

Criminal Procedure Act 2009 Amendments

Friday, 18 November 2022

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Webinar housekeeping

- All attendees will be on mute and their cameras turned off for the entire webinar
- We have BD tech support live to assist with any technical issues
- Use the chat function for any comments/technical issues
- Use the Q&A function for specific questions related to the webinar content – Questions will be addressed at the end of the webinar
- There will be a post webinar survey link sent at the end of the webinar. We value attendee feedback

Why changes were introduced



Why changes were introduced

- Amending Act: *Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022 (Vic)*
- Not new obligations – but way accused (and DPP) is notified of non-disclosed material changed
- Recommendations from the Royal Commission into the Management of Police Informants
- Issues:
 - Management of human sources
 - Disclosure
 - Manage

The High Court said:

*“[Ms Gobbo’s] actions in purporting to act as counsel for the Convicted Persons while covertly informing against them were fundamental and appalling breaches of [her] obligations as counsel to her clients and of [her] duties to the court. Likewise, Victoria Police were guilty of reprehensible conduct in knowingly encouraging [Ms Gobbo] to do as she did and were involved in sanctioning atrocious breaches of the sworn duty of every police officer to discharge all duties imposed on them faithfully and according to law without favour or affection, malice or ill-will. **As a result, the prosecution of each Convicted Person was corrupted in a manner which debased fundamental premises of the criminal justice system.**”*

Duty of disclosure at common law



Duty of disclosure at common law

- Duty of disclosure arises from:
 - Common law
 - Legislation – Criminal Procedure Act
 - Professional guidelines
- Obligation at common law is broader than the statutory obligations
- Obligation owed to the Court by a prosecutor
 - Duty extends to informants because prosecutor acts based on evidence that informant supplies

Duty of disclosure at common law

- It is an ongoing obligation
- Starts from when proceedings are initiated and continues until after determination of any appeal
- Extends beyond material that the prosecution intends to rely on for its own case, includes:
 - undermine the prosecution case
 - assist the defence case
 - exculpate the accused
 - affect the credit of prosecution witnesses
- Extends beyond material in its possession or that is known to it.
- It requires prosecutors to disclose to the accused ‘any material which is known to them which, on their sensible appraisal:
 - is relevant or possibly relevant to an issue in the case; or
 - raises or possibly raises a new issue that is not apparent from the evidence the prosecution proposes to use; or
 - holds out a real as opposed to fanciful prospect of providing a line of inquiry which goes to the above.

Policy of the Director for Public Prosecutions for Victoria (Director’s Policy)

Failure to meet obligation

- Serious consequences
- It can result in a conviction being successfully appealed with a resulting retrial, an acquittal or an order for a 'permanent stay', which means the proceedings are stopped by the court.
- Consequences may occur even when there is an 'innocent failure to disclose relevant material'; that is, when the failure to disclose was not intentional.

**How do you ensure you comply
with the duty of disclosure**



How to comply with the duty

1. Ensure the agency is familiar with disclosure obligations
2. Disclose all relevant evidence
3. Make enquiries if necessary
4. Comply with CPA requirements
5. Always have disclosure obligations in mind – it's a continuing obligation

Criminal Procedure Act 2009 obligations



Preparation of briefs of evidence

- Preliminary brief – section 37 of the *CPA*
- Full brief – section 41 of the *CPA*

When a preliminary brief must be served

Section 35(2)-(4) of the CPA Act provides that:

“(2) At any time after the commencement of a proceeding, the accused, by written notice to the informant, may request that a preliminary brief be served.

(3) If the accused gives notice under subsection (2), the informant must serve on the accused a preliminary brief within 14 days after receipt of the notice.

(4) Nothing in this section prevents the informant from serving a preliminary brief on the accused at any other time.”

Service of a preliminary brief

Section 36(1) of the CPA provides that a preliminary brief **must** be served personally on the Accused unless the Informant is satisfied that ordinary service is appropriate in all the circumstances.

The circumstances which must be considered include whether it is an appropriate method of service in all the circumstances as known by the informant including:

- a) the nature and gravity of the alleged offence;
- b) whether the accused has previously been found guilty or convicted of any similar offence;
- c) the period of time that has elapsed since the Accused's address for service was ascertained;
- d) the manner of service of the summons to answer to the charge.

Personal Service

Section 391 of the CPA provides that personal service of a document is effected by:

- (a) giving a copy of the document to the person to be served; or
- (b) putting the copy down in the person's presence and telling the person the nature of the document; or
- (c) leaving a copy of the document for the person at the person's last known or usual place of residence with a person who appears to be of or over the age of 16 years.

There are other methods of service under section 391, however, the above are the most common.

Ordinary Service

Section 394 of the CPA provides that ordinary service of a document is effected by:

- (a) by sending a copy of the document by prepaid ordinary post addressed to the person to be served at the last known place of residence or business of the person; or

There are other methods of service under section 394, however, the above is the most common.

Contents of a preliminary brief

1. Section 37(1) of the CPA - a preliminary brief must include:
 - a) a copy of the **charge-sheet** in respect of the alleged offence;
 - b) a **notice** in the form prescribed by the rules of court (see s37(1)(b) for more detail);
 - c) a **statement made by the Informant** personally that complies with s37(2) and s38;
 - d) any **evidentiary certificate** issued under any Act that is likely to be relevant to the alleged offence and is available at the time the preliminary brief is served;
 - e) a **copy of the criminal record** of the accused that is available at the time the preliminary brief is served or a statement that the accused has no previous convictions or infringement convictions known at that time;
 - f) if the informant refuses to disclose any information, document or thing that is required to be included in the preliminary brief, **a written notice that the informant refuses disclosure** under section 45, identifying the ground for refusing disclosure;
 - g) a list of any other **orders that are or will be sought**, as known at the time of preparation of the preliminary brief.

Contents of a preliminary brief (continued)

Section 37(2) of the CPA - a preliminary brief must also include an Informant's Statement

2. A statement by the informant in a preliminary brief must be a **complete and accurate statement of the material available** to the prosecution at the time the statement is sworn or affirmed, signed or attested and must include:
 - a) a statement of the alleged facts on which the charge is based, including reference to the material available to the prosecution to support the alleged facts;
 - b) a description of the background to and consequences of the alleged offence, if known;
 - c) a summary of any statements made by the accused concerning the alleged offence, including any confession or admission;
 - d) a list of the names of all persons who, at the time the statement is signed, may be called by the prosecution as witnesses at the hearing of the charge, indicating whether those persons have made statements; and
 - e) a list of any things the prosecution may tender as exhibits, indicating whether they are in the possession of the prosecution at the time the statement is signed.

Requirements for informant's statement

In addition to section 37(2), section 38 of the CPA provides that a statement by the informant in a preliminary brief must be:

- a) in the form of an affidavit; or
- b) signed by the informant and contain an acknowledgment signed in the presence of a person referred to in Schedule 3 that the statement is true and correct and is made in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury; or
- c) in a form, and attested to in a manner, prescribed by the rules of court.

Contents of a preliminary brief (continued)

Section 37(3) of the CPA - a preliminary brief may include any other information, document or thing that is relevant to the alleged offence and may assist the accused in understanding the evidence against the accused that is available to the prosecution.

It is best practice to include all information, documents or things that may be relevant to the alleged offence that is available at the time the preliminary brief is prepared and served.

When a full brief must be served

Under section 39(1) of the CPA the Accused, by written notice to the Informant, may request that a full brief be served (this is the most common basis upon which a full brief must be served, but not the only basis).

If the Accused gives a notice, the Informant must serve a full brief on the Accused at least 14 days before:

- (a) the contest mention hearing; or
- (b) if a contest mention hearing is not held, the summary hearing.

Service of a full brief

Section 40(1) of the CPA (similar to section 36 regarding preliminary briefs) provides that a full brief must be served personally on the accused unless the informant is satisfied that ordinary service is appropriate in all the circumstances.

The circumstances which must be considered include whether it is an appropriate method of service in all the circumstances as known by the informant:

- a) the nature and gravity of the alleged offence;
- b) whether the accused has previously been found guilty or convicted of any similar offence;
- c) the period of time that has elapsed since the Accused's address for service was ascertained;
- d) the manner of service of the summons to answer to the charge.

Contents of a full brief – s41 CPA

Unless earlier disclosed to the accused (even if previously disclosed it is best practice to ensure that all the below are included so there can be no argument as to the material provided) a full brief must include:

- a) a **notice** in the form prescribed by the rules of court (see section 41(1)(a) for more details)
- b) a copy of the **charge-sheet** relating to the alleged offence
- c) a copy of the **criminal record** of the accused or a statement that the accused has no previous convictions or infringement convictions; and

Contents of a full brief (continued)

- d) any **information, document or thing** on which the **prosecution intends to rely** at the hearing of the charge including:
- a copy of any **statement** relevant to the charge **signed by the accused**, or a record of interview of the accused, that is in the possession of the informant;
 - a **copy, or a transcript**, of any **audio-recording** or audiovisual recording required to be made under Subdivision (30A) of Division 1 of Part III of the *Crimes Act 1958*;
 - a **copy or statement** of any other **evidentiary material** that is in the possession of the informant relating to a **confession or admission** made by the accused relevant to the charge;
 - a list of the **persons the prosecution intends to call as witnesses** at the hearing, together with a copy of each of the statements made by those persons;
 - a legible copy of any **document** which the prosecution intends to **produce as evidence**;
 - a **list** of any things the prosecution intends to **tender as exhibits**;
 - a clear **photograph**, or a clear copy of such a photograph, of any **proposed exhibit that cannot be described** in detail in the list;
 - a **description of any forensic procedure**, examination or test that has not yet been completed and on which the prosecution intends to rely as tending to establish the guilt of the accused;
 - any **evidentiary certificate** issued under any Act that is likely to be relevant to the alleged offence;

Contents of a full brief (continued)

- e) any other **information, document or thing** in the **possession of the prosecution** that is **relevant to the alleged offence** including a:
- **list of the persons** (including experts) who have made **statements** or given information relevant to the alleged offence but who the prosecution does not intend to call as witnesses at the hearing;
 - **copy of every statement** referred to in subparagraph (i) made by each of those persons or, if the person has not made a statement, a written summary of the substance of any evidence likely to be given by that person or a list of those statements or written summaries;
 - copy of **every document relevant** to the alleged offence that the prosecution does not intend to tender as an exhibit at the hearing or a list of those documents;
 - **list** containing descriptions of any things **relevant** to the alleged offence that the **prosecution does not intend to tender** as exhibits at the hearing;
 - clear **photograph**, or a clear copy of such a photograph, of any thing relevant to the alleged offence that **cannot be described** in detail in the list;

Contents of a full brief (continued)

- a copy of records of any medical examination of the accused;
- a copy of reports of any forensic procedure or forensic examination conducted on the accused; and
- a copy of the results of any tests:
 - carried out on behalf of the prosecution and relevant to the alleged offence but on which the prosecution does not intend to rely;
 - a copy of any other information, document or thing required by the rules of court to be included in a full brief; and
 - a copy of any information, document or thing that is relevant to the credibility of a witness for the prosecution (subject to section 32C of the Evidence (Miscellaneous Provisions) Act 1958 re confidential communication).
- if the informant refuses to disclose any information, document or thing that is required to be included in the full brief, a written notice that the informant refuses disclosure under section 45, identifying the ground for refusing disclosure.

NEW Amending Legislation– Commenced 1 October 2022

Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022 (Vic) (**Amending Act**) brought in a variety of changes to the CPA which imposed further disclosure obligations on informants, requiring them to identify information and documents that are not contained in the brief, and why they are not.

These changes were designed to implement recommendations made by the Royal Commission into the Management of Police Informants regarding the disclosure obligations of informants in criminal proceedings.

Section 41A – Commenced 1 October 2022

Section 41A will requires a relevant officer to complete a disclosure certificate in any proceeding in which a full brief is served. This certificate must:

- Be in the form prescribed (see schedule 2 of Criminal Procedure Regulations 2020);
- Acknowledge the relevant officer is aware of their disclosure obligations and that the certificate has been reviewed by a more senior officer;
- Describe relevant information, documents or things not contained in the full brief because they are subject:
 - to a claim of privilege or public interest immunity; or
 - immunity conferred by statute; or
 - a prohibition or restriction provided by statute.

Section 41A – Commenced 1 October 2022

The relevant officer is required to serve a copy of the certificate on the accused at the time the brief is served on them and file a copy of the certificate with the registrar within 7 days of service of the full brief.

These new obligations apply to the 'relevant officer' which is either:

- the informant; or
- if the informant did not investigate the offence that is the subject of the proceeding, the law enforcement officer who prepared the full brief.

Section 41A – Commenced 1 October 2022

The relevant officer is required to serve a copy of the certificate on the accused at the time the brief is served on them and file a copy of the certificate with the registrar within 7 days of service of the full brief.

These new obligations apply to the ‘relevant officer’ which is either:

- the informant; or
- if the informant did not investigate the offence that is the subject of the proceeding, the law enforcement officer who prepared the full brief.

Importantly, an informant is only exempted from complying with the obligation if they have first obtained a court order to that effect.

Section 110A – Commenced 1 October 2022

Section 110A introduces a requirement of the officer in a proceeding in which a hand-up brief is served to complete a disclosure certificate.

Section 110A provides that the relevant officer must provide a disclosure certificate describing what is not contained in the brief, the privilege or immunity which applies to it, and file a copy of the certificate with the accused, DPP and registrar.

Section 110A(2) provides the requirements for filing and serving the certificate.

Section 110A – Commenced 1 October 2022

Section 110A(3) provides that the informant is not required to describe the privilege or immunity in a way that would prejudice an existing claim for public interest immunity in the Supreme Court, or an application for non-disclosure that has commenced.

Section 110A(4) provides that the section does not limit or otherwise affect the courts power to hear and determination applications on disclosure of information etc.

Section 110A(5) clarifies that unless the court otherwise orders, the relevant officer or informant must complete the disclosure certificate describing the material and nature of any privilege or immunity, and serve the certificate.

Section 415A – Commenced 1 October 2022

Section 415A provides that an informant in a proceeding conducted by the DPP to provide the DPP with all material obtained during an investigation that may be relevant to either the prosecution or the accused person's case, except for material that is subject to a claim or privilege, public interest immunity, a legislative immunity or publication restriction.

The informant must also notify the DPP of the existence and nature of the material subject to an exception, and where requested provide the material subject to an exception.

Schedule 2—Disclosure certificate— section 41A of the Act

Sch. 2
inserted by
S.R. No.
57/2022 reg. 6.

Regulation 27(a)

DISCLOSURE CERTIFICATE

(Section 41A of the **Criminal Procedure Act 2009**)

In the [*court*] at [*venue*] Court Ref.:

Acknowledgement

1. I am aware that, as the *informant/*law enforcement officer who prepared the full brief in this matter, I have a duty under the **Criminal Procedure Act 2009**, and at common law, to disclose to the accused all information, documents or things relevant to the alleged offence. I am aware that this duty is subject to—
 - (a) any claim of privilege or public interest immunity that has been determined by a court; and
 - (b) any immunity conferred by statute; and
 - (c) any relevant statutory prohibition or restriction that has the effect of precluding disclosure to the prosecution or the defence.
- *2. [*To be included if this certificate is completed by the informant*] I am aware of my continuing obligation under the **Criminal Procedure Act 2009**, and at common law, to disclose to the accused any relevant information, document or thing that comes into my possession or to my notice after service of the full brief.
- *3. [*To be included if this certificate is completed by the informant and the proceeding is conducted by the DPP*] I am aware of my obligation under section 415A of the **Criminal Procedure Act 2009** to provide to the DPP any information, document or thing that I possess or have knowledge of, or that the law enforcement agency I represent possesses or has knowledge of, that is relevant to the alleged offence, subject to the provisions in section 415A.

I am aware that this obligation continues to apply to any information, document or thing that I come to possess or have knowledge of, or that the law enforcement agency I represent comes to possess or have knowledge of, after I have first complied with the requirements of section 415A.

Schedule 2—Disclosure certificate— section 41A of the Act

Regulation 27(a)

DISCLOSURE CERTIFICATE

(Section 41A of the **Criminal Procedure Act 2009**)

In the [court] at [venue] Court Ref.:

Acknowledgement

1. I am aware that, as the *informant/*law enforcement officer who prepared the full brief in this matter, I have a duty under the **Criminal Procedure Act 2009**, and at common law, to disclose to the accused all information, documents or things relevant to the alleged offence. I am aware that this duty is subject to—

- (a) any claim of privilege or public interest immunity that has been determined by a court; and
- (b) any immunity conferred by statute; and
- (c) any relevant statutory prohibition or restriction that has the effect of precluding disclosure to the prosecution or the defence.

- *2. *[To be included if this certificate is completed by the informant]* I am aware of my continuing obligation under the **Criminal Procedure Act 2009**, and at common law, to disclose to the accused any relevant information, document or thing that comes into my possession or to my notice after service of the full brief.

- *3. *[To be included if this certificate is completed by the informant and the proceeding is conducted by the DPP]* I am aware of my obligation under section 415A of the **Criminal Procedure Act 2009** to provide to the DPP any information, document or thing that I possess or have knowledge of, or that the law enforcement agency I represent possesses or has knowledge of, that is relevant to the alleged offence, subject to the provisions in section 415A.

I am aware that this obligation continues to apply to any information, document or thing that I come to possess or have knowledge of, or that the law enforcement agency I represent comes to possess or have knowledge of, after I have first complied with the requirements of section 415A.

Sch. 2
inserted by
S.R. No.
57/2022 reg. 6.

4. The information I have given in this certificate is true, to the best of my knowledge and belief, and has been reviewed by a superior officer within the law enforcement agency I represent. *[NOTE: A superior officer is a person to whom an organisation has given responsibility for reviewing disclosure certificates. If the informant or law enforcement officer completing this certificate is a member of Victoria Police, a superior officer must be a person who holds a rank senior to the informant or law enforcement officer.]*

*Delete if not applicable

Notes

1. See sections 41(1)(f) and 45 of the **Criminal Procedure Act 2009**.
2. See also section 416(2) of the **Criminal Procedure Act 2009** which provides that nothing in that Act requires the prosecution to disclose to the accused material which the prosecution is required or permitted to withhold under that or any other Act or any rule of law.

Schedule 1—Relevant material not contained in brief that is subject to a privilege or immunity (section 41A(1)(a)(i) and (ii) of the Criminal Procedure Act 2009)

*Relevant information, or a relevant document or thing, is not contained in the full brief because it is the subject of a claim of privilege, a claim of public interest immunity, or an immunity conferred by statute.

This information, document or thing, and the nature of the privilege or immunity to which it is subject, is described in the table below **subject to any order of a court.**

	Information, document or thing	Nature of privilege or immunity
1.	<i>[Describe the information, document or thing]</i>	<i>[Describe the privilege or immunity]</i>
2.		
3.		
4.		
5.		
6.		
7.		

Note

See also section 416(2) of the **Criminal Procedure Act 2009** which provides that nothing in that Act requires the prosecution to disclose to the accused material which the prosecution is required or permitted to withhold under that or any other Act or any rule of law.

*No relevant information, document or thing has been withheld from the full brief because of a claim of privilege, a claim of public interest immunity, or an immunity conferred by statute.

*Delete if not applicable

Schedule 2—Relevant material not contained in brief that is subject to a statutory prohibition or restriction on disclosure (section 41A(1)(a)(iii) of the Criminal Procedure Act 2009)

*Relevant information, or a relevant document or thing, is not contained in the full brief because it is the subject of a statutory prohibition or restriction on disclosure that has the effect of precluding disclosure to the prosecution or the defence.

This information, document or thing, and the nature of the prohibition or restriction to which it is subject, is described in the table below to the extent permitted by the relevant statute and **subject to any order of a court.**

Information, document or thing	Nature of statutory prohibition or restriction
1. [Describe the information, document or thing]	[Describe the statutory prohibition or restriction on disclosure including, if permitted, the relevant statute and section]
2.	
3.	
4.	
5.	
6.	
7.	

Note

See also section 416(2) of the **Criminal Procedure Act 2009** which provides that nothing in that Act requires the prosecution to disclose to the accused material which the prosecution is required or permitted to withhold under that or any other Act or any rule of law.

*No relevant information, document or thing has been withheld from the full brief because of a statutory prohibition or restriction on disclosure that has the effect of precluding disclosure to the prosecution or the defence.

*Delete if not applicable

Signature of relevant officer:

Name and position of relevant officer:

Address:

Telephone:

Email address:

Date:

Note

This certificate must be completed by the informant or, if the informant did not investigate the offence that is the subject of the proceeding, the law enforcement officer who prepared the full brief and it must be served with the full brief.

Ongoing obligation of disclosure – s42 CPA

The informant must serve on the accused a copy of any document or thing that:

- comes into the informant's possession or comes to the informant's notice after the service of a preliminary brief; and
- would have been required to be listed, or a copy of which would have been required to be served, in the preliminary brief or the full brief.

as soon as practicable after the information, document or thing comes into the informant's possession or comes to the informant's notice.

Grounds on which informant may refuse disclosure

The only way something cannot be disclosed is under:

on the grounds for refusing disclosure – s 45 CPA

a lawful exceptions to disclosure

- privilege or Public interest immunity,
- immunity conferred by legislation;
- a prohibition or retraction provided by statute that has effect of precluding disclosure to the prosecution or defence;
- non-disclosure order under 416A(1)

Grounds on which informant may refuse disclosure

- s45 CPA

The informant may refuse to disclose any information, document or thing that is required by this Division to be disclosed to the accused if the informant considers that disclosure would, or would be reasonably likely to—

- (a) prejudice the investigation of a contravention or possible contravention of the law or prejudice the enforcement or proper administration of the law in a particular instance; or
- (b) prejudice the fair hearing of the charge against a person or the impartial adjudication of a particular case; or
- (c) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law; or
- (d) disclose methods or procedures for preventing, detecting, investigating or dealing with matters arising out of contraventions or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or

Grounds on which informant may refuse disclosure

- s45 CPA

(e) endanger the lives or physical safety of persons engaged in, or in connection with, law enforcement or persons who have provided confidential information in relation to the enforcement or administration of the law; or

(f) endanger the life or physical safety of a person referred to in section 43(1)(a) or of a family member, as defined in the Family Violence Protection Act 2008, of such a person; or

(g) result in the disclosure of child abuse material to the accused personally.

Public interest immunity and the prosecution's duty of disclosure

PII is a principle recognised by the common law and is also a rule of evidence that allows relevant material not to be disclosed when:

- disclosing it would damage the public interest; and
 - the need to avoid this damage outweighs the accused person's right to have all relevant material made available to them.
-
- Courts will determine the issue
 - If PII claim made out – not disclosed and is not evidence in the case
 - Courts will give considering whether the public interest in withholding disclosure outweighs the public interest in the proper administration of justice.

The benefits of providing the full brief with the charges

- Proceed *ex parte* without witnesses having to attend Court
 - section 83 of the CPA (full brief)
 - Section 84 of the CPA (preliminary brief)
- Accused is aware of the case right from the outset
- Assists in ensuring all elements of the suspected offence are made out

The benefits

- **Ex parte** - where a full brief is served a matter may proceed ex-parte in the absence of the Accused should they fail to attend Court. In those circumstances prosecution witnesses are not required to give evidence as the full brief is relied upon as the whole of the prosecution's evidence.
- **Expedience** – in circumstances where a full brief has been served, the Court may hear and decide the matter ex-parte. This may avoid the need for multiple adjournments in the absence of an Accused.
- **Cost** – if an Accused does not attend Court, costs may be incurred as a result of any necessary adjournments. These can be avoided or limited by serving a full brief early in a proceeding.
- **Increased likelihood of a guilty plea** – if a full brief has been served and an Accused attends Court they may be more likely to enter a guilty plea as the strength of the prosecution evidence will be clear to the Accused. The evidence contained in the full brief will show that the prosecution can prove each element of the alleged offence beyond a reasonable doubt.

Section 80 – CPA – Summary Offence

- **If no appearance by Accused in summary offence**
 - (c) can proceed to hear and determine charge in absence of the Accused
 - (can also direct personal service if ordinary service, issue a warrant or adjourn)

Section 81 – CPA – Indictable Offence

- **If no appearance by Accused in indictable offence**
 - Warrant may be issued

Section 83 – CPA – Full Brief Served

- **If Court proceed to hear and determine in absence of the Accused**
 - Statements and exhibits and documents all admissible as if their contents were a record of evidence given orally

Section 84 – CPA – Preliminary Brief Served

- **If Court proceed to hear and determine in absence of the Accused**
 - If offence disclosed in preliminary brief despite the rule against hearsay the following is admissible:
 - the informant's statement in the preliminary brief; and
 - any exhibit referred to in the informant's statement.

Section 87 – CPA – Limitations on Sentencing

- Custodial order not available
- Preliminary Brief
 - No fine over 20 penalty units and total sum of orders for fines must not exceed in aggregate 50 penalty units;
 - Restitution or compensation exceeding \$2000
- Sentence which requires consent of the accused
- If above apply – adjourn to enable accused to attend court
 - issue a warrant

Questions



Disclaimer

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