

# Pleading Guilty

Know where you stand



University of  
South Australia

Legal Advice  
Clinic



## Welcome to the University of South Australia Legal Advice Clinic

The Legal Advice Clinic at the University of South Australia provides confidential, free legal advice.

The Clinic is staffed by law students who offer legal advice to clients under the supervision of a managing solicitor. Students are trained in professional conduct and all enquiries are treated as confidential.

The Clinic is based on the University of South Australia City West campus, offering an appointment service from Monday to Thursday. On Fridays it offers a drop-in service at the Port Adelaide Magistrates Court.

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## Pleading Guilty

### Know where you stand

*This booklet deals with what to expect, do and say when pleading guilty to a straightforward offence. Pleading guilty means that you agree that you actually committed the offence that you have been charged with.*

### BEFORE YOU PLEAD GUILTY:

- Get a copy of the **police apprehension report, complaint** and **summons** – these are the documents which explain what you have been charged with, and what the police say happened. Sometimes you will not be given these documents until you ask the prosecution for them at your first court date.
- Get **written references** – these are explained in detail at page 4.
- **Make sure you agree** with what the police prosecutor says – see page 4 for more information.
- **Get legal advice** – free legal services in South Australia are listed at page 6.

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**Pleading guilty in court at the first opportunity may reduce the severity of the penalty faced for committing an offence.**



### Why plead guilty?

When the police allege you have committed an offence you are presumed to be innocent until found guilty by a court. It is your right to have the police prove their case against you in court even if you have committed an offence. However, if the police do prove their case and the court finds you guilty, the penalty is likely to be harsher.

Of course, you should always get legal advice *before* pleading guilty in court or speaking to the police about any offence. Pleading guilty in court at the first opportunity may reduce the severity of the penalty faced. You could avoid a criminal record or imprisonment, or receive a reduced fine.

### Getting ready for court

To make the best impression in court, you should be neatly dressed. This shows respect for the court and demonstrates to the magistrate that you are taking the matter seriously. Ideally, men should wear a

suit and tie and women should wear pants or a skirt and a modest shirt or top.

You should arrive at court early. This will give you time to find your courtroom and also give you time to speak with the duty solicitor. You can find the duty solicitor and your courtroom by speaking with a court staff member when you go through security. When you find your courtroom you should wait outside. As soon as possible let the court officer at your courtroom know that you have arrived. The court officer might ask you what you are going to do in court: plead or ask for an adjournment. In your first hearing you may ask for an adjournment so that you can get legal advice.

When you are called into the courtroom you should bow to the magistrate and follow the court officer's directions. You should listen, be polite, and address the magistrate as 'Your Honour.' Do not be afraid to ask questions. If you are seeking an adjournment to get legal advice make sure

you ask for a copy of the police apprehension report and be sure to get a note of your next court date from the court officer.

### Getting written references for a guilty plea

If you provide the magistrate with written references, this may also help the magistrate to determine a fair penalty. Make sure you have two copies of all your references to give to the magistrate and the prosecutor.

If you are under medical care or were under medical care at the time of your offence, a letter from your doctor might help. If you are seeing a counsellor or undertaking any other sort of program, it is generally useful for the court to be aware of this. A letter from an employer may also help. Close family members, neighbours, teachers, and other members of the community can also write written references.

All written references should:

- be dated, signed and addressed to "The Presiding Magistrate";
- be written specifically for your court appearance – the writer must know about your offence;
- for character references, state why the writer thinks you are of good character or why your offence was out of character for you;
- for medical references, the doctor should

state how long he or she has known you and any other issues your doctor thinks are relevant;

- for counselling references, the counsellor should state the reason for counselling, how long you have been in counselling, how you have been responding, and mention any future appointments you may have.

### What happens when I plead guilty?

When you plead guilty the police prosecutor will tell the magistrate about the circumstances of your offence and may bring up your past criminal record. What the police prosecutor says to the magistrate usually comes from a 'police apprehension report' - it is very important that you have a copy of this document and agree with everything in it before pleading guilty.

If you object to anything the police prosecutor says to the magistrate about you or the circumstances of your offence, you should tell the magistrate. The police prosecutor may agree to change what he or she said, or may leave it to the court to hear the dispute.

Once the police prosecutor has finished speaking to the magistrate, you will have the opportunity to have your say. At this time you should tell the magistrate about what he or she should take into account when determining the penalty for your offence.

### Speak clearly and confidently

If you are pleading guilty you should speak clearly and as confidently as you can to the magistrate. Do not exaggerate or make anything up. When requested by the magistrate you should talk about all of the relevant issues the court takes into account when determining a penalty – see page 5. The best way to prepare for this is, after getting legal advice, write in dot points (or get your legal advisor to help you write) all of the issues which the court should take into account when determining your penalty. You should then practise and read out loud what you have written down. This will help you to be able to talk to the magistrate about all of the relevant issues when you are in court. Do not get angry or argue with the magistrate. If you disagree with something the magistrate says, politely explain why.

Of course you should always try to get legal advice before going to court. Even if you have to represent yourself, getting legal advice will help you to achieve the fairest outcome.

### What the magistrate takes into account when deciding the penalty for an offence

The magistrate will usually take into account the following issues when deciding your penalty:

- Extenuating circumstances - for example, whether your offence occurred at a time when: there were family issues such as separation or the loss of a loved one; you

had just lost your job; you had medical problems; you were under financial, mental, or physical stress.

- Nature of the offence - for example, whether your offence was the product of: poor judgment, immaturity, or irresponsibility rather than being planned or carefully considered; you being influenced by others; irrational behaviour that was very much out of character.
- Manner with the police - for example, whether you were: cooperative; expressed remorse at the time the police discovered your wrong doing; polite with the police.
- Compensation issues - whether you are prepared and able to compensate any victim for damage/loss (always make sure you let the court know how much time you need to pay if you have a limited income and also provide evidence of any compensation you have already made).
- Conduct since your offence - for example, you have engaged in relationship / alcohol / drug / anger management counselling; apologised to the victim; sold or registered your car (for traffic offences); no longer associate with certain people.
- Penalty already suffered for the offence - for example, as a result of your offence: you have lost your job; you have become ill or have been very upset and remorseful about your wrong doing; you have damaged/lost relationships with loved ones.

- Your personal background – for example, family responsibilities including caring for children or parents; support from family and friends to ensure you will not get in trouble again; education; employment; current financial circumstances; whether you have no criminal record or if you do have a criminal record, it contains nothing similar to the current offence.
- Effect of a criminal record - for example, whether you will be applying for citizenship; travelling overseas; or have career aspirations.
- The guilty plea, itself. The earlier you plead guilty, the greater the discount you may receive. Further to this, if you plead guilty within four weeks of your first court appearance, you may be eligible for a 40% discount.

### What happens now?

It is very important that you understand exactly what penalty the magistrate has imposed for your offence. If you are unsure about what has happened you should speak to the court officer.

Your penalty could include:

- A fine
- A good behaviour bond
- A suspended sentence
- A term of imprisonment

You must obey the penalty that the magistrate has imposed. If you need assistance with understanding your penalty you should get legal advice. There are a number of free legal services that can provide you with assistance.

### Free legal services

The following is a list of free legal services available in South Australia:

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*South Australian Council of Community Legal Centres*

t +61 8 8342 1800

f +61 8 8342 0899

*South Australian Legal Services Commission*

Telephone Advice

Monday to Friday 9.00am-4.30pm

Legal Help Line 1300 366 424

TTY t +61 8 8463 3691

*Duty Solicitor*

Duty solicitors can be found at each of the metropolitan magistrates courts in South Australia and offer a drop-in service.

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### **Disclaimer**

This material contains general information only. It does not contain legal advice and you should not rely on the general information for advice about your legal problem. You should see a lawyer for specific advice about your legal problem.

Care has been taken to ensure that the information contained in this material is correct at the time of publication, but no responsibility will be accepted for any errors or omissions.

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