

FACT SHEET — *This fact sheet is for people of all ages.*

What will happen in court?

There are two kinds of court hearings. The first is the committal hearing where a magistrate (judge) decides if there is enough evidence for the case to go to trial, which is the second kind of court hearing. If you live in a country area you may not want the court hearings to be held locally. You have every right to ask for the court hearings to be held in another town.

The committal hearing

The committal hearing is held in a Magistrates' Court and will probably be heard a couple of months after the accused is charged with sexual assault. The magistrate may allow a closed court while the person who was assaulted gives their evidence. Their name will not be given in court.

The person who was assaulted is a witness (not a defendant) so they don't need a lawyer to represent them in court. The case against the accused is presented by a Barrister briefed by the Director of Public Prosecutions. The accused may not have representation (a lawyer) at the committal hearing, but they will need one if there is a trial. The accused does not have to give evidence at the committal hearing, but they must enter a plea (guilty or not guilty). If the accused has a lawyer, then they will speak on their behalf.

The trial

The second court hearing is the trial. This is usually before a Judge of the County Court and a jury. A trial is generally not a closed court. However, on application by the prosecution and at a Judge's discretion, the court can be closed while the person who was assaulted gives their evidence. If the accused pleads guilty then the person who experienced the sexual assault will not have to give evidence or even attend court at all. If the accused pleads not guilty, they will have to give evidence under oath in the witness box and be cross-examined by the defence (the lawyer representing the accused). Other witnesses may also be asked to give evidence.

The trial may take a few days or several weeks. At the end of the trial, the jury gives a verdict and the Judge then passes sentence.

Frequently asked questions

Can a person be questioned in court about their past sexual history?

Evidence about someone's sexual past is not allowed. For example: what other people think or say about you will not be used as evidence. Information about your past sexual experience is only allowed if it is directly relevant to the case. For example: if a person is raped by a someone with whom there has been a previous sexual relationship, what has happened between them previously may be relevant to the case.

What happens if the accused claims that they believed the person consented to sex?

Currently the law says that the Prosecution must prove that the accused was aware that no consent was given, or, if the assaulted person did object, the accused went ahead regardless. This means that the person who was sexually assaulted needs to prove that the accused knew there was no consent. If you were sexually assaulted and were too paralyzed with fear to say ‘no’, or object in any way, this does not mean you gave your consent. Doing nothing is not giving consent. Sexual assault is an abuse of power and is never your fault.

Can a partner be charged with the rape of their partner?

Yes. Consent is needed for every sexual act regardless of marital status.

What kind of sexual behaviour is covered by the law?

The law covers penetration of any body orifice (anus, mouth or vagina) by parts of an offender's body or by other objects. Attempts at any of these types of sexual behaviours, as well as indecent assault or encouraging or inciting others to commit acts of indecency are also covered.

Can young people be charged?

Young people over 10 years can be charged with rape and other sexual offences.

What happens if there is no witness to back up the accused's evidence?

Often there is no eyewitness to back up the accused's version of what happened. But there can be other details such as medical evidence or torn clothing. It is not legally necessary that there be another witness, but without some supporting evidence it will be hard to get a conviction. Evidence can also be provided by someone the person who was assaulted spoke to soon after the attack. This is especially useful if the assault was not reported to the Police immediately. On some occasions if there is no evidence available at all the matter cannot proceed to Court.

What happens if a person does not report the sexual assault soon after it happens?

A person may have good reason for delay in reporting the sexual assault. However, if a person does not report the assault soon after it occurs it can be more difficult to prove in court that it did happen, especially if the person has not been to a Centre for Sexual Assault (CASA) or has not had medical examination.

What happens at court if it was a pack rape?

If several people are accused of rape, they may be jointly committed at the same committal hearing or separately at separate hearings. If not guilty pleas are entered the person who was raped will be cross examined by more than one person, since each of the accused is entitled to have their own lawyer. If all the accused plead guilty then the person who was raped will not have to give evidence at all.