

Crime FAQs



- **What are my obligations if I am arrested?**

If you are arrested by Police, there are many aspects which people should be aware of.

The first is that you have a right to remain silent.

Despite Police suggesting that you should or can talk to them, you do not have to, not at all. If Police ask you to go into an interview room and speak to them, even just to record that you do not wish to be interviewed, you do not need to do this.

Secondly, you have the right to get advice from a solicitor. Even in the middle of the night, Legal Aid solicitors are on standby to be called. You have the right to seek their advice and to not speak to Police until you do so. You also have the right to have your solicitor present prior to being questioned by police.

Finally, if you are a minor, or someone with a mental impairment, you have the right to have a parent, guardian or support person with you during any police interview.

- **How can a solicitor help if I am called to attend a police interview?**

Having a legal mind present during a police interview can be invaluable for someone who has been arrested and may be charged with a crime. In the first instance, our advice is always don't give an interview! There are very few cases from the perspective of a defence lawyer where a client having done an interview has helped their case in the end.

If you do wish to do an interview, having a solicitor present can ensure that the Police ask appropriate questions and that you do not answer any question which may be disadvantageous to you.

- **I have been caught drink driving. Will I lose my license?**

Yes, you might. While a drink driving charge can sometimes be considered a 'low level' offence, it can have far reaching practical consequences for people charged and should be taken seriously.

There are different levels of drink driving charges which impact the likelihood of you losing your licence. These levels likewise impact the length of time you might lose your licence for. Any previous criminal offences of a similar nature, as well as any aggravating or mitigating features of your offence may also tip the scale as to loss of licence or the length of same.

It is important that you get legal advice as soon as possible to understand your position and to be able to get the best outcome in the circumstances.

- **How do I apply for bail?**

If you have been arrested, you have the right to apply for bail in most circumstances. For most crimes, there is a presumption in favour of bail, however there are some crimes, or circumstances of committing an offence, where there is a neutral presumption in relation to bail, or even a presumption against bail.

If you are brought before the Court after being arrested, you can apply for bail at this time. If you are coming back before the Court, or wish to apply for bail anytime

thereafter, you must lodge an application for bail ahead of time, to ensure that the Court and the Police or Prosecution are aware of the application for bail. An application for bail must be lodged a minimum of 48 hours in advance of the proposed date for the application to be heard by the Court.

In both ACT and NSW, there is a limit on how many times you can apply for bail without having a significant change in circumstance to prompt a further request for bail. It is important that you do not squander your change for bail by making an application too soon and running out of opportunities.

- **I have been charged with an offence but I didn't do it. How do I plead not guilty?**

Entering a plea of not guilty is an important step in a matter, particularly as it has varying consequences with regard to a discount on sentence you might receive should an early plea of guilty be entered. Prior to entering a plea, it is important to get legal advice as to what your position is and the legal validity of that position. There are many reasons why, despite your understanding of the matter, the law may have a completely different view.

Appearing before the Court to enter a plea of not guilty will also have numerous flow on effects as to hearing dates, witnesses, subpoenas which may need to be issued and the service of the brief of evidence by the Police or Prosecution.

- **I want to plead guilty to an offence, but I am scared about the effect it might have on my job. What can I do?**

There are many reasons why a person might decide to plead guilty to an offence, including having committed the crime, limited financial resources or lack of time. There are a number of offences which will impact employment, security clearances for Government, security licences, gun licences and overseas travel. The effect of these need to be clear prior to entering a plea of guilty as, once it is entered, it is very hard to change it.

Other than if a person received a "non-conviction" for their offence by the Court, which happens in specific circumstances for relatively minor offending, you will have a conviction on your record forever. Even with a "non-conviction", there will still be an entry on your criminal record forever, however it will note that you received no conviction. There is a common misunderstanding that after time a criminal history will wipe away, this is not true. The flow on effects can be substantial.

Speak to one of our solicitors about achieving you the best possible sentence outcome and possibly being able to seek a "non-conviction" Order by the Court.

- **Will a conviction affect my Working with Vulnerable People check?**

Yes, possibly. A WWVP Card will include a police check, which will show all criminal history. It is at the discretion of this issuing authority as to whether certain offences will warrant not giving, or revoking, a WWVP Card from someone. Obviously, there are some offences which will immediately prompt a revocation or non-issue of a Card, however many offences may only be considered as a concern, rather than an automatic decision.

- **What is an EAGP (Early Appropriate Guilty Plea)?**

In NSW, legislation has been enacted with regard to the timing in which Defendant's enter a plea of guilty for their matter if it is a matter which will ultimately be before the District or Supreme Court. This is known as the Early Appropriate Guilty Plea (EAGP).

In most jurisdictions, an early plea of guilty will attract a discount on sentence of up to 25%. This is an incentive for Defendant's to plead guilty to not waste Court and Police/Prosecution resources as well as not putting Victims through the trauma of a hearing or trial.

NSW has now legislated further to make it clear to Defendant's how much discount they are going to receive depending on the time they enter their plea. The discounts are broken down as follows:

DISCOUNT	TIMING
25%	If you enter a plea of guilty any time prior to the matter progressing through the committal proceedings in the Local Court and being committed to the District Court.
10%	If you enter a plea of guilty after committal by prior to 14 days before your trial begins.
5%	If you plead guilty anytime from 14 days before trial onward.

Therefore, it is more important than ever to get legal advice as soon as possible. If you are in NSW and proceed with a plea of not guilty and the matter is committed, the 25% discount is lost forever.

- **What does it mean to accept jurisdiction in the ACT?**

There are three different types of matters in the ACT:

Summary Offences	Maximum penalty is less than 2 years in custody
Summary Indictable Offences	Maximum penalty is between 2 and 10 years in custody.
Indictable Offences	Maximum penalty is over 10 years in custody.

Summary indictable offences can therefore either be dealt with in the Magistrates Court or the Supreme Court. The law assumes that, unless the Defendant agrees to accept that the matter stays in the Magistrates Court, it will go to the Supreme Court. Generally speaking, in most cases, the Defendant would want the matter to stay in the Magistrates Court as the maximum penalty the Magistrates Court can hand down is 5 years full time custody, as opposed to the Supreme Court which can hand down any maximum penalty.

Therefore, accepting jurisdiction in the ACT Magistrates Court is extremely important as it can affect the penalty someone may receive if found guilty, as well as the length and cost of a matter.

- **My partner has obtained an AVO/FVO against me. What happens if I breach it?**

If you breach an AVO or FVO, you can be arrested and kept in custody. You can also be charged with a criminal offence of breaching the Order. An AVO or FVO is not itself a criminal matter. It is not on your criminal history or police check if you have an AVO or FVO against you. However, if you breach it by not complying with the Order, that is a criminal matter, and will be on your criminal history.

An AVO or FVO is a civil Order for you to adhere to the conditions listed. The onus is on the Respondent (or person the Order is against) to comply with it. Even if you are, for example, called by the Application (or Person In Need of Protection – PINOP), if the Order says you can't speak to them, do not answer the phone. If the PINOP invites you over willingly but the Order says you cannot go to their house, do not go to their house. You will be in breach of the Order and face criminal charges.

- **What is a Statement of Facts?**

The Statement of Facts is a short summary of what the Police or Prosecution say are the key aspects of the crime someone is charged with. They are not a fulsome document which outlines all of the Prosecution evidence or witnesses, they are a shortened version for the Court to use to understand the important points. They are not evidence in and of themselves, they are an overview, like a blurb on the back of a book.

If you plead guilty, the Statement of Facts are the only thing the Magistrate will read when considering the Facts of the matter. The Statement of Facts is also used in the consideration of bail, though can be in conjunction with other information or witnesses in certain cases. It is important the Statement Facts is accurate as, once you plead guilty to them, they are the Facts the Court will consider when sentencing someone.

Statements of Facts can be changed with the agreement of the Prosecution/Police or you can have a "disputed facts hearing", whereby you accept the crime and charge stemming from same, but do not accept the Statement of Facts as to how the crime occurred.

- **How do sentencing proceedings work?**

Sentencing proceedings are, generally, the final time a matter will be before the Court. It is at this time that the Magistrate or Judge is considering what an appropriate sentence is for a matter, based on what is known as "objective and subjective circumstances". This is, they consider the objective circumstances of the crime and whether there are any aggravating or mitigating features which might change their consideration of what an appropriate sentence is. They also then consider the subjective circumstances of the person who committed the crime. This is when your solicitor is able to spend significant time explaining your personal circumstances, upbringing, currently lifestyle and personal issues or factors which may have either played a part in your offending conduct, or should otherwise still be considered by the Court as a mitigating factor in sentence.

The Court may also consider Victim Impact Statements or third party reports such as psychologists, drug counsellors or character references from the Defendant.

Once the Court has considered all of these things, they will hand down their decision on sentence. This sentence can be appealed but must be done so within specific timeframes, usually 28 days.

- **What should I bring to my appointment?**

Anything relevant to your matter. All paperwork, notes, Police forms, videos, screenshots that might affect your matter. Even if you are not sure it is important, you should bring it with you just in case. Your charges and Statement of Facts are the most important documents you must bring with you. Without these documents it is very difficult for us to provide you with any advice. We need to know what you have been charged with and what the Police allege.