



## **Information for a Defendant**

The information here is only information. It is **not** legal advice. Only a lawyer, solicitor or barrister can give you legal advice.

The information here is only about **NSW Local Courts** and criminal situations. Other courts like the District Court and the Supreme Court are a bit different. Local Courts are where most people go to court and where most offences are resolved.

### **1. Who is the defendant?**

This is the person who has been accused of breaking the law. They have been ordered to go to court to explain what they did and to tell the court if they are guilty or not.

### **2. How will I know if I have to go to court as a defendant?**

If you have been accused of breaking the law, you will be given a Court Attendance Notice (CAN) by the police. This will have the date, time and court you must attend on it. The CAN may have some pages attached with a heading "Full Facts" or "Facts Summary". These facts are a summary of what the police believe happened and what they think you did.

### **3. What decisions do I need to make before I go to court?**

- 1) Will you get a lawyer? If Legal Aid can help you, a duty lawyer can represent you in court. If Legal Aid can't help you, you will need to ask a private lawyer to represent you and you will need to pay them.
- 2) Are you "guilty" or "not guilty"? A person is guilty if it is proved that they did break the law in the way the police say they did in the Facts Summary. A person is not guilty if they did not break the law. You should get advice from a lawyer who can tell you if you should say you are guilty or not guilty.
- 3) Is the police Facts Summary accurate and fair to you? The Facts Summary might have mistakes or be unfair to you. You should talk about this with your lawyer and they will advise you on what to do.
- 4) If you admit you are guilty, are you ready for sentencing? Sentencing is the process where the magistrate decides the punishment. If you explain to the magistrate why you did what you did and give character references, the magistrate will think about this before they sentence you. You could be given a lighter sentence because of these things. You should talk to your lawyer about doing this before you go to court.

#### **4. How do I prepare for the first day in court?**

- 1) Read your CAN and the Facts Summary. Make sure you understand what the police are saying about you. If the police have not given you the Facts Summary, contact them and ask why not. Ask if they will give you the Facts Summary before the first day at court.
- 2) Get legal advice from a lawyer. If you do not know a lawyer, Law Access or Legal Aid can help you with advice or information on how to find a lawyer.
- 3) Organise an interpreter. You can ring the court to organise an interpreter for you. If you are being represented by Legal Aid, they can organise the interpreter.
- 4) Make sure you have your Court Attendance Notice (CAN) and any other papers you have been asked to bring.
- 5) Make sure you know where the court is and how to get there. It is important that you are not late as it can affect the magistrate's opinion of you. If you are going by public transport, look at bus/train timetables and plan your trip.
- 6) Be prepared to wait a long time at the court. There are often delays and many cases on in one day.
- 7) Dress well. It is important to look good in smart clothes.
- 8) Be prepared to come back to court on another day. Sometimes your case may not be decided in one day. The magistrate may adjourn or postpone your court case. Make sure you know if your case has been moved to another day. The magistrate will announce the new date. If you are not sure about the date, or why your case has been adjourned, make sure you ask for a clear explanation.

#### **5. What happens when I arrive at court?**

- 1) Be prepared to go through a security check. Any sharp objects like nail scissors or pocket knives will be held for you to collect at security when you leave the court.
- 2) Find out what court room you are in. Check the court list which will be in the foyer or near the entrance to the court. If you can't find where you need to go, ask the court staff and they can help you.
- 3) Meet your interpreter.
- 4) If you want legal advice, you can go and speak with the duty lawyer at the court before you go into court. The duty lawyer is available everyday from 9am.
- 5) If a lawyer from Legal Aid is representing you in court, go to the Legal Aid office and let them know you are there.
- 6) Go and wait outside the court room until you are called to go in.

## 6. What happens when I go into the court room?

- 1) If the magistrate is there when you walk into the court room, you must bow your head to the magistrate. You will see other people and the interpreter do this too.
- 2) The court officer will ask who you are and show you where to sit.
- 3) If you have a lawyer the magistrate will ask your lawyer questions about your case.
- 4) If you don't have a lawyer the magistrate will talk directly with you. Some of the first questions they will ask you are:
  - Are you .....? (your name)
  - Do you have a lawyer representing you?
  - Do you want to have your case decided today?
- 5) The magistrate will then decide if you are ready for your case to be decided or if it needs to be postponed so you can get legal advice or more information.
- 6) If the magistrate decides to go ahead, they will ask you "how you plead". This means whether you will say you are guilty or not guilty.
- 7) If you plead **guilty**, the magistrate will ask the police prosecutor to explain what happened and give their version of the events you were involved in. The papers from the police that explain what happened will be given to the magistrate to read and think about.
- 8) The magistrate will ask you if you have anything you want them to think about when they decide your punishment. This is called "submissions in mitigation". This is your chance to explain things to the magistrate. This can lead to a lighter punishment. You can do this by writing a letter to the magistrate, or by talking to the magistrate. In your submission you can talk about:
  - Mitigating circumstances. This means explaining why you did what you did.
  - Your good record and character. You will need to give written character references.
  - Any special circumstances.If you are worried about being nervous in court, you can write out your "submissions in mitigation" before you go to court. At court you can hand up the letter to the magistrate and also give a copy to the prosecutor.
- 9) After the magistrate has listened to all the evidence, they will decide on your punishment.
- 10) The magistrate will ask you to stand and then tell you what the punishment is. After that you are free to leave the court room, unless you have been sentenced to go to jail.
- 11) When you leave the court room, remember to bow your head to the magistrate as you go out.

- 12) If you plead **not guilty**, the magistrate will order the police to give all the evidence to you or your lawyer. You will be given a date to come back to court to confirm you are pleading “not guilty”. After that court appearance, you will be given a date to come back to court for the hearing.

## **7. What do I do when I leave the court room?**

- 1) Make sure you understand what the magistrate said to you. Ask your lawyer or you can go to the court office and ask them to explain to you.
- 2) Go to the court office and check if you need to sign any papers.
- 3) If you have to pay a fine or enter into a bond, make sure you understand what you have to do and how much you have to pay.
- 4) Collect your things from security if they kept anything that belongs to you.

## **8. What is a hearing?**

If you pleaded “not guilty” the first time you went to court, you will need to come back to court for the hearing. This is when all evidence will be shown to the court and the police try to prove that you are guilty.

## **9. What happens at a hearing?**

- 1) First the prosecutor will present their evidence to the court.
- 2) They will call their witnesses and ask them questions to explain what they think happened.
- 3) After they question each witness, you or your lawyer can ask them questions about their evidence and what they have said.
- 4) After the police have presented their case to the court, it is your turn to present your case.
- 5) You or your lawyer will give evidence and call your witnesses to explain what happened. Make sure your witnesses are in court on the day and at the right time.
- 6) After each of your witnesses has answered all your questions, they may be asked questions by the police. They will do this to test what they have said.
- 7) After the magistrate has listened to your case and the police case, they will make a decision.
- 8) There are two decisions they can make:
  - You are **not guilty** which means your case is finished and are free to go.
  - You are **guilty** and a punishment will be decided for you.

### **10. What is an oath or affirmation?**

- This is a promise to tell the truth.
- If you are called to the witness box to answer questions about your evidence, you will be asked to make an oath or affirmation first.
- You need to decide if you will do an oath or an affirmation.
- If you do an oath it means you promise to tell the truth by referring to God.
- If you do an affirmation it means you promise to tell the truth but you do not refer to God.

### **11. How do I make an oath or affirmation?**

- The court officer will show you how to do this.
- You will be asked to stand and face the magistrate.
- If you do an oath, you will be asked “Do you swear that the evidence you will give will be the truth, the whole truth and nothing but the truth?” You must answer “I do”. You will also be asked to put your hand on the bible.
- If you do an affirmation, you will be asked “Do you solemnly and sincerely declare that the evidence you will give will be the truth, the whole truth and nothing but the truth?” You must answer “I do”.
- You can sign “I do”.

### **12. What is a Court Attendance Notice (CAN)?**

This is a paper given by the police. It tells you that you must attend court on a certain day and time. It will also tell you why you have to go to court and what law you have broken.

### **13. Should I say I am guilty or not guilty?**

No one can advise you what to say. The only person who can is your lawyer.

### **14. Where do I sit when I go into court?**

The court officer will show you where to sit. You will sit next to your lawyer.

### **15. Do I need to say anything in court?**

If you are representing yourself, you will need to talk to the court. If you have a lawyer, they will do all the talking. You only talk if the magistrate asks you a question. Remember when you talk to the magistrate to call them “Your Honour”. If you say “yes” to a question, you should say “Yes Your Honour”. Remember if you say anything in court, you must stand up.

**16. What is a fine?**

This is a punishment or penalty for what you have done wrong. You pay a fine with money. You must pay at the court office.

**17. What if I cannot afford to pay the fine?**

You need to tell the court office. You can ask to pay the fine in small amounts every month. You can also ask for more time to pay the fine.

**18. What is a bond?**

A bond is a promise you make to the court to follow certain rules for a certain amount of time. If you break the rules you will have to go to court again. You may also have to meet with a probation or parole officer.