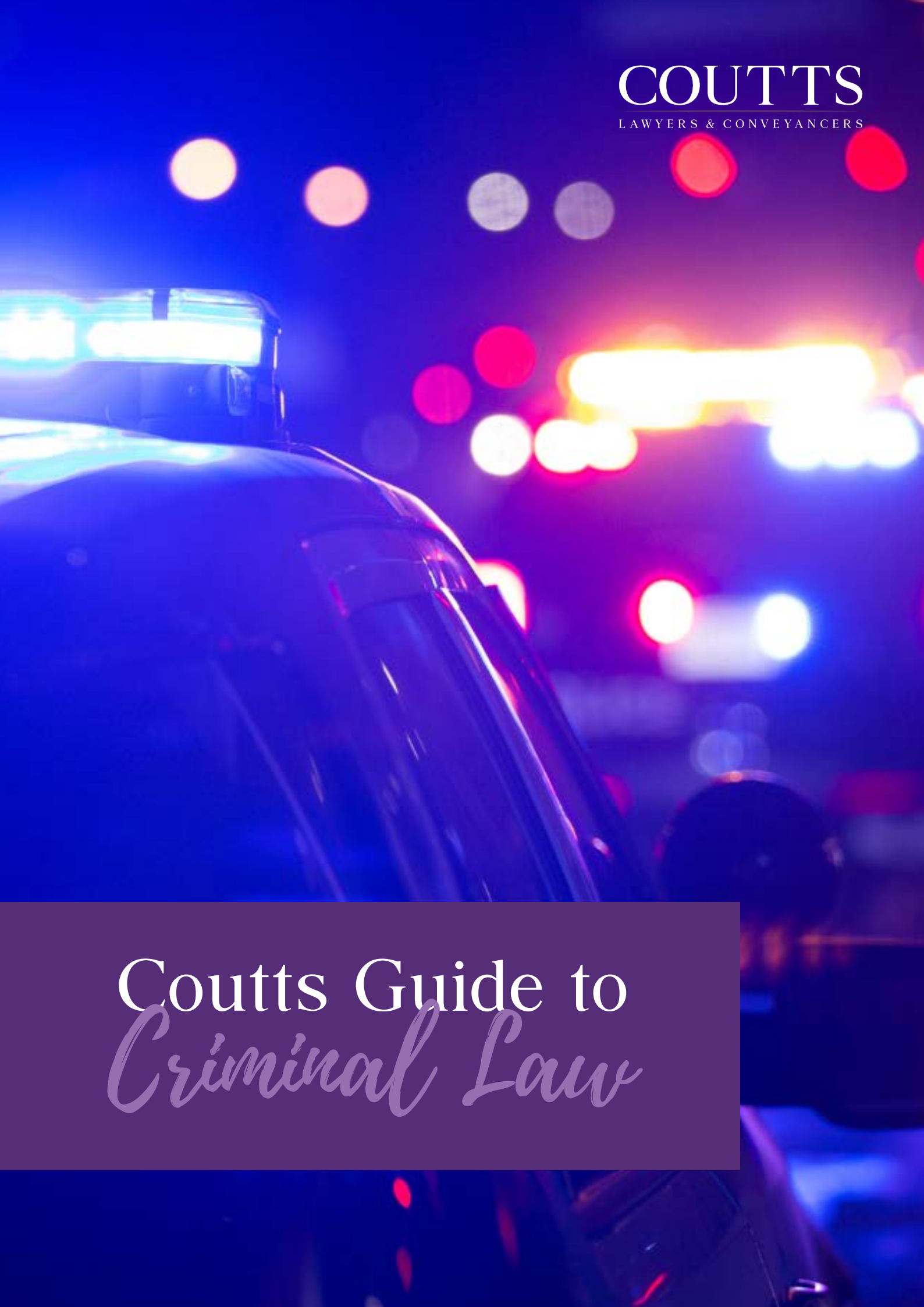

COUTTS
LAWYERS & CONVEYANCERS

Coutts Guide to *Criminal Law*

Contents

Your Experts Criminal Law

We understand that facing criminal charges is a challenging and daunting experience, with potentially very serious and life-changing consequences. Our team of experienced lawyers are here to assist and support you through every step of the process. We are committed to ensuring that you are fully informed of your rights and any options available to you so that you are empowered to make informed decision.

Receiving expert legal advice as early as possible is imperative in criminal matters. If you have been contacted by police, asked to attend the police station for the purposes of being interviewed, or charged with an offence call our offices without delay.

Lara Menon
Senior Associate
Head of the Criminal Law Department

Shannan Wright
Lawyer

Alexander Cumerlato
Lawyer

Isabel Strahan
Law Graduate

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Click on our team to read their bio!

CRIMINAL LAW HOTLINE: 02 8324 7527

Apprehended Violence Orders

What is an AVO?

Apprehended Violence Orders provide protection to a person in need of protection by restraining the offender, or alleged offender from contacting, approaching, or coming within a certain distance of the protected person and anyone they are in a domestic relationship with. An application for an Apprehended Violence Order can be made by a police officer on behalf of a person in need of protection. Alternatively, a person in need of protection above the age of 16 can also lodge an application with the local Court.

When can an AVO be order?

Initially, NSW Police may issue a provisional order until such time as the matter can be heard by the Court. Once the matter is heard by the Court, an interim or final order may be made. An interim order has the same effect as a final order in that it provides protection to the person in need of protection and will remain in force until the matter is finalized. The interim AVO order will either be made final by the Court, withdrawn by Police, or dismissed by the Court.

A final AVO will be made in circumstances where the named person either consents to the final order, or if the named person does not consent the Court determines that the AVO is necessary following a hearing. If the matter proceeds to hearing, the Court must be satisfied that:

1. The person in need of protection has reasonable grounds to fear, and does fear that the named person will commit a personal violence offence against them, or that the named person will intimidate or stalk them; and
2. Such conduct is sufficient to warrant the making of an order.

What does an AVO cover?

There are several mandatory orders that the Court must make when granting an application for an AVO, which include:

- ✓ Prohibiting the named person from harassing, threatening, molesting, assaulting or otherwise interfering with the person in need of protection;
- ✓ Prohibiting the named person from intimidating, or engaging in conduct that may intimidate, the protected person;
- ✓ Prohibiting the named person from stalking the protected person;

- Prohibiting the named person from damaging or destroying the property of the protected person.

In addition to the mandatory orders, the Court may also include some additional orders, such as:

- Prohibiting or restricting the named person from contacting or approaching the person in need of protection;
- Prohibiting the named person from approaching or entering the home of the person in need of protection;
- Prohibiting the named person from approaching or entering the workplace of, or any other place that the person in need of protection often attends;
- Prohibiting the named person from contacting the person in need of protection within 12 hours of consuming alcohol or illicit drugs.

What to do if an AVO is taken out against you?

If you are a defendant, or named person, in an application for an apprehended violence order, you have a number of options, including:

- Provide an undertaking to the Court that you will no longer cause the person in need of protection to fear you.
- Agree to the conditions contained within the Apprehended Violence Order, without admitting to the allegations against you.
- Agree to the conditions contained within the Apprehended Violence Order, admitting to the allegations against you.
- Proceed to a hearing and entirely defend the application for the Apprehended Violence Order so a magistrate can decide whether to make the order or dismiss the application.

Will I get a criminal record if an AVO is taken out against me?

If an apprehended violence order is made against you, you are not given a criminal record. An AVO may appear on a working with children or criminal check while it is still in force, which could have effects on employment. Also, if you breach the apprehended violence order, it is a criminal offence, and the maximum penalty is a fine of $5,500.00 and/or two years imprisonment.

How can we help?

The Criminal team at Coutts Lawyers & Conveyancers are experienced in attending Court to assist in defending an AVO. There are a number of options available, and it is important to obtain independent legal advice before attending Court.

Assault

What is assault?

Assault has been defined as any act, and not a mere omission to act, by which a person intentionally or recklessly causes another to apprehend immediate and unlawful violence (*R v Ireland [1998] 1 AC 147*). Assault may or may not include physical contact, and physical contact need not necessarily be present to prove the offence of assault (*The Queen v Phillips (1971) 45 ALJR 467*).

There are various types of assaults offences that you may be charged with. The most common assault offences include:

- Common assault
- Assault of police
- Assault occasioning actual bodily harm
- Intentionally/recklessly cause grievous bodily harm

What must you prove for assault?

To secure a conviction for common assault, the prosecution must prove the following elements beyond reasonable doubt:

1. An act by the accused which intentionally, or recklessly, causes another person (the complainant) to apprehend immediate and unlawful violence.
2. That such conduct of the accused was without the consent of the complainant.
3. That such conduct was intentional or reckless in the sense that the accused realised that the complainant might fear that the complainant would then and there be subject to immediate and unlawful violence and none the less went on and took that risk.
4. That such conduct be without lawful excuse.

What to do if you have been charged with assault?

If you have been charged with assault, there may be a defence available to you, including:

- Self-defence;
- Necessity;
- Duress; or
- Accident.

If you have been charged with assault, it is important to obtain professional legal advice as soon as possible.

How can we help?

The Criminal team at Coutts Lawyers & Conveyancers have the expertise to represent you in court when defending an assault. There are several options available, and it is important to obtain independent legal advice before attending Court.

Break & Enter/Theft

What is classified as Break & Enter/ Theft?

The crime of Break, Enter and Steal is contained in Section 112 of the *Crimes Act 1900*. In order to secure a conviction, the Prosecution must prove the following:

1. That the accused broke and entered the premises described;
2. Those premises were a dwelling house or building; and
3. Having entered the property the accused stole an item of property.

In relation to "break", although there is no definition contained in the *Crimes Act 1900*, it has been determined that there is a requirement that the accused forcibly gains access. Therefore, it is not breaking to walk through an open door. There is no "breaking" involved in further opening an open window (*Standford v R (2007) 70 NSWLR 474*), however opening a closed but not locked door would be sufficient to constitute breaking (*DPP (NSW) v Trudgett (2013) 238 A Crim R 1*).

If you have been charged with a break & enter / theft offence, the police must prove beyond a reasonable doubt that you did break into a house or other dwelling, you entered the property, and you committed the offence or intended to commit an offence. There are also general theft offences which do not have the requirement of break and enter. The crime of larceny is contained in Section 117 of the *Crimes Act 1900*. In order to secure a conviction, the Prosecution must prove the following elements beyond reasonable doubt:

1. That the property belongs to someone other than the accused;
2. That the property was taken and carried away; and
3. The taking of the property was without the consent of its rightful owner.

In addition, the Prosecution would need to prove the following additional elements, which relate to the accused's state of mind at the time of the taking:

1. The property was taken with the intention of permanently depriving the owner of it;
2. The property was taken without a claim of right made in good faith; and
3. The property was taken dishonestly.

What can you do if you are accused of break & enter/theft?

There is a defence available of "claim of right", which is available where you believed you were legally entitled to the property. In addition, duress and necessity may be available.

If you have been charged with a theft offence, it is important to obtain legal advice as soon as possible.

How can we help you?

The Criminal team at Coutts have the expertise to represent you in court. There are a number of options available if have been accused of Break and Enter and it is important to obtain independent legal advice before attending Court.

Domestic *Violence*

Domestic violence offences are considered by Judges and Magistrates to be incredibly serious, and with the recent increased focus on domestic violence incidents, the Courts have an increased focus on protecting the victims of domestic violence.

What is Domestic Violence?

While there is no specific offence in relation to domestic violence, and domestic violence is generally prosecuted under the general offences of assault or intimidation, where the offence occurs in the presence of a domestic relationship, there are some differences in the way the Court will treat the matter. For example, there are certain matters that the Court must take into consideration when sentencing a person for a domestic violence offence under section 4A of the *Crimes (Sentencing Procedure) Act 1999*. Under this legislation, the starting point for sentences in domestic violence matters is either a full-time custodial sentence, or supervision. In the event that the Court considers that an alternate sentence is appropriate, the Court must give their reasons for imposing an alternate sentence. The safety of the victim is the paramount concern, and the Court must consider the potential effect of any alternate sentence on the victim's safety before imposing an alternate to full-time custody.

In addition, section 4A of the *Crimes (Sentencing Procedure) Act 1999* require a Court to impose a full-time custodial sentence where an accused breaches an AVO with an act of violence.

How can we help?

It is important to seek legal advice before providing an interview to Police in relation to any domestic violence-related incident. Our Coutts Criminal Law team has the expertise to assist you throughout the process.

Drug Offences

Our criminal law team at Coutts Lawyers & Conveyancers are highly experienced in defending drug offences, including:

- Possess prohibited drug
- Deemed supply prohibited drug
- Supply prohibited drug
- Supply prohibited drug on an ongoing basis
- Deal with proceeds of crime

What happens when you are charged with a drug offence?

Drug offences are contained in the *Drug Misuse and Trafficking Act 1985 (NSW)*. Possessing a prohibited drug is an offence under Section 10 of the Act. Schedule 3 of the Act lists the substances considered to be prohibited drugs. To secure a conviction for possession of a prohibited drug, the Prosecution must prove the following beyond reasonable doubt:

1. You had a prohibited drug in your possession;
2. You either knew it was in your possession, or you knew that it was likely to be in your possession; or
3. You believed that the item you had in your possession was a drug.

There are number of defences available to defend a drug possession charge, which include the following:

1. Youv did not have exclusive possession of the drugs. This defence may be applicable in circumstances where the drugs were found in the communal area of a house which you share with others, for example the lounge room or living area;
2. You were not aware that the drugs were in your possession, for example they may have been placed into your bag without your knowledge;
3. The search conducted by Police was not lawful;

4. You have a lawful reason to possess the drug under the *Poisons and Therapeutic Goods Act 1966*;
5. You had the care of, or were assisting in the care of another person who has been lawfully prescribed the drug.

Under Section 29 of the *Drug Misuse and Trafficking Act 1985 (NSW*), anyone found in possession of a "trafficable quantity" of drugs are considered to be in possession of those drugs for the purposes of supply. The trafficable quantities of each drug are found in Schedule 1 of the *Drug Misuse and Trafficking Act 1985 (NSW)*, and for some of the more popular "party drugs" are in fact quite low. For example, the trafficable quantity of MDMA (ecstasy) is 0.75grams; the trafficable quantity for cocaine, amphetamines and heroin is 3 grams. With the average ecstasy tablet containing 0.1gram of MDMA, someone found in possession of 8 ecstasy tablets, depending on the quality and strength, would be considered to be a trafficable quantity and therefore charged with deemed supply.

In order to defend a charge of supply, the defendant would need to prove that the drugs were intended for personal use. This would be quite difficult to prove in circumstances where other items associated with the supply of drugs are also found, such as bags, scales, large amounts of money or multiple mobile phones.

How can we help you?

Drug Offences can be serious, but our NSW Criminal Lawyers team has the expertise to defend you in court. There are a number of options available, and it is important to obtain independent legal advice as soon as possible.

Fraud

What is fraud?

Fraud offences are contained in Part 4AA of the *Crimes Act 1900*. There are several offences in this Part covering the offence of fraud, however the charge of fraud is generally known as obtaining a benefit by deception, or alternatively causing disadvantage by deception.

The offence of fraud generally consists of a person dishonestly by any deception either obtains property belonging to another; obtains any financial advantage; or causes any financial disadvantage.

Section 4B of the *Crimes Act 1900* defines dishonesty as "dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people". Deception can include words or conduct; however, it must be reckless or intentional.

What if I am accused of fraud?

To be convicted of a fraud offence, the police must prove beyond a reasonable doubt, that a person by deception, dishonestly, obtained property belonging to another person, or obtained a financial advantage.

The offence of fraud carries a maximum penalty of two years imprisonment in the local court and a maximum penalty of ten years imprisonment in the district court, depending on the seriousness of the offence.

How can we help you?

Our Criminal Law team has the knowledge and expertise to assist you in responding to fraud claims. There are several options available which is why It is important to gain independent legal advice before you attend court.

Prohibited *Weapons*

What is a prohibited weapon?

Under Section 7 of the *Weapons Prohibition Act 1998* it is an offence for a person to possess or use a prohibited weapon unless they are authorized to do so under a permit. In addition, anyone who has a permit but possesses or uses the weapon for a purpose other than the purpose for which they have the permit, is also guilty of an offence. Due to Australia's commitment to eradicate unlawful possession of guns, the maximum penalty is quite severe, and if found guilty the offender could spend up to 14 years in jail.

Part 4 of the *Weapons Prohibition Act 1998* deals with the sale and purchase of prohibited weapons, and similarly carry maximum penalties of extensive imprisonment terms. How we can help you:

Our team is experienced in the following areas of firearm and prohibited weapon offences:

a. Possession of an unregistered firearm
b. Firing at dwelling houses or buildings
c. Possession of an unlicensed firearm
d. Possess prohibited firearms

Robbery

What is Robbery under the law?

Robbery is a hybrid offence which contains elements of both larceny and assault and is contained in Section 94 of the *Crimes Act 1900*. In order to secure a conviction, the Prosecution must prove the following elements:

1. That the property belongs to someone other than the accused;
2. That the property was taken and carried away;
3. The taking of the property was without the consent of its rightful owner; and
4. The property must be taken
    a. From the person of another;
    b. In the presence of another;
    c. From the immediate personal care and protection of another.

In addition, the Prosecution would need to prove the following additional elements, which relate to the accused's state of mind at the time of the taking:

1. The property was taken with the intention of permanently depriving the owner of it;
2. The property was taken without a claim of right made in good faith; and
3. The property was taken dishonestly.

In addition to the above larceny elements, it must be proven that:

1. The property was taken by actual violence or putting the owner, or person with lawful possession, in fear of actual violence.

For the purposes of the offence of robbery, there must

be violence or threat of violence which induces the victim to part with the property, and it is not sufficient if there was violence or threat made after the property was taken *(R v Foster (1995) 78 A Crim R 517)*. However, the victim does not need to be present when the actual the taking occurs *(Smith v Desmond [1965] AC 960)*.

There is also an offence of assault with an intent to rob, which covers the circumstance where the accused had the intent of permanently depriving the victim of an item of property but did not actually steal from them.

How can we help you?

If you have been charged with a robbery offence, it is important to obtain legal advice as soon as possible The NSW criminal law team at Coutts Lawyers & Conveyancers has the expertise to provide clear advice on what to do next ensuring you get a favourable outcome when defending a robbery charge.

Sexual Assault

What is Sexual Assault?

The offence of sexual assault is contained in Section 61I of the *Crimes Act 1900*, which provides that "Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse is liable to imprisonment for 14 years". The Act also defines the acts which constitute sexual intercourse, and Section 61HA provides that sexual intercourse means:

1. "Sexual connection occasioned by the penetration to any extent of the genitalia (including a surgically constructed vagina) of a female person or the anus of any person by —
2. Any part of the body of another person, or
3. Any object manipulated by another person,
4. Except where the penetration is carried out for proper medical purposes, or
5. Sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person, or
6. Cunnilingus, or
7. The continuation of sexual intercourse as defined in paragraph (a), (b) or (c)."

What is consent?

In NSW, consent is a fundamental part of sexual offence laws. A sexual offence only occurs when someone has not consented to the sexual act.

For the purposes of the Act, consent is defined by the act as occurring "if the person freely and voluntarily agrees to the sexual activity at the time of the act" *(Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021)*. Therefore, consent is not presumed but rather requires affirmative confirmation at the time of the sexual activity. The acquisition of sexual consent involves ongoing and mutual communication.

A person is considered to have not consented to a sexual act unless they say or do something that is indicative of consent.

In addition, the Act states that a person knows that the victim did not consent to the sexual activity if:

- the person knows that the alleged victim does not consent to the sexual activity, or
- the person is reckless as to whether the alleged victim consents to the sexual activity, or
- the person has no reasonable grounds for believing that the alleged victim consents to the sexual activity. (Section 61HE(3) of the *Crimes Act 1900*).

For the purposes of determining whether the accused knew that the victim did not consent to the sexual activity, the Court must take into account all the circumstances of the case including any steps taken by the accused to ascertain whether the victim consents to the activity but cannot take into account any self-induced intoxication of the accused (Section 61HE(4) of the *Crimes Act 1900*).

The legislation also defines the circumstances where any consent is negated, including where the victim does not have the capacity to give consent; where the victim is unconscious or asleep; if the victim consents due to threats of force or terror; because the victim is unlawfully detained; due to a mistaken belief as to identity of the accused; mistaken belief that the victim is married to the accused; mistaken belief that the sexual activity is for health or hygienic purposes; or any other mistaken belief about the nature of the activity induced by fraudulent means.

What do you need to secure a conviction?

In order to secure a conviction, the Prosecution must prove beyond reasonable doubt the following elements:

8. That the accused had sexual intercourse with the victim;
9. That the victim did not consent; and
10. That the accused knew that the victim did not consent.

What to do if you are accused of sexual assault?

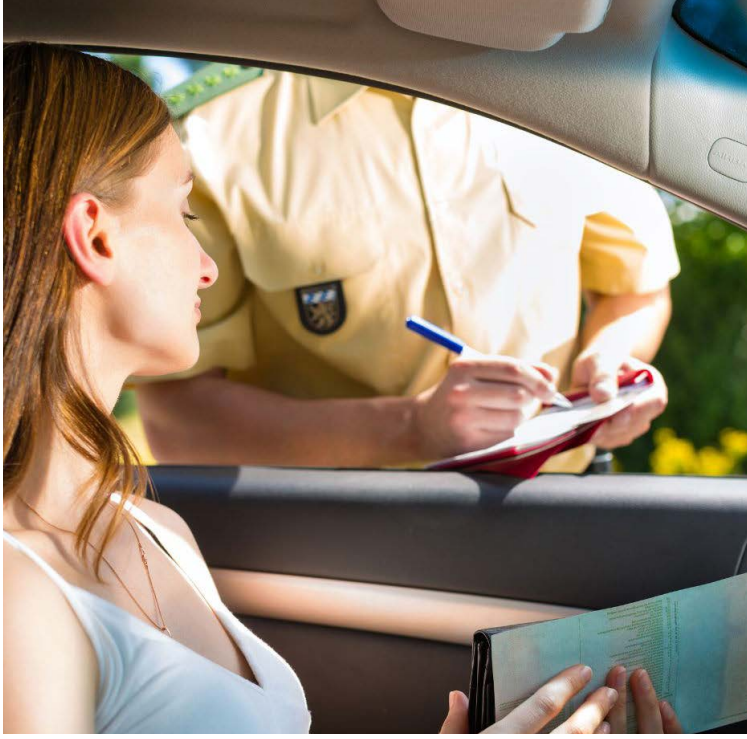
There are a number of defences available to a charge of sexual assault, which include the following:

- Maintaining that no sexual intercourse occurred;
- Claiming that the victim consented to the sexual intercourse;
- Claiming that the accused held a reasonable belief that the victim consent to the sexual intercourse

How can we help you?

Our Criminal Law team has the expertise and experience to defend a sexual assault claim. It can be a very complex process and it is important to know your rights and seek independent advice before providing an interview to Police or attending court.

Traffic *Offences*



At Coutts Lawyers & Conveyancers, we understand the importance of holding a driver's licence and the impact a conviction may have on your future. Our lawyers have the experience in dealing with a wide range of traffic matters, including:

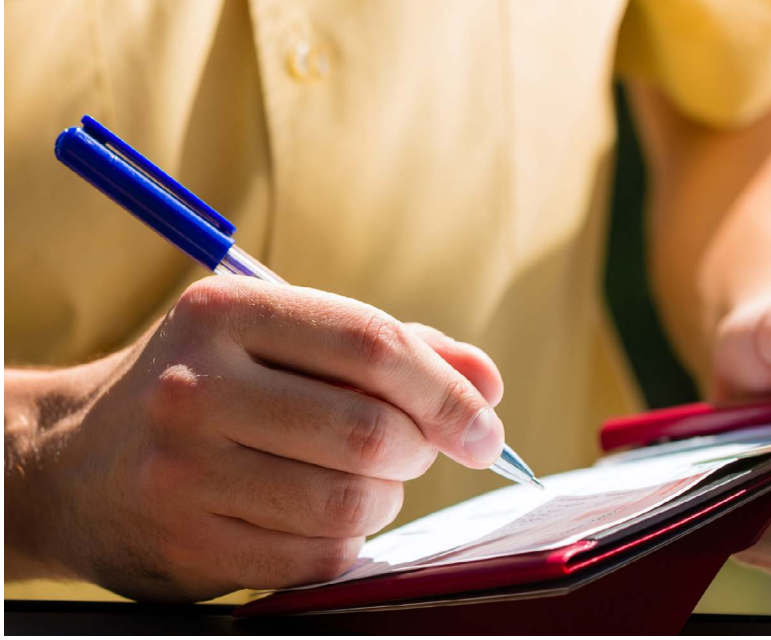
- Drink driving
- Driving whilst license suspended/disqualified
- Negligent driving/dangerous driving
- License appeals
- Police pursuit
- Driving under the influence of drugs (DUI)

For an understanding as to the possible penalties available to you for driving offences, refer to the RMS website.

How can we help?

We understand that dealing with a driving offence can affect your life in a big way when you depend on your license. Our NSW criminal lawyers Team has the expertise to represent you when fighting traffic offences and appeals. We can provide advice and assist with all traffic related matters

Penalties



There is a range of penalties available to the Courts in New South Wales, which include the following:

- Dismissal under Section 10;
- Conditional Release Order;
- Section 10A;
- Fines;
- Imprisonment;
- Community Corrections Order;
- Deferral of sentence;
- Suspended sentence;
- Intensive Correction Order.

Section 10 Dismissal

A dismissal under Section 10 of the *Crimes (Sentencing Procedure) Act 1999* allows the accused to avoid a criminal record but allows the Court to register a finding of guilt. A "Section 10" can be made by the Court with or without a condition, such as a good behaviour bond, or Conditional Release Order as they are now known. When this occurs, the conviction becomes "spent" as soon as the condition expires, which means that the accused will not have a criminal record. However, in some circumstances the accused person may still need to disclose the finding of guilt, for example if the national police check is made for the purposes of immigration or in certain employment situations.

Section 10A

Similarly, to a Section 10, Section 10A of the *Crimes (Sentencing Procedure) Act 1999* allows for the Court to register a conviction without requiring any further penalty. This is most used in circumstances where the Court decides to disqualify a person from driving, which can only occur once a conviction is recorded.

Community Corrections Orders

Under the *Crimes (Sentencing Procedure) Act 1999* a penalty available to the Court is a Community Correction Order, formerly known as community service. A length of time that a person must adhere by the community correction order can be specified by the Court but must not exceed 3 years. Under Section 88 the *Crimes (Sentencing Procedure) Act 1999* there are two standard conditions which must always be included, which are that the offender must not commit any offence, and that the offender must appear before the court if called on to do so at any time during the term of the community correction order. It is then open to the Court to impose additional conditions such as:

- A curfew condition imposing a specified curfew (not exceeding 12 hours in any period of 24 hours),
- A community service work condition requiring the performance of community service work for a specified number of hours (not exceeding 500 hours or the number of hours prescribed by the regulations in respect of the class of offences to which the relevant offence belongs, whichever is the lesser),
- A rehabilitation or treatment condition requiring the offender to participate in a rehabilitation program or to receive treatment,
- An abstention condition requiring abstention from alcohol or drugs or both,
- A non-association condition prohibiting association with persons,
- A place restriction condition prohibiting the frequenting of or visits to a particular place or area,
- A supervision condition requiring the offender to submit to supervision- by a community corrections officer, except as provided by subparagraph (ii), or if the offender was under the age of 18 years when the condition was imposed, by a juvenile justice officer until the offender has reached that age.

Fines

It is open to the Court to impose an Order upon a convicted person to pay a fine, either as the only penalty of their sentence, or as part of their penalty in conjunction with another penalty. The maximum fine for an offence is usually specified in the legislation containing the offence and is often prescribed as a maximum amount of penalty units, for example 50 penalty units. In New South Wales at present, each penalty unit represents $110 (Section 17 of the *Crimes (Sentencing Procedure) Act 1999*. Therefore, where an offence has a maximum penalty of 50 units, this equates to $5,500.

Intensive Corrections Order

Section 66(1) of the *Crimes (Sentencing Procedure) Act 1999* states that community safety must be the paramount consideration when the sentencing court is deciding whether to make an intensive correction order in relation to an offender. When considering community safety, the sentencing court is to assess whether making the order or serving the sentence by way of full-time detention is more likely to address the offender's risk of reoffending (Section 66(2) of the *Crimes (Sentencing Procedure) Act 1999*).

Section 67 of the *Crimes (Sentencing Procedure) Act 1999* provides that an intensive correction order must not be made for any of the following offences—

- Murder or manslaughter,
- A prescribed sexual offence,
- A terrorism offence within the meaning of the *Crimes Act 1914* of the Commonwealth or an offence under section 310J of the *Crimes Act 1900*,
- An offence relating to a contravention of a serious crime prevention order under section 8 of the *Crimes (Serious Crime Prevention Orders) Act 2016*,
- An offence relating to a contravention of a public safety order under section 87ZA of the *Law Enforcement (Powers and Responsibilities) Act 2002*,
- An offence involving the discharge of a firearm,
- An offence that includes the commission of, or an intention to commit, an offence referred to in paragraphs (a)–(f),
- An offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraphs (a)–(g).

Conditional Release Order

Under Section 9 of the *Crimes (Sentencing Procedure) Act 1999* the Court may decide to record a conviction on the accused's criminal history but release them with no further penalty. The Conditional Release Order will contain two standard conditions as prescribed under Section 98 the *Crimes (Sentencing Procedure) Act 1999*, which are that the offender must not commit any offence, and that the offender must appear before the court if called on to do so at any time during the term of the community correction order. It is then open to the Court to impose further conditions including the following, listed under Section 99(2) of the *Crimes (Sentencing Procedure) Act 1999*:

- A rehabilitation or treatment condition requiring the offender to participate in a rehabilitation program or to receive treatment,
- To abstain from alcohol or drugs or both,
- A non-association condition prohibiting association with particular persons, A place restriction condition prohibiting the frequenting of or visits to a particular place or area,
- A supervision condition requiring the offender to submit to supervision by a community corrections officer. If the offender was under the age of 18 years when the condition was imposed, by a juvenile justice officer until the offender has reached that age.

A Conditional Release Order, in accordance with Section 99(3) of the *Crimes (Sentencing Procedure) Act 1999* can not include any of the following:

- Home detention;
- Electronic monitoring;
- Curfew;
- Community service.

Imprisonment

Imprisonment is to be considered by the Court as a last resort. Section 5 of the of the *Crimes (Sentencing Procedure) Act 1999* states that "a court must not sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate". The Court must first set a non-parole period, or minimum term of imprisonment under Section 44(1) of the *Crimes (Sentencing Procedure) Act 1999*. The balance of the imprisonment term set by the Court must not exceed one-third of the non-parole period under Section 44(2) of the *Crimes (Sentencing Procedure) Act 1999*. In other words, the non-parole period must be at least three-quarters of the total imprisonment term unless there are special circumstances which justify otherwise.

If the Judge considers that the matter is sufficiently serious, or that the character of the offender is such that requires the Court to do so, the Court can decline to set a non-parole period under Section 45 of the *Crimes (Sentencing Procedure) Act 1999*.

Deferral of sentence

A Court, in certain circumstances, may choose to defer sentencing under Section 11 of the *Crimes (Sentencing Procedure) Act 1999*. Following a finding of guilt, the Court may decide to defer its decision on a sentence for the following reasons:

- To assess the offender's capacity and prospects for rehabilitation, or
- To allow the offender to demonstrate that rehabilitation has taken place, or
- To assess the offender's capacity and prospects for participation in an intervention program, or
- To allow the offender to participate in an intervention program, or for any other purpose the court considers appropriate in the circumstances.

The Court will impose bail conditions on the offender for the period of deferral, which may include orders that the offender attend a rehabilitation program, to regularly report to a Police station, to reside in a rehabilitation facility while receiving treatment, to attend counselling or any of the other available bail conditions. If the offender breaches any of those conditions, a warrant will be issued for their arrest. Once the offender is back before the Court, the Court may choose to immediately proceed to sentencing.

How can we help?

Our Criminal Law Team has the expertise to provide clear advice on any criminal charge and provides a considered, thorough, and expert defence to any criminal charge. We can aid with the following:

- ✓ Court Appearances
- ✓ Appeal Applications
- ✓ Bail Applications
- ✓ Pleas
- ✓ Advice
- ✓ Sentencing
- ✓ Defended hearings
- ✓ Facts disputes

Checklist

- [ ] If you are arrested, or approached by Police, you are obliged to provide your full name, date of birth and address for the purposes of confirming your identity.
- [ ] Seek legal advice before participating in an electronically recorded interview with Police.
- [ ] If you have been charged with an offence, and receive a Court Attendance Notice, either in the mail or in person, seek independent legal advice before the first Court date.

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"Coutts is a powerful female founded law firm with a core value system that puts people first. Our reputation as the legal business of choice is recognised by our achievements and awards."

Adriana Care
Managing Partner

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