

Criminal Matters

Q:

I have been charged with a criminal offence and do not know what to do.

What would be your initial advice?

A:

This is a common query from those who have never faced a criminal charge. The first thing to remember is that a person has the right to remain silent. People often believe they can talk their way out of a charge, in some instances this may make matters worse.

We therefore recommend not answering any questions you are not legally required to answer (generally only your name and address) until you have spoken with your lawyer.

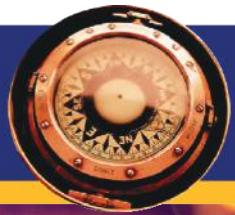
Specific defences are available for certain charges, which should be considered before deciding how to proceed.

Unfortunately, many people plead guilty to simply ‘get it over with’. They do not realise the impact this can have if any further offences are committed or whether a charge could have been defended or a lesser penalty achieved. Certain penalties such as the recording of a conviction can have detrimental effects on future employment and possible overseas travel plans.

Those who do plead guilty are given an opportunity to describe their background, the circumstances of the offence, and any reasons why their penalty should be reduced. There are also incentives for early guilty pleas.

Contested charges that do not resolve at earlier proceedings are decided at Trial. In most police matters, the Prosecution must prove the charge beyond reasonable doubt, which means that no reasonable person would have any reasonable doubt that you are guilty of the offence with which you have been charged.

In some circumstances you may also be eligible to claim against the police part of your legal costs if you are successful in defending the charge.



Q:

What are my rights when being questioned by Police?

A:

It is important that you remain cooperative and polite with Police but we recommend that you exercise your right to remain silent until you have received legal advice. There are some questions that you are required by law to answer otherwise you will be charged with further offences. The information that you must provide to Police is:

- Your full name.
- Your address.

If the Police inquiry relates to your registered motor vehicle then it will be necessary for you to provide the name of the person that was driving your motor vehicle at the date and time nominated by Police.

To other questions simply reply, “I exercise my right to remain silent until I receive legal advice” – or simply say “I don’t wish to answer”.

Ring Scammell & Co. on 8447 4466 or 8212 6875 (or after hours on 0412 975 081) as soon as the Police give you an opportunity to call a solicitor. We will provide you with further advice over the telephone and can even negotiate with the Police to get bail for you.

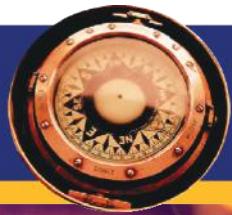
Q:

I have just had my first court appearance and the matter has been adjourned (put off to another date). Am I still on Bail?

A:

The short answer is usually “Yes”, unless the Court formally withdraws your bail agreement. Assuming you have been arrested (not summonsed to court) you may have entered into a police bail agreement. Once you go to court and adjourn the matter, most Magistrates will say that Bail is to continue, which means you are placed on court bail for the duration of your court case.

If you are on bail, it is very important that you follow all of your bail conditions including attending every court hearing in your matter. Breaching your bail conditions is a criminal offence punishable by imprisonment. If you wish to have anything altered on the bail agreement – for example, you want to move house and change your bail address – you will need a solicitor to make a formal application to the court to vary your bail. We can explain your bail conditions to you.



Q:

I have recently been arrested and placed on police bail to appear in court at a later date. I need to get my bail conditions varied to travel interstate for work. What should I do?

A:

Prior to your first court date the police (not the court) have control over your bail and bail conditions. To change your conditions or to seek permission to leave the state you will need to go to the nearest police station, speak to the bail sergeant and make that request to vary your bail conditions. We are able to assist you in conducting these negotiations with the police. If the police will not alter your bail, you will need to wait until your first court hearing before you can apply to the court to vary your bail.

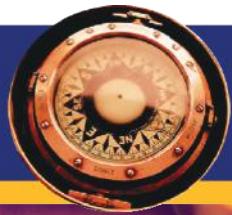
Q:

have been charged and asked if I would like to provide a statement. Should I do this?

A:

The safest option is usually not give a statement to police. Providing a statement is unlikely to help your case, even if you think that you can “explain everything”, and even if you believe that you are guilty of the offence and just want to “give a confession”. Do not feel pressured to provide a statement – remaining silent cannot be held against you in court. Sometimes your statement is the strongest evidence that the police have against you. Providing a statement to police may affect our ability to persuade police to drop their charges.

We are able to obtain statements, notes, CCTV footage, forensic test results and other evidence from prosecution in relation to your matter. It is important we review that material prior to obtaining your final instructions.



Q:

Should I involve the media in my case?

A:

It is almost always not advisable to involve the media in your matter. Although this is always your decision, we ask you to bear in mind that your statement and the media's interpretation of it may impact negatively on our ability to successfully negotiate with Prosecution regarding your matter. Further, your statements to the media can be used as evidence at any trial that may take place in your matter. Finally, the media will not always report things in the way that you want them to report. For all of these reasons, giving a statement to the media could have a negative impact on the outcome of your matter.

Contact Us Today

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