

# A GUIDE TO CRIMINAL CASES IN THE MAGISTRATES' COURT



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## GOING TO COURT

If you have been charged by police with a criminal offence/s, you will be summonsed or bailed to appear at the Magistrates' Court ('Court') on a specific date. You can find which Court venue and the date you must attend at the bottom of your charge sheet and summons, or the undertaking of bail document given to you by police. A warrant for your arrest may be issued if you fail to attend Court without contacting the Court Registry prior to your matter going before a Magistrate. If your matter is application based, there is a risk your application can be struck-out or an adverse finding being made in your absence if you fail to appear.

Your matter will be listed at the closest Court venue to where your alleged offending occurred. However, this can be changed if you intend to plead guilty and reside closer to another Court venue.

All matters are normally listed at 10AM. Ideally, you should arrive at Court at 9AM so you can announce your appearance (check-in) with the Criminal Coordinator at the front counter. You announce your appearance by telling the Criminal Coordinator your name, what you intend to do with your case, such as contest the charges or plead guilty, and inform them if you are ready to go into court. Once your matter is ready to proceed, you will be directed to a specific court room.

Other people will arrive at the same time, so by arriving early, your matter should be called on early if you are ready to proceed.

## LEGAL REPRESENTATION

Having an experienced criminal solicitor represent you in Court will ensure your interests are protected. You will have someone speak on your behalf.

## THE PARTIES AT COURT

At Court, you will see registry staff, police members, police prosecutors and Magistrates. Each person has a different role.

Police members (also known as informants) normally attend Court to file charges, give evidence at a bail application hearing or at a contested hearing. Unless your matter is listed for a bail application or contested hearing, it is unlikely the police officer (or informant) who charged you will attend Court.

Police prosecutors are specifically trained members of police who represent the police officer who charged you in Court. Their role is to run the prosecution against you in Court on behalf of the charging police officer. They have the power to negotiate charges with your legal representative, including withdraw charges.

The Court staff effectively manage the Court lists and ensure the smooth running of matters. They attend to administrative matters and assist with queries.

Magistrates are former solicitors or barristers who are appointed based on their experience and good-standing within the legal profession. Magistrates are appointed to hear matters and make decisions according to law. While Magistrates have discretion, in some instances, they must apply the law according to how the relevant legislation mandates they do. The Magistrate is the ultimate decision-maker in Court.

## HOW TO PRESENT FOR COURT

In most Court venues, you enter your allocated court room from a foyer area. As you enter the court room, you must bow towards the Coat of Arms located directly behind the Magistrate by nodding your head as a mark of respect. Magistrate's impression of you is important. They will observe you sitting in their court room as you wait for your matter to be called on and especially during the proceeding.

You should wear neat casual clothes. I normally advise clients to dress as though they are attending a job interview. You must make sure your mobile phone is on silent or turned off to avoid it disrupting court. Also, avoid looking at your phone because it can appear as though you are not paying attention.

Once the bench clerk calls your matter on, you can take a seat in the front row of chairs directly behind your legal representative or at the Bar table if you are representing yourself. If you are legally represented, you should remain silent during the hearing unless you need to tell your lawyer something important about your case or the Magistrate directly addresses you. You must stand when the Magistrate addresses you directly.

## WEBEX HEARINGS

The Magistrates' Court responded to the COVID-19 pandemic by introducing online hearings. Online hearings are facilitated by Webex. You can locate your Webex link by searching for your matter here - [www.mcv.vic.gov.au/going-court/avl](http://www.mcv.vic.gov.au/going-court/avl)

When appearing via Webex you should –

- Make sure your camera and microphone on your device work properly
- You have stable internet connection
- Sit next to natural light
- Make sure there are no external distractions
- Make sure your camera is still
- Make sure you are in a private space.

## DIFFERENT STAGES OF A CRIMINAL MATTER

### MENTION HEARING

There are different stages of a criminal matter in court. The first listing of your case is a Mention Hearing. A Mention Hearing is where your legal representative has an opportunity to discuss your case with a prosecutor with the view of either resolving your matter to a plea of guilty or by establishing the foundation of your defence if you deny the allegations. This process is a 'summary case conference'.

Some prosecuting offices have police prosecutors physically located at Court to summary case conference matters. Others, require that the summary case conference be booked in and conducted before your Court date.

If your matter resolves to a plea of guilty, it will be booked in for a Plea Hearing. If your matter doesn't resolve, it will proceed to Contest Mention Hearing.

## CONTEST MENTION HEARING

A Contest Mention Hearing is the second hearing of a criminal matter being contested. Prior to the hearing, your matter will be allocated to a specific prosecutor who will look at the police brief in more detail and be able to engage in meaningful discussions with your legal representative.

## DISCLOSURE MATERIAL

One advantage to a Contest Mention Hearing is that it creates a duty on police to disclose relevant material to your case referred to as 'disclosure material'. Disclosure material will give your legal representative an insight into the police investigation against you, which can expose deficiencies in the police case. For instance, your legal representative can request draft witness statements, if they exist. A witness' draft statement may provide a contradictory version of events to their final signed statement relied on by the prosecution. This can raise credibility issues for the prosecution. A skilled criminal defence lawyer will know what specific disclosure material they should request from police.

## DISCUSS THE ISSUES IN THE CASE

Another advantage of a Contest Mention Hearing is that the issues in your case will be discussed, potentially narrowing the facts in dispute. For instance, a person accused of causing another an injury, may dispute that an 'injury' was caused. This issue would be central at the Contested Hearing.

## SENTENCE INDICATION

You may apply for a sentence indication at a Contest Mention Hearing. This is where the Magistrate hears the police summary and submissions raised by your legal representative on your behalf and indicate what penalty they would impose if you pleaded guilty. A sentence indication will give you some certainty of the outcome before committing to a plea of guilty.

If the matter resolves at the Contest Mention Hearing, it can be booked in for a Plea Hearing. If your matter doesn't resolve, it will progress to a Contested Hearing.

## CONTESTED HEARING

A Contested Hearing is a trial in the Magistrates' Court without a jury. The prosecutor presents the police case to the Magistrate by calling witnesses to give evidence and produce documents.

Your legal representative is given an opportunity to cross-examine police witnesses and present your evidence (if appropriate) to cast doubt on the prosecution case.

After hearing and reviewing all the evidence and legal submissions, the Magistrate will make a finding of fact. A 'not guilty' verdict will result in a complete acquittal. A 'guilty' verdict will lead to receiving a penalty.

A lot of preparation goes into a Contested Hearing. Your legal team will consider how to cross-examine witnesses, find weaknesses in the prosecution case, and make forensic decisions of whether to call evidence or not. There may subpoenas and witness summons that need to be issued prior to your Contested Hearing starting. There may also be pre-trial issues which need to be resolved such as arguments over the admissibility of evidence and edits to certain pieces of evidence.

## PLEA HEARING

If you plead guilty, your matter will proceed as a Plea Hearing. The prosecutor will commence the proceeding by reading the police summary detailing your wrongdoing, tender any prior criminal history and any victim impact statements. It is important that you read the police summary before you agree to plead guilty because there may be things mentioned which you disagree with. This could be amended by agreement before a resolution is reached.

## HOW TO IMPROVE THE OUTCOME

Preparation is key to a favourable sentencing outcome. Your legal representative should advise you of relevant things to do before your Plea Hearing to mitigate the penalty. This may include –

- Undergoing counselling
- Engaging with a psychologist
- Attending drug or alcohol rehabilitation
- Writing a letter of apology/reflection
- Obtaining character references
- Donating to a charity
- Completing a traffic safety course.

You will work with your solicitor by providing them with information about your personal circumstances and history so they can tailor plea submissions on your behalf.

## PENALTIES

After hearing submissions from the prosecutor and your lawyer, the Sentencing Magistrate will make an order regarding penalty. This may include –

- Diversion if recommended by prosecutors
- Proven and dismissed
- Adjourned Undertaking also known as a Good Behaviour Bond
- A Fine
- A Community Correction Order
- Imprisonment.

Some driving offences attract suspension or disqualification of your driver's licence.



Tyson Manicolo is an experienced criminal defence solicitor who appears daily in the Magistrates' Court. He has dedicated his career to defending people accused of criminal wrong-doing and appearing in Court. He has achieved fantastic outcomes for many clients. Tyson is available to appear in all metropolitan and regional Magistrates' Courts.

Tyson prides himself on providing his clients strategic and proactive legal advice. He brings attention to detail to all his matters.



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