

- *I am dealing with my alcohol /drug problem through counselling/rehabilitation.*
- *I am sorry for what I did and understand the effects and consequences of my actions.*

A character reference is sometimes useful. The person who writes the reference must either note the charges you face or at least refer to them.

You should tell the Magistrate if you believe a conviction will mean that you lose your job or you will no longer be able to work in the industry.

How should I dress?

You should dress as if you were going to a job interview and want to make a good impression. No shorts, no singlets, no t-shirts, no caps, no hats, no sunglasses.

What should I do when I get to Court?

Turn up to court at least 15 minutes before you are due. Check the court lists to find out where you need to go. Ask the security staff to help if you are unsure. If you are waiting outside the court room, listen carefully for your name to be called and immediately go into court.

Be polite to all court staff. Be especially respectful to the Magistrate. You should stand when the Magistrate speaks to you and refer to him or her as "Your Honour".

Speak slowly and clearly.

AT COURT

Entering a Plea

When your name is called, you will be asked to confirm who you are. For example: "Are you John Michael Smith?" The court clerk will then read out the charges and ask you how you wish to plead: guilty or not guilty.

I've pleaded guilty now what?

The prosecutor will read out the facts about the charges

to which you have pleaded guilty. The prosecutor will show you a copy of your prior convictions (if you have any) and will ask you if you agree they are yours. The Magistrate will then say "Mr Smith is there anything you wish to say?" This is your opportunity to stand up and tell the court about yourself and the circumstances of the offence which should explain your actions. This is your chance to read your plea in mitigation. The Magistrate will then make a decision on an appropriate penalty and give you reasons.

Are you ready?

- ◇ Have you written your Plea? Does it cover everything? Is it less than 2 pages?
- ◇ Do you have the right clothes to wear?
- ◇ Are you taking any character references?
- ◇ Have you organised transport to get there on time?
- ◇ Have you checked your summons or court documents for the right day and time to appear?

What if I can't afford to pay a fine?

If you are fined, the Magistrate will order that it be paid within 28 days. If you cannot pay the fine within that time, you must contact Monetary Penalties Enforcement Unit on 1300 366 776 as soon as you can to arrange an instalment plan.

Free Legal Advice

1300 366 611

Or find us on the web

www.legalaid.tas.gov.au



CRIMINAL LAW

Plea in Mitigation



**This brochure is designed
to help unrepresented
defendants pleading guilty
in the Tasmanian
Magistrates Court**

What is a Plea in Mitigation?

A Plea in Mitigation is a formal statement read to the court after you have pleaded guilty or admitted the offence. The aim is to explain your personal circumstances and provide an explanation for committing the offence. The Magistrate can then decide an appropriate penalty. This brochure helps you put together a Plea in Mitigation for the Magistrates Court. It is divided into two main sections - what to do **Before Court** and what to do **At Court** on the day.

BEFORE COURT

Know the Police Facts

You should find out what the police will rely upon to prove the charges against you. Do this as soon as you receive your summons. It will also help you decide whether to plead guilty or not guilty. If you disagree with the Police Facts or your Record of Prior Convictions are not correct, call for free legal advice 1300 366 611.

Apply to Police for Basic Disclosure

This is free of charge and will give you a copy of:

- The complaint/charge against you;
- Your prior convictions;
- The police facts for the prosecutor;
- Your record of interview.

Full Disclosure will cost you \$53.90 and you will be given all of the above, plus the statements of witnesses.

Disputing the Police Facts

If you dispute some of the facts, you may be able to negotiate with the prosecutor before court. Otherwise, the matter may need to go off to another date for a Disputed Facts Hearing. If in doubt, call for free legal advice on 1300 366 611.

How will you plead?

If, after obtaining Police Disclosure, you are unsure of how to plead, call for free legal advice on 1300 366 611.

If you **plead not guilty**, you are disputing that you committed the offence and that you have a valid defence. The Magistrate will set a date in the future for a hearing where you and any witnesses will attend to give evidence.

If you **plead guilty**, you are agreeing to the particulars of the charge and the police facts. The matter will be dealt with on that day.

Writing your Plea in Mitigation

Prepare your Plea in Mitigation well before you are due in court. Keep it to less than 2 pages. Make sure what you say is relevant and get straight to the point. Use short sentences. Remember you are asking for leniency in the hope of a lesser penalty. Make sure you are truthful.

It is important to remember that you are **not** offering a defence in your plea. You are merely giving reasons for your actions. Your plea of guilty will not be accepted by the Magistrate if you try to offer a defence.

What should I say?

There are 3 parts to a Plea in Mitigation. Each part deals with different information. Here are some suggestions for the kind of information the Magistrate is interested to know:

1. Personal Details

The Magistrate wants to know your age, your level of education, whether you have a job, your family situation and your income and expenses. For example:

“Your Honour, I am 22 years old. I’ve lived at 14 Belle Street in Craige Town for 3 years with my de facto wife & 2 year old son. I have worked part time at Cadbury’s since I was 17. I receive \$550 per week clear. From that I pay \$260 per week rent.”

2. Circumstances of the Offence

The Magistrate will have heard the facts from the prosecutor. This is now your chance to explain the facts from your point of view. You can disagree with some of the facts so long as they don’t affect your agreement with the charge. (See above Disputing the Police Facts.)

The Magistrate wants to know the background leading up to the offence that will help explain why you committed the offence. Be truthful.

For example:

- *I was with my mates and they convinced me to break the window.*
- *My boyfriend left the pub after we had an argument. I had no money for a taxi. I was stranded I had no option but to drive.*
- *There was an emergency—my son had a fit. I knew I’d had a few drinks, but less than my partner. I did not want to wait 20 minutes for the ambulance to arrive.*

3. Summary

In the summary of a Plea—you need to bring certain important points to the Magistrate’s attention. Briefly explain how the offence has affected you.

For example:

- *Your Honour I pleaded guilty on my first appearance for this matter.*
- *I co-operated with the Police and told the truth.*
- *I no longer associate with the friends who were a bad influence on me.*
- *I have no prior convictions for this sort of offence and ask that no conviction be recorded.*