



# POLICE POWERS AND RESPONSIBILITIES

This sheet is intended to provide **general legal information** about the law in Queensland. It is not legal advice. If you have a particular legal problem you should contact a solicitor for legal advice. At the end is a list of agencies that might be able to assist you, including legal agencies.

## Remember, when interacting with police

- stay cool and calm
- you have a right to silence
- you can film in a public place. Ask a friend to film any interaction you have with police, or film for your friends. You might like to use the app Cop Watch.
- if you feel comfortable, you can ask whether an LGBTI Liaison Officer is available.

As soon as possible:

- write down what you can remember about the interaction; and
- get supporting information e.g. name and station police are from, photos of injuries, damage to personal property, medical reports.

Ask questions to politely clarify whether you have to do something or whether you are under arrest.

## Right to silence

- you can refuse to answer police questions
- anything you say to police may be recorded or used in court or in the decision to arrest you
- the right to silence applies even if you have been arrested
- be mindful that if you are in custody, anything you say may be recorded.

You could say: *"I don't want to say anything."*

- If you choose to answer some questions but then refuse to answer others your choice to stay silent on that question may accidentally reveal information.

## One exception to your right to silence

- there are laws requiring that you tell police your **name, address and date of birth** if they ask in particular circumstances
- you can ask why they are asking this or if you legally have to tell them. Try and remember the reason they give you as it may be relevant later

- failing to comply with their request may result in a charge
- you can ask the police for their identification. Try and remember their name.

## Do I have to carry ID on me?

No. There is no law that says you have to carry ID, BUT if a police officer believes you have given a false name, address or age, they can detain you to figure out who you are. If you are driving a car (including on a 'L' or 'P' plate) then it is an offence to fail to produce your driver's licence if the police request it.

## If your preferred name is not the same as your legal name

The police may charge you with an offence if you do not provide your legal name. Aim to stay calm and explain to the police that your legal name is \_\_\_\_ but you would prefer to be referred to as \_\_\_\_\_. If police refuse to use your name, or make fun of you or harass you, you should speak to a lawyer afterwards.

## Can the police search me?

- the police can only search you in specific circumstances. You can read more about those circumstances here: <https://www.yac.net.au/searches/>
- it can be difficult to determine whether the police are allowed to search you as they only require a reasonable suspicion of one of the specific circumstances. This includes things like if they reasonably believe you have a knife or weapon, drugs or anything which may be evidence of an offence.
- if you have been arrested the police and watchhouse officers can search you.

## What to do if police stop and search you:

- ask police why they intend to search you. If they cannot give you a reason or show you a warrant then they have no right to search you.
- remember the reason they give you.
- tell the police that you are not consenting to the search but are

allowing it because they are claiming to have a legal right.

- avoid physically resisting. You may be charged with obstructing police if you misjudge the situation.
- ask and remember the identity of the police officers who are searching you.
- if anything is taken from you, you have the right to know where it is being taken and to be given a property receipt. Check that the property receipt is correct.

### ***Contact a lawyer afterwards.***

A police search can be confronting. There are specific requirements to be met when police are conducting searches in order to protect your dignity; however, any search is likely to feel invasive. Police may conduct a frisk search, which involves quickly running the hands over the outer garments and examining anything worn or carried, or a pat-down search. Police are allowed to conduct strip searches of young people; however, a support person should be present and this should only be conducted in a private place. A pat-down or strip search may be referred to as a personal search.

Police searches may be even more confronting for LGBTQIAP+ Sistergirl and Brotherboy young people or those experiencing body dysmorphia. **Content Warning//Transphobic language:** you should be aware that police policy when searching transgender people is:

“to discreetly enquire as to the person’s genitalia. Where the person has male genitalia, the person is to be searched by a male officer or watchhouse officer. Where the person has female genitalia, the person is to be searched by a female officer or watchhouse officer.”

You may like to request whether an LGBTI Liaison Officer is available or state that you would be more comfortable with somebody else conducting the search. Persons searching you should not make any comments about your body before, during or after the search and should remain mindful of any sensitivities.

If you believe you have been treated unfairly during a search, contact a lawyer. You may like to make a complaint against the police.

### **Do I have to do everything the police tell me to do?**

- the police may give you a formal direction, like a “move on” order
- you can clarify by asking something like, “Do I legally have to do that?”
- if you do not comply with a lawful direction then you may be charged with an offence.

**Move on orders** are not the only types of directions that police can give however they are often given to young people.

Young people and the things they do are often judged because they are in groups and use public space differently to adults. These views alongside the way they dress, the way they look and what they do all impact on how they are treated. Young people who hang out in public spaces are often viewed negatively, even though they may not be breaking the law.

### **When can the police ask me to ‘move on’?**

You can be asked to move on if your behaviour (or just you being where you are):

- is causing or has caused anxiety to someone and that feeling of anxiety is reasonable in the circumstances
- is or has been getting in the way of people going in or out of somewhere
- is disrupting or has disrupted an event, entertainment or a gathering place
- is disorderly, indecent, offensive or threatening

**and you are in or near:**

- a ‘public place’
- a ‘prescribed place’ - places which are named in the ‘move on’ laws
- any Government owned place that has its own laws which say you can be moved on: for example, Southbank Parklands.

If the police issue a move on order they must tell you why you are being moved on, where you must move on from specifically and how long for. If you do not leave, then the police can charge you with not complying with a lawful direction.

Security and local council officers do not have the powers of police officers to move you from public or private places but they can ask you to leave and call the police if you do not go.

Whether you decide to move on or not, **remember to stay cool and calm**. You can ASK the police why you are being moved on. It is a good idea to write down everything you remember about what happened in case you want to do something about it later.

#### **Do I have to go with a police officer?**

You do not have to go with a police officer unless you are arrested.

The police can arrest you to question you if they believe that you have broken or are breaking the law. If you are arrested for questioning you do not have to answer any questions except to give your legal name, address and age.

#### **When can the police take my photograph?**

The police can only photograph you if you are arrested and charged. You do not have to agree to be photographed when being 'street checked'.

#### **Do I have to be in a line up or give a DNA sample?**

*No...* You do not have to go with a police officer to be in a line up or to give them your DNA even if the police say they think you have broken the law. You should talk to a lawyer before agreeing to either of these things.

#### **What if I am arrested?**

You can ask why you are under arrest, but resisting arrest is an offence. You have the right to ask why the police officer is demanding you go with them. If you are not under arrest then you do not have to go with the police. If you are under arrest, a police officer must tell you why you are under arrest. Even if you have been arrested and charged you do not have to answer police questions.

A police officer is only allowed to use 'reasonable force' to carry out their job. Stay cool and calm, and talk to a lawyer later about what you can do if you think the arrest was unfair or wrong, or if the police injured you.

#### **How long can the police hold me?**

The police can arrest and hold you for questioning for up to 8 hours to investigate an offence and question you about any offences they think you may have committed. Remember, you can be held for questioning but you do not have to answer any questions, except your name, age and address.

If they have decided to charge you they must decide as soon as reasonably possible whether to grant you bail or hold you in custody until you can appear before a Magistrate.

You may be held at the watch house or transferred to a detention centre. The segregation of prisoners is generally determined by gender with cultural considerations, which may be concerning if you are not cisgender. Police policy states:

*(v) transgender prisoners should be placed in an empty cell, unless an empty cell is not available, in which case transgender persons are to be placed with prisoners who have the same type of genitalia.*

#### **Am I entitled to make a phone call?**

*Yes*, as long as it is to speak with a support person and/or solicitor. If you are under 18, unless the police officer knows you have arranged for a lawyer to be present during questioning or you have spoken to a lawyer, the police officer must before questioning starts notify or attempt to notify a legal aid organisation (eg LAQ, ATSIILS) that you are in custody for the offence. They also have to tell you that they are going to do this.

#### **Who can I have with me during police questioning?**

If you are under 18 you can have a 'support person'. Generally, if you are under 18 and questioned by police, you must have a 'support person' with you but if you are being questioned about a minor offence such as obscene language or possession of property suspected of being stolen, a 'support person' is not required. The support person should be:

- a parent or guardian
- a lawyer

- a person who is acting for you who works in an agency that deals with the law
- a relative or friend you would like to have there
- if none of these are available, then a justice of the peace (JP).

You should tell the police which person you would like to have with you. The police should also give you the opportunity to talk to this person in private (where they cannot overhear you) before the questioning starts.

Remember you can have both a lawyer and a support person at an interview.

**What if I am charged with an offence?**

If you are under 18 then you may be cautioned, sent to a Youth Restorative Justice Conference, sent to a Drug Diversion Assessment Program or sent to court. If you'd like to know more about going to court see: <https://www.yac.net.au/>

If you are required to go to court, or feel you have been treated unfairly by the police, you should contact a lawyer.

## Keeping useful notes

**It's important to try and keep detailed notes of any concerning interactions you may have with police, or anyone you feel may have discriminated against you. These notes may be useful if you later decide to make a complaint or seek legal advice.**

*If you have any evidence of unfair treatment be sure to save it somewhere or print and keep copies, for example offensive emails, medical certificates showing you have suffered injury, or any other relevant documents.*

**Where did it happen**

**Date and time**

**Name and contact details for anyone else who saw what happened**

**Name and badge number/station of police officers/ other party involved**

**What happened?**

*Try and write down exactly what you saw and heard, including exactly what was said if you can remember.*

**Print your name**

**Sign and date**

## Who can help?

Youth Advocacy Centre (YAC) <a href="http://www.yac.net.au">www.yac.net.au</a> .....	3356 1002
Youth Legal Advice Hotline .....	1800 527 527
Hub Community Legal <a href="http://www.communitylegal.org.au">www.communitylegal.org.au</a> .....	3372 7677
YFS Legal <a href="http://www.yfs.org.au">www.yfs.org.au</a> .....	3826 1500
Legal Aid Queensland <a href="http://www.legalaid.qld.gov.au">www.legalaid.qld.gov.au</a> .....	1300 651 188
Aboriginal & Torres Strait Islander Legal Service <a href="http://www.atsils.org.au">www.atsils.org.au</a> .....	3025 3888 or (free call) 1800 012 255 (24hrs 7 days a week)
Refugee and Immigration Legal Service <a href="http://www.rails.org.au">www.rails.org.au</a> .....	3846 9300
Translating & Interpreting Services (24hrs) .....	131 450
Community Legal Centres (CLCs) see <a href="http://www.naclc.org.au">www.naclc.org.au</a> for your nearest CLC	

This sheet was last reviewed and updated in February 2020. The Youth Advocacy Centre does not accept responsibility for any action or outcome as a result of anyone relying on the information provided.