

Queensland Police Service Preliminary Feedback
Criminal Procedure Review – Magistrates Courts
September 2022

<i>Justices Act 1886 Review</i>		
Questions		Responses/Suggestions
Question 2	What does 'contemporary and effective' mean to you? How should those concepts be applied to criminal procedure laws in the Magistrates Courts?	Flexible to needs of witnesses, victims and defendants. Early disposition of matters. Reduction of red tape processes where applicable. Greater use of technology.
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.	Forms and paperwork to be simplified and available/accessible for people with language and reading challenges (availability of forms in multiple languages). Legal jargon to be removed or reduced to a minimum. Include requirements for access to a support network to help navigate the process. Improved accessibility, including through use of technology.
Question 5	Should the law be changed to create a single Magistrates Court of Queensland?	The QPS has no objection to establishing a single Magistrates Court of Queensland, however some of the challenges with a single Magistrates Court may include the transfer of witnesses between different districts to give evidence at contested hearings, including the viability of alternative options such as video conferencing facilities and associated impacts on the trial process.
Question 6	Should the Queensland Magistrates Courts be renamed as Local Courts?	The proposed retitling to Local Court/s is not expected to impact the QPS.
Question 7	Should the title of 'Magistrate' be changed to 'Local Court Judge'?	The proposed retitling to Local Court Judges is not expected to impact the QPS.
Question 8	Should the new Act contain general provisions to allow for electronic processes and procedures? If yes, are any safeguards required?	Yes, see responses to Question 9
Question 9	What criminal procedures in the Magistrates Court could be improved by using technological solutions?	Making committal proceedings more amenable to electronic processes: Section 110A of the JA requires written witness statements to be: signed by the witness (s110A(6C)) - and the Magistrate admitting the statement - s110A(11). It doesn't contemplate signed statements being tendered on a USB or otherwise dealt with electronically. This requirement means that hard copy originals are generally required to be handed up in committal proceedings. The same issue exists with section 114 of the <i>Justices Act 1886</i> which governs registry committals.

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		Briefs of evidence of any complexity could be dealt with electronically with signed statements scanned into IMAC or QPRIME and then downloaded into an electronic brief that is put on a disc or USB. Enabling tendering of statements electronically may also open opportunities to digitally 'share' evidentiary material (including statements) with the court (and others) and realise savings across the broader criminal justice system.
		The automation of outcomes from courts to other stakeholder agencies that require information to take any regulatory action will remove the ongoing and increasing burden on the QPS to store, manage and provide information (that is not QPS information) on behalf of the courts.
		Digital lodgement and filing portals, introduction of electronic case management, e-filing of subpoena documents, and electronic court orders that can then be shared between the court and QPS.
		Consideration could be given to acceptance of electronic signatures, electronic service of documents (email, SMS, etc), including summons to witnesses and SMS/email messages/reminders to defendants and witnesses regarding upcoming court appearance/adjournments etc (previous pilot suggests it may help to reduce non-attendance rates). See also Recommendation 53 of the Women's Safety and Justice Taskforce – <i>Hear her voice</i> - Report 2, and the expansion/provision of capability for court participants to participate remotely.
Question 10	Should summary hearings be conducted remotely? Why or why not?	The QPS supports exploring opportunities to conduct remote hearings, particularly in rural and remote areas of the State.
Question 14	How should criminal proceedings in Queensland be started by persons other than police under the new legislation? For example, should the complaint and summons be replaced by a notice that the person must appear in court?	Introducing a new form for summoning witnesses: Notices to Appear (s 382 of the <i>Police Powers and Responsibilities Act 2000</i>) for defendants have proven to be largely effective in replacing a Complaint and Summons. Similarly, supplementing the Summons to Witness process, by allowing police to issue a 'Notice to Witness', with appropriate safeguards, could, save significant police officer hours.

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Question 15	How can procedures for starting proceedings be simplified?	E-service and E-filing of Notices to Appear and Bail Undertakings: Digitising the lodgement of initiating instruments would bring significant savings to court staff and QPS. Business rules could be built into the portal to block lodgement of erroneous material (wrong date, wrong court, etc) which would eliminate the need for officers to relocate an accused and recommence proceedings for the correct date, location, etc.
Question 17	What requirements should be included in the new Magistrates Courts criminal procedure legislation about the description of an offence?	Providing the correct charge wording for all summary charges in a new schedule to the Criminal Practice Rules, as currently exists for indictable offences.
Question 22	How could the disclosure process be improved? For example, could the new criminal procedure legislation include a staged approach to disclosure, or include timeframes for disclosure in summary and committal proceedings?	Digitising Disclosure: Enabling prosecution disclosure through digital means (eg. a secured email link providing a hyperlink to cloud based evidentiary material) would align with Recommendation 11 of the <i>Police Prosecution Service Sustainability Review 2019</i> (Butler Report). See also Q. 9.
Question 24	Should there be any disclosure obligations on defendants in the Magistrates Courts (for example, about an alibi or expert witnesses)?	<p>Disclosure of Expert Reports: Disclosure to the Prosecution any expert reports intended to be relied upon at trial as soon as practicable before the trial. The equivalent provision in s 590B of the Criminal Code does not seem to apply to matters dealt with summarily, because it refers to the trial “judge”.</p> <p>Subpoenas: Subpoenas are often issued to the investigating and prosecuting agency to produce documents, in addition to existing disclosure obligations under the Criminal Code. This situation creates additional work for officers required to participate in a ‘dual disclosure’ process, which often involves the same documentation but required to be considered under different disclosure regimes (ie. a document that is not required to be disclosed under the Criminal Code may be required to be disclosed under a subpoena).</p>
Question 26	Should the new criminal procedure legislation include requirements about case management? If yes, what requirements should be included? Should these be different for offences that will be dealt with summarily and those that will be committed to a higher court?	Potentially broadening the scope of section 83A of the JA to replicate section 590AA of the Criminal Code to allow for pre-trial hearings to narrow issues in dispute and increase efficiency. Also, consider adopting principles from the civil system where hearings are limited to only those elements of the offence (or issues) that are genuinely in dispute. This would shorten hearing times, allow the progress of more matters within existing court and prosecution resources, and avoid the cost and time impost on witness attending hearings to give evidence on undisputed issues.
Question 32	Are the existing criminal procedure laws about mediation of matters in the Magistrates Court working effectively? If not, why? Should there be any changes?	The unavailability of adult restorative justice conferencing (ARJC) in many areas creates an imbalance of justice against those victims of crime located in areas where ARJC is not available.

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Question 44	When should a matter be able to be dealt with in the defendant's absence (if at all)?	Some minor indictable offences could be dealt with <i>ex-parte</i> where the circumstances of the offending are unlikely to lead to a period of imprisonment.
Question 46	How could the existing committal procedures in Queensland be improved? (This applies to registry committals and committals taking place in court.)	See Question 9.
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).	Promoting the interests of justice and protecting the rights and interests of victims by allowing sentence proceedings to be adjourned (where there is a late indication of a guilty plea by the defendant) to allow victims to provide a victim impact statement and/or attend sentencing proceedings unless the victim consents for the matter to proceed in their absence.
		<p>If required to give evidence, remote evidence or pre-recorded statements should be considered as an option to be explored.</p> <p>Recording of evidence from adult witnesses who may be considered special witnesses: Section 110A of the JA requires "written statements" to be tendered for the purposes of a committal proceeding. Section 21AF of the Evidence Act provides exceptions for the presentation of a "written statement" at committal for affected child witnesses, however there are no similar exceptions for any of the other special witnesses in s 21A Evidence Act. The result is that investigators must obtain a written statement from adult victims of sexual violence. This process is not victim-centric and can cause further trauma to the victim, noting that the time taken to sit with an investigator to type a statement is greater than the time taken to record a free narrative account. A free narrative account is also considered best evidence as it allows the victim to describe the event in their own words. This issue is also related to Recommendations 54 and 55 of Women's Safety and Justice Taskforce - <i>Hear her voice - Report 2</i>.</p>