

Factsheet No. 22

Making a civil claim for compensation against NSW Police



Police powers

Police have a range of powers to help them protect the community and respond to crime, including the power to stop and search, arrest, and move people on in certain circumstances. The main source of police powers is the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (**LEPRA**), but police have powers in other legislation too.

LEPRA limits police powers. For example, it requires police to explain why they are searching you or to only use force that is 'reasonably necessary'. If police act beyond their powers or fail to comply with these conditions, they may be the subject of a police complaint and/or may be sued in court for compensation.

This fact sheet aims to explain the most common civil claims against NSW Police, and provides a brief overview of the legal process involved in making a claim against NSW Police.

Common claims brought against police

- **Assault** – an intentional act which makes you believe that a person will use harmful physical force against you.

Example: Police point their taser at you and say "if you don't get on the ground, we will taser you". If they had no lawful power to do this, they could be found to have unlawfully assaulted you.

- **Battery** – intentional contact with your body that is either harmful or offensive, and is committed without a lawful reason.

Example: If police strip search you without lawful reason, or if they are physically rough or aggressive when arresting you.

- **False Imprisonment** – a wrongful and intentional act which causes your freedom to be restricted.

Example: If police arrest you for a fine-only offence, or stop you to 'just have a chat' and tell you that you are not allowed to leave

- **Malicious prosecution** - where criminal proceedings were started or continued against you out of malice and the police had no reasonable or probable cause. This tort is very hard to prove.

Example: If a police officer makes false allegations that you assaulted them and then charges you with assault, when they know (and it can be shown) that you did not.

Which court?

Civil claims for compensation are generally filed in the District Court and are made against the State of NSW (as they are responsible for NSW Police). Most people have a lawyer, but this is not required.

If you make a claim against NSW Police and you lose, you will generally need to pay the legal costs of NSW Police, which could be significant. This is why it is very important to seek legal advice before you bring a claim against NSW Police.

Time limits

Civil claims must be filed in court within a certain period of time. If you are making one of the claims against NSW Police discussed above, the time limit is 6 years, unless you are claiming personal injury damages, in which case it is 3 years.

Legal advice

If you think you may have a claim against police, you should get legal advice. In order to advise you, your lawyer will need:

- a detailed description of your recollection of events,
- a copy of all relevant police records about the incident (records can be obtained by making a *Government Information (Public Access) Act* ('GIPA') 2009 (NSW) application),
- any CCTV or other relevant footage, if available, and
- statements from any witnesses.

More information about lodging a GIPA application is available at:

<https://www.ipc.nsw.gov.au/fact-sheet-your-right-access-government-information>.

If you are unable to provide the above information, your lawyer may be able to assist you with obtaining this.

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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.

