Youth Justice

Your Guide to Cops and Court in NSW

4th Edition

Macquarie Legal Centre

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Going to court

This chapter is about going to court as a defendant charged with a crime. It applies to both juveniles (under 18) and adults (18 or over).

Most of this chapter is about the Local and Children's Courts. There is also some information about procedures in the District and Supreme Courts.

Which court?

Which court you appear in will depend on the type of offence that you have been charged with. Offences are classified broadly as either *summary* offences or *indictable* offences.

Types of offences

Summary offences

A *summary offence* is a minor criminal offence that is dealt with by a magistrate in a Local or Children's Court (no judge or jury is involved). Examples of such offences include goods in custody, offensive language, custody of a knife in a public place, drug use, possession and most traffic offences.

Indictable offences

An *indictable offence* (pronounced 'in-dite-able') is a more serious criminal offence, which may be tried before a judge and jury in either the District Court or Supreme Court. Examples of indictable offences include robbery, sexual assault, stealing, joy-riding in stolen cars, malicious damage and assault.

Generally, all indictable offences start off in the Local or Children's Court. Many indictable offences can be finalised there (see *Indictable offences dealt with summarily* on page 267).

More serious indictable offences will go to the District or Supreme Court after *committal* proceedings. Here the Local or Children's Court magistrate decides whether there is enough evidence to send your case to the District Court or Supreme Court (see *Committal proceedings* on page 290).

Indictable offences dealt with summarily

Certain indictable offences can be dealt with *summarily* (finalised in the Local or Children's Court – like summary offences).

For adults, these offences are listed in Tables 1 and 2 of the *Criminal Procedure Act 1986*. Examples include break and enter, stealing and most types of assault.

For juveniles anything except a *serious children's indictable offence* (see below) can be dealt with summarily.

There is a presumption that such indictable offences will be finalised in the Local or Children's Court.

- For some indictable offences you may choose to have your case dealt with in the District Court (eg you might want to be tried in front of a judge and jury instead of a magistrate). You should always get legal advice before deciding to do this.
- If you are an adult, the prosecution (police or DPP) may elect to send the matter to the District Court.
- If you are in the Children's Court, the magistrate may decide to send the matter to the District Court.

In practice, most indictable offences are dealt with summarily.

Strictly indictable offences

Only the more serious offences (eg robbery, sexual assault, dealing huge amounts of drugs, or any offence where someone has been killed) go to the District or Supreme Court. These offences are said to be *strictly indictable*.

Criminal courts in NSW

Local Court

You will need to appear before the Local Court if you were 18 or over when the alleged offence was committed and your situation is one involving either:

- a summary offence
- an indictable offence that can be dealt with summarily, or
- committal proceedings for a more serious indictable offence.

If you're under 18 and are charged with a traffic offence, you may have to go to the Local Court if you were old enough to have a licence (ie 16 for cars, 16 and 9 months for motorbikes) at the time of the offence. See *Going to court for traffic offences* on page 215.

Children's Court

You will need to appear before a Children's Court if you were under 18 when the alleged offence was committed and under 21 when charged, and your situation is one involving:

- a summary offence
- an indictable offence (not a serious children's indictable offence)
- committal proceedings for a serious children's indictable offence
- a traffic offence where you are too young to get a licence (under 16), or
- a traffic offence that is connected to another criminal offence that you have been charged with (eg stealing a car).

A *serious children's indictable offence* is one that is punishable by life imprisonment (eg murder) or 25 years' imprisonment or more (eg robbery with wounding). Certain types of sex offences are also included. Only the committal stage is dealt with in the Children's Court. If the magistrate decides that there is enough evidence, the matter is referred to either the District Court or Supreme Court.

A Children's Court conducting a committal hearing for a juvenile may also conduct the committal hearing for an adult co-accused, where there is less than 3 years age difference between them.

District Court

You will need to appear before the District Court if your situation concerns:

- an indictable offence which is not capable of being dealt with summarily (after you have been *committed* from the Local or Children's Court)
- an indictable offence which you have chosen to have sent to the District Court
- if you are an adult – an indictable offence which the prosecution has elected to send to the District Court
- if you are a juvenile – an indictable offence which the magistrate has decided to send to the District Court
- certain summary offences that are related to your indictable offence, or
- an appeal from the Local Court or Children's Court.

Supreme Court

You will need to appear before the Supreme Court if your situation concerns:

- a very serious indictable offence (eg, murder), or
- an appeal on a question of law from the Local or Children's Court.

Court of Criminal Appeal

The Court of Criminal Appeal is made up of a number of Supreme Court judges (usually two or three). It hears appeals from the District and Supreme Courts.

Drug Court

If you have been charged with a criminal offence and have a drug problem and meet other requirements, you may be able to go to a Drug Court (see *Adult Drug Court* on page 308 and *Youth Drug and Alcohol Court* on page 312).

Going to court as a defendant

This section is about going to court as a defendant charged with a crime.

Other reasons you may have to go to court include:

- you are a victim or witness in a crime (see *Victims and going to court* on page 61 and *Appearing in court as a witness* chapter)
- to apply for an apprehended violence order (AVO) or if someone is applying for an AVO against you (see *Apprehended violence orders* chapter).

Turning up to court

When should you turn up?

The police or court give you a document telling you which court to attend and on what day. Usually the document says to turn up at 9.30am or 10am. However, your case could be any time that day depending on how busy the court is. Getting to court early might make it more likely that your case is on earlier, but there are no guarantees.

If you miss your court date, it could be very serious (see *If you miss court* on page 353).

What to wear?

Dress neatly if you want to impress the magistrate. Don't wear thongs, or torn or dirty clothes. Men don't have to wear suits, ties or expensive clothes. Women can wear trousers if they wish. But avoid shorts/short skirts and take off your hat!

What to bring to court?

- **Lunch**: Be warned! Most courts are near shopping centres, but a few courts are a very long walk to the nearest shops.

- **Something to do while you're waiting**: At most courts there is nothing to do while you are waiting around, so it is a good idea to bring along a magazine, book, music or game to pass the time.
- **Papers**: Bring all the police papers and other legal documents about your case. This will make it easier for your lawyer to help you. If you have lost or forgotten your papers, don't worry – your lawyer will probably be able to track down copies.
- **Support**: You may want to bring someone to support you. You can bring family, friends, or a youth worker or welfare worker. At the Local Court, these people can usually come into the courtroom with you. At the Children's Court, the magistrate will want your parent(s) or youth worker to come in unless you really don't want them to; the magistrate may or may not let your friends come in. You might also be able to get help from a court support worker at court (see *Court support* and *In the courtroom* on page 272).
- **References:** If you are pleading guilty and want to get a more lenient sentence, it is a good idea to bring references (see *References and court reports* on page 45).
- **Witnesses:** If it is a *hearing* (because you pleaded not guilty at a previous court appearance) bring your witnesses (see *Pleading not guilty and going to hearing in the Local or Children's Court* on page 282).

Interpreters

If the defendant cannot speak and understand English well, often a family member, a friend or a support worker interprets for them. This is not ideal. Legal interpreting is highly skilled work. And people who are personally involved with the client often find it difficult to interpret without adding to or changing what people say.

As a defendant, you have the right to a free interpreter at court who can explain the courtroom proceedings to you, and help you talk with your lawyer. At court every word is important, so if English is not your first language, seek an interpreter.

Ask someone to help you ring the court before your court appearance and ask them to book an interpreter. If there is no interpreter at court on the day, ask the magistrate to adjourn the case until another day, so you can get an interpreter.

If you speak good English but your family doesn't:

- **In the Children's Court**, the court will order interpreters for parents of defendants.
- **In the Local Court**, there are no free interpreters for family members, only for the defendant, and for any witnesses in a hearing.

Court support

It is helpful if you have someone at court to support you, especially at the Children's Court.

Some Children's Courts have court support workers provided by the Children's Court Assistance Scheme (see *Contacts* on page 406). They are usually youth workers with lots of experience and a good understanding of the court process. They can be a big help to you, even if you have a family member or other support person with you.

Getting a lawyer

If possible you should get a lawyer to represent you, or at least give you some legal advice. See *Getting legal advice and assistance* chapter.

Court procedure

The first mention date

The first day at court is often referred to as the *first mention date* or *first return date*. A *mention* is basically a court appearance where your matter gets adjourned without the court hearing evidence or making any major decisions. Sometimes, especially if you are pleading not guilty or the matter is very serious, a case might have several mentions before proceeding to hearing or sentencing.

Seeking an adjournment

You should not make a decision about what plea to make (guilty or not guilty) without legal advice. If you are not legally represented, you should ask the magistrate to adjourn the matter so that you get a chance to speak to a lawyer.

The case will usually be adjourned for 2 or 3 weeks. If it is a domestic violence matter, the court will usually adjourn your case for only one week and you will be expected to obtain legal advice in that time.

Sometimes more than one adjournment will be allowed without a plea being entered, though after two or three adjournments the magistrate usually gets involved to get things moving.

Entering a plea

Pleading guilty or not guilty (*entering a plea*) usually happens at your first or second court appearance, unless the case is very serious or it is a situation when you don't have to enter a plea.

Before you decide how to plead, talk to a lawyer. They can tell you what your chances are of getting off if you plead not guilty, and what the penalty might be if you plead guilty.

Sometimes you know that you 'did it', you feel guilty, maybe the police even caught you red-handed, but the law says that you aren't guilty. *Feeling guilty* and *being guilty* are different. For example, sometimes the police charge you with a worse crime than the one you actually did – or the thing you actually did is not a crime!

If you are under 14, or if you have an intellectual disability or a mental illness, sometimes the law doesn't hold you responsible for the crime. Only a lawyer can advise you about this.

Your lawyer may advise you what to plead, but the ultimate decision is yours (see *What to plead?* on page 276).

VINCENT'S DAY AT COURT

– Lisa

Last year I went to the Local Court with my friend Vincent, who was charged with stealing two CDs. Vincent didn't have a clue what would happen at court and neither did I. We turned up at 8.30am because the piece of paper said to turn up at 9am and we wanted to work out what was going on before Vincent's case was on. Nobody was there at 8.30, so we read some of the posters and signs to work out what would happen in the courtroom. When court started we sat in the courtroom and slowly worked out what was going on. It seemed like everyone would go in with a lawyer, plead guilty, get fined between $500 and $2000, then go home.

We decided we should go and ask for Legal Aid, but Vincent didn't get it because he earned $5 too much a week. By this time he was freaking. We had been sitting there for three hours and his case hadn't been called yet. The court stopped for lunch by which time Vincent was a mess. He'd been waiting on edge all morning.

His case wasn't called until 3.30pm. By this time there was only one other person left, and we realised that it was because all the others had lawyers representing them so their cases went on first.

The magistrate was a bit nicer with Vincent and asked him about his job and why he stole the CDs. The magistrate seemed happy with his answer, and put him on a good behaviour bond. Vincent was the first person I saw all day who didn't get a fine. I think the magistrate realised that the day in court was enough of a deterrent, but it seems quite unfair that some of the people on welfare got fined huge amounts of money.

Vincent asked the magistrate if he could have no conviction recorded because he wants to go to university and do business, and so he got off with no criminal record. (One of his friends had told him to ask for this.)

In the courtroom

If you are going to court on a charge, you might want to know who is in the courtroom during your case. It depends on which court you are going to.

Children's Court

Children's Courts are closed to the public to protect the young person's identity. People who are not directly involved with the case need the magistrate's permission to be allowed into the court.

Everything that goes on in the courtroom is confidential and, outside the court, people are not allowed to reveal any information that would identify you as a defendant in Children's Court proceedings.

Magistrate

The magistrate is the person who makes the decision in your case. If you have to speak to the magistrate, you should call him or her 'Your Honour'.

Court officers

The *court officer* and *monitor* are there to ensure the court runs smoothly and that accurate records are kept. Don't be surprised if they keep walking in and out of the courtroom – this is part of their job.

Prosecutor

The prosecutor represents the police and presents the case against you. In the Children's Court this is usually a police prosecutor. For matters which are being dealt with on indictment (see *Which court?* on page 266) the prosecutor is usually a lawyer from the Office of the Director of Public Prosecutions (DPP).

Your lawyer

If you have a lawyer, he or she will sit at the *bar table*. You usually sit just behind your lawyer, unless you are in custody (in which case you will usually sit off to the side, or in the dock if there is one). Your lawyer speaks on your behalf, unless you have to get into the witness box and give evidence.

Sometimes other lawyers sit in the courtroom while they wait for other cases. If you are uncomfortable with someone in the courtroom during your case, you could ask your lawyer to ask the magistrate to tell them to wait outside.

Juvenile Justice worker

Sometimes there will be a Juvenile Justice worker in the courtroom. This might be your JJO, or the intake worker on duty at court. They often assist the court by helping you find accommodation or updating the court about your situation.

Your family

Magistrates usually let family into the Children's Court. Family members sit near you in the courtroom.

Occasionally, the magistrate might speak directly to a family member, especially about bail or the sentence. (If a family member wants to say something to the magistrate, they should tell your lawyer first.)

If you don't want a family member in court with you, instruct your lawyer to ask the magistrate to exclude them. Tell your lawyer why you don't want the person there.

Your friends

Often the court officer at the courtroom door refuses permission for your friends to come into the courtroom. If you want them in, ask your lawyer to ask the magistrate for permission. Magistrates sometimes refuse to let friends in, especially if they are under 18.

Other support people

Magistrates usually allow youth workers, social welfare workers and other support people into the courtroom. You can avoid any hassle by telling your lawyer that you want your support person in court with you.

Sometimes the victim of the alleged offence is also a potential support person at court. They might be a family member, a carer or youth worker. Victims are not the best people to support defendants at court, whatever they feel about the crime.

Witnesses

At hearings, witnesses stay outside except when they are giving evidence.

The media

Occasionally the magistrate lets the media into the courtroom and sometimes the media hang around outside Children's Courts. No one is allowed to take photos or film inside the court. Inside or outside, the media can't disclose your name or show your face on TV, radio or in newspapers.

In the Local Court

In the Local Court, there will also be a magistrate, court officers, a prosecutor and defence lawyer.

Unlike Children's Courts, Local Courts are usually open to the public. Usually there are seats for the public at the back of the courtroom, and people can sit and watch whichever cases they like. This means that your support person, your family, your friends and the media can come into court (whether you want them there or not).

The media cannot film or take photos inside the courtroom, but they can outside. In most Local Court cases (there are exceptions), the media can show your face on TV and in newspapers. They can report your name, your crime and details of the case.

In many parts of NSW, there is no separate Children's Court, so the Local Court sits as a Children's Court to hear children's cases. When this happens the Children's

Court rules apply. The court is closed, and people not involved in the case are asked to leave.

In some Local Court cases, the magistrate may close the courtroom – for example, if it is a very sensitive matter, such as a child sexual assault case.

In other courts

Other courts (eg the District Court) are usually open to the public. The judge will close the court if the case involves a juvenile defendant, a child victim or witness, or a very sensitive matter.

If you can't get to court

If you are the defendant in a criminal case, you probably don't feel like turning up to court at all! But what if you really can't make it on that particular day? Is there anything you can do?

If you can't get there on the day, can you change the court date in advance?

If you know in advance that you can't make it to court on the date your case is listed, you might be able to have the case relisted to a suitable date. A lawyer can help with this, or you can go to the court yourself and ask the staff at the counter to help.

A court commitment is very important, and the court usually won't excuse you from attending because you have to work, look after your kids, go to school, etc. However, if you are too sick to attend, or you are in detox, the court excuses your attendance and adjourns the case if it receives an appropriate medical certificate or letter. The court often excuses you if you need to attend an important commitment like an exam or a funeral. It is important to get your papers that prove this commitment to court before it has a chance to issue a warrant, so you should fax or deliver them to the court on the day of court or earlier if possible.

Sometimes you don't have to go to court

If you're on bail and are excused

If you are on bail, you have to turn up to court each time, unless the court has excused you from attending (see *Bail* chapter).

Field, future or no bail court attendance notice (CAN)

If you have been given a *no bail CAN*, a *field CAN* or a *future CAN*, you don't have to appear personally at court. You can send a lawyer along in your place, at least for the first court date and any *mention* date.

For more information about the different types of court attendance notices, see *How police deal with you for alleged offences* on page 147.

Written notice of pleading

A *written notice of pleading* is a procedure that only applies to less serious offences. When the police give you a court attendance notice, they may also give you a form that you can fill in and send to the court instead of turning up. The notice must get to the court at least 5 days before your court date.

The form asks you whether you wish to plead guilty or not guilty. It's a good idea to get legal advice before filling in the form. Sometimes a lawyer might advise you that it's better to attend court personally.

If you miss court without telling them in advance

If you have missed court, do something about it! Things could get a lot worse. Sometimes you can fix things up afterwards (see *If you miss court* on page 353).

Get legal advice about your options (see *Getting legal advice and assistance* chapter and *Contacts* on page 405).

What to plead?

One of the main questions you have to decide after being charged with an offence is how to plead. *Pleading* means telling the court whether you are guilty or not guilty. Sometimes it isn't easy to decide, and you don't have to decide straight away.

When do you decide how to plead?

Before you decide how to plead, you should understand the legal elements of the offence and be aware of the police case against you. Get a copy of the police fact sheet which lists the charges and a summary of the police case (see *The police fact sheet* on page 277). After reading the police facts, ask a lawyer to explain the charges.

Discuss the case and decide how to plead with your lawyer. It is important to realise that your understanding of the words *guilty* and *not guilty* is often different from the legal definition of these words. They are legal terms, and whether you are guilty or not guilty depends not only on your opinion but also on the law.

Once you've discussed everything with your lawyer, you may be in a better position to know whether or not you should plead guilty to the offence. But you still may not be able to decide by your first appearance at court.

You shouldn't decide how to plead on the first day if you haven't had any legal advice yet or need more detailed legal advice. Always make sure that you have had

adequate legal advice before you decide what to plead. See *Getting legal advice and assistance* chapter.

If you don't enter a plea on your first day in court, your case is adjourned (put off until a later date). A court will nearly always give you at least one adjournment to allow you to get legal advice.

The police fact sheet

When the police accuse you of an offence and your case goes to court, the police write a fact sheet. The police fact sheet is a summary of what the police say you did. In other words, it is a summary of the police case against you.

GIMME THE FACTS!

The fact sheet includes:

- Your name, address, nationality, date of birth and occupation. Some of this information (eg address and occupation) may be wrong or out of date. Police often get these details from old computer records rather than asking you.
- A section called *antecedents*. Sometimes this includes a summary of your past criminal convictions. Sometimes it merely summarises your personal circumstances – eg who you live with, your employment situation and so on. Often this information is inaccurate.
- The date and time of alleged offence.
- The offences you are charged with, and the name and section number of the Act where the offence is found.
- The court and the date of the first court appearance.
- The name of the *informant* or *officer in charge* (the police officer who is handling the case). This is usually the officer who arrested or charged you and gathered the evidence to bring your case to court. If you need information from the police about the case, this is the person to contact.
- The names of other police officers involved.
- The number of witnesses the police have to support their case. This is divided into police witnesses and civilian witnesses.
- Your bail status.
- The *full facts*, a summary of the police case against you.

How do you get the fact sheet?

The police are supposed to give you a copy of the fact sheet when they give you a court attendance notice (CAN). If you don't have a fact sheet when you go to court, ask your lawyer to get you a copy from the police prosecutor.

Why does the fact sheet matter?

The fact sheet has useful information about your case. It helps you and your lawyer work out what to plead: guilty or not guilty. Read it, or have it read to you, before you enter a plea.

If you plead guilty, the magistrate reads the fact sheet before they sentence you. The information in the fact sheet has a big effect on the penalty you get.

Go through the facts with your lawyer

It is very important that you read the police facts and work out what you agree with and what you don't, before deciding what to plead in court. Go through the facts with your lawyer, and tell them what you agree or disagree with. Take your copy of the police fact sheet with you when you go to court or to see a lawyer.

Back-up charges

The police may not go ahead with all the charges listed on the fact sheet. Some of the charges listed might just be *back-up charges*. If the magistrate finds you not guilty of the more serious charges, they might find you guilty of the less serious back-up charges.

For example, the fact sheet may say you are charged with larceny (stealing) and goods in custody (possessing goods suspected to be stolen). The magistrate might decide that you didn't actually steal the goods, but that you had them in your possession and had a suspicion that they might be 'hot'. In this case you would be found not guilty of larceny but guilty of the back-up charge of goods in custody.

Sometimes the prosecutors drop the more serious charge (eg because there is not enough evidence) and proceed on the back-up charge.

What if I want to plead guilty but disagree with the fact sheet?

You might plead guilty to an offence but disagree with one part of the police facts. It is very important to tell your lawyer if you disagree with anything in the police facts. A different version of the facts may affect the penalty.

For example, you might plead guilty to the offence of larceny (stealing) but disagree with the amount of money the police say you stole. Or, you might disagree with what the police say about how you behaved when they arrested you. It is important to tell your lawyer this as magistrates often take into consideration whether you co-operated with the police.

What if I am pleading not guilty?

The police facts are not evidence used to decide if you are guilty. The magistrate only sees the police facts if you plead guilty, if the court is dealing with the case in your absence, or if you are making a bail application.

If you plead not guilty, the magistrate doesn't see the police facts (except if you are making a bail application – and they must hand the facts back to the prosecutor after your bail application has been dealt with).

Some things that may affect your plea

- **Innocent until proven guilty:** It is up to the prosecution to prove beyond reasonable doubt that you are guilty. If you plead not guilty and the prosecution doesn't have enough evidence, you are found not guilty.
- **Intention:** With some offences, if you didn't intend to do something, you cannot be found guilty of it. For example, if you accidentally hit someone during sport, you are not guilty of assault.
- **Doli incapax:** If you are under 14, the prosecution has to prove you knew what you were doing was wrong (see *Under 14s and doli incapax* on page 287).
- **Legal defences:** The circumstances of your involvement in a crime may mean that you have a legal defence, eg if someone else forced you to do the crime (duress), or if you did something in self-defence.
- **Confessing to the police doesn't mean you must plead guilty:** A police confession is not the same as a plea. For example, if you tell the police you did something, and later you realise you didn't properly understand the charge against you, it is often appropriate to plead not guilty – despite what you said to the police. Or if you only said things to the police because you were scared or threatened, or you didn't understand what the police said, or you were under 18 and did not have an adult present, it is often appropriate to plead not guilty at court.
- **Illegal activity by the police:** Sometimes the police act illegally or improperly, eg by arresting you when they shouldn't, or searching you when they don't have a reasonable suspicion (see chapters on *Dealing with police on the street*, *Police searches* and *Arrest*). Sometimes this means that the police will not be able to prove the case against you.
- **You can plead guilty to some offences and not guilty to others:** For example, if you are charged with assault and malicious damage, you might deny the assault (plead not guilty) but admit to the malicious damage (plead guilty). Then both charges may be adjourned to the day of the hearing for the assault. After the hearing, you will be sentenced for the malicious damage. If you are found guilty of the assault, you will be sentenced for that at the same time.
- **Some of the charges might be** *back-up charges*: The police may not actually go ahead with all of the charges listed on the fact sheet (see *Back-up charges* on page 278).

- **Mental health or intellectual disability:** If you have a mental illness or intellectual disability, you may be able to get the charge dismissed without even entering a plea (see *If you have an intellectual disability or mental illness* on page 347).

Situations when you don't have to enter a plea

Sometimes you don't have to enter a plea, at least not straight away. For example:

If you have a mental illness or intellectual disability

You may be able to get your case dealt with under section 32 or section 33 of the *Mental Health (Forensic Provisions) Act* without having to enter a plea. For more information see *If you have an intellectual disability or a mental illness* on page 347.

Young Offenders Act

If you are asking the Children's Court to refer you to a Youth Justice Conference or caution you under the *Young Offenders Act*, you don't enter a plea but instead you admit the offence.

MERIT and other diversionary programs

If you are referred to the MERIT or CREDIT program, you don't have to enter a plea until the program has finished. For more information see *Drug Courts and other special programs* chapter.

Matters being dealt with on indictment

For serious matters that are being dealt with on indictment, you don't have to enter a plea straight away (see *Indictable matters going to the District or Supreme Court* on page 289).

Benefit of pleading guilty

If, after you discuss the charge with your lawyer, you decide to plead guilty, you should do it at the first available opportunity. If you plead guilty, the court should reduce the penalty that it would normally give. The earlier you plead guilty the quicker your case is dealt with.

But – if you really believe you are not guilty, you should *not* plead guilty – even though it might be the quickest way to get things over and done with.

OVER AND DONE WITH (NOT)!

If you are considering pleading guilty to get your case over and done with, you need to know that sometimes the worst penalty comes years later with a restitution

order from the Victims Compensation Tribunal. See *Victims compensation restitution orders* on page 389.

Sam

Sam went to court for a bag snatch. Not a very bad crime, he thought, and not worth stuffing around with hearings and witnesses – he decided to plead guilty to get it over and done with.

Sam was 14. It was his first (and only) offence. He pleaded guilty and got a bond.

Four years later …

Sam got a restitution order from the Victims Compensation Tribunal – some legal paper about the bag snatch ... and something about $16,000!

He asked a lawyer from the Legal Centre to explain it to him. The woman whose bag was snatched had applied for compensation from the Victims Compensation Tribunal. She got $16,000, mainly because of the psychological trauma the crime caused.

Now the tribunal wanted Sam and his mate to pay them back. $16,000!

Time to stick up for yourself

Sam's lawyer suggested that they fight the order. Worth it, thought Sam (this wasn't some petty bond, it was big bucks).

The lawyer said it would be difficult to get out of the whole thing, because Sam had pleaded guilty in court. So Sam couldn't turn around now and say he didn't really do it. The fact that he was only 14 at the time would not get him off it either.

The lawyer suggested that Sam offer to pay some money – just not the whole amount. Fair enough, thought Sam. What about $50 per month for 2 years – that's $1200.

At the restitution hearing, the lawyer stressed that Sam hadn't been the main offender in the bag snatch, he was very young at the time, it was his first offence, and he hadn't reoffended since. However, the magistrate seemed more interested in his financial situation and how much he could pay.

The magistrate reduced the order from $16,000 to $2000. At $50 per month, that would take just over 3 years to pay.

Sam considered himself lucky.

Don't forget … get legal advice first!

The most important thing to remember is to get legal advice before you enter a plea, and to give the lawyer as much detail as possible. It may help to get legal advice before the first day in court, or get your case adjourned so you can see a lawyer. Lawyers at court are often rushed and may not have the time to go slowly through this important decision with you.

Pleading not guilty and going to hearing in the Local or Children's Court

If you plead not guilty, your case is put off (adjourned) to another date for a *hearing*. A *hearing* is like a trial, where the magistrate hears evidence from all the relevant witnesses to decide whether you are guilty or not guilty.

The word *hearing* is confusing, because sometimes people use it to mean any court appearance. When courts and lawyers talk about a hearing, it usually means the day when the court hears evidence from all the witnesses, to decide whether you are guilty or not guilty. A *trial* generally means a hearing in the District or Supreme Court, in front of a jury. A hearing in the Children's or Local Court is sometimes called a *summary trial*. There is no jury in the Local Court or the Children's Court, just a magistrate.

So what happens at the hearing? And what can you do to prepare for it? This section is about hearings in the Local Court and the Children's Court.

What happens when you plead not guilty?

If you plead not guilty, your case isn't dealt with there and then. A lot of people plead guilty just to get it over and done with, which is understandable but is not a good idea if you really believe you are not guilty, or if your lawyer thinks that you might not be guilty.

Brief of evidence

When you plead not guilty, the court usually adjourns the case for a few weeks and orders the police to serve (give you or your lawyer a copy of) a *brief of evidence*. A brief of evidence contains copies of statements from the police and any witnesses they wish to call. It usually takes about 4 weeks, or even longer, for the police to get the brief together.

POLICE BRIEFS OF EVIDENCE

A police brief of evidence is a set of statements from the witnesses the police use to prove their case. It may also include photographs, CCTV footage, a CD or transcript of your police interview, banking or phone records, and certificates from experts who have analysed drugs, DNA or fingerprints.

The court usually makes sure that the brief is served before they set a hearing date, unless it is a minor summary charge or a domestic violence charge.

The police must give you or your lawyer a copy of the brief at least 2 weeks before the hearing date. If the police don't supply the brief when they should, the magistrate may decide not to let the police give any evidence, and the charge against you might be dismissed (not guilty).

For some minor summary offences (eg offensive language or conduct, disobeying a police direction) a hearing date will be set straight away without the police serving a brief first. However, in some cases the police still have to serve a brief 14 days before the hearing date.

For domestic violence offences, the defendant must enter a plea within 7 days. If the defendant pleads not guilty, the court will set a hearing date without waiting for the brief first. However, the police should serve a mini brief (including victim statements and any photographs) on the first mention date, and will have to serve a full brief at least 14 days before the hearing date.

Reply date

The next court appearance after you have received the brief is often called the *reply date*. On this date, if you are sticking with your not guilty plea, the court will set a hearing date. The magistrate or registrar asks the prosecutor and your defence lawyer how many witnesses they intend to call, and how long they think the case will take.

Hearing date

The hearing date might be several weeks or even months away. It takes so long to get a hearing date for a number of reasons. First, the court has to pick a date when all the witnesses are available. Secondly, a hearing can take a lot of time (anything from an hour to several days or even weeks) and the court has to find a date when it has enough time available. This is made worse by the fact that the courts are very busy and have a huge backlog of cases to hear.

Getting a lawyer for the hearing

Children's Court

If your case is in the Children's Court, you automatically get a free lawyer from the Legal Aid Children's Service, or a private solicitor who is paid by Legal Aid.

You can also approach the Aboriginal Legal Service (if you are an Aboriginal or Torres Strait Islander person), a Community Legal Centre or a private lawyer (if you have the money or you can find someone to represent you for free). See *Getting legal advice and assistance* chapter.

If you are not sure who your lawyer is for the hearing, contact Legal Aid straight away – your lawyer needs time to talk to you and prepare for the hearing.

Local Court

If you haven't already got a lawyer, it's a good idea to organise one for the hearing. If you think you might be eligible for Legal Aid, you should make an application, either by sending in a form or going in to see them.

If you are not eligible for Legal Aid, or you would prefer to use a different legal service, there may be other options. See *Getting legal advice and assistance* chapter.

Get a lawyer before the hearing date

Don't just turn up to a hearing without a lawyer and expect to use the duty lawyer on the day or to get your case adjourned. You need to organise a lawyer well before your hearing date.

Keep in touch with your lawyer

If you had a lawyer who represented you when you entered your plea of not guilty, they will usually keep your case and represent you at the hearing.

It is important to get the lawyer's name and contact details, and make sure you keep in touch with them before the hearing. Your lawyer usually wants to spend some time talking with you and your witnesses so that they can prepare properly.

If you are over 18, and you are getting Legal Aid, it could be cut off if you do not make or keep your appointment with your lawyer, or if you move on and they can't contact you. If you lose your lawyer's contact details, ring Legal Aid or the court to see if they can put you back in touch.

Representing yourself

At a hearing, representing yourself without a lawyer is very difficult to do. If you are under 18 or on a very low income, it isn't necessary because you automatically get Legal Aid. If you do represent yourself, the book *Defend Yourself* (see *Resources* on page 422) might help you.

Witnesses

A witness is someone who can give evidence about your case. Witnesses aren't just people who were at the scene of the alleged crime, they can be anyone from the police officers who interviewed you, or the owner of the car you are accused of stealing, to the lab technician who analysed the white powder that you were caught with.

If you have any relevant witnesses, it is important that you tell your lawyer well in advance so that arrangements can be made for them to come to court for the hearing. You can't just say to the magistrate at the hearing 'I've got witnesses – here are their phone numbers if you want to talk to them'.

If you have doubts about whether they will turn up, or if they need something in writing to get them released from work for the day, you or your lawyer may need

to *subpoena* them. A *subpoena* (pronounced *suppeena*) is a legal document telling someone to appear at court or produce documents for court.

Adjournments

Unlike guilty pleas, it is not easy to get a hearing adjourned. This is because the court has specially put time aside and (usually) the witnesses have gone to the trouble of coming along.

If you really can't make it to a hearing because you are sick, the court will usually adjourn it if you supply a medical certificate. If you know in advance that the hearing date is going to be a problem, for example, because you have an exam on or your main witness is going to be overseas, you should talk to a lawyer about getting it relisted or *vacated* (changed to another date).

Your case might have to be adjourned because it is *not reached* or *part heard*, which means that the court is so busy that it can't get to your case, or starts to hear it but can't finish it on the same day. This seems to happen a lot at some courts and less at others.

The hearing

On the hearing day, all cases are usually listed to begin at 9.30 or 10am, but you might have to wait around all day for your case to actually start.

The prosecution case

The hearing starts off with the police giving their evidence. Usually the police officers read or hand up their statements to the magistrate. If you participated in a police interview, the record of interview forms part of the police evidence, unless the court excludes it (eg if you are under 18 and there was no appropriate adult present during the interview or the police didn't let you call the Legal Aid Hotline for under 18s, see *Police questioning* on page 151).

After that, the other prosecution witnesses (who might include the victim) give their evidence.

Your lawyer has a chance to cross-examine the police officers and the other prosecution witnesses, which means asking them questions to test the truth, strength or credibility of their evidence.

Your lawyer may challenge the admissibility of other parts of the police evidence. If it is illegally obtained, irrelevant or unfair to you in some way, the magistrate may decide to exclude the evidence (eg an illegal search, see *Police searches* on page 109).

The defence case

Occasionally, the prosecution case is so weak that the court decides that there is *no prima facie case* or *no case to answer* and dismisses the charge without hearing from any defence witnesses.

As a defendant, it is up to the prosecution to prove the case against you. Your right to silence extends to the courtroom, which means you don't have to give evidence or call any witnesses on your behalf. But unless the magistrate decides there is no prima facie case, you will need to give evidence and/or call witnesses to tell your side of the story.

Unlike the police, you can't just read out or hand up a statement. You have to give evidence from your own memory (in some situations, you are allowed to refer to notes or documents to refresh your memory) and in your own words. To help you tell your story, your lawyer asks you questions, but they mustn't ask *leading questions*, which means they can't put words into your mouth or tell you what to say.

After you have given your evidence, the police prosecutor usually cross-examines you. Unlike your own lawyer, the police prosecutor may ask leading questions and often tries to put words into your mouth, to twist what you say or to make you contradict yourself. If you feel that the prosecutor is suggesting that you are lying and not letting you explain yourself, remember that this is the prosecutor's job and that they don't have anything against you personally! Your lawyer can object if the prosecutor unreasonably badgers you or asks improper or irrelevant questions.

If you have a prior criminal record

It is important to note that the prosecution is not usually allowed to bring in evidence about your criminal record at the hearing. Even if you have been in trouble before, this is not relevant to whether or not you are guilty of *this* offence.

In some cases, the prosecution may be allowed to show the court your criminal record (this is called introducing *tendency* evidence, and there are special rules about when this can be done).

If you *don't* have a criminal record, you might wish to give evidence of this. This is called *character* evidence – meaning you are of good character because you don't have a record. But beware – if you give evidence of your good character, the prosecution is allowed to give evidence of your bad character!

Closing arguments

After all the witnesses have given evidence, the prosecutor and your defence lawyer usually sum up and present some legal argument about why the court should find you guilty or not guilty.

The magistrate's finding – guilty or not guilty

After hearing closing arguments, the magistrate will usually make a decision straight away. In some cases, especially if there are complicated legal issues or lots of wit-

nesses, the magistrate will *reserve* the decision until later – this often means later that day but sometimes means in a few days or a few weeks.

To find you guilty, the magistrate must consider all the evidence and the relevant law, and be satisfied *beyond reasonable doubt* that you are guilty of the offence. This means more than finding the police case a bit more credible (believable) than yours, or having a gut feeling that you probably did it. Where there is a reasonable doubt, you should get the benefit of the doubt.

If you are found not guilty, you are free to go.

If you are found guilty, the magistrate then sentences you. Sentencing happens the same day or at a later date. Your case proceeds as if you pleaded guilty, except that you don't get the extra leniency which the magistrate gives to people who plead guilty at the start. See *Outcomes in the Children's Court* on page 325 or *Outcomes in the Local Court* on page 331.

THE WELFARE WORKER'S ROLE

In contrast to bail applications and sentencing, where a youth worker often writes a report or gives evidence, youth workers do not usually give evidence at hearings. This is because evidence of a person's background, character, criminal history, etc, is not usually relevant to whether they are guilty of the offence.

A youth worker is still a great help with hearings. They can help ensure that you have legal representation, have your witnesses organised, and you get to court. A worker can accompany you to court as a support person, and, if you are found guilty, they can give evidence or hand up a report or reference about you.

Sometimes a youth worker might be a relevant witness – for example, if a resident is accused of assaulting someone or damaging property in a refuge. Depending on the circumstances, the worker may be giving evidence for or against the resident. If the worker has to give evidence against their client, they should be careful about any conflict of interest that might arise. They should try to arrange for the client to have an independent support person.

Under 14 year olds and doli incapax

If you are under 14 at the time of the crime, the court presumes that you did not know it was wrong to commit an offence. The Latin term for this is *doli incapax*. The effect of this depends on your age:

- **Young people under the age of 10** cannot be charged for a criminal offence.
- **Young people aged at least 10 but under 14** can only be found guilty of an offence if the prosecution proves that the young person knew what they did was *seriously wrong*, rather than just naughty.

It is up to the prosecution (the police) to prove that you knew it was seriously wrong to commit the offence. The police use evidence to prove this such as:

- the police record of interview, if they asked you directly whether you know that what you did was wrong
- evidence from a parent or teacher that you know the difference between right and wrong
- evidence of your past criminal history (which may include cautions) for similar offences.

It is important for you and anyone helping you (such as your parent or a youth worker) to be aware of this principle. Some lawyers who don't appear in Children's Court regularly don't know about *doli incapax*, so draw their attention to it.

DOLI INCAPAX IN ACTION

Paul, who is 12, is charged with malicious damage for sling shotting the window of a derelict house. The magistrate can only find Paul guilty if the police prove that Paul knew it was seriously wrong to do this. To prove this the police might call Paul's father as a witness to give evidence that he had told his son that he could get in serious trouble if he kept sling shotting the window. It is not good enough for the police just to say that anyone should realise this kind of behaviour is unacceptable.

Mental health and intellectual disability issues

A person with an intellectual disability or mental illness may have difficulty at a hearing, but usually they can give evidence if they have adequate preparation and support. There is an alternative procedure available for people with intellectual disabilities or mental health problems. See *If you have an intellectual disability or a mental illness* on page 347.

Apprehended violence order hearings

If someone applies for an apprehended violence order (AVO) against another person, and the other person objects to the order, the court holds a hearing to decide about the application. This hearing is similar to a hearing for a criminal charge, except there is no police brief, and the magistrate only has to be satisfied *on the balance of probabilities* that there are reasonable grounds for an AVO. This is a lower standard of proof, and an easier hurdle for the prosecution to get over, than *beyond reasonable doubt*. See *Apprehended violence orders* on page 73.

If you don't turn up for the hearing

If you don't turn up at the hearing, the court will probably hear the case without you. This will usually mean that you are found guilty. The magistrate might fine you in your absence, or issue a warrant to get you to court for sentencing.

Pleading guilty in the Local or Children's Court

If you plead guilty, your matter will proceed to sentencing. Sometimes this will happen straight away and sometimes it will be adjourned. For more information about guilty pleas and sentencing, see *Outcomes of court* chapter.

Indictable matters going to the District or Supreme Court

In the Local or Children's Court

Nearly all criminal matters start off in the Local or Children's Court. If the matter is strictly indictable, or a decision has been made to deal with the matter on indictment, the matter will go through *committal* proceedings in the Local or Children's Court before proceeding to the District or Supreme Court.

For more information about indictable offences, see *Which court?* on page 266.

Matters that are being dealt with on indictment are prosecuted by the Director of Public Prosecutions (DPP) instead of police prosecutors.

Brief of evidence

For matters being dealt with on indictment, you do not have to enter the plea at the first court date. On the first court date, an order for *brief of evidence* will be made and the DPP will decide whether they will take the case or not. In these early stages there will be many adjournments and mentions at the Local Court.

After the brief has been served, the prosecution and the defence will usually have a *case conference* to discuss whether the matter can be resolved (eg by pleading guilty to a lesser charge).

Sometimes this process results in charges for serious offences being withdrawn. Sometimes the defendant ends up pleading guilty to a charge that can be dealt with summarily, and the matter ends up being finalised in the Local or Children's Court. If the matter cannot be resolved through these negotiations then the matter will proceed through the committal process.

Committal proceedings

Committal proceedings are basically a way of filtering out cases which should not be going up to the District or Supreme Court (either because there is not enough evidence against the defendant, and/or because the prosecution should be proceeding with less serious charges).

Once the brief has been served, the next step is for the magistrate to decide whether to *commit* the defendant for *trial* or *sentence* in the District or Supreme Court. Of course, if the prosecution has withdrawn the charge, or proceeded with a less serious charge which is going to be finalised in the Local or Children's Court, the matters will not reach this stage.

Committal hearing

Traditionally every defendant had a *committal hearing*, which gave them an opportunity to hear evidence from the prosecution witnesses and cross-examine them. After hearing all the evidence, and any submissions from the lawyers, the magistrate would then decide whether there was enough evidence for the matter to proceed to trial before a judge and jury.

A defendant no longer has an automatic right to a committal hearing. Prosecution witnesses do not have to give evidence and be cross-examined at a committal hearing unless the magistrate decides there are substantial reasons in the interests of justice or (if the witness is the victim of an offence involving violence) special reasons in the interests of justice.

An application to have prosecution witnesses called to give evidence at a committal hearing is made by the defendant and is often called a *section 91 application* or a *section 93 application*. This application might be granted if there are real problems, inconsistencies or uncertainties in the prosecution case – for example, a witness has provided two inconsistent statements, or the victim is extremely vague about dates, times and details.

If a section 91 or 93 application is granted, the matter will be set down for a committal hearing on another date. Prosecution witnesses will give evidence and the defendant's lawyer will have the opportunity to cross-examine them (for more information about this procedure see *The Hearing* on page 285). The defendant usually does not give evidence, or call any witnesses on their behalf, at a committal hearing.

Once the magistrate has heard the evidence, he or she must decide whether the evidence is capable of satisfying a jury beyond reasonable doubt, and whether a reasonable jury would be reasonably likely to find the defendant guilty of an indictable offence. If so, the defendant will be *committed for trial* to the District Court (or to the Supreme Court if the charge is extremely serious).

Paper committal or waiver of committal

In most cases, there will not be a committal hearing but instead there is a *paper committal*. This means the magistrate reads the brief and decides whether the evidence is strong enough to commit the defendant for trial.

Sometimes the defendant might choose to *waive* committal, which means not having any dispute about the evidence and agreeing for the matter to be sent to the District or Supreme Court.

Committal for sentence

If the defendant decides to plead guilty, they can enter their plea of guilty in the Local Court. In this case the magistrate will commit the defendant for sentence in the District or Supreme Court.

Entering the guilty plea in the Local Court will mean a better sentence in the District or Supreme Court, because the defendant has pleaded guilty at the first available opportunity.

In the District or Supreme Court

Arraignment

The *arraignment* is the defendant's first appearance in the District Court. It usually takes place about a week after committal. Being *arraigned* means having the charge read out and being asked to formally enter the plea.

If the defendant pleads not guilty, the matter will then be listed for trial. If the defendant pleads guilty (or confirms the plea of guilty they have already entered in the Local Court) the matter will be adjourned for sentence.

Trials

A District or Supreme Court trial is similar to a Local or Children's Court hearing, with one important difference: there is usually a jury.

The jury's task is to hear all the evidence and then to decide on a *verdict* (guilty or not guilty). To find you guilty, they must be satisfied beyond reasonable doubt.

The judge's job is to make sure the trial proceeds smoothly, to decide whether evidence should be admitted or excluded (eg if it is illegally obtained) and to sentence you if you are found guilty. The jury has no role in deciding the sentence.

Sentencing

Sentencing in District and Supreme Court proceeds in a similar manner to sentencing in Local Courts. However, it is much more formal, takes longer and often involves calling evidence from the defendant and other support people.

Sentencing is done by a judge without a jury. Judges will sometimes (but not always) *reserve* their sentencing decisions until another day especially in complex matters.

For more information see *Outcomes in the District and Supreme Courts* on page 335.