

Are you facing a committal?

What is a committal?

If you are facing a committal, you have been charged with a serious offence, which is unlikely to be finalised in the Local Court. A committal is a hearing in the Local Court before the charge is heard in the District Court or Supreme Court.

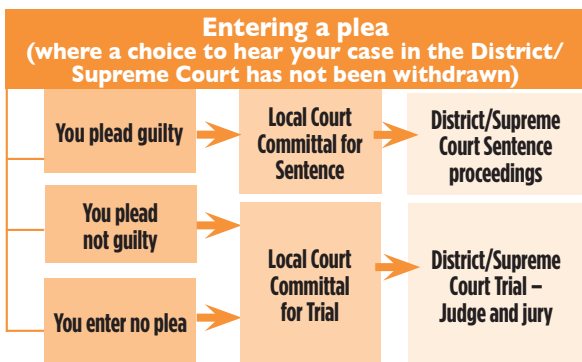
In the committal hearing a Magistrate decides whether the prosecution has enough evidence for your case to be committed for trial, or sentence. If there is enough evidence and the case is serious enough, your case will be decided by a Judge and a jury in the District or Supreme Court.

You do not have to enter a plea at the committal. However, if you plead guilty your matter will be committed for sentence unless the prosecution decides that it can stay in the Local Court. If you plead not guilty or enter no plea your matter will be committed for trial.

If you have been granted legal aid for your committal, it is a condition of the grant of legal aid that your legal representative attends a case conference.

A case conference will give your representative and the prosecution the opportunity to work out whether your case will proceed to a trial or become a sentence. The case conference will only be carried out when your solicitor has taken instructions from you. Your case will only be committed for sentence if you decide to plead guilty.

If you plead not guilty or enter no plea when you appear at a trial in the District Court or Supreme Court, a jury will decide whether or not you are guilty. If you are in doubt about the procedure, you should seek more advice from a solicitor.



Is legal aid available for committals?

Yes. However, there are a number of conditions which apply to eligibility for legal aid. If you wish to apply for legal aid for a committal, you should lodge an application at the Legal Aid office nearest to you. Legal aid for committals is subject to a means test. You may be required to pay a contribution. There are also limits on the extent of legal aid for committals.

If your matter is not one for which legal aid is available, you can instruct and pay for a solicitor or barrister to appear for you. Otherwise you will have to represent yourself.

Committal proceedings can be difficult to conduct if you have no legal training. It is unwise to attempt to represent yourself unless you are well prepared and have had legal advice.

What happens at a committal hearing?

You will be given a brief (a copy of the statements of the prosecution's witnesses) before the committal hearing.

The Magistrate will set a date by which you must:

- be given the brief; and
- tell the prosecution whether you want any of their witnesses to give oral evidence at the committal and be available for questioning by you or your representative.

You do not have an automatic right to require prosecution witnesses to attend court and give oral evidence, and/or be available for cross-examination.

If you want the witnesses to give oral evidence then you will need to apply to the court for them to attend the committal hearing. You or your representative will then be able to cross-examine them.

Depending on the offence you are charged with and the evidence to be given by the witness, you will need to convince the Magistrate that there are either **substantial reasons** or **special reasons** why the witness should be required to give oral evidence.

No witnesses can be called to give oral evidence and be cross-examined unless the Magistrate is of the opinion that there are **substantial reasons** why, in the interests of justice, that witness should give oral evidence.

If the offence involves violence, the alleged victim cannot be called to give oral evidence or be cross-examined unless the Magistrate thinks that there are **special reasons** why, in the interest of justice, the alleged victim should give oral evidence.

The magistrate can also impose limits on the extent of the cross-examination of these witnesses. Otherwise the committal hearing will be dealt with as a paper committal.

The restrictions on permitting witnesses to give oral evidence mean that many committals are **paper committals**. In a paper committal, the prosecutor will give the Magistrate the brief of evidence to read. The Magistrate then has to decide whether there is enough evidence to commit you for trial (if you have pleaded not guilty or not entered a plea) or for sentence (if you have pleaded guilty).

If you do not wish to enter any plea at the Local Court and want the case to be finalised in the District Court or the Supreme Court, you may also waive your committal hearing (that is, give up your rights to a committal hearing) and be committed.

If you do this, your case will go to the higher court without any consideration by the Magistrate and without the making of any applications to ask witnesses questions. You should seek advice from a solicitor before you waive your committal hearing.

If your matter is being heard at the Sydney District Court there are special rules relating to the discount you can receive for pleading guilty depending on the time that you enter your plea. You should speak to your solicitor about whether your matter is affected by these rules. If your matter is being heard in another Court you still need to speak to your solicitor about whether the matter you are charged with has a standard non parole period and the discount a plea of guilty can attract if it is entered before your matter is committed to the District Court.

How does the Magistrate decide?

The Magistrate must decide if there is a reasonable possibility that a jury would convict you. If the Magistrate decides that a jury would not convict you, you will be discharged.

The outcome of many committal proceedings is that the Magistrate commits the matter for trial. If the Magistrate makes the decision to commit the matter for trial, you will be asked whether you want to say anything or call any evidence.

The Magistrate also gives a warning that, "Anything you say will be taken down and may be used against you." It is important to pay attention to this warning. Usually, there is no advantage in saying anything to the Magistrate or in calling evidence. You can simply reply "I do not wish to say anything". It would be unwise to say anything or to call evidence without being legally represented or advised.

The Magistrate will tell you which District or Supreme Court you must appear in next and set a date.

What should you do after a committal?

If you have legal aid for your committal, then the grant of aid will extend to your appearance in the District or Supreme Court.

If you do not have legal aid for your committal, and if you want legal aid for your appearance in the District or Supreme Court, send an application immediately after your committal to:

**Records, Grants Division, Legal Aid NSW
PO Box K847 Haymarket NSW 1238
Tel: 9219 5880**