

# Perjury

## Factsheet

## What is perjury?

Perjury is the offence of making a false statement when under an oath.

The elements of the offence of perjury include that the false statement:

- was made when under an oath
- was made in, or in connection with, any judicial proceeding
- concerns any matter which is material to the proceeding
- that the person made the statement knowing it to be false or not believing it to be true.

Perjury is a serious offence, and in NSW there are a range of maximum penalties under the *Crimes Act 1900*, depending on the circumstances of the offence.

It is also a serious offence to procure, persuade, induce or otherwise cause a person to give false testimony that amounts to perjury.

### Reporting perjury

As perjury is a criminal offence, it is the function of the NSW Police Force to investigate allegations of perjury.

Although the NSW Attorney General has a range of responsibilities in relation to the administration of justice in New South Wales, those responsibilities do not extend to the investigation of alleged criminal acts.

### Prosecuting an offence of perjury

Following a police investigation, the NSW Police Force may refer to the Director of Public Prosecutions (DPP) any evidence that appears to be an offence of perjury. The DPP will then

determine whether or not the offence is prosecutable.

It is important to recognise that where the NSW Police Force declines to lay charges, it is unlikely that the DPP would choose to prosecute.

The *Crimes Act 1900* restricts authorisation for the commencement of prosecutions for perjury. The Act states that a person is not to be prosecuted for perjury except:

- by the DPP
- at the direction of the Attorney General
- by any other person with leave of the judicial officer who constituted the judicial tribunal before which the perjury is alleged to have been committed. If it is impossible or impracticable to apply for leave to prosecute, the prosecution may be instituted with leave of the Supreme Court.

In addition, a person is not to be prosecuted for perjury (except by the DPP or at the direction of the Attorney General) unless notice of the proposed prosecution has been given to the DPP.

### The role of the Attorney General

Although the Attorney General retains a power to direct a prosecution for perjury, he would only do so in very exceptional circumstances (such as if an employee of the Office of the DPP were accused of perjury).

Since the introduction of the *Director of Public Prosecutions Act 1986*, decisions regarding whether or not to commence a prosecution for perjury have always been made by the DPP.

The DPP is an independent statutory officer, and the Attorney General is unable to direct the DPP to initiate a prosecution in any particular case.

### **Private prosecutions for perjury**

In some cases, it may be possible to commence a private prosecution for perjury but only with the leave of the Court. This requires issuing a Court Attendance Notice, signed by a registrar, and filing the notice.

If considering this course of action, it is important to seek and be guided by independent legal advice.

The NSW Attorney General cannot provide legal advice to individuals about their private legal matters, and does not intervene in private legal disputes. The NSW Department of Justice also cannot provide legal advice or intervene.

#### **For further information**

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