Going to Trial in the Magistrates Court

OVERVIEW

Pleas

If you do not accept that you are guilty of an offence or you do not accept that all the particular facts of the police case as alleged against you are correct, you may decide to go to trial. This means that you will be entering a 'plea of not guilty' and making the prosecutor (either a police officer or an employed lawyer working with Police Prosecutions) prove the case against you. If you accept that you are guilty, you can use an online form to enter your guilty plea. You can find the relevant form at www.courts.qld.gov.au/_data/assets/pdf_file/0003/359832/ja-f-plea-of-guilty.pdf.

Presumption of innocence at the court

In Queensland, everyone is presumed to be innocent until proven guilty. It is your right to go to trial and to make the prosecution prove their case beyond a reasonable doubt. If your matter is in the Magistrates Court, your trial (or summary hearing) will be heard in front of a magistrate, who you should address as 'Your Honour'. The magistrate will hear the evidence and then make a decision about your innocence or guilt. Matters heard in the Magistrates Court of Queensland do not involve a jury.

Brief of evidence and preparation

When Police Prosecutions prepares the case against you, they will collate the evidence they gather into a 'brief of evidence'. This may include paper documents such as written statements, videos and other electronic files, audio recordings and photographs.

When your matter is listed for a summary trial, the magistrate will set a date called the 'brief disclosure date', which is the day by which the prosecution must give you a copy of the evidence they are relying upon. Even though it is the prosecution's responsibility to provide you with a copy of the evidence, you must follow this up with them if you have not heard anything by the due date. It is a good idea to call and send an email asking about the brief. The email address for the Police Prosecutions section in Brisbane is prosecutions.brisbane@police.qld.gov.au. You need to read the copy of the brief carefully and try to identify errors and weaknesses in the prosecution's case. This will help you prepare your own defence case. Make sure that you bring the brief to court with you as you are likely to refer to statements in it as you present your case in response.

Witnesses

It is also important for you to organise your witnesses if you have any. There may be people who can give evidence in your matter about something they have seen or heard on your behalf. In criminal matters, witnesses must come to court and give verbal evidence. The court will not accept written statements or affidavits. Affidavits are simply written statements affirmed or sworn under oath. It is important that you organise your witnesses in advance and let them know if you need them to attend court. If you want to legally make them come to court, you can issue a 'summons' to them to appear on the date of the hearing. A summons is a court form (Form 10) available at www.courts.qld.gov.au/about/forms under Justices Act 1889). You would need to complete the form and take it to the relevant Magistrates Court registry to have it signed and issued by the court before you would have it served on the relevant witness.

Etiquette

Dress neatly for court and ensure that your mobile phone is switched off in court.

Legal help

Ideally, you should obtain legal advice in more detail about how to conduct your case before your actual hearing. Community legal centres are

often able to help with such information. You should also try to find out if you are eligible for a grant of legal aid. Information about grants of legal aid is available at www.legalaid.qld.gov.au/Get-legal-help/Get-a-lawyer-to-represent-you. You can also find out contact details for private lawyers from the Queensland Law Society.

AT THE HEARING

What is set out below is a very brief summary explaining the order in which things will happen at your actual hearing.

Prosecution case

As the prosecution bears the responsibility (usually referred to as the 'onus') of proving your guilt, they proceed first.

Opening

The prosecution is given the opportunity to give an opening statement. This is when they describe the evidence that they intend to call and describe what the witnesses will say.

Evidence in chief

The prosecution then will call their witnesses one by one.

The prosecution will ask a series of questions designed to get the witness to explain to the court about what they saw or heard. They may introduce physical evidence, such as photographs or CCTV footage, they were involved in collecting. The prosecution will continue to ask questions of their witnesses until they have spoken about all that the witness can remember.

Cross examination

After the prosecution has finished asking their witness questions, you get the opportunity to ask questions. You can put to witnesses that they may be mistaken about the events or suggest a different version of events to them. You can ask questions that the prosecution may not have asked. This style of questioning can be aggressive and directed at getting a particular answer. You must be careful not to abuse or threaten a witness.

It is very important that you put your version of events to each witness in cross-examination. Each witness needs to have the opportunity to agree or disagree with your version of events. If you do not put your version of events to the witness, you will not be able to rely on this later on. Even if you know the witness will disagree with you, you must give them the opportunity to disagree. This line of questioning relates to a rule that was outlined in an English case of *Browne and Dunn* (1893) 6 R 67.

For example, if a witness says the sky is blue but you think the sky is green, you have to say to the witness, 'Isn't it true that the sky was green?'.

Re-examination

After you questioned all the witnesses, the prosecution gets the chance to ask any follow-up questions. They may choose not to ask any follow-up questions.

This process is then repeated for every witness. The prosecution will then formally close their case.

Defence

You will then present your defence case. This is explained below.

Closing cases

Both parties will then close their cases.

Judgment

The magistrate may make a decision immediately following your hearing, but it is likely that they will adjourn the matter to another date so that they have time to consider their decision. The matter will then be listed for return on another day when the magistrate's judgment (their decision) will be given as to a finding of guilt or innocence.

If you are found guilty, you will be given an opportunity to make submissions about sentencing. Just in case a decision is given on the day of your hearing, you should have any material that you intend to hand to the court that is relevant to sentencing ready to give to the magistrate. This might include character references (please read Caxton's factsheet on *How to Write a Character Reference*).

DEFENCE CASE

It is important to know that, as a defendant in a criminal trial, you do not bear the responsibility of proving your innocence. The prosecution has to prove that you are guilty of an offence beyond a reasonable doubt by

satisfying the elements of each offence. As a result of this, you do not have to give evidence and you can maintain your right to silence.

It is important to know though that if you do not want to give evidence at your trial, you can only talk about the evidence that is put before the court by others. You cannot talk about 'your version of events' or raise defences that are not raised by others. If you do want the court to consider things from your point of view you may have to give evidence. This is a decision that requires careful consideration.

If you do decide to give evidence, you can decide to give or call evidence. Giving evidence means that you provide your version of events to the court. Alternatively, you can decide to call evidence from someone but not give evidence yourself. You can do both or one or none of these things.

The magistrate will ask you whether you wish to give or call evidence.

If you decide to give evidence then your case proceeds in the same way as the prosecution's case.

Opening

This is your opportunity to explain to the magistrate about what your case is about. You can briefly summarise the evidence that you will give or your witnesses will give.

Evidence in chief

You will then either call evidence from a witness or give evidence yourself. If you give evidence yourself, this is your opportunity to tell the magistrate what happened. You can only give evidence about what you were directly involved with, what you saw and what you heard.

If you have a witness giving evidence, you have the opportunity to ask open-ended questions to get your witness to explain what they saw or heard. You need to be careful that you do not give evidence about your opinions, but you can tell the magistrate about what you thought or felt if it is relevant to a fact in issue. For example, if you acted in a certain way because you felt that you were going to be hurt, your thoughts about this would be relevant.

All of your evidence needs to be relevant to the facts in issue at the trial. There may be a lot of things that you may feel are important but the magistrate may not be able to legally consider.

Try to speak clearly and avoid rambling on. Courts are very busy and it will help if you are organised in how you put your case to the court. Try to avoid wasting the court's time, but do make sure that you get anything relevant before the magistrate.

Never lose your temper giving your evidence. Do not swear when speaking in court.

Cross-examination

After you and your witnesses give your evidence in chief, the prosecution gets the chance to cross-examine you. This style of questioning can be aggressive, and the point of this questioning is to discredit your evidence and to point out inconsistencies.

The magistrate will carefully monitor the prosecution and pull them up if their questioning is inappropriate.

During cross-examination, it is important to remain calm and answer their questions.

Re-examination

Re-examination is the questioning where you can ask any follow-up questions that arise from cross-examination.

After the conclusion of the prosecution evidence and your evidence, each party will close their case. If you decide to give or call evidence, you are required to give your closing statement first.

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This information is current at December 2018.

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