

Thousands Fined for Jaywalking: A Cash-Grab or Public Safety Issue?

Imagine you're waiting at the lights to walk across – the little man is red, but there are no cars around at all, and haven't been any for what seems like ages.

Would you be tempted to cross anyway? Or perhaps cross from a few metres away from the intersection just to be completely safe?

You may not even realise that this is against the law – until a police officer approaches, informs you that you've committed an offence, and writes up a \$71 fine!

What does the law say?

The definition of pedestrian includes someone walking on or near a public road, and also a person:

- In a motorised wheelchair that has a maximum speed of over 10 km per hour;
- In a non-motorised wheelchair; and
- In a wheeled recreational device or wheeled toy such as a skateboard, roller blades, scooter, unicycle, or the tricycle, pedal car or other similar toy of a child under the age of 12

While the NSW [Road Rules Act 2014](#) primarily relates to vehicles, there is an entire section of offences specifically applying to pedestrians.

These offences include:

- Crossing a road at traffic lights or pedestrian crossings during the red pedestrian light is on;

- Crossing a road within 20 metres of a pedestrian crossing;
- Entering on foot areas past signs marked 'no pedestrians';
- Not taking the 'shortest safe route' when crossing a road, or staying longer on the road than necessary;
- Walking along the road if there is a footpath or nature strip adjacent to the road, unless it is impractical to do so. This rule does not apply to pedestrians who are travelling in a wheeled recreational device or toy;
- Travelling on a path designated to bicycles, unless you are simply crossing over the path; and
- Standing on or moving onto the road to hitchhike, offer to wash windscreens, or display advertisements.

Police can hand out infringement notices carrying fines of \$71 for these offences – but if you choose to take the matter to court and are found guilty, the maximum penalty increases to a whopping \$2,200.

Do police actually enforce these rules?

When it comes to public safety, relentlessly pursuing people jaywalkers probably not the first thought that comes to mind.

But police will often make a point that certain laws exist by organising 'blitzes', some of which can last weeks or even months.

One such blitz focused on jaywalking in the Sydney CBD, [resulting in 4,480 people being given tickets for jaywalking between July 2013 and July 2014,](#).

This year, police have focused on those who cross the road when the pedestrian light is red – even handing-out tickets

even when no cars are around.

The enforcement of these laws is said to be for public safety reasons – pedestrians being on the road when they shouldn't be is cited as a common cause of accidents.

But the breadth and application of the current law has been criticised as unfair, and as a cash-grab with little if any public safety benefit.

Is the current law fair?

There is an argument that the current law is far too broad because it does not consider whether the pedestrian actually caused any danger.

Under the law, a pedestrian can be fined even if there is absolutely no traffic around and there is no conceivable danger to any road user.

Fining people who are not causing any danger may be seen as unfair, and even as making a mockery of the law.

It is suggested that the law could be amended to require some evidence that the pedestrian was actually causing a danger, eg by crossing where there was traffic on the road, rather than simply allowing police to make offenders out of just about everyone in the community.

Indeed, that evidence could be captured on the cameras that are now fitted to many of the officers that are performing the task of catching jaywalkers.

In fact, the officer was wearing a camera on his helmet while issuing a ticket for jaywalking to a pedestrian when there was no traffic on the road at all.

Can I contest a jaywalking ticket?

It can be frustrating to get an [infringement notice](#) for

jaywalking, particularly if there weren't any cars in sight and you didn't even know it was illegal.

You might wish to ask the State Debt Recovery Office for a review. If that fails, you can elect to dispute the ticket in court.

But it should be borne in mind that going to court may not always be a good option, because it can take a lot of time, be stressful, and you could end up with a much higher fine if you lose.

Interestingly, the back of these tickets warns recipients that "less than 4 per cent of penalties result in the recipient not needing to pay the penalty" and that "less than 1 per cent of penalties result in a not guilty verdict in court."

Even if you are successful, or escape penalty by way of a [section 10 dismissal](#) or [conditional release order](#) (which means no penalty), you could be left wondering if it was all worth it.

Unfortunately, infringement notices allow police to easily take action for very trivial offences, while current arrangements make it impractical and financially risky to contest them.

Of course, police know all of this when they issue people with fines for offences that seemingly carry very little public benefit.

The Downing Centre Drug Court

Program: A Glowing Success

The NSW Drug Court aims to assist those battling drug addictions by providing rehabilitation programs to break the cycle of crime and help them to get back on their feet.

The Court commenced operation in 1999, following the success of similar initiatives in the United States.

The first drug court was in Parramatta, and a second one opened in Toronto in the Hunter Region in 2011.

In February 2013, a third drug court was opened at the Downing Centre Courthouse in Sydney's CBD; and it has operated every Thursday in Court 4.7 on level four ever since.

The registry for the Drug Court is located on level one, just outside the lifts.

Getting a Referral

Only certain eligible people can be [referred to the Drug Court](#) and, due to the high demand for the program, those who receive a referral must then have their name drawn from a ballot.

The ballot for the Downing Centre Drug Court is held every Thursday at 1.00pm.

To be referred to the program, the individual must live within the following Local Government Areas: Auburn, Bankstown, Baulkham Hills, Blacktown, Campbelltown, Cessnock, Fairfield, Hawkesbury, Holroyd, Lake Macquarie, Liverpool, Maitland, Newcastle, Parramatta, Penrith, Port Stephens, The Hills Shire or the City of Sydney.

The Downing Centre Drug Court Program takes referrals from the Local and District Courts at the Downing Centre, Central, Newtown and Waverley.

Eligible persons must be over the age of 18, must be facing a sentence of full time imprisonment, be drug dependant, and be willing to participate.

However, people charged with violent or sexual offences, and those who suffer from a serious psychiatric condition, are deemed ineligible.

Some people charged with serious drug crimes are also ineligible for the program.

How Does It Work?

Those who are seeking inclusion must first plead guilty.

The Local or District Court will then impose a sentence, but this sentence will be suspended while the person undertakes the Drug Court program.

If the program is completed successfully, the original court can reconsider the sentence that was imposed and will normally decide to set it aside or vary it in some way to take into account the person's participation in the program.

Those who successfully complete the program will generally be rewarded by avoiding time behind bars.

If the program is not completed for whatever reason – for instance, if a person pulls out or are kicked out, they can be sent to prison. However, the court cannot impose a harsher sentence than was originally ordered.

The Three Phases

Unlike typical courts, which generally take a punitive (punishment) approach towards offenders, the Drug Court focuses on treatment.

Participants [gradually progress through three phases.](#)

Phase 1 is known as the initiation and stabilisation phase.

This phase lasts at least three months and involves a process of detoxification and stabilisation of physical and mental health.

Detoxification takes place in custody at the Silverwater Metropolitan Remand and Reception Centre ('the MRRC') – and all participants must enter custody for detox, even if they are on bail.

A case management plan is developed at this stage in consultation with a community corrections case manager and treatment provider.

Participants must submit to drug testing, attend counselling, refrain from drug use for at least four weeks and undertake psychiatric treatment and medication as directed.

After completing this phase, participants progress to Phase 2, which also lasts for a minimum of three months.

During this phase, participants must remain drug free for significant periods, stay away from crime, develop life skills and maintain their health.

It is during this period that efforts are made to reintegrate the participant into society – for example, by referring them to appropriate accommodation and employment programs.

Again, participants are subject to regular drug testing and must attend appointments with counsellors, case managers and other professionals.

They must also complete the Pathways into Employment, Education and Training Course.

Finally, Phase 3, which lasts for a minimum of 6 months, involves re-integration into the community.

During this stage, participants must remain crime and drug free and maintain a stable home environment and accommodation.

They must also be working, or be ready to commence work, or be otherwise engaged in positive activities or education programs.

Throughout the program, participants must regularly attend reviews at the Drug Court.

A judge heads a panel consisting of people from the DPP, the NSW Police Force, Legal Aid, Corrective Services, Justice Heath, the Department of the Attorney General and Justice, and Area Health Services.

The panel conducts a roundtable discussion prior to court where they discuss each individual's progress through the program, including any outstanding efforts made to engage with the program, as well as any slip ups.

Those who engage positively can be rewarded by reduced restrictions, while those who make mistakes – for example, succumbing to drug use, may have sanctions imposed upon them such as short prison sentences.

Those who complete the three phases will finally graduate from the program.

Does the Drug Court Work?

Initial Drug Court statistics are very promising.

A [BOSCAR review](#) found that those who participated were 37% less likely to be convicted of any offence, 64% less likely to be convicted of an offence against a person (such as assault), 35% less likely to be convicted of a property offence, and 58% less likely to be reconvicted of a drug offence, compared to those who had not completed the program.

These success rates have largely been mirrored in other jurisdictions, including similar programs in [Queensland](#) and [South Australia](#).

It is hoped that such positive result will pave the way for more Drug Courts to be opened around the country.

Party-Goer Sentenced in Downing Centre Local Court

Rebecca Hannibal and her friend Georgina Barttner were two typical teenagers who were planning on attending Sydney's Harbourlife festival last year.

Things changed horribly, when the three ecstasy pills that the girls shared made Georgina sick and she was rushed to hospital. Tragically, she did not survive due to multiple organ failure.

Since then, Rebecca has had to deal with a barrage of public opinion as well as drug charges, all on top of the grief of her friend's death.

Earlier this year, [she pleaded guilty to supplying the ecstasy](#) that ultimately ended in the death of her friend.

The sentencing had been delayed because she was suffering from acute appendicitis, but she was back before the court just recently.

The sentence

Chief Magistrate Henson sat on the case in [Downing Centre Local Court](#).

He expressed concern that drugs had become part of the everyday party scene for many young adults. He noted that the real blame should lie with drug dealers, especially low-level

ones who sold drugs to their friends and family, knowing the harm they could do.

In the case of Rebecca and Georgina, it was Rebecca who had bought three pills from a drug dealer to share with Georgina.

She paid \$60 for her share and each girl took one-and-a-half pills.

[Henson acknowledged that Rebecca was not “legally responsible”](#) for her friend’s death, but found that the community expected action to be taken for her illegal conduct in supplying the drugs:

“Two young women, close friends, go out to enjoy a music festival. They make a foolish decision to buy and consume drugs. Only one comes home.”

Because of this, he imposed a criminal conviction upon Rebecca by placing her on a ‘section 9 bond’ for 12 months.

This means that if Rebecca offends within the next year, she will be brought back before the court and re-sentenced for supplying Georgina, and could receive a harsher penalty. And the fact that she would be on a bond will make any additional offence more serious.

Although Rebecca avoided prison, she was upset to find out that she would get a criminal record. She had suffered enormously since her best friend’s death, including constant hounding by the media. She has moved down to Victoria with her boyfriend to start a new life.

This case shows the potentially tragic consequences of taking drugs, especially when we don’t know exactly what’s inside them. It also shows how easy it can be to face serious charges over what many see as a fun night with friends.

What are the penalties for drug supply?

The definition of 'drug supply' is very broad, and can include buying pills and sharing them with friends – even if you give them away for free.

The penalty for drug supply depends on a number of factors, including the type of drug, the quantity and whether the case remains in the Local Court.

For small quantity, the maximum penalty is two years imprisonment and/or a \$5,500 fine if the case remains in the Local Court or 15 years and \$220,000 if it goes up to the District Court. A small quantity is defined as not more than 0.25 grams of ecstasy, 30 grams of cannabis, or 1 gram of cocaine, heroin or amphetamines.

If you have been charged with a drug offence, you are certainly not alone. Drug offences are very common in the NSW courts – in fact, drug possession is the [fourth most common offence](#), coming in behind mid-range PCA (drink driving), common assault and low-range PCA (drink driving).

There are a range of defences to drug charges, and an experienced criminal lawyer will be able to advise you about whether they apply in your case.

Alternatively, it may be possible to avoid a criminal record even if you wish to plead guilty.

If you are facing drug charges, the best first step is to contact a specialist criminal lawyer who is experienced in drug cases for advice that is specific to your situation.

There are a number of law firms in Sydney that offer a free first conference, and it might be in your best interest to see several lawyers before making your decision about who will best represent you in court.

Violent Movies Give Offender a “Taste for Blood”

36-year-old Luke Woods appeared in Downing Centre District [Courthouse in Sydney](#) this week charged with attempted murder after allegedly attacking a 71-year-old taxi driver, stabbing him 13 times.

The driver, Neal Kent, sustained wounds to his head, shoulders and hands and is fortunate to have survived the attack. He now needs a walking frame to move around. Woods quickly admitted responsibility for the crime, saying that he drank 12 beers and watched six horror movies before getting into the taxi.

[He told police](#) that the violent movies “give me the taste for blood”, and that films like Texas Chain Massacre make him feel like murdering someone.

The court was shown a video of his police interview on Monday, with [Woods stating](#) that “I had the taste for killing, more killing.”

Woods is pleading guilty to “wounding with intent to cause grievous bodily harm” but he also faces charges of attempted murder.

Although Woods’ trial is still ongoing, it raises the question of whether violent movies and video games lead to the commission of violent crimes.

The purported link

There have been several violent crimes over the years which have been reportedly influenced, at least in part, by events contained in movies, games and books. In the US, violent media

has been linked to the Sandy Hook massacre, and more recently, to the tragic Charleston Church shooting.

One proponent of this view is an American preacher, Rev. Franklin Graham, who has repeatedly spoken out against the "[constant stream of violence](#)" that appears in Hollywood movies, believing that they are directly linked to violent attacks.

But is there any evidence to back up such claims?

In-depth studies which have examined the purported link have actually found that despite a large and popular market for violent games and movies, violent crime has gone down.

And just last year, [one long-term US study](#) suggested that there is no link at all. It criticised the methodology of previous studies which had suggested a link between violent video games and real-life crimes. The study looked at the correlation of violent films and crimes from 1920 up to 2005. It found that the expansion of the market for violent games and movies coincided with a drop in the levels of societal violence.

Violent crime in NSW has been similarly decreasing over the past several years, despite the fact that a significant portion of adolescents play graphic video games.

Another [US study](#) found that when popular films are released, violence decreased around the evening and weekend hours of the film's release, suggesting that those who may otherwise have perpetrated crime are instead watching it on screen at the movies.

More to the story

In the case of Woods, it appears that there was much more at play than watching violent films. He suffers from an intellectual disability, and had set out to commit an offence

on the night in question because he wanted help. Woods told police that he was drunk and angry with the world well before he attacked Neal Kent, and was now “sorry for poor Mr Kent”.

He had struggled with mental illness, homelessness and self-harm before deciding to break the law in order to be put in a mental facility, believing it will be “better for everyone, including myself”.

Despite this, the case of Woods will undoubtedly be used by some to further bolster the argument that violence on the computer or TV fuels real life attacks.

Recent Cases in Downing Centre Court

There’s never a shortage of interesting and high-profile cases in the Downing Centre [courthouse in Sydney](#).

Let’s take a look at a few that have played out in the last few weeks.

Former Soccerroo Mark Bosnich

[Former Soccerroo Mark Bosnich was charged with reckless driving](#) after he collided with a cyclist, but he managed to escape getting a criminal record.

The incident began when Bosnich was driving through Sydney’s CBD and a cyclist moved into the middle lane. Bosnich wound down his window and said: “champ, you gotta pull a little to the left, you can’t keep in the middle of the road.”

The cyclist broke off Bosnich's side mirror before an angry Bosnich turned his steering wheel towards the cyclist. The grill and bumper of his car collided with the bike wheel, causing the cyclist to sustain minor injuries to his ribs and elbows. It was later revealed that the cyclist was three times over the legal blood alcohol limit.

Bosnich pleaded guilty to reckless driving but was fortunate enough to avoid a conviction and licence disqualification. His lawyer told the court that Bosnich was remorseful and his reputation had already suffered through being shamed by the media.

He was placed on a one-year good behaviour bond under '[section 10 dismissal](#) or [conditional release order](#)', which means that he avoids any further consequences as long as he commits no further offences for 12 months.

X-factor Judge

34-year-old X-factor judge Luke Jacobz faced a magistrate himself earlier this month after being charged with mid-range drink driving. His blood alcohol reading was 0.116 – more than double the legal limit of 0.05. Jacobz told the media that he was extremely remorseful for his conduct.

The incident occurred the morning after a big night of drinking with friends, which is a common way for drivers to be caught out drink driving.

The matter has adjourned until July 15, when Jacobz is expected to enter a plea of guilty.

Miguel Silva

In March this year, blaring headlines introduced us to Jessica Silva, a woman who escaped prison after being convicted of manslaughter.

Ms Silva had killed her abusive boyfriend, James Polkinghorne,

when Polkinghorne came to her home while high on ice and threatened her. A jury found Silva guilty of manslaughter rather than murder, and she received a two-year suspended sentence.

Now it was Jessica's brother Miguel's turn to face the court, but for a completely separate incident.

[Miguel was charged with being an accessory to the murder of a drug dealer](#) who, it is suspected, was murdered by Polkinghorne. The body of the drug dealer in question, Nikolas Argiropoulos, was found in Leichardt Park after having been shot repeatedly in the face.

Earlier this month, Silva was found not guilty by a jury in the Downing Centre District Court.

The juror who flirted with the defendant

A jury trial was just about to end, when a Court Sheffiff noticed that the [jury foreperson was flirting with the defendant.](#)

The juror, a woman in her 20s, was seen flicking her hair, smiling, raising an eyebrow and nodding in a potentially suggestive manner at the handsome defendant.

As a result of the flirtatious conduct, the Downing Centre District Court Judge discharged the whole jury and listed the case for a fresh trial.

The reason for this drastic move was that His Honour was unsure that the juror could do her job impartially, and that this might affect the ultimate verdict.

He told the court that "discharging a juror for flirtatious behaviour is fortunately not something that happens all that often."

The Dangers of Trusting Others With Your Car

Handing over your keys to a friend might not seem like a big deal, but there can actually be [serious legal consequences](#) for lending other people your car.

Although it's not an offence by itself to lend anyone your car, there have been cases that might make you think twice about it.

What happens if your car is involved in a crime?

If your trusted friend is involved in a crime, such as a police pursuit, it is easy to see how you might become a suspect.

Or if they take it upon themselves to use drugs and leave some behind, you could potentially be charged with drug possession.

Fortunately though, in both of those situations you can often avoid a conviction by bringing the true situation to the attention of authorities.

If you are suspected of certain major traffic offences, police are able to demand that you disclose the identity of the driver at the time. Once you disclose the driver's identity, police should then pursue the culprit.

In the case of suspected drug possession, you (or your lawyer) can write to police advising that you did not have "exclusive possession" of the car; in which case you may be able to have the charges withdrawn, or thrown out of court if police go ahead with the case against you anyway.

What happens if I get an infringement notice in the mail?

If your trusted friend runs a red light or gets caught by a speed camera, the fine will be sent to you.

Once you receive the fine, you should fill out the attached statutory declaration advising that you were not the driver at the time, and identifying the true offender.

Is my insurance void if they crash?

Your insurance company may not cover all of the circumstances whereby another driver has an accident in your car, particularly if they were [driving whilst suspended](#), or driving at high speed, or under the influence of drugs or alcohol.

This could mean that you may not receive an insurance payout, and may even be sued for personal injury if someone was hurt.

Whether or not your insurance company will pay will depend on the policy itself. If they do pay your claim, the company will normally seek to recover the amount from the driver responsible.

What happens if my car is stolen?

Due to the prevalence of car theft and associated crime, the NSW government now expects you to help stop such offences from occurring.

It is therefore an offence under [Regulation 213 of the NSW Road Rules 2014](#) to keep the key in the ignition of your car, or to leave doors or windows unlocked if you are more than 3 metres away and no one aged 16 years or over is inside the vehicle. The maximum penalty is a \$2,200 fine.

If the theft of your car was partly caused by your own negligence, the insurance company may refuse to pay out all or part of your claim.

If you are facing criminal charges through no fault of your own, an experienced criminal lawyer will be able to advise you of your options and the best way forward.

What is 'Beyond Reasonable Doubt'?

If you have been charged with a criminal offence, it is normally up to the prosecution to prove each 'element' (or ingredient) of that offence "beyond reasonable doubt."

But what exactly do those words mean?

"Beyond reasonable doubt" is the tried and true formula used to determine guilt for centuries. But did you know it has no legal definition at all?

According to the [Criminal Trial Courts Bench Book in NSW](#), the standard "beyond reasonable doubt... [is] an ancient one... and it needs no explanation from trial judges."

This may seem baffling, as it is arguably one of the most important phrases in criminal law. Not only this, but coming up with a definition has actually been found time and time again to be perilous.

When criminal cases are heard in the [District Court in NSW](#), defendants have the right to a jury trial – and it is a jury's job to decide whether or not the prosecution has proved the offence "beyond reasonable doubt."

And even when cases come before magistrates and judges-alone, they too must determine guilt or innocence against that test.

It seems logical, then, that fact-finders such as juries, magistrates and judges would want to know the precise meaning of the term – especially given that the future of the person on trial depends so heavily upon it.

Attempts to define the phrase

Judges who have tried to explain the phrase have consistently had their judgments overturned.

This happened in the case of [Green v The Queen \(1971\) 126 CLR 28.](#)

In that case, Mr Green appealed his conviction on the basis that the trial judge's explanation of "beyond reasonable doubt" was an error of law.

During Mr Green's trial, the judge gave a lengthy explanation of the term to the jury.

On appeal, the High Court found that this was an error because the 'explanation' may, at best, have led to confusion amongst jurors and, at worst, caused them to convict where they may otherwise have acquitted.

The High Court found that: "a reasonable doubt is a doubt which the particular jury entertain in the circumstances. Jurymen themselves set the standard of what is reasonable in the circumstances."

Because of the error, Mr Green's conviction was overturned and a new trial was ordered.

Looking for a definition

The lack of a concrete definition is unfortunate because it may lead to uncertain jury members doing their own research into the term, which is against the law and lead the trial being "aborted" and a new trial ordered.

Under [section 68C of the NSW Jury Act NSW](#) , it is an offence punishable by two years imprisonment and/or a \$5,500 fine to ask anyone a question, use the Internet to research, conduct an experiment or conduct an inquiry about the accused or anything to do with the trial.

But even this hasn't stopped jurors from conducting their own investigations – one juror in Victoria caused a mistrial by looking up the definition of “a reasonable doubt” on the Internet.

Defining the indefinable?

Throughout legal jurisprudence, any attempts to define the phrase, or substitute it with other words, have been doomed to fail and condemned by judges in higher courts.

In fact, one judge described trying to define or rephrase it as [“embark\[ing\] on a dangerous sea.”](#)

The phrase has been described as something so commonplace, and such a traditional formula, that it needs no explanation because everyone already knows what it means.

But given the fact that trial judges feel the need to (erroneously) explain it, and jurors continue to seek definitions, it would seem that those assumptions are not quite accurate.

Instead, we have decisions being overturned and jurors facing criminal prosecution – all for wanting to do the right thing.

Teen in Court after Nudie Run for Free Kebab

The Downing Centre is the busiest court complex in Sydney.

It has heard the cases of many high-profile figures over the years; from Justice Marcus Einfield, to Matthew Newton, Jodhi Meares and Freya Newman.

Cases in the [Downing Centre](#) are as varied as the thousands of defendants who find themselves within its walls each year.

So the case of an unknown teenager doing a nudie run wouldn't seem to rank amongst the Centre's most illustrious moments – but just such a case has hit the news headlines.

Eighteen-year-old Victorian Jack Mascitelli recently appeared in Downing Centre Court for [stripping naked and running through the streets of Byron Bay for a free kebab.](#)

Police located the teenager hiding in, where else but a kebab shop. He was arrested and slapped with a \$500 fine, making the 'free' kebab anything but.

However, Mascitelli didn't want the fine to tarnish his reputation, so he took the matter to court, hoping to receive a better outcome.

Mascitelli had to travel from Victoria to the Downing Centre to answer the charges.

And the Presiding Magistrate certainly didn't see the funny side of the dare, calling Mascitelli a "goose" and sternly lecturing him about the inappropriateness of his conduct.

Mascitelli was also rhetorically questioned about why anyone would want a kebab at 8:45 in the morning, saying that he thought kebabs were something eaten at night (perhaps His

Honour has never worked up an appetite after partying all night).

But Mascitelli was fortunate when it came to the penalty; he was given a “non conviction order” after His Honour noted his remorse and acceptance of responsibility. This meant that no criminal conviction was recorded against Mascitelli’s name, and the fine of \$500 was wiped away.

As a law and commerce student, Mascitelli was relieved about the outcome. But the Magistrate warned the youngster that his actions could have jeopardised his legal career.

The nudie footy runner

Not all those found guilty of public nudity get off so easily.

In fact, one man, [Wati Holmwood](#), was sent to prison after he streaked through a rugby match held at ANZ Stadium in Sydney. This wasn’t a first offence for Holmwood, who had already breached two good behaviour bonds.

What does the NSW law say on nudie runs?

Although nudie runs are often seen as a bit of fun, this is not how the law perceives such behaviour. Nudie runs amount to ‘obscene exposure’ – an offence under [section 5 of the NSW Summary Offences Act](#) which carries a maximum fine of \$1,100 and / or imprisonment for up to six months.

But it looks like Mascitelli will avoid any future temptation or penalty, after declaring on Twitter that his days of nudie runs are over for good.

If you have been charged with a criminal offence and have to appear in Downing Centre Court, it is a good idea to speak with a criminal lawyer to find out your options and the best way forward.

Sydney Criminal Lawyers® is located across the road from the

Downing Centre and offers a free conference to those who are going to court.

Guns Inside Downing Centre Court

Law enforcement agencies are constantly demanding greater powers, despite dramatic recent increases in their powers of investigation and arrest, and even immunities from prosecution for criminal offences in certain situations.

The [Police Association is now demanding that officers have the right to take their guns inside courtrooms](#), and mass meetings are reportedly about to commence in a bid to force the change.

But is this really necessary, or even desirable?

Let's take a look at the current law in NSW.

What is the current law?

When it comes to court security, there are rules about what items can be taken into courthouses – and this applies to police too!

Under [section 8 of the Court Security Act 2005](#), it is an offence to carry a restricted item into a courthouse. This includes any firearm, imitation firearm, knife, bomb, grenade, crossbow, spear gun, slingshot, baton, knuckle dusters, handcuffs, body armour vests.

Body-scanners at [courthouses like the Downing Centre Court](#)

check each person who enters the courthouse to ensure that no one brings in a prohibited item.

The rules currently say that police must take off their guns – but they are still allowed to carry their extendable batons, handcuffs and pepper spray.

Police can also seek permission from the court to carry firearms in high-risk cases.

Police Association

The NSW Police Association President Scott Weber claims that police of all ranks need access to firearms in all locations to protect themselves and the community.

He says that the current restrictions are “ludicrous” and that “the safety of both police officers and the community is at risk... It is a tragedy waiting to happen.”

One police officer said “it makes sense, that’s where all the bad guys are.” Of course, not everyone in court is a ‘bad guy’ – in fact, the most likely defendant you will come across is a drink-driver or a young drug possessor.

In fact, those who are suspected of more serious offences will normally be in custody refused bail, and Corrections Officers and Court Sherrifs have done a good job preventing any incidents to date.

So are police using fear-mongering in order to demand more power, or is there a genuine need for more police power?

Despite the security scans, Weber argues that even at a place like the Downing Centre, it would be possible to take in a ceramic 3D gun or knife which would not be detected by the scanners.

Police argue that courts are becoming increasingly dangerous, and could even be the site for terrorist attacks.

While there have been allegations that terror plots have targeted courthouses, there is no actual evidence that this has ever occurred.

Views of the judiciary and lawyers

Judges and criminal lawyers are not convinced that police taking firearms into court is necessary, or desirable.

The Chief Magistrate has so far refused to allow police to bring firearms into court, and perhaps for good reason.

Like many other experienced criminal lawyers, I have personally cross-examined hundreds of police officers on the witness stand – causing many of them to become visibly frustrated, red-faced and angry; especially when their untruths are exposed. The last thing I would want is a furious police officer with a gun on the witness stand.

The mere fact of police having guns in court would, in my view, give them an aura of great authority and power – where any such authority should rest with magistrates, judges and court sheriffs. And for criminal lawyers, having to question someone who has possession of a gun has obvious psychological implications; especially when the cross-examination is lengthy and involves credibility. Such a situation would, in my view, be contrary to the interests of justice.

Police having body armour, batons, handcuffs and pepper spray in an environment where others are unarmed is enough. Guns are simply unnecessary.

Negotiations ongoing

The debate about guns in the courtroom has been going on for months, with police even threatening to black-ban giving evidence in court unless their demands are met. This is despite the lack of any evidence being put forward that police need to have guns inside court.

Negotiations are still going on between the judiciary, police and the NSW government.

One spokesperson from the NSW Department of Justice said that [court security was being reviewed to ensure that “all users”](#) are being protected.

Should Gun Users Have Blood Alcohol Limits?

NSW motorists must adhere to blood alcohol limits when it comes to driving a car or boat, or riding a motorcycle – so should people who handle dangerous weapons like guns be subjected to similar restrictions?

It's not hard to imagine situations involving alcohol and guns going wrong – and anti-gun groups are keen to see specific alcohol limits imposed on those who use firearms.

The Tasmanian Proposal

In Tasmania, amendments to the [Firearms Act](#) which would incorporate a blood alcohol concentration (BAC) limit for gun users are currently being debated in parliament.

The Vice President of Gun Control, Roland Browne, proposes that gun-users should be restricted to a BAC of 0.05 – the same as most drivers.

While Browne acknowledges that the majority of gun owners are responsible, he believes that the law is required to target the few that recklessly drink before performing jobs that require them to handle a firearm.

[Shooters groups vehemently oppose the proposals](#), pointing-out that the industry has been successfully self-regulated thus far.

Under current Tasmanian law, it is an offence to use a firearm while “under the influence” of alcohol – but it can be far more difficult to prove that a person is under the influence than it is to establish a particular level of blood in their system, eg that they are 0.05.

This is because proof that a person is under the influence requires evidence that the person’s ability was actually affected by alcohol, rather than simply producing a reading from a testing machine.

What is the law in NSW?

In NSW, there is currently no BAC limit on gun use.

[Section 64\(1\) of the NSW Firearms Act 1996](#) simply states that a person must not handle a firearm while “under the influence” of alcohol or any other drug.

This is similar to existing Tasmanian legislation, although the penalties differ.

In NSW, the maximum penalty for this is five years imprisonment, while in Tasmania it is a \$7,000 fine and/or two years imprisonment.

What does “under the influence” mean?

Being under the influence does not necessarily mean that a person is highly intoxicated – it simply means that a person’s ability to drive a car (or use a gun as the case may be) is affected or impaired to some extent by the use existence of alcohol.

Police do not currently have the power to require a person in possession of a firearm to undergo a [random breath test](#)

like they do if someone is driving a car.

Instead, to prove that a person is under the influence of alcohol, a police officer must look for signs that a person is actually affected, such as erratic behaviour, glazed or red eyes, having trouble talking, stumbling and the smell of intoxicating liquor.

The story of John Jedrasiak

One man recently got himself into trouble with the law after consuming a few alcoholic beverages with his son over lunch.

[John Jedrasiak](#) worked as a security officer, and the two or three beers he consumed over lunch would prove fatal to his career.

At about 9pm, he went to lock up Cabramatta mall as part of his job. After an altercation with two men who threatened to kill him, Jedrasiak called the police. When they arrived, he was interviewed but things quickly changed when he became the focus of suspicion himself.

The police officer who interviewed Jedrasiak formed the opinion that he was affected by alcohol. He told the Tribunal that he smelt liquor on Jedrasiak's breath and noted his glazed and slightly red eyes.

The officer intended to charge him, but after receiving legal advice, decided not to.

However for Jedrasiak, those beers still came with unfortunate consequences. Although he avoided criminal charges, he ended up losing his firearm licence.

He appealed and the matter came before the Administrative Decisions Tribunal.

The Tribunal found that Jedrasiak had made an error by assuming that he could be drink alcohol and then do his job,

which involved carrying a firearm. It therefore dismissed his appeal and upheld the cancellation of his licence.

The case shows that harsh consequences may flow from using or handling a gun under the influence of alcohol.