



# ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

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## Peaceful Protest and Your Rights

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### 1. Introduction

While everyone has a right to protest about issues that concern them, this right is subject to limitations imposed by law.

This fact sheet outlines:

- The procedure that should be followed for running a stall and organising a protest march or public assembly;
- The potential legal consequences of these actions; and
- The potential legal consequences of other non-violent protest actions.

This fact sheet is not a substitute for legal advice. Before becoming involved in protest activities, the advice of a lawyer should be sought. A lawyer can give advice on how to organise a particular protest action, potential legal consequences of that action and what to do if a person is arrested and charged.

### 2. Stalls and banners

It may be desirable to set up a stall to distribute information and put up banners in public places such as shopping centres, parks and other places where there are likely to be large numbers of people passing by.

Permission of the body responsible for management of the particular place must be sought before setting up. For public places such as local parks which are managed by local governments, permission should be sought from the local government authority responsible for the particular area. For public places which are occupied and managed by private organisations such as shopping centres, permission should be sought from the management office of the particular shopping centre.

### 3. Public assemblies and street marches

Public assemblies and street marches in Queensland are regulated by the *Peaceful Assembly Act 1992 (PAA)*.

The *PAA* recognises the right of all people to assemble peacefully with others in a public place subject only to restrictions necessary and reasonable in a democratic society in the

interests of public safety or public order, or the protection of rights and freedoms of others.<sup>1</sup> A 'public place' includes a road and places open to the public.<sup>2</sup>

Where an authorised assembly is proposed, notice must be given to:

- The Police Commissioner; and
- The relevant local government authority (if the assembly is to be held in, or pass through, a park, reserve, mall or other public place under the local government's jurisdiction).<sup>3</sup>

The notice must be in writing, addressed to the Commissioner or local government authority and signed by the organiser.<sup>4</sup> The notice must contain the following particulars:

- The name of the organiser and person responsible for conducting the assembly and the address for service of notices;
- The day and place for the proposed assembly and the time at which people will assemble;
- The times at which the assembly is proposed to begin and end;
- If a march is involved, the proposed route of the march, any stops planned along the route, and how long the stops will be;
- The expected number of participants;
- The purpose of the assembly; and
- A description of any sound amplification equipment proposed to be used.<sup>5</sup>

The relevant authority may approve a proposed assembly by issuing the organiser with a notice of permission which may also specify conditions of the approval.<sup>6</sup> Conditions may only be imposed if:

- The relevant authority has considered the objects of the *PAA*;
- The organiser has agreed in writing to the conditions; and
- Any group or individual having a significant interest in, or responsibility for, the place of assembly has been consulted.<sup>7</sup>

Conditions may only relate to the matters specified in s 11 (3), which include public safety, payment of clean-up costs and recognition of any inherent environmental or cultural sensitivity of the place.

Up to five days before the proposed date of an assembly, the relevant authority may apply to a Magistrates Court for an order refusing authorisation of the assembly.<sup>5</sup> But such an application may only be made where the relevant authority:

- Has had regard to the objects of the *PAA*;
- Is reasonably of the view that public safety would be jeopardised, serious public disorder would be likely or rights and freedoms of persons would be excessively interfered with; and

- It has consulted with the body (if known) to have a significant interest in the place or assembly, or any 'interested persons' (or body/ authority) with a significant interest or a responsibility for the place of assembly.

If an assembly notice has been duly made, within five days of the proposed date of the assembly, the assembly organiser may apply to a Magistrates Court for an order authorising the assembly.<sup>9</sup> The organiser may not apply for such an order if he or she has been told that the relevant authority does not oppose the assembly.<sup>10</sup> Before applying for such orders, a mediation process between the organiser of the assembly and the relevant authority must have been completed.

No offence is committed by a person merely by participating in an assembly authorised under the *PAA*, provided the assembly is peaceful and substantially in accordance with the proposal submitted for authorisation and any conditions attached to the assembly's approval.<sup>11</sup> The failure to obtain authorisation does not of itself make the assembly 'unlawful', but of course the participants don't have the protection of being involved in an 'authorised' assembly.

#### 4. Protest actions in protected areas

Additional procedures are prescribed for activities in, or affecting, protected areas in Queensland.

##### Forestry Act 1959

Under the *Forestry Act 1959*, entry on state forests or timber reserves may be prohibited by notices made by the Minister for Primary Industries. Contravention of any such notice is an offence.<sup>12</sup>

##### Nature Conservation Act 1992

The *Nature Conservation (Protected Areas Management) Regulation 2006* contains a number of restrictions on activities in protected areas managed under the *Nature Conservation Act 1992*. These protected areas include national parks, nature refuges, coordinated conservation areas and resources reserves. The restrictions that will be most relevant to protest actions by conservation groups are set out below.

- Entry on a protected area that has been declared a restricted access area, requires a permit.<sup>13</sup>
- Where it is proposed to hold a rally or public assembly in a protected area, a group activity permit must be obtained from the chief executive of the Department of Environment.<sup>14</sup> Failure to do so is an offence.
- If it is proposed to solicit donations or information in a protected area, a permit to carry out this activity must be obtained from the chief executive.<sup>15</sup> Such a permit may only be granted if the activity is consistent with the management principles

- for the area (set out in the *Nature Conservation Act*). The people soliciting donations or information must not cause a disturbance to other people in the area.
- It is an offence to enter and remain in a protected area that has a regulatory notice visibly displayed on the area stating that entry is prohibited.<sup>16</sup>
  - There is a general prohibition on disorderly conduct and creating a disturbance in protected areas.<sup>17</sup> There are restrictions placed on the use of vehicles, boats and other recreational craft<sup>18</sup> and sound equipment such as radios, tape recorders and amplifiers (if they may cause unreasonable disturbance to persons or animals)<sup>19</sup> in protected areas.

### Marine Parks Act 1982

The *Marine Parks Regulations 2006* contain a number of restrictions on activities carried out in declared marine parks without written authority for the Department of Environment.

In particular, the Regulations:

- Make it an offence to behave in a disorderly or disturbing manner, or to interfere with the safety or health of someone in the marine park;<sup>20</sup> and
- Prohibit a person from entering or using a zone identified in a marine park zone plan, other than for an emergency, or a purpose permitted under the zoning plan, or with permission of the Chief Executive<sup>21</sup>

The prohibition on entry or use of a zone in a marine park would restrict traffic in or over the waters of a marine park, so a written application for permission to enter would have to be made to the Chief Executive.<sup>22</sup> Therefore, it would appear that a protest action that involves the passage over the waters in a marine park could not take place without specific authority, unless it was a purpose permitted under a zoning plan. Certainly protest action involving more extensive use of marine park, e.g. camping on the foreshore or remaining on the marine park waters in a houseboat would require written authority. Again, additional requirements may be imposed by zoning plans.

## 5. Non-violent action

Non-violent action is any protest action that does not involve violence to any person or property, is conducted openly and in a disciplined way. It includes any form of public assembly and street march and even deliberate breaches of the law, such as trespass and passively resisting arrest.

Non-violent action can help by drawing public and media attention to a particular issue, thus putting political pressure on government to deal with the issue.

## 6. Criminal charges

There are certain offences under Queensland and Commonwealth legislation which may be attracted by protest action. Some examples of offences commonly arising from protest action are provided below, but this should not be taken as a complete list of all possible criminal offences.

### Wilful damage to property

It is an offence to wilfully damage or destroy another persons' property without their consent. If the cost of the damage is \$250 or less, the offence is dealt with under the *Regulatory Offences Act 1985* and a penalty of up to \$500 can be imposed.<sup>23</sup> However, if the property is damaged or destroyed in the course of a riot as defined in the *Criminal Code*, the penalties are much more severe.<sup>24</sup>

### Trespass

It is an offence under the *Summary Offences Act 2005* s.11 to enter or remain in a building or structure, whether public or private, without lawful excuse – punishable by 6 month's jail. If offensive language is used – another 6 months applies.

This mirrors the *Criminal Code* provisions. Entry on another persons' land in a manner considered likely to cause a breach of the peace or reasonable apprehension of such a breach, is an offence under the *Criminal Code*, punishable by 1 year's jail.<sup>26</sup> In these circumstances, it is immaterial that the offender was entitled to enter the place. Breach of the peace essentially involves harm actually done or likely to be done to a person or his or her property or where a person is in fear of such harm.<sup>27</sup>

“Offensive or disorderly manner” under sections 11(2) and 12(2)(a) of the *Public Order (Protection of Persons and Property) Act 1971* (Cth), states that it is an offence for a person who “while trespassing on premises in a Territory” or “being in or on Commonwealth premises...behaves in an offensive or disorderly manner”. These offences both carry penalties of up to \$2000. Note that the meaning of “offensive or disorderly” has to be established, and that the defence of “reasonable excuse” can be used.

This does not need a warning to be given but has a defence of “lawful” or “reasonable excuse” (section 89(1) *Crimes Act 1914* (Cth) and ss.11(1) and 12(1) *Public Order (Protection of Persons and Property) Act 1971* (Cth)). The penalty for both is a fine of up to \$1000.

Trespass on certain types of premises is governed by different Acts; e.g. Regulation 35 of the *Defence Force Regulations 1952* (Cth) authorises the Minister to declare a place to be a prohibited area and creates offences of entering or remaining without permission. The maximum penalty is \$2000 or imprisonment for six months, or both.

In relation to Commonwealth areas, there are a number of likely offences provided in the *Crimes act 1914 (Cth)*. For example:

- It is an offence to go onto any Commonwealth land on which a notice is erected stating that trespassing on the land is prohibited, without a lawful excuse (s 89) and
- Any person who wilfully and unlawfully destroys or damages property belonging to the Commonwealth is guilty of an offence (s 29).

### Unlawful assembly

Participating in an unlawful assembly or a riot is an offence under the *Criminal Code*.<sup>28</sup> An unlawful assembly will arise where an assembly, whether gathered lawfully or not, acts in such a way as to cause others to fear that the people assembled will violently disturb the peace.<sup>29</sup> If the assembly acts so disruptively that they actually disturb the peace, the assembly has become a riot.<sup>30</sup> Harsh penalties are imposed where those engaged in a riot do not disperse within one hour of being asked to do so.<sup>31</sup>

Commonwealth law has a section more clearly aimed at demonstrations: a person “taking part in an assembly [who] engages in unreasonable obstruction” commits an offence (section 9 *Public Order (Protection of Persons and Property) Act 1971 (Cth)*). The penalty is a fine of up to \$2000.

A defence to this charge would be that the obstruction (if it occurred) was “reasonable”.

### Assaulting a police officer

Assaulting or obstructing a police officer in the performance of the officer’s duties is an offence under the *Criminal Code*.<sup>32</sup> ‘Obstruction’ includes resisting arrest or obstructing the arrest of another. Attempting to pervert, obstruct or defeat the course of justice is an offence under the *Criminal Code*.<sup>33</sup> This may in some circumstances include providing false or misleading information to police.

It is not an offence to passively resist arrest, or to run away before you have been arrested. An arrest starts when the police officer makes it plain to you by words or other action that you are under arrest.

It is not an offence to resist or hinder a police officer who is not acting in the execution of his or her duty. Police may not be acting in the execution of their duty when they make an illegal arrest, or use excessive force. It is a defence to the charge of resisting if you did not know that the person who you resisted was a police officer.

It is a Commonwealth offence to “intentionally and knowingly obstruct, resist, hinder, use violence against, threaten or intimidate” a member of the Australian Federal Police carrying out a “function or duty” (section 149(1) *Criminal Code Act 1995 (Cth)*). The maximum penalty for this offence is two years' jail.

## 7. Arrest

The following information provides a general outline of what people can expect if they are arrested following protest action. However, it should not be taken as sufficient legal advice in itself and specific legal advice should be obtained by a person who is arrested.

### Police questioning

There is no legal obligation to answer questions put by the police officer. As a general rule, a person should give their correct name and address when asked by a police officer. It may be an offence to withhold this information in certain circumstances.<sup>35</sup> However, a person should be careful about anything else they say, as it may later be used as evidence against them. Giving a police officer false information is an offence.

### Arrest procedure

The arresting officer must do the following things for an arrest to be valid:

- Say 'you are under arrest' or words to that effect;
- Touch the arrested person, except if that person complies with the officer's direction to go or stay; and
- Indicate the reason for the arrest – although the precise offence need not be specified.

A police officer may use whatever force is reasonably necessary to arrest a person, but unreasonable force constitutes an assault. Whether or not the level of force used was unreasonable will be decided by the judge or magistrate hearing the matter. Resisting arrest or obstructing police officers are further offences.

If the charge is minor, the police may decide to issue a summons instead of arresting a person. The summons will require the person to appear in court at a specified time. Polite behaviour towards police may encourage them to take this option.

A person will be cautioned when they are arrested (ie told that no questions need to be answered and that any answers given may be used in evidence). The police will then attempt to question the person about the suspected offence before a charge is laid. There is an entitlement to have a lawyer present during questioning and it is advisable to do so. A lawyer can give legal advice about a persons' situation and how to proceed.

The police will search an arrested persons' clothing and in most cases are entitled to take fingerprints and photographs of the arrested person for identification purposes only. If the person is found not guilty of the offence or if the prosecution is not proceeded with, the person is entitled to have the fingerprints and photographs destroyed in his or her presence.

### Bail

A person who has been arrested and charged with a criminal offence is entitled to apply for bail at the watch-house, which must be granted provided the person is not considered to pose an unacceptable risk of not appearing and/or committing further offences.

A person released on bail will be required to sign a bail undertaking by which the person:

- Promises to appear in court at a specified time;
- Agrees to the bail conditions; and
- Agrees that if the person fails to appear or breaches any other bail condition, the person will have committed an offence.

For certain minor offences, an arrested person may be released on bail after depositing an amount of money as security for his or her appearance in court at the specified time. If the person fails to appear, the money is forfeited but no criminal conviction is sustained. Legal advice should be sought as to which offences this applies to.

### Anti-Terrorism Laws

In recent years environmental activists have been subjected to claims of 'eco-terrorism'. These claims are mostly unsubstantiated but it is worthwhile being aware that anti-terrorism legislation may be used for acts considered sabotage or vandalism.

The term 'eco-terrorism' implies that the police have investigated, gathered and tested information that shows beyond reasonable doubt that environmentalists involved in protest actions were motivated towards causing serious harm to people or property<sup>36</sup>.

The main terrorism legislation made after 11 September 2001 is in the federal *Criminal Code Act 1995* at Schedule 1, Part 5.3 (Terrorism), divisions 100-103. Incitement to criminal acts (including incitement to terrorism) is contained in Part 2.4.

Police powers of arrest are far wider if it is suspected that a person or organisation has caused serious harm to people or property by advancing a religious, political or ideological cause. This does not include, in theory, those involved in lawful protest or dissent.

### Legal assistance

An accused person should obtain legal advice preferably as soon as possible after arrest, but certainly before their first court appearance. Most courts have a duty solicitor who can provide free legal advice and act for the accused in his or her first court appearance. A person accused of a criminal offence 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.

It is possible for an accused person to represent themselves in court. However, the person will need a good working knowledge of the relevant case law, legislation and court procedures. They must also ensure that they can deliver a defence argument that is well supported by law, bearing in mind that the reasons for the protest action will have little or no weight with the court.

1. *Peaceful Assembly Act 1992*, s 5.
2. *Peaceful Assembly Act 1992*, s 4.
3. *Peaceful Assembly Act 1992*, s 8.
4. *Peaceful Assembly Act 1992*, s 9 (1).
5. *Peaceful Assembly Act 1992*, s 9 (2).
6. *Peaceful Assembly Act 1992*, ss 10 (2) (a), (b), 11 (1).
7. *Peaceful Assembly Act 1992*, s 11 (2).
8. *Peaceful Assembly Act 1992*, s 12.
9. *Peaceful Assembly Act 1992*, s 14.
10. *Peaceful Assembly Act 1992*, s 15.
11. *Peaceful Assembly Act 1992*, s 6.
12. *Forestry Act 1959*, s 76
13. *Nature Conservation (Protected Areas Management) Regulation 2006*, s 49.
14. *Nature Conservation (Protected Areas Management) Regulation 2006*, s 65
15. *Nature Conservation (Protected Areas Management) Regulation 2006*, ss 50, 66
16. *Nature Conservation (Protected Areas Management) Regulation 2006* s 73.
17. *Nature Conservation (Protected Areas Management) Regulation 2006*, s 140.
18. *Nature Conservation (Protected Areas Management) Regulation 2006*, s 137.
19. *Nature Conservation (Protected Areas Management) Regulation 2006*, s 139
20. *Marine Park Regulations 2006*, s 146.
21. *Marine Park Regulations 2006*, ss 108, 109
22. *Marine Park Regulations 2006*, s 23
23. *Regulatory Offences Act 1985*, s 7.
24. *Criminal Code Act (incorporating the Criminal Code) 1899*, ss 65, 66.
25. *Summary Offences Act 2005* s 12
26. *Criminal Code*, s 70.
27. *R v Howell* (1982) 1 QB 416.
28. *Criminal Code*, ss 62, 63.
29. *Criminal Code*, s 61.
30. *Criminal Code*, s 61 (4)
31. *Criminal Code*, s 64.
32. *Criminal Code*, s s340(1)(b).
33. *Criminal Code*, s 140.
34. *Crimes Act 1914* (Cth), s 89.
35. *Police Powers and Responsibilities Act 2000*, s 40-41.
36. For more details on 'eco-terrorism' see  
[www.edo.org.au/edovic/publications.html#FactSheets](http://www.edo.org.au/edovic/publications.html#FactSheets).