

30 June 2022

The Hon. Judge M Shanahan AM
Criminal Procedure Review Team
GPO Box 149
BRISBANE QLD 4001

By email: Criminal-Procedure-R@justice.qld.gov.au

Dear Judge Shanahan AM

Criminal Procedure Review – Magistrates Court

Thank you for the opportunity to provide feedback on the consultation paper developed to assist the review of procedures in the Magistrates Court. Aged and Disability Advocacy Australia (ADA) appreciates being consulted on the important issues considered by the review.

About ADA Australia

ADA is a not for profit, independent, community-based advocacy and education service with nearly 30 years' experience in informing, supporting, representing and advocating in the interests of older people, and persons with disability in Queensland.

ADA also provides legal advocacy through ADA Law, a community legal centre and a division of ADA. ADA Law provides specialized legal advice to older people and people with disability, including those living with cognitive impairments or questioned capacity, on issues associated with human rights, elder abuse, and health and disability legal issues related to decision-making.

ADA advocates and legal practitioners work with identified First Peoples advocates through the Aboriginal and Torres Strait Islander Disability Network Queensland (ATSIDNQ), a network established to support mob with disability and provide individual advocacy services for Aboriginal and Torres Strait Islander people with disability.

Response to Consultation Paper

ADA has reviewed the consultation paper and provides the following for your consideration. We have limited our response to those questions that are relevant to ADA's experiences in supporting and advocating for older persons, and persons with disability, including Aboriginal and Torres Strait Islander persons and people from culturally and linguistically diverse backgrounds.

[REDACTED]



General procedures

QUESTION 3: How could criminal procedures in the Magistrates Courts better accommodate the needs of different people? What is needed to allow for better understanding, connection and participation? This might include (but is not limited to) First Nations people, people from culturally and linguistically diverse backgrounds, women, people with disability, victims of crime and the general community.

Accessibility measures must be resourced and made available as required, having regard to the needs of the individual. This should include, for example, ready availability of AUSLAN translators and other supports that may be required to ensure that a person is not obstructed from full participation in court processes.

ADA supports the implementation of recommendations made by the Women’s Safety and Justice Taskforce (the **Women’s Taskforce**), including:

- Reducing the number of court appearances required, and engaging security staff in courts when victims are required to attend
- Permitting victims to appear and participate in court remotely by telephone or video, and providing for electronic lodgment of court documents
- Enhancing court services and safety planning, especially for people with disability and CALD people; and
- A focus on improving victim safety, and participation and fairness for Aboriginal and Torres Strait Islander peoples, particularly in relation to domestic and family violence (**DFV**) matters

We suggest that the above recommendations proposed by the Women’s Taskforce may be improved by the express inclusion of older persons when introducing new procedures to enhance court services and safety planning.

ADA supports the recommendations for accessibility and support for older persons to participate in court and tribunal processes, as set out in the Australian Law Reform Commission Report, *Elder Abuse – A National Legal Response*.¹ This includes practices of flexibility and informality, whilst preserving procedural fairness.

Guiding principles

Question 4: Should the new legislation include guiding principles? If so, what should the main themes of those principles be?

ADA supports the inclusion of guiding principles in the *Justices Act 1886* (the **Act**). Certain aspects of the principles in the *Youth Justice Act* could be adapted and included in the Act, such as:

- persons dealt with under this Act should be treated with dignity and respect and be encouraged to treat others with dignity and respect – they should have procedures explained to them in a way that the person understands, be given the opportunity to participate in and understand any criminal proceedings and have access to legal and other support services. Proceedings should be conducted in a ‘fair, just and timely way’ and be finalized as soon as practicable.

¹ Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, ALRC Report 131, 2017.

- Persons who commit offences should be diverted away from the courts' criminal justice system, unless the nature of the offence and the person's criminal history means that court proceedings should be started. They should be held accountable and encouraged to accept responsibility for their behaviour, and dealt with in a way that gives opportunities to develop in 'responsible, beneficial, and socially acceptable ways'.
- Victims should be given the opportunity to participate in the process.

We note the guiding principles under consideration by this review as described on page 24 of the consultation paper. ADA generally supports adoption of these, but again suggest that these should expressly recognize and include older persons and persons with disability.

Technology and the Courts

ADA supports the use of technology where use demonstrably improves access to justice and in protection of a witness. We note existing legislation that provides for use of technology in certain circumstances – for example, evidence given by a child or a person with impairment of mind can be recorded and played in court at a later hearing.²

We note that the Women's Taskforce is considering how court processes may be improved for victims of sexual violence, including a recommendation that victims of DFV should be able to appear and participate in proceedings via video or telephone.

Question 10: Should summary hearings be conducted remotely? Why or why not?

ADA supports the use of remote hearings in limited circumstances. For some defendants the process is not appropriate. For example, where remoteness of the hearing impacts on the defendant's understanding and implications of the process. This should be carefully considered for persons with questioned capacity, and for those persons with limited understanding of the justice system.

Diversion and court proceedings

Question 29: Should the new legislation about criminal procedure in the Magistrates Courts include 'in-court diversion'?

Yes, ADA supports the insertion of diversionary pathways in the legislation, including 'in-court diversion'.

Question 30: If yes, what types of in-court diversion should be available? What sort of offences should they be available for? What safeguards are required?

We submit that diversionary pathways should not be available to every defendant, and that therapeutic interventions such as mediation or counselling may not be appropriate in the context of the defendant and victim relationship. These interventions are particularly fraught in circumstances where the relationship involved a power imbalance, such as a carer and client/patient, or other examples where a victim may have experienced manipulative, coercive or intimidating behaviours by the defendant.

² Evidence Act 1997 (Qld), s 93A.

Question 38: Are there any offences, or types of offences, for which in-court diversion (such as completing programs so not continue to be prosecuted) should not be available?

We refer to our response to Question 30 above and submit that in-court diversion may not be appropriate where the offence involves an abuse of a relationship of trust.

Victims of Crime

Question 49: How can victims' interests be incorporated into Magistrates Court criminal procedures? This includes decisions to divert a defendant out of the criminal justice system, diversionary processes and outcomes, and court proceedings (for example, in closing the court room or considering adjournment applications).

ADA notes the recognition of victim trauma through processes, such as the Victim's Impact Statement, the Queensland Health Victim Support Service, and the Victim Coordination Program. We suggest that the review consider the application and accessibility of these services for older victims, and victims with disability. This should include the provision of training to Victim Support Officers to ensure that support can be tailored to an individual's needs – including specialised support for Aboriginal and Torres Strait Islander persons, and persons from culturally and linguistically diverse backgrounds.

Thank you again for the opportunity to comment. Should you wish to discuss this submission, please do not hesitate to contact Vanessa Krulin, Solicitor and Senior Policy and Research Officer on [REDACTED].

Yours faithfully

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Geoff Rowe
Chief Executive Officer