



Department of Justice and Attorney-General

In reply please quote: 6244049



18 July 2022

Mr Michael Shanahan AM
Criminal Procedures Review – Magistrates Courts
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Dear Mr Shanahan AM

Thank you for the opportunity to provide a submission in response to the Criminal procedure review – Magistrates Courts consultation paper. The Dispute Resolution Branch, Department of Justice and Attorney-General provides the following information on issues raised in the consultation paper relating to the referral and conduct of adult restorative justice conferencing.

Adult Restorative Justice Conferencing (ARJC) is a diversionary program provided by the Dispute Resolution Branch (DRB) in 4 locations: Brisbane, Gold Coast, Townsville, and Cairns regions. ARJC operates under the *Dispute Resolution Centres Act 1990* and DRB's policies and procedures.

ARJC provides facilitated meetings between a person who has caused harm (an offender or defendant) and the people most affected by it (victims of crime). It provides an opportunity for the victim to tell their story and to hold the offender accountable for their actions, and an opportunity for the offender to take responsibility for their actions and take steps towards repairing that harm.

Referrals to ARJC are primarily made by Queensland Police Service (QPS) prosecutors after a charge has been laid, with the purpose of diverting appropriate defendants from the criminal justice system. A smaller number of referrals are made by the Office of the Director of Public Prosecutions (ODPP) for more serious matters where pursuing a prosecution is not strongly in the public interest and resolution of the matter through ARJC is considered preferable. ARJC also receives, comparatively, a very small number of victim self-referrals, and referrals from Magistrates under section 53A of the *Justices Act 1886*. Less than 2% of referrals to ARJC are received as referral from the Magistrates Court. All referrals are carefully assessed against ARJC suitability criteria through a robust intake process providing a key safeguard for victim participation. Approximately 50% of referrals progress to conference.

ARJC maintains a 98% agreement rate and 98% compliance rate for matters proceeding to conference. Client feedback shows that there is a 94% overall satisfaction with the service from victims of crime, offenders and their supports. There is potential for increased referrals from the Magistrates Court to realise of the benefit of diverting suitable matters to ARJC.

This submission focuses on criminal matters referred to the DRB Branch and ARJC however, a small number of referrals to the DRB are for Peace and Good Behaviour orders which are managed by the DRB's civil mediation process.

Consultation Question 31 - Should new legislation about criminal procedure in the Magistrates Court have specific objects or principles about 'in-court diversions'? If yes, what should they be?

Restorative Justice is an effective diversionary program that can alleviate some of the current pressures that the justice system faces, such as wait times and dissatisfaction among victims.

Ideally, in-court diversion should occur as early as possible.

ARJC client feedback indicates that early intervention to a sufficiently resourced restorative justice model with robust intake and appropriate safeguards provides:

- A victim centred approach that incorporates victim wishes in the justice response
- Increased satisfaction and impression of the justice system overall
 - 94% satisfaction from all ARJC participants
- Cost savings for the justice system, especially for early intervention
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- Considerable accountability through compliance
 - 98% of defendants complied with the outcomes they agreed to complete.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Consultation Question 32 - Are existing criminal procedure laws about mediation of matters in the Magistrate Court working effectively? Should there be any changes?

Existing criminal procedure laws about referrals to mediation are not working to their full potential. ARJC receives a minimal number of referrals from Magistrates. In 2020-2021 ARJC received 2% of overall referrals directly from Magistrates. It appears to ARJC that referral to mediation is only considered when the justice system is not

meeting the needs of clients and/or there is a complex array of client intersectionality. This could be alleviated by earlier referrals to ARJC in the justice process.

Magistrates may also have a more traditional view of mediation as a path for civil disputes or be unaware of the ARJC program. Clear referral pathways for criminal matters to restorative justice would support increased and timely referrals to ARJC.

While resourcing of diversionary programs is outside of the scope of the Criminal Procedures Review, ARJC notes that limited resources for its programs results in longer timeframes for the intake and scheduling of conferences and may also act as a deterrent to referrals.

Consultation Question 43 - Are criminal procedures about summary hearings and pleas of guilty including written pleas of guilty, working in practice? How could they be changed or improved?

A referral to restorative justice conferencing may be appropriate when a plea of guilty takes place in Court. Since restorative justice is a victim centric process, it has significant benefits for all parties at any point in the justice process.

Consultation Question 49 - How can victim's interests be incorporated into Magistrates Courts 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 adjourning proceedings.)

ARJC is an existing pathway that focuses on the needs of victims of crime and their supports. ARJC is an existing diversionary method, alleviating pressure on the traditional justice system in ways that hold offenders accountable for their actions and offers them ways in which they can repair the harm.

Should you require further information, please contact [REDACTED],
Dispute Resolution Branch, DJAG on [REDACTED] [REDACTED] [REDACTED] or at
[REDACTED]

I trust this information is of assistance.

Yours sincerely

[REDACTED]

Nicola Doumany
Executive Director
Community Justice Services