

Factsheet No. 4

Strip searches and your rights



This factsheet provides an overview of the law about strip searches in NSW.

When can police strip search me?

At a police station or place of detention:

you can only be strip searched if the officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search. For example, a strip search may be necessary if police reasonably suspect that you are hiding something you may use to hurt yourself or others.

Anywhere else: you can only be strip-searched if a police officer suspects on reasonable grounds that a strip search is necessary for the purposes of the search **and** the seriousness and urgency of the circumstances make the strip search necessary (see below).

What is a reasonable suspicion?

Reasonable suspicion is not defined in the Law Enforcement (Powers and Responsibility) Act, which is the law that concerns strip searches. Instead, it has been defined by the courts through various cases. A reasonable suspicion is less than a belief but more than a possibility. Reasonable suspicion is usually based on a number of factors.

For example, just waiting in a line at a music festival with your hands in your pockets should not be enough to meet the standard of reasonable suspicion. However, if police were to see you handing a small package to another person and then move away quickly when police began to approach, this may constitute reasonable suspicion.

What does 'seriousness and urgency' mean?

The legislation does not currently define the terms 'reasonable grounds', 'necessary' or 'seriousness and urgency of the circumstances', so it can be difficult to know whether a strip search is legally justified.

An example of when circumstances may be serious and urgent enough to legally justify a strip search is if you are under arrest and police reasonably suspect that you have a knife in your possession, but do not find it during a pat-down search. In this situation, they may have reasonable grounds to do a strip search to protect your safety and the safety of others present.

What must the police tell me before conducting a strip search?

Police must tell you:

- If they are not in police uniform, evidence they are a police officer
- their name and station
- the reason for doing a strip search (e.g. that they think you have drugs or weapons on you)
- that you are required by law to comply.

If police don't give you the above information this may make the search unlawful (except for giving their name and place of duty, unless you asked for that information) (LEPRA, Part 15).

How should police conduct a strip search?

When doing a strip search police must preserve your privacy and dignity as much as possible.

Police must:

- tell you the reason for the search
- tell you if you will be required to take off your clothes
- ask you for your cooperation
- do the search in a private area (as far as reasonably practicable in the circumstances)
- do the search as quickly as possible
- ensure that the police officer conducting the search is of the same sex as you
- not do the search where anyone of the opposite sex can see
- only do the search in the presence or view of a person who needs to be there for the purpose of the search.

The police must also provide you with the name and place of duty of the officer performing the search.

What clothing can police ask me to take off?

Police must not ask you to take off any more clothes than necessary for the purpose of the search.

Police must search you in the least invasive way and let you get dressed as soon as the search is finished. If your clothes are taken by police, police must ensure that you are left with reasonable and appropriate clothing.

Can I be questioned while being strip searched?

No. Police are not allowed to ask you questions while you are being strip searched.

Can police touch my body?

No. Police must not touch your body. Police are only allowed to do a 'visual search', and only so much as is reasonably necessary for the search.

Can police search my genitals or breasts?

Yes, but not by touch. Police may visually search genitals or breasts if they suspect on reasonable grounds it is necessary to do so for the purposes of the search. For example, if they have reasonable grounds to suspect that you have something (such as drugs) hidden at or around that part of your body.

Can police search my body cavities?

No. Police are not allowed to search your body cavities, except for your mouth. If police ask you to squat and cough, this may be a search of a body cavity.

Police can ask you to open your mouth and conduct a visual inspection.

Can I ask a friend to be present?

Yes. You can ask for a parent, guardian or personal representative to be with you and police must allow this if reasonably practicable.

Can police strip search children and young people?

Yes, in some circumstances.

Police can strip search a child aged between 10 and 18 years but not a child under 10 years of age.

A strip search of a child must be conducted in the presence of a parent or guardian. If none are available, then another person (who is not a police officer) who represents the interests of the child being searched must be present.

Police can conduct a strip search without a parent or guardian present if they suspect on reasonable grounds that delaying the search would conceal or destroy evidence, or an immediate search is necessary to protect the safety of a person.

Police must record the reasons for their decision to proceed without a parent, guardian or other person present.

What if I have an intellectual impairment?

If you have an intellectual impairment, police must do the search in the presence of a parent or guardian. If none are available, then another person who is not a police officer who represents your interests must be present.

Police can conduct a strip search without a parent or guardian present if they suspect on reasonable grounds that delaying the search is likely to result in evidence being concealed or destroyed, or an immediate search is necessary to protect the safety of a person.

The police officer must record their reasons for proceeding without a parent, guardian or other person present.

Do I have to comply with a strip search?

It is an offence to refuse to comply with a lawful strip search.

Police may use reasonable force to strip search you.

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This factsheet is not a substitute for legal advice. If you have a problem please seek legal advice from your local community legal centre.

