

Trespass Act 2023

Guide to issuing directions to leave and warnings to stay off

Document title	Trespass Act 2023
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Approved by	CEO, Department of the Attorney-General and Justice
Date approved	
Document review	
TRM number	

Version	Date	Author	Changes made
1.0	April 2023	Hannah Clee	First version

Acronyms	Full form

Contents

1. Introduction	4
2. Key terms	4
3. What is the <i>Trespass Act 2023</i>?	5
4. Who can use the <i>Trespass Act 2023</i>?.....	5
How authorisation of others can be given	5
5. Direction to leave	6
Giving a direction to leave	6
When can a direction to leave be given?	6
Who can give a direction to leave?.....	6
How can a direction to leave be given?.....	6
Giving a verbal direction to leave.....	6
Give clear instructions.....	6
Record that a notice can be given	7
Giving a written direction to leave.....	7
6. Warning to stay off	7
Giving a warning to stay off.....	7
When a warning to stay off can be given.....	7
Who can give a warning to stay off?	8
How a warning to stay off can be given.....	8
Giving a verbal warning to stay off	8
Give clear instructions.....	8
Records to keep if giving a verbal warning to stay off	8
Giving a written warning to stay off	9
7. What is the difference between a direction to leave and warning to stay off?	11
8. What you should do if your direction to leave or warning to stay off is breached	12

Introduction

The *Trespass Act 2023* (the Act) enables occupiers to enforce property rights through formal process for trespass.

This guide has been developed as an aid for occupiers, and persons authorised to exercise powers under the Act on behalf of occupiers.

Key terms

The following are key terms for the Act.

Act: means the *Trespass Act 2023*

Ban period: the period that a person is prevented from either returning to a place, or entering a place. A ban period may be:

- for a warning to stay off - up to 7 days (or if no ban period is given, 72 hours) or
- for a warning to stay off - up to 12 months (or if no ban period is given, 3 months).

Trespass: Unauthorised entry or remaining on a place when there is no permission or authorisation to be on the place. Trespass includes a failure to comply with a direction to leave or a warning to stay off given under the Act.

Occupier: is defined in section 3 of the Act. This provides that an occupier is:

- for a place that is Crown land or land occupied by the Territory – a person in charge of the land; and
- for another place – a person in lawful occupation of the place and any person acting under their authority; or the owner of the place.

Lawful occupation: A person in lawful occupation of a place is a property owner, or a person who has express or implied consent from the occupier (for example, a tenant, or someone in occupation under a licence or agreement providing express authority). An occupier therefore includes a property owner or a tenant or a person who has express authority.

Authorised person: A person is an authorised person if they are acting under the authority of a person in lawful occupation.

Authorisation: include definition according to the Act. A person may have authorisation, or be acting under authority, as an employee (if part of general or specific duties of employment) or a person may be contracted to provide services such as security on behalf of the occupier.

Place: means any of the following:

- (a) a building or structure, whether permanent or temporary and whether fixed or capable of being moved
- (b) land, whether enclosed or not

- (c) a motor vehicle
- (d) a trailer or caravan
- (e) an aircraft
- (f) a boat or other vessel
- (g) a train or rolling stock on or for use on a railway.

Direction: means a direction to leave a place given under section 9(1) or (2) of the Act.

Warning: means a warning to stay off a place given under section 10(1) or (2) of the Act.

What is the *Trespass Act 2023*

The Act commences on 1 May 2023 and sets out enforcement measures for occupiers to remove and exclude a person from a place.

The enforcement measures are a direction to leave or a warning to stay off a place. A direction to leave or a warning to stay off revokes any express or implied consent, or authority for a person to enter and remain at a place.

The Act outlines that a direction or warning may be given verbally or in writing, and provides a period of time that bans a person from returning to a place or entering a place (a **ban period**) by giving the direction to leave, or warning to stay off.

The Act makes the failure to comply with the direction to leave, or entering a place in breach of the ban period an offence.

The Act allows Police to issue a direction to leave or a warning to stay off on behalf of (and at the direction of, or instruction by) an occupier.

Police have power to remove a person who has not complied with a direction to leave or a warning to stay off. Police may also arrest a person committing an offence.

Who can use the *Trespass Act 2023*

The Act can be used by occupiers.

An occupier can authorise others, such as an employee or security guard to give directions to leave or warnings to stay off on their behalf.

An occupier may ask Police to give a direction to leave or warning to stay off on their behalf.

How authorisation of others can be given

An occupier can give authority to anyone. It should be clear however, who may act on behalf of the occupier to exercise powers under the Act. In practice, an occupier would give certain employees or others authority to exercise the powers under the Act on their behalf as part of specified duties of employment through verbal instruction or as a condition of service (i.e., provision of security services).

A written authorisation helps to make it clear that a person can act on behalf of the occupier.

Authority may be given as part of employment terms and conditions, or may form part of duties of certain positions (for example, a person operating as a security officer). A written authority may be as simple as including the exercise of powers under the Act as a duty of employment, or in the conditions of a contract or agreement for services.

Direction to leave

A direction to leave is a means for occupiers to require a person to leave the occupier's place and ban the person from returning for up to 7 days.

Giving a direction to leave

When can a direction to leave be given?

A direction to leave may be given at any time when a person is on the occupier's property.

No reason is required to issue a direction to leave, however the basis or reason for a direction to leave cannot be discriminatory. This means a direction to leave cannot be given for a reason that would breach anti-discrimination legislation, for example, because of a person, or group's, race, sex, or age.

Who can give a direction to leave?

A direction to leave may be given by an occupier (including an employee or security guard who may be authorised, on behalf of the occupier, as part of their employment duties or under agreed services) or a Police Officer (on request).

How can a direction to leave be given?

A direction to leave may be given verbally (spoken to the person) or in writing.

A direction to leave is enforceable whether given verbally or in writing.

You do not need to get a person's name, address or date of birth for the direction to take effect.

Giving a verbal direction to leave

Give clear instructions

State that:

- you are an occupier, or are authorised by the occupier of a place
- the person is directed to leave the place immediately and is banned from returning
- a ban period applies (if no ban period is stated – the person is banned for 72 hours)
- the place that the ban period applies to.

You should also state that not leaving immediately is a criminal offence, as is returning to the place during the ban period.

Record that a notice has been given

Keep a written record - for example, an incident log.

This may include:

- That a direction to leave was given
- The date and time
- The place/location
- Who has given the notice (and if an authorised person, who the occupier is)
- If the notice was verbal or in writing, or both
- If known, the name of the person the direction to leave was given to;
- If known, the address of that person;
- If a period of time was specified, the length of the ban (up to 7 days);
- What information was given to, or stated to, the banned person.

The written record may be needed for evidence if a person breaches the direction to leave.

Find out the name of the trespasser, if safety permits, and add this information to the log.

Giving a written direction to leave

A written direction to leave may be given to a person.

A written direction should include the same information that is given in a verbal direction to leave.

It is easier to prove that the direction was given to the person, and the contents of that direction, if there is a record of a written notice.

Warning to stay off

A warning to stay off may be used by occupiers to require a person who is trespassing or has trespassed on an occupier's property to stay off the occupier's property and ban the person from returning for up to 12 months.

Giving a warning to stay off

When warning to stay off can be given

Trespass is required to give a warning to stay off.

This means a person must be trespassing, have trespassed, or there are reasonable grounds to suspect the person will trespass on a place.

Reasonable grounds to suspect a person will trespass might include a person who has been directed to leave a place being seen approaching to enter the place (but has not yet entered the place).

If a person who has been directed to leave enters the place during the ban period, this is a trespass.

Who can give a warning to stay off

A warning to stay off may be given by an occupier (including an employee or security guard who may be authorised, on behalf of the occupier, as part of their employment duties or agreed services) or a Police Officer (on request).

How a warning to stay off can be given

A warning to stay off may be given verbally (spoken to the person) or in writing.

A warning to stay off is enforceable whether given verbally or in writing.

You do not need to get a person's name, address or date of birth to give a warning to stay off for the warning to take effect. However this information will assist you in enforcing the warning to stay off as a ban period may be in force for up to 12 months.

Giving a verbal warning to stay off

Give clear instructions

State that:

- you are an occupier or are authorised by the occupier of a place
- the person must leave the place immediately, or not enter the place
- the person is banned from entering the place
- the period that the person is banned (up to 12 months) - if no period is stated, the person is banned for 3 months.

You should also state that not leaving immediately or entering the place during the ban period is a criminal offence.

Records to keep if giving a verbal warning to stay off

Keep a written record. It is easier to prove that the warning was given to the person if there is a record.

This may include:

- that a warning to stay off was given
- the date and time
- the place/location of the ban
- who has given the notice (and if an authorised person, who the occupier is)
- if known, the name of the person the warning to stay off was given to (this is preferable for a warning to stay off because the length of the ban period is greater than a direction to leave)

- if known, the address of that person
- if a period of time was specified, the length of the ban (up to 12 months)
- what information was given to, or stated to the banned person.

The written record may be needed for evidence that a warning to stay off was given.

Giving a written warning to stay off

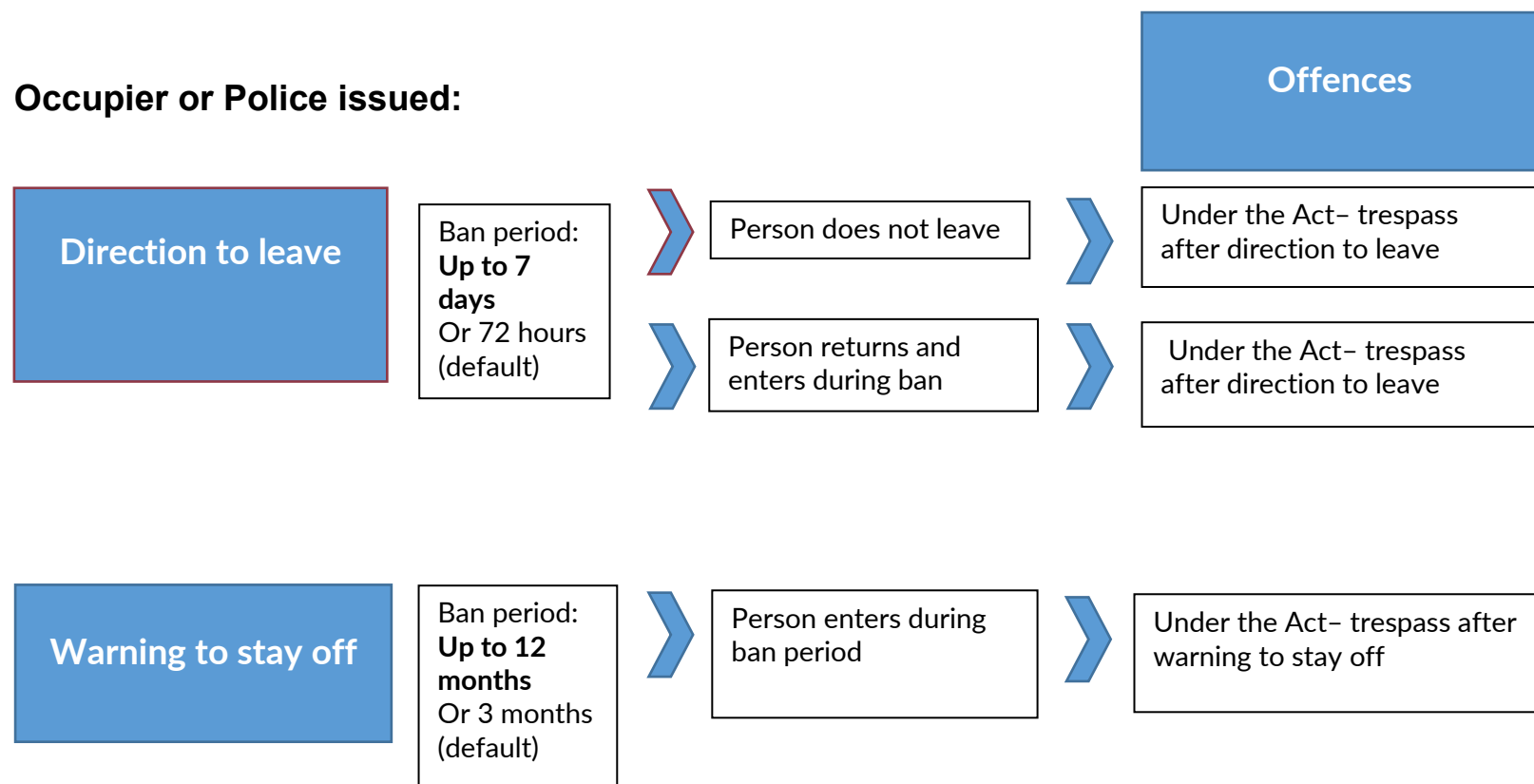
A written direction to leave may be given to a person.

A written direction should include the same information given in a verbal warning to stay off. A written notice is recommended as the ban period may be up to 12 months.

It is easier to prove that a warning to stay off was given to a person, and the contents of that warning if there is a written notice.

Trespass Act 2023

Occupier or Police issued:



Power of removal

If it's believed on reasonable grounds that the person has committed, is committing or is about to commit an offence **Police** may remove a person.

Police may arrest a person:

Section 123 *Police Administration Act 1978*

Section 23 *Youth Justice Act 2005*

What is the difference between a direction to leave and warning to stay off?

The following table sets out the key characteristics of a direction to leave and a warning to stay off.

	Direction to leave	Warning to stay off
What is it?	A tool that allows occupiers to require a person to leave the place and bans the person from returning for up to seven days.	A tool that allows occupiers to keep a person who is trespassing or has trespassed on the occupier's place to stay off the occupier's place and ban their return for up to 12 months.
Length of ban	Up to 7 days A default 72 hour ban applies if no period is specified when given the direction	Up to 12 months A default 3 month ban applies if no period is specified when giving the warning
What is required before a direction or warning can be given?	The person must be on, or in the occupier's place.	Trespass is required. The person: <ul style="list-style-type: none"> • must be is trespassing or has trespassed in, on or at the occupier's place; or • the occupier has reasonable grounds to suspect that the person is likely to trespass in, on or at the occupier's place
How a direction or warning can be given	Verbally (spoken to the person); or In writing	Verbally (spoken to the person); or In writing
Who can give a direction or warning?	An occupier or a police officer acting at the request of an occupier	An occupier or a police officer acting at the request of an occupier
Offences	It is an offence: To fail to leave the place as soon as reasonably practicable after being given a direction; or	It is an offence: To enter the place within the ban period.

	To return to and enter the place within the ban period.	
Maximum penalty for contravening a direction or warning	A fine of up to \$3,240	A fine of up to \$3,240

What you should do if your direction to leave or warning to stay off is breached

If a person breaches a direction to leave or warning to stay off you should contact the police as an offence has been committed.

The *Trespass Act 2023* does not authorise an occupier to use force to detain a person.