

31 August 2022

Criminal Procedure Review – Magistrates Courts

GPO Box 149

BRISBANE QLD 4001

By email: [Criminal-Procedure-R@justice.qld.gov.au](mailto:Criminal-Procedure-R@justice.qld.gov.au)

Dear Criminal Procedure Review Team,

**Re: Criminal Procedure Review – Magistrates Courts.**

#### **About Women's Legal Service Qld**

Women's Legal Service Queensland (WLSQ) is a specialist community legal centre, established in 1984, which provides free legal and social work services and support to Queensland women. We assist women in the areas of family law, domestic violence, financial abuse, child protection and some aspects of sexual violence.

WLSQ provides information, referral and support through our state-wide domestic violence legal helpline, which includes providing women with timely legal information, advice and minor task assistance. WLSQ operates a designated rural, regional and remote priority line so that women outside of the metropolitan regions have direct access to a lawyer who provides legal advice, information and task assistance. We undertake outreach work at the Brisbane Women's Correctional Centre, Gatton Prison and at Family Relationship Centres in Brisbane. We also conduct domestic violence duty lawyer services at three Courts: Holland Park, Caboolture, and Ipswich. Our specialist domestic violence units in Brisbane, the Gold Coast, and Caboolture provide intensive case work and Court representation for our most vulnerable clients.

We thank you for the opportunity to provide this feedback.



## General Observations

WLSQ refers to and endorses the recommendations in the 2<sup>nd</sup> ‘Hear Her Voice’ report from the Women Safety and Justice Taskforce (the Taskforce), specifically as they propose revisions to existing legal procedures to enhance and improve the outcomes for victim survivors of domestic, family and sexual violence in the criminal justice system.

While many of the Taskforce recommendations are outside the scope of this review, for completeness, we note that the efficacy of any changes to the procedure will be influenced by other key factors which were the subject of recommendations including:

- Courthouse physical design and safety
- Provisions in relation to the giving of evidence by victims/special witnesses
- Amendments to the *Criminal Code* and the *Penalties and Sentences Act 1992*

The observations and recommendations of WLSQ are reflected below in relation to each of the areas of consultation. In an attempt to simplify the content, the feedback has been provided in summary table form. Further information and context is available should it be required.

### Consultation area: Contemporary and effective criminal procedure

<b>Position summary</b>	WLSQ supports improving criminal procedures in the Magistrates Court so that it can better accommodate the needs of different people. WLSQ specially advocates for an improvement in the ability for women who have experienced domestic and sexual violence to understand, connect with, and participate in court processes.
<b>Recommendations</b>	<p>The safety and accessibility recommendations made by the Taskforce should be prioritised and adequately resourced as part of a state-wide plan.</p> <p>Information should be published in multiple languages, and available across a range of different platforms and formats, paper, online, social media, YouTube, etc.</p> <p>Access to interpreters for all parties, and the ability to seek alternative interpreters based on conflict, community or cultural issues should be reflected in criminal procedure</p> <p>Victims’ rights to access support services (for example allowing specialist support services to appear as a friend of the court on their behalf) should enshrined in the criminal procedure</p> <p>Victims should be involved in the development of resources about the court system</p> <p>More rigour should be implemented in relation to the progress of criminal matters to ensure that victims have greater certainty about the resolution of matters and likely outcomes of listed court dates.</p>
<b>Other observations</b>	To ensure the system continues to operate as it is intended, an equitable criminal justice procedure requires the parties to be

	aware of how they can make complaints and how those complainants will be resolved.
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**Consultation area: Key issues about criminal procedure in the Magistrates Court**

<b>Position summary</b>	WLSQ strongly supports the development and implementation of a guiding principles, especially principles that address and acknowledge the role and rights of victims within the criminal justice process. WLSQ supports the guiding principles as set out in the consultation paper at 3.8.
<b>Recommendations</b>	<p>The following guiding principle:</p> <ul style="list-style-type: none"> <li>- Procedures should be fair for victims and defendants</li> </ul> <p>be amended as follows:</p> <ul style="list-style-type: none"> <li>- Procedures should be fair for victims and defendants and the safety of all parties prioritised in their application</li> </ul> <p>The following guiding principle:</p> <ul style="list-style-type: none"> <li>- criminal procedures should be adaptive to modern and changing technology</li> </ul> <p>be amended as follows:</p> <ul style="list-style-type: none"> <li>- criminal procedures should be adaptive to modern and changing technology and community expectations</li> </ul>

**Consultation area: The Magistrates Court and decision-makers**

<b>Position summary</b>	WLSQ supports changing the law to have a single Magistrates Court of Queensland and also supports the re-naming of the Magistrate's Courts to 'Local Courts', and Magistrates to 'Local Court Judges'
<b>Recommendations</b>	WLSQ supports the introduction of electronic lodgement and filing portals, however, notes the need to ensure that this does not further disadvantage already vulnerable groups (e.g., those from CALD backgrounds, people experiencing homelessness).
<b>Other observations</b>	While WLSQ is supportive of steps to reduce barriers to access to justice, such as conducting hearings remotely, consideration must also be given to the risks associated with remote access to courts – including victims not having access to support services, increased risks of duress/threats to witnesses. These issues would need to be carefully considered in the design of remote appearance rules.

#### Consultation area: Types of Proceedings heard in the Magistrates Court

<b>Position summary</b>	WLSQ recommends that the language in the Code and the Justices Act be modernised and made consistent
<b>Recommendation</b>	The term “simple offence” should be replaced with “Local Court offence”
<b>Other observations</b>	Chapter 58A is not accessible for non-lawyers. It might be more useful to consider a graphical representation of this, or a flow chart with lists of the relevant charges so that it might be more easily understood.

#### Consultation area: Starting Proceedings

<b>Position summary</b>	WLSQ is supportive of a requirement that all matters be commenced by ‘Notice to appear’.
<b>Recommendation</b>	To avoid systems abuse, private prosecutions should only be commenced with leave of either the Registrar or the court. Vexatious litigant processes also ought to be incorporated in the court procedures.

#### Consultation area: Disclosure, case conferencing and case management

<b>Position summary</b>	WLSQ is supportive of case management processes and the greater transparency and efficiency this can deliver.
<b>Recommendation</b>	For the effective implementation of case management obligations, it will be necessary to ensure that there are consequences for non-compliance and that prosecuting authorities are adequately resourced to meet their obligations.
<b>Other observations</b>	WLSQ is mindful of the risks associated with creating separate processes and obligations for those who are represented and not represented. It would be counterproductive if any of the structure imposed created a disincentive for defendants to be represented. Legal representation is a key contributing factor to fair and efficient disposition of matters.

#### Consultation area: In-court diversion and resolving proceedings, Mediation/ Deferred prosecution agreements/ Diversionary Programs/ Cautions

<b>Position summary</b>	WLSQ is supportive of in-court diversion processes and any programs designed to mitigate further criminalising already vulnerable people and compounding existing inequalities. WLSQ is particularly supportive of the development of well resourced, evidence based, domestic violence court intervention programs.
<b>Recommendation</b>	WLSQ supports the inclusion of specific objects of in-court diversion in legislation, similar to those in the New South Wales legislation.
<b>Other observations</b>	WLSQ endorses Taskforce recommendation 100 <sup>1</sup> including the need to incorporate protections and safeguards.

<sup>1</sup> Women’s Safety and Justice Taskforce, Hear Her Voice, Report Two, Volume 2, Recommendation 100 at 466

**Consultation area: Committal proceedings**

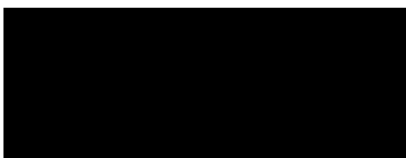
<b>Position summary</b>	WLSQ is very supportive of legislative guidance in relation to the meaning of “substantial reasons, in the interests of justice”.
<b>Recommendation</b>	Examples of situations which will and will not meet the test ought to be included in the court Bench Book.
<b>Other observations</b>	If principles are to be incorporated in the legislation, they ought to reflect a desire to avoid unnecessary traumatising of witnesses (in addition to ensuring the efficient progress of matters).

**Consultation area: Victims of Crime**

<b>Position summary</b>	WLSQ supports the consideration of victim’s interests throughout criminal proceedings.
<b>Recommendation</b>	The obligations to inform and consult with victims should be broadened to include diversionary processes and procedural applications.
<b>Other observations</b>	Adequately engaging with and considering the interests of victims has a host of benefits for the whole community, from the efficient administration of justice, to reduced collateral costs of crime via swifter victim recovery etc. For any expansion of victim engagement to be successful, increased obligations on prosecutors must be accompanied by appropriate resourcing. Increasing the expectations of victims and failing to meet them could be more detrimental than taking no action at all.

Please feel free to contact our office if you have any questions about the contents of this submission.

Yours faithfully



Ms N H Bromley  
CEO Women’s Legal Service Queensland