

## **Criminal Proceedings In The District And Supreme Courts**

After the Magistrates Court, where criminal matters always commence, the higher courts within the Queensland court system are the District and Supreme Courts. These higher courts deal with cases deemed to be too serious to be dealt with by a Magistrate. This brochure discusses the progress of criminal matters which are determined in the District or Supreme Court.

### **Preliminary “Mentions”**

All criminal matters, large or small, commence in the Magistrates Court. After you have been charged, the Magistrates Court regularly reviews the progress of each case. These periodic reviews are called “mentions” and occur every few weeks. They are usually very brief. If you are legally represented you may not have to appear at these mentions. There will often be a number of mentions prior to a “committal hearing” (see below), for the Magistrate to monitor issues such as bail, delivery of the police material to the defence, setting dates for committal, etc. We will handle those issues for you, as your legal representative.

### **Committal Hearing**

A committal hearing is a preliminary hearing which occurs in the Magistrates Court prior to trial in the higher court. In committal hearings where questioning of prosecution witnesses is allowed (either with the agreement of the prosecution or with the court's permission), it allows the defence an opportunity to test the police evidence and better prepare for trial.

The “prosecution” will normally be conducted by a lawyer from the government's Director of Public Prosecutions office, or in suburban and country areas, a trained Police Prosecutor. The statements of each witness are provided to us on your behalf in advance of the committal hearing. Ultimately, the Magistrate makes a decision whether or not to “commit” you for trial, by determining whether there is sufficient evidence for it to be *possible* (not necessarily “probable”) for a jury to ultimately convict you. This is not a question of determining your guilt or innocence - far from it. The Magistrate's job is simply to identify if there is any evidence, however weak, that could be used by a jury to support a conviction. The accused person can elect to have this process occur administratively by way of a “registry committal”, if he/she doesn't require a magistrate to consider the matter.

The vast majority of accused persons going through a committal hearing are committed for trial. Those who are not are discharged from any further proceedings (subject to a rarely used power of the prosecution to recharge people post committal). Whether you are committed to the District Court or the Supreme Court will depend on the offence with which you have been charged. We will advise you of this in advance.

A committal hearing can be a vital part in the defence case. Where questioning of witnesses is allowed, it allows us to test the case against you, and greatly assists in our preparations for your trial. Recent changes to the law have significantly reduced the ability of defence lawyers to question witnesses at the committal stage. We will discuss with you in detail the various options you have in relation to your committal hearing.

## **Into the District or Supreme Court**

When committing someone for trial, the Magistrate (or registry) does not nominate a date for your trial in a higher court. This is done later by the higher court itself. It is usually some months (3-6) after this date that your matter will be "mentioned" again, this time in the higher court. Following the committal, the original police charges are redrawn and placed on a document called an "indictment". This document is prepared by the Office of the Director of Public Prosecutions. It is then presented in the higher court. At that time the judge will wish to be advised whether the matter is to be a trial or a plea of guilty. In some circumstances an adjournment may be appropriate if there are matters under consideration or requiring some extra time.

## **Guilty or Not Guilty?**

Having been charged with a criminal offence, you will ultimately have to decide whether to plead guilty or not guilty. The decision is one to be made by you after receiving detailed advice from us. If you intend to plead guilty, a "sentence" is arranged in the appropriate court, usually some weeks later. In that situation there are normally no witnesses, and the judge alone determines the sentence without any jury. If you plead not guilty, the matter will be listed for a "trial". This will often be 3 to 6 months further ahead. At a trial, witnesses are called and questioned fully. A jury of twelve people listen to the evidence and ultimately determine the question of your guilt. Their verdict must be unanimous. The judge decides any questions of law that may arise, and attempts to ensure the trial is a fair one. The judge alone decides the sentence if you are found guilty.

## **Will I Need A Barrister?**

Barristers are lawyers who specialise in the presentation of oral arguments in court. Their expertise is in the area of advocacy and the rules of evidence. In matters heard in the District and Supreme Courts, it is highly desirable to be represented by a barrister (after we have performed the detailed preparation and investigation required). Gilshenan and Luton only utilise the services of a select group of experienced criminal barristers, all with proven track records who have achieved excellent results for our clients in the past.

## **Can I Be Reimbursed If I Win?**

No. There is no power in the Supreme or District Court for a judge to order costs to a person who successfully defends criminal charges. The reasoning behind this is that it is thought that to compensate parties found to be not guilty would act as a deterrent to police in charging people, and would hinder the execution of the criminal justice system. Likewise, you do not have to pay court costs or the prosecution's legal fees if you are convicted. You should be aware, however, that if you plead guilty, or are found guilty, of an offence which caused physical injury to someone, the injured party can later make a claim for "criminal compensation" against you. This is something we will discuss with you in detail, if relevant to your case.

## **Further information**

For further information, feel free to contact:

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*Please note: this publication is designed to provide a simple overview and should not be relied upon instead of legal advice.  
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