

CRIMINAL LAW – FREQUENTLY ASKED QUESTIONS (FAQ)

Q1 Will having a criminal lawyer for my case make a difference?

You need legal advice before you talk to the police!

Being represented by an experienced criminal lawyer is strongly recommended as it can make a positive difference to the outcome of your matter.

A criminal lawyer can conduct a strategic defence at your trial if you are defending charges, or, if you choose to plead guilty, make arguments that are most likely to persuade the court to suspend a penalty of imprisonment or give you the lowest possible fine.

Grope Hamilton Lawyers' experienced criminal lawyer, Tony Kerin, knows all the "ins and outs" of criminal law and can help make the difference in the outcome of your matter.

Q2 How can the criminal lawyer at Grope Hamilton Lawyers help me?

Grope Hamilton Lawyers' experienced criminal lawyer, Tony Kerin, can help you with all parts of your criminal law case.

In the early stages, we can help apply for bail or have your bail varied. We can also be present at your Police interview.

Tony can negotiate with the police and with the prosecution, and of course speak up for you in court. Whether you choose to enter a plea of guilty or to take your matter to trial, he can help. Rest assured, he will give you thorough and well-thought out advice, so you can decide the best way to deal with your matter.

Q3 I have been charged with an offence by the police and they want me to provide a statement. Should I do this?

Firstly, always remember that anything you say to the police can be used against you in court. Sometimes, your statement can be the strongest, and sometimes the only, evidence the police have to support their case against you. Contrary to popular



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belief, providing a statement is usually unlikely to help your case or result in charges being “dropped”.

Refusing to provide a statement cannot be “held against you” in court, because you have the right to silence.

Nearly always, it’s safer and preferable that you do not provide a statement to the police. Also, remember, nothing that you say to the police is “off the record”!

Tony will advise you to give police only the information that you are legally required to provide (for more on this, see the next FAQ). Aside from that, it is usually best to simply say “*I wish to remain silent until I have received legal advice*” or “*I do not want to answer the question*”.

Tony will also advise you, while maintaining your *right to silence* (see more below), to remain calm and polite when dealing with the police. Remember, it is an offence to resist arrest.

If you have an explanation to help establish your innocence, or you believe that you are guilty and want to make a confession, wait until you get legal advice from Tony before deciding whether or not to provide a statement to the police.

Q4 The police say that I have to give them some information. What are my rights?

While you have *the right to remain silent*, you are required by law to provide police with:

- your full name
- Your current address; and
- in relation to motor vehicle matters, the name of the person driving the vehicle on the date and time in question.

Remember that failing to truthfully answer any of the above questions is an offence.

Q5 The police say that they have CCTV footage of me to support the charge against me. Can I see this footage?

Our experienced criminal lawyer, Tony Kerin, will ensure he gathers all evidence the police/prosecution intend to rely upon in court. This can include CCTV footage, witness statements, photographs, forensic evidence (DNA), police notes and other evidence. It can take some time to obtain such evidence, and this usually happens part-way through court proceedings.

If you believe that there may be evidence at hand that may help your case, let your criminal lawyer know as early as possible. This includes, but is not limited to CCTV footage that should be preserved or witnesses who may be willing to assist.

Remember, you are entitled to see all of the evidence that makes up the police or the Director of Public Prosecution's case against you. Tony will ensure that you have this opportunity, and will advise you about the strength or weakness of your case and your defence, and the strength or weakness of the prosecution case against you.

Q6 The police want to take a buccal (mouth) swab from me to obtain a sample of my DNA. Should I say yes?

It's best to get legal advice before consenting to this or any other forensic testing procedure. Ask the police to telephone our office, or in the event that you are unable to speak to our criminal lawyer, ask to speak to the Legal Aid Duty Solicitor who is on call to speak to people in custody 24/7.

Q7 I am on bail not to leave the State but need to be able to travel interstate soon. What can I do?

Our experienced criminal lawyer, Tony Kerin, can help you make a bail variation application (please note, Legal Aid will not usually cover bail variation applications).

Prior to your first court date, you will probably be on police bail which means that we will negotiate directly with the police to seek the bail variation. If the police will not vary your bail then we can apply to the court to vary your bail on or after the date of your first court hearing.

From your first court date onwards, only a Magistrate or Judge can vary your bail. Tony can ensure that your matter is brought before the court for a special hearing for the purposes of seeking to vary your bail. Bail variations can be complicated, particularly if Prosecution oppose the bail variation. Tony will present the strongest possible case for your bail variation.

Q8 I am on bail to attend court but I can't take time off from work. Do I have to go to court if I have arranged for a criminal lawyer to attend on my behalf?

A condition of your bail is that you must attend all court hearings, even if you have arranged for a criminal lawyer to represent you.

If you fail to attend at court, a warrant may be issued for your arrest and you may be charged with breach of bail. In some circumstances, the police may then refuse to grant further bail.

If you are unable to attend court, tell our experienced criminal lawyer, Tony Kerin, as soon as possible so we can help and advise you. Also, if there is another court hearing date before the date on which you cannot attend, your criminal lawyer may be able to persuade the Court to excuse you from attending on that occasion.

Q9 I am currently unemployed and facing a criminal charge. I have no way of paying for a criminal lawyer. Can I get Legal Aid through Grope Hamilton Lawyers?

Our experienced criminal lawyer, Tony Kerin, accepts Legal Aid (legally-aided matters funded by the Legal Services Commission of SA) matters.

The Legal Services Commission offer legal aid funding for some, but not all, criminal law charges. Generally speaking, there must be a risk of imprisonment. Our solicitors can advise whether or not your case is likely to be suitable.

To apply for Legal Aid, clients fill out an application form available at our office, and provide the supporting financial information required by the Legal Services Commission.

The Legal Services Commission (and not Grope Hamilton Lawyers) make the decision as to whether or not your matter will be accepted for legal aid funding. This process can take three weeks or sometimes longer, so it's important to apply for legal aid well before your court date.

If your application for legal aid is successful, you will be sent a letter confirming that your matter will receive legal aid. You will need to pay a client contribution fee, as determined by the Legal Services Commission, before we can start work on your matter.