



Charged or Arrested

Some of the most commonly asked questions about being Charged or Arrested are discussed on this page.

1. Who can arrest me and why?

A Police Officer can arrest you if a Warrant has been issued by the Court for your arrest, the Officer has a reasonable suspicion that you are about to commit, are committing or have recently committed a crime and you may be arrested if you are suspected of being involved in smuggling or the import or export of prohibited goods. Further, a private citizen can arrest you where you have committed or attempted to commit a crime or where you have committed or about to commit a breach of the peace. In this circumstance a breach of the peace includes assault, creating public alarm or obstructing a Police Officer doing their duty.

2. Can force be used to arrest me and what happens if I resist?

A Police Officer may use as much force as is necessary to arrest you. However, unreasonable force is assault. It is appropriate for a Police Officer to handcuff you if you attempt to escape or the Officer considers it necessary to prevent you escaping. Whether force was reasonable in the circumstances is a matter for a Judge or Magistrate to decide, if required, at a later time. It remains an offence to resist arrest. However, active resistance is required for a charge of resisting arrest to be laid. Therefore, it is not enough to charge someone with resisting arrest for simply refusing to co-operate or lying down for example. However, it should also be remembered that resisting arrest is an offence in itself. Therefore, if you are being arrested for something which you are completely innocent of, yet you continue to resist arrest, you may face that charge even if the Police do not charge you with any other offence.

3. Do I have to submit to a search?

Police Officers have the right to search you, without a Warrant, immediately after arresting you or later if you have been charged.

4. Can I be arrested for questioning?

Police can request you accompany them to a Police Station for questioning but you are not required to go unless you have been arrested for an offence. The Police simply cannot demand you accompany them to the Police Station without arresting you. It is not advisable to speak with the Police until you have first spoken with a Solicitor. You should always ask for a Lawyer or independent witness to be present during any period of questioning and you should exercise your right to refuse to answer any questions without there being present a Lawyer in the room. If you are arrested and taken to a Police Station it is advisable to politely insist that you be allowed to contact a Lawyer.



5. When I am arrested what questions should I answer?

The general rule of thumb is do not answer any questions until you have had an opportunity to contact a Lawyer or independent witness so they may be present whilst questioning takes place. You have a right to silence. However, if the arrest concerns a motor vehicle collision, you are required to give your name and address and particulars of the incident to the Police. A general caution should be made by the Police before questioning you that no questions need to be answered and that any answer may be used in evidence against you at a subsequent time and place. It is important that you only offer the Police the general details they would require when processing you such as your name, address and date of birth. Do not ever sign a document other than a bail form. Always be polite and remain calm and ask that you be afforded an opportunity to contact a Lawyer as soon as possible.

6. Do I have to participate in an identification parade?

The Police may wish to have you partake in an identification parade. You are not obliged to do so and you are afforded a right to refuse participating in such a parade.

7. Do I have to submit to being fingerprinted and photographed?

The Police may take your fingerprints and photographs for the purpose of identification. It is always of benefit to cooperate with Police when they are performing this task. In the event that you are subsequently acquitted or the charges are dropped you may make application to the New South Wales Police Service asking that your fingerprints and photographs be immediately destroyed.

8. How long will I have to stay in custody?

Following arrest, the Police may detain you for an initial period of up to four (4) hours to conduct investigations. An Application can be made to allow an extension of up to a further eight (8) hours. Following this you must either be charged or released.

9. What is bail?

Generally, when individuals are charged they will be either released on bail with or without conditions or if you are refused Police Bail afforded an opportunity to appear before a Court where a Bail Application may be made before a Magistrate. Bail conditions may mean money is forfeited if the conditions are not complied with.

10. When will bail be refused?

The Police and/or a Magistrate may refuse an individual be released on conditional bail if:

- You have previously failed to appear in Court;
- Committed an offence while on Bail, Parole or Probation; and
- The offence you have been charged with involves murder, robbery, drug trafficking or domestic violence where there is a history of violence.

11. What happens if I don't comply with bail conditions?

You can be arrested by the Police for breaching your Bail and brought before the Court. In the event a breach of bail is proven, the Court can either refuse bail or release you on fresh or continued bail. This means there may be specific



reporting requirements for you to comply with or further orders may be made in relation to the conditional nature of the bail.

If you would like further information, or require assistance, please contact us on (02) 4731 5899 or send us an email by clicking on the 'Contact Us' page on our website.