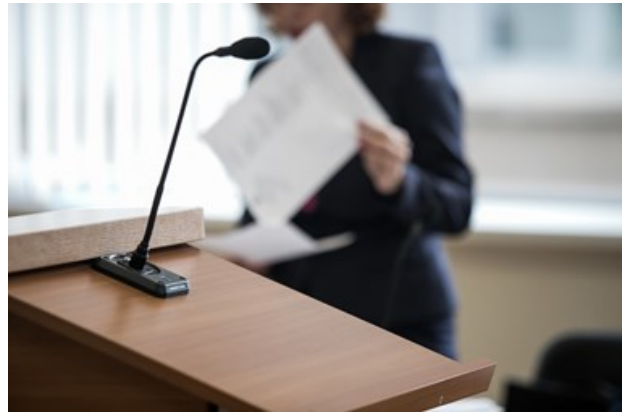




Private prosecutions in Queensland

Date: Tuesday January 14, 2020

Who can bring a private prosecution?

In Queensland, if a person (including a corporation) is a **victim** of a criminal offence, that person can commence a private prosecution against the offender. This means that the person (or corporation), rather than the state, prosecutes the offender.

Ordinarily, private prosecutions are commenced by a person when the police have elected not to take any action in relation to a criminal complaint. However, this is not a prerequisite for the laying of a private complaint.

Whether you are considering commencing a private prosecution or you are a defendant in a private prosecution, below is some information to assist you about the private prosecution process.

What types of offences can be privately prosecuted?

A private prosecution can be commenced in relation to criminal offences.

Like police charges, the offence can be either summary (less serious offences dealt with in the Magistrates Court) or indictable (more serious offences which may need to be dealt with in the District or Supreme Courts). Some examples of charges that could be privately prosecuted include assault, stalking and even murder.

How is a private prosecution commenced?

If the complaint is for an offence that can be dealt with summarily, the private prosecution process is commenced by the complainant filing a private complaint in the Magistrates Court. They must then serve the complaint on the defendant with a summons requiring the defendant to appear on a specified date in the Magistrates Court. The *Justices Act 1886* (Qld) governs this process.

If the alleged offence is an offence that cannot be dealt with summarily, a person can charge another person as long as the person has the leave (permission) of the Supreme Court. If leave is granted, the private prosecution is commenced by the presentation of what is called an 'ex-officio indictment'. This process is governed by the *Criminal Code* (Qld).

Validity of the charge/complaint

Importantly, when a private complaint is laid and the complaint alleges a criminal offence, for it to be valid at law, it must strictly comply with the provisions in the applicable legislation.

For example, a complaint alleging a summary offence must be:

- in writing and in the prescribed form;
- contain a sufficient description of the offence;
- detail the particular act, manner or thing alleged as the foundation of the charge; and
- specify the time, place and manner of the defendant's acts or omissions.

If a complaint fails to include all of these matters, it will be invalid.

The complaint must also be legitimate and truthful and the person laying the complaint must have sufficient evidence to support his or her allegation.

If the court considers that the complaint is an abuse of process, is frivolous or is vexatious, the complaint can be 'struck out' (dismissed).

Who represents the parties in a private prosecution?

The complainant and defendant both have the right to legal representation (meaning lawyers and/or barristers can appear for each party). However, sometimes the complainant and/or defendant choose to appear themselves (as self-represented litigants).

Who hears a private prosecution?

As with any criminal charge, it will be heard and decided by either a magistrate or a judge (depending on which court it is heard in).

What happens if a private prosecution is successful?

If a defendant is convicted of a criminal offence in a private prosecution, as with all criminal proceedings, the defendant can be convicted and sentenced by the court.

All sentencing options available in criminal proceedings can be applied by the court when sentencing a defendant who has been privately prosecuted. For information about those sentencing options, read our article ['How does criminal sentencing work in](#)

Who pays for the private prosecution?

In private prosecutions, the costs of the proceedings are the responsibility of the parties. However, costs orders can be made by the court in certain circumstances.

For example, costs can sometimes be awarded to the complainant, upon conviction of the defendant. They may also be awarded to the defendant if the complaint is struck out (upon an application that it is an abuse of process or frivolous or vexatious) or if the defendant is acquitted of the charge (found 'not guilty').

What should I do if I'm served with a private complaint?

Private prosecutions can be daunting for people who don't practice in the law. They can involve complex legal issues and if successful, can result in criminal convictions and costs orders being made.

It is recommended that you take the following steps if served with a private complaint:

1. Don't contact the complainant;
2. Review the complaint and summons with special attention being given to the date on which you are required to attend court;
3. Note the court date in your diary and apply for leave from work (if required) so that you can attend court; and
4. [Contact our firm for advice and representation.](#)

If you are considering whether to privately prosecute a person for a criminal offence or you have been served with a private complaint, we recommend that you contact us urgently. We have expertise and experience acting for complainants and defendants in private prosecutions.

Contacting Gilshenan &Luton criminal lawyer

[07 3361 0222](tel:0733610222) (24/7)

gnl@gnl.com.au