

# Factsheet No. 16

## Police searches



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

To do any search police must have a 'reasonable suspicion' that you have on you drugs, a stolen or dangerous item or something else you've used or intend to use to commit a criminal offence.

### What is a 'reasonable suspicion'?

A reasonable suspicion is less than a belief but more than a possibility. It requires some factual basis. It is about what was in the mind of the officer at the time.

For example, just waiting in a line at a music festival with your hands in your pockets should not be enough for '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 walk towards you, this may be enough for reasonable suspicion.

## Part A – searching you

### When can police conduct searches?

Police are not allowed to search you or your property for no reason.

A police officer can only search you if they have your consent, a warrant, or a 'reasonable suspicion' that you have on you drugs, a stolen or dangerous item or something else you've used or intend to use to commit a criminal offence.

If an officer searches you for any other reason, the search could be unlawful, and they may not be allowed to use any evidence they found in court.

### Search by consent

If you consent to a search, police don't need to show that 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 a 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. So if police tell you that you have to comply, you should.

### Can police use force when searching me?

Yes, police can use such force that is 'reasonably necessary' to search you. Whether force is necessary and reasonable will depend on a number of things, such as the seriousness of the offence, whether you are resisting or not and whether they think you might be carrying a weapon.

### Am I entitled to be searched in a private place?

For an ordinary search, Police 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 search and a strip search?

In an ordinary search, a police officer can quickly run their hands over your outer clothing and look at anything you are holding or carrying. They can

make you remove outer layers of clothing like your coat, shoes and hat.

In a strip search police can ask you to remove all of your clothes and can look at your body and your clothes.

In order to do a strip search:

- an officer must *suspect on reasonable grounds* that a strip search is necessary for the purposes of the search; and
- a strip search must be necessary due to the *seriousness and urgency* of the circumstances.

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?**

It is Redfern Legal Centre's position that police are not allowed to search your mobile phone. If police want to search your phone, you do not have to give them your passcode (if the phone is locked) and you should tell them that you do not consent. If police search your phone, you should seek legal advice immediately.

### **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 was used to commit an offence, or is dangerous or could help you escape.

### **What if I am at a police station?**

If you are at a police station, police can search you and hold onto anything they find.

### **What if there is an emergency or public disorder?**

Police have the power to search people and vehicles if there is a public disorder (such as a riot). Police do not require a reasonable suspicion to search you if the Police Commissioner has declared a public disorder.

## **B – Searching premises**

### **When can police enter and search my premises?**

Police can enter and search your premises if they have a warrant or if you have given your consent. Otherwise, they can only enter in very few circumstances.

If you do not want police to enter your premises, you need to tell the police that you do not consent.

### **When can police enter and search my premises without a warrant?**

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

- an act of domestic violence has recently been or will be committed
- there has been or will be a breach of the peace
- someone has been or will be seriously injured
- a person they need to arrest or search is on the premises
- the premises may contain evidence of a serious crime.

## **Part C – Searching your vehicle**

### **When can police search my vehicle?**

Police can stop, search and detain your vehicle 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
- contains anything stolen or unlawfully obtained
- 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,

## **Part D – Protests**

A police officer may stop and search you or your vehicle if they suspect on reasonable grounds that you have anything which is:

- intended to be used to lock-on or secure a person to any plant, equipment or structure for the purpose of interfering with the conduct of business;
- likely to be used in a manner that will give rise to a serious risk to the safety of any person.

## **Part E – General principles**

### **Are there safeguards that police must comply with?**

Yes. 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).

They must also:

1. Inform you whether you will need to remove clothing, and explain why;
2. Ask for your co-operation;
3. Conduct the search in a way that allows for your reasonable privacy and as quickly as reasonably practicable;
4. Conduct the least invasive search possible;
5. Not search your genitals or breasts unless they suspect on reasonable grounds it is necessary to do so for the purposes of the search.
6. Not touch you during the search;
7. Ensure the search is done by a Police officer of the same sex;
8. Not question you while searching you; and
9. If clothing is seized, leave you with 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 refrain from making any comments that could be construed 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 charge you with an offence.

## **Part F – 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 away 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, or do 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 can still 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 suspected.

### **Do police need to record the search?**

If something is found, police must record the search and the reasons for the search in the police database called 'COPS'.

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

Although you have a right not to give your name, it will be more difficult to make a complaint or civil claim in the future if you do not give your name. This must be balanced against the risk that if a search is recorded against your name, it can result in further police attention in the future.

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.

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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

