

10 DRUGS, ALCOHOL AND THE LAW

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THE LAW CONCERNING ILLEGAL DRUGS IS HIGHLY COMPLICATED. ANYONE CHARGED WITH A DRUG OFFENCE IS STRONGLY ADVISED TO SEEK LEGAL ADVICE.

drug laws in Victoria

The most common drug offences and their penalties are found in the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) (the DPSCA). These include the following offences. (**Note:** All references to sections in this chapter apply to the DPSCA unless otherwise advised.)

use (sections 70(1) & 75)

The use of a drug of dependence is an offence. ‘Use’ includes smoking, inhaling fumes or introducing a drug of dependence into your body.

possession (section 73)

Possession means having a drug on you or in a house or in a car that you ‘control’. The starting point is that you are ‘deemed’ to be in possession of a drug found in your house or car — it is up to you to show that you did not know it was there, or that it belongs to somebody else.

cultivation (sections 70(1) & 72(B))

Cultivation includes planting, sowing, growing, tending, nurturing or harvesting a drug. Even if you water one plant or harvest one leaf, this is cultivation. If the drug isn’t being grown for personal use only, then you may be charged with trafficking.

trafficking (sections 70(1) & 71AC)

If you are involved in getting a drug from its source to a user you are trafficking. Trafficking includes manufacturing a drug so it can be sold, exchanging drugs for something else or even just offering to sell a drug to someone. Even if the substance turns out NOT to be an illegal drug, so long as the would-be seller thought it was at the time of offering it for sale they may be found guilty of trafficking. Likewise, in relation to ‘rip-offs’ — where a person passes off another substance as a drug (e.g. aspirin as heroin), or does not actually intend to provide any drugs (e.g. they take the money and run) — they may still be found guilty of trafficking.

Trafficking also includes buying drugs for a friend, even if you do not make any profit (e.g. you buy cannabis for \$30 and sell it to someone for \$25 as a favour). You don’t have to be caught with a large amount of a drug to be charged with trafficking. The police may charge you with trafficking if you have packaged the drug for sale and have items such as scales and cash on you, even if the amount of the drug found is less than what the law calls a ‘traffickable quantity’.

If you are caught with a ‘traffickable quantity’ then it will be up to you to prove that it was not for trafficking. Since 1997, when drugs in powdered form are weighed it is now the weight of the whole mixture that is considered, not just the weight of drug in the mixture.

what is a traffickable quantity?

The traffickable quantity for some drugs is set out below:

| Drug | Traffickable quantity | Weighed |
|--------------------------------|------------------------|---------|
| Amphetamine | 6 grams | mixed |
| Cocaine | 3 grams | mixed |
| Heroin | 3 grams | mixed |
| LSD | 1.5 grams | mixed |
| Ecstasy | 3 grams | mixed |
| Barbiturates | 50 grams | pure |
| Mescaline | 7.5 grams | pure |
| Methadone | 2 grams | pure |
| Magic mushroom (psilocybin) | 0.1 gram | pure |
| Cannabis | 250 grams or 10 plants | |

It is worth remembering that many people are charged with trafficking based solely on their own admissions (e.g. Question by police: ‘what is your reason for possessing one gram of heroin?’. Answer: ‘To sell it’).

other charges

The following charges are less common, but are sometimes laid against people suspected of using or selling drugs.

- Forging and uttering a medical prescription (section 77).
- Obtaining a drug or prescription for a drug by false representation (section 78).
- Trafficking to a child (section 71AB).
- Conspiracy to commit an offence (section 79) (e.g. if you make an agreement with someone to commit an offence under the DPSCA).
- Introduction of a drug into the body of another person (section 74).
- Aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence (section 80); helping someone, or encouraging someone else, to commit an offence.
- Attempting to commit drug offences.
- Conspiring, aiding, or abetting to commit any offence outside Victoria (section 80(3)).
- Doing a preparatory act in Victoria for the commission of an offence outside Victoria (section 80(4)).

alcohol offences

The most common alcohol related offences in Victoria, covered under the *Summary Offences Act 1966* (Vic), are:

- drunk in a public place (section 13); and
- drunk and disorderly (section 14).

Disorderly behaviour includes disturbing the peace or interfering with the comfort of other people who may be near the street or public place. If the police pick you up for these offences, you will usually be put into the police cells for four hours or overnight. You may then be charged and bailed to a hearing date. Unlike almost all other criminal offences, if you do not wish to contest these charges (i.e. you elect to plead guilty) you do not have to attend court, as common practice is for the court to find the charge proven (i.e. that you are guilty) and dismiss it (without any other penalty) whether you attend the court or not.

Note: This is only the case in relation to these charges and does not apply to other offences. For other charges, it is in your best interest to attend court, explain your circumstances and seek a more lenient penalty.

for people under 18

Under the *Liquor Control Reform Act 1998* (Vic), it is an offence for a young person under 18 to purchase, receive, possess or consume liquor or enter or stay on licensed premises.

It is not an offence for a young person to receive, possess or consume liquor in a private residence or to drink alcohol with their parents with a meal.

related alcohol charges

Often when you are being charged with an alcohol offence, there is a potential for violence between you and the police. If you are charged with resisting or assaulting police (section 52 of the Summary Offences Act), these charges are taken much more seriously by the courts.

If you think you have been wrongfully charged or mistreated you have the right to make a complaint. See the relevant section in this chapter or Chapter 14, *Making a Complaint*, for further information on the procedure for complaining about police behaviour.

police powers

being searched

Police can only search you or your car if they have 'reasonable grounds' to suspect they will find illegal drugs, weapons or stolen goods, or to preserve evidence. Otherwise a search warrant is required.

Police can search a house without a warrant if they believe they will find someone who has committed a 'serious indictable crime' or who has escaped custody. Police can also get a warrant to search a house if they believe drugs are there. If police come to your house to search, ask to see the warrant.

being arrested

You can be arrested and taken to a police station to be questioned if the police think you have committed a crime. You don't have to go anywhere with the police unless arrested. The police must tell you why you're under arrest. It is important to tell someone (family, friend or onlooker) where you are to be taken and why. (**Note:** There are some limited exceptions when you are not arrested but must go with the police, e.g. for a breathalyser test or for your own protection.)

You must give the police your full name and address if they have a reasonable belief that:

- you have committed an offence or are about to commit an offence; or
- you can help them in their investigation of an indictable offence.

In these situations, it is an offence to refuse to give your name and address or to give a false name or address. You can be charged and fined \$500 for giving the police a false name and/or address. The bottom line is that you can get into more trouble for withholding or misleading the police about your name and address, so it is wiser to provide these details in the first instance.

When arrested, you may be taken back to the police station and required to provide your details for police records. There is no longer a maximum time the police can hold you at a police station. Under the *Crimes Act 1958* (Vic) the police can now hold you for a 'reasonable time'. You have the right to speak to a lawyer and may be formally interviewed,

fingerprinted, charged, released or taken for a bail application. Details regarding your rights are listed below.

Before any formal questioning begins, the police must let you phone a lawyer from a private space. A private space means somewhere that the police cannot hear you. They must also let you phone a friend or relative from a private space. They do not have to do this if it is a drink driving matter or if they believe that during this time:

- someone else involved in the crime might get away;
- some evidence may be lost or tampered with; or
- other people may be in danger.

being questioned by police

Again, you must give your name and address to police if asked. The police must tell you their reason for asking, and give their name, rank, and place of work if you ask for it. If you give a false name and address you can be charged and fined \$500.

You don't have to answer police questions, but if you have a clear explanation of your innocence, it may be best to give it. However, if you are unsure about answering questions or feel that the police may trick you into saying things you do not mean, it is best to do a 'no comment' record of interview. If you decide to do this, you must say 'no comment' to every single question (apart from giving your name and address and agreeing that you understand your rights). If you answer some questions and not others, this can be used against you.



Ron Tandberg, *The Age*

You have the right to speak to a lawyer in private (i.e. somewhere that the police cannot hear you). A lawyer can give you advice on your rights and whether it is best to do a 'no comment' record of interview. A lawyer can also speak to the police officer and find out more details of what they are planning to charge you with.

If you are less than 18 years old the police cannot question you without a parent, guardian or independent adult present.

fingerprints

You have to give your fingerprints. If you are 15-years-old or over and the police suspect that you have committed an offence, they can take your fingerprints. If you refuse they may use reasonable force to take them. If you are between 10 and 14 years of age, you can refuse to give your fingerprints unless both you and a parent or guardian agree, or the police obtain a court order.

photographs/lineup

You have the right to refuse your photograph being taken or being put in an identification 'line-up'.

forensic procedures

If you are 18 or over, police may ask that you undergo a forensic procedure (e.g. draw a blood sample or take pubic hair or saliva). If you refuse the police must get a court order. If you are between the ages of 10 to 18 police cannot request a forensic procedure without a Children's Court order.

interpreters

Police must provide an interpreter if they believe that you require one. If you feel that you need an interpreter you should tell the police. If they do not get one for you, you should tell them you do not understand during your taped interview.

diversion — police and drugs

In some police districts, police policy is to caution you for minor drug offences if you have not been in trouble with the police before and have been co-operative with the police. (See: 'Penalties and Sentences', below.)

being charged — bail conditions

If you are charged you should get legal advice as soon as possible.

Charged on summons: Police can release you to appear at court on a particular date. If you have been charged with a summary offence and you do not turn up to court on that date the court may adjourn the matter for an *ex-parte* hearing (i.e. without you being present) and may sentence you in your absence. It is usually in your best interest to attend to put forward any explanations or mitigating factors, as you are likely to get a harsher sentence if you're not there.

If you have been charged with an indictable offence and summonsed to attend court then you must go to court — the court needs you to give permission for the matter to be dealt with in the Magistrates' Court ('consenting to the jurisdiction'). Therefore, if you don't turn up the magistrate will issue a warrant for your arrest to ensure that you are brought before the court.

Charged and bailed: Police can release you on bail to appear at court on a later date. Bail is a promise by you that you will attend court on this date. There may also be some bail conditions that you have to comply with, such as reporting regularly to the police station. If you breach your bail conditions, you may be arrested and taken back to court.

If you are bailed to a court date and do not turn up, the court will issue a warrant for your arrest and you will be charged with 'failing to appear'.

Held on remand: In some situations police can refuse to release you on bail and you may be held on remand. If you are not released on bail, you will have the opportunity to do a bail

application. If it is outside court hours, a Bail Justice will be brought into the police station. If a Bail Justice does not grant you bail, you are remanded to the next court date. A lawyer can advise you of whether you should make an immediate bail application or wait until there are more things set up (i.e. family at court, accommodation organised, linked in with doctors, etc).

It is important to realise that you only get 'one bite of the cherry' when applying for bail. You can apply for bail as many times as you like on your own, but once represented by a lawyer you can only re-apply if you can show the court that there are new facts and circumstances. Therefore, it is very important to think carefully about when is the best time to apply for bail. Sometimes it will be in your best interest to wait a day or two in order to get reports prepared, family members to come to court and housing organised, etc.

why bail is refused

Some of the reasons why you may be refused bail are that the court believes:

- you will not appear at court for the hearing of your case;
- you will commit more offences if released; or
- you will endanger members of the public or interfere with witnesses.

The court will look at things like:

- whether you are already on bail for other charges;
- how serious the charges are;
- your character, home situation, prior convictions; and
- whether you have ever failed to answer bail in the past.

The court will also take into account factors such as whether:

- you have somewhere to live;
- you are using on a regular basis;
- you are on methadone/buprenorphine; and
- you are linked in with any support agencies.

It is important to be able to provide proof to the court — faxed letters are fine. If your offending seems to be 'out of control' the magistrate may refuse bail on the basis that you are an unacceptable risk. If you are charged with a serious offence (e.g. armed robbery) then you must 'show cause' to the court as to why you should be released on bail. If you can't present good reasons (e.g. a lack of prior convictions and a minor role in the offending, employment or family responsibilities, that you're linked in with support agencies, or have an illness etc.) then bail may be refused.

If bail is granted you must follow any conditions until the court hearing. If you don't go to court a warrant will be issued for your arrest. You will be charged with failure to appear.

to make a complaint about police behaviour

Before you leave the police station, you should be asked to sign a record book that you have been treated okay. You should ask to make a complaint in the book if you feel able to. If you have been injured, see a doctor as soon as possible and explain to them how you were hurt and make sure they take notes so that they can write a report later if necessary. Make sure photos are taken of your injuries and ask anyone who saw you immediately before you went to the police station to make a statement that you did not have the injuries when they last saw you.

You should talk to a lawyer as soon as possible about who you can complain to (see 'Getting Legal Advice', below). Complaints can be made to the Office of Police Integrity or the Ethical Standards Department of Victoria Police (see Chapter 14, *Making a Complaint*).

penalties and sentences

the approach of the courts

Some magistrates and judges display more understanding of drug, alcohol and other harmful substance use and addiction, and the difficulties in addressing addiction, than others. However, even more sympathetic magistrates will want to see evidence that you are trying to tackle your addiction. If you are linked in with a support agency and/or doctor (e. g. taking methadone or buprenorphine) ask the service provider to write a letter, addressed to the magistrate, outlining their involvement with you and your progress or treatment regime etc.

Most magistrates and judges recognise a difference between trafficking to sustain a drug habit and trafficking for profit. They clearly see trafficking for profit as a much more serious offence.

cautioning scheme

The Victoria Police have introduced a statewide cautioning scheme in relation to cannabis. Under this scheme, first-time cannabis users are formally cautioned by the police rather than charged. There is also a cautioning scheme for heroin and other illicit drugs. Under this scheme, offenders are formally cautioned at a police station and then referred to compulsory counselling at a drug treatment centre. If you do not turn up for your counselling appointment without a good excuse, the treatment centre must report this to the police and you may then be charged with the offence.

sentencing options

If you are over 18 when you committed the offence, your case will be heard in the Magistrates' Court. For very serious offences (such as armed robbery) the case will have to be heard in the County Court.



John Spooner, *The Age*

what if I'm found guilty?

The main options a magistrate or judge has if you are found guilty of an offence are listed below.

- **Finding the charge proven and dismissing it.**
- **An adjourned undertaking** (known as a '**good behaviour bond**'): You can be made to give a sum of money to the court fund as part of the bond. If you stay out of trouble until the period of the bond is finished there is no further action. (This can be with or without conviction.)
- **A section 76 bond (under the *Drugs, Poisons and Controlled Substances Act 1981*):** For a first offence of using or possessing cannabis you are virtually guaranteed a good behaviour bond so long as it is a 'small quantity' of cannabis (less than 50 grams) and it is all for personal use. For a first-time offence of use of heroin, amphetamines or cocaine, you are also likely to be placed on a bond, with the compulsory condition that you complete an approved drug education and information program.
- **A fine (with or without conviction):** The more serious the charge and the more prior convictions you have, the bigger the fine is likely to be. The court has to take into account your capacity to pay, but often you won't be able to pay the fine all at once. You can ask for more time, or to pay by weekly instalments. You can also apply to have the fine converted into community work (at a conversion rate of \$20 per hour).

- **A Community-based Order (CBO) (with or without conviction):** With these orders, you can be made to do all or some of the following:
 - be supervised by a correctional services officer;
 - do unpaid community work;
 - do educational programs;
 - have treatment for drug and alcohol use;
 - be tested for drug and alcohol use; and
 - live at a certain place.

If you don't comply with a CBO or if you commit more offences while the CBO is still going, you will normally be brought back to court and be re-sentenced.

- **Intensive Corrections Order (ICO) (with conviction):** These are sentences of imprisonment that are served in the community. These have more supervision and more intensive community work than CBOs.
- **Combined Custody and Treatment Order (CCTO) (with conviction):** These can be made when the court is satisfied that drunkenness or drug addiction contributed to you committing the offence and is considering sentencing you to a term of not more than 12 months imprisonment. The first six months of the CCTO have to be served in custody and the remaining time can be served in the community. But if the order is breached while it is being served in the community, the whole part of that order has to be served in custody.
- **A suspended prison sentence:** This means that you are given a jail sentence and then told that you do not have to serve the sentence unless you commit more offences within a certain time (typically 12, 18 or 24 months). If you do commit a further offence which is punishable by imprisonment (which includes minor theft or begging, but does not include the charge of using a small quantity (less than 50 grams) of cannabis), you will be brought back to court and will normally be made to serve the full sentence, plus any extra time for the new charges. The only way you can avoid serving the suspended sentence is if you can convince the court that there are 'exceptional circumstances' that have come about since you received the suspended sentence. This is very difficult to prove.
- **A partially suspended sentence:** This means that you serve part of the sentence straight away and then only have to serve the rest if you commit more offences. You cannot get a suspended Youth Training Centre sentence.
- **An order to serve a prison sentence:** In the Magistrates' Court, the longest sentence you can possibly get is five years, but this is very unusual. Note that Victoria no longer has a 'remissions' system, which used to entitle adult prisoners to early release (by up to a third of their sentence) if they had been of good behaviour. The only option for early release now is if you are sentenced to at least 12 months jail and the magistrate makes an order that you become eligible for parole after a certain period of time, e.g. an 18-month head sentence with a non-parole ('bottom') period of nine months. This means that, after serving nine months, you become eligible for parole. The Parole Board then decides whether or not you should be released on parole. If you are under 21 years of age when you are convicted you can be sentenced to up to two years at a Youth Training Centre.

- **Deferral of sentence:** If you are under 25 years of age, the court can defer sentencing of a matter for up to six months to see how you are going, in particular to see whether or not you have re-offended.

diversion programs

Various programs operate to divert first-time offenders away from the criminal justice system and enable them to access programs to assist in dealing with their drug use. The Federal Government's version of the Drug Diversion Initiative can be downloaded at <www.nationaldrugstrategy.gov.au>.

Court Referral & Evaluation for Drug Intervention & Treatment (CREDIT / Bail Support Program)

This program has been set up at the following suburban and country courts — Ballarat, Broadmeadows, Dandenong, Frankston, Geelong, Heidelberg and Ringwood. There is also a Rural Outreach Diversion worker located at the Bendigo Magistrate's Court.

General eligibility

Any defendant eligible to be admitted to a period of bail may be referred to the CREDIT / Bail Support Program for support in engaging with:

- alcohol and other drug services, including assistance with pharmacotherapy;
- accommodation services;
- psychosocial supports, including mental health, sexual assault and behaviour modification programs; and
- assistance with Centrelink, material aid and travel.

If the defendant is on a current order through Corrections that does not encompass access to alcohol and other drugs counselling, they may be assessed for the program.

This program involves the offender being bailed by the magistrate to another court date with conditions that they comply with all requirements of the program, and if improvement is made this will be taken into account when sentencing.

Note: The CREDIT / Bail Support Program formerly operating in the Melbourne, Sunshine and Moe Magistrates' Courts is now incorporated under the services of the CISP program (see following).

Court Integrated Services Program (CISP)

CISP is a new initiative established by the Department of Justice and the Magistrates Court of Victoria, which is able to link defendants with support services relating to:

- drug and alcohol dependency;
- homelessness;
- mental health;
- disability;

- young offenders; and
- Koori specific needs.

The service involves assessment and case management where necessary, and is aimed at offenders who have a moderate or high risk of offending and the causes of offending.

The service is available at Melbourne, the Sunshine and Latrobe Valley Magistrates' Courts. In order to access the program, a referral form must be completed and is available from the support services counter at these locations.

General eligibility criteria

- The defendant must be charged with an offence;
- the defendant's history of offending or current offending indicates a likelihood of further offending;
- the matter before the court warrants intervention to reduce risk and address needs; and
- the defendant has physical or mental disabilities or illnesses, drug and alcohol dependency and misuse issues, or inadequate social, family and economic support that contribute to the frequency or severity of their offending.

Note: Defendants are eligible for the program regardless of whether a plea has been entered or whether they intend to plead guilty or not.

First Offender Court Intervention Service (FOCiS)

Run through Moreland Hall (see full listing in Chapter 9, *Drug and Alcohol Agencies*), FOCiS is a sentencing option for magistrates and is aimed at first time drug offenders found guilty of possession of no more than 1 gram of amphetamine, cocaine, heroin, LSD, 0.75 grams of MDMA or similar quantities of other amphetamines and MDA.

How does it work? The offender is given a bond with condition attached agreeing to attend a 2½ hour drug education and information session. Failure to attend more than once results in a police informant being notified of breach of conditions (notification sent to Officer in Charge of Police Station).

The aims of FOCiS are:

- to provide drug and harm minimisation information;
- to provide an opportunity, with the assistance of a trained alcohol and other drug counsellor/educator to reflect upon drug using behaviours and the possibility of changing those behaviours;
- to provide the offender with linkage to alcohol and other drug services and other health and welfare services; and
- to avoid the stigma of conviction for first time offenders.

Drug Court

The Drug Court of Victoria supervises some offenders with a drug problem by placing them on an order known as a Drug Treatment Order (DTO). A DTO may be ordered for defendants who plead guilty to drug-related offences in the Magistrates' Court (other than sexual charges or assault charges involving injury to the victim) and who are facing jail sentences. For example, they may have committed dishonesty offences such as burglary and theft. A DTO will only be ordered after a detailed assessment by the Drug Court team as to the defendant's suitability.

A DTO has two parts:

- a treatment and supervision part, usually for a period of two years, which can involve conditions such as not re-offending, taking part in drug testing and/or treatment, employment programs, restrictions on where you can live or who you can associate with and reporting regularly to the court; and
- a custodial part, which is a term of imprisonment of up to two years, suspended while the defendant is complying with the treatment and supervision conditions of the DTO.

If the DTO is cancelled or breached, the custodial part will usually have to be served in prison.

The Victorian Drug Court is located at the Dandenong Magistrates' Court as a pilot program. It is possible for defendants suitable for DTOs who have charges listed at other Magistrates' Courts to have the charges transferred to Dandenong Drug Court, if this is done before pleading guilty.

For further information, contact the Drug Court (tel: 9767 1344) or look on the Magistrates' Court website at <www.magistratescourt.vic.gov.au>.

Children's Court

If you are under 18 at the time of the alleged offence and under 19 at the court hearing, your matter will be heard in the Children's Court (unless it is a charge of murder or manslaughter).

Penalties in the Children's Court may be any of the following:

- **Charge proven and dismissed.**
- **An undertaking** (unaccountable or accountable) for six to 12 months (without conviction). This is a promise to the court not to reoffend.
- **A good behaviour bond** for up to 12 months (without conviction). The bond is a promise to the court to be of good behaviour and to come to court if this promise is broken. If you have to come back to court, you may have to pay the amount of the bond (normally \$100) or be breached on your bond.



Ron Tandberg, *The Age*

- **Deferral of sentence** for up to four months. A magistrate can defer your case for up to four months to see how you go. They may also order a 'presentence' report to be prepared by Juvenile Justice.
- **A fine** (with or without conviction). However, a magistrate must consider a young person's capacity to pay the fine and won't make the fine unless the young person can pay for it.
- **Probation** for up to 18 months (with or without conviction). This means that you have to report to a probation officer who supervises you and you must take up any suggestions they have for support.
- **Youth Supervision Order** (with or without conviction). This is like probation but more intensive and may include some community work as directed by the Department of Human Services.
- **Youth Attendance Order** for up to one year (with conviction). This can only be given if a magistrate would be otherwise sentencing you to a Youth Training Centre. Involves going to a Youth Attendance Project for up to 10 hours per week (four of these hours may be community service work). A breach of a youth attendance order normally means that you will be sentenced to a Youth Training Centre.
- **Sentenced for a period of time in a Youth Residential Centre** if under 15 (with conviction).
- **Sentenced to a Youth Training Centre** if over 15 (with conviction).

Children's Court Clinic Drug Program (CCCDP)

This program provides for assessment, referral and treatment of children who:

- are appearing in the Criminal Division of the Court;
- have a substance use problem; and
- are not on any other current court order with a drug treatment condition.

If the presiding judicial officer decides it is appropriate, the matter will be adjourned and the child and family will be ordered to attend the Children's Court Clinic for a comprehensive drug and alcohol assessment and development of a treatment plan. If the child is assessed as eligible and both the child and the child's guardians agree, sentencing can be deferred for up to four months while the child participates in treatment such as counselling, youth outreach, withdrawal services and supported accommodation.

The child may also have regular appointments with the drug clinician. Some families may also participate in the program. A final report on the child's progress will be taken into account by the court when sentencing the child.

For further information about the program, contact the Senior Drug Clinician at the Children's Court Clinic (tel: 8601 6750).

getting legal advice

If you have been charged with an offence and have to go to court, it is a very good idea to see a lawyer as soon as possible.

what does a lawyer do?

When you see a lawyer, everything you tell them is confidential. A lawyer cannot tell anyone what their client has told them unless the client gives permission. A lawyer will be able to discuss with you whether you should plead guilty or not guilty, the likely range of penalties you will receive and how to prepare for your court case.

where can I go?

There are different ways you can get help from a lawyer to represent you in court.

see a lawyer at a community legal centre

Community legal centres are located throughout Australia, with 25 generalist and 16 specialist centres in Victoria. In most cases, these services are free. Most centres provide legal advice at drop-in sessions or by appointment. You should contact your nearest centre to check on their appointment or session times. To find the centre nearest to you see the listing in Chapter 15, *Quick Guide*, or contact:

Federation of Community Legal Centres

1st Floor, 54 Victoria Street, Carlton South 3053
Ph: 9654 2204

see a lawyer from Victoria Legal Aid (VLA)

Initial consultation will be free, however if you are working and have assets you may have to pay for part or all of the cost of your court case. Appointments are required unless your case is an emergency; waiting periods may be as long as three weeks.

There are 10 VLA offices in Victoria. To find the nearest office to you contact:

Victoria Legal Aid

350 Queen Street, Melbourne 3000
Ph: 9269 0234; 1800 677 402 (country callers)
Web: www.legalaid.vic.gov.au

see a lawyer at the court on the day of your case

At most Magistrates' and Children's Courts in Victoria, VLA provides a lawyer, known as a 'duty lawyer', at no cost. It is important to note that:

- as duty lawyers see a lot of people in one day you may have to wait a while;
- the duty lawyers normally can't spend as much time with you as a lawyer who has seen you before your case;

- if the first time you see a lawyer is on the day of your court case, you may not have all the best information available (i.e. character references, doctors' reports); and
- the duty lawyers usually can't help you if you want to plead not guilty (except in the Children's Court).

see a private lawyer and get them to apply for legal aid

VLA may be willing to pay for the lawyer to help you. The lawyer should be able to advise on whether you will be eligible for legal aid.

pay a private lawyer to assist you

The amount of money the lawyer will ask for will depend on how serious the charges are, what court the case will be heard in and how long the case will take. Most lawyers will request payment or part-payment prior to your case being heard (with the exception of no win/no fee arrangements) and their rates may vary.

what information will my lawyer need?

documents

If you still have them, it is helpful to take your charge sheets and copy of your taped record of interview with you. Your lawyer will then know exactly what you have been charged with, your court date and what you have told the police. Your lawyer will then also have the name of the police officer who charged you so that they can write to request their evidence, which is called the police brief.

It is useful to take a copy of your health care card and recent pay slips so that your lawyer can apply for legal aid.

police brief

The police brief contains a summary of the offence, witness statements, a list of any exhibits and your prior convictions. Your lawyer will organise for the police brief to be obtained. Until your lawyer has a copy of the police brief, they are unlikely to be able to give you advice on whether or not to plead guilty.

what will my lawyer ask me?

- Whether you have been to court before, and if you have, what happened. (If you can't remember, then this information has to be provided to the lawyer by the police).
- Your version of the event which led to you being charged.
- If you want to plead not guilty, whether you have any witnesses.
- If you are pleading guilty, your lawyer's job is to explain to the court why it was that you committed the offence. They will ask you lots of personal questions.
- Whether you can get character references. These are written references by people of 'standing' in the community (i.e. teachers, community workers, employers or people who have known you for a while).

- Details of any doctors you are seeing, and any medical treatment you are on. If possible provide evidence to the court that you are addressing a drug addiction (i.e. clean urine samples, that you are on methadone/buprenorphine/naltrexone, or any reports from detox units).

what to do when going to court

what time should I get there?

Magistrates' Courts start at 10 am; however, if you are planning to see a duty lawyer, it is a good idea to get to court early as there is often a queue.

should I take anyone with me?

Going to court can be a daunting and stressful experience and having a family member or friend to go with you may help.

Magistrates and judges also like to know that people are being supported. If part of your plea is about the good family support you have, it is very useful to have a family member there to back this up.

Having your support worker, drug and alcohol worker or youth worker attend with you is also very helpful. Community workers are very well regarded by judges and magistrates, who may want to hear directly from the worker as to what supports are in place or progress made. If the worker has already written a reference and they are sitting in court, this will give more weight to their report.

what do I wear to court?

Many people wonder what to wear to court. While there are no set rules, remember that courts are formal places and showing respect to the magistrate by looking neat and tidy will place you in a more positive position.

court procedures

If you have time, it is a good idea to have a look at the courtroom before you go in for your case, to get an idea of the general layout and who sits where. Many courts have trained volunteers from Court Network who can provide support and help you find your way around court.

for pleas of guilty in the Children's and Magistrates' Courts

The police prosecutor (not the police officer who charged you) will read out a summary of the offence. The magistrate will ask your lawyer whether you agree with the summary and whether you have any priors. The prosecutor will hand a list of any priors to the magistrate.

Your lawyer will then do a 'plea', which is an explanation of why you committed the offence and what sort of person you are, putting this in the best possible light. Your lawyer can suggest an appropriate penalty to the magistrate.

The magistrate will then make a decision about what penalty you should receive. When the magistrate informs you of your penalty you should stand up and look respectful — even if you are upset or angry about the decision.

If you have been charged with an ‘indictable’ offence, before your lawyer can enter your plea of guilty you must first give the court permission to hear the charges — this is called ‘consenting to the jurisdiction’. If you do not consent to the jurisdiction the charges must be referred to the County Court.

for pleas of not guilty in the Children’s and Magistrates’ Courts

The process of pleading not guilty is a longer process involving more court and police time. This is why police and often the court system encourage you to plead guilty. If you plead guilty straight away, this can be taken into account when the magistrate is sentencing you. If you plead not guilty, but are still found guilty, you will not receive the sentencing discount for an early plea of guilty.

For pleas of not guilty, it is up to the police to prove their case. The police officer who charged you and any other police officers who were around will give evidence. Your lawyer can then ask them questions (cross-examine them). If it helps your case, you and any witnesses can give evidence and the police prosecutor may also ask you and your witnesses questions. The magistrate will then decide who to believe. If you are found guilty, your lawyer will make a ‘plea’ on your behalf and the magistrate will sentence you.

It is important to be aware that pleas of not guilty cannot go ahead on the first court date. Defendants are often frustrated because they want to ‘get it over with’, but their case has to be adjourned, and go through one or more preliminary hearings, before the main court hearing.

what if I am not happy with my lawyer?

As a consumer you have a right to expect the lawyer to act on your behalf to their utmost capacity. If you don’t understand or have doubts about what your lawyer is saying or doing, ask questions. Treat them like anybody else and make sure they explain things to you fully. If you are not happy, then say so.

If the situation does not improve you may consider seeing another lawyer and asking for further advice and whether you can change lawyers. If Legal Aid is covering your case, your new lawyer will have to get Victoria Legal Aid to agree to the change of lawyer. They will usually let you change lawyers once, but after that you will need a very good reason to change again.

If you are paying for your case, your old lawyer will wait until they have been paid before giving your file to the new lawyer. You will be required to also pay your new lawyer.

See Chapter 14, *Making A Complaint*, for further information on what to do when you are not happy with your lawyer.