



Our Ref: RH:EH

30 June 2022

Judge Shanahan AM
Criminal Procedure Review—Magistrates Courts
GPO Box 149
BRISBANE QLD 4001

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

Dear Judge Shanahan

Re: Submission - Criminal Procedure Review - Magistrates Courts

The LGBTI Legal Service Inc ('the Service') is a non-for-profit community legal centre that began operation on 7 July 2010 and was officially launched on 1 December 2010 by former Justice of the High Court of Australia, the Hon Michael Kirby AC CMG.

The Service recognises the difficulties faced by the LGBTI community and seeks to assist the Queensland LGBTI community to gain access to justice. The Service provides legal assistance across a broad range of legal areas such as criminal, family, domestic violence, employment and discrimination law. The Service also has an active Law Reform division that seeks to advocate for LGBTI-inclusive law reform and the protection of human rights in Australia.

This submission was compiled on the homelands of the Turrbal and Yuggera People. The Service accordingly acknowledges the Turrbal and Yuggera people as the Traditional Custodians of this land and recognises their ongoing connection to land, waters and community. This submission was prepared collaboratively by the Service's staff and volunteers all with diverse backgrounds.

The Review

The Service welcomes the opportunity to make a submission to the review and wishes to thank his Honour for leading the review process. In response to the review and with reference to the discussion paper published by the QHRC on April 2022, the Service has identified several relevant considerations given our knowledge of the unique experiences of the LGBTQIA+ community. Guided by the experiences of our clients in the court process we have focused our review on the areas that would principally have the greatest impact on the LGBTQIA+ community.

For this process The LGBTI Legal Service also wishes to bring to light that domestic violence is a factor for the LGBTQIA+ community that is often misunderstood or marginalised and we will continue to strive for awareness in the wider community.

Discussion

1. Contemporary and Effective – A Consideration of Diversity

The aim to update the courts to be contemporary and effective is both a procedural mission to be efficient and fair as much as it is equally a mission to acknowledge human rights and diversity in the process.

The consultation paper notes that the review will aim to consider the needs and preferences of people who use the Magistrate's court, in particular groups with specific needs or vulnerabilities such as women, people with disabilities, First Nations people and people from culturally and linguistically diverse backgrounds.¹ In the same view, the Service wishes to highlight the need for the consideration to extend to members of the LGBTQIA+ community in conducting the review.

As it is often the case that particular attributes interconnect with one another the review should opt for an intersectional approach in assessing the needs of a particular individual. For example a person identifying as a Sistergirl² may require supports in language, culture and personal safety while a Trans man with an anxiety condition may feel more comfortable in a virtual attendance.

The Service has assisted clients with intersectional attributes and have found difficulties in engaging with certain court procedures to ensure their needs are considered. The Service submits that this can be improved through updating both internal procedures and publicly available information on how the Magistrate's court may approach and acknowledge diversity. Similarly, the Service recommends that the review consider how domestic violence is approached in the justice system when dealing with LGBTQIA+ people. Research into this area is still new and emerging and in the instances the Service has assisted clients with domestic violence, we have noted that it is often the case that a heteronormative lens is applied in the court procedures. The review should note that experiences of coercive control may look quite differently in an LGBTQIA+ relationship and traditional gender role aspects should not be assumed.

Mirroring the Women's Safety and Justice Taskforce plan to address the safety for domestic violence victims, similar considerations should be extended to consider how members of the LGBTQIA+ community may be affected by domestic violence and the trauma they may experience from engaging with the justice system.

Specifically, the Service recommends:

¹ Queensland Government, 'Criminal Procedure Review—Magistrates Courts: Consultation paper' (April, 2022) 18, 19<<https://www.publications.qld.gov.au/dataset/202f1e64-a1e24299b24bac14d24e737d/resource/9dc3084b-ebd8-4580-bae1-0e8b623eccf3/download/cprmc-consultation-paper.pdf>>

² 'Sistergirl' or 'Brotherboy' are terms used by Aboriginal and Torres Strait Islander people to describe gender diversity, whereby a Sistergirl has a female spirit and takes on a feminine role in the community and a Brotherboy has a male spirit and takes on a masculine role in the community.

- Widening the scope of liaison services to include support for people of diverse backgrounds;
- Publish information on the Magistrates court website entailing information and resources for people with diverse backgrounds who attend court;
- Develop a mechanism for the provision of necessary supports for people of diverse backgrounds;
- Perform targeted training for staff on LGBTQIA+ domestic violence awareness;
- Implement training on and implementation of inclusive language and non-gendered language in the court process.

2. Human Rights – Acknowledging Sexuality and Gender Diversity

The Service wishes to acknowledge the steps taken to include human rights in the process of the review. In addition to the considerations given to the *Human Rights Act 2019* (Qld) in the consultation paper, going forward the Service recommends the court process implement elements from the Yogyakarta principles to inform and guide a more modern approach and commitment to human rights.

The Yogyakarta principles provide a broad range of human rights standards for persons of diverse sexual orientation and gender identities and in particular the Service would recommend the following for consideration by the review³:

- **Principle 8, Paragraph A.**
Take all necessary legislative, administrative and other measures to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity at every stage of the judicial process, in civil and criminal proceedings and all other judicial and administrative proceedings which determine rights and obligations, and to ensure that no one's credibility or character as a party, witness, advocate or decision-maker is impugned by reason of their sexual orientation or gender identity.
- **Principle 8, Paragraph C.**
Undertake programmes of training and awareness-raising for judges, court personnel, prosecutors, lawyers and others regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.
- **Principle 30, Paragraph F.**
States shall ensure sensitivity training of judicial and law enforcement officers and other public officials on issues relating to sexual orientation, gender identity, gender expression and sex characteristics.

³ International Commission of Jurists (ICJ), 'Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity' (March,2007) <http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf?> ; International Commission of Jurists (ICJ), 'Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta principles' (November,2017) <http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf>

In the view of the Service implementing the values established by these principles, with particular focus on the educational aspect in the process of the review would only improve the equality and fairness for members of LGBTQIA+ community in engaging with the court system and the wider goal of protecting and promoting human rights.

3. The Inclusion of Guiding Principles

The Australian Law Reform Commission in conducting their inquiry into family violence stated that guiding principles can perform an important symbolic and educative role in the application and interpretation of the law, as well as for the general community.⁴ Like several other legislative instruments that have adopted guiding principles into their frameworks⁵ the Service recommends the inclusion of guiding principles into the *Justices Act 1886* (Qld).

The Service has reviewed the list of recommendations set out in paragraph 3.8 of the consultation paper and submits that in addition to their implementation the following wording in some form should be included:

- **Court procedures should not operate in a way that is inherently discriminatory against victims or defendants on the basis of a particular attribute.**⁶

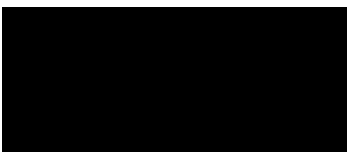
Including elements of non-discrimination in the guiding principles of the act will indicate that there is a commitment to human rights and will guide the operation of the legislation in practice.

Our Clients

The Service continues to assist clients from a range of diverse backgrounds and identities and will continue to advocate for changes to laws and procedures that promote principles of equality, fairness and non-discrimination.

Please, if you have any queries regarding the submissions outlined in this correspondence we encourage you to contact our office.

Yours faithfully



Renea Hart
Director/Principal Solicitor | LGBTI Legal Service Inc.



⁴ Australian Law Reform Commission, 'Guiding principles and objects clauses', Cybersecurity (Web Page) <<https://www.alrc.gov.au/publication/family-violence-improving-legal-frameworks-alrc-cps-1/16-sexual-offences/guiding-principles-and-objects-clauses/>>

⁵ See *Domestic and Family Violence Protection Act 2012* (Qld) ; *Youth Justice Act 1992* (Qld) ; *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

⁶ Similar to the *Human Rights Act 2019* (Qld) discrimination in relation to a person should take the wording from the *Anti-Discrimination Act 1991* (Qld) meaning of attribute such as age, impairment, political belief or activity, race, religious belief or religious activity, sex and sexuality.