



Steps in a prosecution

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The criminal prosecution process can be long and complex. It involves a host of people, including investigators, prosecutors, court staff, the defendant and the defendant's solicitors.

The Office of the Director of Public Prosecutions (Cth) (CDPP) is a national office but state and territory laws of procedure apply to the prosecution process – therefore, practices may vary.

1. Investigating

The CDPP has no investigative powers and relies on our [partner agencies](#) to investigate.

The investigator's role is to gather evidence. They will take statements from people who may know something about the incident or conduct, including from any victims. They may also gather documents, take photographs or make recordings.

Once the investigator considers enough evidence has been gathered to substantiate a criminal charge, they compile the material in a brief of evidence.

The investigator then refers the briefs of evidence to the CDPP. Once a prosecution has been commenced, the investigator becomes known as the informant.

2. Assessing the brief and decision to charge

The decision to prosecute is the most important step in the prosecution process.

A prosecutor will assess the brief of evidence referred to the CDPP in accordance with the [Prosecution Policy of the Commonwealth](#). A prosecution will be commenced when there are:

- reasonable prospects of securing a conviction; and
- it is in the public interest to prosecute.

If charge/s are laid before the brief of evidence is referred to the CDPP (for example, police have arrested the defendant), the CDPP will consider whether to maintain the charge/s and how the matter should proceed.

3. Charging or commencing proceedings

If the CDPP decides that charge/s should be laid, a document will be sent to the defendant telling them of the charge/s and the date they are first required to attend court. This is known as an 'initiating process' and may be called a 'complaint and summons' or a 'court attendance notice'.

There are three levels of courts that can hear criminal matters, depending on the seriousness of the offence. All matters are commenced in a Local or Magistrates Court.

The Local or Magistrates Court deals with:

- **Summary offences**, which are less serious.
- The **committal process** for indictable offences, which are more serious.

At the first mention in the Local or Magistrates Court, the defendant can plead guilty, not guilty or ask for an adjournment to get legal advice.

If the defendant pleads guilty, the magistrate will sentence the defendant. If the defendant pleads not guilty the magistrate will allocate a hearing date. If the defendant seeks an adjournment, the matter will be listed for a date in the future.

4. Hearings for summary offences

If the defendant pleads not guilty to a summary offence, the hearing occurs in the Local or Magistrates Court. There is no jury and the magistrate decides the verdict.

During the hearing for a summary offence, witnesses give their evidence in court. Other forms of evidence, like documents, photos or recordings may be produced.

The CDPP must prove its case to the criminal standard of beyond reasonable doubt.

If the magistrate finds the defendant guilty, the magistrate will then sentence the defendant immediately or set a later date to hear the sentence. If the magistrate finds the defendant not guilty, the matter is dismissed.

5. Committal proceedings

In some jurisdictions, there is a step called a 'committal hearing' before an indictable offence can be heard in a superior court (the County or District Court or the Supreme Court).

The committal hearing happens in the Local or Magistrates Court. A magistrate will read or listen to the evidence and decide if there is enough evidence for the defendant to be tried in the superior court.

If the magistrate decides there is sufficient evidence, the defendant will be committed to the superior court for trial (or, if the defendant then pleads guilty, committed for sentence). If the magistrate decides there is not enough evidence, they can dismiss the matter.

In some jurisdictions, there are variations to the committal process that do not require a magistrate to make a decision on the evidence.

6. Trial

Whether a defendant is tried in the County or District Court, or Supreme Court, depends on the seriousness of the offence.

The CDPP prepares a document called an 'indictment', which brings serious criminal matters to the superior court. The indictment lists all the offences the defendant has been charged with.

There can be a lot of steps before a matter is listed for trial, including pre-trial hearings to resolve issues about the evidence.

Commonwealth trials must be before a jury – judge-alone trials are not allowed. The onus of proof is on the prosecution to prove its case to the criminal standard of beyond reasonable doubt. During the trial, the CDPP calls witnesses to support its case and may also produce other forms of evidence. The defendant can decide whether to give or call evidence. Once all the evidence has been heard, the judge sums up both sides of the argument and directs the jury to decide if the defendant is guilty or not guilty. The jury then leaves the courtroom to make its decision. In Commonwealth trials, the jury must be unanimous in its decision.

If the jury finds the defendant not guilty, the defendant is discharged. If the jury finds the defendant guilty, the judge will either deliver the sentence immediately or set a later date to hear the sentence. Once the jury delivers their verdict, the jury is discharged.

7. Sentencing

There are a lot of factors for the court to consider when it sentences an offender. The court must impose a sentence or make an order that is of a severity appropriate in all of the circumstances of the offence.

Sentences can include imprisonment, home detention, conditional release, a fine or orders such as a community service order. In addition, the court might make a reparation order. This would order the offender to repay the Commonwealth, a Commonwealth public authority or any person who has suffered loss or incurred an expense because of the offence.

8. Appeals

An individual convicted and sentenced for an offence has the right to ask another court to review those decisions, if they think the conviction or sentence was not in accordance with the law

The CDPP may also decide to appeal a sentence if it considers that the sentence was manifestly inadequate. The CDPP cannot appeal a not guilty verdict.

An appeal is generally heard by a Court of Appeal.