

Criminal Procedure Act 2009

Section 88

IN THE MAGISTRATES' COURT
OF VICTORIA AT _____

Court Reference: _____

Informant details

Agency: _____ Informant's name: _____

Address: _____

Telephone: _____ Email address: _____

Accused details

Accused's full name: _____

Date of birth: _____ Telephone: _____

Residential Address: _____ Post Code: _____

Email address: _____

Licence No: _____ Licence State: **Select State** International licence? ☐ Yes ☐ No

Are you of Aboriginal or Torres Strait Islander origin? ☐ No
☐ Yes, Aboriginal
☐ Yes, Torres Strait Islander
☐ Yes, Aboriginal & Torres Strait Islander
☐ Prefer not to say

Do you require an interpreter? ☐ Yes ☐ No If Yes: Language required _____
Dialect (if applicable) _____

This application was filed by: ☐ The Accused ☐ The Informant
On [date] the Magistrates' Court at [venue]

On [date] the Magistrates' Court at [venue]

found the accused guilty of [the following charges]

and ordered [sentence imposed]:

The order was made in the absence of the accused. The reason for the accused's non-attendance was: [specify reasons]

The charge-sheet was served: ☐ Personally ☐ by post ☐ other

On [date] _____ the accused intends to apply to the Magistrates' Court at [venue] _____ for an order that the sentencing, be set aside and the charge to be reheard.

Date: _____ Signature of applicant: _____

APPLICATION FOR STAY OF ORDER (If the order affected the driver's licence)

On [date] _____ the accused intends to apply to the Magistrates' Court at [venue] _____ for an order that the order affecting the driver's licence be stayed and that the licence holder be allowed to drive until the decision of the re-hearing.

Date: _____ Signature of applicant: _____

NOTES ON SERVICE

If the application is made by the accused:

1. Within 7 days of lodging the application, you **must** serve a copy of the application on the person who charged you. This is done—
 - (a) by giving a copy of the application to the informant or a person representing the informant at a hearing in relation to the charge; or
 - (b) by sending a copy of the application by prepaid ordinary post addressed to the informant at the business address nominated by the informant; or
 - (c) by sending a copy of the application by email addressed to the informant at the email address nominated by the informant; or
 - (d) by leaving a copy of the application for the informant at the informant's business address with a person who appears to work there; or
 - (e) in any other manner agreed to by the informant.

Once you have served the application you must complete the "Affidavit of Service" and give it to the registrar of the Court at the venue where your case was heard. You must do this within a reasonable time before the court date for the hearing of the application.

2. If you are making an application for a stay of order you must serve a copy of the application on the person who charged you 7 days before the Court date for the hearing of the application.
3. If you are in custody only because of the order that is the subject of this application, you may apply for bail pending the re-hearing.

If the application is made by the informant on behalf of the accused:

A copy of the notice must be served in the same manner as a summons may be served.

What is a rehearing?

If the Magistrates' Court gives a sentence in a criminal case when you were not there, you can ask the court to hear the case again. This is called an application for a rehearing. An informant can also apply. The court will decide whether the rehearing is granted.

Who can apply?

- The person charged (Accused)
- A legal practitioner on behalf of the Accused
- The Informant

When do I need to apply?

You should apply as soon as possible after becoming aware that a sentence was imposed. In most cases, this must be within 28 days of finding out about the sentence.

How do I apply?

Complete the form by:

- Go to the Magistrates Court and complete the application form in person
- Email the application form to the court
- Your lawyer can make the application for you.

Important:

Your application must explain why you did not attend court.

What happens after I apply?

The court will list your application for hearing. You will need to give a copy of the application to the informant so they can appear at the hearing.

- At the hearing, a judicial officer will decide the application. If granted, the sentence will be set aside and the case may be listed for a new hearing date.

If you cannot attend

If you cannot attend the hearing date, contact the court as soon as possible. If you do not attend and do not contact the court, your application may be cancelled.

What happens after the hearing?

- The Judicial Officer will tell you the result of your rehearing application, as long as the Informant has been notified properly.
- If your rehearing is granted, your case may be listed for a new date.
- If your rehearing is refused, the original sentence remains in force.