



The criminal justice system can be a daunting and confusing experience for victims and witnesses, especially as the law has unique processes and a language of its own.

To help you navigate it, we've developed this guide, which outlines eight major steps in the prosecution process.

### Step 1. Investigation

The investigator, who is often a police officer, takes statements and collects evidence to be used in criminal prosecutions. Statements may be taken from victims of the crime, witnesses, or anyone who knows something about the alleged offence.

Once the investigator thinks they have enough evidence to charge someone with a criminal offence, they compile a brief with all the information they have about the crime. This includes witness statements and physical evidence like photographs and recordings. When it is ready, a brief of evidence is referred to the CDPP for assessment.

- » Once a prosecution has started, the investigator becomes known as the informant or complainant.

*The CDPP does not investigate offences, it prosecutes crimes against Commonwealth law.*

### Step 2. Brief assessment/charges are laid

The CDPP will go ahead with a prosecution if we can answer yes to two questions:

- » Are there reasonable prospects of the accused being found guilty?
- » Is it in the public interest to start a prosecution?

Our prosecutors assess briefs referred to the CDPP in accordance with the Prosecution Policy of the Commonwealth.

Deciding whether or not to go ahead with a prosecution is the most important step of the prosecution process.

### Step 3. Court proceedings

If the CDPP decides to start a prosecution, charges will be laid against the person prosecutors believe has committed a crime. This person is known as the defendant.

The defendant will be notified when charges against them are laid. This can be done in two ways, they may be:

- » sent a summons, or a court attendance notice, to appear in court on a certain date
- » arrested and either granted bail or kept in custody until the prosecution finishes.

#### How will I know if charges have been laid?

Victims can contact the CDPP Witness Assistance Service or the investigator who is dealing with the matter, to find out if charges have been laid.

#### The court system

Australia has three levels of court for criminal matters. Cases are allocated depending on how serious the offence is, and which state or territory the matter is heard in.

- » Regardless of the charges, all matters start in the Local Court, which is also known as the Magistrates' Court. This court deals with matters that are less serious, which are often referred to as summary offences. A summary, or simple, offence is tried by a magistrate alone. Examples of summary offences include less serious cases of fraud and drug offences.
- » More serious criminal matters, also known as indictable offences, are heard in a higher court, such as the Supreme, County or District Court. Indictable offences require a trial by judge and jury. Examples of Commonwealth indictable offences include major drug importation cases, terrorism offences and fraud cases where the sum of money involved is large.

## Making a plea

At the very start of the criminal proceedings, the defendant will be asked to state how they intend to plead to the charges. This will determine how the case proceeds, and whether a trial will be held.

A defendant can plead guilty to committing the crime, not guilty, or they may ask for an adjournment to seek legal advice.

- » If the defendant pleads **guilty**, the magistrate will sentence them, or commit them for sentence to a higher court. Witnesses are not usually called to give evidence on a guilty plea and the magistrate uses an agreed statement of facts prepared by the prosecution.
- » If the defendant pleads **not guilty** the matter must go to either a hearing in the Magistrates' or Local court, or to trial in a higher court. The matter is set down for a case management hearing and a date will be set for a committal [Link to step 4] or hearing.

## What is a Statement of Facts?

A Statement of Facts is a summary of the prosecution's case, outlining what is alleged to have happened when the crime was committed. The facts are prepared by the prosecutor and provided to the defendant's lawyer.

## Step 4. Committal hearing

Different states and territories have different rules about whether committal hearings are needed.

During a committal hearing, a magistrate will consider the evidence the prosecution intends to use, and decide if there is enough to take the matter to a trial. Depending on where the trial takes place, it will be held in either the Supreme, County or District Court.

If the magistrate decides the prosecution does not have enough evidence, they will dismiss the matter and the defendant will be free to leave.

At a committal hearing, there is no jury and the magistrate makes all the decisions and judgments.

- » If the magistrate decides there is enough evidence, the defendant will be committed for trial. This means the matter will be heard in one of the higher courts at a later date.

## Step 5. Hearing

A hearing takes place in the Magistrates' or Local court. There is no jury and the magistrate makes all the decisions and judgments.

During the hearing:

- » Witnesses give their evidence in the court and other forms of evidence may be produced, for example photographs and recordings.
- » The prosecution must prove its case beyond reasonable doubt.
- » The magistrate hears all the evidence and decides the verdict.

If the verdict is guilty, the magistrate will either impose a sentence or set a later date to do it. If the verdict is not guilty, the matter is dismissed.

*Remember:* If your case involves child sexual abuse, and the CDPP decides not to prosecute, or stops the prosecution against a defendant, you may be entitled to a right of review. [Link to definition in legal speak explained.]

## Step 6. Trial

If the defendant is committed for trial, it will take place in either the Supreme, County or District Court, depending on how serious the crime is.

When a matter is sent to these courts, an indictment must be prepared by the prosecution and presented to the court. An indictment lists all the offences the defendant has been charged with.

During the trial, a jury will need to decide whether the defendant is guilty of any, or all, of the offences they have been charged with.

During the trial, the prosecution will call witnesses and present evidence to support its case against the defendant. The defendant can decide whether to give evidence before the court or put other evidence forward to support their innocence.

In Australia, a person is innocent until they are proven guilty of an offence. This means the onus of proof is on the prosecution. The CDPP must convince the jury 'beyond reasonable doubt' the defendant committed the crime. The defendant does not have to prove they are innocent.

When all the evidence has been given, the judge sums up both sides of the argument for the jury. The jury then leaves the courtroom to decide if the defendant is guilty or not guilty.

If the jury decides a defendant is guilty of some, or all, of the offences they are charged with, the court will set aside a date for sentencing.

If the jury decides there is not enough evidence to prove beyond reasonable doubt the defendant committed the crime, they must find them not guilty. The defendant is acquitted and free to leave the court.

If the jury can't reach a verdict, the matter may be set aside and a re-trial may be ordered.

»» The main difference between a hearing and a trial is that a trial takes place before a judge and a jury, and the jury decides whether the defendant is guilty or not guilty.

## Step 7. Sentencing

If someone pleads guilty to committing a crime, or a jury finds them guilty after a trial, the judge or magistrate will need to decide on the appropriate penalty, and sentence them accordingly. Sentences can include:

- »» jail time, conditional release, a fine, or community service
- »» repaying the Commonwealth and people who lost money due to the crime.\*

See reparation orders. [Link to this section in support and entitlements.](#)

When deciding what the sentence will be, a judge will take into account a Victim Impact Statement if one has been submitted.

»» A Victim Impact Statement is a written or spoken statement that describes the impact of the crime on those affected by it, and the harm the victim suffered as a result. The harm may include physical, psychological and emotional suffering, economic loss and damage.

## Step 8. Appeals

A defendant may lodge an appeal against being found guilty and the severity of the sentence. The prosecution can appeal against the sentence imposed.

All appeals must be heard by a higher court.