



MURRAY TORCETTI LAWYERS

RIGHT LAWYER / RIGHT NOW

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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Charge: Assault / Obstruct Police (PPRA)

THE ELEMENTS

NO.	Element	Notes on the Element	Comment / Evidence / Instructions
1	A person	See the <i>Acts Interpretation Act</i> "Meaning of commonly used words and expressions" – person includes an individual and a corporation.	
2A	Assault	Assault has the meaning given by the Criminal Code: Section 245, see the charge of Common Assault for the elements of assault.	
** Either element 2A or 2B must be proven**			
2B	Obstruct	<p>Obstruct includes hinder, resist and attempt to obstruct. This element has a wide scope and captures a range of behaviours from running away from the officer, giving a false name or not giving your name to resisting arrest to more serious situations and facts.</p> <p>A person who obstructs a police dog or police horse under the control of a police officer in the performance of the police officer's duties is taken to obstruct the police officer.</p>	
4	Police officer	<p>This element is self-explanatory but extends the meaning of "police officer.</p> <p>See definitions in the Act, "a police officer of a police force or service of another State or the Commonwealth who is, for the time being, performing duties for the police service". Then over to police service meaning the Queensland Police Service.</p> <p>For instance, say the NSW police have sent officers to Queensland for the execution of an interstate warrant and you obstruct or assault them, the QLD law will operate as if they were QLD police officers.</p>	

5	In the performance of the officer's duties	The police officer must be obstructed or assaulted whilst they were performing a lawful exercise of their duties. Your lawyer will check to ensure the police had the power to do whatever lead to the incident. It should be noted that even if a substantive charge is withdrawn or is unsuccessful the initial interaction is not then unlawful. For instance, if the police enter your house and find drugs, and there is an obstruct charge in addition to any possession charges, if the drug charges are unsuccessful the obstruct charge may well remain.	

Charge: Assault / Obstruct Police (PPRA)

Source: s 790 Police Powers and Responsibilities Act 2000 -

Election: Summary (Magistrates Court)

*Penalty: 40 penalty units or 6 months imprisonment or
If the assault or obstruction happens within licensed
premises, or in the vicinity of licensed premises—60
penalty units or 12 months imprisonment*

A charge of Assaulting or Obstructing Police is often charged with other more serious offences (often called the “substantive charges, but is also commonly seen where a person who has never had any real interactions with police find themselves in a negative situation with police which escalated.

In some circumstances, the police may have charged you with assaulting or obstructing police under the Police Powers and Responsibilities Act, but the facts might raise the more serious offence of Serious Assault under the *Criminal Code* which has a maximum penalty of 7 years (or 14 years in some circumstances).

Also, the police in some circumstances can choose to issue an infringement notice for the offence instead of sending to you court. If an infringement notice is issued, it will not result in an entry on your “court outcomes” record which might have implications for employment, or a higher risk of a conviction being recorded.

The *Penalties and Sentences Act 1992*, section 108B require community service to be imposed where the offence occurred in public and the defendant was adversely affected by alcohol.

What are some of the ways the lawyers can resist (fight) the charge?

When the lawyers first see the police materials, what are the first and most frequent options to test the strength of the charge the lawyer might consider?

- Any body worn footage that could/should be disclosed
- Any CCTV of the incident
- Any additional witness statement of people who saw the incident
- The “QPRIME” incident records that might give insights into what lead to the police involvement
- Medical records
- The officers statement
- Exactly what and where is the power the police officer is purporting to be acting under?

The offence of Assaulting or Obstructing Police has a number of defences open to people who have been charged. All the defences are complicated in how the tests operate, how they have been applied, what needs to be raised and the various factual issues about force and proportion. Your lawyer will work out with you which defences may apply, to what extent and your prospects of successfully establishing them. Below are a few examples but are not an exhaustive list or in-depth discussion on how they operate.

The Police were not acting lawfully.

This is not strictly a defence but an approach to weaken or prevent the police from establishing beyond reasonable doubt an element of the charge.

Your lawyer will need to review the facts, law and your instructions to determine the police officer was acting within their lawful powers at the time you obstructed or assaulted the police officer.

Compulsion – Duress s 31(1)(c) Criminal Code

In certain circumstances the law offers a defence if we are compelled to act to resist the violence of others. The Queensland Criminal Code calls this ‘compulsion’ and says, for present purposes, that a person is not criminally

responsible for an act if that person does the act because it is reasonably necessary to resist a threat of actual and unlawful violence to themselves or property.

Like all defences. The law of defences is nuanced. Your lawyer will need to review the facts, law and your instructions to determine if the defence is open to you and form a strategy to wield the defence in a way that best works in your unique case.

Self-Defence – Section 271(1) of the Criminal Code

Like many other defences in criminal law the defence of self-defence is complicated and more nuanced than “they hit me first”. The defence has limitations on the force used in different circumstances. Your lawyer will need to review the facts, law and your instructions to determine if the defence is open to you and form a strategy to wield the defence in a way that best works in your unique case.

Can the charge be 'Case Conferenced'?

For criminal charges in Queensland, your defence lawyer will review your charges, the possible evidence and your instructions to start negotiating the charges. The aim of case conferencing for defence lawyers is to place you in the most favourable position by resisting charges and facts that are not supported by evidence, law or contrary to your instructions.

What is Case Conferencing?

Case Conferencing – Disclosure

At the start of your case, you are provided the police version of the facts but not the evidence relied upon. Your lawyer will seek the disclosure of materials to clarify the facts further or determine the strength of the case against you.

Example: After an incident at the local pub, you have been charged with assault occasioning bodily harm. The police facts note the incident was recorded on CCTV and have sought the CCTV be disclosed to see if the footage supports the police version (or have left out important facts supporting your version) and medical records.

Case Conferencing – Facts

You might wish to plead guilty to the offences, but the police materials are different to your version of the events. Defence lawyers propose amendments, additions or removal of facts so the matters do not need to go to hearing. From a defence perspective, the purpose of conferencing on the facts is to remove irrelevant information or facts that may result in a higher sentence.

Example: CCTV records you striking a person several times. The police facts state it was "5 punches", but the footage is unclear. Through case conferencing the facts were amended to “struck the victim a number of times” or “the complainant was struck twice”.

Case Conferencing – The Law

If the charges are not supported by the evidence the prosecution has, the lawyers suggest the charge be withdrawn or reduced to a lesser offence. If the law provides a mitigation or defence to your charges, your lawyer will confer with the prosecution to seek the charge be withdrawn.

Example: You have been charged with assault occasioning bodily harm, however the medical evidence does not support the charge. As a result of conferencing, the charge was amended to the less serious charge of common assault.

Case Conferencing – Charges

Charges are not set in stone after the police issue with the notice to appear or release you on bail. Often the police will “over charge” and though the process of case conferencing more appropriate charges are agreed to.

Example: The police do a search of your property and locate your phone. After searching your phone a few text messages are found where you have offered to supply a few people (or even one person a number of times) the

cannabis. The police charge you with trafficking in cannabis. After reviewing the evidence the defence lawyers and prosecution agree that 3 charges of supply is far more appropriate.

What you can do to mitigate penalty if you are pleading guilty

Sometimes the decision to plead guilty is made for several reasons beyond actual guilt of the charge. It might be because the evidence is overwhelming, the risk of a trial is not worth the time and funds required or because pleading guilty is the fastest option. After consulting with the lawyer, if a plea is identified and we are instructed to list the matter for sentence there are numerous things you can do to assist the court to see beyond the charges and demonstrate remorse.

Attend Counselling

If you are going to enter a plea of guilty to the charge, attendance at a counselling program will assist the court to see you have a better understanding of your behaviour and demonstrated a willingness to change so it does not happen again.

Your Murray Torcetti Lawyer can suggest local programs you can take part in.

Demonstrate Employment

Demonstrating employment through a letter of employment assists the court to see you are productive and able to maintain responsibilities whilst being a member of the community. The letter could address your responsibilities, how long you have been employed and your attitude towards work.

Your Murray Torcetti Lawyer will review the letter of employment ahead of court to ensure all important points are addressed in the letter.

Letters of Reference

Character references assist the court by showing you have other parts to your character. You are more than a moment in time as read out by the prosecutor. You may be an active member of the community, provide support to a person in need or be able to demonstrate this was out of character.

Before the court date your Murray Torcetti Lawyer will review the references to ensure the letters achieve what is intended by the people who have taken the time and effort to assist you at your sentencing date.

Letters of Remorse

Remorse can be seen as a deep regret and repentance for a wrong committed. Letters of remorse can be tendered to the court at your sentencing to show the court you have insight into your behaviour and its impact on others.

Depending on the unique facts of your situation, your Murray Torcetti Lawyer will direct you if the insights are better as a letter to the court or another party as it would be inappropriate to provide any correspondence in some instances.

Offer compensation / Restitution

Before making any offers of compensation or restitution it is important to make you have been given legal advice. You may be admitting guilt where you have a defence. Or, if not done correctly you may be seen to be attempting to 'buy your way out of trouble' which will not go down well for you in court. However, genuine offers of compensation are one way to demonstrate genuine remorse for your behaviour to both the complainant and the courts.