

# DEFENDING DRUG TRAFFICKING CHARGES

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# IMPORTANCE OF DISCLOSURE

- Extremely important in drug trafficking matters
- Ensure you know the full case against the accused
- It is an ongoing obligation by the Prosecution

## *Criminal Procedure Act 2009*

### **Section 110 – Contents of the Hand Up Brief**

- Relevant section for disclosure see s110(e)
- Identify what evidence is being disclose by the Informant/Prosecution
- Identify what evidence is in possession of the Informant/Prosecution but have chosen not to disclose it
- Review the evidence and see if there are any “missing links” in the evidence

## *Criminal Procedure Act 2009*

### **Section 119 – Contents of Case Direction Notice**

- Relevant section for disclosure see s119(e)
- Identify in your Form 32 the additional disclosure items sought by defence
- Request order from Magistrate at committal mention to ensure Informant discloses all evidence, and additional disclosure items *at least 30 days before Committal*

## *Criminal Procedure Act 2009*

### **Section 111 – Continuing obligation of disclosure**

- Section 111 provide statutory obligation on Informant to continue disclosure of evidence
- *Roberts v The Queen* [2020] VSCA 58 at 56:
  - “It is now accepted that it is fundamental that there must be full disclosure in criminal trials. It is a ‘golden rule’. The duty is to disclose all relevant material of help to an accused. **It is owed to the court**, not the accused. It is ongoing. It includes, where appropriate, an obligation to make enquiries. It is imposed upon the Crown in its broadest sense. And a failure in its discharge can result in a miscarriage of justice”

# SUBPOENA

- Issue subpoena if Informant refuses to disclose the material you have requested
- Informant must file the documents with the Courts within the appropriate timeframe and, then seek to have the subpoena set aside or object to disclosing certain evidence in Court
- See JCV website for subpoena procedure in court and reasons Informant may seek to set aside the subpoena
- *Bradley v Senior Constable Chilby* [2020] NSWSC 145 at 68 and 69:
  - The Prosecutor's position in the Local Court... was that if a hearing could be conducted without the material in respect of which disclosure was sought, there was no obligation on the Prosecutor to disclose such material. This submission was adopted by the Court below. This proposition finds no support in the authorities. The magistrate's finding that the accused could have a "fair" hearing without access to such documents was legally unreasonable...and was based on the erroneous premise engendered by the Prosecutor, which reflected the **flawed approach taken by NSW Police to its duty of disclosure in the present case.**

# CONCLUSION

- Know what the Informant has disclosed
- Know what other evidence is in possession of the Informant but has chosen not to disclose it
- Review the evidence to ensure there are no “missing links”
- Make disclosure requests to the Prosecution for material/evidence sought (these requests “can be made for the entire duration of the proceeding)
- If they don’t want to provide it – issue a subpoena
- Don’t be afraid to shake the tree!
- Disclosure never ends. It is an ongoing obligation the Prosecution have and must fulfil to ensure there is no miscarriage of justice

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