The National Legal Eagle

Volume 17
Issue 2 *Spring 2011*

Article 4

9-22-2011

Good Cop, Bad Cop: A Quiz about Police Powers

Elizabeth Greene
Bond University, Elizabeth_Greene@bond.edu.au

Suzie O'Toole
Bond University, sotoole@bond.edu.au

Follow this and additional works at: http://epublications.bond.edu.au/nle

Recommended Citation
Greene, Elizabeth and O'Toole, Suzie (2011) "Good Cop, Bad Cop: A Quiz about Police Powers," *The National Legal Eagle*: Vol. 17: Iss. 2, Article 4.
Available at: http://epublications.bond.edu.au/nle/vol17/iss2/4

This Journal Article is brought to you by the Faculty of Law at ePublications@bond. It has been accepted for inclusion in The National Legal Eagle by an authorized administrator of ePublications@bond. For more information, please contact Bond University's Repository Coordinator.

Good Cop, Bad Cop: A Quiz about Police Powers

Senior Teaching Fellows Elizabeth Greene and Suzie O'Toole Faculty of Law Bond University

'Stop! Police!'

'Freeze and put your hands in the air!'

'I am placing you under arrest!'

These are some of the classic phrases we associate with the police stemming mostly from television shows rather than real life experience. But what is the true scope of police power?

Just like any of us the police are free to walk the streets, observe people and ask questions. But, in Queensland, if a citizen decides not to co-operate then the police can only lawfully compel their co-operation where they have a statutory power to act under the *Police Powers and Responsibilities Act 2000* (Qld) (*'PPRA'*). The *PPRA* is a very important piece of legislation because it both grants power to the police but it also limits the power of the police.

Of course police need wide ranging powers so they can be effective at detecting and investigating crime. However, limits on police powers are essential as citizens have the right to go about their lives without unnecessary interference from the State. The police have the very important task of gathering evidence to prosecute criminals but it is essential that the police play by a very clear set of rules so that innocent people are not wrongfully convicted on the basis of unreliable or tainted evidence.

Here is a quiz to see how much you already know about police powers. Choose the correct responses:

1. You have the right to remain silent and you never have to tell the police your name and address even if requested to do so.
   a) True
   b) False
2. It is an offence to give the police a false name.
   a) True
   b) False
3. It is an offence to swear at a police officer.
   a) True
   b) False
4. When investigating a serious offence the police are allowed to enter a person's home without consent:
   a) In order to make further investigations; or
   b) In order to make an arrest only where they reasonably suspect the person to be arrested is in the home; or
   c) The police are never allowed to enter a person's home unless they have a warrant.
5. The police can stop and search any person to see if they might have committed a crime.
   a) True
   b) False
6. Police can stop and search a vehicle for no reason.
   a) True
   b) False
7. If you are hanging out in a public place, like a park or a mall, the police can insist that you leave even if you have not done anything wrong.
   a) True
   b) False
8. Generally when arresting or searching a person the police can use as much force:
   a) As they like; or
   b) As is reasonably necessary; or
   c) As is reasonably necessary so long as it is not likely to cause grievous bodily harm or death to a person.
9. The police can take fingerprints from a person who they suspect of committing an offence.
   a) True
   b) False
10. When a child has already been convicted of other offences they can be treated like an adult offender during the investigation and arrest processes.
    a) True
    b) False
11. How old does a person have to be to be considered an adult in the eyes of the law?
    a) 18
    b) 21
    c) 14
    d) 17
12. The police can only question a suspect about their involvement in a crime when a solicitor is present.
    a) True
    b) False
13. When questioning a person suspected of having committed a serious offence the police are allowed to lie in order to get a confession out of the person.
    a) True
    b) False
    c) Maybe
14. When questioning a person suspected of having committed an extremely serious offence it is acceptable for the police to threaten violence in order to obtain a confession only when:
    a) They are absolutely certain they have the right person; or
    b) They are absolutely certain they have the right person and they have no other evidence against them; or
    c) They are absolutely certain they have the right

Published by ePublications@bond, 2011

person and they have no other evidence against them and they obtain the permission of their superior officers before making the threat; or

d) Police are never allowed to use or threaten to use violence in order to obtain a confession.

15. When questioning a suspect the longest the police can detain the person before charging them is:
    a) 2 hours unless the police apply for an extension of time; or
    a) 8 hours unless the police apply for an extension of time; or
    b) 32 hours unless the police apply for an extension of time; or
    c) There is no limit as long as they are only detained for a 'reasonably necessary' time.

16. When a suspect is intoxicated it is permissible for the police to question them provided the suspect agrees.
    a) True
    b) False

For the answers to this quiz see page 14

Police Powers in other States and Territories

If you reside in a State or Territory other than Queensland you would have noticed that the criminal law with respect to when a person is an adult is different to that in Queensland. Are there any other significant differences between the police powers in Queensland and that in your State or Territory? (Hint – first you will need to find out what legislation applies in your State/Territory then do the comparison.)

How Did You Go?

Answers to the *PPRA* Quiz

1. (b) False. Everyone has the right to silence but it is not absolute. The police can direct a person to state their name and address in certain circumstances, eg because they reasonably suspect they have committed an offence or were witness to a serious offence: ss 40 and 41 *PPRA*. According to s 791 of the *PPRA*, it will amount to an offence for a person to contravene a requirement or direction given by a police officer including a direction to state their name and address unless there is a reasonable excuse for not providing the information. The maximum penalty for failing to comply is a monetary fine (currently $4000).
2. (a) True. Giving a false name to the police can amount to obstruction: s 790 *PPRA*. The word 'obstruct' is defined in the *PPRA* to include 'hinder', which means to hamper or to make more difficult. Giving a fake name makes it more difficult for the police to investigate a matter and the maximum penalty for the offence of obstruction is a monetary fine ($4000) or six months imprisonment.
3. The answer to this one is not straightforward. There is no specific offence of 'swearing at a police officer', however s 6 of the *Summary Offences Act 2005* (Qld) describes the offence of *public nuisance* to include using offensive, obscene, indecent or abusive language and this can capture swearing at police. These days police can issue an on the spot fine of $100 for public nuisance, however a person can elect to dispute the offence at court rather than pay the fine. There was a recent case in Townsville where the Magistrate decided that although the accused person admitted to swearing AT the police officer it *did not* amount to public nuisance and there have been suggestions from the bench that police need to get a 'thicker skin'![1] Probably better to err on the side of caution and not push your luck...!
4. (b) Given that we want to enjoy privacy and security in our homes, special rules apply that limit police rights of entry into 'dwellings'. The police cannot enter a dwelling merely to further investigation: s 19(5) *PPRA*. The police can enter a dwelling in order to arrest a person but only when they *reasonably suspect* that the person to be arrested is in the dwelling: s 21(2). The police can also enter a dwelling where they have a warrant to do so: s 157. If the police believe that the circumstances justify it they can force their way into a dwelling, even damaging property (like the door): s 635.
5. (b) False. The police cannot stop and search a person just because they think they might have committed an offence, but they can if they *reasonably suspect* that they have. The power to stop and search a person is found in s 29 and will be available where the police officer *reasonably suspects* one or more of the prescribed circumstances, which are outlined in s 30. It is a fairly broad provision and prescribed circumstances include when the person being searched has something that may be – a weapon, stolen property, drugs, housebreaking tools, etc. Section 29(2) says that such items may be seized when they may provide evidence of an offence, or may be used to harm the person or others.
6. (b) False. Police always need a reason to stop a car but the reason does not always have to relate to that *specific* car. For example, if police are searching for an escapee, and set up a road block, they can search every car to see if the escapee is in the car: s 26(3). Similarly, when police are conducting random breath tests (RBTs) they can pull over any car they choose and ask the driver to take the test: s 60. However, if police want to stop a vehicle for another reason they must satisfy the requirements in s 31 – that is, they must have *reasonable suspicion* of one of the prescribed circumstances listed in s 32. It is also a fairly broad provision and prescribed circumstances include that there is something in the car such as a weapon, stolen property, drugs, housebreaking tools, etc.
7. (a) True. The police have the power to issue 'move-on' directions: ss 44-49 *PPRA*. It is unnecessary for the recipient of the move-on direction to have actually committed any offence and failure to comply with the direction is an offence: s 791. A direction can be issued on the basis that the officer reasonably believes a person's behaviour or mere presence is causing another anxiety. The direction requires the person to leave the area and not return within a stated time but not more than 24 hours.
8. (c) Section 615 says that it is lawful for a police officer to use reasonably necessary force, however the use of force under s 615 is limited such that the police cannot use force likely to cause grievous bodily harm to a person or the person's death. However in 'critical situations', for example where the police reasonably suspect the person is about to cause serious injury or death to another, or is about to commit a really serious offence, then s 616 empowers the police to use 'reasonably necessary' force even if it is likely to cause grievous bodily harm to a person or their death. If reasonably practicable, before using lethal force, the police officer should first call upon the person to stop doing the act.
9. (a) True – with qualifications! The legislation says that a person must be 'facing proceedings' in relation to an identifying particulars offence (IPO): ss 467-468. An IPO is one which carries a maximum of at least one year imprisonment, or an offence listed in Schedule 6. Fingerprints are one form of Identifying Particulars which can be taken by police in such circumstances. Other identifying particulars are palm prints, handwriting samples, voiceprints, footprints, measurements or photographs of identifying features like scars or tattoos.
10. (b) Children are recognised as a vulnerable group and therefore deserve extra protection under the law. Regardless of whether or not a child has committed offences in the past, a child always has extra rights when they are being questioned by the police about their involvement as a suspect in an offence. The police are not allowed to question a child unless a support person is present: s 421. Other vulnerable groups include aboriginal people or Torres Strait Islanders, people with 'impaired capacity' and people affected by drugs and/or alcohol.
11. (d) In Queensland, a 17 year old is considered an adult for the purposes of the criminal law. This means that if a

young person is charged with committing an offence that was alleged to have been committed by them after they turned 17 they are prosecuted in the adult courts. If the court orders that the person be locked up they are imprisoned in an adult prison rather than a juvenile detention facility. In all other Australian States and Territories, a person is still considered a juvenile until they reach the age of 18.

12. (b) False. However, the police must give the person the *opportunity* to have a solicitor present. This is one of the rights afforded to all persons being questioned by police as a suspect of an indictable offence: ss 418-419. Police must also delay any questioning to allow reasonable time for the solicitor to arrive (usually up to two hours depending on the circumstances): s 418.
13. (c) This is a bit of a grey area. It seems accepted that a certain amount of trickery and deception can be employed by the police in order to gather evidence. But police are also trained to know that there are certain lines that should not be crossed because if they cross the line then the evidence they gather may well be excluded by the judge at trial because it was tainted and therefore unreliable. The exclusion of the tainted evidence may in turn lead to the person getting acquitted due to lack of evidence.
14. (d) There is an absolute rule against using a threat to obtain a confession: s 416. Where a judge accepts that a confession was obtained by a threat from a police officer the judge *must* exclude the confession.
15. (b) The police can detain a person for a maximum of eight hours. Within those eight hours the *PPRA* states that the person may be questioned for not more than four hours: s 403. It is possible for the police to apply for a further eight hour extension, taking the maximum detention period to 16 hours. However, there must also be a further period of at least four hours non-questioning during any extended detention.
16. (b) If the police want to question an intoxicated person about their involvement in an indictable offence, they *must* delay the questioning until reasonably satisfied the influence of the alcohol or drugs no longer affects the person's ability to understand his or her rights and to decide whether or not to answer questions: s 423 *PPRA*.

Some of the questions were straightforward but on some of these issues the answers may have been surprising.

It is essential to find that correct balance between protection of the community and the rights of the individual and this is what the *PPRA* aims to provide. It may be heartening to know that breaches of the *PPRA* are not a regular occurrence and there are ramifications for police who do not observe the rules. From the police perspective it is also of benefit to have a clear set of protocols to follow so that they also know their rights, duties and protections.

Reference

[1] The Townsville case of Bardon Kaitira was reported in Roanne Johnson, 'Police Must Toughen Up', *Townsville Bulletin* (online) 17 March 2011 <http://www.townsvillebulletin.com.au/article/2011/03/17/215821_news.html> and for a High Court case discussing whether swearing is necessarily insulting to police see: *Coleman v Power* (2004) 220 CLR 1.

http://epublications.bond.edu.au/nle/vol17/iss2/4