

2.2 ASCERTAINING THE PLEA

INDICTABLE OFFENCES

The defendant is **not** asked to plead if the offence is an indictable offence. (eg. theft, burglary, Crimes Act offences, etc).

If the defendant does not plead, the Court accepts this as a plea of not guilty.

If the defendant is charged with an indictable offence the Magistrate will inform the Defendant that they have the right to have the charge heard before a Judge and Jury at the County Court if they so desire.

If the person charged consents to the charge being summarily tried and determined, the Magistrate will then ask the defendant how he/she pleads to the charge.

The Magistrate will then proceed to deal with the case summarily.

If the defendant does not consent to the Court's jurisdiction to hear the matter, the case must be stood down and a committal for trial hearing date obtained.

The Magistrates' Court Act specifically provides that no indictable offence may be tried summarily unless the Magistrates' Court itself is of opinion that the offence is one which it is proper in all the circumstances to try summarily.

SUMMARY OFFENCES

A summary offence is one which may be heard by a Magistrates' Court. An indictable offence is one which, apart from the provisions of Section 53 of the Magistrates' Court Act, may only be heard by a Judge and Jury.

2.3 PROCEDURE AFTER ASCERTAINING THE PLEA

After ascertaining the plea, request the defendant to be seated behind their counsel or if unrepresented, on the seat provided.

Defendants are not to sit at the bar table unless contrary instruction is given by the Magistrate.

2.3.1 CALLING WITNESS AND ADMINISTERING THE OATH

- Always STAND;
- Stand in a position that does not block the Magistrates' view of the person being charged;
- Speak in a clear AUDIBLE voice.
- As Bench Clerks are dealing with people who may be nervous, be from non English speaking backgrounds or people who have difficulty in following oral instructions, it is preferable to speak in simple language giving clear and precise instructions.

CALLING WITNESS AND ADMINISTERING THE OATH

- When a witness is called direct the witness to the witness box. **DO NOT** allow the witness to walk between the bar table and the bench when proceeding to the witness box. Request the witness to take the Bible in their uplifted hand (which can be either the left or right hand) and to repeat the words of the oath after you.
- Before commencing the oath, ensure that there is silence in the Court room and that all persons are stationary. If people enter the Court room or are moving around whilst you are administering the oath, pause, instruct the person to remain stationary whilst the witness is being sworn and then start the oath afresh.
- If a witness for an unrepresented defendant or in a case involving private parties not represented, the bench clerk shall also ask the witness,

"PLEASE STATE YOUR NAME, ADDRESS AND OCCUPATION"

2.4 OATHS AND OTHER ANNOUNCEMENTS**2.4.1 USUAL FORM OF OATH**

**"I SWEAR BY ALMIGHTY GOD
THAT THE EVIDENCE I SHALL GIVE
IN THIS CASE/APPLICATION SHALL BE THE TRUTH
THE WHOLE TRUTH / AND NOTHING BUT THE TRUTH"?"**

2.4.2 AFFIRMATION IN LIEU OF OATH

Affirmation is usually used when the witness has no religious beliefs or taking the Oath is contrary to their religious beliefs, either will be determined by the Magistrate.

The Bible is not used when administering an affirmation but you should ascertain the name of the witness before commencing:

**"I, (the name of the witness) / DO SOLEMNLY,
SINCERELY AND TRULY DECLARE, AND AFFIRM /
THAT THE EVIDENCE I SHALL GIVE / IN THIS CASE /
SHALL BE THE TRUTH / THE WHOLE TRUTH / AND
NOTHING BUT THE TRUTH"**

2.4.3 INTERPRETER'S OATH:

"I SWEAR BY ALMIGHTY GOD / THAT I SHALL WELL AND TRULY INTERPRET / THE EVIDENCE ABOUT TO BE GIVEN AND ALL OTHER MATTERS AND THINGS THAT MAY BE REQUIRED OF ME IN THIS CASE TO THE BEST OF MY SKILL AND ABILITY".

2.4.4 MUSLIN OR ISLAMIC OATH:

The Muslim oath is administered in the usual form, but the Koran is used instead of the Bible.

The Koran must not be uncovered, and it is available from the Registrar's Office.

2.4.5 ORDERING WITNESSES OUT OF COURT

"ALL WITNESSES IN THIS CASE, EXCEPT FOR THE COMPLAINANT (OR INFORMANT) AND THE DEFENDANT ARE TO LEAVE THE COURT, AND REMAIN BEYOND THE HEARING OF THE COURT UNTIL CALLED UPON TO GIVE THEIR EVIDENCE"

2.4.6 ADJOURNING COURT TEMPORARILY

"ALL STAND PLEASE. THIS DIVISION OF THE _____MAGISTRATES' COURT IS TEMPORARILY ADJOURNED. (or if to a particular time) UNTIL _____a.m./pm."

2.4.7 ADJOURNMENT AT THE COMPLETION OF THE DAY

Request of the Court Officer at the door, or announce

"ARE THERE ANY APPLICATIONS TO BE MADE TO THIS COURT?"

If the answer is negative, announce,

"SILENCE, ALL STAND PLEASE. THIS DIVISION OF THE _____MAGISTRATES' COURT IS NOW ADJOURNED"

2.5 UNREPRESENTED DEFENDANTS

2.5.1 CROSS EXAMINATION OF WITNESSES

As each prosecution witness completes their evidence, the bench clerk shall instruct the defendant to stand up. The Magistrate will ask the defendant if they desire to cross examine the witness.