



MURRAY TORCETTI LAWYERS

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CRIMINAL LAW CASE ASSESSMENT

ELEMENT SHEET

Element sheets are one tool the Criminal Defence Team at Murray Torcetti Lawyers can use to test the charge against our clients. We break down the 'elements' of the offence and examine the evidence the police may and your instructions to test the strength of the charge. The "elements" are the puzzle pieces of a charge. If all elements can be proven beyond reasonable doubt and no defences are raised successfully at a trial, you could be found guilty of the charge.

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THE ELEMENTS

NO.	Element	Notes on the Element	Comment / Evidence / Instructions
1	A Police officer exercising a power under an Act	Remembering the police has broad powers under various Acts, consider if there was a lawful exercise of power.	
2	The Police Officer using a motor vehicle		
3	Gives the driver of another motor vehicle a direction to stop the motor vehicle the driver is driving	Such as the use of lights and sirens. See section 748 for the ways a police officer can give the direction. Lights and sirens or physical or audible signal.	
4	The driver of the motor vehicle must stop the motor vehicle		
5	As soon as reasonably practicable if a reasonable person would stop the motor vehicle in the circumstances.	It is sufficient evidence of the commission of the offence if the evidence is that the driver, in failing to stop, took action to avoid being intercepted by a police officer (See subsection 4)	

Charge: Evasion Offence aka Failure to Stop

Police Powers And Responsibilities Act 2000 – 754 - Evasion offence

Election: Summary (Magistrates Court)

Penalty: Fines / Minimum 50 days to be served – Maximum is three years imprisonment or 200 penalty units

This charge suggests an extended police chase along the highway with lights and sirens possibly even police air following. However, it could be as uneventful as the police activating lights and sirens and your vehicle turning a corner making no effort to stop. This Evading Police or “Failing to Stop” has significant consequences even at the lower end of the sentencing options. Upon conviction of this charge, the sentencing court must disqualify the defendant from holding or obtaining a driver license for a mandatory minimum period of two years.

Mandatory sentencing is a live issue with this charge, the courts are faced with either imposing 50 days served in a correctional facility or a significant fine. [Commissioner of Police v Broederlow \[2020\] QCA 16](#) is cited as the authority of a court not having the power to impose probation, the issue of law in this appeal was a wording of mandatory sentencing in the *Weapons Act* that has the exact wording as it is found in this section of the *Police Powers & Responsibilities Act*. Total bummer because for a while a line of case following *Doig v Commissioner of Police* [2016] QDC 320 allowed Magistrates to impose a sentence of probation.

This charge can also be imposed by way of “strict liability”. If the police do not think you were the driver of the vehicle, but are the registered owner, the police can issue a direction for you to nominate the driver, if you fail to do so, the police can charge you with the evade charge. However, an alternate charge for failing to nominate the driver could also be PPRA s.755(5) “Fail to give statutory declaration.

In some instances, the alternate charge under s 60 of the PPRA of “Stopping vehicles for prescribed purposes” could be open as a substituted charge which has only a fine as the penalties open at sentencing.

Resisting the charge?

When assessing this charge, what are the materials that are most used to test the strength of the case?

- Dash cam footage
- Maps of the alleged area
- Statements of the police officers in the vehicle
- CCTV if in a captured area.

See ss (5) Also, for subsection (2) it is immaterial that the driver had a mistaken belief that the motor vehicle from which the police officer was giving the direction was an emergency vehicle unless the driver proves, on the balance of probabilities, that a reasonable person in the circumstances would have believed the motor vehicle was an emergency vehicle. Would a reasonable person have understood or taken the direction to stop to have been directed at them? [Williams v Commissioner of Police \[2015\] QDC 134](#) – This is not a defence, but a way of attacking the element of final element.