

Diversion

July 2012

What do these words mean?

Words that are highlighted in **bold** are explained in our *What do these words mean?* fact sheet.

What is diversion?

The diversion program is a way to deal with your matter out of the court system and give you a chance to avoid a criminal record.

If the magistrate agrees that you are eligible for diversion, you will be put on a diversion plan. You must follow certain conditions in this time. You might have to:

- write a letter of apology to the victim
- get counselling
- do an education course
- do community work.

If you follow the conditions of your diversion plan, the police drop the **charges** and there will be no finding of guilt. That means no criminal record.

A diversion plan usually goes for a year.

How do I get diversion?

Am I eligible?

You will be eligible if:

- your **offence** can be heard in the Magistrates' Court
- your offence does not have a minimum or fixed **sentence** or **penalty**
- you agree that you were responsible for the offence.

Will I get it?

If you are eligible, the **informant** will need to give you a **diversion recommendation**. Then the magistrate will need to decide to grant diversion. As a general rule, they will do this if:

- this is your first offence
- the offence is not too serious. For example, it might be a shop theft or careless driving offence.

You cannot get diversion for driving offences such as:

- **excessive speed**
- drink or drug driving
- refusing to do alcohol or drug testing.

Demerit points

If you are accepted for diversion you will still get any demerit points for any driving offences. **VicRoads** looks after the demerit points system, not the Magistrates' Court.

How do I ask for diversion today?

Accept responsibility

Before doing anything, you must accept that you were responsible for the offence. This does not mean that you are **pleading** guilty. But it does mean that you are going before the magistrate saying that you know you did something wrong.

If you are granted diversion and you stick to the conditions, there will be no **finding of guilt**. That means no criminal record.

Tell the counter staff that you are asking for diversion

Go to the court counter and tell the staff there that you are going to ask the magistrate to adjourn your case so you can ask the informant for a diversion recommendation. The staff will send your file into the courtroom. This lets the magistrate know that your case can be heard.

Stay close to or wait in the courtroom

Stay close to the courtroom or go in there and wait for your name to be called. This may take a while. Make sure you bow to the magistrate as you go into the courtroom.

The hearing begins

When your name is called, go to the bar table. Go to the opposite end of the table from the police **prosecutor**. Stand when you speak to the magistrate.

The charge is read and you make your request

The court clerk calls out your name you stand at the bar table. Tell the magistrate that you would like to ask for a diversion.

The magistrate may adjourn the case so you can ask the informant for a diversion recommendation.

There is more to go. Today you are asking to adjourn your case. The magistrate may let this happen. This is not the same thing as being granted diversion. There are still a few steps to go.

What should I do next?

Write to the informant for a diversion recommendation

This is very important. The informant must agree to recommend you for diversion. If the informant has not already made a diversion recommendation you or your lawyer can write a letter asking for this.

The details of the informant should be in the charge sheet.

Note: sometimes the informant will **serve** a diversion notice on you at the same time as you were served the police brief. If the informant is at court today, they will have a copy of the diversion notice. Your matter can go straight to a **diversion hearing** today. Go to the diversion counter and ask for your matter to go ahead today 'for a diversion hearing'. See below for 'What happens when I come back to court?'

What should I put in my letter to the informant?

It may be helpful to include:

- an introduction saying who you are and what your offence was
- that you are writing to ask the informant for a diversion recommendation
- whether you have already apologised to the victim
- a bit more about yourself. For example, what job you are doing, where you are living
- that you have already paid or are willing to pay for any loss or damage suffered by the victim
- that this behaviour is out of character. For example, you were affected by drugs, alcohol or both at the time of the offence
- if you have no **prior** convictions and you are unlikely to break the law again
- that you understand that there may be conditions like drug education or anger management counselling and you are confident you will stick to these conditions
- that a criminal record would have a very bad effect on your future. For example, you are young and a criminal record would make it harder to get jobs in the future.

What happens if the informant agrees?

The informant will file a diversion notice with the court. This lets the court know that the police have recommended diversion and that the court can book you in for a diversion hearing. At this hearing, the magistrate decides whether they agree with the police and will agree to grant you diversion.

Before coming back to court, get any paperwork that you can to back up what you have said in your letter. Bring this to court.

What happens when I come back to court?

The diversion co-ordinator interviews you

The Magistrates' Court has diversion co-ordinators working at all courts. They will interview you before the diversion hearing. They may talk through some things that you may be asked to do if you are on the diversion program.

The diversion hearing happens

The magistrate or registrar reads the statement of alleged facts. Usually they will decide whether to grant you a diversion 'on the papers'. This means that you will not need to be there while they read the paperwork.

The magistrate also reads any supporting materials such as:

- receipts showing you have paid for any damage you caused
- reports from doctors or counsellors you have seen
- certificates or awards that show how well you have done at work, at school or in a sports or recreation activity
- character references from your employer, family or people who know you well.

If the magistrate agrees to grant you diversion, they will tell you the conditions of your diversion program.

If they decide not to grant diversion, you may get a chance to talk to them directly in a hearing. If you have a lawyer, they may be able to talk for you.

What if there was a victim because of my offence?

A victim could be someone who was injured or someone who had something stolen from them. The diversion staff will have written to the victim to find out if they want you to get diversion. If the victim does not want this, you may not get diversion. If the victim does not say anything, you may still be granted diversion.

What happens if the informant or the magistrate do not agree?

Your matter is put back into the court system. This means you have to go back to court for another **hearing**. You will need to think about pleading guilty or not guilty. See our *Pleading guilty* and *Pleading not guilty* fact sheets.

What happens if they agree but I do not stick to the conditions of my diversion program?

Your matter is put back into the court system. You will have to go back to court. The magistrate may put you back into the diversion program if you can show that you have now completed all parts of it.

If the magistrate does not agree to put you back onto diversion, then you must decide if you are pleading guilty or not guilty.

Where can I get help?

Magistrates' Court Diversion Co-ordinators

www.magistratescourt.vic.gov.au

Victoria Legal Aid

Legal Help

Free legal help by telephone and information about Victoria Legal Aid services

Tel: 9269 0120 or 1800 677 402 (country callers)

Website

www.legalaid.vic.gov.au