SUMMARY CASE DISCLOSURE IN TASMANIA

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It is fundamental to the administration of justice that the Prosecution or a Prosecuting Agency discloses the case against the accused.[1] The importance of this was recognised in indictable crimes with Parliament enacting sections 56 and 57 of the *Justices Act* 1959 (Tas). Unfortunately, for persons accused of summary offences in Tasmania, there is no statutory rule requiring the police or police prosecution to disclose the case against the defendant. I am reliably informed that for many years Tasmanian practitioners undertook summary matters without any information whatsoever! Nowadays, Tasmanian lawyers are required to rely upon the *Right to Information Act* 2009 (Tas) as the basis for disclosure in summary criminal cases. Reliance on the *Right to Information Act* is problematic, largely because disclosure is not timely, often incomplete and the *Right to Information Act* is not drafted with criminal prosecutions in mind. By contrast, Victoria has summary case disclosure laws which are contained in the *Criminal Procedure Act* 2009 (Vic). Summary case disclosure laws create fairness and efficiency within the criminal justice system, whilst promoting good prosecution procedure. This article will discuss the Victorian summary case disclosure laws and argue that Tasmania should implement summary case disclosure laws.

THE VICTORIAN RULES

In Victoria, the *Criminal Procedure Act* covers all aspects of criminal procedure. In particular the Act was designed to consolidate criminal procedure laws in Victoria, which had for many years been voluminous, outdated, and complex.[2] In addition, the *Criminal Procedure Act* seeks to facilitate the early resolution of cases by introducing preliminary brief of evidence and full brief of evidence disclosure laws for summary criminal matters.

In the Second Reading Speech for the *Criminal Procedure Bill* 2008, Victorian Attorney-General Robert Hulls stated the following regarding the advantages of summary case disclosure laws:

> "If a Notice-To-Appear [summons] is issued and a charge sheet [complaint] is filed, the bill provides that the prosecution must prepare a preliminary brief and serve this within *seven days* of filing the charge sheet (emphasis added). This will always be before the first court date. Clause 37 sets out what must be contained in a preliminary brief.
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> This early provision of information will assist in early resolution of cases.
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> The benefits of the Notice-To-Appear process include reducing delay in the commencement of proceedings, requiring personal service of the notice and providing more information to the defendant at an earlier stage."[3]

PRELIMINARY CASE DISCLOSURE

Once a Notice-To-Appear is issued, the defendant must be served with or can request a preliminary brief. A preliminary brief sets out all of basic information required to

assist the defendant and lawyers determine whether the case can proceed to hearing (or contest mention) or whether it should resolve by way of a guilty plea.

Section 35 *Criminal Procedure Act* states that a defendant is entitled to preliminary case disclosure within 14 days of making a request to the informant (The police officer laying complaint(s) against the defendant). Section 37 defines what must be contained in a preliminary brief.[4] Accordingly, within 14 days of being charged, the defendant and their lawyer knows the nature of the charges, the factual basis for the charges, the names of witnesses, the prior criminal history of the defendant (which is up to date at the time of service!) and most importantly it must contain the sworn statement of the informant police officer which clearly sets out the case against the defendant.[5] This sworn statement is comprehensive and clearly sets out the case for the prosecution by providing the factual basis, witness names, a list of exhibits and any admissions allegedly made by the defendant.[6] The provision of this statement can greatly assist lawyers in advising their clients about whether to plead guilty or not guilty at an early stage.

FULL BRIEF DISCLOSURE

Once preliminary disclosure has been obtained the full disclosure provisions come into operation. These laws are designed to ensure that a defendant person has reasonable notice of the case against them.

Full brief disclosure may be obtained by writing to the informant and requesting a copy of the full brief of evidence. Section 39 of the *Criminal Procedure Act* further requires that the informant must serve the full brief on the defendant at least 14 days before a contest mention, in cases where a contest mention is not held, the full brief is to be served 14 days prior to a summary hearing. In the event that an informant cannot meet the deadlines for service of the full brief, an application can be made under s39(3) of the Act which grants the power to a Magistrate to vary the date for service of a full brief.

Section 41(2) *Criminal Procedure Act* sets out the requirements for the contents of a full brief of evidence. It is a comprehensive section, requiring the defendant be served with (among other things) witness statements, the record of interview, lists of witnesses and evidence, as well as photographs of any exhibits and copies of documents to be tendered in evidence.

In addition to preliminary and full brief disclosure laws, s42 *Criminal Procedure Act* obligates informants to disclose any information, document or thing that comes into the informant's possession or to the informant's notice that relates to the case against the defendant. This is a necessary section that ensures that informant police officers are disclosing any evidence that comes to their attention or into their possession. This is fundamental in criminal cases as evidence of an exculpatory nature may surface after charge sheets are filed.

DISCUSSION

Lawyers have a duty to ensure that cases are progressed in a timely fashion and so it is astonishing that summary case disclosure laws do not exist in Tasmania. As a matter of policy, disclosure in summary cases can assist to reduce Magistrates Court case backlog by moving cases to plea or hearing in a timely fashion. At present,

disclosure is received at extremely late stages in proceedings and only after a plea of Not Guilty is entered. Consequently, hearings are being scheduled for cases that could have been resolved sooner if summary case disclosure laws existed in Tasmania.

The advantages of preliminary and full brief disclosure and legislated timeframes for disclosure are also obvious. Providing the defendant with access to the whole of the prosecution case in a reasonable timeframe allows lawyers to prepare hearings or pleas with sufficient notice. Importantly, this ensures fairness to the defendant. Additionally, receipt of full brief disclosure prior to contest mention can assist police, prosecution and lawyers to refine the scope of the issues in the case, thereby reducing the overall time required for the hearing. Importantly, full brief disclosure requires police officers to be responsible for conducting timely investigations, which in turn ensures that the file is complete at the time full brief disclosure is made and that prosecutions are not unduly delayed.

CONCLUSION

The implementation of the *Criminal Procedure Act* 2009 in Victoria has provided defendants with the right to disclosure in summary cases. Disclosure must be timely and must meet certain legislated standards. The result is an efficient prosecution process that resolves cases faster and with a reduced burden on the courts. Importantly, the Victorian summary case disclosure laws create fairness within the criminal justice system. Tasmania by contrast languishes in the past, where unfairness to the defendant is par for the course. As a profession we need to be advocating for summary case disclosure laws, because the *Right to Information Act* is simply the wrong vehicle for obtaining disclosure and does not encourage efficiency. The introduction of summary case disclosure laws will make the prosecution and defence of summary crime more efficient, will reduce delays and encourage efficient policing and prosecution practises.

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[1] *Cannon v Tahche* (2002) 5 VR 317 (CA) at 340 per Winneke, P., Charles and Chernov, JJ.A.
[2] Parliament of Victoria, Legislative Assembly, Second Reading Speech , *Criminal Procedure bill* 2008, 4 December 2008
[3] *Ibid*
[4] See s37(1) *Criminal Procedure Act* 2009 (Vic)
[5] Section 37(2) *Criminal Procedure Act* 2009 (Vic) sets out what the sworn statement must include.
[6] Sect37(2)(a)-(e) *Criminal Procedure Act* 2009 (Vic)