



Department of Justice and Attorney-General
Justice Services, Court Services Queensland

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Mr Michael Shanahan AM
Criminal Procedure Review – Magistrates Courts
Criminal-Procedure-R@justice.qld.gov.au

Dear Mr Shanahan

Thank you for the opportunity to provide a submission in response to the *Criminal procedure review – Magistrates Courts* consultation paper. I understand as part of your consultation process you have been meeting with registry staff in various Magistrates Courts locations across Queensland and that they have provided you with valuable insights on the day-to-day operations of Magistrates Courts registries. I also understand the review has made a request for data over the last five years on the Magistrates Courts criminal jurisdiction. This will be provided to you in the coming weeks.

This submission reflects the position of Court Services Queensland (CSQ) on some of the issues raised in the consultation that impact on registry administration. It does not reflect the broader Department of Justice and Attorney-General's (DJAG) policy position on criminal procedure nor the views of Magistrates.

Contemporary and effective criminal procedure in the Magistrates Courts

The most significant and pressing issue impacting Magistrates Courts registries in the delivery of contemporary and effective criminal courts services is the reliance on paper-based files with IT systems with limited functionality. A high proportion of registry staff are allocated to creating, maintaining, storing and retrieving paper-based files. These manual processes are magnified when Magistrates Courts are convened at circuit locations and when transferring files between court locations. CSQ has developed some innovative electronic initiatives, such as the online guilty plea portal, which provides efficiencies for some court users, though still requires manual registry processes due to the paper-based filing system.

As you may be aware, the Queensland Government's recent budget announcement includes approximately \$40M over five years to digitise court functionality, including registry processes in Queensland Courts and Tribunals. This funding supports implementation of the CSQ five year ICT Roadmap. The ICT Roadmap includes analysis of the processes and technology supporting criminal justice across Queensland Courts and key partner agencies. CSQ will deliver a new criminal case management system within the next five years. This funding will contribute towards more efficient processes in Magistrates Courts criminal registries.

Key issues about criminal procedure in the Magistrates Courts

The Magistrates Courts and decision-makers

Courts Services Queensland agrees in principle with changing the law to have a single Magistrates Court of Queensland. It would be appropriate to have one Magistrates Court registry with offices at the various places where the Magistrate Court is convened. This reflects the current operational structure of the Magistrates Courts which, similar to the District Court, has registrars (clerks of court) and court officers in locations across Queensland reporting to the one Principal Registrar (who is also the Principal Clerk of the Court under the *Justices Act 1886*). Having one Magistrates Court registry with many offices will also support the flexible use of registry resources. For example, there may be instances where a registry in a particular location perform functions that relate to matters that are being held in different court locations.

Any proposal that provides greater flexibility on where proceedings are started and heard will need to be further assessed to determine any implications for registry operations.

What is in a name?

Any decision to rename the Magistrates Courts to Local Courts will require changes to various signs across Queensland courthouse buildings and will have resourcing implications for CSQ.

Technology and the courts

CSQ supports new legislation allowing for electronic processes and procedures, removing any legislative barriers which limit or prevent digital functionality of court processes. CSQ supports electronic processes for the end to end processes in the criminal jurisdiction, including lodgement and filing, case management and the issuing of court orders. CSQ also recognises the importance of the use of technology to facilitate virtual appearances, when authorised by a presiding juridical officer or practice direction.

CSQ has been iteratively adding to our suite of technical solutions to reduce manual processes. For example, we are developing a digital portal to process registry committals. Registry committals are a paper-based administrative process that is prone to error, which increases the time required to process the committal. The portal incorporates the coding which requires the user to comply with legislative requirements, eliminating human error, as recently demonstrated to you and your secretariat team. It is anticipated the technical build will be completed shortly with the portal being piloted towards the end of the year.

Another key issue for criminal justice agencies, including courts, is the sharing of court orders with criminal justice agencies. CSQ is undertaking a “whole of justice” information sharing project to explore better ways of sharing information between criminal justice agencies.

Starting proceedings

How are proceedings started?

CSQ supports a streamlined process for public entities which commence criminal proceedings. It is anticipated CSQ would achieve administrative efficiencies if criminal procedure laws enabled initiating processes to be filed electronically and are supported by enhanced information sharing capability, as noted above.

CSQ considers proceedings commenced by individuals rather than entities should include appropriate safeguards and potentially different methods for commencing criminal proceedings.

When have proceedings started?

A clear statement declaring when proceedings have started, such as on the date material is filed in court would provide clarity to all participants in the criminal justice system, including registry staff.

Particulars

CSQ prefers consistency in the information to be provided in an initiating document. At a minimum CSQ considers initiating documentation should provide sufficient information to identify the date of the offence, place of offence, a description of the charged offence including the legislation and details of the defendant.

Private Prosecutions

CSQ agrees the ability to bring a private prosecution in the Magistrates Courts is essential to supporting access to justice. However, this needs to be balanced against the demand on court time and resources that arises when private prosecutions are invalidly filed, for example failing to identify an offence known at law in Queensland or it is found to be vexatious.

CSQ agrees in principle there should be a mechanism to test that a private prosecution satisfies minimum criteria before they can commence. CSQ notes any proposal to implement a mechanism similar to the New South Wales approach where a registrar exercises discretionary decision-making as to whether a private prosecution may commence would be a significant change to current operations for Queensland criminal registries. Operationally CSQ staff are not qualified or trained to assess questions of threshold eligibility. Such an approach would have significant resource implications for CSQ and would require further consideration.

In-court diversion and resolving proceedings

CSQ supports in principle the expansion of diversionary options within the criminal justice system. Any new diversionary scheme including its legislative basis should consider the existing specialist courts and diversionary processes currently in operation in Queensland and how other types of in-court diversion would fit within that framework.

CSQ notes that the Victorian Criminal Justice Diversion Program targets low-risk, first-time offenders. Queensland's Drug and Alcohol Assessment and Referral (DAAR) and

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Illicit Drugs Court Diversion Program (CDP) each target low risk and low need offenders. Specialist programs Court Link and the Queensland Drug and Alcohol Court (QDAC), target medium risk and high risk, high need offenders respectively.

Diversion programs delivered within DAAR and CDP each take up to two hours to complete and can be delivered by phone. This supports the availability of DAAR and CDP state-wide. In contrast, both Court Link and QDAC are location-based programs.

CSQ requests that consideration be given to the feasibility of state-wide delivery to Queensland's geographically dispersed population when contemplating the introduction of any diversionary program. CSQ notes diversion options need to be both culturally appropriate and readily available including in rural and regional areas.

Any such scheme in Queensland should be developed utilising a cultural and accessibility lens to ensure its suitability for Aboriginal and Torres Strait Islander persons and other diverse court users, including culturally and linguistically diverse people and people with disabilities. Such consideration should extend to ensuring availability of culturally appropriate and accessible diversion options.

Should you require further information, please contact Ms Elizabeth Moore, Director, Legal, Policy, Procedure and Development, DJAG on [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

I trust this information is of assistance.

Yours sincerely

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Angela Moy
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Court Services Queensland