



CDPP

Australia's Federal Prosecution Service

Commonwealth Director
of Public Prosecutions



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Your Reference:

Our Reference:

30 June 2022

Criminal Procedure Review - Magistrates Courts
GPO Box 149
Brisbane Qld 4001

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

Dear Reviewer

Criminal Procedure Review – Submission in response to consultation paper on behalf of the Commonwealth Director of Public Prosecutions

The Commonwealth Director of Public Prosecutions (CDPP) thanks the reviewer for the opportunity to provide a response to assist in the review of the Magistrates Court.

The Office of the CDPP is an independent prosecution service established by Commonwealth Parliament to prosecute offences against Commonwealth law.

Section 68(1) of the *Judiciary Act 1903* (Cth) relevantly provides that the laws of a State in respect of the arrest and custody of a person, the procedure for their summary conviction and examination, and commitment for trial on indictment apply *'so far as they are applicable'* to persons charged with offences against Commonwealth law.

The CDPP's focus on the prosecution of federal offences in State Courts informs the scope of this submission, and accordingly which consultation questions have been addressed. The CDPP's responses are as follows:

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

1. The CDPP works with a number of non-police partner agencies to commence proceedings for summary and indictable offences in the Magistrates Court. The procedure for commencement via complaint can be, as identified in the consultation paper, cumbersome and time consuming. Of some cost and inconvenience to a national legal practice, is the necessity to have a complaint made before a Queensland Justice of the Peace, in circumstances where the complainant may be based interstate.

2. A more integrated approach to the use of remote access and electronic filing in the Magistrates Court would also be of significant utility to Court users generally. Further matters are set out in answer to other questions below.

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

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

3. The CDPP supports the new Act containing general provisions to allow for electronic processes and procedures.
4. The Federal Court of Australia has adopted an electronic filing and management system for matters in that jurisdiction. Court participants are provided with a login , and must then register as a party to a particular matter. Online access to the originating process, the charges presently before the Court, lodging of committal paperwork and the ability to access forthcoming court dates would promote efficiency and reduce the need for Court registry staff to field requests. The ability to seek and be advised of the outcome of administrative adjournment applications (other than via email exchanges with registry) would be beneficial.

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

5. The option of conducting summary hearings remotely should be available to parties in circumstances where it can be sensibly accommodated, without prejudice to the fair conduct of the matter. The cost and time for travel associated with Court proceedings can be significant to government and private individuals. Utilising technology to reduce travel where appropriate would be more efficient.

Question 12: How should new legislation about criminal procedure in the Magistrates Court deal with the term 'simple offence', and the fact that the Justices Act currently defines the 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'?

6. The CDPP would support the term 'simple offence' being replaced with a term such as 'summary offence' in circumstances where the present meaning of simple offence is retained.
7. Section 4H of the *Crimes Act 1914* (Cth) (Crimes Act) prescribes that Commonwealth offences punishable by imprisonment for a period not exceeding 12 months, or those that are not punishable by imprisonment, are 'summary offences'. This provision is subject to contrary intention. For example, a number of Commonwealth Acts prescribe whether certain offences within those acts are summary or indictable. These Commonwealth provisions allow no room for chapter 58A of the *Criminal Code* (Qld) to operate in respect to Commonwealth offences.
8. The term 'simple offence' is not defined in the context of Commonwealth offences with 'simple offence' in the Justices Act meaning; that is, any offence punishable on summary

conviction. Section 4J of the Crimes Act provides that a Commonwealth offence, where punishable by imprisonment for a period not exceeding 10 years may be heard and determined summarily by joint election. Thus, it is important that the wider definition of simple offence presently in the Justices Act is retained to permit procedures for the summary disposition of Commonwealth matters. This is clearly a definitional matter relevant to State offences also.

9. Whilst some confusion may perhaps be occasioned by the term 'summary offence' bearing a different definition in the Crimes Act and in Queensland procedural legislation, no difficulty arises should the term 'summary offence' be introduced as proposed.

Question 14: How should criminal proceedings in Queensland be started by persons other than police under the new legislation?

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

10. As set out in paragraph 1 above, the commencement of proceedings in Commonwealth matters are often initiated by a government officer other than a police officer, and must as a consequence be commenced via complaint and summons. Commencing proceedings by way of Court Attendance Notice (or equivalent), as is the case in New South Wales under the *Criminal Procedure Act 1986* (NSW), has proved an efficient and expedient way for Commonwealth prosecutions to be instituted. We note also that Court Attendance Notices can be filed electronically in New South Wales.
11. Whilst it would be expected that personal service would be required for initiating processes, some discretion in the available forms of substituted service would provide greater flexibility.

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?

12. The legislation should specify when proceedings have commenced. Section 15B of the Crimes Act provides a limitation period for the commencement of prosecutions for offences that carry a maximum penalty of six months or less. A number of other Commonwealth provisions have similar limitation periods. Accordingly, certainty around a date of commencement would be of benefit. The CDPP would favour the commencement date reflecting the date of signing or filing the originating document, rather than service. This would retain the ability to commence proceedings in circumstances where a defendant is unable to be served within a prescribed statutory time limit.

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

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?

13. The CDPP is of the view that for the purpose of an initiating notice, those matters presently required to be set out via bench charge sheet would be adequate. That is, the name of the complainant and defendant, the charge and adequate particulars such as the time and place of the offence, person aggrieved, any property in question, and any circumstances of aggravation.

Question 19: Are the current provisions about private complaints in the Justices Act working in practice? If not, why?

Question 20: Should the new legislation about criminal proceedings in the Magistrates Court place any limits on private complaints? Why or why not? For example:

- (a) Should the additional procedural provisions that currently apply to some indictable offences be extended to any private complaint?**
- (b) Should there be limitations on the circumstances in which a private complaint may be brought, such as where it may be vexatious?**
- (c) Should any private complaint be subject to assessment or review before it can proceed? If yes, how should this operate?**

14. Section 9(5) of the *Director of Public Prosecutions Act 1983* (Cth) empowers the CDPP to take over a summary or committal proceeding instituted by another. Having taken over the proceeding, the Director may continue it as informant, or decline to continue the prosecution. Otherwise, the initiation and procedure for a Commonwealth offence commenced via private complaint is governed by State practice and procedure. The CDPP is in favour of the introduction of contemporary procedures such as those referred to in the consultation paper, to permit some assessment at a preliminary stage of whether private complaints are brought in good faith, and with some prospects of success.

Question 33: Could an in-court deferred prosecution scheme work in the Queensland Magistrates Court? What issues need to be considered?

Question 34: What new procedures could be included in criminal procedure laws in Queensland to allow for a deferred prosecution?

Question 35: In what circumstances should a deferred prosecution occur? What offences should be excluded? What is an appropriate timeframe to defer a prosecution?

15. The CDPP is of the view that in-court diversion programs may have application to Commonwealth offences. We note that such schemes may lengthen the criminal justice process.

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?

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?

16. The CDPP supports the option being available, in certain circumstances, to deal with matters in the absence of the defendant. While it is necessary for the defendant to be present to enter a signed recognisance for most Commonwealth sentencing dispositions, matters may be dealt with ex-parte where a fine is to be imposed. We support the continued ability to deal with a matter in the defendant's absence in such circumstances, where there is proof of service of the originating proceeding; where sufficient particulars of the offending as alleged; and any criminal antecedents to be alleged have been provided to the defendant.

Question 46: How could the existing committal procedures in Queensland be improved? (This applies to registry committal and committals taking place in court.)

Question 47: Should there be a compulsory directions hearing before a committal takes place? If yes, what should be the purpose and requirements of this hearing? Should there be any circumstances where a directions hearing can be waived (for example, where there the parties indicate a matter will proceed as a registry committal)?

Question 48: In relation to the examination of witnesses during committal proceedings, should the law include guidance about what is 'substantial reasons, in the interests of justice'?

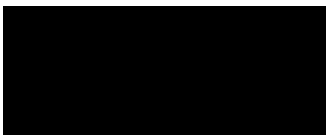
17. Whether the prosecution can call a witness at committal, other than on the basis of a successful defence, is presently uncertain. Further, the operation of section 111 of the Justices Act, which permits the use of committal depositions at trial where the deponent is dead, absent etc., requires the relevant deposition to have been taken before Justices.
18. A directions hearing may be sought if required, a procedure which presently seems to work adequately.
19. In the interests of justice, legislative confirmation of what 'substantial reasons' might be, may provide more clarity.

Question 51: Are the costs provisions in the current legislation working? What could be improved?

20. The costs provisions in the Justices Act are adequate.

The CDPP hopes that this response if of assistance to the reviewer. Please do not hesitate to contact this office for clarification or further comment.

Yours faithfully



Bill Ferguson
Assistant Director