

Commenced 9 March 2017

RESTRICTED PREMISES ORDERS: Glossary of Terms

Part 4 of the *Peace and Good Behaviour Act 1982*.

Disorderly activity:

- a) drunkenness, disorderly or indecent conduct or entertainment of a demoralising character; or
- b) unlawful supply of liquor or drugs from the premises; or
- c) unlawful possession at or supply from the premises of firearms or explosives; or
- d) the presence of recognised offenders, associates of recognised offenders, or persons subject to control orders on the premises; or
- e) participation of recognised offenders, associates of recognised offenders, or persons subject to control orders in the management or control of the premises.

Recognised offender: An adult with a recorded conviction (other than a spent conviction) for an indictable offence punishable by at least 5 years imprisonment or another offence prescribed under section 77 of the Criminal Code (Fact Sheet Series 2 lists the prescribed offences).

Associate of a recognised offender: A person to whom an official consorting warning has been given under the *Police Powers and Responsibilities Act 2000*.

Person subject to a control order: A person given a control order under the *Penalties and Sentences Act 1992* (including a registered corresponding control order). See Fact Sheet 1 for further details.

Fortification: Any structure or device that alone, or as a part of a system, is designed to stop or hinder uninvited entry on a premises.

Prohibited items:

- a) liquor; or
- b) drugs; or
- c) a firearm; or
- d) an explosive; or
- e) any drinking glass, vessel or container that is used (or capable of use) in connection with the storage, supply or consumption of a liquor or drug; or
- f) anything that is used (or capable of use) to contribute to or enhance the ambience of the premises in support of the sale or consumption of liquor or drugs, or entertainment of a demoralising character (e.g. bar fitout, music/entertainment systems, stripper's pole, etc.); or
- g) fortification of the premises that is excessive for lawful use for that type of premises.

2013 clubhouses: those listed in the *Criminal Code (Criminal Organisations) Regulation 2013*



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Fact Sheet 3A: RESTRICTED PREMISES ORDERS

New restricted premises

2013 clubhouses automatically declared: see Fact Sheet 3B.

Any other premises: see Fact sheet 3C.

WHO MAKES THE ORDER? A senior police officer applies to a Magistrates Court for an order.

WHAT IS THE TEST FOR THE ORDER? The Court may make the order if satisfied that a senior police officer reasonably suspects that 1 or more disorderly activities have taken place on the premises, and are likely to take place again, and the making of the order is reasonable in the circumstances.

CONDITIONS OF THE ORDER: The order must prohibit:

- a) disorderly activities taking place at the premises;
- b) recognised offenders, associates of recognised offenders, or persons subject to control orders being present on the premises;
- c) any person mentioned in b) taking part in the management of the premises; and
- d) the existence of any fortification of the premises that is excessive for lawful use of that premises.

LENGTH OF THE ORDER: Between 6 months and 2 years.

CONSEQUENCES OF THE ORDER

What happens if the order is breached?

What powers do the police have?

If disorderly activities take place at a declared premises and the owner or occupier knows or ought reasonably to have known that it has, they commit an indictable offence.

First offence: maximum penalty: 18 months imprisonment or 150 penalty units.

Second/further offence: maximum penalty: 3 years imprisonment or 300 penalty units.

SEARCH & SEIZURE: Police have unlimited warrantless search powers. They can:

- Require name and address;
- Stop a vehicle to serve the order;
- Enter and search the declared premises for prohibited items or anything that is evidence of the commission of an offence;
- Open anything that is locked;
- Search any person at the declared premises;
- Photograph anything that may be evidence.

FORFEIT PROPERTY: The Commissioner of Police can forfeit any prohibited items seized at the declared premises to the State.

Legitimate owners have 21 days within which to make an application to the Magistrates Court for the return of a seized prohibited item/s.

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Fact Sheet 3B: RESTRICTED PREMISES ORDERS

New restricted premises: see Fact Sheet 3A

2013 clubhouses automatically declared

Any other premises: see Fact Sheet 3C.

AUTOMATIC DECLARATION: Places that are prescribed under section 11A of the *Peace and Good Behaviour Regulation 2010* are taken to be restricted premises for 2 years from 9/03/17.

EXTENDING THE ORDER: A senior police officer can make an application to a Magistrates Court for an extension any time after 1 year from 09/03/17, but at least 2 months before the initial order ends.

The Magistrates Court must grant the extension if satisfied that: one or more disorderly activities have taken place at the premises in the past, and if the Court does not make the order, disorderly activities would likely take place again, and making the order is appropriate in the circumstances.

CONDITIONS OF THE ORDER: The order must prohibit:

- a) disorderly activities taking place at the premises;
- b) recognised offenders, associates of recognised offenders, or persons subject to control orders being present on the premises;
- c) any person mentioned in b) taking part in the management of the premises; and
- d) the existence of any fortification of the premises that is excessive for lawful use of that premises.

LENGTH OF THE EXTENSION: Between 6 months and 2 years.

CONSEQUENCES OF THE ORDER

What happens if the order is breached?

What powers do the police have?

If disorderly activities take place at a declared premises and the owner or occupier knows or ought reasonably to have known that it has, they commit an indictable offence.

First offence: maximum penalty: 18 months imprisonment or 150 penalty units.

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- Require name and address;
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- Enter and search the declared premises for prohibited items or anything that is evidence of the commission of an offence;
- Open anything that is locked;
- Search any person at the declared premises;
- Photograph anything that may be evidence.

FORFEIT PROPERTY: The Commissioner of Police can forfeit any prohibited items seized at the premises to the State.

Legitimate owners have 21 days within which to make an application to the Magistrates Court for the return of a seized prohibited item/s.

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Fact Sheet 3C: RESTRICTED PREMISES ORDERS

A Magistrate Court can declare a premises a restricted premises if satisfied that there is a reasonable suspicion that disorderly activities are occurring on the premises.

New restricted premises: see Fact Sheet 3A

2013 clubhouses automatically declared: see Fact Sheet 3B

Any other premises: SEARCH WARRANT

WHO MAKES THE APPLICATION: A senior police officer applies under the *Police Powers and Responsibilities Act 2000* to a Magistrates Court for a search warrant to search for prohibited items at the premises.

WHAT IS THE TEST FOR THE WARRANT? The Court may grant the search warrant if the police officer has a **reasonable belief** that 1 or more disorderly activities have taken place on the premises, and are likely to take place again. The purpose of the warrant is to search for prohibited items at the premises.

CONSEQUENCES OF THE WARRANT: Police can enter and search the premises for prohibited items, and seize any prohibited items that are found.

FORFEIT PROPERTY: Police can forfeit any prohibited items seized at the premises to the State. Legitimate owners have 21 days within which to make an application to the Magistrates Court for the return of a seized prohibited item/s.

The Court can order the return of the seized item/s if satisfied they were not lawfully seized.