



EJP's Little Guide to:

Peaceful Protesting and Knowing Your Rights



This guide is a basic introduction on how to avoid police intervention whilst protesting, and what your rights are if the police do intervene. This guide does NOT constitute legal advice. Please seek formal legal advice if you have specific questions or need help with a specific situation.

This guide covers:

- Peaceful protest.
- Interacting with the police.
- Your right to remain silent.
- Your rights if you are arrested.
- Search and seizure rights.
- Being processed and bailed out.

Introduction

All New Zealanders have the right to freedom of expression and peaceful assembly. This is expressed in the s14 and s16 of the Bill of Rights Act 1990, and play an important role in the functioning of a democracy. These rights are not absolute. As with all rights in the Bill of Rights, your rights to freedom of expression and peaceful assembly are subject to ‘reasonable limits’, as justifiable in a free and democratic society (s5).

The police can intervene in a demonstration when the behaviour of any protestor amounts to an offence. Common circumstances in which this may occur include:

- **Obstructing/assaulting police officers.**
- **Breaching the peace.**
- **Offensive behaviour/language.**

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Peaceful Protest

The best way to avoid police intervention is to ensure that you are protesting peacefully. Our top tips to ensure your protest is legal and peaceful are:

- **Keep it Public** - do not enter on to private property.
- **Keep it Peaceful** - do not commit or incite acts of violence or damage anything.
- **Keep it Respectful** - do not engage in any behaviour, or say anything, that could be considered offensive or disorderly.
- **Make Space** - ensure there is room for other people to use the public space.
- **Cooperate** - do not resist, obstruct or assault a police officer, and obey their instructions.

Political activists risk facing charges when protests become violent and destructive. To keep protests peaceful, it is helpful to be aware of common charges so that any illegal behaviour can be avoided.

- **Breach of the peace (s42 Crimes Act 1961)**, which will often result in arrest, detainment, and release without charge. A breach of the peace involves creating a public disturbance, or acting in a way that is likely to cause one.
- **Trespassing (Trespass Act 1980)** occurs when you enter someone's land or property without permission. You must be given warning to leave or stay off the property before you are charged (ss3-4). You are legally obliged to give your name and contact address when police are issuing you a trespass notice (s9).
- **Disorderly behaviour (s3 Summary Offences Act 1981)** is a common charge that arises when your actions are likely to cause violence against persons (including yourself) or property.
- **Offensive behaviour (s4 Summary Offences Act)** is behaviour that is seriously disruptive of public order.
- **Being found on property, etc, without reasonable excuse (s29 Summary Offences Act)** which includes buildings and yards.
- **Resisting or obstructing police (s23 Summary Offences Act)** arises when you intentionally resist or obstruct an officer, or encourage someone else to.
- **Assaulting a police officer (s10 Summary Offences Act)**, which involves any application or attempted application of force to their body, or any threat to do so.
- **Wilful damage (s11 Summary Offences Act)** which relates to any intentional act that damages property or impairs its function, even if only temporarily.
- **Obstructing a public way (s22 Summary Offences Act).**

Interactions with Police

If you are in a situation where the police are involved, there are some key points to remember to help the process go smoothly.

- Stay calm.
- Do not argue with the police.
- Say as little as possible (generally just your name), anything you say can be used against you.
- Do not touch the officer.
- Do not complain or threaten to file a complaint.
- Do your best to remember the officers' patrol car and badge numbers.
- Try to get contact details from a witness of the interaction.
- If injured, take photos as soon as possible.

Intentionally interfering with police officers and/or not obeying their instructions can lead to additional charges. This is the case even if you believe you have done nothing wrong.



The Right to Remain Silent

Generally, you do not have to tell the police anything about yourself (unless you have been detained or arrested, are suspected of having drugs, or are in a motor vehicle). This includes your name, address, phone number, where you are going or who you know.

If **arrested** or **detained**, **s32 of the Policing Act 2008** requires you to give your:

- **Name**
- **Address**
- **Date of birth**

In this situation, you do not need to give them any other information (including phone number, email address etc).

Police will often question you about the incident resulting in your detainment or arrest or ask for a statement, but you do not need to do either of these things. If you need to talk to someone, ask for a lawyer.

Your Rights when Arrested

In the case of an arrest or detainment, it is helpful to know proper police procedure. Being familiar with this means you can be clear and assertive about your rights when interacting with police.

- They should tell you that you have the **right to remain silent** and refrain from making a statement (even if they don't tell you) If you choose to talk to an officer, you can decide to stop talking even if you have answered some questions already.
- You should be informed of the **reason** for your arrest.
- You should be told that you have the right to have the **validity** of the arrest/detention determined **without delay**, and to be released if it is unlawful.
- You can be searched with 'reasonable force', and if this happens you must be searched by a person of the **same sex**. This does NOT include items **not on your person** (e.g. a bag) if they do not have a warrant.
- The police can take a DNA sample from you if you have been arrested for an imprisonable offence (most offences are but offensive behaviour and obstructing a public way aren't) (s24J Criminal Investigations (Bodily Samples) Act 1995).
- The only information you are required to provide is **name, address, and date of birth**.
- You should be told you have a **right to a lawyer** (see Being Processed and Bailed)

Search and Seizure

Police can only search you and/or your belongings without a warrant if they suspect you of having drugs or firearms. They must tell you this is the case (**s18, s20 of the Search and Surveillance Act 2012**). If they have a warrant it must be signed, dated, addressed and state what is being searched for.

Police are able to search your belongings if you consent, and your silence will be considered consent (**s92 Search and Surveillance Act**). Once detained or arrested, police can search for

Special Rights of Young People

If you are under the age of 18, there are extra steps the police must take when they question you (**ss214-219 Oranga Tamariki Act 1989**). They have to:

- Explain your rights in a way that is understandable to someone your age.
- Ensure there is a lawyer and/or adult of your choice present when they take a statement from you.

If you are under the age of 14 police cannot search you without a warrant, even if you consent (**s95 Search and Surveillance Act 2012**).

Protest Safely and Know Your Rights

Being Processed and Bailed

If arrested, speak to a lawyer as soon as possible. Within reasonable time of your arrest, you have the **right to make a phone call**. If you do not have a pre-arranged lawyer to contact, the police will have a list of lawyers you can call.

Usually, you will be fingerprinted, handprinted, photographed and measured for height. It is common for questions to be asked about your state of mind. You **don't have to answer** these questions but doing so will generally not hurt your legal position.

Once you have been processed you will usually be bailed or released at large and given a court date. Sometimes bail conditions will be imposed. If you agree to these you will be released. If you challenge them by not signing, you can be held until the next available court hearing.

