



Last updated by CDPP: December 2021

Table of Contents

AUSTRALIAN CAPITAL TERRITORY.....	2
NEW SOUTH WALES.....	5
NORTHERN TERRITORY	12
QUEENSLAND	17
SOUTH AUSTRALIA.....	22
TASMANIA.....	28
VICTORIA	33
WESTERN AUSTRALIA.....	42

CDPP Summary of State and Territory Disclosure Regimes
 STATUTORY DISCLOSURE OBLIGATIONS
 AUSTRALIAN CAPITAL TERRITORY

<p>Legislation, Practice Directions and Rules governing the disclosure regime in the Australian Capital Territory include:</p> <ul style="list-style-type: none"> • <i>Magistrates Court Act 1930</i> (ACT) • <i>Court Procedures Act 2004</i> (ACT) • <i>Court Procedures Rules 2006</i> (ACT) • Practice Direction Criminal 1 of 2020 – Magistrates Court - Adult Criminal Matters (commencing 1 January 2020) 			
SUMMARY PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
There are no statutory requirements under ACT legislation for summary matters. The Common Law principles apply generally in relation to disclosure in all matters.			
<p><u>Summary only matters:</u></p> <p>Practice Direction Criminal 1 of 2020, Paragraph 16 - On a plea of not guilty, all charges will be listed for hearing on a future date, and ordinarily without a Pre-Hearing Mention.</p> <p>Note: A summary matter may be listed for a Pre-Hearing mention if, for example, the parties agree that the matter is likely to benefit from it and the Court is minded to list it for one.</p>	Plea of not guilty	CDPP practice is to serve the brief on defence at least 2 weeks before the hearing date	<p><u>Sanctions for non-compliance</u></p> <p>Where an informant has failed to provide the brief to the prosecution in time for the brief to be disclosed to the defendant before the deadline imposed by this Practice Direction, the informant must attend the Pre-Hearing Mention and be prepared to give evidence about why the brief has not been provided in time. (Practice Direction Criminal 1 of 2020, Paragraph 24)</p>
<p>Evidence in chief interview</p> <p>If prosecution intends to tender an audio-visual recording as evidence, they must give written notice of the intention and a copy of the transcript of the recording to the accused person or their lawyer. (Section 53(3) <i>Evidence (Miscellaneous Provisions) Act 1991</i> (ACT))</p> <p>Note: The accused person, and their lawyer, must not be given or take a copy of an audio-visual recording</p> <p>Family Violence Evidence in Chief interview If accused represented by a lawyer in the proceeding they must be given a copy of the statement</p>		As soon as practicable	<p>Sections 51-59 <i>Evidence (Miscellaneous Provisions) Act 1991</i> (ACT)</p>

Accused person must not be given or take a copy of recorded statement (if represented)			Sections 81E-G Evidence (Miscellaneous Provisions) Act 1991 (ACT)
<p>Indictable matters that can be determined summarily: Practice Direction Criminal 1 of 2020, Paragraph 40: On a plea of not guilty the matter will ordinarily be listed for Pre-Hearing Mention 10 weeks in the future unless the defendant is in custody in which case the period will be six weeks.</p> <p>All matters involving family violence will be listed for pre-hearing mention six weeks after a plea of not guilty.</p>	Plea of not guilty	CDPP practice is to serve the brief on defence at least 2 weeks before the hearing date	<u>Sanctions for non-compliance</u> Where an informant has failed to provide the brief to the prosecution in time for the brief to be disclosed to the defendant before the deadline imposed by this Practice Direction, the informant must attend the Pre-Hearing Mention and be prepared to give evidence about why the brief has not been provided in time (Practice Direction Criminal 1 of 2020, Paragraph 24)
COMMITTAL PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
Section 90 of the <i>Magistrates Court Act 1930</i> (ACT) sets out the evidence to be given by the prosecution to persons charged with indictable offences prior to Committal proceeding. This comprises of the witness statements, a copy of the exhibits or a notice relating to the inspection of the exhibits.			
<p>Indictable matters: Practice Direction Criminal 1 of 2020, Paragraph 40: On a plea of not guilty the matter will ordinarily be listed for Pre-Hearing Mention 10 weeks in the future unless the defendant is in custody in which case the period will be six weeks.</p> <p>Practice Direction Criminal 1 of 2020, Paragraph 44: All matters involving family violence will be listed for pre-hearing mention six weeks after a plea of not guilty.</p> <p>The prosecution should disclose the brief of evidence to the defendant no later than two weeks before the Pre-Hearing Mention.</p> <p>If a contested committal hearing is required, the hearing will ordinarily be listed at a time to allow the prosecution to serve and file a copy of the brief of evidence as required by s90 of the <i>Magistrates Court Act 1930</i> (ACT) and</p>	Plea of not guilty	Brief from DPP to defence no later than 2 weeks before the Pre-Hearing Mention	Practice Direction Criminal 1 of 2020, Paragraph 36. Section 90 of the <i>Magistrates Court Act 1930</i> (ACT). Rule 4305 <i>Court Procedures Rules 2006</i> (ACT)
		A copy of the brief must be filed and served 28 days prior to Committal hearing, or if the court	

rule 4305 of the <i>Court Procedures Rules 2006</i> (ACT). A further adjournment of four weeks is allowed if prosecution is not ready for the committal, this allows for compliance with rule 4305 <i>Court Procedures Rules 2006</i> (ACT).		orders another period, the period ordered.	
<p>Evidence in chief interview</p> <p>If prosecution intends to tender an audio-visual recording as evidence, they must give written notice of the intention and a copy of the transcript of the recording to the accused person or their lawyer. (Section 53(3) <i>Evidence (Miscellaneous Provisions) Act 1991</i> (ACT))</p> <p>Note: The accused person, and their lawyer, must not be given or take a copy of an audio-visual recording</p> <p>Family Violence Evidence in Chief interview If accused represented by a lawyer in the proceeding they must be given a copy of the statement</p> <p>Accused person must not be given or take a copy of recorded statement (if represented)</p>		As soon as practicable	<p>Sections 51-59 <i>Evidence (Miscellaneous Provisions) Act 1991</i> (ACT)</p> <p>Sections 81E-G <i>Evidence (Miscellaneous Provisions) Act 1991</i> (ACT)</p>
INDICTABLE PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
Rule 4733 of the <i>Court Procedure Rules 2006</i> (ACT) provides that if the accused person is committed for trial the court may on the appearance date direct that the DPP file and serve the draft indictment, case statement, list of proposed prosecution witnesses and pre-trial questionnaire by the date set by the court. The general practice is this is within 3 weeks after the date of the directions mentions list.		Set by the Supreme Court but general practice is within 3 weeks of the date of the directions mentions list	
Expert witnesses and evidence to be provided to defence in writing, as well as a statement that the prosecution intends on adducing this evidence. Alternatively, if the prosecution does not intend on adducing expert evidence a statement to this effect (section 79 <i>Court Procedures Act 2004</i> (ACT)).			
Also note requirements for victims and CCTV evidence.			

CDPP Summary of State and Territory Disclosure Regimes
 STATUTORY DISCLOSURE OBLIGATIONS
 NEW SOUTH WALES

Legislation, Practice Directions and Rules governing the disclosure regime in New South Wales include:

- the *Criminal Procedure Act 1986* (NSW)
 - Division 3, Part 3 of Chapter 3 – indictable procedure
 - Division 2, Part 2 of Chapter 4 – summary procedure
 The purpose of the provisions is to make trials more efficient and reduce delays in proceedings on indictment. The provisions relate to both mandatory and discretionary disclosure requirements for the prosecution and defence.
- District Court Criminal Practice Note 18 – Criminal Trials
- Practice Note SC CL 2 – Supreme Court Common Law Division – Criminal Proceedings (commencing 1 May 2021)

SUMMARY PROCEDURE

Formal Requirements	Trigger	Timeline	Comments
<p><i>Criminal Procedure Act 1986</i> (NSW)</p> <p>Brief of evidence</p> <p>Section 183: Prosecution must serve the brief of evidence on an accused person who pleads not guilty to an offence</p> <p>Section 183(2): The brief of evidence is to consist of documents regarding the evidence that the <u>prosecutor intends to adduce</u> in order to prove the commission of the offence, and is to include:</p> <ul style="list-style-type: none"> (a) Written statements taken from the persons the prosecutor intends to call to give evidence in proceedings for the offence (b) Copies of any document or any other thing, identified in such a written statement as a proposed exhibit (subject to subsections 184 and 185, concerning requirements for evidence that is impossible or impractical to copy and recording of interviews with vulnerable persons respectively). 	<p>Plea of not guilty (Section 183(1))</p> <p>Section 187 allows a court to make an order that a brief does not have to be served where there are compelling reasons or a brief cannot reasonably be served, or the proceeding is one prescribed by Regulation 24 (see comments)</p>	<p>At least 14 days before the hearing (Section 183(3)).</p> <p>Additionally, Clause 5.4 of Local Court Practice Note Crim 1 provides that the Magistrate is to make orders for service of the brief 4 weeks after the first mention, with proceedings adjourned for mention for reply 7 weeks after the first mention.</p> <p>However, the Magistrate may set a later date for service with the consent of the accused, or if of the opinion that the circumstances require it (Section 183(4)).</p>	<p><u>Sanctions for non-compliance</u></p> <p>The Court <i>must</i> refuse to admit evidence that the prosecutor seeks to adduce if prosecution disclosure obligations have not been complied with in relation to that evidence (Section 188(1)).</p> <p>In determining whether to grant an adjournment or variation to the disclosure timetable, the Court will consider whether a departure is in the interests of justice – see 5.6 Local Court Practice Note Crim 1.</p> <p>Section 183 does not apply to certain proceedings, prescribed by reg. 24 of the <i>Criminal Procedure Regulations 2017</i>, including proceedings for an offence under:</p> <ul style="list-style-type: none"> • Section 4 of the <i>Summary Offences Act 1988</i> (NSW); • Various sections of the <i>Road Transport Act 2013</i> (NSW); • Section 10 <i>Drug Misuse and Trafficking Act 1985</i> (NSW); • Section 16(1) <i>Poisons and Therapeutic Goods Act 1966</i> (NSW).

			<p>Or for:</p> <ul style="list-style-type: none"> • a summary offence for which there is a monetary penalty only; and • an offence for which a penalty notice may be issued (other than an offence in Schedule 3 and not referred to above).
COMMITTAL PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
<p><i>Criminal Procedure Act 1986 (NSW)</i> Requirement to disclose evidence Section 61(1) - The prosecutor must, after the commencement of committal proceedings and on or before any day specified by the Magistrate, serve or cause to be served on the accused a brief of evidence relating to each offence the subject of the proceedings.</p> <p>Matters to be disclosed in brief of evidence Section 62(1)</p> <ul style="list-style-type: none"> (a) Copies of all material obtained by the Prosecution that forms the basis of the Prosecution's case. (b) Copies of any other material obtained by the Prosecution that is reasonably capable of being relevant to the case of the accused. (c) Copies of any other material obtained by the Prosecution that would affect the strength of the Prosecution case. 	<p>Commencement of charges proceeding on indictment Subject to exceptions in section 64 (impossible or impractical to copy the thing, accused agrees to inspect the thing) – see comments.</p>	<p>8 weeks after an order for brief service is made (Clause 7.1 of Local Court Practice Note Comm 2)</p> <p>And</p> <p>As soon as practicable for any additional material obtained by the prosecutor that ought to be included in the brief of evidence(Section 63 <i>Criminal Procedure Act 1986 (NSW)</i>)</p>	<p>Section 62(2) provides that for committal proceedings the brief of evidence may be but is not required to be in the form required under Part 3A of Chapter 6.</p> <p>Sections 64(1) and 64(2) provide that the Prosecution is not required to serve a copy of anything required to be provided to the defence if it is impossible or impractical to do so, or if the accused agrees to inspect the thing pursuant to a notice by the prosecutor allowing the accused a reasonable opportunity to inspect and specifying a reasonable time or place at which the thing may be inspected.</p>
<p>Mandatory pre-trial disclosure</p> <p>Prosecution's notice Section 141(1) (a) requires the prosecution to give notice of the prosecution case to the accused after the indictment is presented or filed. Section 142(1) sets out that the notice is to contain:</p> <ul style="list-style-type: none"> (a) a copy of the indictment; and (b) a statement of facts. 	<p>After the indictment is presented or filed in proceedings (Section 141)</p> <p>Subject to a court waiver under section 148</p>	<p>Timetable for pre-trial disclosure is set by the court (Section 141). Practice Notes issued by the court provide the standard directions for pre-trial disclosure and related matters that are to apply, unless the court orders otherwise.</p>	<p><u>Sanctions for non-compliance</u> Section 146 sets out the sanctions for non-compliance with pre-trial disclosure requirements, including excluding evidence and granting adjournments.</p>

<p>Further, copies of the following documents must be provided to the defence where the prosecutor proposes to adduce them at trial:</p> <ul style="list-style-type: none"> (c) a copy of a statement of each witness whose evidence will be adduced (including a copy of any recorded statement or transcript of an audio or visual recording) (d) a copy of each document containing evidence which will be adduced (e) summaries or an outline of any summary not yet prepared (f) copies of exhibits (g) charts or explanatory material (h) relevant reports of expert witnesses (where the witness is proposed to be called) (i) Any other information, document or other thing provided by law enforcement officers to the prosecutor or otherwise in the possession of the prosecutor, that would reasonably be regarded as relevant to the prosecution or defence case and has not otherwise been disclosed (j) Lists identifying - <ul style="list-style-type: none"> o Any information, document or other thing of which the prosecutor is aware and which is of potential relevance to the case, but is not in the possession of the prosecutor or accused. o The prosecutor must also disclose any location at which the information is believed to be (k) a copy of any information in the possession of the prosecutor that is relevant to the reliability or credibility of a prosecution witness (l) a copy of any information, document or other thing in the possession of the prosecutor that 		<p>Section 142 notice is to be filed and served on the accused no later than 6 weeks before the date of the Readiness Hearing (District Court Practice Note 18)</p> <p>Supreme Court Common Law Division - Criminal Proceedings - Practice Note SC CL 2 provides at Clause 13(a) – subject to specific directions of the court, the prosecution is to file and serve on the accused notice of the prosecution case (Section 142) no later than 14 weeks before the trial date.</p>	<p>Section 149A - A copy of a proposed exhibit, document or thing is not required to be included in a notice under this Division if it is impossible or impractical to provide a copy and the prosecution give notice specifying a reasonable time or place at which the thing may be inspected.</p> <p>Section 149D - The prosecutor is not required to include in a notice anything that has already been included in a brief of evidence or otherwise provided or disclosed to the accused person.</p>
---	--	--	---

<p>would reasonably be regarded as adverse to the credit or credibility of the accused</p> <p>(m) a list identifying the statements of witnesses who are proposed to be called by the prosecution</p> <p>Supreme Court Common Law Division - Criminal Proceedings - Practice Note SC CL 2 provides at Clause 13(a) - In addition to the Section 142 notice, the Prosecution is to include a statement as to the basis upon which the prosecution will contend that the accused is criminally responsible in respect to the alleged offences. Where the prosecution intends to rely upon post-offence conduct of the accused for an inference of consciousness of guilt, the notice is to include a statement to that effect which includes a precise identification of the conduct relied upon</p>			
<p>Affidavit by officer of investigating agency</p> <p>District Court Practice Note 18 provides at Clause 19, the prosecution to file and serve on the accused person an affidavit by an appropriate officer of the relevant investigating agency which:</p> <ul style="list-style-type: none"> I. confirms compliance with the duty of disclosure as set out in paragraph 3 of the Commonwealth Director of Public Prosecutions “Statement on Disclosure in Prosecutions conducted by the Commonwealth”; and II. details any further evidence the police are yet to obtain. <p>Supreme Court Common Law Division - Criminal Proceedings - Practice Note SC CL 2 provides at Clause 11 - the prosecution is to file and serve on the accused an affidavit by an officer of the investigating agency confirming compliance as at the date of arraignment</p>	<p>After the indictment is presented or filed in proceedings</p>	<p>District Court Practice Note 18 provides at clause 19(d) - Affidavit by Investigating Officer to be filed and served no later than 8 weeks prior to the date fixed for the Readiness Hearing</p> <p>Supreme Court Common Law Division - Criminal Proceedings - Practice Note SC CL 2 provides at clause 11 – Affidavit by officer from investigating agency to be served as at date of arraignment,</p>	

<p>with its duty of disclosure as set out in the CDPP 'Statement on Disclosure'</p>			
<p>Defence response Section 141(b) requires the defence to file and serve on the prosecution a response to the prosecution case. Section 143(1) outlines what the notice of the defence response is to contain.</p>		<p>District Court Practice Note 18 at Clause 19(e)) - The defence is to file and serve on the prosecution, no later than 3 weeks prior to the date fixed for the Readiness Hearing, the notice of the defence response.</p> <p>Supreme Court Common Law Division - Criminal Proceedings - Practice Note SC CL 2 provides at section 13(b) – the defence is to file and serve on the prosecution a defence response (Section 143) no later than 11 weeks before the trial date.</p>	<p><u>Sanctions for non-compliance</u> Section 146A sets out the sanctions for defence non-compliance with disclosure obligations a court may impose, including the drawing of unfavourable inferences as appear proper. This will only be the case where the Prosecution has complied with its disclosure obligations (section 146A(4))</p> <p>If the accused fails to provide notice of section 143(1)(c) issues that the defence intends to dispute (the facts, matters or circumstances that the prosecution indicated it would rely on) the court may, by order, dispense with formal proof under subsections 145(1) and (2). For instance, the prosecution may be allowed to ask leading questions of a prosecution witness where the accused has failed to initially take issue with the evidence in the defence response.</p>
<p>Prosecution response to defence response</p> <p>Section 141 (1) (c) requires the prosecution to file and serve on the defence a response to the defence response.</p> <p>Section 144 outlines the points to be covered in the prosecution response:</p> <ul style="list-style-type: none"> (a) If the accused person has disclosed an intention to adduce expert evidence at the trial, notice as to whether the prosecutor disputes any of the expert evidence and, if so, in what respect, (b) If the accused person has disclosed an intention to tender any exhibit at the trial, notice as to whether the prosecutor proposes to raise any issue with respect to the continuity of custody of the exhibit, 		<p>The prosecution is to file and serve on the accused, no later than 1 week prior to the date fixed for the Readiness Hearing, the notice of the prosecution response to the defence response (District Court Practice Note 18 provides at Clause 19(f)).</p> <p>Supreme Court Common Law Division - Criminal Proceedings - Practice Note SC CL 2 provides at Clause 13(c) – the prosecution is to file and serve on the accused a prosecution response to the defence response (Section 144) no later than 9 weeks before the trial date.</p>	

<p>(c) If the accused person has disclosed an intention to tender any documentary evidence or other exhibit at the trial, notice as to whether the prosecutor proposes to dispute the accuracy or admissibility of the documentary evidence or other exhibit,</p> <p>(d) Notice as to whether the prosecutor proposes to dispute the admissibility of any other proposed evidence disclosed by the accused person, and the basis for the objection,</p> <p>(e) A copy of any information, document or other thing in the possession of the prosecutor, not already disclosed to the accused person, that might reasonably be expected to assist the case for the defence,</p> <p>(f) A copy of any information, document or other thing that has not already been disclosed to the accused person and that is required to be contained in the notice of the case for the prosecution.</p>			
<p>Ongoing disclosure obligations Section 147</p> <p>(1) The obligation to comply with the requirements for pre-trial disclosure continue until the accused person is either convicted or acquitted of the charges in the indictment, or the prosecution is terminated.</p> <p>(2) If any information, document or other thing is obtained or anything else occurs after pre-trial disclosure is made, it must be disclosed as soon as practicable.</p>	<p>Ongoing until the accused person is either convicted or acquitted of the charges in the indictment, or the prosecution is terminated.</p>	<p>As soon as practicable after it is obtained or the prosecution is made aware of it.</p>	<p>The accused may amend the Notice of Defence Response (Section 143) if additional information is obtained from the prosecution after the notice was provided to the defence (Section 147(3))</p>
<p>Other disclosure obligations by the Defence</p> <p>Notice of Alibi</p>			

<p>Section 150(2) requires the defence to file and serve notice of particulars of any alibi that they intend to adduce evidence in support of.</p> <p>Section 150(3) outlines what the notice under s150(2) is to contain</p> <p>Notice of Intention to Adduce Evidence of Substantial Mental Impairment</p> <p>Section 151(1) requires the defence to file with the court and give the prosecution notice of an intention to adduce evidence tending to prove a contention of substantial mental impairment, where an Accused is on trial for murder.</p> <p>Section 151(2) outlines what the notice under s150(2) is to contain</p>	<p>Upon the decision to adduce alibi evidence</p> <p>Upon the decision to adduce evidence of Substantial Mental Impairment**</p> <p>**Note only applies to trials for the offence of murder</p>	<p>Within the “<i>prescribed period</i>” as defined in Section 150 <i>Criminal Procedure Act 1986</i> (NSW)</p>	
<p>General case management provisions</p> <p>Section 149E - The court retains a general power to ensure the efficient management and conduct of the trial. On or after the commencement of the trial, the court may make further disclosure orders in relation to any matter that was, or could have been, required to be disclosed.</p>	<p>Upon court direction</p>		

CDPP Summary of State and Territory Disclosure Regimes

STATUTORY DISCLOSURE OBLIGATIONS

NORTHERN TERRITORY

Legislation, Practice Directions and Rules governing the disclosure regime in the Northern Territory include:

- *Local Court (Criminal Procedure) Act 1928* (NT)
 - Division 2A of Part 4 – summary procedure
 - Division 1 of Part 5 – indictable procedure
- Local Court (Criminal Division) Practice Direction 13 – Procedures During and Following Preliminary Examination (Committal)
- Practice Direction No. 2 of 2021 (note Practice Direction No. 4 of 2004 (dated 13 October 2004 commencing 1 January 2005) was extended by Practice Direction No. 2 of 2015 (dated 6 January 2015 commencing on 1 January 2015) and Practice Direction No. 2 of 2021 (dated 5 January 2021 commencing on 1 January 2021))

SUMMARY PROCEDURE

Formal Requirements	Trigger	Timeline	Comments
<p><i>Local Court (Criminal Procedures) Act 1928</i> (NT)</p> <p>Preliminary brief</p> <p>Section 60AD(2)(a): Serve a preliminary brief of evidence on the defendant. The contents of a preliminary brief of evidence are prescribed by section 60AE. This includes:</p> <ul style="list-style-type: none"> (a) a copy of the information or complaint (b) a statement of facts in compliance with section 60AF(1)(a) (c) any available audio or video evidence, or a statement that there is information 	<p>Once the information has been laid or the complaint has been made in relation to a charge.</p>	<p>Within 7 days after the matter is first mentioned in Court.</p>	

<p>recorded that the prosecution intends to obtain</p> <p>(d) a copy of the defendant's criminal record, or a written statement that the defendant does not have a criminal record</p> <p>(e) any evidentiary certificates available to the prosecution at the time</p> <p>(f) any written statement made by the informant or prosecution that the informant or prosecution will not disclose any document or thing that would otherwise be included in the preliminary brief but that the informant or prosecution is not required by law to disclose</p> <p>(g) any other document or thing that may assist the defendant in understanding the evidence against the defendant</p> <p>(h) any other document or thing prescribed by the regulations</p>			
<p>Section 60AD(2)(b): File with the Court a copy of the statement of the alleged facts on which the charge is founded – in compliance with section 60AF(1)(a).</p>	<p>Once the information has been laid or the complaint has been made in relation to a charge</p>	<p>Within 7 days after the matter is first mentioned in Court</p>	<p>The statement of facts must be in compliance with section 60AF(1)(a).</p>
<p>Section 60AJ: At the directions hearing the prosecution must indicate if any document or thing that is required to be provided to the defendant has not been provided to the defendant</p>			<p>Section 60AK – At a directions hearing the court may make orders to progress the matter including that the prosecution (or defendant) to disclose information to the other party</p>

<p>Defence disclosure</p> <p>The defendant has disclosure requirements in summary proceedings under the <i>Local Court (Criminal Procedure) Act 1928</i> (NT)</p> <ul style="list-style-type: none"> • Section 60AG – if the defendant intends to adduce evidence of an alibi the defendant must serve the prosecution with a notice of the defendant’s intention to adduce evidence of an alibi, the particulars of the alibi and a list of the names of the persons whom the defendant intends to call as witnesses to give the evidence and the address for each person • Section 60AM – the defendant must serve the prosecution with a document or thing in relation to any expert evidence that the defendant intends to adduce at the hearing, and written notice of an objection by the defendant to a document or thing that the prosecution intends to tender as evidence, or evidence to be given by a witness whom the prosecution intends to call • Section 60AN – if the defendant obtains a document or thing in relation to any expert evidence material or decides to make an objection within 21 days of the date and time appointed for the hearing for the matter, the defendant must serve the prosecution with the document or thing or a written notice of the objection under section 60AM(2) 		<p>Section 60AG(2) – not less than 7 days before the date and time appointed for a directions hearing for the matter, or if the decision to do so falls within that 7 day period, as soon as practicable</p> <p>Section 60AM(3) – the defendant must comply not less than 21 days before the date and time appointed for the hearing</p> <p>Section 60AN(2) - as soon as practicable after obtaining the document or thing or deciding to make the objection</p>	<p>Sanctions for non-compliance</p> <p>Section 60AQ(1) – if, at the hearing of a matter, the court is satisfied that the defendant has not complied with a disclosure requirement, the court on the application of the prosecution may adjourn the hearing to a time that would allow enough time:</p> <ul style="list-style-type: none"> (a) for the defendant to do what is required by the provision that imposes the disclosure requirement; and (b) for the prosecution to further prepare its case and to obtain any further evidence that may be necessary as a result of the disclosure. <p>Section 60AQ(2) on the resumption of a hearing adjourned under section 60AQ(1) the court may permit the prosecution to adduce further evidence, whether or not obtained as a result of the disclosure.</p>
---	--	--	---

COMMITTAL PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
<p>Committal brief</p> <p>Section 105C of the <i>Local Court (Criminal Procedure) Act 1928</i> (NT) imposes an obligation on the prosecutor to serve on the defendant a committal brief at least 28 days before the committal date unless the defendant consents to a shorter period or a different period is set by the Magistrate.</p> <p>A committal brief means a brief served under section 105C of the <i>Local Court (Criminal Procedure) Act 1928</i> (NT), including any additional documents forming part of the brief under section 105D(3)(b) or 105E(3)(b) – see comments.</p> <p>Section 105D(1) – A committal brief must contain:</p> <ul style="list-style-type: none"> (a) A copy of the information for the charge to which the preliminary examination relates (b) A notice stating a preliminary examination is to be conducted and where and when it will take place (c) A notice explaining the purpose and nature of the preliminary examination, that the prosecution’s evidence will include the statements of the listed witnesses and any listed exhibits; and the defendant’s rights and obligations under Sections 105G to 105L 	<p>Committal date</p>	<p>At least 28 days before the committal date, unless the defendant consents to a shorter period or a different period is set by the Magistrate.</p> <p>Section 105C(4) – the prosecutor must file a copy of the committal brief at the Court as soon as practicable after it is served</p>	<p>Clause 13.7 of Practice Direction 13 provides that where the prosecution does not seek an extended brief service order or the Court is not satisfied that such an order should be made, the Court will order service of the brief in no less than six weeks. In such a case, the matter will be adjourned to the preliminary examination list on a date no less than 14 days after the date for service of the brief.</p>

<p>(d) A list of the persons whose statements the prosecutor proposes to tender as evidence and any other documents or things the prosecutor proposes to tender as evidence at the preliminary examination</p> <p>(e) For each listed witness – the documents required by Section 105F(1) to (3)</p> <p>(f) For each listed exhibit – the information required by Section 105F(4)</p> <p>Section 105D(2) – if it is not reasonably practicable for a document mentioned in subsection (1)(e) or (f) to be included in the committal brief when it is served, the document need not be included but the prosecutor must serve it on the defendant as soon as it becomes practicable to do so.</p>			<p>Section 105D(3) requires a document required by section 105D(2) to be served on the defendant as provided in section 105C(3) for service of the committal brief and when served, will form part of the committal brief.</p>
<p>Continuing obligation to disclose</p> <p>Section 105E(1) provides a continuing obligation to update a committal brief if, after the committal brief is served, there is any change as to:</p> <p>(a) who the persons are whose statements the prosecutor proposes to tender as evidence at the preliminary examination; or</p> <p>(b) what other documents or things the prosecutor proposes to tender as evidence at the preliminary examination.</p>			<p>Section 105E(2) and (3) requires the prosecutor to update the list mentioned in section 105D(1)(d) or prepare a supplementary list and serve it and the documents mentioned in section 105D(1)(e) or (f) for any witness or exhibit added to the list. Service must be in accordance with section 105C(3) and when served, the document then forms part of the committal brief.</p>

CDPP Summary of State and Territory Disclosure Regimes

STATUTORY DISCLOSURE OBLIGATIONS

QUEENSLAND

Legislation, Practice Directions and Rules governing the disclosure regime in Queensland include:

- *Criminal Code* (Qld) Chapter 62, Chapter Division 3 - Disclosure by the prosecution
Section 590AB(1) it is a fundamental obligation of the prosecution to ensure criminal proceedings are conducted fairly with the single aim of determining and establishing truth. Section 590AB(2) 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.

The provisions apply to “relevant proceedings,” defined in section 590AD to mean:

- a committal proceeding, or
- a trial on indictment, or
- a prescribed summary trial (defined in section 590AD as meaning a summary trial of certain indictable offences pursuant to nominated provisions under the *Criminal Code* (Qld), or summary proceedings in relation to an indictable offence against the *Drugs Misuse Act 1986* (Qld) where the prosecution has elected summary jurisdiction, or a charge for an offence prescribed under a regulation).

NOTE: Section 590AO provides that the prosecution does not have to disclose “sensitive evidence” (which is defined in section 590AF). A court may make an order in relation to disclosure of such material. Nothing requires the prosecution to disclose information which it is otherwise unlawful to disclose (Section 590AC(1)).

- Practice Direction 22 of 2011
- Bar Association of Queensland Barristers Conduct Rules
- Queensland Law Society Australian Solicitors Conduct Rules

SUMMARY AND INDICTABLE PROCEDURE

Formal Requirements	Trigger	Timeline	Comments
Section 590AH(2) – the prosecution must give the accused person a copy of each of the following: <ol style="list-style-type: none"> (a) the bench charge sheet, complaint or indictment containing the charges against a person; (b) the accused’s criminal history in the prosecution's possession; (c) any statement of the accused in the prosecution's possession; (d) for each proposed prosecution witness who is or may be an "affected child" (defined in section 590AD by reference to the <i>Evidence Act 1977</i> (Qld), section 	Mandatory disclosure	As soon as practicable, but at least: <ul style="list-style-type: none"> • Section 590AI(2)(a) for a committal hearing or prescribed summary trial – at least 14 days before the date set by the court for the commencement of the hearing of evidence; • Section 590AI(2)(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, before the evidence starts to be heard. 	Section 590AH(2), Section 590AI(2) Note: A number of subsections in section 590AH(2) refer to items in the "possession of the prosecution." The expression "possession of the prosecution" is given an extended definition by section 590AE, and it includes things the "arresting officer" (defined in section 590AD as including a person who brought a charge if the accused was not arrested) or prosecutor were aware of, and which could be located

<p>21AC), a written notice naming the child and describing why they may be an affected child;</p> <p>(e) for all other proposed prosecution witnesses, any statement in the prosecution's possession, or if there is no statement, written notice of the witness's name;</p> <p>(f) if section 93B of the <i>Evidence Act 1977</i> (Qld) is to be relied upon (pre-recording of a child's evidence), a notice stating that intention and the matters set out in section 590C(2) of the <i>Criminal Code</i> (Qld);</p> <p>(g) any report of any test or forensic procedure relevant to the proceeding and in the prosecution's possession;</p> <p>(h) a written notice describing any test or forensic procedure, including one that is not yet completed, on which the prosecution intends to rely;</p> <p>(i) a written notice describing any "original evidence" (defined in section 590AD as a thing that may be tendered in the proceeding) on which the prosecution intends to rely. (An exhibit list should usually suffice)</p> <p>(j) Anything else on which the prosecution intends to rely. (This may include maps or charts etc to be used as an aid for the Court or jury)</p> <p>(k) written notice or a copy of anything else in the prosecution's possession prescribed under a regulation.</p>			<p>without unreasonable effort. This definition would extend the expression "possession of the prosecution" to include things held by third parties and known to the police or prosecutor.</p>
<p>EXCULPATORY THINGS – defined in section 590AD as "reliable evidence of a nature to cause a jury to entertain a reasonable doubt as to the guilt of the accused person."</p>	<p>Mandatory disclosure</p>	<p>The obligation to disclose an exculpatory thing continues post trial until the accused is discharged or acquitted or dies (i.e. the obligation continues indefinitely even after the person has been convicted and has been unsuccessful on appeal).</p>	<p>Section 590AL(3)</p>
<p>Particulars of a charge against the accused if a proposed prosecution witness is or may be an affected child.</p>	<p>On request by the defence</p>	<p>As soon as practicable</p>	<p>Section 590AJ(2)(a), Section 590AK(2)</p>
<p>A criminal history of a proposed witness for the prosecution that is in the possession of the prosecution.</p>	<p>On request by the defence</p>	<p>As soon as practicable</p>	<p>Section 590AJ(2)(b), Section 590AK(2)</p> <p>Notes: (1) "Possession of the prosecution" is given an extended definition in section 590AD.</p>

			(2) The common law requires the prosecution to disclose any criminal history of a witness, where their credit or reliability is in issue, whether requested by defence or not.
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.	On request by the defence	As soon as practicable	Section 590AJ(2)(c), Section 590AK(2)
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.	On request by the defence	As soon as practicable	Section 590AJ(2)(d), Section 590AK(2)
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.	On request by the defence	As soon as practicable	Section 590AJ(2)(e), Section 590AK(2)
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.	On request by the defence	As soon as practicable	Section 590AJ(2)(f), Section 590AK(2) This may include documents such as accounting records, correspondence and emails seized pursuant to a warrant, but upon which the prosecution does not rely.
<p>Magistrates Court of Queensland Practice Direction 22 of 2011 Note: This practice direction relates to "Commonwealth criminal matters" which includes Commonwealth offences prosecuted by the CDPP, and State offences investigated by a Commonwealth officer and prosecuted by the CDPP.</p> <p>Statement of Facts (defined in paragraph 5.11 as meaning a summary of the evidence and witnesses relied upon by the prosecution to prove the case)</p>	Commencement of prosecution proceedings by summons, arrest or Notice to Appear	Within a reasonable time of any request made by the defence, and always prior to the initial appearance	<p>NB. The term 'paragraph' in this section refers to paragraphs in the Practice Direction.</p> <p>Paragraph 6 Note: The CDPP's practice in summons matters is to have a statement of facts prepared and available for service upon a defendant at the same time as their copy of the complaint and summons.</p>

Statements and exhibits nominated by defence at any case conference	Request made at case conference	Within 14 days of such request being made where reasonably practicable	Paragraphs 17, 18 Note: In practice few case conferences are held.
Partial brief of evidence	If defence tells the court the matter will proceed as a committal for sentence or the CDPP has consented to the matter proceeding by way of ex officio indictment pursuant to s23EB of the <i>Justices Act 1886</i> (QLD)	Within 14 days of defence advising the court	Paragraph 19 "Partial brief" is defined in paragraph 5.8 to mean "a brief which contains copies of signed statements of the prosecution witnesses who will provide the 'substantial evidence' for the purpose of a committal or sentence." "Substantial evidence" is defined in para 5.12. Note: Generally if a full brief is available the CDPP will provide the full brief.
Full brief of evidence	Summary matters - upon the matter being listed for trial. Matters proceeding on indictment - if the court is not told that the matter will proceed by way of consent committal for sentence or ex officio indictment.	Summary matters - 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. Matters proceeding on indictment - within 35 days of the Commonwealth callover.	Paragraph 20.2 (summary matters) Paragraph 21.3 (matters proceeding on indictment) Note: The expression "full brief of evidence" is not defined.
2011 Barristers' Rules (made pursuant to the Legal Profession Act 2007 (Qld)) - Rules 86 and 87 Australian Solicitors Conduct Rules 2012 - Rules 29.5 and 29.6			

<p>86/29.5 - A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connection with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused other than material subject to statutory immunity, unless the prosecutor believes on reasonable grounds that such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person.</p>	<p>As soon as the prosecutor is aware of the material</p>	<p>As soon as practicable</p>	
<p>87/29.6 - A prosecutor who has decided not to disclose material to the opponent under Rule 86/29.5 must consider whether:</p> <p>(a) the charge against the accused to which such material is relevant should be withdrawn; and</p> <p>(b) the accused should be faced only with a lesser charge to which such material would not be so relevant.</p>	<p>As soon as the prosecutor has decided not to disclose material.</p>	<p>As soon as practicable</p>	

CDPP Summary of State and Territory Disclosure Regimes

STATUTORY DISCLOSURE OBLIGATIONS

SOUTH AUSTRALIA

SUMMARY PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
<p>Legislation, Practice Directions and Rules governing the disclosure regime in South Australia include:</p> <ul style="list-style-type: none"> • <i>Criminal Procedure Act 1921 (SA)</i> • <i>Magistrates Court Act 1991 (SA)</i> • <i>Magistrates Court Rules 1992</i> 			
There are no statutory requirements under South Australian legislation for summary matters. The Common Law principles apply generally in relation to disclosure.			
<p>Before a matter can be listed for summary trial the parties have duties to confer and usually a pre-trial conference is held before a summary trial is listed. It is necessary to have disclosed the relevant documents prior to the pre-trial conference.</p> <p>Magistrates Court Rules 1992 (Criminal) Rule 26.16 – if a party wishes to rely upon a recorded interview, pursuant to section 13BB of the <i>Evidence Act 1929 (SA)</i>, they must disclose and serve an electronic copy on all parties</p> <p>Rule 26.16 – An electronic copy of the transcript of the recording must be disclosed and served Rule 35.02 – Affidavit Evidence. Any party relying on an affidavit must serve the other party with a copy therefore at least 21 days before the hearing together with a copy of this Rule.</p> <p>Magistrates Court Act 1991 (SA) Section 20 - the Court may order production of documents under s20 (<i>Carter v Hayes (1994) 61 SASR 451</i>)</p> <p>Section 49(c) – Rules of the Court may be made imposing mutual obligations on parties to proceedings in the Court to disclose to each</p>	<p>Pre-trial conference</p> <p>Court order</p>	<p>CDPP practice is to serve the brief immediately following the listing of a pre-trial conference if it has not already been provided.</p> <p>Not less than 7 days before the pre-trial conference</p> <p>Not less than 14 days before the trial</p> <p>Not less than 21 days before a hearing</p>	<p>Rules 8 and 26 of the <i>Magistrates Court Rules 1992 (Criminal)</i> apply</p>

<p>other the contents of expert reports or other material of relevance to the proceedings before the proceedings are brought to trial.</p> <p>Section 49(ca) – Rules of the Court may be made imposing mutual obligations on parties to proceedings in the Court to disclose to each other the contents of expert reports or other material of relevance to the proceedings before the proceedings are brought to trial</p>			
COMMITTAL PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
<p>Preliminary brief Section 105(1) provides a requirement for all indictable matters – the defendant is to be provided with certain documents prior to or at the first appearance: the charges, a notice regarding State sentencing discounts where applicable, a description of the alleged offending.</p> <p>The procedure at committal is determined by whether the matter has been investigated by State Police (SAPOL).</p> <p>If the matter has been investigated by State police, then a "preliminary brief" is required to be provided to the DPP, and filed and served: section 106 <i>Criminal Procedure Act 1921</i> (SA).</p> <p>If the defendant pleads guilty at or before the committal appearance, an answer charge hearing will not be required and the Magistrates Court may (subject to section 116(1)) determine and impose sentence on the defendant for State offences, or commit the defendant to a superior court for sentence: Section 110(1) <i>Criminal Procedure Act 1921</i> (SA).</p> <p>If the defendant pleads not guilty after provision of the preliminary brief, the matter will be listed for an answer charge hearing (see below).</p>	<p>Whether the charge is State or Commonwealth. If a State offence, the defendant's plea.</p>	<p>At or before the defendant's first appearance in the Magistrates Court</p>	
<p>Committal brief If the matter was not investigated by SAPOL, then the preliminary brief provisions don't apply.</p> <p>After the first appearance the matter will be listed for a committal appearance (Section 109(1)(a)). If the defendant does not plead guilty</p>		<p>At least 4 weeks before the date appointed for the answer charge hearing</p>	<p>Section 111 of the <i>Criminal Procedure Act 1921</i> (SA)</p> <p>Rule 20 <i>Magistrates Court Rules 1992 (Criminal)</i></p>

<p>at the committal appearance, the prosecution must provide the court information as to the time required for preparation of the "committal brief": Section 110. The court will then list the matter for an answer charge hearing.</p> <p><i>Criminal Procedure Act 1921 (SA)</i> Section 111(1) Where a charge of an indictable offence is to proceed to an answer charge hearing, the prosecutor must file in the Magistrates court a brief containing:</p> <ul style="list-style-type: none"> (a) statements of witnesses (in the form of an affidavit – see section 111(4)) for the prosecution on which the prosecutor relies as tending to establish the guilt of the defendant; (b) copies of any documents on which the prosecutor relies as tending to establish the guilt of the defendant (other than sensitive material or documents of only peripheral relevance); (c) a document describing any other evidentiary material on which the prosecutor relies as tending to establish the guilt of the defendant together with a statement of the significance the material is alleged to have; (d) all other material relevant to the charge that is available to the prosecution, except material exempt from production because of privilege for some other reason <p>provided any such material that has already been included in the preliminary brief (Section106) need not be included in the committal brief</p> <p>Section 111(7) if the prosecutor relies on evidence that is sensitive material as tending to establish the guilt of the defendant, the prosecutor must, give the defendant copies of the sensitive material or given the defendant a sensitive material notice in relation to the material (see sections 67H and 67I of the <i>Evidence Act 1929 (SA)</i>)</p> <p>Continuing obligation of disclosure Section 111(2) – if material of the kind required to be included in the committal brief comes into the prosecutor’s possession after the filing of the committal brief, the prosecutor must file the new material in the Magistrates Court</p>	<p>At least 4 weeks before the date appointed for the answer charge hearing</p> <p>As soon as practicable after it comes into the prosecutor’s possession</p> <p>As soon as practicable after it is filed</p>	<p>No form is prescribed in relation to the document mentioned in Section 111(1)(c). It is usual practice to prepare a “declaration delivery certificate” (a previously prescribed form) which acts as an index to all material contained or described in the committal brief under section 111(1).</p> <p>Section111(4) requires affidavits and see Rule 43 of the Magistrates Court Rules (SA) which sets out the rules for affidavits. Rule 43.01 specifies that an affidavit must be in accordance with Form 115.</p> <p>Section 111(5) provides specific requirements for ROIs, illiterate/child/disabled witnesses and "sensitive material"</p> <p>Service: Section 27 prescribes the manner in which documents required to be served may be served under the Act. It includes given personally, by post to the defendant or legal practitioner, for <i>particular proceedings</i> by email to an email address provided by a legal practitioner or other electronic means including a data storage device.</p> <p>Filing: see Rule 20 of the Magistrates Court Criminal Rules regarding the filling of the committal brief through an e-brief portal (in practice this does not yet exist) or otherwise in hardcopy and in triplicate.</p>
---	--	--

<p>Section 111(3) – if material is filed in accordance with section 111(2) a copy of that material must be given to the defendant</p>			<p>The CDPP has entered into an arrangement with the Magistrates Court, where we have permission to file briefs electronically (on USB) for matters that commence after 1 January 2020. Briefs are to be accompanied by a hardcopy “declaration delivery certificate”.</p> <p>Per the CDPP Disclosure Statement, agencies must comply with both the statutory requirements and the disclosure duty described in the CDPP statement. The concept of relevance to the defence case under the statute may arguably be broader than that described in the CDPP statement.</p>
<p>Case Statements Section 123</p> <p>(1) Where the Magistrates Court commits a defendant charged with an indictable offence to a superior court for trial, the prosecution must present an information against that person and must file in that court and give to the defendant a prosecution case statement</p> <p>(2) A prosecution case statement must include:</p> <ul style="list-style-type: none"> (a) a summary of the alleged facts; (b) a description of evidence that may be led by the prosecution in relation to each element of the offence; (c) list of witnesses the prosecution intends to call; (d) details of each expert witness the prosecution intends to call; (e) details of any additional witness statements that the prosecution is aware will be obtained but which has not yet been obtained; (f) whether the prosecution intends to lead discreditable conduct evidence that relies on a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue and, if so, details of that evidence; (g) whether the prosecution intends to make any pre-trial applications under the Evidence Act 1929 and if so, a copy of any such application; 		<p>Not less than 6 weeks before the date fixed for the defendant’s arrangement in the superior court</p>	<p>Section 123(6) – the obligation to disclose information or material of a kind that is required in a case statement is ongoing until the defendant is convicted or acquitted of the offence, or the prosecution is terminated.</p> <p>Section 125 – Failure to comply with disclosure requirements</p> <p>Disclosure requirements is defined in section 125(9) as meaning a requirement to disclose or otherwise provide information or material applying to that party under sections 123 or 124</p>

<p>(h) whether the trial is to be given priority under Section 50B of the District Court Act 1991;</p> <p>(i) an estimate of the length of the prosecution case;</p> <p>(j) whether an interpreter will be required.</p> <p>Section 123(3) – A defendant committed to a superior court for trial on a charge of an indictable offence must file in that court and give to the prosecution a defence case statement.</p> <p>Section 123(7) – if any information or material included in a case statement changes or any information or material is obtained or anything else occurs after a case statement has been filed in a court the information, material or occurrence is to be disclosed to the other party to the proceedings.</p> <p>Section 123(9) – the Regulations may prescribe circumstances in which the prosecution will be required to file and serve a response to the defence case statement and may impose any requirements in relation to such response</p> <ul style="list-style-type: none"> ○ <i>reg. 7 Criminal Procedure Regulations 2017 (SA)</i> – for the purposes of section 123(9) of the Act, if notice has been provided to the prosecution by the defendant of the defendant’s intention to introduce expert or alibi evidence and the prosecution intends to challenge the admissibility of the expert or alibi evidence, the prosecution must file a response that outlines the basis on which it intends to challenge it. <p>Section 124 – if expert evidence or evidence of alibi is to be introduced for the defence, notice of intention to introduce the evidence must be filed in the court and given to the prosecution</p> <p>See Regulations. 1 – 4, Schedule 1 of the <i>Criminal Procedure Regulations 2017 (SA)</i></p> <p>Subpoenas</p>		<p>Not more than 4 weeks after being given the prosecution case statement</p> <p>As soon as practicable</p>	<p>Section 134 Power to require defence notice of intention to adduce certain kinds of evidence</p> <p>Division 3 of Part 3 of the Evidence Act 1929 (SA) deals with “discreditable conduct evidence” . There are timeframes and prescribed forms in relation to the notice and objection requirements, as set out in the Rules for each court.</p>
---	--	--	---

Section 126 of the Criminal Procedure Act – the test for subpoenas to be issued in relation to indictable offences in a superior court (see also Part 3 of Chapter 7 of the District Court Criminal Rules and rule 43 of the District Court Criminal Supplementary Rules)

CDPP Summary of State and Territory Disclosure Regimes
STATUTORY DISCLOSURE OBLIGATIONS

TASMANIA

<p>Legislation, Practice Directions and Rules governing the disclosure regime in Tasmania include:</p> <ul style="list-style-type: none"> • <i>Justices Act 1959</i> (TAS) • <i>Justices Rules 2003</i> (TAS) • <i>Right to Information Act 2009</i> (TAS) • <i>Criminal Rules 2006</i> (TAS) • Supreme Court of Tasmania Circular to Practitioners No. 13 of 2012 (dated 15 October 2012) 			
SUMMARY PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
<p>There are no statutory requirements under Tasmanian legislation. The Common Law principles apply generally in relation to disclosure. A new suite of legislation has been drafted which creates a framework for the disclosure of prosecution evidence, however it is yet to commence.</p>			
<p>Currently, defendants must rely on the <i>Right to Information Act 2009</i> (Tas) for disclosure in summary matters. In police matters a defendant may request basic or full disclosure by completing a Request for Disclosure Information Form and submitting it to the nearest Prosecution Services office and where applicable, paying a fee.</p> <p>As a matter of course in Commonwealth matters, the CDPP will disclose to the defendant a full brief of evidence upon a plea of not guilty being indicated or entered, or upon request of defence.</p> <p>Rule 23 of the <i>Justices Rules 2003</i> (Tas) provides that after a summons has been served and endorsed, a copy of the complaint and summons must be filed with the court. As a matter of practice a copy of the complaint is served on the defendant with the summons. This is not legislatively required, but under section 74A <i>Justices Act (1959)</i> (Tas) the court will not require a defendant to enter a plea to the charge unless satisfied that the defendant has</p>	<p>After a summons has been served</p>	<p>Complaint and summons should be served before the first appearance.</p> <p>Remaining disclosure to be made within the 6-8 week period of the adjournment after first mention.</p>	<p>Section 74A <i>Justices Act 1959</i> – when a person charged with a simple offence to which he or she has not entered a plea in writing first appears before the court, the court shall, if that person is not represented by counsel cause the charge to be read to the person or state to the person in simple terms with what he or she is charged, and inform the person that he or she is entitled to have the proceedings in respect of the charge adjourned in order to consider a course of action or to obtain legal advice in relation not the charge. However, the court is not required to do this if it is satisfied that the defendant has received a copy of, and understands, the nature of the charges (section 74A(1A)).</p>

Formal Requirements	Trigger	Timeline	Comments
<p>The procedure prescribed for the State is adhered to in relation to indictable matters.</p> <p>For arrest matters, a complaint should be served on the first appearance date. The court will not require a defendant to enter a plea unless satisfied that the defendant has received a copy of, and understands the nature of, the charge; Section 55(2) <i>Justices Act (1959)</i> (Tas).</p> <p>For summons matters, Rule 23 of the <i>Justices Rules 2003</i> (Tas) provides that after a summons has been served and endorsed, a copy of the complaint and summons must be filed with the court.</p> <p>As a matter of practice a copy of the complaint is served on the defendant with the summons. This is not legislatively required, but under s55(2) <i>Justices Act 1959</i> (Tas) the court will not require a defendant to enter a plea to the charge unless satisfied that the defendant has received a copy of, and understands the nature of, the charge.</p> <p>The procedure prescribed for the disclosure of the brief is directed only to Tasmania Police officers, however as a matter of practice the CDPP complies with these requirements also.</p> <p>If at the first mention, the defendant does not plead guilty, the matter is to be adjourned for a period not exceeding 4 weeks (Section 55(5)). In practice this adjournment can be longer. During this time section 56(3) of the <i>Justices Act 1959</i> (Tas) requires the defendant's lawyer or the defendant to be served with:</p> <ul style="list-style-type: none"> (a) the complaint (if not already provided); (b) transcript of record of interview with police/ a copy of the audio visual recording if a transcript is not available/ or opportunity to hear or watch the recording. (c) the statements of all witnesses that have been obtained by a police officer or other person investigating the offence; (d) a summary of the material facts relevant to the charge. 	<p>After a summons has been served</p> <p>Plea of not guilty</p>	<p>The complaint should be served on or before the first appearance. It must be provided before a plea is required to be entered.</p> <p>Remaining disclosure is to be made within the 4 week period of the adjournment after first mention. If this cannot be met, a further adjournment may be granted but only if the Magistrate is satisfied that it would not be in the interests of justice to require the defendant to enter a plea (Section 55(4) <i>Justices Act</i> (Tas)).</p> <p>Additional statements are to be served as soon as practicable.</p>	

<p>The disclosure obligation is continuing. If, after copies of all witness statements have been served on a defendant or his or her lawyer, a statement or further statement from a witness obtained by the police or investigator, section 57(2) requires the prosecution to serve a copy of that statement or further statement as soon as is reasonably practicable.</p> <p>If, after a summary of material facts has been served on a defendant or his or her lawyer, the prosecution becomes aware of additional material facts relevant to the charge or considers that the material facts relevant to the charge have changed, section 57(3) requires that a revised summary of material facts must be served as soon as is reasonably practicable.</p>		<p>As soon as is reasonably practicable.</p> <p>Preliminary proceedings may be sought and ordered before committal for trial; Section 61-69A Justices Act. (This no longer occurs after committal to the Supreme Court.)</p>	
---	--	--	--

INDICTABLE PROCEDURE

Formal Requirements	Trigger	Timeline	Comments
<p>Trial: Service and filing of indictment and Crown papers</p> <p>In practice, the indictment is filed in the Supreme Court registry. A copy of the filed indictment is then included in the Crown papers along with an indexed copy of all statements or statutory declarations on which the prosecution relies. The Crown papers are filed with the court and served on the defendant’s legal representative or unrepresented defendant.</p> <p>Under rule 3H <i>Criminal Rules 2006</i> the judge conducting a directions hearing may order the prosecution to file a written notice identifying the witnesses the prosecution intends to call at trial and setting out the evidence proposed to be adduced from each witness.</p>	<p>Charges proceeding to trial on indictment</p>	<p>The judge conducting the remand list or directions hearing will make enquiries about when the indictment and papers will be filed and will not list a trial until it has been done.</p> <p>Section 328 <i>Criminal Code 1924 (Tas)</i>, the requirement is only that the defendant be supplied with a copy of the indictment two clear days at least before the day of trial. In addition, the defendant should be permitted to view the depositions taken against him.</p>	<p>On committals for trial, the defendant is committed to the Supreme Court to appear first in the remand list not less than 7 weeks after the committal for trial. There is no statutory requirement for the indictment to be filed by then.</p> <p>The CDPP must liaise with the state DPP in order to obtain a trial date.</p>
<p>Sentence: Service of Crown papers</p> <p>An indictment is not required. A copy of the endorsed complaint and the order of committal for sentence will be forwarded to the prosecution and Supreme Court. The prosecution file Crown papers with the Supreme Court which include a copy of the endorsed complaint, summary of facts and statements or other</p>			<p>On committals for sentence, the defendant is committed to the remand list on the first day of the next criminal sittings of the Supreme Court occurring not less than 7 days from the date of the order of committal for sentence; or the additional</p>

material the prosecution wish to rely on during the sentencing hearing. The prosecution serve a copy of the Crown papers on the defendant's legal representative or unrepresented defendant.

day set; Section 60(1) *Justices Act 1959* (Tas) and Supreme Court Circular No. 13 of 2012. There is no statutory requirement for the Crown papers to be filed by then.

CDPP Summary of State and Territory Disclosure Regimes

STATUTORY DISCLOSURE OBLIGATIONS

VICTORIA

<p>Legislation, Practice Directions and Rules governing the disclosure regime in Victoria include:</p> <ul style="list-style-type: none"> • <i>Criminal Procedure Act 2009</i> (Vic) • <i>Magistrates Court Criminal Procedure Rules 2019</i> • Supreme Court of Victoria Practice Note SC CR 3 – Expert Evidence in Criminal Trials (reissued on 30 January 2017) 			
SUMMARY PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
Section 13 requires provision of a Form 8 with the Charge Sheet and Summons to be served on the accused (see also rule 18 of the <i>Magistrates Court Criminal Procedure Rules 2019</i>)	To be provided with the Charge-sheet and Summons when served on the accused		Advises accused of rights to access Victorian legal Aid and request pre-hearing disclosure from the Informant
<p>Preliminary brief Section 24 - if a charge-sheet is filed the informant must:</p> <p>(a) serve a preliminary brief on the accused; and</p> <p>(b) on the return date have available a copy of the preliminary brief for provision to the accused or legal representative</p> <p>Section 35(1) the informant must serve a preliminary brief on the accused</p> <p>Section 35(2) the accused may, by written notice to the informant, request that a preliminary brief be served</p> <p>Section 37(1) a preliminary brief must include</p> <p>(a) copy of the charge-sheet;</p> <p>(b) a notice in the form prescribed by the rules of court explaining section 37 and section 84, the importance of obtaining legal representation, that the accused has the right to legal aid if eligible and providing details of how to contact Victoria Legal Aid;</p>	<p>Upon request</p> <p>Return date</p> <p>If required to do so by section 24</p> <p>Accused gives notice under Section 35(2)</p>	<p>Within 21 days after the day on which the charge-sheet is filed</p> <p>On the return date</p> <p>Within 14 days after receipt of the notice under section 35(2)</p>	<p>Nothing in section 35 prevents the informant from serving a preliminary brief on the accused at any other time (Section 35(4))</p> <p><i>Magistrates Court Criminal Practice Rules 2009</i> Section 19(1) – full brief prescribed notice is in Form 10</p>

<ul style="list-style-type: none"> (c) a statement made by the informant that complies with section 37(2) (see below) and section 38; (d) any evidentiary certificate issued under any Act that is likely to be relevant to the alleged offence and is available at the time the preliminary brief is served; (e) a copy of the criminal record of the accused if available or a statement that the accused has no previous convictions or infringement convictions known at this time; (f) a written notice of any information, document or thing that the informant refuses to disclose under section 45, identifying the ground for refusal; and (g) a list of any other orders that are or will be sought, as known at the time of preparation of the preliminary brief. <p>The statement in section 37(1)(c) must be in the form of an affidavit (Section 38) and pursuant to section 37(2) must include:</p> <ul style="list-style-type: none"> (a) a statement of the alleged facts including reference to the material available to support the alleged facts; (b) a description of the background to and consequences of the alleged offence, if known; (c) a summary of any statements made by the accused concerning the alleged offence, including any confession or admission; (d) a list of the names of all persons who, at the time the statement is signed, may be called by the prosecution as witnesses at the hearing of the charge, indicating whether those persons have made statements; and (e) a list of any things the prosecution may tender as exhibits, indicating whether they are in the possession of the prosecution at the time the statement is signed. 			
<p>Full brief of evidence Section 39(2) the informant must serve a full brief of evidence on the accused if the accused requests it under section 39(1)</p>	<p>Upon written request of the accused</p>	<p>At least 14 days before:</p> <ul style="list-style-type: none"> (a) the contest mention hearing; or (b) the summary hearing (if no contest mention hearing) 	<p>The Magistrates Court may vary the date for service of a full brief to a date that is earlier or later than the date for service required by section 39(2)</p>

<p>Section 41(1) requires disclosure in the prescribed form (Form 11 Magistrates Court Criminal Procedure Rules 2009) of (among other things):</p> <p>Section 41(1)(d) <i>any information, document or thing on which the prosecution intends to rely at the hearing of the charge, including (items set out in sub-paragraphs (i) – (ix); and</i></p> <p>Section 41(1)(e): <i>any other information, document or thing in the possession of the prosecution that is relevant to the alleged offence, including (items set out in sub-paragraphs i – vii).</i></p> <p>Section 41(1) a full brief of evidence must contain:</p> <ul style="list-style-type: none"> (a) a notice in the form prescribed by the rules of court explaining section 41 and section 83, explaining the importance of the accused obtaining legal representation, advising that the accused has the right to legal aid if eligible and providing details of how to contact Victorian Legal Aid (b) a copy of the charge-sheet relating to the alleged offences; (c) a copy of the criminal record of the accused or a statement that the accused has no previous convictions or infringement convictions; (d) any information, document or thing in which the prosecution intends to rely at the hearing of the charge including: <ul style="list-style-type: none"> i. a copy of any statement relevant to the charge signed by the accused, or a record of interview of the accused, that is in the possession of the informant ii. a copy or a transcript of any audio visual recording iii. a copy or statement of any other evidentiary material that is in the possession of the informant relating to a confession or admission made by the accused iv. a list of the persons the prosecution intends to call as witnesses at the hearing, together with a copy of each of the statements made by those persons 			<p>Nothing in section 39 prevents agreement between the informant and the accused to more limited disclosure than is required in a full brief</p> <p><i>Magistrates Court Criminal Practice Rules 2009</i> Section 20 – full brief prescribed notice is in Form 11</p>
---	--	--	--

<ul style="list-style-type: none"> v. a legible copy of any document which the prosecution intends to produce as evidence vi. a list of any things the prosecution intends to tender as exhibits vii. a clear photograph of any proposed exhibit that cannot be described in detail in the list viii. a description of any forensic procedure, examination or test that has not yet been completed and on which the prosecution intends to rely as tending to establish the guilt of the accused ix. any evidentiary certificate issued under any Act that is likely to be relevant to the alleged offender. <p>(e) any other information, document or thing in the possession of the prosecution that is relevant to the alleged offence including:</p> <ul style="list-style-type: none"> i. a list of the persons (including experts) who have made statements or given information relevant to the alleged offence but who the prosecution does not intend to call as witnesses at the hearing ii. a copy of every statement referred to in (i) iii. a copy of every document relevant to the alleged offence that the prosecution does not intend to tender as an exhibit at the hearing or a list of those documents iv. a list containing descriptions of any things relevant to the alleged offence that the prosecution does not intend to tender as exhibits at the hearing v. a clear photograph of any thing relevant that cannot be described in detail in the list vi. a copy of record of any medical examination of the accused, reports of any forensic procedure or examination conducted on the accused and the results of any tests carried out on behalf of the prosecution relevant to the alleged offence but on which the prosecution does not intend to rely vii. a copy of any other information, document or thing required by the rules of court to be included in a full brief 			
---	--	--	--

(f) if the informant refuses to disclose any information, document or thing that is required to be included in the full brief, a written notice that the informant refuses disclosure under s45, identifying the ground for refusal.			
<p>Continuing obligation of disclosure Section 42 creates a continuing disclosure obligation even after the full brief of evidence has been served.</p> <p>Section 43 provides that the accused may request material not provided in the preliminary or full brief of evidence, apply to court for order requiring disclosure</p>	<p>Any further relevant information coming into the possession of the prosecution after service of a preliminary or full brief of evidence (Section 42(1)(a))</p> <p>Written request of the accused</p>	<p>As soon as practicable after the information, document or thing comes into the informant's possession or notice (Section 42(2))</p> <p>Unless the Magistrates Court orders otherwise, a request under section 43(1) must be made at least 7 days before the contest mention hearing or the summary hearing (if a contest mention is not held)</p>	<p>Accused may apply to court for order requiring disclosure (Section 46)</p>
COMMITTAL PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
Section 13 requires provision of a Form 9 with the Charge Sheet and Summons to be served on the accused; (see also s18 of the <i>Magistrates Court Criminal Procedure Rules 2019</i>)	To be provided with the Charge-sheet and Summons when served on the accused		Advises accused of rights to access VLA and request pre-hearing disclosure from the Informant.
<p>Hand-up brief Section 110 requires disclosure in prescribed form of hand-up brief (Form 30 <i>Magistrates Court Criminal Procedure Rules 2019</i>) of (among other things):</p> <p>Section 110(d) <i>any information, document or thing on which the prosecution intends to rely in the committal proceeding, including (items set out in sub-paragraphs (i) – (x); and</i></p> <p>Section 110(e): <i>any other information, document or thing in the possession of the prosecution that is relevant to the alleged offence, including (items set out in sub-paragraphs i – vi).</i></p>	Section 107 (subject to subsection 107(2), where plea brief has been served) Informant must serve hand-up brief which complies with section 110 CPA.	Section 108(1) - At least 42 days before the committal mention hearing, (which is normally held approximately 12 weeks after person charged)	<p>Section 111 – continuing obligation of disclosure</p> <p>Where written consent to service of plea brief given to Informant and DPP, (s116(2)), Informant may serve plea brief at any time before service of a hand up brief, s116(1).</p> <p>Section 117 – contents of plea brief</p> <p>Note also: Section 416 - Disclosure of material by prosecution:</p>

			<p>(1) Nothing in this Act derogates from a duty otherwise imposed on the prosecution to disclose to the accused material relevant to a charge.</p> <p>(2) Nothing in this Act requires the prosecution to disclose to the accused material which the prosecution is required or permitted to withhold under this or any other Act or any rule of law.</p>
<p>Section 115 – inspection of exhibits The accused may inspect the exhibits at a time and place agreed between the accused and the informant</p>			
<p>Specific committal disclosure obligations</p> <p>Section 118 – A joint case direction notice must be filed by the parties at least 7 days before the committal mention hearing</p> <p>Section 119(e) – In a case direction notice the accused can: require items listed in the hand up brief to be provided or produced for inspection; require a copy of any information or document that the accused considers ought to have been provided in the hand-up brief; require previous particulars of convictions of prosecution witnesses</p> <p>Section 122 - The informant must either comply with the request or object to the production on various grounds. Nothing in this section prevents the accused applying for a witness summons</p> <p>Section 125(1)(e) - At a committal mention hearing the Magistrates’ Court may hear and determine any objection to disclosure of material</p> <p>Section 131 - A witness whose address or telephone number was not disclosed in material provided to the accused must not disclose that information to the Magistrates' Court unless the court permits the disclosure</p>		<p>At least 7 days before the committal mention hearing</p>	<p>In practice, an Informant will compile and serve a disclosure compilation in response to requests made by an Accused in a case direction notice. This compilation (sometimes referred to as “Form 32 Disclosure”) will generally be provided in advance of committal hearing.</p> <p>A response to requests made in the case direction notice may also include notifying the Defence that material requested does not exist or is not in the possession of the prosecution. The response might also be that certain material is unable to be provided on the basis of public interest immunity and/or legal professional privilege.</p>

INDICTABLE PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
Section 147 - Depositions and transcript to be provided to accused post committal	Committal	As soon as possible after being committed	An accused committed for trial is entitled as soon as possible after being committed to receive a copy of the depositions and a transcript of any recording admitted in evidence (if not previously supplied) and to examine any exhibits
Section 171 – Indictment to be served on accused	Filing of indictment	As soon as practicable after an indictment is filed	The DPP must, as soon as practicable after an indictment is filed, serve on the accused a copy of the indictment
Section 182 - Service of prosecution opening and notice of pre-trial admissions	Trial listing	At least 28 days before the trial is listed to commence	Unless the court otherwise directs, the prosecution must serve a summary of prosecution opening and notice of pre-trial admissions at least 28 days before the trial is listed to commence. The summary must outline the manner in which the prosecution will put the case against the accused, and the acts, facts, matters and circumstances being relied upon to support a finding of guilt.
Section 183 - Service of defence response to prosecution opening and notice of admissions	Trial listing	At least 14 days before the trial is listed to commence	The accused must at least 14 days before the trial is listed to commence, serve on the prosecution a response to the prosecution summary and notice of pre-trial admissions. The response to the opening must identify the acts, facts, matters and circumstances with which issue is taken and the basis on which issue is taken. The response to the notice of admissions must indicate what evidence is agreed to be admitted and what evidence is in issue and the basis on which issue is taken. The accused is not required to state the identity of any witness to be called (other than an expert) or state whether the accused will give evidence.
Ongoing obligation of disclosure post committal Section 185 - Any information that comes into the prosecution's possession after committal and would have been required to be listed or included in the hand up brief must be served on the	Information, document or thing coming into the possession of the prosecution after an accused is committed for trial	As soon as practicable	Section 416 - Nothing in the CPA derogates from a duty otherwise imposed on the prosecution to disclose to the accused material 'relevant to a charge'. Nothing in the CPA requires the prosecution to disclose to the accused material

<p>accused, or made available for inspection, as soon as practicable</p> <p>Section 185A - Disclosure of evidence that is child abuse material Subject to a contrary order from the court, the prosecution need not provide, or make available, any information or document, if the prosecutor believes that doing so will result in the disclosure of child abuse material to the accused personally</p>			<p>which the prosecution is required or permitted to withhold under the CPA or any rule of law</p>
<p>Section 186 - Disclosure of address or telephone number of witness Subject to a contrary order from the court, the prosecution must not disclose the address or telephone number of a witness</p>			
<p>Section 187 - Defence request for convictions of prosecution witnesses The accused may request the prosecutor to provide particulars of previous convictions of any witness who the prosecution intends to call at the trial</p>	Request from Accused		
<p>Section 188 - Additional prosecution evidence If DPP intends to call evidence from a witness not included in the committal depositions, they must serve a notice of intention to call additional evidence and provide a copy of the statement of the proposed witness containing the additional evidence or an outline of the additional evidence that the witness is expected to give.</p>	Additional evidence obtained post-committal.	After the additional statements become available to the prosecution and before the witness is called at trial.	
<p>Section 190 - Alibi evidence An accused must not adduce evidence in support of an alibi unless the accused has given notice, containing relevant particulars of the alibi including time and place, by serving a notice on the prosecution within 14 days after being committed</p>		Within 14 days after being committed	
<p>Expert report obligations <i>Supreme Court of Victoria, Practice Note SC CR 3, 8.1 – 8.2 (and County Court Practice Note equivalent)</i></p> <p>8.1(a) A party wishing to introduce an expert report must serve it on the other party as early as reasonably practical, and no later than 60 days before the trial is listed to start.</p>	Decision to call expert evidence	No later than 60 days before the trial is listed to start	<p><u>Sanctions for non-compliance</u> 8.2 - A party that fails to comply with these timeframes may not introduce the expert evidence without the consent of the other party or leave of the court.</p>

<p>8.1(b) If the report is in response to an expert report produced by another party, it must be served as early as reasonably practical and no later than 14 days before the trial.</p> <p>Section 189 – Expert evidence If the accused intends to call a person as an expert witness at the trial, they must serve on the prosecution a copy of the statement of the expert witness that complies with s189(2)</p>		<p>No later than 14 days before the trial.</p> <p>At least 14 days before the day on which the trial is listed to commence</p>	
---	--	--	--

CDPP Summary of State and Territory Disclosure Regimes

STATUTORY DISCLOSURE OBLIGATIONS

WESTERN AUSTRALIA

Legislation, Practice Directions and Rules governing the disclosure regime in Western Australia include:

- *Criminal Procedure Act 2004 (WA)*
- *Criminal Procedure Practice Rules 2005 (WA)*
- District Court of WA Consolidated Practice Directions & Circulars to Practitioners (as updated on 11 March 2021)

SUMMARY PROCEDURE

Formal Requirements	Trigger	Timeline	Comments
<p>Initial Disclosure – simple offences that are not prescribed</p> <p>Section 35(6) requires service upon the accused of:</p> <p>(b) an Approved Notice of the criminal record of the accused and of the prosecutor’s intention to tender it, if it is sought to be relied upon; and</p> <p>(c) any prescribed document.</p>	<p>Statutory requirement for all proceedings</p>	<p>As soon as practicable after service of prosecution notice on an accused</p> <p>Timing for service – section 35(9) The materials to be served pursuant to section 35(6) must be served before or at the time of the accused’s first appearance unless it is impracticable to do so. Failure to do so may result in an adjournment or orders to serve the materials: section 35(10).</p>	<p>As a matter of practice, however, the CDPP complies with section 35(5) (which applies to State <i>prescribed simple offences</i>), and also serves an accused with the following:</p> <p>(a) a written statement of the material facts for each charge;</p> <p>(b) an approved notice of the existence or non-existence, as the case may be, of any confessional material of the accused that is relevant to each charge.</p>
<p>Pre-trial Disclosure</p>			<p>Exceptions to prosecution disclosure requirements</p>

<p>Pursuant to section 60(2) if an accused pleads not guilty to an either way charge that is to be dealt with summarily, or a charge of a simple offence and the court does not discharge the accused under sections 128(2) or (3), the court must adjourn the charge to a new date that allows a reasonable time for the prosecutor to comply with section 61.</p> <p>Section 61(5) requires service on the accused of:</p> <p>(d) any confessional material of the accused that is relevant to the charge and that the accused has not already received from the prosecutor (“confessional material” is defined in section 42);</p> <p>(e) any evidentiary material that is relevant to the charge (“evidentiary material” is defined in section 42);</p> <p>(f) a copy of the accused’s criminal record, if the accused has not already received it from the prosecutor;</p> <p>(g) any prescribed document.</p>		<p>Section 61(6) - As soon as practicable after the case is adjourned under Sections 60(3), (4) or (5) and in any event at least 28 days before the trial date</p>	<p>The exemptions and dispensation from disclosure provisions apply equally to summary matters as to indictable – see sections 137A and 138 and 61(3) <i>Criminal Procedure Act 2004 (WA)</i></p>
<p>Ongoing obligation</p> <p>Section 61(7) The disclosure obligation is ongoing until the charge is finally dealt with.</p>		<p>Service to occur as soon as practicable</p>	
<p>Defence disclosure obligations</p> <p>Section 62(4) - the accused is required to give notice and details of any alibi evidence, to provide any expert evidence material that is relevant to the charge, written notice of the factual elements of the offence that the accused may contend cannot be proven, and written notice of any objection to evidence to be called or adduced at the time.</p>	<p>Listing for trial</p>	<p>At least 14 days before the trial date</p>	
<p>Consequences of non-disclosure</p> <p>Section 63(2) - if the court is satisfied that a party has not obeyed a disclosure requirement, the court, on application of an affected party, may adjourn the trial to a date that allows enough time for the breach to</p>	<p>At the trial</p>		

<p>be rectified and for the affected party to investigate properly any evidence or other matter disclosed and to obtain further evidence that may be necessary as a result of the disclosure.</p> <p>Section 63(4) if a party does not obey a disclosure requirement, the court, in making an order for costs, may reduce the amount that would otherwise be ordered by the amount of the costs that a party affected by the breach incurred as a result of the breach.</p>			
INDICTABLE PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
<p>Initial Disclosure</p> <p>Section 35(4) requires service on the accused of:</p> <ul style="list-style-type: none"> (a) a written statement of the material facts of each charge; (b) an approved notice of the existence or non-existence, as the case may be, of any confessional material of the accused that is relevant to each charge; (c) an approved notice that the accused does or does not have a criminal record; (d) any prescribed documents. 	<p>Statutory requirement for all proceedings</p> <p>Where a notice re confessional material or record has been served</p>	<p>When or as soon as practicable after a Prosecution Notice that contains one or more indictable charges is served on an accused.</p> <p>Timing for service – section 35(9) The materials to be served pursuant to section 35(4) must be served before or at the time of the accused’s first appearance unless it is impracticable to do so. Failure to do so may result in an adjournment or orders to serve the materials: section 35(10).</p> <p>As soon as practicable after the notice has been served</p>	<p>“Confessional material” is defined under section 35(1) to mean:</p> <ul style="list-style-type: none"> (a) Any written statement signed by the accused; (b) Any written record of interview with the accused (signed or unsigned by the accused); (c) Any interview (within the meaning of the <i>Criminal Investigation Act 2006</i> (WA) section 115) that has been electronically recorded, that is relevant to the charge and that is in the possession of the organisation that investigated the offence
<p>Section 35(11) further provides that the prosecutor must make available a copy of any confessional material of the accused that is relevant to a charge and/or criminal record to the accused or the accused’s lawyer</p>			<p>As a matter of practice, the CDPP provides a copy of the confessional materials and the accused’s criminal history at the time the other preliminary disclosure materials are served. The accused can plead guilty and be committed for sentence on service of these materials</p>

<p>Approved Notices advising an accused of the existence of confessional material or that the accused does have a criminal record must also advise the accused (relevantly) of the effects of Sections 35(11) and 35(12) (being the requirement to serve a copy of such material) and section 168 (as to the admissibility of a criminal record at sentence) of the <i>Criminal Procedure Act 2004 (WA)</i> (Sections 35(7)-(8))</p>		<p>If before or at an accused's first appearance in court the accused requests the prosecutor to give the accused a copy of the accused's criminal record, the prosecutors must if practicable, obey the request before or at the appearance (Section 35(12))</p>	<p>(called a 'fast-track' plea of guilty): Section 41(3).</p> <p>Section 35(1)(c) does not apply to most Commonwealth prosecutions because our interviews are generally not conducted by a WA Police officer or Corruption and Crime Commission official. However, interviews conducted by AFP will fall within s35(1)(b), and as a matter of practice these are disclosed through the use of Approved Notices. Reference should also be included in the Statement of Material Facts to any confessional material</p> <p>Upon receipt of the Section 35 disclosure, an accused may enter a plea. If the accused pleads guilty, s/he will be committed to a superior Court for sentencing. Should an accused not enter a plea or enters a plea of not guilty, the accused will be remanded to a Disclosure / Committal Hearing date in the Magistrates Court for the provision of "full disclosure" to the accused or the accused's lawyer (section 41(4))</p>
<p>Full disclosure</p> <p>The prosecution must provide to the accused or the accused's lawyer "full disclosure" in the committal mention brief as set out in Section 42.</p> <p>Section 42(5) requires that the following must be served on the accused:</p>	<p>Where no plea of guilty is entered following initial disclosure</p>	<p>As soon as practicable after the charge is adjourned under Section 41(4) and prior to the Section 44 disclosure/ committal hearing and ongoing</p>	<p>Section 42(2)(b) requires that if a copy of a statement or recording of a person is served, then the prosecution must also serve a copy of any statement or recording of the person that contains material that is inconsistent with that statement or recording. Sections 42(6) and 95(9) provide for ongoing disclosure of any newly obtained material to the accused as soon as practicable.</p>

<p>(a) Any confessional material of the accused that is relevant to the charge and that the accused has not already received from the prosecutor;</p> <p>(b) Any evidentiary material that is relevant to the charge;</p> <p>(c) Any other document that is prescribed.</p> <p><u>Confessional material</u> of the accused that is relevant to the charge and that the accused has not already received from the prosecutor. This is defined broadly in sections 42(1) (and 35(1)) to, inter alia, mean:</p> <ul style="list-style-type: none"> • Section 35(1)(a) Any written statement signed by the accused relevant to the charge. • Section 35(1)(b) Any written (transcribed) record of interview with the accused (signed or unsigned) relevant to the charge. • Section 35(1)(c) Any electronically recorded interview (as defined by s115, <i>Criminal Investigation Act 2006</i>) relevant to the charge. • Section 42(1)(b) A copy of any electronic recording between the accused and a person in authority that is relevant to the charge and in the possession of the organisation who investigated the offence. • Section 42(1)(c) A written version of the substance (if not recorded) of anything the accused said to a person employed by the investigative agency that is relevant to the charge. <p><u>Evidentiary material</u> relevant to the charge. This is defined in section 42(1) to mean a copy of:</p> <ul style="list-style-type: none"> • Section 42(1)(a)(i) every statement that has been made in accordance with Schedule 3 clause 4 (formalities of witness statements) by; 			
--	--	--	--

<ul style="list-style-type: none"> • Section 42(1)(a)(ii) every recording that has been made in accordance with Schedule 3 clause 6 (conduct of examinations of witnesses) of evidence given by; • Section 42(1)(a)(iii) every recording that has been made under the <i>Evidence Act 1906</i> (WA); and • Section 42(1)(a)(iv) every other recorded statement, whether oral or written by, any person who may be able to give evidence that is relevant to the charge, irrespective of whether or not it assists the prosecutor’s case or the accused’s defence. <p>AND</p> <ul style="list-style-type: none"> • Section 42(b) if there is no statement or recording referred to in paragraph (a) of a person who the prosecutor intends to call as a witness, a written summary of the evidence to be given by the person; • Section 42(c) a copy of any document or object to which a statement or recording referred to in paragraph (a) refers • Section 42(d) a copy of every other document or object that the prosecutor intends to tender in evidence at trial; and • Section 42(e) a copy of every other document or object that may assist the accused’s defence, <p>that is in the possession of the organisation or person who investigated the offence</p> <p>Section 42(2)(b) further requires that if a copy of a statement or recording of a person is served, then the prosecution must also serve a copy of any statement or recording of the person that contains material that is inconsistent with that statement or recording.</p>			
---	--	--	--

<p>Notices must also be served of the following:</p> <p>Section 42(2)(a) - Notice describing evidentiary material which was impracticable to copy and stating where and when it may be inspected</p> <p>Section 42(2)(c) - Notice of the name and address, if known, of any witness from whom no statement or recording has been obtained but who may be able to give evidence that may assist the accused's defence and a description of the evidence concerned.</p>			
<p>Procedure at disclosure/committal hearing</p> <p>At a disclosure/committal hearing, the Court must, if satisfied that the prosecution has complied with Section 42, require the accused to plead to the charge, and then commit the accused for sentence or trial, as the plea requires, to a superior court with jurisdiction to deal with the charge: Section 44(1)(a).</p> <p>If the Court is not satisfied that the prosecution has complied with Section 42, the court must adjourn the charge to another disclosure/committal hearing that allows reasonable time for the prosecutor to comply with Section 42, and must order the prosecutor to comply with Section 42 before the new court date; if the prosecutor does not obey any such order, the court must adjourn the charge again or dismiss it for want of prosecution: Section 44(1)(b).</p>			
<p>Service and filing of the indictment</p> <p>Section 85 provides the formal requirements and service of indictments. The indictment must be compliant with Schedule 1 and as soon as practicable after it is lodged with a Superior Court, the prosecutor must serve it on the accused in accordance with Schedule 2, clause 2, 3 or 4,</p>	<p>Committal to a superior court</p>	<p>No later than 42 days after the date of committal for trial or sentence (<i>Criminal Procedure Rules 2005 (WA)</i>, rule 20) – unless otherwise ordered by the Court</p>	<p>An application to extend time to lodge the indictment may be made orally, and after the due date, although a Court may order an affidavit in support by the prosecution – see section 9.2.2 of Practice Direction 9 of</p>

<p>Section 85(2) provides an indictment must:</p> <ul style="list-style-type: none"> (a) Be in writing in a prescribed form; (b) Comply with Schedule 1 Division 2; (c) Be signed by an authorised officer; and (d) Be lodged in the prescribed manner. 		<p>No accused can be required to enter a plea within 21 days of service of the indictment (<i>Criminal Procedure Rules 2005 (WA)</i>, rule 16)</p>	<p>the District Court Consolidated Practice Directions of 2017.</p>
<p>Certificate of Compliance s45</p> <p>The investigating officer must provide to the CDPP a signed Certificate of Compliance certifying disclosure has been complied with</p> <p>Section 45(5) The Certificate of Compliance must:</p> <ul style="list-style-type: none"> a) Be signed by a person who is involved in, and who has knowledge of, the investigation of the charge/charges; and b) Certify that Section 35 and, if the case requires, Section 42 have been complied with; and c) Certify that the CDPP has been given a copy of all confessional material and evidentiary material that is relevant to the charges and that has been served on or made available to the accused; d) State the person’s grounds for so certifying and any inquiries made by the person before so certifying, where inquiry has been necessary; and e) Contain any information prescribed. 	<p>Section 45(2) CPA - following ‘fast track’ guilty plea</p>	<p>With the brief, i.e., within 42 days after committal</p>	<p>Note: Section 45(5)(b)(ii) refers to “the relevant authorised officer”. This is defined in Section 80(1) to mean the authorised officer who is responsible for the prosecution of the charge in a superior court. The Certificate of Compliance forms part of the brief lodged with the superior court and served on the accused: Sections 95(5) (sentence briefs) and 95(6) (trial briefs).</p>

<p>Superior Court Disclosure – for sentence</p> <p>Plea of guilty at disclosure / committal hearing</p> <p>Section 45(3) requires that within the prescribed period after an accused is committed for sentence or trial under Sections 43(5) or 44(1)(a)(ii) on a charge (currently 21 days), the prosecutor must give to the relevant authorised officer (i.e. the CDPP):</p> <ul style="list-style-type: none"> (a) a copy of the written statement of material facts last served on the accused under Section 35; (b) any confessional material of the accused that is relevant to the charge; (c) any evidentiary material that is relevant to the charge; (d) anything that has been served on the accused, as required by the ‘ongoing’ disclosure obligation under Section 42(6); (e) a copy of the accused’s criminal record; (f) a signed certificate pursuant to Section 45(5) (“Section 45 certificate”). In the Section 45 certificate, a person who was involved in and has knowledge of the investigation of the charge certifies that the prosecution has complied with its disclosure obligations. 	<p>Committal for sentence</p>	<p>Within 21 days of committal</p>	
<p>Fast-track plea of guilty</p> <p>Section 45(2) requires that within the prescribed period after an accused is committed for sentence under Section 41(3) on a charge (currently 21 days), the prosecutor must to give to the relevant authorised officer (i.e. the CDPP):</p> <ul style="list-style-type: none"> (a) a copy of the written statement of material facts last served on the accused under Section 35; (b) any confessional material of the accused that is relevant to the charge; 	<p>Committal for sentence</p>	<p>Within 21 days of committal</p>	

<p>(c) a copy of the accused’s criminal record;</p> <p>(d) a signed certificate pursuant to Section 45(5) (“<i>Section 45 certificate</i>”).</p> <p>After an accused is committed for sentence (fast track or otherwise)</p> <p>Section 95(5) requires lodgement with Court, and service on the accused if not already served, of:</p> <ul style="list-style-type: none"> a) a statement of the material facts of the charge; b) any confessional material of the accused that is relevant to the charge; c) a copy of the accused’s criminal record; d) a copy of the Section 45 Certificate of Compliance; e) any other prescribed document. 	<p>Committal for sentence to a superior court</p>	<p>No later than 42 days after committal (<i>Criminal Procedure Rules 2005 (WA)</i>, rule 20(1))</p>	
<p>Superior Court Disclosure – for trial</p> <p>Matters committed for trial</p> <p>Section 45(3) requires that within the prescribed period after an accused is committed for sentence or trial on a charge (currently 21 days), section 45(3) requires the prosecutor to give to the relevant authorised officer (i.e. the CDPP):</p> <ul style="list-style-type: none"> a) a copy of the written statement of material facts last served on the accused under Section 35; b) any confessional material of the accused that is relevant to the charge; c) any evidentiary material that is relevant to the charge; d) anything that has been served on the accused, as required by the ‘ongoing’ disclosure obligation under Section 42(6); 	<p>Committal for sentence or trial to a superior court</p>	<p>21 days after committal</p>	

<p>e) a copy of the accused's criminal record; f) a signed certificate pursuant to Section 45(5) ("section 45 certificate"). In the Section 45 certificate, a person who was involved in and has knowledge of the investigation of the charge certifies that the prosecution has complied with its disclosure obligations.</p> <p>After an accused is committed for trial</p> <p>Section 95(6) requires lodgement with court, and service on the accused if not already served, of:</p> <p>a) a statement of the material facts of the charge; b) any confessional material of the accused that is relevant to the charge; c) any evidentiary material that is relevant to the charge; d) a copy of the accused's criminal record; e) a copy of the section 45 Certificate of Compliance; f) any other prescribed document.</p>	<p>Committal for trial to a superior court</p>	<p>No later than 42 days after committal (<i>Criminal Procedure Rules 2005 (WA)</i>, rule 20(2))</p>	
<p>Ongoing obligation</p> <p>Section 95(9) provides that if, after complying with Section 95(6) and before a charge is finally dealt with, a prosecutor receives or obtains further material of the kind in Section 95(9)(a) to (d), the prosecutor must lodge it or a copy of it and serve it or a copy of it on the accused as soon as practicable</p>			
<p>Defence disclosure obligations</p> <p>Section 96(3) - the accused is required to give notice and details of any alibi evidence, to provide any expert evidence material that is relevant to the charge, written notice of the factual elements of the offence that the</p>			

<p>accused may contend cannot be proven, and written notice of any objection to evidence to be called or adduced at the time.</p>			
<p>Consequences of Non-Disclosure</p> <ul style="list-style-type: none"> • adjournment of the trial, or discharge of the jury (Section 97(2)) • adverse comment to the jury by the court, counsel for the accused person, or the prosecution (Section 97(4)); or • a ground for appeal or lead to a miscarriage of justice. <p>Section 97(3) - on resumption of the trial, a party affected by the breach may require a witness, including the accused, to be recalled as a witness; may cross-examine or further cross-examine the person about the evidence or other matter disclosed; and may adduce evidence in rebuttal</p>	<p>Section 45(3) - following Not Guilty plea or Guilty plea after disclosure</p>		<p>It is an offence to knowingly or without reasonable diligence sign or authenticate a Section 45 certificate that is false in a material particular (penalty: fine \$5,000): Section 45(6).</p>
<p>Exemptions from Disclosure</p> <p>Disclosure obligations under Section 42, Section 61 and Section 95 are subject to certain immunities or exemptions outlined in Section 137A, namely:</p> <p>a) the <i>Evidence Act (WA) 1906</i> Sections 19C and 106HB(3);</p> <p>b) any other written law that relates to the disclosure of specific information;</p> <p>c) the law on privilege; and</p> <p>d) the law on public interest immunity.</p> <p>Section 138 allows any party to seek orders from the court that either dispense with all or part of a disclosure requirement under Sections 35, 42, 61, 95 or 96; or that shortens or extends the time for obeying the requirement; that amends or cancels a previous Section 138 order; or as to any other matter that the court considers is just. The prosecution may</p>			

make an application for a Section 138 order on an ex parte basis. The grounds for seeking such orders would relate to matters that do not fall within the grounds of Section 137A.			
--	--	--	--