

# PEACEFUL PROTEST - ACTIVIST RIGHTS ON ARREST DRAFT

This information is not a substitute for legal advice.

## CRIMINAL CHARGES

Some legislated offences that may be incurred by protest action include:

- Wilful damage to property
- Trespass – entry onto another person’s land or building without lawful excuse, or in a manner likely to cause breach of the peace
- Unlawful assembly – where a group of people acts in such a way as to cause others to fear that the people assembled will violently disturb the peace.
- Assaulting a police officer (includes spitting);
- Obstructing a police officer;
- Resisting arrest;
- Behaving in a riotous, violent, obscene, disorderly, indecent, offensive, threatening, or insulting manner; or
- Defaming a police officer or a third party (this occurs where a statement is made or printed material is published to others which would make a reasonable person think less of the defamed person.).

## ARREST

### Being arrested

Police must formally tell you they are arresting you and the reason for the arrest.

### Obstructing, hindering or resisting arrest

Be very careful how you interpret “obstruct”. The definition of obstruct for the purposes of the offence of obstructing a police officer is to “hinder, resist or attempt to obstruct”. This could be broadly interpreted in certain circumstances to include refusing to move and lying down or even going limp.

Police may use “reasonable force” to take you into custody.

Unless you are under arrest, you do not have to go anywhere with the police.

### Name & address

Refusing to give a name, age and address or giving false information once under arrest is an offence and you can be charged.

The arresting officer is legally obliged to tell you their name, rank and station.

## **Police questioning**

Apart from name, age and address, there is no legal obligation to answer any other questions. You can say “no comment”. Be careful what you say, it may be used as evidence against you.

You can be detained without arrest for questioning by the police; however they must not keep you for more than 8 hours (without a special court order). And they must not question you for more than 4 hours out of that 8. Police are obliged to electronically record the questioning (where possible).

You can legitimately decline to give a statement to the police. You are also allowed to refuse to answer questions until your lawyer or support person is present. In such a situation, politely request that the questioning be delayed until your lawyer arrives. You should note that there is no such thing as an “off-the-record” conversation when speaking to the police.

## **Contacting legal advice & support**

You have the right to make a private telephone call to a friend and a lawyer or legal support person before the police question you. You have the right to request that the questioning be delayed for a reasonable time to allow your lawyer and/or support person to be present. What is a reasonable time will depend on how far the person has to travel, but usually not more than two hours is reasonable. The police must provide access to a telephone in order to make the calls. You also have the right to privacy when speaking to your lawyer on the telephone. Ask for the yellow pages and look-up a lawyer if you do not already have one in mind.

## **Photos, fingerprints & line-ups**

Police may take identifying particulars if you have been arrested or are in custody for an “identifying particulars offence”.

Identifying Particulars Include:

- Photograph (and photograph of identifying features, such as tattoos or scars);
- Fingerprints;
- Palm prints;
- Footprints;
- Voiceprint;
- Handwriting sample; and
- Measurements (but not bums or breasts).

An Identifying Particulars Offence Includes:

- An offence where the maximum penalty is 1 year imprisonment or more;
- An offence against the following Acts:
  - The Regulatory Offences Act;
  - The Weapons Act; or
  - The Vagrants, Gaming and Other Offences Act.

Police can use “reasonable force” to take your identifying particulars.

The police may ask you to participate in an identification parade or “line-up”, but you are not obliged to agree. You cannot be forced to participate in a line-up against your will.

## **Searches**

Police can search you (and/or your vehicle) if they reasonably suspect that you are carrying a weapon (remember this has a very broad meaning. Eg. A stick can be a weapon), illegal drugs (or drug related utensils such as pipes or rolling papers) or stolen property (or tools for breaking entry such as bolt cutters or crowbars).

## **Getting out of custody**

The police will either: release you without charging you. (you may get a Notice to Appear or summons later), or charge you and release you on bail.

## **Bail**

You are entitled to apply for bail at the watch house. Bail is an undertaking that you will appear in court on the day your charge is listed.

The police can add special conditions such as an undertaking not to return to the place of arrest. If you do not agree with the special conditions, you can refuse to sign the bail until the conditions are removed. You can sign the bail form at any time. In some cases bail may be denied. This will depend on the seriousness of the offence for which you have been arrested. Where bail is denied, you will be detained in the watchhouse until you are able to appear before the court.

## **Keeping records**

If you are arrested, or you have been a witness to arrests or police violence involving other activists, keep a written record of every detail.

## **Complaints against police**

If you have been injured, see a doctor immediately, and get a written medical report describing your injuries. Get someone to photograph any injuries. Write down as much information as you can about the person or people who injured you including name, rank, police station. You should also make a note of any witnesses to the event and their contact details. Get legal advice and make a formal complaint. Police are under instructions to wear their identity badges at all times, but commonly do not during confrontations at demonstrations.

## **Personal injuries**

If you have been injured through the violence or negligence of another person you should note that strict time limits apply for making claims for criminal compensation or damages.

Legal Aid Qld offers advice on compensation to victims of crime through a special criminal compensation unit. If you are injured due to negligence or a criminal or civil assault you should immediately seek legal advice in order to ensure that you take any steps necessary in order to preserve your rights to seek compensation.

### **Unlawful arrest**

If an arrest proves to be unlawful, or if "unreasonable" or "excessive" force was used, civil actions against the police for assault or false imprisonment may be possible.

### **Legal assistance**

You should obtain legal advice as soon as possible after arrest, and certainly before your first court appearance. Most courts have a duty solicitor who can provide free legal advice and act you in your first court appearance.

You should make sure you obtain copy or at least read the "QP9" (which is the police record of events and exact charges which have been laid). You should make sure the record of events is correct and that you understand the nature of the charges and the maximum penalty involved before you make a decision about whether or not to plead guilty or defend the matter. Ideally your legal representative would assist you with this process.

In some cases, if you pass a means and merit test, you may apply for funding from the Legal Aid Office (Qld) to help cover the costs of legal representation for the remainder of the legal proceedings.

In order to make the court process more efficient, you may want to consider preparing a statement to take to court to give to the duty lawyer setting out your personal circumstances and describing the relevant incident and circumstances of your arrest. It may also help to bring some character references (from a friend or respected member of the community and an employee) with you when you attend court. The character references can then be handed up to the Judge/Magistrate and may assist the court with sentencing.

### **More information:**

***Police Powers and Responsibilities Act 2000 (Qld)***, available at: [www.legislation.qld.gov.au/](http://www.legislation.qld.gov.au/) then click on legislation, then P, then scroll down until you see the name of the Act.

***Peaceful Protest and Your Rights***, Environmental Defenders Office, Qld. 2003

***Activist Legal Rights***, Fitzroy Legal Service Inc, [www.activistrights.org.au](http://www.activistrights.org.au)