



SECURITY OPERATIONS IN AUSTRALIA

A Resource to Support

CPP20218 CERTIFICATE II IN SECURITY OPERATIONS

LEGISLATION
QUEENSLAND



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Introduction

Our system of law consists of a series of rules that we live by in a civilised society. The absence of this system would see society break down into anarchy. A professional security officer must have a sound understanding of the law.

Sourcing Legislation

Legislation is amended regularly and Security Providers must have the ability to locate current versions of legislative documents in order to ensure that:

1. The Security Provider complies with all legal requirements; and
2. When dealing with offenders, the Security Provider has an understanding of exactly what constitutes the offence and what actions they are entitled to perform in order to stop or prevent the offence from occurring.

There are three primary sources of current legislation:

1. Local Magistrate's Court;
2. Legal Professionals (Solicitors, Barristers, Lawyers, etc) although this will generally incur a cost; and
3. Online at the following websites:
 - www.comlaw.gov.au (Federal); and
 - www.legislation.qld.gov.au (Queensland)

Referencing Legislation

There are hundreds of different legislative documents in Queensland alone; each are comprehensive documents, some with several thousand pages of text. The only way to effectively locate and reference information in these documents is to follow a standardised system. This section will briefly describe a common system of referencing components of legislation.

The two types of legislation covered in this section are Acts and Regulations.

Sections from the Security Provider Act 1993

Other relevant regulations and codes of practice include:

Security Providers Regulation 2008

Security Providers (Crowd Control Code of Practice) Regulation 2008

Security Providers (Security Firm Code of Practice) Regulation 2008

Security Providers (Security Officer - Licensed Premises Codes of Practice) 2008

Unarmed security officer

An unarmed security officer personally guards, patrols or watches another person's property, without a guard dog or weapon.

This also includes:

- In-house security (someone who guards, patrols or watches their employer's property)
- Loss prevention personnel
- Security gate operators

Crowd controller

A crowd controller keeps order at a public place by:

- Screening the entry of people into a place
- Monitoring or controlling the behaviour of people in a place
- Removing people from a place

For example, a hotel security guard needs a crowd controller licence, but an usher does not.

Cash transit officer

A cash transit security officer carries cash, bullion, jewellery or valuables. Officers who carry a weapon while working must also apply to the Queensland Police Service for the appropriate weapons licence.

Bodyguard

A bodyguard carries out close personal protective services.

Monitoring security officer

A monitoring security officer personally monitors property using an electronic monitoring device, such as a visual recording system, a radio or remote alarm system.

Dog patrol officer

A dog patrol security officer guards, patrols or watches another person's property with a guard dog.

Private investigator

A private investigator is a person who:

- Obtains private information about a person without that person's permission
- Carries out surveillance to gather information about a person without that person's consent
- Investigates the disappearance of a missing person

You are not a private investigator if you operate for or are employed by:

- Legal practitioners
- Accountants
- Insurance businesses
- Insurance adjustment agencies
- Independent investigators engaged to investigate and report on grievances lodged by Queensland public service employees

Restricted licence

You can apply for a restricted licence. This licence allows you to complete your training requirements while working under the direct supervision of a fully licensed security provider.

A restricted licence is issued for a term of six months only. After the term ends, you cannot apply for an extension. You must complete the training requirements and apply for an unrestricted licence within six months.

Direct supervision of restricted licence holders

A crowd controller supervisor; cash transit security officer supervisor; dog patrol supervisor must:

- Remain on the same premises as the restricted licensee
- Remain in the restricted licensee's line of sight, where practical
- Be able to provide immediate assistance to restricted licensee if needed
- Give the restricted licensee detailed written instructions about the work they need to do
- Document the tasks that the licensee performs
- Document and give the restricted licensee regular progress checks
- Supervise no more than one restricted licence holders at any time

A bodyguard supervisor; monitoring security supervisor; private investigator supervisor must:

- Give the restricted licensee detailed written instructions about the work they need to do
- Document the tasks that the licensee performs
- Document and give the restricted licensee regular progress checks

Mandatory fingerprinting

All new applicants for a security provider's licence must be fingerprinted by the Queensland Police Service. After you've lodged your application, you will receive a letter from us that details the process for having your fingerprints taken.

The fee is \$100 and is payable at the time the application is lodged.

Revalidation training

Every three years, as a licensed bodyguard or licensed crowd controller, you will need to successfully complete three units of competency through a nationally recognised training provider. This is known as revalidation training. Revalidation training ensures that you remain up to date with the latest industry standards and techniques. The units of competency required to be completed every three years are:

- CPPSEC3002A Manage conflict through negotiation
- CPPSEC3013A Control persons using empty hand techniques
- HLTFA311A Apply first aid or HLTAID003 Provide first aid

You must seek retraining and be re-assessed in each of these units of competency by the due date. You will be advised of the required completion dates for these competencies on the notice supplied with your security licence.

These units are specifically prescribed as revalidation training, and as such, completing these courses via **recognition of prior learning is not acceptable**. The Statement of Attainment provided to you by your training organisation does not include the actual result and the method through which the competency was achieved.

To ensure that this initiative of revalidation training is properly administered, we also require a copy of the record of results. When you lodge evidence of completion of the required revalidation training unit, please remember to include both the Statement of Attainment and Record of Results.

The first aid unit must be current at the time the unit is due for completion. If the first aid unit has been completed more than 12 months ago, it will also be necessary to provide evidence of completion of the CPR component, HLTCP211A Perform CPR or HLTAID001 Provide CPR, within the last 12 months. It is the responsibility of the licensee to ensure that this CPR component remains current and up to date at all times. Licensees who fail to lodge evidence of completion of the required units of competency prior to the completion date will be subject to disciplinary action which may result in the cancellation of the bodyguard or crowd controller function from their licence.

Inspections

Fair Trading inspectors conduct random checks to ensure security providers are complying with the law. Inspectors also conduct investigations and may take enforcement action for breaches identified under the Security Providers Act 1993. Queensland police service officers can also issue on-the-spot infringement notices.

From 1 July 2012, OFT and the Office of Liquor and Gaming Regulation (OLGR) will be administering a six month Brisbane-based trial which will enable OLGR inspectors to monitor

and report on certain aspects of the SPA. This trial will increase the regulatory presence and further protect Queensland consumers from harm caused by unsuitable security providers.

OLGR inspectors will identify offences while visiting licensed premises by completing a spot check form and will have all of the powers of an inspector under the Act to inspect licenses and documents. Where evidence of breaches are found, OLGR will provide a report and available evidence to OFT who will consider relevant enforcement history and take appropriate action. If an inspector approaches you, they will produce a signed photo ID.

Security provider register

Security firms must record details of all security providers it employs or engages. They must store this register where unauthorised people cannot access it. Fair Trading inspectors and the police are authorised to inspect the register at any time. The register must contain each security provider's:

- Name, licence number and licence expiry date
- Employment commencement and termination dates (where applicable)

Crowd controller register

Any licensed premise that engages a crowd controller must maintain a crowd controller register. The register records which crowd controllers are on duty and any incidents that occur. Crowd controllers must sign in and out of each shift. Fair Trading inspectors and the police are authorised to inspect the crowd controller register at any time. Liquor licensees must keep the register on the premises. Otherwise the security firm must keep the register. They must keep the register for seven years after the date of the last entry. The register must contain:

- The crowd controller's full name and licence number
- The security firm's name and address (if applicable)
- The crowd controller's identification details (venue-issued ID number)
- The crowd controller's shift date, and start and finish time
- The name of any unrestricted crowd controller licensees directly supervising restricted crowd controller licensees
- Details of every incident in which a person is injured
- Details of every incident in which the crowd controllers removes a person from a public place

Incident details must include:

- The incident date and time
- The location at the premises where the incident happened
- Each person involved in the incident and, if known, their name
- The incident, including whether the crowd controller removed a patron from the premises because of the incident
- Injuries sustained by people involved in the incident
- Any action that a crowd controller or staff member took in response to the incident

Identification requirements

A crowd controller must identify themselves while working. They must:

- Enter their details in the crowd controller register if working at a licensed venue or for a security firm
- Wear the prescribed identification on their clothing at chest level
- Not wear or display a hat with a chequer board design or band, as this could be confused with the police uniform

Their identification must include:

- The word 'SECURITY' in capital letters, at least 10 mm high and 2 mm thick

- A number unique to the controller at least 30 mm high and 4 mm thick
- Black numbers and letters on a white background

Carrying weapons

A security provider licence does not authorise you to carry any firearms, handcuffs or batons.

Applying for a licence

Refer to: www.fairtrading.qld.gov.au

For the application form, refer to:

www.fairtrading.qld.gov.au/Forms/Class1_security_provider_licence_application.pdf

The application form may be completed and submitted online.

Work Health and Safety Act 2011

Subdivision 1 Principles that apply to duties

13 Principles that apply to duties

This subdivision sets out the principles that apply to all duties that persons have under this Act.

Note: The principles will apply to duties under this part and other parts of this Act including, for example, duties relating to incident notification and consultation.

14 Duties not transferable

A duty cannot be transferred to another person.

15 Person may have more than 1 duty

A person can have more than 1 duty by virtue of being in more than 1 class of duty holder.

16 More than 1 person can have a duty

- 1) More than 1 person can concurrently have the same duty.
- 2) Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.
- 3) If more than 1 person has a duty for the same matter, each person:
 - a) Retains responsibility for the person's duty in relation to the matter; and
 - b) Must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

17 Management of risks

A duty imposed on a person to ensure health and safety requires the person:

- a) To eliminate risks to health and safety, so far as is reasonably practicable; and
- b) If it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

Division 2 Primary duty of care

19 Primary duty of care

- 1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of
 - a) Workers engaged, or caused to be engaged by the person; and
 - b) Workers whose activities in carrying out work are influenced or directed by the person; while the workers are at work in the business or undertaking.

- 2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
- 3) Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable:
 - a) The provision and maintenance of a work environment without risks to health and safety; and
 - b) The provision and maintenance of safe plant and structures; and
 - c) The provision and maintenance of safe systems of work; and
 - d) The safe use, handling and storage of plant, structures and substances; and
 - e) The provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and
 - f) The provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and
 - g) That the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.
- 4) If:
 - a) A worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking; and
 - b) The occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available; the person conducting the business or undertaking must, so far as is reasonably practicable, maintain the premises so that the worker occupying the premises is not exposed to risks to health and safety.

Queensland Regulatory Offences Act

Unauthorised dealing with shop goods

These offences deal with goods worth \$150 or less.

Consuming goods

It is an offence to consume goods without express or implied consent.

Changing price tags

It is an offence to change, alter, remove or deface price tags on articles.

Leaving without paying

It is an offence to leave without paying for food, drink or accommodation. It is a defence to prove on reasonable grounds that the person believed the cheque would be paid on presentation or they were authorised to use a credit card.

Wilful damage

It is an offence to wilfully destroy or damage property of another person without consent, causing damage of \$250 or less.

Police have power to arrest for the above offences.

Queensland Vagrants and Gaming Act

4

- 1) Any person who:
 - a) Without lawful excuse (the proof is on them to prove lawfulness):
 - (i) Is found in any dwelling house, warehouse, or in any yard, garden, or area;
 - (ii) Has in their possession any picklock key or implement of housebreaking;
 - b) Or with intent to commit an indictable offence:
 - (i) Is found at night with their face blackened or disguised; shall be guilty of an offence.

4A

- 1) Any person who without lawful excuse (the proof is on them to prove lawfulness) together with others enters or remains in or upon any part of a building or structure, whether public or private, or any land occupied or used with such land, is guilty of an offence.
- 2) Any person who remains in or upon any part of a building, structure or land occupied or used with such land, and has no lawful excuse for so doing (the proof is on them to prove lawfulness) shall: if they do any act or use any language which is an offence under this or any other Act which would be an offence, shall be guilty of an offence.

7

Any person who in any public place or near a public place uses profane, indecent or abusive language or uses any threatening, abusive or insulting words, or behaves in a riotous, violent, disorderly, indecent, offensive, threatening or insulting manner shall be guilty of an offence.

Queensland Invasion of Privacy Act 1971

Unlawful entry of dwelling-house

48A

- 1) Any person who enters a dwelling house without the consent of the person in lawful occupation or, where there is not a person in lawful occupation, without the consent of the owner is guilty of an offence.
- 2) Any person who without lawful excuse, the proof of which lawful excuse shall be upon the person, is found in a dwelling house or the yard of a dwelling house is guilty of an offence.
 - a) Yard includes any path, garden, curtilage, courtyard, enclosure, lawn or other ground or area within the precincts of or appurtenant to or under the dwelling house in question.

Power of arrest

It is lawful for any person who finds another committing an offence against this section to arrest him without warrant.

This makes it clear that any licensed security provider has no power to enter private property; a "dwelling-house". The section also applies to any other person.

If the licensed security guard etc. finds another person in breach of the above section, they also have power to arrest the person.

Dwelling-house

A "dwelling-house" is any building or structure (or part of it) for residence whether it is uninhabited at the time or not and includes a caravan, motel etc. (s1 Criminal Code).

Evidence Act 1995 (Queensland)

This Act sets out the federal rules of evidence. Generally speaking, the Act applies to proceedings in federal courts (see section 4), but some provisions extend beyond such proceedings (see Note 2 to subsection 4(1)).

Chapter 2 is about how evidence is adduced in proceedings.

Chapter 3 is about admissibility of evidence in proceedings.

Chapter 4 is about proof of matters in proceedings.

Chapter 5 deals with miscellaneous matters.

The Dictionary at the end of this Act defines terms and expressions used in this Act.

Related legislation

This Act is in most respects uniform with the following State and Territory Acts:

- (a) the Evidence Act 1995 (NSW);
- (b) the Evidence Act 2001 (Tas.);
- (c) the Evidence Act 2008 (Vic.);
- (d) the Evidence Act 2011 (ACT);
- (e) the Evidence (National Uniform Legislation) Act 2011 (NT).

While these Acts are in most respects identical to this Act, there are differences. The explanatory memorandum to the Civil Law and Justice Legislation Amendment Bill 2014 includes a table setting out the differences as at 8 July 2014. An updated version of the table is maintained by the Attorney-General's Department on its website (<http://www.ag.gov.au>).

Queensland Juvenile Justice Act

The Juvenile Justice Act aims to provide a special system for administering justice for children before and during court.

Principles

A child:

- Should only be detained in custody as a last resort;
- If detained, should be held in a children's facility;
- Should be diverted from the court system if an offence is committed unless the nature of the offence or the child's history deem otherwise;
- Should be involved in a fair and just proceeding and held accountable and accept responsibility for their actions: s4

A child is a person who has not turned 18 years: s6

If a child has been interviewed over an **indictable** offence, the police officer must have a parent, legal practitioner, or government agency representing the child, a J.P., or an adult nominated by the child.

If such a person is not present, the statement cannot be used in evidence against the child even if there is a full confession: s9E

A police officer must consider whether:

- They should take no action against the child, or
- Administer a caution, rather than starting a proceeding (obtaining an arrest warrant, or arresting without warrant) against the child without such consideration: s10

Administering a caution can be done if an adult person is present and the child admits to committing the offence and consents to being cautioned, where the child receives a full explanation of the matter and may also involve an apology. This means they do not go to court: s13

There are restrictions on arrest powers for police officers. The police may arrest if it is a serious offence or an indictable offence or to prevent the continuation or repetition of the offence or to prevent the concealment, loss or destruction of evidence relating to the offence: s20

Where possible a child should not be arrested, but proceeded against by way of complaint and summons or by an attendance notice: s21

If a person arrests a child they must advise the child's parent (or if unable to be found promptly, a departmental representative) of the whereabouts of the child: s22

The Bail Act also applies to children: s37

Queensland Anti-Discrimination Act 1992

Introduction

Queensland has some of the widest anti-discrimination laws in the country. Discrimination covers:

- Sex
- Pregnancy
- Parental status
- Breast feeding
- Age
- Race
- Impairment
- Religion
- Political belief or activity
- Trade union activity
- Lawful sexual activity¹

Vicarious liability also occurs with the State legislation and the legislation covers discrimination in:

- Work
- Education
- Provision of goods and services
- Accommodation
- Clubs

As in the Commonwealth legislation, there are exclusions for genuine occupational requirements. There are general exemptions for actions done for:

- Workplace health and safety
- Public health
- Sport in some circumstances

Sexual harassment is also covered and includes:

- Touching
- Pinching
- Sexual propositions
- Suggestive comments
- Indecent exposure, etc.

It must also be shown that the actions were intended to offend, humiliate or intimidate the victim, or a reasonable person would take the action that way. Relevant circumstances include age, sex, race or impairment.

¹ s47

Sections of the Criminal Code Act

Assault

245 Definition of assault

- 1) A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person's consent, or with the other person's consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person, and the act is called an assault.
- 2) In this section:
Applies force includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.

335 Common assault

Any person who unlawfully assaults another is guilty of a misdemeanour, and is liable, if no greater punishment is provided, to imprisonment for 3 years.

339 Assaults occasioning bodily harm

- 1) Any person who unlawfully assaults another and thereby does the other person bodily harm is guilty of a crime, and is liable to imprisonment for 7 years.
- 2) If the offender does bodily harm, and is or pretends to be armed with any dangerous or offensive weapon or instrument or is in company with 1 or more other person or persons, the offender is liable to imprisonment for 10 years.

320 Assaults occasioning grievous bodily harm

- a) The loss of a distinct part or an organ of the body; or
- b) Serious disfigurement; or
- c) Any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health; whether or not treatment is or could have been available.

268 Provocation

- 1) The term provocation, used with reference to an offence of which an assault is an element, means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under the person's immediate care, or to whom the person stands in a conjugal, parental, filial, or fraternal, relation, or in the relation of master or servant, to deprive the person of the power of self-control, and to induce the person to assault the person by whom the act or insult is done or offered.
- 2) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.
- 3) A lawful act is not provocation to any person for an assault.
- 4) An act which a person does in consequence of incitement given by another person in order to induce the person to do the act, and thereby to furnish an excuse for committing an assault, is not provocation to that other person for an assault.
- 5) An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

Self Defence

271 Self-defence against unprovoked assault

- 1) When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for the person to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.
- 2) If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that the person cannot otherwise preserve the person defended from death or grievous bodily harm, it is lawful for the person to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.

272 Self-defence against provoked assault

- 1) When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults the person with such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce the person to believe, on reasonable grounds, that it is necessary for the person's preservation from death or grievous bodily harm to use force in self-defence, the person is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm.
- 2) This protection does not extend to a case in which the person using force which causes death or grievous bodily harm, first begun the assault with intent to kill or to do grievous bodily harm to some person; nor to a case in which the person using force which causes death or grievous bodily harm endeavoured to kill or to do grievous bodily harm to some person before the necessity of so preserving himself or herself arose; nor, in either case, unless, before such necessity arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.

273 Aiding in self-defence

In any case in which it is lawful for any person to use force of any degree for the purpose of defending himself or herself against an assault, it is lawful for any other person acting in good faith in the first person's aid to use a like degree of force for the purpose of defending the first person.

72 Affray

Any person who takes part in a fight in a public place, or takes part in a fight of such a nature as to alarm the public in any other place to which the public have access, commits a misdemeanour.

230 Common nuisances

Any person who:

- a) Without lawful justification or excuse, the proof of which lies on the person, does any act, or omits to do any act with respect to any property under the person's control, by which act or omission danger is caused to the lives, safety, or health, of the public; or
- b) Without lawful justification or excuse, the proof of which lies on the person, does any act, or omits to do any act with respect to any property under the person's control, by which act or omission danger is caused to the property or comfort of the public, or the public are obstructed in the exercise or enjoyment of any right common to all Her Majesty's subjects, and by which injury is caused to the person of some person.

260 Breach of the peace

An example of the overlap between two pieces of legislation occurs with parts of s546 and s260 that relates to breach of the peace. When a security officer is a witness to a breach of the peace he / she may interfere to prevent the continuance or renewal of the breach, and to use such force as is reasonably necessary for such prevention and is reasonably proportioned to the danger to be apprehended from such continuance or renewal, and to detain any person who is committing or who is about to join in or renew the breach of the peace for such time as may be reasonably necessary in order to give him into custody of a police officer.

Arrest

Arrest in Queensland

Section 546 of the Queensland Criminal Code Act affords citizens and police the power to arrest without a warrant in certain circumstances.

546 Arrest without warrant generally

When an offence is such that the offender can be arrested without warrant generally:

- a) It is lawful for any person who is called upon to assist a police officer in the arrest of a person suspected of having committed the offence, and who knows that the person calling upon the person to assist is a police officer, to assist the officer, unless the person knows that there is no reasonable ground for the suspicion; and
- b) It is lawful for any person who finds another committing the offence to arrest the other person without warrant; and
- c) If the offence has been actually committed - it is lawful for any person who believes on reasonable ground that another person has committed the offence to arrest that person without a warrant, whether that other person has committed the offence or not; and
- d) It is lawful for any person who finds another by night, under such circumstances as to afford reasonable grounds for believing that the other person is committing the offence, and who does in fact so believe, to arrest the other person without warrant.

A citizen may only apply the provisions of s546 in relation to crimes and some misdemeanours. Examples of crimes are:

- Murder s291, s305
- Rape s348
- Stealing s398
- Unlawful use or possession of a car s408
- Break and enter / burglary s419, s422
- Arson s461

Examples of misdemeanours where an arrest may be applied:

- Taking part in a riot or unlawful assembly s62, s63
- Going armed causing fear s69
- Indecent acts s227
- Unlawful wounding s323

The law changes when an arrest is to take place at *night*. In some states night is described as; 'the hours of darkness'. At different times of the year the actual time dusk and dawn occur will vary quite significantly. Queensland, on the other hand provides a definition of night as the hours between 9.00pm and 6.00am.

550 Arrest during flight

It is lawful for a person who believes on reasonable grounds that another person has committed an offence and that person is escaping from custody and freshly pursued by some person whom, on reasonable grounds, they believe has authority to arrest that person.

254 Force in an arrest

While the law allows force that is reasonably necessary to be used to overcome a person resisting arrest it is always advisable to apply the principles discussed above. For example, is it better to 'observe and report?'

257 Preventing escape from lawful arrest

It is lawful for the person attempting to make the arrest to use such force as may be reasonably necessary to prevent their escape so long as such force is not intended nor is likely to cause death or grievous bodily harm.

258 Preventing escape after arrest

When a person has been lawfully arrested, it is lawful to use such force as they believe on reasonable grounds to be necessary to prevent their escape. If the offence is not a crime, force intended or likely to cause death or grievous bodily harm is not authorised.

259 Search after arrest

Only police and / or a medical officer may search a person after they have been arrested. Evidence like the weapon or the item that has been stolen may be taken and retained as evidence.

255 Reasons for arrest

It is the duty of any person making an arrest to give the reasons for the arrest or the cause of the arrest. It is not necessary to specify the charge. s255

Take before justice

A person who has made the arrest has a duty to take the arrested person 'forthwith' (s552 Criminal Code) or as "soon as practicable" (s69 Justices Act) before a justice to be dealt with according to law.

The effect of this section is that the person making the arrest must contact police immediately.

355 Deprivation of liberty

Any person who unlawfully confines or detains another in any place against the other person's will, or otherwise unlawfully deprives another of the other person's personal liberty, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

255 Duty of persons arresting

- 1) It is the duty of a person executing any process or warrant to have it with him or her, if reasonably practicable, and to produce it if required.
- 2) It is the duty of a person arresting another, whether with or without warrant, to give notice, if practicable, of the process or warrant under which the person is acting or of the cause of the arrest.
- 3) A failure to fulfil either of the aforesaid duties does not of itself make the execution of the process or warrant or the arrest unlawful, but is relevant to the inquiry whether the process or warrant might not have been executed or the arrest made by reasonable means in a less forcible manner.

Stealing

390 Things capable of being stolen

Anything that is the property of any person is capable of being stolen if it is:

- a) Moveable; or
- b) Capable of being made moveable, even if it is made moveable in order to steal it.

391 Definition of stealing

- 1) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to the person's own use or to the use of any other person anything capable of being stolen, is said to steal that thing.
- 2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if the person does so with any of the following intents, that is to say:
 - a) An intent to permanently deprive the owner of the thing of it;
 - b) An intent to permanently deprive any person who has any special property in the thing of such property;
 - c) An intent to use the thing as a pledge or security;
 - d) An intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;
 - e) An intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;
 - f) In the case of money—an intent to use it at the will of the person who takes or converts it, although the person may intend to afterwards repay the amount to the owner.

409 Definition of robbery

Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen, is said to be guilty of robbery.

418 Definitions

- 1) A person who breaks any part, whether external or internal, of a dwelling or any premises, or opens, by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window, shutter, cellar, flap, or other thing, intended to close or cover an opening in a dwelling or any premises, or an opening giving passage from one part of a dwelling or any premises to another, is said to break the dwelling or premises.
- 2) A person is said to enter a dwelling or premises as soon as any part of the person's body or any part of any instrument used by the person is within the dwelling or premises.
- 3) A person who obtains entrance into a dwelling or premises by means of any threat or artifice used for that purpose, or by collusion with any person in the dwelling or premises, or who enters any chimney or other aperture of the dwelling or premises permanently left open for any necessary purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the dwelling or premises.

Premises includes:

- a) A building or structure and a part of a building or structure other than a dwelling; and
- b) A tent, caravan, or vehicle; and
- c) Any similar place.

419 Burglary

- 1) Any person who enters or is in the dwelling of another with intent to commit an indictable offence in the dwelling commits a crime.
Maximum penalty—14 years imprisonment.
- 2) If the offender enters the dwelling by means of any break, he or she is liable to imprisonment for life.
- 3) If:
 - a) The offence is committed in the night; or
 - b) The offender—
 - (i) Uses or threatens to use actual violence; or
 - (ii) Is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance; or
 - (iii) Is in company with 1 or more persons; or
 - (iv) Damages, or threatens or attempts to damage, any property; the offender is liable to imprisonment for life.
- 4) Any person who enters or is in the dwelling of another and commits an indictable offence in the dwelling commits a crime.
Maximum penalty—imprisonment for life.

469 Wilful damage

Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence which, unless otherwise stated, is a misdemeanour, and the person is liable, if no other punishment is provided, to imprisonment for 5 years.

Force to prevent crime

Reasonable and proportionate force may be used to prevent the commission of an offence if the offence provides for arrest without warrant: s266

Trespass

Literally millions of people enter and leave property every day. The basis upon which they may enter the property and (potentially) be removed will vary.

Contract

In this case the person entering has usually paid to enter the property and the occupier / owner of the property owes an implied warranty that the premises are safe. That person's right to remain on the property can be removed by the owner, occupier or their agent simply by telling them to leave. The person then becomes a trespasser if they stay.

Invitee

This is the usual category for an entrant to property who enters for the mutual benefit of that person and the owner / occupier. A shopping centre or a hotel are examples of premises that benefit from inviting people to enter. That person's right to remain on the property can be removed by the owner, occupier or their agent simply by telling them to leave. The person then becomes a trespasser if they stay.

Licensee

This entrant to the property has gone onto the property for their own and not the owner / occupier's material benefit, e.g. a guest entering for a social purpose. The right to be on the property can be removed by telling them to leave. The person then becomes a trespasser if they stay.

Trespasser

A person who enters uninvited and whose presence is unknown or if it was known they were entering, it would be resisted. A trespasser also includes the person who has entered under any of the other categories (contractual, invitee or licensee) and had their authority to be on the property withdrawn. Previously an owner / occupier only owed the same duty towards a trespasser as they owed to "common humanity", but now the liability is governed by the general laws of negligence.

277 Defence of premises against trespassers - removal of disorderly persons

- 1) It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to prevent any person from wrongfully entering upon such land, structure, vessel, or place, or in order to remove therefrom a person who wrongfully remains therein, provided that he or she does not do grievous bodily harm to such person.
- 2) It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person acting by his or her authority, to use the force that is reasonably necessary in order to remove therefrom any person who conducts himself or herself in a disorderly manner therein, provided that he or she does not do the person grievous bodily harm.
- 3) In this section:
Place includes any part of an enclosure or structure, whether separated from the rest of the enclosure or structure by a partition, fence, rope, or any other means, or not.

274 Defence of moveable property against trespassers

It is lawful for any person who is in peaceable possession of any moveable property, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to resist the taking of such property by a trespasser, or in order to retake it from a trespasser, provided that the person does not do grievous bodily harm to the trespasser

Licensed Venues in Queensland

The Queensland Liquor and Gaming Commission (QLGC) is an independent statutory body under the provisions of the Gaming Machine Act 1991, Liquor Act 1992 and the Liquor Regulation 2002. The Commission typically meets at the Office of Liquor and Gaming Regulation's office in Brisbane at least once and possibly twice per month subject to need.

Functions and responsibilities of the Commission

- Grants, cancels and suspends gaming-related licences including:
 - Gaming machine licences
 - Monitoring operator's licences
 - Major dealer's licences
- Sets the maximum number of machines operable at sites
- Approves applications to increase the number of gaming machines that can be operated by licensees and other administrative approvals
- Sets permitted hours of gaming at sites and other operational conditions
- Grants, suspends, cancels and imposes conditions in regard to liquor licences of significant community impact
- Considers applications for the permanent extension of trading hours and to vary the conditions on certain licences, for example, increase noise limits in relation to liquor licences for commercial hotels, community clubs and nightclubs

Liquor legislation and regulations

The primary piece of legislation for the licensed premises in Queensland is the Liquor Act 1992. Other legislation has also been developed to further support members of the liquor industry, for example Liquor and Other Legislation Amendments Act 2010.

Liquor compliance officers

The Office of Liquor and Gaming Regulation at the Department of Justice and Attorney-General (DJAG) regulates the liquor industry under the *Liquor Act 1992* and monitors licensees' compliance with the conditions, responsibilities and obligations of their respective licences. OLGR compliance officers conduct proactive, educational and investigative activities such as:

- Proactive risk assessments of licence applications prior to a licence being issued
- Proactive educational assistance to licensees, other regulatory authorities and the public
- Compliance investigations of premises during daytime hours and peak trading hours at night
- Investigations into complaints made by members of the community and from information provided by the Queensland Police Service, peak industry bodies and licensees

OLGR compliance officers are located throughout Queensland.

Security in licensed venues

Venues often engage a security firm to provide appropriately licensed personnel to avoid, reduce or address violent or otherwise poor patron behaviour. Best practice for safety in licensed venues encourages licensees to adopt more demanding criteria when choosing a security firm and suggests ways to create and implement an appropriate selection process. According to the *Liquor Act 1992* and Liquor Regulation 2002, licensees must maintain a safe environment for patrons and staff. The *Security Providers Act 1993* and Security Providers Regulation 2008 states:

- Security provider licences are to be held by the security firm and its proprietors
- A security firm must be a member of an approved security industry association
- Crowd controllers who work for a security firm must be licensed
- Licence applicants must meet 'appropriate person' tests, including criminal record check
- Licensed security firms and their crowd controller staff are bound by codes of practice, which set ethical and professional standards

Engaging a security firm to provide specialist security staff and services is a legitimate, acceptable and commonly used practice, but employing a security firm does not absolve the licensee of the legal obligation to provide venue safety. Competent security staff and appropriate procedures are critical to venue safety. Security services and standards should remain subject to the direction and scrutiny of the licensee. The process of selecting a licensed security firm should be thorough, a security firm should not be selected based on price alone.

Responsible service of alcohol

To ensure a consistent approach to Responsible Service of Alcohol (RSA) across the industry, many staff, managers and licensees are required to undertake RSA training. Those people under a packaged liquor licence, a general licence or an on-premises licence (as well as their late night equivalents) are required to undertake the training. For other licence categories, it is not automatically mandatory, although some venues will have it listed as a condition on their licence. Infringement penalties apply where RSA requirements are not met.

Minors and identification

Licensees have a responsibility to understand the law and how it relates to minors. A minor is a person who is under 18 years of age. Under the *Liquor Act 1992*, a minor is not permitted to be on licensed premises. It is a licensee's responsibility to ensure that minors do not gain entry to licensed premises. The exceptions are if the minor is a resident, employee, person conducting a lawful business, undertaking training or work experience, at a function, eating a meal, or accompanied by a responsible adult. However, there are also restrictions around each of these categories of minor. If minors are found on the premises, the licensee (and their staff) may be prosecuted and fined up to \$10,000.

Identification (ID)

Four forms of ID are acceptable in licensed venues:

- A current driver licence or learner permit
- A current passport (from any country)
- An Australian Government-issued proof of age card (18+ card)
- A Victorian Keypass

A foreign driver's licence is accepted as evidence of age, providing it has a photo and the date of birth of the licence holder.

Confiscating ID documents

Suspected fake, defaced or falsely presented documents should be confiscated and forwarded to OLGR as soon as possible, with an ID confiscation report for further investigation.

Australian identification checking toolkit

The Australian identification checking toolkit helps licensees and their staff to prevent underage drinking in their venues. The toolkit consists of a booklet, the Australian ID Checking Guide and a black / UV light.

Responsible alcohol advertising and promotions

Drink promotions and happy hours may contribute to excessive and rapid consumption of alcohol if not adequately controlled. Requirements for conducting drink promotions were introduced in 2006 to ensure such activities are conducted responsibly. Drink promotions and happy hours are still able to be held, as long as they are conducted in a responsible manner. Happy hours are permitted in licensed venues outside the Brisbane City Council area, but cannot be advertised externally. Licensees within the Brisbane City Council area are subject to further restrictions.

Advertising ban on drink promotions

The following are examples of what must not be advertised external to the licensed premises:

- Free drinks
- Multiple quantities of liquor - for example; two for one, six drinks for a certain price
- The sale price of liquor
- Any type of drinking promotion - for example; happy hours, all you can drink, toss the boss

Advertising of discounted drinks and / or drink promotions may still occur inside the premises, but only if it is not visible or audible to a person who is outside the premises.

Promotional activities involving liquor prizes

Reward promotions such as a raffle where the prize is free liquor or 'buy one get one free' promotions may still be held, provided they do not encourage excessive consumption of liquor or promote intoxication. This does not restrict low-risk promotions, such as 'beer of the

month' brand switching to encourage the trial of a new product or loyalty reward programs that are conducted over more than one trading day.

The following principles provide licensees with a quick reference guide for responsible advertising and promotion of liquor.

- The advertising or promotion of liquor should not provide incentives that could lead to the rapid or excessive consumption of liquor, such as drinking games, competitions, dares or challenges that involve rapid or excessive consumption of liquor
- The advertising or promotion of liquor should not encourage the stockpiling of drinks by the consumer for consumption at the licensed premises. This includes promotions that encourage or reward the purchase of, or drinking of, large amounts of liquor in a single session or transaction
- The advertising or promotion of liquor should not involve the availability of non-standard sized drinks or the availability of liquor in receptacles that encourage rapid drinking. For example; serving liquor in a yard glass for 'skulling' or pouring liquor straight into patrons' mouths (e.g. pouring liquor directly from a bottle or shooting liquor from a water pistol)
- The advertising or promotion of liquor must not condone or encourage rapid or excessive drinking, drunkenness or anti-social behaviour, such as the advertising or promotion of events that focus mainly on the excessive consumption of liquor (binge-drinking as part of end of sporting season celebrations, such as 'Mad Monday' or end of school year celebrations, such as 'Schoolies Week' or 'after parties')
- The advertising or promotion of liquor involving 'happy hours', free drinks or discounted drinks must have reasonable limits and controls to minimise the risk of rapid, excessive or irresponsible consumption of liquor, such as promotions involving extreme discounts (e.g. \$1 shots of spirits) or excessive periods of free drinks (e.g. \$50 entry and free drinks all night)
- Where limited free liquor is advertised or promoted as ancillary to a product or service, the advertising or promotion must not place the free liquor as the primary focus. Advertising must not focus exclusively on free alcohol where there are other activities to promote
- Where the advertising or promotion involves the inclusion of unlimited liquor within the entry price, the advertising or promotion must be consistent with responsible service of alcohol practices. This pertains to advertising or promotions that explicitly focus on the 'all you can drink' element of the event by using terminology such as 'drink till you get smashed' or 'drink your money's worth'

Barring problem customers

Generally, three levels of bans can be imposed:

- Court imposed bans
- Venue bans - a licensee bans a person from their venue
- Group venue bans where licensees collaborate on local safety issues and each licensee imposes bans that prevent a person from entering any licensed premises in the specific district or town

A venue placing a ban on a person, when it can be justified, is a legitimate risk management approach. Natural justice, procedural fairness and privacy rights should apply to bans. Fair and efficient banning policies and procedures may be a deterrent to potential troublesome patrons.

General powers to refuse a person entry to a premises

Every licensee is able to refuse entry to any person as long as the reason is not discriminatory. The licensee also has the right to ask any person to leave their licensed premises. No special laws or forms are required to do this, but if a patron continues to be a

problem or if a particular incident is severe enough, the licensee may wish to carry out one of the more formal options.

Designated outdoor smoking area (DOSA)

A DOSA is a dedicated outdoor licensed area where a person may take a drink and have a cigarette break before returning to their group or companion. While drinks taken into the DOSA may be consumed, the supply of alcohol, food or entertainment to a person in a DOSA is prohibited.

If a licensee chooses to have a DOSA, they need an up-to-date Smoking Management Plan. Refer to *Tobacco and other Smoking Products Act 1998*. A DOSA should be managed so that it is used only as intended by law. The DOSA should be kept clean and presentable. A common complaint is when excessive noise emanates from a DOSA. A DOSA is not a de facto beer garden.

Best practice:

- Keep patrons aware of the purpose and the permitted use of a DOSA
- Manage the DOSA to avoid risks to the safety of patrons and staff, such as loitering, overcrowding or boredom
- Where a DOSA becomes a prominent factor in the venue's risk profile, ban the consumption of alcohol after 6pm or make it a permanent 'smoking only' area
- Where these best practice principles are inconsistent with a legal standard under the Liquor Act or Liquor Regulation that specifically applies to the venue, including a condition of licence, then the licensee is obligated to follow that legal standard
- Encourage patrons to return to other areas once they finish their cigarettes
- Have signs which tell patrons about the purpose of the DOSA
- Reduce the opportunity for patrons to observe or hear entertainment
- Provide furnishings consistent with its intended legal use
- Allocate security staff to assure compliance with the law and to monitor patron behaviour

Courts in Queensland

Magistrates Court

A Magistrates Court does not have a jury. It deals with civil matters with a financial threshold of \$250,000 and minor criminal matters.

It also hears 'prima facie' evidence for indictable criminal offences. In order for a prosecution to proceed, the police and the accused (defendant) must present a summary of their case to a magistrate. Not all the evidence is heard, but there will be a sufficient argument put forward from both parties for the magistrate to decide if there is sufficient grounds for the case to proceed to a full trial. The trial will take place in the District Court or Supreme Court, depending on the seriousness of what has taken place.

A security officer may be asked to attend Magistrates Court as a witness. The court is presided over by a judge who should be referred to as: 'Your Honour'. In a serious criminal case, the accused is first charged in a Magistrates Court. The magistrate will determine if there is sufficient evidence to justify a trial before sending the matter to trial at a higher court. This is called a *committal for trial*. In the instance of a criminal case, the magistrate determines guilt or innocence and also the penalty.

District Court

Once a 'prima facie' case has been made, the full trial and all the evidence may be heard in the District Court. The District Court also hears and determines civil matters where the amount in dispute is over \$250,000.

Appeals against a Magistrates Court decision are also heard in the District Court. The judge is a District Court judge and is referred to as 'Your Honour'. In criminal cases, a jury decides guilt or innocence and the judge sets the penalty. In civil matters the judge usually decides without a jury.

Supreme Court

The Trial Court and the Court of Appeal are the two divisions of Queensland's Supreme Court. Presiding over the court is a justice of the Supreme Court. The justice is referred to as 'Your Honour'. The Supreme Court hears serious criminal offences including murder and serious drugs offences.

The trial division of the Supreme Court must use a jury to determine guilt or innocence in criminal cases. Civil cases are usually heard by a judge without a jury. Appeals go before the Court of Appeal and are heard by three justices of the Supreme Court. All District Court and Supreme Court appeals go directly to the Court of Appeal.



SECURITY OPERATIONS IN AUSTRALIA LEGISLATION – QUEENSLAND