

HOW TO RUN YOUR OWN COURT CASE

A practical guide
to representing yourself in
Australian courts and tribunals

{NON-CRIMINAL CASES}

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Note for the reader

While every effort has been made to make the information contained in this book as up to date and accurate as possible to reflect the laws and the legal system of Australia as at August 2008, its contents are not intended as legal advice. Use it as a guide only and be sure to obtain legal advice for your specific legal problem.

13 The hearing

The hearing is your opportunity to have an impartial decision-maker listen to both sides of the case and then decide it. It is the culmination of your extensive preparations and hopefully the last step towards resolution. It is your chance to have the dispute finalised so that you can move on with your life.

To make the most of this chance, don't approach the hearing with uncertainty and fear. Instead, face it with a clear head and have confidence in yourself, your preparations and your desired outcome.

Here are some practical tips about the hearing day and a final look at the Golden Rules.

What to expect at the hearing

Courtrooms nowadays come in all shapes and sizes. Your case might be heard in a large, traditional courtroom, a small informal one or a meeting room called a hearing room. On the day, it might be devoted to your case alone or there might be hearings in it before and after you.

Most courts are open to the public, so you might have an audience. There might be other parties and their lawyers or Joe Bloggs and his whole family. You might have student groups on school excursions traipsing through. Staff and decision-makers can generally ignore these intrusions. When presenting your case, you'll need to too.

A traditional courtroom looks something like this:

The decision-maker sits in an area called the **bench**. The decision-maker, **associate** and sound recordist sit facing the rest of the court.

The associate assists the decision-maker. The sound recordist tapes the proceedings. You can order a copy of the tape or transcript later, but these aren't cheap. They are mainly used if the matter is appealed.

The court official's duties include calling the court to order at the beginning and end of a session, announcing cases, calling witnesses in from outside the courtroom as well as swearing them in. In some courts, the roles of associate, sound recordist and court official are combined and done by just one official.

The lawyers sit at the **Bar table**. When you represent yourself, you usually sit here also.

Behind the Bar table are rows of seats for the public. Where the parties in a case are using lawyers, the parties usually sit here but as near as possible to their lawyers at the Bar table.

Behind the public seating is the entrance door. If you enter or leave the court while the decision-maker is present, you need to bow your head in their direction when you reach the door. A brief nod-type bow will suffice.

A less traditional hearing room might look like this:

	Tribunal Member	
You		Presiding
Witness		Member
	Tribunal Member	

You and a panel of tribunal members might sit around a large table with a seat left vacant for a witness. The Presiding Member will direct the proceedings. This type of hearing is probably closed to the public.

In between these two extremes there are many variations of room arrangements. It's best to investigate or visit the court or hearing rooms beforehand so you know what to expect.

Most court sessions usually start at 10 am, then have morning tea about 11 am, stop for lunch at 1 pm, reconvene at about 2 pm and finish for the day at around 4 pm. Be aware, some start at 9.30 am. Your hearing notice will state what time to be there.

Arrive early. Parking isn't always easy, especially if the court is busy that day. Also it can take considerable time once you're in the building to locate the right court or hearing room. Some court buildings have both courtrooms and hearing rooms. Hearing Room 3, for instance, may not be the same as Courtroom 3. The rooms might not be clearly marked.

If your hearing time is, say, 10 am this isn't necessarily when your hearing will start. Although you must be there at 10 am, there may be several cases listed ahead of you and you may have to wait your turn. So just in case, bring a newspaper or something to occupy your time. Dress comfortably but in a manner appropriate to the setting. You may be expected to stand to give your presentation and to stand whenever the decision-maker addresses you.

Be sure to address the decision-maker respectfully. A judge is called Your Honour. A magistrate is called Your Worship or Your Honour, depending on which state or territory you're in. A tribunal member is called Tribunal Member or you can add their name, for instance, Tribunal Member Smith. You can also call any of these decision-makers Sir or Madam.

At all times conduct yourself with civility and consideration. This helps maintain an environment of respect between the parties and also respect for the legal system that you're using to resolve your dispute.

Treat your opponent and their lawyer professionally and politely. Very little is ever gained using hostility, and much can be achieved using tact. So don't interrupt them while they're speaking, don't be provoked if they're nasty, refer to them pleasantly, and consider their ideas carefully while at the same time pursuing your competing goal. Each party has an equal right to present their case, and by respecting their job you will be respecting your own.

This professional approach can help your case in several ways. It gets rid of unproductive emotion and keeps the hearing on track towards a workable outcome. It short-circuits attempts to get you off-guard and then anger, intimidate, manipulate or bulldoze you into a position you aren't prepared for. It saves valuable hearing time. And by not buying into trouble you avoid being sidetracked. Behaving well helps keep you focused.

Golden Rule of Litigation:
 { CONDUCT YOURSELF POLITELY AND PROFESSIONALLY }

Throughout the hearing be simple, clear and direct. Speak naturally and wherever possible use your own words. Be brief and stick to the point.

Being simple means using common everyday words and natural speech to explain yourself clearly. It does not mean oversimplifying your argument. It means breaking down your argument into bite-sized chunks that follow logically and easily to form an idea. Complex arguments that are conveyed simply can be very convincing.

Golden Rule of Litigation: BE SIMPLE, BE BRIEF }

Every hearing has its surprises. It might be evidence you weren't aware of, a new slant on the law you hadn't thought of, an unexpected development from a witness or a remark from the decision-maker that sheds a different light on the whole case. Or it might be something more practical like a mix-up with the hearing

room, misplaced documents, a witness who doesn't turn up, you don't feel well, or you have a bingle beforehand in the car park.

Whatever comes your way on the hearing day, deal with it. Take the time, proceed calmly, and with a minimum of fuss, get on with your case.

{ ***Golden Rule of Litigation:*** EXPECT SURPRISES }

Throughout your presentation, aim to follow your outline as closely as possible. But if circumstances change, be prepared to improvise. If you need a few moments to consider a new development, ask for it. If you need a brief adjournment to examine new evidence, think something through, make revisions or do calculations, ask for it.

If at any time during the hearing you do not understand what's happening, wait for a convenient moment to interrupt, then ask the decision-maker for an explanation. It is crucial that you understand what's going on.

{ ***Golden Rule of Litigation:***
DON'T BE AFRAID TO ASK QUESTIONS }

Finally, if the decision-maker seems hostile, don't take it personally. Do not assume that it's you or your case or the bright shirt you're wearing. You can't possibly know their reason for being out of sorts. If they make opposing remarks, listen to them and respond firmly but courteously then continue presenting your case. Weather the storm.

{ ***Golden Rule of Litigation:***
IF YOU GET SIDETRACKED, DON'T LOSE YOUR WAY }

{ ***Golden Rule of Litigation:***
NEVER FORGET WHAT YOU WANT }

Let's look one last time at all of the Golden Rules of Litigation. Use them to recall everything you know about how to run your case.



THE GOLDEN RULES

THE DOs

DO YOUR HOMEWORK; BE PREPARED
 KEEP ACCURATE RECORDS
 OBEY THE TIME LIMITS FOR LODGING DOCUMENTS
 KNOW THE FACTS
 CONFIRM THE FACTS WITH EVIDENCE
 KNOW THE LAW
 KNOW HOW THE LAW APPLIES TO THE FACTS
 GET RID OF YOUR EMOTION
 CONDUCT YOURSELF POLITELY AND PROFESSIONALLY
 IF YOU GET SIDETRACKED, DON'T LOSE YOUR WAY
 BE SIMPLE, BE BRIEF
 EXPECT SURPRISES

THE DON'Ts

DON'T BE AFRAID TO ASK QUESTIONS
 DON'T WASTE TIME ON IRRELEVANCIES
 DON'T GET RATTLED, DON'T BE BULLDOZED
 NEVER FORGET WHAT YOU WANT

Above all, stay cool and calm. Be yourself. Now off you go to your hearing.