

Critical definitions in Queensland

➤ **In Queensland Reasonable grounds** is an objective criterion used to determine if a police officer has sufficient facts to suspect someone or something. In Queensland, police can use reasonable grounds to search people and vehicles without a warrant if they suspect:

- The person is involved in a criminal organization
- The person has a weapon or explosive
- The person has a dangerous drug
- The person has stolen property
- The person has evidence of an offense
- The person has an antique firearm without permission
- The person has a tool or item that could cause harm to someone
- The vehicle is being used unlawfully
- There is someone in the vehicle who may be arrested

The arresting officer must form the view based on objective circumstances, not on the assertion of another police officer.

➤ In Queensland, "**reasonable suspicion**" is a legal term that means a police officer has a factual basis to suspect that someone has committed an offense or has something illegal or dangerous on them or in their vehicle. Police can use reasonable suspicion to:

- Stop and search a person for:
 - A weapon
 - A dangerous drug
 - Stolen property
 - Tools to break into houses or cars

- Something that could hurt someone
- Evidence of an indictable offense
- Search a vehicle without a warrant or the driver's consent if they reasonably suspect:
 - The vehicle is being used unlawfully
 - There is a person in the vehicle who may be arrested
 - The vehicle contains something illegal or dangerous

Police cannot conduct arbitrary or random searches. They must have some factual basis to support their suspicion.

If you are stopped by the police, you can get legal advice from Legal Aid Queensland. You can call them to arrange for legal advice, and the police must delay starting the interview for a reasonable amount of time.

- In Queensland **Probable grounds, or probable cause**, is the reasonable belief that a crime has been or is being committed. It's the threshold at which law enforcement officers have enough evidence to take specific actions, such as: Charging someone with a criminal offense, conducting a search, Obtaining search warrants, and Making arrests.

In Queensland, police can conduct personal searches without a warrant in some circumstances, including:

- The person is a participant in a criminal organisation
- The person has a weapon or explosive in their possession
- The person has a dangerous drug on their person

Police can also legally perform a vehicle search if they have: A warrant, The driver's permission, and Reasonable suspicion of illegal activity.

Reasonable and probable grounds are based on tests of objectivity, incorporating rationality and proportionality. However, they are open to interpretation and depend on the person exercising the power.

Local Government Act 2009

➤ 128 Entering a public place that is open without the need for permission.

- (1) This section applies if an authorised person wants to enter a public place to ensure that the public place complies with the Local Government Acts.
- (2) The authorised person may enter the public place, without the permission of the occupier of the place, if the place is not closed to the public (by a locked gate, for example).

➤ 129 Entering private property with, and in accordance with, the occupier's permission

- (1) An authorised person may enter private property, that is not closed to entry by the public (by a locked gate, for example), in order to ask the occupier of the property for permission to stay on the property and exercise powers under a Local Government Act.
- (2) When asking the occupier for permission, the authorised person must inform the occupier—
 - (a) of the purpose of entering the property; and
 - (b) that any thing or information that the authorised person finds on the property may be used as evidence in court; and
 - (c) that the occupier is not obliged to give permission.
- (3) If the occupier gives permission, the authorised person may ask the occupier to sign a document that confirms that the occupier has given permission.
- (4) The document must state—
 - (a) that the authorised person informed the occupier—

- (i) of the purpose of entering the property; and
- (ii) that any thing or information that the authorised person finds on the property may be used as evidence in court; and
- (iii) that the occupier was not obliged to give the permission; and
- (b) that the occupier gave the authorised person permission to enter the property and exercise powers under a Local Government Act; and
- (c) the date and time when the occupier gave the permission.
- (5) If the occupier signs the document, the authorised person must immediately give a copy of the document to the occupier.
- (6) If, in any proceedings—
 - (a) a question arises as to whether the occupier of a property gave permission to allow an authorised person to stay on the property under this Act; and
 - (b) a document that confirms the occupier gave permission is not produced in evidence;
the court may assume that the occupier did not give the permission, unless the contrary is proved.
- (7) If the occupier gives permission, the authorised person may stay on the property and exercise the powers that the occupier has agreed to be exercised on the property.
- (8) However, the right to stay on the property—
 - (a) is subject to any conditions that the occupier imposes (including about the times when the property may be entered, for example); and
 - (b) may be cancelled by the occupier at any time.

➤ **130 Entering private property with, and in accordance with, a warrant**

- (1) An authorised person may enter private property with, and in accordance with, a warrant.
- (2) An authorised person must apply to a magistrate for a warrant.
- (3) The application for the warrant must—

- (a) be in the form approved by the department's chief executive; and
 - (b) be sworn; and
 - (c) state the grounds on which the warrant is sought.
- (4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information that the magistrate requires about the application, in the way that the magistrate requires.

Example—

The magistrate may require additional information in support of the application to be given by statutory declaration.

- (5) The magistrate may issue the warrant only if the magistrate is satisfied that there are reasonable grounds for suspecting—
- (a) there is a particular thing or activity that may provide evidence of an offence against a Local Government Act (the **evidence**); and
 - (b) the evidence is at the place, or may be at the place within the next 7 days.
- (6) The warrant must state—
- (a) the evidence for which the warrant is issued; and
 - (b) that the authorised person may, with necessary and reasonable help and force, enter the property and exercise an authorised person's powers under this Act; and
 - (c) the hours of the day or night when the property may be entered; and
 - (d) the day (within 14 days after the warrant's issue) when the warrant ends.
- (7) The magistrate must keep a record of the reasons for issuing the warrant.
- (8) A warrant is not invalidated by a defect in the warrant, or in compliance with [section 131](#), unless the defect affects the substance of the warrant in a material particular.
- (9) As soon as an authorised person enters private property under a warrant, the authorised person must do, or make a reasonable attempt to do, the following things—
- (a) inform any occupier of the property—

- (i) of the reason for entering the property; and
- (ii) that the warrant authorises the authorised person to enter the property without the permission of the occupier;
- (b) give any occupier a reasonable opportunity to allow the authorised person to immediately enter the property without using force.
- (10) However, the authorised person does not need to comply with subsection (9) if the authorised person believes that immediate entry to the property is required to ensure the warrant is effectively executed.

➤ **149 Obstructing local government officials**

- (1) A person must not obstruct a local government official in the exercise of a power under this Act or a local law, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A **local government official** is any of the following persons—

- (a) the mayor;
- (b) the chief executive officer;
- (c) an authorised person.

- (3) A person must not obstruct a local government worker in the exercise of a power under [part 2, division 2](#), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

Notes—

1 Local government workers are only those employees and agents of a local government who are authorised to act under [chapter 5, part 2, division 2](#).

2 In particular circumstances a local government worker may enter a property and carry out work or obtain materials in compliance with [chapter 5, part 2, division 2](#).

(4) If a person has obstructed a local government official or local government worker and the official or worker decides to proceed with the exercise of the power, the official or worker must warn the person that—

(a) it is an offence to obstruct the official or worker, unless the person has a reasonable excuse; and

(b) the official or worker considers the person's conduct an obstruction.

(5) A person must not pull down, damage, deface or destroy a board or anything else that is displaying a local law, order, notice or other matter authorised by a local government.

Maximum penalty for subsection (5)—35 penalty units.