

# Summary offences in Victoria

## What are summary offences?

Criminal offences in Victoria are either categorised as a summary or indictable offence.

**Summary offences** refers to less serious offences.

Summary offences carry a maximum penalty of 2 years imprisonment or fines of no more than 240 penalty units for a single criminal charge.

**Indictable offences** refers to more serious offences.

## Examples of summary offences

Examples of summary offences include:

- Traffic offences
- Minor assaults
- Property damage
- Offensive behaviour
- Minor drug offences

**Defendant** or **accused** refers to the individual who has been charged with a criminal offence.

**Prosecution** is the party who officially charges an individual with a criminal offence and brings criminal proceedings against them.

A **charge** is an allegation that a criminal offence has occurred.



## Charged with a summary offence

After you are charged with a criminal offence, you will be:

- granted bail and released;
- granted bail, but not realised until bail requirements are met;
- placed in custody until hearing (remand); or
- released and summonsed to appear at the court hearing.
  - Most summary offence charges will result in the accused being released and summonsed.

If you are charged with a summary offence in Victoria, you will likely be prosecuted by **Victorian police**.

Prosecution not only collect evidence during investigation to charge you with an offence, but are also responsible for conducting criminal proceedings and establishing guilt during the court process.

- You will be considered **innocent until proven guilty**.

If you have been charged with a criminal offence, contact us at **1300 892 237** for legal advice.

# General court process

Summary offences in Victoria are **heard in Magistrates' Courts**.

## Diversions

**Diversion** refers to a program which allows certain offenders to avoid a criminal record by complying with conditions set out in a diversion plan.

You may be eligible for a diversion; particularly if you are a first time offender.

- The prosecution must agree to a diversion.

Refer to <https://www.fortyfourdegrees.com.au/diversion> for further information on diversions.

## Mention hearing

Pleading guilty

OR

Pleading not guilty

If you wish to **plead guilty** to your charge(s), your matter may be heard and determined within this court hearing (your first hearing for the criminal matter).

If you wish to **plead not guilty**, a judicial officer will adjourn your hearing for: a contest mention hearing or a contest hearing.

## Contest mention

The matter **may be resolved** during this hearing **if**:

- You decide to plead guilty;
- Prosecution withdraws the charges; or
- The matter is narrowed or charges are adjusted.

**If the matter is not resolved** in this hearing, there will be a contest hearing.

The court will provide a date for the next hearing and a list of the charges including any adjustments made.

The magistrate **may decide what will occur in the contest hearing** including how an estimation of how long it will take to hear the matter and what witnesses will be called during the hearing.

Contact us at **1300 892 237** for legal representation.

## Contest hearing

Both parties - the prosecution and defence counsel, will present their case to the magistrate; this may include calling upon witnesses to give evidence.

**Note:** there will be no jury to hear cases for summary offences.

The magistrate will consider the arguments and evidence presented before determining the outcome of the matter.

- You will be found **guilty of an offence** if the magistrate is satisfied that there is sufficient evidence of all elements of the offence charged.

## Ex-parte hearing

The court may hear and determine the outcome of your matter **if you do not attend court** for a charged summary offence.

However, if the court believes that it is inappropriate to do so, it will adjourn the matter to a later date or issue a warrant for your arrest to ensure that you attend court for your hearing.

## Sentencing hearing

During this hearing, the magistrate will determine and impose a sentence for an offence you have pleaded guilty for, or have been found to be guilty of committing.

### Common sanctions include

- Adjournment with undertaking
- Fines
- Community Corrections Orders
- A term of imprisonment

When determining the appropriate sanction and its severity, the **magistrate will consider a range of factors, including:**

- the maximum penalty for the offence
- the standard sentence for the offence
- the nature and gravity of the offence
- your culpability and degree of responsibility for the offence
- the impact the offence had on any victims
- whether you pleaded guilty to the offence
- your previous character and criminal history (if any)

## Appealing a decision

You can appeal the **finding of guilt** and/or the **sentence** imposed by the Magistrates Court.

### Forty Four Degrees

Contact us at **1300 892 237**. We can help you appeal a decision by providing legal advice and legal assistance by completing relevant forms on your behalf.

## OR

**Step 1:** complete a notice to appeal form and file it within 28 days of the decision being made. You can go to the court to get the form, complete it and file it immediately.

**Step 2:** the court will transmit the notice of appeal to the relevant court (usually the County Court).

Lodging an application for appeal does not change the outcome or sentence immediately. The current decision will be enforced until the court hearing the appeal makes a decision.

### The appellate court may:

- Confirm the decision (nothing changes)
- Set aside the decision; this may lead to a rehearing