

JANUARY 2020

Your day in court

A guide for people going to the Magistrates' Court for less serious criminal offences



Do you need this booklet in a different format?

Please go to www.legalaid.vic.gov.au and search *Your day in court* for an accessible version of this booklet. You can also ring (03) 9269 0234 and ask for Publications. We can talk with you about what you need.

Produced by Victoria Legal Aid

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For free information about the law and how we can help you:

- visit our website www.legalaid.vic.gov.au
- call 1300 792 387 Monday to Friday, 8 am to 6 pm, excluding public holidays

For business queries, call (03) 9269 0234

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Changes to the law: The law changes all the time. To check for changes you can visit our website or call us.

Disclaimer: The material in this publication is a general guide only. It is not legal advice. If you need to, please get legal advice about your own particular situation.

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CONTENTS

About this booklet	1
What do these words mean?	3
Important things to know	6
How does the court process work?	7
I have to go to court: what should I do first?	10
Delaying your court date	12
Preparing for your hearing	14
Going to court: getting ready and arriving	18
Going to court: what happens in a guilty hearing?	21
Going to court: what happens in a not guilty hearing?	23
What to say in court	26
Being found guilty	28
Leaving court: what happens now?	32
Appeals and re-hearings	34
Example documents	36
Where to get help	40

Victoria Legal Aid

Victoria Legal Aid is a government-funded agency set up to ensure that people who cannot afford to pay for a private lawyer can get help with their legal problems. We provide free information for all Victorians, family dispute resolution for disadvantaged families, provide lawyers on duty in most courts and tribunals in Victoria, and fund legal representation for people who meet our eligibility criteria. We help Victorian people with legal problems about criminal matters, family breakdown, child protection, family violence, child support, immigration, social security, mental health, discrimination, guardianship and administration, tenancy and debt.

ABOUT THIS BOOKLET

This booklet is a guide for people going to the Magistrates' Court for less serious criminal offences. It can help people who may be able to represent themselves at court.

Less serious criminal offences include the following:

Driving offences:

- careless driving
- driving without a licence
- drug driving
- drink driving
- driving while disqualified or suspended
- hoon driving-related offences.

Public transport offences:

- using offensive language or behaving offensively on public transport
- placing feet on public transport furniture
- smoking on public transport
- failing to give your name and address.

Infringements:

- matters where you have chosen to challenge the infringement in court.

Offences where the prosecuting agency is a local council, government department or an agency other than the police, including:

- behaviour of a dangerous dog
- not lodging a tax return
- fishing without a licence.

Other offences:

- hindering police (but not actually assaulting anyone)
- using or possessing a drug of dependence (for example, a small quantity of cannabis)
- being drunk in public
- committing shop theft.

This booklet is for people who are charged as adults (18 years or over). If you are charged when you are under 18, your charges will be heard in the Children's Court. This information is only about the Magistrates' Court.

Getting more help

This booklet gives general information not legal advice. We strongly recommend that you get legal advice before you go to court. If you are going to court for serious offences, it is even more important that you see a lawyer. See 'Where to get help' on page 40.

Legal words

To help you, we have explained some words in 'What do these words mean?' on the next page. These words are also highlighted in bold the first time they appear in each section.



WHAT DO THESE WORDS MEAN?

In every section of this booklet we highlight legal words in bold when they first appear. The definitions for these words are below. We have also included other legal words that you might hear used.

accused – a person the police think has done something wrong or who has been charged with an offence

adjourn/adjournment – to ask the court to put off your case to another date

allege/alleged – to accuse someone of having done something wrong

arrest – when the police hold you in custody because they think you have broken the law

bail – a promise to go to court to face charges on a certain date. Bail may have conditions, like reporting to the police or living at a certain place

breach – to break a law or court order (also called a contravention)

brief of evidence – the evidence that makes up the police's case against you. This can include the charge sheet, the informant's statement, your criminal record and witness statements

charge – the offence the police say you have committed

charge sheet – a document that lists all the offences a person is charged with

conviction – a finding that a person is guilty of an offence

contravention – when a court order is not followed

court list – a list at court that shows the cases to be dealt with that day and which courtroom they are in

court order – where the court tells you to do something (like come to court again or write a letter of apology). It can also be a document that sets out your penalty if you are found guilty of breaking the law

criminal record – a record of the crimes a person has previously been found guilty of and the punishment they received

custody – under arrest (not free to leave)

defence – a legal reason why a person is not guilty

evidence – information (documents or witnesses) used by the court or tribunal to make a decision

finding of guilt – when a judge or magistrate decides there is enough evidence to prove the offence/s or charge/s

hoon driving – driving offences that involve behaviour which puts the public at risk. Penalties for hoon driving offences include the vehicle being impounded, immobilised or forfeited

indictable offence – a serious offence which may be heard in the County or Supreme Court. Many indictable offences can be heard in the Magistrates' Court, if you and the magistrate agree to this

informant – the police officer or government official (for example, a ticket inspector) who charged you

magistrate – a person in the Magistrates' or Children's Court who hears cases and makes decisions about whether someone is guilty or not, and what punishment (sentence) they get

mention date – a court date when the magistrate will ask you or your lawyer about your case. The magistrate will also speak with the other side's lawyer (or with police if they are involved). If your case is not sorted out a further date may be set for a hearing

notice to appear – a document that tells you to go to court on a certain date when the police suspect you of breaking the law

offence – an action the law says is wrong (illegal). See charge

penalty – a punishment for breaking the law

plea/pleading – the response in the courtroom to the charge: guilty or not guilty

police case – what the police say about what happened and why they charged you. This is based on the brief of evidence

prosecution/prosecutor – the agency who presents the informant's case in court. The prosecutor can be the police or another government agency, like Corrections Victoria, the Department of Transport or the Australian Taxation Office

preliminary brief – this is a shorter version of the police brief of evidence which gives details of the prosecution's case but does not include any evidence

registrar – an administrative person who works for the court

registry – the court's front counter

sentence – the punishment the court gives for the offence

serve – the legal delivery of a document

summary offence – a less serious offence that is usually heard in the Magistrates' or Children's Court

summons – a document that says when and where to go to court

triable summarily – when an indictable offence can be heard by a magistrate in the Magistrates' Court

undertaking – a promise to the court to do or not to do certain things

warrant – a court document authorising what the police or sheriff can do, such as arrest someone or search property

witness – a person who gives evidence in writing or in person at the court

IMPORTANT THINGS TO KNOW

The court process

In court, the **prosecution** is on one side and the defence is on the other side. The prosecution could be the police, a local council or a government department. The defence is you and your lawyer, if you have one. Each side may give **evidence** to the **magistrate**.

You are innocent until proven guilty beyond reasonable doubt

Even if you plan to **plead** guilty at court, the prosecution must prove to the magistrate that you are guilty of the **offence** 'beyond reasonable doubt'. You are innocent until the evidence proves this. If there is a reasonable doubt in the magistrate's mind they must find you not guilty.

You should go to your court hearing

If you have been **served** with a **summons**, you should go to court. If you do not turn up, the magistrate may issue a **warrant** or **sentence** you and give a **court order** with a harsh **penalty**. Going to court gives you the chance to tell the magistrate your side of the story, and about how your life will be affected by getting a penalty. For example, losing your driver licence could mean you are not able to help a sick relative. The magistrate may take this into account.

You must go to court if you are on **bail**. If you do not go, the magistrate may issue a warrant. A warrant allows the police to **arrest** you and take you to court. The police may hold you in **custody** until the magistrate can deal with your case.

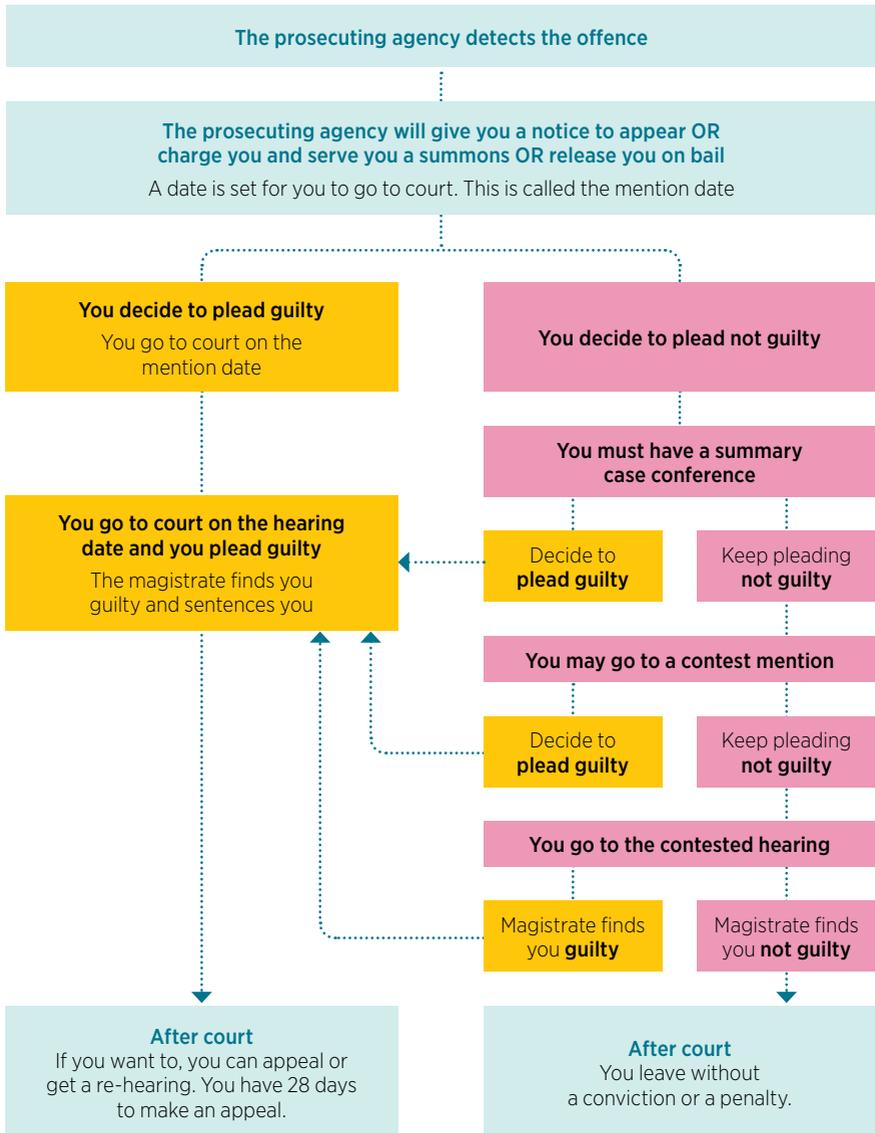
Do not be late

Your **charge sheet** or **notice to appear** will give you the time to be at court. Remember this date and be on time. You should get to the court 30 minutes before the time stated. The magistrate can issue a warrant for your arrest if you are late to court.

If you need an interpreter, organise one before you go to court

Ring the court where your matter is listed to arrange this. Do this at least five days before going to court. The court will pay for the interpreter. Only qualified interpreters work at court.

HOW DOES THE COURT PROCESS WORK?



How does the court process work?

Explanation of the flowchart

Step 1. The prosecuting agency detects the offence

For example, a police officer caught you driving carelessly.

Step 2. The prosecuting agency notifies you of the charge

They will:

- give you a **notice to appear**, or
- **charge** you and **serve** you a **summons**, or
- release you on **bail**.

A date is set for you to go to court. This is called the **mention date**.

A police officer or someone who works for a prosecuting agency might give you a notice to appear if your case is not too complicated. They can give you this on the spot or soon after. You will go to court quicker than if they give you a summons.

If the prosecuting agency gives you a **charge sheet** and summons, this means they will file a charge with the court and serve a summons on you to come to court. They usually do this in person. Sometimes they will mail it. A summons could be issued weeks or even months after the date the **offence** is said to have been committed.

If the prosecuting agency releases you on bail, this means they have **arrested** you and interviewed you at a police station. If you are given bail, you can leave the police station. You will need to sign an **undertaking** saying that you will go to court on a certain date. That undertaking may have conditions, for example, that you must live at a certain place or report regularly to a police station.

If you decide to **plead** guilty, go to Step 3. If you decide to plead not guilty, go to Step 4.

Step 3. You go to court on the mention date

Go to step 8.

Step 4. You must have a summary case conference if you want to plead not guilty

The summary case conference is a discussion between you, or your lawyer (if you have one), and the prosecuting agency. It is a chance to work out what you and the prosecuting agency disagree over.

You must have a summary case conference before going into the courtroom, and before you can have your case **adjourned** for a contest mention or a contested hearing.

If you decide to plead guilty, go to Step 8. If you keep pleading not guilty, go to Step 5.

Step 5. You may go to a contest mention

This is the next step for a matter where you are pleading not guilty. The contest mention must happen before the contested hearing can happen.

At the contest mention the **magistrate** will want to know:

- the main issues you and the **prosecution** disagree over
- the number of **witnesses** that will be called at the hearing
- how long your hearing might take.

The **informant** will usually be there. So will the prosecutor. The magistrate will try to get you and the prosecutor to agree on as much as you can. You can ask the magistrate what would happen if you were to plead guilty. The magistrate may give an idea of the **penalty**. This is called a sentencing indication.

You might now feel that the prosecution has a strong case against you. You can choose to plead guilty at the contest mention stage. If you are charged with more than one offence, the prosecution may drop some charges if you plead guilty to others.

If you decide to plead guilty, go to Step 8. If you keep pleading not guilty, go to Step 6.

Step 6. You go to a contested hearing

This hearing happens when you continue to plead not guilty.

This usually only happens after you have had:

- the summary case conference
- the contest mention.

The hearing can include:

- witnesses giving **evidence**
- you giving evidence as one of your own witnesses
- submissions and arguments on points of law
- the magistrate deciding whether you are guilty or not guilty
- the magistrate deciding penalties, if they have found you guilty.

If you change your mind and decide to plead guilty, your case can still go ahead on that day. You should tell the court and prosecution as soon as you can if you decide to plead guilty. If you plead guilty the prosecution does not get witnesses to come to court.

If the magistrate finds you guilty, go to Step 8. If the magistrate finds you not guilty, go to Step 7.

Step 7. After court... you leave without a conviction or penalty

Your court process has ended.

Step 8. You go to court on the mention date and you plead guilty. The magistrate finds you guilty and sentences you

Go to Step 9.

Step 9. After court... if you want to, you can appeal or get a re-hearing. You have 28 days to make an appeal

I HAVE TO GO TO COURT: WHAT SHOULD I DO FIRST?

Understand what the charge is

What offence has the informant charged me with?

This is on the **charge sheet**. Look at the 'Details of the **charge**' section. You can see what the **informant** wrote about your **offence**. The **magistrate** refers to this in the courtroom. The **preliminary brief** can also give you more information about the offence.

Summary or indictable offence?

The charge sheet tells you whether the prosecuting agency charged you with a **summary offence** or an **indictable offence**.

The Magistrates' Court usually deals with summary offences. An indictable offence is more serious. A higher court like the County Court or Supreme Court often deals with indictable offences. These courts use a judge and jury.

Most indictable offences, however, are **triable summarily**. This means you can ask to have your case heard by a magistrate in the Magistrates' Court instead of by a judge and jury. People often choose the Magistrates' Court because costs are lower, **penalties** may be less severe and cases are dealt with quicker. Get advice from a lawyer about this.

Do I agree with the charge?

It is not as simple as asking yourself 'Did I do it?' You may have done what the informant says but you may have a **defence**. For example, the informant charged you with shoplifting but you took the item by accident.

Do I agree with every charge?

The informant may have charged you with more than one offence. The **prosecution** may drop some of the charges, especially if you want to **plead** guilty to the rest of the charges. Your lawyer, if you have one, can speak with the prosecution about this.

Get legal advice

When should I get legal advice?

Do this as soon as you can – even if the police or court staff have said that you do not need a lawyer. No matter how small the charge may seem, treat it seriously. If the magistrate finds you guilty, you may get a **criminal record**.

Getting legal advice early can help you decide if you need a lawyer to speak for you in court or if you can represent yourself.

What should I ask the lawyer?

Ask them questions such as:

- Should I plead guilty or not guilty?
- What sort of penalty might I get?
- Will I go to prison?
- Would having a lawyer in court make a difference to the penalty?
- If I get a lawyer to represent me, how much will it cost? (Weigh up this cost against the likely penalty and if you plan to plead guilty or not guilty)
- What do I need to take to court?
- What will happen in court?

Where do I find a lawyer?

See 'Where to get help' on page 40. You may have to pay for a lawyer.

Decide to plead guilty or not guilty

This is up to you. To help you decide, think about:

- the legal advice you got from your lawyer
- your defence and the strength of the prosecution's case against you
- your chances of being found not guilty.

You may need to think about the penalties for the offence. Ask a lawyer about this. For some offences the only way to avoid a penalty is to plead not guilty and win. This can be hard. If you plead guilty, the court must take this into consideration and you will get a lighter penalty.

You may feel pressured to plead guilty. Only plead guilty if you think you are guilty. Do not do it just to get the case over and done with.

I want to plead guilty. Can I get help from Victoria Legal Aid?

On the day you go to court, the duty lawyer service at court can give you information and advice or represent you in the courtroom, depending on your circumstances. The duty lawyer service is free. For more information about duty lawyers, see page 19 or visit www.legalaid.vic.gov.au.

It is best to get advice before going to court. Call our Legal Help phone line.

See 'Where to get help' on page 40. We can give you information and help you understand the charge sheet. One of our lawyers may be able to give you advice or represent you in your case. This depends on things like your income and circumstances. More information is on our website: www.legalaid.vic.gov.au.

DELAYING YOUR COURT DATE

Can I ask to delay the date?

This is called an **adjournment**.

You may be able to adjourn your case if:

- you want to **plead** not guilty and have had a summary case conference
- you have accepted responsibility for the **offence** and want to ask for a diversion. [See](#) page 15 for more information about diversion
- you need more time to prepare and want to find a private lawyer
- you need more time to get legal advice. The **magistrate** may want to know whether you will plead guilty or not guilty.

Generally, the magistrate will only adjourn a case if they believe there is a very good reason.

How do I delay the date?

If you have a good reason for an adjournment, you can speak to your lawyer or the court co-ordinator about how to adjourn your matter. You can do this when you get to court on the day of your hearing.

If you are not on **bail** you can call the court before your hearing date to adjourn the matter if you have not adjourned it before. You must do this by 3 pm on the day before your hearing.

If your matter is adjourned you will need to turn up to all future hearing dates. If you want to adjourn your matter again, you will have to go to court on the day of your hearing and ask the magistrate for this.

What if I am on bail?

You must turn up on the day of your hearing. You can ask the magistrate to adjourn your case but you will need a good reason for this.

What if I am sick on the day or there is an emergency?

Ring the court co-ordinator. Ask them to put off your case to another day. Tell them what has happened. Make a note of the time of your call and the name of the person you spoke with.

Get a doctor's certificate, especially if you are on bail or **charged** with an **indictable offence**. Get someone to take it in or fax it to the court as soon as you can. If you do not let the court know why you are not present, they may issue a **warrant** for your **arrest**.

Remember: if you cannot get to court, let the court co-ordinator know.



PREPARING FOR YOUR HEARING

Checklist for pleading guilty

- It is important that you get legal advice. [See](#) 'I have to go to court: what should I do first?' on page 10.
- Find out the **police case**. Get the **preliminary brief**. You can also ask for the full police **brief of evidence**. Write to the **informant** at least 14 days before the first court date to get this. Details of the informant's station should be on the **charge sheet**. You can still write to them after 14 days but they may not send you the information in time.
- Think about what you want to say in court. [See](#) page 26. Write down what you want to say and practise it.
- Organise an interpreter if you need one. Ask the court to arrange this for you. Do this at least five days before your case. If the court arranges the interpreter it will be free. Only qualified interpreters work at court.
- Organise your paperwork. This includes character references and any paperwork about your finances. The **magistrate** may need to know about your weekly wage and things you have to pay for. For an example of a character reference [see](#) page 39.
- Arrange counselling or training that may show the magistrate you are serious about not breaking the law again. For example, you may want to do a drink driving course if your **offence** has to do with a drink driving **charge**.
- Visit the court beforehand so you know what to expect. You can also do an online tour of the court by visiting the Magistrates' Court website. [See](#) 'Where to get help' on page 40.

If you are ready to go ahead with your case, the court will try to deal with your case on that day. Remember, it is important that you get legal advice. [See](#) 'I have to go to court: what should I do first?' on page 10.

Programs you could do if pleading guilty

Contact a lawyer or the court as early as you can if you want help from the services below.

Court Integrated Services Program (CISP)

You, your lawyer or the magistrate hearing your case can refer you to CISP. This is a program to help you reduce the chances of breaking the law again. It is for people who are given a **summons**, are on **bail** or are being held in **custody** waiting for their bail hearing. If the court decides it is suitable, you can do the program for up to four months. You will usually attend court each month and the magistrate will receive progress reports from your CISP worker about how you are going on the program.

Through CISP you can get help with short-term housing, medical treatment (such as methadone treatment), drug and alcohol counselling, job programs, travel cards, food vouchers, passport photos and court date reminders or diaries.

If you keep to the program it shows you have done something positive about your situation. It may help when the magistrate gives you your **sentence**.

Diversion program

The diversion program is a way to deal with your matter outside of the court system. It is normally for less serious cases. You do not **plead** guilty but you must accept responsibility for the offence. You will still get demerit points if your offence attracted demerit points. However, you do not get a **criminal record**.

If the informant gives you a diversion recommendation and the magistrate agrees, you will be put on a diversion plan.

You must follow certain conditions while you are on the plan. You might have to:

- write a letter of apology to the victim
- get counselling
- do an education course
- do community work
- pay for any damage or loss you have caused.

If you follow the conditions of your diversion plan, no further action is taken and the charge will be withdrawn. This means there will be no **finding of guilt** and no criminal record.

A diversion plan usually goes for one year.

Checklist for pleading not guilty

- It is important that you get legal advice. [See](#) 'I have to go to court: what should I do first?' on page 10. Representing yourself when you plead not guilty can be very hard. It is better to get a lawyer to speak for you in court if you can. Duty lawyers will not be able to represent you on the day of your contested hearing.
- Find out the police case. Get the preliminary brief. You can also ask for the full police brief of evidence. Write to the officer-in-charge at the informant's station at least 14 days before the first court date. Details of the informant's station should be on the charge sheet. You can still write to them after 14 days but they may not send you the information in time.
- Carefully read the brief of evidence. Note the evidence the police have. Use the brief of evidence to get your defence ready. Think about whether you have **witnesses** who can give evidence that can help your case. For example, were you with someone at the time and in a different location from where the offence is said to have occurred? Can this person confirm you were elsewhere?
- Organise an interpreter if you or your witnesses need one. Ask the court to arrange this for you. Do this at least five days before your case. If the court arranges the interpreter for you it will be free. Only qualified interpreters work at court.
- Organise your witnesses. Tell them when they have to come to court. You might need to get a witness summons if your witness refuses to come or if their employer wants proof that they need to be in court. A witness summons is a court document telling witnesses they must go to court. Ask a lawyer or the court co-ordinator about how to fill this out.
- Think about what you want to say to the magistrate in case they find you guilty. [See](#) page 26.
- Organise your character references and any paperwork to do with your finances. The magistrate may need to know about your weekly wage and things you have to pay for. For an example character reference [see](#) page 39.
- Visit the court beforehand so you know what to expect. You can also do an online tour of the court by visiting the Magistrates' Court website. [See](#) 'Where to get help' on page 40.



GOING TO COURT: GETTING READY AND ARRIVING

Before you arrive

Here are some things to think about two weeks or so before your hearing:

- time off work – you may need to get the whole morning or afternoon off
- child care – you may need to organise someone to look after your children
- bringing a friend – organise for a friend to come with you. You may need someone to drive you home if you are at court for a driving **offence** and you end up losing your licence.

If you are young, ask your parents to come along. This can make a good impression. Even for adults, **magistrates** like to see people with you. This shows that you are treating the matter seriously. It shows that you have support. The magistrate may let these people speak for you.

Here are things to think about in the morning:

- clothing – dress to impress, look clean and neat
- paperwork – remember to bring your papers with you.

Arriving

Go to the **registry** and tell the court co-ordinator your name. They will:

- ask if you are **pleading** guilty or not guilty
- tell you which courtroom your case will be in.

The court co-ordinator may ask you if you have a lawyer. If you want to see the duty lawyer, ask the court co-ordinator where the duty lawyers are.

If you are pleading guilty, the court co-ordinator will send your file into the courtroom. This lets the magistrate know that your case can be heard.

If you are pleading not guilty, the court co-ordinator will tell you to have a summary case conference with the **prosecutor**. If the prosecuting agency is the Department of Transport or someone other than the police, you will need to talk with the person appearing on their behalf at court.

If you cannot agree with the prosecution and you still want to plead not guilty, tell the court co-ordinator that you are still pleading not guilty. The court co-ordinator will send your file into the courtroom. This lets the magistrate know that your case can be heard.

Waiting

Once the court co-ordinator has sent your file into the courtroom, stay close by or go into the courtroom and wait for your name to be called. This may take a while.

If you wait in the courtroom, make sure you bow to the magistrate as you go into the courtroom. You can also watch how other matters are heard.

Be patient, you might not be first. Your **charge sheet** may say that your case is on at 9.30 am. This just means that the court starts hearing cases at 9.30 am.

In the courtroom do not:

- talk (unless it is your case) or whisper
- smoke, eat or chew gum
- listen to music, even if you have earphones
- have your mobile phone switched on
- answer your phone. If you do, the magistrate may take it from you
- wear your sunglasses on top of your head
- wear a hat.

Seeing a duty lawyer

We have duty lawyers at most courts.

Depending on your background and things going on in your life, the duty lawyer may be able to help with:

- information – if we cannot meet with you to give you advice, we will give you detailed fact sheets about the offence and about what happens in the courtroom
- advice – if we can meet with you, we will tell you about the law, what your options are and what happens in the courtroom. We may talk to the prosecution on your behalf
- representation in court – if we can give you more help, we may appear for you in the courtroom. We can only do this for people most in need and/or people facing serious **charges**.

There may be a lot of people wanting to see the duty lawyer. Again, be patient. You may have to queue up or take a number.

See for yourself what happens in the courtroom

You can do an online tour of the court by visiting the Magistrates' Court website.

See 'Where to get help' on page 40.



GOING TO COURT: WHAT HAPPENS IN A GUILTY HEARING?

The hearing begins

When your name is called, go to the bar table. Stand at the end of the table opposite from the **prosecutor**.

The charge is read and you make your plea

The court clerk or **magistrate** reads out the **charge**. Then they ask you if you are **pleading** guilty or not guilty. This is when you say you are pleading guilty.

If the prosecution has charged you with an **indictable offence** that is **triable summarily**, the magistrate then asks you if you want your case heard in the Magistrates' Court or the County Court. Only the Magistrates' Court will be able to hear your case that day. If you choose to have your case heard in the County Court, it will be scheduled for another day.

The prosecutor reads out the summary

The prosecutor reads out their statement of facts. This comes from the **brief of evidence**. The magistrate asks you if you agree with the statement or if it is a fair account of what happened.

If you do not agree with something major in the summary, tell the magistrate. The magistrate might decide to stand down your case so you can speak to the prosecutor or a duty lawyer. Being stood down means your case is put on hold briefly and called back on that same day for completion.

If you agree with the summary, the magistrate will say 'I find the charge proved'.

The prosecutor hands up your prior history

The magistrate asks the prosecutor if there is anything 'known' or '**alleged**'. They are asking if the prosecutor knows of any prior **convictions** or previous times you went to court. If they do, the prosecutor will normally 'hand up' a document that lists the times you have been to court.

If you are guilty of similar **offences**, and if the magistrate finds you guilty this time, they will probably give you a harsher **sentence**.

You can read the priors. They should be in the brief of evidence. If not, get a copy of your priors from the prosecutor.

If there is anything you do not agree with, tell the magistrate. If you disagree with or do not remember one of the entries on your record, usually your case will be stood down. This will give you the chance to sort things out with the prosecutor.

The prosecutor may comment on your priors. They may also tell the magistrate what they think your sentence should be.

You get a chance to speak

The magistrate asks if you want to say anything. Although you accept that what you did was against the law, this is a chance to give your side of the story. This can be important in helping the magistrate decide what **penalty** they give you. For what to say to the magistrate, [see](#) 'What to say in court' on page 26.

You can disagree with things the prosecution say happened. However, you cannot plead guilty but say that you did not break the law.

Remember to call the magistrate 'Your Honour' or 'Sir' or 'Madam'.

Speak clearly and loudly enough for the magistrate to hear you. Look at them when you speak. However, it is okay to look down and read from your notes.

The magistrate will ask you questions if they need more information.

The magistrate announces the sentence

After listening to you, the magistrate announces your sentence. [See](#) 'Being found guilty' on page 28 for an idea of what penalties may be in your sentence. For some offences, the magistrate must give you mandatory penalties, which means they do not have any choice but to give you those penalties. This is the case with many driving offences.

GOING TO COURT: WHAT HAPPENS IN A NOT GUILTY HEARING?

This is called a contested hearing. The hearing will need to be booked in with the court. It will not go ahead on the first time you go to court, even if you want it to.

The hearing begins

When your name is called, go to the bar table. Stand at the end of the table opposite from the **prosecutor**.

The charge is read

The court clerk or **magistrate** will read out the **charge**. Then they will ask if you are **pleading** guilty or not guilty. This is when you say you are pleading not guilty.

If the prosecution has charged you with an **indictable offence** that is **triable summarily**, the magistrate then asks you if you want your case heard in the Magistrates' Court or the County Court. Only the Magistrates' Court will be able to hear your case that day. If you choose to have your case heard in the County Court, it will be scheduled for another day.

The courtroom is cleared

If there is more than one **witness**, they should not hear each other's **evidence**. At this point the magistrate will order all witnesses to leave the court. The magistrate will call them back when it is their turn to speak. The **informant**, who is a witness, can stay.

The prosecution's witnesses speak

The prosecutor will question their witnesses first. One of these will be the informant. Take notes of what the witnesses say. This will help you to get your questions ready.

The prosecution has to prove their case beyond reasonable doubt.

You can cross-examine the prosecution witnesses

After each of the prosecution's witnesses has given evidence, you can question them. This is called cross-examination. Your main aim is to ask questions that put doubt on the prosecution's witnesses' evidence. This can be hard to do. Witnesses may have different versions of the same event.

Try to:

- challenge witnesses on things you disagree with
- show up any contradictions
- point out things that do not make sense
- mention things that they have left out.

Always be polite. Ask short and clear questions related to your case.

There are some witnesses who you will not be able to cross-examine. These witnesses are known as 'protected witnesses'. A common example is a complainant in a family violence matter. The court will not allow the **accused** person to question these witnesses and you will need to have a lawyer if you wish to cross-examine them at your hearing.

The prosecution can re-examine their witnesses

The prosecutor can ask their witnesses more questions to clear up anything you have asked when you did your cross-examination.

You can give evidence

You can give evidence once the prosecution has finished questioning their witnesses. You will go into the witness box and swear an oath or make an affirmation that you will tell the truth.

Look at the magistrate and explain what you saw, heard or did. Keep to the facts. Remember to call the magistrate 'Your Honour' or 'Sir' or 'Madam'. The magistrate may ask you questions.

You do not have to give evidence. If you do, the prosecutor may cross-examine you. Talk to a lawyer about this before you go to court.

You can also call your own witnesses to give evidence that is different to what the prosecution is saying. Ask your witnesses about what they saw or heard. Let them say it in their own words. The prosecutor can also cross-examine your witnesses.

The prosecution may cross-examine you

The prosecutor can ask questions:

- to you, while you are in the witness box
- to your witnesses, after they give evidence.

The magistrate may also ask you questions. The magistrate is not trying to help the prosecution. If a magistrate asks you questions, these will usually be about clarifying the information.

You can re-examine what you said and your witnesses

You get another chance to speak about anything the prosecutor has asked you in cross-examination. You can also ask your witnesses about things that came up in cross-examination.

The magistrate announces a decision

After the magistrate has heard all the evidence, they will announce their decision.

They could find you not guilty. If so, they will dismiss the case and you are free to go. You can ask to be paid back for your costs and any witnesses' costs.

The magistrate could find you guilty. If so, the magistrate will ask the prosecutor if there is anything 'known' or '**alleged**'. That is, if the police want to say anything about your **criminal record**. See 'The prosecutor hands up your prior history' on page 21.

The magistrate will then ask if there is anything you want to say. Think about the things happening in your life right now. Think about how your life could be affected by getting a **conviction**. Be ready for this. See 'What to say in court' on page 26.

The magistrate gives you a sentence if you are found guilty

The magistrate then decides on a **sentence**. See 'Being found guilty' on page 28 for an idea of what **penalties** may be in your sentence.



WHAT TO SAY IN COURT

Fill in this checklist to help you with what to say in court. Write notes in the spaces below. You can read from these notes in court but make sure you look at the **magistrate** too.

Support people

Who is at court supporting you?

.....

.....

.....

About the offence

If you are pleading guilty, why did the offence happen? For example, why were you driving?

.....

.....

.....

What have you done to make up for it?

For example, you paid for the damage caused, you were co-operative with police, you have apologised to the victim.

.....

.....

.....

What have you learned and how do you feel about what you did?

.....

.....

.....

What are you doing to stop this happening again?

For example, you are dealing with drug or alcohol problems, seeing a counsellor or social worker, selling your car.

.....

.....

BEING FOUND GUILTY

What happens if I am found guilty?

The **magistrate** will **sentence** you. This may include a **conviction** and a **penalty**. The sentence will depend on:

- how serious the **offence** is
- if you have been found guilty of similar offences before
- what else is going on in your life.

What sort of penalty will I get?

You will get one or more of the following:

No penalty

The magistrate can find the matter proven but dismiss it without giving you a penalty. This means the magistrate has found you guilty of the offence but has not given you a penalty because the offence was minor or there are things going on in your life that mean the magistrate does not think it is useful to punish you with a penalty.

Adjourned undertaking

This is sometimes known as a 'good behaviour bond'. It is a promise you make to be of good behaviour for a period of time. Sometimes it includes a promise to do other things like continue counselling or keep taking medication.

If you do not keep your promise, or if you break the law during the **undertaking**, you can be brought back to court and the magistrate can resentence you on the original **charges**.

Fines and other payments

The magistrate can order you to pay:

- a fine
- money to the court fund (instead of a fine). This money goes to charity and is usually a part of an undertaking
- money to a victim, for example, to cover any property damage.

Also, any profits from the crime may be taken from you.

Community Corrections Order

This is a **court order** that allows you to **serve** your sentence in the community. It has conditions (rules) you must follow.

Before you are put on an order Corrections Victoria must assess you to see if you are suitable.

You may have to do things like:

- unpaid work with a community group (such as rubbish or graffiti removal)
- an education program
- counselling
- alcohol or drug tests
- reporting to a community corrections centre.

If you don't follow the rules or if you break the law while you are on the order, you can be charged with a **contravention**. This carries serious penalties. If this happens, talk to a lawyer as soon as you can. You will have to go back to court. The magistrate may give you a heavier penalty or send you to jail.

If you are sick or have trouble getting to the Corrections Office, tell your supervisor. Get a doctor's certificate. Keep a record of conversations with your supervisor in case there is a problem later.

Make sure the court has your current address. The court may need to write to you.

Imprisonment or youth detention

In some cases, especially if it is not your first offence and the offending is serious, the magistrate may sentence you to jail or detention.

There are different types of detention:

- suspended sentence – you serve this sentence in the community and not in jail, as long as you don't break the law again. You can only get a suspended sentence if you committed the offence before 1 September 2014. If you **breach** a suspended sentence a magistrate can sentence you to jail straight away.
- detention in jail, or in a youth justice centre (for people under 21).

What penalties can I get for driving offences?

Licence loss

The magistrate may:

- suspend your licence or permit. This means you cannot drive for a certain period of time
- cancel your licence or permit. This means that your licence no longer exists and you are disqualified from driving for a period of time. When the disqualification ends, you can apply to the court to get your licence back. This is called a licence restoration.

For many drink driving and speeding offences, the magistrate must cancel your licence.

If you are charged with any drink driving offence after 29 April 2018, your licence will be cancelled. How long it is cancelled for depends on your alcohol reading and whether it is your first offence.

Demerit points

You will get demerit points if the magistrate finds you guilty of a driving offence that attracts demerit points. The magistrate has no power to do anything about demerit points. They apply automatically.

You might lose your licence if you get too many points.

For more information on demerit points, visit the VicRoads website www.vicroads.vic.gov.au.

Alcohol interlock

An alcohol interlock is a device that stops a car from starting if the driver has been drinking alcohol. The interlock is fitted to a car. The driver must blow into the interlock before driving. It measures and records the amount of alcohol on the driver's breath. The car will not start if there is alcohol on your breath.

If you are found guilty of any drink driving offence after 1 October 2014 your vehicle will be fitted with an interlock for at least six months.

Behaviour change program

All people caught drink or drug driving must complete a behaviour change program. A certificate of completion must be provided to the court when you ask to get your licence back. There are different programs, depending on whether you have been caught drug or drink driving and the seriousness of your offence.

Hoon driving penalties

Police can search for and take a vehicle if they believe it was used in a **hoon driving**-related offence. They can impound the vehicle by taking it away to a garage or holding yard, or immobilise it by attaching a wheel clamp or steering wheel lock. Police can impound or immobilise the vehicle immediately for 30 days.

Hoon driving-related offences include:

- speeding
- deliberately causing the vehicle to skid, smoke or make excessive noise
- continuing to drive after police order you to stop
- driving in or organising a street race
- deliberately driving into a crossing where a train or tram is approaching

- driving with too many passengers
- repeat drink or drug driving
- repeat offences of unlicensed or disqualified driving.

The police may impound or immobilise a vehicle for longer than 30 days depending on how serious the offence is. Police can take a vehicle permanently for very serious offences.

If police take your vehicle, you may have to pay for all impounding and immobilisation costs.

You can apply to have the car returned to you.

What else might happen if I am found guilty?

Forensic sample

The police might ask for a court order for you to provide a forensic sample so that your DNA can be kept on a database.

You can ask the court not to make the order for reasons such as your age or if the offence is minor.

It is a court decision. If the court makes this order you must go to a police station to provide the sample. Usually this will involve a police officer taking a sample from inside your mouth.

Criminal record

What happens in court goes on your **criminal record**. This includes:

- the **finding of guilt**
- a conviction, if there is one
- the penalties you got.

The court and the police can see your criminal record. Sometimes they can let other people know what is in your criminal record. A criminal record, especially with convictions, may make it harder for you to get some jobs or get visas to some countries.

The police have a policy for when they will give out information about your criminal record. Look for the Police Release Information Policy on their website for more information. [See](#) 'Where to get help' on page 40.

What if I am unhappy with the court result?

You may want to make an appeal or have a re-hearing. [See](#) page 34.

LEAVING COURT: WHAT HAPPENS NOW?

What if I got a penalty?

You need to understand what the **penalty** means and what you have to do next. If you are unsure, ask the court **registrar** before you leave court. You may have to sign something before you leave court (such as an **undertaking**). The **magistrate** will ask you to sit in the court until the court clerk brings you the document to sign.

If you have trouble obeying **court orders**, get legal advice as soon as you can.

How do I pay a fine?

Any unpaid fines and costs must be paid to Fines Victoria. They will send you a collection statement. This statement will include a reference number you will need to make your payment. Visit the Fines Victoria website: www.online.fines.vic.gov.au.

There are options if you have trouble paying the fine. Fines Victoria may:

- give you more time to pay
- make a payment plan
- convert your fine into community work instead.

If you cannot pay all of it, pay what you can. If you don't pay you may end up back in court. You may have to pay more money and the court can issue a **warrant** for your **arrest**.

What happens if I have lost my licence?

You should not drive at all during this time. There are no exceptions. For example, you cannot drive to work or to pick up your children. There are no special licences that allow you to drive some of the time. There are very serious penalties for driving when you are not supposed to.

What happens if I have to do a drink driving course?

Get in touch with a driver education agency as soon as you lose your licence. The agency will tell you what you have to do and what the costs are. You usually do two sessions with the agency. This lets them look at your progress over time. They will write a report about your drinking or drug use. The agency sends the report directly to court. The magistrate will consider this report when you apply for a licence restoration.

Contact DirectLine for information about your closest driver education agency. See 'Where to get help' on page 40.

What if I do not understand the sentence?

Ask the magistrate or court registrar before you leave the courthouse. You can also ring the court later.



APPEALS AND RE-HEARINGS

What is an appeal?

An appeal allows you to challenge a decision made by a court. If you disagree with the **magistrate's** decision, you can appeal in a higher court, such as the County Court.

You can appeal to the County Court against the:

- **conviction** – the magistrate's decision to find you guilty
- **sentence** – the **penalty** or other sentencing order the magistrate gave you.

The appeal involves:

- filling out court forms
- going to the County Court for an appeal hearing.

Get legal advice before lodging an appeal. A lawyer can advise you on whether your sentence was appropriate. The decision might feel unfair but this does not mean that you will get a better result if you appeal.

It is very important to keep in mind that a judge hearing your appeal can give you an even heavier sentence than what the magistrate gave you.

You have 28 days to lodge an appeal. It may take several months after that before the judge hears your appeal.

What is a re-hearing?

A re-hearing means your case is heard all over again.

You can ask for a re-hearing if you did not go to court for your hearing. Sometimes, if you did not turn up, the magistrate will:

- listen to the **charges** against you
- find you guilty
- decide on a penalty, and
- sentence you without you being there to tell your side of the story.

If the magistrate makes an order without you there, the court will **serve** a notice in writing to your address.

This notice tells you what order the magistrate made. It will also tell you that you can apply for a re-hearing. You have 28 days from the date you get the notice to apply for a re-hearing.

The police may try to stop a re-hearing from happening.

Get legal advice if you are thinking about appeals or re-hearings. [See](#) 'Where to get help' on page 40.



EXAMPLE DOCUMENTS

Notice to appear

Accused Copy		Form 8 - Rule 13			
Notice to Appear					
Person served					
Accused	Given Names		Surname		Date of Birth
	Street Name and No.				
Address	Suburb/Town				Post Code
You are required to appear before a Magistrates' Court at					
Venue	Place				Date Notice Served
	Street Name and No.				
Address	Suburb/Town			Post Code	Telephone
	Time	Day	Month	Year	
When					
You are suspected of having committed the following offences					
These are general particulars of the offence(s) only					
The suspected offences were committed in the following manner					
General terms of the circumstances of the suspected offence(s)					
Member of the police force or authorised person					
Signature				Date	
Authorised Person	Name		Rank		Reg. No.
	Status				Agency Ref.
Agency and Address	Street Name and No.				
	Suburb/Town				Post Code
	Telephone		Fax No.		Email
IMPORTANT INFORMATION					
DO NOT IGNORE THIS NOTICE – GET LEGAL ADVICE					
When you must go to court					
You must go to court if you get a copy of the charge-sheet and preliminary brief. This means you have been charged with an offence. You will get a copy of the charge-sheet and preliminary brief within 21 days of getting this notice.					
If you do not appear at court, the magistrate may:					
<ul style="list-style-type: none"> • Make a decision without you about your case and issue a penalty based on the information in the preliminary brief • Order that you be arrested and get the police to bring you to court. 					
When you do not need to go to court					
You do not have to go to court if you get a written notice that says that a charge-sheet has not been filed and you do not have to go to court.					

Charge and summons

Revised 01/10		VP Form 402
Printer ID at which Identifiers Report will be printed	Total Number of Charges Submitted for this Accused	LEAP FAX SEQUENCING Page No./Total No. of pages
CHARGE-SHEET AND SUMMONS		
Copy - CDEB/Police Brief		FV/SA Code Select ...
		Magistrates' Court Criminal Procedure Rules 2009 Form 3 Rule 11 (Consider all witnesses and Corroborators)
TO THE ACCUSED	Unsuitable Dates	
	Preferred Dates	
	M	F
	<input type="checkbox"/>	<input type="checkbox"/>
	Co.	Date of Birth
	<input type="checkbox"/>	<input type="checkbox"/>
You have been charged with an offence against the law. Read these pages to see what you must do.		
(1) MNI / JAID	Registration No.	State
	Licence No.	State
Details of the charge against you		
What is the charge?		
(2) Sub-Incident Number	Offence Code	
Offence Literal		
Under what law?	<input type="checkbox"/> State <input type="checkbox"/> Act <input type="checkbox"/> Other - Specify	Act or Regulation No. Section/Clause (Full Ref)
	<input type="checkbox"/> C'wealth <input type="checkbox"/> Reg	
Type of Offence	<input type="checkbox"/> Summary Offence (You should go to Court) <input type="checkbox"/> Indictable Offence (You <u>must</u> go to Court)	
Request for committal proceeding	<input type="checkbox"/> No <input type="checkbox"/> Yes	
Are there more charges?	<input type="checkbox"/> No <input type="checkbox"/> Yes - see "Continuation of Charges" attached.	
Informant	Phone No:	
Agency and Address		
Fax	Email	
Informant Signature	Date	
Prosecution Authorised by:	Registered Number	Signature:
Where will the case be heard		
Where you must go	The <input type="checkbox"/> Magistrates' / <input type="checkbox"/> Children's Court of Victoria at	
Address	Phone No	
When	Time	Day
	am	Month
		Year
Details about this summons		
<input type="checkbox"/> S 14		
Issued at:	Date	
Issued by:	Signature	<input type="checkbox"/> Registrar <input type="checkbox"/> Magistrate
		<input type="checkbox"/> Police Informant
Charge Filed at	by (member)	Emp No
Method of Filing	mail / personal	Date
	* delete inapplicable	

Letter from employer

Your employer can use this letter as a guide to write their own letter about the effect of licence cancellation or suspension on your employment.

[Address to the magistrate]

To the Magistrate,

[Employer's details]

My name is Albert Locklear. I am the sales manager at New Quality Motors at 1 Coburg Avenue, Coburg.

[How the employer knows you]

Luke Thomas has worked under my supervision as a sales representative for three years. In that time I have found him to be a good worker and from my experience of his driving, a safe driver. He has a bright future at this company.

[What the employer knows about the court case and their reason for writing the reference]

I understand that Luke has to attend court about a drink driving charge. Due to other commitments, I am unable to attend court to give character evidence on his behalf.

[How penalties might affect the accused]

Luke's job involves some driving and a licence is important so he can properly perform his work. Therefore, I can say that if the court cancels or suspends his licence, Luke will have difficulty performing his job. His future prospects may be affected and he may be laid off.

Yours faithfully

[Employer's signature]

Albert Locklear

[Employer's printed name and phone number]

ALBERT LOCKLEAR (03) 1234 5678

Character reference

The character reference is written by someone who knows you, for example, a friend. The letter needs to cover the issues related to the charge, for example, dishonesty, violence or drug use.

If possible, have the character reference typed. Make sure it is signed and dated. If the referee (the person who is giving you a reference) has a letterhead, ask if they can print the character reference on the letterhead.

[Address to the magistrate]

Your Honour,

[Referee's details]

My name is Peter Johnson of 1 Temple Court, Keilor Park. I am a professional architect.

[How the referee knows you]

I have known Jane Citizen of 123 Alphabet Street, South Melbourne, for five years. I understand she works as a retail assistant.

[What the referee knows about your court case and their reason for writing the character reference]

I understand that Jane Citizen has to attend court about a theft charge. Due to other commitments, I am unable to attend court to give character evidence on her behalf.

[What the referee knows about your character]

However, I can say that in all the time I have known her, Jane has been a decent, hard working and trustworthy person. I believe any behaviour she displayed that caused her to be charged with theft was a one-off event.

[What the referee knows about the circumstance of the offence]

She has been under stress due to her mother's difficult battle with cancer. Even though she has been charged with theft I would continue to trust Jane with my money and belongings.

Yours faithfully

[Referee's signature]

Peter Johnson

[Referee's printed name]

PETER JOHNSON

WHERE TO GET HELP

Victoria Legal Aid

Legal Help

For free information about the law and how we can help you:

- visit our website www.legalaid.vic.gov.au
- call 1300 792 387 Monday to Friday, 8 am to 6 pm, excluding public holidays

Do you need help calling us?



Translating and Interpreting Service

Tel: 131 450



National Relay Service

Speak and Listen users: Call 1300 555 727

Internet relay users: <https://nrschat.nrscall.gov.au>

SMS relay: 0423 677 767

Local offices

We have offices all over Victoria. Our offices are open Monday to Friday, 8.45 am to 5.15 pm.

See the back cover for office locations.

All offices are accessible to people with a disability.

Other legal services

Federation of Community Legal Centres

Call to find your nearest community legal centre.

Tel: (03) 9652 1500

Website: www.fclc.org.au

Victorian Aboriginal Legal Service

Legal advice and representation for Aboriginal and Torres Strait Islander peoples.

Tel: 1800 064 865

Website: www.vals.org.au

Law Institute of Victoria's Referral Service

For referral to a private lawyer – first 30 minutes free.

Tel: (03) 9607 9550

Website: www.liv.asn.au/Referral

Magistrates' Court

To find out the address and contact details of courts in Victoria, for more information about the services at the court, to do the online court tour and for any other information about the court.

Website: www.magistratescourt.vic.gov.au

Court Network

For personal support and referral to other services at court.

Tel: 1800 681 614

Website: www.courtnetwork.com.au

Other organisations

Salvation Army

For personal support and referral to other services at court.

Tel: 13 72 58

Website: www.salvationarmy.org.au/need-help/court-and-prison-support/

DirectLine

For drink driving courses throughout Victoria and help with drug and alcohol problems.

Tel: 1800 888 236

Website: www.directline.org.au

VicRoads

For questions about a driver licence.

Tel: 131 171

Website: www.vicroads.vic.gov.au

Fines Victoria

For questions about a fine or to pay a fine.

Tel: (03) 9200 8111

Website: www.online.fines.vic.gov.au



Notes:

A series of horizontal dotted lines for writing notes.

Useful Victoria Legal Aid resources

To order publications

We have free booklets about the law in English and other languages.

Visit www.legalaid.vic.gov.au to order or download booklets.

Call (03) 9269 0234 and ask for Publications to find out more.

Our public law library

Open Monday to Friday, 9 am to 5 pm

570 Bourke Street

Melbourne VIC 3000



Fines: the law, your options



Police powers: your rights in Victoria

Watch me on 

Watch our community legal education videos.

Your day in court

Victoria Legal Aid

For free information about the law and how we can help you, visit our website www.legalaid.vic.gov.au

For help with legal problems call Legal Help on 1300 792 387

For business queries, call (03) 9269 0234

Offices

Melbourne

Suburban offices

Broadmeadows

Dandenong

Frankston

Ringwood

Sunshine

Regional offices

Bairnsdale

Ballarat

Bendigo

Geelong

Horsham

Mildura

Morwell

Shepparton

Warrnambool



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