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**NSW Police Force**

# **Use of Force Manual**

**Office of the General Counsel**

**OFFICIAL: Sensitive**



## **Use of Force Manual**

This is the principal document for the use of force within the NSWPF. It provides instruction on when police may use force and the level of force police may use based on legislation and the common law. The document also provides instruction on the recording of any incident where force is used.

### **Essential Summary**

- You may use force in the following circumstances:
  - to arrest a person
  - to detain a person not under arrest in certain circumstances
  - to prevent a breach of the peace
  - in self-defence or in defence of others
  - for the protection of property.
  
- You should use no more force than is reasonably necessary to exercise your policing functions. Force that is reasonable is necessary and appropriate to the circumstances.
- Where possible you should attempt to de-escalate a situation, taking the time to disengage, review the situation and consider tactics.
- You are personally responsible for any force you use and must be able to justify it. You must not use force to inflict punishment.
- Every use of force must be recorded in COPS, including the type of force used and why that force was necessary.
- If any person is injured during the course of a police operation, whether from the use of force or otherwise, it must be reported to the supervisor immediately and must be recorded on COPS, including details of the injury and how it was sustained.



**Document Control Sheet**

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## 1. Purpose and/or Scope

The role of policing within the community is unique. You have a duty to protect people and property. You are given powers in statute and common law to enable you to perform your policing functions.

You should not be concerned you will be criticised when you engage in a physical confrontation, however, you should always ensure you use no more force than is reasonably necessary to carry out your duties safely and effectively.

It is not uncommon for complaints or civil claims to be made against the NSW Police Force many years after an incident occurs. You should always record sufficient information in order to explain what occurred. A comprehensive record will help you to recall what you did and why it was necessary.

## 2. What is force?

### 2.1. What is force?

Force includes, but is not limited to:

- Firearms (including draw and cover)
- Handcuffs (during a detention or arrest)
- Taser (including draw and cover)
- O.C. Spray (including draw and cover)
- Baton
- Weaponless control.

**NOTE:** The use of handcuffs for the transport of a prisoner is not considered a use of force for the purpose of this document. [Insert content]

### 2.2. Tactical Options Model

The Tactical Options Model provides a series of options to consider when presented with a situation where you will contemplate using force. You should know the tactical options and be prepared to deploy them appropriately to gain and maintain control over any situation you are faced with.

Force will not be considered lawful just because it involved the use of an approved tactical option. You must consider the circumstances you are faced with and only use force that is appropriate and proportionate to that situation.



Conversely, use of force will not be unlawful just because it didn't involve an approved tactical option. As long as the force used is reasonable, appropriate and proportionate to the circumstances it will be lawful.

### TACTICAL OPTIONS MODEL



### 2.3. STOPAR

When responding to a situation police should engage in dynamic risk assessment. That is the continuous process of identifying hazards, assessing risk, taking action to eliminate or reduce risk, monitoring and reviewing, in the rapidly changing circumstances of an operational incident. To assist police in dynamic risk assessment police should use the critical thinking model STOPAR.

**Stop:** Apply some critical thinking

**Think:** How do you approach the problem without escalating the risk to self or others?

**Observe:** Your priority is public safety and safety of self.

**Plan:** Gather all available information, plan your approach, communicate with your partner, advise police radio of the situation

**Act:** Adapt your approach based on the risks and components observed.

**Review:** Continually review your plan. Is what you are doing still effective? Are there any other strategies you can use?



### 3. What is a policing function?

Section 230 of LEPR states:

***Use of force generally by police officers***

*It is lawful for a police officer exercising a function under this Act or any other Act or law in relation to an individual or thing, and anyone helping the police officer, to use such force as is reasonably necessary to exercise the function.*

LEPRA defines a policing function as a power, authority, or duty.

Typically, powers are found in LEPR, for example the power under s 21 to stop, search and detain or the power in s 99 to arrest without warrant.

It is the duty of every police officer to, amongst other things, prevent and detect crime, and protect persons from injury or death, and property from damage, whether arising from criminal acts or in any other way.

Police generally operate under legislation which provides them powers individually; however, some legislation limits the power to certain ranks. An example of this is the power to evacuate under s 60L of the *State Emergency and Rescue Management Act 1989*. The power to direct a person to evacuate in an actual or imminent emergency is restricted to a police officer of or above the rank of Sergeant. However, the police officer with the power to direct an evacuation may authorise another police officer (who is under the rank of Sergeant and who does not have the power) to direct persons to evacuate.

### 4. Any force used by police must be reasonable, appropriate, and proportionate to the circumstances

You are required to exercise judgment every time you use force. You must be able to explain the reasons why the force you used was reasonable, appropriate and proportionate to the situation.

In choosing the level of force and the appropriate tactical options, you should consider all of the circumstances, including:

- The threat you are facing, including the presence of weapons
- The age of the person/s you are dealing with
- The number of persons you are dealing with
- The number of officers present
- Whether the person is affected by alcohol or drugs





- Whether the person is suffering mental illness
- Gender
- Size

#### 4.1. What does reasonable mean?

What is reasonable depends on two factors. You are entitled to use such force as you reasonably believe to be necessary in the circumstances and a reasonable person in your position must not consider the force to be disproportionate.

The following extract from *O'Hara v Chief Constable of the Royal Ulster Constabulary* HL 21 Nov 1996 explains the term 'reasonable':

*The point does not depend on whether the arresting officer himself thought at the time that the suspicion was reasonable. The question is whether a reasonable man would be of that opinion having regard to the information which was in the mind of the arresting officer. The test is not only whether the police officer actually had the suspicion or belief, but also whether a reasonable person, armed only with the information that the police officer had at the time, would have held a belief.*

## 5. Police are lawfully entitled to use force to arrest a person

Section 231 of LEPRA states:

### ***Use of force in making an arrest***

*A police officer or other person who exercises a power to arrest another person may use such force as is reasonably necessary to make the arrest or to prevent the escape of the person after arrest.*

An arrest can only be for the purpose of “*bringing [an arrested person] before a justice (or nowadays before some other person with power to deal with him) to be dealt with according to law*”. That is, the “*true purpose*” of arrest is to charge a person and bring them before a court. This is a clear statement of the law that has been repeatedly approved and applied, including recently by the High Court of Australia in *New South Wales v Robinson* (2019) 266 CLR 619.

The exercise of such arrest power is principally prescribed under LEPRA. Section 99 sets out the strict criteria that must be satisfied for the lawful exercise of the power to arrest without a warrant. If you form the opinion that the criteria of s 99 of LEPRA has been satisfied, and arrest is warranted, you may use reasonable force to effect that arrest if necessary.





**6. Police may use force to detain a person who is not under arrest or to prevent a breach of the peace**

In certain circumstances you may lawfully detain a person without arresting them. Section 230 of LEPR applies, even if there is no express power to use reasonable force in the relevant Act.

You are also entitled to use such force as is reasonably necessary to prevent a breach of the peace.

Examples when police may detain a person who is not under arrest include:

- a police officer may, without a warrant, detain a person for the purpose of searching that person in the circumstances prescribed under s 21 of LEPR
- a police officer may detain an untested registerable person in the circumstances set out in s 75W of the *Crimes (Forensic Procedures) Act 2000*
- a police officer may detain and search a person to prevent them from removing evidence or otherwise interfering with a crime scene
- a police officer may detain an intoxicated person found in a public place where that person is behaving in a disorderly manner or likely to cause injury to another person or property, or in need of physical protection because they are intoxicated
- a police officer may detain a person to prevent a breach of the peace
- a police officer may detain a person in exercise of their duty to do what is reasonably necessary for the protection of persons from injury or death, which may include reasonably necessary action to remove a person and others from danger
- under the *Mental Health Act 2007*, a police officer may detain a person for the purpose of transporting the person to or from a mental health or other health facility
- in the circumstances prescribed by s 189 of the *Migration Act 1958 (Cth)*, a police officer must detain an unlawful non-citizen.

While the power of police officers to detain is distinct from the power to arrest, the power to detain involves a serious incursion on an individual's liberty and must only be used strictly, when necessary and in the way such power has been conferred. You should always remember that if someone is not free to leave them you must have a lawful justification for detaining them.

Under Part 15 of LEPR, where you are exercising certain powers, including specified powers to detain a person, you are required to provide the person with the reason for the exercise of that power.

Certain statutes expressly recognise that police may restrain a person when the person is not under arrest. Where an intoxicated person is being detained under s 206 of the LEPR, they may be "detained under such reasonable restraint as is necessary to protect the intoxicated person and other persons from injury and property from damage".



Under the *Mental Health Act*, where a police officer is taking a person to a mental health facility or other health facility, you are authorised to “use reasonable force” and “restrain the person in any way that is reasonably necessary in the circumstances”.

Section 418 of the *Crimes Act 1900* states:

**Self Defence**

- (1) *A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in self-defence.*
- (2) *A person carries out conduct in self-defence if and only if the person believes the conduct is necessary-- (a) to defend himself or herself or another person, or (b) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person, or (c) to protect property from unlawful taking, destruction, damage or interference, or (d) to prevent criminal trespass to any land or premises or to remove a person committing any such criminal trespass, and the conduct is a reasonable response in the circumstances as he or she perceives them.*

The common law also allows police to act in self-defence. At common law the test is simply that “...any defensive act in which a person who is in danger engages must be reasonably necessary ...if excessive force is used the defence fails.” (*Underhill v Sherwell* [1997] NSWCA 325)

The test at common law is both subjective and objective. In *Zecevic v DPP (Vic)* (1987) 162 CLR 645 the test was simply stated to be:

- (1) Did the person believe subjectively that it was necessary to do what he did in self-defence?
- (2) If the person did so believe, did he do so on reasonable grounds?

**7. Where possible police should attempt to de-escalate a situation and, if appropriate, disengage, review the situation and consider tactics**

In some circumstances by clearly talking and communicating, you can avoid using force. If you do need to use force, you should continue to communicate throughout the incident wherever possible to attempt to resolve the situation.

Having said that, throughout your career you will be faced with many situations where you are engaged in some type of violent confrontation requiring the use of force. In those situations, the initial force you use may be ineffective or circumstances may change, and the use of a different tactical option may be necessary. You are equipped with, and trained in, various tactical options in order to gain control of situations.





One of the tactical options, tactical disengagement, allows you to step back, evaluate a situation and consider the appropriate tactics. It is an opportunity to de-escalate and communicate while reviewing the situation and considering tactical options, including obtaining more resources or support to assist in resolving the situation.

**8. Every police officer is personally responsible for any force they use and must be able to justify it. You must not use force to inflict punishment**

The decision to use force rests with you. You alone are accountable for your actions.

You should not be afraid to use reasonable force, however, you may be called upon to justify any force you use and demonstrate that it was reasonable, necessary, proportionate, and appropriate in the circumstances.

You may be called to justify the force you used in criminal courts, civil courts, the Coroner's Court, Part 8A investigations and investigations conducted by the Law Enforcement Conduct Commission.

You should constantly assess every situation to monitor the level of force you are using. You should not be influenced by the actions of other police but should make an independent assessment of the situation with the knowledge you are personally responsible for your actions and may have to justify them at a later time.

You must not use force to inflict punishment. This is unlawful. Any officer who does so may be criminally charged or face other sanction.

By the nature of their duties, police put themselves in harm's way to deal with some of the most dangerous and reprehensible criminals. At times you will find it difficult to remain composed and considered in your actions. However, it is the role of the police to uphold the rule of law. You must do so with professionalism and integrity, treating people with decency and respect.

**9. Every use of force must be recorded in COPS at a minimum**

Whenever police use any type of force it must, at a minimum, be recorded on the COPS system. It is important that use of force by police is properly monitored to ensure it is being used appropriately. You must record the force you used and the reason for doing so. This will require marking the appropriate use of force checkboxes and an explanation in the narrative.

When you complete a COPS entry you must ensure you record not only the type of force that was used, but also why it was necessary to use such force. For example, if you are faced with a person





armed with a knife you may decide to draw your firearm and cover the offender, before they drop the knife and are arrested and handcuffed. When you complete the COPS event you must record that the firearm was used to cover the offender to protect police from being injured. You must also record the handcuffs were used to protect police from being injured and to prevent the offender from escaping.

Another example where you may have your firearm drawn would be when you are clearing a high-risk premises and have your firearm drawn. In that situation you are not considered to be using force as the firearm is not being used against a person.

Supervisors must ensure every COPS event recording the use of force is completed correctly and contains sufficient details of the force that was used and an explanation why that force was used.

You may be called upon to justify force you used at a later time. In some cases, such as in the civil courts, this may occur years after the incident. A comprehensive record will help you to recall what you did and why it was necessary.

**10. If any person is injured during the course of a police operation, whether from the use of force or otherwise, it must be reported to a supervisor immediately and must be recorded on COPS**

During the course of operational policing, it is inevitable that injuries will occur to members of the public or police. Whenever an injury occurs police must obtain medical assistance if required and immediately report the injury to a supervisor. In addition, details of the injury and how it was sustained (eg. was the injury caused as a result of the use of force) must be recorded on COPS.