



Registered TM 1227576

## *Dean R. Love & Associates*

Barristers & Solicitors  
DRL Legal Pty Ltd (ACN 123 034 846)

FAMILY LAW – CIVIL LAW – CRIMINAL LAW

ABN 34 123 034 846

**Perth Office:**  
1<sup>st</sup> Floor, 231 Adelaide Terrace  
PERTH WA 6000

**Postal:**  
PO Box 3263  
PERTH WA 6832

Tel: (08) 9218 9993  
Fx: (08) 9218 9557  
[enquiries@drlegal.com.au](mailto:enquiries@drlegal.com.au)  
[www.drlegal.com.au](http://www.drlegal.com.au)

# REPRESENTING YOURSELF AT A MAGISTRATES COURT TRIAL

**This information is for people who are pleading ‘not guilty’ to a criminal offence in the Magistrates Court, and will not have a lawyer to represent them in court.**

## **What happens if I plead ‘not guilty’?**

If you plead ‘not guilty’ in a criminal case a **hearing** or **trial** date is set. This is when the court will make its decision. The words ‘hearing’ and ‘trial’ mean the same thing.

Before you plead ‘not guilty’, you should get legal advice to make sure you have a defence. A duty lawyer can advise you about this.

When you plead ‘not guilty’, you **may** have to choose if your matters are dealt with:

- in the Magistrates Court by a magistrate (summary jurisdiction) or
- by a judge and jury in the District Court (on indictment).

If you choose to go before a judge and jury, your hearing will not be in the Magistrates Court. You will need legal representation. If you are not sure what to do, ask for an adjournment and get legal advice.

## **When will my hearing date be?**

In the Magistrates Court there is usually about 2-3 months from when you plead ‘not guilty’ until your hearing date. The length of time is different in different places. Make sure the hearing date set is suitable for you and your witnesses.

In some places, you may have to appear on a ‘callover’ date, or for a ‘directions hearing’. This is before the final hearing. At callover the court checks on the progress of the case. This

is also when your hearing date will be set. If you aren't sure if the date you have been given is for a hearing or a callover, contact the court and check.

### **Can I get an adjournment?**

Unless you have exceptional circumstances, once your hearing date is set you will not be able to adjourn (put off) your hearing to another day. If you need an adjournment, contact Police Prosecutions **at least** 2 weeks before your hearing date to see if they will agree. You can ask the court to list the matter early to request an adjournment. The earlier you do this, the more likely it is to be granted. A duty lawyer will not usually be available to ask for an adjournment of a hearing date. You will probably have to do this yourself.

### **Can I change my mind and plead 'guilty'?**

If you decide to change your plea to "Guilty", you should contact Police Prosecutions as soon as possible. If you don't, you may have to pay further costs of the police for preparing your hearing. You can also ask the court to list the matter earlier than the original hearing date.

If you change your plea to guilty, a duty lawyer may be able to represent you if they are at the court.

If you cannot afford a lawyer and don't qualify for legal aid, you will have to represent yourself at your hearing. A duty lawyer **cannot** represent you at your hearing.

### **How do I prepare for the hearing?**

#### **Get all the documents you can from the police**

Write to the Officer in Charge of the Police Station preferring the charge against you requesting documents in criminal cases in the Magistrates Court. If you have more information about the case against you, it will be easier to prepare for the hearing.

Read through the Statement of Material Facts very carefully. Work out exactly what is in dispute.

#### **Write down your story of what happened**

Write down what happened as soon as possible after the incident. You may not be able to use these notes at the hearing but they will help to get ready for it.

Think about the questions you need to ask each witness. You will be able to use notes of the questions you want to ask. Think about what each witness saw or heard that could help show that something happened as you say it did.

#### **Organise your witnesses to come to court**

- you must be ready to defend the matter when you go to the hearing;
- if a witness refuses to go to court if you ask them, you can summons them to attend - ask at the court if you aren't sure how to do this;
- issue any summons as soon as you are given your hearing date;
- bring all witnesses, documents or other evidence you are relying on to the hearing;
- if you want to use a document as evidence at your hearing, you should also organise the person who wrote it to be at the hearing.

### **Organise child care if you need to**

It will be very difficult to represent yourself properly in court if you need to look after young children.

If you have children, try to arrange childcare. If you can't, take someone with you who can mind the children outside the court while your matter is being dealt with. Some courts can help organise and pay for childcare. Ask at the court office before your hearing date.

### **What do I do on the hearing date?**

- Make sure you are on time. The time should be written on your summons or bail papers. If you are not sure, check with the court. If you are late or do not go at all, a bench warrant may be issued. If this happens, you could be arrested and put in custody.
- Dress neatly. You will not be allowed into court wearing a singlet or without shoes. Take off sunglasses and hats. No food or drink is allowed in court.
- Turn off any mobile phones or pagers before entering the court.
- Stand up when the magistrate enters or leaves the court. Stand up when you are being spoken to or when you wish to speak. Otherwise remain seated.
- It is customary to bow towards the magistrate when you go into the courtroom.
- Address the magistrate as "Your Worship", "Sir" or "Ma'am".
- Young children can be taken into court. You may be asked to take them out if they are noisy.

### **When you get to court**

Tell the court orderly when you arrive and that you are representing yourself. Then sit at the back of the court and wait. When your name is called, walk to the front of the court and stand behind the bar table on the left hand side. The prosecutor will be on the right hand side.

Any witnesses you have should wait outside the court room. Make sure they don't go far, so they will be available when they are needed.

### **The prosecution case**

The prosecution presents its case first. After a brief outline of the case, the first prosecution witness will take the witness stand, and take an oath or affirmation to tell the truth.

The prosecutor will then ask the witness questions. The answers given by the witness are known as 'evidence'. Listen carefully to the evidence. Make notes of any point you wish to ask questions about.

After the prosecutor has finished, you will be able to ask the witness questions. This is called 'cross examination'. You should cross-examine if you disagree with the evidence given or if you want to clarify any evidence.

When you are cross-examining you may ask questions only. Don't make statements. You have the chance to give your evidence later.

If you will be calling evidence that is different from what the prosecution witness has said, you should briefly tell the witness that and give them the chance to explain why their evidence is different. Don't argue with a witness.

The magistrate may also ask a witness questions at any time.

After you finish your cross examination, the magistrate will ask the prosecutor if they wish to re-examine the witness. The prosecutor can only ask the witness to clarify things already raised.

The prosecutor will then call the next witness and continue until all of the prosecution evidence has been heard.

### **The case for the defence**

You do not have to give evidence yourself. If you want to give evidence you go first. After your evidence, you call your witnesses.

After you have taken the oath or affirmation, tell the court your full name, age address and occupation. Then give your evidence. Usually it is easiest to do this chronologically (in date and time order).

Keep your evidence clear and precise. Keep to the points you want to make. Don't get side-tracked by minor matters.

You will not be allowed to read from a prepared statement. However, you may be allowed to refer to any notes you made shortly after the events in question took place. The magistrate may ask you questions at any time.

When you have finished giving evidence, the prosecutor will be allowed to cross-examine you. Answer the questions as best you can. If you don't understand a question, ask for it to be repeated.

The magistrate will then ask if you wish to say anything else to clarify anything arising from the questions asked by the prosecutor.

Then you will be able to call any witnesses you may have. Keep your questions short and ask only one question at a time. Your questions must not suggest an answer.

The prosecution will have the opportunity to cross-examine your witnesses.

### **Submissions**

When you have presented all your evidence, the magistrate will allow both you and the prosecutor to comment on the evidence, and say who should be believed and why. You can also say what conclusions the magistrate should draw from the evidence.

At this stage, you cannot produce further evidence.

The magistrate will then decide whether or not the prosecution has proved its case beyond a reasonable doubt. If it has not, you will be found 'not guilty'; if it has, you will be found 'guilty'.

### **Sentencing**

If you are found 'guilty', the magistrate will have to decide what sentence to impose. If you have any previous convictions, you will be shown a copy of your record. Check that it is correct.

You will be given the opportunity to speak. The statements that you make about sentencing are called making a **plea in mitigation**. You should also explain your financial position and say whether you are supporting anyone.

The magistrate will then impose a sentence. The type of sentence will depend on the circumstances of your case and can range from community based orders to fines to imprisonment. Depending on the charge, you could also have your driver's licence suspended.

You can arrange for time to pay a fine with the court registry within 28 days if you need to.

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