



## **Magistrates Court of Western Australia**

### **Criminal Jurisdiction**

#### **Fact Sheet 42 – Cross Examination by an Accused**

*This fact sheet contains information on the procedure to be followed when you are defending a criminal charge and cross-examining a prosecution witness*

#### **What is a cross-examination?**

When a prosecution witness is called and sworn, they will give their evidence to the Court in the first instance and be questioned by the prosecutor. This is called examination-in-chief. When the witness has completed their examination-in-chief you have the right and opportunity to ask them questions. This is called cross-examination.

#### **Why cross-examine a witness?**

The purpose of cross-examination is to challenge the evidence of the witness. By asking questions of the witness you should try to point out what you think is wrong in their evidence or where their evidence may differ from your version of events and you should try to establish doubt.

#### **How do you cross-examine a witness?**

You must ask questions of the witness. You cannot make statements - you will have the opportunity to give your account later. If you disagree with something that has been said by the witness in evidence, then you must question the witness to challenge their version of events. You may even ask

leading questions in cross-examination. A leading question is one that suggests the answer. For example, "Do you agree that Fred was wearing a red jumper that day?" instead of "What colour jumper was Fred wearing that day?"

## **The rule in Browne v Dunn**

Prosecution witnesses are usually called to give their evidence before you will be called to give your evidence. This means that if you are going to say something in your evidence later that is different to, or is missing from, what a prosecution witness says and you think they may have knowledge about it then you must question them in cross-examination. It means that the Court has the best opportunity to hear both sides of all matters in dispute and is known as the Browne v Dunn rule.

For example, a prosecution witness may not have mentioned in their evidence what time of the day an event occurred. You may be relying on the fact that it was night and very dark and that someone has made a mistake identifying you as the offender. You may want to rely on that fact later in your evidence so you should question the witness as to time of day or lighting conditions in the area during cross-examination.

## **What to do**

When the prosecution witness is giving evidence in the examination-in-chief you should listen carefully and make notes of any points you wish to ask questions on when you get a chance to cross-examine. You should also question the witness about matters that may be useful to your case even if the witness did not mention them in their evidence in chief.

If the Court orders it, cross-examination may take place via closed circuit television, with screens separating you and the witness or by asking your questions through the magistrate. You must obey the order of the magistrate.

## **What not to do**

Do not make statements in cross-examination. You will get the opportunity to give your evidence at a later stage and, if you wish, call your own witnesses. Try not to ask questions that are not relevant to the matter before the Court and try to stay calm with the witness.

## **What if I don't cross-examine?**

If you do not cross-examine a witness then what the witness has said can be taken as unchallenged and true and you may be denied the right to present any contradicting evidence at a later stage in proceedings.

## **Before the trial**

Go through the statement of material facts and any statements of prosecution witnesses before the Court and prepare questions you would like to ask in court. If you don't have these documents, contact the prosecutor.

## **Take time to sit in court before the date of your trial**

It may help you to see how others cross-examine. You are allowed to sit at the back of any court hearing and observe proceedings unless the magistrate orders everyone except the parties to leave.

## **What should I bring to court**

On the date of your trial you should bring any relevant documents, any witnesses you may have, a pen and a notepad.

## **What if I need an interpreter?**

You must notify the court registry as soon as possible to arrange an interpreter

**This is a guide only. The content is subject to change.**

If you are unsure about any of the information in this fact sheet, contact your nearest registry or seek legal advice.