GILSHENAN & LUTON
LEGAL PRACTICE

What is a committal hearing?

Author: Callan Lloyd
Email: clloyd@gnl.com.au
Phone: 0421 406 476
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A committal hearing is a preliminary hearing held in the Magistrates Court to determine whether there is sufficient evidence for an accused person to stand trial in a higher court. Committal hearings are only held where the defendant is charged with a serious offence, also known as an indictable offence.

The committal hearing is the usual procedure by which criminal cases are transferred from the Magistrates Court (where all criminal cases start) to the appropriate higher court (the District Court or Supreme Court, as the case may be). A committal can generally take one of three forms:

1. A “registry committal”; or
2. A “full hand up” committal; or
3. A committal involving oral evidence from some or all prosecution witnesses.

Prosecution witnesses can only be cross-examined (questioned) by the defence with the agreement of the prosecution or with the permission of the court. This is different to proceedings once the matter progresses to a higher court for trial, wherein all prosecution and/or defence witnesses may be cross-examined.

Preliminary steps

After the initial appearances in court (also referred to as “mentions”), the defence need to decide how the accused’s committal hearing should proceed. The different options are explained below.

Prior to making a decision about a committal hearing, the prosecution will usually have to provide to the defence a “prosecution brief”; i.e. a copy of the statements and exhibits it relies on against the accused person. The court system generally then requires the lawyers involved on both sides to have a “case conference” to see if any issues can be settled by negotiation.

The case will usually then progress through other steps (called the “committal callover” and then the “committal mention”) on its way to being committed to the relevant higher court.

What is a registry committal?

Under a registry committal, there is no committal hearing as such. The court registry processes the committal administratively (with no-one present) after the defence has filed certain forms with the court.

The parties (prosecution and defence) must agree to the charges being committed to the higher court for trial (or sentencing), however, only the defence can make the application for a registry committal.

What is a full hand up committal?

A full hand up committal takes place where the statements within the prosecution brief are provided to the magistrate and the defence indicates that it does not wish to cross-examine any of the prosecution witnesses. Present at a full hand up committal will be the presiding Magistrate, the prosecution, the defence lawyer/s and the accused themselves.

Like registry committals, this is quite common and there are a number of instances when such a course is tactically wise.

It is very common for people wishing to plead guilty, to have a registry committal or a hand up committal so it can later be said on their behalf (to the sentencing judge in the higher court) that they have tried, throughout the process, not to inconvenience witnesses. If a hand up committal option is chosen, it usually takes place within a month of the committal callover, or at the time of the committal mention.

What occurs in a committal involving oral evidence from prosecution witnesses?

If the defence require any prosecution witnesses to be cross-examined at the committal hearing stage, the consent of the prosecution or an order of the court is required.

This involves a detailed application setting out the specific witnesses to be questioned and the proposed topics of questioning. If the application is allowed, the matter will be adjourned to another date for that cross-examination to occur. On the appointed day for the committal hearing, the Crown (prosecution) witnesses required to give evidence are called to the witness box and are cross-examined by the defence.

- The primary purpose of such an exercise is to test the accuracy and reliability of Crown witnesses to see if there is sufficient evidence to justify committal to the higher court. It also allows the defence to explore possible weaknesses in the Crown case

and perhaps explore other lines of enquiry prior to trial.

- Giving evidence at committal also makes witnesses commit to a particular version of events. The committal proceedings are digitally recorded and transcribed and a copy of the transcript, called the “depositions”, is made available to the defence a few weeks after the committal hearing. If witnesses depart from their earlier versions when giving evidence at trial, their earlier evidence from the committal can be used to challenge them.

Cases involving child witnesses are subject to special rules. Generally speaking, the defence cannot question child witnesses at committal in cases involving allegations of sexual impropriety and in some instances, of alleged violence. In such cases, the defence can still apply to question any other adult witnesses at committal and leave the questioning of any children for a later time (after committal, but before pre-trial).

It is possible to apply to the court to be allowed to question child witnesses at committal, but this is rarely allowed.

Deciding whether to have a committal with cross-examination

Deciding whether or not to cross-examine witnesses at committal is an important decision.

If an accused person is determined to plead not guilty or is undecided but feels that there are many unanswered questions arising from the prosecution material, a committal hearing with cross-examination is often best. If permitted (remembering that the prosecution or court must agree), this allows for detailed questioning of witnesses to take place, to better understand the prosecution case. This knowledge can be of great benefit to the defence at a later trial.

There is one recognised drawback in having a committal hearing with cross-examination though. If an accused person later pleads guilty or is found guilty after having earlier chosen to cross-examine witnesses at committal, the court will commonly take that fact into account as showing a lack of remorse. The inconvenience to witnesses is also taken into account.

Consequently, the sentencing “discount” commonly applied to someone who pleads guilty without contesting the prosecution case, will not usually be fully extended to someone who has had a committal hearing with cross-examination.

The test applied – what’s considered when deciding to commit a defendant to trial?

Where a committal hearing proceeds via a registry committal, the Registrar does not decide whether there is sufficient evidence to progress the matter to a higher court. It is simply an administrative process, where both the prosecution and defence have agreed to the charges progressing to the next court.

Where a committal hearing proceeds by way of hand up or cross-examination of witnesses, the magistrate must consider whether there is sufficient evidence to commit a person for trial to a higher court.

In the vast majority of cases, magistrates decide to commit the accused person to trial. This is largely because the test applied by the magistrate at committal is simply whether a jury *could* (not would) find the accused person guilty of the offence charged. It is a

particularly low test and one that can be satisfied by even flimsy evidence.

In a committal with cross-examination, the accused person does not normally give evidence or call any other evidence at the committal hearing. The true purpose of the committal hearing is to focus upon the sufficiency of the Crown case, not the defence case. Whilst it is possible for the accused to give evidence at committal, in practice this is rarely done, and our experience over many years indicates that not calling evidence at committal is tactically the best course for an accused.

What happens after the committal hearing?

If a magistrate or the registry commits an accused person for trial, the matter is transferred to the appropriate higher court. Some months later, an “indictment” is presented to the higher court. This is simply a document containing the charges to be heard by the higher court (usually the original charges brought by the police, unless modified following the committal).

If a person is not committed for trial, the proceedings are dismissed. The accused person is free to go and the charges are no longer on foot.

In special circumstances, however, the Director of Public Prosecutions can reinstitute charges that have been dismissed at committal by a magistrate. Such a process was recently enlivened by the DPP in the high-profile manslaughter case of Cairn’s childcare worker, Dionne Batrice Grills over the death of a toddler left on a minibus.

In summary

The committal hearing is a vital part of any defence case and decisions made at the committal stage can have a major effect on the ultimate outcome of a criminal matter. It is important that accused persons properly understand the committal process and the benefits that can be gained by making considered, informed decisions at this preliminary stage.

Contacting a Gilshenan &Luton criminal lawyer

07 3361 0222 (24/7)

gnl@gnl.com.au

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