

# Pleading Guilty in the Magistrates Court

## OVERVIEW

When you are charged with an offence you have several options.

- 1 You can accept the allegations and the facts and enter a *plea of guilty*.
- 2 You can challenge the facts by entering a *plea of not guilty* and proceed to a *summary trial*.
- 3 You can attempt to negotiate your matter with prosecutions and then enter a plea of either guilty or not guilty.

If you decide to enter a plea of guilty, there are things the court can consider in your favour.

You do not have to plead guilty to any offence. You have the right to proceed to trial. It is for the prosecution to prove that you are guilty of the offence beyond a reasonable doubt.

It is important to understand that by pleading guilty you are accepting the prosecution facts and that you are guilty of the offence. It is therefore important that you accept the facts. If there are facts that you do not accept, attempt to negotiate and settle this with prosecutions prior to confirming your plea of guilty.

If you do decide to plead guilty, you are entitled to receive a benefit for an early plea. This benefit is a reduction in the sentence that the court would have imposed had you not pled guilty.

## DUTY LAWYER SERVICE

Most Magistrates courts have a duty lawyer who can help you out with a plea of guilty.

A duty lawyer is a lawyer selected by Legal Aid Queensland to provide advice to defendants, help adjourn matters and help those entering a plea of guilty. If you want to speak to the duty lawyer, tell the court and prosecutor who will direct you to the nearest duty lawyer. You will generally be able to

find a room at court with a sign saying something like *Duty Lawyer Office*; court volunteers and security staff can also usually point you in the right direction.

It is important to note that, generally speaking, duty lawyers cannot help with traffic matters. They may help you, however, if the charge relates to a very serious driving offence such as dangerous driving or where jail is a likely outcome of a successful prosecution.

Be aware that there may be a queue to see the duty lawyer, and they will only be able to see you for a relatively short time. Therefore, make sure that you have a copy of any relevant papers the lawyer might need to read.

## I HAVE DECIDED TO PLEAD GUILTY. WHAT NOW?

The magistrate will read the charge to you and ask you how you want to plead. You will have to answer either guilty or not guilty. It is important that you are sure of how you want to plead because once you confirm your plea, it becomes almost impossible to change your mind.

### Pleading guilty

In most plea-of-guilty matters, the prosecutor will summarise the facts for the court. They will do this verbally or, in some cases, will hand up a schedule of facts to the magistrate. You have to accept these facts when you plead guilty. It is therefore important that you have already negotiated and settled with the prosecution any facts you previously did not accept. You will not be able to argue about the facts after the hearing, and the courts will assume that you have accepted the facts. This may have ramifications for future events. If you argue or disagree with the facts, the magistrate may not continue to hear your plea.

The prosecutor will also hand up any criminal history or traffic history you may have to the magistrate for consideration. If you are

representing yourself, the prosecutor should give you an opportunity to review this history before it gets handed to the magistrate.

If you are representing yourself, the magistrate will ask if there is anything that you want to say about the matter. If you are represented by a lawyer or a duty lawyer, they will talk to the court on your behalf.

It is useful for you to briefly explain why you acted in the way you did and to acknowledge that you are sorry for the behaviour. It is not helpful to make excuses or blame someone else for your actions.

### Describing your personal circumstances

You need to tell the court about your personal circumstances. Generally speaking this involves telling the court about the following:

- age, relationship status and whether you have children
- family situation
- schooling and work history:
  - Do you have a job?
  - Do you have any tickets, certificates or other higher education qualifications?
  - If you are unemployed, are you in receipt of a Centrelink benefit?
  - How long have you been receiving a Centrelink benefit?
  - Do you support a family?
  - Do you have financial commitments, including regular loan payments?
- health situation:
  - Do you suffer from a physical illness? If so, describe how this affects you. Do you need to take medication?
  - Do you suffer from a mental health illness? If so, describe how this affects you. Do you need to take medication? Do you have a formal diagnosis? Do you currently see a treating psychologist or psychiatrist?
- drug and alcohol situation:
  - Do you suffer from substance abuse issues?
  - Do the offences stem from drug and alcohol abuse?
  - Have you engaged with any rehabilitation services?

You need to tell the magistrate about anything that is important.

## CONVICTION

If you have no criminal history or only a limited criminal history prior to the offending, you may ask the court to consider not recording a conviction against you. Courts will generally record a conviction if you have had a conviction previously recorded. Each matter will vary because of the different circumstances.

A magistrate may decide not to record a conviction if they believe there would be a negative impact on someone's employment or ability to get a job or to travel. You should tell the magistrate why having a conviction recorded would have a negative impact upon you. For example, if you are in your final year of education studies and a conviction for a relatively minor matter might affect your employment opportunities once you graduate, or a conviction will interfere with your ability to take up a scholarship for planned education in another country, you should tell this to the court. Produce any evidence that supports your claim about this.

## DO I NEED CHARACTER REFERENCES OR OTHER MATERIAL?

Character references and supporting material are very important for sentencing purposes. They allow the magistrate to place greater weight on relevant factors highlighted in your references and other materials.

For more information about what the court can consider as a relevant factor when deciding upon an appropriate sentence, please refer to sections 9 to 15 of Queensland's *Penalties and Sentences Act 1992* (Qld) available [here](#).

Character references are useful tools that give courts a snapshot of your character. It is important that referees know of your charges and that you are pleading guilty. Please read our *How to Write a Character Reference* factsheet available on Caxton's Queensland Law Handbook website. One or two references can be helpful.

If you have a diagnosed medical condition, it is important to get confirmation of this from your treating doctor or psychologist. This may include a short medical report or letter from your health care professional that confirms

your diagnosis. If you have been hospitalised because of this condition, especially around the time that the offence occurred, hospital records may also be useful.

If you have been attending counselling, anger management or rehabilitation services for drug and alcohol abuse issues, it is also very useful if you are able to get a letter outlining the program undertaken and confirming your attendance at it. A social worker or counsellor, who has been providing you with support, may also be willing to write you a pre-sentence report. This report can be handed to the court to explain the context of your life circumstances before, at and after the relevant offence.

## REFERRAL POINTS

For more information about criminal law procedures and criminal court processes refer to Legal Aid Queensland's free online resources available here.

Caxton Legal Centre Inc.  
© Copyright Caxton Legal Centre Inc.  
1 Manning Street  
South Brisbane Qld 4101

Telephone: (07) 3214 6333  
Facsimile: (07) 3846 7483  
Internet: [www.caxton.org.au](http://www.caxton.org.au)

Know Your Rights! [www.queenslandlawhandbook.org.au](http://www.queenslandlawhandbook.org.au)

This information is current at December 2018.

### Disclaimer

This information is intended only as a guide. It is not a substitute for legal advice.

No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication.