

THE UNREPRESENTED DEFENDANT



*From the police investigation right through to sentence in Court.
All you need to know if you choose to represent yourself**



There can be wide ranging and dire consequences if you are charged by the police and have to go to Court. It is always advisable to have qualified and experienced representation.

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Disclaimer

** This is an informative handbook only and is by no means designed to be a substitute for legal advice from a qualified practitioner. The legal system is very complex and not all of the variables are or can be outlined in this paper. The purpose of this material is to give the reader a general overview only of the judicial system. If you have any specific questions/ queries/ concerns, you should seek your own independent legal advice. If you are charged by the police and have to go to Court, this could have wide ramifications. It is always advisable to have qualified and experienced legal representation if you have any Court matter. The information is correct and up to date as at the time of the writing of this book (March 2024).*



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The Unrepresented Defendant

The Author



Brooke Winter is the Principal and supervising Lawyer at Brooke Winter Solicitors. This practice has its head office on the Gold Coast in Queensland and services all jurisdictions in Queensland and New South Wales. The firm also has a branch office in Hobart Tasmania and services the Magistrates and Supreme Court in that state. Brooke has been working continuously and exclusively in the criminal law arena for over 27 years in various capacities. Brooke was an investigator and Prosecutor in both New South Wales and also in Queensland for many years. He then commenced practice as a Criminal Defence Lawyer in 2006 and has been defending matters in Court since that time.

Brooke has worked extensively in both metropolitan and country Queensland and New South Wales. He has experience in the Magistrates, District and Supreme Courts and has represented hundreds of people in Court.

Brooke completed his schooling on the Gold Coast and then completed a degree in Business Management (BBus) from Griffith University on the Gold Coast. He then concentrated his studies in the area of law and completed his Law Degree (LLB) with the University of New England (Armidale). Brooke then went on to complete a Graduate Diploma in Legal Practice (GDLP) with the Australian National University in Canberra. Brooke is admitted as a solicitor in the Supreme Court of Queensland, the Supreme Court of the Australian Capital Territory, and the High Court of Australia.

Brooke has extensive experience in dealing with Police investigations, and also investigations by other statutory and regulatory bodies such as the Crime and Misconduct Commission and the Australian Crime Commission. Brooke has a passion for advocacy and has particular skills in trials, pleas and also complicated bail applications. Brooke has had extensive experience in both the adult and juvenile jurisdictions.

We offer first class quality legal advice and representation at an affordable cost. We have competitive rates and offer fixed quotes so there are no financial surprises at the conclusion of your matter. Don't hesitate to contact us if you have any questions.

Wishing you all the very best in your endeavors.

A handwritten signature in black ink, appearing to read 'Brooke Winter', written over a horizontal line.

Brooke Winter
Solicitor

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1 - What Is This Book About?

This book is specifically tailored for unrepresented Defendants who are charged by the police and are going before a criminal Court. This will include criminal and traffic matters. We will also speak about Domestic Violence matters and the specialist Domestic Violence Court. The information contained in this book is designed to be informative in nature and provide a broad overview of legal issues. It is not intended to provide any specific legal advice. This book contains validated information which is current as of March 2024.

You should obtain legal advice about your specific circumstances as otherwise the consequences could be dire. This book is designed to provide an outline to the Legal System in Australia and guide the reader through the complex maze. A Court can be a very overwhelming place, and you should know what is going on before you embark on this process yourself.

You may find yourself in a situation where you cannot, for some reason, obtain legal representation. For example, you may not be eligible for Legal Aid, or a duty Lawyer is not able to assist you for various reasons. Alternatively, you may not have access to community legal representation, and you may not have the funds to afford a private Lawyer. This book will help and guide you through the criminal justice system.

Throughout this book it is hoped that the following questions will be answered: what the Court function is, what you need to do if you are appearing unrepresented, what to expect from the process, and some procedural guidance.

2 -The Court System

Courts in Australia are structured in a hierarchy. Put simply, the higher the Court in the hierarchy, the more powerful it is. The decisions of the Courts higher in the hierarchy are binding on all the lower Courts (for example, a decision from the Supreme Court is binding on a Magistrate). There are five levels of Courts that can hear criminal matters (note that the states of Tasmania, Northern Territory and the ACT do not have a District Court and the District Court is called the 'County Court' in Victoria).



All criminal matters will commence in the Magistrates / Local Court. Some minor matters are able to be dealt with by a Magistrate, while other more serious charges will have to progress to a higher Court (District or Supreme Court).

High Court of Australia

The High Court is the highest Court in the Australian judicial system. There are 7 Justices of the High Court (the Chief Justice and six Justices appointed by the Governor-General). Amongst its other functions, the High Court has discretion to hear appeals from any state Supreme Court. There is no automatic right to have an appeal heard in the High Court, the Applicant must first obtain special leave by persuading the Court that there are special reasons why the appeal should be heard. The High Court usually sits in Canberra, but it may sit in any of the other states or territories when required throughout the year.

Court of Appeal

The Court of Appeal is the highest Court in the State / Territory. This Court is made up of the President and other Supreme Court Judges who will make up the bench of the Court of Appeal. Three Judges will sit together to hear an appeal. The Court of Appeal hears matters arising from appeal from the Trial Division of the Supreme Court as well as appeals from the District Court.

An appeal to this Court can be made because the Applicant thinks that the penalty was too harsh AND / OR that they think that they were wrongly convicted and there has been an error at law. The Court of Appeal can either uphold the original sentence or conviction, or it can allow the appeal. If the appeal is allowed then the Judges can order a retrial, or otherwise, alter the sentence that was first imposed.

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Supreme Court

The Supreme Court was established in Queensland in 1861. There is currently 29 Supreme Court Justices that sit in 11 locations throughout Queensland including; Brisbane, Bundaberg, Cairns, Longreach, Mackay, Maryborough, Mt Isa, Rockhampton, Roma, Toowoomba and Townsville. The Supreme Court of Queensland will hear the most serious of charges in the State including; Murder, Manslaughter, and major drug cases. There is a trial division which hears civil disputes of more than \$750,000.00

The Supreme Court was established in Tasmania in 1823 and is the oldest Supreme Court in Australia. There are currently 7 Justices of the Tasmanian Supreme Court that sit in Hobart, Launceston and Burnie. The Supreme Court of Tasmania will hear the most serious of charges in the State including; Murder, Manslaughter, major drug cases, serious fraud cases and sex offences.

If a Defendant pleads not guilty to their charge(s) then a jury of 12 members of the public is used to hear and determine the evidence in a trial. The maximum penalty that a Supreme Court Judge can impose is life imprisonment.

A Supreme Court Judge is referred to as *"Your Honour"* and will wear traditional Court attire, including a wig and robes.

District Court

There is no District Court in Tasmania, the ACT or the Northern Territory. There is a District Court in every other State and Territory of Australia (although the Victorian equivalent is called the "County Court").

In Queensland there are currently 40 District Court Judges that sit in 32 different locations throughout the State. The District Court will hear very serious criminal offences including such charges as: armed robbery, serious assaults, child sex offences, major fraud, and some serious drug offences.



The District Court will also hear appeals from the Magistrates Court (commonly referred to as Section 222 Appeals).

A jury of 12 members of the public is used in a trial for those Defendants who plead not guilty to charges. The maximum penalty that a District Court Judge can impose on a Defendant is 20 years jail.

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Magistrates Court

This is also referred to as the “Local Court” in New South Wales. There are currently 106 Magistrates that sit in Queensland and 16 Magistrates in Tasmania. The Magistrates Court is the first or lowest level of Court in the hierarchy. Every person that is charged with any criminal offence will have their matter commence in the Magistrates Court. Ultimately, 95% of all criminal charges are dealt with to finality by a Magistrate.

The Magistrates Court will deal with indictable matters (those that have to proceed to higher Courts) by way of a committal hearing. There are some indictable matters, however, that can be dealt with summarily (that is, by a Magistrate). The Magistrates Court also deals with all traffic matters, some Commonwealth Matters, and all Domestic Violence matters.

The Magistrates Court is very busy, with a large volume of Defendants proceeding through the Courts every day. A Magistrate will also decide summary trials where a Defendant pleads not guilty. There is no jury in a Magistrates Court, it is the Magistrate who has the ultimate decision of guilt or innocence. If the Magistrate finds the Defendant guilty, then they will sentence them.

Diagram of the Court Hierarchy

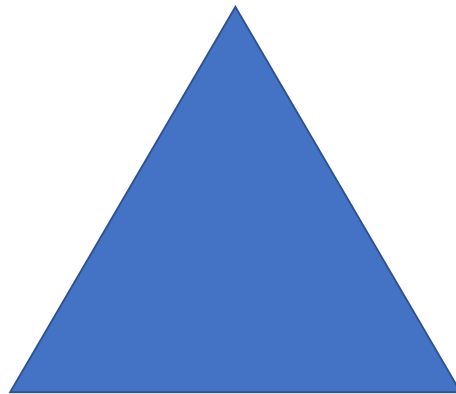
High Court

Court of Appeal

Supreme Court

District Court

Magistrates / Local Court



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3 -The Police Investigation

There are currently more than 12,000 serving police officers in the Queensland Police Service and 1,200 in the Tasmanian Police. On the majority of occasions, it will be a police officer that investigates (and charges) people for matters that will go before the Court. There are other types of investigative bodies that perform a similar role. These include the Australian Federal Police, Department of Fair Trading, Australian Taxation Office, Racing, Liquor Licencing, and also interstate police officers.



It is the role of the police officer / investigator to gather as much evidence as possible to either confirm or deny the complaint that they are investigating. The investigator may be in a uniform, or they may be in plain clothes. You should ask to see the identification of the investigator before anything happens. You should write down the name, rank and station of the investigator. They must provide you with this information – that is the law.

From the outset, you must understand that you do not have to speak with the police and that you do have the right to remain silent. The only exceptions to this are that you must tell them:

- Your full name,
- Date of birth, and
- Contact details.

There are some other exceptions to this general rule:

- Providing a version of events in relation to a motor vehicle accident, and
- If you are summoned by the Crime and Corruption Commission.

If you are not sure about what you should do if you are approached by the police, then you have the right to telephone a Lawyer. You should ring a Lawyer for advice if you are not sure.

You do not have to make a statement, any comment, or participate in any record of interview unless you wish to do so. If you comment, or participate in any interview, know that it will be recorded, and this can possibly be used against you later in Court.

You should obtain legal advice prior to making any statement or comment in any interview.

Police may come to your premises with a search warrant. If that happens, then you should ask to see the warrant before you let them into the premises. You will be given a

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copy of that warrant as well as a statement to the occupier. If the officer has a valid warrant then you must let them come in and search the premises. If they do not have a search warrant, then they are not allowed to come inside unless you give them permission. During any search, you should not do or say anything unless you get legal advice. Anything that you say or do will be recorded by the police and possibly used against you later in Court. You have the right to have a Lawyer present with you whilst the search warrant has been conducted. You should be aware that the execution of the search warrant will be recorded electronically by the police.

Most police these days carry concealed voice-recording devices or wear body-cameras. You should be aware of this and not say anything to the police during your contact with.

The police have a number of ways of gathering evidence including:

- Search warrants,
- Statements from witnesses,
- CCTV footage,
- Listening devices in houses and cars,
- Telephone intercepts,
- Undercover police operatives,
- Police surveillance, and
- Records of interview.

Police are also increasingly using social media forums such as Facebook and Instagram, as well as monitoring emails, text messages and phone calls. You should be careful about what you say in any of these forums as anything you say can be used against you.

In major operations the police may successfully apply to have the matter investigated further by either the Crime and Corruption Commission (CMC) or the Australian Crime Commission (ACC). They are not Courts; they are an investigative tool used by the police and are called coercive hearings. The proceedings look like they are conducted in a Courtroom.

If you receive a summons by the police to attend one of these hearings, you must attend. If you fail to attend then a warrant could be issued for your arrest. In a coercive hearing you must answer all questions asked of you. Your right to silence is removed during that process. If you fail to answer questions or tell an untruth to the Commission, then you could be charged with an offence similar to contempt of Court or perjury.

You have a right to have a Lawyer present with you during this process, and it is a wise idea to have an experienced Lawyer on your side for this purpose.

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4 – The Interview Process and Arrest

4.1 - Your Rights

Once the police have completed their investigation, they will then approach a person that they suspect has committed an offence. They will then offer their suspect an opportunity to participate in an electronically recorded interview. You should **NOT** participate in any record of interview with an investigator, nor should you make any comment or statement to them without prior legal advice.

You have a number of rights:

- You will be cautioned by the police. They will say to you; ***“You have the right to remain silent. This means that you do not have to say anything or make any statement in this unless you wish to do so. Anything that you do or say will be recorded and may later be used against you in evidence. Do you understand that?”***
- You have the right to telephone or speak with a Lawyer of your choice and to have them present with you during questioning,
- You have the right to speak with a friend or relative to inform them where you are,
- You have the right to an interpreter,
- If you are Aboriginal or Torres Strait Islander, then you have the right to have a support person present with you.



Remember that any comment you make, statement you provide, or interview recording you participate in will most likely be played back at your trial.

Why Shouldn't I Participate in an Interview?

There are a number of reasons why you should not participate in an interview with the police:

1. You have the right not to,
2. You will be in an unfamiliar environment at the police station,
3. You do not know what evidence the police have against you,
4. You will be nervous,
5. You may accidentally say something that is incorrect,
6. You will feel intimidated by the police, or
7. If you say something that is out of context or make a mistake, it will be too late as the conversation will be recorded. It is very difficult to correct the record at trial as the Prosecutor will call you a liar.

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The next thing that will happen is that the officer will start their proceedings in getting you to Court. The officer can get you to Court in one of three ways:

1. Arrest and charge
2. Notice to appear
3. Summons

4.2 Arrest and Charge

If you are arrested, then you will be taken to the nearest Watchhouse or police station and will be formally charged. You will be given a copy of the charge sheet. You will be required to have your fingerprints, photograph and identifying particulars (DNA) taken. The Watchhouse keeper will then determine whether or not they are going to grant you bail. If you are bailed then you will have to sign of Bail Undertaking (with or without conditions) and you will then be released from police custody. You must strictly comply with your bail undertaking. You must appear in Court in accordance with your bail. If you fail to appear in Court, a Bail Act warrant would be issued for your arrest.



Alternatively, you could be refused bail by the Watchhouse keeper. That means that you will be kept in police custody and taken before a Magistrate Court the next time it sits. Courts typically sit every weekday and every Saturday morning. You will have the benefit of a duty Lawyer, if you wish, who can represent you in Court. Alternatively, you can contact your own private Lawyer who can represent you.

4.3 Notice to Appear

Another way to get you before a Court is for the police to issue you with a Notice to Appear. This is a smaller piece of paper (about the size of a cigarette packet) and white in colour. See below an example of a Notice to Appear.

This document outlines a summary of the allegations against you and places an obligation on you to attend Court on the dates specified. If you fail to appear in Court on that date, then a Police Powers and Responsibilities warrant may be issued for your arrest.

You will probably also be issued an Identifying Particulars Notice. This is a requirement for you to attend the nominated police station on a particular date and at a particular time, as outlined on the notice. This is to have your fingerprints / photograph and DNA taken. You must comply with this notice. Failure to comply will result in the charge of Contravening Direction, for which additional penalties would be imposed by a Court. The Identifying Particulars Notice looks similar to the above Notice to Appear.

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4.4 Summons

Lastly, you could be issued with a summons to go to Court. This is used rarely by the police these days and will be mainly for traffic infringement matters. It is more likely to be used by other investigative bodies, such as the Office of Fair Trading. A summons has the same effect on you however, that is, that you will have to go to Court on the date nominated. The summons usually has more detail on it and could include an outline of the allegations.

5.0 Bail



The police have the power to refuse your bail. If that occurs, you will remain in police custody at the Watchhouse and will be taken before the next available Magistrate.

The police can also grant bail. If you are granted bail from the Watchhouse, then you must comply strictly with these conditions. In some cases, you can ask a Magistrate to later review your bail to remove some of the conditions imposed by the Watchhouse.

A Magistrate (or a Judge) can also grant you bail. The Magistrate will essentially need to consider whether or not you are a risk to be placed on bail. If the Court considers you to be unacceptable risk, then they will refuse you bail and remand you in custody.

The Court will take into consideration the following essential factors when assessing your bail prospects:

- Whether you are a risk failing to appear,
- Whether you are a risk of committing further offences whilst on bail,
- Whether you are a risk of endangering the safety or welfare of others,
- Whether you are a risk of interfering witnesses, and
- Whether you should remain in custody for greater protection.

The Court will also take into consideration:

- The nature and seriousness of the offence,
- Your character, antecedents, associations, home environment, employment and background,
- Any history of any previous grants of bail to you,
- The strength of the evidence against you, and
- If you are of Aboriginal or Torres Strait Islander descent.

If the charge before the Court relates to any of the following factors, then you will have to “show cause” as to why should be released from custody. This is called being placed in “show cause position”. The onus then turns to you to prove to the Court that you are an acceptable person to be placed on bail.

Charges that put you in a “show cause position”:

- an indictable offence committed whilst on bail,
- a life imprisonment offence or an offence which holds an indefinite detention,
- a firearm / offensive weapon / explosive substance was used or threatened to be

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- used, or
- an offence under the Bail Act.

If you are not granted bail, then you will be remanded in custody. If this happens you would remain at the Watchhouse for a few days until a bed becomes available at the jail. You cannot make another application for bail in the Magistrates Court unless there are a change of circumstances. The only option you have at that stage is to either accept the fact that bail has not been granted, or alternatively make an application to the Supreme Court for bail (see section below).

If you are granted bail, then there are a number of conditions which could be imposed upon you (these are by no means exhaustive and adjust listed as a guide only):

- Your own undertaking to be of good behaviour and not commit any offences whilst on bail,
- reporting to the police station,
- residing at a certain address,
- a curfew - not to be absent from your residence between certain hours,
- surrender any passports,
- not to approach international ports of departure,
- your own surety to the positive sum of money to the Court Registry,
- acceptable person to deposit a sum of money at the Court Registry (note - an acceptable person must be someone of good character and not have any previous criminal history),
- not to contact certain people (i.e., complainants or prosecution witnesses),
- not to contact any co-accused,
- not to leave state or a certain geographical area, or
- not to go to a specific location (i.e., the town of the offence).

5.1 Supreme Court Bail

If the bail was refused by a Magistrate or Judge, then the prisoner can make an application to the Supreme Court for bail. An application form must be completed, and Affidavit material must be obtained. This material, along with any supporting material, must be served on the office of Director of Public Prosecutions (DPP) at least three clear days before the hearing date. Supporting material should also be provided to the Court.

An outline of argument is prepared and tended to the Judge's Associate and the DPP prior to the hearing day of the matter. The Court will typically allocate 20 to 30 minutes for the hearing of any application for bail. It is heard in the civil list. If the applicant is represented by a Lawyer then they will not appear in Court, while if the applicant is unrepresented, then they will appear in Court in-person.

The Supreme Court Judge will then consider the bail application in the same way that the Magistrates Court would have initially done. They will then decide as to whether or not the applicant is an acceptable risk to be granted bail. If they are granted bail, then the Court order needs to be forwarded to the jail for processing. Depending on the time of the day, the prisoner may not actually be released from custody until the next day, although it is usually done the same day.

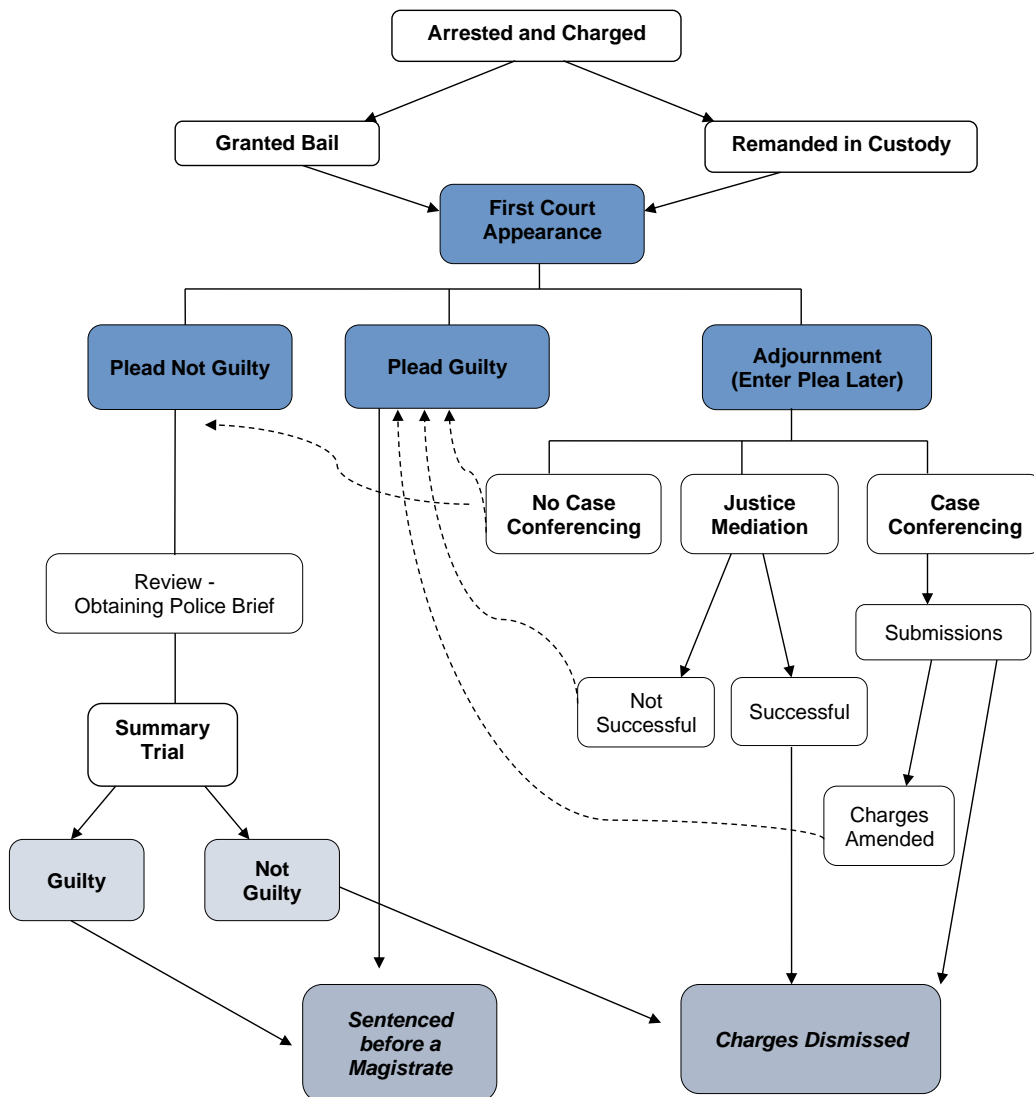
If bail was refused, then the prisoner will be remanded in custody at the jail. There can be no other applications for bail unless there is a change of circumstances.

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6.0 The Court Process

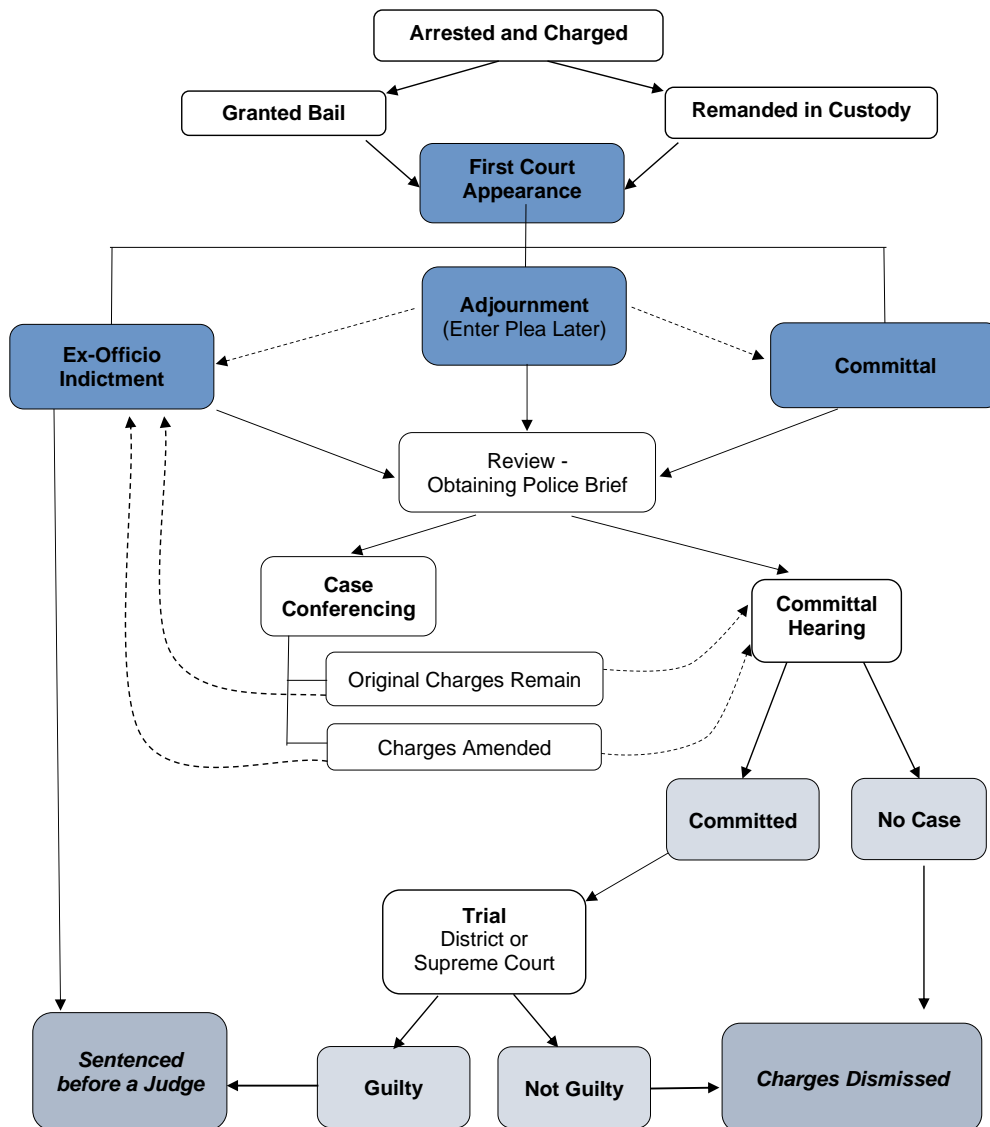
Below are some basic flowcharts covering the general processes involved in Court proceedings. These flowcharts are a basic guide only. There are many variables which can impact on this process.

Magistrates Court Flowchart



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District and Supreme Court Flowchart



7.0 – Your First Court Appearance



Commented [A1]: Super blurry – we may have to find another image to replace it or find a clearer version

The above illustration is an example of the typical layout of a Courtroom. Every Courtroom is different to some extent, but they have the same basic features. If you have never been to Court before, it is not a bad idea to go to the Courthouse a few days before your Court date and sit in the back while it is in session. This will be a good opportunity for you to familiarise yourself with the layout of the Court, who is who in the room, what people are doing and saying, how loud you will have to speak and so on.

If you have never been to Court before then you will probably be very nervous. Just remember that the person sitting next to you is probably experiencing the same stress levels. This will probably be a very traumatic experience for you as you will have to do some public speaking. In the list of top 10 fears that people have, the fear of public speaking is ranked second. The fear of dying is ranked number six. If this statistic were to be taken at face value, people would rather die than speak in public. I will now give you some tips to make this experience a little easier.

7.1 Courtroom Tips

a) Arrive on Time: -

Your Notice to Appear for a Bail Undertaking will have the time clearly printed on it. You must be at the Courthouse at that time. Aim to get there 15 minutes early. There is nothing worse than if you are running late and stuck in traffic or miss the bus. It will just increase your feelings of panic.

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b) Wear Something Appropriate: -

You should wear something that is appropriate for the Court. Look at it as if you are going for a job interview. If you want to get that job, then you will dress to impress. It is not a fashion parade, but the Court will look at you to see what type of person you are. If you are wearing a collared shirt and tie then that is going to be much more impressive than a singlet top, board shorts and thongs. If you have a suit, then wear it. Use common sense and respectful of the Courts expectations. The Court system has been around for thousands of years. Dressing in a modest and conservative manner is not only upholding traditional standards of dress, it is also viewed favourably by Judges, Magistrates, and legal professionals alike.

The correct look:

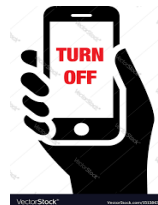


OR



c) Turn off your mobile phone: -

Do not just put them on silent as they will still interfere with the Court recording equipment. There is nothing worse than a phone going off in Court. Expect to be yelled at if it does and expect to possibly have it confiscated. If it does go off, for goodness sakes **do not answer it.**



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d) Do not bring food or drink into the Court: -

This includes any takeaway coffee cups, drink bottles, cans of drink, and any type of food at all. Leave it outside.



e) Refer to the Judge or Magistrate as “Your Honour”: -



If you are really nervous and cannot remember this, then it is acceptable to call them Sir or Ma’am. Did not refer to them as mate or anything along those lines; it is extremely inappropriate. You will get yelled at if that happens. This will not impress the Judge or the Magistrate; they have studied and practiced for years to earn their position and they deserve the upmost respect.

f) Take off your hat and sunglasses: -

Do not wear these in Court under any circumstances. Do not put your sunglasses on the top of your head either. Take them off and put them in your pocket.



g) Bow your head: -

Whenever the Court is in session, it is a sign of respect to bow your head towards the back of the Court whenever you leave or enter a Courtroom. A slight bow from your shoulders up is appropriate. Make sure that you are facing the Magistrate or Judge when you do that. If the Magistrate or Judge is not in Court, then you do not need to bow your head.

h) No talking: -

Remain silent when you are sitting in the back of the Court and do not disrupt the proceedings in any other way. If you have to have a conversation with someone then very quietly whisper or leave the Court together. Lawyers often have to talk to other people in Court and even they get told off by the Judge or Magistrate if they get too loud.



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7.2 Who are the Key Players in Court?

a) Magistrate or Judge -



The Magistrate will wear a plain black robe but does not wear a wig. A Judge will wear a robe and usually also wear a wig. There is no jury in the Magistrates Court. A Magistrate or Judge is referred to as “*Your Honour*”. They make all the Judgements and decisions in Court. They sit on the bench at the very far end of the Court.

b) Clerk or Associate -

They sit directly in front of the Magistrate or the Judge. They assist the Magistrate or the Judge during the day in Court. They are a bit like a personal assistant to the Magistrate or the Judge.

c) Prosecutor -

In the Magistrates Court the Prosecutor is typically a police officer in a uniform. The Prosecutor may however be a civilian / unsworn police officer and could be wearing plain clothes. On some occasions, the Prosecutor may be from the Director Of Public Prosecutions (DPP) or other prosecuting organisations such as Fair Trading, the Tax Office, local Council, and the like. The Prosecutor usually sits on the right-hand side of the bar table. Their role is to assist the Court by providing the Magistrate or Judge with an outline of the facts and any relevant history that the Defendant has.

d) Defence Lawyer / Defendant -

They sit on the left-hand side of the bar table. Their role is to defend the charge as much as possible before the Court. If you are charged with a criminal offence, then you will be referred to as the Defendant. If you are called that, do not take it personally, it is simply a term that the Court uses to identify different parties in a matter.

e) VIP's (Volunteers in Policing)-

The police will have volunteer assistance from time to time that assist the Prosecutor with managing their paperwork and organising matters. They will have some identification on them and will typically have a name badge and a blue shirt on. Remember that they are volunteers and be polite and respectful to them. They assist greatly with the running of the Court.

f) Duty Lawyer -

This is a qualified Lawyer appointed by Legal Aid Queensland. Their role is to provide legal advice and representation to those Defendants in Court who meet certain eligibility criteria. Basically, the

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Duty Lawyer will not represent you if the charge is traffic related, or a minor criminal offence where there is no likelihood that you would go to jail. They will typically give you advice and represent you in Court if there is a prospect of a jail sentence.

g) Watchhouse Staff -

They are uniformed police officers from the Queensland Police Service, or they could be officers with Corrective Services. These officers take fresh Defendants into custody where the Court sentences that Defendant jail. They also manage those Defendants who have been bail refused or on a return to prison warrant. They also transport prisoners to and from the respective jails.

When you arrive at Court, you will need to go to the Courtroom that has been allocated for your matter. In the larger Courts, such as Brisbane and Southport, there is an electronic board with everyone's name on it (like in an airport). Look for your name on the board and go to the Courtroom indicated. In the smaller Courthouses there might not be an electronic board. In that event, you may need to ask Court staff or security staff where you have to be or which Court you have to go to. In a lot of Courthouses across the State there is only one Courtroom. You can also check online by going to the Court List on the Court website.

Queensland	www.Courts.qld.gov.au
Tasmania	www.Courts.tas.gov.au
New South Wales	www.onlineregistry.lawlink.nsw.gov.au
Victoria	www.Courts.vic.gov.au
South Australia	www.Courts.sa.gov.au
Western Australia	www.eCourts.justice.wa.gov.au
ACT	www.Courts.act.gov.au
Northern Territory	https://nt.gov.au/law/Courts-and-tribunals/daily-Court-lists

When you arrive at the correct Courtroom, speak with the VIP (Volunteer in Policing) or the Police Prosecutor. Tell them your name and they will find your file. You will need to tell them what you are doing with the matter. That is, you will need to tell them if you are pleading guilty, not guilty, or seeking an adjournment. They will then tell you to take a seat in the back of that Courtroom or go to another Courtroom. If it is your first time in Court on a charge, **make sure you get a copy of the police report**. That report will contain a copy of the charge and the factual basis that the police are relying on. It will also contain a copy of your criminal and traffic history. Those documents are what the Magistrate will ultimately be relying on. You should read this document very carefully. Take particular note of the following details:

- a) check that it is your correct name and date of birth,
- b) check that you agree with the allegations that are contained in the report. If you do not agree with the allegations, then you should seek legal advice on how to proceed with your matter.

Those Defendants were represented by a Lawyer go first in Court. This is not a bad opportunity to watch what happens and familiarise yourself with the process. You will be waiting in the back of the Court until you eventually have your name called. When you hear your name called, go to the right-hand side of the bar table, and remain standing until you were spoken to by the Magistrate.

7.3 Adjournments

If you want an adjournment, you will have to have a legitimate reason. Do not expect to get an adjournment if you do not have a good reason for one. By the time that you get Court you will have

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had plenty of time to get legal advice. The Court may give you an adjournment on the first occasion without asking too many questions but after that they will start to question why you are seeking adjournments. The Court doesn't like matters to go on too long and the Judge or Magistrate will be frustrated if you do not show you are trying to resolve the issue.

Below is a typical script for an adjournment in Court:

Magistrate: Stephen Anthony Jones, is that you sir?
You: Yes Your Honour (Always refer to the Magistrate as "Your Honour")
Magistrate: Now Mr Jones, you have been charged that (the Magistrate will then read the charge to you). What do you want to do that charge today? Are you going to plead guilty, not guilty or seeking adjournment?
You: Your Honour I am seeking an adjournment to another day.
Magistrate: Why do you want an adjournment sir?
You: I am seeking an adjournment to allow me to complete the Roads and Traffic Education (RATE) program (or for whatever legitimate reason you want an adjournment for. It could be that you are seeking an adjournment for further legal advice.)
Magistrate: How do you intend plead?
You: I want to plead guilty to the charge Your Honour, but I need an adjournment to complete my preparations prior to finishing the matter in Court.
Magistrate: I will allow the adjournment. Your matter is now listed for sentence on (whatever date the Magistrate adjourns the matter to). You must sign a Bail Undertaking before you leave the building. You understand that?
You: Yes Your Honour.

You will then have to go to the Court Registry and sign your Bail Undertaking if you have not already done so. If you have signed Bail Undertaking at the Watchhouse then the Magistrate will consider if that undertaking is appropriate. If you need to get your bail changed for whatever reason, then you should raise that with the Magistrate in Court.

7.4 Guilty Pleas

If you want to plead guilty to the charge, then you can usually do that at any stage. You can enter a plea of guilty at the very first Court appearance if you wish. If your plea is going to take more than 20 minutes because it is complex, then it will most likely be adjourned to another day when the Court is hearing lengthy pleas. In some Courts they will make you wait until the end of the list and you must wait until your matter is recalled (depending on the business of the Court that day).

If you have decided that you wish to plead guilty to your charge, then you should let the Prosecutor know that before Court. You should be aware of the nature of the charge and the outline of the allegations against you. You should also be aware of any previous criminal or traffic history that the Prosecutor is going to give to the Magistrate. You can get all this information from the Prosecutor on the morning of Court if you have not previously obtained it. You can get the information prior to Court from the relevant Police Prosecutor's office.

Before you enter the guilty plea, you should be aware of the likely penalties that the Court can impose upon you. If you are not sure about this then you should get legal advice.

Procedure - when you hear your name called, make your way quickly to the left-hand side of the bar table in Court. This is a typical script that the initial part of a guilty plea:

Magistrate: Stephen Anthony Jones, is that you sir?

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You: Yes Your Honour (always refer to the Magistrate as “Your Honour”)
Magistrate: Now Mr Jones, you have been charged that (the Magistrate will then read the charge to you). Do you understand that charge?
You: Yes
Magistrate: What do you want to do with that charge? Are you pleading guilty, not guilty or are you seeking an adjournment?
You: Your Honour I am pleading guilty to that charge.
Magistrate: Has any person or authority such as a police officer or any other person forced you to make that decision?
You: No
Magistrate: Is a plea of guilty of your own free will?
You: Yes
Magistrate: Thank you Mr Jones, please take a seat while the Prosecutor reads the facts.

The Prosecutor will then read the police report with the facts to the Magistrate and tender a copy of your previous criminal and traffic history where relevant. The Magistrate will then read all of these documents and say:

Magistrate: Thank you Mr Jones, what you wish to tell me about this matter?

This is your opportunity to tell the Court your version of events. Stand up at the bar and present to the Magistrate. You will need to tell the Magistrate a little bit about yourself, your background, and any other information that you think is relevant to the circumstances. You will usually have no more than a few minutes to discuss this with the Magistrate. If you are unable to stand for whatever reason, then you should tell the Magistrate. If you know that you will be too nervous to speak on your own behalf, then you can write out the information on a bit of paper and give it to the Magistrate. If you are going to do this then make sure that it is neatly typed or written and checked for any errors. Have three copies of that document, one for the Magistrate, one for the Prosecutor and one for yourself.

Tender:
 handing/entering the documents up to the Magistrate and to the Police Prosecutor as evidence.

You should also now hand the Magistrate any material that you might want them to see. If you do have any paperwork, such as character references, you should have three copies. Have a look at the “Preparations” section below for examples of things that you can do to prepare for Court.

Once you have handed the Magistrate these documents, they will then read the documents. They will ask you if you have got anything else that you would like to tell them. If there is nothing further, then the Magistrate will then sentence you. You will remain standing through this entire process.

7.5 Preparations for Court

Here are some examples of preparations you might want to do prior to going to Court. If you do any of these preparations, then you will need evidence in the form of certificates or documents.

1. Character References –

It is ideal to have two or three character references. The referee should have known you for a long period of time, and the reference must say that they are aware of the charge. Is in good idea to get a reference from your employer if possible.

Useful character references can be obtained from such people as; professionals (Doctors, Accountants, Lawyers etc.), people that you have known for a long time, business leaders,

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politicians, community leaders, employers, sporting leaders and the like.

The reference should include the following points:

- a) The Referee's full name, age, occupation and contact telephone number,
- b) One very brief paragraph outlining the referee's own history and background,
- c) The fact that the referee is aware of the nature of the matter, the outline of the allegations and the necessity to go to Court,
- d) The length of time that the referee has known the person and in what context,
- e) Comment on any programs that the Defendant has done (for example the RATE Traffic Program / Anger Management / Drug Rehabilitation etc). Specific comments should be made about the efforts that the course has had on the person and any positive changes that they have made, and
- f) Any additional comments that you feel will be of importance to the Court (such as good traits or achievements)

The reference MUST:

- Be signed and dated,
- Ordinarily be no more than one page in length,
- Be clearly handwritten or typed,
- Be in the referee's own words,
- Be addressed "To the Honourable Court"

2. Roads and Traffic Education Program (RATE) –



If you are charged with a traffic related matter or a matter involving a motor vehicle then you should consider completing a traffic education program. By doing this, and being an active participant in the course, you will demonstrate to the Court that you are addressing the issue of rehabilitation. You will be able to demonstrate to the Court that you acknowledge that you have committed an offence and that you have taken positive steps to fix the problem. That problem might be a lack of knowledge, not having an insight into your offending behaviour, a refresher in relation to your obligations on the road and to other road users generally.

There are a number of programs on the market but the best one is the RATE program which can be done online. You will receive a certificate of completion for the course. You will also get a workbook and a receipt of payment. These documents should be handed to the Magistrate. You can enroll in the course by going to www.rateprogram.com.au

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3. Drug and Alcohol Rehabilitation –

If you have a drug or alcohol problem, it is strongly advised that you complete a drug rehabilitation course prior to going to Court. Sometimes these programs take a long time to complete so you might need an adjournment, so you have time to finish the course and receive a certificate. There are various services in the community and to find out more information you should speak with your local doctor. In Queensland there is a program for the Alcohol and Other Drugs Program (AODS). You can access that program through Queensland Health. Visit <https://adis.health.qld.gov.au/> for more information.

4. Counselling / Psychologist Report –

You may wish to consider undergoing counselling with a registered counsellor or psychologist and obtain a report so that you can present that to the Magistrate. You can access free counselling through a Mental Health Plan. In order to receive a Mental Health Plan, you should speak with your local doctor or General Practitioner.

We all experience challenging emotional issues at different times. We cannot always deal with these on our own. If you feel you need help and it is not an emergency, it is best to see your doctor.

When you see your doctor, they will assess what help you need. This could include:

- Making a mental health assessment,
- Creating a mental health treatment plan,
- Referring you to a psychiatrist or other mental health professional, or
- Giving you a prescription for medicines to treat depression or anxiety.

Your doctor might ask you some personal questions to understand your situation. Sometimes it can be hard to talk to others about your mental health however it is very common, and they are there to help you. It is their job, and they will not judge you for anything you tell them. This service might be able to be accessed through Medicare if your doctor provides a bulk billing service. If your doctor does not bulk bill, you will need to pay either the full cost of the consultation or the difference between what the doctor charges and what Medicare would cover.

If you have a mental health disorder, you and your doctor can create a plan to treat it. Your mental health treatment plan will have goals agreed by you and your doctor. The plan will cover treatment options and also provide support services that are available. Your health information and treatment plan will be private and cannot be disclosed to law enforcement unless it is through an order of the Court.

Your doctor can refer you to mental health professionals including psychiatrists, psychologists, counsellors, and social workers.

A treatment plan lets you claim up to 10 sessions each calendar year with a mental health professional. If your health professional decides you are eligible, you can have an extra 10 group sessions. To start with, your doctor or psychiatrist will refer you for up to 6 sessions at a time. If you need more, they can refer you for further sessions. Your health professional will need to regularly review your treatment plan.

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5. Urine Testing –

If you have had a drug problem in the past but have now overcome the problem, then it is a good idea to provide proof that you are now clean. You can do this through urinalysis which is otherwise known as a Drug Screen Test. If these tests come back with no drugs detected in your system, then it is evidence that you are no longer taking drugs. It is advisable to get as much testing done as you can. You will need to speak with your doctor to arrange the drug testing.

Urine testing is quick, painless, and convenient. You will need to speak with your doctor about the cost of the drug screening. The sample is provided to authorised collection centres in controlled circumstances. The sample is then sent to pathologists for testing and the results are usually returned within a couple of days. The authorised collection centres in Queensland are facilities such as QML.

6. Letters of Apology –

A letter of apology by you to any victim will be treated favourably by the Magistrate or Judge. Such a letter can be passed to the victim by the Prosecutor. You should not give the letter directly to the victim. You need to be careful, however, such a letter could expose you to civil proceedings. That means that the victim could sue you for money.

Be genuine in your letter of apology or do not bother writing one. Tell the victim how you are sorry and most importantly why you are sorry for what you have done. Also discuss any changes you have made to improve as a person since the incident. The letter of apology can be as long or short as you feel necessary. Do not give the letter of apology directly to the victim.

The letter of apology can be typed or neatly handwritten. If you have a problem with reading and writing, then you can ask a friend to help you.

7. Offers of Compensation/Remuneration –

If the victim has suffered a financial loss, then an offer to financially reimburse them is a good idea. That means that you will repay any money to the victim. You should not approach the victim directly but offer the compensation to the victim through the Court.

You cannot buy your way out of a criminal charge by offering payment to the victim. However, an offer to pay for any out-of-pocket expenses (such as medical costs or damage to property) or some compensation for pain, suffering or loss of wages would be looked upon favourably by the Court.

8.0 What Punishment Can a Court Impose?

There are essentially four basic principles the Court must consider when imposing a sentence on a Defendant:

- Punishment (the Court must impose a sentence that aims to punish the Defendant).
- Sending a message to the community. The Court is used as a medium to share the message that criminal offending will receive punishment. Journalists usually sit in the back of Courts and record the names of parties, the nature of the charge, and the penalty that is received.
- Rehabilitation. The Court must impose a sentence that allows for a Defendant to be rehabilitated. This is usually done through a supervised order such as probation.
- Deterrence. There are two types of deterrence; specific deterrence to stop you from offending again, and general deterrence to stop other people committing the offence.

In determining the punishment that they will deliver to a Defendant, the Court will consider a number of factors including:

- Seriousness of the crime,
The effect on the victim,
- The offender's personal circumstances,
- The offender's criminal history, and
- Whether the offender has cooperated with the police.

Now let us look at the type of punishments that the Court can impose. Please note that they can do some of these punishments separately, or they can do a combination of punishments.

8.1 Bonds

If a Defendant is convicted of an offence that is trivial, or there are exceptional circumstances, the Court can either absolutely discharge the Defendant (not punish them at all), or alternatively, place them on a bond to be of good behaviour for a period of time. The condition of the bond is that the Defendant does not commit any further offences during the period of time the bond is for. The maximum length of a bond that the Court can impose is three years. There is usually an amount of money placed against the bond. You do not have to pay that money upfront, but if you commit any further offences during the period of the bond then you will become liable to pay that sum of money. In these circumstances the Court usually would not record a conviction.

8.2 Drug Diversion

For minor drug matters the Court can place the Defendant on a Drug Diversion scheme. This is a bond (as above) but one of the conditions of the bond is that the Defendant does a drug rehabilitation program with Queensland Health. If the program is successfully completed, and there is no further offending, then the Defendant will be discharged without conviction at the conclusion of the period of the bond.

You will be eligible to apply to the Court for a Drug Diversion if:

- It is an eligible offence,

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- You admit your guilt to the charge,
- You don't have any outstanding drug or sexual charges in the District or Supreme Court, and
- You have not previously had two (2) drug diversions.

What is an eligible offence?

To be eligible for Drug Diversion you have to have been charged with one of the following offences:

- Small possession charges (see below),
- Fail to take care of a syringe,
- Fail to dispose of syringe, or
- Possess utensil.

The drug will need to be under the following amounts:

Drug	Weight
Cannabis	50g
Amphetamine	1g
Ecstasy	1g
Methadone	1g
Heroin	1g
LSD	3 tabs

How does Drug Diversion work?

You will have to go to Court on the allocated day of your hearing. You will need to go and speak with the Prosecutor and obtain a copy of the QP9 and your criminal history (if you haven't already got it). You will then need to speak with the Court staff PRIOR to going into Court and tell them that you want to make an application for a Drug Diversion program. The Court staff will require you to complete a form and you will obtain a date for a suitable referral.

You will then need to go into the Courtroom and appear before the Magistrate. You will not automatically get the diversion, you may have to make a submission and demonstrate to the Magistrate why it is appropriate to refer your matter to a Drug Diversion program.

If you are successful in your application, then you will have to sign another document at the Court Registry called a Recognisance. This is an undertaking that you will be of good behaviour for a period of time (as ordered by the Magistrate) AND that you will attend the Drug Diversion appointment. There will be an amount of money attached to the bond. You do not have to pay that money unless you don't comply with the bond. You will then be free to leave the Court.

If you successfully complete the program by attending as required, and also that you don't commit any further offences during the period of the bond then you will satisfy the bond and no conviction will be recorded. If however you don't attend the Drug Diversion session OR you commit an offence during the period of the bond then you will be brought back before the Court. In that event, you could forfeit the amount of your bond and you could be resentenced for the original offence.

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8.3 Fines

A penalty unit is a measurement of the fine imposed for a criminal offence. For offences that have a punishment involving 'Penalty Units', the maximum number of penalty units are outlined in the offence section in the legislation. At the time of the writing of this article, one penalty unit is equal to the amount of \$154.80. So, for example, the maximum penalty for the offence of Shoplifting (UTAG Regulator Offences Act QLD where the amount of goods is under \$150.00) is 6 penalty units. Therefore, the total maximum fine that a Magistrate can impose is \$928.80.



Please note that there is also an offender's levy attached to every criminal Court proceeding. The offenders levy in the various states and territories are:

STATE	MAGISTRATES	DISTRICT / SUPREME
Qld	\$138.10	\$413.90
NSW	\$166.00	N/A unless upon appeal
Tas	\$20.00	\$50.00

If you receive a fine from the Court, then you can pay that at the Court Registry after Court. You can speak with the Court staff about organizing a time to pay the fine. Alternatively, you can have the fine referred to SPER. If you do not do anything about the fine, then it will automatically be referred to SPER. Be aware, that if your fine is referred to SPER then you will be charged with the SPER administration fee which will increase the cost that you owe. If your matter is referred to SPER then you can either pay that in one lump sum or you can enter into a payment plan.

You can visit <https://www.qld.gov.au/law/fines-and-penalties/overdue-fines/instalment-plans> for more information.

If you ignore the fine and don't respond to SPER, then action can be taken. This can include the suspension of your driver's licence or the recovery of your personal property in certain circumstances.

8.4 Probation

The Court will impose a period of probation typically when an element of supervision is required for the Defendant. Probation is intensive supervision by the probation and parole office and will require constant contact with the allocated supervising officer. A person on probation must report to the nearest probation and parole office, usually within 48 hours of the time of sentence. It is recommended that you go and report to that office immediately after Court. If you are on probation, you must accept and receive visits from authorised probation and parole officer.

You must not leave the state of Queensland without their permission and you must notify them immediately of any change of address. You may have to do certain courses that the probation officer directs you to do. You may have to provide breath tests or urine tests if the order states that you are required to do so. You must not commit another offence whilst on probation. You must comply with every reasonable direction of authorised Corrective Services Officer.

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If you breach of probation in any way, then it is likely that you will be summonsed to go back to Court. In that event, your probation order could be revoked, and you could be resented in relation to the original offences (this could include a harsher sentence).

There are a wide range of programs that people on probation may be required to do. These programs include (*Source: Legal Aid Queensland Duty Lawyer Handbook*):

- **Turning Point** - Preparatory program: which helps people prepare to change their offending behaviour. This program helps people weigh up the pros and cons of changing their behaviour and helps them become more confident about their ability to make positive changes in their lives.
- **Getting SMART** - a moderate intensity substance abuse program which teaches people to use cognitive behavioural therapy principles, theories, tools, and techniques to abstain from any type of addictive behaviour.
- **Making Choices Program** - which addresses general offending behaviour and helps participants examine how they came to offend, while also helping them recognise points where different choices could be made. Different versions of this program have been developed for male and female offenders.
- **Cognitive Self Change Program** - high-intensity cognitive behavioural intervention specifically for high-risk adult prisoners for whom the repeated use of violence is part of a general pattern of antisocial behaviour and criminality.
- **Ending Family Violence Program** - which tackles violence within indigenous families and develops culturally appropriate solutions to protect adults and children from the effects of domestic violence.
- **Ending Offending Program** - which meets the needs of Aboriginal and Torres Strait Islanders in a culturally appropriate manner. The overall aim is to modify the drinking and offending behaviour of indigenous offenders.

Please find below a list of Probation and Parole offices in Queensland: -

Beenleigh, Brisbane (Spring Hill / Chermside / Buranda), Bundaberg, Burleigh Heads, Caboolture, Cairns, Cleveland, Emerald, Gladstone, Gympie, Harvey Bay, Inala, Innisfail, Ipswich, Kingaroy, Logan City, Mackay, Mareeba, Maroochydore, Mt Gravatt, Mt Isa, Noosa Heads, Pine Rivers, Redcliffe, Rockhampton, Toowoomba, Roma, Southport, Thuringowa, Thursday Island, Townsville, and Wynnum.

8.5 Community Service

The Court can order that the Defendant complete an amount of community service. The total number of hours required cannot exceed 240 and not be less than 40. The rationale behind community service is that the offender put something back into the community in the form of unpaid work. This is to make amends for their offending behaviour. Community service might be imposed, for example, in graffiti charges or charges involving multiple wilful damages. Community service, however, could be ordered for a whole range of offences.

If you are sentenced to a period of community service, it must be satisfactorily completed within a period of 12 months. You will be under the supervision of the probation and parole office. Community

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services designed to be performed in conjunction with any other employments that you may have. Therefore, you are most likely going to have to do this after hours or on the weekends. You will be particularly busy during this time, but the onus is on you to complete the hours.

8.6 Intensive Correctional Orders (ICO)

An Intensive Correctional Order is exactly as it sounds - intensive. Make no mistakes though, it is a jail sentence, just served in the community. If a Court sentences a Defendant to a period of imprisonment of less than one year, then the Court may make an intensive correctional order instead of actual jail time.

A conviction must be recorded if an ICO is imposed.

Practically, an ICO is similar to a probation order combined with community service. However, the Defendant will have to visit will receive visits from a corrective services officer at least twice a week. Further, they must reside in a community residential facility if required.

The consequences of a breach of an ICO means that the Defendant will not go back before a Court, they will be sanctioned by the probation and parole office and be placed in a corrective services facility (jail) usually for 28-day periods. That is a matter for the probation and parole office.

An ICO is the last option of the Court has before they must impose a period of actual custody.

8.7 Jail

A period of imprisonment is no longer an option of last resort the Court (*Section 9 (12) of the Penalties and Sentences Act Queensland*). This effectively means that the Court can sentence a Defendant to a jail sentence for any offence that holds a maximum penalty of jail under the legislation. For any jail sentence, a conviction must be recorded. A jail sentence can be the following ways:

a) Actual Jail Time - the Court to impose a jail sentence with a whole of the sentence is served in a corrective services facility (i.e., in jail)

b) Parole After Serving Some Time - Court can order a parole release date if the jail sentence imposed is less than three years, is not a conviction for a sex offence, and is not a Serious Violent Offender (SVO). Otherwise, it becomes a parole eligibility date.

c) Immediate Parole – The Court can sentence a Defendant to a period of imprisonment but order that the prisoner be immediately released from custody. That means that the prisoner gets released from the Courthouse or Watchhouse facility. They will then however have to report to the Probation and Parole Office in accordance with the requirements of parole for the duration of their sentence. If there are any breaches of the parole, the prisoner will not go back before the Court (unless they have to face fresh charges), they will be sanctioned by the Parole Office and could be returned to a prison for a 28-day period.

d) Partially or Wholly Suspended Sentence – The Court can sentence a Defendant to a period of imprisonment but instead of requiring them to serve that sentence in a jail, the sentence can be partially or wholly suspended. If it is partially suspended, then the prisoner will have to serve some time in a jail and is then released after serving a part of their sentence. If it is wholly suspended, then they will not have to serve any time in a jail. A suspended sentence means that the prisoner does not have to report to a Parole Officer as part of their sentence. If, however, the commit an offence during

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the period of their sentence then they will be brought back before a Court. The Judge or Magistrate will have the following three (3) options available to them:

- Not take any action,
- Make the Defendant serve part or the whole amount of their sentence, or
- Extend the length of the sentence.

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9 Recording of a Conviction

In Queensland, if you are found guilty of a criminal offence, then the Court will have a discretion about whether or not they will record a conviction. Section 12 of the *Penalties and Sentences Act (Qld)* states:

12 COURT TO CONSIDER WHETHER OR NOT TO RECORD CONVICTION

- (1) A Court may exercise a discretion to record or not record a conviction as provided by this Act.
- (2) In considering whether or not to record a conviction, a Court must have regard to all circumstances of the case, including—
 - (a) the nature of the offence; and
 - (b) the offender's character and age; and
 - (c) the impact that recording a conviction will have on the offender's—
 - (i) economic or social wellbeing; or
 - (ii) chances of finding employment.

You will need to speak to the Magistrate / Judge and ask that they not record a conviction against you. You will need to address points (a) (b) and (c) above. Please note that if you are sentenced to any type of a period of imprisonment then the Court MUST record a conviction.

If a conviction is recorded then it will be disclosable for every purpose, including future job applications, character checks and travel applications. If a conviction is not recorded, then if you are asked the question then you can comfortably say no. You must read the question carefully though if the Court does not record a conviction then:

Has a conviction been recorded against you?



Have you ever been charged with a criminal offence?



If a conviction is recorded against you then it will stay on your record for 10 years. After a period of 10 years, it is deemed to be a spent conviction under the *Criminal Law (Rehabilitation of Offenders) Act*. That means that it cannot be disclosed with the exception of Court proceedings certain other unusual.

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10 Traffic and Driving Matters

There are two ways in which a police officer can commence a proceeding for a breach of traffic laws.

10.1 Infringement Notice: –

This is either handed to you by the police officer on the side of the road or it will be posted or emailed to you. The infringement notice could also be generated by way of a camera for speeding, red lights, and mobile phone use.

If you receive an infringement notice, then you have the option of paying it or contesting it. The methods of payment are outlined on the infringement notice. Note, if you don't pay the infringement within a 28-day period then the fine will be referred to SPER (State Penalties Enforcement Register). If that happens then there will be additional SPER administrative fees charged to the outstanding amount.

Alternatively, if you do not agree with the infringement and want to contest it then you will need to fill out the rear of the infringement notice and elect to have the matter heard in Court. You will need to forward that to the nominated address. You will then receive a summons to go to Court.

10.2 Notice to Appear / Summons / Charging: -

The police may instead send you to Court. For some offences you have no choice but to go to Court. If you are charged with a traffic related offence, and you have to go to Court, then you should get legal advice. You will have the option of pleading guilty or not guilty to the charge.

If the Court finds you guilty, or if you plead guilty then you will be sentenced by the Court. The punishment for some offence can include:

- Jail,
- Probation,
- Community Service,
- Fines, or
- Bonds

The Court also has the power to disqualify your driver's licence for ANY offence involving a motor vehicle (section 187 Penalties and Sentences Act). For some offences, there is a mandatory disqualification of your driver's licence.

10.3 Drink Driving Penalties

Queensland

Offence	Fine	Imprisonment	Minimum Disqualification
UIL (0.150 or more)	\$4,334	9 months	6 months
First Offence	\$4,334	9 months	6 months
Second Offence	\$9,288	18 months	12 months
BAC			
0.100 – 0.149	\$3,096	6 months	3 months
0.050 – 0.099	\$2,167	3 months	1 month
0.000 – 0.049	\$2,167	3 months	1 month
Drug Driving	\$ 2,167	3 months	1 month

New South Wales

Offence	Fine	Imprisonment	Auto Disq	Min Disq
			Automatic	Minimum
High Range (0.150 or more)				
First Offence	\$3,300.00	18 months	3 years	12 months
Second or subsequent offences	\$5,500.00	2 years	5 years	2 years
Mid Range (0.080 – 0.149)				
First Offence	\$2,200.00	9 months	12 months	6 months
Second or subsequent offences	\$3,300.00	12 months	3 years	12 months
Low Range (0.050 – 0.079)				
First Offence	\$2,200.00	Nil	6 months	3 months
Second or subsequent offences	\$3,300.00	Nil	12 months	6 months
Special Range (0.020 – 0.049)				
First Offence	\$2,200.00	Nil	6 months	3 months
Second or subsequent offence	\$3,300.00	Nil	12 months	6 months
Novice Range (0.000 – 0.019)				
First Offence	\$2,200.00	Nil	6 months	3 months
Second or subsequent offence	\$3,300.00	Nil	12 months	6 months

The Unrepresented Defendant

10.4 Other Minimum Licence Disqualification Periods

Unlicensed Driving

SPER	-	1 month
Demerit Points	-	6 months
Court Disqualification	-	2 years
Police Suspension	-	2 years

Driving Without Due Care - No mandatory disqualification

Dangerous Driving - 6 months (unless aggravated)

10.5 Alcohol Interlock Program

The Alcohol Interlock Program is an initiative of the Queensland Government in relation to drink driving offences. The program requires an interlock device to be installed in the offender's car when they get their licence back. This device will prevent the car from starting unless a negative breath test is provided. In order to start the car, the driver will have to blow into the device. They will also have to blow into the device at random times to allow for the car to continue to drive.

You will have to get an interlock device installed in your car if:

- a) You are found guilty of a drink driving offence greater than 01.50%, OR
- b) If you have been convicted of two drink driving offences within a 5-year period (no matter what the readings were).

In that event, at the conclusion of your disqualification period you will need to go to Queensland Transport and apply to get your licence back. Queensland Transport will only give you your licence back if you elect to go onto the Alcohol Interlock Program. The program is NOT compulsory. If, however, you do not go on the program then you are not eligible to apply for a licence for a period of a further 2 years.

If you choose to go on the program, then you can only drive a vehicle that has the Interlock device installed in the car. It will be your responsibility to have the device installed at your expense. The cost of the device will be a total amount of about \$2,500.00. This will include the installation, calibration, and ultimate removal of the device.

The device will have to be installed in your vehicle for a period of 12 months. After that time, you are eligible to apply to Queensland Transport for an unrestricted licence.

If you do not comply with your licence requirement of driving a vehicle with an Interlock Device installed, then you commit an offence and will have to go back to Court. Further penalties will apply including the further loss of your driver's licence.

The Unrepresented Defendant

11 Work Licence Applications (s.87 Applications)

If you are charged with [drink driving](#) or drug driving in Queensland, then you may be eligible to make an application to drive for work purposes. Work licence applications are not available for offences committed in New South Wales.

What is a Restricted Work Licence?

A restricted work licence is a driver's licence directed by the Court that will allow you to continue to drive a motor vehicle for work purposes. It will only allow you to drive to allow you to work to earn your livelihood. You will be able to drive from home to work, for any purpose associated with your work, and then from your place of work to home at the end of the day. You must travel via the most direct route and you cannot deviate from your journey for any purpose. You will be permitted to stop to get fuel if required.

If you are successful in obtaining a Restricted Work Licence from the Court, then it will outline the conditions in which you are allowed to drive:

- The hours that you are able to drive between,
- The days in which you are allowed to drive,
- If you are required to keep a logbook,
- If you are allowed to carry passengers,
- Whether you have to wear a uniform,
- The locations that you are allowed to go to,
- The class of vehicle that you are allowed to drive.

You cannot get a restricted drivers licence if you are unemployed or looking for work. You cannot get a drivers licence if you are a student attending an educational facility (unless it is part of your job requirements).

What if I am a shift worker and I need to drive anytime of the day or night?

Yes, you can get a licence which will allow you to drive 24 hours a day, 7 days per week. But the purpose of the driving must be only associated with the means of earning your livelihood. The Court may order that you keep a logbook and also that you carry your roster with you. If you are stopped by the police then you will be able to prove that you were driving for work purposes.

For what purpose will I be allowed to drive?

The Court order will allow you to drive for work purposes, and **work purposes ONLY**.

For what purpose will I NOT be allowed to drive?

You will not be able to drive for any purpose that is not directly associated with earning your livelihood. This will include such activities as:

- Dropping off or collecting children at school or other activities,
- Visiting friends and family,
- Going to the shops for any purpose (including getting groceries),
- Going to the beach or park,
- Exercise,
- Just to go for a drive because you feel like it.

Am I eligible to make an application for a Restricted Work Licence?

To be eligible to apply for a QLD work licence you must:

1. Be the holder of an open Queensland Drivers Licence; and
2. Have a reading below 0.150% (Drink Drive) or be charged with Drug Driving; and
3. Have not had any previous major offences in the last 5 years; and
4. Not have been driving for work purpose at the time of the offence.

What do I have to do to make an application for a Restricted Work Licence?

To be eligible for a restricted work licence, you must demonstrate to the Court that:

1. You are a fit and proper person to be the holder of a driver's licence; and
2. That without a licence you would be deprived from the means of earning your livelihood.

To make a work licence application in QLD, you will need to complete the following documents.

1. Work Licence Application Form AND
2. Your Affidavit; AND
3. Your Employers Affidavit (if you are not self-employed)

Application Form: -

The application form must be completed fully and briefly outline the reasons why you need a licence for work. Usually, you would indicate in there that you require your driver's licence for work purposes. If you were deprived of your driver's licence, then you would be deprived of the means of earning your livelihood. That would then place you in a position of severe financial hardship.

See example of the application form that you will need to complete on the next page.

Application for an Order directing the issue of a Restricted Licence (s87)

Transport Operations (Road Use Management) Act 1995



Queensland
Government

1. This form is to be used if you have been charged with a drink or drug driving offence under s79 (drink or drug driving) or s80(5A) (failing to supply specimen of breath or saliva for analysis) of the *Transport Operations (Road Use Management) Act 1995* (the Act) and you are **eligible** to apply to a court for an order directing that you be issued with a restricted licence. You will need to complete this application before the court hearing and give the application to the Magistrate **immediately after** you have been found guilty and **before** the Magistrate disqualifies you from holding or obtaining a driver licence.

2. This form may also be used if you have paid the monetary penalty on a *Drink Driving Infringement Notice* issued under s81 of the Act and you are **eligible** to apply to a court for an order directing that you be issued with a restricted licence. You will need to lodge this application with the Magistrates Court in the district where you reside prior to the expiry of the 28 day period commencing from the date of the issue of the infringement notice. You must also promptly deliver a copy of this application to the Department of Transport and Main Roads.

Eligibility to apply for a restricted licence (please read carefully)

(1) You are **ONLY eligible** to apply if, when you committed the drink or drug driving offence—

- (a) you held a Queensland (Qld) class C open licence and you were driving a class C motor vehicle; or
- (b) you held a Qld class RE open licence and you have held a class RE licence for at least 1 year in the last 5 years and you were riding a class RE motorbike; or
- (c) you held a Qld class R open licence and you were riding a class R motorbike.

(2) You are **NOT eligible** to apply if, within the last 5 years before making this application—

- (a) you have been previously convicted in Qld of an offence under the Act, s79 or s80(5A);
- (b) you have been previously convicted outside Qld of a drink or drug driving offence that would have been an offence under the Act, s79 or s80(5A), if it had been committed in Qld;
- (c) you have been previously convicted in Qld of an offence under the Criminal Code, s328A (*dangerous driving of a vehicle*);
- (d) you have had your provisional or open licence suspended or cancelled or you have been disqualified from holding or obtaining a Qld driver licence for a reason other than mentioned in the following note.

Note: Your eligibility to apply for a restricted licence is not affected by a suspension, cancellation or disqualification:

- that was set aside on appeal;
- in relation to which a special hardship order was granted;
- imposed because of a mental or physical disability;
- imposed because you did not pay a fine;
- imposed because you failed to appear in court to answer a charge of drink or drug driving;
- that was a 24 hour suspension imposed because of a drink or drug driving related matter;
- that was an immediate suspension imposed because of a charge for a middle alcohol limit offence.

(3) You are also **NOT eligible** to apply if, when you committed the drink or drug driving offence—

- (a) you held a non-Qld driver licence;
- (b) you held a Qld learner, provisional or probationary licence or you were not the holder of a valid driver licence;
- (c) you held a Qld restricted licence issued to you under a court order;
- (d) you were learning to drive the next higher class of licence under the authority of your Qld open licence;
- (e) you were not authorised under your Qld open licence to drive the motor vehicle (for example, you were riding a motorbike but you only held a class C licence);
- (f) you were using the motor vehicle in an activity directly connected with your means of earning a living;
- (g) you were driving a truck, tractor, specially constructed vehicle, bus (a motor vehicle built or fitted to carry more than 12 adults, including the driver), articulated motor vehicle, B-double, road train, taxi, limousine, tow truck (must be operating as a tow truck), pilot or escort vehicle escorting an oversize vehicle, a vehicle carrying a placard load of dangerous goods or a vehicle used by a driver trainer to give driver training;
- (h) the concentration of alcohol in your blood or breath was equal to or more than 0.15.

(4) You are also **NOT eligible** to apply if, immediately prior to being convicted of the drink or drug driving offence, you no longer hold a Qld open licence.

Important information

You must **satisfy the court** that you are a fit and proper person to hold a restricted licence, having regard to the safety of other road users and the public generally. You may be required to submit yourself as a witness to give evidence in respect of all matters relevant to this application and are liable to cross-examination with respect to the evidence.

Other persons may be called as witnesses to give evidence in respect to all matters relevant to this application and may be liable to cross-examination with respect to that evidence.

The court will **not** grant the application for an order directing the issue of a restricted licence to you unless you are able to **satisfy the court** that—

- (a) you are an appropriate person to hold a restricted licence, having regard to the safety of other road users and the public generally; and
- (b) a refusal to make the order would cause extreme hardship to you or your family by depriving you of your means of earning a living.

Personal details (please PRINT)

Family name

Given name/s

Current residential address (number, street and suburb or town)

Postcode

Date of birth

Qld licence number

Licence class/es

Licence expiry date

Occupation

Application details

The facts and circumstances I am relying on to **satisfy the court** that this application should be granted are as follows—

Note: If necessary, please provide additional information or supporting documents.

Declaration

I declare that I am eligible to make this application for an order directing that I be issued with a restricted licence. I declare that the information provided in this application is complete, true and correct in every detail. I understand that failure to provide complete, true and correct information may result in my application being refused. I understand that I may be prosecuted for giving or stating any false or misleading information or documents. I consent to the department taking, keeping and using my personal information and documents for the purposes associated with my driver licence as required under the *Transport Operations (Road Use Management) Act 1995* or otherwise authorised by law.

Applicant's signature

Date

Privacy Statement: The Department of Transport and Main Roads (the department) provides this form under the *Transport Operations (Road Use Management) Act 1995* (the Act) so that you may apply to a court for an order directing that you be issued with a restricted licence. The information collected for the purpose of this application will be accessible by authorised representatives of the Department of Justice and Attorney-General, Queensland Police Service and the department, and may be disclosed to interstate driver licensing authorities as allowed under the Act. The department will not disclose your personal information or documents to any other third parties without your consent unless authorised or required by law.

Your Affidavit: -

Your Affidavit will need to address a number of areas in order for the application to be successful. You will need to put in a background about yourself, where you were raised, whether you are married, whether you have any children. You will need to outline your education background and your work history. You will need to outline your current work situation and your needs for a driver's licence. You will need to put in your Affidavit what happened in relation to the incident giving rise to the police charge. It is important that you mention your traffic history and any attempts at rehabilitation (including completing the RATE Program). Lastly, you will need to put in there the requirements that you have for a driver's licence (including hours, days, passengers and why you need to drive).

It is ESSENTIAL that you cover the following two issues:

- a) That you are a fit and proper person to be the holder of a driver's licence. To address this, you will need to speak about your traffic history and what steps you have put in place to ensure that you do not reoffend in the future; AND
- b) That you need your driver's licence to earn your livelihood. You will need to include a summary of your income and all of your expenses. This will need to prove that if you lose your job then you will be in a situation of severe financial hardship.

See the sample Applicant's Affidavit which will need to be completed prior to Court on the next page
(Source: Legal Aid Queensland)

Sample 2 – Applicant's Affidavit

MAGISTRATES COURT OF QUEENSLAND

Registry: Brisbane
Number: M1234 of 2012

IN THE MATTER OF
section 87 of the Transport Operations
(Road Use Management) Act 1995

AFFIDAVIT OF BOSCA ALBERTO TRAN

BOSCA ALBERTO TRAN of 26 Little Street, Browns Plains in the State of Queensland, Landscape Gardener, states on oath:

1. I am the Applicant in this matter.
2. I am 31 years of age, married with 3 children that I support. My children are aged 11, 7 and 5.
3. My wife works one day per week at Cindy Kindy, Buranda and earns an average of about \$100 a week clear. She has tunnel vision and is not able to get a driver's licence.
4. I am the holder of Queensland driver licence number 67891234 (Type O, Class C) which expires on 1 September 2012. Exhibit BAT1 is a copy of my licence.
5. I work as a landscape gardener for Beautiful Gardens, at 273 Logan Road, Buranda. I have been with that firm since I left school in 1998, and I'm now one of the most experienced employees.
6. Most of my work is not done at Buranda. My work entails looking after gardens that are already in existence and developing new gardens, including basic maintenance like lawn mowing, weeding, building retaining walls, rockeries, planting small and large plants etc. Beautiful Gardens has a number of regular clients as well as one-off jobs. As part of my daily duties, I am required to travel to the homes or business premises of these clients to do my work. I usually start the day at Buranda, drive one of the work trucks or utes to and from wherever I'm working on the day (as I need to take heavy equipment with me to and from the job site) and then come back to Buranda. Sometimes if the job goes for more than one day, to save time I take the work ute home and drive directly from my home to the work site the next day.

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Signed:	Taken by:
AFFIDAVIT OF BOSCA ALBERTO TRAN	Bosca Alberto Tran
Filed on behalf of the Applicant	26 Little Street
Form 46 Rule 431	BROWNS PLAINS QLD 4118
	Tel: XXXX.XXXX

Sample 2 – Applicant's Affidavit continued

7. Sometimes other employees come with me from Buranda – it depends how big the job is and whether more than one person is needed. Often someone else drives as well and I am left to finish the job on my own.
8. My normal work hours are Mondays to Fridays from 6am to 3pm and on Saturdays from 6am to 11am. It is a condition of my employment that I am available to work at least one Sunday every two months from 6am to whenever the job finishes. I usually work every 4th Sunday. I rely on the extra money I get for this work.
9. I have spoken to my employer Roger Minty. Roger has said that if I don't have a licence and can't drive, even though he would like to keep me, he cannot provide another employee to drive me around to and from the various sites and therefore unfortunately there would not be a job for me at Beautiful Gardens.
10. I also need my licence to drive to and from work as there is no public transport that I could reasonably take to get to and from my work place at Buranda and my wife is unable to get a licence. Nor is there anyone else who could drive me to and from work and I cannot afford taxis. By car it usually takes me about an hour to drive to/from work at Buranda. As I mentioned, sometimes I take the work vehicle home from the site and drive back in it the next day. While there is a train station at Buranda, my work is about a 20 minute walk from that station. The nearest train station to me is not walking distance, and it doesn't go through Buranda. I would need to catch a bus to the station, a train into the City and then a train back out. The trains and buses don't start early enough for me to do this and be at work by 7am and certainly not at 6am. Nor could I carry the necessary equipment by public transport. It would also take me about 3 hours each way to catch public transport. My wife works at Buranda one day each week. She took the job there because I already worked at Buranda and could drive her to and from work. She would have the same problems catching public transport, so it would not be feasible for her to continue working. The \$100 she earns is necessary for us to keep to our commitments, with a small "safety net".
11. So that I can do my job, I would need a licence to be able to leave home at about 4:45am and arrive home at about 5:30pm, earlier on Saturdays. I would also need a licence to be able to leave home at about 5am and arrive home at say 4pm on the Sundays that I work. I would need to be able to drive my car and the work vehicles.

Page 2

Signed:

Taken by:

The Unrepresented Defendant

Sample 2 – Applicant's Affidavit continued

12. Four years ago my wife and I bought a house and we have a mortgage of \$100,000 owing. I am currently taking home about \$650 a week (excluding the money I get for when I work on Sundays) and my wife about \$100 per week. My wife also gets approximately \$150 a week family benefits from Centrelink.

My major weekly financial commitments are approximately as follows:

a) mortgage repayments	\$300.00
b) personal loan for car	\$100.00
c) petrol	\$ 50.00
d) electricity	\$ 50.00
e) telephone (incl mobiles)	\$ 20.00
f) food	\$250.00
Total	\$770.00

There are also other expenses such as doctors' visits, medication, school expenses, clothing, registration, car repairs etc. We put aside as much as we can from the Centrelink benefits and my Sunday earnings to pay for these. It is still a pretty tight exercise.

13. Landscaping is the only work I know. I started doing it as a school based apprenticeship, and have been doing it ever since. I have worked very hard for Beautiful Gardens and I know that they would be happy to keep me on as long as I want to stay – provided I can do the job. Without a licence, I can't do my job. While there are other jobs going in landscaping, all the ones I have seen advertised require a driver's licence. There may be other jobs I could get, but I would earn a lot less as I don't have experience in any other field. I need to earn at least what I'm getting now to be able to pay the mortgage. If we had to sell the house and rent, we would have to pay a lot more each week and we just couldn't afford it.
14. I got caught for drink driving on the way home from a night out playing darts. I play darts once a week and I usually get a lift with Bob, another team member. On the evening in question Bob was sick so I drove. I was counting my drinks so that I would be ok to legally drive home. I arrived at about 7:30 and had three standard beers between 7:30 and 10:30 when the game finished. Our team won and the boys

Page 3

Signed:

Taken by:

Sample 2 – Applicant's Affidavit continued

persuaded me to stay after the game and have "one for the road". Stupidly I agreed and had another drink – and then a couple more. My wife rang wondering where I was so without thinking further I quickly finished my drink and drove home. There was a "booze bus" on the way home and I was one of the drivers pulled over and tested. I was found to be over the limit.

15. I regret having driven while over the legal limit. Had I left when I had originally intended, I am sure I would have been under the limit, having carefully counted my alcohol consumption. And if I had considered things properly I would have left the car and not have driven. I would not intentionally endanger myself or other road users, and previously I have never knowingly driven a vehicle when over the legal limit.
16. I got my licence on the very first day I could when I was 17 and I have been driving for 14 years. In that time I have never intentionally and would never put any other person's life or my own in danger. I am not a heavy drinker, and am often the "designated driver" at social functions due to my habit of drinking ginger ale or tea when I am out and intending to drive home. I do not have any previous convictions for drink driving and have a good traffic history (one speeding conviction for driving 10 kms over the speed limit when I was 25). Exhibit BT1 is a copy of my traffic history which I obtained from Department of Transport and Main Roads. Should the court grant my application I will ensure that I do not drive if I have recently consumed alcohol or have any suspicion that I could be anywhere near the limit.
17. If the court refuses my application for a restricted licence I would lose my job and my wife would have to resign. Any Centrelink benefits we would get would not be sufficient to pay our regular commitments, let alone any unexpected expenses, and I believe we would lose our house. This would cause extreme hardship for me and my family.
18. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

Sworn by Bosca Alberto Tran on the _____ day of 2012, at _____ in the presence of:

Deponent

A Justice of the Peace/Solicitor

Your Employers Affidavit: -

Your employer will also need to supply an Affidavit. That Affidavit will need to say that if you were to lose your licence then they will have to terminate your employment. This can include getting to and from work, and also driving for work purposes. It is also helpful if the Affidavit can make some comment about your character (for example that you are a hardworking and reliable member of the team).

Your employer will not need to be at Court for the hearing of the application UNLESS the Prosecutor or the Court advise that they require them.

See below a sample Applicant's Affidavit which will need to be completed prior to Court (Source: Legal Aid Queensland)

Sample 3 – Employer's Affidavit

MAGISTRATES COURT OF QUEENSLAND

Registry: Brisbane
Number: M1234 of 2012

IN THE MATTER OF
section 87 of the Transport Operations
(Road Use Management) Act 1995

AFFIDAVIT OF ROGER MINTY

ROGER MINTY of 78 Crescent Drive, Carina in the State of Queensland, Landscape Gardener, states on oath:

1. I am the owner of a small landscaping business trading as Beautiful Gardens. I employ six permanent employees and others on a casual basis as the need arises.
2. Bosca Alberto Tran is one of the six permanent employees. Bosca has worked for me for the past 12 years, starting while still at school in a school-based apprenticeship.
3. Beautiful Gardens is located at Buranda but most of the jobs Bosca does are at the homes or business premises of clients. He does both maintenance work on existing gardens and creation of new ones. As he is one of my most experienced employees, he often works alone from the beginning or stays behind to finish off after other employees have left. Depending on the job he is doing, he needs to take various tools and other equipment with him to the various sites where he works.
4. My business is not large enough to have the luxury of sending more than one employee to every job. Every employee, especially those who often work alone, has to be able to drive. Beautiful Gardens has five work vehicles which are in use daily by my employees. Sometimes they use their own vehicles and sometimes they take a work vehicle home.
5. I find Bosca to be a very reliable and responsible worker, and I would hate to lose him. However, unfortunately, if he has no licence he can't drive to the work sites and would not be able to do his work. I have no other work I can give him that doesn't require a licence, nor can I spare another employee to drive him around. If Bosca doesn't have a licence, unfortunately I would have to terminate his employment. I have several friends in this business looking for employees, but they all require those employees to have a licence for the same reasons.
6. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

Sworn by Roger Minty on the _____ day of 2012, at _____ in the presence of:

Deponent AFFIDAVIT OF ROGER MINTY Filed on behalf of the Applicant Form 46 Rule 431	A Justice of the Peace/Solicitor Bosca Alberto Tran 26 Little Street BROWNS PLAINS QLD 4118 Tel: XXXX XXXX
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What to do in Court?

When you were charged by the police you should have received the following three (3) documents:

- a) Notice to Appear in Court,
- b) A copy of the Breath Analysis Certificate, and
- c) A notice of suspension of your driver's licence. If you are charged with drink driving and your reading was under 0.100 % then your suspension will be for a 24 hour period. If your reading was 0.100% or over then your licence will be suspended until you go to Court. **DO NOT DRIVE CONTRARY TO THE NOTICE OF SUSPENSION.**

It is a good idea to start your preparations for Court as soon as you are charged by the police. At the first available opportunity you should contact the Police Prosecutors office and request a copy of the Police QP9 report and a copy of your traffic history.

Once you have completed your application form and your supporting Affidavit material you will need to file that in the Court Registry and you will need to give a copy to the Police Prosecutors.

You will need to appear in Court on the date that appears on your Notice to Appear. Some Courts will deal with your matter on the first Court date. Other Courthouses will adjourn your matter to another day when they hear work licence applications.

On the hearing of your matter, you will need to enter a plea of guilty to the charge. The Prosecutor will read the facts to the Court and tender a copy of your traffic history to the Magistrates. The Prosecutor usually tells the Magistrate whether or not they oppose the work licence application. The Prosecutor may make submissions to the Court about the application.

Once the Prosecutor has finished the Magistrate will invite you to make submissions to the Court about your application. This is your opportunity to speak with the Magistrate and outline why you are a fit and proper person to be the holder of a licence and why you need your licence for work purposes.

Is there anything else I can do to prepare for a restricted work licence?

Here are some other good ideas to include in your application:

- a) Complete the RATE Traffic Education program
- b) Obtain 2 – 3 character references
- c) Complete a Drug and Alcohol rehabilitation program
- d) Produce public transport timetables (to prove you cannot catch public transport)
- e) Produce evidence of the cost of alternate transport (UBER / bus etc)

What happens after Court?

If the Court grants you a restricted work licence, then you will be given a copy of the Magistrates Order. You will need to take that to a Queensland Transport office. You cannot drive from Court to Queensland Transport. Once you get to Queensland Transport you will need to give them a copy of the order and they will give you a new licence. You are then able to drive again but ONLY for work related purposes.

At the conclusion of your disqualification period, you have to go back to Queensland Transport and

The Unrepresented Defendant

be re-issued with a new licence. You cannot drive again until you have done that. The licence will be the same as your old licence, but you will be restricted to a zero blood alcohol reading and only 4 points for a period of 12 months.

12 Special Hardship Licences

If you have a Queensland Drivers Licence and the following happens:

- You exceeded your Demerit Point Allocation, OR
- You drive over 40 kilometres over the speed limit.

Then you may be eligible to make an application to the Court for a **Special Hardship Order (SHO)**. The application to the Court is appealing the decision of Queensland Transport to suspend your driver's licence. A SHO is an order of the Court directing that Queensland Transport issue you with a restricted driver's licence during the period of the suspension.

Accumulation of Demerit Points

If you are coming close in exceeding your demerit point allocation, then you will receive a **Demerit Point Warning Letter** from Queensland Transport. This letter will tell you that you are running low on demerit points. If you exceed your demerit point allocation, then Queensland Transport will send you another letter called an **'Option to Choose'**. This letter gives you the choice on going on a good behaviour driving option (with one point) for a period of 12 months OR you can lose your licence for a period of 3 months.

If you choose the good behaviour driving option and accumulate any demerit points during the 12 months, then Queensland Transport will send you a further letter which is a **Notice of Suspension** of your driver's licence. This notice will tell you the date on which you are suspended from driving. The period of suspension will be for a period of 6 months.

High Speed Suspension

If you receive an infringement notice for exceeding the speed limit by more than 40 kilometres per hour, and you pay the infringement then you will receive a notice of suspension of your driver's licence. The period of the suspension will be for a period of 6 months.

If you receive a suspension letter by Queensland Transport because of the accumulation of demerit points or excessive speed, then you may be eligible to make an application to the Court for a SHO. The application **MUST** be in an approved form and it **MUST** be made to your nearest Courthouse. The application **MUST** be accompanied by supporting Affidavit material from both yourself and your employer (if you are not self-employed). The application must also include a copy of your traffic history which you will need to get from Queensland Transport prior to submitting your paperwork. You will only be eligible to make an application for a SHO if you require your licence for work purpose OR if you require it for a special purpose (i.e., medical, or other needs).

Your application **MUST demonstrate that:**

- You are a fit and proper person to be the holder of a drivers licence; and

The Unrepresented Defendant

- That if you were to be deprived of your drivers licence then you will be placed in a position of severe financial hardship OR other hardship.

You must file a copy of your application at the Court registry and you MUST serve a copy on Queensland Transport. You will be given a Court date when the Magistrate will hear and determine your application. The suspension of your driver's licence will be lifted between the time that you file your application and the time that you go to Court.

When you go to Court you will have to demonstrate to the Magistrate that you are a suitable person to be granted a SHO. The application may be opposed by the Prosecutor if they feel that you are not a suitable person to the holder of a driver's licence. You will generally not need your employer to go to Court unless the Magistrate or Prosecutor requires them for cross-examination.

If you are not successful in your application, then the 6 month suspension of your driver's licence will commence then (it will not be backdated). If you are successful, then the Court will give you a copy of the order. You will need to take that order to Queensland Transport who will update the status of your licence. You cannot drive from the Court to Queensland Transport for that purpose. Once you receive your updated licence then you will be able to drive but only in accordance with the Court order.

The Court order could include such conditions as:

- The hours you are allowed to drive,
- The days you are allowed to drive,
- The purpose for which you are allowed to drive,
- The class of motor vehicle you are allowed to drive,
- Whether or not you are allowed to carry passengers,
- Whether you have to keep and maintain a logbook,
- If you have to wear a uniform, or
- That you have to carry a copy of the order with you whilst driving.

You must comply strictly with the order as any breaches could result in you losing your driving privileges.

You can get a copy of the application form from any Courthouse. The application form looks like this:

The Unrepresented Defendant

Special Hardship Order Application

Transport Operations (Road Use Management) Act 1995



Queensland
Government

1. Personal Details

Family name (please PRINT)

Given name/s

Date of birth

____/____/____

Town and Country of birth

Current residential address (number, street and suburb)

Qld driver licence number

____-____-____

Expiry date

____/____/____

Driver licence type: (please tick box)

Provisional ☐ Open ☐

Note: If you do not have a Provisional or Open driver licence, you are not eligible to apply for a SHO.

Licence class/es

Occupation

2. Is your driver licence currently suspended because you have gained two or more demerit points when driving during a Good Driving Behaviour Period?

No ☐ Yes ☐

3. Is your driver licence currently suspended because of an offence of driving more than 40 km/h over the speed limit?

No ☐ Yes ☐

4. Is your suspended driver licence a Qld learner or probationary licence or a non-Qld driver licence?

No ☐ Yes ☐ You are not eligible to apply for a SHO.

5. Does this application relate to the same licence class as your suspended Qld driver licence?

No ☐ You are not eligible to apply for a SHO. Yes ☐

6. Prior to the current suspension:

a) has your Qld driver licence been suspended or cancelled in the last 5 years because of the accumulation of demerit points or a high speed offence?

No ☐ Yes ☐ You are not eligible to apply for a SHO.

b) has your authority to drive in Qld under an interstate or overseas licence been suspended, in the last 5 years, because of the accumulation of demerit points or a high speed offence?

No ☐ Yes ☐ You are not eligible to apply for a SHO.

c) have you been ineligible to apply for a Qld licence, in the last 5 years, because of the accumulation of demerit points or a high speed offence?

No ☐ Yes ☐ You are not eligible to apply for a SHO.

7. Have you been disqualified from holding or obtaining a Qld driver licence by a court in the last 5 years?

No ☐ Yes ☐ You are not eligible to apply for a SHO.

8. Have you been convicted of dangerous driving by a court in the last 5 years?

No ☐ Yes ☐ You are not eligible to apply for a SHO.

9. Have you attached the necessary supporting evidence? (see over page for meaning of 'supporting evidence')

Yes ☐ No ☐

Note: You are required to give the court an affidavit containing information relevant to your circumstances.

10. Applicant's declaration

I declare that I have read all the answers I have given to the questions in this application and that the answers given by me are complete, true and correct in every detail. I understand that if I have stated anything in this application that is false or misleading, my application may be refused. I understand that I may be prosecuted for giving or stating any false or misleading information or documents. I consent to the department taking, keeping and using my personal information and documents for the purposes associated with my driver licence as required under the *Transport Operations (Road Use Management) Act 1995* or otherwise authorised by law.

Applicant's signature

Date

____/____/____

11. Magistrates Courts Use Only

This application was filed in the Magistrates Court at:

on

____/____/____

Notice of Hearing

This application will be heard in the Magistrates Court at:

on

____/____/____

at

____:____ am/pm

Clerk of the Court's signature

Date

____/____/____

12. Department of Transport and Main Roads Use Only

A copy of this application was filed in the office of the Department of Transport and Main Roads (the department).

Authorised person's name (please PRINT)

Driver licence issuing centre

Authorised person's signature

Date

____/____/____

Privacy Statement

The Department of Transport and Main Roads (the department) provides this form under the *Transport Operations (Road Use Management) Act 1995* (the Act) so that you may apply to a court for a Special Hardship Order. The information collected for the purpose of this application will be accessible by authorised representatives of the Department of Justice and Attorney-General, Queensland Police Service and the department and may be disclosed to interstate driver licensing authorities as allowed under the Act. The department will not disclose your personal information or documents to any other third parties without your consent unless authorised or required by law.

Corporate Forms Area Form F4401 V01 Jul 2012

Original (White) - Retained by Clerk of the Court Duplicate (Yellow) Retained by Applicant Triplicate (Green) Retained by the department

the Unrepresented Bereavement

Your Affidavit: -

Your Affidavit will need to address a number of areas in order for the application to be successful. You will need to put in a background about yourself, where you were raised, whether you are married, whether you have any children. You will need to outline your education background and your work history. You will need to outline your current work situation and your needs for a driver's licence. You will need to put in your Affidavit what happened in relation to the incident giving rise to the police charge. It is important that you mention your traffic history and any attempts at rehabilitation (including completing the RATE Program). Lastly, you will need to put in there the requirements that you have for a driver's licence (including hours, days, passengers and why you need to drive).

It is ESSENTIAL that you cover the following two issues:

- a) That you are a fit and proper person to be the holder of a driver's licence. To address this, you will need to speak about your traffic history and what steps you have put in place to ensure that you do not reoffend in the future; AND
- b) That you need your driver's licence to earn your livelihood. You will need to include a summary of your income and all of your expenses. This will need to prove that if you lose your job then you will be in a situation of severe financial hardship. If your application is based on other grounds (such as medical) then you will need to provide supporting evidence and Affidavits of the nature of the condition and the need to drive.

See below a sample Applicant's Affidavit which will need to be completed prior to Court (Source: Legal Aid Queensland)

Sample 6 – Applicant's Affidavit

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: Number: of 2010
IN THE MATTER OF CATHERINE DELIA PENNIE
AND IN THE MATTER of an Application for a Special
Hardship Order pursuant to Part 14 of the Transport Operations
(Road Use Management - Driver Licensing) Regulation 2010

CATHERINE DELIA PENNIE, of 10 Wish Street, Whoop Whoop in the State of Queensland, Nurse, states on oath:

1. I am the Applicant in this matter.
2. I was born on 1 June 1973 and am 38 years of age. I am divorced with no children.
3. I am the holder of Queensland driver licence number 956102 (Type O, Class C) which expires on 1 June 2011. Exhibit CDP1 is a copy of my driver licence. My licence was suspended on 8 November 2010 pursuant to the Notice of Suspension dated 8th October 2010 Exhibit CDP2 is a copy of the Notice of Suspension.
4. My current position is with the We Care Hospital at Toowoomba. I joined We Care Hospital seven years ago, in November 2003. The hospital is about 45 minutes drive from my home at Whoop Whoop. Exhibit CDP3 is a copy of my current job description and Exhibit CDP4 is a copy of my Curriculum Vitae.
5. I work for a total of 37 hours per week over five days per week, with the days and hours changing according to the monthly roster. I am also on call for 24 hours straight approximately once every three months. At the moment my roster is from Tuesday to Saturday inclusive as follows:
 - Tuesday/Wednesday: 5am to 1:30pm (one hour lunch break)
 - Thursday/Friday: 8am to 4pm (half hour lunch break)
 - Saturday: 5am to 2pm (half hour lunch break).
 My next 24 hour on call period commences this coming Sunday.
6. My work is a combination of looking after patients at the hospital and visiting others at their homes. I drive my own vehicle to and from work and to and from the hospital for appointments at patients' homes. There is a small team of us on different rosters doing the same duties, and it is occasionally possible to swap appointments outside the hospital, but I have no ability to do this on a long term basis. I go by myself to

Page 1

Signed: _____ AFFIDAVIT BY CATHERINE DELIA PENNIE Filed on behalf of the Applicant Form 46 Rule 431 Filed on behalf of the Applicant	Taken by: _____ CATHERINE DELIA PENNIE 10 Wish Street WHOOP WHOOP QLD 4352 Tel: 07 3818 1234
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Sample 6 – Applicant's Affidavit continued

these appointments, often carrying quite bulky medical supplies (dressings etc) and sometimes aids like wheelchairs, shower chairs etc. There is nobody available to drive me to and from them. Also, sometimes I arrive there and find that particular supplies are necessary, and I then make a trip back to and from the hospital to obtain these.

7. There is no direct public transport from my home at Whoop Whoop to the hospital. The only public transport is by bus, and the bus service does not start until 6am on weekdays, 7am on Saturdays and 8am on Sundays and public holidays. The bus service finishes at 11pm on weekdays and 10pm on weekends and public holidays. There is no direct bus service from my home to the hospital. The nearest bus stop to my home is about a 15 minute walk. I would then need to catch the bus into the town centre and then a different bus from the city centre to the hospital. The trip into the town takes about 45 minutes depending on the time of day, and then another 30 minutes or so from the city to the hospital. There is a bus stop directly outside the hospital entrance. Altogether, to travel each way by bus would take me about an hour and a half, about double the time it takes by car. As well, there is no way I would be able to get to work in time to start any days with shifts commencing before about 7:30am on weekdays, later on other days. I would have a similar problem at finishing time for the shifts when I finish late at night or very early morning and when I am on call.
8. I do not have anyone who could drive me to and from work on the days when I cannot catch the bus due to timing difficulties. There are no colleagues who work the same shifts who live anywhere near me, and I cannot afford to pay for taxis on these occasions. The position is the same for my calls on patients at their homes. Even if there were buses available to get to and from these appointments, on many occasions I need private transport to carry the supplies and equipment I take with me. While there is some flexibility with the timing of these appointments, there is not enough to be able to work in with the bus timetable.
9. I have outlined above the nature of my work duties and the hours of some at We Care Hospital and the work related need for me to have a driver's licence. As is shown in my CV, since graduation from university my work experience has been solely in small private hospitals like We Care Hospital. Just as I would lose my current position with We Care Hospital if I do not have a driver's licence, I could not gain employment elsewhere within the health industry without a driver's licence because the type of work that I am qualified for by training and experience is invariably shift work, as well as being on call for 24 hour periods or more, with both of these including on weekends and public holidays, when public transport is often not available. To enable me to work in the profession for which I am qualified a driver's licence is essential.

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Signed:

Taken by:

Sample 6 – Applicant's Affidavit continued

10. As a divorced person my salary is my only means of supporting myself and servicing my mortgage and other necessities. While I have some savings, I do not have sufficient to live on for six months. My take home pay each week (excluding if I have an on call period) is \$1,154.00. My weekly commitments are approximately as follows:

i. Mortgage	\$325.00
ii. Car loan	\$104.00
iii. Petrol	\$200.00
iv. Car Registration /maintenance	\$ 30.00
v. Food	\$150.00
vi. Telephone (including mobile)	\$ 30.00
vii. Electricity	\$ 35.00
viii. Health insurance	\$ 60.00
ix. Superannuation/life insurance	\$ 40.00
Total	\$1084.00

I also try to put away \$100.00 per week to a savings fund for a "rainy day". If I am unable to work for six months I will suffer extreme hardship.

11. Although I am divorced without children, I have family responsibilities in that my mother Delia Ethel Pennie has cancer and is currently undergoing chemotherapy and radiotherapy at Whoop Whoop Hospital, a public hospital. My father died some years ago and my mother does not drive. My brother Charlie, his wife Donna and I co-operate to ensure that my mother gets to her various treatment sessions. Both Charlie and Donna work fulltime and have two primary school age children to look after. I estimate that I take my mother for about half of her appointments, including waiting with her at the treatment and taking her home. Without a driver's licence I would be unable to assist with my mother. As Charlie and Donna do not have the capacity to take over the times that I currently spend with my mother, my mother would be unable to attend for a lot of her treatments, and her prognosis would be much worse than if she is able to attend everything. I have obtained a letter from my mother's specialist outlining her medical condition and the necessity for treatment appointments. Exhibit CDP5 is a copy of this letter.

Page 3

Signed:

Taken by:

Sample 6 – Applicant's Affidavit continued

13. As well as my paid employment, I am a panelist on a radio station on the first Monday each month for an hour on health matters. While I do not receive payment for this other than an allowance to cover kilometres, I sign a contract annually which I have just renewed. The studio is about an hour's travel from Whoop Whoop, and the only feasible method of transport is by car. To go by public transport it would mean a bus trip to the station, by train into the town centre and then back out again to the other side, taking about 2 hours each way. From Whoop Whoop by car I can cut straight across without going through the city. I have negotiated with We Care Hospital so that this commitment is always possible even with my shift work and on call work, but I have not allowed for the extra time it would take if I had to use public transport. Without a driver's licence I would be unable to continue this commitment, and would be in breach of my contract.
14. In relation to my work as a panelist, exhibit CDP6 is a copy of a reference from Ms Jane Doe.
15. Since obtaining my licence some 17 years ago I have committed some relatively minor traffic offences. I went onto a 12 month Good Driving Behaviour period approximately 10 months ago as a result of an accumulation of points from a mixture of speeding, not wearing a seatbelt etc as shown on my traffic history, a copy of which is exhibit CDP7. Unfortunately, before the expiry of the 12 months, in early June, I was on my way to meet a friend at night, travelling just under the "normal" speed limit of 80 kms per hour. I did not notice that there was a reduced speed limit due to road works. I did not deliberately speed, but I am familiar with speed limits in the local area and I obviously did not pay proper attention to the change of speed limit in the area due to the changed circumstances. I have not committed any further traffic breaches since this breach.
16. I have never intentionally and would never put any other person's life or my own in danger. The suspension of my driver's licence has brought home to me the importance of being able to drive and on 29 October 2010 I completed a Defensive Driving Course at the Whoop Whoop Training Centre and annexed hereto and marked CDP8 is a copy of the Defensive Driving Certificate issued to me on 29th October 2010.
17. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

Sworn by the deponent at Whoop Whoop this day of , 2010 at
in the presence of:

(Signature of Deponent)

A Justice of the Peace/Solicitor

Your Employers Affidavit: -

Your employer will also need to supply an Affidavit. That Affidavit will need to say that if you were to lose your licence then they will have to terminate your employment. This can include getting to and from work, and also driving for work purposes. It is also helpful if the Affidavit can make some comment about your character (for example that you are a hardworking and reliable member of the team).

Your employer will not need to be at Court for the hearing of the application UNLESS the Prosecutor or the Court advise that they require them.

See below a sample Applicant's Affidavit which will need to be completed prior to Court (Source: Legal Aid Queensland):

Sample 8 – Employer's Affidavit

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: Number: of 2010
IN THE MATTER of CATHERINE DELIA PENNIE
AND IN THE MATTER of an Application for a Special
Hardship Order pursuant to Part 14 of the Transport Operations
(Road Use Management - Driver Licensing) Regulation 2010

AFFIDAVIT OF SANDY DENNY

SANDY DENNY of 15 Aged Circuit, Toowoomba in the State of Queensland, Director of Nursing, state on oath as follows:

1. I am the Director of Nursing at We Care Hospital in Toowoomba, which employs the applicant Catherine Delia Pennie as a full time nurse.
2. The hospital employs several nurses on a rotating shift basis. The rosters are done monthly in advance. Each full time position involves 37 hours per week over five days per week, with the days and hours changing according to the monthly roster. Each nurse is also required to be on call for 24 hours straight approximately once every three months.

Under the current roster for the month of June, Catherine is working from Tuesday to Saturday inclusive each week as follows:

- Tuesday/Wednesday: 5am to 1:30pm (one hour lunch break)
- Thursday/Friday: 8am to 4pm (half hour lunch break)
- Saturday: 5am to 2pm (half hour lunch break).

Her next 24 hour on call period commences this coming Sunday

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Deponent:	Solicitor:
AFFIDAVIT BY SANDY DENNY	CATHERINE DELIA PENNIE
Filed on behalf of the Applicant	10 Wish Street
Form 46 Rule 431	WHOOOP WHOOOP QLD 4352
	Tel: xxxxx xxxxx

Sample 8 – Employer's Affidavit continued

3. Catherine's duties are a combination of looking after patients at the hospital and visiting others at their homes. The hospital does not provide a driver or a vehicle for these visits, it being part of Catherine's conditions of employment that she has a driver's licence and provides her own transport. There is a small team of nurses on different rosters doing the same duties, and nurses can swap shifts themselves, which happens sometimes when a nurse's car is out of service, but this would not be possible on a long term basis. The appointments are scheduled fairly close together, and it is often necessary for the nurse to carrying quite bulky medical supplies (dressings etc) and sometimes aids like wheelchairs, shower chairs etc. Occasionally another health professional such as a physiotherapist goes with the nurse, but this is not frequent. It would not be possible to adhere to the appointments scheduled and carry any necessary equipment without private transport.
4. If I had to estimate the percentage of time Catherine spends on outside visits, I would say it is probably more than half of her total work hours, although it fluctuates depending on the needs of patients.
5. As previously mentioned, having a licence and one's own vehicle are part of the nurses' conditions of employment, and the hospital does not see itself as responsible to fill in if an employee for one reason or another no longer has a licence or a vehicle. If Catherine does not have a valid licence, she would not be able to fulfill a vital condition of her employment, and I would have no option but to terminate her employment with the hospital as there is no available job she can do for the hospital that does not require a driver's licence. While there are other nurse positions based solely at the hospital, none of these are vacant at present, and I am not aware of any likely upcoming vacancies. In any event, these positions are also shift work, with starting/finishing times often outside the hours that public transport is available.
6. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

Sworn by the deponent at Whoop Whoop this day of , 2010 at
in the presence of:

(Signature of Deponent)

A Justice of the Peace/Solicitor

13 Summary Charges

A Summary Charge is one that is less serious than an Indictable Charge and is able to be heard and determined by a Magistrate in the lowest Court in the hierarchy. Summary Charges include minor traffic offences including Unlicensed Driving and Drink Driving. They also include offences under the Summary Offences Act and Regulatory Offences Act. There are a number of other criminal charges under the Criminal Code and other State and Commonwealth pieces of legislation which will be dealt with by a Magistrate. A Summary Charge is still classified as a criminal offence for which punishment by the Court will be imposed. The maximum penalty that the Court can impose is outlined in the legislation; on more serious offences it is up to 3 years.

The other types of charges are called Indictable Charges (*see commentary below*). Note that some Indictable Charges are able to be heard and determined by a Magistrate if they are less serious. The more serious Indictable Charges will have to proceed to either the District or Supreme Court for determination.

13.1 Your Options

When you are charged with a summary offence you will have to go to a Magistrates Court. The police may either issue you with a Summons (usually for minor matters such as traffic breaches), issue you with a Notice to Appear, or alternatively arrest and charge you. If you are arrested and charged, then the police will either grant you Watchhouse bail or alternatively they will refuse your bail. If your bail is refused, then they will keep you in the Watchhouse and place you before the next available Court.

At your first Court appearance you have the following options available to you:

a) Seek an adjournment to another day: -

This would be to allow you to seek some legal advice, prepare for Court, conduct negotiations with the prosecution or to allow you further time to consider your options. You will not automatically get an adjournment, that is a matter for discretion for the Magistrate. If your matter is adjourned then the Court may require you to enter into a Bail Undertaking (with or without conditions), or alternatively they may require you to remain at large (which means that you do not have to sign a Bail Undertaking).

b) Enter a plea of guilty: -

You should get legal advice before you enter a plea of guilty to any criminal matter. If you wish to plead guilty then you will need to tell that to the Magistrate. If the Magistrate has time to deal with the matter that day, then they will do so. If they do not have time or need a pre-sentence report then they will adjourn your matter to another day.

The Magistrate will usually formally read the charge to you. They will also formally ask you if the plea of guilty is of your own freewill. They will ask if any person in authority told you that you have to plead guilty to the charge. Once the Magistrate is satisfied that the plea is of your own freewill then the Prosecutor will read the facts to the Magistrate and hand them a copy of any criminal and traffic history. The Prosecutor may make submissions to the Magistrate about the type of penalty that they should impose.

The Unrepresented Defendant

Once that has happened then the Magistrate will give you an opportunity to make submissions about the matter. This is your opportunity to explain your side of the story, tell the Magistrate a little bit about yourself and to speak with them about the type of penalty that they should impose and what is appropriate in the circumstances.

At the end of your submissions the Magistrate will then sentence you and tell you what your punishment is.

c) Enter a plea of not guilty: -

You should get legal advice before you enter a plea of not guilty to any criminal charge. If you enter a plea of not guilty then the Magistrate will most likely require that you participate in a case conference with the Prosecutors (see below). If you have participated in the Case Conferencing process and you still wish to maintain your plea of guilty then you will need to advise the Magistrate of this. The Magistrate will then list the matter for a summary trial on a future date that is suitable to the Court and both parties. A direction will be given by the Magistrate that the prosecution must serve the brief of evidence on the defence by a certain date (which must be more than 14 days prior to the hearing date). If the police don't serve that material in accordance with the Magistrates direction, then they may be prevented from calling that evidence at the trial.

What is a Brief of Evidence? this is all of the evidence that the prosecution will rely on in an attempt to prove their case against you. This will include all statements, exhibits, photographs, CCTV footage, recordings, and any other supporting material.

A summary trial is conducted before a Magistrate sitting alone. There is no jury in a Magistrates Court. See section 14 'Conducting a Summary Trial'.

13.2 Case Conferencing

Case Conferencing is a process conducted in the Magistrates Court between the Defence and the Prosecution. The purpose of Case Conferencing is to try to settle the matter without the need for the charge to go to a trial. Case Conferencing is used if the Defence have a dispute about the charge, the facts of the charge, the nature of the evidence, or an Alternative Dispute Resolution (Justice Mediation), or are wanting to obtain evidence supporting the charge (i.e., CCTV footage).

Every Police Prosecutors office have slightly different ways that they practically do these conferences. Some are done face to face with a Prosecutor in their office, some are done face to face on the morning of Court. Usually though the Case Conferencing request needs to be formally put in writing and emailed to the Prosecutors office. A list of the email addresses can be found on the Queensland Police Service's website at <https://www.police.qld.gov.au/qps-corporate-documents/prosecution-contacts-case-conferencing>

The Magistrates will generally insist that Case Conferencing is conducted where there is a disputed charge. If the Defendant maintains their innocence to the charge however, they need to be careful that they do not disclose something to the Prosecutor that they do not have to (such as their version of events). It needs to be remembered that a fundamental principle of law is that a Defendant has a right to silence. That means that they do not have to say anything unless they wish to do so. If a Defendant makes a comment or representation to the police in the Case Conferencing process, then that could be potentially used against them at a trial. It could potentially be used as a prior

The Unrepresented Defendant

inconsistent statement in some circumstances if you are not careful.

When you receive your QP9 police report, make sure that you carefully read that document. If you are not sure about the contents, then you should immediately get legal advice. If you wish to dispute the charge or dispute the facts, then you will need to go through this Case Conferencing process.

In the communications to the Prosecutor, you will need to include the following information;

- Your full name
- Date of Birth
- List of charges
- QP reference number (this is the number found at the top of the Police QP9 report)
- Which Court you are going to
- Next Court date
- What issue you want to raise

If the dispute is simple, then the case conference may be able to be finalized straight away without a further adjournment. If it is more complicated, then the Prosecutor may need time to consider your case conference request. They may need to speak with the investigating officer and / or the complainant, and they may need to seek authorization from their superior officers. As part of an anti-corruption plan within the Police Department, the Prosecutor in Court only has very limited power to amend facts and charges. Quite often they require everything to be in writing.

14 Conducting a Summary Trial

When a Defendant pleads not guilty to a charge that can be dealt with in the Magistrates Court then the charge will proceed to a summary trial. This means that the Defendant does not agree with the charge and they wish to challenge it. If you are charged by the police with an offence and you wish to challenge it, then you will need to go through the 'Case Conferencing' process as described above. This process will allow you to attempt to negotiate the matter with the police, and also to obtain a full brief of evidence. Once you receive the full police Brief of Evidence, and you still wish to challenge the charge, then you will need to formally need to enter a plea of Not Guilty to the Magistrate. The Magistrate will then give you a date for the hearing of all the evidence – called a Trial Date. A Summary Trial is conducted before a Magistrate sitting alone. There is no jury.

14.1 Preparation

Once you receive the police brief of evidence, you need to read it very carefully. This is all of the evidence that the police will be relying on to prosecute you in relation to the charge. You need to carefully consider all of the issues that is raised in the brief and look at the points that you agree with and the points that you disagree with.

You will need to consider what the issues are and what witnesses you wish to cross-examine. You should write out all of the questions that you think that you should ask at the Trial. You should practice asking these questions with a friend.

14.2 Preliminary Discussions

Prior to the commencement of the trial, you may be asked to have a discussion with the Police Prosecutor to try to resolve the matter. You might ask them to withdraw the charge, refer the charge to Justice Mediation or consider reducing the charge to another one. The Prosecutor may ask you if you wish to plead guilty to the charge, what witnesses you wish to cross examine, how long the trial is expected to last, and whether or not you will be calling any evidence or any other witnesses.

You do not have to speak with the Prosecutor before the commencement of the trial, that is entirely up to you. If you do speak with them however just remember that you might be saying something that is going to harm your chances in the trial, so you need to be very careful.

14.3 Start of the Trial

At the beginning of the trial the Magistrate will formally read the charge(s) to you and ask you how you wish to plead. If you don't agree with the charge, then you need to say, "Not guilty your Honour". You should be polite and respectful to the Court at all times.

The Prosecutor may or may not be in uniform and they will be typically seated on the right-hand side of the bar table. You will be seated on the left-hand side of the bar table. You will remain seated at all times unless you are speaking or being spoken to by the Magistrate.

Witnesses to the trial must remain outside the Courtroom until they are called to give evidence. Once they have finished giving their evidence and have been excused then they are able to remain in the Court room (unless it is a Domestic Violence matter).

The Unrepresented Defendant

You should familiarise yourself with the Courtroom. The witness box is where the witnesses sit when they are giving their evidence. The location of the witness box varies in each Courtroom. There will be a jug of water and drinking cups at the bar table. You should pour yourself a glass of water at the beginning of the trial as you will probably be nervous.

There might be some preliminary issues that the Court needs to address prior to witnesses giving evidence (such as applications for telephone evidence / the order of witnesses and the like). Once these preliminary issues have been dealt with then the Prosecutor will call their first witness.

The witness will make their way to the witness box where they will remain standing. The Magistrates Clerk will then administer the oath or the affirmation. Essentially, the oath is if you believe in a God and an affirmation is if you have other religious beliefs or no beliefs at all. It does not matter which one you choose. You will have to repeat either:

I swear by almighty god that the evidence that I shall give shall be the truth, the whole truth and nothing but the truth. So, help me god.

OR

I you solemnly and sincerely declare and affirm that the evidence that I shall give shall be the truth, the whole truth and nothing but the truth.

The witnesses in turn will give their evidence-in-chief and then you will get to cross-examine them. Once you have finished your cross-examination then the Prosecutor will get a chance to re-examine them. Once that has finished then the witness will be excused.

This process will be repeated for all prosecution witnesses. Once the Prosecutor has called their last witness then they will formally close their case. They will say something like "That is the case for the Prosecution".

Once that happens you might be able to make a submission to the Magistrate that you have no case to answer. This is called a "No Case" submission. That is, the Prosecutor was not able to prove their case. If you are successful, then the case will be dismissed. If you are not successful, then the Magistrate will ask you if you want to give or call any evidence.

You DO NOT have to give any evidence yourself nor do you have to call any evidence if you don't want to. That is a matter for you. If you don't give or call any evidence, then the Magistrate will not be able to take into consideration your side of the story.

If you do give evidence, then you will do that from the witness box. You will give your evidence-in-chief and the Prosecutor will have the opportunity to cross examine you. You will have an opportunity to respond to the cross-examination if appropriate. This same process will happen if you choose to call other witnesses.

14.4 Evidence-in-Chief

Evidence-in-chief is where the witnesses get their opportunity to tell their side of the story. The person calling the witness is entitled to ask this witness questions. These questions cannot be leading in nature. That is, they cannot suggest an answer. There are strict rules that apply to the evidence that the witness can give. They must be relevant; it cannot be hearsay or opinion evidence. It cannot

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be evidence of general bad character. There are exceptions to these rules and other rules apply.

The party calling the witness will ask questions-in-chief.

14.5 Cross-Examination

Once the witness has given their evidence-in-chief then the opposing party will have the opportunity to cross-examine the witness. The cross-examination needs to be carefully prepared and must be relevant to the fact in issue that is in dispute. There are many different techniques which are applied in cross-examination and each questioner will have a different style.

The purpose of cross-examination is to attempt to undermine the credibility or reliability of the evidence that the witness is giving. There is also a rule in cross-examination that you must put your case to the witness in fairness to allow them to comment. This is called the rule in "Browne v Dunn".

There are specific rules which apply to the cross-examination of children and vulnerable witnesses.

Unlike Evidence-in-chief, leading questions are permitted. In fact, a technique of cross-examination is that you should never ask a question that is not leading.

The preparation of cross-examination is tricky and will vary in every case. The essence of cross-examination however is to do one of two things:

- Undermine the Prosecution Case, or
- Establish your defence.

In a famous lecture by Professor Irving Younger, he proposed the **10 Commandments of Cross-Examination** which are:

- a) Be brief
- b) Use plain words
- c) Only use leading questions
- d) Be prepared
- e) Listen
- f) Do not quarrel with the witness
- g) Avoid repetition
- h) Disallow witness explanation
- i) Limit questioning
- j) Save for summation ("Closing Submissions")

14.6 Re-Examination

Once a witness has been cross-examined then party calling that witness gets the opportunity to ask clarifying questions. These clarifying questions are called re-examination. These questions are really specific and only relate to any ambiguity which might have arisen from the cross-examination. Usually, these questions are framed by something like "what do you mean when you said.....".

Once the witness has completed all of their evidence then the Magistrate will excuse them. They will then leave the witness box and are free to go. If it is an Open Court, they will be free to sit at the back

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of the Court and listen to the rest of the hearing if they want to.

14.7 Tendering Exhibits

Sometimes a witness will refer to an object or an item in their evidence. These items are called exhibits. These exhibits need to be formally given to the Court for their consideration. This process is called “tendering” the exhibit. If the object is not tendered, then the Court cannot consider it. Items that might be tendered could include photographs, CCTV footage, photo boards, physical objects what might have been used in a crime such as a knife or a bank cheque, documents, records, statements, and the like.

Once a witness has referred to and identified an object that needs to be tendered, it should be done so immediately. You just simply need to say “I tender the (whatever the item is)”. The other party will have an opportunity to object to the tendering of that item and there might be a legal argument in relation to its admissibility.

If an item is received as an exhibit, then the Court will give it a marking (i.e., Exhibit 1). This is so the item can be referred to correctly during the course of the trial.

14.8 Closing Submissions

At the conclusion of all of the evidence then both the Prosecutor and the Defence have an opportunity to address the Magistrate about their case. This is called a Closing Submission. Basically, there will be a summing up of the evidence and the party will try to persuade the Magistrate about their case. The Prosecutor will attempt to persuade the Magistrate that the Defendant is guilty and the defence will attempt to persuade the Magistrate that he / she is not guilty.

The Magistrate may require some points of clarification and may require the parties to make submissions about the law.

14.9 Magistrates Decision

Once the closing submissions are finished then the Magistrate will consider all of the evidence, all of the exhibits, the submissions by both the Prosecutor and the Defence and also the law. The Magistrate may give their decision straight away if it is a straightforward case. If it is a more complicated case, then the Magistrate may need some time to prepare their decision. They might deliver their decision later that day or alternatively adjourn the matter over to another day.

The decision will be a summary of the evidence, what weight the Magistrate has placed on that evidence, the credibility and reliability of each of the witnesses, and the nature of the charge and the law. The Magistrate will then find the Defendant either guilty or not guilty. If they are found guilty then the Magistrate will hear submissions from the defence in relation to penalty. They will then deliver their punishment in the form of a sentence. If they are found not guilty then the charge will be dismissed.

14.10 Costs

If the charge is dismissed, then the Defendant may ask the Magistrate for a costs order. Costs can be awarded under the Justices Act. The amount of money that is paid by the Police to the Defendant is what is deemed to be fair and reasonable in all of the circumstances. The amount of money that the

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Court can award is capped at under the Justices Regulations.

The awarding of costs is a discretion for the Magistrate. There is no guarantee that costs will be awarded – even if your charge is dismissed.

In exercising their discretion to award costs, the Magistrate must take into consideration the following factors:

- (a) whether the [proceeding](#) was brought and continued in good faith; and
- (b) whether there was a failure to take appropriate steps to investigate a matter coming to, or within, the knowledge of a person responsible for bringing or continuing the [proceeding](#); and
- (c) whether the investigation into the offence was conducted in an appropriate way; and
- (d) whether the [order](#) of dismissal was made on technical grounds and not on a finding that there was insufficient evidence to convict or make an [order](#) against the [Defendant](#); and
- (e) whether the [Defendant](#) brought suspicion on himself or herself by conduct engaged in after the events constituting the commission of the offence; and
- (f) whether the [Defendant](#) unreasonably declined an opportunity before a charge was laid—
 - (i) to explain the [Defendant](#)'s version of the events; or
 - (ii) to produce evidence likely to exonerate the [Defendant](#); and the explanation or evidence could have avoided a prosecution; and
- (g) whether there was a failure to comply with a direction given under *section 83A* ; and
- (h) whether the [Defendant](#) conducted the defence in a way that prolonged the [proceeding](#) unreasonably; and
- (i) whether the [Defendant](#) was acquitted on a charge but convicted on another.

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15 Indictable Charges

An indictable charge is a charge that is much more serious than a Summary Charge (see section 13 above). An indictable charge is one that is punishable with a maximum penalty of a period of imprisonment. Some Indictable Charges are able to be dealt with by a Magistrate whilst others will have to go to a higher Court – the District or Supreme Courts. On some Indictable Charges the Defendant may elect to have the charge heard in either the Magistrates Court or the District Court. On some Indictable Charges the Prosecutor may elect to have the charge heard in either the Magistrates Court or the District Court. Sometimes, a Magistrate may say that the charge is too serious and refer the matter to the District Court.

A Magistrate is able to hear an Indictable Charge if both parties consent (where applicable) and also if the Magistrate agrees. The maximum penalty that a Magistrate can impose is a period of imprisonment of 3 years.

If the Magistrate does not hear the charge for whatever reason, then the matter will be referred to the District or Supreme Court for determination. In that event, the prosecution will need to compile a full brief of evidence and a committal hearing in the Magistrates Court will have to be conducted (see committals below).

Put simply, an Indictable Charge is generally more serious than a Summary Charge.

15.1 Committals

If you are charged with an indictable offence and the matter cannot be finalized in the Magistrates Court, then committal proceedings will need to be conducted. A committal is the process of transmitting the charge from the Magistrates Court to the District or Supreme Court.

Once you appear at the first mention of the matter in the Magistrates Court, the Magistrate will identify that the matter will have to be later transferred to the District or Supreme Court. The Magistrate will adjourn your matter to a ‘Committal Callover’. This is another Court date where the Magistrate will have time to case manage the charge to progress it through the criminal justice system.

When you appear at the Committal Callover you can advise the Court if you are going to plead guilty to the offence. But you don’t have to. Alternatively, you can exercise your right to silence at this stage and not enter a plea at all.

If you indicate to the Court that you are going to plead guilty to the charge, then the Magistrate will adjourn the matter for at least 28 days and direct that the prosecution serve a partial brief of evidence on you.

A **“Partial Brief of Evidence”** means a brief which contains copies of signed statements of the prosecution witnesses who will provide the “substantial evidence” in the matter and copies of exhibits of substantial evidence for the purpose of a committal for sentence.

If you do not enter a plea then the Magistrate will adjourn the matter and order that a full brief of evidence be served on you.

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What is a Brief of Evidence? this is all of the evidence that the prosecution will rely on in an attempt to prove their case against you. This will include all statements, exhibits, photographs, CCTV footage, recordings, and any other supporting material.

15.2 Committal Hearings

As described, a committal is the process of getting an indictable charge transmitted from the Magistrates Court to either the District or Supreme Court. The committal is a formal Court process which requires a number of steps. Firstly, the prosecution must have served all of the relevant brief of evidence material on you. Once that has occurred then you need to decide on what type of committal hearing is best for your circumstances.

A committal hearing is not a hearing to determine your guilt or innocence. It is to determine whether or not there is sufficient evidence for the matter to be transmitted to the next stage in the District or Supreme Court. It is not whether or not you should be convicted, it is whether you **COULD** be convicted. That is, could a reasonable jury, properly instructed by the Judge convict you. There just needs to be **SOME** evidence that the jury could use to convict you. It does not matter how weak or tenuous that evidence is, it just has to exist. It is basically whether or not the Prosecution have a “prima facie” case.

Prima facie: Latin for “on the face of it”. It means that the decision would be based on what they have in front of them.

For example, there would conceptually be enough evidence if you had one complainant say that you committed the offence. Now in this case, the evidence is only from one person. It does not have to be corroborated (backed up by other evidence). In this instance, the Magistrate would probably find that there is sufficient evidence for the matter to proceed.

There are different types of committal hearings and we will examine them below.

15.2.1 Registry Committals

A Registry Committal is a process that only Lawyers can use to move a matter from the Magistrates Court to the District or Supreme Court. This is basically completed by filling out some paperwork which is given to the Prosecution and the Court. Once the Registry Committal is processed then the Court will notify the parties. There is no Court appearance and there is no consideration given by a Magistrate as to the contents or strength or weakness of the case.

15.2.2 Full Hand-Up Committals with no Cross-Examination

A Full Hand-Up Committal is conducted in a Courtroom formally before a Magistrate. This can be done with or without a Lawyer. It is a good idea, however, to get legal advice before you make any decision on how your Court proceeding should be conducted.

A full Brief of Evidence must be provided by the Police to the Defendant prior to the committal. The Defendant must be allowed sufficient time to consider the evidence.

The Court proceedings are formally recorded and both the Prosecutor and the Defendant (or their Lawyer if they have one) will be asked to state their name for the record. The Prosecutor will then tender an Index to Brief and all of the written statements to the Magistrate.

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The Magistrate will then ask the Defendant if they want the Court to consider any of the evidence and whether or not they consent to the matter being transmitted to the District or Supreme Court. A submission may be made to the Magistrate that there is no case to answer and ask the Court to dismiss the charge at that stage. If not, the Magistrate will then read a number of warnings to the Defendant and ask if they wish to make any comment or give any evidence in relation to their charge.

At the conclusion of this process the matter will be transmitted out of the Magistrates Court and into the District or Supreme Court. The Defendant's bail will usually be reconsidered. If a person is in custody, then they could make an application for bail. If they are on bail conditions, then an application could be made to the Court for the bail conditions to be varied.

15.2.3 Committal with Cross-Examination

In some circumstances a Defendant may wish to make an application to the Court to cross-examine witnesses at a Committal Hearing. The general purpose for doing this is to attempt to either weaken the prosecution case or, alternatively, to strengthen a defence that you might have. There is no right to cross-examine witnesses at a Committal Hearing, you need to get permission from the Magistrate. In order to do this, you need to make an application to the prosecution. If they agree then the matter will be listed for a hearing day and the witnesses, you request will be present at Court and an opportunity will be given to cross examine them. If they do not agree then an application will need to be made to the Magistrate.

It is a very tactical decision as to whether or not such an application should be made. It could actually be detrimental to your case, so you need to be very careful. You should get legal advice before you consider this option.

If witnesses are cross examined at a Committal Hearing then only limited questions will be allowed to be asked. This will be controlled closely by the Magistrate.

16 Appeals

If you are not happy with the decision that a Magistrate or Judge has given, then it is your right to appeal that decision to a higher Court. There are two grounds for an appeal. Firstly, there can be an appeal on conviction. That is if you believe that you have been wrongly convicted after a trial. Secondly, you can appeal on sentence. That is if you believe that the sentence that the Court has imposed is too harsh.

You should get legal advice before you lodge an appeal. Strict time limits apply. In Queensland you only have 28 days to lodge an appeal if you are not happy with the Courts decision. You may be able to get leave to file a late appeal in some circumstances.

If you lodge an appeal, there are a number of outcomes that the appeal Court can come to. Firstly, they can conclude that the Defendant was wrongly convicted. If that happens then the appeal Court could set aside the conviction and refer the matter back to the original Court for a re-trial. Alternatively, they can set aside the conviction and not refer the matter back for a re-trial. If the Court is satisfied that the original Court made the right decision, then they can dismiss the appeal. In that event, the decision of the original Court will stand.

If there is an appeal against the sentence, then the appeal Court can:

- Dismiss the appeal if they conclude that the original sentence was correct, OR
- Uphold the appeal and impose a sentence that they believe is appropriate.

In order for a sentence to be reduced by an appeal Court the Applicant needs to satisfy that the penalty was manifestly excessive.

The prosecution can also lodge an appeal if they believe that the penalty was manifestly inadequate. If the prosecution believe that the penalty is too low, then they can lodge an appeal on the basis that it was not adequate. The sentence in that event can either remain in place or be adjusted by the appeal Court.

If a person is aggrieved by the decision of a Magistrate, then the appeal is lodged to the District Court. A District Court Judge sitting alone will hear and determine the appeal. In Queensland this is called a Section 222 appeal.

If a person is aggrieved by the decision of either a District Court Judge or a Supreme Court Justice, then an appeal can be lodged to the Court of Appeal. The appeal will be heard by a panel of 3 Supreme Court Judges sitting in the Court of Appeal. This will include the President and two other appeal Judges. As there is an odd number of Judges, an outcome will always be achieved, and a decision is made. There could be a unanimous decision, or there could be a dissenting (disagreeing) Judgement.

In certain circumstances there can be an application for an appeal from the State Courts of Appeal to the High Court of Australia. The Applicant firstly needs to obtain special leave for the appeal to be heard. If special leave is granted, then the appeal will be heard and determined by 7 High Court Justices sitting together. The High Court is the highest Court and there are no appeal mechanisms past that.

The most famous recent appeal before the High Court was the case of Cardinal George PELL.

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17 What Happens if I am Sentenced to Jail?

If you are convicted of a serious offence you may be sentenced to jail for a period of time. If you are sentenced to jail by the Court, then you will be immediately taken into custody. You will generally not have time to say goodbye to friends and loved ones and give them a hug. You will be immediately taken into custody by either the Queensland Police Service Officers or Corrective Services Officers depending on the location.

If you think that you are going to be sentenced to jail, then it is a good idea to have the following on you before you go to Court:

- A list of all the names and telephone numbers of family, friends and your Lawyer,
- Cash (you cannot take any more than \$1,000.00 into a correctional facility),
- Any medication that you are required to take.

DO NOT have anything on you that would be illegal i.e., drugs, weapons as you will be charged with these offences. You cannot smoke in a Watchhouse or a jail so do not take cigarettes or tobacco with you.

You will be taken to the nearest Watchhouse. Some Watchhouses are attached to the Courts. When you arrive at the Watchhouse you will be processed by the officers. You will be strip searched and all property will be removed from you. If you have a mobile phone with you then that will be taken and switched off. You will then be formally identified, photographed, fingerprinted, and entered into the custody records. A risk assessment will be conducted as to whether or not you are a risk of self-harm or harm to any other person. A health check will be conducted, and any medication will be assessed by the Watchhouse nurse.

You will then be placed in a cell, usually with other prisoners. The Watchhouse cell is very basic and you will only have access to a bed, a toilet and a TV and you will be provided with meals and any medication that you are required to take.

A prisoner will remain at a Watchhouse until a vacancy becomes available at the nearest remand center. This period of time will vary but could be as little as 24 hours but could be as long as 2 weeks. If you are sentenced from a Court in South East Queensland, then you will be taken to the Arthur Gorrie Correctional Center in Wacol Brisbane. If you are sentenced by a regional Court, then you will be taken to your nearest jail.

17.1 Locations of Queensland Jails

Location	Address	Phone Number	Classification
Arthur Gorrie	3068 Ipswich Road Wacol QLD 4076	(07) 3212 0411	High
Borallon	75 Ivan Lane Ironbark QLD 4306	(07) 5460 8401	High
Brisbane Correctional Centre (BCC)	234 Station Road Wacol QLD 4076	(07) 3909 1300	High
Brisbane Womens Correctional Centre	Grindle Road Wacol QLD 4076	(07) 3271 9000	High
Capricornia	Bruce Highway North Rockhampton QLD 4701	(07) 4912 6200	High and Low
Helena Jones (Womens)	374 Sandgate Road Albion QLD 4010	(07) 3624 8033	Low
Lotus Glen	Chettle Road Mareeba QLD 4880	(07) 4093 3911	High and Low
Maryborough	Stein Road Aldershot QLD 4650	(07) 4123 7600	High
Wolston	Grindle Road Wacol QLD 4076	(07) 3271 9500	High
Numinbah	2458 Nerang- Murwillumbah Road Numinbah Valley QLD 4211	(07) 5533 4131	Low
Palen Creek	12113 Mt Lindesay Highway Rathdowney QLD 4287	(07) 5544 3700	Low
Southern Qld	Millers Road Spring Creek QLD 4343	(07) 5466 6888	High
Townsville	22 Dwyer Street Townsville QLD 4811	(07) 4430 5999	High and Low
Woodford	Neurum Road Woodford QLD 4514	(07) 5422 5200	High

17.2 What Happens Once a Prisoner Gets to the Jail ?

You will be transported from the Watchhouse to the jail in a secure vehicle by either Queensland Police or Queensland Corrective Services officers. When you initially arrive, you will be processed by the jail staff who will confirm your identity and formally admit you to the jail.

Your property will be taken from you and you will again be strip searched and given a medical examination. You will be allowed to take a shower and you will be issued with prison clothes (green in colour) – this is the standard prisoner ‘uniform’. You will then be interviewed by a counsellor and allowed to make a phone call. You will then be assessed for security classification (i.e., if you are a high-risk prisoner) and then allocated a cell.

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You will then participate in an induction where you will learn about how the prison works and its rules. You will be shown what is required of you and the expectations of the jail. You may be reclassified and re-assessed at any time at the discretion of the jail. You may be relocated to another prison if required at any time.

17.3 Life as a Prisoner

Day to day life as a prisoner is highly structured and based on a strict routine. There is the requirement for regular musters and head counts and assignment of tasks for the day. The vast majority of time however is described as boring which is why many prisoners take up exercise or seek employment in the jail if they can.

Cells

In most prisons in Queensland there are single cells which house one prisoner. In times of accommodation shortages however the cells may house two prisoners with a portable bed. In each cell there is a bed, a shower, and a toilet. Each prisoner is responsible for their own cells and they are responsible for keeping it neat and tidy at all times. A prisoner will generally be able to keep their own personal effects in their cell including letters, photos, books, and stationery, sometimes a television, a radio, a bible or religious writings, and educational items. Prisoners will spend long periods of time in their cells but will be allowed to move throughout the prison at mealtimes, for exercise, visits by family and friends and their Lawyer, and also for medical appointments. If the prisoner has a job, then they will be permitted to move within the jail for their employment.

The cells will be searched from time to time and any prohibited items “Contraband” will be seized. These items include drugs, weapons, mobile phones and any other items that are not permitted, and which pose a threat to the security of the jail. If a prisoner has prohibited items in their cells, then they could be charged with a criminal offence and / or punished by the jail. This could include the transfer to another cell, transfer to another jail, isolation from other prisoners, removal of rights including visits and removal from employment privileges.

You have to wear prison issued clothes at all times however you may be allowed to wear your own clothes (i.e., suit) to Court if you wish.

Employment

There is no obligation for a prisoner to work whilst they are in jail, however most people choose to work if they are given the opportunity. Prisoners generally choose to work so that they can earn some money which will be added to their prison account, and also to give them something to do to prevent the boredom.

Work can be sourced to assist with the day to day running of the prison such as in the kitchen, cleaning, or laundry. There may be other jobs available from time to time such in industry such as maintenance, metal, leather, and woodworking. A prisoner will receive payment based on a rate determined by the jail. This is not the same as the minimum wage and prisoners are not covered by industrial relation entitlements.

If a prisoner is employed whilst they are in jail, then this will reflect well on any later applications for

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parole. If a prisoner wants to work but there is nothing available, then they may be entitled to a small unemployment payment.

A prisoner may also be engaged in unpaid employment if they are part of a training program or vocational program. This is good for gaining skills in areas that they might be able to use when they are released.

In addition, there are from time to time educational, rehabilitation and other interest courses conducted from time to time in the prison system. There is also generally access to a library for educational and research purposes.

Medical Needs

Prisoners have the right to access medical and health facilities whilst they are in jail. These facilities are however extremely limited and the right to Medicare is lost whilst in jail. Generally speaking, over the counter medication such as Panadol is not available. Each prisoner will be given a health check when being admitted into the jail and there is access to a doctor whilst in jail if required. The responsibility of health within the jail is the responsibility of the Department of Corrective Services and the Health Department.

There is a general complaint that there is poor access to medical treatment whilst in jail. This includes both physical health and also mental health. There is generally poor access to counsellors and psychologists. If the complaint is non-life threatening, then it can take a number of days or even weeks for the prisoner to see a doctor. Generally, prescription medication is crushed and given to the prisoner to take under the supervision of a nurse. This is to prevent the trafficking of drugs within the jail.

A prisoner must comply with any reasonable direction given to them by prison doctors. This can include the requirement for blood and urine samples and also for body cavity searches. If the prisoner fails to comply with the direction, then force may be used.

Purchasing Items in Jail

A prisoner will have an account in which they have money and will be allowed to purchase personal items. The maximum amount of money that can be held in the account is \$1,000.00 and deposits can be made by family and friends. You will be allowed to purchase food items from the canteen and personal items for recreation such as art and hobby items allowed by the jail. You can purchase personal items such as underwear and shoes and you may be able to rent a television from the jail. If you wish to send letters, then you can purchase stamps from your account. You can pay victim of crime levies from this account or you may be required to pay for any prison items that you intentionally destroy or damage.

Phone Calls

No prisoner is able to receive telephone calls unless there are exceptional circumstances and permitted by the jail. A prisoner, however, is able to receive pre-booked telephone calls from their Lawyer.

A prisoner is able to make telephone calls to locations outside of the jail through the Arunta telephone system. To make calls, the prisoner will need to open a telephone account and nominate the phone

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numbers that they wish to call. They will need to nominate the name and address of the person that they wish to maintain contact with.

The prisoner is able to have a capped amount of \$300 on their telephone account at any one time. The prisoner is responsible for the cost of each of the calls that they make. Prisoners will not be permitted to telephone banned persons, ex-prisoners, or businesses.

Prison staff are able to make enquiries about the person that the prisoner wishes to speak with. The telephone calls are recorded and monitored.

Mail

There is no limit to the number of letters that you send or receive from the jail. You will have to pay for any stamps from your account. Jail staff have the power to open and review all correspondence and packages that are coming into or going out of the jail. The prison has the power to seize any items of correspondence that pose a risk to the security or good management of the jail or would otherwise amount to an offence.

17.4 Visiting a Prisoner in a jail

A prisoner is entitled to receive visits from people that are not in custody. A prisoner is entitled to one non-contact visit per week from family and friends. A prisoner is also entitled to visits from their Lawyer as required. In order to visit a prisoner, a person must make an application to the jail which will need to be approved. A person will be approved if it is appropriate in the circumstances considering the safety and security of the prison. Contact visits are approved with visitors once they have passed a security clearance which generally takes about 6 – 8 weeks.

Visitors will be screened and sometimes searched when they enter the correctional facility. If they refuse to be searched, then they will not be able to enter the jail for the visit. If the prison officials reasonably suspect that the person is in possession of drugs or weapons, then they can call the police for them to investigate.

17.4.1 Application Process

Before you can visit someone in a jail you must complete an application form (Form 27). You can download a copy at

<https://publications.qld.gov.au/dataset/queensland-corrective-services-forms/resource/3289cb00-2078-47d8-bd03-8a2acd574892>

You will need to complete the form, provide identification, and declare whether or not you have any criminal convictions. Once you are approved then you will need to take identification with you to the visit. Most facilities require you to provide an electronic fingerprint sample to allow you to gain access to the jail on each visit. The biometrics sample will be checked each time you visit by you placing your finger on an electronic reader to allow you to gain access to the jail. You cannot just turn up to the jail, you will have to make a booking in advance each time you want to visit.

You must arrive at your visit early otherwise you might be prohibited from entering. You cannot smoke or take any tobacco products into the jail.

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17.4.2 - What Can a Visitor Bring?

You cannot bring anything to the prisoner in a jail. You cannot give them any money or bring them any items such as mobile phones. Smuggling drugs into a center is a very serious criminal offence and if you are detected then the matter will be referred to the police. You cannot bring any money, documents, or any other personal items with you to your visit. You can bring socks and underwear and Court clothes if you wish. You will however need permission from the jail before you can bring them.

You are able to mail other items to the prisoner such as letters, cards, and photos. Remember that all items in the post will be scanned and searched.

Remember also that you are able to deposit money into the prisoner's account. You cannot bring cash with you to actually give to the prisoner.

17.4.3 - What can a visitor wear?

You should familiarize yourself with what you can and can't wear BEFORE you leave home to go to the visit. There are very strict rules about what you can wear and if you do not comply with these rules then you may be refused entry. You cannot wear anything that is in poor condition, revealing or provocative in nature. You must have closed in shoes and cannot wear thongs. You cannot wear singlets or any shirts without sleeves. You are able to wear your wedding or engagement ring, but you cannot wear any other jewellery during the visit.

17.4 4 - How long is the visit?

The prisoner will be allowed 2 hours of visiting time for family and friends per week (this does NOT include time with Lawyers or official visits). So, the prisoner can have two visits of one hour duration each or one visit of 2 hours.

17.4.5 - Can children visit a prisoner?

Yes, children can visit a prisoner. However, it must be established that there is a relationship between the child AND it is in the best interests of the child to visit the prisoner. An application form must be completed to allow a child entry into a jail and approval must be given first before a child can visit a prisoner.

17.5 Breaches of prison discipline

Jail is a highly regulated and controlled environment and breaches of discipline are dealt with seriously. The prison guards and officials have the power to give reasonable directions to prisoners. If the prisoner refuses to obey that direction, then they will be punished. Officers are able to use force if required to maintain good order within the prison. In extreme circumstances (i.e., an escape),

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Officers have the power to use lethal force if required.

If an officer suspects that there has been a breach of discipline, then they will conduct an investigation. Their conclusions can be reviewed if the prisoner is not satisfied of the outcome. The consequences of a breach can include removal of privileges, moving to another unit within the jail, removal to another jail, and possibly criminal charges. The punishment will be dependent on the breach and also the record of the prisoner. The incident may be viewed as a one off and isolated incident or it could be viewed as a pattern of behaviour.

Breaches of discipline can include:

- Disobeying a lawful direction from an officer,
- Possessing or concealing a prohibited item,
- Fighting,
- Consuming drugs or alcohol,
- Gambling,
- Bad behaviour, or
- Criminal offences (i.e., assaults / rape)

17.6 Applying for Parole

If you are sentenced to a period of imprisonment by a Court for 3 years or less, then you will receive Court ordered parole. That is, the Court will tell you when you will be released from jail. If, however you receive a jail sentence of more than 3 years then you will receive a parole eligibility date. That is, when you are eligible to apply for parole. If you are declared a Serious Violent Offender, then you will have to serve 80% of your sentence.

Parole is the release of a prisoner into the community on certain conditions. The jail sentence will still apply but the sentence is served in the community under the supervision of a parole officer and not in a jail. The prisoner must apply to the Parole Board to be released on parole.

If you are released on parole, then you will be subject to strict supervision by a parole officer. This will include the checking of your accommodation, regular visits and interviews with the officer, drug and alcohol screening, and the requirement to attend courses and appointments with professionals such as Counsellors and Psychologists. You will not be allowed to leave the state of Queensland whilst you are subject to parole unless you receive prior written consent from your parole officer.

18 What is SPER (Queensland)?

SPER is short for the **State Penalties Enforcement Registry**. SPER is a division of the Office of State Revenue and are essentially the debt collectors for the state. SPER is responsible for the collection of outstanding fines.

If you have an outstanding fine, it will be referred to SPER for registration. The Court can order that a fine be paid within a certain period of time, and if it is not paid then it can be referred to SPER for collection. Once the debt is referred to SPER then there will be a registration fee of \$78.20 added to your account.

You should contact SPER immediately on **1300 365 635** to either pay the debt in full or alternatively you can enter into a payment plan. You will have it due date to pay the total amount. If you do not take any action within a 28-day period, then SPER may take enforcement action. An additional fee of \$131.05 will be charged in that event.

If SPER decide to take recovery action, then an enforcement order is issued. If you still do nothing, then SPER can;

- Refer the debts to unauthorised debt collection agent,
- cancel your driver's license,
- direct your employer to deduct funds from your pay,
- direct your financial institution to deduct funds from your bank account,
- register an interest of your property,
- Immobilise your motor vehicle,
- Seize and sell your property, or
- obtain a warrant for your arrest.

If SPER cancels your driver's license (which is most common action) then they will send a letter to advise you of the suspension of your license. If you drive contrary to that suspension and are detected by the Police, then you will be charged with unlicensed driving. In that event you will have to go to Court and face a Magistrate. The maximum penalty is up to \$6,192.00 / 12 months jail and a disqualification of your driver's licence between 1 and 6 months. You will not be eligible for a restricted work licence.

The biggest problem the people have with this process is that there may be a debt referred to SPER which is either unknown to them, or they simply forget about it. SPER will send correspondence to you last known address. These are the records of Queensland Transport. Therefore, if you change address and you should immediately contact Queensland Transport and update your contact details.

If you have any doubts, then contact SPER immediately.

19 Domestic Violence

What is Domestic Violence?

The law in Queensland in relation to Domestic Violence is covered under the Domestic Violence and Family Protection Act. This is a comprehensive piece of legislation and the objective of the act is:

- To maximise the safety, protection and wellbeing of people who fear or experience domestic violence, and to minimise disruption to their lives; and
- To prevent or reduce domestic violence and the exposure of children to domestic violence; and
- To ensure that people who commit domestic violence are held accountable for their actions.

This is achieved by:

- Allowing a Court to make a domestic violence order to provide protection against further domestic violence; and
- Giving police particular powers to respond to domestic violence, including the power to issue a police protection notice; and
- Imposing consequences for contravening a domestic violence order or police protection notice, in particular, liability for the commission of an offence.

Domestic Violence is defined as behaviour by one person against a second person that is:

- (a) is physically or sexually abusive; or
- (b) is emotionally or psychologically abusive; or
- (c) is economically abusive; or
- (d) is threatening; or
- (e) is coercive; or
- (f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.

Domestic violence does not just include physical abuse; it includes any threats, unwanted sexual activity, damaging a person's property, depriving a person of their liberty, threats of suicide, threats to kill or injure, threats or injuries to animals, emotional abuse, depriving a person of money, controlling behaviour, unwanted surveillance, and stalking.

Who is an Aggrieved?

An Aggrieved person is the person who has made the application (if a private application) or for whom the application has been taken out for (if it is a police application). The Aggrieved person is sometimes referred to as the 'Complainant' or the 'Person in need of protection'.

Who is a Respondent?

A Respondent is the person who has the order taken out against them. This person is sometimes also referred to as the 'Defendant'.

Who can be named on an order?

The Aggrieved will be named on an order. An Aggrieved is a person who has had an intimate personal relationship, a family relationship, or an informal care relationship with the Respondent. Apart from

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the Aggrieved, the following parties can be named on an order:

- a) a child of the [aggrieved](#);
- b) a [child who usually lives with the aggrieved](#);
- c) a relative of the [aggrieved](#);
- d) an [associate](#) of the [aggrieved](#).

What is a Temporary Order?

A temporary order is an interim protection order which restrains the Defendant's behavior from the time that the application is made to the time that the Magistrate makes a final decision. A temporary order is enforceable, and any breach of a temporary order could result in a police investigation and possible criminal charges. There is an expectation that a breach of an order (temporary or final) which involves actual violence will attract a jail sentence.

Temporary orders are able to be varied at any time with an application to the Court. Any temporary order will be served on the Defendant.

How to Apply for a Domestic Violence Order

There are two ways that you can apply for a Domestic Violence Order in Queensland:

- A) Police Application: -
- If the matter is urgent and you are in immediate danger you should dial 000. You can contact your nearest police station and speak with an officer for advice and guidance. The Police Officer can take out an application on your behalf if they conclude that an act of Domestic Violence has been committed and it is in the interests of the public for the police to act. In that event, the police will do all of the paperwork and organize for the matter to be placed before a Magistrate. The police could go and speak with the Respondent and interview them. They have the power to enter a premise and search it if they suspect an act of domestic violence has occurred. The police can arrest and detain the Respondent, or they can issue them with a Police Protection Notice (PPN).

A PPN is a handwritten document issued by the police on the Respondent which restrains them from certain acts. The PPN can include any of the following prohibitions:

- To Be of Good behaviour and not to commit any acts of domestic violence against the Aggrieved or a named person on the order.
- Cool Down Condition – that the Respondent is not to return to the premises for a period of 24 hours.
- Ouster Condition – preventing a person from returning to or attending the nominated premises.

B) Commencing a Private Domestic Violence Application

If the police are not willing or able to take action on your behalf for any reason then you are able to commence Court action yourself. This is called a 'Private Domestic Violence Application'. You can complete the form online by going to

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<https://www.qld.gov.au/law/crime-and-police/abuse-family-matters-and-protection-orders/apply-for-a-protection-order>

Or you can visit your local Courthouse and complete the application in a safe and secure environment. You can have someone assist you in this process and a Lawyer is able to do this on your behalf.

Once you have completed the application form and given it to the Court then they will determine if an urgent application is required or not. If it is urgent then the registry may be able to immediately place it before a Magistrate for determination. The Magistrate is able to make urgent temporary orders if there are sufficient grounds to do so. Otherwise, the application will be given a Court date in the future.

A copy of the application will be given to the Queensland Police who will serve a copy on the Respondent. The Police Officer will explain the application to them and warn them in relation to any possible breaches. The Police officer will then fill out an Affidavit of service which will be placed on the Court file. This Affidavit is proof that the Respondent knows about the application.

Going to Court

On the day of Court both parties are required to appear. If the Aggrieved does not appear then there is a risk that the application will be struck out. If the Respondent does not appear then there is a risk that a final order will be made in their absence.

At most Court houses there are separate waiting areas for the parties. The idea is to keep the parties separate as much as possible unless they are in the Court room. The parties are required to check in with the Court when they arrive, and their names will be marked off on the list.

There are duty Lawyer facilities available at a number of Courthouses. Parties don't need to see a Lawyer, but they are generally encouraged to do so by the Court. A party can be represented by their own Lawyer if they wish. The Aggrieved will generally see one of the duty Lawyers and the Respondent will see another duty Lawyer. The duty Lawyer service is free of charge and is provided by Legal Aid Queensland.

The duty Lawyer will meet with the person, provide them with some information about the process, provide them with legal advice and then represent them in Court if the person wishes. There is usually a negotiation which occurs between the two duty Lawyers to see if they can come to an agreement in relation to the way in which the matter is to proceed.

What Happens in Court

Once the parties are ready, and the Court becomes available, the matter will be heard before a Magistrate in Court. The Magistrate will read the application and determine the issues. They will ask the Police Prosecutor (if it is a police application) or the Aggrieved if they want to proceed with the application. They will then ask the Respondent what they want to do with the matter. The Respondent will essentially have the following options:

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- a) **Adjourn the matter** – This can be done if they need further time, need to seek further legal advice, or to complete the Men's Behavioural Change Program (see below). A temporary order may be made until the matter is back before the Court,
- b) **Contest the matter** – If the Respondent does not agree with an order being made against them then they can contest the matter. In that event the Court will give a direction for the parties to file and serve their supporting evidence in the form of Affidavit material by a certain date. They will also give a date for subpoenas and the issues in the trial. A Court date will be given for the review of the case and then a trial date will be set. A temporary order may be made until the matter is back before the Court,
- c) **Consent to an Order** – A Respondent is able to agree to the making of a final order without making any admissions as to the contents of the application. That is, they can agree with an order being placed on them, but they don't have to agree with the reasons why.

An order has been made against me – what does that mean?

- It is not an offence to have a domestic violence order made against you, but it is an offence to breach it.
- If there is a breach of an order, then it will be referred to the police for investigation.
- If the police reasonably believe that an offence has occurred, then they will charge you.
- If the breach involves violence, then the Court will consider a jail sentence.
- An order against you will cause you problems with Blue Cards, Security Licences and Firearm Licences.
- An order (temporary or final) is enforceable in every State and Territory of Australia and also in New Zealand.
- You can make an application to the Court to vary the order at a later stage if you wish.

Safety Plans

If you are the victim of domestic violence, then you need to ensure that your safety is paramount. If you are in immediate danger and fearful of your safety or the safety of someone else, then you should call the police immediately on 000.

It is a good idea to organize a safety plan for you and anyone else that is suffering from domestic violence. This will help you in organizing yourself, particularly if you have to leave your house quickly. You should speak with your counsellor or family or friend about this plan and make sure that they know the steps that you intend to take if need be. Here are some tips for organizing a safety plan:

1. Talk with someone. This can be done formally (in counselling) or informally through a trusted friend or family member. You should discuss your situation with them and the options that you have available to you. You should talk about whether or not you should remain in the house or whether you should leave.

2. Have a safety person that you can call if you feel threatened or if you are in danger. This person

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should know of your safety plan and how to contact you. You should keep the phone number of the safety person in a safe and accessible place. You should have backup copies of those phone number in case your mobile is lost or taken from you.

3. Where is your **safe place** going to be? Is it going to be with your safety person, or another trusted friend or family member? You should know what resources are in your community including women's shelters and support accommodation. Does your safe place have the available accommodation at short notice, and can they accommodate your children?

4. **Prepare your children.** How old are they? Is it appropriate to talk to them to help them prepare for any situation. Be careful that you don't scare or upset them. Think about their schooling and what is going to be in their best interests.

5. Do you need to **take anything with you** such as clothes, money, children's toys and essential personal items and any medications for you and your children.

6. **Essential Items** - Do you have the passwords for any of your banking accounts, security codes, or any other passwords that you might need in the immediate future. Do you have a safe place that you can keep spare keys. Are you able to store these items in a safe place outside the home (such as your safety person or a friend, relatives or neighbours house).

7. Get some **legal advice.** Know your rights. Know what you are entitled to do and what you should be doing. You might be surprised about how many rights you actually have. You can get legal advice from Community Legal Centers, Legal Aid Queensland. Many private Lawyers will spend some time with you, usually without charge, to advise you of your rights in this situation. Speak with your local police officer. They will be able to assist you also. There are many online resources available and also pamphlets and brochures available from Police Stations, Courthouses and Community Legal Centers.

What the Court Considers

When an application is made to the Court for a Domestic Violence Order the Magistrate needs to consider a number of factors:

1. Is there a 'Relevant Relationship'?

The relationship between the parties must be one of the following:

- a) An Intimate Personal Relationship (married, de-facto, engaged, had an intimate relationship – no matter how long, former spouses or the parents of a child).
- b) A Family Relationship (Includes blood or marriage or former relatives, or those that are 'regarded' as relatives such as Aboriginal or Torres Strait Islander or non – English speaking communities)
- c) An Informal Care Relationship (Where one person is dependent on another for daily living needs). This does NOT include parent / child relationship or a commercial arrangement (such as a nurse or paid carer).

2. Was there an 'Act of Domestic Violence'

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The definition of Domestic Violence is very wide. It is not limited to actual physical violence and includes many other types of acts including:

- Social isolation (from friends and family),
- Financial abuse (ie/ depriving a person of money),
- Emotional abuse,
- Threats,
- Assaults,
- Molesting,
- Harassments,
- Prevention of ability to practice religious beliefs, or
- Diminishing self-esteem.

The Court must conclude that there was an act of Domestic Violence committed by the Respondent. This does not need to be just one act (although it could be), it could be a combination of these acts. The Court needs to be satisfied on the 'balance of probabilities' which means that they just need to be satisfied that it more likely than not occurred.

3. Is it 'Necessary or Desirable' for an order to be made for the protection of the Aggrieved.

If the Court is satisfied that a relevant relationship exists, and there was an act of domestic violence, then they need to consider the next test – Is it Necessary or Desirable for an order to be made for the protection of the Aggrieved.

There is a significant amount of case law on this topic. Case law is other cases that have gone before the Court which have set a example on what a Court should do in the future. Again, the terms "Necessary" and "Desirable" have very wide meanings. Some factors that the Court will take into account on this issue include such things as:

- Was the incident a one off and isolated matter,
- What are the wishes of the Aggrieved,
- What is the position of the Police (if it is a police matter),
- Is there an ongoing relationship between the parties,
- Are there any Family Law proceedings in place between the parties,
- If the parties have any children together,
- Is there any joint property,
- Is there any ongoing mediation / Counselling,
- What is the nature of the Domestic Violence (was it severe or mild),
- Has there been a history of Domestic Violence,
- Has the Respondent completed a Men's Behavioural Change Program?

The Court will consider all factors and decide on whether or not an order should be made to protect the Aggrieved.

A domestic violence order is enforceable in every state and territory of Australia and also in New Zealand.

The Court will make an order for a period of 5 years unless there are very good reasons why it should be reduced.

Temporary Orders

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A temporary order is an order made by the Court until the matter is finally determined by a Magistrate. A temporary order is enforceable by the police. A temporary order can contain any condition that the Magistrate deems to be fair and reasonable for the protection of the Aggrieved.

Options

A Respondent has the options of Consenting to an order, contesting an order, or adjourning the matter.

A) Consenting to an Order

A respondent has the option of agreeing to an order (or not fighting it). They can do this without agreeing to the contents of the application. That is, they can consent to the making of an order without agreeing to what is contained in the application. If they do this then the Court will generally make an order.

The order will usually be made in the same terms of the application. This however can be an agreement which is made between the parties. At the end of the day however, the ultimate decision is up to the Magistrate who can make any order that they deem necessary in the circumstances.

The order will usually be made for a period of 5 years.

It is not an offence to have an order made against you, but it is an offence to breach the order. If the Court order is breached, then it will become a criminal investigation by the police. If you are charged with the Contravention of a Domestic Violence Order, then the Court can consider imposing a jail sentence (particularly if the contravention involves violence).

Typically, if you have a domestic violence application against you then it will usually not affect your day to day living EXCEPT:

- If you require a Blue Card,
- If you require a Security Licence' OR
- If you require a Firearms Licence

There are some other circumstances where having a domestic violence order against you will have some problems (i.e., some employment).

B) Adjournment

A Respondent may wish to adjourn the hearing of the matter in Court for a number of reasons:

- If they are unsure of the procedure and need time to think about it (if it is a first mention of the matter in Court),
- To secure legal advice,
- To make any necessary enquiries / investigations,
- To undertake the Men's Behavioural Change Program, or
- For any other reasonable purpose.

If the matter is adjourned, then it will be given another Court date at the convenience of the Court. The Magistrate will consider whether or not a temporary order is put in place, and if so, what the conditions are on the temporary order.

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C) Contesting an Order

If a Respondent does not agree to the making of an order and wants to contest it then the application will be listed for a trial. If that happens then the Court will generally give you a number of dates which you must carefully diarise. If you miss these crucial dates then this can have significant problems. The dates that you will receive are:

- A date that the Aggrieved (or the Police if they are the applicant) have to provide their Affidavit material by,
- A date that the Respondent has to provide their Affidavit material,
- A date that subpoenas must be issued by,
- A review mention of the matter in Court (to give the Court an update on the progress of the matters), AND
- A date for trial.

The Court will then consider if a temporary order is needed in the meantime to protect the Aggrieved until the matter is heard at the trial.

Preparing Affidavits

If a domestic violence application is contested, then all parties must put their evidence in writing in the form of an Affidavit. The Affidavit must be signed in the presence of a Justice of the Peace and sworn that the contents of the document is true and correct. There are penalties that can apply to the swearing of a false document.

The Aggrieved must file and serve all of their Affidavit material first. That is, the Affidavit material of the Aggrieved, and also the Affidavits of any witnesses. They must attach any exhibits to their Affidavits. Their Affidavits are put together in a brief of evidence and are filed in the Court registry. The brief must then be given to the Respondent.

The Respondent will then have an opportunity to read all of the material and prepare all of their response Affidavits. Their response material must also be filed in the Court registry and served on the Aggrieved.

Appearing at a Trial

A trial for the hearing of a domestic violence application is exactly the same process as what happens in a summary trial (see Section 14 of this book). There is one important difference though. The only difference however is that the witness will give their evidence-in-chief through the Affidavit material NOT orally in Court.

Each witness will need to attend Court on the hearing date and be available to give evidence to the Magistrate and to be cross examined by the other party.

An unrepresented Respondent however is not able to cross examine an Aggrieved. They MUST be legally represented under the law.

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Some Helpful Contact Numbers

Qld Courts

<https://www.Courts.qld.gov.au/contacts/Courthouses>

Mens Behavioural Change Program

<http://centacarebrisbane.net.au/domestic-violence-prevention/mens-services-2/>

Legal Aid Queensland	1300 6511 188
Lifeline	13-11-14
Beyond Blue	1300 224 636
Community Legal Centres	https://communitylegalqld.org.au/
Queensland Law Society	1300 367 757
DVConnect Womensline	1800 811 811
DVConnect Mensline	1800 600 636
Sexual Assault Helpline	1800 010 120
Kids Help Line	1800 551 800
Lifeline	13 11 14
Elder Abuse Helpline	1300 651 192

23 Peace and Good Behavior Orders



Every person has the right to live without the fear of the behaviour of another person. A Peace and Good Behaviour Order is a formal order of the Court restraining a person (The Defendant) that the keep the peace and be of good behaviour to another person (The Applicant). In order to obtain a Peace and Good Behaviour Order against someone you first need to make an application to the Court.

Section 4 of the Peace and Good Behaviour Act (Qld) sets out the objective of the legislations and states:

The main object of this Act is to protect the safety, welfare, security, and peace and good order of the community from risks presented by people engaging in antisocial, disorderly or criminal conduct.

You may make an application to the Court if someone is behaving in an anti-social way against you. You must establish that the other person has threatened to do one of the following things:

- (a) Assault you or any person in your care; or
- (b) Get someone else to assault you or any person in your care; or
- (c) Destroy or damage your property; or
- (d) Get someone else to destroy or damage your property.

You must also establish that you are in fear of the other person.

How to Apply for a Peace and Good Behaviour Order: -

STEP 1

You must obtain and complete an Application Form and Summons. These can be obtained at any Court registry or by downloading them at:

Complaint: https://www.Courts.qld.gov.au/_data/assets/pdf_file/0004/88150/pgb-f-1.pdf

Summons: https://www.Courts.qld.gov.au/_data/assets/pdf_file/0006/88152/PGB-f-2.pdf

You will need to complete three (3) copies. One for you, one for the Court and one which will need to be served on the Defendant. You will need to know the name of the Defendant and their address for service.

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STEP 2

Once you have completed the application and summons then you will need to go to a Justice of the Peace to have the documents sworn. It is an offence to provide false or misleading information in these documents.

STEP 3

You will need to file the application at the Registry of your nearest Magistrates Court. You will need to pay the filing fee of approximately \$111.70 at the Court. Once the application is filed you will receive a sealed copy which will need to be served on the Defendant.

STEP 4

Organise the service of the document on the Defendant. This is your responsibility. Service means that a copy of the documents must be given to the Defendant. If the documents are not served on the Defendant, then the Magistrate cannot make an order. Any adult over the age of 18 years can serve the documents on the Defendant. It is however a good idea to have someone not connected with the case to serve the documents on your behalf. The Complaint and Summons can be served in a number of ways:

- a) The Police may serve it on your behalf; or
- b) The Bailiff at the Court; or
- c) A private process server

Fees may apply.

Whoever serves the documents on the Defendant will then need to complete the Oath of Service. This is proof that the Defendant has received a copy of the document. You will need to file the Oath of Service at the Court registry or alternatively you can take it to Court with you on the allocated Court day.

Note that there are **no temporary orders** that can be made until the Magistrate makes the final decision.

STEP 5

Appear in Court. You must appear in Court on the allocated Court day and demonstrate to the Magistrate that it is appropriate for an order to be made for your protection. You can appear unrepresented or you can choose to have a Lawyer represent you.

If there is an oath of service on the Court file and the Defendant does not turn up to Court, then the Magistrate is able to deal with it in the absence of the Defendant. The Magistrate may make an order if they are satisfied that there are sufficient grounds. If the Magistrate is not satisfied that there are sufficient grounds, then they may dismiss the application.

If you as the applicant do not turn up to Court, then the Magistrate may dismiss the application. If the Defendant turns up and establishes to the Magistrate that it is a vexatious or malicious application, then costs may be awarded against you.

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If the Defendant does turn up to Court, then one of three (3) things may happen:

- a) The Defendant seeks an adjournment, OR
- b) The Defendant consents to the making of the order without making any admissions as to the contents of the application; OR
- c) The Defendant contests the application.

Alternatively, the Magistrate may refer the matter to mediation in an attempt to settle the dispute if appropriate.

If the Magistrate is satisfied that the order should be made, then the order can include any such terms as the Magistrate sees fit. The order can be for as long as the Magistrate sees fit.

If the Defendant contests the application, then a hearing date will be given. There will also be a direction by the Magistrate that both parties file and serve their supporting Affidavit material by certain dates. The Applicant will have to file their Affidavit material first and then the Defendant will have some time to respond. An Affidavit is the sworn testimony of the person. Swearing a false Affidavit is an offence for which a person can be charged by the police.

The Hearing Day

If the Defendant contests the application, then the matter will be listed for a hearing of the evidence. On this day both parties must appear in Court. Both parties are able to be represented by a Lawyer if they wish. It is not compulsory that a party is represented by a Lawyer.

The Applicant will first have to swear an oath on the bible or take an affirmation to tell the truth. Once this happens then they will give their evidence from the witness box. They will then be cross examined by the Defendant or their Lawyer. If the Applicant has any witnesses, then those persons will need to give their oral evidence from the witness box too.

The Defendant, and any of their witnesses will go through the same process. The Applicant will have the opportunity to cross examine the Defendant and their witnesses.

Once the evidence is finished then both the Applicant and the Defendant will have the opportunity to address the Magistrate on the merits of their case. The Magistrate will then decide on whether or not an order should be made in all the circumstances.

What if the Defendant disobeys the order?

If the Defendant disobeys the order, then you will need to report that to the Police who will investigate the complaint. If the Police are satisfied that there has been a breach of the order, then they will charge the Defendant with a criminal offence. The Defendant may be fined up to \$12,190.00 or imprisoned for one year for breaching the order.

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21 Do I Need a Lawyer?

The law is very complicated, and the ramifications of any wrong decision can be very damaging. These ramifications can include jail, supervision from the Probation and Parole Office, lengthy disqualifications of your driver's license, and the recording of convictions. An experienced Lawyer in Court will definitely be able to assist you to keep your Court penalty as low as possible. The reason is that such a Lawyer usually has many years' experience and knows the system, the law, and what to say on your behalf. Most importantly, the Lawyer also know what not to say. A good Lawyer will be able to assist and guide you with in all your preparations for Court.

Your Lawyer should be contactable and approachable, and you should know exactly what they are doing for you at all stages of your matter. You should know exactly how much your matter is going to cost you too. Don't be afraid to ask these questions.

Whilst it is not compulsory of course that you have a Lawyer to represent you, it is a really smart move is usually the stakes are high. One wrong turn in your matter could have a huge impact on the rest of your life.

22 Where Can I Get Help?

Here are some very useful contacts for legal advice that you might be able to access:

- a) Legal Aid,
- b) The Duty Lawyer at Court,
- c) Various community legal groups,
- d) The Law Society of your relevant state, or
- e) Private legal representatives

23 Applying for Legal Aid

Queensland

If you want a Lawyer to represent you, you will need to firstly make an application to Legal Aid Queensland for assistance. To get a grant of legal aid, you must satisfy the following three criteria:



- a) Be financially eligible under our means test (that is to say that you can't afford to pay a Lawyer privately because you either have too many assets or your income is too high); and
- b) Have a legal problem which meets LAQ's requirements. For criminal law, it must be a criminal charge which is sufficiently serious enough for the Court to consider a jail sentence. Legal Aid will not be approved for minor matters and driving related matters; and
- c) Meet LAQ's merits test. That is, the allocation of LAQ's resources must be worthwhile and justified. There must be a reasonable prospect of success for your matter for aid to be granted.

You can apply for a grant of aid through a private Lawyer who does Legal Aid work or directly to Legal Aid Queensland. You can obtain an application form by:

- Downloading it at <http://www.legalaid.qld.gov.au/files/assets/public/about-us/laq-application-form.pdf>
- Email Legal Aid directly at request.application@legalaid.qld.gov.au
- Attend in person your nearest Legal Aid office
- Calling Legal aid on 1300 65 11 88 and asking for one to be mailed to you.

For your assistance we have attached a Queensland Legal Aid application form at the end of this e-book.

Tasmania

To make an application for legal aid you can either contact the Legal Aid Commission directly or alternatively speak with a private Lawyer. The choice is yours. The same guidelines and tests will apply.



To apply through the Legal Aid Commission, you will simply need to come into one of the advice clinics at one of the following locations. The advice clinic is free and is available to everyone. You do not need to make an appointment, you will be seen by a Lawyer who will be able to give you advice and guidance which is usually limited to 10 minutes.

HOBART	Clinic Times: Monday to Friday 10:30am to 2:00pm Address: 158 Liverpool Street Hobart Phone: (03) 6236 3800
LAUNCESTON	Clinic Times: Monday to Friday 10:30am to 1:00pm Address: 64 Cameron Street Launceston Phone: (03) 6328 4000
DEVONPORT	Clinic Times: Tuesday and Thursday 1:00pm to 2:00pm Address: 8 Griffith Street Devonport Phone: (03) 6423 8444
BURNIE	Clinic Times: Tuesday and Thursday 12:30pm to 1:30pm Address: 50 Alexander Street Burnie Phone: (03) 6432 5000

24 Some Helpful Websites

Queensland

Brooke Winter Solicitors	www.brookewintersolicitors.com.au
Legal Aid	www.legalaid.qld.gov.au
Queensland Law Society	www.qld.com.au
Queensland Courts	www.Courts.qld.gov.au
Queensland Police	www.police.qld.gov.au
Probation and Parole	www.qld.gov.au/law
Corrective Services	www.corrections.qld.gov.au
Queensland Health (Drug Programs)	www.adis.health.qld.gov.au
Traffic Education Program (RATE)	www.rateprogram.com.au

Tasmania

Brooke Winter Solicitors	www.brookewintersolicitors.com.au
Legal Aid Tasmania	www.legalaid.tas.gov.au
Law Society Tasmania	www.lst.org.au
Tasmanian Courts	www.Courts.tas.gov.au
Tasmanian Police	www.police.tas.gov.au
Corrective Services	www.justice.tas.gov.au
Drug Rehabilitation	www.legalaid.tas.gov.au/referral-list
Traffic Education Program (RATE)	www.rateprogram.com.au

26 Dictionary

Below you will find some common terms and their definitions.

Adjournment: This is when your Court matter is put over to be heard on another day.

Bail: Bail is your written agreement with the Court that during the period of the adjournment you will promise to agree with the conditions of your bail. These conditions will be to come back to Court on the next occasion and not to commit any offence whilst on bail. There could be other conditions on your bail such as reporting to a police station or surrendering your passport.

Barrister: A Barrister is a Lawyer who specialises in Court appearances and giving advice to Solicitors. A barrister typically is engaged to appear on more serious police charges and will appear at trials and sentences in the District and Supreme Courts and sometimes in the Magistrates Court.

Bar Table: This is the table in the Courtroom where the Prosecutor and the defence Lawyer sit at. It is the large table in the middle of the Courtroom and faces the Magistrate or Judge.

Committal Hearing: This is a legal procedure in the lower Court conducted before a Magistrate. The purpose of a committal hearing is to test the evidence and establish if there is sufficient evidence for the matter to proceed to the District or Supreme Court. The test is whether a reasonable jury, properly instructed could (not would) find the Defendant guilty. Leave of the Magistrate needs to be given to cross examine witnesses. A 'no case to answer' submission can be made. The leading case is *Doney v The Queen* - [1990] HCA 51

Conference: This is a meeting between parties and is usually used to refer to the discussions (face to face or by telephone) between a Defendant and their Lawyer.

Case Conference: This is a meeting between the defence and the prosecution in an attempt to resolve the charge. It may result in the prosecution dropping the charge(s), changing the facts or an agreement on an issue (such as restitution or the calling of witnesses).

Defendant: This is the term used for a person who has been charged with a criminal offence and has to go to Court.

Elements of

Offence: These are the key factors that a Prosecutor must prove before a Defendant can be convicted of an offence. It is the duty of a Prosecutor to prove each and every element beyond a reasonable doubt. Example: In a Dangerous Driving charge, the Prosecutor must prove that the driving was "Dangerous".

The Unrepresented Defendant

Fail to Appear: This is where a Defendant is required to go to Court and doesn't turn up. If the Defendant does not turn up to Court in accordance with their bail or notice to appear then the Court will probably issue a warrant for their arrest.

First Appearance: This is the first time that you have to go to Court. This date is written on your Bail Undertaking (from the Watchhouse), your Notice to Appear, or your summons. Generally speaking, you have to appear in Court at your first appearance

Full Hand Up: This is a committal hearing conducted in the Magistrates Court where there is no cross-examination. The police brief of evidence is literally handed up to the Magistrate. At the end of the 'hand up' you can make a submission that there is no case to answer or the matter will be transmitted to either the District or Supreme Court.

Hearing: This is a trial in the Magistrates Court where the Defendant pleads not guilty. The prosecution will call all of their evidence and the Defendant will have the opportunity to cross examine or test the witnesses. The Defendant can give evidence and call other witnesses if they choose.

Indictable Offence: This is a police charge that is serious in nature. Some indictable offences are able to be determined by a Magistrate and others will have to go to the District or Supreme Court. An indictable offence will always have a maximum penalty of imprisonment, however the Court can choose another punishment if they wish.

Judge: This is the judicial officer who controls the Court and determines the outcome of matters in the higher Courts (District and Supreme). The Judge will control jury trials and sentence the Defendant if they are found guilty or plead guilty. The Judge typically wears Court robes and a wig.

Magistrate: This is the judicial officer who controls the Court and determines the outcome of matters in the lower Court. The Magistrate has the power to sentence Defendants if they are guilty of an offence. They have the power to make any decision that they like within the law. The Magistrate typically wears Court robes but does not wear a wig.

Mention: This is the brief review of a charge before the Court on an allocated date. It is to provide the Court with an update on the progress of the matter.

Mitigating

Circumstances: These are factors that a Defendant will rely on which will provide context on why an offence was committed. It is an explanation that can be provided to the Court as opposed to an excuse. An example of a mitigating circumstance may be the death of a loved one.

Notice to Appear: This is a document that the police will give a Defendant when they require them to go to Court. It is an obligation to appear in Court on a nominated date. If the

The Unrepresented Defendant

person does not appear in Court, then a warrant may be issued for their arrest.

Partial Brief: These are the essential documents that the police will be relying on to prove a charge against a Defendant. It is not the entire evidence. For example, the partial brief may include the victim's statement and photographs of injuries.

Full Brief: This is the entire amount of evidence that the police will put together in an attempt to prove the guilt of a Defendant. It will include all of the witness statements, any photographs, medical evidence, CCTV footage, telephone records, expert statements, and copies of any essential documents that the police will be using against you.

Police Prosecutor: This is the representative of the police that will be appearing in Court and presenting the evidence against the Defendant. The Prosecutor may be a sworn police officer, or they might be a civilian. They may or may not have a law degree.

QP9: This is an initial document that the investigating police officer prepares for Court. It contains the essential information that the Magistrate may require such as the personal details of the Defendant and a statement of the facts of the charge.

Solicitor: A Solicitor is a Lawyer that is able to help someone that is charged with a criminal offence. The Solicitor will be able to represent a Defendant in Court and liaise with the Court and the Prosecutor on their behalf. They will be able to guide them through the preparations for Court and advise them on the prospects of success and likely outcomes.

Submissions: Submissions are the points raised by either the Prosecutor or the defence and are made to the Magistrate or Judge. The submissions may be either oral or written. The submissions are made to assist the Court with a point of law or to persuade the Magistrate or Judge to come to a conclusion (i.e., in relation to what penalty they will impose).

Summary Callover: This is a mention of the police charge before a Magistrate before a hearing is conducted. It is a procedural mention where the Court is updated on the progress of the matter. The information discussed at the call over might include how long the hearing is going to go for, what witnesses are required, and has the full brief of evidence been supplied yet by the police.

Summary Hearing: Also called a 'Hearing' where a plea of not guilty has been entered and all of the evidence is heard and determined by a Magistrate. All of the witnesses will give evidence and the Magistrate will determine whether the Defendant is guilty or not guilty of the charge.

Summary Offence: This is a police charge that is less serious in nature. It is a charge that must be heard by a Magistrate. Examples of summary offences include drink driving, trespass, and shoplifting.

The Unrepresented Defendant

Summons: This is a document that is served on a Defendant requiring them to attend Court. A summons may be handed to a Defendant personally or it could be mailed to them.

The Unrepresented Defendant

Conclusion

We hope that this book has been helpful to you in your understanding of the Criminal Justice System. Please remember though that the information contained in this book is of general nature only and will not be specific to everybody's situation. Do not substitute the information contained in this book as legal advice. If you have a legal problem, then you should get legal advice from a qualified and experienced Lawyer.

I wish you all the very best.

A handwritten signature in black ink, appearing to read 'Brooke Winter', with a horizontal line drawn through it.

Kind Regards
Brooke Winter
Solicitor

Appendix

The Unrepresented Defendant

Sample Character Reference

Penelope Doris Langer
71 Archer Street
Southport
Qld 4215
Ph: (07) 5573 5426

TO: The Presiding Magistrate
<Insert the Court where the matter is being heard>

Dear Your Honour,

RE: CHARACTER REFERENCE – JASON MONTGOMERY

My name is Penelope Doris Langer. I am 56 years of age and I am currently working as a seamstress with Davis Garments Pty Ltd on the Gold Coast. I have been working in that position for 28 years.

I have known Jason for approximately 12 years. I first met him when I was performing volunteer work with Meals on Wheels at Labrador. Jason was also doing volunteer work with Meals on Wheels as a delivery driver. Since that time, I have kept in regular contact with him and usually see him about once a week. Jason has become close friends with my husband and son and they regularly play golf and sports together.

I have been made aware of the charges which Jason is facing and his need to go to Court. He told me that he was charged with drink driving and that his reading was 0.130%. I was shocked when I heard about this charge and was very disappointed to know that Jason has committed this offence.

I know that Jason is very embarrassed and remorseful for having committed this offence. He has told me that he has completed the Gold Coast Traffic Offenders Program. He told me that he has learnt the dangers of drink driving and the risk that he posed to the community on this occasion.

I stand by Jason as a good person and value his good character and friendship. I know that Jason has learnt this lesson and I believe that he will never commit such an offence again. He has always told his children and others that the road is a dangerous place and I believe that Jason now fully understands the consequences of poor decisions.

I wish Jason all the best and I am proud to call him a true friend. I can be contacted on the above number should you require any clarification.

Yours Faithfully,

Penelope Langer
<date>

Application



LAQAP

Need help?



If you need help filling out this form, call our grants inquiry line on 1300 383 900. For general administrative inquiries, legal information, referrals and advice bookings, call 1300 65 11 88.



If you need an interpreter call the Translating and Interpreting Service on 13 14 50. Ask them to connect you to Legal Aid Queensland. This is a free service.



Post your completed form to GPO Box 2449 Brisbane, QLD 4001, hand deliver to your nearest Legal Aid Office or e-mail to submit.application@legalaid.qld.gov.au. [See back page for instructions about how to submit your application.](#)



IMPORTANT: Please send photocopies of documents only. Do not send original documents.

Contents

- 2 Personal details
- 3 Address details
- 3 Financial details
- 6 Court details
- 7 Criminal law problem
- 9 Family or relationship problem
- 12 Civil law problem
- 13 Details about your application
- 14 Declaration and authority to release information and privacy statement
- 15 About legal aid and how legal aid works
- 16 Office locations and addresses

Checklist

Before you send the application, check you have attached:

Financial details

- ☐ Centrelink income statement
- ☐ payslips for at least the last four weeks (or a letter from your employer confirming your income)
- ☐ copies of bank statements for the past three months from all financial institutions where you have accounts
- ☐ proof of your self-employed income

Court details

- ☐ copies of any Court documents you have received/filed

Criminal law problem

- ☐ Queensland Police Service Court Brief (QP9), criminal and traffic history, notice to appear, proceeds of crime order

Family or relationship problem

- ☐ any Court orders, family dispute resolution certificate/s, invitation to attend a family dispute resolution conference

Also check you have:

- ☐ answered all relevant questions including question 18 (*page 13*)
- ☐ read and signed the "Declaration and authority to release information" (*page 14*)

The Unrepresented Defendant

OFFICE USE ONLY			
Client ID	<input type="text"/>	File	<input type="text"/>
<input type="checkbox"/> Health care or pension card	<input type="checkbox"/> Documents		
sighted Application taken by	<input type="text"/>	Date	<input type="text" value="DAY MONTH YEAR"/>
Application entered by	<input type="text"/>		<input type="text" value="DAY MONTH YEAR"/>
<input type="checkbox"/> No in-house capacity Advised by	<input type="text"/>		
	<input type="text"/>		

Personal details

1. Name

Title Mr ☐ Mrs ☐ Ms ☐ Miss ☐ Other ☐ [Give details](#)

Family name

First name

Middle name(s)

Do you have, or have you ever used any other names?

(eg maiden name or previous married name)

☐ No ☐ Yes [List your other names](#)

Family name

First name

Type of name

Birth date

Gender

Male ☐ Female ☐ Other ☐ [Give details](#) (eg group or organisation)

What is your marital status?

☐ Married

☐ Defacto

☐ Separated (married/defacto)

☐ Divorced

☐ Single

☐ Other [Give details](#)

Do you need an interpreter to help you fill out this form?

☐ No

☐ Yes [Which language and dialect?](#)

Do you have a disability that affects how you access our services?

☐ No

☐ Yes [Which disability?](#)

☐ Intellectual

☐ Psychological/psychiatric

☐ Sensory (including speech)

☐ Physical [Give details](#)

Do you need extra or practical help to access our services?

(eg do you need help to read or write)

☐ No

☐ Yes [Give details](#)

Were you born in another country?

☐ No

☐ Yes [Which country?](#)

Do you identify as Aboriginal or Torres Strait Islander?

☐ No

☐ Yes, Aboriginal ☐ Yes, Torres Strait Islander

If you identify as Aboriginal and Torres Strait Islander, tick both boxes.

Do you have any special circumstances?

(eg long-standing ill health, can't read or write, can't access assets or money, unable to work)

☐ No

☐ Yes [List details at question 18](#)

! We may be able to take your special circumstances into account when considering your application.

Address details

2. Home address

Address	<input type="text"/>		
Suburb/town	<input type="text"/>		
State	<input type="text"/>	Postcod	<input type="text"/>

Address where we can contact you (eg postal address)

If same as above, leave blank

Address	<input type="text"/>		
Suburb/town	<input type="text"/>		
State	<input type="text"/>	Postcod	<input type="text"/>

Contact details

Home phone	<input type="text"/>	<input type="text"/>
Mobile phone	<input type="text"/>	
Work phone	<input type="text"/>	<input type="text"/>
Email	<input type="text"/>	
Other	<input type="text"/>	

Are you in prison?

☐ No
 ☐ Yes ▼ List prison/detention centre

Integrated Offender Management System (IOMS) number

If you're in prison, you still need to complete the financial details below.

Financial details

3. Are you 17 years or younger? ☐ No ☐ Yes ► You don't need to complete this section

Go to question 10

! Your financial circumstances

You must give us all relevant information about your financial circumstances, including any income and assets you own. We also need information about anyone who helps you financially.

If you don't receive any income, give details at question 18.

Documents

Please give us the following documents, for you or anyone who helps you financially, so we can assess your financial eligibility for aid (attach these documents to the application form):

- copies of pay slips for the last four weeks (or a letter from the employer detailing income paid), copies of Centrelink income statements and copies of bank statements for the past three months from all financial institutions where accounts are held regardless of the account balance (use an official bank statement or print one from your online bank account. You can't use ATM receipts)
- details of any financial help you get from another person
- details of assets you own or the assets of a person who gives you financial help, for example copies of statements for shares, bonds and superannuation
- copies of any contracts in place if you have cash saved to buy a home or you own land with the intention of building a home.

If you or a person who helps you financially is self-employed, a small business owner or a farmer, you both must provide:

- individual and business tax returns for two years
- personal and business bank statements for the last three months
- the most recent income (or profit and loss) statement
- the most recent balancesheet.

Financial details continued

4. Do you get financial help from another person?

☐ No ☐ Yes

What does 'financial help' mean?

Financial help is where another person (eg a relative or partner) regularly gives you money, helps pay your bills or shares living

Are you, or someone who financially helps you, self-employed, a small business owner or a farmer?

☐ No ☐ Yes **Give details** **Attach details of self employment**
(see page 3 for more information)

5. Do you, or a person who helps you financially, receive a Centrelink or Veterans' Affairs payment?

☐ No **Go to question 6**

☐ Yes **Which payment?** **Attach a copy of Centrelink income statement**

☐ Full ☐ Part

☐ Disability support pension

☐ Mature age allowance/pension benefit

☐ Newstart allowance

☐ Parenting payment partnered

☐ Sickness allowance

☐ Single parenting payment

☐ Special benefit

☐ Veterans and war services

☐ Widow allowance

☐ Youth allowance

☐ Other **Give details**

Current health care or pension card details

Office use only – check

You

Card number

Expiry date Type of card ☐ Health care ☐ Pension

Other person

Card number

Expiry date Type of card ☐ Health care ☐ Pension

Attach a copy of health care or pension card

6. Which describes your living and employment situation?

Couple ☐ one working ☐ both working ☐ both not working

Single ☐ person working ☐ not working

Total weekly gross income (before tax) for the household

\$ /week **Attach proof of income documents**
(see page 3 for more information)

What is 'income'?

Income is money you receive from all sources, including any pensions or benefits, child support or maintenance payments, rent received etc. refer to page three for further information on what documents need to be provided

Number of dependent children under 18

(including children you pay child support or maintenance for)

Financial details continued

NOTE: YOU MUST ANSWER parts a), b) and c) of Question 7

7. Do you, or a person who helps you financially, own or are you or they paying off:

What is 'equity'?

Equity is the asset's value less any money owing on that asset (eg Mary's house is worth \$400,000 and her mortgage is \$290,000. Mary's equity in the

Office use only – check equity if applicant is 60 years or older. Check

How do I work out how much equity I have in my vehicle?

You will need to work out the value of your vehicle. Websites like RedBook (www.redbook.com.au) can help you work out the value of your vehicle. Your equity is the value of the car less any money

a) the home you live in? ☐ No ☐ Yes ▼ Give details

What is the current value of the home?

\$

What is the total mortgage on the home?

\$

How much equity do you have in the home?

\$

When did you buy the home?

How long have you lived there?

If you are 60 years or older, have you had to move out of the home or buy another home because of a disability or health problem?

☐ No ☐ Yes ▼ Give details of disability or health problem

Give details of your current living arrangements (eg moved in with a relative, moved to a nursing home, moved to a lowset house).

► List extra details at question 18

If you still own the property you've moved out of, give details of any income you receive from the property (eg rent).

\$ /week

b) any other real estate apart from the home you live in? (eg house or land)

☐ No ☐ Yes ▼ Give details

What is the value of your real estate?

\$

What is the total mortgage on this real estate?

\$

How much equity do you have in this real estate?

\$

c) a motor vehicle(s)? ☐ No ☐ Yes ▼ Give details

How much equity do you have in the vehicle(s)?

\$

8. Do you, or a person who helps you financially, have money in the bank?

☐ No ☐ Yes ▼ Give details

\$

Bank account



Attach a copy of bank statements
(see page 3 for more information)

9. Do you, or a person who helps you financially, have

any valuable assets you can sell or use now?

Shares or bonds

Recreation vehicles
(boats/caravans etc)


\$
\$
\$
\$

Superannuation you can access now/insurance
payments or any other valuable items you can sell
Other ▼ Give details

--

Court details

10. Do you have to go to Court or a tribunal?

☐ No ☐ Yes  Attach copies of any Court documents received/filed

Date, if known Time

Which Court or tribunal? ☐

Magistrates Court ☐

District Court

☐ Tribunal  Give details

☐ Court of Appeal

☐ Childrens Court

☐ Family Court of Australia

☐ Federal Circuit Court

☐ Supreme Court

☐ Mental Health Court

☐ Drug Court

☐ Not sure

Suburb/town

What is your next Court date for?

(eg mention, committal, trial)

☐ Not sure

Do you have a Lawyer representing you?

☐ No ☐ Yes  Give details

Lawyer's name

Law firm

Address

Suburb/town

State Postcode

Your legal problem

This section is divided into:

Criminal law problem

Family or relationship problem

Civil law problem

Complete each section that relates to your legal problem(s). Then complete the following sections:

Extra details

Applicant declaration

Criminal law problem

11. Have you been charged with an offence?

☐ No ► Go to question 13 ☐ Yes ▼ List your charges

Date charged	Charges

► List extra details at question 18

Who made the complaint(s) against you?

(eg child, partner, victim of crime – do not include the police or Child Safety Services)

Family name

First name

☐ Not sure

Office use only – check to see if a conflict exists

► List extra details at question 18

Are you involved in any other legal matters?

(eg child protection, family law)

☐ No ☐ Yes ▼ Give details ☐ Not sure

Was anyone else charged with you?

☐ No ► Go to question 12 ☐ Yes ▼ Give details ☐ Not sure

First person charged: Family name

First name

Middle name(s)

Street address

Suburb/town

State

Postcode

Birth date

DAY MONTH YEAR

Do they have a Lawyer? ☐ No

☐ Yes ▼ Give details below, if known

☐ Don't know

Lawyer's name

Law firm

Address

Suburb/town

State

Postcode

Second person charged: Family name

First name

Middle name(s)

Street address

Suburb/town

State

Postcode

Birth date

DAY

MONTH

YEAR

Do they have a Lawyer? ☐ No

☐ Yes ▼ Give details below, if known

☐ Don't know

Lawyer's name

Law firm

Address

Suburb/town

State

Postcode

► If more than two people were charged with you, give details at question 18

12. Have you pleaded guilty in Court to these charges?

☐ No ☐ Yes

You may be able to change your plea.
Call 1300 65 11 88 to arrange legal advice.

How do you want to plead? ☐ Guilty ☐ Not guilty ☐ Not sure

If you are in custody, do you want to apply for bail? ☐ No ☐ Yes

Do you have a criminal record? ☐ No ☐ Not sure

☐ Yes ▼ Either attach a copy of your criminal record or list your criminal record, including matters where no conviction was recorded

Year	Offence	Penalty

Have the police taken any of your belongings under a proceeds of crime order?

▶ List extra details at question 18

If you have

been given a copy of your Queensland Police Service Court Brief (QP9) and/or criminal/traffic history, please attach a copy

☐ No

☐ Yes

▶ Attach a copy of your order

!

!

Legal Aid Queensland application form

Family or relationship problem

13. Are you applying for aid for a family or relationship problem?

If you are not sure what your application is about and would like to talk to a lawyer, call 1300 65 11 88 to arrange legal advice.

☐ No ► Go to question 17

☐ Yes ▼ Which problem?

☐ Who my children live with (*residence/custody*)

☐ How much time my children spend with me or the other parent (*contact/access*)

☐ Decisions about how my children are raised (*eg schooling, health, religion*)

☐ Child support/maintenance/paternity

☐ Property settlement ▼ Tick the items that are part of your settlement

☐ The home you live in

☐ Any other real estate (*apart from the home you live in*)

☐ Savings

☐ Superannuation/insurance payments or any other valuable items you can sell

☐ Other ▼ Give details

☐ A motor vehicle

☐ Recreation vehicles (*boats/caravans etc*)

☐ Shares or bonds

☐ Spousal maintenance

☐ Divorce

☐ Enforcing a Court order or advising an order has been breached

☐ Child protection (*including family group meeting*)

☐ Domestic/family violence ▼ Give details

☐ Applying for a protection order

☐ Responding to a protection order application

☐ Change of family Court orders due to violence

What type of relationship describes the situation you are in with the person?

☐ A family relationship with the other person (*relative or extended family*)

☐ A spousal relationship with the other person (*including de facto relationships*)

☐ An informal care relationship with the other person

☐ An intimate personal relationship with the other person

☐ Not applicable

Have the police applied for a domestic and family violence protection order about this matter?

☐ No ☐ Yes ► When?

DAY

MONTH

YEAR

☐ Not sure

Has an application for a domestic and family violence protection order been lodged in Court?

No


Yes ► Attach a copy of any application(s)


☐ Not sure ► Get legal advice

☐ Other

Family or relationship problem continued

14. Do you have any current orders about this family matter (including domestic violence protection orders, child protection orders, family law Court orders)?

☐ No ☐ Yes  Attach a copy of any order(s)

 If you don't have copies, contact the Court or the lawyer who helped you get the orders.

15. Who is your legal issue with?

If this is a child protection matter, you do not have to include Child Safety Services in this section. Please include details of other people involved in the proceedings.

Family name

First name

Middle name(s)

Street address

Suburb/town

State

Postcode

Birth date

DAY MONTH YEAR

Phone number

Email

Relationship to you

Do they have a Lawyer? ☐ No ☐ Don't know

☐ Yes ▼ Give details below, if known

Lawyer's name

Law firm

Address

Suburb/town

State

Postcode

► If more than one person was involved give details at question 18


16. Do you have any children under 18?

☐ No ☐ Yes ▼ Give details

Family name	First and middle name(s)	Birth date	Relationship to you	Who do they live with?	Involved in this matter?

► List extra details at question 18

Have you been to counselling/mediation or any family dispute resolution sessions with the person you are in dispute with?

☐ No ☐ Yes ►  Attach a copy any certificates received from these sessions

Were you married to the person you are in dispute with?

☐ No ☐ Yes ▼ Give details

Marriage date

DAY	MONTH	YEAR
-----	-------	------

Separation date

DAY	MONTH	YEAR
-----	-------	------

Divorce date

DAY	MONTH	YEAR
-----	-------	------

Were you in a defacto relationship with the person you are in dispute with?


☐ No ☐ Yes ▼ Give details

Relationship date

DAY	MONTH	YEAR
-----	-------	------

Separation date

DAY	MONTH	YEAR
-----	-------	------

 If you don't have any civil law problems, go to question 18 on page 13 and tell us more about your family or relationship problem. Then sign the declaration on page 14.

Civil law problem

17. Are you applying for aid for a civil law problem? ☐ No ► Go to question 18 ☐ Yes ▼ Which problem?



If you are not sure what your application is about and would like to talk to a lawyer, call 1300 65 11 88 to arrange legal advice.


- ☐ Administrative Appeals Tribunal
- ☐ Anti-discrimination
- ☐ Child protection ► Go to question 13 on page 9
- ☐ Dangerous prisoners
- ☐ Domestic/family violence ► Go to question 13 on page 9
- ☐ Inquest
- ☐ Mental health
- ☐ Migration
- ☐ Peace and good behaviour
- ☐ Veteran's appeal (war caused) or other defence appeal
- ☐ Workers' compensation
- ☐ Not sure ► Get legal advice
- ☐ Other

► Please tell us more about your problem under question 18 on page 13 and then sign the declaration on page 14

Details about your application

18. Tell us about your legal problem and include, for example:

- what the legal problem is
- who is involved and how they are involved
- how and when the legal problem started
- what has happened since then
- financial details (if you don't receive any income)
- any special circumstances that apply to your situation

 If you are unsure about what to include or need help filling out this section, call our grants inquiry line on 1300 383 900.

[illegible]

Declaration and authority

Are you completing this application for yourself?

☐ Yes ☒ Read and sign declaration below

☐ No ► What authority do you have to complete this application for someone else?

(eg power of attorney, QCAT order, parent, guardian)

Applicants or authorised people must sign this authority

I (name) _____

consent and authorise Police Prosecutions to give Legal Aid Queensland (LAQ):

- a copy of my Queensland Police Service Court Brief (QP9) and/or criminal and traffic history ☐ No ☒ Yes

By ticking yes, I understand:

- LAQ may ask Police Prosecutions for information to decide my legal aid application and to consider any further requests for aid
- I can get a copy of any material provided by Police Prosecutions related to me at any time from LAQ
- this consent is ongoing when I have an active legal aid file but I can stop it at any time by writing to

I acknowledge it is an offence to:

- make a false or misleading statement when applying for legal aid
- give a false or misleading document when applying for legal aid
- refuse to give information requested by LAQ with the intent to deceive or mislead LAQ.

Legal Aid Queensland is required to manage documents in line with the *Legal Aid Queensland Act 1997*, *Public Records Act 2002*, *Information Privacy Act 2009* and *Right to Information Act 2009*. Where legal representation is provided by a Legal Aid Queensland Lawyer, documents must also be managed in line with legal professional and ethical duties.

Legal Aid Queensland retains a client's legal files for a minimum of seven years. Before the destruction of their file, clients can seek a copy of their file under Legal Aid Queensland's administrative access scheme.

By signing below, I authorise my Legal Aid Queensland appointed legal representative to destroy my legal file seven years after the date of the last action on my file.

Applicant's or authorised person's signature

Date

Information privacy and

LAQ is committed to ensuring client confidentiality and has information barriers in place to protect client information.

LAQ may hold information about other people involved in your legal matters that may be relevant to your case. Under our information privacy and conflict of interest policies, this information will not be disclosed to you or used to assist your case.

The information you give us in this form and the information you give to your Legal Aid Queensland Lawyer will be used to:

- assess your eligibility for legal aid
- help your Lawyer with your legal representation
- update your personal details in our records
- evaluate our services.

LAQ also gives statistical information, after removing names of clients, to the Australian Government Attorney-General's Department.

LAQ's information barriers are designed to keep your confidential information from being accessed by or discussed with any other Legal Aid Queensland Lawyer who may give legal services to other people involved in your legal matters or a related matter.

Your information will not be given to any other person or agency unless you give us permission to or we are required to by law.

You can get information about our privacy and conflict of interest policies by visiting www.legalaid.qld.gov.au or contacting our privacy contact officer (07) 3238 3500.

Declaration

I have read/have had read to me, understand and accept the terms and conditions of Legal Aid Queensland's information privacy and conflict of interest statement above.

Signed

Date

About legal aid

It is important you understand the terms and conditions of legal aid that apply to you, if you are granted aid.

Conditions

- Legal aid is granted according to the *Legal Aid Queensland Act 1997* and guidelines set by the state and federal governments, and other conditions you and your Lawyer will be told about.
- We can stop or change your grant of aid if you do not meet these conditions.

Financial contributions

- You may have to pay some money towards your legal costs.
- You may have to pay some or all the costs we incur on your behalf if you keep property or you get money or property because of your grant of aid.

Legal costs

- You may have to pay any legal costs the Court orders against you. You can ask us to pay the costs ordered against you.
- It is your responsibility to pay any legal costs you may owe to anyone who has done legal work for you before your grant of aid starts.
- If you are awarded any money because of the legal work we do for you (eg a compensation or settlement payment), it will be held in your Lawyer's trust account until we assess if you owe Legal Aid Queensland any money.

Your Lawyer

- You cannot change your Lawyer without our agreement. If we agree, you may have to pay any costs involved with changing Lawyers.
- If your application is approved you cannot choose your own Lawyer.
- We can stop your grant of aid if you do not follow your Lawyer's advice.
- We can ask any Lawyer acting for you, or who has acted for you before, to give us information relevant to your grant of aid.

Providing information

You must tell us immediately if:

- you change your address while you are getting legal aid
- financial or other details set out in your application change
- you become aware of information likely to affect your eligibility to get legal aid or the conditions on which legal aid is granted.

It is an offence to make a false or misleading statement or fail to give information about your application. You may be fined or imprisoned for doing so.

How legal aid works

After you submit your legal aid application, you will be sent a letter telling you:

- if you have been granted legal aid
- what the grant is for
- any conditions on the grant.

If you are granted legal aid, you will also be sent an information sheet explaining how your grant works and how you can make the most of it. Please read it carefully.

If a Legal Aid Queensland Lawyer is handling your case, you will be told who is managing your file. You should ask your file manager any questions you have.

If a private Lawyer is handling your case, you should ask that Lawyer any questions you have. If you still have concerns after talking to your Lawyer, call the Legal Aid Queensland information service on 1300 65 11 88, or for more detailed information about your grant of aid, call the grants inquiry line on 1300 383 900.

How long will it take?

We aim to assess about 80 percent of applications within five days. However many applications are complex and can take two weeks or more to properly assess. If you haven't received a response 14 days after lodging your application, please contact us.

Please tear off this page and keep for your records.

Office use only (for in-person applications)

Application received on:

Date

DAY	MONTH	YEAR
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Legal information and referrals 1300 65 11 88

Grants inquiries 1300 383 900

Sending your documents

Please send photocopies, not your original documents. Documents provided with your application will become the property of Legal Aid Queensland and may not be returned. Legal Aid Queensland operates in a digital environment and documents are scanned and processed digitally. Hard copy documents may be destroyed shortly after being received, in line with the *Public Records Act 2002*.



Please post your form to GPO Box 2449 Brisbane Q 4001

Emailing your application

We can accept applications via email.

- You can scan and email your application to **submit.application@legalaid.qld.gov.au** – please ensure the form and documents have been scanned (*photos taken with a camera cannot be accepted*)
- Your application and relevant documents must be emailed as attachments — we cannot download documents from ‘Google Drive’ or other third-party websites
- Please send each document as one file, not each page as individual attachments
- All documents must be sent in one email (*noting the maximum email size including attachments is 25 mb*).
- Attachments must be in PDF format (*all other formats ie JPG, PNG, HTML images cannot be accepted*)
- We cannot process ‘zipped’ files such as .zip or .rar. PDF’s must be attached directly to your email.

Your local Legal Aid Queensland office:

BRISBANE

44 Herschel St, 4000

BUNDABERG

3rd Floor, WIN Tower,
Cnr Quay & Barolin Sts, 4670

CABOOLTURE

Ground Floor, Kingsgate
42 King St, 4510

CAIRNS

Level 2, Cairns Square Complex,
42-52 Abbott St, 4870

INALA

Level 1, Inala Commonwealth
Offices, 20 Wirraway Pde, 4077

IPSWICH

Level 7, 117 Brisbane St, 4305

MACKAY

Ground Floor, 17 Brisbane St, 4740

MAROOCHYDORE

Ground Floor, M1 Building
1 Duporth Ave, 4558

MOUNT ISA

6 Miles St, 4825

ROCKHAMPTON

Ground Floor, 35 Fitzroy St, 4700

SOUTHPORT

Level 2, 7 Bay St, 4215

TOOWOOMBA

1st Floor, 154 Hume St, 4350

TOWNSVILLE

3rd Floor, Northtown
280 Flinders St, 4810

WOODRIDGE

1st Floor, Woodridge Place,
Cnr Ewing Rd & Carmody St, 4114

APPLICATION FORM TO VISIT A PRISONER IN QUEENSLAND JAILS

Version 9

Form 27
QUEENSLAND

Corrective Services Act 2006 (ss 155 and 156)

Approval for Access to a Corrective Services Facility and Visit a Prisoner (Personal Visitor)

Queensland Corrective Services

VISITOR TO COMPLETE

Surname:	First name:	Other given:
Any previous name or aliases: / Female		Sex: Male
DOB:	Place of Birth - Town:	State: Country
Residential Address:		Suburb:
State:	Country:	Post Code: Start date at address:
Day time phone number:	Mobile Number:	Email:
		YES/NO
A. Do you have any criminal convictions recorded against you (A conviction is "a finding of guilt, or the acceptance of a plea of guilty, by a Court")?		<input type="checkbox"/> <input type="checkbox"/>
B. Have you ever had a finding or determination made against you in a criminal Court (Including a finding of "guilty, no conviction recorded")?		<input type="checkbox"/> <input type="checkbox"/>
C. Do you have any outstanding charges (this means a charge in any form, including; a charge on an arrest; a notice to appear served under the <i>Police Powers and Responsibilities Act 2000</i> ; a complaint under the <i>Justices Act 1886</i> ; a charge by a Court under the <i>Justices Act 1886</i> , section 42(1A) or another provision of an Act; an indictment?		<input type="checkbox"/> <input type="checkbox"/>
D. Is any child visitor the subject of any Court matter (eg Court order or proceedings) related to the prisoner?		<input type="checkbox"/> <input type="checkbox"/>
E. Are you the subject of any current restraining, child protection or domestic violence order/s?		<input type="checkbox"/> <input type="checkbox"/>
F. Have you been released from a prison within the last 12 months?		<input type="checkbox"/> <input type="checkbox"/>
G. Are you currently under supervision by Probation and Parole (eg probation order, parole order, community service order, intensive correction order)?		<input type="checkbox"/> <input type="checkbox"/>
If YES to any of the above questions, please provide details (attach a separate sheet if necessary).		

Details of prisoner being visited

Prisoner's name:	DOB:
Relationship to prisoner:	

Details of vehicle used as transport to the corrective services facility

Vehicle Make:	Model:	Registration Number:
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Particulars of child visitor/s

Name of Child	Date of Birth	Relationship to Prisoner	Length of relationship

Consent

I,, consent for the Queensland Corrective Services (QCS) to seek a national criminal history check on me through the Queensland Police Service and for the Australian police services to disclose criminal history information, which may include charges laid against me or awaiting determination to QCS, its employees and agents.

I understand the disclosure of information about my criminal history will be subject to Commonwealth, State or Territory legislation where it applies, or the policy of the police service making the disclosure, or both.

I acknowledge that I may be asked to participate in an IONSCAN testing process, requiring the touching of the person and / or garments with a wand for the purpose of collecting a scanning sample. I may refuse to participate, but will either be refused entry or will have to participate in a non-contact visit.

NOTICE

The *Corrective Services Act 2006* s 146 provides that lethal force may be used to stop a person from helping, or attempting to help, a prisoner to escape from secure custody.

It is an offence to assume a false identity for the purpose of entering a corrective services facility or to give information that the person knows is false or misleading. A person who does so is liable to a maximum penalty of 100 penalty units or 2 years imprisonment – refer *Corrective Services Act 2006* s 134.

It is an offence to interview a prisoner, or obtain a written or recorded statement from a prisoner, whether the prisoner is inside or outside of a corrective services facility. A person who does so is liable to a maximum penalty of 100 penalty units or 2 years imprisonment – refer *Corrective Services Act 2006* ss 130, 132.

A mobile telephone is a 'prohibited thing' in a corrective services facility. It is an offence for a person to take, or attempt to take, a prohibited thing into a corrective services facility. A person who does so is liable to a maximum penalty of 100 penalty units or 2 years imprisonment - refer [Corrective Services Act 2006](#) s 128.

Tobacco and smoke free facilities

All Queensland corrective services facilities are tobacco and smoke free.

- Tobacco and other smoking related products and smokeless tobacco products are prohibited things and;
- the grounds of a corrective services facility are smoke free areas.

Additionally

- Personal tobacco or other smoking related products or smokeless tobacco products should not be brought onto the grounds of a corrective services facility. Where tobacco or other smoking related products or smokeless tobacco products are in the possession of a visitor, it must either be secured in a motor vehicle or a visitors locker; and
- no smoking will be permitted anywhere on the grounds of a corrective services facility (including car parks, walkways, visits processing etc).

Visitor's Signature: Date:/...../.....

Form 27 Information Privacy Notice

Sections 155, 156, 157A, 160, 162, 263 and 341 of the *Corrective Service Act 2006*

The Department of Justice and Attorney-General is collecting the information on this form for the following purposes:

- to decide whether a visitor poses a risk to the security or good order of a corrective services facility.
- for the Department to discharge its legislative, accountability, administrative, reporting, management, personnel and financial functions.

Collection of this information is authorised by the *Corrective Service Act 2006*.

The Department of Justice and Attorney-General usually gives some or all of this information to: the Queensland Police Service or other state, interstate, commonwealth and international government departments or other entities; to private organisations which provide services to offenders and; in some circumstances, to individuals.

In addition to the above uses and disclosures, your personal information may also be used and disclosed as per the Queensland Corrective Services *Visitor Privacy Statement* that is provided to all visitors to correctional centres. For further information about privacy and other uses and disclosures of your personal information, refer to the QLD Corrective Services Privacy Statement on the Agency's website.

Visitor's signature: Date:/...../.....

NOTE: Certified copies of your identification documents witnessed by a Justice of the Peace or a Commissioner of Declarations to be included with your application and sent to the correctional centre that you are applying to visit.

Office use only

Visitor's Signature Witnessed <input type="checkbox"/> Yes <input type="checkbox"/> No Identification Verified <input type="checkbox"/> Yes <input type="checkbox"/> No Officer's Name: Signature: Date:/...../.....	Application to Visit Approved <input type="checkbox"/> Yes <input type="checkbox"/> No Signature: Date:/...../.....
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Verification of identification provided:

- ☐ Current Driver's Licence No. ☐ Address matches application ☐ DOB matches application
☐ Current Passport No.

☐ A letter signed by a member of an Aboriginal or Torres Strait Islander organization that identifies the person by name and signature.

- ☐ Identification card containing the person's photo issued by—
- i. the chief executive
 - ii. a law enforcement agency
 - iii. the Supreme Court
 - iv. a State Government entity
 - v. an education facility

OR ANY 3 OF THE FOLLOWING

- ☐ Other current Photographic ID displaying signature
- ☐ Birth Certificate
- ☐ Statutory Declaration*
- ☐ Current Debit/Credit card/Bank Book with signature**
- ☐ Current Medicare Card
- ☐ Current Pensioner or Social Security Card

***must verify visitor's identity and signature and be signed by a Justice of the Peace or a Commissioner of Declarations.**

** Where a visitor provides a current debit card, credit card or bankbook as a form of identification, the name of the banking institution and the type of card or bankbook should be recorded on the Approved Form 27 and entered into IOMS. The card or account number should not be recorded or entered into IOMS. Where certified copies of these forms of identification are received, they should be filed on the visitor file and retained in accordance with the QCS Retention and Disposal Schedule.

