



## INFORMATION / FACT SHEET

### 'CRIME TO TRIAL' PROCESS CRIMINAL COURT HEARINGS EXPLAINED

*\*(Please be advised that this is a general guide only and is by no means an exhaustive summary of all criminal court hearings. It is important to remember that each criminal matter is different and may involve other more specific hearings not listed here).*

#### ALLEGED CRIME

*Police* are responsible for investigating reported criminal offences.

Where a criminal offence has been committed, and then reported to the *Police*, they will initiate an investigation into the alleged offence(s) by speaking with the victim(s), other witnesses and the accused.

This can be a lengthy process especially where the reported criminal offences are complex and involved.

*Police* need to gather sufficient evidence to be in a position to *CHARGE* an alleged offender.

Where there is reasonable cause to believe that the crime has been committed, the alleged offender will either be reported to or charged by *Police*. Where an alleged offender is arrested and charged by *Police*, they will be *REMANDED IN CUSTODY* or *BAILED* to appear in the Magistrates Court.

Alternatively, where sufficient evidence cannot be obtained by *Police*, no charges will be laid.

If charges are laid by *Police*, the alleged offender is then *SUMMONSED* to appear before a Magistrate in the Magistrate Court. A *summons* is a legal document that advises the alleged offender of the offences they are charged with and the date and time they are required to appear in the Magistrates Court (see below).

#### COMMITTAL PROCEEDINGS (MAGISTRATES COURTS)

*Committal Proceedings* are held in the *Magistrates Court* in front of a Magistrate.

The job of a Magistrate is to determine if there is sufficient evidence for the matter to be sent to (committed) a higher court for *Trial*.

#### FOR MENTION ONLY (FMO)

This is the first time a person appears in the *Magistrates Court* and is usually at the next available court date and time following an arrest.

*BAIL* may also be discussed at this hearing and a date and time set for a *DECLARATIONS HEARING*.

#### DECLARATIONS (DECS)

The *DECS* is the hearing by which the *Prosecution* must file all witness statements and other evidentiary material relevant to the criminal matter before the court.

This can take time in more complex cases and may involve the court listing more than one *DECS* hearing.

Once all *DECS* are received and filed with the court, the Magistrate will set the matter for an *ANSWER CHARGE* date and time.

#### ANSWER CHARGE (AC)

Once all *DECS* have been filed and read by the *Magistrate* and *Defence Lawyer for the accused*, the accused person will be asked to enter a plea of *GUILTY* or *NOT GUILTY* to the relevant charges they are facing.

This is referred to as *ANSWERING THE CHARGES*.

If the accused person enters a plea of *GUILTY* to the relevant charges, the matter will be *COMMITTED FOR SENTENCE* in the *District* or *Supreme Court* (for *Major Indictable* matters).

In *Summary* and *Minor Indictable* offences, the matter will proceed to *SENTENCING SUBMISSIONS* and then *SENTENCING* in the *Magistrates Court*.

Where the accused person enters a plea of *NOT GUILTY* to the relevant charges, and the Magistrate finds that *A CASE TO ANSWER* has been established, the matter will be *COMMITTED FOR TRIAL* in the District or Supreme Court.

In *Summary* and *Minor Indictable* offences, the matter will proceed to a *Trial* in the *Magistrates Court*.

Other hearings that may be heard in the Magistrates Court include the following:

## BAIL APPLICATIONS

Where an accused person is *ARRESTED*, they are entitled to *APPLY FOR BAIL*.

In alleged criminal matters it is important to note that there is a *PRESUMPTION OF BAIL* - that is, in the eyes of the law, all accused persons should receive *BAIL* (given they are *'innocent until proven guilty'*) unless there are strong reason to not grant *BAIL*.

If *BAIL* is *GRANTED* by the court the offender will enter into a *BAIL AGREEMENT* and then be released to appear at a date in the future. This may involve a *SIMPLE BAIL AGREEMENT*, or, depending on the seriousness of the alleged offences, may involve the accused person being placed on a *HOME DETENTION BAIL AGREEMENT*.

Where *BAIL* is *REFUSED* the accused person will be *REMANDED IN CUSTODY*.

Where an accused person has been *REFUSED BAIL*, they may *re-apply* for *BAIL* at a later date.

Also, where *BAIL* has been *GRANTED*, an accused person may seek to *VARY* their *BAIL CONDITIONS* at some point leading up to the *Trial* or *Sentence*.

Where an accused person is found to be in *BREACH* of their *BAIL CONDITIONS* the Magistrate or Judge may *REVOKE* their *BAIL* and *REMAND* the accused person in custody.

Where a person on *BAIL* absconds or cannot be located, a *BENCH WARRANT* will be issued by the relevant court.

## NO CASE SUBMISSIONS (NCS)

*NCS* is also known by the term *'NO CASE TO ANSWER'*.

*NCS* involve submissions (legal arguments) by the *Defence Lawyer* that the opposing party (*Prosecution*) has no evidence, or lacks sufficient evidence, for the matter to progress to a *Trial*.

A successful *NCS* results in the end of the criminal matter and the release of the accused person.

## RULE 20 HEARING

A *RULE 20 HEARING* is also known by the term *'ORAL COMMITTAL'*.

Occasionally, the *Defence Lawyer* for the accused will make a *RULE 20 APPLICATION* in the *Magistrates Court*.

Here a witness for the *Prosecution* may be asked to give (limited) evidence in person on the statement they gave to *Police*.

*Oral Committal* proceedings do not occur in every matter.

Where additional information is required from a *Prosecution* witness, a further (addendum) statement will usually be taken by *Police* (avoiding the need for a *RULE 20 HEARING*).

## MENTAL IMPAIRMENT / FITNESS TO STAND TRIAL PROCEEDINGS

South Australian law relating to people who have a mental illness and who commit criminal offences is covered under *Part 8A (Sections 269A - 269ZB)* of the *Criminal Law Consolidation Act, 1935*. The legislation specifically deals with:

- *Criminal offenders who are Mentally Incompetent at the time of committing the alleged offence or offences, and*
- *Criminal Offenders who are currently Unfit Fit to Stand Trial.*

If an accused person has a mental illness at the time of committing an alleged offence, or is currently mentally unwell, the *Defence Lawyer* for the accused may raise a *MENTAL IMPAIRMENT* or *FITNESS TO STAND TRIAL* defence.

Where the court accepts that the accused had a *MENTAL IMPAIRMENT* at the time of committing the alleged offences, or is currently *UNFIT TO STAND TRIAL*, the accused person will be dealt with under the above special legislation.

Where such a defence is *REJECTED* the accused person will be dealt with in the ordinary way.

For more information on this topic refer to the *Information Fact Sheet: 'Mental Impairment & Fitness to Stand Trial Fact Matters'*

## HIGHER COURT PROCEEDINGS (DISTRICT & SUPREME COURTS)

### MATTER COMMITTED TO TRIAL

Where a *Magistrate* determines that there is a *CASE TO ANSWER* (that is there is sufficient evidence to send the matter to a higher court) the matter will be *COMMITTED FOR TRIAL* or *SENTENCE* in the *District* or *Supreme Court*.

It is important to note that the term *COMMITTED for TRIAL* or *SENTENCE* simply means sending the matter to one of the higher court jurisdictions, and does not mean that the next court hearing is the *Trial* or *Sentence* date.

### ARRAIGNMENT (ARR)

The *ARR* involves the reading of the relevant charges in the *District* or *Supreme* Court

The *ARR* is the first official appearance in the *District* or *Supreme* Court whereby the accused person must formally enter a plea of *GUILTY* or *NOT GUILTY* to the relevant charges.

Where an accused person enters a plea of *GUILTY*, a conviction is recorded and the Judge will hear *SUBMISSIONS* on *SENTENCE*.

Where an accused person enters a plea of *NOT GUILTY* the Judge will adjourn the matter to a *DIRECTIONS HEARING*.

### DIRECTIONS HEARING (DH)

*DIRECTIONS HEARINGS* are closed court hearings involving the Judge, Legal Counsel and the Accused person.

At these hearings, relevant issues pertaining to the trial are discussed and a date for *TRIAL* will normally be set.

Depending on the number and complexity of issues in dispute (to be argued at a *TRIAL*), the Judge will list the *TRIAL* for a set number of days.

It is common for a number of DH's to take place prior to the actual *TRIAL* date.

### TRIAL (DISTRICT & SUPREME COURTS)

The purpose of a *TRIAL* is to put all relevant and admissible evidence before the court.

It is then for the *Jury* (or *Judge* in a 'Judge Alone' Trial) to decide whether the *Prosecution* has proved the guilt of the accused person '*BEYOND ALL REASONABLE DOUBT*'.

If not, the accused person will be found *NOT GUILTY* and will be '*free to go*'.

At *TRIAL* witnesses for both the *Prosecution* (and *Defence*)\* are called to give oral evidence before the court. This will involve telling the court what happened in response to questions from both the *Prosecutor* and *Defence Lawyer*.

Following the conclusion of the *TRIAL* a verdict will be handed down. This may involve:

- A finding of *GUILTY* to some or all of the charges;
- A finding on *NOT GUILTY* to some or all of the charges;
- A *HUNG JURY* (meaning the jury is not able to agree on a verdict).

On occasions, a *TRIAL* may result in a *MISRTIAL*. This involves the termination of the *TRIAL* before its natural conclusion because of a prejudicial error in procedure.

In such circumstances a new Jury will be empanelled and the *TRIAL* will start over.

*\*NB: An accused person may choose not to give evidence in their own defence*

### SENTENCE (DISTRICT & SUPREME COURTS)

Where an accused person decides to plead *GUILTY* to the relevant charges, or is found *GUILTY* by a Jury (or Judge in a 'Judge Alone' *TRIAL*) they will need to be *SENTENCED* by the *Judge*.

This will usually occur in two stages, namely *SENTENCING SUBMISSIONS* and then *SENTENCING*.

#### SENTENCING SUBMISSIONS

During *SENTENCING SUBMISSIONS* the *Prosecution* and *Defence Lawyer* for the convicted person(s) provide the court with all relevant information to assist the Judge in determining an appropriate *SENTENCE*. Issues covered in *SENTENCING SUBMISSIONS* usually include:

- *Defendants antecedents (prior offences);*
- *Victim Impact Statements;*
- *Relevant authorities (precedents);*
- *Background information pertaining to the defendant;*
- *Psychological / Psychiatric Reports for the defendant;*
- *Character witnesses for the defendant;*
- *Discussion on suitable penalties (tariffs);*
- *Any other information relevant to the SENTENCING of the defendant.*

#### SENTENCE

Once *SENTENCING SUBMISSIONS* are completed, the Judge will set a date to *SENTENCE* the accused. This is the penalty imposed on the accused person once they are found *GUILTY* of an offence.

This will usually involve setting a *HEAD SENTENCE (total time to be served)* and *NON PAROLE PERIOD (period that must be served prior to a defendant being eligible for parole)*.

A Judge will also decide whether the defendant will receive a *CUSTODIAL SENTENCE* (required to spend time in a correctional facility) or *SUSPENDED SENTENCE* (not required to spend time in a correctional facility).

Where a defendant receives a *SUSPENDED SENTENCE*, they may be released unconditionally, or with particular requirements and conditions to fulfil.

## **APPEALS (COURT OF CRIMINAL APPEAL (CCA) / HIGH COURT OF AUSTRALIA**

Once an accused person is convicted (found guilty) at the conclusion of a *Trial*, they are referred to as a *DEFENDANT*.

The *DEFENDANT* has the right to appeal against his or her *CONVICTION* and/or *SENTENCE*. This is not automatic and there must be *reasonable grounds* for doing so. APPEAL papers must be lodged within 21 days.

The DPP has no right of APPEAL against a *JURY CONVICTION* (i.e. a NOT GUILTY verdict) although can refer questions of law of general importance to the *Court of Criminal Appeal (CCA)* for determination in very rare circumstances involving a *JUDGE ALONE TRIAL*.

The DPP does have a right to APPEAL against *SENTENCE* however will only exercise this right in rare and exceptional cases (i.e. where a *SENTENCE* is considered *manifestly inadequate*).

Appealing a court decision involves a number of steps as follows:

### **LEAVE (PERMISSION) TO APPEAL (LTA)**

A *DEFENDANT* must first seek permission to appeal (known as *LEAVE TO APPEAL*) before their *APPEAL* can be heard by the Court of Criminal Appeal. *The LTA ARGUMENT* will be heard before a single Judge in the District or Supreme Court.

### **FORM 7 APPEAL**

Where permission to *APPEAL* is denied, a *DEFENDANT* may seek to have this decision reviewed by three Justices in the *CCA*, who again may deny or allow the *APPEAL*.

### **APPEAL ARGUMENT**

Where a *defendant* is granted permission to appeal their *CONVICTION* or *SENTENCE*, a date and time will be set for *APPEAL ARGUMENTS* by the *Prosecution* and *Defence Lawyer*

It is usual for the *CCA* to take time to consider the *APPEAL ARGUMENTS* prior to reaching a decision. Here they will *RESERVE* their decision.

## **APPEAL DECISION**

When handing down its decision, the *CCA* will either ALLOW or REFUSE the *APPEAL*.

Where the *CCA* ALLOWS an *APPEAL AGAINST SENTENCE*, the defendant will be *RE-SENTENCED* (unless the appeal involves a technical error in arriving at the sentence amount which will be corrected).

Where the *CCA* ALLOWS an *APPEAL AGAINST CONVICTION* (by the defendant), the *CONVICTION* (*GUILTY* finding) will be *QUASHED* (abandoned) and an *ACQUITTAL* (judgement of *NOT GUILTY*) entered or a *RETRIAL* ordered.

## **SPECIAL LEAVE TO APPEAL (HIGH COURT OF AUSTRALIA)**

Where an *APPEAL* decision is *denied* by the *CAA*, *SPECIAL LEAVE* may be made to the *HIGH COURT OF AUSTRALIA*.

This can only be done in exceptional circumstances and must involve a '*question of law of general importance*'.

# CRIMINAL JUSTICE PROCESS FLOW CHART

