Can a Criminal Lawyer ever refuse to take on a Client?

Under Australian law, every person has the right to seek legal representation.

But what if no lawyer wants to take your case?

Are criminal lawyers allowed to refuse, and can they terminate your retainer halfway through?

There are two broad categories of criminal defence lawyers that practice in the courts – solicitors and barristers.

Solicitors are normally the lawyers that you see first.

They will sometimes refer complex or difficult cases to barristers, especially if a case is heading towards a jury trial.

However, there is a common misconception that solicitors are actually less-experienced and less-capable in the courtroom than barristers.

It should be borne in mind that many solicitors have decades of experience in the courtroom and are highly accomplished lawyers who represent clients in court on a daily basis.

By the same token, many barristers are admitted 'to the bar' after finishing law school and 'reading' (ie receiving instructions from another barrister) for just a year, and are extremely inexperienced.

This makes the distinction between 'solicitors' and 'barristers' somewhat artificial – and perhaps it's about time we adopted the American regime of calling all lawyers 'attorneys' – or even just 'lawyers' – and then separating them by their principal area of practice, eg 'criminal trial

attorney' or 'criminal trial lawyer' etc.

In any event, different rules apply to solicitors and barristers when it comes to accepting or refusing a case.

Can a solicitor refuse to accept a case?

In NSW, a solicitor is permitted to refuse to represent someone in a case, and they may do so for a wide range of reasons.

A solicitor is prohibited from taking-on a case where there is a conflict of interest (eg the solicitor has previously represented or given advice to the opposite party), or where they have prior commitments or where the case is beyond their expertise.

If a solicitor breaks those rules, or terminates the case part-way-through without sufficient reason, they may be subject to a complaint on grounds of 'unsatisfactory professional conduct' – and may be subjected to disciplinary action.

Can a barrister refuse to accept a case?

The rules for barristers are stricter.

Barristers often receive cases from solicitors – a process called 'briefing'.

According to the NSW Barrister's Rules a barrister cannot refuse a brief from a solicitor to appear in a court if:

- The case is within their capacity, skill and experience;
- The barrister is available to work, and not already committed to other professional or personal engagements which may prevent the barrister from advancing the clients interests to the best of their ability;
- The fee offered is acceptable
- No other exception applies (for example, there would be

a conflict of interests, it is reasonably likely that the barrister will required in court for another client on the same day or a barrister may be required to cross-examine a friend or family member)

This is known as the cab-rank rule and it means that unpopular clients or causes will still be able to get representation.

It also means that barristers who take on such cases should be spared criticism for doing so.

According to the NSW Law Reform Commission, the latter reason is actually the main implication of the rule.

Can solicitor ever terminate a retainer?

There are some situations where a legal practitioner can stop acting for their client.

And, according to Rule 20 of the NSW Solicitors Rules, a solicitor must in some circumstances refuse to take any further part in defending their client.

For example, if the solicitor learns that their client has:

- Lied in court;
- Submitted a false document;
- Suppressed evidence where there was a positive duty to disclose it; or
- Procured another person to do any of those things

They must advise the client that the court should know about this activity and request authority to inform the court.

If authorisation is not given, a lawyer may no longer defend that client.

In addition, if a defendant confesses their guilt to their lawyer but still wants to plead not guilty, the lawyer may choose to cease acting for that client, provided there is

enough time for another lawyer to take over, and the client does not insist that they continue to act for them.

If they continue to represent the client, they cannot falsely suggest someone else committed the offence, or set up another defence that is inconsistent with the confession.

The lawyer can still ‘put the prosecution to proof’; in other words, make the other side prove their case beyong reasonable doubt.

In practice, however, it is highly advisable for a lawyer to withdraw from a case if they know their client is guilty.

What about Legal Aid?

In criminal trials, you may be refused a grant of legal aid if you don’t meet the Legal Aid Commission’s eligibility criteria.

These criteria include a ‘means test’, which considers your income and assets when determining whether you qualify.

With limited resources, Legal Aid cannot afford to provide funding in all kinds of cases, even if they meet the means test.

Legal Aid must prioritise the cases that they fund and this will include whether your case has a reasonable prospect of success.

This is called the ‘merits test’

They will also consider whether your matter is one that Legal Aid funds, such as whether or not the offence you were charged with carries a prison sentence.

If you have been charged with an offence, it is important to hire an experienced, successful and ethical lawyer.

Although lawyers have stringent regulations on their conduct,

unfortunately not all meet these standards.

It is important to do your research so that you know you can trust your lawyer.

Can I go to Prison for not Paying a Fine?

Fines are a huge source of revenue for the government – hundreds of millions of dollars come from motorists alone each year.

But not everyone issued with a fine has paid up – and the enforcement of debt collection has presented a problem to enforcement agencies.

Back in ye olde England, being sent off to 'debtors prison' for being unable to pay fines (or any debt) was common.

Nowadays, bankruptcy laws have ensured that being in debt no longer means you will end up in prison.

And in Australia today, you cannot end up in prison simply for not paying a fine.

Up until 1987, sending people to prison for unpaid fines was perfectly legal in NSW.

And while the NSW State Debt Recovery Office currently has a range of enforcement options against those who refuse to pay, prison is not one of them.

You may not have heard of Jamie Partlic before, but his tragic assault led to a drastic change in the way that fines are

dealt with in NSW.

The teenager was sentenced to four days in prison for not paying his parking fine, but ended up spending six months in a coma after he was attacked by another prisoner in Long Bay Prison.

After this, measures were put in place to make sure that people wouldn’t end up prison for defaulting on a fine payment.

But what penalties can you get for refusing to pay a fine?

Although going to prison is not the go-to penalty anymore, if you don’t pay fines the NSW State Debt Recovery Office can still make your life pretty difficult.

You will usually first get a reminder notice, which comes with an extra 28 days to pay.

After that, the penalties increase incrementally.

The next step will normally be an enforcement order fee (currently $65) attached to your fine, and further costs may be added to that.

Your driver licence may then be suspended, your vehicle registration can be cancelled and your ability to do business with the RMS may be terminated.

Further refusal to pay can result in the seizure of your property – SDRO can actually take your property, hold an auction and use the money to pay off your fine.

They may even prevent you from selling your home and garnish your wages or your bank accounts.

You can also be summoned to court where your circumstances will be scrutinised by SDRO representatives to see how else they could squeeze the money out of you.

Community service can also be ordered.

So while the government can stop you driving, take your property, help themselves to your paycheque or bank account and summon you to court, at least you can't be put in prison anymore – well, almost.

Despite the fact that prison is technically not a penalty for defaulting on a fine, according to section 125 of the Fines Act 1996, a very small amount of people do still end up in prison because of their failure to pay up.

This piece of legislation states that while a person cannot be imprisoned for failure to pay a fine, they can be sent to prison if they fail to perform a community service order that has been instituted because they defaulted on their fine.

There is another way that fine absconders may find themselves incarcerated: of all the sanctions that can be placed on a non-compliant fine recipient, the suspension of their driving licence is the most likely to get an offender in trouble.

Some people decide to continue driving despite being suspended, and risk getting caught, despite it being a criminal offence.

Driving without a licence carries heavy penalties including a criminal conviction, a fine, a further period without a licence, and even time behind bars for repeat offenders.

Funding Cuts to Community

Legal Centres: The Bigger Picture

When the Abbott government announced massive funding cuts to already under-resourced community legal centres earlier this year, the move was met with backlash from Community Legal Centres (CLCs) and the wider community.

Most members of the public understand the important role that these centres play in promoting social justice and equal access to legal representation for disadvantaged persons within the justice system.

However, many are unaware of the broader duties that these centres have in the wider community.

Recommending Reform

A key function of community legal centres such as Legal Aid, the Aboriginal Legal Service and Women's Legal Services NSW is their role in shaping policy and law reform by making submissions on new legislation and proposed changes to the law.

Through working within some of the most socioeconomically disadvantaged communities in the country, CLCs possess a unique insight into the social and legal issues which most affect these people.

Unlike policy makers, who often lack first-hand experience with those affected by proposed legislative changes, lawyers and other persons employed by CLCs understand the motivating factors behind social issues and have experience applying the law in complex legal cases.

This gives them an advantage over other bodies when it comes to advising policy makers of the advantages or dangers posed

by changes to the law.

So how do they do this?

Generally, when changes to the law are proposed, the government will launch an inquiry or committee to review the proposed changes and determine how they should be implemented.

An integral step in the review process is obtaining submissions from the general public to ensure that persons affected by the legislation can have their say.

Submissions are essentially a means by which the public can communicate their concerns or recommendations about a proposed change to the law to policymakers.

Usually, they consist of a written document which highlights the factors affecting the proposed changes, as well as opinions and arguments for or against the reforms.

Submissions may also contain recommendations about how a proposed reform can be improved, and may specify examples of how the changes will affect members and clients of that organisation.

While any member of the public is able to make a submission, organisations such as CLCs who have a specialist understanding of how the law applies in a wide variety of situations are often able to provide an in-depth and valuable insight into how the reforms will affect the wider community.

In recent times, CLCs have made submissions on a wide variety of legal and social issues, including legal personhood legislation (better known as *Zoe's law*), child protection laws and victims' compensation.

While CLCs are predominantly known for playing an integral role in the criminal law system, they have also been instrumental in bringing about change in civil law, including tenancy law and even regulation of the financial services

industry.

Besides making submissions, CLCs may also incite parliamentary action on a particular social issue by making recommendations for reform or calling for an inquiry into an area where the law is not operating effectively.

Testing the Boundaries

An often overlooked function of community legal centres is their ability to clarify existing laws under the Constitution where there is a public interest dimension.

One means by which this is done is through the running of ‘test cases.’

A ‘test case’ is essentially a case which concerns unsettled legal principles under Commonwealth law, and which is deemed to have national importance.

These cases generally centre upon complex areas of constitutional law which may be heard in the High Court, and often require the expertise of highly experienced lawyers and barristers, as well as significant preparation time and other resources.

As such, test cases are often very expensive to run and individuals often lack the financial capacity to fight a test case on their own.

This means that taxpayer funded community legal centres are often tasked with conducting these cases through grants provided by the Attorney-General.

It also means that publically funded test cases are confined to issues of Commonwealth law – in other words, you cannot obtain funding from the government to run a test case concerning a State or Territory law.

The outcomes of test cases often have far-reaching and lasting effects on how the law is applied in the future – perhaps the most famous test case in Australia is *Mabo*, which gave recognition to Indigenous native title rights.

More recently, the case of *Bugmy v The Queen*, which was backed by the Aboriginal Legal Service found that the effects of social disadvantage as a result of being Aboriginal does not diminish over time, and can still be considered as a factor in sentencing.

Cases such as these illustrate the long-term benefits that test cases provide to the wider community in defining legal rights and obligations.

How will funding cuts affect CLCs?

In the Federal budget, the Abbott government announced funding cuts to CLCs totalling $43.1m across four years.

This represents a significant proportion of CLC funding – in 2013 alone, the Federal government provided a total of $36.7m to 140 legal centres.

Considering CLCs already suffer from extremely limited funding, many are wondering how these cuts will impact the way CLCs deliver invaluable services to the community.

Some CLCs have already expressed concerns about the viability of existing services under the new cuts, while prominent legal professionals have foreshadowed an increase in the number of unrepresented litigants coming before the courts.

The full effects of the cuts are yet to be seen, but given the important role that CLCs play in preserving access to justice for some of the most disadvantaged persons in the community, they have been criticised as a threat to democracy and equality before the law.

What is the Privilege against Self-Incrimination? How can it Protect me in Court?

Imagine you are on the witness stand in court.

You have been asked a question, the answer to which might lead to criminal charges being pressed against you.

But you are required to answer the question.

And you know that lying in court is very serious offence also.

What should you do?

The right to silence is probably one of the most well-known rights in the Australian criminal justice system.

It is often associated with your right to refuse to participate in a police interview at the station if you have been accused of a crime.

However, this is not the only situation in which your right to silence might apply.

One aspect of the right to silence is what's known as the 'privilege against self-incrimination'.

That privilege applies if you are giving evidence at a defended hearing or trial, but are worried that your own testimony might end up implicating you in a crime.

If you are concerned, you may be able to benefit from witness immunity.

When does the protection against self-incrimination apply?

In Australia, the right against self-incrimination is an important feature of our criminal justice system and protected in many ways.

It has been a part of our common law heritage since 1641, although it has changed in form since then.

However, the right is not absolute: which means that it does not apply in all situations.

You may sometimes be required to answer questions even if they tend to prove you committed an offence.

But by the same token, the privilege against self incrimination is not to be removed lightly.

And that is why section 128 of the Evidence Act exists.

The section says that a witness can object to answering a question/s on the ground that the answer/s may tend to prove that he or she committed a crime, or that he or she is liable to a civil penalty.

If the witness does object, the court will then decide whether there are reasonable grounds for the objection.

If there are reasonable grounds, the court can then either:

- Inform the witness that they don’t need to answer the question/s, or
- Grant the witness a ‘certificate’ that prohibits the use of their testimony in any future proceedings, and require that the witness answers the question/s.

The rationale behind the use of the certificate is to ensure that witnesses can give truthful answers in court and that the court receives as much relevant evidence as possible in a criminal case.

If a ‘certificate’ is granted by the court, nothing that incriminates the witness can be used against them in future court proceedings.

Rights against self-crimination can also be invoked at coronial inquests.

Witnesses at those inquests can object to answering questions if they believe that an answer might incriminate them in some way, according to section 61 of the NSW Coroners Act 2009.

The privilege against self-incrimination can also apply to defendants themselves, where answering questions while on trial for one offence could potentially bring up evidence which may tend to prove the commission of another crime.

In this case, the provision will still have effect in regard to separate offences to the ones on trial; but the defendant cannot use the privilege in relation to a fact in issue in the present trial.

How does a court determine whether or not to grant a person’s right to immunity?

You have the right to object to any question that, if you answered truthfully, may tend to prove that you committed an offence, either in Australia or overseas.

The court will examine the grounds for granting immunity against self-incrimination.

If the court decides that there are reasonable grounds for the objection and that the interests of justice require that the evidence be given, the court will issue a certificate and require the answers to be given.

The exception to this rule is if you give false evidence: which is an offence itself.

If you have been called to appear as a witness and are worried

about what questions you might be asked, or have any concerns about the process, get in touch with an experienced criminal lawyer in order to make sure that your interests are protected.

Freya Newman: was she committing a criminal offence, or acting out in the public interest?

Freya Newman garnered significant support when she faced the Downing Centre facing charges after she hacked into the Whitehouse system and discovered that the scholarship given to Tony Abbott's daughter came about in dubious circumstances.

Working in her part time job as a librarian at the Whitehouse institute, the UTS student accessed the institute's system using the login details of another staff member.

She resigned immediately after uncovering the incriminating evidence.

The two sides of the debate are polarised: while many have expressed support and sympathy for Ms Newman, declaring her conduct should not even be liable to prosecution, the criminal justice system has another position.

Ms Newman has been charged with unauthorised access to restricted data, which is an offence under section 308H of the NSW Crimes Act.

Newman did not know she was breaking the law, let alone that

her conduct would expose her to criminal charges and a maximum prison sentence of two years.

Ignorance of the law is no excuse, and police are pushing for a criminal conviction.

Ms Newman's lawyer argues that a conviction should not be recorded against her name, as she has already been punished enough by being in the public eye and the backlash she has received.

While Ms Newman pleaded guilty, she has not yet been sentenced.

She will return to court on November 25 for sentencing.

Because the Whitehouse is not a public institution, Ms Newman is not protected by legislation that may otherwise have shielded her.

The Public Interest

Public interest intersects with the criminal justice system in several places.

According to prosecution policies, people should not be prosecuted if it is not in the public interest to do so, and acting for the benefit of the public may therefore override countervailing considerations that might push for punishment.

Of course, whether or not revealing a particular piece of information is in the public interest is often subjective matter where different minds may come to different conclusions.

Some have argued that the 'scholarship', while questionable from a moral standpoint, was not illegal and therefore isn't the sort of thing that should be covered by whistleblower protection.

What is whistleblower protection?

The idea behind whistleblower protection is to encourage those who see wrongdoing in the public sector taking place to come forward without having to risk their own jobs or other negative consequences.

Encouraging people to come forward means that wrongful behaviour is more likely be reported and appropriately investigated.

Australia's protection of whistleblowers has been criticised as lagging in comparison with other G20 countries.

As the Newman case shows, those who divulge information about corruption at private institutions do not enjoy the same protection as public institutions.

Under the Public Disclosure Act 2013, public officers who report will be given anonymity and immunity both from civil and criminal liability as well as protection against any administrative action, including disciplinary action.

However, even the introduction of this law was not enough to allay all fears.

There are significant groups of people who are not protected, including those in the private sector and employees who are not public officers.

It is clear that there are policy reasons behind the decision to protect those who speak up and report wrongdoing, as well as policy reasons for limiting the protection.

As to the latter, the argument is that if the protection were too wide, privacy and commercial secrets could be unjustifiably compromised through unwarranted disclosures of trivial information.

When Can Courts take into Account my Previous Convictions?

Statistics tend to show that it is a small group of people commit a majority of crimes.

But does this mean that courts can take into account past crimes when deciding whether you are guilty or not?

In the vast majority of cases, the answer is: No it doesn’t.

Courts cannot look at your previous convictions, or even charges laid against you, when they are deciding whether or not you are guilty.

The exception to the rule is ‘tendency and coincidence evidence’.

This is where the prosecution alleges that the facts in your previous cases were so similar to the present case that there is a very high chance that you also committed the present offence.

However, it can be very difficult for the prosecution to establish tendency or prosecution – and this means that your criminal record will not be relevant to determining your guilt or innocence.

On the other hand, courts can look at your track record when it comes to sentencing – which is after you have pleaded guilty or were found guilty.

Courts will do this to determine the appropriate penalty in

your case.

In making that decision, courts will consider whether you were a person of good character or otherwise.

If you have a criminal record, courts will look at the nature of those convictions and their relevance to the present offence.

The use of previous convictions or charges during the trial or hearing:

According to the Evidence Act, any judgement or conviction that has been made in relation to a defendant, whether in Australia or overseas, cannot be used as evidence in a proceeding – subject to the tendency and coincidence exception.

Being able to consider a person's previous criminal record would be highly unfair because it may unfairly prejudice the decision maker into reaching the conclusion that they are guilty.

The argument is that because a person has committed a crime in the past, it should not act as proof that they committed whatever crime they are now accused of.

In jury trials, the use of past convictions could cause members of the jury to lose sight of the fact that they are trying to work out whether or not someone is actually guilty of the specific crime he or she is currently charged with, rather than if they are the sort of person who might commit the crime.

Some members of a jury, when confronted by a list of serious or abhorrent crimes might think that, regardless of whether or not the person facing trial is actually guilty of the crime they are accused of, they 'deserve' to be convicted anyway.

This would be highly unfair.

Since there is a significant risk associated with allowing any 'unfairly prejudicial' material into the courtroom, instances where it will be allowed are low.

Tendency and coincidence

The 'tendecy and coincidence' exception was touched upon earlier.

That rule says that previous convictions may be used to prove a 'tendency' to commit an offence or that the previous offence/s are so similar that it would be a great coincidence for anyone else to have committed it.

However, to establish tendency or coincidence, the prosecution would need to prove that the evidence is so relevant and important that it overshadows the unfair prejudice that would be created by it's use.

They would need to establish that there has been a pattern of similar behaviour, or a strikingly means of committing an offence (also known as a 'modus operandi') such as a signature mark left at crimes scenes.

An example of a modus operandi was the 'Son of Sam' murders in the U.S. where the offender left those words in blood at each murder scene.

The test for establishing tendency and coincidence is understandably a high one, and the Australian Law Reform Commission has said that the circumstances in which evidence of past convictions being allowed into evidence should be rare.

The use of previous convictions during sentencing:

As stated, when it comes to determining your sentence, past convictions are a different matter.

Section 21A of the Crimes (Sentencing Procedure) Act requires

a magistrate or judge to take your previous convictions into account before imposing a penalty upon you.

Having no criminal convictions, or no significant criminal convictions is a positive, and should be considered as a mitigating factor by the judge.

However, if it is not a first offence, particularly if the offence is similar to a previous offence committed, the law will not be so lenient.

Legislation will sometime mandate a stronger punishment for a second or subsequent offence.

For example, when it comes to drink driving, the disqualification period and maximum fine doubles if you were convicted of another major traffic offence within the previous five years.

Unfortunately, unrepresented defendants may not know the rules that the police and prosecution are supposed to follow in court.

This means that without an experienced criminal lawyer, you might be vulnerable.

Speak with an experienced criminal lawyer today to make sure that no unfair evidence is allowed into the courtroom during your proceedings.

Is the Sydney Lockout

Destroying Business?

New lockout laws proved tough enough to stop even Justin Timberlake from attending his own after party, when he arrived at 1:45 am, just fifteen minutes after lockout.

The penalties for owners who don't comply with the law are very heavy, making disobedience risky and not worth the penalty.

Police say that there has been a reduction of alcohol-induced assaults since the lockout laws came in force in Sydney.

The City of Sydney Council, however, says that this may just be the result of less people out partying and revellers finding alternative suburbs.

The Council says that pedestrian traffic in the city has been down by up to 84%.

Don Weatherburn of the Bureau of Justice Statistics says that it is still too early to tell whether the new laws are working.

This is partly due to the number of violent attacks already being in decline before the lockout came in; and assaults generally decreasing in the colder months, then peaking in January.

The laws have seen a transfer of party-goers to areas like the Star City Casino, Newtown and Double Bay.

This has led some people to say that the lockout hasn't solve the problem at all, just moved it from the CBD and Kings Cross to surrounding areas where the law does not operate.

The latest reports from the Bureau of Crime Statistics and Research do not support for the theory that the lockout laws laws are working.

The reports show no real change over the previous two years in the incidence of non-domestic assault outdoors or in public places in either Kings Cross or the Sydney CBD.

While the incidence of non-domestic assault on licensed premises declined, Don Weatherburn cautioned against automatically linking this with success.

He said assaults will always falls in winter and rise in spring and summer, and we therefore may not be able to evaluate their effectiveness until early next year.

The fact that there are no concrete links between the laws and reduced crime is frustrating for businesses, many of which have been forced to reduce their trading hours or even had to close their doors altogether.

Before the laws kicked in, owners were anxious that the Sydney lockout may be destroying business.

The heaviest trade for bars and clubs in Kings Cross is generally between 10pm and 4am.

But with bars and clubs forced to close their doors at 1:30, with last drinks at 3am, the patronage levels and profitability of many businesses has been drastically affected.

Some have labelled the changes as ‘death’, with the famous golden mile now covered with lease signs 35 shops on the 300 metre strip, according to Fairfax Media.

Businesses have reported losses of up to 40% since the introduction of the new laws.

Small food shops are suffering but even the larger establishments are failing to draw the crowds they ones did.

Owner of the Kings Cross nightclub ‘the Backroom’ was forced to close, citing the lockout laws as the reason that it was no

longer viable to continue trading

The Oxford Art Factory has also suffered.

Patrons of that business come to see live music, not to get drunk, according to Mark Gerber who has run the venue for the last seven years.

Gerber believes that the Sydney lockout is destroying his business. He described the lockout as being like 'chemotherapy' that didn't deal with the cancer but instead inflicted harm.

He was also upset that local businesses were not consulted before the measures were put into place.

He told the ABC that many of his staff have had their working hours cut by about 35%, including security guards.

The loss in profits also means that it is more expensive for bands to perform.

Some NSW politicians have acknowledged the pain of business owners forced to shorten trading hours, let staff go and even shut up shop completely.

But they blame this on the economy rather than the lockout laws.

If the lockouts don't work, then there will almost certainly be greater calls to have them repealed.

This is what occurred in Melbourne when 2am lockout was dumped in 2008 for being ineffective.

I guess we'll just have to wait and see.

Can I Change my Court Date or Location?

Having to appear in a NSW court to face criminal charges isn't fun for anyone and it may be an intimidating and stressful experience.

On top of this, the court date may come at terrible timing for you or at a location that would be very inconvenient for you to get there.

In these circumstances, you may wonder if you can change either the place or date of your upcoming court date, or if you can even avoid going to court altogether.

Even if you are represented by a lawyer, you will usually have to attend the local court at some point – for example, at your 'sentencing hearing' if you plead guilty or your 'defended hearing' or 'committal hearing' if you plead 'not guilty'.

If you plead not guilty, you (or your lawyer) will still have to come to the court at a later date for a further short court date, called a 'mention', and on the day when your case is ultimately decided, which may be a 'sentencing hearing' (if you plead guilty) or 'defended hearing' (if you plead not guilty).

What if I don't know when my case is going to court?

Your Court Attendance Notice (CAN) should outline the date and location of the court, and the type of charge that you are facing.

If you don't have a CAN, you can ring the police station where you were charged and ask for the details.

Alternatively, you may be able to call and ask the court nearest to where the alleged offence occurred.

If neither of those avenues is successful, you can go onto the Lawlink online registry and undertake a case-name search. However, your case may not be entered into Lawlink until shortly before the scheduled court date.

How can I change the location of my court?

Sometimes, you may wish to change the location where your case is heard on the basis that you live very far away from that location.

If this is the case, you can apply to have the matter transferred to another court which is closer to you. This is called a 'change of venue'.

Requests for a change of venue should be made in writing and at least a week before your court date, and should go into some detail about why you do not want to attend that location.

However, changes of venue will normally only be granted if you are pleading guilty, and if the charge is less-serious.

It is unusual for a court to transfer venue if you are pleading not guilty.

This is because it is generally thought that cases should be heard in the locations where the offences were allegedly committed, and because local witnesses and police may need to attend the defended hearing.

The relevant part of the law when it comes to applications for a change of venue is section 30 of the Criminal Procedure Act 1986, which provides that:

In any criminal proceedings, if it appears to the court–

> *(a) that a fair or unprejudiced trial cannot otherwise be had, or*
>
> *(b) that for any other reason it is expedient to do so,*

the court may change the venue, and direct the trial to be held in such other district, or at such other place, as the court thinks fit, and may for that purpose make all such orders as justice appears to require.

What happens if I don’t turn up?

Simply not turning up to court without sufficient notification and justification can result in a matter being unfavourably decided in your absence, or even a warrant being issued for your arrest.

If you are on bail, the situation can be even more serious.

In that case, you could be charged with breaching your bail and you, or your bail surety, could end up losing your bail security – which is money put-up for bail.

You are generally expected to turn up when your case is scheduled, unless you have a very good reason not to.

This may include a serious illness or accident.

If you are very sick, you should telephone the court immediately and get a medical certificate from a doctor stating why you cannot attend court.

That certificate should be sent to court and you should call the court on the morning of your court date to ensure it is brought before the Magistrate.

You should also call later about the outcome.

If you have had a serious accident, you should call the court as soon as possible to advise them of this, and you should send through evidence of the incident.

If the case is nevertheless decided in your absence, and you receives a conviction or unfavourable outcome, you may be able to apply to ‘re-open’ the case through what’s known as a

‘section 4 annulment application’.

This is an application to get rid of the conviction and start the case from the point before you were convicted.

Section 4 applications can be made up to 2 years after the date when you were convicted.

Alternatively, if you are unhappy with the penalty that you received, you can file a ‘severity appeal’ – which is an application to the District Court to give you a lesser-penalty, or to get rid of your conviction altogether by awarding you what’s known as a ‘section 10 dismissal or conditional release order’.

Severity appeals must be lodged less than 28 days after your Local Court case was finalised, or up to 3 months if there are good reasons why you didn’t file the appeal within the 28 days.

If you didn’t attend your defended hearing, it may be difficult to achieve a ‘section 4 annulment application’ unless you have a very good reason. This is because witnesses will have attended court on the hearing date and courts are reluctant to call them back (and inconvenience them) for a second time.

If you have any concerns about your upcoming court date, you can call the court who may be able to assist you with general information.

However if you need specific advice relating to your situation, it is best to seek help from an experienced criminal lawyer.

Who Decides if my Case goes to Trial?

Just because police believe you have committed an offence, it doesn't necessarily mean that you will end up going to a defended hearing (local court) or jury trial (district or supreme court).

Police or, in more serious cases, the DPP l have discretion as to whether a case should go all the way.

There has never been any police or DPP rule that every offence that is charged must be prosecuted to the full extent of the law.

In fact, when the prosecution continues to prosecute a flimsy case, they can be punished with court costs.

There is even a certain amount of discretion when it comes to whether a person should be charged with an offence in the first place.

Police must form a 'suspicion on reasonable grounds' that an offence has occurred before the press charges.

If a complaint is made, police will need to decide whether it is credible before they commence a prosecution.

There are certain areas of the law where police will tend to charge a person even if the complaint appears to be lacking in some respects. Two such areas are domestic violence and sexual offences.

After an offence has been charged, the decision as to whether the prosecution will continue all the way to a defended hearing or jury trial will be primarily governed by what is in the 'public interest'.

Prosecution policy dictates that criminal proceedings should be withdrawn if:

- They do not have enough evidence that will be admissible in court to establish each element of the offence, or
- There is otherwise no reasonable chance of success in court, or
- There is any other reason why the offence should not be prosecuted.

The last category is the broadest, and the Prosecution Guidelines has a list of about 20 discretionary factors that must be considered when the decision is made as to whether or not to continue with a prosecution.

Broadly, these categories look at what kind of law was broken, the history and background of the defendant, and the interests of the community as well as the criminal justice system.

If the law is old, obsolete or the alleged offence was trivial or committed a long time ago, these are all good reasons for the prosecution to drop the charges. Any mitigating or aggravating factors will also be considered.

The prosecution can consider the background of the defendant, including age, maturity, intelligence, physical or mental health or disability. They can also include any previous criminal offences committed by that person.

If there are any alternatives to prosecution available, the prosecution should consider how effective they would be.

For minor offences (called 'summary offences'), there is generally a statutory limitation of six months for taking action. After this time, you cannot be prosecuted or punished.

For more serious crimes, such as sexual assault and murder, there is no limitation period at all and offences can be charged years or even decades after they were allegedly

committed.

The prosecution can drop charges at any time, so don't think it is too late just because your case has been going for some time and you've already been to court for short court dates (called 'mentions')

One way to get the charges reduced or dropped is to write to the prosecution and argue that the evidence is not sufficient to prove the charges.

The prosecution can be the police, the DPP (Director of Public Prosecutions), the RMS, your local council or another prosecutor body.

If you can convince the prosecuting body that they won't be able to prove the elements of the offence, or that they don't have reasonable prospects of success due to a valid legal defence you may have, and/or that there are discretionary factors in your favour, then as a matter of policy they are required to withdraw the case.

This way, you can get on with your life without having to face the stress, anxiety and expense of a lengthy hearing or trial.

If the decision is made to prosecute anyway, and they lose in court, they may have to pay your legal costs.

If you are facing a criminal or traffic case, and you don't feel that your lawyer is doing enough to get your case dropped, you may wish to speak with a lawyer who will.

Downing Centre Magistrate Hands Former Police Officer Shane Diehm Jail Sentence

Remember Shane Diehm, the policeman who was facing charges for corruption and drugs?

We published an article about him a while ago, while he was still facing serious charges of lying to the Police Integrity Commission.

The Commission was established in 1996 to detect, investigate and prevent police misconduct.

After extended adjournments and months of the case dragging through the courts, the Presiding Magistrate in Downing Centre Local Court has finally handed down her decision.

Diehm was sentenced to six-month jail after being convicted of lying to the police force watchdog.

This is a significant fall from grace for a police officer who was once one of the most well-respected on the Northern Rivers.

The 49 year old cried when he heard that he was sentenced to a maximum of 12 months in prison, with a minimum of 6 months.

However, Diehm has yet to spend a night in jail – he has appealed the decision and his appeal will be heard in Downing Centre District Court.

In court, Diehm initially denied that he had taken drugs. He later admitted taking drugs but said he had no memory of his friends doing the same.

While acknowledging that he was certainly not the only one

taking drugs, he says he cannot remember exactly who else took them

He pleaded not guilty to the charge of knowingly misleading the Police Integrity Commission in relation to the other officers at a party.

The police officers had enjoyed a wild night of partying complete with alcohol and drugs in a Gold Coast hotel room back in 2010.

Police at the party were unaware that they were being recorded, but surveillance cameras were placed in the lounge rooms and kitchens of two hotel rooms.

According to a phone tap, one of the rooms was paid for by Diehm.

Damning evidence from the bugged hotel clearly records men joking and talking about drugs they were about to take.

But this was not the first time Diehm had been caught out on drugs; he had previously been investigated for cocaine use, which you might think should have had repercussions on his career as a police officer.

According to the Police Handbook, police must not use any kind of prohibited drug and police officers may be subject to random, target and mandatory testing.

While breaching the police Code of Behaviour is not an offence, it can still have repercussions for police who are found to have contravened.

According to the NSW Police Force Drug and Alcohol Policy, any police officer who tests positive to any prohibited drug can be dismissed.

Even if an officer is not dismissed, they will be subject to unscheduled testing for the next five years as well as

mandatory participating in counseling and/or rehabilitation.

This year, Diehm told the court that he was too intoxicated to have a good memory of the weekend and a psychiatrist gave evidence that he was suffering from chronic depression and post-traumatic stress caused by his work as a police officer, and that he often drank large quantities of alcohol until he passed out.

Despite his conditions, The Magistrate had little sympathy for this drug-using policeman.

She treated his selective memory with skepticism and said she believed the weekend to have been very memorable for him.

In sentencing, Her Honour gave him the jail sentence in order to deter other members of the police and politicians – a warning not to lie to watchdogs.

She hopes that the threat of severe penalties will deter any others facing similar investigations from my lying.

Diehm now looks back at regret at the weekend that he says ruined his life.

He left the police force in 2013 and during the hearing in court, admitted that he now has no future career in the police force and that his son wouldn’t talk to him.

Do you think that public figures of authority should be held to higher standards than the rest of us?

The Police Integrity Commission began in 2011, and only now has the matter been decided in court.

And since Diehm has lodged an appeal, we may not be hearing the end of this case for some time.

The case raises an interesting question: should the court have given such as harsh penalty to act as a deterrent? Or was it

unfair to send him to prison?

Members of the police force are supposed to be upholders of the law and if even they do not conform, there can be a real lack of public confidence in the justice system.

So should they be held to higher standards than the general citizen?