

TERMS OF REFERENCE

Review of Criminal Procedure in Queensland's Magistrates Courts

An independent reviewer, supported by a secretariat provided by the Department of Justice and Attorney-General, will lead a comprehensive review of Queensland Magistrates Courts criminal procedure laws.

The reviewer will be an eminent retired Judge who will oversee the review on behalf of the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence (Attorney-General).

The reviewer will:

1. make recommendations to create a new framework for contemporary and effective criminal procedure laws applying in Queensland's Magistrates Courts; and
2. based on the recommendations, provide expert criminal law guidance, knowledge, and oversight to the secretariat team in developing new criminal procedure legislation for the Magistrates Courts.

Background

Criminal procedure laws are fundamental to the effective operation of the criminal justice system, facilitating the fair and expeditious disposal of cases according to law.

In Queensland, offences are classified as regulatory or criminal offences. Criminal offences are further classified as indictable or simple offences. While all offences start in a Magistrates Court, different criminal procedural rules can apply depending on an offence's classification.

Magistrates Courts are the first tier of the Queensland courts system. A Magistrates Court operates without a jury. A magistrate sits alone and decides questions of both law and fact. This is referred to as dealing with matters 'summarily'; and the court exercising summary jurisdiction.

Magistrates Courts hear and determine most Local, State and Commonwealth simple and regulatory, as well as a wide range of indictable offences. When a Magistrates Court does not have summary jurisdiction to deal with an indictable offence, a committal proceeding occurs to transfer the case to the District or Supreme Court where it will be finalised.

Criminal cases account for most of the work of the Magistrates Courts. According to the Magistrates Courts Annual Report 2019-20, approximately 95 percent of all criminal matters in Queensland are dealt with by the Magistrates Courts. Many defendants appearing in the Magistrates Courts are not legally represented. Most people's experience and understanding of the criminal justice system in Queensland is informed by contact with a Magistrates Court.

The *Justices Act 1886* (Justices Act) is the key criminal procedure legislation for Queensland's Magistrates Courts. The Justices Act sets out the summary criminal procedure laws, that is the court process and procedures necessary for the prosecution of offences and administration of justice, including the way criminal matters are commenced, dealt with and determined.

The Justices Act has long been recognised as requiring modernisation. While the Justices Act has been periodically amended, it has not been comprehensively reviewed. The form of the Justices Act is generally recognised as problematic. It is written in an archaic style making it

difficult to understand in parts, and this is not reflective of its central role in the administration of justice in Queensland.

In late 2020, the Queensland Government committed to commencing a comprehensive review of the Justices Act and the *Criminal Practice Rules 1999* (CPR), including consultation with a wide range of key stakeholders, the judiciary and legal practitioners. The commitment included introduction of legislation into the Parliament in the current term of Government.

Scope

The reviewer is asked to make findings and recommendations to the Attorney-General for a new legislative framework for contemporary and effective summary criminal procedure laws in Queensland to replace the Justices Act.

The reviewer should develop the framework for summary criminal procedure laws that follows the chronology of a criminal proceeding in the Magistrates Court, from instituting proceedings to resolution, including an appeals process.

To remove any doubt, summary criminal procedure laws include committal proceedings and mechanisms available to the court for managing how matters are dealt with, for example closing the court, attendance of witnesses, access to the court files. It does not include consideration of sentencing options or procedures.

In making recommendations, the reviewer should consider:

- the role and context of the Magistrates Courts in the criminal justice system in Queensland;
- alternative ways for the Magistrates Courts to deal with matters, and is not restricted to the existing summary criminal procedures contained in the Justices Act;
- necessary or desirable reforms that achieve contemporary and effective summary criminal procedure laws and practices;
- exploring options to improve existing summary criminal procedures;
- consolidating existing summary criminal procedure laws where this is necessary to promote a contemporary and effective legislative framework;
- summary criminal procedural laws that balance the interests of victims and accused persons;
- more efficient and effective methods of the court dealing with criminal offences, including ways to reduce court operational costs and procedural delays;
- adopting summary criminal procedures that enhance consistency across Queensland courts, where appropriate and particularly in relation to the CPR;
- leveraging where relevant, existing criminal procedure reviews and reforms undertaken in Queensland and in other relevant jurisdictions that align with a contemporary and effective framework;
- the need to protect and promote human rights;
- supporting increased use of technology and electronic processes for summary criminal procedure, including electronic lodgement, filing and service of documents;
- the extent to which existing legislation should be repealed or amended to give effect to the recommended new summary criminal procedure laws; and
- any other related matters the reviewer considers relevant.

The review will also consider whether:

- a single Magistrates Court of Queensland should be established; and
- Magistrates and the Magistrates Courts should be retitled as Local Court Judges and Local Court/s respectively, having regard to the costs and benefits of such a change.

The reviewer will then provide expert criminal law guidance, knowledge, and oversight to develop the necessary legislation to give effect to its recommendations.

The review is not an examination of the criminal justice system delivered through the Magistrates Courts in Queensland, including for example the general workings of the Magistrates Courts' criminal jurisdiction, the institutions and issues associated with service delivery, determining what matters can be finalised within its jurisdiction, reforming the substantive criminal law and systems, drivers of crime, policing, outside court diversionary options and imprisonment.

The scope of the review does not include an evaluation of relevant reforms in the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*.

Also, while summary criminal procedural laws are supplemented by other legislation, the scope of the review is not concerned with specific criminal offences (including offence classification) and generally does not include examination of the operation of these Acts, including for example: *Criminal Code*, *Bail Act 1980*, *Penalties and Sentences Act 1992*, *Evidence Act 1977*, *State Penalties Enforcement Act 1999*, *Police Powers and Responsibilities Act 2000*, *Victims of Crime Assistance Act 2009*, or the *Youth Justice Act 1992*.

Consultation

The Review will be informed by broad and wide-ranging consultation with:

- the judiciary, including the Chief Magistrate and the Rules Committee;
- Courts Services Queensland staff;
- prosecution agencies, including the Queensland Police Service and Director of Public Prosecutions (Queensland and Commonwealth);
- government departments, agencies, local governments and relevant statutory bodies;
- legal stakeholders and legal practitioners, including community legal centres;
- the public generally; and
- any other group or individual, considered appropriate given the scope of the review.

Consultation may be undertaken in any form.

Report

The Reviewer is to provide a summary report reflecting findings and recommendations to the Attorney-General by 30 April 2023.

The summary report is to guide preparation of legislation for contemporary and effective criminal procedure laws in Queensland's Magistrates Courts.

Further work as required is to be undertaken to develop the draft legislation.