

Discussion paper

Reform of the Committal Proceedings Process



Reform of the Committal Proceedings Process **Discussion Paper**

At the launch of the Review of the Civil and Criminal Justice System in Queensland on the 28th July, the Hon Martin Moynihan AO QC announced that the review team would be publishing a short discussion paper on committal proceedings.

This discussion paper has been produced in a very short time frame for the purpose of stimulating debate and discussion only. It does not purport to be a comprehensive analysis of all of the issues, nor does it represent the final views of the Review.

It does not represent the views of the Attorney-General or the Queensland Government.

1. Introduction/Terms of Reference

The committal procedure for indictable offences is contained in the provisions of the Queensland *Justices Act 1886* (Part 5, Divisions 5-9). The *Justices Act 1886* permits different forms of committal proceedings including:

- a full committal with examination in chief, cross-examination and re-examination of witnesses;
- a full hand-up or “paper” committal in which the defendant (where represented) consents to all evidence being tendered to the magistrate in the form of written statements in which case the magistrate is not required to make an assessment of the evidence but automatically commits the defendant to the higher court; or
- a combination of the above in which some statements are tendered as evidence in chief but some or all of the witnesses may be examined, cross-examined and re-examined.

The Terms of Reference specifically require the Review to consider the following question:

Should the committal proceeding process be reformed? For example to:

- Abolish committal proceedings.
- Abolish the full hand-up committal proceeding (with these matters to proceed directly to the higher court) but retain committal proceedings with cross-examination.
- Abolish committal proceedings but introduce enhanced prosecutorial disclosure obligations.
- Abolish committal proceedings but introduce an election to cross-examine witnesses in a pre-trial hearing by agreement or ordered by the higher court.
- More closely align the committal test with the test applied by the prosecution in deciding whether to present an indictment.

Reform of committals has been the subject of many reviews throughout Australia over the past two decades. It is a well ploughed field and has led to important changes in many other jurisdictions. (Appendix A outlines the principal reforms in other jurisdictions). Rather than duplicate this research, it is the intention of this review to draw on the extensive research already available and to enhance this with a conceptual “map” of the current criminal justice process in Queensland to identify both the crucial functions the “committals system” discharges, and how its operations might be improved so that appropriate recommendations can be made.

a. Environmental context

One of the most significant environmental factors affecting reform in the criminal justice system is the way information is collected, stored and accessed. We are rapidly moving away from a paper-based system. Data itself is increasingly in

digital/electronic form (for example, photographs, recorded conversations, video-recordings etc) is becoming the norm. Police (QPS), Director of Public Prosecutions (DPP) and the Courts are increasingly developing and applying software to make data more accessible and useful (for example the Future Courts program, the development of electronic briefs and police capture of evidence). This change brings with it greater capacity to map processes as well as to streamline and simplify information flows within the criminal justice system. To be effective reform of any aspect of the criminal justice system must move with this development.

b. Underlying Principles

The important issue is not whether committal proceedings, as commonly understood, should be retained or abolished, but rather whether its essential purposes can be met in a more streamlined and effective way, consistent with principles of fairness and access to justice.

Some of the principles which inform the consideration of reform of the committal process in this review include:

- The effectiveness and fairness of the criminal justice system should be considered as a whole. The impact of changes in one part of the system on other parts must be fully considered. There should be an alignment between the flow of information and the available technology. Specifically there needs to be a “better interface between the committing court and the superior court” to enable matters to be determined more efficiently.¹
- An accused should not face trial unless there is sufficient evidence against him or her.
- Pre trial procedures should be designed to narrow the issues, filter out weak cases, and ensure the smooth and expeditious flow of cases through the system. Screening mechanisms need to be open to public scrutiny to ensure accountability and public confidence in the justice system.
- Before a person is committed for trial on a serious offence she or he should know the case they have to answer. Full and frank disclosure at the earliest opportunity enables both prosecution and defence to make informed decisions about how to proceed. Compliance mechanisms need to be practical and effective.
- Pre trial court appearances and court listings should be minimised and in general limited to contentious issues. Effective administrative processes will ensure the smooth flow of criminal processing. Active judicial oversight and

¹ National Legal Aid, and the Conference of Australian Directors of Public Prosecution “a best practice model for the determination of indictable charges”

opportunities for court intervention for defined exceptional cases will ensure there is no compromise of fairness.

- The provision of legal aid funding should be congruent with these principles.
- There should be congruence in treatment of cases dealt with summarily and those dealt with by indictment.

2. Purpose of committal proceedings

The system of committal proceedings in Queensland is a legacy of our British heritage. Historically, the primary, if only purpose of committals was to ensure that an accused did not face trial on a serious criminal matter without sufficient evidence. In practice, however, it is uncommon for a Magistrate to discharge a matter because of a failure of the prosecuting authorities to adduce sufficient evidence.²

The importance of the committal process was reaffirmed by the High Court in *R v Barton* 1981 147 CLR 75 at 99-100 which emphasised that:

“... the principal purpose of that examination is to ensure that an accused will not be brought to trial unless a prima facie case is shown...”

Fairness to the accused also requires that he or she knows the case he or she has to answer and is given a fair opportunity to meet it. A secondary purpose for the committal has thus evolved to ensure the accused is fully informed about the nature and detail of the case against him or her (disclosure). In Queensland statutory disclosure obligations are linked to the committal process. (See Appendix B for relevant provisions of the Criminal Code). In the majority of cases, oversight of disclosure obligations has become the primary purpose.

Committal proceedings, when properly used, can also play an important role in filtering out weak cases. In particular, the committal can:

- lead to earlier pleas of guilty (where the accused recognises the strength of the prosecution case)
- lead to refinement or dropping of charges (where the prosecution recognises the weaknesses in their case or where evidence is produced that discloses other charges)
- narrow the issues for trial
- lead to better concession-making on both sides
- enable the defence to “test” the crucial links in the case against them.

3. Problems

² The Review Team in conjunction with Future Courts is currently gathering data on this issue and many other aspects of the functioning of committals to enable a better “map” of the system to be drawn.

The various purposes and benefits of the committal, however, are in practice often more theoretical than real. The majority of committals in Queensland are full hand ups in which the Magistrate (or judicial registrar) simply rubber stamps the committal. In such cases the Magistrate is not required to consider the sufficiency of evidence question.

Other concerns about the committal process include:

- The committal is ineffective at weeding out weak cases. Almost all committal proceedings result in a committal to a higher court. Queensland has the largest actual number of matters committed for trial of any state. This is a consequence of both limitations on the jurisdiction of magistrates as well as problems with the committal process.
- It is questionable whether committals generally assist in producing early pleas of guilty. In 2006/07, 83% of matters committed resulted in pleas of guilty after committal, often after being set down for trial.
- The disclosure function may be more effectively achieved by other mechanisms or by adjusting the linkage between disclosure and the committal.
- The impact of the committal on witnesses can be severe. The trauma of having to relive a terrible experience and of being cross-examined twice (initially without the moderating effect of the jury) has been widely recognised in the reports of many law reform bodies³. In addition, a witness may be deterred by the experience of the committal process from later giving evidence at trial. Giving evidence multiple times can also affect its quality and reliability⁴.
- It is likely that the committal process adds considerably to both cost and delay in the processing of criminal cases. This is a difficult contention to prove, however, anecdotal evidence from court staff, lawyers, witnesses and victims indicates the committal process adds significant cost and delay, tying up resources that could be better used elsewhere. Brisbane court staff estimate the average delay between arrest and committal to be approximately 4 -6 months by which time there has often been multiple “committal mentions”. Late consents to the full-hand up or late changes to the witnesses required for cross-examination often mean inefficient allocation of court resources. Difficulties with accurately estimating the length of committals mean that it is not uncommon in some Queensland courts for committals to be interrupted by significant delays.

³ See for example, Review of the Criminal and Civil Justice System in Western Australia

⁴ This is strong justification for the video-recording of certain categories of evidence as early as possible, even at the crime scene. For example, eye witnesses.

- It is claimed that the contested committal is too often used by defence as a “fishing” exercise or to bully the witness, and is open to misuse by both sides with lengthy and unnecessary and unproductive cross examination of witnesses.
- There are issues of equity. For example, limitations of legal aid funding mean that contested committals may be more likely when the defendant can either afford private legal representation or is unrepresented (in which case the Magistrate must conduct a full committal even if the accused intends to plead guilty). However, effective disclosure and compliance mechanisms could go a long way to achieving equity.
- The role of the Magistrate in determining sufficiency of evidence or appropriate charges is largely theoretical. Very few cases are “knocked out” in this way. Irrespective of the Magistrate’s determination, the DPP may proceed by ex officio indictment, or can alter the charge or decide not to proceed with the indictment.⁵
- Opportunity costs. It is not known what opportunities (for the system and the individual) are lost because of persistence with an outdated system.

4. What happens now in Queensland

The conduct of criminal law prosecution begins with the reporting of a crime and proceeds through investigation, arrest of suspects and the determination of charges by the Queensland Police Service (QPS). In simple (summary offences) the Magistrate will hear and determine the matter either by way of trial or sentence. In the case of serious (indictable) offences a committal proceeding is conducted.

In Queensland the prosecution role in committals for State offences is divided between the police and the DPP. Since the favourable evaluation of the Brisbane Central Committals Project by the Criminal Justice Commission in 1996 the DPP has conducted the prosecution of all matters listed for committal in Brisbane Central Magistrates Court (not suburban Brisbane courts). It also conducts committals in Ipswich and in sexual offence matters and offences involving violence against women in Southport. The DPP estimates that it conducts approximately 25 -30% of all committals in the State.

There has been no objective evaluation of the effectiveness of the committals project since 1996.

The prosecution of all other committals in Queensland are conducted by the QPS. However, the QPS can request the DPP to conduct committals on their behalf in complex or sensitive matters. In cases where the committal is conducted by the QPS, the DPP does not generally become involved until the end of the committal process.

⁵ DPP figures for 2006.07 indicate that 1.7% of matters it receives contain insufficient evidence to proceed and were discontinued.

At this stage, the DPP will consider the evidence, reassess the charge and prepare the indictment for either sentence or trial.

Prior to committal, the prosecution collects evidence from witnesses in the form of written statements. Copies of these are given to the defence. The QP9 is generally provided at around time of first appearance with the brief of evidence provided before committal.

Mandatory prosecution disclosure obligations are set out in the Criminal Code. Disclosure obligations on prosecutors in Queensland were codified in 2004. (Prior to this, prosecution obligations of disclosure were found in a number of different QPS and DPP guidelines, procedures and policies, as well as case law, unwritten rules, and general practice). These strict and detailed provisions give recognition to the prosecution obligation of fairness. The review is currently obtaining information about how they work in practice. Appendix B sets out the relevant provisions of the Criminal Code

The prosecuting authority then decides which witnesses will be required to give oral testimony or be available for cross examination.

At the conclusion of the contested committal, where no plea has been entered or the accused has pleaded not guilty, the magistrate must satisfy him or herself as to whether there is sufficient evidence upon which the accused could be found guilty on the charges before him or her. If satisfied, the magistrate then commits the accused for trial.

Where the defendant pleads guilty and it is not a matter which can be dealt with summarily and he or she is legally represented and consents to a full hand-up committal the Magistrate will commit him or her for sentence

A flowchart outlining the Queensland Criminal Law Prosecution Process is set out at Appendix C. This is an unpublished document prepared by the Business Analysis Unit, Legal Aid Queensland. There will be some differences where the defendant has private representation, nonetheless it gives a useful overview of the entire process.

5. Issues

In considering reform of committals the three critical issues are: disclosure, screening and the right to cross examine witnesses:

a. Disclosure

- ⇒ Are the current disclosure mechanisms adequate to achieve full and frank disclosure? How are these being utilised in practice? Are there any improvements that could be made? See Appendix A
- ⇒ Are there additional incentives and sanctions that could be put in place to ensure compliance? (Sanctions might include: disciplinary; monetary; stay of proceedings; a committal/mention date not set until brief is delivered; adverse comments at trial. Incentives could include early hearing dates, professional acknowledgement);
- ⇒ What are the implications of the increased use of electronic data in legal processes? How can disclosure mechanisms be facilitated by, and aligned with, available technological solutions?
- ⇒ What is the role of the Magistrate's court in ensuring compliance with disclosure obligations? What preliminary steps should be put in place prior to application to a court for intervention? (refer to the UCPR disclosure provisions for civil matters)
- ⇒ Is the linkage between disclosure obligations and the committal the appropriate one? What changes to the statutory provisions would be necessitated by any changes to the committal process?

b. Screening

- ⇒ How can weak cases most effectively be filtered out?
- ⇒ Should the Magistrate retain the power to discharge? Since the Magistrate does not consider the "sufficiency of evidence" question in the majority of cases (full hand ups), the de facto screening is already conducted by the DPP.
- ⇒ In deciding whether to commit, the magistrate must determine whether there is evidence from the prosecution capable of satisfying a jury beyond reasonable doubt that the defendant has committed an indictable offence whereas the DPP has a mandate to consider broader public interest issues. If the Magistrate is to retain power to discharge, how can the tests/standards used by magistrates and the DPP are better aligned? Should they be better aligned? Are both needed?

c. Cross examination of witnesses

- ⇒ Should a preliminary right to cross-examine witnesses be retained?
- ⇒ If so, in what circumstances or in what category of case? According to Magistrate's court staff, the offence types most often the subject of contested committals are: indecent dealing, sexual offences, fraud and drug offences. What are the essential features of these types of cases which make them more likely to go through a contested committal and can overriding principles be distilled that might apply more generally to the right to cross-examine?
- ⇒ In Victoria, for example, in determining whether cross-examination is necessary, the court must consider whether: there has been adequate disclosure, the issues have been adequately defined; there is sufficient evidence to support a conviction; a fair trial can take place if it proceeds to trial etc. Trivial, vexatious and oppressive cross-examination is not permitted and the interests of justice must be served by the cross-examination. In South Australia, there must be "special reasons". In Tasmania it must be "in the interests of justice" to do so. See Appendix A for further discussion of reforms in other jurisdictions.
- ⇒ Section 21AG Evidence Act Queensland 1977 sets out limitations on the right to cross-examine child witnesses (see end of Appendix C). What lessons can be drawn from the operation of this provision?
- ⇒ What impact will any additional disclosure and compliance mechanisms have on the need for preliminary cross-examination of witnesses?

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Committal Proceedings in Other Jurisdictions

Committal proceedings have been the subject of extensive reform across Australian jurisdictions over the last two decades. During the 1970's and 1980's statutory changes were made in most jurisdictions to permit committal on the papers. In recent times, reforms have taken three directions: the abolition of the committal with statutory disclosure; making the hand up committal mandatory with provision for cross-examination of witnesses in special circumstances, and the exemption of certain categories of witness from giving oral evidence or from being cross-examined at committal.

- **Abolition of committal proceedings and statutory disclosure obligations.**

Western Australia and Tasmania have recently introduced significant reforms which have effectively abolished the committal.

In 2004 *Western Australia* introduced an administrative committal process with strict disclosure obligations on both prosecution and defence.

Under the new system, the prosecution is required to provide a committal brief to the defendant 14 days before the committal hearing. At the committal mention day hearing, the defendant is required to enter a plea and all documentary evidence is tendered. Parties are not required to attend the hearing in uncontested matters. Once the court is satisfied that disclosure obligations have been complied with, an administrative committal for trial or sentence is made. (*WA Criminal Procedure Act 2004*)

Tasmania introduced far reaching reforms in 2007. Committal proceedings were abolished. The accused is now committed directly to the Supreme Court for trial or sentence. In certain circumstances an accused may apply to conduct a post-committal but pre-trial hearing to cross-examine witnesses before a Magistrate (in sexual offences and homicide) and before a Justice of the Peace in other matters. There are also stricter disclosure provisions. (*Criminal Procedure Act 1986; Justices Act 1902*)

- **Retention of hand-up committals with statutory disclosure and rights to examine witnesses in exceptional cases**

There has been a steady move towards mandatory “hand-up” committals in many jurisdictions. These reforms are generally accompanied by disclosure obligations with the retention of a statutory right to cross examine witnesses in exceptional cases. This model aligns the court process with what has become standard practice i.e. that the majority of committals are non-contested (hand-ups) whilst making provision for exceptional cases where cross examination of witnesses is necessary.

Appendix A

In *South Australia* it is mandatory for the evidence of prosecution witnesses to be tendered in the form of written statements. Witnesses may only be cross-examined with the leave of the Court if satisfied that there are special reasons. (see *SA Summary Procedure Act 1921*)

In *New South Wales* paper committals are mandatory with restrictions on the right to call witnesses. The defendant is given a brief before the committal. Where a defendant requires a prosecution witness to give evidence or be available for cross-examination, he or she must apply to the court and provide substantial reasons why, in the interests of justice, the witness is required to give evidence. There is no absolute right to require a witness to give evidence. (see *NSW Justices Act 1902*)

Victoria introduced mandatory paper committals in 1999. Witnesses may be cross-examined only where the magistrate is satisfied that it will introduce evidence of “substantial relevance” to the facts in issue. (*Magistrate’s Court (Amendment) Act 1999; Crimes (Criminal Trials) Act 1999*)

In the *ACT* mandatory paper committals are currently under consideration. (see Department of Justice and Community Safety Discussion Paper *Reforms to court jurisdiction, committal processes and the election for judge alone trials* May 2008)

- **Exemption of categories of witnesses exempt from having to give oral testimony.**

In *Queensland* hand up committals are the norm but are not mandatory. Amendments to the *Evidence Act 1977* have exempted child witnesses from giving oral testimony and it is only necessary to give evidence once. The evidence of a child is pre-recorded and they can not be cross-examined unless a stringent test is met, that is:

- identified an issue to which the proposed questioning relates;
- provided a reason why the evidence of the witness is relevant to the issue;
- explained why the evidence disclosed by the prosecution or before the court at the committal does not address the issue; and
- identified the purpose and general nature of the questions to be put to the witness to address the issue.

The magistrate must also be satisfied that the interests of justice cannot adequately be served by leaving cross-examination of the affected child about the issue to the trial. In other words, if the interests of justice would be served by the child being cross-examined about the issue at the trial, then there is no reason to also do so at the committal.

Without limiting the matters to which the magistrate should have regard in considering the interests of justice and whether cross-examination at committal is justified, the court must consider whether the case for the prosecution is adequately disclosed; and whether the charge is adequately particularised.

Appendix A

The magistrate must also have regard to the vulnerability of children and the undesirability of requiring a child to be cross-examined at the committal.

This test is designed to link the ability to cross-examine to an identified issue relevant to the proper purposes of the committal.

In *New South Wales* a victim of a crime involving violence cannot be required to give evidence at a committal without “special reasons... in the interests of justice”. (see s 93 *Criminal Procedure Act* 1986)

Appendix B

Reform of the Committal Proceedings Process **Discussion Paper – Appendix B**

Provisions of the Criminal Code relating to disclosure obligations

Chapter division 3 - Disclosure by the prosecution

Chapter subdivision A - Preliminary provisions

590AB Disclosure obligation

- 1) This chapter division acknowledges 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.
- 2) Without limiting the scope of the obligation, in relation to disclosure in a relevant proceeding, the obligation includes an ongoing obligation for the prosecution to give an accused person full and early disclosure of—
 - a) all evidence the prosecution proposes to rely on in the proceeding; and
 - b) all things in the possession of the prosecution, other than things the disclosure of which would be unlawful or contrary to public interest, that would tend to help the case for the accused person.

590AC Chapter division does not have particular consequences

- 1) Nothing in this chapter division—
 - a) requires the disclosure of a thing it is unlawful to disclose under this or another law; or
 - b) affects an accused person's right to a thing under another law.
- 2) Failure to comply with this chapter division in a proceeding does not affect the validity of the proceeding.

Chapter subdivision B - Interpretation

590AD Definitions for ch div 3

In this chapter division—

affected child see the *Evidence Act 1977*, section 21AC.⁵²

arresting officer, for a person charged with an offence, means—

- a) the police officer who arrested the person or, if the person was not arrested, the police officer who brought the charge against the person; or
- b) at any time the person mentioned in paragraph (a) is unavailable, another police officer the police commissioner, or a delegate of the police commissioner, designates as the arresting officer for the person.

court means the court for the relevant proceeding.

criminal history of a person includes every finding of guilt, or acceptance of a plea of guilty, whether or not a conviction was recorded, other than a spent conviction.

disclose a thing, other than particulars, means disclose the thing by—

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- a) giving a copy of the thing or a written notice about the thing as required under section 590AH; or
- b) giving a copy of a thing or notice about the thing as required under section 590AJ; or
- c) giving a written notice about the thing under section 590AO.⁵³

disclose particulars means disclose the particulars by giving the particulars as required under section 590AJ.

exculpatory thing, in relation to an accused person, means reliable evidence of a nature to cause a jury to entertain a reasonable doubt as to the guilt of the accused person.

original evidence means a thing that may be tendered as an exhibit in a relevant proceeding.

possession of the prosecution see section 590AE.

prescribed summary trial means a summary trial of an offence prescribed under a regulation for this definition.

prosecution means the person in charge of the prosecution or a person appearing for the prosecution.

relevant proceeding means—

- a) a committal proceeding; or
- b) a prescribed summary trial; or
- c) a trial on indictment.

sensitive evidence see section 590AF.

spent conviction means a conviction—

- a) for which the rehabilitation period under the Criminal Law (Rehabilitation of Offenders) Act 1986 has expired under that Act; and
- b) that is not revived as prescribed by section 11 of that Act.⁵⁴

statement of a person means—

- a) a statement signed by the person; or
- b) a statement of the person that is potentially admissible under the Evidence Act 1977, section 93A;⁵⁵ or
- c) any other representation of fact, whether in words or otherwise, made by the person.

590AE Meaning of *possession of the prosecution*

- 1) For a relevant proceeding, a thing is in the possession of the prosecution only if the thing is in the possession of the prosecution under subsection (2) or (3).
- 2) A thing is in the possession of the prosecution if it is in the possession of the arresting officer or a person appearing for the prosecution.
- 3) A thing is also in the possession of the prosecution if—
 - a) the thing is in the possession of—
 - i) for a prosecution conducted by the director of public prosecutions—the director; or
 - ii) for a prosecution conducted by the police service—the police service; and
 - b) the arresting officer or a person appearing for the prosecution—
 - i) is aware of the existence of the thing; and
 - ii) is, or would be, able to locate the thing without unreasonable effort.

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590AF Meaning of *sensitive evidence*

- 1) Sensitive evidence means 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.
- 2) Child exploitation material under chapter 22, or material alleged to be child exploitation material, is sensitive evidence.

590AG Particular references to an accused person include references to a lawyer acting for the accused person

- 1) A reference in this chapter division to giving or disclosing a thing to an accused person includes a reference to giving or disclosing the thing to a lawyer acting for the accused person.
- 2) A reference in this chapter division to an accused person viewing a thing includes a reference to a lawyer acting for the accused person viewing the thing.

Chapter subdivision C - Disclosure

590AH Disclosure that must always be made

- 1) This section applies—
 - a) without limiting the prosecution's obligation mentioned in section 590AB(1); and
 - b) subject to section 590AC(1)(a) and chapter subdivision D.
- 2) For a relevant proceeding, the prosecution must give the accused person each of the following things—
 - a) a copy of the bench charge sheet, complaint or indictment containing the charge against the person;
 - b) the following things in relation to the accused person—
 - i) a copy of the accused person's criminal history in the possession of the prosecution;
 - ii) a copy of any statement of the accused person in the possession of the prosecution;
 - c) the following things in relation to witnesses—
 - i) for each proposed witness for the prosecution—
 - (1) a copy of any statement of the witness in the possession of the prosecution; or
 - (2) if there is no statement of the witness in the possession of the prosecution— a written notice naming the witness;
 - ii) 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;
 - iii) if the prosecution intends to adduce evidence of a representation under the *Evidence Act 1977*, section 93B,⁵⁶ a written notice stating that intention and the matters mentioned in section 590C(2)(b) to (d);
 - d) the following things in relation to tests or forensic procedures—

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- i) a copy of any report of any test or forensic procedure relevant to the proceeding in the
- ii) possession of the prosecution;
- e) 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;
- f) a written notice describing any original evidence on which the prosecution intends to rely at the proceeding;
- g) a copy of any other thing on which the prosecution intends to rely at the proceeding;
- h) a written notice or copy of any thing else in the possession of the prosecution prescribed under a regulation.

590AI When mandatory disclosure must be made

- 1) This section applies if—
 - a) the prosecution must give an accused person a written notice or copy of a thing under section 590AH(2); or
 - b) the prosecution must give an accused person a written notice of a thing under section 590AO(2) and, apart from section 590AO, the prosecution would have to give the accused person a copy of the thing under section 590AH(2).
- 2) The prosecution must give the accused person the written notice or copy—
 - a) for a committal proceeding or prescribed summary trial—at least 14 days before evidence starts to be heard at the relevant proceeding; or
 - b) for a trial on indictment—no more than 28 days after presentation of the indictment, or if the trial starts less than 28 days after presentation of the indictment, before evidence starts to be heard at the trial.
- 3) Subsection (2) is not intended to discourage the prosecution from voluntarily giving the accused person the written notice or copy at a time before the latest time the subsection may be complied with.
- 4) The court may, at any time, shorten the period mentioned in subsection (2)(a) or extend the period mentioned in subsection (2)(b).

590AJ Disclosure that must be made on request

- 1) This section applies—
 - a) without limiting the prosecution's obligation mentioned in section 590AB(1); and
 - b) subject to section 590AC(1)(a) and chapter subdivision D.⁵⁸
- 2) For a relevant proceeding, the prosecution must, on request, give the accused person—
 - a) particulars if a proposed witness for the prosecution is, or may be, an affected child; and
 - b) a copy of the criminal history of a proposed witness for the prosecution in the possession of the prosecution; and
 - c) a copy or notice of any thing in the possession of the prosecution that may reasonably be considered to be adverse to the reliability or credibility of a proposed witness for the prosecution; and
 - d) notice of any thing in the possession of the prosecution that may tend to raise an issue about the competence of a proposed witness for the prosecution to give evidence in the proceeding; and

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- e) 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 at the proceeding; and
 - f) 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 at the proceeding.
- 3) If the prosecution gives notice of a thing under subsection (2) that is not original evidence, the prosecution must advise the accused person that the thing may be viewed on request by the accused person at a stated place.
 - 4) In this section—
particulars means particulars of a matter alleged in the bench charge sheet, complaint or indictment containing the charge against the accused person.

590AK When requested disclosure must be made

- 1) This section applies if—
 - a) an accused person requests particulars or a copy or notice of a thing under section 590AJ(2); and
 - b) either—
 - i) the prosecution must give the accused person particulars or a copy or notice of the thing under section 590AJ(2); or
 - ii) the prosecution must give the accused person written notice of a thing under section 590AO(2) and, apart from section 590AO, the prosecution would have to give the accused person a copy of the thing under section 590AJ(2).
- 2) The prosecution must give the accused person the particulars, copy or notice as soon as practicable after the request is made.

590AL Ongoing obligation to disclose

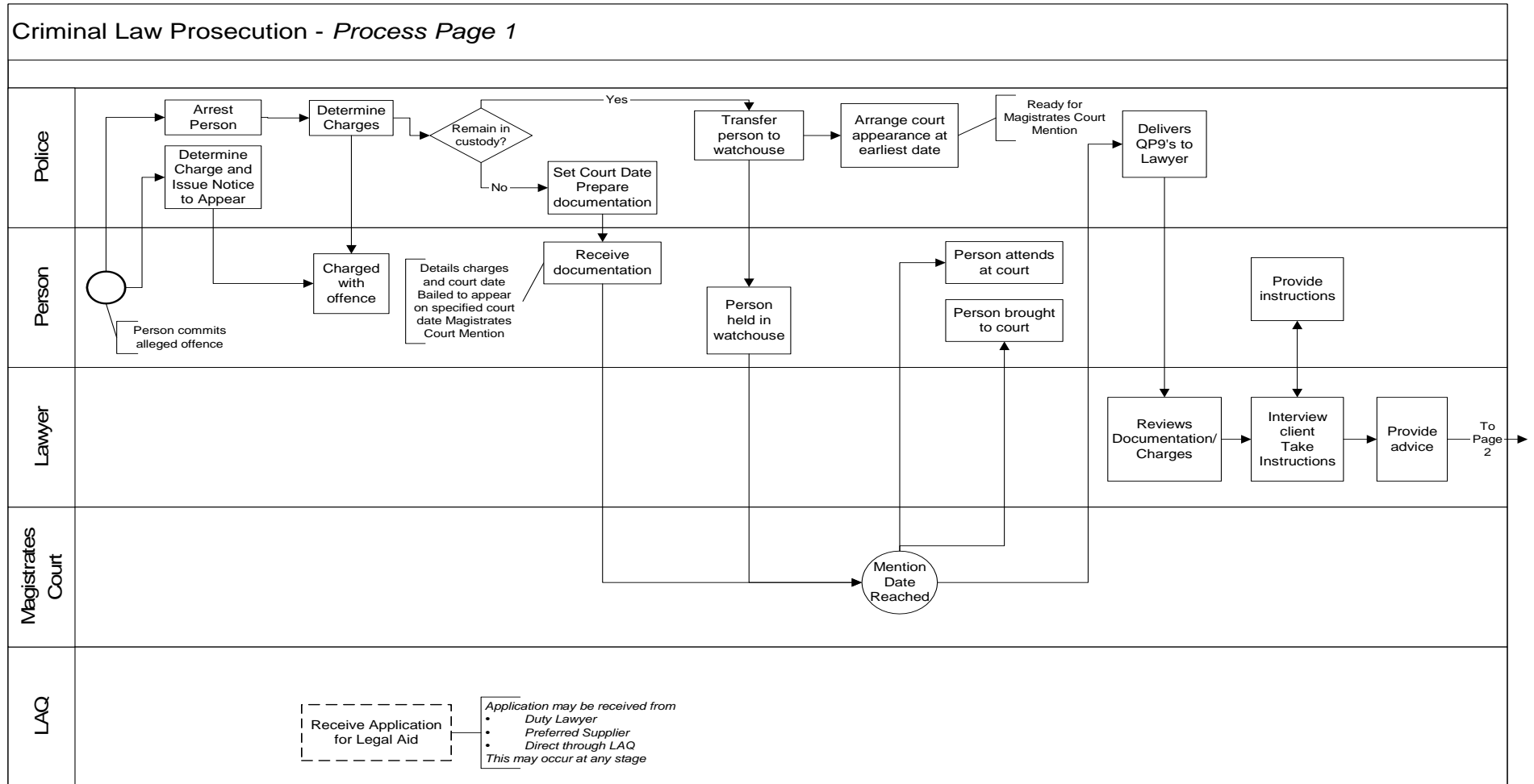
- 1) If the prosecution can not comply with a time requirement because the thing to be disclosed was not in the possession of the prosecution in sufficient time, including, for example, because the thing did not exist at the time, the prosecution must disclose the thing to the accused person as soon as practicable after it comes into the possession of the prosecution.
- 2) The obligation to disclose a thing, other than an exculpatory thing, to the accused person continues despite a failure to comply with a time requirement or subsection (1) until the prosecution ends, whether by the accused person being discharged, acquitted or convicted, or in another way.
- 3) If a thing is an exculpatory thing, the obligation to disclose it to the accused person continues despite a failure to comply with a time requirement or subsection (1) until 1 of the following happens—
 - a) the accused person is discharged or acquitted;
 - b) the accused person dies.
- 4) In this section—
time requirement means a requirement under section 590AI or 590AK.

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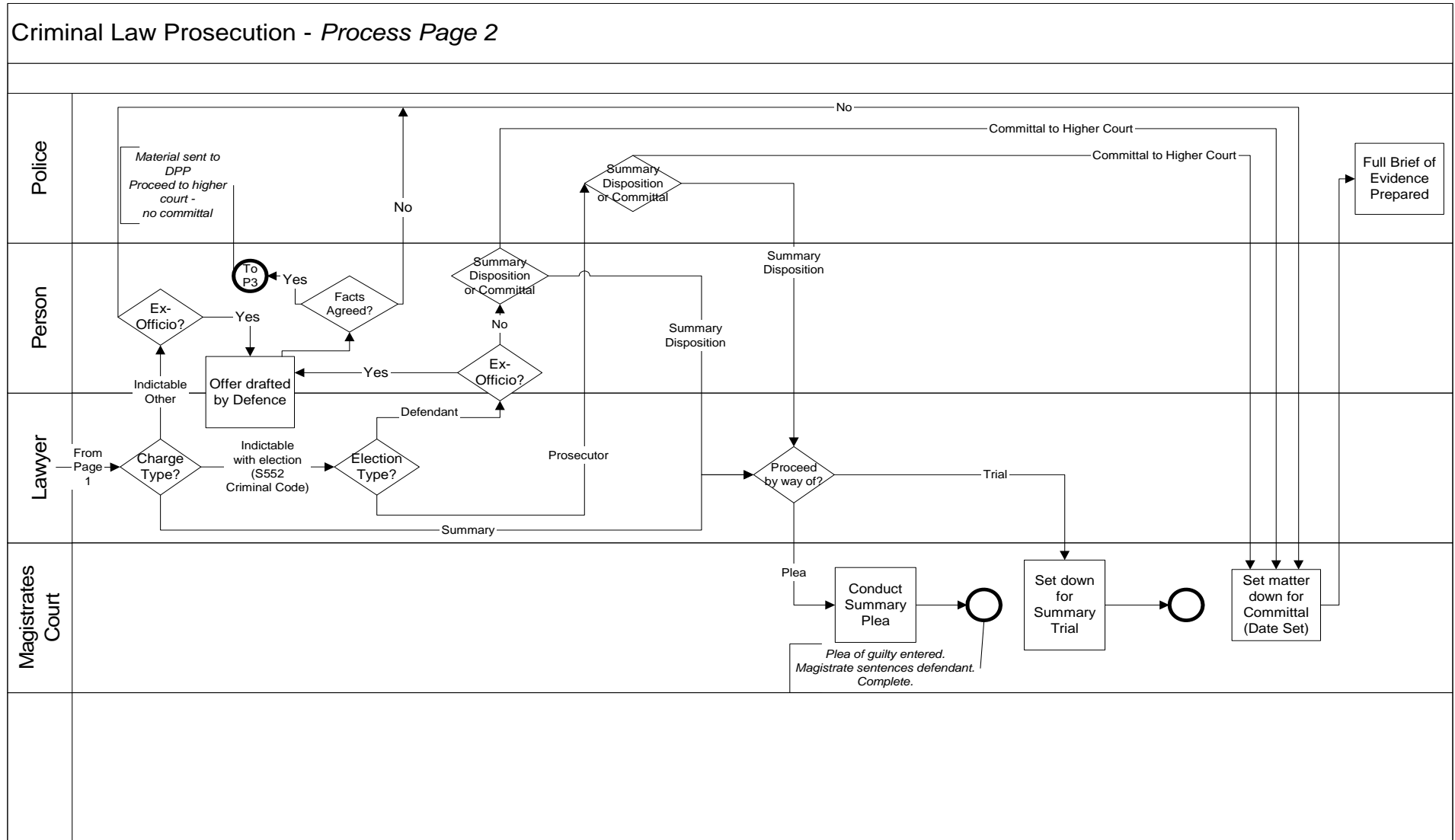
590AM How disclosure may be made

- 1) If a written notice or copy of a thing must or may be given to the accused person under this chapter division, it is sufficient for—
 - a) a document advising that the written notice or copy of the thing is available for collection at a stated place to be served on the accused person—
 - i) if a lawyer acts for the accused person—at the lawyer’s address for service; or
 - ii) otherwise—at the accused person’s place of business, or residential address, last known to the prosecution; and
 - b) the written notice or copy of the thing to be available for collection at the stated place.
- 2) If notice of a thing must or may be given to the accused person under this chapter division, it is sufficient for notice to be given in a way the prosecution considers appropriate.

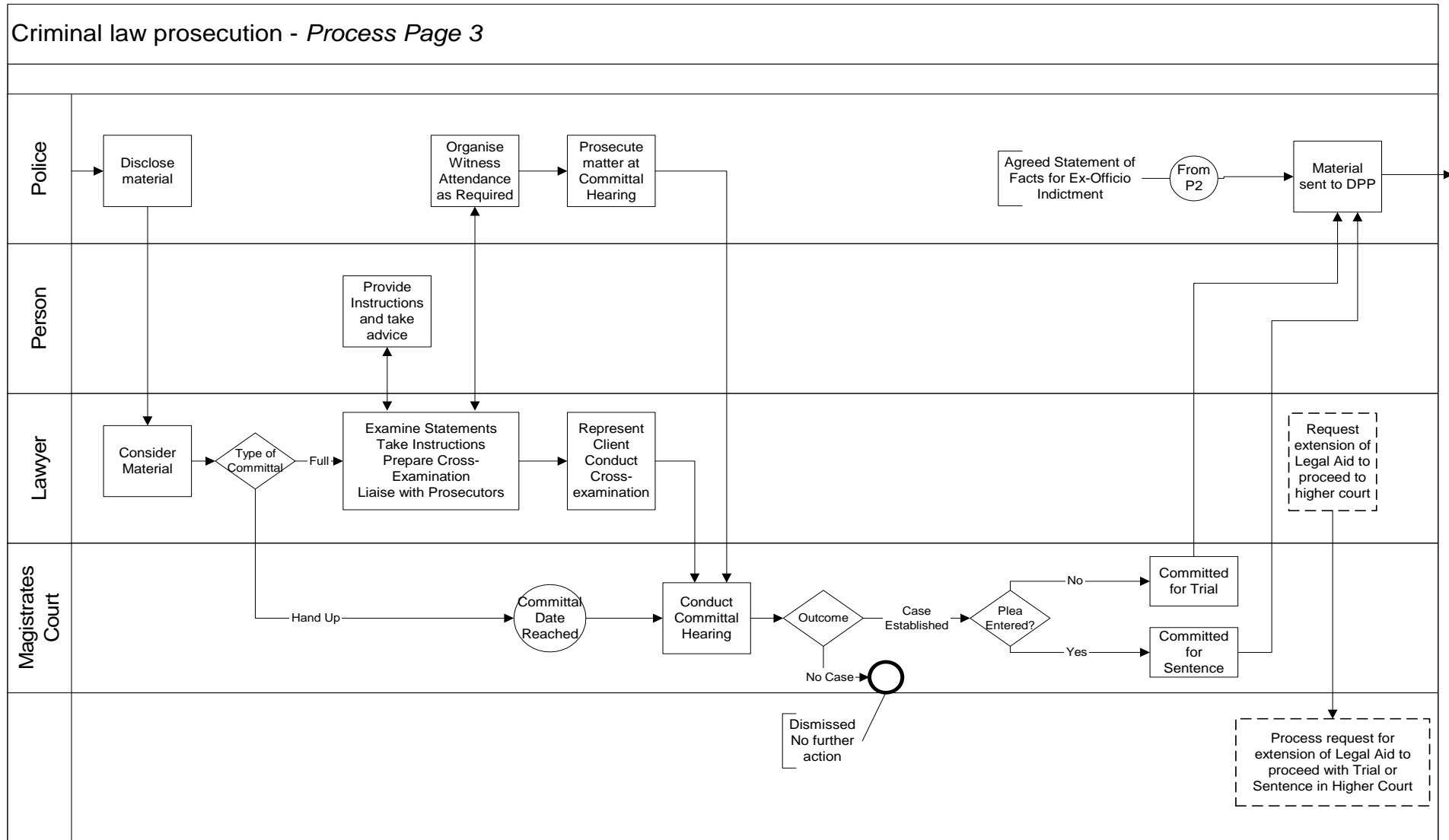
Appendix C



Appendix C



Appendix C



Appendix C

