

YOUR RIGHTS – A SHORT GUIDE FOR ACTIVISTS IN TASMANIA

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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 Australia, 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, drugs, stolen goods or goods relating to a crime (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. The police must tell you why they are asking for these details. 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.

If police have a reason believe that you have given a false address, they can arrest you on the spot. **If you are arrested and want to be processed quickly it is highly recommended that you carry current photo ID.** If you do not have a fixed address or a Tasmanian address, you can tell police the truth, but some interstate activists have found that this may concern police regarding bail. Some activist groups deal with this by providing activists with a Tasmanian address linked to their organisation to give the police if asked.

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 (and your date of birth if you look under 18), you are not required to answer any police questions either before or after your arrest, participate in any interview. 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, unless you don't want them there. Police need to give you an opportunity to speak privately with your parent, guardian or the independent person before any questioning.

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 that they are arresting you, and why they are arresting you. Police can use reasonable force to arrest you. You should always ask the police officer; "Am I under arrest?" and "What for?" Remember what they say. If you are not under arrest, you do not have to go anywhere with police, and activists have found that it rarely serves their interest to go with police voluntarily. If you're not sure, you can ask "Am I free to go"?

If you are not an Australian citizen, being arrested and charged can sometimes 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 also an offence to obstruct a police officer from 'acting in their lawful duty'. In some cases, lying down, going limp or refusing to move (passively resisting) might be considered resisting arrest. Police might also attempt to charge you with resisting arrest if you refuse to lock off. Please be aware of this if you wish to use these tactics.

CONTACTING LEGAL ADVICE AND SUPPORT

Once you are arrested and taken into police custody, you have the right to speak with a friend or relative and a lawyer. Police need to give you a phone to do this. It is useful to have a lawyer's number written on your body as your personal phone might have been confiscated. If you are Aboriginal and/or Torres Strait Islander, Tasmanian police policy states that the police must notify the Aboriginal Legal Service if you are detained in custody, and also need to make every effort to notify one of your friends or relatives. See [this police policy](#) for more information.

FORENSIC PROCEDURES

For police to obtain a forensic sample (blood, hair, mouth swabs etc.) they usually require your consent or a court order. If you are an adult and suspected of or charged with a serious offence (e.g., trespass plus obstructing or resisting arrest, but not trespass on its own) police can get an Order of Police to conduct a non-intimate forensic procedure without your consent. If police want to take an [intimate procedure](#), they will need to get a court order.

If you are younger than 15, any forensic procedure (intimate or not) can only be carried out if you and your parent/guardian have given your informed consent. If you do not consent the police must get an order from a Magistrate to perform the procedure.

If police have not yet obtained a court order, you should refuse to consent to providing a forensic sample, and ask to speak with a lawyer. Once the procedure has been authorised, police can use reasonable force to take a sample and if you resist or obstruct, this will be included in any court proceedings.

SEARCHES

Police do not have an automatic right to search you without a warrant. 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: dangerous articles (like a weapon, knife or explosive), illegal drugs (including paraphernalia), stolen/unlawfully obtained goods, or if they think you are about to commit a crime or reasonably believe that you have an object that you intend to use to commit a crime.

Once you are in custody (under arrest), police have broader powers to search you and can conduct a pat-down or strip search. You have the right to request that any search is conducted by someone of your preferred gender.

Police can confiscate any of your property that they find during the search that they believe could be relevant to an offence, including your phone. If police confiscate your property ask for a form documenting this. must give you a form stating what they are taking from you, which you should always keep.

Unfortunately, there are limited laws and publicly available policies regarding police searches of non-binary, intersex or transgender people. You have the right 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, [especially if you are under 18](#). Tasmania Police has established LGBTIQ+ Liaison Officers and you could ask to speak with one, though they are unlikely to be available at every station or police watch house. You can also email LGBTIQ+Liaison@dpfem.tas.gov.au or call 131 444 and ask for a referral to an LGBTIQ+ Liaison Officer to speak with one after the fact.

GETTING OUT OF CUSTODY

After an arrest, you can only be detained for a 'reasonable time' for the purposes of questioning you, or carrying out investigations in order to determine your involvement (if any) in relation to an offence. Police need to consider a range of factors¹ to determine what constitutes a 'reasonable time' in the circumstances, including the number and complexity of offences in question, the number of people they want to question, whether any searches are required etc. 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 police bail
- Charged and brought before the court

¹ See section 4 of the [Criminal Law \(Detention and Interrogation\) Act 1995 \(Tas\)](#).

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

- The police have not taken anything from you (or if they have, that you have received a form with the details)
- You have been treated reasonably
- You have received any police charge sheets with details about your court date.

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.

BAIL

Bail is simply an undertaking (promise) that you will appear in court on the day your charge is listed, and is currently typically granted for low level civil disobedience.. 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 associate with particular people, for example fellow activists;
- not attend a particular event;
- report to the police station.

In Tasmania, you are be bound by your bail conditions even if you don't sign them and can refuse to sign them without being held by police. If they threaten to hold you, you can explain that you understand you are bound by the conditions even though you don't consent to them. You can challenge your conditions with the police and they will consider them at their discretion, or if necessary, your lawyer can try to change the conditions after the fact (which will be easier if you didn't sign them).

In some cases, 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 are refused bail, you will need to appear before the court for an order granting bail. You need to be brought before a court at the 'earliest possible time', but this could take a little while, especially if you are arrested on a weekend or after hours. 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. You can film all interactions with police – they are usually filming you with a body camera. It is illegal to film or audio-record private conversations without consent from those present. However, interactions with police, whether on private or public land, are unlikely to be considered private conversations, and you (or the activist you are filming) can say that you do not consent to participating in a private conversation. You are also able to record private conversations if a principal party (e.g. you or another activist interacting with police) consents and recording is reasonably necessary for the protection of your lawful interests.

WHEN CAN THE POLICE CONFISCATE MY CAMERA OR PHONE?

Once you are arrested and taken into custody, 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 to consent. Generally, police will then need to get a warrant to search this property, but they may seize the items in the meantime. Police could also obtain orders from the court that require you to release your security passwords or codes so they can access 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 Tasmania Police Service Statement of Complaint form, and there are 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 in our legal section.

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 and 'move on' powers

A land-manager can ask you to leave a site and have this order enforced by police, or a police officer can make the order themselves if they reasonably believe you are likely to commit an offence, block pedestrians or vehicles, endanger anyone's safety or breach the peace. This is usually called a 'move on' direction. Police need to tell you the boundaries of the area that you must leave and where you can safely move to, as well as the time-period of the move-on order, which must be more than four hours. There is no upper legal limit of time that police can impose these orders for, but activists say it is unusual to receive an order lasting more than 14 days. Being issued this order is not an offence (unless you have also committed trespass, see below), but failing to comply is (see below).

POSSIBLE OFFENCES

Trespass

It is an offence to enter onto land, into a vehicle, or into a building etc. without the owner's consent. If you are on private property, police and landowners do not need to give you a warning; you can commit trespass even if you haven't been told to leave. You might receive a summons if you leave when someone asks you to, but you would only be arrested for trespass

if you are told to leave and refuse. If you are in a state forest, you will not be trespassing unless an authorised officer with Sustainable Timber Tasmania (STT) tell you to leave and you refuse a move on order in front of police.

Obstructing police or resisting arrest

A police officer may charge you with resisting arrest if you try to stop them from arresting you, for example, by trying to run off. It is also an offence to actively resist or hinder obstruct a police officer from 'acting in their lawful duty', which might happen if you refuse to, for example, come down from a tree. In some cases, lying down, going limp or refusing to move (passively resisting) might be considered obstructing police resisting arrest.

Failure to comply with a police direction

This can include not following a police move on order, or a police direction as allowed under a different Act.

Public nuisance

This usually includes disorderly or any other behaviour that interferes or is likely to interfere with a person's use and enjoyment of a public place (e.g., blocking a road). Note that the maximum penalty for this offence (three units or three months imprisonment) doubles if you commit the offence again within six months.

Aiding and abetting

If you help someone commit an offence, you could be charged with aiding and abetting. This could involve something as simple as somehow assisting someone who is locking on. This is worth keeping in mind if you do not intend to be arrested but a fellow activist does (or is open to it), so that you can plan your actions and roles accordingly.

CHARGES TO AVOID

Include offensive language, weapons charges, jaywalking, property damage, assault and any driving charges (for example, driving an unregistered or non-roadworthy vehicle). 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 drugs on them, having something like a camping or climbing knife on them (if you are in the bush with one of these you might be okay, but make sure to declare it to police before being searched), or flailing when being arrested, and accidentally assaulting an officer.

NEW TASMANIAN ANTI-PROTEST LEGISLATION

In October 2022, Tasmania introduced new laws targeting certain types of protests on 'worksites' like public forests, logging and mining sites, and the roads around these places. These laws primarily broaden the kinds of activities that can attract offences related to unlawful entry on land and increase the penalties for these offences, especially 'aggravated' trespass offences. The three major impacts of the new laws are:

- Bigger penalties for activists peacefully protesting who impede work at a worksite while committing trespass (a maximum of 50 penalty units, \$8,650 in December 2023) or 12 months imprisonment;
- Companies or incorporated associations (which includes some activist groups like the Bob Brown Foundation) could be charged for trespassing and obstructing work on worksites, with serious financial penalties;
- Introducing an 'aggravated trespass' offence for protests and an offence that applies where someone 'causes risk to themselves or another person.'

It is important to be aware of this new legislation, but also worth noting that it has not yet been tested in court, so it is difficult to predict the outcomes. At the time of writing, no protestors in Tasmania have ever received the maximum penalties for offences under the *Police Offences Act*.

COMMON CONCERNS

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 often 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 (i.e., they find you guilty but will not record a conviction). Factors that the is likely to take into account include: 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 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 registered to work with vulnerable people (including any children)?

[Getting registered to work with vulnerable people](#) is a pre-requisite for a range of professions, such as childcare teachers. Some offences will automatically disqualify you from registration, 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 registered and getting Working With Children Checks in other states. At the time of writing, we are not aware of people with minor civil disobedience offences being refused working with children/vulnerable people permits. However, some activists have had to write supporting statements and go through a review process to get registered in Tasmania.

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 legal activists adapting resources produced by Tasmania Legal Aid, CounterAct and the Bob Brown Foundation and checked by lawyers. **It is not legal advice.**

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

Legislation referred to in this guide includes: [Police Offences Act 1935 \(Tas\)](#), [Criminal Code Act 1924 \(Tas\)](#), [Bail Act 1994 \(Tas\)](#), [Listening Devices Act 1991 \(Tas\)](#), [Forensic Procedures Act 2000 \(Tas\)](#).