

Policing in Queensland during the COVID-19 pandemic

NEW RULES

Under the [Public Health Act 2005 \(Qld\)](#) (Public Health Act), the Chief Health Officer can make a range of public health directions (CHO directions). Throughout the COVID-19 pandemic, a number of CHO directions have been made and they are constantly subject to review. The directions tend to restrict movement and gathering of people. They can also shut businesses and restrict access to places. Current [CHO directions](#) are published by Queensland Health.

CHO directions are enforceable. Queensland Police officers (police) can use their usual powers, as well as special emergency powers, to ensure people comply. Doctors and some other officials also have extra powers at this time.

Other laws have also brought in new rules. For example, the [Biosecurity Act 2015 \(Cth\)](#) is being used to regulate access to remote communities to protect against outbreaks.

USUAL POWERS

Police have all their usual powers available to them during this pandemic. Caxton Legal Centre publishes a booklet that provides more [information about police powers](#).

EMERGENCY POWERS

Under the Public Health Act, police (and some other emergency officers) have extra powers during this emergency. These include having the power to:

- require a person to remain isolated in a place such as their home or a hotel room (s [362H](#)) or a hospital
- enter private property to save human life, prevent or minimise serious adverse effects

on human health or do anything else to relieve suffering or distress (s [343](#)). If they enter private property for that purpose, police may also search the property and inspect and remove items

- require a person to provide their name and address, and answer questions relevant to the public health emergency (s [345](#)).

If police are issuing their own direction to a specific person, they must give that person a chance to comply first before they consider a fine. A person should only be given a fine if they refuse to comply when directed to by police (s [362G Public Health Act](#)).

There is no need to warn when police are enforcing a CHO direction. The CHO direction itself is the warning so it is important to stay aware of updates. There are extra charges possible if a person misleads police, for example by lying about what they are doing (s [363 Public Health Act](#)), or obstructs police in their duties (s [365 Public Health Act](#)).

People who breach a CHO direction but have a 'reasonable excuse' for doing so might still be questioned by police, but should not be fined.

CONFUSION

CHO directions change quickly and there is confusion about how some rules operate in practice.

Other confusion occurs because there are restrictive rules and significant powers, but also a high degree of discretion about enforcement. A system that relies on individual officers' discretion, rather than on clear rules, can be problematic. Conscious and unconscious bias can affect assessments about wrongdoing especially in relation to Aboriginal and Torres Strait Islander people, young people and some other population groups.

There is widespread uncertainty about what is a reasonable excuse in any given situation. Adding to confusion, many media reports have listed clearly permissible activities as reasonable excuses.

THE QUEENSLAND HUMAN RIGHTS ACT

Human rights law can be helpful when the rules are unclear, and when there is a lot of discretion. The CHO directions are in place to protect the right to life, which is a fundamental human right.

But they do so at a cost. Many individuals have lost jobs and livelihoods. The CHO directions also limit other protected human rights, such as freedom of movement, the right to family and home, the right to privacy and reputation, and others. When limiting human rights, even for a good reason, such as protecting another human right, the restrictions must be proportionate and justified, and last the shortest possible time.

Human rights law also reminds us that when a rule can be interpreted in different ways, the interpretation that best respects human rights will usually be correct. If a CHO direction is vague or confusing, it should be interpreted in a way that best protects human rights.

Human rights law also applies to police enforcing the CHO directions.

Police in Queensland are required to consider human rights when acting and making decisions, and must act in a way that is most compatible with human rights. This means individual officers must respect human rights. Police as a whole must also make sure the pandemic response is fair across Queensland, and respond to the legitimate aim of protecting human life.

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RECEIVING AN INFRINGEMENT NOTICE

It is important to get legal advice about any infringement notice alleging a breach of the CHO directions. You have 28 days to challenge any infringement notice by electing to have the matter determined in court. Information about how to elect to go to court is on the infringement notice itself.

It is possible to ask police to review the decision to issue you an infringement notice. There are many things that might influence a decision to withdraw an infringement notice including the impact it will have on you, and whether you have a reasonable excuse for having breached the rules.

MAKING COMPLAINTS ABOUT POLICING

If you are concerned about any policing affecting you, there are a range of complaint options. See the *Queensland Law Handbook* chapter [Complaints against Police and Public Officials](#).

If you think that there has been a breach of your human rights, you can complain about police, or any public entity, to the [Queensland Human Rights Commission](#) within one year from the date of the conduct you are concerned about.

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Know Your Rights! www.queenslandlawhandbook.org.au

This information is current at April 2020.

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