

*This document does not cover all the information you need from your lawyer for the purposes of the case conference and your decision to plead guilty or not guilty.*

## **Case Conferences for indictable matters in the Local Court**

### **Explanation to legally represented accused**

#### **if statutory utilitarian discount caps apply**

- 1) The law requires me to explain to you that a plea of guilty entered in the Local Court can reduce the sentence you get in your matter.
- 2) Decisions you make during the case conference may affect the sentence you receive if you plead guilty to one or more of the offences you are charged with, or if you are found guilty at trial.
- 3) If you plead guilty, the court takes a number of factors into account in deciding the appropriate sentence. One of those factors is called the 'utilitarian discount'. This is a discount you get off your sentence because you contribute to the efficiency of the criminal justice system.
- 4) The size of the discount depends on when you enter the plea or when your lawyer tells the prosecution in writing that you will be pleading guilty.

#### **The Discounts**

- 5) Unless you fall under an exception, if you plead guilty to an offence, the discounts are:
  - a) 25% if you plead guilty in the Local Court,
  - b) 10% if you plead guilty up to 14 days before your trial is set down to start, and
  - c) 5% if you plead guilty less than 14 days before your trial is set down to start, or during the trial.

#### **Exceptions to the Discounts**

- 6) The court may decide not to give you the full discount, or any discount, if:
  - a) you dispute the facts for sentence and you lose that dispute, or
  - b) the court decides your culpability in committing the offence was extreme.
- 7) There will be no discount at all if the offence has a maximum penalty of life imprisonment and the sentencing court decides that a life sentence is appropriate.

#### **What if the prosecution amends a charge, or adds a new charge, after committal?**

- 8) After you are committed for trial, the prosecution may change some of the details of the charge (amends the charge) or lay a new charge. If 'as soon as practicable' after that happens, your lawyer tells the prosecution in writing that you will plead guilty to that amended or new charge, you are entitled to the 25% discount, except:
  - a) if you have already refused a written offer by the prosecution in the Local Court to plead guilty to the amended or new charge, or
  - b) if the amended or new charge is based on substantially the same facts or evidence as the original charge and the maximum penalty is the same or less than for the original charge.
- 9) If your lawyer did not tell the prosecution in writing 'as soon as practicable' after the charge was amended or laid that you intended to plead guilty, then the discount will be:

- a) 10% if you plead guilty up to 14 days before your trial is set down to start,
- b) 5% if you plead guilty less than 14 days before your trial is set down to start, or during the trial.

**What if the prosecution rejects an offer by you to plead guilty to a different offence than the one charged, and at trial you are found guilty of that different offence?**

10) The discount will be 25% if:

- a) when you are in the Local Court, your lawyer tells the prosecution in writing that you will plead guilty to an offence which is different to the one charged,
- b) the prosecution rejects your offer, and later you are found guilty of that different offence at trial, or an offence that is reasonably the same as the different offence (because the facts are capable of constituting the different offence and the maximum penalty is the same or less than the different offence), and
- c) you did not withdraw the offer before being convicted of the different offence.

11) The discount will be 10% if your lawyer tells the prosecution in writing that you will plead guilty to the different offence after you are committed for trial and up to 14 days before your trial is set down to start.

12) The discount will be 5% for a plea of guilty, if your lawyer tells the prosecution in writing that you will plead guilty to the different offence less than 14 days before your trial is set down to start, or during the trial.

**What if the prosecution rejects an offer by you to plead guilty to a different offence from the one charged and later accepts the offer?**

13) The discount will be 25% if:

- a) when you are in the Local Court, your lawyer tells the prosecution in writing that you will plead guilty to an offence which is different than the one charged,
- b) the prosecution rejects your offer but later changes its mind and accepts the offer, and
- c) you do not withdraw the offer to plead guilty to the different offence.

14) The discount will be 10% if you offer to plead guilty to the different offence after you are committed for trial and up to 14 days before your trial is set down to start, and the prosecution later accepts the offer.

15) The discount will be 5% if you make an offer to plead guilty to the different offence less than 14 days before your trial is set down to start or during the trial, and the prosecution later accepts the offer.

**s.72(2)(b): The penalties applicable to the offences certified in the charge certificate and to any other offences the subject of offers made by the accused or the prosecutor in the committal proceedings**

16. The penalties applicable to the offences certified in the charge certificate are:

*[Add offences certified and applicable penalties].*

17. The penalties applicable to the offences the subject of offers made by the accused during committal proceedings are:

*[Add offences offered by the accused and applicable penalties].*

18. The penalties applicable to the offences the subject of offers made by the prosecutor in the committal proceedings are:

*[Add offences offered by the prosecutor and applicable penalties].*

**s.72(2)(c): The effect on the applicable penalty if the accused person were to plead guilty to an offence at different stages of proceedings for the offence**

19. The effect on the penalty for the offences certified, or offered as set out above, if the accused person were to plead guilty, in accordance with the effect of the scheme concerning sentencing discounts is:

- a) Offence/s charged: *[List offences and applicable maximum penalty, standard non-parole period]*
  - i) Plea of guilty to offence/s charged, entered prior to committal from the Local Court: *[Add relevant discount]*
  - ii) Offer to plead guilty to offence/s charged, 14 days prior to trial: *[Add relevant discount];*
  - iii) Plea of guilty entered thereafter: *[Add relevant discount].*
- b) Offence/s offered by the prosecution: *[List offences offered by prosecutor, and applicable maximum penalty, standard non-parole period]*
  - i) Plea of guilty to offence/s offered by prosecutor, entered prior to committal from the Local Court: *[Add relevant discount]*
  - ii) Offer to plead guilty to offence/s offered by prosecutor, 14 days prior to trial: *[Add relevant discount];*
  - iii) Plea of guilty thereafter to offence offered by prosecutor: *[Add relevant discount].*
- c) Offences offered by the accused person: *[List offences offered by accused person, and applicable maximum penalty, standard non-parole period]*
  - i) Plea of guilty to offence/s offered by accused person, entered prior to committal from the Local Court: *[Add relevant discount]*
  - ii) Offer to plead guilty to offence/s offered by accused person, 14 days prior to trial: *[Add relevant discount];*
  - iii) Plea of guilty thereafter to offence offered by accused person: *[Add relevant discount].*

**Utilitarian Sentence Discounts**  
**Adults Accused of State Offences**

<b><i>Circumstances</i></b>	<b><i>Timing of plea of guilty or offer to plead guilty</i></b>			<b><i>Exceptions</i></b>
<b><i>Defence pleas and offers</i></b>	Before Committal	At least 14 days before trial	Less than 14 days before trial	
Plea to offence charged or to an alternative accepted by Crown	<b>25%</b>	<b>10%</b>	<b>5%</b>	1. Extreme culpability 2. Lost factual dispute 3. Judge sentences to Life
Defence offer rejected and not withdrawn is later accepted	<b>25%</b>	<b>10%</b>	<b>5%</b>	1. Extreme culpability 2. Lost factual dispute 3. Judge sentences to Life
Defence offer rejected and not withdrawn – at trial found guilty of reasonably equivalent charge  (i.e. the maximum penalty is the same or less than for the offence offered and the facts can fit both)	<b>25%</b>	<b>10%</b>	<b>5%</b>	1. Extreme culpability 2. Lost factual dispute 3. Judge sentences to Life
<b><i>Crown changes charges after committal</i></b>	As soon as reasonably possible	At least 14 days before trial	Less than 14 days before trial	
Plea to new charge laid by Crown after committal	<b>25%</b>  <u>Unless:</u>  New offence has same or lower penalty than original charge <i>and</i> is based on substantially the same facts or evidence;  <i>or</i>  Defence refused previous Crown offer of the new offence	<b>10%</b>	<b>5%</b>	1. Extreme culpability 2. Lost factual dispute 3. Judge sentences to Life