

Factsheet No.17

Confiscation of Property by police



This factsheet provides information on what to do if police confiscate your property. 'Confiscating' property means police taking away property that you own or possess.

When can police confiscate my property?

If police are conducting a lawful search, they can take:

- property that they have reasonable grounds to suspect was **stolen**
- property that they have reasonable grounds to suspect might provide **evidence** of the commission of a crime (eg. boltcutters),
- **illicit drugs**
- **dangerous articles** (eg. knives, firearms). See RLC's factsheets on searches to find out what a lawful search is:

<https://rlc.org.au/publications-bytype/Factsheets/Police-Complaints>

When will I get my property back?

Police can hold on to your property until they decide that:

- the property is no longer needed as evidence, and
- it is lawful for you to have the property in your possession.

Police will not return dangerous articles (including firearms, detonators and prohibited weapons) or dangerous implements (including knives, blades and items intended to be used to cause injury or damage property).

Who do I contact to get my property back?

To get your property back contact the officer in charge of your matter. If this officer is unavailable, or you do not know who to contact, ask to speak to the supervising Sergeant.

If police are not responding to you, you can write a letter to the relevant police station requesting your property is returned.

Police have confiscated documents from me, can I make a copy of them?

Yes, police must allow you to look at the documents at a reasonable time and make copies of the documents. Contact the officer in charge of your matter to do this.

Will Police tell me when I can go pick up my property?

Yes. Police must notify you once your property can be collected. You must then claim your property within 28 days. After 28 days, police can destroy unclaimed property.

What can I do if police refuse to return my property?

You can apply to a court for an order that police return your property.

If your property is worth less than \$100,000, the application should be made to the Local Court.

If your property is worth more than \$100,000, you will need to make an application to the District Court or the Supreme Court.

You will need to prove to the court that you are allowed by law to possess the property (for example, by showing receipts). You should seek legal advice before making an application to the court.

What can I do if police have confiscated a knife, blade or other 'dangerous' object?

If you would like to get your property back, you have 28 days from the date of police taking the property to apply in writing to the Police Area Commander or Police District Commander for the return of the property. You will need to explain why the item should be returned to you.

If you are under 18, the application will need to be made on your behalf by a parent, guardian or other person with lawful care or custody.

Police do not have to return the item to you if:

- court proceedings have been commenced against you in respect of the item (unless the court proceedings have been withdrawn or you were found not guilty),
- you are subject to a firearms prohibition order or weapons prohibition order, or
- possession of the item would constitute an offence.

What can I do if the Commander refuses to return my knife, blade or other 'dangerous' object?

You have 28 days from the date of refusal to make an application to the Local Court to appeal the decision. The Local Court will decide whether the item is returned to you, or forfeited.

When can police sell or destroy my property?

You must claim your property within 28 days of proceedings being finalised or police notifying you that the property is no longer needed. If you don't claim your property within this time, police can sell or dispose of your property.

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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.



