
Issued: 7 November 2019

Indictable offences

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

1. The provisions apply to a “relevant proceeding”, which is defined in s.590AD to mean:
 - a. A committal proceeding, or a trial on indictment; or
 - b. 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).
2. 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.
3. Nothing requires the prosecution to disclose information which it is otherwise unlawful to disclose (s.590AC(1)).

Mandatory disclosure

4. A copy of each of the following:
 - a. 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 s.590AD by reference to the *Evidence Act 1977*, s.21AC), a written notice naming the child and describing why they may be an affected child.
 - 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.
 - 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).
 - g. Any report of any test or forensic procedure relevant to the proceeding and in the prosecution's possession.
 - h. A written notice describing any test or forensic procedure, including one that is not yet completed, on which the prosecution intends to rely.
 - 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.)
5. 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, for example, the reversal of the onus of proof, or a submission for an alternative verdict.)

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6. Written notice of, or a copy of, anything else in the prosecution's possession prescribed by regulation.
7. Pursuant to s.590AI(2), this material must be disclosed as soon as practicable, but at least:
 - a. 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;
 - 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.
8. 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.
9. The obligation to disclose an exculpatory thing continues post trial until the accused is discharged or acquitted or dies (that is, the obligation continues indefinitely even after the person has been convicted and has been unsuccessful on appeal) (s.590AL(3)). Exculpatory material is 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."

Disclosure on request

10. The matters listed below, which are disclosable on request, must all be disclosed as soon as practicable:
 - a. Particulars of a charge against the accused if a proposed prosecution witness is or may be an affected child. Must be disclosed as soon as practicable (s.590AJ(2)(a), s.590AK(2)).
 - b. A criminal history of a proposed witness for the prosecution that is in the possession of the prosecution (s.590AJ(2)(b), s.590AK(2)). "Possession of the prosecution" is given an extended definition in s.590AD. 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.
 - c. A copy or notice of any thing in the possession of the prosecution that may reasonably be considered to be adverse to the reliability or credibility of a proposed witness for the prosecution (s.590AJ(2)(c), s.590AK(2)).
 - d. Notice of anything in the possession of the prosecution that may tend to raise an issue about the competence of a proposed witness for the prosecution to give evidence in the proceeding (s.590AJ(2)(d), s.590AK(2)).

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- e. 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 (s.590AJ(2)(e), s.590AK(2)).
- f. A copy or notice of any other thing in the possession of the prosecution that is relevant to the proceeding but on which the prosecution does not intend to rely at the proceeding (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 possession does not rely.

Summary Offences

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- 11. The Practice Direction defines “Prosecution” to mean either the DPP or Police Prosecution Corps, but should be read to include OWHSP.
- 12. Prior to the initial appearance, and within a reasonable time of any request, a statement of facts is to be delivered to the Defence by the prosecution which had carriage of the matter at the time the request was made. If there has been no earlier request for a Statement of Facts, it is to be handed personally to a defendant, who is not legally represented, at an appropriate time before his/her first appearance.
- 13. Written notices which may be given pursuant to Chapter 62 Chapter Division 3 may, in addition to hard copy documents, be given by means of electronic communication.
- 14. In the event that the defence requests the Prosecution to provide to it certain specified statements and/or exhibits then the Prosecution will make copies of the same available for collection by the defence (and advise the Defence of same) within 14 days of the request or such longer time as directed by the Court.
- 15. The full brief of evidence must be made available by the Prosecution for collection within 35 days of the matter being set for trial and at least 14 days prior to the date set for the hearing of the trial. “Full brief”, means a brief which contains copies of signed statements of witnesses and exhibits upon which the prosecution proposes to rely on in the proceeding and 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 defendant;
- 16. Briefs of evidence and any specified statements and/or exhibits shall have the statements endorsed with original signatures.

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17. "Specified statements and/or exhibits" means statements of the prosecution witnesses who will provide the "substantial evidence" in the matter and copies of exhibits of substantial evidence as requested by the defence or prosecution for the purposes of finalising a case conference.
18. "Substantial evidence" means the evidence which tends to prove an offence but does not include corroborative evidence or continuity evidence or evidence of ownership (except where it is expected that such evidence will be a major point of the litigation).

Professional Rules

2011 Barristers' Rules (made pursuant to the Legal Profession Act 2007 (Qld)) - R.86 and 87 Australian Solicitors Conduct Rules 2012 - R.29.5 and 29.6

19. 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.
20. 87/29.6 - A prosecutor who has decided not to disclose material to the opponent under Rule 86/29.5 must consider whether:
 - (a) the charge against the accused to which such material is relevant should be withdrawn; and
 - (b) the accused should be faced only with a lesser charge to which such material would not be so relevant. That consideration must occur as soon as practicable after the prosecutor has decided not to disclose material.