

# How to Amend a Police Facts Sheet

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Guilty pleas are a large part of any criminal law practice. No guilty plea should ever be entered until after the best possible set of facts has been negotiated and agreed with the police. However, the skills needed for amending Facts Sheets are not taught at University and many practitioners seem to have no understanding of them. This article seeks to assist legal practitioners appearing in the Local Court of NSW.

## Allocution

Before a court can sentence an offender, it must make a finding of fact as to the circumstances of the offence. If the accused pleads not guilty, then these facts are established by evidence at the trial. But if the defendant pleads guilty, then there is no trial and no evidence. Instead, the defendant is required to allocute – that is, to say what he did. This is done by way of a police 'Facts Sheet'.

Defendants are given a Court Attendance Notice and a Facts Sheet, which is a narrative of what the police allege. The Facts can and should always be amended to be as favourable to the client as possible before a plea is entered. There are clear rules as to what can go into the Facts and what material should be excluded. Every word in the Facts should be parsed to see if it complies with the rules.

## Relevance

The first rule is that everything in the Facts Sheet must be relevant to a charge on the indictment. Police will often include extraneous material to paint the defendant in a bad light. This might include:

- Allegations of other offences that have not been charged,
- Allegations of conduct that is immoral but not illegal,
- Allegations of previous suspected offending,
- Allegations of consorting with undesirable people.

All such allegations should be removed as not relevant to the offence charged.

## Opinions

The Facts Sheet should contain facts and not opinions. Yet, police often throw in their two cents worth. The Facts Sheet should simply state the facts. Opinions can be put in the court submissions. Common submissions in Facts Sheets include:

- The Defendant is a recidivist criminal, has no respect for the law ... etc
- The Defendant's conduct placed people in danger

This is a conclusion that can be put in submissions, but it is not fair to ask the defendant to agree with such a conclusion as they may have an explanation.

# The De Simoni Principle

The De Simoni<sup>1</sup> principle provides that a court cannot take into account as an aggravating factor a circumstance that would warrant conviction for a more serious offence. So, when the prosecutor accepts a plea to a lesser charge in full satisfaction, they must amend the Facts Sheet to make out the less serious charge and not the more serious one that is withdrawn. For more on De Simone, [click here](#).

## Allegations That Are In Dispute

If there are allegations in the Facts Sheet that the client will not admit, then the facts are not agreed and the matter should not proceed as a guilty plea. Instead the matter should be listed for a 'Disputed Facts' hearing. If the police fail to prove that particular fact, then the defendant is entitled to the full discount for his plea.

In practice this rarely ever happens. Either the police will remove the disputed fact, or the defendant will plead to it to avoid the expense of a hearing.

## Be Flexible

Congratulation on reading this far. You now know the basics of amending police Facts Sheets. My last word of advice is to be flexible with the rules and remember that it is a negotiation. Sometimes it is better to give ground on one point if you can gain ground on another. At the end of the day, the goal is to get the best result for the client and not to demonstrate how well you know the rules.

If you have any interesting issues, I'm available every day.

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<sup>1</sup> R v De Simoni (1981) 147 CLR 383