

Defending yourself in Criminal Court

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.

What should I do first?

This information will assist you if you have been charged with a criminal offence and you are due to appear in court.

The first thing to do is to work out how serious your situation is. This means you should get **legal advice** about the seriousness of your charge and the likely penalty you will receive if you are convicted of it. Being **convicted** means being found guilty or pleading guilty to the charge.

Where possible, you should get legal advice **before** appearing in court.

If you can afford it, you can pay for a lawyer yourself, or you can go to Legal Aid or a community legal centre. For more information about where to get help, refer to the end of this information sheet.

What do I plead – guilty or not guilty?

If you are charged with a criminal offence, you can choose to plead guilty or not guilty. If you plead not guilty it generally means that you deny committing the offence.

It is important to get legal advice before you enter any plea, including a plea of not guilty, so that you understand:

- the seriousness of the charge
- the court in which the charge must be dealt with
- whether you need more information before you enter a plea
- whether you have a defence
- the things the prosecution need to prove
- the possible penalties that might be imposed if you plead guilty, or are found guilty after a trial.

Some charges begin in the Magistrates Court but cannot ultimately be dealt with in that court. They must be sent to the District Court or Supreme Court to be dealt with. **These are usually more serious charges that will result in more serious consequences.**

Before you enter any plea to a charge that must be dealt with in the District or Supreme Court, you should arrange legal representation. **You should not enter any plea until you have discussed your case with the lawyer who will be representing you in the District or Supreme Court.**

This information sheet only deals with charges that are dealt with in the Magistrates Court of WA and assist you to understand the process if you elect to please not guilty.

When do I 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.

After you have taken legal advice, you can attend at the next court hearing and tell the magistrate that you are ready to enter your plea. When you plea not guilty, the matter will be scheduled for a trial. In the Magistrates Court there is usually a wait of about 2-3 months from when you plead 'not guilty' until your trial date. The length of time is different in different places.

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. 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.

Pre trial hearings/directions/trial allocation date/callover

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 pre trial hearing, a directions hearing, callover or a 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.

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.

Prior to the pre-trial hearing, 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.

After you receive the information from the police, you should look through it to see what you agree with and what you don't agree with. For example, if the police give you witness

statements then you should read through them and try to work out, for each witness:

- whether you disagree with anything in their statement
- 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.

Getting the information from the police

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.

The information the prosecution may have to give you will include witness statements, exhibits and any record of interview. The evidence presented by the prosecution will mainly consist of witnesses who will tell the court what they remember (called witness statements). Before the trial date arrives, the police will take written statements from these witnesses covering the evidence they will give in court.

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.

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 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.

What do you have to tell the police?

Depending on the charge you are facing, once the police 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.

Make sure you are prepared

Write down your version of what happened

- Read through the statement of material facts and any witness statements carefully and think about which parts you agree with and which you don't. There might also some

pieces of information that have been left out that you think are important.

- Write down your version of what happened in date and time order. You should do this in your own words and from your own perspective. You can use this to explain or clarify any problems that you see in the police statement of material facts and witness statements.
- 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 can use your notes and your list while you are questioning witnesses or making submissions to the magistrate about your case. However you can't use a list or notes when you are giving your own evidence – this evidence must be giving from your own memory.

For the police witnesses

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

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 witnesses and any other evidence

- You and your witnesses must attend court on your trial date and be ready to give evidence.
- If a witness will not come to court of their own free will, you can make them attend by serving them with a witness summons to attend court on the trial date. You need to serve the summons on the witness well before the trial. You should contact the court registry to find out how to issue and serve a witness summons.
- You need to bring all documents and other evidence you wish to rely on, to the trial.
- If you want the court to consider a document at your trial, you must arrange for the person who created the document to be there to give evidence about it.

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 this is not possible, take someone with you who can mind the children outside the courtroom while your matter is being dealt with. Some courts can help organise and pay for childcare. Ask at the court registry well before your trial date.

I need more help

If you would like some legal advice specific to your application please make an appointment at the Fremantle Community Legal Centre on 08 9432 9790.

We are located at:

Shop 11, Queensgate Building, 10 William Street, Fremantle
08 9432 9790 (9.00 am- 4.00 pm weekdays)

You might also find the following services useful:

Legal Aid WA

Telephone infoline: 1300 650 579

(General Enquiries) InfoLine open Monday to Friday 8.30 am to 4.30 pm (Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450

National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

Fremantle Magistrates Court

8 Holdsworth Street, Fremantle

Open 8.30 am–4.30 pm weekdays

08 9431 0300

www.magistratescourt.wa.gov.au

Alternative formats available on request