

YOUR RIGHTS – A SHORT GUIDE FOR ACTIVISTS IN QUEENSLAND

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OUR RIGHTS

Our rights to protest, demonstrate and take part in political activities are recognised by the *International Declaration of Human Rights* (1948) as well as the *International Covenant on Civil and Political Rights* (1966) and other covenants. In 2019, Queensland passed the *Human Rights Act 2019* (Qld), which includes the right to peaceful assembly and freedom of association.

Despite this, in Australia generally, international human rights are seldom enforceable in the face of the state. We do have these rights and we can assert them as informed community members, but we shouldn't expect them to be respected without question. It is useful to be informed of your basic rights and to hold the police accountable whilst participating in peaceful protest activities. Dissent is important for democracy!

YOU HAVE A RIGHT TO

- Remain silent
- Refuse to answer police questions
- Know why you are being arrested
- Refuse to give personal DNA samples in particular circumstances
- Refuse to be searched unless police believe you are carrying a weapon or evidence (unless you are under arrest)
- Privacy
- **seek legal advice regarding specific cases*

NAME AND ADDRESS

Police have the right to ask for your name and address if they reasonably believe that you have committed, or are about to commit any offence, or you may be able to assist in the investigation of an indictable (serious) offence. If you refuse to give your name and address when the police have a right to ask for it and you do not have a reasonable excuse for refusing to co-operate, you will be committing an offence and could be charged.

Police can also ask for proof of identify where it is reasonable in the circumstances. **If you are arrested and want to be processed quickly it is highly recommended that you carry current photo ID.**

If the police ask you for your name and address, you can ask the police officer for their name, rank and station for use in court later. They are legally obliged to tell you.

ANSWERING POLICE QUESTIONS

You have the right to remain silent. Anything you do say to the police can be used as evidence against you in court, or in the police decision whether or not to charge you.

Be aware that aside from the requirement to give your name and address, you are not required to answer any police questions either before or after your arrest. You can politely explain that you are exercising your right to silence and you will not be answering any questions. It is important to exercise your right to say NO COMMENT, and not answer occasional questions.

If you are under 18 years of age — the police **MUST NOT** formally question you unless your parents, a guardian or an independent person is present during questioning.

If you are an adult Aboriginal and/or Torres Strait Islander person — you have the right to speak privately with a support person before being interviewed and have that support person present while being interviewed.

If you have a disability that impacts your capacity to understand police questions and communicate — you should be allowed to speak privately with a support person before being interviewed and have that support person present while being interviewed.

BEING ARRESTED

Arrest is the process by which police can lawfully take you into their custody. Police are not required to give you a warning prior to arresting you, but often they will. Police must formally tell you they are arresting you. You should always ask the police officer; “Am I under arrest?” and “What for?” Remember what they say. In most cases, it is necessary for police to inform you of the reason for the arrest.

If you are not an Australian citizen, you may wish to seek further information before considering arrest. and charged can have more serious consequences. Check out [this resource](#) for more information.

HINDERING OR RESISTING ARREST

A police officer may charge you with resisting arrest if you try to stop them from arresting you. It is an offence to actively resist or hinder a legal arrest (yours or another’s). In some states it is not necessarily an offence to not cooperate, for instance by lying down, going limp or refusing to move, however Queensland law has a stricter reading of hinder/obstruction charges. Activists passively resisting have been charged with the offence of “Assault or obstruct a police officer”. Please be aware of this if you wish to use these tactics.

CONTACTING LEGAL ADVICE AND SUPPORT

The Police are only required to inform you of your right to contact a friend, relative or lawyer if you are being questioned about an indictable (serious) offence. Regardless of the offence however, you have a right to speak to a friend, family member or lawyer before you enter into police questioning. If you are an adult Aboriginal and/or Torres Strait Islander person, the police must notify or attempt to notify the Aboriginal Legal Service if they intend to question you.

PHOTOGRAPHS AND “IDENTIFYING PARTICULARS”

For almost all offences, the Police may request ‘Identifying Particulars’. These include palm prints, fingerprints, handwriting samples, footprints, photographs and measurements. It is an offence not to give the Identifying Particulars requested. You may be required to provide these Identifying Particulars while you are in custody, or you may be issued with a notice by a police officer to report to a police station within 7 days to provide them.

BODY SAMPLES

For police to obtain a forensic sample (blood, hair, mouth swabs etc.) they require your consent or a court order. You should refuse to consent to providing a forensic sample, and ask to speak with a lawyer.

SEARCHES

Police do not have an automatic right to search you. If they do not have a warrant, a police officer may stop and search you or your vehicle without your consent only in certain circumstances. This includes where they reasonably suspect you of having in your possession: a weapon, knife or explosive; illegal drugs (including paraphernalia), stolen/unlawfully obtained property; a graffiti instrument; tools used for housebreaking or car stealing; something you intend to use to harm yourself or someone else, or a 'dangerous attachment device' (e.g, a lock-on device) that has been used, or is going to be used, to disrupt a relevant lawful activity.

Police must follow certain rules when searching you, including: respecting your dignity; limiting any public search to a pat down search, if possible, and having a police officer of the same sex carry out the search, unless an immediate search is required.

Most activists are not strip searched, but there is unfortunately a history of Queensland police occasionally strip-searching activists for deterrence reasons. For more information about police search powers, including powers to search your home, car or other property, see [this resource](#) from Action Ready.

There are limited laws and publicly available policies regarding police searches of non-binary, intersex or transgender people. However, the Queensland Police Operational Procedures Manual section 16.10.4 requires the searching officer to explain the purpose of the search and how it will be conducted, who will conduct it, and the legislative requirement for the search to be carried out by someone of the same sex to anyone who identifies themselves as gender diverse, transgender, or intersex. You should have the opportunity to request to be searched by someone of a particular sex or gender identity, and if this is practicable the police should comply with your request (see more police-issued information [here](#), and information from Action Ready [here](#)). You could also ask to speak with an [LGBTI Liason Officer](#).

GETTING OUT OF CUSTODY

After an arrest, a person can be detained by a police officer for no longer than 8 hours, unless this period is extended. During this time, the person must not be questioned for more than 4 hours. This does not include time taken to transport you to the police station or wait for your lawyer. Make a note of the name of the arresting officer and the time you were taken into custody and released.

Just because you have been arrested doesn't mean that you will necessarily be charged. You may be:

- Released without charge
- Released and charged at a later date
- Charged and released on bail
- Charged and brought before a bail justice

If you are being released, you will be asked to confirm that:

- The police have not taken anything from you
- You have been treated reasonably
- You have received your police charge sheets

You can raise any issues with your treatment at this point. You do not have to sign or confirm anything if you do not want to. You may wish to ask for a record of anything confiscated.

BAIL

Bail is simply an undertaking (promise) that you will appear in court on the day your charge is listed. Bail may be granted with a set of conditions, including for example a condition that a person:

- not enter or go within a certain distance from a particular place;
- not attend a particular event;
- report to the police station.

If you are from another state, and have weak ties to Queensland, the court may order that you pay a deposit of money or provide a 'surety' to guarantee that you will appear at court. A surety is a promise by another person to pay money if you fail to turn up at court. The money will be refunded if you comply with the bail conditions, and after your matter has been dealt with in court.

If you do not agree to the bail conditions or you are refused bail, you may make an application to the court for an order granting or varying bail. The court will then hear and make a ruling on the application.

KEEPING RECORDS

If you are arrested, or you have been a witness to arrests or police violence involving other activists, keep a record of every detail: what, when, where etc. Write everything down as soon as possible, and ensure you have contact details for witnesses. This information can be of critical importance in subsequent legal proceedings, either against you (for example, when you are charged with an offence), or against the police (for example, when you are issuing a complaint or suing them for injuring you or unlawfully arresting you).

There is no law that prevents you from videotaping or taking photographs while protesting if these events are taking place outdoors in a public place.

WHEN CAN THE POLICE CONFISCATE MY CAMERA/PHONE?

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.

It is always a good idea to have passwords on your devices and disable any fingerprint or face ID unlocks.

COMPLAINTS AGAINST THE POLICE

If you have been injured by a police officer:

- see a doctor immediately, and ensure that they provide you with a written medical report describing your injuries, and photograph your injuries
- write down as much information as you can about the person or people who injured you including name, rank, police station, etc.

- write down the name of the last person to see you before you were injured and the first person to see you afterwards,

Police are under instructions to wear their identity badges at all times, but sometimes do not do so during demonstrations.

The first avenue for complaints against police is the Queensland Police Service complaint management department, and further steps from there. Community activists are often frustrated by these processes. There is more information [here](#), plus a guide to writing a witness statement on Counteract's main legals page.

COMMON CHARGES AND INTERACTIONS WITH THE POLICE

Whilst it is not required, it is common practice for the police to enter into dialogue with people committing acts of political civil disobedience before arresting and charging them.

Protesting in a public place and 'move on' powers

A public place is any place that the public can enter, with or without payment. A police officer can ask you to leave a public place (move on) if they reasonably suspect your behaviour is: causing anxiety to a person entering or leaving a place; interfering with trade or business of the place by unnecessarily obstructing, disorderly; or disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.

POSSIBLE OFFENCES

Contravening a police direction

Can include not following a police move on order, or a police direction as allowed under a different Act. There is a requirement that the police issue a warning that failing to follow their instructions will be an offence, and then they must give you reasonable time to comply with the order.

Breach of the peace

If the police believe that a breach of the peace is happening, likely to happen or being threatened to happen they can detain the person until the threat has passed.

High risk activities

This includes unlawfully parachuting/hang gliding onto a building/structure; Base jumping or gliding from the building/structure; climbing up or down the outside of a building or abseiling from a building/structure.

Use of dangerous attachment device to disrupt lawful activities

It is an offence to use a 'dangerous attachment device' to unreasonably interfere with the ordinary operation of transport infrastructure, or stop a person from entering or leaving a place of business, or cause a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person, without a reasonable excuse. These offences carry penalties ranging from one to two years imprisonment, or police can choose to issue an on-the-spot fine instead.

A dangerous attachment device under this legislation is a device that 'reasonably appears' to be constructed or modified to cause injury if someone attempts to interfere with the device. It is important to note that activists have no record of making devices that could harm themselves or others, however this legislation was pushed through with little scrutiny. This relatively new offence might apply to lock-on actions depending on whether the attachment device is considered 'dangerous', noting that sleeping dragons/lock on pipes and dragon's dens/concrete barrels as well as monopoles and tripoles (for disruptions to persons entering and leaving businesses or plants/equipment, only if they incorporate a dangerous element) are all considered 'dangerous' under the legislation.

Cause a traffic hazard or obstruction

As a pedestrian it is an offence to cause a traffic hazard by moving into the path of a driver, or to unreasonably obstruct the path of a driver. Also to dig up, undermine or interfere with a road; or use anything that is likely to cause danger, obstruct, inconvenience, annoy or injury to a person or animal on a road.

Trespass

It is an offence to enter or remain in a public or private building or structure without reasonable excuse. Offences for trespass also exist at the Commonwealth level and in areas that are governed by certain other Acts.

Public nuisance

This includes disorderly, offensive, threatening or violent behaviour; or any other behaviour that interferes or is likely to interfere with a person's use and enjoyment of a public place. It does not require a complaint from a member of the public for the police to charge someone under this provision.

CHARGES TO AVOID

Include offensive language, weapons charges, jaywalking and assault. Being mindful of how your behaviour impacts other people, and the broader campaign at actions is useful, even if you feel passionate about the issue. Examples of where people have gotten charges they didn't anticipate could be swearing at an officer, having something like a camping or climbing knife on them, or flailing when being arrested, and accidentally assaulting an officer. See [this resource](#) from Action Ready for more information about the different levels of seriousness of common charges facing activists.

COMMON CONCERNS What are the impacts of a criminal record?

Many people new to campaigning and activism have serious concerns about having a criminal record and the impacts that may have on employment, including working with children, or travel. People such as teachers, doctors, lawyers and other professionals have participated in peaceful civil disobedience actions with relatively minor consequences, and have retained employment. However, you should always assess the risks for your own situation. The following information helps you to understand some of the risks before taking any action that may break the law.

What are the impacts of a criminal record?

It depends on your circumstances, but often the impacts of a criminal record are over-stated. Whilst some employment applications may require you to disclose your interactions with the justice system, many employers tend to be more concerned about issues relating to dishonesty or violence. That said, it is important you make a decision for yourself, and some government departments or employers may not look kindly upon civil disobedience activities.

Will I always get a criminal record if I have been arrested and charged?

The Courts will always have the discretion as to whether or not a conviction will be recorded against you. Often people without prior charges, and who have committed low level offences may not have a conviction recorded (Ie, they find you guilty but will not record a conviction) The factors that the Court takes into account are: the nature of the offence; the offender's character and age; and the impact that the recording of a conviction will have on the offender's economic or social wellbeing or chances of finding employment.

Will I still be able to travel overseas?

Most likely, yes, if you have been charged with minor offences. The examples of people who have been able to travel even though they have a criminal record includes peace activists who have been charged with trespass under Commonwealth laws and other offences at joint US-Australian military exercises, and were granted entry to the United States. These activists chose to disclose their criminal record. Other activists have travelled without incident throughout Asia, Europe and the United States, some disclosing their records, others were not required to.

Some countries, including Australia, require you to disclose any past arrests or convictions on visa applications. Laws vary from country to country and are changing rapidly in the current international climate.

Will I still be able to get a Working With Children Check? (sometimes referred to as a Blue Card in Queensland)

Working With Children Checks are a pre-requisite for a range of professions, such as childcare teachers. Some offences will automatically disqualify you from obtaining a Working With Children Check, such as sexual assault and sexual offences against children.

The kinds of offences that may arise in the context of a protest (such as minor property damage, trespass) will not automatically disqualify you. However, they are likely to be taken into account as part of a broader risk assessment. A range of activists who have been charged with minor civil disobedience offences have had no issue getting Working With Children Checks. At the time of writing we are not aware of people with minor civil disobedience offences being refused Working With Children Permits. One person is currently challenging a situation where they were refused due to the inference of dangerous activity being related to lock on devices.

REMEMBER

it is up to you whether or not you choose to participate in civil disobedience activities. The risks of interaction with the police and justice system are often over-stated, particularly in relation to risk to working with children, visas and travel, however it is your personal decision, and you need to feel comfortable with it.

*NOTE: This document was prepared by adapting documents including: Action Ready's excellent work, Activist Rights website, legal guide for climate activists CounterAct, legal aid, and research done and checked by lawyers in Queensland. **It is not legal advice.***

Whilst some similar penalties and processes apply in other states, this is information specific to QUEENSLAND and should not be used elsewhere.

Legislation referred to in this guide includes: *Police Powers and Responsibilities Act 2000 (Qld), Bail Act 1980 (Qld), Human Rights Act 2019 (Qld)*. Criminal offences are contained in the *Summary Offences Act 2005 (Qld)* and the *Criminal Code Act 1899 (Qld), Traffic Regulation 1962 and Transport Operations (Road Use Management) Act 1995*.