



Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc.

Sexual Violence — Going to Court

When a person is charged with an offence they may either:

- admit to the facts and allegations and plead “guilty” or
- plead “not guilty”.

Plea of Guilty

If the person charged pleads guilty, the charges will be dealt with by the Court without going to a trial. A plea of guilty means that the offender cannot argue about the facts or allegations in court.

When a person pleads guilty, the Court will hear from the prosecution (a police officer or a lawyer from the Office of the Director of Public Prosecutions) and the defence lawyer (the lawyer acting for the accused person). The prosecutor will summarise the facts for the Court and provide the offender's criminal history to the Court. The victim / survivor has the right to give the Court a Victim Impact Statement.

When the Accused Pleads “not guilty”

If the person charged with the offence pleads not guilty, the matter will go to trial in a two-step process:

1. Committal hearing in the Magistrates Court; and
2. Trial in either the Magistrates Court or the District Court, depending on the nature of the offence.

At a committal hearing, the Magistrate considers whether there is enough evidence to go to a trial. If there is sufficient evidence, the Magistrate will advise the prosecution and defence of the charges against the accused person, and the matter will then be listed to go to trial. A time and a date will be set for the trial, but it may not be for several months.

Trial in the District Court

If your matter goes to a trial in the District Court, it will usually be heard before a Judge and a jury of 12 people. In some cases it may only be heard before a Judge.

The trial must prove that the accused person is guilty of committing the offence “beyond reasonable doubt”. This means that the evidence must show that the person is guilty without any doubt.

You may be called to give evidence. There are special rules about giving evidence in cases involving a sexual offence.

Generally in a trial, a witness “giving evidence” means that the prosecutor will ask some questions. Usually this verifies the facts that you have already provided to the police. The Judge may also ask some questions. The defence lawyer will “cross-examine” you, which involves questions that test your evidence.

Special Rules about hearing cases involving a Sexual Offence

The General Public Excluded

While you are giving evidence, the public is not allowed to be in the Court room. The only people allowed to be in the room are the lawyers, the prosecutor, the accused person, any person you have asked to be with you as emotional support and anyone the Court considers necessary to be in the room, but this will *not* include members of the general public.

No Questions about your (sexual) Reputation Allowed

As a victim / survivor of sexual violence the Court must not allow any questions about your “reputation”.

You cannot be cross-examined about any sexual activities with a person and no evidence about your sexual activities can be received into court unless allowed by the Court. The Court can only allow this evidence if it is very relevant to the facts. If the evidence is about sexual activity with a person, the Court cannot regard it as relevant.

Identifying Information not to be Published

No report is permitted to be published that would identify you as the victim / survivor of a sexual offence. There are certain exemptions to this rule. For example, the recorded court record will record everything that happened during the trial, but this is not available to the general public.

Giving Evidence

As you are the victim / survivor, you do not need a lawyer to represent you in court. The prosecutor will present your case to the Court at trial.

Everything that is said in evidence must be true and relevant to the case. Giving evidence about a sexual offence can be challenging. Some tips that may assist you are:

Before you get to trial

- Counselling before a trial may help to prepare you for the experience of giving evidence
- Ask prosecution to keep you informed of steps towards trial
- Seek legal advice to help you to prepare for giving evidence
- You can ask for a person to be present in court as emotional support while you are giving evidence

When you are giving evidence

- Take your time
- Give evidence of the things you saw, heard, felt or did
- Answer the questions in your own words
- Only give information that was asked for
- Do not answer a question you do not understand (you can ask for the question to be repeated or ask for clarification)
- If you cannot remember, tell the Judge that you can't remember
- Do not give your opinion unless you are asked
- Ask for a break if you need time to calm down. You cannot discuss evidence with anyone during this break.

The Judge will close the Court while you give evidence. Members of the public will not be allowed in the courtroom. The jury will be present during this time.

If you find it difficult to talk about what happened when you were sexually assaulted the Judge may take special measures such as:

- Putting up a screen between you and the accused
- Allowing you to give evidence before the trial by video link from a remote witness room

Making a Victim Impact Statement

As a victim / survivor of sexual violence, you have the right to tell the Court how the crime has affected you. You may provide the Court with a “Victim Impact Statement”.

A Victim Impact Statement is like a letter to the Court telling the Court that the sexual violence had on you. The statement will help the Judge understand how you have been affected by the crime and take this into consideration when sentencing the offender.

A copy of your Victim Impact Statement will be given to the accused’s lawyer and will probably be read by the accused person.

If you need more information about making a victim impact statement, contact Victims Assist Queensland:

- Phone: 1300 546 587

What if I Change my Mind and Do Not Want to go to Court?

If you change your mind about going to trial, you should discuss your concerns with the prosecutor. However, the Director of Public Prosecutions has the final decision about whether a case should proceed to trial. Your wishes will be considered by the Director of Public Prosecutions.

Where Can I get Legal Advice?

You can seek legal advice from a lawyer on such things as:

- The Court process
- Preparing to give evidence
- Your rights as a victim of a sexual offence, for example your Victim Assist entitlements.

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Some free Legal Services in North Queensland are:

- **The Aboriginal and Torres Strait Islander Women’s Legal Services, NQ Inc.**
 - ◇ Free call: 1800 082 600
 - ◇ Phone: (07) 4721 6007
- **The Aboriginal and Torres Strait Islander Legal Service (Townsville)**
 - ◇ Phone: (07) 4722 5111
- **North Queensland Women’s Legal Service (Townsville)**
 - ◇ Free call: 1800 244 504
 - ◇ Phone: (07) 4772 5400
- **Queensland Indigenous Family Violence Legal Services (Townsville)**
 - ◇ Phone: (07) 4721 0600



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FREECALL 1800 082 600 or (07) 4721 6007

DISCLAIMER WARNING: Care has been taken in the preparation of the material in this document; however every person and every family is different. This fact sheet is provided for community educational purposes only. It is not legal advice and it is not a guide to your legal matter. If you have a legal issue, it is recommended that you make an appointment with a lawyer or legal service. Please also note that the law changes constantly and the information in this factsheet is only accurate to **April 2019**. ATSIWLSNQ does not warrant its accuracy beyond that time.