

# Your Day in Court:

**A Guide for Victims of Crime  
who are Witnesses in Court**



Victims of Crime Bureau



## ACKNOWLEDGMENTS

This booklet and video are part of a kit called *Your Day in Court: a guide for victims of crime who are witnesses in court*.

The booklet is produced by Redfern Legal Centre Publishing and the video is a production of the NSW Film and Television Office. Both projects were funded by NSW Attorney General's Department and co-ordinated by the Victims of Crime Bureau.

Staff and members of the following organisations have provided assistance throughout the project: Victims of Crime Bureau, Victims Compensation Tribunal, Office of the Director of Public Prosecutions, Victims of Crime Assistance League, Homicide Victims Support Group, Violence Against Women Specialist Unit and Disability Unit of NSW Attorney General's Department, Office of the Director of Local Courts and the NSW Police Service.

Additional thanks go to Ruth Heazlewood who wrote the booklet for Redfern Legal Centre Publishing and to Nanette Williams whose booklet *A Survivor's Guide to the Criminal Justice System* has been an invaluable source of information for this project.

ISBN 0 947 205 65 9

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# CONTENTS

ABOUT THIS BOOKLET	2
WORDS IN COURT	3
WHEN A CRIME IS COMMITTED	6
WHAT HAPPENS BETWEEN THE CRIME AND THE COURT HEARING	11
PREPARING FOR COURT	12
IN COURT	15
APPEALS	26
SPECIAL CASES	28
VICTIMS COMPENSATION	30
LOOKING AFTER YOURSELF	30
COMPLAINTS	31
WHERE TO GET MORE INFORMATION	32
THINGS TO READ	33
CHARTER OF VICTIMS RIGHTS	34

## ABOUT THIS BOOKLET

This booklet and video form a kit called *Your Day in Court* which is aimed at victims of crime who are required to be witnesses in court. The kit outlines the court process and highlights some particular issues for victims as witnesses. It explains your role as a witness and where you fit in the broader context of the process, from the arrest of the suspect to the final decision about the case.

Most people are unfamiliar with how the criminal law operates. Giving evidence in court can be a very stressful experience for any witness. Some victims of crime, especially violent crime, may find the court experience almost as traumatic as the crime itself.

*In recent years there has been an increasing recognition of the rights and needs of victims of crime. There are now legislative measures and victims services designed to inform, protect and support you as a victim of crime – see pages 32–33.*

Going to court is never easy, but reading this booklet and watching the video may help give you some idea of what to expect. It is hoped that this information will assist you with the experience of being a witness.

Because of space constraints the booklet can only give an overview of the criminal justice system. It should not be read as a definitive statement of the law, although every effort has been made to ensure its accuracy at the time of publication. The law is constantly evolving, and advice should always be sought on particular matters.

# WORDS IN COURT

**Acquitted** – When the magistrate, judge or jury find that a person is not guilty of the crime.

**Accused/Defendant** – The person charged with committing the crime. Accused is used in the District and Supreme Court. Defendant is used in the Local Court.

**Adjournment** – When the case is put off to another day.

**Admissible** – Used to describe evidence that is allowed to be given in court.

**Affirmation** – A promise to tell the truth in court. Used by people who do not wish to swear on the Bible or other religious book.

**Antecedents** – A person's criminal record.

**Arraignment** – Where the details of the charge (called an indictment) are read out to the accused in court. The accused will then plead guilty or not guilty.

**Bail** – An agreement to turn up to court. A defendant may be given bail by the police or the court. A person on bail is allowed to go free until their case is decided at court.

**Bar table** – A long table near the front of the courtroom where the lawyers sit.

**Bench** – Where the judge or magistrate sits.

**Barrister** – A lawyer who specialises in court presentation. Usually wears a wig and gown in court.

**Beyond reasonable doubt** – The test (or standard of proof) used by a jury, judge or magistrate to decide if the defendant is guilty or not guilty.

**Brief** – The evidence in written form, including the charge/s, witness statements, photographs etc. that the prosecution intends to use to prove the case.

**Charge** – The allegation that a person has committed a crime.

**Committal hearing** – A hearing of all the evidence at the local court by a magistrate who then decides if there is enough evidence for the case to go to trial.

**Counsel** – Another word to describe barristers acting for the defence or the prosecution.

**Complainant** – Used to describe victims of crime in court.

**Conference** – A meeting with the solicitor or barrister (or both) to talk about the case.

**Court** – The building where the case is heard. Also used to describe in general terms the judicial officer hearing the case, such as a magistrate or judge.

**Court officer** – A person employed to help with the running of the court.

**Cross-examination** – When the lawyer for the other side asks questions of the witness about the evidence they have given.

**Crown prosecutor** – A barrister who presents the prosecution case in court.

**Defence** – The defendant's case and the lawyers who present it.

**Defence counsel** – A barrister who presents the defendant's case in court.

**Deposition** – A typed copy of the evidence recorded in court.

**DPP** – The Office of the Director of Public Prosecutions. An independent body established by the State government to prosecute serious criminal offences. The DPP provides a solicitor and/or Crown Prosecutor to prepare and present the case at court.

**Examination-in-chief/evidence-in-chief** – When the prosecutor asks the witness questions so that they can tell the court what happened.

**Exhibits** – All the other evidence (apart from statements from witnesses) needed to help present the case, such as documents, photographs, clothing or other items relevant to the case.

**Hung jury** – The situation where a jury cannot reach a unanimous (agreed by everyone) decision about the defendant's guilt or innocence.

**Indictable offence** – A serious criminal offence that is usually only heard in a higher court before a judge and jury (or judge alone). Sometimes less serious indictable offences may be heard in a lower court with agreement.

**Indictment** – The formal charge for more serious cases. Used in the District and Supreme Courts.

**Instructing solicitor** – A solicitor who helps with the preparation of the case and helps the barrister in court.

**Judge's associate** – A person who helps the judge in court with documents used in the case, such as exhibits.

**Legal argument** – A disagreement about legal points in the case. The magistrate or judge decides the argument.

**Mention** – A brief hearing to sort out what will happen with the case, such as setting a date for the committal hearing or deciding bail. It is not a full hearing of the case.

**Plea** – When the defendant tells the court whether they are guilty or not guilty of the charge.

**Oath** – A promise to tell the truth by swearing on a religious book that is important to the person making the promise.

**Office of the Director of Public Prosecutions (DPP)** – See DPP above.

**Statement** – A written document that sets out the evidence of a witness or an accused.

**Sheriff's officer** – A court official.

**Subpoena** – A court order to make a witness come to court to give evidence and/or bring documents to court.

**Summary offence** – A less serious charge that is dealt with in the local court.

**Summons** – An order from the local court requiring the defendant to come to court to answer a charge.

**Transcript** – A typed copy of what was said in the court.

**Victim impact statement** – A report on the effect of a violent crime on the victim written by the victim, a family member or a support person (e.g. a counsellor or psychologist).

**Voir dire** – Legal argument about the admissibility of a particular piece of evidence in court. The jury are sent out of court while this argument takes place.

# WHEN A CRIME IS COMMITTED

## **Overview**

When a crime is committed against a person, our society regards the offence as a crime against the community. In our legal system, the State or Commonwealth government represents the community by prosecuting and punishing offenders.

Our elected governments make the laws and establish the courts that deal with criminal behaviour. They establish police services and prosecuting bodies to investigate crimes and prosecute cases in the courts.

The role of a victim of crime in the criminal justice system is that of a witness. Witnesses play an important part in the process, but they have no other rights beyond that role. Unlike the defendant, witnesses are not entitled to legal representation. Prosecutors act for the State and not for victims or other witnesses.

However, it is acknowledged that victims of crime have certain needs and the right to be treated with compassion and respect throughout the court proceedings. The Charter of Victims Rights sets out these rights (see page 34).

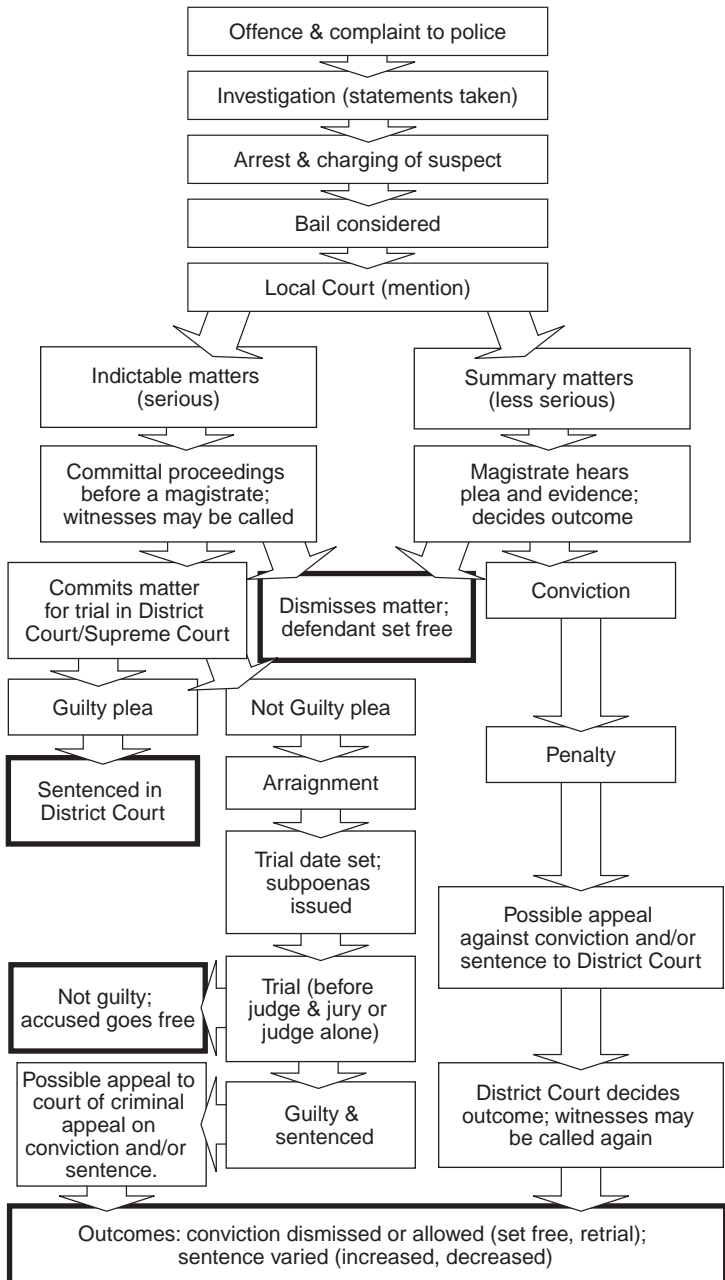
## **Police investigation**

When a crime is reported to the police they will usually start investigating it by talking to the victim of the crime and other witnesses. The details of what is said are typed up as statements and form part of the prosecution evidence.

The police may also examine the crime scene for other evidence.

## **Victims cards**

These are cards given out by police officers to victims of crime or people closely related to or



involved with the victim. The card shows the officer's name and details to make it easy to contact them.

The card also has information about victim's rights and how to contact the Victims of Crime Bureau for information, support or referral.

## ***Arrest and identification***

When someone is suspected of committing a serious crime, they are usually arrested and taken to a police station. The suspect may then be questioned and, if there is enough evidence, they will be charged.

The police will interview the suspect and can record the questions and answers in writing. In serious matters, they may record the interview on audio or video tape.

As part of the investigation, a victim or other witness may be asked to identify the person who is suspected of committing the crime. In most cases this is done by looking at photographs, but sometimes police use an identification parade.

## ***Bail***

After a person has been charged, the police decide if the person should stay in custody or be released on bail.

If given bail, the defendant agrees to turn up to court. If they don't turn up they can be arrested. Bail may be granted on certain conditions. For example, it is usual to ask the defendant or some other person to pay or agree to pay some money to the court to make sure the defendant turns up. In other cases, it may be a condition of bail that the defendant does not contact the victim or other witnesses.

If bail is refused, the police must take the person to court as soon as practicable for bail to be

reconsidered. In most cases the person is taken to the nearest local court.

*You should tell the police or the prosecutor if you have fears for your safety; this is one of the issues considered when decisions about bail are made.*

## **First court appearance**

The defendant's first court appearance is at the local court. This is a brief hearing called a mention. There is usually no need for victims or witnesses to attend the first court hearing.

The question of bail may be reconsidered by the magistrate, who will decide if bail should be continued, changed, granted or refused.

A magistrate has to consider a number of different matters before deciding to grant bail. One important matter is the protection of the community, particularly when the defendant is charged with a serious and/or violent offence.

Bail can be reviewed at any time before the case is finished. Both the defence and the prosecution can ask for changes to be made. For example, if a defendant breaks one of the conditions of bail, then the prosecution can ask the court to refuse bail or apply different conditions.

Sometimes a higher court (usually the Supreme Court) may be asked to reconsider a bail decision.

## **After the first court appearance...**

The case may go back to court a number of times for further mention to sort out what is to happen with the case.

At some stage the defendant will be asked to make a plea of guilty or not guilty to the charge. If the plea is not guilty then the case will be set down for hearing at a later date.

Less serious crimes (summary offences) can be

dealt with by a magistrate who decides the case alone. There is no right to a jury trial in local court cases.

Serious cases (indictable offences) are sent to the District or Supreme Court, even if the defendant pleads guilty.

### ***The committal hearing***

If the defendant pleads not guilty to a serious offence at the local court, there must be a committal hearing.

In many committal hearings only the written statements of evidence (the brief of evidence) are presented by the prosecution. The defence does not usually call evidence at this stage.

If the defence wishes to cross-examine witnesses they must make a written request. Where the offence involves violence (including sexual assault) the defence must show special reasons why it is in the interests of justice for a witness to give evidence or be cross-examined at a committal hearing.

After hearing or reading the evidence, the magistrate decides if there is enough evidence to go before a jury. If not, the defendant is discharged and this is the end of the case.

If there is enough evidence then the case is sent (committed) to hearing or trial.

# WHAT HAPPENS BETWEEN THE CRIME AND THE COURT HEARING

## **Gathering evidence**

After the defendant's first appearance in court, the police will prepare a brief of evidence. A brief of evidence is all the written statements, charges and exhibits that the prosecution relies on to prove the case against the defendant, including any statement made by the defendant.

The police may also collect physical evidence about the crime, such as items of clothing, fingerprints, blood samples, documents, weapons or other things which might help prove the case against the defendant. These are called exhibits.

Sometimes experts are used to examine the crime scene or other evidence or give an opinion about some part of the case. Their evidence may also form part of the brief.

All these investigations can take time but it is important that the police do their job properly. They have to act fairly in getting the evidence, or the magistrate or judge may refuse to allow it to be given in court.

## **Preparing the case**

The lawyers also use the time between court appearances to work on the case. A case may have to go back to court a number of times for mention before it is finally set down for hearing.

If the case is sent to a higher court for trial or sentence then all the evidence given at the local court is considered by the DPP to see whether the case should go to trial. The DPP also decides what the formal charge (indictment) should be.

Sometimes the DPP may decide to **no-bill** the case; often because the evidence against the

defendant is weak. This means the charge is dropped and the defendant does not have to go to trial.

## **Waiting**

Because courts are very busy, every case has to wait its turn to be heard. It can be many months before the case is finally heard. This can be a very frustrating and anxious time for witnesses.

Even when the day for the hearing arrives, it may suddenly have to be cancelled if, for example, a witness or the defendant is ill. Sometimes the court runs out of time to hear the case on that day. However, most cases do go ahead on the day so be prepared to give your evidence.

*The defendant may be charged with more than one crime. The police and the prosecution may decide not to proceed with all these charges. Some charges may be held back in the local court while the more serious charges are heard in a higher court.*

## **PREPARING FOR COURT**

It is natural to feel nervous about giving evidence in court. Courthouses are usually large and may feel quite strange. The formality and the legal language can be confusing. Added to this is the anxiety about giving evidence in front of strangers. All adult courts are generally open to the public, and members of the media are often in court to report on any newsworthy cases.

If the case involves sexual assault or other personal violence you may have to describe the physical details of what happened during the assault. This can be embarrassing and humiliating. You may feel frightened, especially as the defendant is in court when you give your evidence. In some situations it

is possible that your evidence can be given in a closed court – see page 29.

You may also have to wait some hours or days before you finally give your evidence.

There are some things you can do to help you cope:

- Ask a friend or relative to come to court as a support person. This person should not be a witness, otherwise they will not be able to sit in court with you when you give your evidence. They cannot sit next to you, but they may be able to sit where you can see them. They should not try to prompt you or help you when you are giving evidence. Their main role is to give you emotional support.
- Read your statement over a few times before you go to court. Normally you won't be able to read from your written statement when giving evidence although you may be asked to refer to it in some circumstances. The prosecutor will probably want to talk to you about your statement beforehand. If you don't have a copy of your statement ask the police or the solicitor from the DPP to give you a copy before you go to court.
- Visit a courthouse before the case to see what a court looks like or see how other cases are run. Contact one of the victims' support services listed on page 32 to see if they can arrange for someone to go with you.
- Be prepared to speak loudly and clearly. The microphone on the witness box does not always amplify; sometimes it is only used to record proceedings.

It is a good idea to keep in touch with the police or the solicitor from the DPP to discuss any concerns you have about the case.

*Don't forget to tell the police or the DPP if you change your address or telephone number or if you are going away for more than a few days.*

## **Protection for witnesses**

If you have fears for your safety or the safety of others you should tell the police or the DPP. They can then bring these concerns before a magistrate or judge during any bail application.

If the court is satisfied that there is real danger to the community or an individual then it may impose conditions on bail, including a direction not to approach or contact any witnesses in the case.

You may also be able to apply for an Apprehended Violence Order (AVO – see p. 29) or ask the police to apply for you.

If the defendant breaks a condition of bail or an AVO, then the police may arrest them and take them into custody. The question of bail will then be reconsidered.

*You can ask that your address not be given in open court. If you have concerns tell the prosecutor.*

## **Interpreters**

If English is not your first language, you may need to use an interpreter to help you give evidence. They can also interpret when a witness is making a statement. If you feel you need an interpreter, talk to the police prosecutor or the DPP solicitor. As there are a limited number of interpreters available, it is important to let the prosecution know well in advance if one is needed.

Courts use professional interpreters who are properly trained and accredited. Most courts will not allow friends or relatives to interpret during

court proceedings unless it is just to pass on simple information and no other interpreter is available.

Professional interpreters are bound by rules not to tell other people about the case unless the court requires it. They are also required to take an oath where they promise to properly interpret what is said.

If the interpreter is not interpreting your evidence accurately you should complain to the prosecutor or tell the magistrate or judge.

Interpreters are provided by the NSW Ethnic Affairs Commission. Witnesses do not have to pay for interpreters.

Interpreters can also be used by people with a hearing or speech impairment or other disability that may make it difficult to communicate.

## IN COURT

### **People in court**

*In the local court* – The judicial officer who presides over the local court is called a **magistrate**. They have legal qualifications and have a similar role to a judge except there is no jury in the local court. They do not wear wigs and gowns, and they are called ‘Your Worship’. They sit behind a large raised desk called the bench.

Magistrates hear less serious (summary) cases. If the case is defended they hear all the evidence and decide if the defendant is guilty or not guilty. If the offence is proven or the defendant pleads guilty, the magistrate decides what penalty to impose.

They also decide if there is enough evidence for more serious cases to be heard by a higher court after a committal hearing.

The magistrate is assisted by **court staff**. Some help record the proceedings on tape while others assist

with paperwork and the general running of the court.

**Prosecutors** in the local court are usually specially trained police officers. More serious cases are often prosecuted by a solicitor from the DPP. Both represent the State in the prosecution of criminal cases.

The **defendant** is represented by a solicitor or barrister, often referred to as the defence. **Solicitors** are more likely to represent people in the local court, while **barristers** tend to concentrate on higher court matters.

Lawyers for both sides sit at the bar table, which is usually in front of the bench.

The defendant will also be in court. There may be more than one defendant; if so they are called **co-defendants** or **co-accused**. They may be represented by different lawyers. If bail has been refused they will be held in the dock; otherwise they can sit behind their lawyer.

***In the District or Supreme Court*** – These higher courts are more formal than the local court and are presided over by judges, who wear wigs and gowns and are called ‘Your Honour’. The **judge** decides questions of law and sums up the case for the jury. It is their job to make sure a trial is run fairly.

They are assisted in court by an **associate** who helps with the paperwork and exhibits. The judge's associate reads out the formal charges (indictment) against the accused.

Both barristers and solicitors can appear in these courts, although it is more usual for barristers to do the talking. Instructing solicitors sit next to them and help the barrister in preparing and running the case.

In the District Court and Supreme Court, the person charged is called the **accused**. If the accused has pleaded not guilty there will be a **jury**

of twelve people who have been chosen at random from the jury roll. They represent the community and decide if the accused is guilty or not guilty. Sometimes only a judge will hear the case. The prosecution and the defence must both agree to a judge-only trial.

## **Court rules**

There are many different things that can happen in court, depending on the type of case. There are, however, some basic principles and rules that apply to all courts and criminal procedures.

***Presumption of innocence*** – A person charged with a criminal offence is innocent until proven guilty. This is an essential principle of our criminal justice system.

***Proof beyond reasonable doubt*** – For a person to be convicted of a crime, the magistrate, judge or jury has to be satisfied 'beyond reasonable doubt' that the accused committed the crime. This is called the burden of proof. The prosecution is said to carry the burden of proof, which means it is up to them to establish that the accused committed the crime.

If there are a number of different charges then each charge must be proved beyond reasonable doubt.

***Right to remain silent*** – There is a long-standing principle of law that an accused person has the right to remain silent. This principle protects a person from self-incrimination. The defence does not have to prove the accused is innocent.

In practice, most defendants/accused give evidence or call other evidence as part of their case.

***Rules of evidence*** – These rules have been made by the courts and Parliament to make sure that criminal cases are conducted fairly and without bias. They say what evidence is allowed to be given

and how it may be given. They are too complicated to explain in detail. The main thing to know is that witnesses can only give evidence about what they actually heard, saw or experienced.

## ***Behaviour in court***

Courts are formal places where everyone is expected to follow some basic rules of behaviour. It is usual for anyone entering or leaving the courtroom to bow in the direction of the judge or magistrate.

Eating, drinking or smoking are not allowed. If you wish to talk you should go outside. Making loud comments or noises or other distracting behaviour when someone is giving evidence is not acceptable. Anyone doing this may be asked to leave the court.

## ***When the case stays in the local court***

The majority of criminal cases are finalised in the local court and are decided by a magistrate.

When a defendant pleads not guilty, the case is set down for hearing. The prosecution starts the case by calling witnesses. The defence has usually been given a copy of the written statements of witnesses in the prosecution brief.

Although the evidence of a victim of crime is important, victims are not usually called as the first witness. This means that victims often have to wait around outside the court before getting their chance to tell what happened.

*It is important that witnesses do not discuss or read the evidence of other witnesses involved in the case. Firstly, it may lead to confusion in your own evidence; secondly, the defence may suggest that you have made up the evidence together.*

After the prosecution witness has given evidence (examination-in-chief), the defence lawyer is allowed to cross-examine the witness. Sometimes the lawyer may decide not to cross-examine.

When all the prosecution evidence has been given, the defence may ask the magistrate to find that the defendant has no case to answer. If the magistrate agrees with this submission, the charge will be dismissed.

If the magistrate disagrees with the submission, then it is the defendant's turn to present their case. As mentioned above, the defence does not have to call any evidence, but in most cases the defendant gives evidence.

Any witnesses called by the defence can be cross-examined by the prosecution.

### ***In the District Court and Supreme Court***

The procedure in these courts is very similar to the local court, but there is an important difference. Unlike a magistrate, the judge does not normally make decisions about an accused person's guilt unless it is a judge-only trial. Judges are there to decide questions of law and procedure. In these courts, an accused person's guilt or innocence is usually decided by a jury.

A jury trial starts with the formal reading of the charge (indictment). The jury members are chosen at random. Both the defence and the prosecution may challenge up to three jurors. The judge will excuse these jurors from the trial. This process is called empanelling the jury.

The trial then proceeds in much the same way as a hearing in the local court, although these courts tend to be a bit more formal. As a result they can be even more intimidating.

When all the evidence has been given, both the

crown prosecutor and defence counsel will address the jury. The judge will then **sum-up** the evidence and give instructions to the jury on how the law applies to the case.

The jury then retires to consider its verdict. If the accused is found guilty the judge may impose a penalty on that day, but usually sentencing is put off to another day.

### ***When a defendant or accused pleads guilty***

The defendant or accused may plead guilty at any stage, even after the hearing or trial has started. Sometimes the plea of guilty will be to a less serious or different charge.

### ***Giving evidence and cross-examination***

It is important to remember that the evidence of a victim of crime is only part of the whole case against the defendant or accused. It is not up to you to prove the crime. This is the role of the prosecution.

You can only give the best evidence you can on the day. It can help if you know what to expect.

### ***Examination-in-chief***

You will be asked to wait outside the court until it is your turn to give evidence. You cannot sit in court when other people are giving evidence as this may influence your own account of what happened.

***Remember! Do not discuss your evidence  
with other witnesses.***

When your name is called you will be shown to the witness box. You will be asked to take an oath or, if you prefer, to make an affirmation. By taking an oath or affirmation, you are making a promise to tell the truth in court.

Examination-in-chief is your opportunity to say what happened in your own words. The prosecutor will ask you a series of questions to help you through your evidence.

You can only tell the court what you saw, heard or experienced. If you are giving evidence about a conversation, you should try to use words that were actually spoken. For example, if someone said 'Take me to the shops' then the correct way to give this evidence is to say, 'She said: "Take me to the shops"' not 'She told me to take her to the shops'.

You may be asked to identify items such as clothing, jewellery or other personal effects when you are giving evidence. These items will form part of the exhibits.

You may also have to identify the accused in court. You should ask the solicitor from the DPP if you have to do this beforehand.

Sometimes the defence may object to the way the crown prosecutor is letting you give your evidence. This can be off-putting, but don't take it personally. They are just making sure the rules of evidence are being followed. When an objection is made, stop answering the question until the judge or magistrate tells you whether or not to continue.

***If you are asked to leave the courtroom while legal argument takes place, it is important that you don't discuss your evidence with anyone while waiting to go back into court.***

Where there is a jury, they may be asked to leave the courtroom while counsel make submissions to the judge about the admissibility of the evidence. If the judge decides the evidence is admissible, the jury returns and hears the evidence. If the judge decides the evidence is inadmissible then it cannot

be presented to the jury. The trial continues without that evidence being heard.

### **Some tips for giving evidence**

- Speak clearly and slowly. In some courts the microphones only record what is said and do not make your words louder.
- Listen carefully to the questions.
- Only answer what you have been asked.
- If you do not understand a question ask for it to be repeated.
- If you can't remember or don't know, then say so.

### **Cross-examination**

This can be the hardest part of giving evidence. The defence lawyer's job is to test the evidence, especially where it is inconsistent with the information the defendant or accused has given. The defence aims to convince the magistrate, or judge and jury, that there is a reasonable doubt; this is what they try to do in cross-examination.

During cross-examination it may be suggested that your memory of events is not clear, or that you are not telling the whole story, that you are unreliable or lying. This can be quite distressing.

The defence counsel is bound by rules of law when asking questions. They should not ask questions that are intended to insult or annoy a witness, or are offensive. The crown prosecutor may object if this happens, and the magistrate or judge may disallow the question. The magistrate or judge can also stop counsel from asking questions that are irrelevant, indecent or scandalous.

*Remember, it is your job to tell the truth  
about what you know.*

### **Some tips for cross-examination**

- Answer the question without going into unnecessary explanation.
- If your answer does need further explanation, ask if you can explain it.
- Only give answers about things you know.
- If you are becoming upset, ask for a break or have a drink of water.
- If you have a support person, keep in mind that they are in the courtroom.

Don't forget that it is natural to be nervous. When you are giving evidence you may feel as if you are re-living the events. If you do become upset don't blame yourself. A magistrate or judge will usually stop (adjourn) the case for a short time if you become too distressed.

### **Re-examination**

After cross-examination, the crown prosecutor may ask further questions on any issues that came up during cross-examination which need further explanation.

### **Unrepresented defendants**

Sometimes a defendant or accused may not be represented in court by a lawyer. When a defendant or accused is unrepresented, they are allowed to appear for themselves. This means they can question witnesses and talk to the judge or magistrate.

Sometimes the judge or magistrate will help them by explaining the law or court procedure, but they do not run the case for the defendant. The judge or magistrate will also make sure the defendant behaves properly in court and doesn't ask questions that are rude, insulting or irrelevant.

## ***Can you be in court after giving evidence?***

In theory, a witness can go into court after giving evidence. However, it is probably better not to as witnesses can be recalled to give further evidence. Check with the prosecution first before you go back into court.

After all the evidence has been given, witnesses may wish to hear the submissions of the prosecution and defence, especially if they are involved in a jury trial. It may also help to hear the magistrate's decision or the judge's summing up, plus any remarks made when sentencing an offender.

*When the judge or magistrate says 'You are excused', this means you will no longer be required to give evidence, and can leave or sit in court and listen to the proceedings.*

## ***The decision***

After hearing all the evidence the prosecution and the defence will present their arguments to the court on why the defendant or accused should be found guilty or not guilty.

The magistrate, judge or jury will make a decision based only on the evidence given in court and the relevant law.

If the magistrate, judge or jury has any reasonable doubt about the defendant's guilt, the charge is dismissed. If, however, they are satisfied beyond reasonable doubt, then the charge is proven and the defendant/accused is found guilty.

The magistrate or judge will then ask if the defendant or accused has any criminal record (antecedents). If so, the prosecutor will give them to the court. The magistrate or judge will then ask the defence lawyer if they wish to say anything to

lessen (mitigate) the penalty that may be given. The defence may call other evidence or hand references or reports to the court.

### ***Victim impact statements***

A victim or family member may choose to make a statement detailing the personal harm suffered as a direct result of the crime. This is presented to the court after conviction and before sentencing. If accepted by the court a copy will be given to defence counsel. Victims or family members can refuse to make a victim impact statement.

For more information about victim impact statements contact the DPP Witness Assistance Service or the Victims of Crime Bureau (see p. 32).

### ***Penalties***

There are many different penalties, ranging from good behaviour bonds, fines and periodic detention to full-time jail. The court will take into account several different factors, including the seriousness of the crime, the circumstances in which it was committed, and the defendant's record and personal problems when deciding the appropriate penalty.

In some cases a magistrate or judge may dismiss a charge under section 556A of the NSW Crimes Act even though the offence was proven. This means no conviction is recorded against the person and no penalty imposed. This option is only used in special cases, for example, when the person is of previously good character, it is a minor offence and the person is unlikely to be in trouble again.

### ***Other important things to know about trials***

Not all trials end with a verdict of guilty or not guilty. Our law requires all twelve jurors to come to a unanimous (agreed) verdict. If they cannot agree then it is called a **hung jury** and there is no verdict.

The accused may then face a retrial at a later date with a different jury. In some cases the prosecution may decide that the evidence isn't strong enough to proceed with a further trial. More serious crimes are likely to be retried. If so, you will probably have to give evidence at the second trial.

In rare cases, the evidence may be so weak that a judge will direct the jury to find the accused not guilty. This is called a verdict by direction.

In other cases the trial may be stopped (aborted). This can happen for a number of reasons, but most commonly because the jury hears inadmissible or prejudicial evidence. It can also happen when certain information about the trial or the accused is broadcast on television or radio, or is reported in newspapers.

The law prohibits the publication of material which may influence the outcome of a trial. For example, a media report may give details or an opinion about an accused or witness that would not be allowed to be heard by the jury in court.

Where a trial is aborted it will have to be stood over to another day. You will have to give your evidence again.

## APPEALS

An accused has a right to appeal against conviction and sentence. When a person makes an appeal to another court they are called an **appellant**. Whether you will be required to give evidence again depends on:

- whether the local, District or Supreme Court originally heard the case
- what the appeal is about
- whether the court only uses a transcript (see below) of the original hearing, rather than calling witnesses again

## ***The local court***

A defendant may appeal to the District Court against a magistrate's decision. The appeal can be against the finding of guilt (conviction), the penalty or both.

An appeal to the District Court against conviction involves a rehearing of the case. The person appealing (appellant) can ask for all the witnesses who gave evidence in the local court to attend the appeal. Sometimes both parties may agree to evidence being given by deposition only. A **deposition** is a typed copy of the recorded evidence from the local court. A witness does not have to give evidence again if depositions are used.

Apart from the use of depositions, the appeal is heard in the same way as the local court hearing except the question of guilt is now decided by a District Court judge.

An appellant can also appeal against the severity of the sentence. Witnesses are not required for severity of sentence appeals. A judge can decide to vary the sentence.

An appellant can also appeal to the Supreme Court on questions of law. Witnesses are not called at these appeals.

## ***District and Supreme Courts***

A person who has pleaded guilty or has been found guilty by a jury in the District or Supreme Court has a right of appeal to the Court of Criminal Appeal. The appeal can be against the conviction or sentence or both.

This appeal is not a rehearing and witnesses are not called. Instead, the judge and the lawyers look at the typed copy (transcript) of the trial evidence and the judge's summing-up to see whether the judge or jury made a mistake about the law or the facts of the case.

The Crown (DPP) can appeal against the sentence if they think it is too light (lenient).

### **Appeal to the High Court**

This is the highest court in Australia. It only considers questions of law and witnesses are not called. The court looks at the transcript and the written arguments presented to the court by the lawyers. If the High Court finds that there has been a serious mistake in the law then it can order a retrial. In some cases it may decide that the appellant should be acquitted.

### **Bail**

An appellant may have bail continued or granted while waiting for the appeal even if they were given a prison sentence.

## **SPECIAL CASES**

Sometimes the nature of the offence, or the age or other circumstances of the victim or accused will alter the way a case is dealt with. It is recognised that victims of violent crimes, including sexual assault and domestic violence, have special needs and require extra support during court proceedings.

Our legal system also recognises the need to protect children when they are involved with the courts, whether as a victim, witness or defendant.

### **Sexual assault**

Victims of sexual assault are usually referred to as the **complainant**.

There have been recent changes to the law to better protect victims of sexual assault.

Defence counsel are limited in some of the questions that may be put to a complainant. For example, they can no longer ask questions about a complainant's sexual reputation or history.

A complainant can also ask that the case, or at least their evidence, be given in a closed court, where members of the public are excluded. They can also ask that certain people such as family or friends remain in court to give support.

A judge or magistrate can prohibit the publication of any details about the case. The law prohibits publication of the complainant's name and address, or any other information which might identify the complainant.

In addition, there are a number of specialist support services available to help victims of sexual assault through the legal process (see page 33).

## **Domestic violence**

There are special provisions of the *NSW Crimes Act* that deal with domestic violence.

Apprehended violence orders (AVOs) are court orders to protect people from violence or the threat of violence. AVOs are not a criminal charge although a person may face a criminal charge if they break a condition of an AVO.

A person can ask the police to apply for an AVO on their behalf or apply to the local court themselves.

There is a range of specialist services than can help with legal representation, advice and support in domestic violence matters (see p. 33).

## **Children**

Both child witnesses and child defendants are treated differently by our legal system in recognition of their special needs. There are specific rights for child witnesses to help them

through the court process. For more information contact the DPP (see p. 32).

## VICTIMS COMPENSATION

A victim of a violent crime may apply for compensation to the Victims Compensation Tribunal. People who suffered an injury as a result of actually witnessing the violent crime may also seek compensation.

There does not need to be an arrest or a conviction for an award of compensation to be made. However, the crime must be reported to the police and the victim must give reasonable assistance in the investigation of the crime.

An application for compensation must be lodged within two years from when the crime occurred. Compensation can include payment for financial loss and for personal harm. Minor injuries such as cuts or bruising will not be compensated.

For help in making a claim, see page 32.

## LOOKING AFTER YOURSELF

It is important that you look after yourself before, during and after the court case. How you do this is up to you, but here are some suggestions for you to think about:

- try to get enough rest, eat well and do some sport or other activity you enjoy
- learn relaxation techniques to help you stay calm
- get counselling if you need it (see Where to get more information, page 32)
- talk to someone; a close friend or relative, a counsellor, someone from a victims support group or anyone else you feel you can trust and confide in

- know your rights as a victim and get as much information as you can about the court process
- take a support person with you to help you through the experience of going to court
- have a plan for what you would like to do after the case is over, like going to the movies, taking a holiday, visiting friends or just doing something special for yourself.

When going to court, wear comfortable but appropriate clothing. Take a jacket as some courtrooms can be cool. Take something to read or do while you are waiting at court. You may wish to take your own food and drink.

Sometimes it can help if you take a small item with special meaning for you to court, such as a piece of jewellery or a letter from someone close.

Remember, it is not your responsibility to prove the case. Your job is to tell the truth as a witness. The outcome of the case does not depend on you alone.

## COMPLAINTS

As a victim of crime you should be treated with courtesy, compassion and respect. You should be kept informed of the progress of the case, and are entitled to safety (see p. 34).

If you think your rights are being ignored or you are otherwise unhappy with your treatment as a witness, it is often most effective to raise your concerns with a local representative of the agency concerned. If you are still not satisfied with your treatment, make a formal, written complaint to the relevant agency from the list below:

### **COMPLAINTS OR PROBLEMS WITH THE POLICE**

*NSW Police Service Customer Assistance Unit*  
Ph: 1800 622 571 (toll free)

## **COMPLAINTS ABOUT YOUR TREATMENT AS A VICTIM**

*Victims of Crime Bureau*

Ph: 1800 633 063 (toll free outside Sydney) or  
(02) 9374 3000

## **COMPLAINTS ABOUT THE NSW COURTS**

*Community Relations Division,  
Attorney General's Department,*

Ph: 1800 684 449 or (02) 9228 7484

## **COMPLAINTS OR PROBLEMS WITH THE DIRECTOR OF PUBLIC PROSECUTIONS**

First talk to the DPP lawyer in charge of the case and/or the Witness Assistance Service staff. If you are still not satisfied you can write to:

*Office of the Director of Public Prosecutions*

Locked Bag 8, Sydney South NSW 2000  
or phone the Service Relations Officer on (02)  
9285 8888

## **WHERE TO GET MORE INFORMATION**

*Director of Public Prosecutions*

265 Castlereagh Street Sydney NSW 2000

Ph: (02) 9285 8606

*Victims of Crime Bureau*

Level 6, 299 Elizabeth Street Sydney NSW 2000

Ph: (02) 9374 3000 or 1800 633 063 (toll free  
outside Sydney)

*Victims Compensation Tribunal*

Level 4, 299 Elizabeth Street Sydney NSW 2000

Ph: (02) 9374 3111 or 1800 069 054 (toll free)

*Victims Register – Department of Corrective  
Services*

Level 15, 24 Campbell Street Sydney NSW 2000

Ph: (02) 9289 1374

*Witness Assistance Service (part of the DPP)*

265 Castlereagh Street Sydney NSW 2000

Ph: (02) 9285 8949 or 1800 814 534 (toll free)

## **SEXUAL ASSAULT SERVICES**

You can get counselling, advice and support from sexual assault centres throughout the State. Contact your local hospital or community health centre for details.

## **DOMESTIC VIOLENCE SERVICES**

*Department of Community Services Domestic Violence Counselling and Advice Line*  
Ph: 1800 656 463 (toll free)

# THINGS TO READ

## **INFORMATION FOR VICTIMS OF CRIME**

Available from *Victims of Crime Bureau*  
Level 6, 299 Elizabeth Street Sydney NSW 2000  
Ph: (02) 9374 3000 or 1800 633 063

## **GOING TO COURT: INFORMATION FOR WOMEN WHO ARE VICTIMS OF SEXUAL ASSAULT**

Available from *Department for Women*  
Level 11, 100 William Street Woolloomooloo NSW  
Ph: (02) 9334 1160

## **HOT TOPICS SERIES: VICTIMS OF CRIME AND SENTENCING**

Produced by the *Legal Information Access Centre*  
State Library of NSW  
Ph: (02) 9273 1558

LIAC has other useful resources on the law many of which are available at public libraries. Contact them on the above number for more information.

## **INFORMATION FOR COURT SUPPORT PERSONS**

Available from the *Office of the Director of Public Prosecutions* and *NSW Health*

Contact the *Witness Assistance Service (DPP)*  
Ph: 1800 814 534 or (02) 9285 8949

## **INFORMATION FOR CHILDREN AS WITNESSES**

*About Court: activity book for kids who are going to court as witnesses* (available from Tunra,  
Ph: (02) 4921 8777; \$5 plus postage)

# CHARTER OF VICTIMS RIGHTS

(VICTIMS RIGHTS ACT 1996)

## **COURTESY, COMPASSION AND RESPECT**

A victim should be treated with courtesy, compassion, and respect for the victim's rights and dignity.

## **INFORMATION ABOUT SERVICES AND REMEDIES**

A victim should be informed at the earliest practical opportunity, by relevant agencies and officials, of the services and remedies available to the victim.

## **ACCESS TO SERVICES**

A victim should have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim's needs.

## **INFORMATION ABOUT INVESTIGATION OF THE CRIME**

A victim should, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardise the investigation. In that case, the victim should be informed accordingly.

## **INFORMATION ABOUT PROSECUTION OF ACCUSED**

A victim should, on request, be informed of the following:

(a) the charges laid against the accused or the reasons for not laying charges,

(b) any decision of the prosecution to modify or not to proceed with charges laid against the accused, including any decision for the accused to accept a plea of guilty to a less serious charge in return for a full discharge with respect to the other charges,

(c) the date and place of hearing of any charge laid against the accused,

(d) the outcome of the criminal proceedings against the accused (including proceedings on appeal) and the sentence (if any) imposed.

## **INFORMATION ABOUT TRIAL PROCESS AND ROLE AS WITNESS**

A victim who is a witness in the trial for the crime should be informed about the trial process and the role of the victim as a witness in the prosecution of the accused.

## **PROTECTION FROM CONTACT WITH ACCUSED**

A victim should be protected from unnecessary contact with the accused and the defence witnesses during the course of court proceedings.

## **PROTECTION OF IDENTITY OF VICTIM**

A victim's residential address and telephone number should not be disclosed unless a court otherwise directs.

**ATTENDANCE AT PRELIMINARY HEARINGS**

A victim should be relieved from appearing at preliminary hearings or committal hearings unless the court otherwise directs.

**RETURN OF PROPERTY OF VICTIM HELD BY STATE**

If any property of a victim is held by the State for the purpose of investigation or evidence, the inconvenience to the victim should be minimised and the property returned promptly.

**PROTECTION FROM ACCUSED**

A victim's need or perceived need for protection should be put before a bail authority by the prosecutor in any bail application by the accused.

**INFORMATION ABOUT SPECIAL BAIL CONDITIONS**

A victim should be informed about any special bail conditions imposed on the accused that are designed to protect the victim or the victim's family.

**INFORMATION ABOUT OUTCOME OF BAIL APPLICATION**

A victim should be informed of the outcome of a bail application if the accused has been charged with sexual assault or other serious personal violence.

**VICTIM IMPACT STATEMENT**

A relevant victim should have access to information and assistance for the preparation of any victim impact statement authorised by law to ensure that the full effect of the crime on the victim is placed before the court.

**INFORMATION ABOUT IMPENDING RELEASE, ESCAPE OR ELIGIBILITY FOR ABSENCE FROM CUSTODY.**

A victim should, on request, be kept informed of the offender's impending release, or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody.

**SUBMISSIONS ON PAROLE AND ELIGIBILITY FOR ABSENCE FROM CUSTODY OF SERIOUS OFFENDERS**

A victim should, on request, be provided with the opportunity to make submissions concerning the granting of parole to a serious offender or any change in security classification that would result in a serious offender being eligible for unescorted absence from custody.

**COMPENSATION FOR VICTIMS OF PERSONAL VIOLENCE**

A victim of a crime involving sexual or other serious personal violence should be entitled to make a claim under a statutory scheme for victims compensation.

