



Dear Review Secretariat,

My apologies for providing such a brief response to this important review.

I would be happy to discuss any aspect of our submission.

Access to Justice Context

1. Townsville Community Law was established in 1992 and is a non-profit community based legal centre serving North Queensland and surrounding regions.
2. Our service has a long history of providing advice to accused persons and those charged with regulatory offences for which legal aid assistance is not readily available. It is worth noting that although this cohort only represents a small proportion of our clients, it remains a significant gap in Queensland's access to justice system.
3. Legal Aid Queensland's policies, while obviously constrained by funding, are restrictive and maintain a requirement that an applicant for criminal law services meet several tests including a means and merits test as well as relevant guidelines.
4. The application of the combined tests means that Duty Lawyer services in the Magistrates Court are effectively the full extent of available services for those who cannot afford a private lawyer. Additionally, minor traffic and regulatory offences are generally excluded even from Duty Lawyer services.
5. It would be antithetical to expected outcomes of this review to consider any changes or system re-design without also considering the impacts on access to justice issues, including when, how and where people obtain legal assistance, and just as importantly, the human rights implications of any changes.
6. We do note that the issue of legal assistance is relatively absent from the Consultation Paper. We note that critical ancillary matters are considered, for example, the power to admonish as opposed to convict, or record a Court outcome of another kind.
7. In our view, the process by which such a discretion (and many other judicial discretions) is most carefully considered is where an accused person has had the benefit of legal assistance. That is, they have been advised of the nature of the charges against them, however minor, and have had the time, opportunity, and expertise (usually a lawyer's assistance) to ensure that the matters before the Court are fully explored. This includes making sure the charges are viewed in the context of accused person's lived-experience, social and health determinants, economic status, and personal background including intersecting factors that may have contributed their alleged offending.

Human Rights Issues

8. While compatibility with the *Human Rights Act 2009* (Qld) (HRA) is anticipated as a mandatory process, the Consultation Paper briefly canvasses several human rights issues that warrant detailed attention. These include the issue of reasonable and procedural accommodations and entrenched bias within the criminal justice system. We deal with each issue in turn.

Reasonable Accommodations

9. The Consultation Paper does mention this issue:
In addition to operating in a way that accommodates the needs of people using the criminal justice system and the broader community, contemporary and effective criminal procedure must recognise that some of those people—such as women, people with

disability, people from culturally and linguistically diverse backgrounds, and First Nations people—have particular needs and vulnerabilities. (Para 2.38)

10. In our view, the concept of reasonable and procedural accommodations should be at the heart of the Consultations. The concept is already accepted by Australian law through Australia's ratification of the Convention on the Rights of Persons with Disabilities (CRPD) at article 13, which provides:

Article 13 – Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

1. The CRPD defines reasonable accommodations as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” (Article 2)
2. In this regard, and to provide relevant commentary, we **attach** copies of ‘Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ and the ‘Report of the Office of the United Nations High Commissioner for Human Rights and The International Principles and Guidelines on Access to Justice for Persons with Disabilities’. We also note that the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability produced reports on criminal justice and disability that would be highly relevant for the review to consider.
13. While CRPD's formulation is essentially the first of its kind to which Australia is obliged to adhere, similar considerations obviously apply to other groups.
14. We note that Court benchbooks have been a very effective way of providing guidance to Courts and Tribunals on how to recognise the justice needs of various groups in society, including any reasonable and procedural accommodations that might be relevant.
15. While Benchbooks are effective in this regard, any system re-design should ensure that reasonable and procedural accommodations are part of the new system, thereby reducing the need for external guidance in the first place. That is, reasonable and procedural accommodations should form part of the process rather than be superimposed as a supplementary idea.
16. We commend the attached documents to the review as a baseline for considering how redesign might incorporate these existing obligations and thereby improve the accessibility of the system. Of course, reasonable accommodations might also properly include responding to the human rights articulated in many of the provisions of the HRA. The Consultation Paper notes certain provisions however, other considerations should also include:
 - That many of the functions of Courts involve matters that fall under section 9(4)(b) and thereby create a mandatory consideration of human rights under the HRA. In our experience, this is an area of significant concern. Court officers and staff (and the public) lack real clarity around what decisions enliven human rights considerations from an administrative capacity;
 - That human rights are indivisible and interrelated and one cannot cherry-pick those that might seem most likely to apply. In this context, it would be likely that other relevant rights might include HRA sections 15 (Recognition and equality before the law); 17

(Protection from torture and cruel, inhuman and degrading treatment); 20 (Freedom of expression); and 25 (Privacy and reputation. Additionally, access to justice is a cross-cutting rights that helps to guarantee all other rights; and

- That the Act itself when re-designed will also be subject of interpretation pursuant to section 48 of the HRA.
17. We also note that given the review has indicated it will consider a greater breadth of reasonable and procedural accommodations than in CRPD, it might be prudent to seek the views of specialist groups and persons with lived experience in this regard.
 18. We note that recent work by the Open-ended Working Group on Ageing on access to justice noted a range of issues for older persons including dealing effectively and fairly with impaired functional capacity (as opposed to cognitive impairment) due to ageing; the need for timely and expedient proceedings given older age; accessibility features that address common ageing related deficits; access to alternative, non-judicial pathways where appropriate; special needs for older persons in remand awaiting due process; and the importance of equality and non-discrimination training for personnel of justice administration and law enforcement including specific training on legal issues for older persons. We **attach** a copy of that working document.

Entrenched Structural Bias

19. The criminal justice system itself must ensure that it can and will have proper regard to reasonable and procedural accommodations by ensuring it does not contain any entrenched structural inequality or unconscious bias. While this takes many forms, it is best known by the forms of racism, ableism, sexism, homophobia, and ageism. Entrenched structural bias is a clear barrier to fair process and can lead to very negative outcomes. It also diminishes public and professional confidence in the system.
20. We note that induction, training and competencies for Court officers and staff must be incorporated into re-design processes. This obviously also includes groups and themes far broader than disability. Despite this it must include the obvious issue of accounting for legal capacity in a contemporary manner and ensuring that those with impaired decision-making are not disadvantaged by the system itself, and that the process, and their entry and exits points do not criminalise their disability.
21. Furthermore, the interplay of stereotypes within Courts and criminal justice systems means that some accused persons already faced preconceived notions of how and where they should enter and exit the system. This can lead to a failure to identify the need for specific reasonable and procedural accommodations. For example, older persons less commonly engaged in the criminal justice system, however when they are accused, victims or in another role, their specific needs must be identified and addressed lest it lead to a miscarriage of justice. Groups such as people with disability (broadly speaking) and older persons are not included within specific systems that provide justice system values in the same way as other groups (like children) as noted by the Consultation Paper at Part 3. In fact, Queensland Benchbooks do not even include a chapter on older persons.
22. Some values within criminal justice systems are structured around a perpetrator/victim dynamic - as indeed they should – such as in the Domestic Violence Courts. This is not incompatible with a human rights approach to ensure that all court users have their human rights respected.

Victims of Crime

23. In our view the current scheme for victims of crime requires greater opportunities for court-support and victim support services as part of a scheme of reasonable and procedural accommodations. In fairness, these services should be broadened to include a braider range

of court users including family-support for parents of accused persons, particularly where the outcome of the accused persons' criminal justice process impacts on that family member. Examples include where adult age children who care for an older parent are likely to be imprisoned, where parents are involved in Bail arrangements or where they need support to themselves support an accused family member with disability.

We thank the Review for the opportunity to submit.

Regards,

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