

Trespass – Queensland Legislation

The Queensland Police Service has a policy for when to take action for trespass. Trespass on land is actionable as a civil wrong. However, trespass may, in some circumstances, also amount to a criminal offence.

The decision by police to take action for this type of criminal offence should therefore only be made when:

- (1) one or more of the following requirements is present:
 - (a) where specific legislation exists;
 - (b) the police officer has a reasonable suspicion the person trespassing is committing, or has committed or is intending to commit an offence;
 - (c) the person trespassing is committing a breach of the peace;
 - (d) an issue of safety arises; or
 - (e) the person in peaceful possession of the land/place is not able to readily remove the person; and
- (2) That there is sufficient evidence and it is in the public interest to commence proceedings.

The predominant offence for trespass that Queensland Police use in enforcement is the **Summary Offences Act 2005: Section 13 - Unlawfully entering farming land etc.**

(1) A person must not unlawfully enter, or remain on, land used for—

- (a) agricultural or horticultural purposes; or
- (b) grazing; or
- (c) animal husbandry.

Maximum penalty—10 penalty units or 6 months imprisonment.

(2) A person must not unlawfully open, and leave open, any gate, fence or other barrier that encloses all or part of enclosed land used for agricultural or horticultural purposes or for grazing or animal husbandry.

Maximum penalty—10 penalty units or 6 months imprisonment.

(3) This section does not prevent an authorised industrial officer entering a workplace in accordance with the terms of the person's appointment as an authorised industrial officer. *with the*

Put simply, Police may arrest an offender without warrant if they have reasonable suspicion that an offence has occurred, which includes that the land is used for the purpose described, that the person fails to provide or gives an unreasonable explanation for being on the land (Police must comply with the safeguards for declared offences under Summary Offences Act 2005).

It is also important to note that the element of 'unlawfully' must be satisfied. This often relates to whether the person has permission from the owner to be there and the owner makes a complaint to police.

Insofar as the rights of the land owner, put simply they have the same rights in relation to trespassers and disorderly persons as any other land owner or person managing property.

This is primarily vested in **Section 277 of the Criminal Code - Defence of premises against trespassers — removal of disorderly persons:**

(1) It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to prevent any person from wrongfully entering upon such land, structure, vessel, or place, or in order to remove therefrom a person who wrongfully remains therein, provided that he or she does not do grievous bodily harm to such person.

(2) It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person acting by his or her authority, to use the force that is reasonably necessary in order to remove therefrom any person who conducts himself or herself in a disorderly manner therein, provided that he or she does not do the person grievous bodily harm.

(3) In this section— Place includes any part of an enclosure or structure, whether separated from the rest of the enclosure or structure by a partition, fence, rope, or any other means, or not.