

Department of Regional Development, Manufacturing and Water

Magistrates Courts Criminal Procedure Review

Consultation Paper April 2022

Submission by the Department of Regional Development, Manufacturing and Water

The Department of Regional Development, Manufacturing and Water (DRDMW) has a regulatory function in the administration of the *Water Act 2000*, *Planning Act 2016* and *Water Supply (Safety and Reliability) Act 2008*. The legislation administered by DRDMW contains various simple offence provisions and some misdemeanour and crime offence provisions.

Question 1: Generally, how are criminal procedures in the Magistrates Courts working? What could be changed or improved?

From a regulatory perspective, criminal procedures in the Magistrates Courts are generally effective. In particular, the practice and procedure for disclosure of prosecution and defence evidence in summary proceedings, not being “relevant proceedings” as defined by s. 590AD of the *Criminal Code Act 1899*, could be developed. This could involve review and development of the Magistrates Courts Practice Directions 9 and 13 of 2010.

Question 2: What does contemporary and effective mean to you. How should those concepts be applied to criminal procedure laws in the Magistrates Courts?

DRDMW does not seek to respond to this question.

Question 3: How could criminal procedures in the Magistrates Courts better accommodate the needs of different people.

DRDMW does not seek to respond to this question.

Question 4: Should the new legislation include guiding principles.

Yes, this would be useful to assist in applying and interpreting provisions. The main themes should be efficiency and simplicity of procedures and documents.

Question 5: Should the law be changed to create a single Magistrates Court of Queensland.

Yes, with provisions for the place where documents are to be filed and for matters to be heard. For example, in the first instance a Complaint and Summons may be filed and heard in the Registry closest to the Defendant’s place of residence or in the Registry in the District in which the offence occurred. Then provisions could allow for transfer to another place for the more convenient and efficient hearing of the matter.

Question 6: Should the Queensland Magistrates Courts be renamed as Local Courts.

Question 7: Should the title of Magistrate be changed to Local Court Judge.

DRDMW does not seek to respond to these questions of policy.

Question 8: Should the new Act contain general provisions to allow for electronic processes and procedures. If yes, are any safeguards required.

Yes, mainly regarding filing of documents and procedural appearances, not including sentence hearings and trials.

A particular safeguard would be service of originating process such as a Complaint and Summons to be served by personal service, registered post, upon a solicitor having instructions to accept service or by email with receipt confirmed by return email from the Defendant.

Question 9: What criminal procedures in the Magistrates Court could be improved by technological solutions? Are there any criminal procedures for which technology should not be used? Please provide examples.

As mentioned above, improvements could be achieved by electronic filing and service of documents and procedural appearances by Zoom or Teams etc. Sentences hearings (except in the absence of the

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Defendant such as pursuant to s. 142A of the Justices Act) and trials are preferably conducted in person subject to directions in particular cases.

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

Subject to directions in particular cases, trials should be conducted in person. Whilst technology has improved, it is not foolproof. A lot of time and effort and cost can be involved on both sides in preparing for summary trial. There is an instance where a matter was discontinued due to the failure of technology which prevented a prosecution witness giving her evidence. There may be other instances where trials have had to be adjourned due to technology problems.

Question 11: In practice, in what circumstances are proceedings about breach of duty currently used in the Magistrates Courts?

DRDMW does not seek to respond to this question because such circumstances do not involve the administration of the Department.

Question 12: How should new legislation about criminal procedure in the Magistrates Courts deal with the term 'simple offence', and the fact that the Justices Act currently defines this term differently to the Criminal Code. For example should the new legislation keep the current meaning of the term in the Justices Act but rename it as a 'summary offence'.

The reason for renaming the term of simple offence in the Justices Act as a 'summary offence' is sound.

Question 13: What procedural changes (if any) should be made to chapter 58A of the Criminal Code and the laws about indictable offences dealt with summarily. For example should they be moved or redrafted to improve their readability?

Regarding chapter 58A of the Criminal Code and other laws about dealing with indictable offences summarily, such as s. 931 of the *Water Act 2000* and s. 493 of the *Water Supply (Safety and Reliability) Act 2008*, these laws can continue to operate as they presently are in conjunction with new Magistrates Court criminal procedure legislation.

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?

A complaint and summons containing particulars of charges remains an effective way to commence some criminal proceedings such as prosecutions by Queensland Government Departments for simple offences under the particular legislation administered. The drafting of the approved forms for a complaint and summons could be reviewed and modernised.

Question 15: How can procedures for starting proceedings be simplified?

Apart from the jurisdictional issues discussed earlier in the paper about Magistrates Courts Districts, the current procedure for starting criminal proceedings by a complaint and summons is simple.

Question 16: Should the new legislation about criminal procedures in the Magistrates Courts have a clear statement of when proceedings have started. For example, should proceedings start on the date that material is filed in Court?

It is common practice for State Government Departments to have a complaint and summons signed by the complainant and a Justice of the Peace at the Magistrates Court District Registry having jurisdiction and then filed in the Registry at the same time which is taken to be the commencement date of the proceeding or the time of the making of the complaint. The complaint and summons is then served on the defendant before the first return date. If service has not occurred, s. 54(3) of the Justices Act operates and a Notice of Adjournment is sent to the Defendant by the Registrar.

In conjunction with the jurisdictional issue discussed earlier involving Magistrates Courts Districts, the new legislation would assist by clearly stating that proceedings have commenced (or started) when the initiating process is filed with a Registrar.

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Question 17: What requirements should be included in the new Magistrates Courts criminal procedure about the description of an offence ?

Section 47(1) of the Justices Act should be replicated regarding the sufficient description of an offence in an initiating process, and the approved forms for a complaint may be amended to clearly provide for particulars under the charge. An issue of the sufficiency of the pleading of a charge of an offence, or the sufficient provision of particulars of a charge, ought to be dealt with on a case by case basis by a Court having regard to the common law.

Also ss. 43 and 76 of the Justices Act should be replicated.

Question 18: If the new legislation provides for a notice about proceedings to replace a complaint and summons, what requirements should there be about information that must be included in that notice ? Should the requirements be consistent across all initiating documents, or should there be a requirement to file a second document ?

We refer to our response to question 17. A notice about proceedings should contain the charge(s) and particulars of the charge(s).

Question 19: Are the current provisions about private complaints in the Justices Act working in practice ?

Question 20: Should the new legislation about criminal proceedings in the Magistrates Courts place any limits on private complaints ?

Questions 19 and 20 relate to policy issues outside the scope of the administration of DRDMW. We are not aware of any private prosecutions for offences created under the legislation administered by DRDMW.

Question 21: Are the current disclosure obligations in Queensland working in the Magistrates Courts? If not, why ?

The current disclosure obligations are working because prosecutors and Magistrates generally ensure that the obligation stated in s. 590AB of the Criminal Code is fulfilled regarding disclosure.

In particular, Magistrates Courts Practice Directions 9 and 13 of 2010 should be reviewed and developed to encompass State Government Departments regulatory prosecutions. This would address a common situation where it mentions Magistrates "order" a "brief of evidence" to be disclosed to the defendant at a stage when no plea has been entered let alone a trial date set.

Investigations for State Government regulatory prosecution matters do not always result in the production of a "full brief", as that term is defined in Practice Direction 13 of 2010, prior to the commencement of proceedings.

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 ?

We refer to our response to question 21. The new legislation through practice directions could improve the current practice and procedure for disclosure in summary proceedings including State Government Department regulatory prosecutions. A staged approach should be adopted whereby a "full brief" of evidence is not required to be disclosed for summary prosecution proceedings until a trial date is set.

Question 23: Should the Criminal Code disclosure obligations extend to all offences in Queensland ?

No, considering that most Queensland Government Department regulatory summary prosecutions are commenced by particularised charges, and result in guilty pleas. The overarching obligation stated in s. 590AB of the Criminal Code can also be achieved through practice directions which provide for a staged approach for disclosure.

Question 24: Should there be any disclosure obligations on defendants in the Magistrates Courts, for example about an alibi or expert witnesses ?

Yes, in the circumstances of the example given. This could be provided for in a practice direction.

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Question 25: Are the current case conferencing requirements in Queensland working in the Magistrates Courts? If not, why?

Case conferencing as provided for by Practice Direction 9 of 2010 could be better implemented for Queensland Government Department regulatory summary prosecutions. This Practice Direction, as with Practice Direction 13 of 2010 regarding disclosure, could be reviewed to encompass these matters.

Question 26: Should the new criminal procedure legislation include requirements about case management. If yes, what requirements should be included?

No, not in the same vein as case management in civil jurisdictions. However as discussed in our response to questions 21 and 25, practice directions for disclosure and case conferencing could benefit from a review including to encompass State Government Department regulatory prosecutions.

Question 27: If the new legislation does include requirements about case management:

(a) Should they be mandatory?

(b) How should they apply when a defendant is self-represented?

If the new legislation were to include requirements about case management, reference could be had to civil jurisdictions such as the Planning and Environment Court where case management is done by mandatory directions hearings and reviews.

A self-represented defendant would be subject to case management under the cognisance of the Court and prosecution.

Question 28: Should the new criminal procedure legislation include any requirements about timeframes for progressing through the Magistrates Courts? If yes, what should they be?

This is a matter for the parties and the Court considering the circumstances of each case. However, a review of the practice and procedure for disclosure and case conferencing could encompass timeframes for these procedural aspects.

Questions 29 to 42 – In-court diversion

It is submitted that State Government Department summary prosecution matters would not be subject to the In-court diversion measures discussed in the paper due to the nature of the offence provisions involved, and the policy based decision to commence a prosecution which involves standard public interest considerations including the antecedents and culpability of the alleged offender and whether there are appropriate and effective alternative regulatory responses having regard to the nature of the offending. However there may be utility in the provision for a deferred prosecution agreement for these State Government Department matters which often involve corporate defendants.

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.

The existing practice and procedure for guilty pleas and sentence hearings, including in the absence of the defendant pursuant to s. 142A of the Justices Act, is satisfactory.

Question 44: When should a matter be able to be dealt with in the defendant's absence if at all?

Question 45: If a Magistrate is dealing with a matter in the defendant's absence, should the sentencing options available to the Magistrate be restricted? If yes, how?

It is submitted that a matter should be able to be dealt with in the defendant's absence, subject to restrictions on a Magistrates sentencing options, in the circumstances as currently provided for by the Justices Act.

Question 46 to 48 - Committal proceedings

DRDMW does not seek to respond to these questions because committal proceedings are rarely involved in State Government Department regulatory prosecution matters.

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Question 49 – Victims of crime

DRDMW does not seek to respond to this question due to the nature of the offence provisions under the legislation administered by the Department.

Question 50: Are the costs provisions in the current legislation working. What could be improved ?

The costs provisions in the Justices Act as outlined in the discussion paper are satisfactory. In cases where the complainant is a police officer or public officer, consideration may be given to specifically providing for a Magistrate to order the defendant pay the complainant's reasonable investigation costs and outlays where the legislation creating the offence provision does not have an operative provision in this respect (eg. s. 503 of the *Environmental Protection Act 1994*).

Question 51: Should the law be changed so that costs can be awarded in relation to offences under the Drugs Misuse Act 1986 that are heard and decided in the Magistrates Courts, consistent with the current provisions in the Justices Act ?

DRDMW does not seek to respond to this question because the Department does not administer the *Drugs Misuse Act 1986*.