

Criminal Procedure Review – Magistrates Courts

**Submission by
Queensland Advocacy for Inclusion**

to

The Criminal Procedure Review Team

30 June 2022

About Queensland Advocacy for Inclusion

Queensland Advocacy for Inclusion (QAI) (formerly Queensland Advocacy Incorporated) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our mission is to advocate for the protection and advancement of the fundamental needs, rights and lives of people with disability in Queensland. QAI's Management Committee is comprised of a majority of persons with disability, whose wisdom and lived experience is our foundation and guide.

QAI has been engaged in systems advocacy for over thirty years, advocating for change through campaigns directed at attitudinal, law and policy reform. QAI has also supported the development of a range of advocacy initiatives in this state. For over a decade, QAI has provided highly in-demand individual advocacy services. These services are currently provided through our four advocacy practices: the Human Rights Advocacy Practice (which provides legal advocacy in the areas of guardianship and administration, disability discrimination and human rights law and non-legal advocacy support with the Disability Royal Commission and the justice interface); the Mental Health Advocacy Practice (which supports people receiving involuntary treatment for mental illness); the NDIS Advocacy Practice (which provides support for people challenging decisions of the National Disability Insurance Agency and decision support to access the NDIS); and the Disability Advocacy Practice (which operates the Pathways information and referral line, and provides non-legal advocacy support with Education and other systems that impact young people with disability).

From 1 January 2022, we have been funded by the Queensland Government to establish and co-ordinate the Queensland Independent Disability Advocacy Network (QIDAN), which includes operating the Disability Advocacy Pathways Hotline, a centralised phone support providing information and referral for all people with disability in Queensland. We have also been funded to provide advocacy for young people with disability as part of the QIDAN network, which we provide in addition to our non-legal education advocacy for Queensland students with disability. Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

The objects of QAI's constitution are:

- To advocate for the protection and advancement of the needs, rights and lives of people with disability in Queensland;
- To protect and advance human rights including the Convention on the Rights of Persons with Disabilities (CRPD);
- To be accountable to the most disadvantaged people with disability in Queensland; and
- To advance the health, social and public wellbeing of disadvantaged people with disability.

QAI's recommendations

QAI recommends:

1. QAI welcomes any changes that streamline the criminal procedure in the Magistrates Court so long as all processes are accessible and do not compromise a participant's privacy or access to a fair and just outcome.
2. The new criminal procedure legislation should include guiding principles that: procedures and documents should be easy to understand; and people should not be disadvantaged in proceedings *because of their capacity to understand or participate in the proceedings, their financial ability to be legally represented, or because they are from a culturally or linguistically diverse background and do not speak English as a first language.*

Background

QAI does not advise or represent for criminal law matters however the Justice Support Program (JSP) at QAI provides non-legal advocacy for people with impaired capacity who are involved in the criminal justice system. JSP staff are not lawyers and do not need to have in-depth experience of the Magistrates Court criminal procedure. Our first priority is to assist clients to access legal advice or representation, then assist the client and lawyer to communicate with each other while relying on the lawyer's expertise to carry the matter before the Court and explain the process to the client.

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Most of the points of discussion in the Criminal Procedure Review Consultation Paper (the Consultation Paper) are not relevant to QAI services or members, however we would welcome any changes that streamline the criminal procedure in the Magistrates Court, so long as all processes are accessible and do not compromise a participant's privacy or access to a fair and just outcome.

From a JSP point of view, the most frequent and concerning complaint about the criminal procedure in the Magistrates Court is that deadlines set by the Court are frequently not met. A stricter adherence to the Queensland model litigant principles would benefit both parties and there may be some way for future criminal procedure laws to enforce changes.

In Question 4 of the Consultation Paper our comments are that:

- procedures and documents do not necessarily need to be simple but should be easy to understand; and
- people should not be disadvantaged in proceedings *because of their capacity to understand or participate in the proceedings, their financial ability to be legally represented, or because they are from a culturally or linguistically diverse background and do not speak English as a first language;*

Regarding Questions 5 to 7 of the Consultation Paper:

- JSP interactions with self represented defendants have revealed that most are unfamiliar with the minutia of Magistrates Court management and registry administration, so creating a single Magistrates Court of Queensland, changing the name to Local Court or the Magistrate's title to Judge would have little or no impact on their experience of criminal procedure; however any changes that improve the efficiency and flexibility of the Magistrates Court or makes it easier for non-lawyers to learn about the Court process would benefit all Queenslanders.

Conclusion

QAI thanks The Criminal Procedure Review Team for the opportunity to contribute to this inquiry. We are happy to provide further information or clarification of any of the matters raised in this submission upon request.