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LEGAL PRACTICE



Protesting lawfully in Queensland: the law, the process and the risks involved

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The right of peaceful assembly, commonly referred to protesting, is considered a key pillar of a democratic society. It is an article of the International Covenant on Civil and Political Rights, to which Australia is a signatory. A non-violent and non-threatening protest is an example of a peaceful assembly. In Queensland, the right to assemble peacefully in a public place is recognised in the *Peaceful Assembly Act 1992* ('the Act').

Does a public assembly need to be authorised?

As the Act establishes a right to assemble peacefully, a public assembly can take place without being authorised by the police.

However, doing so places those taking part at greater risk of unfriendly police contact, than an authorised assembly. It is more likely that the police will attend any unauthorised protest and ask you to 'move on from the area' or charge participants with offences.

While simply gathering peacefully outside should not ordinarily breach the law, it is impossible to consider every possible scenario and every possible offence that might be relevant.

An example is that involvement in an unauthorised public assembly could result in a charge of obstruction. It is a traffic rule that a pedestrian must not cause a traffic hazard or unreasonably obstruct the path of any driver or another pedestrian. If a person does this, they break the traffic rules and can be fined up to 20 penalty units (currently $2,669).

How do I get a public assembly authorised?

An authorised public assembly is a process set out in the Act that requires members of the public to advise the police and the local council about any planned protest before it takes place.

There is significant benefit in obtaining authorisation for a public assembly. For example, the police do not have the power to issue protesters participating in an authorised public assembly with a direction to move on from the area. Certain other offences that may often be applicable also do not apply if the assembly is authorised.

Give appropriate notice of a planned peaceful assembly

In order to have a public assembly authorised in Queensland, at least five business days before the assembly, a 'Notice of Intention to Hold a Public Assembly' form should be completed and provided to the Queensland Police Service ('QPS') and the local council.

There are a number of matters set out in the *Peaceful Assembly Act 1992* that the notice must comply with, including:

- details of the person responsible for the assembly;
- the time and place for the assembly; and
- any procession that is planned.

While you do not necessarily need to use the specific police form, it does cover the matters that are set out in the Act so would act as a failsafe to ensure you provide all the details required. Some questions may not apply to your assembly and they can be marked 'N/A'.

Only the Magistrates Court can refuse to authorise the assembly

The QPS and the local council do not have the power to refuse approval for a public assembly. Only the Queensland Magistrates Court can make an order refusing to authorise the assembly.

The QPS and/or the local council may, however, apply to the court for such an order if they have engaged in a mediation process with the organiser of the assembly and formed the opinion on reasonable grounds that:

- safety of persons would be likely to be placed in jeopardy; or
- serious public disorder would be likely to happen; or
- the rights or freedoms of persons would be likely to be excessively interfered with.

If five business days' notice is given to the QPS and the local council, and no order has been made by the Magistrates Court to refuse to authorise the assembly, the assembly is deemed to be authorised.

If the notice of assembly is given less than five days before the day of the assembly and a notice of permission has not been provided by the QPS and the local council, an application can be made to the Magistrates Court for an order to authorise the public assembly.

What conditions can the police or council impose on the protest organisers?

The QPS and local council can give permission to hold the protest subject to conditions.

For the conditions to be imposed, the organiser of the protest must agree in writing to the conditions and the conditions must relate to:

- a matter concerning public safety, the maintenance of public order or the protection of the rights and freedoms of persons;
- the payment of clean-up costs arising out of the holding of the assembly;
- the recognition of any inherent environmental or cultural sensitivity of the place of assembly;
- the application to the place of assembly of any resource management practice of a delicate nature.

If the organiser does not agree to the conditions, and the assembly notice was submitted at least 5 days in advance, the assembly can proceed without the conditions unless an application is made (by QPS or local council) to the Magistrates Court to refuse to authorise the public assembly (based on one or more of the above reasons).

Therefore, the organiser should satisfy themselves that the conditions are reasonable in the circumstances before agreeing to the QPS or local council's proposed conditions.

What are the risks in taking part in an authorised public assembly?

The *Peaceful Assembly Act 1992* overrides other laws relating to:

- the right of peaceful assembly;
- the movement of traffic or pedestrians;
- loitering;
- the use or obstruction of a public place; and
- the payment of a fee, charge or other amount for a licence, permit or other authorisation relating to a public assembly.

Therefore, provided the public assembly is authorised, peaceful and held in accordance with any conditions imposed via agreement, you should not be charged a fee, charged with an offence or fined **merely for your involvement in the assembly**.

However, it is important to note that an authorised public assembly does not provide a defence against trespass, defamation or other criminal offences, such as public drunkenness, indecent or offensive behaviour and property damage.

A person can still commit an offence or defame another person while participating in an authorised protest.

At a public assembly, it is important that the conduct of the people involved remains peaceful. There will likely be police officers present at a protest and if, for example, the behaviour of the protesters becomes threatening or violent, they may be charged with an offence.

Offences that often arise out of protests include:

1. public nuisance;
2. unlawful assembly and riot; and
3. obstruct or assault police.

This is not intended to be a complete list of potential offences that a person could be charged with at a protest. This will, of course, depend upon the conduct of those involved.

Can the police direct me to ‘move on’ when I am participating in a protest?

Ordinarily, police officers have the power to direct a person to move from a public area or place in certain circumstances, even if the person has not committed any offence. The policy behind such power is that it may prevent an offence being committed or unacceptable behaviour occurring.

Importantly, this power does not apply if the person is participating in an **authorised** public assembly.

Even if the assembly is **not** authorised, the *Police Powers and Responsibilities Act 2000* states that a police officer must not give a direction to move on that interferes with a person’s right of peaceful assembly unless it is reasonably necessary in the interests of public safety, public order or the protection of the rights and freedoms of other persons.

The interests of public safety and public order are broad terms.

For example, it includes the rights and freedoms of the public to enjoy a public place. Therefore, the police regularly give move on directions to people involved in unauthorised protests in public places.

It is an offence to contravene a direction given by a police officer (i.e. not move on) and a person that does so is liable to a fine unless the person has a reasonable excuse.

Get help from a criminal lawyer

In Queensland, you have the right to protest peacefully in public.

There are risks involved, particularly where the protest has not been authorised. It is worthwhile working collaboratively with the police to obtain authorisation for the protest as it will likely lead to a more friendly police presence.

Our team has experience working with peaceful protestors and police, and we can also assist you to work with police to obtain authorisation prior to the protest or assist you if things go awry at the protest.

07 3361 0222 (24/7)

gnl@gnl.com.au

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