

ATTN: Cairns Courthouse Registrar, Cairns Regional Co-Ordinating Magistrate Terence Brown, Chief Magistrate of Queensland Judge Janelle Brassington, Director-General Jasmina Joldic PSM Queensland Department of Justice and Attorney-General, Queensland Attorney-General and Minister for Justice Deb Frecklington.

By email

CC: WGC Lawyers

27 March 2025

Dear Sir/Madam

I would like to bring the following matters to your attention:

Re: Shane Cuthbert, Exclusion from Domestic and Family Violence Court

1. The following submissions seek to clarify;

- (a) Whether there is an Act, Regulation or Direction specifically precluding those with a Criminal and/or Domestic Violence History from the Queensland Courts generally and;
- (b) Whether there is an Act, Regulation or Direction which sets out specifically, who can/cannot act as a support person in Domestic and Family Violence matters specifically and;
- (c) Whether there is an Act, Regulation or Direction which sets out specifically, who can/cannot act as a support person in matters of the Court generally and;
- (d) Whether such Act, Regulation or Direction complies with the Criminal Law (Rehabilitation of Offenders) Act 1986 and;
- (e) Whether there is an Act, Regulation or Direction requiring members of third party organisations and/or (Stakeholders) to seek the permission of the Courts to engage, solicit and support individuals in the Courts and;
- (f) Whether, the Cairns Courthouse, its stakeholders, and/or members, officers of the Court, the Registrar and/or members of the Judiciary will continue to exclude Shane Cuthbert from Domestic and Family Violence matters in the Courthouse specifically and;
- (g) Whether, the Cairns Courthouse, its stakeholders, and/or members, officers of the Court, the Registrar and/or members of the Judiciary will continue to exclude Shane Cuthbert from matters in the Courthouse generally.

Background

2. On Thursday, the 20th of March 2025, I attended the Cairns Magistrates Court 7 as a support person, for a Respondent in a Private/Civil Application.

68. I submit that I should be allowed to enter the courthouse without issue and carry on or conduct any business without the harassment of registrar and security like any other lawyer or stakeholder. And; if the court disagrees and I will be excluded in the future I would to be present during any such discussion regarding my history, suitability and make submissions to the court in the interests of fairness and justice principles.

Thank you, in advance, for your consideration of this matter.

Regards,

Shane Cuthbert LLB, BSc (Psyc)
Phone - 0411 872 189
Email – shane-cuthbert@live.com.au

"Injustice anywhere, is a threat to justice everywhere" – Martin Luther King Jnr

3. A Lawyer and Senior Associate Kelly Whitten of WGC Lawyers and a Barrister, instructed by WGC Lawyers representing the Applicant informed the Court Clerk they wished to object to my presence in the Courtroom as a support person and the Court Clerk advised, that was a matter for the Magistrate, and I was asked to wait outside.
4. The Applicant in the matter had a support person present. Jess from Cairns Regional Domestic Violence Service in addition to a Lawyer and Senior Associate Kelly Whitten of WGC Lawyers and a Barrister, instructed by WGC Lawyers.
5. The objection included a reference to an alleged "criminal/domestic violence history" and Magistrate Dalton made the decision to exclude me from the Court.
6. The respondent was self-represented and remained unsupported during the full day Hearing. The matter has been adjourned for a second, full day Hearing.
7. The following; Legal Aid publication says you can bring your own support person into Court¹ If this is incorrect, Legal Aid Queensland SHOULD be advised there is/are errors in this publication.
8. The Federal Circuit and Family Court of Australia has published² information providing support in its Courts Country/Nation wide.
9. The Queensland Courts Website³ provides;
 - (a) *If you are a self-represented party, you may ask the court for leave for another person to assist you at the hearing. This person is known as a "McKenzie friend". They may be permitted to sit with you at the bar table, prompt you, take notes, and provide emotional support, but cannot address the court on your behalf or present your case. Any request should be made prior to the allocated hearing date and may be made by contacting the Court of Appeal registry in writing.*
 - (b) *You may also arrange for a support person to attend court with you. They may be a relative, colleague, or friend. They will not be permitted to speak to the judges or to represent you in any way and must sit at the back of the courtroom, in the area reserved for members of the public.*
10. Whilst I was present in Court. Jess from the Cairns Regional Domestic Violence Service told me directly that "the objection was due to permission not being sought prior to the hearing". My interpretation of the information above is that in regards to a 'McKenzie Friend', Leave of the Court must be sought however, leave does not need to be sought in regards to a support person.
11. I was asked, by the Respondent to attend the proceedings as a 'support person'.

¹ https://www.legalaid.qld.gov.au/files/assets/public/v/3/publications/domestic-and-family-violence/representing-yourself-at-court-factsheet/laq_00197-representing-yourself-at-your-domestic-and-family-violence-application-hearing-web-new.pdf

² <https://www.fcfa.gov.au/fv/faq>

³ <https://www.courts.qld.gov.au/courts/court-of-appeal/the-appeal-process/people-in-the-courtroom#:~:text=Bringing%20a%20friend,for%20members%20of%20the%20public.>

12. My understanding, is that the Respondent has asked the Court to allow my attendance as a 'support person'.

Criminal History/Domestic Violence History

13. I can only assume, the objection to my presence as a support person for the Respondent was made in reference to public allegations made against me in 2016.
14. In relation to those allegations, I was not charged with, nor convicted of any offences relating to the allegations.
15. IF the objection to my presence as a support person for the Respondent was made in reference to any ACTUAL criminal/Domestic Violence history, The *Criminal Law (Rehabilitation of Offenders) Act 1986* may apply.

Spent Convictions Act/Right To Be Forgotten

16. In Queensland, a "spent conviction" under the *Criminal Law (Rehabilitation of Offenders) Act 1986*⁴ means a criminal conviction that has lapsed after a specified period, after which it's removed from a person's criminal record and they are not required to disclose it.

In addition,

17. A person cannot be forced to disclose, for any purpose, a conviction that is not part of their criminal history, or someone's else's criminal history, or any charge made against themselves or anyone else.
18. Section 6 of the *Act*⁵ states a person's spent conviction cannot be disclosed by that person or anyone else unless:
 - (a) *the person chooses to disclose it;*
 - (b) *it is disclosed under the authority of a permit;*
 - (c) *disclosure is required by law, such as when the person applies for employment in a specified profession or to hold a specific office.*
19. A person can apply for a permit that allows them to ask another person to disclose any spent conviction. The permit will be granted if the applicant is deemed to have a "legitimate and sufficient purpose" for asking for the disclosure.
20. I have not been made aware of any application for a permit being sought by any officer of the Court or Senior Associate Kelly Whitten of WGC Lawyers and/or the Barrister, instructed by WGC Lawyers.

⁴ *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld)

⁵ *Ibid* s6

21. Under the *Ac6*, a person who discloses information about a spent conviction, without the consent of the convicted person or without legal authority, commits an offence and is liable to a maximum penalty of 100 penalty units (\$13,345).
22. I did not provide consent for the disclosure of my Criminal/Domestic Violence history including: any spent convictions and was not made aware of any legal authority to do so. The disclosure was made in my absence.

Further,

23. The underlying principle is the 'right to be forgotten' and 'rehabilitate'. Principles supported by the Legal Profession generally.
 24. The "right to be forgotten" is an adapted concept from France's *droit a l'oubli* – "right to oblivion"⁷. The French acknowledgement of a right to live a life in dignified privacy is born out of a valued history of protecting citizens reputations from the media⁸.
 25. A friend of mine, Pat O'Shane AM told Fairfax Media in 2013 that, *"I tell you, the law is a two-edged sword, 'It can be used to do considerable injustice to people and it can be used to do considerable justice to people. It's value-laden from beginning to end. My principles in life were to do justice to all manner of people, and particularly people who hadn't had justice in the past'"*⁹.
- "I've seen many cases where the judicial officer was very, very good about black letter law but not very good about justice. Law is not the same as justice and justice is certainly not the same as law. My priority was in fact to get justice according to the law."*¹⁰
26. I was not present in Court when/if the Disclosure of a Spent Conviction was made however, the Transcript of proceedings will show whether this occurred.
 27. In the absence of any potential Disclosure of a 'spent conviction', it may still arise that what was said during the Hearing by Senior Associate Kelly Whitten of WGC Lawyers and/or the Barrister, instructed by WGC Lawyers, Magistrate Dalton or any others present during the proceeding is defamatory.

⁶ *ibid*

⁷ E Chow, 'Learning From Europe's 'Right to Be Forgotten'', *HuffPost*, 2013, accessed 15 October 2020

https://www.huffpost.com/entry/learning-from-europes-rie_b_3891308

⁸ R K Walker, 'The right to be forgotten: right of individuals to have their personal information permanently removed from online databases', *Hastings Law Journal*, Vol.64, No.1, 2012, p.270, accessed 16 October 2020, https://heinonline.org/eurolex/finders.edu.au/HOL/Page?collection=journals&handle=hein.journals/hastl64&id=272&men_tab=srchresults

⁹ Cuthbert, Shane., O'Shane, Pat. Submission to: Youth Justice Reform Select Committee inquiry into youth justice reform in Queensland. No 15. <https://documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-54D8/submissions/00000015.pdf>

¹⁰ Cuthbert, Shane., O'Shane, Pat. Submission to: Youth Justice Reform Select Committee inquiry into youth justice reform in Queensland. No 15. <https://documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-54D8/submissions/00000015.pdf>

28. It is my understanding that the objection was/is based on Hearsay evidence ONLY and that any document relating to my Criminal/Domestic Violence History was not presented/provided to the Court for consideration and that;
 - (a) the Magistrates consideration and judgment on the matter was based also on Hearsay evidence ONLY. Magistrate Dalton said words to the effect of "his name precedes him".
29. I have not been sentenced or subject to ANY proceedings as a defendant or witness whereby Magistrate Dalton presided and as far as I'm aware, Magistrate Dalton did/does not have access to, nor referred to my Criminal History Document specifically.
30. Whilst my reputation may 'precede' me and whilst my name may be spoken about and/or discussed in the halls of the Courthouse and Legal Practices, this particular discussion took place in a Courtroom, in the Cairns Courthouse and; the discussion was recorded.

FNQLA member of legal profession

31. I have currently and in the past, been a member of the Queensland Law Society, the Far North Queensland Law Association, Queensland Council for Civil Liberties, the Queensland Young Lawyers and other law related organisations and groups.
32. I have attended Justice Henry's end of year 'Seasons Greetings', Admissions Ceremonies, the Opening of the Law Year, Law Ball and other functions and events held with the Court of Appeal, Chief Justice and CPD events.
33. Whilst there may be members of the Court, Cairns Courthouse, its stakeholders, and/or members, officers of the Court, the Registrar and/or members of the Judiciary that may hold certain views about me, it is my submission that those views and opinions should not have the effect of exclusion.
34. I Obtained a Law Degree from the University of Central Queensland University in October 2023 and Graduated in April 2024, in addition to serving as the Universities Law Society President from July 2022 until August 2024.
35. I am currently enrolled in the College of Law Master of Laws (Applied Law) Government and Public Sector Program and Practical Legal Training (PLT), a pre-requisite to admission to practice law.
36. I have the intention of seeking admission to practice this year and if accepted, would allow me to represent clients in the Cairns Courthouse.
37. Ultimately, the question of suitability and admission is a question reserved for the Supreme Court, who will decide whether I will join the legal profession or not.

38. Whilst I respected the decision of the Court and remained outside of the Courtroom, supporting the Respondent voluntarily, I question whether it was/is appropriate and whether the application of the Courts decision amounts to discrimination and;

(a) Whether the decision to exclude discriminates against those with Criminal/Domestic Violence Histories generally and;

(b) Whether the decision to exclude discriminates against me specifically.

39. I Took the Australian Labor Party to the Supreme, Court of Appeal and High Courts over similar alleged discriminatory Practices and decisions to exclude.

40. The Supreme Court¹¹ considered whether the matter was justiciable, referring to a 1934 decision of the High Court¹², that matters of a political nature are not within the jurisdiction of the Courts, a decision upheld by the Court of Appeal¹³.

41. In the High Court, I argued that the matter was Justiciable under Section 71 of the Constitution (Section 71) grants to courts 'judicial power'. 'Judicial power' means:

*'...the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action.'*¹⁴

This proceeding involves matters arising under or involving the interpretation of the Australian Constitution (Constitution) on three grounds: Judicial power is exclusive to the courts.¹⁵ No other person or authority can claim such power for itself, and neither can any persons agree to oust the jurisdiction of the courts to prevent the exercise of judicial power¹⁶.

42. The High Court did not consider the application.

43. Whilst I may be a 'polarising' figure with strong views, opinions and ideas outside the Courtroom, I would argue that those views, opinions and ideas should not prevent me from supporting those in need of support in the Courts.

44. I would argue further, that although some may disagree with my views, opinions and ideas, there are many who support them. I have campaigned for Local and State Government and although I did not obtain either position, I took 18.35% of the vote against four candidates in March, which indicates there is a section of the community, almost one in 5 that sought me as their representative with the power to make decisions about and effecting them.

¹¹ <https://www.queenslandjudgments.com.au/caselaw/qsc/2022/113>

¹² *Cameron v Hogan* (1934) HCA 24-51 CLR 358

¹³ https://eprints.qut.edu.au/242125/1/2023_101_Cuthbert_v_Abbott_Ors_2023_QCA_139.pdf

¹⁴ *Huddart, Parker and Co Pty Ltd v Moorehead* (1909) 8 CLR 330, 357

¹⁵ *ibid*

¹⁶ *Meyers v Casey* (1913) 17 CLR 90, 110-1 per Isaacs J; *Dobbs v National Bank of Australasia Ltd* (1935) 53 CLR 643, 654 (per Rich, Dixon, Evatt and McTiernan JJ), 656 (per Starke J). This is not a case involving a voluntary association, but nevertheless is a binding statement of principle; *Lee v Showmen's Guild of Great Britain* [1952] 1 All ER 1175, 1180 (per Somerville LJ), 1181 (per Denning LJ), 1188 (per Romer LJ); *Baker v Jones* [1954] 2 All ER 553, 558-9; *Harbottle Brown & Co Pty Ltd v Halstead* [1968] 3 NSW 493, 497

45. To put this into perspective, just 413 votes prevented me from election.

History

46. This is not the first time, I have been targeted by the Cairns Courthouse, its stakeholders, and/or members, officers of the Court, the Registrar and/or members of the Judiciary.

47. On multiple occasions prior, I have been approached by Security and the Cairns Courthouse Registrar and asked "what I am doing".

48. As I have explained to the Registrar on multiple occasions, the Court house is a public place and I am aware of no Act, Regulation or Direction preventing me from entering the Courthouse for any purpose and; requiring me to disclose my business to Security OR the Registrar upon entry and; requiring any approval of Security and the Registrar to support individuals who have matters before the Courts.

49. I have requested the Registrar provide on numerous occasions, the relevant Act, Regulation or Direction(s) preventing me from entering the Courthouse for any purpose and; requiring me to disclose my business to Security OR the Registrar upon entry and; requiring any approval of Security and the Registrar to support individuals who have matters before the Courts.

50. I have on no occasion received a response from the Registrar and remain unaware of any Act, Regulation or Direction(s) that may exist, preventing me from entering the Courthouse for any purpose and; requiring me to disclose my business to Security OR the Registrar upon entry and; requiring any approval of Security.

51. If such an Act, Regulation or Direction(s) that may exist, preventing me from entering the Courthouse for any purpose and; requiring me to disclose my business to Security OR the Registrar upon entry and; requiring any approval of Security exists, I would argue that it has been used discriminatively to unfairly target me specifically.

52. My understanding is that the responsibility of Security within the Cairns Courthouse is to prevent, identify and resolve and/or intervene in disorderly, violent, threatening and intimidating behaviour in order to keep all whom frequent the Cairns Courthouse safe.

53. I have never engaged in disorderly, violent, threatening and intimidating behaviour in the Courthouse. Further, I have never been removed from and/or asked to leave the Courthouse.

54. Further, despite what 'representations' may have been made in my absence by Senior Associate Kelly Whitten of WGC Lawyers and a Barrister, instructed by WGC Lawyers or any other officer of or individual present in Court, I have no criminal history that includes violence or physical assault.

55. Although not yet admitted as a lawyer, I regularly provide emotional support to individuals charged with criminal offences and/or attending to Family Court and DV matters.

- 56. I am the President of Domestic Violence Anonymous, an organisation supporting male victims and perpetrators of Domestic and Family Violence, this sometimes includes attending the Courthouse in order to support men during DV and Family Law matters.
- 57. I have always believed that EVERYONE should have the right to support and access to Justice and I have been unable to find any Act, Regulation or Direction regarding 'who' shall/shall not support an individual, particularly a self-represented individual in any matter.
- 58. Although the issue arises out of a matter currently before the Courts, I consider the issue(s) raised separate to that matter specifically.
- 59. This letter, should be treated with care and with regard to the confidentiality of the parties involved and should not have the effect of unfairly prejudicing the self-represented Respondent in this matter which remains part-heard. The Cairns Courthouse, its stakeholders, and/or members, officers of the Court, the Registrar and/or members of the Judiciary should take care when considering this matter.

In Conclusion,

- 60. Is there is an Act, Regulation or Direction specifically precluding those with a Criminal and/or Domestic Violence History from the Courts and;
- 61. Is there is an Act, Regulation or Direction which sets out specifically, who can/cannot act as a support person in Domestic and Family Violence matters specifically and;
- 62. Is there is an Act, Regulation or Direction which sets out specifically, who can/cannot act as a support person in matters of the Court generally and;
- 63. Is such Act, Regulation or Direction complies with the Criminal Law (Rehabilitation of Offenders) Act 1986 and;
- 64. Is there is an Act, Regulation or Direction requiring members of third party organisations and/or (Stakeholders) to seek the permission of the Courts to engage, solicit and support individuals in the Courts and;
- 65. Will the Cairns Courthouse, its stakeholders, and/or members, officers of the Court, the Registrar and/or members of the Judiciary continue to exclude Shane Cuthbert from Domestic and Family Violence matters in the Courthouse specifically and;
- 66. Will the Cairns Courthouse, its stakeholders, and/or members, officers of the Court, the Registrar and/or members of the Judiciary continue to exclude Shane Cuthbert from matters in the Courthouse generally.
- 67. Will the Cairns Courthouse, its stakeholders, and/or members, officers of the Court, the Registrar and/or members of the Judiciary continue to exclude Shane Cuthbert from matters in the Courthouse specifically.