

# 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 be 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.