

3.3 Legal personnel in a criminal trial

Criminal trials often involve a large number of participants, both behind the scenes and in the courtroom itself. They are involved in various aspects of the case from the beginning of the investigation through to the end of the trial. The non-legal participants in a criminal trial include the accused, any witnesses called to testify and the police responsible for investigating the case. Most criminal trials will also involve a number of legal personnel some of the most important are outlined below.

Judges and magistrates

Judges and magistrates are judicial officers who preside over court cases and make determinations in court based on the evidence presented. Judges and magistrates are legally qualified professionals who have considerable experience in the law. They act as the umpires of court cases, making sure that the rules are followed and that a fair trial is carried out (procedural fairness). Whether a case is heard by a judge or a magistrate will depend on the jurisdiction under which the crime which the suspect commits.

Judges

Judges are the judicial officers who preside over the intermediate and superior courts – the District Court and the Supreme Court. Judges oversee proceedings, maintain order in the courtroom and ensure that the procedures of the court are followed. Judges will make decisions about points of law and give instructions to the jury to make sure they understand the proceedings and the evidence presented to them. Once the jury has reached a verdict, the judge will hand down sentences and rulings. In some cases the judge will sit without a jury – in such cases the judge will determine the verdict, either guilt or innocence.

Magistrates

Magistrates are the judicial officers who preside over hearings in the Local Court. Specialised magistrates also hear cases in the Children's Court. In criminal law, magistrates will hear summary proceedings in the Local Court, as well as indictable offences triable summarily where the accused has consented to the case being heard by a magistrate. Magistrates oversee proceedings and make a determination on the basis of the evidence presented. Once a

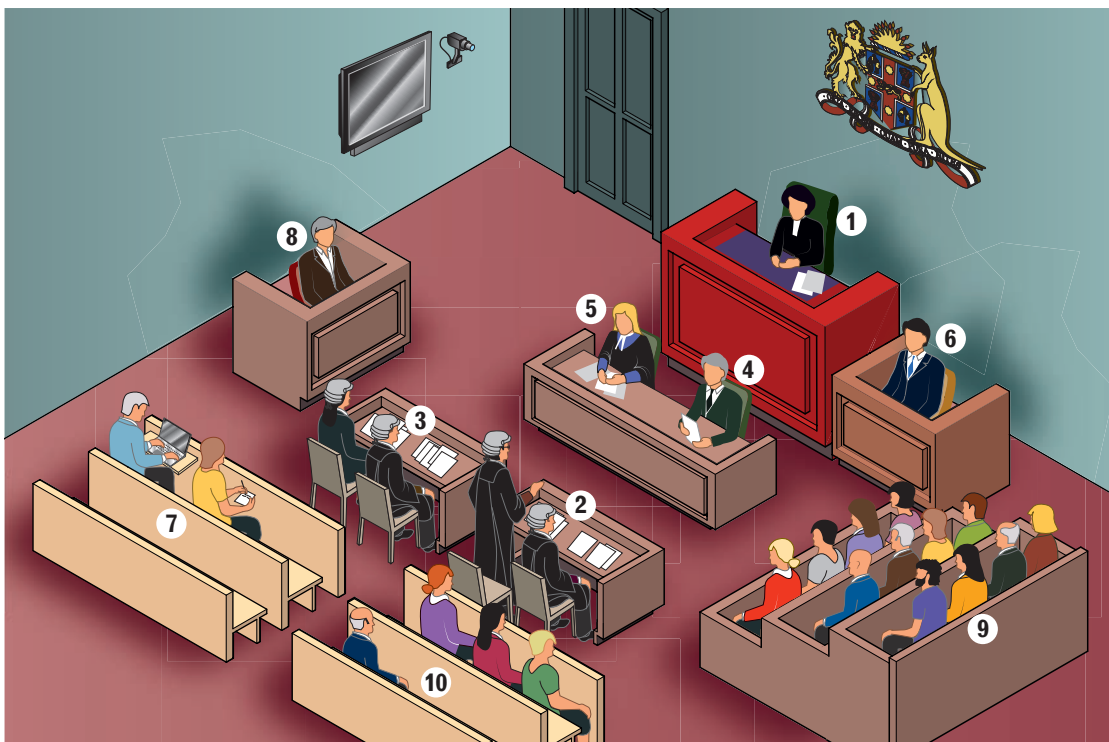


Figure 3.7 Court cases involve a number of key participants, including 1 judge or magistrate; 2 prosecutor (for example, police prosecutor or Director of Public Prosecutions); 3 accused's barrister or solicitor; 4 judge's associate; 5 court reporter; 6 accused; 7 media; 8 witness; 9 jury; and 10 public gallery.

magistrate has found an accused person guilty, they will also pass sentence. Magistrates will also conduct committal proceedings for indictable offences to be tried, and will usually hear bail proceedings.

Prosecutors

In criminal trials, the state or 'Crown' is represented by a prosecutor who brings the action against the accused. It is the prosecutor's role to prosecute the offender in a court of law and obtain an appropriate form of sanction or punishment for the offence. There are two types of prosecutors in criminal trials: **police prosecutors** and **public prosecutors**.

police prosecutor

a NSW Police Force officer trained in prosecution, usually used to prosecute summary offences

public prosecutor

a legal practitioner employed by the Director of Public Prosecutions, usually used to prosecute indictable offences

Police prosecutors

Each criminal investigation begins with the police and they are an essential part of any criminal case. The police must undertake an intensive and exhaustive investigation of the matter and gather all the evidence and information that will be used at trial to form the case against the accused. The police will often also be required to give testimony at the trial to aid the prosecution's case.

For summary offences in the Local Court and Children's Court, cases will usually be prosecuted by police prosecutors. Police prosecutors are members of the NSW Police Force with specialised legal training to conduct prosecutions. Police prosecutors handle most summary cases in New South Wales. More serious offences are dealt with by the public prosecutors (see below).

Director of Public Prosecutions

For indictable offences and some summary offences, cases will be prosecuted by the NSW Office of the Director of Public Prosecutions (DPP). The DPP will also conduct some committal proceedings for indictable offences. The DPP is an independent authority that prosecutes all serious offences on behalf of the New South Wales Government.

Prosecutors employed by the DPP are barristers or solicitors and have numerous years of experience

in the criminal justice system. It is their job to prosecute the case using the evidence gathered by the police. In court their role is to ask questions of the witness on the stand and draw out the truth from the evidence and testimony given by the witnesses.

The DPP does not investigate crime – that is the responsibility of the NSW Police Force – but it prosecutes cases once sufficient evidence has been gathered. The DPP operates independently of the government in deciding which matters to prosecute. It reviews cases proposed by the police to determine if there is enough evidence to succeed. The DPP will prosecute a case where it is in the public interest to do so. The independence of the DPP from government is vital to ensure that cases selected for prosecution are chosen on their merits and not because of political interference or public pressure.

The decision to prosecute will depend on many factors, including:

- whether the evidence is sufficient to establish the elements of the offence
- whether the evidence is sufficient to gain a conviction by a reasonable jury
- certain discretionary factors that relate to the public interest. These include the seriousness of the offence, the special circumstances of the offence, accused or victim, the need to maintain public confidence, the likely length and expense of the trial, and the likely outcome and consequences of a conviction.

Barristers and solicitors

A person charged with an offence will usually contact a solicitor, who will be able to give the accused advice on a range of matters, including the charge, the alleged offence and the procedures surrounding a trial, and will assist in interactions with the police investigating the case. The solicitor may also advise on any available defences, the likelihood of conviction and possible sentences. Many solicitors specialise in criminal law or particular areas of criminal law.

A solicitor may also represent the accused in court, or engage (employ) a barrister to represent the accused. It is common to see solicitors appearing in the Local Court, but it is more common to see barristers in the higher courts. This is due to the fact that barristers are specialists in their field and deal specifically with criminal law, for example,

every day. Barristers have two main roles in court proceedings: to provide legal advice for the accused on the likely outcome of the case and to present that case in court.

Public defenders are paid public barristers who are independent of the government and perform the same duties as other barristers. They will appear or advise in relation to criminal trials, sentencing matters and appeals in the District Court or Supreme Court, and may be briefed (instructed) by a private solicitor, through the Legal Aid Commission or through a community-based legal group.

Public defenders

Where an accused cannot afford to pay for a barrister or solicitor, they may be granted access to a **public defender**. Public defenders are barristers who appear in serious criminal matters for an accused who has been granted **legal aid**.

public defender
a public barrister who can appear for an accused in a serious criminal matter where legal aid has been granted

legal aid
a subsidised legal service provided by the state for those on low incomes

If an accused has been charged with a serious indictable offence and is eligible to receive legal aid, they may be granted a public defender to represent them in court.

3.4 Pleas and charge negotiation

After an accused is charged with an offence and the trial process proceeds, the law requires the accused

to enter a **plea** of either guilty or not guilty. At a plea hearing the accused will state their plea in front of a judge. If they enter a 'no plea', it is written on the record as a 'not guilty' plea.

plea
a formal statement of guilt or innocence by the accused

The plea entered by the accused will have a significant impact on how the charges are dealt with. A guilty plea will be dealt with quickly, going straight to a sentencing hearing at a higher court, and does not require witnesses to give testimony.

If the accused pleads not guilty, the case will be defended in court. The dates of the trial will be set. This may be a long time away, and the accused will be granted bail or remanded in custody until that date. If an accused pleads not guilty and is found guilty, they may find the sentence that they are given is affected.

An often controversial tactic used in criminal proceedings is **charge negotiation**. This is where the accused agrees with the prosecution to plead guilty to a particular charge or charges. It usually involves pleading guilty to a lesser charge in exchange for other higher charges being withdrawn, or pleading guilty in exchange for a lesser sentence. Charge negotiation is sometimes known as 'case conferencing' and can be conducted at many stages of the criminal process. It will usually result in a faster and less expensive case for the prosecution, the

Review 3.4

- 1 Explain the difference between the adversary and inquisitorial systems of law.
- 2 Explain why the inquisitorial system of law could be seen as biased.
- 3 Describe the types of cases heard by a magistrate and by a judge.
- 4 Explain the role of the prosecution in a criminal trial.



Figure 3.8 The accused is expected to enter a plea.