

1. POLICE POWERS & RESPONSIBILITIES	SPECIAL POWERS	DEMANDING ID
<div>OFFENCE TYPES</div> <div>CLASSIFICATION OF OFFENCES</div> <p>CC divides offences into 4 categories:</p> <div><div><div>1. Crimes;</div><div>2. Misdemeanours;</div><div>3. Simple offences; and</div><div>4. Regulatory offences.</div></div><div><div>Criminal offences</div><div>s3(2) CC</div></div><div><div>Indictable offences – s3(3) CC</div><div>Summarily convicted in Magistrates Crt = s3(4) CC</div></div></div> <div>STEP 1 - Is it a crime or a misdemeanour?</div> <div>STEP 2 - If it's not a crime or a misdemeanor it will be a simple offence, which is a non-indictable offence. Section 3(5) CC says that if its not designated as crime or misdemeanor it's a simple offence = not indictable. Summary offences dealt with summarily, regulatory offences, simple offences = they're all simple lower court non indictable offences. People use interchangeably.</div> <div>STEP 3 – WHY do we look at whether there is an indictable offence?</div> <ul style="list-style-type: none">Because they are more series types of offences, generally police powers in relation to indictable offences are greater than they are for summary offences or simple offences.There is an important policy imperative in trying to protect the community against such serious offences.Want to give police every opportunity to investigate & enforce legislation & convict if guilty.That's why the powers in relation to indictable offences are sometimes much broader than non indictable offences.When go through the police powers and responsibilities act, sometimes there's reference to powers that only exist for indictable offences. So you need to always make reference and check whether its indictable or not.The level of court where the matter will be finalized can differ depending on whether its indictable or not.. Can NOT will.Every time someone commits an offence, after they deal with police the first thing that happens they come to the magistrates court or the local court.Every single matter comes to the Mag court even the most serious crimes, even murder.A magistrate can't deal with or finalize a murder charge. It has to go up to a higher court for finalization, for disposition.Generally non indictable offences, can be, or will be or must be disposed of in a lower court. Whereas indictable offences can be or will be or must be disposed of in higher court.Statutes of limitations apply to non-indictable offences but not indictable offences.For non indictable offences it stipulates in the Justices Act that a charge must be brought within 1 year of the offending conduct. So if the police are out of time, if they exceed that 1-year it's too bad. That person gets away, if it's non indictable.If it's indictable that's not the case. no statute of limitations applies to an indictable offence. <div>CONSENT</div> <div>First check consent!</div> <p>Submission is not voluntary or consensual , unless it is made clear that that they have the right to refuse – MUST BE FREELY GIVEN (<i>Dedman v The Queen</i>)</p> <div>SOURCES OF LAW</div> <ul style="list-style-type: none">Police Powers and Responsibilities Act 2000 (Qld) (PPRA)Police Powers and Responsibilities Regulation 2012 (Qld) (PPRR)Police Responsibilities Code (PRC) found in Schedule 9 of the PPRRCommon Law <div>GENERAL POWERS</div> <p>Police Officers (PO) have the same powers as ordinary citizens. They can ask people to stop and answer questions, accompany them to the police station or to hand over items. If a citizen consents (and consent is freely given) there is no requirement for any special power. Special powers are required where a citizen refuses to comply with a police request. Without a special power police would theoretically be liable to be prosecuted in the same way as anyone else who interferes with your person, liberty or property.</p>	<p>NO special powers at CL that allow POs to stop persons, demand identification or compel persons to be searched (<i>Rice v Connolly</i>). So gov. legislated to assist POs in law enforcement role, limiting rights of refusal in certain circums. However, if PO's act outside any special or general powers, the PO's behaviour may be unlawful, evidence obtained as a result of the PO conduct may be excluded or offences allegedly committed against the PO may not stand.</p> <div>STANDARD OF PROOF</div> <div><div><div>Reason. Belief</div><div>Reasonable Suspicion</div><div>No Standard</div></div><div>IN QLD MOST OF THE POLICE POWERS ARE ON THE BASIS OF REASONABLE SUSPICION = <i>George v Rockett</i></div></div> <div>Reasonable Belief (RB)</div> <ul style="list-style-type: none">Believe on grounds that are reasonable under the circumstances (Sch 6 PPRA); higher standard than Reasonable Suspicion (RS)RB is <i>'the assent of belief is given on more slender evidence than proof. Belief is an inclination of the mind towards assenting to, rather than rejecting, a proposition'</i> (<i>George v Rockett</i>) <div>Reasonable Suspicion (RS) (reasonableness is an objective standard – made at time of PO making the assessment – not looking back)</div> <p><i>'A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to a "slight opinion", but without sufficient evidence... Consequently, a reason to suspect that a fact exists is more than a reason to consider or look into the possibility of its existence.'</i> (Kitto J in <i>Queensland Bacon Pty Ltd v Rees</i> (1966) 115 CLR 266 at 303 - Quoted in <i>George v Rockett which is HCA case</i>)</p> <ul style="list-style-type: none">Def'd in Sch 6 of PPRA - Suspects on grounds that are reasonable under circumstances (doesn't define so have to base in case law)MUST use this TEST where you see words reasonable suspicionYou need to say there's a suspicion & you need to say why its reasonable based on factsIncorporates the objective standardConsequently, a reason to suspect that a fact exists is more than a reason to consider or look into the possibility of its existenceNot applicable for breath tests s60 Stopping vehicles for prescribed purposes PPRAThis isn't beyond reasonable doubt, we are not determining whether someone is guilty or not. Just determining whether the police can exercise a particular power. So we are not concerned with the usual evidentiary rules that might exclude certain things in court.CAN rely on Hearsay to establish reasonable suspicion – from either other PO's or public (<i>O'Hara v Chief Constable of the RUC</i> [1997] AC 286)CANNOT rely on mere orders from a superior (<i>O'Hara v Chief Constable of the RUC</i>): PO have to form RS in their own mind based on what they are told from other PO's. HELD: was allowed due to reasonable suspicion of O'Hara's involvement.CANNOT rely on physical characteristics to form reasonable suspicion = <i>Nguyen v Elliot: Dobbs v Ward</i>: related to whether a justice had reasonable grounds for suspecting evidence of the commission of an offence would be at a property when issuing a search warrant. Suspicion found both <u>not</u> reasonable & reasonable for some items of property <div>NO STANDARD</div> <p>So long as POs exercise in accordance with scope & object of the statute they are ok</p> <ul style="list-style-type: none">Discretion must be exercised in accordance with 'the scope and object of the statute' (<i>Barton v The Queen</i>). <div>REASONABLENESS = Objective standard as at the time of the determination</div> <ul style="list-style-type: none">Reasonableness depends on credibility of source, proximity of suspect, behaviour of suspect, any conflicting facts etcCAN rely on hearsay to establish reasonableness (<i>O'Hara v Chief Constable of the RUC</i>)PO's have to make own determination – cant rely on others telling them it is reasonable!	<div>SECTION 40 - Person may be required to state name and address</div> <ul style="list-style-type: none">Police can request name and address under prescribed circumstances = s40(1) PPRAs41 Prescribed circumstances for requiring name and address<ul style="list-style-type: none">(a) PO finds the person committing an offence;(b) PO reasonably suspects the person has committed an offence, incl. extradition offence;(g) PO reasonably believes that obtaining info is necessary for enforcement or admin. of any Act prescribed under a regulation for this section(k) - A person is in a vehicle which is stationary on the road, or has been stopped under s60 (eg for 60(3)(a) enforcing a transport Act (b) to check whether the vehicle complies, or the person is complying, with a transport Act (c) for monitoring or enforcing a liquor provision; (d) enforcing a contravention of law involving putting, dropping and leaving litter on a public place from a vehicle (e) to conduct a breath test or saliva test)Police can request proof of name and address = s40(2) PPRAFailure to comply with a request is an offence = s791 PPRA Offence to contravene direction or requirement of POBUT – if later found did not commit the offence/not the person named in the warrant/could not help the investigation – no offence s40(3) PPRANote also possible offence under s790 PPRA Offence to assault or obstruct police officerUnless police are exceeding their powers under the PPRA/act outside their lawful duties NOTE: s41 has different standards) – both RB & RS that are required in these tests!! <div>STOPPING VEHICLES – s60 STOPPING VEHICLES FOR PRESCRIBED PURPOSES</div> <ul style="list-style-type: none">s60(1) Person may be required to stop the vehicle for a prescribed purposeSection 60(3) – P prescribed purposes:<ul style="list-style-type: none">(a) enforcing a transport Act (b) to check whether the vehicle complies, or the person is complying, with a transport Act (c) for monitoring or enforcing a liquor provision;(d) enforcing a contravention of law involving putting, dropping and leaving litter on a public place from a vehicle (e) to conduct a breath test or saliva test (f) investigate the emission of excessive noise (g) give a noise abatement direction <div>EXCEPTION UNDER s60(2) if person has reasonable excuse eg if would endanger the person</div> <div>PO'S CANNOT SEARCH UNDER THIS PROVISION, BUT CAN STOP YOU UNDER THIS PROVISION</div> <div>SEARCHING VEHICLES</div> <div>SECTION 31 - Searching vehicles without warrant</div> <ul style="list-style-type: none">(1) PO's can stop, detain (the vehicle & occupants) & search vehicle (& anything in it) for anything relevant that is reasonably suspected to exist in prescribed circumstances (stolen car, driver has a history of drug charges etc) OR(2)(a) If reasonably suspect vehicle i& anything in it if is being used unlawfully/person in it may be arrested without warrant/under a prison warrant(3) driver or a passenger in the vehicle is arrested for an offence so PO may search w/o a warrant and detain the vehicle and anyone in it <div>TO USE THIS PROVISION OCCUPANTS MUST BE INSIDE THE VEHICLE (R V KEEN [2015] QSC 7) =</div> <p>People in car police suspected drug traffickers. Problem was the car was parked at the servo.PO's approach the occupants who had just been to the toilet = not in the car and so NOT occupants. Issue was that the PO's were using this provision to get around the search warrant requirements They should have cordoned off car and told the passengers not to approach and await a warrant.</p> <div>TO USE THIS PROVISION THE VEHICLE NEEDS TO BE DETAINED – IT IS AN EXCEPTION TO THE REQUIREMENT FOR A SEARCH WARRANT</div> <div>SECTION 32 - Prescribed circumstances for searching vehicle without warrant</div> <ul style="list-style-type: none">Need reasonable suspicion to search a car. Circumstances:<ul style="list-style-type: none">(a) may be a weapon or explosive or thing under AVO person prevented from having (b) antique firearm & person is not a fit and proper person to possess firearm (c) unlawful dangerous drug (d) may be stolen property (e) unlawfully obtained property (f) been used/ is being used/intended to b used as an implement of housebreaking or stealing a vehicle. <div>POLICE WILL USUALLY ARGUE THEY WERE STOPPED UNDER S 60 NOT S31 BECAUSE S31</div> <div>REQUIRES REASONABLE SUSPICION TO STOP THEM IN THE FIRST PLACE. BUT AFTER STOPPED THEY CAN DEVELOP REASONABLE SUSPICION TO THEN USE S31 FOR SEARCH.</div>

ENTERING A PUBLIC/PRIVATE PLACE	SEARCH WARRANTS	SEARCH PERSON IN CUSTODY
<div>CONSIDER RIGHT TO PRIVACY - AND DISTINCTION BETWEEN PUBLIC PLACE AND PRIVATE PLACE (PARTICULARLY DWELLINGS). DEFINED in Sch 6 –</div> <div>- Public Place = place to which public have access as of right, or part of a place, which occupier allows public to enter at certain time eg beaches, rd, parks, movie, theatre, malls, restaurant etc</div> <div>- place = includes a premise, vacant land, a vehicle etc</div> <div>- premise = includes building or structure, or part of a building or structure, group of buildings or structures, vehicle/caravan tent/cave; and premises held under 2 or more titles or owners.</div> <div>- dwelling = includes building or other structure, part of a building or other structure, kept by owner/occupier as a residence 4 the owner/member of owner’s family or employee of owner.</div> <div>SECTION 19 - GENERAL POWER TO ENTER TO MAKE INQUIRIES, INVESTIGATIONS/SERVE DOCS</div> <div>s19(3): Can enter a place and stay for a reasonable time to inquire into or investigate a matters</div> <div>s19(4): or to serve a document</div> <div>s20: Reasonable time: Ask questions of anyone present in the place and make any reasonable investigation or observation. A time that is appropriate in the circumstances.</div> <div>- Usually excludes private places: s19(2)</div> <div>- Excludes dwellings: s19(5) – PO’s cannot enter/make enqu/invest/serve docs w/o consent</div> <div>SECTION 21 - GENERAL POWER TO ENTER, ARREST, DETAIN SOMEONE OR ENFORCE WARRANT</div> <div>(1) A PO may enter a place and stay for a reasonable time on the place—</div> <div>(a) to arrest without warrant (b) arrest a person named in a warrant</div> <div>(2) Can only enter dwelling, w/o owners consent if officer reasonably suspects that person is in the dwelling that they want to arrest.</div> <div>You need to consider whether the place you are talking about them going into is a private place, like a house or a dwelling or whether it’s a public place. Because that concept of privacy is obviously going to be much more limiting in terms of entering aprivate dwelling. But for public places police have every wide-ranging powers.</div>	<div><div><div>Application</div><div>Issue</div><div>Form</div><div>Execution</div></div><div>R v Inland Revenue Commission: document issued by person in authority under power conferred in that behalf authorizing the doing of an act which would otherwise be illegal</div><div>APPLICATION - SECTION 150 - Search warrant application</div><div>1. Made by PO</div><div>2. Must be sworn and state grounds</div><div>3. Application details outlined in s3 PRC (found in Sched 9 of PPRR) including:</div><div>(a) applicant’s name, rank, registered number & station (b) description of the place to be searched (f) a description of nature of thing sought that is reasonably suspected of being evidence of (i) the commission of the offence; or (ii) the confiscation related evidence in relation to theconfiscation related activity (g) information/evidence relied on to support contention of reasonable suspicion that evidence of the commission of an offence is at the place, or likely to be within 72 hrs</div><div>ISSUE - SECTION 150 PPRA – Who Issues?</div><div>• Normally JP; or</div><div>• Magistrate if it is evidence of the commission of an interstate indictable offence; or</div><div>• SC judge if may cause “structural damage” to building (R v Turner – used sledgehammer to get into concealed drugs cupboard, judge said no has to cause structural damage)</div><div>When can warrant be issued? - s151 PPRA</div><div>• If issuer satisfied that there are reasonable grounds for suspecting the evidence is there (valid for 7 days)/will be within 72 hours (valid for 72 hours)</div><div>• Must be disclosed on face of warrant (George v Rockett)</div><div>FORM - SECTION 156</div><div>• Must be specific as to when the warrant ends AND brief particulars of the offence (sufficient so that accused can see scope of what it involves & avoids a fishing expedition)</div><div>• If at night have to include the hrs at night AND the day and time it ends</div><div>• ‘One ... purpose of the [PPRA] is “to ensure fairness to, and to protect the rights of, persons against whom PO’s exercise powers under this Act.” In that context it is reasonable to construe the requirement for a statement of “brief particulars of the offence” as directed to ensuring that an individual affected is able to discern from the warrant itself the scope of the search authorised by it.’ R v Christensen [2005] QSC 279</div><div>EXECUTION - SECTION 157 – Powers under search warrant</div><div>Outlines general powers under the warrant including to:</div><div>• Enter & remain as long as necessary • Unlock things • Detain people to ascertain whether they have anything sought • Detain people suspected of the offence • Seize and/or photo if reasonably suspect as evidence of offence • Remove walls, ceiling linings/floors, doors etc</div><div>Additionally if specified they can: • search anyone found there for anything sought that is concealable on the person • cause structural damage</div><div>If damage done legally – then no recourse V’s If done illegally – you can pursue civil remedies!</div><div>Process in executing search warrants- s158 PPRA</div><div>• If occupier present – provide a copy along with approved statement</div><div>• If not present – leave copy in a ‘conspicuous place’</div><div>• Unless PO reasonably suspect that providing copy may frustrate or hinder any investigation (eg if police hand it over and this gives people time to call others in the house which would allow them to get away – they don’t need to hand it over)</div><div>SEARCH PERSON NOT IN CUSTODY</div><div>SECTION 29 PPRA – Searching persons W/O warrant</div><div>Police can stop, detain & search person/their possessions for anything relevant, if they have reasonable suspicion of prescribed circumstances (IF CANT FORM RS = Nguyen v Elliot)</div><div>SECTION 30 PPRA – Outlines the prescribed circumstances</div><div>eg (a)(i) person has something that may be a weapon/knife/explosive (ii) an unlawful or dangerous drug (iii) stolen property (iv) unlawfully obtained property; or</div><div>Section 29(2) PO can seize items if may provide evidence of commission of an offence/ or could be used to cause harm to someone</div></div>	<div>CHAPTER 16 - Search powers for persons in custody</div> <div>SECTION 442 - Application</div> <div>• MUST have been (a) lawfully arrested (b) in lawful custody (d) otherwise lawfully detained</div> <div>Section 443</div> <div>• Can search and re-search AND</div> <div>• seize:</div> <div>- (2) anything PO reasonably suspects may provide evidence of commission of an offence.</div> <div>- (3)(a) nything that may endanger someone’s safety (lighters, shoe laces) (b) that may be used for escape (c) anything else they reasonably consider should be kept while in custody</div> <div>Don’t need reasonable suspicion to search BUT do need reasonable suspicion to seize!</div> <div>RULES RE CONDUCTING SEARCHES</div> <div>CONDUCTING SEARCHES</div> <div>Section 615 – Power to use force when exercising a power under the PPRA</div> <div>Police, and anyone helping them, may use reasonably necessary force, but NOT force likely to cause death/GBH (unless it is a critical situation under s616 PPRA eg (1)(a) reasonably suspects offence punishable by life imprisonment (2)(a) reasonably suspects something likely to cause death/GBH to someone else).</div> <div>Section 624 - safeguards in searching eg (1)(a) causes min. embarrassment (b) protects dignity</div> <div>Section 629 - Outlines right to strip search all or from either upper or lower part of body.</div> <div>Section 630 - Outlines safeguards/procedures for strip searching eg same sex searching, supposed to allow a ½ to be covered ie the top half covered or bottom half etc</div> <div>Conduct which is not lawful may render a lawful search to become unlawful</div> <div>CONTRAVENTION OF POWERS</div> <div>• Police not acting within the execution of ‘their duty’</div> <div>- May act as defence to assault/obstruct charges</div> <div>- See Nguyen v Elliot – Guy had drug form, was aggressive etc and said ‘go on f...ing search me’. He resisted. He then resisted the arrest. As they failed to meet the reasonable suspicion element then the resisting arrest charge had to be dropped.</div> <div>• Police direction may not be ‘lawful’ – so no need to comply</div> <div>• Police themselves may be charged with an offence/be civilly liable (eg break and enter, assault/FI/deprivation of liberties)</div> <div>• Evidence obtained as a result of illegal conduct (ie not under a general/special power MAY be excluded BUT may be admitted IF:</div> <div>• Discretionary (judges choose whether to exclude)</div> <div>- Unfairness (under Statute and CL)</div> <div>- Public Policy (CL) (used for real evidence – tangible stuff)</div> <div>DISCRETIONS & EXCLUSIONS OF EVIDENCE</div> <div>1. It is contrary to public policy to admit evidence obtained improperly/unlawfully</div> <div>2. Applied in the interest of the public in general – protecting community confidence in the legal system and the rule of law</div> <div>3. May be used to EXCLUDE SOME (Bunning v Cross) or EXCLUDE ALL evidence (Ridgeway)</div> <div>4. "competing public requirements must be considered and weighed against each other. On the one hand there is the public need to bring to conviction the offenders on other hand the public interest in the protection of the in dividual from unlawful and unfair treatment." BvC</div> <div><div>Offender/offence characteristics:</div><div>- Nature/Seriousness of the offence (Ridgeway)</div><div>- ‘Degree of criminality’ and culpability of accused (Ridgeway)</div><div>- Cogency of the evidence (Bunning v Cross)</div><div>Seriousness/ gravity of police misconduct:</div><div>- Is conduct accepted/ encouraged by higher authority? (Ridgeway)</div><div>- Is this an institutional problem?</div><div>- Is legislation to curtail police behaviour drafted narrowly? (Bunning v Cross)</div><div>- Would it have been easy to comply with the law? (Bunning v Cross)</div><div>- Was law deliberately flouted/result of an honest mistake? (Bunning v Cross)</div></div>

