



Dedicated to a better Brisbane

22 June 2022

Judge Michael Shanahan AM
Criminal Procedure Review – Magistrates Courts
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Dear Judge Shanahan

Thank you for the opportunity to provide submissions on the Criminal Procedure Review: Magistrates Court Consultation Paper April 2022.

Brisbane City Council (Council) has provided a response to questions stated in the Consultation Paper which are relevant to Council's involvement in criminal procedures in the Magistrates Court. The response is detailed in Appendix A to this letter.

Council looks forward to continued collaboration on this matter. Should you require any further information about Council's submission, please do not hesitate to contact Mr Kevin Cartledge, Legal Counsel, Litigation Risk and Enforcement, City Legal, City Administration and Governance, on [REDACTED]

Yours sincerely

[REDACTED]
Colin Jensen
CHIEF EXECUTIVE OFFICER

Appendix A: Council's submission on the Criminal Procedure Review: Magistrates Court Consultation Paper April 2022



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# ¹	Question	Position/Response
1	<p>Generally, how are criminal procedures in the Magistrates Courts working?</p> <p>What could be changed or improved?</p>	<p>Council's involvement with criminal procedures in the Magistrates Court is limited to prosecutions by way of complaint and summons. These complaints are most often brought in the name of a Council employee, who is a "public officer" under the <i>Justices Act 1886</i>, or in the name of Council. As a result, the provisions that are relevant to Council under the <i>Justices Act 1886</i> are limited to these circumstances.</p> <p>Generally, the procedures in respect of prosecutions by way of complaint and summons work quite well. However, there are some areas that could be improved:</p> <ol style="list-style-type: none"> 1. Reducing the ability for, or circumstances where, technical arguments against the validity of a complaint can be raised. 2. Administrative matters (including some adjournments) being able to occur on the papers or electronically. 3. A mechanism for reducing the issues, or identifying the real issues, in dispute in contested hearings. 4. A clearer statement of the circumstances where a person can be dealt with in their absence and the process for that occurring.
2	<p>What does 'contemporary and effective' mean to you?</p> <p>How should those concepts be applied to criminal procedure laws in the Magistrates Courts?</p>	<p>Operates to meet current social expectations by way of procedures that allow for the timely resolution of matters while balancing the various rights and interests of litigants and court users.</p>
3	<p>How could criminal procedures in the Magistrates Courts better accommodate the needs of different people?</p> <p>What is needed to allow for better understanding, connection and participation? This might include (but is not limited to) First Nations</p>	<p>Over the years there have been a number of Specialist Courts that operate for particular circumstances (Murri Court, Drug Court and the Domestic Violence Court for example). They generally focus on the specific needs and/or circumstances relevant to the person before the Court and provide a process that includes relevant cultural considerations (ie involvement by elders in the Murri Court) and aim to</p>

¹ As per the question numbers in the Criminal Practice Review Consultation Paper

	people, people from culturally and linguistically diverse backgrounds, women, people with disability, victims of crime and the general community.	<p>provide specialist support to assist defendants to rehabilitate.</p> <p>Council considers that there should be procedures to accommodate the needs of different people. However, this is a question better answered by entities that have the proper knowledge and research into this area.</p>
4	<p>Should the new legislation include guiding principles?</p> <p>If so, what should the main themes of those principles be?</p>	<p>The inclusion of guiding principles would assist in the interpretation of the legislation, particularly in circumstances where the purpose or operation of a provision, or terms use with the Act, may not be clear or could be construed in different ways.</p> <p>The main themes should include a clear statement of the intention of the Act, what it seeks to achieve and how that is to occur.</p>
8	<p>Should the new Act contain general provisions to allow for electronic processes and procedures?</p> <p>If yes, are any safeguards required?</p>	<p>The advancement of technology allows for electronic processes and procedures to be utilised by the Courts.</p> <p>The ability for the Courts to use these should be included, however the legislation should also reflect the fact that not all Court users will have access to electronic means.</p>
9	<p>What criminal procedures in the Magistrates Court could be improved by using technological solutions?</p> <p>Are there any criminal procedures for which technology should not be used? Please provide examples.</p>	<p>Electronic filing, etrials and video/phone appearances (when used in appropriate situations) could improve criminal procedures in the Magistrates Court.</p>
10	<p>Should summary hearings be conducted remotely?</p> <p>Why or why not?</p>	<p>There is some benefit to being able to conduct hearings remotely. However, where there is complexity of issues or a large volume of material, remote appearances can be difficult.</p> <p>This is a matter where the discretion of the Court might be important to determine the appropriateness of the use of hearings occurring remotely. Such a discretion might assist in finalising matters in circumstances where they may otherwise be adjourned, but also ensuring parties appear in person when the interests of justice and the particular circumstances of the matter require it.</p>

<p>14</p>	<p>How should criminal proceedings in Queensland be started by persons other than police under the new legislation?</p> <p>For example, should the complaint and summons be replaced by a notice that the person must appear in court?</p>	<p>The complaint and summons process has worked for a long time. However, it is by no means a perfect system. What is a suitable initiating document will depend largely on the process that is implemented.</p> <p>If the new process does away with the need to provide particulars, either as part of the initiating document or at a later time, then a notice to attend Court would be a simple way of commencing proceedings.</p> <p>If, however, particulars are still required as part of the initiating document, then the complaint and summons (or an alternatively named document which provides the information) might still be appropriate.</p> <p>Whatever process is implemented, the current requirement for the initiating document to be sworn could be replaced with an unsworn notice to attend Court (similar to that of the QPS) that is issued by, or on behalf of, the relevant authority.</p>
<p>15</p>	<p>How can procedures for starting proceedings be simplified?</p>	<p>The current procedures for starting proceedings ensure fairness to an accused person, in that the complaint is required to state the charge and provide information detailing the factual matters that are said to constitute the charge.</p> <p>This is a common law requirement and there is a lot of litigation around technical issues with complaints. The new legislation could still require a statement of the charge and particulars to be provided, but could identify with some precision what is acceptable, as well as removing the ability for a charge to be defeated on a technical basis (possibly a provision similar to section 228 of the Justices Act in respect of appeals).</p>
<p>16</p>	<p>Should the new legislation about criminal procedures in the Magistrates Courts have a clear statement of when proceedings have started?</p> <p>For example, should proceedings start on the date that material is filed in court?</p>	<p>Yes, this would provide clarity.</p> <p>In circumstances where a complaint is sworn, the proceedings should commence at this time. However, if the process in respect of complaints and summonses is changed/removed, the date the initiating document is filed in the Court might be appropriate, depending on the process.</p>

17	<p>What requirements should be included in the new Magistrates Courts criminal procedure legislation about the description of an offence?</p>	<p>The current position in section 47 of the <i>Justices Act 1886</i>, which identifies “the description of any offence in the words of the Act, order, by-law, regulation, or other instrument creating the offence, or in similar words, shall be sufficient in law” is suitable.</p>
18	<p>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?</p> <p>Should the requirements be consistent across all initiating documents, or should there be a requirement to file a second document?</p>	<p>Natural justice and fairness suggests there should be adequate information provided to allow a person charged with an offence to understand that offence.</p> <p>Having the prosecuting entity provide this information at the time the proceedings are commenced ensures that the person charged with an offence is immediately on notice as to the factual matters that relate to the offence. This requires the prosecution to formulate its case early in the process and will generally assist in avoiding some delays where particulars are provided and considered once proceedings commence.</p> <p>Council does not have a position in respect of when that occurs. Whether these particulars are provided with the initiating document or separate will depend on the process that is implemented.</p>
21	<p>Are the current disclosure obligations in Queensland working in the Magistrates Courts?</p> <p>If not, why?</p>	<p>The current disclosure obligations work, but could be improved.</p>
22	<p>How could the disclosure process be improved?</p> <p>For example, could the new criminal procedure legislation include a staged approach to disclosure, or include time frames for disclosure in summary and committal proceedings?</p>	<p>An effective disclosure process could be tied directly to process a defendant might be required to follow in deciding how they wish to deal with the matter.</p> <p>In this regard, the identification of a clear path detailing the options available in dealing with a charge and the disclosure requirements for that particular stage might be of benefit.</p>
23	<p>Should the Criminal Code disclosure obligations be extended to all offences in Queensland?</p>	<p>Consistency in the disclosure obligations for all offences seems sensible.</p> <p>While there is a difference in the disclosure obligations for various types of offences, it is not clear why that is the case. Prosecutions by way of complaint and summons are often technical prosecutions that involve expert evidence. This is particularly so in Work Health Safety and environmental prosecutions.</p>

		<p>The fact that a defendant is required to give notice of expert evidence in respect of most Criminal Code Act 1899 offences, but not in complex summary prosecutions where the relevant evidence might be highly technical and specialised, does not appear to be in the interests of just and fair outcomes.</p>
24	<p>Should there be any disclosure obligations on defendants in the Magistrates Courts (for example, about an alibi or expert witnesses)?</p>	<p>It is important to ensure that a disclosure obligation on a defendant should not remove their right to silence. However, in circumstances where expert evidence, or evidence that might reasonably be the subject of enquiries by the prosecuting authority to establish its veracity, intends to be led at trial, prior notice to allow the prosecuting entity to make necessary enquiries would be appropriate.</p> <p>Such a course would ensure that prosecuting authorities are not taken by surprise by technical evidence or circumstances they are unaware of and would potentially remove, or limit, the circumstances where a trial is prolonged by the prosecution going into rebuttal evidence.</p>
26	<p>Should the new criminal procedure legislation include requirements about case management? If yes, what requirements should be included?</p> <p>Should these be different for offences that will be dealt with summarily and those that will be committed to a higher court?</p>	<p>A legislative requirement that requires the parties to address issues early with a view to resolving matters without the need for hearing, or reducing issues at hearing, would be beneficial.</p> <p>This could include a requirement on the prosecution to disclose a brief of evidence, or parts of it, to ensure a defendant can properly consider their position and get advice.</p> <p>Given Council only deals with offences summarily, it does not have a view on whether there should be different processes for summary and committal matters.</p>
27	<p>If the new legislation does include requirements about case management:</p> <p>(a) should they be mandatory? Why or why not?</p> <p>(b) how should they apply when a defendant is self-represented?</p>	<p>From a Council perspective, one of the purposes of a case management process would be to require defendants to properly consider their position at an early time, and for the prosecution to provide necessary documents/evidence to allow this to occur.</p> <p>If such a process is included in the new legislation, Council does not have a view on whether the process is to be optional or mandatory. Some level of discretion for the Court to excuse or require involvement might be useful.</p>

28	<p>Should the new criminal procedure legislation include any requirements about timeframes for matters progressing through the Magistrates Courts?</p> <p>If yes, what should they be?</p>	<p>Yes.</p> <p>Ideally, the legislation should prescribe a process which allows a defendant adequate time to obtain disclosure material, get advice and then enter a plea. The legislation should then prescribe a process depending on that plea. The timelines should be flexible to cater for the range of complexity of various matters, but also ensure matters progress in a timely manner.</p> <p>A requirement for a defendant to identify, prior to a matter being listed for trial, what facts are admitted would also assist in more accurate time estimates for the Court and hearings proceeding more efficiently.</p>
43	<p>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?</p>	<p>The provisions are generally working in practice, however there are some aspects that could be improved.</p> <p>For example, the <i>ex parte</i> provisions in sections 142 and 146A of the Justices Act appear to do the same thing.</p> <p>Section 142A could be rewritten to ensure the process for convicting defendants in their absence is clear and unambiguous.</p>
44	<p>When should a matter be able to be dealt with in the defendant's absence (if at all)?</p>	<p>When the Court is satisfied the defendant has been served with the initiating notice and has not appeared in accordance with the requirement of that notice, or subsequent adjournment of the matter.</p>
45	<p>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?</p>	<p>Yes. Where imprisonment, probation, community service or licence disqualification orders are to be made against a defendant then the Court should not be able to make those orders until such time as further steps have been taken to get the defendant before the Court.</p>
50	<p>Are the costs provisions in the current legislation working? What could be improved?</p>	<p>The costs provisions operate quite well. They provide the ability for the Court to impose costs where it is appropriate to do so, and they restrict the imposition costs appropriately.</p> <p>The amounts prescribed under the scale of costs in Schedule 2, Part 2 of the <i>Justices Regulation 2014</i>, have not changed since the regulation commenced in September 2014 (in fact these amounts have not</p>

		<p>changed since their inclusion in the now repealed <i>Justices Regulation 1993</i> in July 1999). Consideration of whether the amounts prescribed under the <i>Justices Regulation 2014</i> should be increased to better reflect the current costs of legal representation might be warranted.</p>
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