrawing the charge unless exceptional circumstances exist;
- (iii) the public interest test is satisfied;
- (iv) any other relevant guidelines in the Director of Public Prosecutions (State) Guidelines are complied with; and
- (v) consultation should where possible and, where appropriate, take place with the victim of the crime (refer Chapter 2: 'Charter of victims' rights' of the *Victims of Crime Assistance Act* and in all cases involving sexual offences, where possible.

Where the prosecutor is not an authorised officer, appropriate approval is to be obtained from an authorised officer prior to withdrawing or offering no evidence to a charge in court.

##### PROCEDURE

Where a prosecutor takes part in case conferencing, the member is to ensure that within the relevant QPRIME case file:

- (i) the 'case conferencing' check box is updated to indicate that case conferencing was undertaken; and
- (ii) brief details of the case conference are entered in the case diary log, including authorising officer details;
- (iii) if no consultation was undertaken (with either the investigating officer, their supervisor or their OIC) a notation in the case diary log is required by the prosecutor as to why consultation did not occur.

Any submission regarding case conferencing from the defendant's legal representative must be dealt with expeditiously. Case conferencing may be conducted orally (in person or by telephone) or in writing (by email or letter).

Any offer by the defence and the subsequent acceptance or rejection, along with the supporting argument and the date it was made should be clearly noted in the QPRIME case diary log.

### 3.16.2 Restrictions on case conferencing

#### POLICY

Case conferencing is not to occur where:

- (i) the defendant is not legally represented;
- (ii) the matter must or is to proceed by way of committal;
- (iii) the public interest is such that disputed facts should be determined by a court;
- (iv) the defendant's legal representative insists the matter is to proceed to trial and there is no likelihood of achieving any resolution; or
- (v) the charge is under a Commonwealth statute.

Case conferencing is a process that involves discussions between prosecutors and the defendant's representatives. It is not a matter that should require the participation of a court other than for approving necessary adjournments. Therefore, a prosecutor should not request court staff or judicial officers to become involved in case conferencing.

Case conferencing must not result in an agreement that will bind the Crown (the Office of Director of Public Prosecutions (State)) in any trial or sentencing proceeding in the district or Supreme courts.

### 3.16.3 Provision and disclosure of material during case conferencing

#### POLICY

Prosecutors may request the supply of information or material, such as statements and audio/video recordings, to facilitate case conferencing.

#### ORDER

Materials supplied to prosecutors for case conferencing are not to contain personal particulars such as address, telephone, or next of kin details relating to a victim or witness unless the information is required to prove the particulars of the offence. See also section titled 'Copies of statements and documentary exhibits' in s. 3.4.13: 'Supply of copies of Court Brief (QP9), particulars, statements and reports' of this chapter.

## 3.17 Deleted

### 3.17.1 Deleted

### 3.17.2 Deleted

### 3.17.3 Deleted

### 3.17.4 Deleted

### 3.17.5 Deleted

### 3.17.6 Deleted

## 3.18 Deleted

## 3.19 Attorney-General appeals and disclosure of information to the Department of Justice and the Attorney-General

Section 669A: 'Appeal by Attorney-General' of the Criminal Code allows the Attorney General to appeal to the court against any sentence.

Section 222(2A): 'Appeal to a single judge' of the *Justices Act* specifically enables the Attorney-General to appeal against an order made by justices or a justice in a summary way, on a complaint for an offence or breach of duty, within 1 month after the date of the order to a district court judge.

#### POLICY

The disclosure of information to the Department of Justice and the Attorney-General (DJAG), in response to an Attorney General appeal, requires the authorisation of the Commissioner in accordance with s. 10.2: 'Authorisation of disclosure' of the *Police Service Administration Act*.

Legal Services, Legal Division deals with Service judicial review and appeal matters. The Director, Legal Services is responsible for coordinating a response to DJAG on behalf of the Commissioner.

#### PROCEDURE

A member who receives a request to supply documentation in response to an Attorney General appeal, is to advise the QPS Legal Unit, Legal Services at the earliest opportunity. Documentation or evidence relating to an appeal can only be released once approval has been issued from the QPS Legal Unit, Legal Services.

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## Appendix 3.1 Factors for consideration in restitution/compensation

(ss. 3.7.2, 3.7.3 and 4.18.3)

### Compensation

- (i) Nature of the injuries:
  - (a) extent and particulars of the injuries as well as the amount of suffering; and
  - (b) the duration of the pain/discomfort (time period, past and future if applicable).
- (ii) Nature and effect of that pain/discomfort:
 

How it affected the complainant's life and if applicable, how it will affect the complainant's life (e.g. soft foods for a week – jaw wired).
- (iii) Mental anguish caused
 

Whether the injury will ever heal based on medical advice, e.g. bite/spitting accompanied by words 'I've got AIDS'.
- (iv) Ongoing problems:
  - (a) particularise as per medical/dental advice;
  - (b) be specific as to the extent of such problems, duration of these problems and what treatment will be required in the future; and
  - (c) cost.
- (v) Out of pocket expenses:
  - (a) ambulance;
  - (b) taxi fares – the doctor or dentist and for further and future treatment;
  - (c) length of journey; and
  - (d) cost of the fare.
- (vi) Loss of wages – amount of money involved:
  - (a) explain why complainant could not work as a direct result of the injuries; and
  - (b) don't overlook future on-going problems.
- (vii) Medical/dental expenses (after any applicable rebate).
- (viii) Motor vehicle expenses:
  - (a) motor vehicle used;
  - (b) length of journey, to where and why;
  - (c) number of trips;
  - (d) future trips in respect of on-going problems;
  - (e) petrol consumed per trip; and
  - (f) parking expenses.
- (ix) Property damaged as a result (e.g. clothing):
  - (a) particularise the property;
  - (b) outline how it was damaged as a result of the offence;
  - (c) outline the age of the property;
  - (d) outline the condition of the property prior to the offence; and
  - (e) outline the cost of replacement.

### Restitution

- (i) Type of property:
  - (a) particularise the property in question;
  - (b) specify the condition of property prior to offence; and
  - (c) specify the value of the property prior to the commission of the offence.
- (ii) Damage:

- (a) specify the extent of damage; and
  - (b) explain how the property was damaged as a result of the commission of the offence.
- (iii) Repair costs:
- (a) explain what has to be done to ensure that the property is of the same condition as it was prior to the offence; and
  - (b) outline the cost of that repair.
- (iv) Wages:
- Explain how the complainant suffered due to loss of the property in question, e.g. hire cars.
- (v) Miscellaneous:
- Any other expenses incurred, such as towing fees, etc.
- (vi) Subrogation of ownership:
- (a) Occurrences in QPRIME should be searched, where appropriate, prior to any court appearance where the matter may be dealt with.
  - (b) It is incumbent upon police to verify the true ownership of property. Ownership may have passed to an insurance company.
  - (c) If ownership in the property has passed to an insurance company, the insurance company is to be consulted to obtain the correct amount for restitution.

**Appendix 3.2 Procedure to be adopted when checking briefs of evidence**

(s. 3.8.14)

- (i) Read brief of evidence;
- (ii) Identify correct statute(s);
- (iii) Identify correct section(s), regulation(s). Consider cognate offence(s);
- (iv) Verify wording of the charge(s) via QPRIME using the Specimen Charge database or if QPRIME is unavailable, from the specimen charge menu on the QPRIME Online Gateway on the QPS Bulletin Board (Intranet);
- (v) Consider any necessary amendments;
- (vi) Elementise the charge(s);
- (vii) Classify the offence(s);
- (viii) Consider jurisdiction;
- (ix) Consider limitation of time;
- (x) Apply any facilitation of proof provisions;
- (xi) Refer to averments;
- (xii) Refer also to definitions;
- (xiii) Is the evidence sufficient to support the charge(s)? Consider possible defences/exculpations;
- (xiv) Are the facts on the form QP9 consistent with those contained in the full brief of evidence?;
- (xv) Is all the evidence including certificates admissible?;
- (xvi) Are all exhibits referred to in statements?;
- (xvii) Should further evidence be obtained?;
- (xviii) Consider police powers and procedures:
  - (a) name and address;
  - (b) search;
  - (c) seize;
  - (d) detain;
  - (e) arrest; summons;
  - (f) authority to prosecute;
  - (g) production of licenses;
  - (h) disposal of property; and
- (xix) Check samples of audio/visual recordings that are to be tendered as evidence. If the quality of the recordings made by Service owned recording equipment is substandard, action is to be taken to ensure any recording equipment faults are rectified. Additionally, if the quality of the recordings is so poor that it will affect its value as evidence, consideration is to be given to the sufficiency of evidence test as contained in s. 3.4.3: 'The discretion to prosecute' of this chapter and whether further investigation is required.

## Appendix 3.3 Police prosecutors appeal report where a record or transcript of the proceedings is not available

(s. 3.11.2)

Unless the proceedings are recorded by typewriter or by tape recorder and transcribed, a detailed report is required to be completed by the prosecutor who believes that a decision or penalty made or imposed by a magistrate should be appealed.

The following list sets out the requirements of the prosecutor's report:

- (i) full name of accused;
- (ii) date and location of appearance;
- (iii) name of magistrate;
- (iv) short title of charge(s);
- (v) legal representative of accused (if any);
- (vi) other matters placed before court by prosecutor;
- (vii) statements made to the court by the defendant or the defendant's legal adviser in relation to the offence or in mitigation of penalty (including plea);
- (viii) if applicable, the details of any submissions made by the prosecutor as to penalty, the material error of fact or material error of law as is relevant to the appeal;
- (ix) sentence or penalty imposed, with comments made by the magistrate; and
- (x) the reasons supporting the belief that the penalty imposed by the magistrate was manifestly inadequate or that a decision made by the magistrates was based on a material error of fact or on a material error of law.

In addition to the above report, a copy of the:

- (i) full brief of evidence;
- (ii) the accused's criminal history;
- (iii) if available, copies of transcriptions of records of interview; and
- (iv) any other document that were tendered before the court,

should be attached to the report.

## Appendix 3.4 Deleted

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## Appendix 3.6 Request for prescribed articles

I <sup>1</sup> \_\_\_\_\_ representing <sup>2</sup> \_\_\_\_\_ charged with <sup>3</sup> \_\_\_\_\_ request a copy of <sup>4</sup> \_\_\_\_\_ being tendered as evidence by the prosecution, for the purpose of defending the above charge(s).

The requested prescribed article(s) is/are required in court proceedings for the purpose of enabling the aforementioned <sup>5</sup> \_\_\_\_\_ to defend the said charge(s).

I understand the provisions of section 10.21A of the *Police Service Administration Act 1990* only allow possession of prescribed article(s) by a person charged with an offence of which the article is evidence or the person's lawyer, for the purpose of enabling the person to defend the charge. I also understand that a person must not possess prescribed article(s) after the time allowed for any appeal against a conviction for an offence of which the relevant article is evidence ends, unless the article is kept as part of court records or the records of a lawyer acting for the person charged with the offence.

I also understand ownership of the requested prescribed article(s) is always vested in the Commissioner of Police.

I undertake to return the prescribed article(s) to the Officer in Charge of Police at <sup>6</sup> \_\_\_\_\_ after the time allowed for any appeal against a conviction for an offence of which the relevant article is evidence ends, unless the article is kept as part of court records or the records of a lawyer acting for the person charged with the offence.

Signature \_\_\_\_\_

<sup>7</sup> \_\_\_\_\_

Date \_\_\_\_\_

<sup>1</sup> Name of lawyer or defendant requesting prescribed articles

<sup>2</sup> If request made by lawyer, insert name of defendant. If unrepresented defendant, insert the word 'myself'

<sup>3</sup> Short title of relevant offence(s)

<sup>4</sup> Prescribed article(s) requested, as per s. 10.21A *Police Service Administration Act 1990*

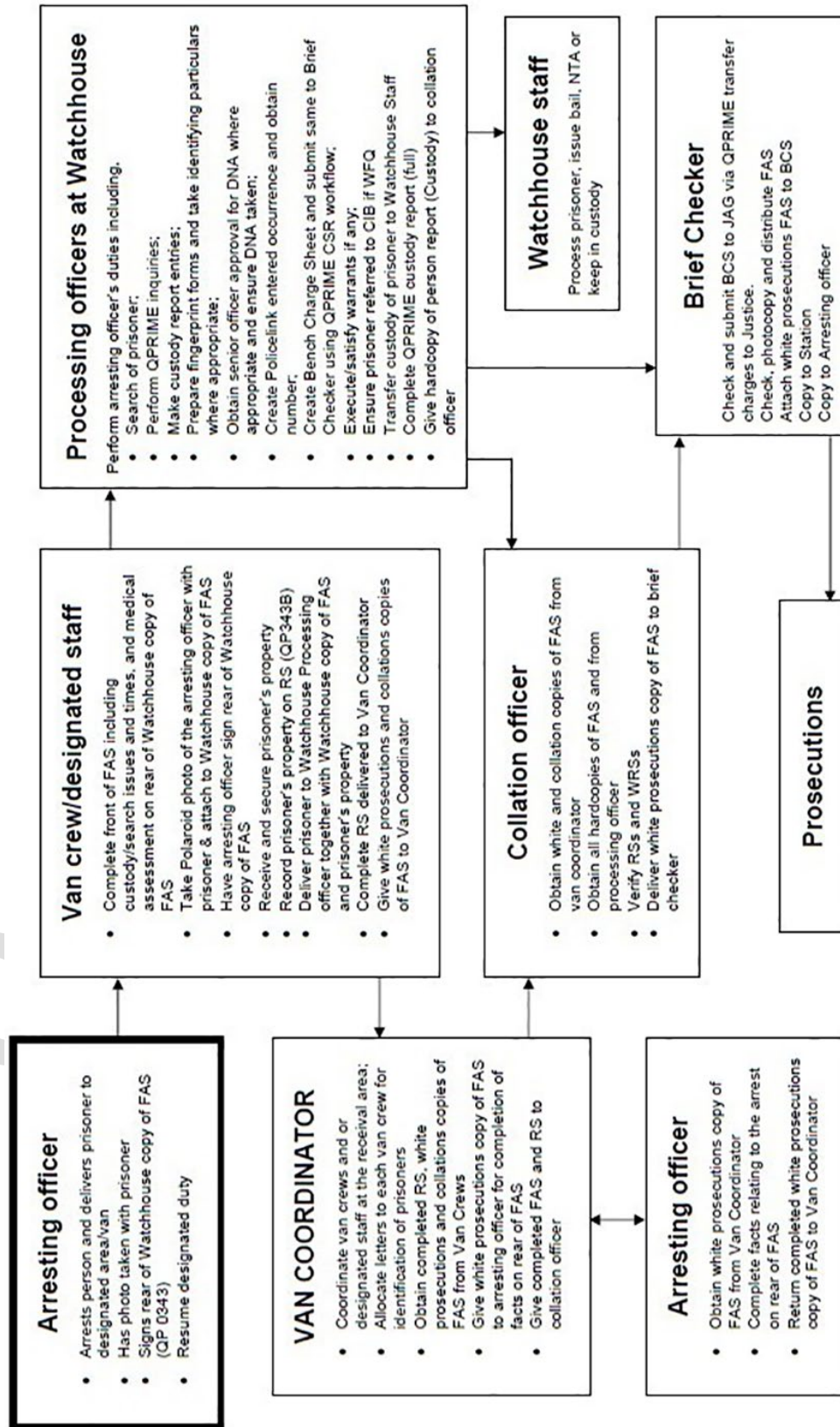
<sup>5</sup> Name of defendant

<sup>6</sup> Location of police prosecution corps, or where appropriate, police station

<sup>7</sup> Where relevant, name of firm of legal representative

**Appendix 3.7 Field Arrest Sheet – Process Flow chart**

(s. 3.7.14)



**Appendix 3.8 Advice pursuant to the Debt Collectors (Field Agents and Collection Agents) Act 2014**

(s. 3.4.29)

Date: ..... / ..... / .....

Facsimile: .....

To: **Manager  
Licensing Branch  
Business Services Division, Office of Fair Trading**

**Advice pursuant to the Debt Collectors (Field Agents and Collection Agents) Act 2014**

On ..... / ..... / ..... (insert person's full name, any other name/s that is believed the person may have used, and date and place of birth) reasonably believed to be a licensee or subagent under the *Debt Collectors (Field Agents and Collection Agents) Act* was convicted of the offence of ..... (insert offence title) against the ..... (insert statute).

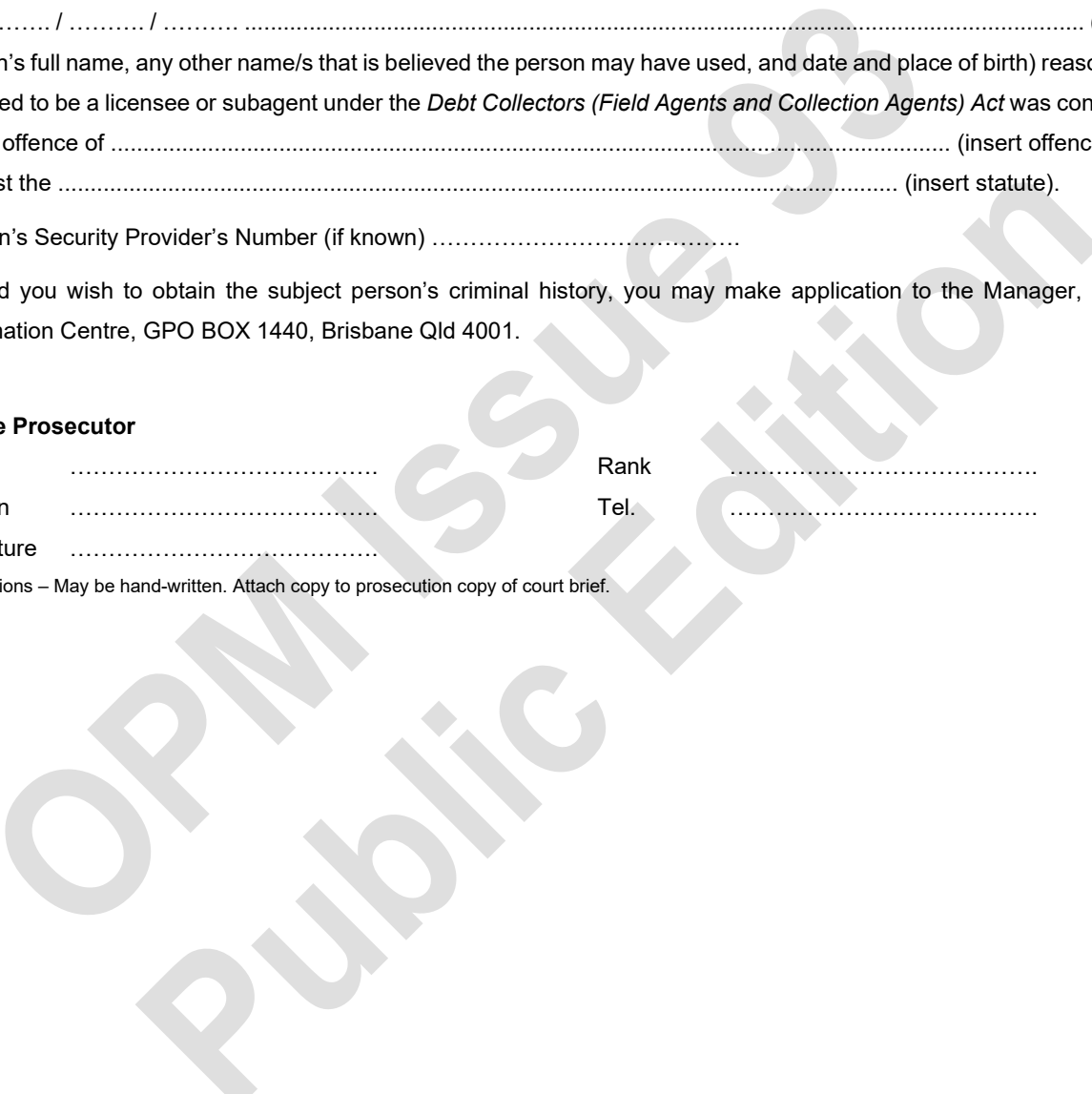
Person's Security Provider's Number (if known) .....

Should you wish to obtain the subject person's criminal history, you may make application to the Manager, Police Information Centre, GPO BOX 1440, Brisbane Qld 4001.

**Police Prosecutor**

Name ..... Rank .....  
Station ..... Tel. ....  
Signature .....

Instructions – May be hand-written. Attach copy to prosecution copy of court brief.



**Appendix 3.9 Advice pursuant to the Security Providers Act**

(s. 3.4.32)

Date: ..... / ..... / .....

Facsimile: .....

To: **Manager  
Licensing Branch  
Business Services Division, Office of Fair Trading**

**Advice pursuant to the Security Providers Act 1993**

On ..... / ..... / ..... (insert person's full name, any other name/s that is believed the person may have used, and date and place of birth), reasonably believed to be \*a licensed person/an applicant for a licence under the *Security Providers Act* was charged with the offence of ..... (insert offence title) against the ..... (insert statute).

A brief description of the nature of the offence charged with is as follows .....

Person's Security Provider's Number (if known) .....

Should you wish to obtain the subject person's criminal history, you may make application to the Manager, Police Information Centre, GPO BOX 1440, Brisbane Qld 4001.

**Police Prosecutor**

Name ..... Rank .....  
Station ..... Tel. ....  
Signature .....

Instructions – May be hand-written. Attach copy to prosecution copy of court brief.

## Appendix 3.10 Notification under s. 80 of the Education (Queensland College of Teachers) Act

(s. 3.4.28)

01 January 2006

Director  
 Queensland College of Teachers  
 PO Box 398  
 Toowoong QLD 4006

### NOTIFICATION UNDER S. 80 OF THE EDUCATION (QUEENSLAND COLLEGE OF TEACHERS) ACT 2005

I have been delegated the functions of the Commissioner of the Queensland Police Service for the purpose of s. 80: 'Requirement for prosecuting authority to notify college about committal, conviction etc.' of the *Education (Queensland College of Teachers) Act 2005* and reasonably believe that a person who has been charged with an indictable offence is an approved teacher or was, at the time the offence is alleged to have been committed. Pursuant to s. 80(2): 'Commissioner of police must notify changes in criminal history' of the *Education (Queensland College of Teachers) Act 2005* you are hereby given notice that the person has been committed for trial for an indictable offence.

Name of person:	Edwin Albert Smith
The court in which the person was committed:	Cairns Magistrates Court
Offence of which the person was committed:	Section 69: 'Going armed so as to cause fear' of the Criminal Code.
Particulars of the offence:	That on the 1st day of January 2006 one Edwin Albert Smith without lawful occasion went armed in public in such a manner as to cause fear to any person.
Occurrence No.	Q06000777
The date of the committal:	1 January 2006.

Respectfully,

**P M JONES**  
**Sergeant 8030**  
**Cairns Police Station**  
**Ph 40306000**

**Appendix 3.11 Notification under s. 74 of the Public Sector Act**

(s. 3.4.32)

Date:

ATTN:

TITLE:

[Relevant Government Department]

**NOTIFICATION UNDER S. 74 OF THE PUBLIC SECTOR ACT 2022**

Pursuant to s. 74: 'Prosecuting authority must disclose to chief executive committals, convictions and other information' of the *Public Sector Act*, I reasonably believe that a person is a public service employee and has been charged with a relevant offence. I hereby give notice that the person has: \*been committed for trial/\*been convicted for a relevant offence/\*had a prosecution for a relevant offence ended.

**Name of person:****The court in which the person appeared:****Offence of which the person was \*committed/\*convicted:****Date of the \*committal/\*conviction/\*prosecution ending:****Particulars of the offence:****Sentence imposed by the court:**

Respectfully,

**Name****Rank and Number****Prosecution Office/Station****Contact Details**

## Appendix 3.12 Notification under s. 357Q of the Working with Children (Risk Management and Screening) Act 2000

(s. 3.4.34)



### QUEENSLAND POLICE SERVICE

**\*\*Police Station/Prosecutions**

**\*\*Queensland 4\*\***

TELEPHONE (07) \*\*\*\* \* FACSIMILE (07) \*\*\*\* \*



QP 0006

11/08

Δ1

Our Ref: QP

Date:

ATTN:

TITLE:

*Working with Children (Risk Management and Screening) Act*

NOTIFICATION UNDER s. 357Q OF THE WORKING WITH CHILDREN (RISK MANAGEMENT AND SCREENING) ACT 2000

Pursuant to s. 357Q: 'Prosecuting authority to notify chief executive about committal, conviction etc.' of the *Working with Children (Risk Management and Screening) Act 2000*, I reasonably believe that a person is a public service employee and has been charged with a relevant offence. I hereby give notice that the person has: \*been committed for trial for a relevant offence/ \*been convicted for a relevant offence/ \*had a prosecution for a relevant offence ended.

**Name of person:**

**The court in which the person appeared:**

**Offence of which the person was\*committed/ \*convicted:**

**Date of the \*committal/ \*conviction/ \*prosecution ending:**

**Particulars of the offence:**

**Sentence imposed by the court:**

Respectfully,

**Name**

**Rank and Number**

**Prosecution Office/Station**

**Contact Details**

\*delete whichever is not applicable.



## Appendix 3.13 Recording of court results

(s. 3.4.20)

The following lists provide the type of orders generally made by courts and examples of common abbreviations for recording such results:

### A. Magistrates Courts

Below are listed the types of orders made in a Magistrates Court and examples of details required with their appropriate abbreviations:

Result	Abbreviated Example
(i) No conviction recorded	N.C.R. s. 12 P & S Act
(ii) Bail forfeited	B./F. \$x
(iii) Community service order	x hrs C.S.O.
(iv) Convicted and fined	C.& F. \$x
in default	I./D. x mths
time to pay	T.T.P. x days
no time to pay	N.T.T.P.
(v) Convicted and not punished	C. & N.P.
(vi) Convicted and sentenced	C. & S.
(vii) Convicted and sentenced to xx months/years imprisonment parole release date xx.	C & S xx mths IMP PRD 8 May 2008.
(viii) Convicted and sentenced to xx months/years imprisonment parole eligibility date xx.	C & S xx mths IMP parole eligibility date 8 May 2008.
(ix) Part or all of the imprisonment sentence suspended	C. & S. x mths imp. susp. x mths
(x) Convicted and placed on recognisance of (amount) to be of good behaviour for a period	Conv. Recog. \$ x G.B.B. x mths
(xi) Discharged conditionally upon entering into a recognisance of (amount) to be of good behaviour for a period	Discharged cond. recog. \$ x G.B.B. x mths
(xii) Fine option order (indicate which fine suspended if more than one fine imposed)	C. & F. \$ x I./D. x days F.O.O. x hrs
(xiii) Probation (write down any specific conditions)	Probation x mths
(xiv) Discharged absolutely	Discharged absol. s. 19 P & S Act
(xv) Multiple charges combined into a singular penalty order	Charges (x no.s) combined into 1 penalty C. & S. x mths. imp.
(xvi) Restitution order	Restn \$ x
(xvii) Compensation order	Compn \$ x
(xviii) Witness and summons costs	Costs \$ x
(xix) Drivers licence disqualification	D.L. Disq. x mths
(xx) Weapons licence disqualification	Weapon Lic. Disq. x mths
(xxi) Reopening of a traffic matter	Application to reopen lodged on [Date]

**B. Childrens Court**

Below are listed the types of orders made in a Childrens Court and examples of details required with their appropriate abbreviations:

Result	Abbreviated Example
(i) Conviction recorded	Conv. Rec. s. 183 J.J.Act
(ii) No conviction recorded	N.C.R. s. 183(2) J.J.Act
(iii) Custodial sentence	Detention x mths
(iv) Reprimanded	Rep.
(v) Good behaviour order	G.B.O. x mths
(vi) Fined	F. \$ x
(vii) Community service order	C.S.O. x mths
(viii) Probation	Probation x mths
(ix) Compensation	Compn. \$ x (child) Compn. \$ x (parent)
(x) Restitution	Restn. \$ x (child) Restn. \$ x (parent)
(xi) Drivers licence disqualification	D.L. Disq. x mths
(xii) Multiple charges combined into a singular penalty order	Charges (charge no.s.) combined into 1 penalty order
(xiii) Custodial sentence suspended immediate release order granted	I.R.O. x mths
(xiv) Indefinite referral Youth Justice Conference per s. 161(3) of the Youth Justice Act	YJC indefinite referral

**C. Suspended sentences**

Where a defendant appears before a court for an offence, for which imprisonment may be imposed, committed during the operational period of a suspended sentence order, the police prosecutor is to record any order made by the court in relation to the suspended sentence.

These details should be recorded on the same Court Brief (QP9) for which the defendant is presently before the court.

Below are listed the types of orders made in relation to a breach of a suspended sentence and examples of details required with their appropriate abbreviations:

Result	Abbreviated Example
(i) Adjourned to (location) District/Supreme Court in custody/granted bail	Adj (location) Dist/Sup Crt in cust/on bail
(ii) Operational period extended	Oper. period extended x mths
(iii) Defendant to serve whole of suspended sentence	To serve whole susp. sent.
(iv) Defendant to serve part of suspended sentence	To serve x mths of susp. sent.