



MAGISTRATES' COURT

Representing yourself at a Magistrates Court criminal trial

Information Kit



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How to find legislation

The Parliamentary Counsel's Office hosts a website (www.legislation.wa.gov.au) which stores current copies of all legislation. There is no cost for you accessing this website. When you go to www.legislation.wa.gov.au, you will be able to select **Acts** or **Subsidiary legislation**. If you are looking for an Act, for example the *Criminal Code*, click on the “in force” link. Then select the first letter of the name of the Act, for example “C” for **Criminal Code** and navigate to the heading of your Act. If you click on this link, you can select to view the Act in PDF, Word or HTML. If you are looking for a piece of subsidiary legislation, for example the *Criminal Procedure Rules 2005 (WA)*, you click on the “in force” link under the heading “**Subsidiary legislation**”.

How to find forms

The Magistrates Court provides the forms that are referred to in this kit. If you want hard copies of the forms or have any questions in relation to the forms, please contact the Magistrates Court registry.

Alternatively, you can go to the court's website and download a copy of the forms that you can edit electronically:

Magistrates Court website (www.magistratescourt.wa.gov.au)

Click on the heading “**Types of Cases**” in the top menu and select “**Criminal Matters**”. Then scroll down until you find the form you are after.

Court etiquette

Be on time – The time should be written on your court papers. If you are not sure ring the court and check. If you are late for court or do not come at all things might happen in your absence, for example, your application might be dismissed without you having a say.

Dress neatly – Take off any sunglasses or hats. You will not be allowed into court in a singlet or without shoes.

No mobile phones, food or drink – Turn off all mobile phones and any other electronic devices before entering the court. Do not take any food or drink into court.

Court room behaviour – When entering and leaving the courtroom it is customary to bow towards the magistrate. Stand up when the magistrate enters and leaves the courtroom. Stand up when you are being spoken to or when you wish to speak, otherwise remain quietly seated. Address the magistrate as “Your Honour”.



Introduction

This information kit will assist you if you are pleading 'not guilty' to a criminal offence in the Magistrates Court and will not have a lawyer to represent you at your trial.

This kit will assist you to:

- obtain relevant information about the case against you
- appear at a pre-trial hearing, if one has been set by the court, and
- represent yourself at your trial in the Magistrates Court.

This kit is not intended to replace legal advice and where possible, you should get legal advice **before** appearing in court and before entering any plea to your criminal charge.

Please see under **Further information** at the end of this kit for details of other resources that may help you represent yourself at your trial, including an interactive online [self-help guide](#) produced by Legal Aid WA.

Definitions and terms

Term	Definition
Conviction	A finding of guilt.
Disclosure	Disclosure is also known as the evidence and includes information such as your video record of interview (if you did one), the statements of prosecution witnesses and any exhibits the prosecution may wish to provide to the court during the trial.
Guilty	Pleading guilty means that you accept that you have committed the offence and accept the police Statement of Material Facts.
Not guilty	Pleading not guilty means you deny committing the offence and therefore the court must hear evidence to decide whether you are guilty or not.
Plea in mitigation	The statement that you or your lawyer makes to the court after you have been found guilty but before you receive your sentence.
Prosecution notice	The Prosecution Notice is a formal document that contains the precise offence or offences that you are alleged to have committed.
Sentence	The punishment that will be imposed if you are convicted.
Statement of material facts	If you are charged with a criminal offence, the Statement of Material Facts is a summary of the facts in support of the allegation(s) against you. It is the prosecution's version of what happened.
Trial	The date the court will hear evidence and decide whether you are guilty or not guilty.



General information about appearing in court on a criminal charge

If you are able to pay for a lawyer yourself, you can seek advice from a private lawyer. You should do this well before your court date.

If you cannot afford a lawyer and you are appearing in the Magistrates Court, on the morning of your court appearance you can ask for advice from a duty lawyer from Legal Aid WA. Duty lawyers are available in most Magistrates Courts but you should check with the Magistrates Court before you appear to make sure a duty lawyer will be available. If not, you can appear in court and ask for your case to be “adjourned” (put off) to a day when a duty lawyer will be available.

You can only see a duty lawyer on the morning of your appearance in court.

Duty lawyers can give you legal advice and can also appear for you in court on a plea of guilty, for a bail application or an adjournment. **A duty lawyer cannot represent you at a trial after you have pleaded not guilty and cannot represent you at a pre-trial hearing.** A duty lawyer may be able to give you advice on your trial date but will not be able to represent you at your trial.

For more information about the scope of the Duty Lawyer Service go to the **Legal Aid WA website:** www.legalaid.wa.gov.au under Get Legal Help > How we can help > Get help at court.

What is pleading guilty?

Pleading guilty means that you accept that you have committed the offence and accept the police **Statement of Material Facts**. If you think you have a defence or you do not agree with the Statement of Material Facts, you should seek legal advice.

What is pleading not guilty?

Pleading not guilty means you deny committing the offence and therefore the court must hear evidence to decide whether you are guilty or not. The hearing of this evidence takes place on a separate date called a trial. A duty lawyer cannot represent you at a trial and therefore your only options are to obtain your own lawyer (with or without a grant of legal aid) or represent yourself.

What if I need an interpreter when I go to court?

If you know that you will need an interpreter when you attend court, you should contact the court well before your court appearance to ask them to arrange an interpreter. This interpreter will then be available on the morning of your court appearance and can assist you during any interviews you may have before court, such as with the duty lawyer.

To arrange an interpreter for the **Magistrates Court** you simply need to call the court in which you are appearing and advise them that you need an interpreter. They will need to know your court date and the specific language you speak. You should do this as early as possible before your court date.

How do I contact the court?

The general number for the Perth Magistrates Court for criminal matters is 9425 2222.

Contact details for Magistrates Courts may be found on the Magistrates Court website at www.magistratescourt.wa.gov.au (About the court > Court Locations and Contacts). Contact details for all other WA courts may be found on the **Court Locations** page on the website of the **Attorney-General’s Department** at www.justice.wa.gov.au (Court and Tribunal Services > Going to Court > Court Locations). Alternatively, for metropolitan court contact details see **Contacts** at the end of this Kit.



Obtaining information for a plea

Information for plea

You should only decide whether to plead guilty or not guilty after you have seen or heard the content of the Prosecution Notice and the Statement of Material Facts.

What is the Prosecution Notice?

The Prosecution Notice is a formal document that contains the precise offence or offences that you are alleged to have committed.

What is the Statement of Material Facts?

If you are charged with a criminal offence, the Statement of Material Facts is a summary of the facts in support of the allegation(s) against you. It is the prosecution's version of what happened.

It is vital for you to have the Statement of Material Facts before you decide to plead guilty or not guilty to the charge as it tells you exactly what the police allege you did. For example, you may wish to plead guilty to charges of assault and possession of cannabis. Until you see the Statement of Material Facts you do not know whether the police are alleging you pushed someone in the shoulder or kicked them in the face. Also you do not know whether the police are alleging they found 1 gram or 50 grams of cannabis. You need to know these facts before you decide whether to plead guilty.

After you plead guilty to a charge in the Magistrates Court, the prosecutor will read out the Statement of Material Facts in court. A plea of guilty is usually (but not always) an acceptance of what is written in the Statement of Material Facts. If the offence is accepted but there is a significant dispute on the facts the court will set the charge down for a trial on the facts before dealing with your plea of guilty.

You should not plead guilty until you are sure of what is on your Criminal Record (if you have one), as this is considered by the court when imposing a penalty (sentence) on you. For more information about sentencing, see the section on [Sentencing](#).

How do I get the Statement of Material Facts?

The police officers who charge you can provide you with a copy of the Statement of Material Facts. You can ask for a copy when you are charged. They can also provide you with a copy of your criminal record (if there is one).

If you are facing a more serious charge, you must be provided with a copy of the Statement of Material Facts by the time of your first appearance in court. If this does not happen, you should tell the court. The court can order the prosecution to provide you with a copy. If you are facing a less serious charge, a copy does not have to be given to you, however, it may be provided if requested.

When you are not at court, you can request a copy by writing to the investigating officer. Their details will be on the **Prosecution Notice** which you received when notified of the prosecution.

Keep a copy of the letter for your records. The written request may read as follows:

(address)

(date)

Dear Officer (surname of officer)

My name is (full name). I have been charged with (charge/charges) and I last appeared at the (Place) Magistrates Court on (date). I am next due to appear in court on (date). I have not received a copy of the Statement of Material Facts. Would you please send me a copy as soon as possible?



Please send the copy to (address).

Yours faithfully

(your name)

After you get the Statement of Material Facts, keep it safe. It is an important document. You will need to show it to any lawyer you talk to about your case. It may be difficult to get another copy.

Pleading not guilty

What happens if I plead ‘not guilty’?

If you plead ‘not guilty’ in a criminal case a trial date is set. This is when the court will hear evidence and decide whether you are guilty or not guilty.

Before you plead not guilty, you should get legal advice about the type of charge you are facing because some charges can be dealt with in the Magistrates Court but others must be dealt with in the District or Supreme Court.

A duty lawyer can advise you about the type of charge you are facing and where that charge will be dealt with.

If you are pleading not guilty to a charge that is to be dealt with in the District or Supreme Court, you should apply for legal aid or instruct a lawyer privately as soon as possible and preferably before you enter your plea. The duty lawyer cannot represent anyone in the District or Supreme Court. However, the duty lawyer can help you get an adjournment so that you can apply for legal aid or instruct a private lawyer. You should discuss your plea with the lawyer that will be representing you in the District or Supreme Court.

If your charge can be dealt with in the Magistrates Court, then it is an offence that can be dealt with “summarily”. You can enter a plea of not guilty immediately but you should get legal advice before you plead not guilty to make sure you have a defence. A duty lawyer can give you this advice.

Once you plead not guilty in the Magistrates Court, a trial date is set. This is when the court will hear evidence and decide whether you are guilty or not guilty. A duty lawyer can give you advice about your defence and the procedures the court will follow during the trial, but **a duty lawyer cannot represent you at your trial.**

If you wish to be represented at your trial you will have to instruct a private lawyer or apply for legal aid. Otherwise, you will have to represent yourself.

When should I decide to plead “not guilty”?

You should only decide to plead not guilty to a charge after you have:

- seen or heard the Prosecution Notice and the Statement of Material Facts (the summary of the allegations against you prepared by the police), and
- spoken to a lawyer.

When will my trial date be?

In the Magistrates Court there is usually a wait of at least 2-3 months from when you plead ‘not guilty’ until your trial date. The length of time is different at different courts. The magistrate will tell you the trial date when you plead not guilty to the charge. If this date is not suitable for you or your witnesses, you should let the court know immediately.



Can I get an adjournment of my trial date?

Unless you have exceptional circumstances, once your trial date is set you will not be able to adjourn (put off) your trial to another day.

If you need an adjournment, contact the prosecution (usually the police) **as soon as possible** to warn them and to see if they will agree. You should also ask the court registry to list your charge on a date before the trial so that you can request the adjournment. The earlier you do this, the more likely the court will allow the adjournment.

A duty lawyer will not usually be available to ask for your trial to be adjourned. If you do not have your own lawyer, you will probably have to do this yourself.

Pre-trial hearings

What is a pre-trial hearing?

In some courts, after you have pleaded not guilty you may be required to appear in court before the trial date to deal with certain issues. These dates might be called a directions hearing, call over or trial allocation date. If you are not sure if the date you have been given is for the trial or an appearance prior to trial, contact the court and check. **The duty lawyer cannot represent you at the pre-trial hearing.**

What should I do before the pre-trial hearing date?

What to do immediately

The prosecution may be required to provide you with certain information before the trial, such as your video record of interview (if you did one), the statements of prosecution witnesses and any exhibits the prosecution may wish to provide to the court during the trial. If you have not received anything from the prosecution by the time of the pre-trial hearing, you should tell the court.

If the prosecution are required to provide you with any information, the court can order them to do so before the trial and may set another pre-trial hearing date to ensure the prosecution have provided the information to you. You may also be required to provide certain information to the prosecution before the trial. The court should tell you what you have to provide and when you have to provide it.

If you are not sure what to do, get legal advice.

What to do after you receive the witness statements

After you receive the witness statements, get legal advice about what you should tell the magistrate on the pre-trial hearing date. If you are not able to get legal advice, read through the statements and try to work out, for each witness:

- whether you disagree with anything in their statement, and
- whether there is anything that witness can say that will support what you say happened.

The magistrate will want to know whether there is anything that you and the prosecution agree about. If there is, the prosecution may not have to bring all their witnesses to court on the trial date.

Where and when will the pre-trial hearing be?

The pre-trial hearing will usually be at least one month before your hearing date. You will be given the date, time and place when you plead not guilty. If you can't find your bail papers call the court to check the date, time and place. It is possible you may have to appear in a Magistrates Court that is in a different location than the court where you entered your plea of not guilty. For example, you may

appear and plead not guilty in Perth, but because the charge was laid in Northam, the pre-trial hearing and trial may take place in the Northam Magistrates Court.

What happens at the pre-trial hearing?

On the pre-trial hearing date you go to court to tell the magistrate:

- whether you still wish to plead not guilty
- how many witnesses you will have, and
- whether a lawyer will represent you on the hearing date.

The magistrate may also want to know what the issues will be at the hearing, and may ask you what your defence is.

If you are supposed to be provided with the witness statements, but you have not received them by the date of the pre-trial hearing, tell the magistrate. You may need to ask for an order that the statements be provided to you and for an adjournment to another pre-trial hearing.

Do not bring your witnesses to court for the pre-trial hearing date. The magistrate will **not** make a decision about whether you have been found guilty or not guilty at the pre-trial hearing date.

Speak with the duty lawyer on the day

If you are considering changing your plea to guilty on the pre-trial hearing date you can try to speak with the duty lawyer on the day. If so, you should:

- go to court at 8:30 am on your pre-trial hearing date to see the duty lawyer, and
- bring the witness statements with you.

The duty lawyer can provide advice and may be able to represent you to help you plead guilty.

If you do plead guilty the trial date will not be needed.

If, after seeing the duty lawyer you still want to plead not guilty, note that the duty lawyer cannot represent you at the pre-trial hearing or the trial date.

Obtaining information for a trial

Information for trial

If you plead not guilty to a charge, you will have to come back to court for a trial. At the trial, the prosecution will present evidence to try to prove that you committed the offence.

Depending on the charge you are facing, the prosecution may have to give (disclose) certain information to you before the trial. In some cases you may also have to give certain information to the prosecution. This is known as pre-trial disclosure.

What information must be given to you?

The information the prosecution may have to give you will include witness statements, exhibits and any record of interview.

What are witness statements?

The evidence presented by the prosecution will mainly consist of witnesses who will tell the court what they remember. Before the trial date arrives, the police will take written statements from these witnesses covering the evidence they will give in court.



What are exhibits?

The prosecution evidence may also consist of exhibits. Exhibits may include documents, photographs, maps, objects and any other thing that is referred to by the prosecution witnesses in their evidence and that the prosecution intend to produce in order to prove their case.

If an exhibit cannot be copied (for example, a 50 gram bag of cannabis), a description of it and a notice of where and when you can inspect this exhibit may be provided instead.

When must information be given to you?

If you are facing a more serious charge, the prosecution must give you a copy of all witness statements and exhibits and any record of interview before the trial date. More serious charges are those described as “indictable” or “listed simple” offences.

If you are facing a less serious charge, you will only be given the witness statements, exhibits and the record of interview if the court orders that you should get them. Less serious charges are simple offences that are not “listed”. In this case, you can ask the court to make an order for the information to be given to you. The court may be more likely to do this if the prosecution case is complicated or there is another good reason.

If you are not sure what sort of charge you are facing and whether the prosecution must provide you with certain information (pre-trial disclosure), get legal advice.

If the prosecution must give information to you, it must be as soon as possible but otherwise, it must be at least 28 days before the trial.

If the prosecution must give information to you, it is useful for you to write to them as soon as you have entered your plea of not guilty, to confirm you are expecting pre-trial disclosure and to provide the address where information may be sent or how you may be contacted, so that service of the information may be arranged.

If the prosecution is brought by the police, the written request should be sent to the police officer dealing with your case. The name of this officer will be in the Statement of Material Facts (the “investigating officer”). You should keep a copy of the letter for your records.

The letter might read as follows:

(address)

(date)

Dear Officer (surname of officer)

My name is (full name). I have been charged with (charge/charges) and I last appeared at the (Place) Magistrates Court on (date). I pleaded not guilty and a trial date was set for (date of trial). Please provide pre-trial disclosure to me in accordance with s61 *Criminal Procedure Act 2004*, including a copy of all witness statements and exhibits and the video record of interview (delete if already received video).

Please serve this material on me at (address)/contact me on (telephone number) to arrange service of this material (delete as required).

Yours faithfully

(your name)



What is a video record of interview?

If you are being investigated for the commission of an offence, police will usually invite you to participate in an interview, which will be recorded on video. The interview is a series of questions and answers and may contain your admissions to the offence under investigation.

If you are charged with the offence, a copy of the video recording can be provided to you. A copy will also be kept by the prosecution and may be played in court if you plead not guilty to the charge.

It can be useful to obtain a copy of your video record of interview before you enter your plea, particularly if you are not sure whether you made admissions to the offence. You may also need to show it to a lawyer to get advice about your plea. If you do obtain a copy, you must remember that there are legal restrictions on how a video recording can be used. **It is an offence to allow a video recorded police interview to be shown in public.**

How do I get a copy of my video record of interview?

If you are facing a more serious charge and you are pleading not guilty, the video record of interview must be provided to you before your trial date as part of pre-trial disclosure. If you are pleading not guilty to a less serious charge, the court can order the prosecution to provide you with a copy of the video record of interview. In this case, if you want a copy, you should ask the court to make this order.

If you have not yet entered a plea or you are pleading guilty, you will not automatically be given a copy of the video record of interview, so you will have to request a copy.

If you wish to request a copy of the video record of interview, you may telephone or write to the investigating officer. The name of the officer will be in the Statement of Material Facts.

If you write to the officer you should keep a copy of the letter for your records.

The letter might read as follows:

(address)

(date)

Dear Officer (surname of officer)

My name is (full name). I have been charged with (charge/charges) and I last appeared at the (Place) Magistrates Court on (date). I am next due to appear in court on (date). I am writing to request a copy of my videotaped record of interview.

Please serve the copy on me at (address).

If you wish to discuss this, please telephone me on (telephone number).

Yours faithfully

(your name)

he police will not post a video record of interview to you by mail. You will have to arrange to collect it, or for the police to deliver a copy of it to you personally. You, or someone on your behalf, will need to sign for its receipt.

If you do not hear from the police within a week after you send this letter, you may wish to telephone the police station to follow it up.



The actual recording will remain the property of the West Australian Police Service and you will have to return it to the police when the case is finalised.

What if the information is not provided to you?

If the prosecution must disclose information to you then you should get it at least 28 days before the trial. If you still have not received it by then, you should immediately contact the prosecution to remind them to send it to you. You can do this by telephoning or writing again to the police officer dealing with your case. You should keep a copy of the letter for your records.

If you still do not receive the information, you should ask the court registry to early list your charge. You should do this as soon as possible. You will then have to appear in court to tell the court what is happening. The court may then order the prosecution to provide disclosure to you and if necessary, may put the trial off to a later date to give you more time to prepare for your trial.

When do you have to disclose information?

Depending on the charge you are facing, once the prosecution have given you information, you may have to give information to them in return.

The information you may have to give includes details of any alibi (where you were if you were not there when the offence happened) and details of any expert evidence you will be presenting to the court.

If you are not sure what type of charge you are facing and whether you must give information to the prosecution, get legal advice.

If you do have to give information to the prosecution, you must give it at least 14 days before the trial date. The information should be given in writing and sent to the Officer in Charge of the Prosecuting Branch for the Magistrates Court you are appearing in. You should keep a copy of the letter for your records, so that you can show the court that you have given the information to the prosecution.

Representing yourself at a Magistrates Court criminal trial

How do I prepare for the trial?

Get all the documents you can from the prosecution

As indicated above under **Obtaining information for a trial**, depending on the charge you are facing, certain information may have to be disclosed to you by the prosecution before your trial. This information includes statements of witnesses to be called by the prosecution, details of any exhibits that the prosecution may use at the trial (such as documents or photos) and a copy of your video record of interview with police.

If you cannot obtain this information, you should at least obtain a copy of the Statement of Material Facts, which is a summary of the prosecution case.

Look at the information you obtain very carefully and work out exactly what you disagree with.

Write down your version of what happened

You should note down your own version of what happened as soon as possible after the incident. It is best if you do this chronologically (in date or time order). You should do this in your own words and from your own perspective.



You should read through the Statement of Material Facts and any witness statements carefully and think about which facts you disagree with and which facts have not been mentioned by the prosecution.

You should clarify or explain information contained in the Statement of Material Facts and witness statements, where possible.

If there is a video record of interview, view it again to remind yourself of what you told police.

You should make a list of the facts that are important to your defence and that you must remember to tell the magistrate when you are giving your evidence at trial. If you are not sure what your defence is and what facts are important, get legal advice.

You cannot read from your notes or your list when you are in the middle of giving evidence in court, however, you can use them when you are in court but not giving evidence. For example, before you go into the witness box to give your evidence, you can look at your notes or your list to remind yourself to say certain things.

You can use your notes and your list while you are questioning witnesses or making submissions to the magistrate about your case.

Organise your witnesses to come to court

You must be ready to defend the charge on the trial date, so your witnesses must be organised to attend on that date. You should know what your witnesses are going to say **but don't tell them what to say**.

If a witness refuses to go to court when you ask them, you can obtain a summons from the court registry that requires them to attend. You should ask about summonses at the court registry. Any summonses should be issued and served on the witnesses as soon as possible and well before the trial date.

If you are not sure if a witness will turn up at court, you should ensure that a summons is issued to require them to attend.

Make a list of questions for each witness

You should make a list of the questions you might want to ask each prosecution witness at the trial.

At the time of the trial, you may find that the witness gives evidence that is different to the information in their statement. In this case, you may not need to ask all the questions on your list. The list is just a useful guide for you, so that you do not forget to question the witnesses about important issues.

Make a list of things to tell the magistrate

You should prepare a list of the things you are likely to want to say to the magistrate when you are summarising your case after all the evidence has been heard. At the time of trial, the evidence from you or other witnesses may come out differently than you expect, so you may have to change some of the things on your list later. The list is just a useful guide for you, so you do not forget to bring something important to the magistrate's attention.

Magistrates are very used to people representing themselves at trial. If you forget to bring something to the magistrate's attention, the magistrate is likely to still take the evidence into account, as long as it is relevant to the issues in the case.



Organise your documents and other evidence

You should bring all documents or other evidence you are relying on to the trial. If you want to use a document as evidence at your trial, you should also organise the person who created it to be at the trial to confirm it is accurate and present it as evidence.

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 case is being dealt with. Some courts can help organise and pay for childcare. Ask at the court registry well before your trial date.

What do I do on the trial 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 warrant may be issued. If this happens, you could be arrested and put in custody.

See [Court etiquette](#) on page 1 for information about how to behave in court.

What do I do when I get to court?

Tell the court orderly that you have arrived 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 at the opposite end to the prosecutor.

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

Opening address

Before any evidence is called, both you and the prosecutor are allowed to make comments to the magistrate about the case, which is called making an opening address. The prosecutor will address the court first, giving a brief outline of the prosecution case. You can follow with an outline of the defence case. This is an opportunity for you to give an overview of the case from your perspective, before any evidence is heard. Alternatively you can wait and make comments after all of the evidence has been heard.

The prosecution case

The prosecution presents its case first. Before the prosecution starts its case, the magistrate should make an order that all witnesses, both for the prosecution and defence, must stay outside the court until they have given their evidence. If the magistrate forgets to make this order and the prosecutor does not remind the magistrate to make it, you should stand up and ask the magistrate to make the order.

The prosecution will then call their first witness. The 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 will have the chance to make statements when you give your evidence later.



If you or one of your witnesses will be giving 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 the 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 by that witness. The witness cannot raise anything new in re-examination.

The prosecutor will then call the next witness and the process of examination, cross-examination and re-examination will continue until all of the prosecution evidence has been heard.

If you completed a video record of interview this may be played in court and forms part of the prosecution evidence.

The case for the defence

After the prosecution case has finished, it is your turn to give evidence. You do not have to give evidence but if you want to you must go first, before any other witnesses you may have. You may call your other witnesses in any order you wish.

If you decide to give evidence, you will be required to enter the witness box and take an oath or make an affirmation. After you have taken the oath or made an 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 give evidence about issues that are not relevant to the case or your defence.

You will not be allowed to read from a prepared statement. However, you may be allowed to refer to any notes you made at the time of, or shortly after, the incident took place. You must get permission from the magistrate to do this.

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 that it be repeated or clarified before you try to answer it.

The magistrate will then ask if you wish to clarify or explain anything that came up while the prosecutor was questioning you. This is your opportunity to make your evidence clear, in case it became confused while the prosecutor was questioning you. You cannot raise new information.

Once you have completed your evidence, you must return to the bar table. You can then call any witnesses you may have. Keep your questions short and ask only one question at a time. Not all questions are allowed and your questions must not suggest an answer. Questions that begin with "what", "when", "why" or "who" are usually appropriate.

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

After the prosecutor finishes cross-examining the witness, the magistrate will ask you if you wish to re-examine the witness in order to clarify their evidence. You can only ask the witness to clarify things already raised by that witness. The witness cannot raise anything new in re-examination.



You may then call your next witness and continue until all of the evidence in your defence has been presented.

Submissions

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

At this stage, you cannot produce any new evidence.

The magistrate will then decide whether or not the prosecution has proved its case to the criminal standard of “beyond reasonable doubt”. If it has, you will be found ‘guilty’, but if it has not, you will be found ‘not guilty’.

What if I am found not guilty?

If you are found not guilty, the charge will be dismissed and you will be free to go.

If you have incurred any specific costs associated with your trial, you can ask the court to consider them. The court may order that you be reimbursed some of your costs.

What if I am found guilty?

If you are found guilty, the magistrate will have to decide what penalty (sentence) to impose.

Sentencing

If you have any previous convictions, you will be shown a copy of your criminal record. Check that it is correct as the court will consider it when sentencing you.

You will be given the opportunity to speak before you are sentenced. The statements that you make at this point are called making a **plea in mitigation**. Some of the things that you could raise in your plea in mitigation, if they are relevant, include:

- your personal background
- your work history and current employment
- your financial position and whether you are supporting anyone financially
- your health now and at the time of the offence
- whether drugs or alcohol influenced your involvement in the offence
- whether you were less involved in the offence than others.

The magistrate will then give you your sentence. This may happen on the same day that you are found guilty, or on a later date set by the court.

The type of sentence will depend on the offence and the circumstances of your case and can range from fines, to community-based orders, to imprisonment. Depending on the charge, you may also have your driver’s licence suspended, you may be ordered to return property, you may be required to pay compensation and you may be ordered to pay court costs.

You will be given a piece of paper with your sentence on it. Read it carefully. If you do not understand any aspect of it, ask the court to explain or get legal advice.

If you are given a fine you must pay it within 28 days unless you arrange with the court registry for more time to pay. This arrangement must be made before the 28 days is up.



Changing your plea to guilty

Can I change my mind and plead ‘guilty’?

After you have read the Statement of Material Facts, or seen the video record of interview or other prosecution information, you may decide it is appropriate to change your plea to guilty.

Be careful changing your plea to guilty. Once you plead guilty in court you cannot change your plea back to ‘not guilty’ except in unusual circumstances.

You should NOT plead guilty if you have a defence. You should have received legal advice about what your defence is before the trial date. If you need to obtain more legal advice before making a decision you can speak to the duty lawyer or telephone the **Legal Aid WA Infoline on 1300 650 579**. Ensure you have the Statement of Material Facts and witness statements available.

You may change your plea to guilty at any time. If it is appropriate to change your plea, it is best to do so as early as possible before your trial date. The later you leave it, the more inconvenient and costly it is for the court and the prosecution and you may be ordered to pay the costs of preparing for the trial.

What should I do once I have decided to change my plea to “guilty”?

If you decide to change your plea to ‘guilty’, you should tell the prosecution and the court as soon as possible. You can alert the prosecution by writing to the investigating officer. You can alert the court by sending a copy of that letter to the court registry where your trial is listed.

Here is an example of the letter you might send to the investigating officer:

Only send this letter if you decide to plead “guilty”.

(address)

(date)

Dear Officer (surname of officer)

My name is (full name). I have been charged with (charge/charges). My case is listed for a trial in the (place) Magistrates Court on (next court date).

I have decided to plead guilty to this charge. You do not need to call witnesses on the trial date.

Yours faithfully

(your name)

Send a copy of this letter to the Listings Manager for the Magistrates Court that you are appearing in, so that the court also knows that the trial will not be proceeding and keep a copy for yourself.

It is not enough to just write to the investigating officer and the court to let them know you intend to plead guilty. You will also need to appear in court to change your plea to guilty. You may be able to do this on a court date that is already set, for example on a pre-trial hearing date. Alternatively, you can request an earlier appearance date to change your plea.

The earlier you appear in court to change your plea the better. This helps the court and the prosecution as it means they can be sure of your plea of guilty and can abandon the trial date and



cancel the attendance of witnesses. You may be given a discount on your sentence if you assist the court in this way.

To request an early listing you must submit a **Form 6** at the court. A Form 6 is available from any Magistrates Court registry or you can download a copy from the [Magistrates Court website](#) under Criminal Matters.

If your trial date is very soon, you may not have time to early list the charge to enter your plea of guilty. In this case, it is still important to advise the investigating officer and the court that you intend to plead guilty and then you may enter your plea of guilty in court on the trial date. You are more likely to have to pay the costs of preparing for the trial if you change your plea to guilty at this late stage.

On the date you enter your guilty plea, a duty lawyer may be able to represent you if one is available at the court on that day and at that time.

Changing your plea to “guilty” on an existing court date

If you think you want to plead guilty on a pre-trial hearing date, you may wish to:

- represent yourself, plead guilty and have the case adjourned so that a duty lawyer or private lawyer can represent you
- tell the magistrate that you want to change your plea to guilty but that you want to be represented and have the case adjourned to another day to enter the plea of guilty so that the duty lawyer or a private lawyer can represent you, or
- have the case adjourned to another day so that you may obtain legal advice about whether to plead guilty.

If you want to plead guilty on the day of the trial you should obtain legal advice before you enter your plea of guilty. You will not be able to adjourn the trial to consider your plea, except in exceptional circumstances.



Further information

Legal Aid WA

Legal Aid WA has produced a [Magistrates Court Criminal Trial self-help guide](#). To access this guide, go to Legal Aid WA's website at www.legalaid.wa.gov.au under **Resources – Self-help kits and guides – Criminal trials**.

How to get a copy of this kit

- Contact the Legal Aid WA Infoline on 1300 650 579 and ask to be sent a copy
- Attend at a Legal Aid WA office and request a copy (see location details below)
- Conduct a search of the [Legal Aid WA website](#) using the title of this kit and download a copy

Contacts

Metropolitan court registry contact details

Perth Magistrates Court

Central Law Courts
501 Hay Street
PERTH WA 6000
Tel: 9425 2222
Fax: 9425 2776

www.magistratescourt.wa.gov.au

Armadale Magistrates Court

109 Jull Street
ARMADALE WA 6112
Tel: 9399 0700
Fax: 9497 1488

Fremantle Magistrates Court

8 Holdsworth Street
FREMANTLE WA 6160
Tel: 9431 0300
Fax: 9430 4464

Joondalup Magistrates Court

21 Reid Promenade
JOONDALUP WA 6027
Tel: 9400 0700
Fax: 9300 2005

Mandurah Magistrates Court

333 Pinjarra Road
MANDURAH WA 6160
Tel: 9583 1100
Fax: 9581 1842

Midland Magistrates Court

24 Spring Park Road
MIDLAND WA 6056
Tel: 9250 0200
Fax: 9274 6676

Rockingham Magistrates Court

Whitfield Street
ROCKINGHAM WA 6168
Tel: 9599 5100
Fax: 9592 3077



Legal Aid WA

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)

**Infoline open Monday to Friday 9.00 am to 4.00 pm
(Australian Western Standard Time) except public holidays**

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7th Floor, Bunbury Tower,
61 Victoria Street
Bunbury, WA 6230
(08) 9721 2277

West Kimberley Regional Office

Upper Level, Woody's Arcade,
15-17 Dampier Terrace,
Broome, WA 6725
(08) 9195 5888

Great Southern Regional Office

Unit 3, 43-47 Duke Street,
Albany, WA 6330
(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street,
Kalgoorlie, WA 6430
(08) 9025 1300

Pilbara Regional Office

28 Throssell Road,
South Hedland, WA 6722
(08) 9172 3733

East Kimberley Regional Office

98 Konkerberry Drive,
Kununurra, WA 6743
(08) 9166 5800

Midwest & Gascoyne Regional Office

Unit 8, The Boardwalk,
273 Foreshore Drive,
Geraldton, WA 6530
(08) 9921 0200

Indian Ocean Office

Administration Building,
20 Jalan Pantai, Christmas
Island,
Indian Ocean, WA 6798
(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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