



Creevey Russell LAWYERS

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UNDERSTANDING YOUR RIGHTS - SEARCHES

So many of the clients we see on a daily basis would not be in the position they are in if it weren't for a lack of understanding of their rights. Criminal Defence Lawyers probably seem like the 'bad guys' to most, even within the justice system. Police are after all there to "Protect and Serve... with Honour".

Working in the criminal law, you come to the realisation that each and every Officer has a different version of who they are protecting, whose interests they are serving, and how they define honour.

This is not a general attack on the police. There are more good Officers than bad ones, but don't be fooled into believing that the uniform or the badge hides any of the nastier aspects of humanity.

The two biggest pitfalls we see when clients are dealing with Police are when the Police are exercising their powers of Search (with or without a warrant) and when they are questioning or interviewing suspects.

Remember these simple rules. Police can only perform a search in limited circumstances.

1. They have a valid warrant
2. They are performing a valid 'emergent search' under s160 of the PPRA
3. They have reasonable suspicion to suspect the commission of a crime; or
4. You give them permission or consent to a search!

Dealing with police is intimidating, and they know it. Most people will consent to being searched for one of three reasons:

- They have nothing to hide
- They think the police have an automatic right to conduct a search and can't refuse without getting in trouble;
- The police obtain their consent, either by asking or representing that they have the power to search, be it a person, a vehicle, a residence or a building.

You must be aware that once you consent to that search, unless that consent has been obtained by duress, the search will be legal and anything found can be used in evidence.

SCENARIO 1

A young person is pulled over for speeding. The Police ask to search his vehicle. They do not have a warrant. They do not have a reasonable suspicion that he has committed an offence that would justify the search. If the man politely declines, he likely receives a ticket and goes on his way. If the Police are feeling particularly aggrieved by this perceived lack of respect for their authority, they might try for a warrant, but they are unlikely to be successful. More likely, they would tell you that they have the right to search your vehicle. If you consent, as most people do at this point out of fear of being charged with some other offence, the search may become legal. If you again do not consent to the search but the police choose to conduct it against your wishes, the likelihood is that if they find anything, it will later be excluded from evidence as an unlawful search. This is not a guaranteed exclusion, but courts don't encourage Police abusing their powers. What is guaranteed is that if you consent, and then the Police find something, you'll be in a whole lot more trouble.

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SCENARIO 2

The same young man is pulled over for speeding. The Police ask to search his vehicle. They have no warrant, they have no reasonable suspicion he has committed an offence. They ask to search his vehicle. Out of fear and a lack of understanding of the law, he consents to the search. During the search the police find some cannabis under his seat. The search is lawful. they then locate his mobile phone and ask him for the password. He consents again and gives the police his password.

They go through his phone and find a very messages with friends discussing small amounts of cannabis. He is charged with supply. Two months later, after the police forensically analyse the phone he is charged with drug trafficking.

That young man is now before the Supreme Court facing life in prison instead of getting married to his girlfriend and paying a \$250 speeding fine.

If he had known his rights, his life would be very different.

Remember, it is not the police's job to explain their powers, and those that do, often misrepresent them. Call a specialist and protect yourself from those that are supposed to protect you.

DRUG REFORM—CALL TO ACTION

The head of our Crime and Misconduct team, Michael Burrows, is in the process of finalising a submission to the Attorney-General's office in relation to the Court's policies on sentencing those charged with drug-related offences.

Despite the implementation of the Queensland Alcohol and Other Drugs Action Plan, the rate of illicit drug related crime in Queensland has risen consistently.

The submission addresses the fundamental issue of the 'tough on crime' approach to criminal sentencing, and how empirical evidence demonstrates that drug offenders who are sentenced to terms

of actual imprisonment are far more likely to reoffend than those who receive community based orders.

There has been no change in legislative policy or significant steps taken to address Court outcomes that provide a meaningful focus on rehabilitative aims.

The submission will hopefully cause the Government to amend sections of the Penalties and Sentences Act 1992, allowing the Courts to impose sentences which are aimed at the rehabilitation and support of these offenders, who in most cases are victim to their addiction.

If you are interested in further information as to the proposed reforms,

or wish to offer your support to the movement, please do not hesitate to reach out to Mr Burrows personally.



Dan Creevey



Michael Burrows



Craig van der Hoven



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OUR SERVICES INCLUDE

Summary offences; Private criminal offences; CCC proceedings; Environmental Protection Act prosecutions; Animal prosecutions; Vegetation Management Act prosecutions; Health investigations; OHO and AHPRA investigations; Employment matters and internal discipline matters; White collar prosecutions; Director's breaches; Misconduct proceedings; Show cause proceedings.