



CDPP

Australia's Federal Prosecution Service

CDPP Summary of State and Territory Disclosure Regimes



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

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>Purely Summary matters:</u></p> <p>On a plea of not guilty, summary matters will be allocated a hearing date not earlier than 10 weeks from the date of plea. The AFP are to provide a brief of evidence to the DPP within six from the date of plea. The DPP are to provide the brief of evidence to the defendant within eight weeks of the date of plea (i.e. within 2 weeks of receiving it from the AFP). Prosecution are to provide Court and defence with a preliminary witness list and availability for all AFP witnesses for the following 4 months.</p>	Plea of not guilty	Brief to be provided to DPP by AFP within six weeks of plea of not guilty.	Practice Direction No. 1 of 2014 (Listing Procedure for Criminal Matters) Item 4.2.2 and 4.2.3, noting the exception in 4.1.4 where defendant is remanded in custody resulting in shorter service times, or longer service time where the brief is of a particular complexity.
COMMITTAL PROCEDURE			
Section 90 of the <i>Magistrates Court Act 1930</i> 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.			Section 90 of the <i>Magistrates Court Act 1930</i>
Practice Direction No. 1 of 2014 (Listing Procedure for Criminal Matters)			
<p><u>Purely Indictable matters:</u></p> <p>On a plea of not guilty the matter will be listed for further mention not earlier than 10 weeks from the date of the plea</p> <p>The AFP will provide the brief of evidence to the DPP within six weeks of the plea of not guilty</p> <p>The DPP will provide the brief of evidence to the defendant within eight weeks of the plea of not guilty. 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>.</p>	Plea of not guilty	<p>Brief to DPP from AFP within six weeks of plea of not guilty</p> <p>Brief from DPP to defence within eight weeks of plea of not guilty</p> <p>Must be served on defence 28 days prior to Committal hearing</p>	<p>Practice Direction No. 1 of 2014 (Listing Procedure for Criminal Matters) Item 4.3.2</p> <p>Practice Direction No. 1 of 2014 (Listing Procedure for Criminal Matters) Item 4.3.2-4.3.4 Rule 4305 <i>Court Procedures Rules 2006</i></p>

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<p><u>Indictable matters that can be determined summarily :</u></p> <p>On a plea of not guilty the matter will be listed for further mention not earlier than 10 weeks from the date of the plea.</p>	<p>Plea of not guilty</p>	<p>Brief to DPP from AFP within six weeks of plea of not guilty</p> <p>Brief from DPP to defence within eight weeks of plea of not guilty</p>	<p>Practice Direction No. 1 of 2014 (Listing Procedure for Criminal Matters) Item 4.4.2</p>
<p>INDICTABLE PROCEDURE</p>			
<p>Formal Requirements</p>	<p>Trigger</p>	<p>Timeline</p>	<p>Comments</p>
<p>Rule 4733 of the Court Procedure Rules 2006 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 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.</p>		<p>Set by the Supreme Court</p>	<p>rule 4733 of the <i>Court Procedure Rules 2006</i></p>
<p>Expert witnesses and evidence to be provided to defence in writing, and as whether the Crown will call this evidence (<i>s 79 Court Proceedings Act 2004</i>) Also note requirements for victims and CCTV evidence.</p>			<p>section 79 <i>Court Proceedings Act 2004</i></p>

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STATUTORY DISCLOSURE OBLIGATIONS - NEW SOUTH WALES

SUMMARY PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
<p><u>S183 – Prosecution must serve the BRIEF OF EVIDENCE on an accused person who pleads NOT GUILTY to an offence</u></p> <p><u>S183(2)</u>: 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> <ol style="list-style-type: none"> 1. Written statements taken from the persons the prosecutor intends to call to give evidence in proceedings for the offence 2. Copies of any document or any other thing, identified in such a written statement as a proposed exhibit (subject to ss 184 and 185, concerning requirements for evidence that is impossible or impractical to copy and recording of interviews with vulnerable persons respectively). 	<p>Mandatory – <u>s183(1)</u>,</p> <p>subject to a court waiver under <u>s187</u>.</p>	<p>At least 14 days before the hearing (<u>s183(3)</u>). 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 – <u>s183(4)</u></p>	<p>The court must refuse to admit evidence that the prosecutor seeks to adduce, if Prosecution disclosure obligations have not been complied with in relation to that evidence (<u>s188(1)</u>).</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 <u>Local Court Practice Note Crim 1</u>.</p> <p><u>S183</u> does not apply to certain proceedings, prescribed by Clause 21 of the <i>Criminal Procedure Regulations 2010</i>, including:</p> <ul style="list-style-type: none"> ● <i>s4 Summary Offences Act 1988</i> ● <i>s10 Drug Misuse and Trafficking Act 1985</i> ● <i>s16(1) Poisons and Therapeutic Goods Act 1966</i>. <p>Or for</p> <ul style="list-style-type: none"> ● a summary offence for which there is a monetary penalty only ● an offence for which a penalty notice may be issued (other than an offence in Schedule 3 and not referred to above).

[1] Division 3, Part 3 of Chapter 3 of the Criminal Procedure Act 1986 (NSW) contains a statutory disclosure regime applicable to indictable proceedings in NSW. Division 2, Part 2 of Chapter 4 of the Act contains a statutory disclosure regime applicable to summary proceedings in NSW. 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.

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COMMITTAL PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
<p>S61 - REQUIREMENT TO DISCLOSE EVIDENCE, INCLUDING (PER S62(1)):</p> <ol style="list-style-type: none"> 1 Copies of all material obtained by the Prosecution that forms the basis of the Prosecution's case. 2 Copies of any other material obtained by the Prosecution that is reasonably capable of being relevant to the case of the accused. 3 Copies of any other material obtained by the Prosecution that would affect the strength of the Prosecution case. 	<p>Mandatory (s61(1))</p>	<p>Clause 7.1 of Local Court Practice Note Comm 2 provides that the at the first step of committal proceedings brief orders are to be made and the matter is to be adjourned for 8 weeks to allow for service.</p> <hr/> <p>ss63(1) & 63(2) provide that any additional material obtained by the prosecutor that ought to be included in the brief of evidence, be served as soon as practicable.</p>	<p>s62(2) provides that for committal proceedings the brief of evidence is not required to be in the form required under Part 3A of Chapter 6.</p> <hr/> <p>ss64(1) & 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>S142 - NOTICE OF PROSECUTION CASE CONTAINING:</p> <ol style="list-style-type: none"> 1. The Prosecution must disclose copies of the indictment and statement of facts 2. Further, copies of the following documents must be provided to the defence where the prosecutor proposes to adduce them at trial: <ul style="list-style-type: none"> ● Statement of each witness whose evidence will be adduced ● Each document containing evidence which will be adduced ● Summaries or an outline of any summary not yet prepared ● Copies of <u>exhibits</u> ● <u>Charts or explanatory material</u> ● <u>Relevant reports of expert witnesses</u> (where the witness is proposed to be called) 	<p>Mandatory, subject to a court waiver under <u>s148</u></p>	<p>s139(c): the court may determine the timetable for pre-trial disclosure under s141.</p> <p>Practice Notes issued by the court will provide the timetable for pre-trial disclosure and related matters, though the court may vary the timetable.</p> <p>District Court Practice Note 9 provides that the Notice of Prosecution Case is to be served no later than 5 weeks before the trial date with the defence to respond no</p>	<p>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> <hr/> <p>The failure of the defence to comply with disclosure obligations may lead to adverse inferences being drawn.</p> <hr/> <p>However, this will only be the case where the Prosecution has complied with its disclosure obligations.</p>

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<p>3. Lists identifying:</p> <ul style="list-style-type: none"> 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. The prosecutor must also disclose any location at which the information is believed to be <u>Statements of witnesses</u> proposed to be called by the prosecution <p>4. Information in the possession of the prosecutor that relates to the reliability or credibility of the accused person or prosecution witness</p> <p>5. 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</p>	<p>later than 21 days prior to the date set for trial and the prosecution is to serve a prosecution response to the defence response prior to the date set for trial.</p> <p>In the Supreme Court, an addidavit by an appropriate officer confirming compliance with the paragraph 5 of the CDPP's "<i>Statement on Prosecution Disclosure</i>" is to be provided to the Court and the accused.</p> <p>The Notice of Prosecution Case is to be served on the accused no later than 8 weeks before the trial date with the defence to respond no later than 5 weeks before the trial date and the prosecution is to serve a prosecution response to the defence response no later than 3 weeks before the trial date – See Supreme Court Practice Note SC CL2.</p>	<p>If the Accused fails to provide notice of s143(1)(c) issues that the defence intends to dispute (the facts, matters or circumstances that the prosecution indicated it would rely on) the prosecution may be permitting to dispense with formal proof under s145(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>If the accused person fails to comply with pre-trial disclosure requirements, the court or any other party may be permitted to comment, under s146A. In some circumstances, a court or jury may be permitted to draw unfavourable inferences from the defence's failure to comply.</p>
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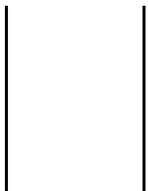
Formal Requirements	Trigger	Timeline	Comments
<p>S143 (1) – DEFENCE RESPONSE WILL BE PROVIDED, CONTAINING:</p> <ul style="list-style-type: none"> If the accused person has disclosed an intention to adduce expert evidence at the trial, notice as to whether the prosecutor disputes any of the expert evidence and, if so, in what respect, 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, 			

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<ul style="list-style-type: none"> ● 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, ● 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, ● 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. ● 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>s147 - Ongoing disclosure obligations 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>	Mandatory		The defence may amend the Notice of Defence Response (s143) if additional information is obtained from the prosecution after the notice was provided to the defence (s147)
<p>s149E – General case management provisions 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>	Upon court direction		

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STATUTORY DISCLOSURE OBLIGATIONS - NORTHERN TERRITORY

SUMMARY PROCEDURE

- Summary disclosure requirements are proscribed by Part 4, Div 2A of the Local Court (Criminal Procedures) Act (NT) and Practice Direction No. 2 of 2015.
- Practice Directions dated 4 October 2010 (in relation to Contest Mentions) and No. 4 of 2014 cease to have effect except for proceedings commenced before 21 September 2015
- Practice Direction No. 2 of 2015 proscribes the scope of the application of the provisions in Part 4, Div 2A to in relation to matters heard and determined in places other than Darwin, Alice Springs and Tennant Creek

Formal Requirements	Trigger	Timeline	Comments
<p><i>Local Court (Criminal Procedures) Act (NT), s 60AD(2)(a):</i> Serve a preliminary brief of evidence on the defendant.</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 contents of a preliminary brief of evidence are prescribed by s 60AE. This includes:</p> <ul style="list-style-type: none"> • a copy of the information or complaint • a statement of facts in compliance with section 60AF(1)(a) • any available audio or video evidence, or a statement that there is information recorded that the prosecution intends to obtain • a copy of the defendant's criminal record, or a written statement that the defendant does not have a criminal record • an evidentiary certificates available to the prosecution at the time • 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 • any other document or thing that may assist the defendant in understanding the evidence against the defendant • any other document or thing prescribed by the regulations
<p><i>Local Court (Criminal Procedures) Act (NT), s 60AD(2)(a):</i> 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>

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 STATUTORY DISCLOSURE OBLIGATIONS - **NORTHERN TERRITORY**

COMMITTAL PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
<p>Section 105C of the Local Court (Criminal Procedure) Act (NT) imposes an obligation on the Prosecutor to serve 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 Local Court (Criminal Procedure) Act (NT), including any additional documents forming part of the brief under section 105D(3)(b) or 105E(3)(b).</p> <p>Section 105E provides a continuing obligation to update 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>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>s105C of the <i>Local Court (Criminal Procedure) Act</i> (NT). Comm</p> <p>Chief Magistrate Practice Directions 1/2011.</p> <p>s105E of the <i>Local Court (Criminal Procedure) Act</i> (NT)</p>

Defence disclosure

Defendant has disclosure requirements in summary proceedings for evidence of an alibi (LCCPA s 60AG), expert evidence and objections (LCCPA s 60AM), and subsequent evidence (LCCPA s 60AN).

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Criminal Code (Qld) Chapter 62, Chapter Division 3 - Disclosure by the prosecution

The provisions apply to a “relevant proceeding”; the term is defined in s.590AD to mean:

- a committal proceeding, or
- a trial on indictment, or
- a prescribed summary trial (defined in s.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 s.590AO provides that the prosecution does not have to disclose “sensitive evidence” (which is defined in s.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 (s.590AC(1)).

Formal Requirements	Trigger	Timeline	Comments
<p>A copy of each of the following:</p> <p>(a) Bench charge sheet, complaint or indictment containing the charges against a person.</p> <p>(b) The accused’s criminal history in the prosecution’s possession.</p> <p>(c) Any statement of the accused in the prosecution’s possession.</p> <p>(d) For each proposed prosecution witness who is or may be an "affected child" (defined in s.590AD by reference to the Evidence Act 1977, s.21AC), a written notice naming the child and describing why they may be an effected 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 s.93B of the Evidence Act 1977 (Qld) is to be relied upon (pre-recording of a child’s evidence), a notice stating that intention and the matters set out in s.590C(2) of the Criminal Code (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 s.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>Mandatory disclosure</p>	<p>As soon as practicable, but at least:</p> <p>For a committal hearing or prescribed summary trial, 14 days before the date set by the court for the commencement of the hearing of evidence.</p> <p>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.</p>	<p>s.590AH(2), s.590AI(2)</p> <p>Note: A number of paragraphs in s.590AH(2) refer to items in the "possession of the prosecution." The expression "possession of the prosecution" is given an extended definition by s.590AE, and it includes things the "arresting officer" (defined in s.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 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>

CDPP Summary of State and Territory Disclosure Regimes
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Formal Requirements	Trigger	Timeline	Comments
<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. It may also include a submission on a legal issue eg. the reversal of the onus of proof, or a submission for an alternative verdict.)</p> <p>(k) Written notice of - or a copy of - anything else in the prosecution's possession prescribed by regulation.</p>			
<p>EXCULPATORY THINGS – defined in s.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>	Mandatory disclosure	The obligation to disclose an exculpatory thing continues post trial until the accused is discharged or acquitted or dies (ie. the obligation continues indefinitely even after the person has been convicted and has been unsuccessful on appeal).	s.590AL(3)
<p>Particulars of a charge against the accused if a proposed prosecution witness is or may be an affected child.</p>	On request by the defence	As soon as practicable	s.590AJ(2)(a), s.590AK(2)
<p>A criminal history of a proposed witness for the prosecution that is in the possession of the prosecution.</p>	On request by the defence	As soon as practicable	s.590AJ(2)(b), s.590AK(2) Notes: (1) "Possession of the prosecution" is given an extended definition in s.590AD. (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.
<p>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.</p>	On request by the defence	As soon as practicable	s.590AJ(2)(c), s.590AK(2)
<p>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.</p>	On request by the defence	As soon as practicable	s.590AJ(2)(d), s.590AK(2)

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Formal Requirements	Trigger	Timeline	Comments
<p>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.</p> <p>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.</p>	<p>On request by the defence</p> <p>On request by the defence</p>	<p>As soon as practicable</p> <p>As soon as practicable</p>	<p>s.590AJ(2)(e), s.590AK(2)</p> <p>s.590AJ(2)(f), s.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>
<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 para 5.11 as meaning a summary of the evidence and witnesses relied upon by the prosecution to prove the case)</p>	<p>Commencement of prosecution proceedings by summons, arrest or Notice to Appear</p>	<p>Within a reasonable time of any request made by the defence, and always prior to the initial appearance</p>	<p>para 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>

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Formal Requirements	Trigger	Timeline	Comments
Statements and exhibits nominated by defence at any case conference	Request made at case conference	Within 14 days of such request being made.	paras 17, 18 Note: In practice few case conferences are held. The CDPP makes available a copy of the brief (statements and exhibits) as soon as possible after defence legal representatives have been identified, or a defendant has indicated that they will not be legally represented.
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 Justices Act 1886	Within 14 days	para 19 "Partial brief" is defined in para 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.

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Full brief of evidence	<p>Summary matters - upon the matter being listed for trial.</p> <p>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.</p>	<p>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."</p> <p>Matters proceeding on indictment - within 35 days of the Commonwealth callover.</p>	<p>para 20.2 (summary matters) para 21.3 (matters proceeding on indictment) Note: The expression "full brief of evidence" is not defined.</p>
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Formal Requirements	Trigger	Timeline	Comments
<p>2011 Barristers' Rules (made pursuant to the Legal Profession Act 2007 (Qld)) - R.86 and 87</p> <p>Australian Solicitors Conduct Rules 2012 - R.29.5 and 29.6</p> <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>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 is aware of the material</p> <p>As soon as the prosecutor has decided not to disclose material.</p>	<p>As soon as practicable</p> <p>As soon as practicable</p>	

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 STATUTORY DISCLOSURE OBLIGATIONS - SOUTH AUSTRALIA

SUMMARY PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
There are no statutory requirements under South Australian legislation. The Common Law principles apply generally in relation to disclosure.			No legislative disclosure provisions
Before a matter can be listed for summary trial the parties have duties to confer and there can be a requirement for a pre-trial conference. Necessity to have disclosed the relevant documents prior to the conference			Rules 8 and 26 of the <i>Magistrates Court Rules 1992</i> (Criminal) apply
The Court may order production of documents under s20 Magistrates Court Act 1991 (SA). <i>Carter v Hayes</i> (1994) 61 SASR 451	Court order		

COMMITTAL PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
The procedure at committal is determined by whether the offence is a State or Commonwealth offence. If the matter only involves State offences (investigated by State police), then a "preliminary brief" is provided: s 108 Criminal Procedure Act. If the defendant pleads guilty at the committal appearance, an answer charge hearing will not be required and the Magistrates Court may (subject to s 116(1)) determine and impose sentence on the defendant for State offences, or commit the defendant to a superior court for sentence. If the defendant pleads not guilty after provision of the preliminary brief, the matter will be listed for an answer charge hearing (see below).	Whether the charge is State or Commonwealth.	Section 111 of the Criminal Procedure Act 1921 substantially re-enacts section 104 of the previous Summary Procedure Act 1921.	Rule 20 <i>Magistrates Court Rules 1992</i> (Criminal)
If the matter involves a Commonwealth offence, then the preliminary brief provisions don't apply and the prosecution must provide the court information as to the time required for preparation of the "committal brief" (see below): s 110. The court will then list the matter for an answer charge hearing.	If a State offence, the defendant's plea.	Where a charge of indictable offence is to proceed to an answer charge, the prosecutor must, at least 4 weeks before the date appointed for that hearing, file a committal brief that contains:	s111(1) <i>Criminal Procedure Act 1921</i> (SA) s111(2) and 123(6) continuing obligation of disclosure
If the matter is listed for an answer charge hearing, the prosecution must, at least 4 weeks before the hearing date, file in court and serve on defence the committal brief (see next column).		<ol style="list-style-type: none"> 1. Statements of witnesses (in the form of an affidavit) for the prosecution on which the prosecutor relies as tending to establish the guilty of the defendant 2. Copies of any documents on which the prosecutor relies as tending to establish the guilt of the defendant (other than sensitive material or documents that are of only peripheral relevance to the subject matter of the charge) 3. A document describing any other evidentiary material (including sensitive material or peripheral documents) 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 4. All other material relevant to the charge (whether relevant to the case for the prosecution or the case for the defence) that is available to the prosecution, except material exempt from production because of privilege or from some other reason. 	S111(4) requires affidavits and see Rule 43 of the Magistrates Court Rules (SA) sets out the rules for affidavits. Rule 43.01 specifies that an affidavit must be in accordance with Form 115. s 114 also provides specific requirements for ROIs, illiterate/child/disabled witnesses and "sensitive material" Service: S27 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.
		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.	However, 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.

CDPP Summary of State and Territory Disclosure Regimes
STATUTORY DISCLOSURE OBLIGATIONS - TASMANIA

SUMMARY PROCEDURE		
Formal Requirements	Timeline	Comments
<p>Rule 23 Justices Rules 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) Justices Act (1959) 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 by Tasmania Police is adhered to. After the first mention, the matter is adjourned for 4 weeks. During this time s56 Justices Act requires the defendant’s lawyer or the defendant to be served with:</p> <ul style="list-style-type: none"> • the complaint (if not already provided); • a summary of the material facts relevant to the charge; • the statements of all witnesses that have been obtained by a police officer or other person investigating; • 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. <p>The disclosure obligation is continuing. Section 57(2) Justices Act requires the prosecution to provide any statements or further statements from a witness obtained by the police or investigator to be provided to the defendant or their lawyer as soon as is reasonably practicable. If there has been a change to the material facts, a revised summary of material facts must be served as soon as is reasonably practicable; s57(3).</p>	<p>Complaint and summons should be served before the first appearance.</p> <p>Remaining disclosure to be made within the 4 week period of the adjournment after first mention. If this cannot be met, a further adjournment can 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; s55(4) Justices Act.</p> <p>Additional statements or revised summary of facts are to be served as soon as practicable.</p>	
COMMITTAL PROCEDURE		
Formal Requirements	Timeline	Comments

CDPP Summary of State and Territory Disclosure Regimes
STATUTORY DISCLOSURE OBLIGATIONS - TASMANIA

<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; s55(2) Justices Act (1959).</p> <p>For summons matters, Rule 23 Justices Rules 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) Justices Act (1959) 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 by Tasmania Police is adhered to. After the first mention, the matter is adjourned for 4 weeks. During this time s56 Justices Act requires the defendant's lawyer or the defendant to be served with:</p> <ul style="list-style-type: none"> • the complaint (if not already provided); • a summary of the material facts relevant to the charge; • the statements of all witnesses that have been obtained by a police officer or other person investigating; • 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. 	<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 s55(4) Justices Act.</p> <p>Additional statements are to be served as soon as practicable.</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>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 day set; s.60(1) Justice Act and Supreme Court Circular No. 13 of 2012. There is no statutory requirement for the Crown papers to be filed by then.</p>	<p>NB: For arrest matters for indictable offences which are capable of being dealt with summarily, police bail can be granted by the arresting officer making an oral statement of the charge to the custody sergeant without a complaint being filed at that stage. (Police bail: s34 Justices Act) A complaint will be required to be filed by the time of the first court appearance.</p>
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CDPP Summary of State and Territory Disclosure Regimes
STATUTORY DISCLOSURE OBLIGATIONS - TASMANIA

The disclosure obligation is continuing. Section 57(2) Justices Act requires the prosecution to provide any statements or further statements from a witness obtained by the police or investigator to be provided to the defendant or their lawyer as soon as is reasonably practicable. If there has been a change to the material facts, a revised summary of material facts must be served as soon as is reasonably practicable; s57(3).

Trial: Service and filing of indictment and Crown papers

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 served on the defendant's legal representative or unrepresented defendant

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.

Preliminary proceedings may be sought and ordered before or after an indictment is filed; Rule 3H *Criminal Rules 2006 (Tas)*.

Under legislation, s328 *Criminal Code (Tas)*, the requirement is only that 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.

Under rule 3H *Criminal Rules 2006* 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.

Sentence: Service of Crown papers

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 STATUTORY DISCLOSURE OBLIGATIONS - **TASMANIA**

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 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.

COMMITTAL DISCLOSURE REQUIREMENTS	
Act and Section	Summary
<p><i>Service and contents of hand-up brief</i></p> <p><i>Criminal Procedure Act 2009 (Vic) (CPA) s107-108 & s110</i></p>	<p>The informant must serve on the accused a hand-up brief at least 42 days before the committal mention, unless a Magistrate has fixed another period or the accused has given written consent to a lesser period (<i>Criminal Procedure Act 2009 (Vic) (CPA) s107-108</i>).</p> <p>The hand-up brief must contain a number of categories of material, including copies of all statements and exhibits and copies of 'any document relevant to the alleged offence that the prosecution does not intend to tender as an exhibit or a list of those documents' (<i>CPA 2009 s110</i>).</p>
<p>Inspection of exhibits</p> <p><i>CPA 2009 s115</i></p>	<p>The accused may inspect the exhibits at a time and place agreed between the accused and the informant (<i>CPA 2009 s115</i>).</p>

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STATUTORY DISCLOSURE OBLIGATIONS - **TASMANIA**

<p>Service of a plea brief</p> <p><i>CPA 2009 s116</i></p>	<p>If the accused provides written consent, at any time before service of a hand-up brief, the informant may serve a "plea brief" on the accused (<i>CPA 2009 (Vic) s116</i>).</p>
<p>Continuous disclosure obligations during committal</p> <p><i>CPA 2009 s111</i></p>	<p>Disclosure obligations are ongoing. When the informant serves a hand up brief and subsequently obtains information or material that would have been disclosed as part of that brief, he or she must supplement the previous brief (<i>CPA 2009 s111</i>).</p>

CDPP Summary of State and Territory Disclosure Regimes
 STATUTORY DISCLOSURE OBLIGATIONS - **TASMANIA**

<p><i>Specific committal disclosure obligations</i> <i>CPA 2009 s118, s119(e), s122, s125(1)(e), s131</i></p>	<p>A joint case direction notice must be filed by the parties at least 7 days before the committal mention hearing (<i>CPA 2009 s118</i>).</p> <p>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 (<i>CPA 2009 s119(e)</i>).</p> <p>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 (<i>CPA 2009 s122</i>).</p> <p>At a committal mention hearing the Magistrates' Court may hear and determine any objection to disclosure of material (<i>CPA 2009 s125(1)(e)</i>).</p> <p>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 (<i>CPA 2009 s131</i>).</p>
<p>POST COMMITTAL DISCLOSURE REQUIREMENTS</p>	
<p>Act and Section</p>	<p>Summary</p>

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 STATUTORY DISCLOSURE OBLIGATIONS - **TASMANIA**

<p>Depositions and transcript to be provided to accused post committal</p> <p><i>CPA 2009 s147</i></p>	<p>An accused committed for trial is entitled as soon as possible after being committed to receive a copy of the depositions and transcript, any recording of evidence and to examine any exhibits (<i>CPA 2009 s147</i>).</p>
<p>Indictment to be served on accused</p> <p><i>CPA 2009 s171</i></p>	<p>The DPP must, as soon as practicable after an indictment is filed, serve on the accused a copy of the indictment (<i>CPA 2009 s171</i>).</p>
<p>Service of prosecution opening and admissions prior to trial</p> <p><i>CPA 2009 s182</i></p>	<p>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 how the prosecution will put its case and the acts, facts, matters and circumstances being relied upon (<i>CPA 2009 s182</i>).</p>
<p>Service of defence response to prosecution opening and notice of admissions</p> <p><i>CPA 2009 s183</i></p>	<p>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 notice of 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</p>

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 STATUTORY DISCLOSURE OBLIGATIONS - **TASMANIA**

	state whether the accused will give evidence (<i>CPA 2009 s183</i>).
<p>Ongoing obligation of disclosure post committal</p> <p><i>CPA 2009 s185 & s416</i></p>	<p>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 accused, or made available for inspection, as soon as practicable (<i>CPA 2009 s185</i>).</p> <p>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 which the prosecution is required or permitted to withhold under the CPA or any rule of law (<i>CPA 2009 s416</i>).</p>
<p>Disclosure of evidence that is child abuse material</p> <p><i>CPA 2009 s185A</i></p>	<p>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 (<i>CPA 2009 s185A</i>)</p>
<p>Disclosure of address or telephone number of witness</p> <p><i>CPA 2009 s186</i></p>	<p>Subject to a contrary order from the court, the prosecution must not disclose the address or telephone number of a witness (<i>CPA 2009 s186</i>)</p>

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STATUTORY DISCLOSURE OBLIGATIONS - TASMANIA

<p>Defence request for convictions of prosecution witnesses</p> <p><i>CPA 2009 s187</i></p>	<p>The accused may request the prosecution provide particulars of previous convictions of any prosecution witness (<i>CPA 2009 s187</i>).</p>
<p>Additional prosecution evidence</p> <p><i>CPA 2009 s188</i></p>	<p>If the prosecution intends to call additional evidence from a witness it must serve and file a notice of intention and a copy of the statement of the proposed witness <i>CPA 2009 s188</i></p>
<p>Alibi evidence</p> <p><i>CPA 2009 s190</i></p>	<p>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 (<i>CPA 2009 s190</i>).</p>
<p>Expert report obligations</p> <p><i>Supreme Court of Victoria, Practice Note SC CR 3, 8.1 – 8.2 (and County Court Practice Note equivalent)</i></p>	<p>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. 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. 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. (<i>Supreme Court of Victoria, Practice Note SC CR 3, 8.1 – 82 (and County Court Practice Note equivalent)</i>)</p>

CDPP Summary of State and Territory Disclosure Regimes
 STATUTORY DISCLOSURE OBLIGATIONS - VICTORIA

SUMMARY PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
<p>S13 CPA requires provision of a Form 8 with the Charge Sheet and Summons to be served on the accused;</p> <p>S 24 (Notice to Appear), S35 (preliminary brief) and s39 (full brief of evidence) details when briefs of evidence may be requested and must be disclosed.</p> <p>s41 CPA requires disclosure in prescribed form (Form 11 Magistrates Court Criminal Procedure Rules 2009) of:</p> <p>s41(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>s41(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>S42 CPA creates continuing disclosure obligation even after the full brief of evidence has been served.</p>	<p>To be provided with the Charge and Sheet and Summons when served on the accused.</p> <p>Upon written request of accused (s39(1) CPA), Full brief must be served.</p> <p>Any further relevant information coming into the possession of the prosecution post disclosure of the full brief of evidence.</p>	<p>Advises accused of rights to access VLA and request pre-hearing disclosure from the Informant.</p> <p>s39(2) CPA - At least 14 days before contest mention or if no contest mention, at least 14 days before the summary hearing.</p> <p>Within a reasonable time of obtaining the material.</p>	<p>Obligation arises irrespective of plea.s41(1)(f) CPA - If Informant refuses to disclose any information document or thing that is required to be included in the full brief, a written notice identifying grounds is required;</p> <p>s42 CPA – continuing obligation of disclosure; s43 CPA Accused may request material not provided, apply to court for order requiring disclosure; s46 CPA – Accused may apply to court for order requiring disclosure.</p>

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STATUTORY DISCLOSURE OBLIGATIONS - VICTORIA

COMMITTAL PROCEDURE			
Formal Requirements	Trigger	Timeline	Comments
<p>S13 CPA requires provision of a Form 9 with the Charge Sheet and Summons to be served on the accused;</p> <p>S110 CPA requires disclosure in prescribed form of hand-up brief(Form 30 Magistrates Court Criminal Procedure Rules 2009) of:</p> <p>S110(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>S110(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> <p>S188: If DPP intends to call evidence from a witness not included in the committal depositions, they must serve a Notice of Additional Evidence and provide a copy of the statement of the witness.</p>	<p>To be provided with the Charge and Sheet and Summons when served on the accused.</p> <p>s107 CPA (subject to ss107(2), where plea brief has been served) Informant must serve Hand Up brief which complies with s110 CPA.</p> <p>Evidence obtained post committal.</p>	<p>Advises accused of rights to access VLA and request pre-hearing disclosure from the Informant.</p> <p>s108(1) CPA At least 42 days before committal mention hearing, (which is normally held approximately 12 weeks after person charged.</p> <p>Before the witness is called at a trial.</p>	<p>S111 CPA – continuing obligation of disclosure;</p> <p>Where written consent to service of plea brief given to Informant and DPP, (s116(2) CPA), Informant may serve plea brief at any time before service Hand up brief, s116(1). S117 – contents of plea brief</p> <p>Note also s416 Disclosure of material by prosecution:</p> <ol style="list-style-type: none"> 1. Nothing in this Act derogates from a duty otherwise imposed on the prosecution to disclose to the accused material relevant to a charge. 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>May result in request for a Bascha hearing before the trial commences.</p>
COMMITTAL DISCLOSURE REQUIREMENTS			
Act and Section		Summary	

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STATUTORY DISCLOSURE OBLIGATIONS - VICTORIA

<p>Service and contents of hand-up brief</p> <p><i>Criminal Procedure Act 2009 (Vic) (CPA) s107-108 & s110</i></p>	<p>The informant must serve on the accused a hand-up brief at least 42 days before the committal mention, unless a Magistrate has fixed another period or the accused has given written consent to a lesser period (Criminal Procedure Act 2009 (Vic) (CPA) s107-108).</p> <p>The hand-up brief must contain a number of categories of material, including copies of all statements and exhibits and copies of 'any document relevant to the alleged offence that the prosecution does not intend to tender as an exhibit or a list of those documents' (CPA 2009 s110).</p>
<p>Inspection of exhibits</p> <p><i>CPA 2009 s115</i></p>	<p>The accused may inspect the exhibits at a time and place agreed between the accused and the informant (CPA 2009 s115).</p>
<p>Service of a plea brief</p> <p><i>CPA 2009 s116</i></p>	<p>If the accused provides written consent, at any time before service of a hand-up brief, the informant may serve a "plea brief" on the accused (CPA 2009 (Vic) s116).</p>
<p>Continuous disclosure obligations during committal</p> <p><i>CPA 2009 s111</i></p>	<p>Disclosure obligations are ongoing. When the informant serves a hand up brief and subsequently obtains information or material that would have been disclosed as part of that brief, he or she must supplement the previous brief (CPA 2009 s111).</p>

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 STATUTORY DISCLOSURE OBLIGATIONS - **VICTORIA**

Specific committal disclosure obligations

CPA 2009 s118, s119(e), s122, s125(1)(e), s131

A joint case direction notice must be filed by the parties at least 7 days before the committal mention hearing (*CPA 2009* s118).

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 (*CPA 2009* s119(e)).

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 (*CPA 2009* s122).

At a committal mention hearing the Magistrates' Court may hear and determine any objection to disclosure of material (*CPA 2009* s125(1)(e)).

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 (*CPA 2009* s131).

POST COMMITTAL DISCLOSURE REQUIREMENTS	
Act and Section	Summary
Depositions and transcript to be provided to accused post committal <i>CPA 2009</i> s147	An accused committed for trial is entitled as soon as possible after being committed to receive a copy of the depositions and transcript, any recording of evidence and to examine any exhibits (<i>CPA 2009</i> s147).
Indictment to be served on accused <i>CPA 2009</i> s171	The DPP must, as soon as practicable after an indictment is filed, serve on the accused a copy of the indictment (<i>CPA 2009</i> s171).
Service of prosecution opening and admissions prior to trial <i>CPA 2009</i> s182	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 how the prosecution will put its case and the acts, facts, matters and circumstances being relied upon (<i>CPA 2009</i> s182).

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STATUTORY DISCLOSURE OBLIGATIONS - VICTORIA

<p>Service of defence response to prosecution opening and notice of admissions</p> <p><i>CPA 2009 s183</i></p>	<p>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 notice of 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 (CPA 2009 s183).</p>
<p>Ongoing obligation of disclosure post committal</p> <p><i>CPA 2009 s185 & s416</i></p>	<p>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 accused, or made available for inspection, as soon as practicable (CPA 2009 s185).</p> <p>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 which the prosecution is required or permitted to withhold under the CPA or any rule of law (CPA 2009 s416).</p>
<p>Disclosure of evidence that is child abuse material</p> <p><i>CPA 2009 s185A</i></p>	<p>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 (CPA 2009 s185A)</p>
<p>Disclosure of address or telephone number of witness</p> <p><i>CPA 2009 s186</i></p>	<p>Subject to a contrary order from the court, the prosecution must not disclose the address or telephone number of a witness (CPA 2009 s186)</p>
<p>Defence request for convictions of prosecution witnesses</p> <p><i>CPA 2009 s187</i></p>	<p>The accused may request the prosecution provide particulars of previous convictions of any prosecution witness (CPA 2009 s187).</p>
<p>Additional prosecution evidence</p> <p><i>CPA 2009 s188</i></p>	<p>If the prosecution intends to call additional evidence from a witness it must serve and file a notice of intention and a copy of the statement of the proposed witness (CPA 2009 s188).</p>

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STATUTORY DISCLOSURE OBLIGATIONS - **VICTORIA**

<p>Alibi evidence</p> <p><i>CPA 2009 s190</i></p>	<p>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 (CPA 2009 s190).</p>
<p>Expert report obligations</p> <p><i>Supreme Court of Victoria, Practice Note SC CR 3, 8.1 – 8.2 (and County Court Practice Note equivalent)</i></p>	<p>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. 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. 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>(Supreme Court of Victoria, Practice Note SC CR 3, 8.1 – 8.2 (and County Court Practice Note equivalent))</p>

CDPP Summary of State and Territory Disclosure Regimes
STATUTORY DISCLOSURE OBLIGATIONS - WESTERN AUSTRALIA

Formal Requirements	Trigger	Timeline	Comments
<p>Full disclosure s42</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 CPA. Section 42(5) requires that the following must be served on the accused:</p> <p>a) <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 s35) to, inter alia, mean:</p> <ol style="list-style-type: none"> i. Any written statement signed by the accused relevant to the charge. ii. Any written (transcribed) record of interview with the accused (signed or unsigned) relevant to the charge. iii. Any electronically recorded interview (as defined by s115, <i>Criminal Investigation Act 2006</i>) relevant to the charge. iv. 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. 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>b) <u>Evidentiary material</u> relevant to the charge This is defined in section 42(1) to mean:</p> <ol style="list-style-type: none"> i. a copy of <ul style="list-style-type: none"> ● every statement that has been made in accordance with Schedule 3 clause 4 (formalities of witness statements) by; ● every recording that has been made in accordance with Schedule 3 clause 6 (conduct of examinations of witnesses) of evidence given by; ● every recording that has been made under the <i>Evidence Act 1906</i> (WA); and ● 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. ii. 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; iii. a copy of any document or object to which a statement or recording referred to in paragraph (a) refers iv. a copy of every other document or object that the prosecutor intends to tender in evidence at trial; and v. a copy of every other document or object that may assist the accused’s defence, that is in the possession of the organisation or person who investigated the offence <p>c) Prescribed documents. (As at May 2016, there are no prescribed documents). Section 42(2) 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 (subsection (b)).</p> <p>3. Notices must also be served of the following :</p> <p>Subsection 42(2)(a) Notice describing evidentiary material which was impracticable to copy and stating where and when it may be inspected;</p> <p>Subsection 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>Where no plea of guilty is entered following initial disclosure</p>	<p>As soon as practicable after the charge is adjourned under s41(4) and prior to the s44 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) CPA provide for ongoing disclosure of any newly obtained material to the accused as soon as practicable.</p>

CDPP Summary of State and Territory Disclosure Regimes
STATUTORY DISCLOSURE OBLIGATIONS - WESTERN AUSTRALIA

Formal Requirements	Trigger	Timeline	Comments
<p>Service and filing of the indictment</p> <p>The indictment compliant with Schedule 1 CPA must be filed in the Superior Court and served on the accused</p>	<p>Committal to a superior court</p>	<p>No later than 42 days after the date of committal (CP Rules r20) – unless (District Court Practice Direction Crim 2 of 2008.)</p> <p>No accused can be required to enter a plea</p>	<p>An application to extend time to lodge the indictment may be made orally, and after the due date, although a Court may</p>
<p>Superior Court Disclosure – for sentence</p> <p>Section 95(5) CPA requires lodgement with Court of:</p> <p>a) a statement of the material facts of the charge;</p> <p>b) any confessional material of the accused that is relevant to the</p> <p>d) a copy of the accused’s criminal record;</p> <p>e) a copy of the section 45 Certificate of Compliance;</p> <p>f) any other prescribed document (none prescribed as at May 2016)</p>	<p>Committal for sentence to a superior court</p>	<p>No later than 42 days after committal (CP Rules r20(1))</p>	
<p>Superior Court Disclosure – for trial</p> <p>S95(6) CPA requires lodgement with court of</p> <p>a) a statement of the material facts of the charge;</p> <p>b) any confessional material of the accused that is relevant to the</p> <p>c) a copy of the accused’s criminal record;</p> <p>d) a copy of the section 45 Certificate of Compliance;</p> <p>e) any other prescribed document (none prescribed as at May 2016)</p>	<p>Committal for trial to a superior court</p>	<p>No later than 42 days after committal (CP Rules r20(2))</p>	
<p>Certificate of Compliance s45 CPA</p> <p>The investigating officer must provide to the CDPP a signed Certificate</p> <p>s45(5) The Certificate of Compliance must:</p> <p>a) Be made by a person who is involved in, and who has knowledge of, the investigation of the charge/charges;</p> <p>b) Certify that section 35 and, if the case requires, section 42 have been complied with;</p>	<p>s45(2) CPA - following ‘fast track’ guilty plea</p>	<p>With the brief, i.e., within 42 days after committal</p>	<p>Note: s45(5)(b)(ii) refers to “the relevant authorised officer”. This is defined in s80(1) to mean the authorised officer who is responsible for the prosecution of the charge in a superior court</p> <p>The Certificate of Compliance forms part of the brief lodged with the superior court and served on the accused: s95(5) (sentence briefs) and 95(6) (trial briefs) CPA.</p>

CDPP Summary of State and Territory Disclosure Regimes
STATUTORY DISCLOSURE OBLIGATIONS - WESTERN AUSTRALIA

Formal Requirements	Trigger	Timeline	Comments
<p>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;</p> <p>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</p> <p>e) Contain any information prescribed (none prescribed as at October 2012).</p>	<p>s45(3) CPA - 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 s45 certificate that is false in a material particular (penalty: fine \$5,000): s 45(6) CPA.</p>
<p>Possible Consequences of Non-Disclosure</p> <ul style="list-style-type: none"> • adjournment of the trial, or discharge of the jury (s97(2) CPA) • adverse comment to the jury by the court, counsel for the accused person, or the prosecution (s97(4) CPA); or • a ground for appeal or lead to a miscarriage of justice. 			
<p>Exemptions from Disclosure</p> <p>Disclosure obligations under CPA s42, s61 and s95 are subject to certain</p> <ul style="list-style-type: none"> a) the <i>Evidence Act (WA) 1906</i> sections 19C and 106HB(3); b) any other written law that relates to the disclosure of specific information; c) the law on privilege; and d) the law on public interest immunity. <p>s138 CPA allows any party to seek orders from the court that either</p>			

CDPP Summary of State and Territory Disclosure Regimes
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Act and Section	Summary
<p>Preliminary disclosure – Criminal Procedure Act 2004 (WA) (CPA) s 35</p>	<p>Indictable offences – s 35(4)</p> <p>As soon as practicable after serving a prosecution notice that contains an indictable offence on an accused, the prosecutor must serve the accused with:</p> <ul style="list-style-type: none"> (1) A written statement of material facts; (2) An approved notice advising of the existence or non-existence of confessional material of the accused that is relevant to each charge; (3) An approved notice advising that the accused does or does not have a criminal record; (4) Any document that is prescribed (none prescribed as at July 2019). <p>As soon as practicable after being served the notices (documents (2)-(3), above) copies of the relevant material must be made available to the accused or their legal practitioner: s 35(11). 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 (called a ‘fast-track’ plea of guilty): s 41(3).</p> <p>Timing for service – s 35(9)</p> <p>The materials to be served 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: s 35(10).</p>

CDPP Summary of State and Territory Disclosure Regimes
STATUTORY DISCLOSURE OBLIGATIONS - WESTERN AUSTRALIA

Pre-committal disclosure for charges to proceed on indictment – CPA 42, 45

If after the prosecution has complied with the s 35 preliminary disclosure requirements, the accused enters any plea other than a plea of guilty to the charge or elects not to plead to the charge, the court must adjourn the charge to a disclosure/committal hearing on a new court date that allows a reasonable time for the prosecutor to comply with s 42: s 41(4).

As soon as practicable after a charge is adjourned under s 41(4), s 42(5) requires that the prosecutor must serve the accused with:

- (1) Any confessional material of the accused that is relevant to the charge and that the accused has not already received from the prosecutor;
- (2) Any evidentiary material that is relevant to the charge;
- (3) Any other document that is prescribed

At a disclosure/committal hearing, the Court must, if satisfied that the prosecution has complied with s 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: s 44(1)(a).

If the Court is not satisfied that the prosecution has complied with s 42, the court must adjourn the charge to another disclosure/committal hearing that allows reasonable time for the prosecutor to comply with s 42, and must order the prosecutor to comply with s 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: s 44(1)(b).

The obligation of disclosure under s 42(5) is an 'ongoing' one: s 42(6).

CDPP Summary of State and Territory Disclosure Regimes
STATUTORY DISCLOSURE OBLIGATIONS - WESTERN AUSTRALIA

Post-committal disclosure for charges to proceed on indictment – CPA ss 45, 95

Indictments for all matters committed to the District Court, whether for sentence or trial, must be lodged within 42 days after the date of committal: District Court Practice Direction 9.2. As soon as practicable after lodgement, the prosecutor must serve a copy of the indictment upon the accused: CPA s 85(3).
Matters committed for trial – ss 45(3), 95(6)

Within the prescribed period after an accused is committed for trial on a charge (currently 21 days), s 45(3) requires the prosecutor to give to the relevant authorised officer (i.e. the CDPP):

- (1) A copy of the statement of material facts last served on the accused under s 35;
- (2) Any confessional material of the accused that is relevant to the charge;
- (3) Any evidentiary material that is relevant to the charge;
- (4) Anything that has been served on the accused, as required by the ‘ongoing’ disclosure obligation under s 42(6);
- (5) A copy of the accused’s criminal record;
- (6) A signed certificate pursuant to s 45(5) (“s 45 certificate”). In the s 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.

Within the prescribed period after an accused is committed for trial on a charge (currently 42 days), s 95(6) requires the relevant authorised officer to lodge the following, and if any of the following has not yet been served on or received by the accused, serve the accused with it:

- (1) A copy of the statement of material facts for the charge;
- (2) Any confessional material of the accused that is relevant to the charge;
- (3) Any evidentiary material that is relevant to the charge;
- (4) A copy of the accused’s criminal record;
- (5) A copy of the signed s 45 certificate;
- (6) Any other document that is prescribed (none prescribed as at July 2019).

The obligation of disclosure is an ‘ongoing’ one: s 95(9).

Matters committed for sentence (plea of guilty at disclosure/committal hearing) – ss 45(3), 95(5)

CDPP Summary of State and Territory Disclosure Regimes
STATUTORY DISCLOSURE OBLIGATIONS - WESTERN AUSTRALIA

The obligation of disclosure is an 'ongoing' one: s 95(9).

Matters committed for sentence (plea of guilty at disclosure/committal hearing) – ss 45(3), 95(5)

Within the prescribed period after committal (currently 21 days), the prosecutor must give the relevant authorised officer (i.e. the CDPP) the documents outlined above, as required by s 45(3).

Within the prescribed period after an accused is committed for sentence on a charge (currently 42 days), s 95(5) requires the relevant authorised officer to lodge the following, and if any of the following has not yet been served on or received by the accused, serve the Accused with it:

- (1) A copy of the statement of material facts for the charge;
- (2) Any confessional material of the accused that is relevant to the charge;
- (3) A copy of the accused's criminal record;
- (4) A copy of the signed s 45 certificate;
- (5) Any other document that is prescribed (none prescribed as at July 2019).

The obligation of disclosure is an 'ongoing' one: s 95(9).

Matters committed for sentence (fast-track plea of guilty) – ss 45(2), 95(5)

Within the prescribed period after an accused is committed for sentence (currently 21 days), s 45(2) requires the prosecutor to give the relevant authorised officer (i.e. the CDPP):

- (1) A copy of the statement of material facts last served on the accused under s 35;
- (2) Any confessional material of the accused that is relevant to the charge;
- (3) A copy of the accused's criminal record;
- (4) A signed s 45 certificate.

Within the prescribed period (currently 42 days after committal), the authorised officer must then lodge the documents with the superior court, and provide copies to the accused if not previously done so, in accordance with s 95(5) (as outlined above).

The obligation of disclosure is an 'ongoing' one: s 95(9).

CDPP Summary of State and Territory Disclosure Regimes
STATUTORY DISCLOSURE OBLIGATIONS - WESTERN AUSTRALIA

<p>Defence disclosure obligations – CPA ss 62, 96</p>	<p>For indictable charges proceeding summarily, listed State simple offences, and charges proceeding on indictment, 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 content cannot be proven, and written notice of any objection to evidence to be called or adduced at the time.</p> <p>For the matters proceeding summarily, disclosure must be at least 14 days before the trial date: s 62(4). For matters proceeding on indictment, the period prescribed by regulations is at least 28 days before the trial date.</p>
<p>Failure to comply with disclosure obligations – CPA ss 63, 97</p>	<p>For both matters proceeding summarily and those proceeding on indictment, if the court is satisfied that a party has failed to comply with their disclosure obligations, the court can adjourn the trial to enable the party in breach of the requirement to obey it, and for the other party to investigate any evidence or other matter disclosed in accordance with the requirement.</p> <p>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>For matters proceeding on indictment – s 97 In addition to the above, if the trial is trial by jury, the court may discontinue the trial, discharge the jury, and adjourn the prosecution. The failure by a party to obey a disclosure requirement may be the subject of adverse comment to the jury by the judge, the accused or the prosecutor.</p>
<p>Exemptions and dispensations from disclosure obligations – CPA ss 137A, 138</p>	<p>Section 137A expressly states that the operations of ss 42, 61 and 95 of the CPA are subject to various exceptions, including the law on privilege and the law of public interest immunity.</p> <p>Section 138 enables a court on its own initiative to make, or a party to apply for, an order that dispenses with all or part of the requirements for disclosure, if there is good reason to do so and no miscarriage of justice will result. Orders can also be made to shorten or extend the time period for obeying requirements, or as to any other matter that the court considers is just.</p>