



# Citizen's Arrest

By Rick Sarre\*

Generally speaking, a security officer is entitled to use whatever force is reasonably necessary in order to make a citizen's arrest. What is 'reasonable' depends upon the circumstances.

*The recent citizen's arrest by six Chinese Americans of Nai Yin Xue grabbed the international headlines. The arrest, ended a six-month manhunt that started in Melbourne in September last year when security footage showed Xue's daughter Qian Xun Xue, 3, wandering alone around Southern Cross railway station in Melbourne.*

*The arrest highlighted the option available to any citizen (and that includes any security officer) to take whatever steps deemed reasonable and necessary to prevent or suppress a breach of the peace. Professor Rick Sarre from the School of Commerce, University of South Australia explores some of the issues that security offices in Australia need to be aware of.*

The common law allows any citizen (and that includes any security officer) to take whatever steps he or she deems reasonable and necessary to prevent or suppress a breach of the peace. These reasonable steps may include detaining another person against their will. Such detention is commonly referred to as "citizen's arrest."

Because any arrest involves depriving persons of their liberty, citizen's arrest is carefully regulated by the law. In each Australian jurisdiction there is specific legislation that sets out the rules (discussed below). Even then the 'arrest' is limited to detaining a suspect until the police arrive.

Generally speaking, a security officer is entitled to use whatever force is reasonably necessary in order to make a citizen's arrest. What is 'reasonable' depends upon the circumstances. The courts may determine whether the force used was reasonable by reference to, for example, the amount of resistance that was offered by the accused suspect. Persons who have been detained wrongly (or against whom excessive and unreasonable force has been used in a legitimate arrest) may sue the person who 'arrested' them for assault and false imprisonment via the civil courts. Security officers do not enjoy the legal immunities that public police officers have, and do not have a defence of reasonable suspicion or honest exercise of power if they make an incorrect judgment. Moreover, they cannot arrest any persons on suspicion of their being about to commit an offence.

The specific rules of citizen's arrest, confusingly, change from jurisdiction to

jurisdiction. In some States, the right of security officers to make an arrest is limited to 'felonies' and not 'misdemeanours'. In other States, it is limited to 'indictable' as opposed to 'summary' offences. In each pairing, the former term refers to more serious offences carrying more severe penalties (with the option of a jury trial).

In South Australia, for example, the citizen's arrest power is outlined in section 271 of the Criminal Law Consolidation Act 1935. Under this section, any person can arrest and detain a person whom they find in the act of committing (or having just committed) '(a) an indictable offence; or (b) theft (whether the theft is a summary or indictable offence); or (c) an offence against the person (whether the offence is summary or indictable); or (d) an offence involving interference with, damage to or destruction of property (whether the offence is summary or indictable)'. How many security officers could recite that list when confronted with a suspicious situation?

In Victoria, section 458 Crimes Act 1958 lists the circumstances where a person may arrest without a warrant. Section 462A then explains how much force a person can use in making such an arrest. It is force that is 'not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence.' Thus, security officers will need to know the difference between indictable and non-indictable offences, and will need to be able to establish circumstances that could legitimately support their use of force. That may not be easy. Similar interpretation questions arise in relation to the wording of section 564 Criminal Code 1913 (WA), section 100 Law Enforcement (Powers and Responsibilities) Act 2002 (NSW), section 55(3) Police Offences Act 1935 (Tas) to be read with section 301 Criminal Code Act 1924 (Tas), section 546 Criminal Code 1899 (Qld), section 441 Criminal Code (NT) and, finally, section 218 Crimes Act 1900 (ACT). All of these Acts express the rules of citizen's arrest in different terms. It should be noted that the 2002 NSW legislation referred to above replaces the citizen's arrest rules that were formerly located in section 352 of the Crimes Act 1900, although the wording



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is very similar. Furthermore, in 2004, the WA parliament repealed the ludicrous provisions of the Police Act 1892 section 47, which allowed any person to arrest without a warrant 'any reputed common prostitute, thief, loose, idle or disorderly person'

The differences in wording aside, and speaking generally, it is probably safe to conclude that where it is clear on the evidence that a security officer, in detaining a suspect, acted reasonably and the suspect unreasonably, then it is likely that the court will find in favour of the security officer and against the suspect if that suspect chooses, later, to sue the officer for assault and/or false imprisonment. In other circumstances where, say, a security officer arrests a suspected thief with force that is disproportionate to the likely harm to the victim, and in clear defiance of the rights of the suspect (for example, to be taken forthwith to a police station), then the court is very likely to find in favour of the suspect (guilty or otherwise) in a civil suit. The courts may order compensation for such suspects in appropriate circumstances.

Justice Mildren, in the Northern Territory Supreme Court, articulated the principles required to be considered by the law. Yes, he says, security officers can act like police officers and can arrest people, but they must have at the forefront of their minds the good order of society and not use unreasonable force.

'The policy of the law seems to be that, in modern times, we are to rely upon the police, who are trained to effect an arrest except in those circumstances where [citizens are

empowered] to assist in keeping the peace. This does not mean that force cannot be used to protect life or property... provided that it is not unnecessary force and is not intended and not likely to cause death or grievous harm.' (Hulley v Hill (1993) 91 NTR 41 at 50 per Justice Mildren)

The law, one can assume, is trying to balance a citizen's right to protect victims on the one hand, against the danger that, if such powers go unchecked, officious meddlers and vigilantes might abuse others' legitimate rights. But the confusing variety of rules in the eight jurisdictions of Australia

results in an unsatisfactory state of affairs for the average citizen who is located in one jurisdiction. Spare a thought for the many private security officers who work across more than one jurisdiction.

In summary, security officers do have considerable power to detain people, but they should be aware of their legal limitations before taking the law into their own hands. They should certainly refer to the

appropriate legislative rules in their jurisdiction to guide them, because these rules will be the ones referred to by the judge or magistrate should a matter come before the courts for determination. And the last thing that a security officer would want, one can assume, is for an offender, having been convicted of a crime, to then be awarded compensation by the courts against the security officer's firm (or its insurer) for a detention that has later been adjudged wrongful.

Rick Sarre is Professor of Law and Criminal Justice in the School of Commerce at the University of South Australia.

**Reference:** Sarre, R. and Prenzler, T. *The Law of Private Security in Australia*, Pyrmont, New South Wales: Thomson LBC, 2005 (Chapter 4).

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management, that type of scenario, and progress from there to diploma level. Because if they educate themselves and they perform on the ground, then basically, the way the industry and the organisations are growing, then they'll move upwards.

**Security Insider:** Chubb bowing out of manpower, how much do you think that will change the shape of the industry?

**Ron Hunt:** I suppose it depends who acquires them. You know the rumours run hot. But, at the end of the day, I don't believe it will change it too much other than there will be another organisation out there that will be significant in size who will be manpower focused only, where Chubb currently is electronics and manpower and CIT.

**Security Insider:** And, new owners having just acquired a manpower operation, they are obviously going to be fairly aggressive to build that operation up.

**Ron Hunt:** Yeah, look, I think so. But I think, at the end of the day, I'm sure that initial they will be quiet as they're identifying what they have purchased and also shoring up those clients that they have acquired to make sure that keep them for the long term.

**Security Insider:** Or, the clients that are left!

**Ron Hunt:** "well, yeah"

**Security Insider:** So you're not buying them?

**Ron Hunt:** No, no.

**Security Insider:** Ok, So, just finally, what would your aspiration be for the industry?

**Ron Hunt:** Look, I think the industry, you know, it can be subject to criticism. But I think its an industry that is professional industry. And, these days, I believe, that more and more we see security specialists coming forward and managing organisations, or in fact the small of medium enterprises owning their own businesses. I believe that whilst organisations are generally compliant to the legislative requirements and delivering the services to their client's expectations in a professional manner, then I think the industry will continue to go forward and grow stronger and stronger and be recognised as such, rather than at the moment there's mixed views I would say.

**Security Insider:** Ron, thanks a lot for your time.

**Ron Hunt:** No worries.