

Police Searches

This factsheet has information about when police can search you or your property.

PART A – SEARCHING YOU

When can police conduct a search?

A police officer can search you if they have your consent, a warrant, or a ‘reasonable suspicion’ that you have illegal drugs, a stolen or dangerous item or something else you’ve used or intend to use to commit a criminal offence. Police can also conduct a search after they have made a lawful arrest.

If an officer searches you for any other reason, the search could be unlawful. Police may be restricted from using evidence they found during the unlawful search in court.

What is ‘reasonable suspicion’?

A reasonable suspicion is less than a belief but more than a possibility. It has to have a factual basis. It is about what was in the mind of the police officer at the time. The police officer must demonstrate there is some rational, factual basis for the suspicion.

For example, just waiting in a line at a music festival with your hands in your

pockets should not be enough for ‘reasonable suspicion’ to search you for illegal drugs. However, if police were to see you handing a small package to another person and then moving away quickly when police began to walk towards you, this may be enough reasonable suspicion to search you.

Search by consent

If you consent to a search, police don’t need to show they had ‘reasonable suspicion’. You do not have to consent to a search. If you don’t consent, it’s a good idea to say, ‘I don’t consent to this search’ or something similar.

Can I refuse to comply with a search?

If police have the power to search you, and you do not let them search you, you may be charged with an offence such as resisting or hindering police if you do not comply. You can tell the police you do not consent to a search, but you should still cooperate and comply with any search.

Can police use force when searching me?

Police can use force that is ‘reasonably necessary’ to search you. Whether force is reasonably necessary will depend on several things, such as the seriousness of

the offence, whether you are resisting and whether the police officer believes you might be carrying a weapon or other dangerous item.

Can police use a metal scanner to search me?

Police can use metal scanners to search people in certain areas including transport areas, shopping centres, retail strips, sporting venues and other public places. Police do not need reasonable suspicion to scan you if a senior police officer has declared the location you are in a designated area.

For more information, see our NSW Scanning Laws – Knives and Weapons factsheet.

Am I entitled to be searched in a private place?

For an ordinary search, the police officer must take all reasonable steps to find a place to search you that is out of public view. A strip search must be conducted in a private space.

What is the difference between an ordinary and strip search?

In an ordinary search, a police officer can quickly run their hands over your outer clothing and look at or in anything you are holding or carrying. Police can make you remove outer layers of clothing like your coat, shoes, socks and hat. Police can also run a metal detection device over you.

In a strip search police can ask you to remove all or some of your clothes and can look at your body and your clothes. A police officer cannot strip search you outside a police station or place of detention unless they suspect on reasonable grounds that a strip search is necessary for the purposes of the search; and the circumstances are serious and urgent enough to necessitate a strip search.

A police officer is not allowed to touch your body, search any body cavities or ask you questions while strip searching you. You should be out of sight of people of the opposite sex and those not needed for the search.

See our strip search factsheet for more information.

Can police search my phone?

If police have reasonable suspicion to search you, they can search items in your possession, which could include your phone. However, you do not have to give police your passcode or open your phone using Face ID unless police have a digital access order from the court. You should tell police that you do not consent to your phone being searched. If police search your phone, you should seek legal advice immediately.

Police have the power to seize your phone if the officer believes there is something of interest on it.

Police can keep your phone if it contains relevant evidence as long as criminal proceedings are ongoing. If there is no relevant evidence on the phone, the police should return it after completing their analysis.

What if I am under arrest?

If you are under arrest for an offence, or police have a warrant, they can search you if they suspect you have an item that could be used or was used to commit an offence, is dangerous or could help you escape.

What if I am at a police station?

If you're at a police station, police can conduct an ordinary search or a strip search if they reasonably suspect that it is necessary.

PART B – SEARCHING YOUR HOME

When can police enter and search my home?

Police can enter and search your home if they have a warrant or if you have given your consent.

Otherwise, they can only enter in very limited circumstances.

If you do not want police to enter your home, you need to tell them that you do not consent.

When can police enter my home without a warrant?

If police do not have a warrant, they can only enter your property if they believe, on reasonable grounds that:

- there has been or likely will be a breach of the peace, involving harm or likely harm to a person, and (breach of the peace generally requires conduct which either actually harms a person or is likely to cause harm)
- someone has been or will be seriously injured, and it is necessary to enter to prevent further significant physical injury, and or
- a person they need to arrest, apprehend or detain is in the premises.

Police are not necessarily entitled to search your premises if they have entered under the above circumstances.

Police are entitled to search and seize items from your home if they have lawfully established a crime scene on the property.

PART C – SEARCHING YOUR VEHICLE

When can police search my vehicle?

Police can stop, search and detain your car if they have a reasonable suspicion that it:

- has been used in connection with an offence, or has an item used or

- intended to be used in connection with a serious offence, or
- contains anything stolen or unlawfully obtained, or
- contains a prohibited plant or drug, or
- is in a public place or school and has something dangerous inside or is a risk to public safety

Police may seize and detain anything they reasonably believe to be stolen, is evidence of an offence, is dangerous or is a prohibited drug.

What if there is an emergency or public disorder?

If there is a serious public disturbance (like a riot or violent protest) the NSW Police Commissioner can declare a specific area as a 'target area' for up to 48 hours. During this time, police have special powers in that area, including the power to stop and search people or vehicles in public places without needing a reasonable suspicion.

PART D – GENERAL PRINCIPLES

Are there any other obligations on police before or during the search?

Yes. Before conducting a search, police must tell you their name and place of duty, and the reason for the search. They must also give you a warning that you are required by law to comply with the search (unless you are already complying).

Police must also:

- inform you whether you will need to remove clothing and explain why
- ask for your co-operation
- conduct the search in a way that allows for reasonable privacy and is as quick as reasonably practicable
- conduct the least invasive search that is practicable in the circumstances
- not search your genitals or breasts unless they suspect on reasonable grounds it is necessary to do so for the purposes of the search
- not touch you during the search
- ensure the search is done by a police officer of the same sex
- not question you while searching you
- if clothing is seized, leave you with, or give you sufficient clothing

Can I film a search?

You are allowed to film a search of yourself or another person so long as you are not interfering with the search.

You should stand away from the police and not make any comments that could be interpreted as interference.

If you do interfere with the search, police may give you a direction to leave (it is an offence not to comply with this direction) or police may charge you with an offence.

PART E – AFTER THE SEARCH

What happens if police find something?

If a prohibited item (such as a stolen item, weapon or prohibited drug) is found during a lawful search, police can take it and charge you with an offence. At this point, you must tell police your name and address. If you do not, you may be arrested so that police can confirm your identity.

You do not have to answer any police questions about the item found, and you do not need to participate in an interview. If you are arrested or charged, you should seek legal advice immediately.

Police often find prescription medicines during a drug dog operation. You do not have to carry your prescription with you, however, if police reasonably suspect that a substance is unlawful, they may take it away and charge you with an offence.

What happens if police do not find anything?

If nothing unlawful is found during the search, you do not need to give police your details. Police should tell you that you are free to go.

Police are not allowed to detain you to 'run a check' (called a CNI check) of your name if no offence is made out.

Do police need to make a formal record of the search?

If something is found, police must enter a record of the search and the reasons for the search in the NSW police internal database called 'COPS'.

If nothing is found, police should still make an entry about the search in COPS but it will not be connected to you (unless you give your name).

You have a right not to give your name if nothing is found during the search. However, it will be more difficult to make a complaint or civil claim in the future if you do not give your name, because it may be more difficult to obtain records about the search.

You can access the police records of your search by making an application under the *Government Information (Public Access) Act 2009* (NSW). See our Police GIPA application guide for information on how to do this.

This factsheet is not a substitute for legal advice.
