



**DURAL LEGAL**  
CENTRE

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# UNDER ARREST

## Who can arrest me and why?

A Police officer can arrest you if, for example:

- ⇒ A warrant (written authority) for you to arrest has been issued by a court;
- ⇒ The Officer has a reasonable suspicion you are about to commit a crime at night, are committing a crime or have recently committed a crime;
- ⇒ You have committed or are about to commit an offence against the Commonwealth Crimes Act;
- ⇒ You are suspected of being involved in smuggling or import or export of prohibited goods.

A private citizen can arrest you (citizen's arrest) where you have committed or attempted to commit a crime or where you have committed or are about to commit a breach of the peace. Breach of the peace includes assault, creating public alarm, or the excitement or obstructing a police officer doing his or her duty. Annoyance, disturbance or insulting language are not sufficient reasons for one citizen to arrest another.

## How should they arrest me?

The person arresting you should:

- ⇒ Tell you that you are under arrest;
- ⇒ Tell you why you are being arrested;
- ⇒ Touch you, unless you submit by going with the police officer or staying where you are told.

## What happens if I resist arrest?

It is an offence to resist arrest. Active resistance is required for a charge or resisting arrest to be laid. Lying down and refusing to cooperate is not resisting arrest. Police may arrest you if they reasonably believe you have committed an offence, even if in fact you are completely innocent. If you resist arrest you are committing an offence with which you may be charged, even if the police do not charge you with any other offence.

### **Do I have to submit a search?**

Yes, Police can stop, search, and detain you if they have reasonable grounds to believe you are carrying something illegal, stolen items or things obtained illegally, or things police believe may be used illegally such as tools for theft or weapons.

Police can pat you down, look in your pockets and bags and search your car. Police are not allowed to strip search you. If you refuse to be searched, the police may arrest you and use force to search you.

### **Can I be arrested for questioning?**

No. Police can request you to accompany them to a police station for questioning but you are not required to go unless you have been arrested for an offence. It is not advisable to speak with the police until you have first spoken with your solicitor. You should ask for a lawyer or independent witness to be present during questioning.

### **What should I do when arrested?**

Politely insist that you be allowed to contact a lawyer. You have the right to a lawyer present while you are being questioned to give you advice. There is no legal aid for lawyers to attend police stations or advise during questioning.

### **Do I have to answer questions if I am under arrest?**

In general you have a right to silence. However, if the arrest concerns a motor vehicle, you are required to give your name and address and particulars of the incident to the Police. Police should caution you, before questioning, that no questions need be answered but that any answer given may be used in evidence. The Police may want you to answer questions in what is known as "record of interview". This may be recorded on video and audio tape. Give the police your name, address and date of birth, but do not answer any other questions unless you have your solicitor present. Do not sign any document other than a bail form.

### **Do I have to submit to being fingerprinted and photographed?**

Yes. The Police may take your fingerprints and photographs of you for the purpose of identification. If you are subsequently acquitted or the charges are dropped, you may ask that your fingerprints and photographs be destroyed.

### **Do I have to participate in an identification parade?**

No. But the police may ask witnesses to identify you from photographs.

### **How long do I have to stay in custody?**

Following arrest, the Police may detain you for an initial period of up to four hours to conduct investigations; an application can be made to allow an extension of up to a further eight hours. Following this you must either be charged or released. If you are charged, you will usually be released on bail, with or without conditions. If you are refused bail, or cannot meet the conditions set, you must be brought before a court where you can apply for bail.

## Where can I get bail?

Usually after arrest and charging at a police station. You may be refused bail if:

- You have previously failed to appear in court;
  - Committed an offence while on bail, parole or probation;
  - ⇒ The offence you have been charged with involves murder, robbery, drug trafficking or
  - ⇒ domestic violence where there is a history of violence.
- Once the Bail Sergeant has decided whether or not to grant you bail, the police are required to inform you of your right to contact a lawyer, or any other person, in connection with bail.

## What happens if I don't comply with bail conditions?

You can be arrested by the police for breaching bail and brought before a court. If the breach of bail is proven, the court can either refuse bail or release you on fresh or continued bail. If the bail needs to be changed see your solicitor or make an application at your local court office.

## How can a solicitor help me?

You should try to contact a solicitor when you are arrested. He or she will:

- Advise you of your rights;
- Explain the alternatives before you;
- Make a bail application for you;
- Represent you in court.



## DURAL LEGAL CENTRE

5/500 Old Northern Road, Round Corner, NSW

**Phone: (02) 9653 9666**