



**CDPP**

Australia's Federal Prosecution Service

## STEPS IN A PROSECUTION

The criminal prosecution process can be long and complex, and involves a host of people, ranging from investigators, prosecutors and court staff to the defendant and their solicitors. As the CDPP is a national office it is important to recognise that practices may vary given that State and Territory laws of procedure apply to the prosecution process.

### 1. Investigation

The CDPP prosecutes Commonwealth offences and has no investigative powers. The role of the investigator is to take statements from witnesses and collect evidence to be used in criminal prosecution. Statements may be taken from the victim of the crime and from other people who may know something about the incident. Once the investigator considers enough evidence has been gathered to substantiate a criminal charge, this evidence is compiled in a brief. Briefs of evidence are referred to the CDPP by investigators and include things such as witness statements and physical evidence for example photographs and recordings. Once a brief of evidence has been referred to the CDPP and a prosecution commenced the investigator becomes known as the informant.

### 2. Brief Assessment/Decision to Charge

These briefs that are referred to the CDPP are then assessed by prosecutors in accordance with the [Prosecution Policy of the Commonwealth](#). The decision whether or not to prosecute is the most important step in the prosecution process. A prosecution will be instituted when there are:

- reasonable prospects of securing a conviction; and
- the public interest requires a prosecution.

If charges have already been laid without the matter first being referred to the CDPP, the CDPP will consider whether that charge should be maintained and how the matter should proceed.

### 3. Charging or Commencing a Proceedings

If during the brief assessment stage the CDPP decides that charges should be laid, an initiating process (such as a summons) will be sent to the defendant notifying them of the charge, and the date they are first required to attend court.

There are potentially three levels of courts that can hear criminal matters depending on the seriousness of the offence and the jurisdiction the matter is heard in. All matters start in the Local Court, also known as the Magistrates Court. The Local/Magistrates Court deals with matters that are less serious in nature, referred to as summary offences. A summary, or simple offence is an offence that is less serious and is

triable without a jury before a lower court. Serious criminal matters, also known as indictable offences, will be sent from a lower court to either the Supreme or County/District Court if the matter is going to be heard on indictment.

The defendant will generally first appear in the Magistrates/Local Court for a mention. At this time the defendant can either plead guilty, not guilty or they may seek an adjournment to seek legal advice. If the defendant pleads guilty, the Magistrate will sentence the defendant or commit them for sentence to a higher court. Witnesses are not usually called to give evidence on a plea of guilty 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 Local/Magistrates Court, or a trial in a higher court. The matter is set down for a Case Management Hearing and a date will be set for a Committal or Hearing.

#### **4. Committal Proceeding**

In more serious cases a committal hearing is required. At a committal hearing, a Magistrate will listen to the evidence and decide if there is sufficient evidence for the defendant to be tried in either the County/District or the Supreme Court. If the Magistrate decides that there is sufficient evidence, then the defendant will be committed for trial. This means the matter will be heard in one of the higher courts at a later date. Alternatively the Magistrate may decide that there is not enough evidence and discharge the defendant.

#### **5. Hearing**

A hearing occurs in the Magistrates/Local Court. There is no jury and the Magistrate makes all the decisions and judgments. During the hearing the witnesses give their evidence in the court, and other forms of evidence may be produced. The Prosecution must prove its case to the criminal standard of beyond reasonable doubt. The Magistrate hears all the evidence and decides the verdict. If it is a guilty verdict, the Magistrate will either impose a sentence, or set a later date for when a sentence will be imposed. If the verdict is not guilty, the matter is dismissed.

#### **6. Trial**

If the defendant is committed for trial this will occur in either the County/District or Supreme Court, depending on the seriousness of the offence and the jurisdiction. When a matter is sent to the Supreme or County/District Court, an indictment must be prepared. An indictment is the document that brings criminal matters to the Supreme or County/District Court. It is the responsibility of the CDPP to prepare the indictment, which lists all the offences the defendant has been charged with. Once the defendant is committed for trial they are referred to as the defendant.

During a trial the prosecution calls witnesses to support their case. Other forms of evidence may also be produced. The defendant can elect whether to give or call evidence. The onus of proof is on the prosecution; the defence does not have to prove that the defendant is innocent. When all the evidence has been given, the judge sums up both sides of the argument for the jury and directs it to decide if the defendant is guilty or not guilty. The jury then leaves the courtroom to make its decision. To convict the defendant, the jury must be satisfied that the defendant is guilty beyond reasonable doubt. If there is any reasonable doubt in the jury's mind, the defendant must be acquitted. If found not guilty, the defendant is discharged. If the defendant is found guilty, the judge will deliver the sentence. Again, this may happen at a

later stage. The main difference between a hearing and a trial is that a trial occurs before a Judge and a Jury, and the Jury decides if the defendant is guilty or not guilty.

## **7. Sentencing**

The court will impose a sentence or make an order that is of a severity appropriate in all of the circumstances of the offence. Sentences can include a term of imprisonment, conditional release, a fine, or orders such as a community service order. A person can also be ordered to make reparation to the Commonwealth or to a public authority under the Commonwealth or to any person in respect of loss suffered, or any expense incurred, by reason of the offence.

## **8. Appeals**

People who are convicted of an offence have the right to ask another court to review a decision by a lower court. An defendant may lodge an appeal against being found guilty and/or against the sentence if they consider the sentence or verdict was not in accordance with the law.