Appearing Before The Courts In Sydney: What Documents Should I Bring With Me?

Many people charged with offences who appear at a local court in Sydney, such as the Downing Centre, are not sure what to expect when they appear in court for the first time.

Going to court can be extremely stressful and it is natural to want to have it all dealt with quickly so that you can move on with your life.

Unfortunately our justice system is not known for its speed, and the case may not necessarily be dealt with on the day.

When you first appear before the Local court you essentially have three choices:

- Plead guilty
- Plead not guilty
- Seek an adjournment to get legal advice

If you want to plead guilty, the magistrate will move right on to sentencing, unless the case is so serious that it requires the case to be adjourned for a pre-sentence report or transferred to a higher court such as the District Court.

This means your case will often be settled that day, within a matter of hours.

However, unfortunately, if you want to plead not guilty at the mention, you will have to come back at a later date. Your case cannot be settled on the day.

You should never plead guilty if you are innocent of an offence, no matter how tempted you may be.

Magistrates actually have the authority to reject a guilty plea if they do not believe that it is genuine.

They may treat it as a not guilty plea and you will have to come to court again.

If you are pleading not guilty, the case will normally be adjourned for 6 weeks to give police the opportunity to provide you with any witness statements and other evidence against you.

The matter will then progress towards a defended hearing whereby police will bring along any witnesses, and where you can also bring witnesses and material to support your case.

What do I need to bring to a defended hearing?

If you have legal representation, your lawyer will have advised you about the material that you should bring along. He or she will also have spoken with any witnesses that may support your case, and they will normally also be asked to come along.

It is ultimately the prosecution’s job to prove all ingredients of every offence against you beyond reasonable doubt.

However, you can make their job so much easier if you don’t bring any evidence or witnesses to corroborate your story, including any photos, call records, business records or any physical evidence.

Since the court will be deciding your future, it is in your best interests to provide all the evidence you have that backs up your story.

Even if you are pleading guilty, this doesn’t mean you don’t necessarily have anything to prove.

When it comes to sentencing, there may be matters that you

want the magistrate to take into account.

Under the Crimes (Sentencing and Procedure) Act, magistrates have a large amount of discretion and are required to consider a range of personal and factual circumstances surrounding the offence.

If there are extenuating circumstances, or particular considerations that you would like the magistrate to consider when sentencing, you will need to bring documentation.

If, for example, you need your licence in order to get to your job, and without your job you will no longer be eligible for your affordable housing scheme, it is vital that you bring along appropriate documentation, such as letters from your employers or Centrelink.

A magistrate may not necessarily just take your word for it.

You can also bring along any character reference or a letter of apology that you have drafted.

If you do have any questions or uncertainties about court process or any other matter relating to your court case, it may be better to speak to an experienced criminal lawyer.

They will be able to work out exactly you will need to collect and prepare for court in plenty of time for your defended hearing (if you plead not guilty) or sentencing hearing (if you plead guilty).

Experienced lawyers may even be able to get your charges dropped before your case even reaches a defended hearing, ensuring you can put the whole matter behind you quickly, and conviction free.

Many lawyers offer a free first appointment, so you can take advantage of their advice even if you are strapped for cash.

What are the Powers of Security Officers in Courthouses in Sydney?

If you are going to court for the very first time, you may want to read our article on what to bring and how to prepare for your case being heard in a local or district courthouse in Sydney or NSW.

When you get to a busy court such as the Downing Centre, you will see security officers running security checks near the entry to the courthouse.

Security officers have considerable power in courthouses, similar in many ways to the powers of police.

Powers to search

Security officers have the authority to perform searches.

So when you enter the courthouse, you may be asked to submit to a basic scanner search.

This may be either the kind where you walk through an electronic screening device or the passing of a screening device over your outer clothing.

Powers to make an arrest

Security officers also have the power to arrest a person on court premises, even without a warrant.

They may perform an arrest upon a person who is committing an offence, or who the officer believes on reasonable grounds has

committed an offence.

They may use as much force as is reasonably necessary to exercise their powers of arrest.

Hindering, delaying or obstructing a security officer is a criminal offence.

Powers to confiscate

Security officers have the power to confiscate anything that they believe on reasonable grounds is a restricted item or an offensive implement.

An offensive implement is a very broad category, which includes anything that could be used to cause injury to a person or intended to injure someone or damage property.

A restrictive item includes weapons, firearms or any kind of knife at all.

This should be obvious, but if you are a person who carries a pocket knife it might be worth double checking you don't accidently take it to court.

In addition, security officers can confiscate anything that may conceal a restricted item or offensive implement.

Possession of a knife in court premises carries the penalty of imprisonment for up to two years.

When you are in the courtroom, while it is okay to take notes, you can't film or take photos at all.

NSW law states that this applies to all court premises, which is not confined to the courtroom but includes all areas, including any entrance area, toilet, hall, corridor or even parking area.

Security officers can confiscate any recording device as well as film, tape or any other medium that has been used to

unlawfully record inside court premises.

An exception to this is journalists who are using recording devices for a media report.

Any confiscated items must either be returned to you when you leave the courthouse, if they are legal and not needed as evidence.

However, they may be retained and passed-on to police if they are deemed to illegal.

Powers to request identification

Security officers have the power to request identification.

They may ask for your name and address if this is unknown and if they believe on reasonable grounds that you are carrying a restricted item or have committed an offence.

However, this works both ways: security officers must also show you identification before exercising their power – for example, their certificate of identification, name or badge number.

They are mandated to carry identification and produce it on demand.

In fact, if they do not they could be facing a $550 fine.

They must also give you the reason for their exercise of power and warn you that refusing to comply with their directions may be an offence.

In the courtroom

A security officer cannot use the above powers in a room where the court is sitting unless it is an emergency and there is not enough time to get a direction from the proper judicial officer.

How Does a Suspended Sentence Work in District Courts in Sydney?

Since jail time must be treated as a last resort, a suspended sentence is one of several sentencing options that are open to judges in the district courts in Sydney.

A suspended sentence is essentially a good behaviour bond, but the consequences for breaching it can be very severe.

Technically an imprisonment sentence is still imposed on you if you are given a suspended sentence, but the actual completion of the sentence in jail is what gets suspended.

A suspended sentence means that you don't actually go to jail at all.

According to section 12 of the Crimes (Sentencing and Procedure) Act, a person who has been given a suspended sentence must enter into a good behaviour bond.

The good behaviour bond must not be for a longer period of time than the term of the sentence, and the term of the sentence must be two years imprisonment or less.

How does a court decide whether or not to grant a suspended sentence?

The court must first make a decision about the length of the prison sentence, before suspending it.

Their decision on the length should not be influenced by the fact that only sentences of two years or less are liable for

suspended sentences.

For example, a person convicted of reckless wounding faces a maximum prison sentence of seven years.

If the judge considers a sentence of four years is appropriate in the circumstances, he or she cannot decrease it to two years just so that the offender can benefit from a suspended sentence.

If however, the individual circumstances of the case mean that the judge finds the person deserving of two years in jail, the judge would be free to consider a suspended sentence.

Factors that a judge must consider are:

- Whether a suspended sentence would still reflect the seriousness of the offence
- Whether it would fulfil the purposes of punishment
- The more lenient an alternative to spending time in jail is, the less likely it is to fulfil the purposes of punishment
- When a court hands down a sentence, they must explain the reasoning behind their decision.

It is not possible in NSW to suspend just part of a sentence, however this is possible under Commonwealth law.

If a defendant is already doing time for another offence, the court cannot order a suspended sentence.

What happens if I breach a suspended sentence?

During a suspended sentence, all the usual rules of a good behaviour bond apply – which means that you will need to be of good behaviour; in other words, you cannot commit any further criminal offences.

You will normally also come under the supervision of the department of community corrections, formerly known as the

probation and parole service.

There may also be extra conditions such as abiding by the directions of a psychologist or psychiatrist, or undertaking a specific rehabilitation program.

Any breach of a suspended sentence is considered to be especially serious.

If the court suspects that you are in breach, you will be called back to court and will need to answer for the breach.

Any failure to appear could result in a warrant being put out for your arrest.

Breaches of a good behaviour bond while serving a suspended sentence mean that by law the court must revoke the good behaviour bond.

There are two exceptions:

- If the court is convinced that the breach was trivial in nature; or
- If there are other good reasons why you failed to comply with the bond

Good reasons may include extenuating circumstances surrounding the breach but cannot include subjective or personal matters.

If your suspended sentence order is revoked, it means that your original sentence will still apply.

The court is free to decide that instead of imprisonment, you may serve the sentence by way of an intensive correction order or home detention.

If the court reaches the conclusion that you must be sentenced to imprisonment, it will impose a non-parole period and an additional term.

The non-parole period is the time that you must spend in

prison before being eligible for release.

If you are in danger of breaching your suspended sentence, or if you have already breached it, you should contact an experienced criminal lawyer straight away as they may be able to avert the breach or minimise the damage caused.

What are the Differences Between the Local and District Court?

At the Downing centre, the local and district courts are located in the same building, but the types of cases and nature of the proceedings will vary.

There can be an overlap between the case-types, as some offences can be heard in either court.

But as a general rule the more serious offences will proceed to the District court while the less serious ones will stay in the Local court.

The Downing centre is a busy court complex and both the Local and District courts are open Monday to Friday.

This is different to many regional areas, where Local courts may hold sittings weekly, and the District courts even less often.

Regardless of the severity of the offence, every case will start in the Local court, even the most serious crimes like murder. The majority of criminal cases will remain in the Local Court until they are finalised.

More serious cases will stay in the Local Court until they reach a committal hearing, which is basically an administrative procedure to decide if the prosecution case is strong enough to progress to a trial in the District or Supreme Court. Whether or not a serious case will progress will depend on whether a reasonable jury could find the accused person guilty.

Does it matter which court hears my case?

Most criminal cases are capable of being decided in either the Local or District Court.

In these cases, it is usually better if your case is heard in a local court, because the maximum penalties are lower than those that can be imposed in the District court.

For example, drug supply of a small quantity has a maximum penalty of two years in prison and/or a $5,000 fine in the Local court. The same offence heard in the District court carries a maximum penalty of 15 years imprisonment and/or a $220,000 fine.

However some offences are more serious, and trials regarding these matters don’t have the option of being heard in the Local court – these are called ‘strictly indictable offences’

To use the same example of drug offences, more serious crimes such as the supply of a commercial quantity or a large commercial quantity are strictly indictable and can only be heard in a higher court (either the District or Supreme court).

But as you can see, having your case held in the Local court holds considerable advantages because you are not liable to the same higher penalties.

Local Court proceedings can also be quicker and cheaper, because you won’t need to go before a jury for a trial which

can often last for weeks.

Can I prevent my case from being held in the District court?

If you have been charged with several offences it may be possible to plead guilty to some of the smaller charges in exchange for the more serious ones being dropped.

This means that the smaller ones may be dealt with at a Local Court level and so stay out of the District court.

A good criminal lawyer may also be able to negotiate for your case to stay in the Local Court if you plead guilty to certain charges.

What is the difference between a magistrate and a judge?

Cases heard in the Local court will be decided by a magistrate, and those heard in the District court will be heard by a jury or a judge alone. Both can be people who have held a judicial office in Australia or who have been an Australian lawyer.

According to the law in NSW, to be a magistrate, a person must have been an Australian lawyer for at least five years whereas for a judge this is increased to seven years. Judges and magistrates are both appointed by the Governor.

What happens in an AVO court hearing?

Okay, so you have read our blog on dealing with an AVO but now you are about to go to court to defend the order. Court rules can be confusing or perhaps you are just not sure what will

happen.

What can you expect during your AVO court hearing?

Firstly, know that you can't get this done in just one day. If you are going to court for the first time ever in relation to the AVO, you wish to defend it, your matter won't be dealt with today. Defending the AVO means that not only will you have to show up for the initial hearing, known as a 'mention', but have to come back for a second mention date, called a 'compliance date', and then when the hearing properly starts generally on the third court date, called a 'hearing date'.

On the first court date, your matter will be adjourned for 5 weeks.

The Local Court 'Practice Note' says that the court will order both the applicant and the defendant of the AVO to file statements by particular dates.

Normally, the applicant will have to serve his or her statements within 2 weeks of the first 'mention' date, and the defendant will be have to file his or her statements 2 weeks thereafter.

The next court date, the 'compliance date', will normally be one week thereafter.

On the compliance date, the court will ensure that both parties have complied with the court's order for service of statements. If they have, the court will then set the matter down for a defended hearing.

It is important that you get the statements right as the other side will be able to rely on the things you say in it.

So it's quite a lengthy process. Although courts seek to provide quick, cheap justice, things unfortunately often don't always work out that way. This means that, if you do not have a lawyer, you may spend a few hours sitting in court awaiting

your turn.

By the stage you arrive at a defended hearing, you (and your lawyer if you have one), should be fully prepared in terms of being ready to present your case.

In AVO cases, the Magistrate will read your statements which will essentially be the ‘evidence’ in your case. The other side (or their lawyer) will be able to ask you questions.

Similarly, the Magistrate will read the other side’s statements and you (or your lawyer) will be able to ask that person questions.

If you are not, the matter may go ahead anyway or, if you seek an adjournment, you may have to pay the other side’s legal costs that have been caused by the delay.

In any case, if you are served with an AVO or are pursuing one, you really should consider legal representation as the potential consequences of an adverse finding could be very serious, particularly if children are involved.

If you don’t have the financial resources, it is worth seeing if you are eligible to receive Legal Aid or through the Law Society’s ‘pro bono’ scheme.

Often it is much better to let a lawyer who is experienced in AVO cases do the talking in court if you have one.

As surprising as it may sound, defendant after defendant walks into court thinking things will be settled if only they have the chance to ‘explain everything’ to the magistrate.

These people are often disappointed.

If the magistrate wants to hear your voice, they will ask you to speak.

If not, it is probably best to let your legal representative

use their training and experience to do this for you. This is why you are paying them, isn't it?

If you are representing yourself, don't forget court etiquette – while you won't be expected you to know all the rules, you should dress conservatively, act humbly and refer to the magistrate as 'Your Honour'.

The applicant may not appear in the courtroom during proceedings – they may instead be in separate different room, known as a safe room.

When the court makes an order they will be looking at several factors.

If you are representing yourself, keep in mind you will be seeking to convince the magistrate to decide in your favour the following issues:

- Whether the order could prohibit or restrict access to the defendants residence
- The consequences on the safety of the protected person and children living at the residence
- Any hardship that may be caused by either making or not making the order especially to the protected person and any children
- The accommodation needs of all parties but particularly the protected person and children

The magistrate can also consider all of the evidence that he or she considers relevant and make a decision accordingly.

Although a decision will usually be made that very day, in some cases it is possible for the outcome to be 'reserved' and you may have to come back to hear of the courts decision.

What are the possible outcomes?

The AVO could be upheld and this is what is known as a Final AVO (as opposed to an interim or provisional one).

This will normally be where the magistrate finds that on the balance of probabilities the applicant has reasonable grounds to fear, and in fact fears, that the other person will intimidate, stalk, or commit a violent offence against them.

These orders last for twelve months, unless the magistrate decides otherwise.

In the case that the magistrate uses their discretion, they can last for just a few months or even several years. You also have the option to appeal within 28 days.

It is also possible that you can successfully defend the AVO – meaning that the magistrate does not believe that on the balance of probabilities the protected person fears and is reasonable to fear you will physically hurt, distress, upset, annoy, intimidate or stalk.

Although this means that no AVO will apply, the protected person can appeal the decision within 28 days or reapply for an AVO at any time.

If you win, the magistrate can also order the applicant to pay for some or all of your costs!

If you lose, however, you may need to pay some or all of the applicant’s costs.

A magistrate may also refer the applicant to mediation in some circumstances.

Is Intoxication ever a

Defence?

Being drunk or drug-affected can cause you to do things you wouldn’t normally do, so you might be wondering if this has any impact on how the court deals with offences committed while an offender was intoxicated.

If you were intoxicated when you committed an offence, this may be taken into account in some circumstances.

According to the law, intoxication includes not only alcohol but also drugs, or any other substance which can intoxicate.

Intoxication which is not self-induced is generally a defence, and a person who fits into this category will not be held criminally liable for their actions.

However, the use that can be made of intoxication will vary depending on whether or not the alleged offence requires the prosecution to prove a ‘specific intent’.

Specific intent

If you are accused of committing a crime where specific intent is an element of the offence, it means that the prosecution must prove not only that you committed the act, but that you had the necessary *intention* to commit the crime.

There are in fact, two parts to offences requiring specific intent that must be proved: the physical act and the mental element of intent.

Examples of offences where specific intent is necessary include murder, kidnapping and recklessly causing grievous bodily harm with intent.

If a person who was intoxicated at the time that they killed another person is acquitted of murder, self-induced intoxication cannot be used to acquit them of manslaughter.

If an offence falls within the specific intent category, evidence of intoxication is allowed in court.

Evidence of self-induced intoxication can be taken into account when determining whether or not the person had the required intention to commit the crime.

However, if the person resolved to commit the offence before becoming intoxicated, or did so in order to strengthen their resolve, this does not apply.

In other words, the prosecution must prove that, despite being intoxicated, the accused person intended to commit the crime.

So if a person, although intoxicated, can still be proved to have had the requisite intent to commit the crime, they may be convicted of an offence of specific intent.

If you are convicted of a crime that you committed while intoxicated, intoxication at the time of the offence cannot be considered during sentencing to allow you a more lenient punishment, according to the Crimes (Sentencing Procedure) Act.

Other offences

Some offences don't require a mental element – the offence is complete by the action.

For these offences, intoxication is not a defence, unless it was not self-induced.

Intoxication cannot be taken into account to consider whether or not the relevant behaviour was voluntary.

In situations where intoxication forms part of the offence, such as drink-driving, self-induced intoxication will obviously not be taken into account as a mitigating factor.

What about the one-punch laws?

The one-punch laws that were introduced the beginning of the year amped up the potential penalties for drunken assaults resulting in death, which now involve mandatory sentencing of at least 8 years in jail and a maximum of 25 years.

The legislation specifically targets those who are intoxicated as part of the NSW governments move to crack down on drug and alcohol-fuelled violence.

According to the Crimes Act 25A, a person who assaults another by intentionally hitting them with their body or an object resulting in death can receive 20 years imprisonment.

If, however the offender was intoxicated at the time of the incident, they may be sentenced instead to a prison sentence up to 25 years but with a minimum of 8 years.

As counter-intuitive as it may seem, far from being a defence, intoxication actually increases the severity of the crime, and increases the punishment.

The exception is of course, if the intoxication was not self-induced.

Self defence

If a person committed an offence while acting in self-defence, their state of intoxication may be considered.

But it can only be considered in determining if the person believed they were in danger and needed to defend themselves – it cannot be considering when determining if their response to the perceived threat was reasonable.

This means that the fact a person was intoxicated when they wrongly concluded that they were in danger; however how this person responded to the perceived danger, whether real or not, cannot be excused by intoxication.

Their response must be judged against that of the reasonable,

and sober, person.

Whose Job is it to Call Witnesses?

In both civil and criminal trials, both parties can call witnesses.

However, in a criminal trial, the prosecution bears the main burden of calling witnesses.

According to the Prosecution Guidelines, the prosecution must call all apparently credible witnesses if their evidence is:

- Admissible;
- Essential to the prosecution case; and
- Material or relevant to the proceedings – this includes witnesses that may not be favourable to the prosecution

Evidence which is merely repetitious or proves unchallenged facts by both parties should not be called, unless the defence wishes it to be.

The prosecution is not allowed to refrain from calling a witness as a tactical consideration and they cannot choose not to call a material witness simply because their evidence does not match up with the case that the prosecution are trying to make.

Merely calling a witness does not mean that the prosecution embraces or agrees with the testimony of that particular witness, but it is their duty to call all material witnesses.

The prosecution can only refuse to call a witness if it is

obvious that they are so devoted to the defendant that they will not tell the truth.

And if the prosecution does decide not to call a witness who could be reasonably expected to appear, the defence must be notified.

The prosecution must also give a reason for their failure to be called, such as the witness was not available or deemed untruthful.

Police failure to call a witness can sometimes cause such a substantial miscarriage of justice that a trial may be overturned.

This happened in the case of R v Kneebone where a girl had accused her mother's boyfriend of assaulting her.

During that trial, police failed to call the mother to give evidence.

The mother was in the house during the alleged attack and was said by the daughter to have intervened at one point.

However, the prosecution did not call her despite the fact that she was a material witness.

On appeal, it was held that the failure to call the mother caused a substantial miscarriage of justice. The conviction of the defendant was quashed and a new trial was ordered.

The fact that the prosecutor bears the responsibility of calling material witnesses can sometimes work to the advantage of a defendant in a criminal trial.

The party calling the witnesses examines them first, and then the opposing side can cross-examine. Cross-examining a witness is advantageous because you may ask leading questions, which is not allowed during the examination in chief.

Leading questions are questions that invite a particular answer and are often an effective means of questioning a witness.

However there is a problem for the defence: if the prosecution refuses to call a witness, the judge does not have much scope to intervene.

In Australia, judges are not supposed to call witnesses except in very, very exceptional circumstances.

So while it is the prosecution's job to call witnesses, a failure to do so may be difficult to remedy in court, as a judge's power to intervene here is limited merely to questioning the prosecution on their decision not to call a particular witness.

Does the defence have to call witnesses?

Unlike the prosecution, the defence has no 'duty' to call any witnesses.

Due to the right to silence, a jury is not permitted to draw any adverse inferences from the defendant's choice not to go onto the witness stand and give evidence.

In fact, in a jury trial, a trial judge should direct a jury not to take note of this fact, as a jury otherwise believe that the accused is hiding something or speculate about what such evidence might have been.

On the other hand, if the prosecution fails to call evidence, a jury may consider this in certain circumstances.

They may not speculate about what such evidence may have been but they may take note that a particular witness was not called.

Rules surrounding calling witnesses and their evidence are quite complicated.

While it is definitely the job of the prosecution to call all material witnesses in most circumstances, this does not always happen.

This is very difficult to remedy in court so if you have any concerns about witnesses that may be important in your upcoming hearing at Downing Centre Local Court or trial at the Downing Centre District Court, it may be best to get expert advice from an experienced criminal lawyer.

How Can I Get Police Evidence Thrown out of Downing Centre?

If you are facing charges in Downing Centre Local or District Court, a good criminal lawyer may be able to get your charges dropped or reduced even before the case gets to a defended hearing or jury trial.

Experienced lawyers often achieve this by advising the prosecution in writing that their case is deficient in one or more respects, or the case is weak overall.

This written document is called 'representations' and can be remarkably successful in getting cases dropped provided that your lawyer follows it up by undertaking 'charge negotiations' with the prosecution.

Even if your case is going to a hearing or trial, there may be steps you can take to make sure that certain evidence never gets used against you in court.

For example, evidence may be inadmissible if it was illegally or improperly obtained.

This means that your lawyer may be able to get it thrown out of court so it will never be used against you.

If any evidence that the prosecution intends to use against you appears to have been obtained illegally or improperly, according to the Prosecution Guidelines, the prosecution must inform you of this fact.

What is illegal or improper evidence?

Illegal or improper evidence is anything that was obtained by police whilst acting in contravention of the law.

This can include illegal arrests and illegal searches.

For example, if police search you, your car or home without a suspicion on "reasonable grounds" that you committed an offence or had something illegal this may render the search illegal.

Simply looking nervous, even in a known drug area is not enough to justify a search.

Improperly obtained can even include confessions, if, for example, police deliberately made a false statement during questioning in order to induce you to give information.

A failure to properly caution a suspect may also lead to evidence being excluded.

Can illegally obtained evidence be admitted into court anyway?

Yes, sometimes illegally or improperly obtained evidence is still admissible in court. This is up to the magistrate or judge to determine.

Evidence found to have been unlawfully or improperly obtained should be excluded, but this principle is qualified by an exception: the evidence can used in court if the desirability of admitting the evidence outweighs the undesirability of

admitting evidence obtained in that way.

This is sometimes seen as a balancing exercise between punishing an alleged wrongdoer and discouraging unlawful police behaviour.

In NSW, according to section 138 of the Evidence Act, when deciding whether or not to let the evidence in, a judge must look at:

- The probative value of the evidence
- The importance of the evidence in the proceeding
- The nature of the offence
- How serious the impropriety or contravention is
- Whether the impropriety or contravention was deliberate or reckless
- Whether the impropriety or contravention was inconsistent with any human rights recognised in the International Covenant on Civil and Political Rights
- Whether any other action has been taken in relation to the impropriety or contravention
- The level of difficulty in obtaining the evidence without breaking an Australian law

In essence, evidence will normally be excluded if the contravention was grave and the charges are not very serious.

Conversely, evidence will normally be admitted if the contravention was trivial and the charges are very serious; especially if the evidence that was illegally obtained is very important to the case.

So evidence that goes towards proving serious crimes like murder and commercial drug cases is far more likely to be admissible than less serious offences such as possession of a small quantity of drugs or common assault.

The rule is designed to deter police officers from acting outside the law.

In addition to illegal and improper evidence, the Evidence Act includes several other grounds on which evidence may be excluded from court: for example, where the evidence may be unfairly prejudicial, confusing or misleading, or lead to an undue waste of time.

If you have a court attendance notice scheduled in either the Local or District court at the Downing Centre and need more information about admissibility of evidence, it may be helpful to speak to a criminal lawyer.

An experienced criminal lawyer will be able to give you information tailored to your situation to make sure that you get the best possible outcome in your case.

What Are My Rights During A Police Interview?

First of all, your rights will depend on whether or not you are under arrest.

Police cannot normally arrest you merely to question you, and if you are not under arrest, you don't have to stay or answer their questions.

The police caution:

Police must caution you if you are arrested, they believe there is sufficient evidence against you to prove you did the offence or they give you grounds to believe that you would not be allowed to leave if you wanted to.

This caution that police must give according to the Code of Practice for CRIME is:

I am going to ask you some questions. You do not have to say or do anything if you do not want to. Do you understand that?

We will record what you say or do. We can use this recording in court. Do you understand that?

Interpreters:

Interpreters are to be provided when necessary, even if the suspect can speak some English but feels more comfortable speaking their own language.

Any interview will be deferred until an interpreter arrives, or if this is not possible, until a telephone interview can be arranged. The interpreter cannot be someone known by the suspect.

Police interview:

You can refuse to participate in an interview with police, and it is often advisable to do so for a range of reasons; eg you may be under extreme stress and say things you don’t mean, you may not be in a position to recall all events, you may be unable to properly understand questions and give accurate answers etc.

It may also be advisable to refuse to participate in an interview so that you have an opportunity to obtain and assess the nature and strength of the police case against you.

If you agree to an interview, you have the right for a lawyer to be present; however, they can’t answer the questions or suggest answers to you.

However, they may advise you not to answer questions on the basis that they are not appropriate, relevant or proper, or they may ask the police to clarify the questions.

A lawyer can only be removed during an interview in extreme circumstances, such as obstructing proper questions from being

asked or answers being recorded.

When you are speaking with your lawyer, police officers must remove themselves from hearing distance in order to ensure your privacy.

While you don't have a right to state-funded legal representation in your case, you do have the right to a lawyer, and may be able to get Legal Aid.

Having an experienced criminal lawyer may make all the difference to your case as they will be able to privately advise you on your options and the best way for you to approach the interview.

Remember, even innocent people can unintentionally incriminate themselves in police interviews, especially if they are nervous or intimidated.

Right to silence:

Rights to silence have changed recently – and now a refusal to answer police questions may have negative consequences for your case if it goes to trial.

In the past, this was not the case – judges or juries were not allowed to draw negative conclusions from the fact that you didn't answer police questions.

But now if you remain silent in a police interview and fail to mention something that you later want to rely on in court, the court may be allowed to draw adverse inferences.

There are three exceptions to this:

- If you are under 18 years of age;
- If you don't have a legal practitioner with you at the time or the chance to speak with one privately; or
- If you are charged with anything other than a serious indictable offence

During your interview, police must caution you that failure to mention a fact that you later seek to rely on may allow unfavourable inferences to be drawn against you in court.

Interview Recordings:

An Electronically Recorded Interview of a Suspected Person or 'ERISP' is the recording of your interview and it may be audio, video or both.

Interviews must be recorded and police must inform you of this fact.

If you refuse to consent to being recorded, police may record your refusal to be recorded.

Police should avoid asking questions in a confusing way, for example, asking two questions at once. You can ask them to clarify what they are asking you.

If police have violated your rights during an interview, the evidence may be improperly obtained and inadmissible in court.

If you are interviewed by police, particularly for a serious crime, keep mind your rights and perhaps even think about whether you need a lawyer.

If you are required to attend a police interview, you should give your name, address and birth date but hold off answering any other questions until you have a legal representative with you.

Don't sign any written statements or any other documents except for a bail form.

How does Self-Defence Work in Court?

Sometimes there are legitimate reasons for breaking the law. Our justice system recognises this and provides defences in situations where acting contrary to the law is justified.

According to the NSW Crimes Act, a person is not criminally liable if they broke the law and were acting in self-defence. You've probably heard about this defence but may not be sure exactly how it works or what it covers.

Self-defence, unlike what it's name suggests, encompasses not only protection of yourself but:

- Defending not only yourself but another person
- Preventing or ending unlawful deprivation of liberty either of yourself or another person
- Preventing property from any unlawful damage, taking or interference
- Preventing or removing a person from committing criminal trespass

For these last two reasons, however, death that is a result of intentional or reckless force to kill is not a defence.

However self-defence according to some, is actually not classified as a 'defence' at all, because the onus of proof in proving that it was self-defence actually does not rest on the accused.

The prosecution must prove beyond a reasonable doubt that the person was not acting in self-defence.

A defendant must have been acting on the belief that it was necessary to act the way they did This belief must have been reasonable.

Self-defence must be:

- A belief in the mind of the accused
- A belief on reasonable grounds

This includes an honest but mistaken belief that a person is going to be attacked.

The proportionality test does not, however mean that the defendant must have weighed up the precise amount of force needed to repel an attacker. In the moment of an attack when a person may be required to make a split second judgment, this kind of analysis is not necessary.

First of all, it must be proportionate. Getting out your shotgun in retaliation to a slap in the face is hardly an appropriate reaction.

In one recent Downing Centre Local Court case, the career of an off-duty policeman was put on the line after he punched a woman in the face.

The policeman was walking home from a Sydney hotel with his girlfriend, and a woman who had earlier had an altercation with his girlfriend approached.

His girlfriend was set-upon by the woman and policeman Michael Simmons intervened. He got her on the ground and then straddled her.

He punched her once in the face, and even though she had been swinging her arms at him, the judge didn't find his reaction proportionate.

Simmons was much bigger and stronger than the attacker, and so although his conduct was provoked, it was deemed to be excessive.

Simmons got 200 hours of community service and a 12-month good behaviour bond. He is currently suspended from the police

force without pay and working as a security guard.

Self-defence is a full, not partial defence, meaning that it exempts the person from any kind of criminal liability, if successful. It can be used not just for murder but other offences, for example assault.

Excessive self-defence is a partial defence – if a person kills another and the conduct was not reasonable, a person will be found guilty of manslaughter and not murder, if they believed that the conduct was necessary to:

- Defend themselves or another person; or
- To prevent or terminate unlawful deprivation of liberty

In other words, if a person believed honestly but mistakenly that the amount of force they used was necessary, excessive self-defence will act as a partial defence, meaning that the person is not criminally responsible for murder, but manslaughter.

Of course, if you have been charged with an offence and think you may need to know about self-defence or any other defence it is best to speak with a lawyer to get professional information about your case.