

Criminal Law

Crimes
& Civil
WrongsInfo
Kit

Criminal Law can be simply summed up as any law which states a specific conduct is an offence and sets a penalty for committing it.

Criminal Law covers both crimes (against the state and community at large) and civil wrongs (against an individual), both of which are uniquely tried and prosecuted. Criminal Law encompasses the complete spectrum of crime, from Summary Offences such as traffic offences, to serious crimes such as murder and fraud.

Case outcomes are dependent on many factors, and it is wise to seek knowledgeable advice and representation from a lawyer as they can greatly affect the verdict and resulting punishment.

Good to know

- There are many aspects to defending a criminal, civil wrong or traffic offense case. Please feel free to contact us to discuss your specific needs in a no-obligation initial consultation so we can provide you tailored advice.
- Please note as crimes can be prosecuted at a state level, this fact sheet relates to criminal law in NSW.

The law is on your side



At Altria, we provide advice you can understand, in a straightforward, clear and concise manner.

This fact sheet provides an overview of the process and factors to consider if you are defending or prosecuting a criminal matter.

If you require more details or wish to discuss your matter, please call or email us on
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Covering the basics of Criminal Law

First, let's cover some quick Criminal Law basics on how crimes are viewed and processed via the court system.

Crimes vs. civil wrongs

CRIME

A '*crime*' is technically a wrong against the whole community and is punishable. An example would be going to jail for murder, because as a community at large our laws protect human life. Crimes are usually prosecuted by the state or Commonwealth.

VS

CIVIL WRONG

A '*civil wrong*' is against an individual which requires compensation or repayment to the person wronged. An example would be suing another individual or entity for damages. Civil wrongs are usually brought to court by an individual or entity, such as a company.

Seriousness of crimes

SUMMARY OFFENCES

Lower level crimes are called '*Summary Offences*', and are heard by a magistrate in Local Court. These include offences such as shoplifting, common assault and possession of small quantities of drugs.

VS

INDICTABLE OFFENCES

More serious crimes are called '*Indictable Offences*' and are heard by a judge and possibly a jury in the District or Supreme Court. These are more serious crimes such as manslaughter and drug dealing.

How cases are heard and tried

NSW Courts



There are many other types of courts including appeals courts and the Federal Courts.

1. POLICE CHARGE, ARREST OR SUMMONS



It is important that you comply with police requests at the time of charging or arrest. If not, this may be used against you in court. If arrested you will be taken to the police station for charging, and held in custody until bail is set (if applicable) and paid. If you are summoned on a civil wrong case it is important that you comply with instructions in the summons and appear in court as instructed.

2. PRE-TRIAL



Your first step is likely to seek representation by a lawyer who is skilled in the area of Criminal Law you have been charged in. Preparing character references can have a big impact on the sentencing, but ensure they stand out and are prepared with examples of your good standing in society. You may also engage in rehabilitation programmes or counselling prior to trial, to demonstrate you are taking the necessary steps to curb your actions. You will also want to prepare your plea for guilty or not guilty, and possibly conduct mock trials to prepare you and your case for court. In a civil wrong case, you may seek an out of court settlement.

In a committal trial in Local Court, a magistrate will determine if your case is an indictable offense that will need to be tried in a higher court, possibly with a jury, or perhaps dismiss your charges based on the lack of evidence.

3. TRIAL



During trial you will likely need to be present in court, and your lawyer will represent you through the entire process. Depending on the case, proceedings will include providing evidence, witnesses and testimony, the prosecution and defence arguing their sides of the case, and the accused entering a plea.

Upon ruling the magistrate, judge or jury will hand down verdict, and the magistrate or judge will outline the sentencing of the case. It is vital that you present well in court, and your lawyer will give you specific advice to navigate the various steps in the trial process.

4. FINES, JAIL AND APPEALS



If you are fined or sentenced to serve time the court will instruct on how to settle the debt and/or hand you over to correction authorities. This is not necessarily the final verdict as the law grants several avenues for appeals, which is when you apply for a higher court to examine a lower court's verdict. Pending the verdict, your lawyer can advise you on what grounds you have to appeal your case, or seek a reduced sentence. Seeking early parole and good behaviour are both options your lawyer can also assist you with.

Good to know

- ① You must always be completely honest and open with your legal team to ensure they can assist you in the best way possible. '*Client legal privilege*' allows you to discuss your matter in confidence with your lawyer, and it won't be admissible in court.
- ② It is possible to commit and be tried for both a crime and a civil wrong at the same time. Assault is a good example of this where the police may bring charges, and the assaulted individual may also bring charges.
- ③ Some crimes and civil wrongs are tried by federal courts.

NSW fines are based on a 'penalty unit' system. 1 penalty unit is currently equal to \$110. The system is designed so that the penalty points can remain the same on a crime, but the government can adjust the monetary rate to account for inflation. For ease, we have stated fines in whole dollar amounts.

Driving offences

Driving offences are common, but losing your license and demerit points along with heavy fines – or worse, going to jail – can be reduced or avoided if the right defence is mounted.

Your matter will go to court if you are accused of:

- ✓ Negligent driving, occasioning death or grievous bodily harm
- ✓ Exceeding the speed limit by more than 30 km/hr over the limit
- ✓ Driving under the influence of drugs or alcohol, or refusing to undergo a breath test
- ✓ Driving while your licence is suspended or you are disqualified from driving

Altria can assist with all traffic offences if you have grounds for defence or have extraordinary needs, such as a pressing requirement to retain your license for personal reasons. Please note we only cover common road topics in this fact sheet, but can represent you on all traffic offences including heavy vehicles and watercraft.

Drink Driving

Drink driving is an offense taken seriously by the police especially if it has caused an accident. If you have breath tested over the limit, you will be arrested and taken immediately to the police station for further compulsory breath analysis. You will then be granted bail, and your charge will be heard at a later date by the Local Court.

Drink driving penalties vary from a fine to imprisonment, and you will lose your licence. Your lawyer can seek a 'Section 10' for punishable traffic offences so your record is not tarnished, and will result in no fine being paid and you keeping your license. Section 10's are applicable in limited circumstances and takes some convincing of the courts. The court may dictate a good behaviour bond or intervention programme in relation to your punishment.

There are two ways to be convicted of drink driving:

PCA

Prescribed Concentration of Alcohol (PCA) means a breath analysis is undertaken, with possible further blood analysis. A blood sample can be ordered by the police within 4-hours of a breath test or incident, or it can be obtained privately with the police present. If you have had blood drawn notify your lawyer so they can determine if it was done lawfully.

OR

DUI

Driving under the influence of alcohol (DUI) is generally proven by the observations of police or witnesses and the surrounding circumstances. Anecdotal evidence such as your breath smelt of alcohol, your speech is slurred, you are unsteady on your feet or your driving caused a car accident are all examples of proving a DUI.

DRINK DRIVING PENALTIES IN NSW *PCA = Prescribed Concentration of Alcohol*

OFFENCE	MAX FINE	MAX JAIL	DISQUALIFIED		MAX FINE	MAX JAIL	DISQUALIFIED	
			AUTO	MIN			AUTO	MIN
	First major offence in 5 years				Second or more major offence in 5 years			
Novice range PCA – 0.01-0.019	\$1,100	n/a	6 mths	3 mths	\$2,200	n/a	12 mths	6 mths
Special range PCA – 0.02-0.049	\$1,100	n/a	6 mths	3 mths	\$2,200	n/a	12 mths	6 mths
Low range PCA – 0.05-0.079	\$1,100	n/a	6 mths	3 mths	\$2,200	n/a	12 mths	6 mths
Mid range PCA – 0.08-0.149	\$2,200	9 mths	1 yr	6 mths	\$3,300	1 yr	3 yrs	1 yr
High range PCA – over 0.150	\$3,300	1.5 yrs	3 yrs	1 yr	\$5,500	2 yrs	5 yrs	2 yrs
Driving under the influence (DUI)	\$2,200	9 mths	1 yr	6 mths	\$3,300	1 yr	3 yrs	1 yr
Refuse breath test	\$1,100	n/a	n/a	n/a	\$1,100	n/a	n/a	n/a
Refuse breath analysis	\$3,300	1.5 yrs	3 yrs	1 yr	\$5,500	2 yrs	5 yrs	2 yrs
Wilfully alter blood concentration	\$3,300	1.5 yrs	3 yrs	1 yr	\$5,500	2 yrs	5 yrs	2 yrs

Drug driving

Police can now also test for various drugs in your system if you have been stopped by for random testing or pulled over by the police. It is important you comply with the police requests for an oral sample.

DRUG DRIVING PENALTIES IN NSW

OFFENCE	MAX FINE	MAX JAIL	DISQUALIFIED		MAX FINE	MAX JAIL	DISQUALIFIED	
			AUTO	MIN			AUTO	MIN
	First offence in 5 years				Second or more offence in 5 years			
Prescribed illicit drug in oral, fluid, blood or urine test	\$1,100	n/a	6 mths	3 mths	\$2,200	n/a	12 mths	6 mths
Cocaine or Morphine in blood or urine test	\$1,100	n/a	6 mths	3 mths	\$2,200	n/a	12 mths	6 mths
DUI drug	\$2,200	9 mths	1 yr	6 mths	\$3,300	1 yr	3 yrs	1 yr
Refuse oral fluid test	\$3,300	n/a	3 yrs	6 mths	\$5,500	1.5 yrs	5 yrs	1 yr
Refuse blood sample	\$3,300	n/a	3 yrs	6 mths	\$5,500	1.5 yrs	5 yrs	1 yr
Alter amount of drug before test	\$3,300	n/a	3 yrs	6 mths	\$5,500	n/a	5 yrs	1 yr
Driver involved in fatal accident fail to supply blood or urine sample	\$3,300	1.5 yrs	3 yrs	6 mths	\$5,500	2 yrs	5 yrs	1 yr
Fail on demand to provide sample of blood or urine	\$3,300	1.5 yrs	3 yrs	1 yr	\$5,500	2 yrs	5 yrs	1 yr

Speeding and red light infringements

If you believe that you were wrongfully booked for speeding or running a red light there are avenues to defend your driving record against the Roads and Maritime Service (RMS). Cameras are not infallible, and there may be technical grounds to argue your case. Call to discuss your matter.

Other infringements and car accidents

Dangerous and negligent driving charges vary on the severity of the act and resulting consequences such as killing or injuring someone and destroying property. If you have been in or caused a car accident it is important you remain on the scene and comply with police requests as failing to do so are also offences. Altria can assist you on all road related offences.

Mounting a defence

Defending yourself against a driving offense is a specialist skill, and whilst you can go it alone in most cases you should engage a lawyer to represent you.

How you are presented to the magistrate, obtaining valuable evidence and pleading your case correctly are vital to obtaining the best outcome.

Common defences include:

- Denial that you did what the prosecutor says you did
- That you have a legal excuse or justification for your actions, such as:
 - **Accident:** The driving offence was the result of an accident
 - **Reasonable efforts:** You did all that you could to avoid committing the offence
 - **Honest and reasonable mistake of fact:** That you mistakenly believed that you were not in the wrong
 - **Necessity or duress:** You had to drive because it was an emergency situation, or someone was forcing you
- The penalty does not reflect the circumstances of your situation
- You were convicted and fined in your absence as you were not properly notified of the hearing

Good to know

- Generally low-level traffic offences (running a red light or being slightly over the speed limit) do not go against your criminal history.
- Pleading guilty can work in your favour to seek a reduced sentence, but your plea should be thoroughly discussed with your lawyer prior to ensure the best outcome.

Drugs

Drug possession and supply are serious crimes that will be prosecuted by the police.

Possession

To be found guilty of possession, an illegal drug must be proven to be in your 'custody' (immediate physical possession) or 'control' (going to do something with the drug, like consume or share it), and that you knew you had custody or control of the illegal substance. So, for example, if drugs were found in your house or car, without your knowledge of their presence, you would have a legal defence against the conviction. If multiple people are involved such as in a share house situation, it must be proven they all knew about the drugs in question, as everyone is innocent until proven guilty.

The penalty for possession is 12 months in prison and/or a fine of \$2,200. Drug possession is a summary matter and will be heard in the Local Court.

While possession cases are easier to prove, there is a separate offence if you use or attempt to use prohibited drugs, or are caught in the act of consumption (smoking, snorting, injecting, etc). The same penalties apply to this charge.

Supply

Supply is another name for 'dealing', and includes selling or giving away of drugs. Having a quantity of illicit substances over and above that of personal consumption ('Small Quantity') will make you guilty of 'deemed supply', which are outlined in the table below. Further still, you can simply just offer to sell drugs, or dishonestly sell a legal substance as a drug (e.g. selling icing sugar as heroin), and you will legally be found guilty on supply charges. If you are caught with drugs in multiple locations, their total weight is combined into the one charge.

Supply and importation of illicit substances is an indictable offence, and is heard by the District Court.

SUPPLY QUANTITIES AND PENALTIES *Penalty = jail sentence and/or fine*

DRUG	TRAFFICKABLE	INDICTABLE	COMMERCIAL	LARGE COMMERCIAL
Cannabis	300g 12 months/\$2,200	1kg 10 years/\$220,000	25kg 15 years/\$385,000	100kg 20 years/\$550,000
Heroin	3g 12 months/\$2,200	5g 15 years/\$220,000	250g 20 years/\$385,000	1kg Life/\$550,000
Amphetamines (ice)	3g 12 months/\$2,200	5g 15 years/\$220,000	250g 20 years/\$385,000	500g Life/\$550,000
Ecstasy	3g or 15 pills 12 months/\$2,200	5g or 25 pills 15 years/\$220,000	0.5kg 20 years/\$385,000	2kg Life/\$550,000
LSD	0.003g or 15 pills 12 months/\$2,200	0.005g or 25 pills 15 years/\$220,000	0.5g 20 years/\$385,000	2g Life/\$550,000

Only the total weight matters not the purity.

It does not matter how much the illegal substance is cut with other substances in dealing charges.

Drug equipment

It is illegal to have equipment with the intention of using it to consume drugs. The law is the same as possession in that there must be knowledge of the equipment and custody or control. It is an offence to sell a bong or ice pipe or their component parts, whether or not it was intended to be used to take drugs. Syringes do not constitute drug equipment, but lighters, spoons and tourniquets do.

Cultivating and manufacturing drugs

Growing cannabis is an offense at all stages of the plants growth from possessing seeds to harvesting. Defence can be mounted if you were unaware the plant was cannabis. It is also illegal to manufacture illicit substances of any kind, including synthetic drugs.

CULTIVATING AND MANUFACTURING QUANTITIES AND PENALTIES

DRUG	LESS THAN SMALL QTY	SMALL QTY	INDICTABLE	COMMERCIAL	LARGE COMMERCIAL
Cannabis – Hydro	5 plants 2 years/\$5,500	5 plants 15 years/\$385,000	50 plants 15 years/\$385,000	50 plants 15 years/\$385,000	200 plants 20 years/\$550,000
Cannabis – Outdoor	5 plants 2 years/\$5,500	5 plants 15 years/\$385,000	50 plants 15 years/\$385,000	250 plants 20 years/\$550,000	1,000 plants 20 years/\$550,000
Manufacture (see previous table for drug quantities)			15 years/\$220,000	20 years/\$385,000	Life/\$550,000

Good to know

- Medicinal cannabis is not permitted in NSW, and generally cannot be used as legal defence.
- Even if you just touched a marijuana joint to pass it along, you could be found guilty of possession.
- 'Social supply' of illicit substances is when there is no consideration of profit, such as giving a pill to a friend.

Assault

Assault can be charged as a crime by the police, or a civil wrong by the attacked, or both.

If you have been the victim of or committed assault Altria can assist you in your case. In most cases of assault, the punishment will reflect the severity of the injury inflicted.

TYPE	MAX SENTENCE	WHERE MATTER IS HEARD
<p>Common assault - Typically a physical blow caused by punching, hitting, kicking or head butting another person, but can include just touching someone, threatening to hit someone, or even spitting on someone. Common assault does not need to cause physical harm.</p>	2 years	Local Court
<p>Assault occasioning actual bodily harm - If the assault caused physical harm, however minor, then the charge is more severe. This can be visible injury, such as a bruise or a scratch, or negatively impact the health or comfort of the victim.</p>	5 years 7 years if aggravated	Local Court, or can be requested by the prosecution to be heard in District Court
<p>Reckless wounding - Typically applied to cutting and stabbing incidences, but also applies to injuries where the skin is split. Being 'reckless' is when you did not intend to cause the injury, and resulted from the defendant's actions.</p>	7 years jail 10 years if aggravated	
<p>Reckless Grievous Bodily Harm - Grievous Bodily Harm is defined as a permanent or serious disfiguration of the person, killing an unborn foetus, or having a Grievous Bodily disease.</p>	10 years 14 years if aggravated	
<p>Intent to Cause Grievous Bodily Harm – This is a very serious charge, and 'intent' is where you were in full knowledge of harm you were seeking to inflict on another person. It can be difficult to prove intent in court.</p>		
<p>Wounding with intent to cause Grievous Bodily Harm - This is where you intended to break the skin of another person, such as by cutting or stabbing. This includes glassing, knowingly running over someone with your car or using a chain saw to dismember a limb.</p>	25 years	District Court or Supreme Court
<p>Assaulting police - Assaulting police, including while off-duty, is a very serious offence and carries harsher penalties than ordinary lay people.</p>	14 years	Local, District or Supreme Court depending on the severity of the assault
<p>Assault causing death – This is one of the only laws carrying minimum sentencing and is the result of your actions causing the death under the definition of 'assault'.</p>	20 years sober 25 years intoxicated	District Court or Supreme Court

Aggravated assault

There are many ways an assault can be aggravated:

- Criminal record of similar offences
- Domestic violence
- Position of authority over the victim
- Serious injuries
- Using a weapon or an ordinary object as a weapon
- If in breach of bail or parole, or an AVO

Mounting a defence

There are several circumstances which if proven can dismiss or reduce assault charges.

These include:

- **Self-defence** – Where you defended yourself or someone else, protected property or restricted trespassing, or defended your or another's liberty
- **Accident** – Where the assault was unintentional
- **Duress** – Assaulted in response to a reasonable threat
- **Necessity** – Where the assault was in response to a situation of imminent peril to you or another person

Good to know

- 'Grievous Bodily Harm' usually encompasses skull and jaw fractures, brain damage, deep lacerations needing stitching, surgery or nerve reconstruction, or causing a mother to lose her unborn baby. Uncomplicated fractures of limbs, facial fractures that have short recovery times and cuts and lacerations are not usually considered Grievous Bodily Harm.
- Assault cases may result in a variety of punishments from fines to periodic detention, good behaviour bonds, or community service. Your lawyer can outline possible results upon discussing your case further.
- You cannot pay a higher fine for a reduced sentence, and the higher the court hearing your case, the higher the penalties that can be incurred.

Domestic violence and AVOs

Domestic and family violence is violent, abusive or intimidating behaviour by a spouse or partner, carer or family member to control, dominate or cause fear. And it's not just physical abuse but also includes emotional, psychological, financial and sexual abuse.

An Apprehended Violence Order (AVO) is a restriction against an individual who makes you fear for your safety, to protect you from further violence, intimidation or harassment. AVOs prohibit that individual from assaulting, harassing, threatening, stalking or intimidating you. There are two types: 1) Domestic and 2) Personal Violence Orders.

HOW YOU CAN OBTAIN AN AVO

POLICE

Go to your local police station and they can apply on your behalf. The police are the ones to serve notice of the court date to the accused. Police will also represent you in court if you file through them.

OR

LOCAL COURT

You can go to Local Court and request an AVO, and a court date will be given to you. The court does have the right to refuse the request if they feel the AVO does not have reasonable grounds or chance of success.

AVOs and the police

- Police may seek an AVO on a person's behalf, despite the protected person protests.
- Police will act in the interest of the victims, and may charge domestic violence perpetrators with assault.
- You will not be able to have the case withdrawn before trial, even if you disagree with the police's claims.

If you are served an AVO notice:

- ✓ It is important you show up to court, as an Order can be made against you in your absence, or an Interim Order.
- ✓ You can consent to the Order, and not have to go to the hearing. But bear in mind that if you breach the conditions of the Order you could be charged.
- ✓ If you oppose and wish to contest the application, then the case will be adjourned to a later date so you and the protected person can prepare your evidence for the hearing.
- ✓ You must comply with the specific conditions of any Order. If you are found guilty of contravening the AVO, then you could face a maximum 2 years in jail and/or a \$5,500 fine, or a number of other punishments.

Good to know

- www.domesticviolence.nsw.gov.au is a good resource for more information..
- AVOs themselves do not form part of your criminal record, but breaking them could be a crime.

HOW MUCH WILL YOUR CASE COST?

Criminal cases vary widely, yet in most circumstances we are able to provide a fixed fee to represent your case. We will be able to provide you an estimate or a much better sense of costs, including any court fees, once we can have an initial no obligation consultation with you.

Traffic and drug possession offences can use our Fee Predictor tool to gauge an estimate of costs.

Criminal Law Case Starter

Altria provides law on your terms. Our Case Starter lets you enter simple details to start the conversation with us so we can design you a bespoke pathway to a legal solution.



GO TO CASE STARTER

How Altria can help you

Altria's criminal and traffic law team, are specialists in their field. Their years of experience ensures you will receive the best advice and representation available. We offer advice and court representation covering the full range of criminal law matters, including:

- Traffic offences and suspended or loss of driving license, including driving under the influence
- Drug possession and dealing
- Personal violence, sexual assault and AVOs
- Fraud
- Firearms charges
- Robbery

Contact Altria today on (02) 9134 5851, or email us at info@altrialaw.com