



The art of negotiating Police Charges

Most people think that if a person is charged by the Police or Authorities such as Local Councils, Environment Protection Authority or the Building Commission for example, there is no opportunity for negotiation or even request to have the charges withdrawn.

In our experience it is wise to discuss the matter with an experienced lawyer before the Court day.

Before the matter is resolved in Court the parties are required to undertake a case conciliation conference with the Police or Authorities, and this can be undertaken outside of the court via letters, emails or telephone discussion.

It is possible at this stage to try and negotiate with Police to have some of the charges dropped. It is not uncommon for Police to be ambitious and include repetitive charges and/or higher to lesser charges, where the evidence upon which they have based the charges are insufficient for the lesser charges and not for the higher ones.

A Contest Mention explained

In some cases where it looks that neither party will 'budge' then the matter may be directly listed for a Contest Mention at the Court. Doing so will reduce the cost of at least one appearance.

At a Contest Mention, the magistrate will act as a form of mediator, and at this stage, we could seek an indication from the Magistrate as to what the likely sentence would be for a guilty plea.

In many cases, the Court would be willing to award a fine without conviction. Or, in more serious cases, the Magistrate could grant a non-custodial sentence and place the Defendant on a good behaviour bond or community based Order.

Do you know about a Diversion?

In some cases where the Defendant has no prior convictions and the charges are not serious, the Police might be prepared to offer Diversion.

The advantages of Diversion is that if the Defendant does not commit, or is charged with, any further crime during the Diversion period, the charges will disappear and there will be no record of them against the Defendant.

Three recent experiences we have encountered

Recently, we have successfully negotiated with prosecutors to withdraw charges on three of our criminal law clients. Naturally we have changed the names of the people concerned. Their stories are detailed below:

1. Charged with assault but no evidence of injury

James (not his real name) attended our offices after being charged with the assault of his former wife. The alleged assault occurred at the family home following a domestic dispute. The wife filed a report with the police. The police brief indicated that the wife showed no signs of injury or bruising when she reported the alleged assault. James, while admitting to a domestic dispute, repeatedly denied assaulting his wife, stating that he had merely held her wrists to prevent her from hitting him during the course of the argument.

James had no history of past criminal behaviour, had strong family and community ties, and worked a steady job. There was no reason to believe that he was the sort of person that would pose a threat to the general community.

In light of the circumstances, we decided the best approach was to engage in case conciliation with the Prosecutions Department, urging them in a strong letter to consider withdrawing the charges. A week before the matter was due before the Court we received a letter from the Prosecution agreeing to the withdrawal of all charges against our client.

2. An unfair Traffic Infringement

Sam (not his real name), a taxi driver, approached us after he was fined by a Protective Services Officer (PSO) for stopping in a loading zone while driving his taxi. Sam advised us that at the time of the incident, he was stopped in a loading zone while waiting for a space to become free at the taxi rank at Flinders Street Station. Even though he was only parked in the loading zone for less than a minute, he was almost immediately approached by an agitated PSO Officer, who insisted that he not move his vehicle. The PSO officer then issued Sam with a fine of \$150.

After conducting some research into the matter, we discovered that, according to the Taxi and Hire Car Knowledge Handbook, there is an exception which allows taxi drivers to stop in loading zones to pick up and drop off passengers. Although Sam was not immediately loading passengers, the fact that he was waiting to move into a Taxi Bay to eventually collect passengers was sufficient to fall within the exception.

On this basis we then wrote a strong letter to the Police Prosecution and the Informant (the police officer that brought the charges) and as a consequence the Prosecutor withdrew the fine.

Most of us tend to pay traffic infringement fines when they are issued, assuming that options for appeal are limited. In most cases, it may still be the sensible option to pay the

fine, but sometimes doing so may have further consequences. Although the fine was not substantial, considering he is a taxi driver, Sam was keen to ensure he had a clean driving record.

Sam's matter shows how helpful the right legal advice and submissions to the correct Authority can be in avoiding unnecessary fines and/or poor driving record.

3. Assault Occasioning Injury based on an unreliable witness

Mr Singh (not his real name), was charged with causing intentional injury to his wife, and was further charged with unlawfully assaulting his wife. We immediately secured a copy of the full brief from the Police, and examined the weight of the evidence in support of the allegations against Mr Singh.

It quickly became apparent to us that the key witness statement lacked clarity, and did not have sufficient particulars such as specific dates, and this therefore allowed us to make strong submissions on behalf of our client questioning how the injuries arose. We were also assisted with the statement of a boarder living in the home who confirmed our submissions.

Based on our submissions, the Police withdrew the charges without any need for attendance at Court by our client.

Conclusion

We have over 35 years' experience in handling criminal and traffic charges, as well as specific breaches brought by authorities such as Local Councils, the EPA, the Building Commission and so on.

As you can see from the case studies above, it is worthwhile to have an experienced lawyer, familiar with this sort of work look at the facts and charges before any Court date. If you know someone who may need assistance please call us on 03 9387 2424 or email Prakash info@rrrlawyers.com.au today and see how we can help.