

# Pleading not guilty in a criminal matter

The law in Victoria

Preparation

Police interviews

The Court process

**DOOGUE**  
**GEORGE**  
defence lawyers

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## Introduction

Pleading not guilty to charges can be a very complex process. Each case is different and reflects each individual's circumstances. Most cases are extremely stressful for the accused and their friends and family. The key issue is that the accused must seek advice from legal professionals who are experts in criminal law.

### **Not every allegation is true.**

The experience of Courts and lawyers is that false and mistaken allegations are made and come before the Courts all the time. Some people commit offences and accept responsibility for what they have done. Others deny responsibility. Innocent people are wrongly accused.

All require and deserve proper legal representation. Do not plead guilty to something that you did not do.

## The Authors



### **Josh Taaffe** Partner

**Trial Counsel | Accredited Criminal Law Specialist**

*"Not every accusation is true and many truthful accusations are exaggerated or made up of a mixture of truth and lies."*

Josh Taaffe specialises in representing his clients at trial. The bulk of his work now involves defending clients who are pleading not guilty. Josh has many years of experience defending his clients at trial and helping the wrongly accused achieve the right outcome.

In the role of counsel, Josh works as the advocate as a team with other lawyers from our firm. This involves examining and cross-examining witnesses, addressing juries and making legal submissions before Judges. Josh has been studying the skills and techniques of advocacy for many years and putting them to work for his clients. As a solicitor Josh has specialised in handling complex matters, such as murder and terrorism trials.

### **Dee Giannopoulos** Senior Associate

**Senior Associate**

*"We pride ourselves on strategic and thorough planning of every matter to fight for our clients in order to achieve the best outcome in every situation."*

Dee Giannopoulos began her criminal law career at Doogue + George in 2012 whilst completing her post graduate studies and has recently been promoted to Senior Associate.

Dee does a lot of work assisting clients with pre-charge strategies, which often have led to clients being interviewed but not charged.

These are often collaboratively handled with Queen's Counsel. This involves extensive investigation and statement compilation to ensure that our client's narrative of events is taken into account before the decision to prosecute is made.



# Pleading Not Guilty in a Criminal Matter

Criminal Cases in our system are decided either by Magistrates (in the Magistrates' Court) or by juries (in the County or Supreme Courts). The decision as to whether someone is guilty or not guilty is made after a hearing in which the prosecution presents all of its evidence.

When a person faces criminal charges it is the job of the prosecution to present evidence that satisfies the Magistrate or jury of the guilt of the accused beyond reasonable doubt. For less serious cases this hearing - a contested hearing - will be heard before a Magistrate in the Magistrates' Court and in almost all cases prosecuted by a police prosecutor. For more serious criminal cases the hearing will be a criminal trial in front of a judge.

In trials it is the jury who are the judges of fact and decide if the accused is guilty or not guilty. The Judge explains the law to the jury but does not make the ultimate decision.

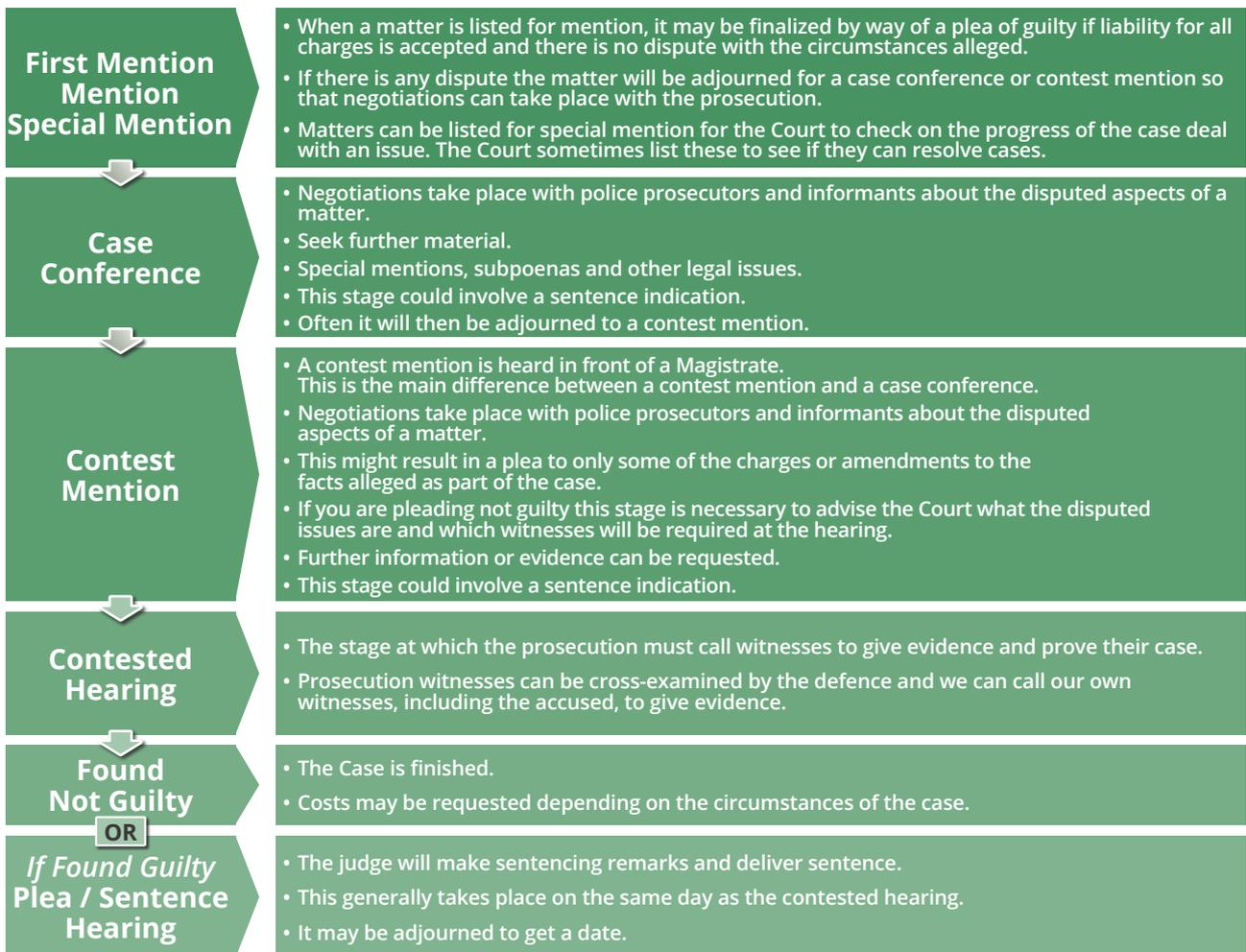
## The Process

When someone is charged by police they are either charged and bailed to appear at Court or charged by summons to appear on a particular date. This first Court date is not the occasion when all of the evidence will be presented and the questions of guilt or innocence be decided.

Criminal Cases go through many preliminary and case management steps before they are ever set down for the final hearing.

The process differs depending on whether the case will be heard in the Magistrates Court in the summary crime process or in the indictable crime process involving a committal and eventual jury trial.

## Pleading Not Guilty in the Magistrates' Court



## Pleading Not Guilty in the County or Supreme Court



## Fundamental Rights

Our legal system has some basic rules. One of those rules is that our system is an accusatory system: Those that accuse must prove. The accusatory system means that we never have the unfair situation where someone must prove their innocence.

What is special about our system, making it quite different from other systems is that we recognize that things can go wrong. Our legal system has developed historically to ensure the balance of risk falls in favour of the accused person – if our system is going to go wrong it is better that no innocent person be convicted.

Our system is designed to protect the innocent person.

The benefit of the doubt must go to the accused.

## Presumption of Innocence

One aspect of this is the presumption of innocence. An accused is presumed innocent until guilt is proven beyond reasonable doubt by the prosecution. Practically speaking, jurors should act as if someone they knew – a loved one or a friend – was accused of a crime. They should hold a firm, unshakeable view that the person was innocent from the start. This should only change if they have heard all of the evidence and change that view if, and only if, proof beyond reasonable doubt was presented that the person was guilty.

The presumption of innocence is a principle of which we as a society can be proud. Our society and its freedoms are built on the back of a legal system that has that principle as its foundation.

## Beyond Reasonable Doubt

Beyond Reasonable Doubt is the standard of proof that the prosecution must meet in criminal cases. It is the highest standard known to the law and it only makes sense that this standard is applied in criminal trials. It is a serious business to decide the guilt or innocence of a person.

The aim of this standard is to ensure that innocent people are not found guilty.

Beyond Reasonable Doubt can be distinguished from the other legal standard, the balance of probabilities. This is the standard in civil cases. In those cases 51%, more likely than not, is enough.

**In a criminal trial, much more is required. Neither possibly guilty nor probably guilty is enough. The standard is that proof beyond reasonable doubt is required. If a jury thinks there is even a possibility that someone is innocent then they must acquit.**

## The Position of the Accused in a Criminal Case

Despite these fundamental protections, someone accused of committing a criminal offence is in a very difficult position. Very often convictions for criminal offences following a trial result in a term of immediate imprisonment.

**Make no mistake, the Police are determined to secure a conviction and imprisonment in almost all of these cases.**

Criminal allegations carry a great deal of social stigma. Many people are judged and ostracized before they have even been charged by the Police – let alone have their cases heard by the courts.

While there is a presumption of innocence, there is often a presumption of guilt just because someone has been charged. Criminal allegations can be hard to defend because of the stigma that they carry.

Sometimes allegations are made about events that are said to have happened years ago, sometimes decades. An accused facing such allegation is at a serious disadvantage. Often all they can do is deny the events. They have lost the chance to answer the charges in detail and to make their own investigation of the surrounding circumstances.



# Police Investigation

Evidence presented at trial is obtained by investigating Police.

When an allegation is brought to Police they investigate to build a case around the allegations they are presented with. Sadly, a Police investigation is not always a search for the truth. In those circumstances it is vital that your own legal team makes their own enquiries about the surrounding events and investigates as thoroughly as possible. Criminal cases can be successfully defended but they are complex, intricate and stressful matters.

## Investigative Techniques - Pre Interview

The Police use a number of investigative techniques in order to build their cases. It is important to be aware of these techniques.

### Pre-Text Calls

One technique commonly used in sex offences cases is known as the pre-text call.

Police provide the complainant or another person with a recording device and leave them in a room to call the accused. The complainant confronts the accused with a view to having them make admissions to the offences. Sometimes an accused is told – “just say sorry,” or “just admit what you have done and things won’t go any further.”

Natural human reaction is to talk to someone and try and find out what they are alleging and discuss the details. This process can often be damaging or misunderstood. It is crucially important if you are falsely accused to be insistent and forceful in your denials. This call will be played to the jury or Magistrate at a contested hearing. It will be used to say that the Accused is aware of their guilt.

### Phones

Information and data obtained from mobile phones can be important in many ways.

Call Charge Records (outgoing calls) and Reverse Call Charge Records (incoming calls) can prove contact between people. A person’s rough location at a point in time of making a call can be determined by checking which mobile phone tower the call has been processed through.

Police can obtain warrants to intercept a person’s phone calls. Sometimes a person is arrested or interviewed and then their calls are monitored afterwards to see if they talk to others about the offence.

Data recovered from phones – text messages, deleted messages, images and GPS locations could all be relevant to a case. In these circumstances a phone might be seized from a person and held for the duration of the case.

### Search Warrants

Police using search warrants can search properties and seize physical items that will become evidence in a case - for example a weapon used in an assault or clothing that might have been worn at a relevant time. Police can use search warrants to seize computers and digital files.

### Forensic Evidence

Forensic evidence can include fingerprints as well as DNA analysis.

Physical surveillance, covert listening and tracking devices are also amongst investigative techniques employed by police.

# Investigative Techniques - The Interview

The interview is one of the most important parts of the police investigation. Most people mistakenly believe that it is a search for the truth of the alleged events.

## **It is not.**

The Police have an allegation and they are trying to find admissible evidence to use in mounting a successful prosecution.

That is how it will be.

After the matter has been referred to the Police your obligation is to deal with your matter in the way that gets the best outcome whether it is as a plea of guilty or as a plea of not guilty.

A Police officer or lawyer would not be confused by this process. They would get legal advice and then decide on the best cause of action.

Often the Police will try to get a person to talk as much as possible. They know what they can already prove and they want a mistaken answer so they can prove to a jury that you are a liar.

The fact may seem of no importance (i.e. the type of car you were driving that year) but by the time it is dressed up for a jury, it will be used by the prosecution to try to prove your dishonesty.

This is why the decision about what you say in an interview is so important.

There is nothing to stop you not answering questions and then taking the time to think about the allegations and then returning to give a statement. Anyone who tells you this is your only chance to answer the allegations is lying to you.

Remember it is not a search for the truth by the Police. They have arrested and are interviewing you on DVD because they, usually, intend to prosecute you.

## **Police Officer Training**

Police Investigators are highly trained in interview techniques.

They understand how to take a small factual mistake and build it into a big point.

They are accustomed to interviewing people and do it on a very regular basis.

They will ask you questions that they know will not be allowed in evidence against you, and that you are not required to answer such as, "Why would she make it up?"

The aim of those questions is just to make you uncomfortable. Obviously you do not know what is running around in someone else's mind.

## **DVD Footage**

The interview will be on DVD.

If you provide answers to questions, this DVD will ultimately be played before a Jury. It is worth thinking about how you are dressed and, if you are a man who is usually clean-shaven, having a shave before an interview. Wear formal clothing as it will be played to a jury if you talk in the interview and the jury will be assessing your demeanour and appearance.

Unfortunately, the interview process is harder for people with speech impediments and/or extreme anxiety about the allegations. This might be a factor in deciding whether to provide answers in an interview.

Always remember the bottom line is that the police are charging you. You do not have to say or do anything that can be used against you. The Police have enormous resources that they will bring to bear against you, so do not help them to convict you.

## Attending a Police Station

If you are attending an interview at a Police station, then take note of the following points, this information might just change the outcome for you:

### **Prepare to wait around!**

The Police will make you wait. Often in the interview room and often for hours. Some because they know it will stress you further. Some because they don't like you. Some because they genuinely do have other matters to attend to.

### **Having a lawyer does help.**

These tactics are often moderated when you are accompanied by a lawyer. It is harder to bully someone with a lawyer.

### **Your commentary in the interview does not affect your prospects of bail.**

Countless times we find that clients have been advised that if they don't talk in the interview they won't get bail. If you attend with a lawyer that sort of comment is never made, primarily because it isn't true.

### **Your lawyers will hear and notice things that you won't.**

Having a lawyer with you at an interview introduces us to the investigators and we can often pick up interesting information about the allegations.

There is one downside of having a lawyer with you and that is simply expense. Only you alone can justify the expense of legal representation versus the cost and consequences of the allegations being brought against you.

Even if you are going to do a no comment interview, bear the above in mind when determining whether to have a lawyer accompany you to an interview.

### **There can be no question that you need proper advice prior to the interview.**

## A Case Study - Police Interview

Our client came to us already having made an appointment with the police to attend and be interviewed. Our client held a high profile position within his community and vague allegations had been published in the press about him, months earlier. He knew only some of the detail of the allegation, including that the offending was alleged to have occurred over 30 years earlier.

We spent several sessions with our client, going carefully over what he knew about the allegations, the person accusing him and the circumstances that existed in the past. We advised him about the merits of putting his denial on the record in an interview with police. We advised him about his rights and about the possibility of doing a 'no comment' interview. We advised him about what information he would be permitted to put forward and what would be appropriate and helpful.

After careful consideration and consultation with us our client answered all questions put to him in the interview and put his own information forward.

Following the interview we undertook our own investigation into aspects of the allegations and provided more information to the police. Ultimately our client was not charged.

**It can seem like a good idea to omit certain details in an interview, in fear of judgement or embarrassment. You should always seek legal advice prior to the interview to ensure you are well-prepared.**

## Arrested or Questioned Regarding a Criminal Offence - Your Rights

Normally, you will be placed under arrest prior to the interview process beginning.

Once you have been detained, the Police are required by law to comply with the following safeguards:

- As soon as practicable after you have been detained, the Police are to caution you and provide you with a summary of your rights and certain Police powers.
- Before any investigative procedure starts, they must inform you orally and in writing that you are able to communicate with a friend, relative, independent person or legal practitioner. In certain circumstances they can refuse to let you make a call.
- The Police must provide you with reasonable facilities to communicate with a friend, relative, independent person or legal practitioner if you request. Police should defer any investigative procedure which you are to participate until the independent person or legal practitioner arrives at the Police station.
- You should be advised that a friend, relative, independent person or legal practitioner is seeking information about the whereabouts of the detained person.
- You have the right to an interpreter.
- You have the right to medical attention.
- You have the right to reasonable refreshments and facilities.

## Interview Advantages and Disadvantages

The decision as to whether to take part in an interview is often a difficult one to make and there are often advantages and disadvantages of doing so. Each case is unique and our advice often varies from case to case whether someone should take part in an interview or not.

**There are no unfavourable inferences in Court from a no comment interview.**

No unfavourable inference can be drawn from a person asserting their right to silence by not answering questions in the course of official questioning. That is where no comment is stated to every question. Selective answering of questions (i.e. answering some and not others) can be used against you.

What that means is should you answer no comment to all questions asked, the record of interview has no evidentiary value and will ultimately not be played to a jury. It is essentially neutral.

### Advantages

- Your denial, if accepted, may mean that Police do not charge you with a criminal offence.
- Your version may be more readily accepted by the Court because you told the Police what you knew at the time of your arrest and before seeing the witness statements.
- The Court must take into account your remorse when sentencing you.

### Disadvantages

- Police often don't have substantial evidence against a suspect to prove the offence at the time of questioning. You may say something that will help the Police prove the case against you.
- Providing a version of events to Police often will not influence the Police Officer's decision to issue a Court attendance notice or not.
- The interview process can often be very stressful and this may lead you to be confused or mistaken about what actually occurred. Often, suspects who are interviewed will give an incorrect version of events and after reading the witness statements they remember what occurred. It is always difficult for an accused person to convince a Court that they were mistaken about the facts and have not changed their evidence to support their case.
- If you are going to implicate others in the crime, there may be repercussions. Especially if you are likely to remain in custody.

You or your solicitor may be able to obtain information from the Police Officer investigating your matter. Details in respect of the following matters may assist you making this decision:

- Whether participation in a record of interview will affect their decision re issuing charges.
- The evidence the Police have against you.
- Whether you are likely to be granted bail.

# The Importance of Witnesses - Their Rights

It is important to understand that there is no general obligation upon people who might be witnesses to provide information to Police or make witness statements.

When taking witness statements from people, Police confine witnesses to matters that the Police think are relevant to the case – that is matters that support their case and are to be used against the accused.

A person may choose not to make a statement or may choose to obtain their own legal advice before making a statement. We can organize for potential witnesses to receive legal advice from independent solicitors who can also help a witness prepare their witness statement on issues that the witness thinks are relevant to the case, free of the influence of the Police. A spouse or family member of an accused may have a right not to give evidence against an accused. It is important to receive advice about these rights before giving a witness statement.

## Compulsory Examination

If a person refuses to make a statement to Police, the Police can apply for an order that the person attend Court and be questioned by Prosecutors about what they know. This whole process is recorded and transcribed and this can often be a superior way to provide information to Police. In this process a person can give the evidence they want and it is obvious what is being avoided and not asked about by Prosecutors.

The Police informant must provide the following information to the Court when applying for a compulsory examination order:

- Whether the person sought to be examined has been asked by the prosecution to make a statement and has refused to do so; and
- Whether the informant is aware of whether the person sought to be examined has obtained legal advice concerning the proposed examination; and
- Whether the person sought to be examined is or has been a suspect with respect to the matters to which the proposed examination relates; and
- Whether the person sought to be examined has been made aware of the application; and
- Any other information prescribed by the rules of Court (CPA 2009 s103)

The power to order a compulsory examination hearing is not one to be exercised merely on the request of the informant. He or she must satisfy the Court that it is in the interest of justice to make the order. This process is designed to safeguard the use of coercive examination powers, which are not to be exercised lightly. The accused is not a party to the application. The information should demonstrate the relevance of the evidence he or she seeks, the scope and purpose of the proposed questions and how those questions relate to the facts in issue.

**Witnesses cannot be forced to give a statement to the Police straight away.**

**Witnesses can give a statement to their own lawyer.**

**It is important that witnesses do not sign anything they do not 100% believe to be true.**

If a hearing is granted, the informant must give notice of the hearing to the accused.

The accused is entitled to be present when the compulsory examination hearing takes place but is not entitled to cross-examine the examinee and is not entitled to address the court unless the Court finds that there are exceptional circumstances

The examinee must attend a compulsory examination hearing as if he or she was validly served with a witness summons. He or she is entitled to be represented at the hearing, and his or her counsel may address the Court.

If a thorough statement has been provided by a witness through a solicitor it would be difficult for the prosecution to obtain an order for their compulsory examination.

# Preparation of Defended Criminal Cases

## **Success is where preparation and opportunity meet.**

The more you prepare and the more laterally you consider the issues the better your position at trial. It is the surrounding circumstances and credibility of the witnesses that are crucial.

How do you examine those issues?

- Use Private Investigators to find information
- Subpoena telephone records
- Download social media
- Analyse computers or telephone
- Bank records

**Preparation is the key to success.  
Cases have to be  
investigated thoroughly.**

## **All of those techniques are often and rightly used.**

Cases are usually won on evidence about the surrounding circumstances.

In one case, as an example, we had a case where we had to establish what our client had done for a year. Through a combination of the above and work records we were able to generate a spreadsheet that showed that he could not have done what was alleged in a very wide allegation. The jury acquitted.

The key to these cases is to work out what might help at trial and using the mechanisms available to provide you with a fair trial. Judges and Magistrates are almost always very fair and reasonable. If you can prove a genuine forensic purpose (and it is not disallowed by legislation) then they will allow you to obtain material.



## **A Case Study - Witness Statement in an Indecent Assault**

A client was working for public transport company. An adult female colleague made an allegation that he indecently assaulted her on the train platform in an area partially obscured from view. The CCTV footage showed them walking next to each other on the platform, but did not depict the alleged offence as it was outside the range of the footage. He denied this in his record of interview but was suspended from his employment and from working in a voluntary capacity with charities and schools as his working with children's check was suspended.

Relevant witnesses were interviewed, one of whom the complainant had spoken to one week prior to the allegation about the accused, and to whom the complainant had indicated that she was sexually interested in our client despite being advised that he was married.

That witness was called for the defence which corroborated the accused's claim that she hit on him and he rebuffed her, which is why she walked off away from him and then seemed upset in the staff room, a point which the prosecution attempted to use as consistent with someone who had just been indecently assaulted.

**The client was acquitted by the Magistrate and all charges were struck out, his legal costs also to be reimbursed by the Police.**

## What Will Happen at Court

Cases may be determined in many different ways. In exceptional cases, the Judge may inform the jury that they are entitled to return a verdict of not guilty at any time after the close of the Prosecution case and invite them to do so. This is an unusual course and is only taken when there is a serious weakness in the prosecution case.

In one of our cases, a young man was charged with sexual penetration of a 14 year old girl. The girl had lied to the accused about her age in order to have sex with him. The accused's defence was that he had a reasonable belief that the girl was 16 or older. All the witnesses in the case, including the girl, were absolutely clear that she had done everything in her power to convince him that she was much older than she was.

At the close of the Prosecution case the trial Judge invited the jury to return a verdict of not guilty. If a Magistrate determines that there is insufficient evidence to support a conviction, a case can be thrown out at a pre-trial hearing known as a committal.

Ordinarily though cases are decided once all of the evidence has been heard. Once all the evidence is in, the Magistrate or the jury must deliberate and decide whether the prosecution have proved its case beyond reasonable doubt.

## Jury Trial and Contested Hearing Experts

### **Expertise comes from experience.**

The team at Doogue O'Brien George has represented accused people in thousands of trials by jury and summary contested hearings.

That experience, built over decades, accumulated and passed between members of our team has produced an expertise at Doogue O'Brien George that is second to none.

In our legal system, decisions of fact - findings of guilty or not guilty- in serious criminal matters are made by juries. Juries of 12 are formed from members of the community selected from the electoral roll.

The prosecution bring the charges and their lawyers present the case against an accused person. Their goal is to secure a conviction of the charges alleged.

Lawyers for the accused present the defence case. It goes without saying that not every allegation is true or accurate. Accused people are entitled to and deserve the best possible defence.

Justice demands that their rights are defended and that their cases are fought with passion and skill.

The jury trial experts at Doogue O'Brien George can provide that passion and skill.

## What Needs to be Done?

There are many parts of a criminal jury trial and many essential roles that the team involved must play. Your team needs to be able to provide the following:

The advocate - the lawyer who appears and speaks on your behalf. The person who addresses the judge and jury, cross examines witnesses and leads evidence. This is the team member who communicates the defence case to the jury.

The instructing solicitor - the lawyer who takes instructions from the client, supports them, explains what is going on, investigates, identified issues, first develops the case theory

You need jury trial experts on your side. Too much is at stake.

Criminal cases can be successfully defended but they are complex, intricate and stressful matters. You need the best possible legal team on your side. In so many ways, your life is at stake.

**Doogue + George** are a leading Victorian criminal defence law firm who have extensive jury trial experience.

Visit [www.dobg.com.au](http://www.dobg.com.au) or call 03 9670 5111 for more information.

You will need  
proper advice and support  
to get the best possible result.  
It could change your life.

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