

May 2011

Your day in court

A guide for people who are representing themselves in the Magistrates' Court

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right to justice
for **30** years

 **Victoria
Legal Aid**

Lawyers And
Legal Services

Your day in court

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Changes to the law

The law changes all the time. To check for changes you can:

- call the Victoria Legal Aid Legal Information Service on 9269 0120 or 1800 677 402 (country callers)
- read the 'new law' section on the Victoria Legal Aid website at www.legalaid.vic.gov.au/3127.htm and www.legalaid.vic.gov.au/3017.htm
- contact a community legal centre. Call the Federation of Community Legal Centres on 9652 1500 to find your nearest community legal centre.

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About this booklet



This booklet is a guide to how the Magistrates' Court works if you have been charged with a criminal offence. It is for people who may wish to represent themselves in 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.** See 'Where to get help' on page 35.

Legal words

We have explained some words in the next section 'What do these words mean?' These words are also highlighted in bold the first time they appear in each section.

For more information on traffic offences, read our free booklet *Road to court*. To order our publications see the back page of this booklet.

Victoria Legal Aid

We are a state-wide organisation that helps people with their legal problems. We focus on helping and protecting the rights of socially and economically disadvantaged Victorians.

We have lawyers in offices in most major metropolitan and country regions. We also fund private lawyers to provide legal services to the public.

We can help you with your legal problems about criminal matters, family breakdown, family violence, child support, immigration, social security, mental health, debt and traffic offences.

Call us to find out how we can help you on 9269 0120 or 1800 677 402 (country callers).

Your day in court

What do these words mean?



accused – a person or organisation charged with breaking the law. The accused used to be called the defendant

adjourn/adjournment – to ask the court to hold off a court case until a later date

arrest – when the police hold you in custody because they think you have committed an offence

bail – a promise that you will go to court to face charges on a certain day. You may have to agree to conditions like reporting to the police or living at a certain place

breach/breaching – to break a law or court order. This is the same thing as contravention

case – your legal issues in the court system

charge – when the police believe you have broken the law (committed an offence), they need to outline what they think you did and when and where you did it. This is called a charge

charge sheet – a sheet of paper that lists the charges (the offences) that the police say you have committed

contest mention – this is a court hearing that can happen if you are pleading not guilty.

conviction – this has two meanings. Firstly, it is when the court has found you guilty of breaking the law. Secondly, the court can give you penalties outside of a term of imprisonment with or without conviction. A penalty with conviction is more serious than a penalty without conviction

court order – a court document that orders you to do something. It is also a document that will set out your penalty if you are found guilty of breaking the law

criminal record – a police record of your history of findings of guilt and convictions

custody – when you have been arrested and are not free to leave

evidence – information (documents or material) used in court to prove something

finding of guilt – when the court rules that you did commit the offence. A finding of guilt appears on your criminal record

indictable offence – a serious offence that the court deals with in a particular way. Some indictable offences can be dealt with in the Magistrates' Court or the Children's Court. Others can only be dealt with in the County Court or Supreme Court

informant – a police officer or government official, such as a public transport officer, who charged you with breaking the law

list – a list at court that shows the cases to be dealt with that day

magistrate – a person who hears cases in the Magistrates' Court or the Children's Court. They can make decisions about whether you are guilty or not. They can give sentences

mention date – the date given on your charge sheet for when you need to go to court and any hearing dates after that

notice to appear – a document you may get when the police suspect you of breaking the law. It tells you to go to court on a certain date. The police will usually give this to you rather than sending it to you

offence – an offence is something the law says is wrong

plea/pleading – your response in court to the charge. You can plead 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

police prosecutor – a police officer who presents all the police cases in court

priors – offences which a court has found you guilty of in the past

sentence – a penalty or outcome you get when a court finds you guilty

serve – the legal delivery of a document

summary offence – a minor offence that is usually dealt with in the Magistrates' Court or the Children's Court

summons – a court document that tells you when you must go to court

triable summarily – when an indictable offence can be dealt with by a magistrate in the Magistrates' Court instead of a judge and jury in a higher court

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

warrant – a court document that says what the police can do, such as arrest you or search your house

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

Your day in court

Important things to know



You are innocent until proven guilty beyond a reasonable doubt

You are at court to face **charges** because the police think that you have broken the law. Even if you agree, the police must prove beyond a reasonable doubt that you are guilty. This means that the magistrate has to be satisfied with no reasonable doubt that you are guilty.

The court is adversarial

This means that the police are on one side and 'the defence' is on the other side. The defence is you and your lawyer, if you have one. Each side may give **evidence** to the court.

You should go to your court hearing

Generally, if the police have **served** you with a **summons**, you should go to court. The **magistrate** may make a decision without you.

You must go to court if you are on **bail**. If you do not go, the police could **arrest** you and take you to court.

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

Ring the court co-ordinator 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.

Do not be late

Your **charge sheet** or **notice to appear** will give you a time to be at the courthouse.

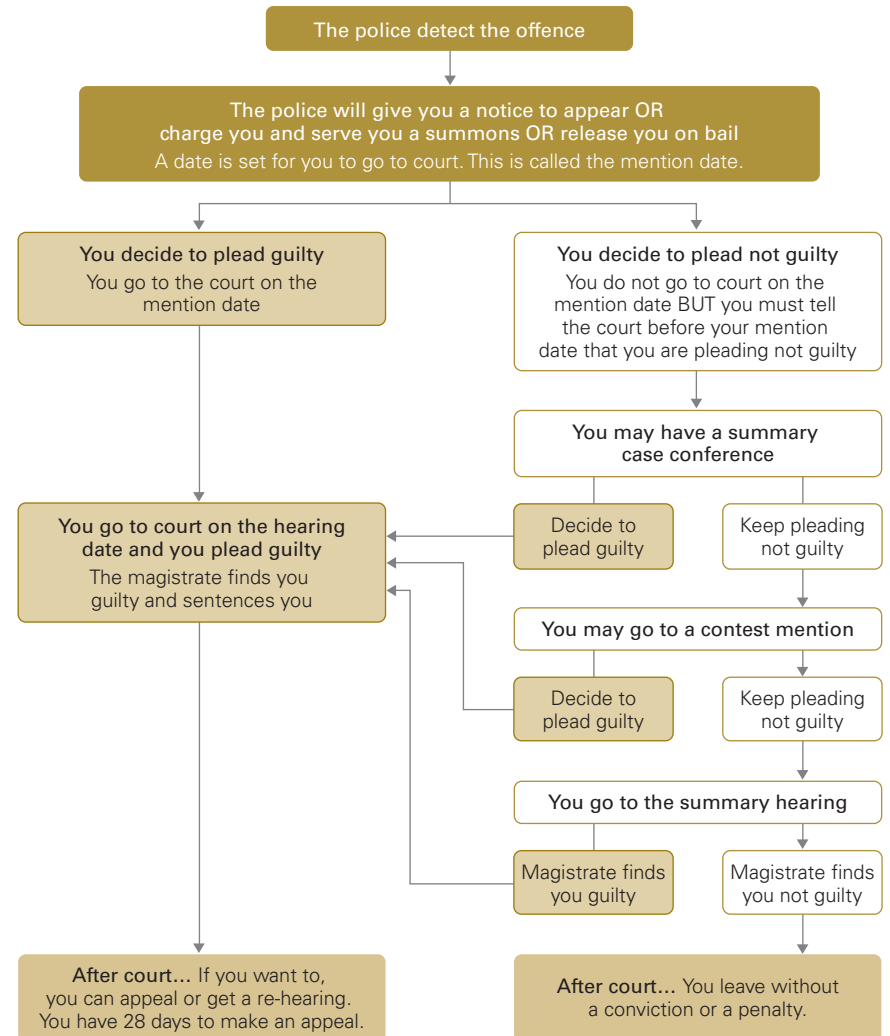
Bring all your paperwork

See 'Example documents' on [page 32](#) to find out what sort of paperwork you might need.

How does the Magistrates' Court work?



Flowchart of how the Magistrates' Court works



Your day in court

Explanation of some of the words in the flowchart

Notice to appear

In this situation, the police think that you may have broken the law and they give you a **notice to appear**. They do this on the spot or soon after the alleged **offence**.

A notice to appear is a written document. It tells you:

- what the police think you have done wrong
- when and where you have to go to court.

See an example on [page 32](#).

With a notice to appear, you will go to court quicker than if the police gave you a **summons**.

Notices to appear are usually for **cases** that are not too complicated.

Charge and summons

In this situation, the police think that you may have broken the law and they file a **charge sheet** with the court and then **serve** a summons on you. They usually do this in person. The summons is a document that tells you to go to court on a certain date. It includes the **charges**. See an example on [page 33](#).

Bail

In this situation, the police have **arrested** you because they think you have broken the law. The police have held you at a police station. If you are given **bail**, you can leave the police station. You will need to sign a document promising you will go to court on a certain date to face the charges against you.

Preliminary brief of evidence

If the police gave you a notice to appear, they will also give you a preliminary brief.

If the police gave you a summons, you can ask for a preliminary brief.

This document helps you to work out what the police know and what might be said at court.

The preliminary brief should have:

- the charge or charges
- a description of the offence or offences that the police say you committed
- a description of what you have said in answer to the charge
- how many **witnesses** there are and what **evidence** the police will give

- the exhibits (pieces of evidence)
- your **priors**
- any orders the police want from the **magistrate**
- a copy of the notice to appear
- a 'notice to accompany a preliminary brief'.

Summary case conference

If you are **pleading** not guilty, you may have to go to a summary case conference before going any further with the case.

This is a meeting with you, the police and the summary case conference manager. It happens out of the courtroom. It is meant to be a chance to work out what issues you and the police disagree with.

You can only have the conference if:

- you have a lawyer or
- you have had a chance to get legal advice.

You must have a summary case conference:

- before you can get your case **adjourned** for a **contest mention**
- if you want a copy of the full brief of evidence.

The full brief of evidence has all of the evidence that the police will use against you. This includes statements from witnesses.

Contest mention

This is a hearing for a not guilty case. It may happen before the summary hearing. It depends on how many witnesses there are and how long the case might take.

At the contest mention the magistrate will want to know:

- what the main points of disagreement are
- the number of witnesses.

The **informant** should be there as well as a **police prosecutor**.

The magistrate will try to get you and the police to agree on as much as possible.

You can ask the magistrate what would happen if you were to plead guilty. The magistrate may give an idea of the penalty. You might feel as though your **defence** to the charges is not strong enough. The magistrate will give you a chance to change your plea. If you have been charged with more than one offence, the police may drop some charges if you plead guilty to others.

Your day in court

Summary hearing

This usually happens after you have had the summary case conference and the contest mention (if you had to do that). It happens if you decide to keep pleading not guilty after all of this.

At this hearing, several things happen:

- witnesses give evidence. You might also give evidence
- the magistrate decides on whether you are guilty or not
- the magistrate decides on a penalty, if there is one.

If you change your mind and decide to plead guilty, your case can still go ahead on that day.

I have to go to court: what should I do first?



Understand what the charge is

What offence have the police charged me with?

This will be on the **charge sheet**. The preliminary brief will also give you more information.

Summary or indictable offence?

The charge sheet will tell you whether the police **charged** you with a **summary offence** or an **indictable offence**.

A **magistrate** in the Magistrates' Court usually deals with summary offences. You might not go to the Magistrates Court if you also have serious charges that can only be heard by a higher court.

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

Most indictable offences 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 police say but that may not be against the law. For example, the police charged you with shoplifting but you only took the item by accident.

Do I agree with every charge?

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

Your day in court

Get legal advice

When should I get legal advice?

Do this as soon as possible – 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 court 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. You will be able to work out if you can represent yourself.

What should I ask the lawyer?

You can 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?’

See ‘Where to get help’ on [page 36](#) for contact details of lawyers.

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
- the strength of the **police case** against you
- your chances of being found not guilty.

You may need to think about the penalties for the offence. For some offences the only way to avoid the penalty is to plead not guilty and win. On the other hand, if you plead guilty, the court will see that you are co-operating with the justice system. You might get a softer penalty.

You may feel pressured to plead guilty. But if you do, the court will find you guilty. Only plead guilty if you think you are. 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?

The duty lawyer at court may be able to give you advice and represent you on the day. This is free. For more information about duty lawyers, [see page 17](#).

Otherwise you might be able to get one of our lawyers to help you with your whole case. This depends on things like your income or if you have special circumstances such as a mental illness. More information is on our website www.legalaid.vic.gov.au/fundingcases

Some private lawyers can also apply to Victoria Legal Aid to get a grant to fund your case.

You may be able to get help from other places too. [See ‘Legal help’ on page 36](#).

Your day in court

Changing your court date



Can I ask for a change of date?

This is called an **adjournment**. It may be hard to do this. Generally, the court will only adjourn a **case** if they believe there is a very good reason.

You may be able to adjourn your case if:

- you had a summary case conference
- you need more time to prepare
- you need more time to decide whether to **plead** guilty or not guilty.

You should ask a lawyer about adjournments.

How do I change the date?

If you have a good reason for an adjournment, speak to your lawyer or contact the court before your hearing date.

What if I am on bail?

You must turn up on the day of your hearing to adjourn your case.

What if I am sick 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.

If you are on **bail** or charged with an **indictable offence**, get a doctor's certificate. Get someone to take it in or fax it to the court. They must do this before 10 am on the day of your case. The court must know why you are not there.

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

Preparing for court



Checklist for pleading guilty

- Please get legal advice. See 'I have to go to court: what should I do first?' on page 9.
- Find out the **police case**. Get the preliminary brief of evidence. You can also ask for the full police brief. 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**.
- Think about what you want to say in court. See page 23. Write down what you want to say and practise it.
- Get an interpreter if you need one. Ask the court to arrange this for you. Do this at least five days before your **case**. You will not need to pay for the interpreter. 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 34.
- 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.
- 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 at www.magistratescourt.vic.gov.au

If you are ready to go ahead with your case on the day, the court will try to deal with your case on that day.

Your day in court

Programs you could do if pleading guilty

Contact a lawyer or the court as early as possible if you want help from these services.

Diversion program

The magistrate may dismiss the **charges** if you complete the diversion program.

You will have to do things like apologise to the victim, get counselling or do an education course or community work. You may have to pay money into the court funds. If you keep to the program, you avoid getting a **criminal record**.

You can only do diversion if it is your first **offence** and you are willing to **plead** guilty. The police will also need to agree to you being in the program.

If you are given diversion for a traffic offence you will still get demerit points.

Court Integrated Services Program (CISP)

You can do CISP at the Latrobe Valley, Melbourne and Sunshine Magistrates' Courts. It is a program that can help you reduce the chances of breaking the law again. It is for people who are given a **summons**, are on **bail** or are on remand waiting for their bail hearing.

Through CISP you can get help with:

- short-term housing, medical treatment (such as methadone treatment), job programs
- travel cards, food vouchers, passport photos and court date reminders/diaries.

You will be in the program for up to four months.

If you keep to the program it shows you have done something positive about your situation. The magistrate will keep this in mind when giving you a sentence.

CREDIT/Bail Support Program (CBSP)

You can do CBSP at Ballarat, Geelong, Moorabbin, Frankston, Dandenong, Ringwood, Heidelberg and Broadmeadows Magistrates' Courts.

Like CISP, it goes for up to four months and can help you with similar services.

Depending on which court your case is being heard at, you can go to CISP or CBSP to work out whether they can help you.

Checklist for pleading not guilty

- Please get legal advice. See 'I have to go to court: what should I do first?' on page 9. **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.
- Find out the police case. Get the preliminary brief of evidence. You can also ask for the full police brief. 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.
- Carefully read the brief of evidence. Note the evidence the police have. Use the brief of evidence to prepare your **defence**.
- Get 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 there will be no fee. 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 staff about how to fill this out.
- Think about what you want to say to the magistrate in case they find you guilty. See page 23. 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 of a character reference see page 34.
- 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 at www.magistratescourt.vic.gov.au

Your day in court

Going to court: what happens on the day



Before you arrive

Here are some things to think about a week or so leading up to your hearing:

- time off work – you may need to get the whole morning or afternoon off
- childcare – 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 lose your licence.

If you are young, organise for 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 counter and tell the staff your name. They will:

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

They may ask you if you have a lawyer. If you want to see the duty lawyer, ask the court staff where the duty lawyers are.

Waiting

Go to the courtroom. Make sure you bow your head to the magistrate when you enter. Tell the court clerk in there that you have arrived. See the next page for a picture of what the courtroom looks like.

Wait for your name to be called. You can sit quietly at the back of the courtroom or wait outside. Stay close by. You need to hear your name being called when the magistrate is ready for your case.

Be patient, you might not be first. Your **charge sheet** may say that your case is on at 9 am. This just means that the court starts hearing all cases in your time-slot at 9 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 glasses on the top of your head
- wear a hat.

Seeing a duty lawyer

We have duty lawyers at most courts. This is a free service and you can see the duty lawyer even if you did not qualify for a lawyer to take on your whole case.

Duty lawyers can:

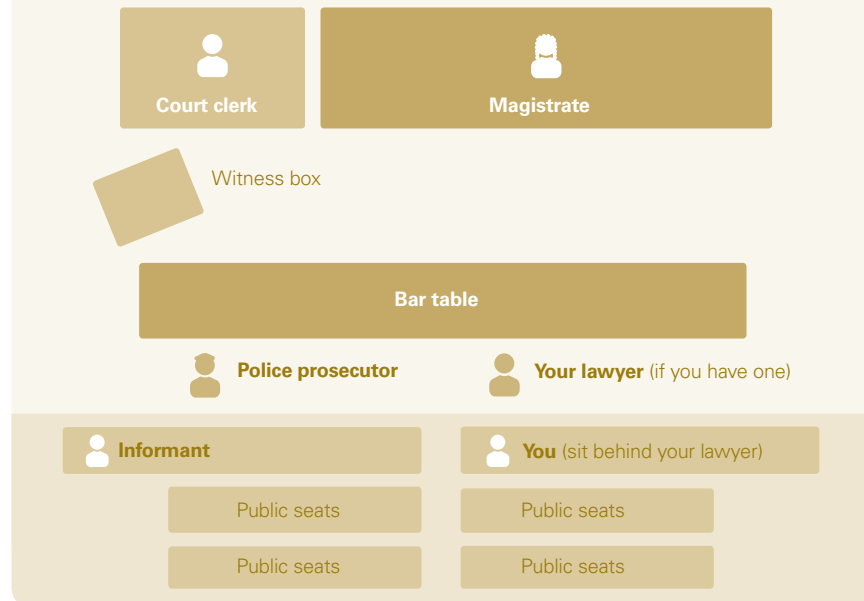
- help you find out what the police will say in the courtroom
- work with the police to see if they will drop some of the **charges**
- tell you how to ask for an **adjournment**
- tell you what to say in the courtroom and explain what will happen in there
- give you a sense of the penalty you might get
- represent you in the courtroom if necessary.

Have all your information ready. You may have to queue up.

Duty lawyers cannot represent you if you are pleading not guilty. Also, duty lawyers must look after serious cases first and may not be able to see everyone. This is why it is better to see a lawyer before you go to court.

Your day in court

What the courtroom looks like



See for yourself what happens in the courtroom

You can do an online tour of the court by visiting the Magistrates' Court website at www.magistratescourt.vic.gov.au

What happens in the courtroom



Pleading guilty

The hearing begins

When your name is called, go to the bar table at the front of the courtroom. You will be at the end opposite to the **police prosecutor**. Stand up when the **magistrate** speaks to you. Do not interrupt the magistrate when they talk.

The charge is read

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

If the police have charged you with an **indictable offence** that is **triable summarily**, the magistrate will ask you if you want your **case** heard in Magistrates' Court or the County Court.

The police summary is given

The police prosecutor will read out a summary of what happened. This comes from the brief of evidence.

The magistrate will ask you if you agree with the summary or if it is a fair account of what happened.

If there is something major that you do not agree with, tell the magistrate. Ask for your case to be delayed so you can see the duty lawyer, if you need to.

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

The police read out your priors

The magistrate will ask the police prosecutor if there is anything 'known' or 'alleged'. This means they are asking if the police want to say anything about any of your previous court attendances.

If you were guilty of similar **offences** in the past, the magistrate will probably give you a harsher **sentence** if they find you guilty this time.

You are allowed to see a list of any of your **priors** the police want to mention. This should be in the brief of evidence.

If there is anything you do not agree with, see the duty lawyer or tell the magistrate.

Your day in court

You make your plea

The magistrate will ask if you want to say anything. This is when you stand up and make your plea. For hints on what to say see page 23. If you have any written material, hand it to the court clerk to give to the magistrate.

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 what you say, the magistrate will decide on the sentence. See 'Being found guilty' on page 26.

In more serious cases, the magistrate may order your case to be put off to another day. This will give time for someone to interview you and write a 'pre-sentence report'. This report will help the magistrate decide on the penalty. The person who interviews you could be a psychologist, a psychiatrist or a welfare worker. It depends on the information that the magistrate wants.

Pleading not guilty

The hearing begins

When your name is called, go to the bar table at the front of the courtroom. You will be at the end opposite to the police prosecutor. Stand when the magistrate speaks to you. Do not interrupt the magistrate when they talk.

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 police have charged you with an indictable offence that is triable summarily, the magistrate will ask you if you want your case heard in Magistrates' Court or the County Court.

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** can stay.

Police witnesses will speak

The police 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 prepare your questions.

The police have to prove their case beyond a reasonable doubt.

You can cross-examine the police witnesses

After each police witness has given evidence, you can question them. This is called cross-examination. Your main aim is to ask questions that put doubt on the police 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
- show up things that do not make sense
- show up things that they have left out.

You can call one of your own witnesses to give different evidence. But you must also give that evidence to the police witness. Police can also cross-examine that witness.

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

The police can re-examine their witnesses

The police 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 police have 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, you can be cross-examined. Talk to a lawyer about this before you go to court.

You can also call your own witnesses. Ask them about what they saw or heard. Let them say it in their own words.

Your day in court

The police may cross-examine you

The police 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.

You can re-examine what you said and your witnesses

You get another chance to speak about anything the police 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. They will dismiss case and you are free to go. You can ask to be paid back for your expenses and any witnesses' expenses. This could include wages you lost while at court.

The magistrate could find you guilty. The magistrate will ask the prosecutor if there is anything 'known' or 'alleged'. That is, if the police wants to say anything about your **criminal record**. See 'The police read out your priors' in on [page 19](#).

The magistrate will then ask if there is anything you want to say. Think about your circumstances. Think about how your life could be affected by getting a sentence. Be prepared for this. See 'What to say to the magistrate if pleading guilty' on [page 23](#).

The magistrate gives you a sentence if you are found guilty

The magistrate then decides on sentence. See 'Being found guilty' on [page 26](#).

What to say to the magistrate if pleading guilty



What sort of things should I mention?

Why the offence happened

The **magistrate** does not want to hear excuses. Describe what happened from your point of view. Tell the magistrate if there was a reason for why you committed the **offence**. For example, you took your P-plates off to wash the car and forgot to put them back on.

Your reaction to the charge

Tell the magistrate how you feel about what you did. Tell them if you have learnt a lesson or plan to change your behaviour.

For example:

- 'I am genuinely sorry for the incident'
- 'Nobody was injured' or 'There were no serious injuries'
- 'I have taken care of all damages' or 'I paid for all damages'
- 'I have done a drink driving course'
- 'I am getting counselling'.

It is better if you start counselling well before you go to court. Bring a letter to the magistrate from your counsellor, youth worker or social worker. Hand it to the court clerk to give to the magistrate. Ask your counsellor to come to court, if they can. The magistrate might want to ask them questions.

Reasons for wanting to keep your driver licence

If you are **pleading** guilty to a traffic offence, you may want to talk about why you need to keep your licence.

For example:

- 'I need the car to help my family' (for example, doing the shopping, picking up the kids)
- 'I live far from public transport'
- 'I have trouble using public transport,' for example, 'I do shift work' or 'I have a disability'

Your day in court

- 'I drive for work' (you will need a letter from your employer. [See](#) an example on [page 34](#))
- 'I have a sick child' (you will need a doctor's certificate) or 'I have an elderly relative'
- 'I have plans that might be risked if I lose my licence or get a heavy fine.'

Sometimes the magistrate does not have a choice and must take away your licence.

For more information about traffic offences, read our free booklet *Road to court*. To order our publications see the back page of this booklet.

Your views on other penalties and on conviction

For example:

- 'A **conviction** will affect my chances of getting certain jobs in the future or going travelling'
- 'If I can, I would like to pay a fine rather than promising to be of good behaviour for a period of time'
- 'I am willing to do community work.'

Find out from a lawyer what the penalties might be for your offence. Also [see](#) 'Being found guilty' on [page 26](#) for information on penalties.

Your personal circumstances

For example:

- your age
- whether you are in a stable relationship
- if you have ever been to court before
- if you have a medical or psychiatric condition.

Give the court clerk any relevant medical or psychiatric reports. The court clerk may give these to the **police prosecutor**.

Your financial situation

For example:

- 'I am employed' or 'I do not have a job at the moment'
- 'I have things to pay for' (for example, mortgage, debts)
- 'I have a family and people who depend on me to provide for them.'

Your character references

Give the magistrate written references from people who know you well.

For example:

- employer
- teacher
- member of a local group you are in.

[See](#) the example document 'Character reference' and 'Letter from employer' on [page 34](#).

You can bring people with you to give **evidence** about who you are as a person. However, most magistrates prefer this information written down unless it is a very serious **case**.

How can I get my point across?

Write down what you want to say. Practise it beforehand. Keep it short. The magistrate is only interested in important and relevant information. The magistrate may ask you questions or stop you if you talk for too long.

Your day in court

Being found guilty



What happens if I am found guilty?

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

- the type of **offence**
- the circumstances of your offence
- **priors**
- your personal circumstances.

What is a conviction?

This has two meanings. Firstly, it is when the court has found you guilty of breaking the law. Secondly, the court can give you penalties outside of a term of imprisonment with or without conviction. A penalty with conviction is more serious than a penalty without conviction. You probably will not get a conviction for a minor first offence or for a minor traffic offence.

What does it mean for me in the future if I get a conviction?

A conviction shows up on your **criminal record**. It could mean that in the future you will not get a particular job, volunteer position or visa.

Even if you do not get a conviction, you will still have a finding of guilt on your criminal record. The police have a policy for when they will release information about your finding of guilt. Look for the Police Information Policy on their website www.police.vic.gov.au for more information. The finding of guilt can also be brought up in court if you get sentenced for a future offence.

What sort of penalty will I get?

You may get one or more of the following.

No penalty

The magistrate decides that no punishment is needed. They can:

- dismiss your **case** without conviction
- discharge your case (but you may still get a conviction).

Payment

The magistrate can order you to pay:

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

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

Community based order

You have to do things like:

- unpaid work with a community group (such as gardening at a local school)
- an education program
- counselling
- alcohol or drug tests
- reporting to a community corrections centre.

You must not commit any offences while you are on the order.

To get a community based order you must go to court for the offence, get assessed by a Corrections officer and agree to stick to the community based order.

Imprisonment or youth detention

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

There are different types of detention:

- suspended sentence – you do this in the community and not in jail. You get to stay in the community on the promise of good behaviour
- intensive correction order – this is like a community based order but more strict
- home detention – you do not go to jail but must spend all your time at home. Sometimes you may be able to get permission from your Corrections officer to go out
- detention in a youth centre (this is for people under 21) or jail.

You must not **breach** your suspended sentence or intensive correction order. You will breach it if you commit an offence that could be punished by jail and you do this while you are still on your suspended sentence or intensive corrections order.

If you make a breach, the magistrate will sentence you to jail straight away. The only time this would not happen is if you have very special circumstances. Get legal advice. See 'Where to get help' on [page 35](#).

Note: the government will be changing the kinds of sentences that courts can order. There could be changes to sentences where people are put in prison or detention.

Your day in court

What sort of penalties could I get for traffic offences?

Licence loss

The magistrate may:

- suspend your licence (you cannot drive for a while)
- cancel it (you cannot drive for a while and you need to apply to get your licence back).

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

Demerit points

You will get demerit points if the magistrate finds you guilty of a traffic offence that attracts demerit points.

You risk losing your licence if you have gotten:

- 12 or more points (fully licensed driver)
- five or more points (probationary driver).

Alcohol interlock

If the magistrate convicts you of a repeat drink driving offence, you will lose your licence and you will have to get an alcohol interlock fitted on your car. This is a breath testing device that is wired to your car's ignition system. If you do not pass the breath test, your car will not start.

For more information on traffic offences, read our free booklet *Road to court*. To order our publications see the back page of this booklet.

What is an undertaking?

The magistrate may decide to give you no penalty if you sign an **undertaking** to stay out of trouble. An undertaking is a promise to the court. It used to be called a good behaviour bond.

An undertaking may have conditions. You may have to pay money to the court fund or do a driver education course.

There are serious consequences if you do not keep your promise. You can be brought back to court. The magistrate can give you a new sentence.

What if I am unhappy with the court result?

You may want to make an appeal or have a re-hearing. See page 31.

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 at all unsure, ask the court staff or the duty lawyer 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 keeping to your sentence and your penalties, get legal advice as soon as possible.

What if I am having trouble paying a fine?

Ring the court and explain the problem. The court may be able to work something out with you. If you cannot pay all of it, pay what you can – it shows the court you are trying. Do not leave it until it is too late or you could end up back at court. You might have to pay more money.

What happens if I have lost my licence?

You must not drive or you will be **charged** by the police. You may go to prison.

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

You will need to do the course and get proof that you have done it. You may need to show this to the magistrate to get your licence back. Find out as soon as possible what you must do to get your licence back.

For more information on traffic offences, read our free booklet *Road to court*. To order our publications see the back page of this booklet.

Your day in court

What happens if I get put on a community based order or an intensive correction order?

Someone from Corrections may interview you. Do not leave the courthouse until this is done and the magistrate has made a final decision.

Once you are on the order, you must follow the conditions of the order. You must turn up at the address where you are carrying out your order. If you do not follow your order, you may be **charged** with **breaching** the order. Talk to a lawyer immediately. You will have to go back to court. The magistrate may give you a heavier penalty or send you to prison.

If you are sick or have trouble getting to the place where you are carrying out your order, tell your supervisor. Get a doctor's certificate. Keep a record of conversations with your supervisor. There could be a problem later.

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

What if I do not understand the sentence?

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

Appeals and re-hearings



What happens with an appeal?

A **judge** hears your **appeal** in the County Court. They re-hear your **case** from the start. You may want to appeal against one part of the **magistrate's** decision, for example, the magistrate suspended your licence. But to do this, you actually need to appeal against all orders that the magistrate made. Remember though, the judge can make the same decisions that the magistrate can.

You have 28 days to lodge an appeal. And it may take several months before the judge hears your appeal. Also, a judge could end up giving you a harsher **sentence**.

What happens with a re-hearing?

The Magistrates' Court hears your case again. You may be able to have this happen if the magistrate dealt with your case when you were not in court on your court date. The police may try to stop a **re-hearing** from happening.

Get legal advice if you are thinking about these options. See 'Where to get help' on [page 35](#).

Your day in court

Example documents



Notice to appear

Accused Copy Form 6 - Rule 13
Notice to Appear

Person served

Accused: Given Names, Surname, Date of Birth
Address: Street Name and No., Suburb/Town, Post Code

You are required to appear before a Magistrates' Court at

Venue: Place, Date Notice Served
Address: Street Name and No., Suburb/Town, Post Code, Telephone
When: Time, Day, Month, Year

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: Name, Rank, Reg. No., Date
Agency and Address: Station, Agency Ref., 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:

- 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 01/03 Magistrates' Court General Regulations 69/2000 Form 7
CHARGE AND SUMMONS

Defendant Copy - Bring this with you to Court

TO THE DEFENDANT

Unsuitable Dates
Preferred Dates
M F Co. Date of Birth
You have been charged with an offence against the law. Read these pages to see what you must do.
Registration No. State
Licence No. State

Details of the charge against you
What is the charge?

Under what law? State Act Other - Specify C/Wealth Reg Act or Regulation No. Section/Clause (Full Ref)

Type of Offence: Summary Offence (You should go to Court) Indictable Offence (You must go to Court)

Are there more charges? No Yes - see "Continuation of Charges" attached.

Informant: Agency and Address, Phone No.
Informant Signature: Date

Where will the case be heard

Where you must go The Magistrates' / Children's Court of Victoria at
Address: Phone No.
When: Time 10:00 am, Day, Month, Year

Details about this summons S 30

Issued at: Signature, Date
Issued by: Registrar Magistrate Police Informant
Charge Filed at: by (member), Emp No.
Method of Filing: mail / personal * delete inapplicable, Date

Your day in court

Letter from employer

[Heading]

To the Magistrate,

[Reference]

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

[Knowledge of 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.

[Referee's knowledge of court case and reason for writing 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.

[Consequences of loss of licence]

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

Albert Locklear

[Print your name under your signature]

ALBERT LOCKLEAR

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.

Character reference

[Address to the magistrate]

Your Honour,

[Referee's name and qualifications]

My name is Peter Johnson of 1 Temple Court, Keilor Park, architect.

[Relationship to you]

I have known Jane Citizen of 123 Alphabet Street, South Melbourne, retail assistant for five years.

[Referee's knowledge of 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.

[Referee's knowledge of 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.

[Circumstance of 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

Peter Johnson

[Print your name under your signature]

PETER JOHNSON

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

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

Where to get help



If you need an interpreter:

Call the Translating and Interpreting Service for an interpreter to help you speak to any of the agencies in this section. Ask the interpreter to put you through to the agency you need. This is usually free.

Tel: 131 450



If you are deaf or have a hearing or speech impairment:

Use the National Relay Service to phone any of the agencies (including Victoria Legal Aid) in this section. This is free. For more information about the NRS visit www.relayservice.com.au

TTY users: Call 133 677 and then ask for the phone number you need. Include the area code.

Speak and Listen users: Call 1300 555 727 and then ask for the phone number you need. Include the area code.

Internet relay users: Connect to www.iprelay.com.au/call/index.aspx and then ask for the phone number you need. Include the area code.

Victoria Legal Aid

Legal Information Service

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

Arabic	9269 0127	Persian (Farsi)	9269 0123
Croatian	9269 0164	Polish	9269 0228
Greek	9269 0167	Serbian	9269 0332
Italian	9269 0202	Ukrainian	9269 0390

Monday to Friday, 8.45 am to 5.15 pm

You can also get an interpreter from the Translating and Interpreting Service if you speak another language. Call 13 14 50 and ask to be put through to Victoria Legal Aid.

Local offices

We have offices all over Victoria. See the back cover for office locations and phone numbers.

www.legalaid.vic.gov.au

Your day in court

Legal help

Federation of Community Legal Centres

Call to find out your nearest community legal centre.

Tel: 9652 1500

www.communitylaw.org.au

Victorian Aboriginal Legal Service

There are country offices too.

Tel: 1800 064 865

www.vals.org.au

Law Institute of Victoria's Referral Service

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

Tel: 9607 9550

www.liv.asn.au/Referral

Magistrates' Court

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

www.magistratescourt.vic.gov.au

Court Network

For personal support and referral to other services at court.

Tel: 9603 7433 or 1800 681 614 (toll free)

www.courtnetwork.com.au

Salvation Army

For personal support and referral to other services at court.

Tel: 9329 6022

www.salvationarmy.org.au/court-and-prison-services.html#tas

Direct Line

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

Tel: 1800 888 236

www.health.vic.gov.au/aod/directline

VicRoads

For questions about driver licences.

Tel: 131 171

www.vicroads.vic.gov.au

Your day in court

More information

Victoria Legal Aid has free booklets for the public with legal information on topics such as debt problems, your options for dealing with fines and going to court.

Visit www.legalaid.vic.gov.au to order or download or phone 9269 0223 to find out more.



Road to court

A guide to traffic offences in the Magistrates' Court



Magistrates' Court fact sheets

Fact sheets about seeing a duty lawyer and representing yourself at the Magistrates' Court



Fines

Your options for dealing with fines



Your day in court

Victoria Legal Aid

Legal Information Service

Tel: 9269 0120

Country callers: 1800 677 402

Offices

MELBOURNE

350 Queen St

Melbourne VIC 3000

Tel: 9269 0120

Country callers: 1800 677 402

Suburban offices

BROADMEADOWS

North western suburbs

Level 1, Building 1

Broadmeadows Station Centre

1100 Pascoe Vale Rd

Broadmeadows VIC 3047

Tel: 9302 8777

DANDENONG

Westernport region

Level 1, 9-15 Pultney St

Dandenong VIC 3175

Tel: 9767 7111

FRANKSTON

Peninsula region

Cnr O'Grady Ave & Dandenong Rd

Frankston VIC 3199

Tel: 9784 5222

PRESTON

North eastern suburbs

42 Mary St

Preston VIC 3072

Tel: 9416 6444

RINGWOOD

Outer eastern suburbs

23 Ringwood St

Ringwood VIC 3134

Tel: 9259 5444

SUNSHINE

Western suburbs

1/474 Ballarat Rd

Sunshine VIC 3020

Tel: 9300 5333

Regional offices

BALLARAT

Central Highlands region

Area A, Level 1

75 Victoria St

Ballarat VIC 3350

Tel: 5329 6222

Toll free: 1800 081 719

BENDIGO

Loddon—Campaspe region

424 Hargreaves St

Bendigo VIC 3350

Tel: 5448 2333

Toll free: 1800 254 500

GEELONG

Barwon region

Level 2, 199 Moorabool St

Geelong VIC 3220

Tel: 5226 5666

Toll free: 1800 196 200

HORSHAM

Wimmera region

29 Darlot St

Horsham VIC 3400

Tel: 5381 6000

Toll free: 1800 177 638

MORWELL

Gippsland region

Cnr Chapel & George St

Morwell VIC 3840

Tel: 5134 8055

BAIRNSDALE

Gippsland region (branch office)

101A Main St

Bairnsdale VIC 3875

Tel: 5153 1975

SHEPPARTON

Goulburn region

36-42 High St

Shepparton VIC 3630

Tel: 5823 6200

Toll free: 1800 119 918

WARRNAMBOOL

South Coast region

185 Fairy St

Warrnambool VIC 3280

Tel: 5559 7222

Toll free: 1800 651 022

Publication orders

To download or order our publications in English or other languages go to www.legalaid.vic.gov.au

If you need help ordering online please call Victoria Legal Aid on 9269 0223