



This document provides victims of crime and their families with a very brief and general overview of the sentencing process for Commonwealth prosecutions.

A sentencing process occurs after an accused person (the defendant) has:

- » pleaded guilty to a criminal offence or offences; or
- » been found guilty of a criminal offence or offences following a hearing or a trial.

Once an accused person is convicted they are referred to as the offender. Sentences are handed down by magistrates (in lower courts such as the local and magistrates courts) and judges (in higher courts such as district and supreme courts). Sentencing proceedings are heard in courtrooms and are generally open to the public. The defendant/offender is usually present in court for all sentencing proceedings. In circumstances where the defendant/offender is already in custody they may appear via audio visual link (AVL) from a corrective facility rather than attend the court in person.

The Sentencing Process

Sentencing processes may vary depending on a number of factors, including the court in which they are heard and the nature of the offending that is concerned. In some cases (usually involving less serious matters heard in lower courts) the sentencing of an offender may occur on the date they enter a plea of guilty.

In many matters, particularly more serious cases, it is common for the sentencing process to occur over more than one court date.

The sentencing process usually involves two main parts. The first part involves the prosecution and defence making submissions to the court about the offender and the offence/s for which they will be sentenced. The second part is where the judge/magistrate hands down the judgment.

Sentence – Submissions

Sentencing submissions may be provided to the court both orally and in writing and will set out the prosecution's and defence's positions regarding an appropriate sentence and their reasons for this. They will usually include comments about the factors that the judge/magistrate should take into account when determining an appropriate sentence for the offender. Much of this information will be provided to the sentencing judge/magistrate in writing so you may not hear it spoken about in court.

In some matters there may be some disagreement between the prosecutor and defence lawyer regarding the facts of the case or other matters that the judge/magistrate should accept. This may mean that oral evidence is called from individuals such as the defendant/offender, a medical professional or other witnesses.

You may also hear the lawyers referring to other cases with similar facts and the sentences received in those matters to help guide the judge/magistrate. There may be discussion about the seriousness of the offending and the offending behaviour may be described as falling within the low-range, mid-range or worst-case category. This enables the judge/magistrate to consider how this particular case compares to other cases and helps them to determine an appropriate sentence. Hearing the offending behaviour spoken about in these ways may be very difficult for victims and their families.

The defence lawyer may make submissions to the court regarding the offender's personal background. In some cases, they may call character witnesses to give evidence in court in support of the offender.

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Some offenders may give evidence in court at the sentencing hearing – they may talk about the offending, including why they did it. They may also express their remorse or make an apology but this is not always the case.

The sentencing submissions stage may also involve the presentation of victim impact statements to the court and requests for the court to make reparation orders.

A Victim Impact Statement (VIS) is a written or spoken statement prepared by the victim of the crime that describes the harm the victim suffered as a result of the crime/s for which the offender is being sentenced. A VIS is given to the sentencing judge/magistrate before they sentence an offender and helps them to better understand the personal impact the crime has had on the victim/s when deciding what the appropriate penalty should be. The preparation of a VIS is voluntary. For more information concerning VIS, including eligibility and what content may be included, please refer to the CDPP's '[Victim Impact Statement](#)' information resource.

A reparation order is an order that can be made by the court for the offender to make some form of payment to a victim of crime. The issue of any reparation order is dealt with by the court during the sentencing proceedings as the court may make a reparation order once a defendant has been convicted of a federal offence or the offence is proven against the defendant but they are discharged by the court without conviction.

Reparation orders can be both for restitution and compensation and cover economic and non-economic loss. For more information relating to Reparation orders please refer to the CDPP's '[Reparation Orders and Victims of Crime](#)' information resource.

Sentence – Judgment

Once the prosecutor and defence lawyer have made their submissions the sentencing judge/magistrate will deliver their sentence/judgment. The judgment is when the judge/magistrate announces the actual sentence to be imposed and their reasons for coming to this decision.

The sentencing judge/magistrate may hand down the sentence/judgment on the same day that submissions are heard. However, it is often the case that the judge/magistrate sets a later date for the sentence to be delivered. The time between submissions being provided to the court and the judgment being handed down can vary. Days, weeks or months may pass between submissions being heard and the actual sentence being handed down.

The judge/magistrate usually reads out their judgment in a courtroom that is open to the public. The offender must be present when the sentencing is being handed down (in person or virtually).

In some cases, victims of crime may be able to view sentencing proceedings remotely via AVL however, this is not always possible. If you are interested in viewing sentencing proceedings remotely you must contact the prosecutor in advance of the court proceedings to see if this is possible. For more information concerning AVL and court proceedings please refer to the CDPP's '[Virtual Court Proceedings](#)' information resource.

Sentencing proceedings may attract the attention of the media who may report on the outcome and judgments may be published online by the courts. In some cases, the court may make non-publication or suppression orders.

The judgment usually contains the facts of the case and may include graphic details of the offending. Sometimes the judgment can be difficult for victims and their families to hear as they may become aware of details about the offender and/or the circumstances of the offending that were not previously known to them. This is one of the reasons why it is important to consider your support needs when deciding whether or not to attend sentencing proceedings. Judgements may also be appealed.

More information

This document contains general information about the sentencing process when it occurs and what to expect. Practices may vary across different jurisdictions and may also vary from case-to-case – this document is intended as a general guide only.

If you have questions or concerns regarding a case concerning yourself and the support that may be available during the sentencing process you may contact the relevant prosecutor or allocated Witness Assistance Officer. The contact details for each CDPP office are available via the [CDPP website](#).