

Submission to the
Criminal Procedure Review
Magistrates Courts
Queensland Corrective Services



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Introduction

This document represents Queensland Corrective Services' (QCS) submission to the Criminal Procedure Review Magistrates Courts. It includes information compiled by QCS and does not represent Government policy.

QCS welcomes the review of the *Justices Act 1886* (Justices Act) and a new legislative framework for contemporary and effective criminal procedure laws in Queensland's Magistrates Courts. The Magistrates Courts are key stakeholders for QCS. Everyday Magistrates across Queensland sentence individuals to QCS supervision, either in custody or in the community.

QCS manage and supervise over 9,000 prisoners and 20,000 individuals across 11 high security and six low security corrective services facilities, 13 work camps, 36 Community Corrections offices and more than 135 reporting locations dispersed across the state. Everyday QCS officers work to ensure that individuals who come into contact with corrective services are less likely to return to crime.

QCS interacts with Magistrates Courts in several ways:

- Provision of pre-sentence advice (written or verbal),
- Prosecuting contraventions of community-based orders,
- Ensuring prisoners attend Magistrates Courts as required (in person or via video link), and
- Receipt and interpretation of sentencing documents.

These functions occur every day and involve QCS officers from Community Corrections, Custodial Operations, Sentence Management Services and occasionally Legal Strategy and Services Group. Only the officers in Legal Strategy and Services Group are employed by QCS in their capacity as lawyers. All other functions are performed by officers that may not be legally qualified and are unlikely to be practicing lawyers.

This submission provides an overview of QCS experiences with Magistrates Courts, including legislative requirements, operational challenges, and opportunities to improve efficiencies. QCS supports any changes to criminal procedures for Queensland's Magistrates Courts that will improve consistency, efficiency and effectiveness of court processes, in particular those that impact QCS. This includes increased use of technology for court attendance, and lodgement of and access to documents.



Queensland Corrective Services

Community Corrections

Corrections offices comprise a multi-disciplinary team of administration, professional and management staff. Across Queensland there are seven regions that oversee the management of 36 Community Corrections offices.

It is Community Corrections staff that provide pre-sentencing reports, court advice and appear in the Magistrates Court to prosecute contraventions of community-based orders, where the contravention is not contested by the defendant and leave has been granted by the Magistrate.

While it is a requirement for Community Corrections professional staff to have a degree relevant to the human services or criminology fields, not all staff are required to hold qualifications. Professional staff may have a degree in the fields of psychology, criminology, law, justice, social work, health, behavioural or social sciences. However, for many other Community Corrections roles these qualifications are highly desirable, but not a requirement.

To provide context, the majority of QCS staff that are preparing court documents, providing court advice, and appearing in Magistrates Courts are providing court advice and appearing in court in addition to managing their regular caseload.

Section 18 of the *Magistrates Courts Act 1921* governs who may appear in a Magistrates Court. Pursuant to section 18(1)(b), Community Corrections officers appear with leave of the court. This becomes problematic in relation to contravention proceedings as outside of QCS's in-house legal officers, many staff providing court advice are not legally qualified, and the majority will not have any legal experience.

QCS in-house legal officers

QCS has in-house legal officers who attend to contested hearings and manage complex legal issues as they arise. There are currently one to two lawyers who attend to these matters and are also responsible for general litigation matters, human rights complaints and providing general legal advice.

These officers are based in QCS Head Office. Due to their significant workload, there is limited capacity for legal officers to travel across Queensland for court attendance.



Custodial Operations

Ensuring prisoners are present in a Magistrates Court when required requires planning by QCS' Custodial Operations, Sentence Management Services and Escort and Security Branch. This can require coordination across the State, between custodial facilities and over 100 Magistrates Courts.

Moving a prisoner for court attendance requires a significant amount of work. This includes ensuring there is appropriate authorisation for the move, escort planning, safety and security considerations, ensuring the prisoner's property, court materials and prescribed medication is taken with them, and consideration of other prisoner movements and timeliness.

Prisoners may have matters in a Magistrates Court some distance from where they are accommodated, or may be required to attend a specialist Court, such as the Queensland Drug and Alcohol Court.

In addition to managing prisoner transport, QCS is also responsible for the safe and secure custody of prisoners within the Brisbane Court Complex, including the Brisbane Magistrates Court, on George Street. In this situation, corrective services officers assist the proper officer of the court to perform their function in nominated courts as required under the *Corrective Services Act 2006* (CSA). This includes, but is not limited to, the management, security and good order of the court cells, and making sure prisoners are escorted to the relevant court at the appointed time.

Sentence Management Services

One of the key responsibilities of Sentence Management Services is the lawful detention of prisoners. There are Sentence Management staff located in each correctional centre across the state as well as in Head Office.

A significant amount of work goes into mitigating the risk of unlawful detention and discharge errors. QCS has a Lawful Detention Unit within Sentence Management Services responsible for sentence calculation and administration practices that ensure prisoners are lawfully detained and released from QCS custody. This involves providing pre-sentence custody certificates to the court and interpreting sentencing documents and ensuring that QCS complies with orders of a court.



Court Advice

Relevant legislation

The Justices Act does not place any significant procedural obligations on QCS giving court advice. However, it is a requirement under section 178C (Use of video link facilities or audio link facilities in proceedings) for QCS to facilitate the video link access of a prisoner to a Magistrates Court.

Procedures in the Magistrates Courts are also influenced by other legislation such as the *Penalties and Sentences Act 1992* (PSA).

In sentencing an individual, a Magistrate must take into consideration factors set out in section 9 (Sentencing guidelines) of the PSA. Subsection 9(2)(n) requires an authorised corrective services officer to disclose in writing or verbally whether an individual subject to a community-based order has complied with the order.

Further parts of this section also require a court to consider:

- (j) time spent in custody by the offender for the offence before being sentenced,
- (o) if the offender is on bail and is required to attend rehabilitation, treatment or another intervention program or course, the offender's successful completion of the program or course.

The PSA also stipulates information that QCS can and should not provide to a court (s15(2)) and the format that a pre-sentence custody certificate should take (s159A).

Section 344 (Pre-sentence report) of the CSA sets out the requirements of a pre-sentence report (PSR). This includes what information should be included, how and when it should be provided. Under section 344 of the CSA, a PSR must be prepared where required by the court. It must be given to the court within 28 days and if the report is in writing (not verbal), given in triplicate.

QCS operations

It is essential that courts have the appropriate information to make informed sentencing decisions. The provision of written and verbal PSRs provides an opportunity to tailor an order to the specific risks and needs of an individual. However, it should be noted that Queensland does not have a dedicated court support or advice service.

In Queensland, there are over 100 Magistrates Courts as well as various specialist courts – Murri Court, Domestic and Family Violence Court and Drug and Alcohol Court. These courts are spread across a vast geographical region and include remote circuit courts.



From a resourcing perspective, preparing court documents and appearing in court takes time away from case management and increases pressure on Community Corrections officers. This includes the time taken to travel to the Magistrates Court and wait for a matter to be heard which can take considerable time, particularly in regional and remote locations.

There are currently only two positions in Brisbane dedicated to providing court advice. In most locations, these functions are performed by Community Corrections officers in addition to their case management workload. Outside of Brisbane, interactions with the courts must be taken into consideration when allocating work to staff, to ensure there is capacity to prepare PSRs or attend court when requested. In some Community Corrections offices, providing court advice places a significant pressure on staff workloads.

State-wide consultation via surveys and direct engagement with district office locations in 2021 found that some Community Corrections offices recorded up to 355.5 hours of court appearances per month. This did not include travel, which saw up to 117.6 hours per month at one Community Corrections office. Some rural and remote locations also require officers to stay overnight for court appearances.

Similarly, the QCS Time in Motion study conducted in 2021 identified that across the state an average 8.9 hours each month is spent preparing PSRs, and approximately 5.3 hours per month is spent preparing return to court documents across the state. It is the greatest time commitment requiring staff to be out of the office.

A 2007 review identified that to provide an effective court advisory service, QCS would require more than 130 additional FTE across the state.

Data collected by QCS between July 2016 and June 2018 shows that 1,446 PSRs (verbal and written reports) were provided across the state¹. In the same period, 50,036 admissions for new community-based orders were received by QCS, indicating only a small percentage of the individuals who have PSRs requested by the courts are sentenced to community-based orders.

The absence of clear procedures between courts can result in QCS officers being requested to complete a variety of tasks that may fall outside of statutory obligations. For example, locating pre-sentence custody certificates or preparing written reports on how an individual has behaved on parole or why case management decisions have been made (outside of the obligations in section 9 of the PSA).

Further, without clear and consistent guidance, requests for PSRs and expectations of QCS officers in providing court advice is ad hoc and susceptible to the preferences of individual Magistrates. Some may request QCS officers to attend court daily or provide verbal pre-sentence information at short notice.

¹ It should be noted that there may have been more verbal PSRs provided, as the provision of these is inconsistently recorded



Clear and consistent procedures between Magistrates Courts would assist in training QCS staff on expectations and procedures and support the provision of better advice to Courts.

Queensland Drug and Alcohol Court

The Queensland Drug and Alcohol Court (QDAC) is a multi-agency, interdisciplinary response to severe drug and alcohol use that is associated with offending. It requires a Magistrate and representatives from the Department of Justice and Attorney-General (DJAG), Queensland Health, Queensland Police Service (QPS), Legal Aid Queensland and QCS to work together.

As part of QDAC, QCS officers perform a unique case management role that includes increased reporting, meetings and court attendance. In the case of QDAC, a significant amount of time is spent having a QCS officer present at all eligibility and suitability mentions.

The QDAC Operating Manual notes that it is not mandatory for QCS officers to be present at each mention of a matter in the pre-sentence phase unless directed by the Magistrate to do so.

QCS has experienced different approaches by Magistrates regarding officer attendance. This can impact on the time officers dedicate to case management of these individuals.

For context, in QDAC's first full financial year of operation (2018-19) a QCS member of the QDAC team was present in court for 184 eligibility mentions, 135 suitability mentions and 84 sentence hearings. In some cases, these staff members have the additional responsibility of attending Review Team meetings. This means one staff member may have to attend these meetings the day prior to court, as well as attendance in court on the day.

Domestic and Family Violence Court

Specialist Domestic and Family Violence (DFV) Courts were established in response to recommendation 96 of the Special Taskforce on DFV *Not Now, not ever: Putting an end to DFV in Queensland report* (the report). These courts are an integrated approach with a dedicated DFV Magistrate, court registry, specialist prosecutors, duty lawyers, court support workers and Community Corrections advisor. Originally trialled at Southport Magistrates Court, the specialised DFV Courts now operate in Southport, Beenleigh, Mount Isa, Townsville and Palm Island.



In these courts, a QCS officer:

- prosecutes contraventions of community-based orders resulting from contravention of DFV orders (DVOs),
- provides expert advice in relation to contravention of DVOs,
- completes suitability assessments for community-based supervision, and
- engage with stakeholders that are part of the specialist DFV court to support coordination of services between QCS, the court and other stakeholders.

This QCS court advisory role is funded through the DFV Courts State Budget allocation and while officers performing this role may have a case load, their primary focus is the delivery of court advice.



Contravention of community-based sentences

Relevant legislation

QCS prosecutes contraventions of community-based orders in Magistrates' Courts under the PSA. Specifically, an offender who contravenes, without reasonable excuse, a requirement of a community-based order commits an offence, pursuant to section 123 of the PSA and section 124 allows proceedings to be brought in any Magistrates Court. Sections 128, 129 and 138 of the PSA provide for a complaint and summons process that guides how QCS commences contravention proceedings in the Magistrates Court. This legislative process is administratively onerous as outlined below.

QCS operations

The prosecution of contraventions of a community-based order is a core QCS function. While QCS officers prosecute contraventions of community-based orders in all regions, Brisbane Magistrates Court is the only location with dedicated resources to undertake this function. Across the remainder of the state, Community Corrections officers prosecute contraventions in court in addition to their case management workload.

Like requests for court advice, QCS has experienced that Magistrates Courts across Queensland have different procedures in place and practices for prosecuting contraventions can vary based on the location of the court.

There are four different methods to return a community-based order to court, depending on the circumstances. These include:

- Complaint and Summons,
- Complaint and Warrant,
- Form 38 - s122(1) (Application for amendment or revocation [of a community-based order]) of the PSA, or
- a Bench Charge Sheet.

Each of these processes are administratively burdensome. For example, to initiate contravention action, QCS is required to provide the following documents:

- the original stamped community-based sentence,
- evidence of contravention (e.g sealed Verdict and Judgment Records (VJR) or the Direction to Report letter),
- Queensland Police Services (QPS) Criminal History (court outcomes),
- sentencing remarks (if any),
- QPS court brief (QP9) for original offence/s, and
- Court report.



For a Complaint and Summons, three copies of the contravention and associated documentation is required. The preparation of a contravention pack is resource intensive. Most of the necessary documents are not held by QCS and an officer must obtain them from QPS or the court. This results in delays to initiating the contravention process, with the delay increasing the risk the individual poses to community safety.

For a Complaint and Warrant, QCS officers must obtain endorsement from a Justice of the Peace (JP). This requires a QCS officer to visit the local court and see a JP. There have been instances where a JP does not understand the Complaint and Warrant process and is hesitant to sign the documents. To avoid this some QCS locations have made local arrangements for a JP to visit the office on certain days.

While amendments to the *Oaths Act 1967* enable a declaration or affidavit to be witnessed electronically, preparing, and collating documents for the Complaint and Summons or Complaint and Warrant process is a significant administrative burden on frontline staff.

Referral of contraventions to higher courts

Prosecutions for contravention of community-based orders can also be heard in the higher courts. This can occur when the community-based order was made in the Supreme or District Court. In most cases, the ODPP appear on the prosecutions in respect of this offence. For the reasons discussed below, this has several advantages. Having consistency of practice across the Magistrates Courts and higher courts and guidance on the relevant prosecutor would assist in streamlining and clarifying procedures between agencies and the court.

Contested contravention hearings

QCS legal officers appear in contested contravention proceedings commenced under section 123 of the PSA. This may result in a Judge or Magistrate resentencing the offender for the original offence.

While in these situations the complaint is initiated by QCS, it is noted that Police Prosecutions is likely to be better placed to be making submissions in relation to the resentencing aspect, following the contravention hearing. This is because Police Prosecutions were the prosecuting agency for the original offences.

For this reason, the *District Court in Walker v Department of Corrective Services & Anor [2014] QDC 59* held that both QCS and the police prosecution should be parties to the contravention proceedings. While this may be the legal position, police prosecutions do not always appear in these matters and the court may require QCS to make submissions in respect of resentencing. This situation can cause confusion, additional work and may hinder the proper dispensation of justice. In *Walker v QCS*,



Reid DCJ held at paragraph [22] *'It is perhaps unfortunate that the Act does not clearly enumerate the correct appellant in the circumstances of this case'*.

It is impossible for QCS to predict whether a court will wish to entertain the options available for resentencing under section 125 of the PSA when dealing with an offender under section 123. It would be preferable to have clear guidelines in relation to required appearances in circumstances where a matter may involve more than one agency.

Another point of contact between QCS and the Magistrates Courts is when QCS returns an individual to court for contravention of a community-based order and the individual contests the contravention. In these situations, QCS's legal officers represent the agency.

In these situations, QCS is not the original prosecuting authority. QCS is returning the individual to court due to non-compliance with the court's order, and QCS legal officers are in court to present QCS's evidence of the non-compliance. QCS legal officers present evidence of the non-compliance and can cross examine the individual, when necessary. It is not QCS's role to prosecute an individual or provide advice on re-sentencing.



Court attendance

A significant amount of coordination occurs between Custodial Operations, Escort and Security Branch and Sentencing Management Services to ensure prisoners attend Magistrates Courts as required. This includes in-person and via audio visual link.

In 2021-22, QCS recorded 1,855 prisoner movements to facilitate attendance at a Magistrates Court. During the same period, there were approximately 34,460 video conferencing bookings for prisoners to appear in court. Of these, approximately 30,180 were appearances in the Magistrates Court. It should be noted that this includes video conferencing for appearances that were cancelled on the day, as it is not possible to remove these from the data.

The Crime and Corruption Commission's *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland prisons* recommended that QCS increase video conference capacity in prisons to reduce the need to transport prisoners to court and health services. The final report noted that reducing the need to physically move a prisoner to court reduces corruption risks. It also noted that current conferencing capacity does not meet demand and prisoners are still being transported to court when their matters could have been attended to via video link.

The ability to facilitate video link court appearances is limited by QCS's infrastructure. QCS is only able to book a video link court appearance if there are enough video link booths available at the right time and sufficient officers to facilitate the videoconferences.

From a safety and efficiency perspective, the use of video link is preferred to in-person attendance. This is the preference particularly for in-person appearances at courts that are not local to the correctional centre, or when there are late notice changes to appearances. However, it is acknowledged that the ability to facilitate more video link appearances is limited to what current resources can support.



Sentencing

As the courts do not set a sentence end date, and sometimes do not set a Parole Eligibility Date (PED) or fixed Parole Release Date (PRD), QCS uses significant resources daily to interpret a courts intent.

QCS staff are required to calculate the offender's custodial end date and PED using the information on the Verdict and Judgement Records (VJRs) and pertinent rules in statute. This includes a complex landscape of intersecting and sometimes conflicting provisions in the *Bail Act 1980*, PSA and CSA.

It is common for individuals to come before the Magistrates Court with more than one or a complex sentence. It is often the case that an individual has multiple VJRs at any given time, which complicate sentence calculation. In addition, the individual VJRs are sometimes not clear on the requirements of the sentence imposed or the impact that it will have on the existing sentence being served.

Current practice is that QCS contacts the court via an email from the Sentence Administration Managers, who have the expertise in sentence calculations, to clarify anomalies/intent to avoid unlawful detention and/or discharge in error. QCS often requests court transcripts to assist with interpreting the intent of the sentencing judge. This results in a highly complex, costly and manual system for sentence calculation.

A common example of this complexity arises with fail to appear offences under section 33(4) of the Bail Act, and how these are to be calculated or incorporated into an existing sentence. This clarification is sought from the courts on a weekly basis. Additionally, QCS is often required to seek legal advice to assist with the interpretation of intersecting legislation and to enable the structuring of lawful sentence calculations to ensure lawful detention.

Sentence calculation is complex. While QCS sentence management staff are experienced in sentence calculation, often legislative interpretation makes calculation of parole eligibility and/or custodial end dates difficult.

The ability for a court to consider a prisoner's current sentence structure at the time of sentencing for new offences and provide for one new parole release/eligibility date and custodial end date, should be considered.

This approach has already been adopted in New South Wales, where a court is required to calculate and specify the release date at the time of sentence. The purpose of the section as stated by section 48(2) of the *Crimes (Sentencing Procedure) Act 1999* (NSW), is to 'require the court to give information about the likely effect of a sentence'. A similar amendment could be considered in Queensland.



Opportunities for efficiency

Technology

QCS supports the increased use of technology and electronic processes for summary criminal procedures, including for lodgement and tracking of contraventions, and access to relevant documents.

Electronic lodgement of documents to initiate a contravention of a community-based order would significantly reduce the resources required to complete contravention paperwork and increase community safety by ensuring a quicker response to an individual's escalating risk.

Any new process for lodgement of contraventions should remove the requirement for QCS to provide third party documentation to the court. This includes original stamped orders, QP9s and the individual's criminal history.

Enabling a JP to endorse documents online or via virtual appointment would improve processes. Similarly, removing the requirement for QCS to request a stamped version of the original community-based order and provide the document back to the court would assist and reduce procedural delays, particularly in rural, regional and remote office locations.

During the COVID-19 public health emergency, court advisory and many criminal proceedings (including contraventions of community-based orders) were put on hold due to widespread lockdowns. Across Magistrates Courts, there was an inconsistent approach to using remote/virtual appearances. In some locations Community Corrections staff were able to remotely provide court advisory so that matters could be heard.

Some Magistrates Courts allow ad hoc teleconferencing by QCS on days where no contraventions of community-based sentences are scheduled to be heard. These officers are on standby in case QCS is required to provide court advice on any relevant matters that arise.

Expansion of this practice to allow routine access to and use of virtual technology for court advisory and prosecution of contraventions would increase staff capacity for case management activities, reduce travel and idle time in court and minimise safety concerns for staff prosecuting contraventions. It could also minimise future procedural delays and ensure continuity of service.



Commencing proceedings

QCS supports any measures that will establish efficient and consistent contravention procedures in the Magistrates Courts.

QCS supports establishing a single process for the commencement of criminal proceedings to replace the existing contravention process with possible solutions to increase efficiencies detailed below.

QCS is also supportive of 'one' Magistrates Court to enhance consistency of procedures across Queensland courts. The standardisation of court procedures may also reduce the time required to train Community Corrections officers on court protocols.

Access to documents

QCS has access to some court documents through Queensland Wide Interlinked Courts (QWIC) or QPS' Suitability Checking, Recording and Monitoring (SCRAM). However, some of the documents available on QWIC, such as VJRs required for sentence calculation, are not sealed versions. Similarly, community-based orders are not transferred on QWIC.

To ensure accuracy of information, QCS requires a sealed VJR to complete and verify sentence calculation. To obtain a sealed VJR, QCS staff must email the sentencing Magistrates Court and request a sealed VJR. The wait for the document can be lengthy depending on the courts resourcing to complete these requests. These delays result in delays of confirmation of sentence-calculation for parole orders (including same day releases) and order activation which has flow-on effects for case management of these individuals, including the ability to commence assessments or suspensions of orders.

Introducing an online real-time portal, like QWIC, SCRAM or Infoxchange, but with increased interoperability, would enhance efficiencies and save resourcing for both the courts and QCS, particularly in duplication of documentation as discussed above. Ideally, electronic access to documents would include QCS access to all community-based orders, VJRs, domestic violence orders (inc. police protection notices), non-contact orders and any other information relevant to QCS and management of individuals.

Removing duplicative processes

QCS supports any improvements to remove duplication of documents or processes.

For example, when an individual contravenes a community-based order and is returned to court for the contravention, there is additional paperwork once the matter is finalised. In addition to the original order, QCS completes a Court Result Notice outlining the determination of the court in respect to the contravention. Court Result



Notices must then be provided to QPS, who use this information to update the individual's Queensland Criminal History.

Similarly, the requirement for QDAC staff to record information in both IOMS and Infoxchange, to enable information sharing across the multidisciplinary QDAC agencies. This process is duplicative and increases the administrative burden for staff.

