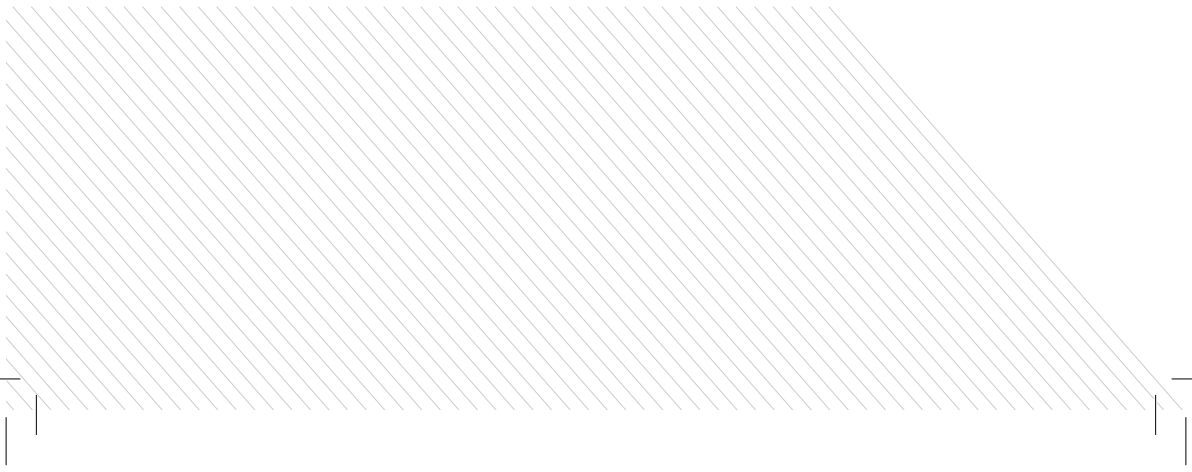


POLICE POWERS: YOUR RIGHTS

A guide to your rights
when dealing with the police



cayton legal centre inc.
unlocking the law



This booklet was prepared by:

Caxton Legal Centre Inc.
28 Heal Street
New Farm
Queensland 4005
Telephone: (07) 3254 1811 Fax: (07) 3254 1356
Email: caxton@caxton.org.au
Website: www.caxton.org.au

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Disclaimer



This booklet is intended to give general information about the law in Queensland. While every effort has been made to ensure accuracy as at November 2009, the law is complex and constantly changing. Moreover, legal exactness is not always possible in a book of this nature. The book should not be used as a substitute for legal advice, and if you have a specific legal problem, you should consult professional legal advice.

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In 1985 Caxton Legal Centre collaborated with the Queensland Council for Civil Liberties to produce the precursor to this publication, *Police Powers: Your Rights*. In 2010, the need for such a publication has not evaporated.

Twenty-five years after the first publication of this guide, the headline issues surrounding the relationship between the community and police are no longer the dramatic confrontation, say, between demonstrators and police which dominated the 70s and 80s. Today, questions about how police pursuits should be managed, the deployment of tasers and the use of move on powers dominate the public discourse about how the police and community should interact.

However, on a day to day basis, the rule of law is best served by a public who are aware of the powers which have been conferred on police (and, importantly, the limits of those powers). It is for this purpose that Caxton and QCCL have again collaborated to produce this, a worthy successor to the original.

Mark Thomas

President
Caxton Legal Centre

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Glossary

Adjournment: An application to postpone a court date. The person being charged must attend court and ask the magistrate or judge for an adjournment.

ATSILS: Aboriginal and Torres Strait Islander Legal Service

CC: Criminal Code Act 1899 (Qld)

Indictable Offence: A serious criminal offence usually tried by a judge and jury in the District or Supreme Courts. Anyone being questioned about an indictable offence is entitled to have a lawyer present during questioning.

JJA: Juvenile Justice Act 1992 (Qld)

LAQ: Legal Aid Queensland

Mention: The first appearance date in court, and future dates set by the Court to review a matter. Mentions generally involve a short discussion of a matter in court to determine its progress and what will happen next. The person being charged must attend court for a mention. Failing to appear for court mentions can result in a warrant being issued for arrest and a criminal charge being laid.

PPRA: Police Powers and Responsibilities Act 2000 (Qld)

PPRR: Police Powers and Responsibilities Regulation 2000 (Qld)

QP9: A document prepared by the arresting officer which outlines the alleged circumstances of the offence(s) a person has been charged with. Police Prosecutions can be contacted to get a copy of the QP9 and criminal or traffic history before a court date.

Right to Silence: Anyone may refuse to answer police questions beyond their name and address if 17 or older. If 16 or younger they must also tell police how old they are.

SOA: Summary Offences Act 2005 (Qld)

Summary Offence: A minor criminal offence usually dealt with in the Magistrates Court. There is no strict right to have a lawyer present during questioning for a summary offence, however, it is always a good idea to ask to contact a lawyer before participating in any sort of police questioning.

1 General information

1.1 Where do I look for information or legal advice?

This booklet sets out general information about Queensland police powers and your legal rights.

If you are ever in trouble with the police, you should seek legal advice immediately. The most important police powers are found in the *Police Powers and Responsibilities Act 2000* (Qld) (the PPRA). Useful referral points are noted in Section 8.2 of this kit. You can also find other useful information at:

- www.legislation.qld.gov.au;
- www.austlii.edu.au; and
- www.courts.qld.gov.au.

You might find that in your dealings with the police, things do not always happen in the way set out in this booklet. If you feel that police have not respected your legal rights, you can make a complaint as explained in Section 8 of this booklet.

1.2 What if I'm under 17?

Queensland's criminal law treats young people up to and including the age of 16 years as children. People who are 17 and older are treated as adults. Children under 10 are not criminally responsible for their actions. If you are under 17, the *Juvenile Justice Act 1992*

(Qld) (the JJA) applies to you and you may have extra rights that are not dealt with here. Always tell the police that you are still under 17 if they try to ask you questions.

Always remember that you are allowed to have an adult support person (parent, lawyer, agency support worker or other adult of choice) with you during an interview, unless the matter involves only a minor offence (such as making a public nuisance by swearing). You should still always ask for a lawyer to help you. More helpful information about your rights can be found at www.yac.net.au and www.yfs.org.au.



“Donut shop is down the hall to your right – and I’m not answering any more questions without my lawyer present.”

www.cartoonstock.com

2. Your first contact with police: questions and directions

2.1. What if the police stop me and ask who I am?

Police have a right to ask for your name and address in many situations, which are listed in a number of different laws. Some of the most important occasions listed in the PPRA include when:¹

- you have been found committing an offence;
- you are 'reasonably suspected' of committing an offence;
- police think you may be able to assist in the investigation of an indictable² offence or act of domestic violence;
- you are given an order to stop making noise or to stop being a nuisance;
- you are in control of a vehicle that is stopped on a road; or
- police are trying to enforce another specific law.



Police can also ask for proof of your identity where it is reasonable in the circumstances.

If you refuse to give your name and address when police have a right to ask for it, and you do not have a reasonable excuse for refusing to cooperate, you will be committing an offence and you could be charged.

Giving a false name or using someone else's name could result in more serious charges.

¹ Sections 40–41 PPRA.

² These are listed in the *Criminal Code* (Qld) and are serious offences. The Code identifies when an offence is an indictable offence and potential jail (and other) penalties are listed with the various offences. Potential penalties vary from offence to offence.



You are allowed to ask why the police are asking you for this information. The police officers asking must give you their names, rank and station and, if not in uniform, must show you their identity cards or some other proof of identity.

It is worth remembering that police are allowed to arrest you without a warrant if they suspect you have committed an offence and arrest is reasonably necessary to make enquiries about your identity.



To avoid unnecessary trouble with the police and an unnecessary appearance in court, it is recommended, if asked for your details, that you:

- check the identity of the police and ask why they want your details (making a note of what they say);
- tell the police your name and address, and age if you are under 17;
- try to record the names of any witnesses to the event if you can; and
- politely say that you are not willing to answer other questions.

2.2. What if police try to stop and question me while I am driving?

Police are allowed to ask you for your licence if they pull you over for a legal reason, such as to do a random breath alcohol or drug test or to enforce transport or drug laws.

Police are allowed to carry out a roadside alcohol breath test (commonly called a random breath test) or a drug saliva test, and can also require that you go to a police station for a blood test.



Apart from giving your name and address, and showing your licence, you can refuse to answer other questions.

2.3. **What if the police tell me to ‘move on’ in a public space?**

Police have a number of powers (commonly called ‘move on’ powers) which allow them to order people to move on from public places and from certain other listed places known as ‘prescribed places’.³ Such directions are commonly called move on directions.

Prescribed places include shops, childcare centres, schools, licensed premises (such as pubs, restaurants and racing venues), railway stations, malls, Southbank in Brisbane (with some limits), automatic teller machines and war memorials.

These move on powers are most commonly used in streets, parks, malls and railway stations.



Police can move people on and can stop them from re-entering a place for up to 24 hours.

Police must tell you the reason why they are directing you to move on.

If police make a mistake in how they use their move on powers, then the direction they give and any associated arrest for disobeying the direction will both be unlawful.

The direction may be given where a police officer reasonably suspects that your presence is causing anxiety to people entering or leaving a regulated place, or is interfering with trade or business at the place, or is disrupting the peaceful and orderly conduct of any event, entertainment or gathering at a certain place. Police

³ Sections 44–48 PPRA.



can also issue a move on direction if your behaviour is disorderly, indecent, offensive or threatening.

Any move on direction that police give you must either be for you to leave the prescribed area for a set period of time (not exceeding 24 hours) or be for you to move a set distance away in a set direction for a set period of time (not exceeding 24 hours). Once the direction is given, you must be given a reasonable opportunity to move.



If you are given a move on direction by police you should:

- ask 'Are you giving me a formal direction to do something?';
- ask under what law the direction has been given;
- ask the reason why you are being given the direction;
- make sure you know what the 'prescribed place' is from which you are being directed to move on;
- try to record the names of any witnesses to the incident, if possible; and
- try to record the name, number and station of the police officer giving the direction.

You cannot be directed to move on during an authorised peaceful assembly,⁴ unless the direction is necessary because of specific public safety concerns, specific public order concerns, or to protect the rights and freedoms of others.

Police must give you a reasonable opportunity to comply with a direction, but what is reasonable will vary from one situation to another. If a police officer lawfully gives you a move on direction and you fail to move, you may be charged with failing to obey a police direction and arrested.

⁴ Queensland's *Peaceful Assemblies Act 1992* sets out a formal process for authorising a public assembly.



If you are found guilty of disobeying a move on direction, the court could impose a fine of up to \$4,000. In practice, the fines tend to be much lower unless the overall circumstances of the offence are very serious, but it is better to move on and later make a complaint with the help of a community legal centre than be arrested.

2.4. **What can police tell me to do if I'm involved in a riot or disturbance?**

A police officer is allowed to take the steps which the officer thinks are reasonably necessary to prevent a breach of the peace or public disturbance.⁵ In order to take such action, the relevant officer needs to have a reasonable suspicion that a breach of the peace has happened, is happening, or is about to happen.

Similarly, police can take the steps they consider are necessary to suppress a riot.⁶

Police have a general power to take the steps they consider to be reasonably necessary to prevent the carrying out or repetition of an offence.⁷

A person who disobeys a police direction can be charged with an offence.

2.5. **Can the police tell me to be quiet?**

Police officers have specific powers to deal with genuine complaints about loud noise.⁸ If you are unreasonably making too much noise and it is affecting people in homes and workplaces nearby, the police may turn up and tell you to stop making so

⁵ Section 50 PPRA.

⁶ Section 51 PPRA.

⁷ Section 791 PPRA.

⁸ Sections 576–584 PPRA.

much noise. Noise from musical instruments, electronic sound and amplifying systems, and even noise from people at a party or other gathering may be 'excessive' in some circumstances.

If police give you a noise abatement direction (that is, a direction to stop making excessive noise), you must stop making noise immediately. This direction lasts for 12 hours.

If you continue to make noise or start making noise again within that 12-hour timeframe, the police can come back and take more serious action. They can take the property which you are using to make the noise, such as a guitar or amplifier, and lock it up, make it inoperable or even remove it for 24 hours. Fines for unlocking or using this property within this period can be up to \$1,000. You can apply to get the property back after 24 hours.

Police can enter a place without a warrant to give directions about noise.⁹

2.6. What if police try to ask me more questions?

There is no such thing as an 'off the record' conversation with police, and any conversations can be used against you. Until you have had proper legal advice, you should tell the police only what you are required by law to tell them.

Police officers will often secretly record their conversations with you. This can occur at any point, including roadside or at the scene of a police raid.

If you have been detained for questioning about an indictable offence or you have been arrested, apart from giving your name and address, you do not have to say anything else. You have a right to silence and it is wise to claim this right by saying 'I have

⁹ Section 581 PPRA.

nothing to say'. You can then seek legal advice. After speaking to a lawyer, you may later choose to provide a statement to the police.

Children should always ask if they can have an adult (who they like and trust) present with them in an interview, however, they can sometimes be questioned by police without another adult being present. Where a child has been charged with an indictable (serious) offence, the court can refuse to consider statements obtained from children (16 years and under) if an independent person (such as a parent or lawyer) was not present at the interview.

As an adult, you are entitled to contact a lawyer and have a lawyer present once you are with a police officer for questioning about an indictable offence.¹⁰ You may not necessarily be under arrest at this time. You are also entitled to contact a friend or relative (who you like and trust) to ask them to be present during your interview.

Contacting a lawyer at this time is important, because police often charge people only after they have questioned them. You may damage your own defence by answering police questions before speaking with a lawyer.



Not only are you entitled to ask for a lawyer in these circumstances, but the police must delay questioning for a reasonable amount of time to allow you to contact a friend, relative or lawyer.¹¹ It is always better to have a lawyer with you than a friend or relative.

Of course, these rules also apply if police want to question you after you have been charged with an indictable offence.

If police refuse you access to your lawyer or refuse to allow you to telephone your lawyer, you should note the name of the relevant

¹⁰ Section 415 PPRA.

¹¹ Section 418 PPRA



officer and any witnesses to the relevant conversation. You should also ask to speak with the officer in charge of the station or watch-house.

If you are arrested in unexpected circumstances, you may not know who to call. Make yourself aware of the names of respected criminal law firms in case you ever need to seek legal advice (or representation in court) at short notice.

If you do not know any lawyers, ask police for the Yellow Pages telephone directory or a list of local lawyers, or call a friend or relative and ask them to contact a lawyer. Most criminal lawyers can be contacted 24 hours a day to attend at the police station. It is best to find your own lawyer rather than relying on police recommendations.

If you intend to take part in some sort of public event where there is a chance you may be arrested, it is wise to carry the contact number of a criminal law firm or Legal Aid Queensland (LAQ)¹² in case you need to phone a lawyer from the watch-house. You can even write the phone number on your arm in permanent marker before heading off to the protest event or public demonstration.

If you are that confident that there will be trouble at such an event, consider carrying a digital sound recorder with you. If you are part of a group organising a demonstration, then consider making arrangements to film the event. Remember that sound and video evidence could also be used against you if you break the law.

You are entitled to record your own face-to-face conversations with other people (including police) without telling them. However, there are strict limitations on playing such recordings or showing transcripts of such conversations to other people.

¹² Phone contacts are listed in Section 8.2 of this booklet.

¹³ Section 45 *Invasion of Privacy Act 1971* (Qld).

Unlawfully playing these recordings is an offence, and the potential penalty is two years jail or a \$4,000 fine. You should always get legal advice before deciding whether to play these recordings to other people.¹³



3. Getting arrested

3.1. What is 'arrest', and when and how can the police arrest me?

Arrest is the process by which police may lawfully take a person into police custody. Usually, an arrested person will then be forced to accompany police to a police station or watch-house for processing before later being sent to a court or released on bail.

Because a person's liberty is at stake, arrest powers are strictly regulated.

You do not have to go with police to the station for questioning, unless you are actually arrested or formally 'detained for questioning' about an indictable offence (a separate process to arrest).

There are normally three key elements to an arrest:

- the police officer states 'you are under arrest' (or similar words);
- the police officer states the reason for the arrest; and
- you either voluntarily give in to the officer's control, or are physically subdued by the police officer.

Sometimes, the police will only tell you that you are under arrest after they physically take charge of you.

You may be arrested by the police if they have a warrant (that is, written authorisation from the court signed by a judge, magistrate or justice) for your arrest.

However, in certain circumstances, police can arrest you without a warrant.¹⁴ You may be arrested without a warrant if the police reasonably suspect that you have committed or are committing an offence and acting without a warrant is, in the police officer's opinion, reasonably necessary for a number of set reasons, including:

- to stop you from completing or repeating an offence;
- to make enquiries about your identity (see above);
- to ensure that you are brought before a court;
- to protect you or another person;
- to stop you running away from the place of the offence;
- to preserve evidence, to prevent you from making up evidence or destroying evidence, or to stop you from interfering with witnesses;
- because you have disobeyed a police direction or you have assaulted or obstructed a police officer; or
- because you are breaching a domestic violence protection order.

Police can also arrest you without a warrant because of the nature and seriousness of the offence you are suspected of committing.

A police officer may arrest a child without a warrant if the police officer reasonably suspects the child is committing or has committed an indictable offence, or for a less serious offence if arrest is necessary to prevent further offences, loss of evidence or to ensure the child's appearance before a court.

Special laws apply in terrorism cases.¹⁵

¹⁴ Section 365 PPRA.

¹⁵ Special provisions about the detention of suspected terrorists are set out in Queensland's *Terrorism (Preventative Detention) Act 2005*. Under that Act, detention orders for people aged 16 and over can be issued by senior police officers (for a period of up to 24 hours) and by Supreme Court judges (for periods of up to 14 days) in order to prevent terrorist acts and preserve evidence. There must be reasonable grounds to justify the orders being made. People detained under this Act must be treated humanely and have a right to speak with a lawyer.

3.2. Can I resist arrest or interfere with police actions if I think the police are wrong?

You should remember that it is an offence to assault or obstruct police officers (or police dogs or police horses) in any way when they are reasonably carrying out their duties.¹⁶ The law specifically states that the reference to 'obstruct' includes 'hinder, resist and attempt to obstruct'. This means that there are many situations in which disputes between members of the public and the police could result in a person being charged with this offence.

A scuffle with police commonly results in a person assaulting a police officer – especially where that person is trying to resist being arrested. Assaulting a police officer is specifically included as a type of 'serious assault'.¹⁷

Assaulting, or even attempting to assault, a police officer is always treated seriously by the courts.

In addition to the everyday meaning, 'assault' includes throwing water on the officer, pushing and shoving. It also includes spitting at an officer and throwing blood, urine or faeces at a police officer. Shining lights or lasers in an officer's eyes can be an assault, as can simply waving a hand or object if that is accompanied by some sort of threat. Attempting to do any of these things can also result in an assault charge.

Spitting at or biting police is treated extremely seriously due to the risks of infection, and you could be jailed for this type of conduct. Depending on the circumstances, touching a police officer can also be interpreted as assault.

¹⁶ Section 790 PPRA.

¹⁷ Section 340(1)(b) *Criminal Code*.

Even if you think police have behaved badly, you should avoid fighting with them. As discussed in Section 8 of this booklet, there are formal ways to complain about police behaviour. In some cases, simply arguing with police about whether or not what they are doing is legal may amount to obstructing police in the exercise of their duties, if this conduct makes the officer's duty a lot more difficult.

Even if you have a reasonable excuse for opposing and questioning police conduct, you might still be arrested. You will then have to go through the difficult process of defending yourself in court to prove your innocence, where there is no guarantee that you will win.



Giving police false information can amount to obstruction and you should simply remain silent rather than lying. Even saying 'I don't remember' or 'I was asleep', if untrue, could be seen as obstruction.

You do not have to help police arrest you, but if you are uncooperative they may use 'reasonable force' to arrest you. You also run the risk that by not doing what the police instruct you to do, you will be charged with obstructing a police officer.¹⁸

Police can ask other people to help arrest you and if you assault those people while they are helping the police, this will also be treated as a serious assault under the *Criminal Code Act 1899* (Qld) (the CC).

Certain arm and wrist locks used by police can be quite painful and struggling against handcuffs can cause pain and injury. Capsicum

¹⁸ In the case of *Charrington v Korac* [2008] QDC 328, refusing to open a door was found to be an obstruction.



sprays and taser guns can also cause serious injury. If you are injured by police, you should see a doctor to record the nature of the injuries and you should seek legal advice immediately. You should also photograph any visible injuries.

Always try to get the names of witnesses to any dispute with police if you think the police have been unfair or have been too rough when arresting you.

If you are in an area where there may be some electronic CCTV (closed-circuit television) footage of your scuffle with overbearing or abusive police officers (for example, on the footpath outside a pub or in the city mall), you should try to get a copy of any relevant footage as soon as possible. Your lawyer may be able to help with this and it is important to tell them about the possibility of any footage as soon as possible.

This sort of surveillance or CCTV footage is often kept for only one – seven days. You need to act quickly to try to ensure that any relevant video footage is preserved. City malls and railway stations often have CCTV coverage.

If you were drunk during a fight with police or with other people in a public space (for example, with security officers outside nightclubs or at railway stations), viewing CCTV footage of your own behaviour is important to find out whether or not your memory of an event is accurate and fair.

Similarly, if you have been caught up in some sort of incident at a public protest and news crews have been photographing or filming the incident, you may need to take quick action to ensure that any relevant film footage and/or photographic evidence is preserved and made available to you. There may be costs associated with this.

3.3. Do police have to 'read me my rights'?

Despite a widely-held belief that police must 'read you your rights' before arresting you, in fact, the Queensland police are not required to give you a warning prior to arresting you. Sometimes police officers will advise you about certain rights you have before arrest; however, police are not required to caution you about your right to silence unless they want to question you as a suspect about your involvement in an indictable offence.¹⁹

Queensland's criminal law system should not be confused with the American legal system that is so often presented on television, with its 'Miranda warning' requirement, which is quite different to the legal processes here.

The police in Queensland normally must tell you (a) that you are under arrest and (b) the basis of your arrest. You should always ask the police officer if you are under arrest and why if it is not clear. Remember what they say and when they say it, and write the details down as soon as possible.

3.4. Can I be charged without being physically arrested?

You can be charged without actually being arrested. Police can start proceedings by serving you with a notice to appear where they reasonably suspect that you have committed or are committing an offence.²⁰ You must be personally given the notice to appear unless the matter relates to a traffic offence (when it can be served by mail). You can also be charged by a Justice of the Peace issuing a complaint and summons.

When a child is served with a notice to appear, this must not be done at the child's workplace or school unless there is no other

¹⁹ Section 431 PPRA and Part 5 of Schedule 10 (the Responsibilities Code) of the PPRR.

²⁰ Section 382 PPRA.

reasonable place for this to happen. Police must not draw attention to what is happening when they serve a child with a notice to appear.

If you are issued with a notice to appear, the notice must:

- set out the general particulars of the offence you are accused of having committed (that is, it must state the type of offence and when and where it happened);
- state your name and whether or not you were a child or adult when the offence happened;
- tell you the set time and place when you are required to appear in the Magistrates Court;
- state the name of the police officer responsible for issuing the notice to appear; and
- be signed by the police officer serving the notice.

You must also be given the full details of the matter once you get to court.



“Here comes trouble!!”

4. Police searches

4.1. What can I do if police ask to come into my home?

Normally, people coming to your home need your consent to come in. Special rules apply to police. Police are allowed to enter your property against your wishes and without your consent in certain circumstances. These circumstances are limited, however, and it can be important in later court proceedings to know whether or not police have entered your home lawfully.

Members of the public have a general right to come to your front door, unless you have put up a notice limiting public entry or you have locked gates. People can only enter past locked gates or locked doors with your consent. Otherwise, they will be trespassing.

If you decide to force a person from your property because they will not leave (despite your request(s) for them to do so), you need to be careful not to use an unnecessary or excessive amount of force. If you use excessive force you may be charged with assault.

Police do not have any automatic right to enter your locked grounds or to force their way into your home. If police do not have a specific legal right to come into your home and you refuse them entry, they are not allowed to come in.

If you do not want police to enter your property, it is important to clearly tell them that you do not consent to their entry. You should make a note if there are witnesses who see and hear you refusing your consent to police entering your home.

4.2. When can police come into my home?

Police can remain in your yard and enter your home against your wishes, of course, if they have a warrant (for example, a search warrant allowing them to search your place, or a warrant for your arrest) or if they have some other specific, legal right to remain there.

An example of such a legal right is that police can lawfully enter and stay on a place (including premises, vacant land, motor vehicles, aircraft, boats, caravans, tents, caves and other buildings) for a reasonable time to investigate or ask about a case or to hand over (or serve) a legal document in the course of their duties. Staying for a reasonable time means the time necessary to ask questions and make any reasonable observations or investigation.

If police need to enter property to make an arrest (either with or without a warrant), to detain someone or to enforce a warrant, they can enter the property and stay for a reasonable time in order to do this. If police need to enter a dwelling (a house, flat, etc.) on the property, they can enter without the occupier's consent to arrest or detain someone only if a police officer reasonably suspects that person is in the dwelling.

What amounts to a reasonable suspicion is difficult to define. Basically, the courts have found that there just need to be some fact(s) that would enable a reasonably minded person to conclude something, such as that a particular person is in that house. The police officer's suspicion does not ultimately have to be right, but their suspicion does need to be reasonable.

If you do not wish to allow a police officer to enter your home, you should be very clear that:

- you are not inviting the officer in;
- you are not consenting to the entry; and

- you are not consenting to the police officers remaining on any part of your land or property.

Be firm, but polite, and do not swear at the police. Remember that if police are recording their conversations with you, anything you say to them may later be used as evidence against you.

Although important safeguards are built into formal police interview procedures, these safeguards may be avoided if you confess to police during a search. Therefore, you should not answer police questions while they are searching your home and you should contact a lawyer as soon as possible.

You should note that police also have the power to forcibly enter premises to detain a person under an anti-terrorism 'preventative detention order', though they must have a reasonable belief that the person they are looking for is on the premises.

A police officer can therefore come into your home in the following situations:

- with your consent;
- if the officer has a search warrant (properly issued and properly detailed);
- if the officer has an anti-terrorism preventative detention order to execute;
- in urgent circumstances (such as where a person has been seriously injured or is about to be harmed);
- to investigate a case or to serve documents; and/or
- to arrest or to detain someone who is there – though the police must have a reasonable suspicion to justify this action.

If the police tell you that they have a warrant that justifies their entry to your home, you should insist on seeing it. Police are required to give you a copy of the warrant. Make a note if any details appear

to be incorrect in the warrant. Even if police have a warrant, they can only stay for a reasonable time to carry out the action that the warrant allows.

In addition to giving you a copy of the warrant, the police must at the same time provide you with a statement of the nature of their powers under the warrant.²¹

Police have significant powers when they have a warrant to enter and search your home. For example, they can detain anyone present to find out if they have anything sought under the warrant. They can remove wall panels, floor panels and ceiling panels while searching for evidence of an offence. They can also take photographs of things that may be evidence even if they do not seize them.



Police have power to dig up your yard. They have power to seize things as evidence. They can open locked items such as safes, filing cabinets, cupboards and the like. Police cannot do anything which damages the structure of a building unless a Supreme Court judge has allowed this in the relevant warrant. If the warrant allows it, police can also search individuals on the premises.

In urgent circumstances, police can enter your home without a warrant if they think it is necessary to:

- prevent an injury to a person;
- prevent a property damage offence; or
- deal with domestic violence that is occurring or has just been occurring.²²

²¹ Section 4, Schedule 10 *Police Powers and Responsibilities Regulation 2000* (the PPRR).

²² Section 609 PPRR.



Police can stay for as long as is reasonably necessary to find out what is happening and to take action to help a person or remove the risk of injury or damage. They can also search for evidence of any offence that may have just occurred.

Police can conduct searches for evidence without a warrant when a police officer reasonably believes that evidence of a particular offence will be destroyed or concealed if they do not enter and search the relevant place immediately.²³ This power applies to indictable (serious) offences, offences involving gaming, betting, explosives, drugs, weapons or possessing alcohol in restricted areas.

If police damage your property during a search, you will not necessarily be compensated for the costs of the damage (for example, to replace a broken lock and a door that has been kicked in during a forced entry by police), especially where the warrant allows forced entry, and drugs or other evidence of an offence has been found during the search. However, there may be circumstances where you have unfairly suffered loss as a result of police conduct towards your property. In such circumstances, you should raise this matter with the police, by first contacting the senior officer involved in the matter.

Police are not specifically required to 'tidy up' after searching your property; however, if you think police have made an unreasonable mess on purpose during a search, then you can make a complaint (see Section 8).

²³ Section 160 PPRA.

4.3. When can police search me and go through my stuff, my phone or my computer?

Police do not have an automatic right to search you and your personal property. They can search you or your property only if:



- you consent to the search;
- they have a search warrant; or
- a law specifically allows them to conduct the search. Such powers are limited and apply only in certain circumstances.²⁴

The PPRA is the most significant source of police search powers. Special rules regarding search powers also apply during major government events, such as when the Commonwealth heads of government meet at CHOGM and others as defined in the PPRA. These powers are not included in this booklet.

Police have power to stop, detain and search you personally without a warrant if they reasonably suspect that you are carrying something such as:

- a weapon (for example, a knife or explosives or an unlicensed gun);
- illegal drugs (or drug implements);
- stolen/unlawfully obtained property;
- graffiti instruments;
- tools used for housebreaking or car stealing;
- something you intend to use to harm yourself or someone else;
- evidence of certain breaches of the *Liquor Act 1992* (for example, drinking alcohol in a public place); or
- some evidence of an offence that is punishable by seven years jail or of wilful damage, where that evidence may be hidden on you or you may destroy it.

²⁴ For examples, see the *Casino Control Act 1982* (Qld), the *Racing Act 2002* (Qld) and the *Corrective Services Act 2006* (Qld).



It is vital that the police officer forms a 'reasonable suspicion' before starting the search. Otherwise, such a search may be unlawful.

Always ask the police why they want to search you and remember what they say. You could try saying 'Could you please tell me exactly what has made you decide to search me?' At the first opportunity, write down what they have said to you.

Remember, a reasonable suspicion does not have to be ultimately correct. There simply needs to be some facts that could make a reasonable person suspicious.

Police must follow certain rules when searching you, including:

- respecting your dignity;
- conducting any personal search so as to cause minimal embarrassment only;
- limiting any public search to a frisk search, if possible;
- conducting any more thorough search away from public view, if possible; and
- having a police officer of the same sex carry out the search, unless an immediate search is required. Alternatively, police may direct a person of the same sex as you or a doctor to do the search.²⁵

You must not be detained for any longer than is reasonably necessary for you or your vehicle to be searched.

If police have formed the necessary reasonable suspicion, they can search your bags, pat down (or frisk) your outer clothing and feel through your clothes for concealed items, or, in more limited circumstances, conduct a strip search. A strip search involves you

²⁵ Section 624 PPRA.

taking off your clothes so that the police can search you;²⁶ however, this does not mean that police are allowed to search your body cavities.

Police can only conduct a strip search in certain circumstances, such as where they have a reasonable suspicion that you possess an unlawful weapon or knife, an unlawful drug, stolen property or evidence of a serious offence. Your privacy during the search must be respected.

Any strip search should be carried out in a private space by a police officer of the same sex as you. Furthermore, you must be given the opportunity to remain partly clothed while the search is taking place – for example, you should be able to keep your pants on while your chest is bare and your shirt on while your pants/skirt are off.²⁷ You must also be told why the search is necessary.

The search needs to be conducted as quickly as is reasonably possible and you must be given the opportunity to dress as soon as possible after the search is completed.

Police cannot improperly touch you during the search and cannot conduct an internal physical examination without either a court order or your consent. They cannot touch your anal or genital areas. Police can ask you to raise your arms over your head and can ask you to bend over to allow a visual inspection.

Searches should not be carried out in view of security cameras. If police seize any of your clothes for evidence, they are required to ensure that you have adequate alternative clothing.

If police do not have a lawful reason to search you or your bags, the fact that you have not consented to the search could end up

²⁶ Section 629 PPRA.

²⁷ Section 631 PPRA.

being very important during legal proceedings, because it means that a court might refuse to consider evidence found in the search.

If you do not consent to a search, you should make sure this is clearly communicated to police. Make a note if there are any witnesses to the conversation.

Once you are arrested, police do have the power to search you and they may confiscate certain property you have with you at the time, such as a mobile phone or weapon, if they decide that it can be used as evidence in court proceedings.

If police ask to go through your phone or your computer, you can refuse your consent. They will then need to get a warrant to search this property, but they may seize the items in the meantime. Police can also obtain orders from the court that require you to release to the police your security passwords or codes for access to these electronic devices.



4.4. When can the police stop and search my car?

Police are allowed to stop your vehicle and enter it in order to arrest or detain someone.

Police can stop, search and detain a vehicle under the PPRA without a warrant. This applies where the police reasonably suspect that the vehicle contains:

- unlawful weapons;
- drugs or drug implements;
- things that could be used to hurt you or others;
- certain protected species;
- graffiti tools;
- evidence of serious offences; or
- stolen property.²⁸

²⁸ Sections 31–32 PPRA.



Police can seize any unlawfully held weapons they find in the search and can also seize evidence of other offences found in the search – for example drugs or housebreaking tools.

If police believe that the vehicle itself needs to be searched for evidence and special equipment is required for that search, police can arrange for the vehicle to be taken into the relevant police station for a further detailed search.



The police can also stop, search and detain a vehicle if they suspect that a person in it is able to be arrested without warrant²⁹ (discussed earlier), with a warrant under the *Corrective Services Act 2006* (for example, an escaped prisoner) or because the vehicle is being used unlawfully (for example, the vehicle has been stolen or driven dangerously).

Sometimes, warrants may also be issued for the search of vehicles. If the police tell you that they want to search your vehicle and they have a warrant allowing such a search, you should ask to see the warrant and check that the details on the warrant are correct.

4.5. Can I get my stuff back if the police take it?

Police may take property from you in a variety of situations. If you have illegal drugs, stolen property, unlicensed guns, child pornography or any other thing which might be evidence of an alleged offence police can take that property. Police may also take property such as vehicles suspected as having been used to commit an offence, and property, including houses, which it is suspected have been obtained through criminal activity.

²⁹ Section 365 PPRA.



If police find evidence of suspected crimes on you or at your property, again they may seize that property as evidence while they investigate and/or prosecute their case against you or someone else.

If you are arrested and taken to the watch-house, you will normally be asked to give your property, such as your wallet, belt and watch/jewellery to an officer while you are held in custody in a cell (for safety and security reasons). If you are released, your property will then be returned to you. Police must give you a receipt as soon as possible identifying the property they take from you.

If you plead guilty or are found guilty of an offence, the magistrate or judge may make an order to destroy or confiscate property that has previously been taken from you by the police. Otherwise, after the appeal period of 28 days you can apply to have your property returned, provided it is not illegal property (such as drugs). There may be a wait before your property is returned.

You can also try to recover property (such as seized mobile phones and computers) or challenge whether the police really need to keep that property as evidence.³⁰ When police have had the property for 30 days, you can write to the police commissioner asking for the return of the property, provided it is not needed as evidence in court proceedings. You will need to provide proof of your right to the property. If your request is refused, you can apply to the Magistrates Court for an order that police return the property.

³⁰ Sections 692–693 PPRA.

5. Going to the police station or watch-house

5.1. Do I have to go to the station with police?

You have to go with the police only if you are being formally arrested for an offence or you are being formally detained for questioning about an indictable offence. You can also be required to go to a police station for a blood/breath test in relation to a drink/drug driving offence.

Otherwise, if the police ask you to accompany them to the police station, you can decline to go with them.

5.2. What questions are police allowed to ask me if they take me to the watch-house or police station?

Police have a general power to question you if you have been detained or arrested. In response to questioning, you can assert your right to remain silent, as discussed earlier.

If you have been arrested for committing an indictable offence (a serious offence), or you are being questioned because you are suspected of having committed an indictable offence, the police must caution you about your right to remain silent. They also must advise you – before they question you – of the possibility that any statement you make might later be used as evidence against you. If it appears that you need an interpreter, the police must enable an interpreter to be made available for you.

Police can only detain you for up to eight hours³¹ unless the period is extended by a court order. Police can only question you for up to four hours in that eight hour period.

Police can only question a child about a serious matter if there is a parent or independent person present.

Similarly, police must notify a legal aid organisation (such as ATSILS or LAQ) and make special arrangements for support for Aboriginal and Torres Strait Islander people before questioning begins.

People with impaired capacities must also be given an opportunity to speak with a support person, but questioning should not proceed if the person does not actually have legal capacity to continue with an interview.

People should not be questioned while they are still under the influence of drugs or alcohol.³²

Police are expressly forbidden from obtaining a confession by threats or by offering promises of any kind, such as no jail time or a reduced sentence.

5.3. What if I'm arrested?

Depending on the seriousness of the matter, after your arrest the police may:

- release you without laying any charges;
- charge you with an offence or offences and issue you with a notice to appear in the Magistrates Court to face the charges at a later date;

³¹ Section 403 PPRA.

³² Sections 420–423 PPRA.

- charge you and release you on bail; or
- hold you at the watch-house to face court in the next 24 hours.



The police have a duty to release you at the earliest reasonable opportunity if the reason for arresting you no longer exists or is unlikely to happen again and it would be more appropriate for you to be issued with a notice to appear. A notice to appear is a piece of paper issued by a police officer that tells you when and where you must appear in court because you have been charged with some specific (and named) offence under a particular law.

If the police decide to keep you in custody they must bring you before a court within 24 hours. If this cannot be done (for example, because it is a weekend), bail must be granted unless police consider there to be an unacceptable risk that you will not turn up to court, commit an offence, endanger a person's safety or interfere with witnesses.

5.4. What happens at a police interview

Police ask questions of people in many different situations and places. Police questioning can occur in a formal interview at a police station. Questioning may also occur in a less formal situation, such as when the police arrive at your home to investigate a disturbance or carry out a warrant.

Sometimes people will actually have been arrested before they are interviewed, others will have been formally detained for questioning about an indictable offence, and others will have volunteered to attend to give a police interview. It is never wise to give an interview unless you have first received proper (and independent) legal advice about what you should do.



At a formal interview, the police will ask questions and will record your answers. If you are being questioned about an indictable offence, police must comply with a number of specific legal requirements, which are designed to safeguard your rights, including the following:



- before your interview starts, police must warn you about certain things;³³
- the warning (or 'caution') must be provided in a language that you can understand and interpreters may be used when necessary;
- police must advise you that you have a right to remain silent and that you do not have to answer their questions;
- police must advise you of your right to contact a support person and lawyer and must allow you to contact them;
- the caution should be recorded electronically, but if this is not practically possible, then the officer must write it out;
- the interview itself is also meant to be electronically recorded – unless it is not practically possible in the circumstances, when it must be recorded in writing. You are entitled to a free copy of the interview tape within seven days if it is a tape recording or within 14 days if it is a video recording.

These safeguards are set out in detail in the *Responsibilities Code of the Police Powers and Responsibilities Regulation 2000* (Qld) (the PPRR)³⁴ as well as in the PPRA. You can look these up on the state government's website at www.legislation.qld.gov.au.

As noted, police must give you the opportunity to contact a support person (friend or relative) and a lawyer and arrange for them to be with you during your interview. They must also promptly give you

³³ Section 431 PPRA.

³⁴ See Schedule 10 of the PPRR – especially sections 34, 37 and 42.



reasonable facilities to speak with your support person or lawyer before your interview. Police cannot listen in on your conversations with your lawyer.³⁵

If you are an Indigenous person and you are disadvantaged in some way, the police must contact a legal aid lawyer for you if you do not contact a lawyer yourself. A support person must also be present during the questioning unless you specifically waive (or reject) the right to this.



If you have impaired capacity or you are a child, you are also protected because interviews must be conducted with a support person. If police only realise that you have impaired capacity once the interview has begun, then they must suspend the interview so that a support person can be organised.

A support person can only be excluded from an interview if they unreasonably interfere with the interview. They should not try to answer questions for you, constantly interrupt questioning, or try to hand you answers. However, they are allowed to help by asking police to clarify questions and challenging improper questions or the way a question is being asked. It is always safer to have a lawyer with you rather than just a support person.

If you are affected by drugs or alcohol, police must delay questioning until you are actually fit to answer questions. This means that they must wait until you have the capacity to understand your rights and make a decision about whether or not to answer questions. If you feel unwell you can ask to see a doctor.

Police must delay questioning for a reasonable time until your support person/lawyer arrives. What is a reasonable time will depend on the particular circumstances and generally a delay of more than two hours may be unreasonable, and police may start to question you.

³⁵ Section 419 PPRA.



If you genuinely need an interpreter, the police must delay questioning until an interpreter has been arranged for you. If you are not a citizen or resident of Australia, the police must allow you to telephone your embassy or consular official.

As noted above, these interviews must be electronically recorded if possible, including the cautions and your responses.

If you make a confession or admission, this must be written down in English either immediately or as soon as possible afterwards. It must be read out to you in English (or other language used in the interview) and you must be given an opportunity to correct any mistakes. This process should be recorded electronically.

It is never a good idea to make a confession unless you have had proper and independent legal advice first. In fact, it is never a good idea to give an interview unless you have first had legal advice. You may be certain that you are right, but you may be completely wrong in your understanding of the law. You may think that you have a great alibi, but in giving an interview you may accidentally make an admission that enables the police to charge you as a party to an offence. Some laws, such as drug laws, are very wide and you may not realise how harmful your statements could be to you.

5.5. What is bail and when can I get it?

Bail is the basis on which a person charged with a criminal offence may be released back into the community while awaiting a court hearing. Bail may involve a payment of money being lodged with the court in return for the person being temporarily freed, or bail may be granted on the person's promise (or undertaking) to attend at court.

There is no automatic right to bail, and bail might be refused if you have outstanding court matters or fines, or if your case is very serious.

Police bail is usually an undertaking, that is, a signed statement in which you promise to appear at court on a set date and to stay living at a set address. Special bail conditions can be set. A deposit of money or surety (a promise by another person to pay money if you don't turn up) can also be required and this would be linked to your promise to appear in court.

If you are charged with a non-indictable (minor) offence, such as a traffic offence, you may be able to post 'cash bail'. If you then fail to attend at court as specified you forfeit the deposited cash but no criminal conviction is recorded.

Legal Aid Queensland publishes a very good self-help kit about bail. You can find this on the LAQ website.

If you have been detained by police for questioning, or to prevent a breach of the peace, you may be released without being charged with any criminal offence.

5.6. **When can police take my photo and fingerprints, put me in an identity parade or get a sample of my DNA?**

If you are taken into police custody for an offence under the PPRA, for a weapons offence, or for an offence that bears a penalty of at least one year in prison, police can take your photograph (often called a mug shot) and your fingerprints.

Various types of 'identifying particulars' can also be taken, including your palm prints, fingerprints, handwriting samples, voiceprints, footprints, photos of your tattoos and scars, and your body measurements, such as your height.

If you are charged with an indictable offence, police can require you to provide a DNA sample. Police can obtain DNA samples with your consent, by court order or with the permission of a senior officer in some cases. DNA samples are usually obtained by mouth swab or hair samples.

If you are later found not guilty of the offence for which you were charged or if the charges are dropped, the photographs, fingerprints and DNA sample should be destroyed after one year. This will not apply in cases where you have other criminal convictions.

You can also be asked to take part in an identification parade. There are strict guidelines about how such parades can be conducted.³⁶ In particular, police must explain the procedure to you before carrying out the identification parade and make sure that you understand what is going to happen. You should not agree to participate until after you have obtained independent legal advice. The parade cannot take place unless you agree.

Your lawyer or a friend or relative can be present at the parade if they can get there within a reasonable time. Police must try to set up the lighting conditions to reflect the conditions at the time that the witness saw the suspect. You are allowed to choose your own position in the parade and change position in the parade after each witness has looked at the lineup. Police must include 11 other people in the parade who look like you and are wearing similar clothing.

³⁶ Schedule 10 PPRR.

6. Legal proceedings

6.1. How do I get to know the full details of any charges brought against me?

If you are charged with an offence, the police must give you a notice to appear or a full charge sheet which sets out details of the charge.

The full charge sheet will be provided if you are arrested and formally charged at the watch-house. This is normally called a bench charge sheet and is much more detailed than a notice to appear, which is a small docket-sized notice.

It is extremely important to know the exact details of the case against you before you decide whether or not to plead guilty or not guilty to such charges.

The police prosecution file is generally made up of two parts referred to as the 'QP9' and the 'Police Brief'. You are entitled to see these documents in order to prepare your case for court. The full police brief, which will include the police witness statements, may not be ready until closer to the date listed for your full hearing. The QP9, which should include your criminal history, a factual summary about the details of the offence and the sections under which you have been charged, should be ready by your first court date.

Not knowing the exact details of your charge and the police case is a problem if you later learn that what the police have actually written in their paperwork is different to what they may have told you they would write.

Always ask to read the QP9 at least before court starts on that first court date. If you have time to do so, you should contact Police Prosecutions before your first court date to ask for a copy of the QP9. The police are required to cooperate with this request and you should tell the magistrate at your first court date if the police do not respond to your request.

You will need a copy of the QP9 to get legal advice and decide what to do about your case.



If you decide to plead not guilty and the matter goes to a hearing, then you (or your lawyers) also need to get a copy of the full police brief in order to properly prepare your defence case.

6.2. What happens when I first appear in court?

Your notice to appear, court summons or bail undertaking will tell you when and where you first have to appear in court. Sometimes you will have time to seek legal advice before you go to court, but often you will not have this opportunity, especially if you are held in custody by the police beforehand. Always allow plenty of time to get to court so that you are not late. You may need to line up to see the prosecutor and the duty lawyer before court starts. Most courts have staff and volunteers on hand who can direct you towards the duty lawyer and the actual courtroom where you need to appear.

You should be prepared to be at court for a long time. The court may list dozens of matters at the same time as your matter. Sometimes you will have to wait for several hours.

Always make sure that you dress smartly when you go to court. Do not wear thongs or dirty clothes. Magistrates and judges expect you to make an effort to be clean and tidy in your appearance. You are not expected to buy a new outfit, but you may be able to borrow more suitable clothing if you do not own such clothing yourself.



Your behaviour also needs to be suitable and it would be extremely unwise to attend court under the influence of illegal drugs or alcohol. This advice should not discourage you from appearing at court; remember that if you do not turn up at court, the magistrate or judge can issue a warrant for your arrest to have you brought before the court.



The court will take a very negative view if you do not appear at court when you are required to – even if you have a lawyer acting for you who does appear.

In a genuine emergency, the court may excuse your absence at court and may move the matter to another date. If, for example, you are unexpectedly taken to hospital on the day of a court case, you should immediately contact the court, the prosecutor and your lawyer (if any) to let them know what has happened. There are no guarantees that the court will excuse your absence. Having a warrant issued because you didn't turn up to court is a very serious thing and may put at risk your future chances of getting bail.

On your first appearance at court, if you have not had a chance to read the case against you and get proper independent legal advice, you should ask to defer your case to another date so that you can get the help that you need.

A deferral of your court date is known as an 'adjournment' and at least one or two adjournments are generally granted if you have not been able to get legal advice and prepare your case. You must have genuine reasons to get an adjournment. Magistrates and judges are quite strict about this. The court does have power to reward your early cooperation in the court sentencing process³⁷ and unnecessary delays can work against your interests.

³⁷ Sections 9 and 13 *Penalties and Sentences Act 1992* (Qld).



The first appearance date in court is usually called a 'mention' date. Sometimes, people do finish their cases at the first mention date by entering a guilty plea. If you do not have your own lawyer, you should always try to see the legal aid duty lawyer before you make a decision. Remember, it is the duty of the prosecutor to prove their case against you. You may actually have a good chance of defending a case and you need to find out about this before you decide what to do.

Legal Aid Queensland has a much more detailed self-help kit about appearing in court by yourself and it is titled *Have you been charged with an offence?* This kit is available from their website for free. A copy can also be obtained directly from the LAQ office. This kit has information about where to stand in court and how to address the court.

If you believe that you are not guilty of the charges and you wish to defend yourself against the charges, you can enter a plea of not guilty and your case will then be listed for hearing on a later date. You should quickly seek legal advice about how to prepare your case. The court will also list what is called a review date a week or two before the court hearing. On that date, you or your lawyer and the prosecutor can attend to confirm to the court whether you are ready to proceed with the hearing.

7. Offences and penalties

7.1. What sorts of street offences are most common and what are the penalties?

The expression 'street offences' is used to describe a variety of offences that occur in public places such as streets, malls and parks.



Where activity carried out in public is outside socially acceptable standards of behaviour, it may, in certain cases, be unlawful. Being drunk or openly urinating in a public place, spitting and swearing at nearby people passing through a public space are examples of the sorts of behaviour that tend to cause trouble.

The police often become involved in such cases because the incidents happen in public spaces where police themselves also are likely to be found.

Street offences often arise out of the use of public space by drunk people, groups of young people mucking about, homeless people, and protestors or demonstrators.

When police officers take action in relation to these cases, further disputes often arise and people may suddenly find that they are accused of assaulting or obstructing police (for example, by resisting arrest) or of disobeying police directions.

The Queensland *Summary Offences Act 2005* (SOA) seeks to ensure that the public can safely pass through public spaces and it sets up a number of offences, including the offence of public nuisance.



Matters that the SOA covers include public nuisance, wilful exposure of your genitals, urinating in public, begging in a public place, being drunk in a public place, possessing a graffiti instrument, staging a sit-in in a building without permission and throwing things at a sporting match.

In 2009, the state government gave police powers to issue on-the-spot fines for public nuisance offences. This includes disorderly behaviour such as challenging people to fight or noisily interrupting a peaceful gathering, and offensive behaviour such as making rude gestures, urinating in busy public thoroughfares, fighting or threatening others. These powers are on top of powers police already have to arrest a person or to issue an offender with a notice to appear in court.

Police are likely to continue to arrest people for public nuisance offences where violence and threatening behaviour are involved and where the arrest is necessary to stop the offending conduct from continuing; however, people who do not need to be arrested can now simply receive a ticket in a process similar to the issuing of traffic tickets. People can also be arrested and then later issued with a ticket.

Penalties for SOA offences tend to be at the low end (compared with other criminal offences) and they often involve smaller fines (say, a couple of hundred dollars), smaller periods of jail time and good behaviour bonds of up to one year. The potential jail periods for SOA offences are up to one year in length. These offences are heard in the Magistrates Court.

Some street offences, however, will fall under the Queensland *Criminal Code* because of the serious nature of the offences. Certain cases involving violence causing personal injury, such as a serious assault of a police officer, may end up being heard in the District Court.

The following is a list of some of the common types of street offences. The more serious, related criminal offences are also included. The penalties listed are the maximum penalties for the offences. Any actual penalty imposed will depend, of course, on all the relevant circumstances associated with the offence and on each person's criminal record (if any).

Assault/obstruct police officer³⁸

- The PPRA includes the offence of assaulting or obstructing a police officer while the officer is carrying out the officer's duties.
- Obstruction includes stopping or trying to stop a police officer (this includes the officer's dog or horse) performing their duties.
- Resisting arrest without a reasonable excuse will also generally be treated as conduct that amounts to obstructing a police officer.
- Maximum penalty: \$4,000 or six months jail.

Serious assault of a police officer³⁹

- The *Criminal Code* also includes an offence of assaulting or obstructing a police officer under the 'serious assault' provisions. This offence includes assaulting, resisting or wilfully obstructing an officer, including by biting, spitting at or throwing bodily fluids or faeces at an officer.
- Maximum penalty: seven years jail.

Assault⁴⁰

- Street brawls, especially fights which break out between partygoers outside nightclubs, or between people who are drunk in public places, can result in a person being charged with common assault.

³⁸ Section 790 PPRA.

³⁹ Section 340(1)(b) CC.

⁴⁰ Section 335 CC for common assault, section 339 for assault causing bodily harm and section 340 for serious assault.

- The offence of assault requires force to have been used either directly (such as by punching or pushing with a hand) or indirectly (such as by throwing a drink on someone) against a person. An assault can also be committed by threats and gestures.
- Maximum penalty: three years jail.
- The offence is more serious if a victim suffers 'bodily harm' (an injury which interferes with a person's actual health and comfort, such as broken bones or teeth, bleeding cuts, bruising, or damage to a bodily function, such as seeing or hearing).
- Maximum penalty: seven years jail (which can be increased to ten years if the assault was committed by a group of people or if the offenders were armed with weapons or at least pretended to be armed).
- The category of 'serious assaults' includes a special provision relating to assaulting and obstructing police as set out above; however, this provision includes other types of serious assaults, such as the assault of a person over 60 years of age, a blind person or someone in a wheelchair, or an intentional assault where the person intended to try to avoid the lawful arrest of themselves or someone else.

Contravene a police direction (without reasonable excuse)⁴¹

- This catch-all offence applies where there is no other specific offence for contravention of a particular police direction.
- The offence also covers cases of disobeying move on directions issued under the PPRA.⁴²
- If the direction given by the police officer relates to your providing information that would incriminate you, you can reasonably refuse to comply with the direction. Otherwise, unless you have another reasonable excuse for not complying, you will be committing an offence if you do not cooperate.

⁴¹ Section 791 PPRA.

⁴² These are set out in sections 44–48 of the PPRA.

- Police must warn you that failure to comply with a police direction without reasonable excuse is an offence and that you may be arrested. They must then give you a reasonable opportunity and time to comply.
- Maximum penalty: \$4,000 (unless higher penalties are given for this particular offence under other laws).

Public nuisance⁴³

- Public nuisance can occur in a number of ways, including where a person behaves in:
 - a disorderly way;
 - an offensive way (this includes using offensive, obscene, indecent or abusive language);
 - a threatening way (this also includes using threatening language); or
 - a violent way;

and this behaviour interferes with, or is likely to interfere with, another person's passing through or enjoyment of a public place.

- Using obscene or abusive language in public is a common cause for public nuisance charges. This includes saying or writing offensive, abusive, indecent, obscene or threatening words. What is indecent or obscene depends on when and how it is used. Whether or not something is actually offensive depends on how it was said and can change as public standards of decency change.
- A public complaint about a nuisance being committed is not required, so the police can charge a person if they feel a public nuisance is being committed.

⁴³ Section 6 SOA.

- Maximum penalty: \$1,000 or six months jail. Fines are often relatively small and may only be \$100–\$300. Sometimes, if you don't have enough money to pay a fine, you may be placed on a 12-month good behaviour bond instead.

Being drunk in a public place⁴⁴

- A person must not be drunk in a public place.
- Maximum penalty: \$200.

Possession of dangerous drugs, utensils or implements, or things used in connection with a drug offence⁴⁵

- If the police conduct a lawful search of you or your bags on the basis of a reasonable suspicion and find drugs or things used in connection with drugs, then you may be charged under the *Drugs Misuse Act 1986*.
- Alternatively, the police may release you without charge on the condition that you attend a drug counselling session organised by police (known as 'drug diversion'). To be eligible, you must admit your guilt on record and you cannot previously have been referred to drug counselling. If the police do not offer drug diversion to you, but you think you are eligible, ask the police if you can be referred to drug counselling or see a lawyer.
- Maximum penalties: range from two years jail for utensils/things offences to 25 years for major drug offences. The penalties for drug offences will vary depending on the type of drug and amounts.

Public urination⁴⁶

- In 2008 the state government amended the SOA to include a specific offence of public urination.

⁴⁴ Section 10 SOA.

⁴⁵ Sections 9–10 *Drugs Misuse Act 1986* (Qld).

⁴⁶ Section 7 SOA.

- It is, of course, lawful to urinate in a public place that is designed for use as a toilet.
- There may be very limited circumstances where a person might not be charged under this section. For example, discreetly urinating by the side of a country road during a long journey where there is no access to a public toilet might be considered reasonable, whereas openly urinating on a lamppost in the middle of a city mall while people are walking by would probably result in a charge.
- Maximum penalty: \$200.

Wilful exposure⁴⁷

- It is illegal to expose your genitals in a public place.
- Wilfully flashing your genitals (commonly referred to as flashing) with the intention of offending or embarrassing other people will be considered to be a more serious type of this offence.
- Maximum penalty: \$200 for a minor offence or, for the more serious example above, \$4,000 or one years jail.

Begging in public⁴⁸

- A person must not beg for money or goods in public or organise for a child to beg on their behalf.
- Also, a person must not ask for donations in a public place unless they have government permission to collect for charity (that is, they must be a lawfully registered collector for charity).
- People who are busking with local government permission will not be committing an offence.
- Maximum penalty: \$1,000 or six months jail.

⁴⁷ Section 9 SOA.

⁴⁸ Section 8 SOA.

Trespass⁴⁹

- It is an offence to enter or remain in someone's dwelling (for example, a house, flat or unit) or yard (including the yard of a business) without legal permission to do so.
- Maximum penalty: \$2,000 or one years jail.
- There are also other civil (non-criminal) trespass actions, but such cases are rare if no substantial damage to property has occurred. This is partly because civil court cases can be very expensive and slow.

Entering, gathering or remaining in a building without lawful excuse⁵⁰

- Two or more people cannot, without legal permission, enter and/or stay in a public building or building that is a business.
- So, for example, a group of people who had permission to enter a particular building to meet with politicians would commit this offence if they were then asked to leave, refused to do so, and mounted a protest.
- Maximum penalty: \$1,000 or six months jail.

Possession of a graffiti instrument⁵¹

- It is an offence to possess a graffiti instrument (such as a spray can or etching device) that is reasonably suspected of having been used for graffiti, is being used for graffiti or is reasonably suspected of being about to be used for graffiti.
- You can defend such a charge by proving that the graffiti instrument has or will have an innocent use.
- Maximum penalty: \$2,000 or one years jail.

⁴⁹ Section 11 SOA.

⁵⁰ Section 12 SOA.

⁵¹ Section 12 SOA.

Preventing public meetings⁵²

- It is an offence to deliberately stop or try to stop a public meeting. Examples of this could include making noises to disrupt the meeting or blocking a doorway to a meeting.
- Maximum penalty: \$1,000 or six months jail.

Unlawful assembly⁵³

- It is an offence for three or more people who have a shared purpose to get together in a public place and conduct themselves in a way that makes people nearby afraid for themselves or for their property (or another person's property).
- The people who are afraid need to have a reasonable fear that actual violence will be used by the group.
- Maximum penalty: one – two years jail depending on the circumstances.

'High risk activities' such as BASE-jumping, hang-gliding, or abseiling from buildings⁵⁴

- It is an offence to engage in high-risk activities, such as BASE-jumping, hang-gliding and abseiling from buildings, without permission. Even climbing the outside of a building can be an offence under this section.
- People who engage in such actions as part of a protest can face prosecution.
- Maximum penalty: \$1,000 or six months jail; however, the court can also order the offender to pay the courts associated with their rescue or attempted rescue. These costs can be significant and could be many thousands of dollars.

⁵² Section 20 SOA.

⁵³ Section 10A SOA.

⁵⁴ Section 14 SOA.

Unauthorised wilful damage to property or destruction of property⁵⁵

- Unlawful intentional damage to property or destruction of property where the amount of loss in question is less than \$250 is an offence.
- Maximum penalty: \$500; however, the court can also order compensation and certain other court and investigation costs.

Interference with road use⁵⁶

- There are a number of offences that relate to conduct on roads. In particular, it is an offence to interfere with road use so as to cause danger, obstruction, inconvenience, annoyance or injury to any person or animal on a road.⁵⁷
- Maximum penalty: \$2,000.

Breach of the peace⁵⁸

- Police have a general power to deal with a breach of the peace by detaining a person in order to prevent that breach from happening or to prevent any ongoing breach of the peace.
- A breach of the peace is not just any public disturbance; it means a situation where violence has happened, or is about to happen, to people or property.
- Police can detain a person until the need for their intervention has ended.
- Specific offences for breaching the peace are listed below.

⁵⁵ Section 7 *Regulatory Offences Act 1985* (Qld).

⁵⁶ See *Traffic Regulation 1962* and *Transport Operations (Road Use Management Act) 1995*

⁵⁷ Regulation 149 *Traffic Regulation 1962*.

⁵⁸ Section 50 PPR. See also section 51 about riots.

Affray⁵⁹

- It is an offence to fight or brawl in a way that causes fear or alarm to others in a public place or a place where the public have access.
- It does not matter if there are no members of the public present to witness the actual behaviour.
- This offence usually involves more than one person.
- Maximum penalty: one years jail.

Going armed so as to cause fear⁶⁰

- Going armed in public in such a way as to cause fear (for example, by wearing a gun on your belt) is an offence.
- Maximum penalty: two years jail.

Riot⁶¹

- This offence involves 12 or more persons who together use (or threaten to use) violence to a person or property.
- The people involved in the riot must be acting for a common purpose.
- The action must be capable of causing alarm in a place where the public have access; it does not matter if there are no members of the public present.
- Maximum penalty: life imprisonment (if the act involves grievous bodily harm, an explosion, or damage to a building, a vehicle or machinery); seven years jail (if the offender is armed with a weapon, dangerous instrument, explosive substance, or property is damaged in the incident); or three years jail.

⁵⁹ Section 72 CC.

⁶⁰ Section 69 CC.

⁶¹ Section 61 CC.

7.2. What do I do about outstanding warrants?

If you know that warrants have been issued for your arrest (for example, because you breached your bail conditions and failed to attend at court in relation to a matter), you should contact a criminal lawyer to discuss what can be done in your situation.

It is always best to sort out your difficulties before the police catch up with you because the courts are likely to treat you more favourably if you turn yourself into the police voluntarily.

Outside Brisbane, you may be able to hand yourself into the local court or your local police station. In Brisbane, you will need to surrender yourself to the central watch-house next to the Magistrates Court on the corner of Roma Street and Makerston Street. You should go to the watch-house early in the morning (preferably at about 6.30 am between Monday and Thursday) in order to allow the police to process your case and complete the necessary paperwork before court starts each day.

You will be placed in a cell while you wait to appear in court. A duty lawyer from Legal Aid will normally be providing free legal advice to people who are being held in the cells at the watch-house and the duty lawyer may be able to provide you with some assistance. If you have already arranged for private representation, then your lawyer should be able to find out from the officer in charge of the watch-house when you will be taken up to the court and can then appear for you.

8. Complaints and referrals

8.1. How do I make complaints about police?

If you wish to complain about the conduct of a particular police officer, you can make your complaint directly to the Commissioner of the Queensland Police Service, which has its own internal ethics/conduct unit called the Ethical Standards Command.

Alternatively, you can complain to the Crime and Misconduct Commission.

You can also complain to your local member of parliament.

8.2. Referral information

Caxton Legal Centre Inc.

28 Heal Street
New Farm Qld 4005
Phone: 07 3254 1811
www.caxton.org.au

Queensland Council for Civil Liberties (QCCL)

PO Box 2281
Brisbane Qld 4001
Phone: 0409 574 318

Legal Aid Qld

44 Herschel Street
Brisbane Qld 4000
Phone: 1300 651 188
www.legalaid.qld.gov.au

Crime and Misconduct Commission

Level 2, 515 St Pauls Terrace
Fortitude Valley
GPO Box 3123
Brisbane Qld 4001

Email: mailbox@cmc.qld.gov.au
Phone: 07 3360 6060

Queensland Police Service Ethical Standards Command

200 Roma Street Brisbane
GPO Box 1440
Brisbane Qld 4001
Phone: 07 3364 6464

Aboriginal and Torres Strait Islander Legal Service

Level 5, 183 North Quay,
Brisbane

Phone: 07 3025 3888
Freecall: 1800 012 255
www.atsils.com.au



Checklist: dealing with police

First contact

1. If police approach you and ask questions, you should generally supply your name and address if asked for that information, and if you are a juvenile you should state your age. When asked for an interview you should state that you 'may be willing to give an interview if you have the opportunity to get legal advice first'. Be polite but firm. Say 'I've got nothing to say'. You could even say 'Sorry guys I want to help, but I've had specific legal advice before on exactly this situation and was told that I really shouldn't'.
2. If police ask you to come into the police station, you should say that you do not wish to go with them to the station unless you are actually being 'arrested' or 'detained'. If they say they are arresting or detaining you, take note of the power upon which they say they are relying to discuss at a later stage with your lawyer.

Interviews

3. There is no such thing as an 'off the record' interview. Do not participate in such interviews if they are offered to you, even when you feel it is safe to do so. Do not answer any police questions once you have been arrested even if you are certain such answers would establish your innocence. Get legal advice first! Remember, your understanding of your situation may not be correct in a strictly legal sense, even if you think you have done nothing wrong. You should always consult a criminal lawyer before deciding whether or not to give an interview. If you are offered any inducements to give an interview,





remember (and if possible take notes about) what is said by the police – for example, ‘We’ll let you call your partner if you give an interview...’ ‘We’ll give you bail if...’.

4. In an interview, you may lawfully refuse to answer questions. If you assert your right to silence during an interview it is vital to stop answering all questions, not just some questions.
5. Get legal advice as soon as possible after you are arrested or detained and ask the police if you can contact a lawyer. You should understand that the police do not have to warn you or provide you with a lawyer before questioning you unless the offence is an ‘indictable’ (serious) one. Strictly speaking therefore, they do not have to provide you with a phone call to a lawyer unless they want to question you in relation to an indictable offence. You should always ask to phone a lawyer and make a note if the police refuse your request. Before attending any protest activities, write the number of your nominated criminal lawyer in waterproof marker on your hand so that you can easily contact your solicitor if necessary. Interviews can usually be scheduled to fit around the availability of your lawyer.
6. The police may detain you for questioning without arresting you only if you are suspected of having committed an indictable offence. This questioning period must not exceed eight hours unless an extension of time for questioning is ordered. You may not be questioned for more than four hours at a time during that eight-hour period.

Arrest and physical interactions with police

7. If arrested or charged with an offence, at the first opportunity write down in full detail everything relating to the matter including word-for-word accounts of any conversations with the police. Ask any independent witness you can find to do the same and keep a list of their contact details. Date, time and sign all notes that you make. Head up your notes with ‘For my lawyer’ – otherwise there is a risk of them be seized as a confession.

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8. If you are arrested you should ask the police officer concerned why you are being arrested and the specific charge involved.
 9. Do not physically resist arrest and never spit at or near an officer as this type of behaviour is treated very seriously and usually results in quite serious charges.
 10. Failure to comply with a police direction or requirement without a reasonable excuse is an offence. The police move on powers, however, do not apply to authorised public assemblies.

Court process

11. Do not plead guilty on advice from the police. Always seek independent legal advice before pleading guilty. Do not ask the police for a referral to a solicitor.
12. See the court duty lawyer to obtain advice or guidance early on the morning of the first 'mention' of your matter if you have not already obtained legal advice. Beforehand, write down what happened to help in your legal interview. Be aware that if you decide to plead guilty to an offence, an early plea should be taken into account by the court in the sentencing process. Always try to obtain legal advice before attending court. You should organise written character references to give to the court for use in the sentencing process. References should be addressed to the particular court hearing your case, for example, the Magistrates Court.
13. If you are charged with an 'indictable offence' it is a serious matter and you should urgently obtain legal advice about your situation.

Referral points

You can attend one of Caxton Legal Centre's free legal advice sessions between 6.00 pm and 7.30 pm on Monday, Tuesday and Thursday evening (no appointment needed). You can also contact your own solicitor or contact the Queensland Law Society for a referral to a solicitor who specialises in criminal law. Legal Aid Queensland duty lawyers are also available at the Magistrates Court. Caxton Legal Centre Inc. and Legal Aid Queensland also employ social workers who may be able to provide you with counselling services and other useful support.



"I hope you're going to come quietly."

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