



Police Powers — Your Rights

A guide to your rights when
dealing with police.

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Disclaimer

This publication is intended to give general information about the subject of law that it deals with. While every effort has been made to ensure accuracy, the law is constantly changing. No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication.

FOREWORD

In 1985, Caxton Legal Centre collaborated with the Queensland Council for Civil Liberties (QCCL) to produce the precursor to this publication. Due to the consistently high demand by members of the public, *Police Powers—Your Rights* was previously updated in 2010 and 2016, and now again in 2018.

Thirty-three 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 between demonstrators and police, which dominated the 70s and 80s. Today, questions about how police pursuits should be managed, the deployment of tasers, rights in public space and arrest powers are at the forefront of public discourse about how police and community should interact.

On a day-to-day basis, the rule of law is best served by a public who are aware of the powers that have been conferred on police and, importantly, the limits of those powers. It is for this purpose that Caxton and QCCL have continued to update this publication.

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.

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.

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.

Offender Levy: The offender levy is a fee payable by every adult sentenced in a Queensland court. The levy is \$368.90 for matters in the Supreme or District courts and \$123.00 for matters in the Magistrates Court. This cannot be appealed against and may be collected by the State Penalties and Enforcement Registry if it is not paid.

Penalty Unit: This is an amount set out in s 5 of the *Penalties and Sentences Act 1992* (Qld). The dollar amount of a penalty unit increases on 1 July of every year and is listed on the Queensland Government website.

PPR Act: *Police Powers and Responsibilities Act 2000* (Qld).

PPR Regulation: *Police Powers and Responsibilities Regulation 2012* (Qld).

QP9: A document prepared by the arresting officer that 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, but it is usual for the QP9 to be collected at the first mention of the matter in court. If one is not available at your first court mention, you should speak with the duty lawyer.

Right to Silence: Anyone may refuse to answer police questions beyond their name and address if they are 18 years or older. If 17 or younger, they must also tell police how old they are, and they should ask for a support person and lawyer.

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 important to ask to contact a lawyer before participating in any sort of police questioning.

GENERAL INFORMATION

Where do I look for information or legal advice?

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

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

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

What if I am under 18?

Queensland's criminal law treats young people up to and including the age of 17 years as children. People who are 18 and older are treated as adults. Children under 10 are not criminally responsible for their actions. If you are under 18, the *Youth Justice Act 1992* (Qld) applies to you, and you may have extra rights that are not dealt with here. Always tell police that you are still under 18 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 your choice) with you during an interview, unless the matter involves only a minor offence (e.g. making a public nuisance by swearing). Do not start an interview without a lawyer.

You should always ask for a lawyer to help you. The Youth Advocacy Centre and the YFS Community Centre publish more helpful information about your rights.

What about terrorism or special-event police powers?

In September 2017, the Queensland Government introduced significant changes to Queensland's anti-terrorism laws. These changes give broader surveillance and information-gathering powers to police in a special emergency/terrorism situation if one is declared by the government. Laws relating to terrorism are generally

outside the scope of this booklet. For more information about this particular issue, seek private legal advice.

Expanded police powers have also been introduced during major government events (e.g. the Commonwealth Heads of Government Meeting) and public events (e.g. the 2018 Commonwealth Games). These powers are also not included in this document.

You can still follow the general information in this document when dealing with police at such events. However, you should be aware that police may have broader powers, and that you may have less rights.

Always ask the police if they are exercising expanded policing powers if you are unsure.

You should immediately seek advice from a criminal lawyer if you have been stopped, questioned, searched, charged or are being otherwise dealt with by the police exercising such powers.

YOUR FIRST CONTACT WITH POLICE: QUESTIONS AND DIRECTIONS

What if 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 are listed in the PPR Act and 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
- police are giving or have given you an order related to your suspected participation in a criminal organisation
- you are being taken to a sober safe centre or you are being issued with a banning notice
- you are in control of a vehicle that is stopped on a road
- police are trying to enforce another specific law.

¹ Sections 40 and 41 of the PPR Act.

² Indictable offences are listed in the *Criminal Code Act 1899* (Qld) (Criminal Code) and are serious offences. The Criminal Code identifies when an offence is an indictable offence, and potential jail (and other) penalties are listed with the various offences.

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 will result in more serious charges.

You are allowed to ask why police are asking you for this information. You should politely ask police for their details including their names, rank and station. If they are not in uniform, they 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.



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

www.cartoonstock.com

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

- check the identity of the police officers and ask why they want your details (making a note of what they say)
- tell the police officers your name and address, and age if you are under 18
- try to record the names of any witnesses to the event if you can
- politely say that you are not willing to answer any other questions.

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. If police ask to search your vehicle, immediately seek legal advice. Refuse consent to the search but avoid engaging in physical resistance against police.

What if 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 all public places including public places in safe-night-out zones and from certain other listed (prescribed) non-public places.³ Such directions are commonly called move-on directions.

These move-on powers are commonly used in streets, parks, malls and railway stations, and near shop and pub entrances.

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. Proving mistakes will typically be difficult.

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

³ Sections 44 to 48 of the PPR Act.

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. Listen carefully to police as they give you a move-on direction and take note of the details.

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; you could even ask for a map of the area if they make one available
- try to record the names and contact details of any witnesses to the incident, if possible
- 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 assembly⁴ 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 you may be arrested.

If you are found guilty of disobeying a move-on direction, the court could impose a fine of up to 60 penalty units, which could potentially amount to several thousand dollars. 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.

Additional police powers exist inside areas defined as Safe Night Precincts. These precincts are key entertainment areas, such as a section of Fortitude Valley and Paddington in Brisbane (you can look at small

maps published by the Queensland Government to find out where these areas are currently located). Police can issue you with an initial police banning notice, which prohibits you from entering or remaining in a certain precinct. It can be an offence to not comply with that notice. The notice normally should state the locations to which it applies and the applicable times and dates. These details can vary, and it is very important that you read the detail contained within the notice.

Police can try and extend these notices for lengthy periods of time. If you disagree with their actions in doing so, then you can apply to the Magistrates Court to have the notice amended or set aside. It is important that you do not breach any notice until you make sure that you have taken the necessary action in court to have it set aside or amended; otherwise you may be charged with breaching the notice.

In early 2017, new restrictions came into place prohibiting the sale of rapid intoxication drinks (i.e. drinks designed to be consumed rapidly such as shots and those with high alcohol content) after 12 am, and introducing a 'last drinks' policy prohibiting the sale of all liquor after 3 am for venues inside a safe night precinct and 2 am for venues outside. However, in a departure from proposed lock-out laws, venues are allowed to stay open and provide food, entertainment and non-alcoholic drinks after sale of liquor trading ends. Different rules apply during special events and to venues such as casinos and licensed venues at airports. These laws are expected to be monitored and reviewed, and more information is available on the Queensland Government website.

What can police tell me to do if I am involved in a riot or disturbance?

A police officer is allowed to take the steps that the officer thinks are reasonably necessary to prevent a breach of the peace or a 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

⁵ Section 50 of the PPR Act.

⁶ Section 51 of the PPR Act.

⁷ Section 52(2) of the PPR Act.

⁴ Queensland's *Peaceful Assembly Act 1992* (Qld) sets out the formal process for authorising a public assembly.

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

Can 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, police may turn up and tell you to stop making so 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, especially if the party becomes out of control.

If police give you a noise abatement direction (i.e. a direction to stop making excessive noise), you must stop making noise immediately. This direction normally lasts for 96 hours.

If you continue to make noise or start making noise again within that stated time frame, police can come back and take more serious action. Police may be able to charge for the cost of taking action on such a return visit to deal with a noise complaint. Police can take the property that you are using to make the noise, such as a guitar or amplifier, and lock it up, make it inoperable or even remove it. Motorbikes creating noise in places other than on a road can also be impounded. Fines for unlocking or using this property within this period can be up to 10 penalty units. You can apply to get a motorbike back after 48 hours and other property after 96 hours. Note that there are additional laws that relate to hooning.⁹

Police can enter a place without a warrant to give directions about noise.¹⁰

What can police do at a party if they consider that it is out of control?

Police also have powers for curbing parties that are considered to be out of control. These powers are very broad and might apply to a wide range of circumstances.¹¹

If 12 or more people are at a gathering (i.e. at an event such as a party) and at least three of them engage in what is called 'out-of-control conduct' at or near the

event, and this conduct could cause people at or near the event (e.g. nearby residents) to be worried about things such as personal safety, property damage or the right to enjoy a public space, then police may act under these powers. Examples of out-of-control conduct at or near a party include damaging property, gate crashing, doing obscene things (e.g. flashing), trespassing, doing burn-outs, fighting, threatening people, stopping traffic, unlawfully using fireworks or lighting fire, being drunk in a public place or using illegal drugs.

Authorised police can order out-of-control events to be stopped and take action to stop them from becoming out of control. Police also can stop such events from being relocated somewhere else, can order people to leave events for up to 24 hours (unless the person actually lives at the relevant home), can enter the relevant place without a warrant, can stop cars, can identify organisers of events and people committing offences at these events, and can take other reasonable action required to deal with the situation.

Significant fines of many thousands of dollars could be imposed on event organisers (or if an organiser is under age, a parent who authorised the event) who did not take reasonable steps to stop the event from becoming out of control,¹² and on other people committing offences. Jail sentences also are potential penalties open to the courts. In reality, the penalty would be much less than the maximum but these are potentially serious charges.

Penalties can be even more serious for organisers where the event was organised somewhere illegally. The penalty can be up to 165 penalty units or three years jail. The same penalty applies where a person disobeys a police direction at an out-of-control event and responds by threatening or committing an assault or property damage.

The person said to be responsible for the party might also be ordered to pay the costs of emergency services called out to the party to deal with it.

What if police try to ask me more questions?

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

Police officers will often secretly (and lawfully) record their conversations with you. This can occur at any

⁸ Sections 576 to 584 and 588 of the PPR Act.

⁹ Section 69 and 69A of the PPR Act.

¹⁰ Section 581 of the PPR Act.

¹¹ Section 53BC of the PPR Act.

¹² Section 53BH of the PPR Act.

point, including at the roadside or at the scene of a police raid. It does not have to be a formal setting.

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 nothing to say'. You can then seek legal advice. After speaking to a lawyer, you may 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 (17 years and under) if an independent person (i.e. a parent or lawyer) was not present at the interview.¹³ It is critically important to have a lawyer present.

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.¹⁴ 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) and ask them to be present during your interview, but it is critically important to have a lawyer present.

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 police must delay questioning for a reasonable amount of time to allow you to contact a friend, relative or lawyer.¹⁵ It is always critical to have a lawyer with you rather than just 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 refuse an interview and note the name of the relevant 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 allowed to speak to a family member only, get them to contact a criminal lawyer for you.

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. Police have a list of criminal law firms published by the Queensland Law Society (QLS).

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) 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.



Courtesy of Sean Leahy

¹³ Section of the *Youth Justice Act 1992* (Qld)

¹⁴ Sections 418 and 419 of the PPR Act.

¹⁵ Section 418 of the PPR Act.

Unlawfully playing these recordings is an offence, and the potential penalty is two years jail or a fine of 40 penalty units. You should always get legal advice before deciding whether to play these recordings to other people.¹⁶ Sometimes, with the court's permission, such recordings may be allowed to be used as evidence, but there is no guarantee of this.

GETTING ARRESTED

What is 'arrest', and when and how can 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 (i.e. their freedom) 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 uses similar words
- the police officer states the reason for the arrest
- you either voluntarily give in to the officer's control or you are physically subdued by the police officer.

Sometimes, police will only tell you that you are under arrest after they physically take charge of you or this may occur during the arrest.

You may be arrested by police if they have a warrant (i.e. written authorisation from the court signed by a judge, magistrate or justice of the peace) for your arrest. However, in certain circumstances, police can arrest you without a warrant.¹⁷

You may be arrested without a warrant if 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
- 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 they reasonably suspect 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. Detaining a child in custody should always be a last resort. Special laws apply in terrorism cases.¹⁸

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

You should remember that it is an offence to assault or obstruct police officers, police dogs or police horses in any way when they are reasonably carrying out their duties.¹⁹ 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'.²⁰

¹⁸ Special provisions about the detention of suspected terrorists are set out in Queensland's *Terrorism (Preventative Detention) Act 2005* (Qld). 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.

¹⁹ Section 790 of the PPR Act.

²⁰ Section 340(1)(b) of the Criminal Code.

¹⁶ Section 45 of the *Invasion of Privacy Act 1971* (Qld).

¹⁷ Section 365 of the PPR Act.

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, and 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 risk of infection, and a period of imprisonment would be within the sentence range. Depending on the circumstances, touching a police officer can also be interpreted as assault.

Even if you think police have behaved badly, you should avoid fighting with them. As discussed in [Complaints](#) below, 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, and there is no guarantee that you will win. Intention is not an element of the offence, which means that even if you did not mean to obstruct a police officer you could have obstructed accidentally and still be charged.

Giving police false information can amount to obstruction, and you should simply remain silent rather than lie to police. Even saying 'I do not 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 police instruct you to do, you will be charged with obstructing a police officer.²¹

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

²¹ In the case of *Charrington v Korac* [2008] QDC 328, refusing to open a door was found to be an obstruction.

Certain arm and wrist locks used by police can be quite painful, and struggling against handcuffs can cause pain and injury. Capsicum 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 police have been unfair or have been too rough when arresting you.

If you are in an area where there may be some electronic closed-circuit television (CCTV) footage of your scuffle with overbearing or abusive police officers (e.g. 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 that footage exists as soon as possible.

This sort of surveillance or CCTV footage is often only kept between one to 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 (e.g. 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.

Do police have to read me my rights?

Despite a widely held belief that police must read you your rights before arresting you, 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.²²

²² Section 431 of the PPR Act and sch 9 pt 5 of the *Police Powers and Responsibilities Regulation 2012* (Qld).

There are some cases where police must give you similar warnings if they are intending to speak to you about, or arrest you in relation to, a less serious offence, but the law in relation to these situations is a bit more unclear. Police are generally considered to be required to treat you in a generally fair and reasonable way, but often it can be hard to enforce these rights if you are under arrest.

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

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.

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.²³ 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 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 (i.e. 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
- be signed by the police officer serving the notice.

²³ Section 382 of the PPR Act.



"Here comes trouble!!!"

www.cartoonstock.com

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

POLICE SEARCHES

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.

When can police come into my home?

Police can remain in your yard and enter your home against your wishes, if they have a warrant (e.g. 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 at a place (including premises, vacant land, motor vehicles, aircrafts, 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 (e.g. a house or flat) 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
- consenting to the entry
- consenting to the police officers remaining on any part of your land or property.

Be firm but polite, and do not swear at 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 (i.e. where a person has been seriously injured or is about to be harmed)
- to investigate a case or to serve documents
- to arrest or to detain someone who is in the house, if police have a reasonable suspicion to justify this action.

With a warrant

If 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. Ring a lawyer for advice immediately. The warrant, amongst other things, must state that police may exercise search warrant powers under the warrant.²⁴ Police also need to give (or leave for) the occupier a copy of a statement setting out their rights and obligations under the warrant.²⁵ Even if police have a warrant, they can only stay for a reasonable time to carry out the action that the warrant allows.

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 and cupboards. Police can also search individuals on the premises if the warrant allows it.

²⁴ Section 156 of the PPR Act.

²⁵ Section 158 of the PPR Act.

Without a warrant

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
- deal with domestic violence that is occurring or has just occurred.²⁶

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.²⁷ This power applies to indictable (serious) offences (e.g. serious drug offences), and offences involving gaming, betting, explosives, 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 (e.g. 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 have 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 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 Complaints).

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
- a law specifically allows them to conduct the search.

²⁶ Section 609 of the PPR Act.

²⁷ Section 160 of the PPR Act.

The PPR Act is the most important source of police search powers.

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 (e.g. a knife, 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* (Qld) (e.g. drinking alcohol in a public place)
- 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.

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

Always ask police why they want to search you and remember what they say. You could say '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 ultimately have to be 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, unless police suspect you are wearing a bomb or carrying a hidden knife or gun
- conducting a more thorough search away from public view, if possible
- 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.²⁸

²⁸ Section 624 of the PPR Act.

Special rules apply for transgender people, and you can ask to speak with a Queensland Police Service LGBTI liaison officer. 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 taking off your clothes so that police can search you;²⁹ however, this does not mean that police are allowed to search your body cavities.

Police can only conduct a strip search in certain circumstances, 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 (e.g. you should be able to keep your pants on while your chest is bare and your shirt on while your pants or skirt are off).³⁰ You must also be told why the search is necessary. If you are a transgender person, you can elect which gender to identify with in such a search.

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 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 (e.g. 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 police your security passwords or codes for access to these electronic devices. Not to comply can be an offence under the Criminal Code in some circumstances.

When can 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 PPR Act without a warrant. This applies where 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
- stolen property.³¹

Police can seize any unlawfully held weapons they find in the search and can also seize evidence of other offences found in the search (e.g. 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 to a place with appropriate facilities for a further detailed search.

Police can also stop, search and detain a vehicle if they reasonably suspect that a person in it can be arrested

²⁹Section 629 of the PPR Act.

³⁰Section 630 of the PPR Act.

³¹Sections 31 and 32 of the PPR Act.

without a warrant³² (discussed earlier) or with a warrant under the *Corrective Services Act 2006* (Qld) (e.g. an escaped prisoner), or if police reasonably suspect the person in it is part of a criminal organisation or the vehicle is being used unlawfully (e.g. the vehicle has been stolen or driven dangerously).

Sometimes, warrants may also be issued for the search of vehicles. If 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.

Can I get my stuff back if 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 possession of property such as vehicles suspected as having been used to commit an offence, and other items of property, including houses, which are suspected of having been obtained through criminal activity.

Changes to the laws dealing with the proceeds of drug offences might mean that police have the power to seize and dispose of property said to have been linked to the profits of serious drug offences. The powers granted to police in relation to this kind of seizures are very wide, and it is vital that you obtain legal advice as to how best to approach this situation. It is possible for police to try and seize someone's house if they can say that it was somehow paid for, even partially, from the proceeds of drug offences, and the situation can become very serious.

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 be asked to give your property (e.g. your wallet, belt and watch/jewellery) to an officer while you are held in custody in a cell for safety and security reasons. You may be required to change into different clothes provided at the watch-house, sometimes referred to as 'prison browns'. 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 took from you.

³² Section 365 of the PPR Act.

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 police. Otherwise, after the appeal period of 28 days, you can apply to have your property returned, provided it is not illegal property (e.g. drugs). There may be a wait before your property is returned.

You can also try to recover property (e.g. seized mobile phones and computers) or challenge whether police really need to keep that property as evidence.³³ 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.

GOING TO THE POLICE STATION OR WATCH-HOUSE

Do I have to go to the station with police?

You have to go with 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 or breath test in relation to a drink/drug driving offence.

Otherwise, if police ask you to accompany them to the police station, you can decline to go with them. Different laws apply in situations relating to state and Commonwealth anti-terrorism preventative detention laws. You should seek specific advice if you are concerned about such matters. They are not discussed here.

What questions are police allowed to ask me at 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, police must caution you about your right to remain silent. They also must advise you, before

³³ Sections 692 and 693 of the PPR Act.

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, police must enable an interpreter to be made available for you.

There are some cases where police must give you similar warnings or take similar precautions if they are intending to speak to you about, or arrest you in relation to, a less serious offence, but the law in relation to these situations is a bit more unclear. Police are generally considered to be required to treat you in a generally fair and reasonable way, but often it can be hard to enforce these rights if you are under arrest.

Police can only detain you for up to eight hours³⁴ unless the period is extended by a court order. Police can only question you for up to four hours in that eight-hour period.

It is important to note that under Queensland's domestic and family violence prevention laws, police may, while they are investigating an incident, detain a suspected perpetrator in the watch-house for four to eight hours (depending on the situation) where it is necessary to protect a person or property.

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 (i.e. the Aboriginal and Torres Strait Islander Legal Service or LAQ) and make special arrangements for support for Aboriginal and Torres Strait Islander people before questioning begins.

People with impaired capacities also must 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.

All LGBTI people can request attendance of an LGBTI liaison officer.

People should not be questioned while they are still under the influence of drugs or alcohol, or are affected by medication, or if they are medically unwell.³⁵

Police are expressly forbidden from obtaining a confession by threats or by offering promises of any kind (e.g. no jail time, a reduced sentence or the possibility of being given bail).

What if I am arrested?

Depending on the seriousness of the matter, after your arrest 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
- charge you and release you on bail
- hold you at the watch-house to face court.

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 police decide to keep you in custody, they must bring you before a court. If this cannot be done (e.g. 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.

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 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, 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 and include the following:

³⁴ Section 403 of the PPR Act.

³⁵ Sections 420 to 423 of the PPR Act explain these matters in more detail.

- Before your interview starts, police must warn you about certain things.³⁶
- 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 a 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 must also be electronically recorded unless it is not practically possible in the circumstances; in this case it must be recorded in writing. You are entitled to a free copy of the interview 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 the Responsibilities Code of the *Police Powers and Responsibilities Regulation 2012* (Qld)³⁷ as well as in the PPR Act.

The safeguards that apply to less serious offences are less clear because they come from case law as opposed to a set of guidelines. Generally speaking, police must treat you with fairness when they are dealing with you even if it is not for an indictable offence, but you might have less of an ability to complain to a magistrate about unfair treatment if the charge is not indictable.

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 reasonable facilities to speak with your support person or lawyer before your interview. Police cannot listen in on your conversations with your lawyer.³⁸

If you are an Indigenous person and you are disadvantaged in some way, 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.

³⁶ Section 431 of the PPR Act.

³⁷ See sch 9 of the PPR Regulation.

³⁸ Section 419 of the PPR Act.

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. 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 or nurse.

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. Generally, a delay of more than two hours may be unreasonable, and police may start to question you.

If you genuinely need an interpreter, police must delay questioning until an interpreter has been arranged for you. If you are not a citizen or resident of Australia, 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. 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 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.

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 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 (i.e. a promise by another person to pay money if you do not turn up) can also be required.

If you are charged with a non-indictable (minor) offence (e.g. 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 and an entry will be recorded on your criminal outcomes sheet.

Legal Aid Queensland publishes information about bail.

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.

When can police take my photo, fingerprints and DNA sample or put me in an identity parade?

If you are charged with an offence, except for certain minor matters, police can take your photograph (often called a mug shot) and your fingerprints.

Various other types of identifying particulars can also be taken, including your palm prints, handwriting samples, voiceprints, footprints, photos of your tattoos and scars, and your body measurements (e.g. your height). If you receive a notice to provide your identifying particulars, get legal advice especially if the charge relates to a minor offence.

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 or by court order. 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, identifying particulars such as the photographs and fingerprints must be destroyed within a reasonable time. DNA samples and test results also must be destroyed within a reasonable time of one year from the day that you are found not guilty or from the day your arrest or court proceedings are discontinued. The rules about this are complicated and more details are set out in the PPR Act.³⁹ 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.⁴⁰ 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. Police can also use video, digital images and a photo board of 12 photos to help in the identification of a suspect.

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 line-up. Police must include at least 11 other people in the parade who look like you and are wearing similar clothing.

Forensic procedure

Police can apply for a special forensic procedure order in serious matters. There are special rights that apply if you are required to participate in a forensic procedure, so make sure that you have a lawyer present. Do not consent to the request voluntarily if an order has not been obtained.

LEGAL PROCEEDINGS

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

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

³⁹ See s 490 of the PPR Act.

⁴⁰ See regs 36 to 41 of sch 9 of the PPR Regulation, which is also known as the Police Powers and Responsibilities Code.

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-size notice.

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

The police prosecution file is generally made up of two parts, the QP9 (the Court Brief) and the Police Brief of Evidence. You are entitled to see these documents in order to prepare your case for court. 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, is provided to you on your first court date.

If you would like a copy earlier, you can go to the police prosecution office and ask for a copy one or two days before the first mention. This copy is free of charge. Police are required to cooperate with this request and you should tell the magistrate at your first court date if police did not respond to your request. Make sure not to lose it as you may not get a second copy. A lawyer representing a client can request a QP9 via email, however, this option is not available to self-represented litigants. 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 full police brief is only provided if you enter a plea of not guilty for matters to be dealt with in the Magistrates Court and, also, if you are charged with an indictable offence and the charge is referred to the committal callover stream, which means it will be 'committed' to a higher court.

Not knowing the exact details of your charge and the police case is a problem if you later learn that what 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. You will need a copy of the QP9 to get legal advice and to 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.

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 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 did not turn up to court is a very serious thing and may put at risk your future chances of getting bail. Try to get some proof that you have been hospitalised if this happens (e.g. a medical certificate or medical report).

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 process,⁴¹ and unnecessary delays can work against your interests. One adjournment to enable you to get legal advice will normally be reasonable.

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 detailed free self-help kit called *Have you been charged with an offence?* about appearing in court by yourself. A copy can be obtained directly from their website or the LAQ office. This kit includes 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.

OFFENCES AND PENALTIES

What sort of street offences are most common and what are the penalties and the offender levy?

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

⁴¹ Sections 9 and 13 of the *Penalties and Sentences Act 1992* (Qld) [Penalties and Sentences Act].

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 sort of behaviours that tend to cause trouble.

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

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 (e.g. by resisting arrest), or of disobeying police directions.

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

Matters that the Summary Offences Act covers include public nuisance, wilful exposure of 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 during a sporting match.

Police have powers to issue on-the-spot fines using infringement notices for public nuisance offences, public urination offences, obstructing a police officer (i.e. specifically in relation to public nuisance or public urination offences) and contravening a requirement of a police officer (particularly stating an incorrect name/address in relation to these offences). These powers are in addition to the powers police already have to arrest a person or to issue an offender with a notice to appear in court.

When issuing the infringement notice, police will also issue a public nuisance ticket information sheet. This has information about fine payment options, court election, diversion programs and support services. This ticketing process was introduced in order to try to calm down what happens when police confront people committing these types of public nuisance offences. If you choose to pay your fine, you do not have to appear in court and you do not get a criminal record. If you dispute the charge, you can elect (choose) to have the matter heard in court.

If you are involved in one of the above-mentioned public nuisance offences, you could talk with the prosecutor and ask if they will issue you with an infringement notice and discontinue proceedings in court. This will then only appear on your non-TORUM history not your criminal history.

Unfortunately, in matters that end up being heard before a magistrate or judge, there is now a mandatory offender levy. This levy is charged to a defendant for each court event when sentencing occurs, in addition to any penalty that is issued (i.e. a fine). This levy does not apply to children.

The requirement to pay an offender levy is not actually part of your sentence and cannot be appealed, even though it causes hardship for people who have very little or no money. The levy will only be removed if you are not convicted or if your sentence is set aside after an appeal. Unfortunately, it is still charged if you are sentenced even with an order where 'no conviction is to be recorded'.

The amount of the levy is currently: (a) \$368.90 if a sentence is imposed by the Supreme or District Court, and (b) \$123.00 if a sentence is imposed by the Magistrates Court.⁴² The State Penalties Enforcement Registry (SPER) enforces payment of the levy. When someone does not pay the levy, the amount increases with interest/penalties over time. It is important to try to pay the levy (and any fines) in order to avoid a growing SPER debt. Other enforcement proceedings can also take place, including the suspension of your licence. Therefore, it is vital that, if you have a driver licence, you keep the Department of Transport updated regarding your postal address. This will ensure you receive a notification if your licence is suspended.

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 Summary Offences Act offences tend to be at the low end (compared with other criminal offences) and they often involve smaller fines (e.g. \$200), shorter periods of jail time (normally only up

to one year in length although some have two-year penalties) and good behaviour bonds of up to one year. These offences are heard in the Magistrates Court.

Some street offences, however, will fall under the 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).

Affray⁴³

- 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 the public has access to.
- 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: 1 year jail plus community service, if the person was drunk or adversely affected by drugs, unless they have a disability that prevents them from complying with a community service order.

Assault⁴⁴

- Street brawls, especially fights that break out between party goers outside nightclubs or between people who are drunk in public places, can result in a person being charged with common assault.
- The offence of assault requires force to have been used either directly (e.g. by punching or pushing with a hand) or indirectly (e.g. by throwing a drink on someone) against a person. An assault can also be committed by threats and gestures.
- Maximum penalty: 3 years jail. It is important to note that if a common assault has been committed in a public place by a person who is intoxicated, the court must make a community service order, which may be in addition to another penalty. This will not apply if the court thinks an offender has a disability

⁴³ Section 72 of the Criminal Code.

⁴⁴ Section 335 of the Criminal Code for common assault, s 339 for assault causing bodily harm and s 340 for serious assault.

⁴² See s 10A of the *Penalties and Sentences Regulation 2015* (Qld).

which would prevent them from doing community service. The same applies for serious assaults and assaults causing bodily harm.

- The offence is more serious if a victim suffers ‘bodily harm’ (i.e. an injury that 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: 7 years jail, which can be increased to 10 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 assault’ includes a special provision relating to assaulting and obstructing police as set out below; however, this provision includes other types of serious assault, 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.
- Maximum penalty: 7 to 14 years jail.

Assault/obstruct police officer⁴⁵

- The PPR Act 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: 40 penalty units or 6 months jail. This maximum penalty increases to 60 penalty units or 12 months jail if the offence occurs in or near licensed premises such as at a pub or nightclub.

Begging in public⁴⁶

- 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 (i.e. they must be a lawfully registered collector for charity).

⁴⁵ Section 790 of the PPR Act.

⁴⁶ Section 8 of the Summary Offences Act.

- People who are busking with local government permission will not be committing an offence.
- Maximum penalty: 10 penalty units or 6 months jail.

Being intoxicated (i.e. drunk or under the influence of drugs or other intoxicating substances) in a public place⁴⁷

- A person must not be drunk or under the negative influence of drugs in a public place.
- Maximum penalty: 2 penalty units.

Breach of the peace⁴⁸

- 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.

Contravene a police direction (without reasonable excuse)⁴⁹

- This catch-all offence applies where there is no other specific penalty provision of a particular police direction.
- The offence also covers cases of disobeying move-on directions issued under the PPR Act.⁵⁰
- 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.
- 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.

⁴⁷ Section 10 of the Summary Offences Act.

⁴⁸ Section 50 of the PPR Act; see also s 51 which deals with riots.

⁴⁹ Section 791 of the PPR Act.

⁵⁰ Sections 44 to 48 of the PPR Act.

- Maximum penalty: 40 penalty units (unless higher penalties are given for this particular offence under other laws). If failure to comply with a move-on direction occurs at licensed premises, at a regulated place near licensed premises or at a public space in a safe night precinct, then the maximum penalty is 60 penalty units.

Entering, gathering or remaining in a building without lawful excuse⁵¹

- Two or more people cannot, without legal permission, enter and/or stay in a public building or building that is a business (and this includes the grounds of such a building).
- 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: 10 penalty units or 6 months jail.

Going armed so as to cause fear⁵²

- Going armed in public in such a way as to cause fear (e.g. by wearing a gun on your belt) is an offence.
- Maximum penalty: 2 years jail. You can be arrested without a warrant for this offence.

Interference with road use⁵³

- 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.⁵⁴
- Maximum penalty: 20 penalty units.

Possession of dangerous drugs, utensils or implements, or things used in connection with a drug offence⁵⁵

- If 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* (Qld) [Drugs Misuse Act].

- Alternatively, 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 police do not offer drug diversion to you, but you think you are eligible, ask police if you can be referred to drug counselling or see a lawyer.
- Maximum penalties: 2 years jail for utensils/things offences and 25 years for major drug offences. The penalties for drug offences will vary depending on the type of drug and amounts.

Possession of graffiti instruments⁵⁶

- It is an offence to possess a graffiti instrument (e.g. 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: 20 penalty units or 1 year jail; community service (including graffiti removal) and compensation for the damage can also be ordered.

Preventing public meetings⁵⁷

- 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: 10 penalty units or 6 months jail.

Public nuisance⁵⁸

- 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.

⁵¹ Section 12 of the Summary Offences Act.

⁵² Section 69 of the Criminal Code.

⁵³ See *Traffic Regulation 1962* (Qld) [Traffic Regulation] and *Transport Operations (Road Use Management) Act 1995* (Qld).

⁵⁴ Regulation 149 of the Traffic Regulation.

⁵⁵ Sections 9 and 10 of the Drugs Misuse Act.

⁵⁶ Section 17 of the Summary Offences Act.

⁵⁷ Section 20 of the Summary Offences Act.

⁵⁸ Section 6 of the Summary Offences Act.

- 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 police can charge a person if they feel a public nuisance is being committed.
- Maximum penalty: 10 penalty units or 6 months jail, but if the offence occurs at or near licensed premises the penalty could be up to 25 penalty units or 6 months jail. Fines are often relatively small and may only be 1 to 6 penalty units. Sometimes, if you do not have enough money to pay a fine, you may be placed on a 12-month good behaviour bond instead. Unfortunately, you will still be charged the offender levy if your matter is heard in a court and you plead or are found guilty of the offence.
- The action must be capable of causing alarm to people in the vicinity; 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; 7 years jail if the offender is armed with a weapon, dangerous instrument, explosive substance, or property is damaged in the incident; or, otherwise, 3 years jail.

Serious assault of a police officer⁶¹

- The Criminal Code also includes an offence of assaulting or obstructing a police officer under the 'serious assault' provisions. Maximum penalty: 7 years jail.
- Where the offence involves biting, spitting at or throwing bodily fluids or faeces at an officer, the police officer is actually injured or the offence involves use or threatened use of a dangerous weapon or item, the maximum penalty is 14 years jail. A sentence of actual imprisonment is within range.

Public urination⁵⁹

- The Summary Offences Act includes a specific offence of public urination.
- 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 lamp post in the middle of a city mall while people are walking by would probably result in a charge.
- Maximum penalty: 2 or 4 penalty units if the offence took place at or near licensed premises.
- This offence is a ticketable offence, and an offender normally will just be given an infringement notice for this offence.

Trespass⁶²

- It is an offence to enter or remain in someone's dwelling (e.g. a house, flat or unit) or yard (including the yard of a business) without legal permission to do so.
- Maximum penalty: 20 penalty units or 1 year 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.

Riot⁶⁰

- 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.

Unauthorised wilful damage to property or destruction of property⁶³

- 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.

⁵⁹ Section 7 of the Summary Offences Act.

⁶⁰ Section 61 of the Criminal Code.

⁶¹ Section 340(1)(b) of the Criminal Code.

⁶² Section 11 of the Summary Offences Act.

⁶³ Section 7 of the *Regulatory Offences Act 1985* (Qld).

Unlawful assembly⁶⁴

- 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).
- Maximum penalty: 1 to 2 years jail depending on the circumstances. The greater penalty applies where unlawful violence has been used against a person or property.

Unregulated high-risk activities such as BASE jumping, hang gliding, parachuting onto or abseiling from buildings⁶⁵

- It is an offence to engage in high-risk activities, such as BASE jumping, hang gliding, parachuting onto 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: 20 penalty units or 1 year jail; however, the court can also order the offender to pay the costs associated with their rescue or attempted rescue. These costs can be significant.

Wilful exposure⁶⁶

- It is illegal to expose your genitals in a public place.
- Wilfully exposing 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: 2 penalty units for a minor offence or, for the more serious example above, 40 penalty units or 1 year jail.

What do I do about outstanding warrants?

If you know that warrants have been issued for your arrest (e.g. 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 in to police voluntarily.

Outside Brisbane, you may be able to hand yourself in to 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 at 240 Roma 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 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 and assistance to people who are being held in the cells at the watch-house. 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 court and can then appear for you. Your lawyer can also contact the Warrants Bureau at the Queensland Police Service to find out about warrants affecting you.

RECENT DEVELOPMENTS IN THE LAW

What are out-of-control event/party powers?

Details about police powers to deal with noise at out-of-control events, such as parties, are set out in the PPR Act.⁶⁷ As previously noted, police powers under the PPR Act to deal with out-of-control parties can be triggered when there are 12 or more people gathered at an event, and at least three of these people engage in out-of-control conduct that causes people nearby to be worried about personal safety or liberty, or damage to property. Out-of-control conduct covers a wide variety of actions including:⁶⁸

- going into (or threatening to go into) a place unlawfully
- behaving in a disorderly, offensive, threatening or violent way
- assaulting (or threatening to assault) others
- damaging (or threatening to damage) property
- flashing
- making an unreasonable amount of noise
- doing burnouts in a motor vehicle

⁶⁴ Section 10A of the Summary Offences Act.

⁶⁵ Section 14 of the Summary Offences Act.

⁶⁶ Section 9 of the Summary Offences Act.

⁶⁷ Chapter 2 pt 7 of the PPR Act.

⁶⁸ Section 53BC of the PPR Act.

- illegally letting off fireworks or lighting fires
- throwing things that endanger others
- blocking pedestrians or cars
- being drunk in a public place.

The biggest problem with these powers is that other people can be held liable for the events even when they are not responsible for the actual conduct that causes problems. Other people who can be held liable are event organisers and parents of organisers, where parents gave permission for the child to organise the event. So, for example, parents may be liable for their children's conduct in holding parties, and the costs incurred by police in attending to the problems at the party may be levied against a child or their parents in some circumstances. There are serious penalties for holding an out-of-control event at someone's place without their permission. Costs ordered may be quite significant.

Only a senior officer can authorise use of these police powers at an event, but the powers are very wide. Police have power to stop the event from getting out of control, stop the event from going on or moving elsewhere, disperse people at the event, minimise the impact the event is having on public order and safety, identify the person who organised the event or who is committing an offence, stop and enter a vehicle without a warrant, and give directions for people to stop doing something and/or to leave a place and not return in less than 24 hours unless they live at the residence.⁶⁹

A detailed factsheet with useful information about these party powers is available at [Community Legal Centres Queensland](#).

What about safe night precincts?

In 2014, the then Queensland Government introduced the 'Safe Night Out Strategy' via the *Safe Night Out Legislation Amendment Act 2014 (Qld)* as part of a plan to make it safer for people to go out at night (especially to busy entertainment precincts) and to stamp out alcohol and drug-related violence at nightspots. The subsequent Queensland Government's *Tackling Alcohol-fuelled Violence Legislation Amendment Act 2016 (Qld)* has further restricted laws affecting alcohol management in Queensland.

Under the legislative changes, increased penalties have been introduced to discourage anti-social behaviour at nightspots, and community-managed safe night

precincts have been created to try to improve safety when people are visiting these precincts. One precinct, for example, has been created around the inner Fortitude Valley area in Brisbane, which is the centre of a vibrant night club scene. The details of all the relevant precincts are set out on maps available from the [Queensland Government website](#).

A sober safe centre was established in Brisbane as part of the strategy, and police have powers to remove intoxicated people to these sober safe centres for their own safety so that they can sober up. In order to detain and remove you, a police officer must reasonably suspect that you are intoxicated and that your behaviour is a nuisance or a risk to you or some other person, and that the behaviour occurs in a public prescribed place.

As soon as reasonably practicable after you are detained and before you are put into the centre, police must tell you that they are detaining you to take you to a sober safe centre. Before you are placed in the centre, you also must be told that:

- you may be assessed by a health professional
- you and your possessions may be searched
- your possessions may be kept in safe custody during your stay
- you can be detained for up to eight hours
- you must pay the charges associated with your transportation to the centre.

You are meant to be allowed to contact a responsible person as soon as you are placed in the centre. In appropriate circumstances, that person may be able to come and take you out of the sober safe centre. A health professional should assess you as soon as they can after you have been detained for four hours. In some situations you may then be released.

People behaving badly can be banned from licensed premises, precincts and events in public places by police, provided this is authorised by a senior officer (sergeant or above). You do not have to be charged with an offence in order to be banned. You can apply to the Commissioner of Police to have a police ban amended or cancelled. Courts also have power to make banning orders.

Initial police banning orders may last for the duration of a named event; otherwise, they last for 10 days. Banning orders can be extended to last a total of three months. Individuals can be banned for behaviour that

⁶⁹Section 53BG of the PPR Act.

is considered to be disorderly, offensive, threatening or violent, and there are significant financial penalties for breaching these bans (up to 60 penalty units). You can appeal banning orders, and courts can make additional banning orders under the *Penalties and Sentences Act 1992* (Qld) (Penalties and Sentences Act). Such bans can be ordered whether or not the court records a conviction.⁷⁰ Bans can also be part of your bail conditions.

Club and pub licences are now subject to increased requirements about their service of alcohol, and they are also required to have networked ID scanners that can cross-check a patron's identity to make sure that they are not letting people into their venues who are subject to police or court bans. If you are subject to a banning notice or order, police may photograph you, and a copy of the notice or order with your photo will be entered into a networked ID scanner system.

Significant fines can be imposed on individuals who refuse to leave licensed premises, resist removal from licensed premises or who try to enter licensed premises if they have been refused entry. On-the-spot fines can also be issued. As already noted, the penalties for breaching a ban are significant.

The Queensland Government publishes further information on their website.

Does the law limit the people with whom I can associate?

The *Serious and Organised Crime Legislation Amendment Act 2016* (Qld) (Serious and Organised Crime Act) has changed the law in this area, including by amending several key pieces of existing legislation and replacing the former *Vicious Lawless Association Disestablishment Act 2013* (Qld) (VLAD Act). The VLAD Act, often referred to as Queensland's 'anti-bikie laws', was introduced with the aim to break down (disestablish) associations that encourage and support people who commit criminal offences. The VLAD Act was repealed in 2016 following a highly critical review by the Taskforce on Organised Crime Legislation that also established the framework for the current law. In addition to the matters discussed below, the Serious and Organised Crime Act has created three new orders under the *Peace and Good Behaviour Act 1982* (Qld) (restricted premises, public safety and fortification removal orders) and a mandatory post-sentence order (control order) designed to allow police and the

courts to restrain the activities of those suspected of participating in criminal organisations. These control orders are not included in this document. An overview can be found on the Department of Justice and Attorney-General's website.

The Serious and Organised Crime Act has introduced a 'habitually consorting' offence. This offence maintains the VLAD Act's aim of deterring criminal networks, making it an offence to consort with two or more 'recognised offenders' on at least one occasion after having been given an official warning by a police officer.⁷¹ To 'consort' is broadly defined as including seeking out and accepting the recognised offender's company, even if it is not for a purpose related to criminal activity, in person or any other way (e.g. via phone, email or social media).⁷² To be 'habitual', the consorting must have occurred on at least two occasions, including once after the official warning has been given.⁷³ A 'recognised offender' is a person over 18 years old who has been convicted of an indictable offence punishable by more than five years imprisonment or a prescribed offence under the Criminal Code or *Weapons Act 1990* (Qld).⁷⁴ The official police warning may be given orally or in writing and must identify the recognised offender and state that consorting with the person on a further occasion may lead to the offence being committed.⁷⁵ The offence can only be committed by an adult (over 18 years) and carries a maximum penalty of three years imprisonment. A defence exists for consorting in circumstances that are reasonable, for example where it is by a close family member or for the purpose of conducting lawful business, employment, education, training, legal or health services.⁷⁶ However, the person accused of the offence must be the one to present evidence that the consorting was reasonable, making it a 'reverse onus' defence. If you have been given an official warning or are charged with a consorting offence, you should immediately seek legal advice from a criminal lawyer.

The VLAD Act introduced mandatory sentencing for people associated with organised crime, requiring courts to impose additional penalties of up to 15 years imprisonment when sentencing under the Act. The

⁷¹ Section 77B of the Criminal Code.

⁷² Section 77A of the Criminal Code.

⁷³ Section 77B of the Criminal Code.

⁷⁴ Section 77 of the Criminal Code.

⁷⁵ Section 53BAA of the PPR Act.

⁷⁶ Section 77C of the Criminal Code.

⁷⁰ Section 43H of the Penalties and Sentences Act.

regime was widely criticised due to the potential for harsh sentences to be imposed without proper judicial consideration, and was repealed under the Serious and Organised Crime Act. Sentencing courts must now expressly consider whether the serious and organised crime circumstance of aggravation applies before imposing an additional penalty. The circumstance of aggravation will apply to people who, during the commission of the offence, were participants in criminal organisation and who (relevantly) knew or ought to have known the offence was being committed with one or more other people who were participants in a criminal organisation.⁷⁷ 'Participants' in organised crime include accepted, honorary, prospective and informal members of a criminal organisation.⁷⁸ A 'criminal organisation' is drafted broadly to include a group of three or more people who engage in serious criminal activity and who represent an unacceptable risk to the safety, welfare or order of the community.⁷⁹ The offences that the circumstance of aggravation will apply to are listed in Schedule 1C of the Penalties and Sentences Act and include a number of drug, sexual offending, fraud, money laundering and serious violence offences. If the circumstance of aggravation is made out, a further sentence of up to seven years imprisonment must be given and served in addition to the base sentence in a correctional facility without any eligibility for parole.⁸⁰

COMPLAINTS

How do I make complaints about police?

The Queensland Police Service (QPS) website offers detailed information on how to make a complaint about a police officer.

The preferred way is to complain directly in person at the nearest police station, or you can make a complaint in writing to the State Coordinator Complaint Management or use the online QPS complaint form.

The website also offers information about the appropriateness of a claim, false claims and how your claim will be handled.

Another option is to complain to your local member of parliament.

⁷⁷ Section 161Q of the Penalties and Sentences Act.

⁷⁸ Section 161P of the Penalties and Sentences Act.

⁷⁹ Section 161O of the Penalties and Sentences Act.

⁸⁰ Section 161R of the Penalties and Sentences Act.

CHECKLIST: DEALING WITH POLICE

First contact

- 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 (i.e. you are under 17 years old) 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 have nothing to say'. You could even say 'Sorry guys, I want to help, but I have had specific legal advice before on exactly this situation and was told that I really should not give an interview'.
- 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 this at a later stage with your lawyer.

Interviews

- 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 police (e.g. 'We'll let you call your partner if you give an interview ...' or 'We'll give you bail if ...').
- 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.
- Get legal advice as soon as possible after you are arrested or detained, and ask police if you can contact a lawyer. You should understand that 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, 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 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 lawyer if necessary. Interviews can usually be scheduled to fit around the availability of your lawyer.

- 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

- 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 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 being seized as a confession.
- If you are arrested, you should ask the police officer concerned why you are being arrested and the specific charge involved.
- 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.
- Failure to comply with a police direction or requirement without a reasonable excuse is an offence. Police move-on powers, however, do not apply to authorised public assemblies.

Court process

- Do not plead guilty on advice from police. Always seek independent legal advice before pleading guilty. Do not ask police for a referral to a solicitor.
- 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 (e.g. the Magistrates Court).

- If you are charged with an indictable offence, it is a serious matter and you should urgently obtain legal advice about your situation.
- If you are a witness in a case and you are concerned about this, you can seek your own legal advice about your rights and responsibilities.

REFERRALS

You can make an appointment to attend Caxton Legal Centre's free legal advice sessions between 6 pm and 7.30 pm on Monday and Tuesday evenings. You can book a phone appointment if you cannot attend at the centre; however, in criminal law matters our legal advisors normally prefer to interview you at a face-to-face appointment. You need to bring any relevant paperwork that you have to your interview. 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."

Courtesy of Kes

CONTACT POINTS AND LINKS

CAXTON LEGAL CENTRE INC.

1 Manning Street
South Brisbane Qld 4101
Tel: (07) 3214 6333
Email: caxton@caxton.org.au
www.caxton.org.au

ABORIGINAL AND TORRES STRAIT ISLANDER LEGAL SERVICE

Level 5, 183 North Quay
Brisbane Qld 4000
Tel: (07) 3025 3888
Free call: 1800 012 255
www.atsils.org.au

CRIME AND CORRUPTION COMMISSION

Level 2, North Tower Green Square
515 St Pauls Terrace
Fortitude Valley Qld 4005
GPO Box 3123
Brisbane Qld 4001
Tel: (07) 3360 6060
Email: mailbox@ccc.qld.gov.au
www.ccc.qld.gov.au

LEGAL AID QUEENSLAND

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

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES (QCCL)

PO Box 2281
Brisbane Qld 4001
Tel: 0475 095 577
www.qccl.org.au

QUEENSLAND POLICE SERVICE—ETHICAL STANDARDS COMMAND

200 Roma Street
Brisbane Qld 4000
GPO Box 1440
Brisbane Qld 4001
Tel: 13 14 44 or (07) 3364 6464

YFS

376 Kingston Road
Slacks Creek Qld 4127
Tel: (07) 3826 1500
www.yfs.org.au

YOUTH ADVOCACY CENTRE

4/162 Petrie Terrace
Brisbane Qld 4000
Tel: (07) 3356 1002
Email: admin@yac.net.au
www.yac.net.au

QUEENSLAND GOVERNMENT ALCOHOL AND THE LAW

www.publications.qld.gov.au/dataset/safe-night-precincts
www.qld.gov.au/health/staying-healthy/atods/alcohol/the-law

NOTES



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