



Getting Arrested and Going to Court

For most people, being arrested and attending Court is a new and unexpected experience which can be extremely daunting.

Under New South Wales law there are many offences for which people can be arrested and ultimately come before the Courts. These range from assaults, drug offences, stealing, dangerous and drink driving, domestic violence and damaging property to name just a few. What is most important is that you are aware of your rights and obligations if you are arrested and charged with an offence.

Who can arrest me and why?

A police officer can arrest you if he or she has a warrant for your arrest issued by a Court, or without a warrant if he or she has a reasonable suspicion that you are about to commit a crime, are at the time committing a crime or have recently committed a crime. In addition, a private citizen can arrest you (citizen's arrest) in certain circumstances.

The police officer or person arresting you should tell you that you are under arrest or that you are being arrested.

A police officer may use reasonable force to arrest you, for example, if you attempt to escape, a police officer may handcuff you.

Once arrested, you will be taken to a police station. If you are charged with an offence you may be photographed and finger printed. You may be asked to participate in a record of interview; however it is advisable not to participate in a record of interview until you have had the opportunity of speaking with your lawyer. You can ask to speak to your lawyer in relation to your matter and don't forget that you have rights not to participate in a record of interview and not to answer police questions except for establishing your identity.

You may be asked to participate in an identification parade; however there is no obligation for you to consent to this. Also, you may be asked to supply a DNA sample. This may be done if you consent to it and should be carried out within two hours. You must be informed by the police of a number of issues including the purpose for the procedure and the offence in relation to which the police officer wants the procedure to be carried out. If you do not consent to a DNA sample being taken, then the procedure may proceed by an order from a Senior Police Officer or a Local Court Magistrate. A Senior Police Officer may order the procedure if he is satisfied that you are under arrest and there are reasonable grounds to believe that the taking of the DNA sample might produce evidence tending to confirm or disprove that you have committed the offence.



Will you be granted bail?

Ultimately, the decision of bail will rest with the Bail Sergeant at the police station. In New South Wales there are some offences for which there is a presumption in favour of bail, some offences where there is no presumption in favour of bail (for example murder) or offences, such as drug related matters, where there is a presumption against bail.

The police may grant bail on certain conditions such as reporting to your nearest police station or not coming into contact with any alleged victim or any witnesses.

If police bail is refused then the police are obliged to take you as soon as possible to the nearest available Local Court where you will come before a Local Court Magistrate where you may apply for bail. The Magistrate will then determine whether bail is granted and under what conditions, if any, such bail is allowed.

If granted bail, you should comply strictly with the bail conditions. Any alleged breach may result in a warrant being issued for your arrest and you coming before the Court where your bail may be revoked. Further bail may be refused and you will then be held in custody pending your trial.

What happens at court?

In New South Wales certain offences can be dealt with summarily (in the Local Court before a Magistrate), with more serious offences (indictable offences) generally being heard either in the District Court of New South Wales or the Supreme Court of New South Wales.

With indictable matters however your first Court appearance will normally still be in the Local Court before the matter is transferred to the higher Court.

The first time you are in Court you have the options of:

1. Seeking an adjournment for a period of time to obtain legal advice;
2. Entering a plea of guilty to the offence; or
3. Entering a plea of not guilty.

If you adjourn your matter to obtain legal advice and you are already on bail normally the Magistrate will continue your bail conditions.

If you enter a plea of guilty your matter may be dealt with on that day or if the Magistrate is considering a full-time gaol sentence may adjourn the matter and ask that a pre-sentencing report be obtained to consider alternatives to full-time gaol such as, Community Service Orders or Periodic Detention (weekend gaol).

If you enter a plea of not guilty then a Brief of Evidence may be ordered by the Magistrate – that is, the police must serve you with their police witness statements. The matter will then be listed for a further return date, for reply to the Brief of Evidence and so that your lawyer can indicate which police witnesses are required to attend Court for cross examination. Your matter will then be listed for a hearing.

If you are arrested on an indictable offence – that is a matter that will be heard in the District or Supreme Court, then you may face a committal proceeding in the Local Court. A committal hearing is now generally heard by the Magistrate reading through the Brief of Evidence supplied by the police. If committed to trial, your matter will then be transferred



to the higher Court. The matter will come eventually before the Court on the first return date when directions may be made including obtaining a hearing date.

DON'T FORGET:

If you are arrested, you have a right to speak to a lawyer. Use that right!

At Bateman Battersby we have a number of experienced Lawyers who specialise in Criminal matters. If you need help sorting out the confusion about who gets what when a marriage breaks up or if you wish to discuss any of the matters addressed above, please feel free to contact Oliver Hagen or Ken Gray on (02) 4731 5899 or email us at litigation@batemanbattersby.com.au if you require further information or assistance.