

Going To Hearing In The Magistrates Court

You have elected to plead not guilty to the charges against you. As a result your matter will go to hearing in the Magistrates Court. Hearings in these courts are conducted before a local magistrate, sitting alone. There is no jury.

Preparing For Hearing

There is a significant amount of preparation required prior to your hearing, and in our experience, thorough preparation is usually the means by which we achieve success in our hearings. There are numerous different aspects of preparing a hearing, but they include such things as carefully detailing your instructions, analysing the prosecution evidence against you, researching the law as necessary and investigating the case and interviewing any witnesses who may assist you.

In the lead-up to your hearing we will have conferences with you in which we discuss our tactics for hearing, and also have you meet with your counsel (barrister), if one is being used, to confirm our preparations. The sorts of issues that need to be discussed in advance include whether or not you should give evidence, whether any other witnesses will be called on your behalf, what tactical approach to take in relation to the cross-examination of certain prosecution witnesses, and whether there are any specific legal arguments to be advanced on your behalf.

It is important to remember that you cannot be forced to give evidence in your own defence - it is entirely your choice and one that we will discuss with you in detail.

Hearing Procedure

Once the hearing starts, the prosecution commence their case.

The prosecutor proceeds to call each of the prosecution witnesses. When a witness is called to the witness box, they are questioned first by the prosecutor (examination in chief), then questioned by your lawyer (cross-examination) and then again if necessary by the prosecutor (re-examination). The prosecution witnesses then continue one by one. This can take some hours, days, or in some cases even weeks.

At the conclusion of the prosecution witnesses, it is then your opportunity to give or call evidence if you wish. If you elect not to give or call any evidence, then closing addresses by each lawyer to the Magistrate commence immediately, with the prosecution going first and the defence following.

If you do give evidence or call other witnesses on your behalf, then the same procedure follows as with the witnesses for the prosecution case, only in reverse. The witnesses are first questioned by your lawyer, then cross-examined by the prosecutor, and then if necessary re-examined by your own lawyer again. At the conclusion of the defence evidence, the closing addresses of both lawyers then proceed. This time the defence goes first and the prosecutor follows. The Magistrate may then adjourn to consider his/her decision.

If the decision is not guilty, you are immediately discharged and that is the end of your hearing. If however you are found guilty, sentencing proceedings normally take place immediately. The prosecution may make

submissions to the Magistrate about the penalty that should be imposed upon you, and your lawyer will in turn do likewise. The Magistrate will then pass sentence upon you.

You should be aware that, as a general rule, you will receive a heavier sentence if found guilty at a hearing than you would had you pleaded guilty. This is because the courts generally reduce a sentence on a guilty plea to recognise the co-operation and/or remorse of the person accused. This is an important factor for you to remember when deciding to proceed to hearing.

After Your Hearing

You can appeal your conviction and/or your sentence if you are dissatisfied with the Magistrate's finding or sentence. We will discuss your prospects of appeal should that be necessary. The prosecution cannot appeal if you are acquitted. They can appeal however if you are convicted and if they believe that the sentence then imposed upon you was too light. In either case there is a strict one month appeal period in which to appeal your conviction or sentence.

Questions

Proceeding towards a hearing is a difficult and stressful time. We will endeavour to assist you as best we can by answering your questions and providing you with as much information as we can. You will no doubt wish to discuss with us things such as your prospects of success, how long the hearing will take, and even more mundane things such as what to wear, what you have to say at different times etc. We will endeavour to discuss all of these issues with you in advance to make you as comfortable and prepared as possible. Feel free to ask us any questions at any stage to assist you in this regard.

At Gilshenan & Luton our belief is that thorough preparation, combined with our expertise and experience, brings consistent success for our clients.

Further information

Gilshenan & Luton is renowned for its expertise and experience in criminal law and related matters. For further information, feel free to contact:

Glen Cranny, Principal, on 07 3361 0240 or email gcranny@gnl.com.au

Craig Pratt, Senior Associate, on 07 3361 0230 or email cpratt@gnl.com.au

Please note: this publication is designed to provide a simple overview and should not be relied upon instead of legal advice. This publication is correct at time of printing

