

Fact Sheet No. 3

Police Search Powers



Police have to use their powers in compliance with the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) ('LEPRA').

This fact sheet aims to help you understand police powers when it comes to ordinary and strip searches.

Search and Seizure with warrant (s21)

Police may *stop, search and detain* a person where they suspect on reasonable grounds that a person has in their possession or under their control:

- Anything stolen or unlawfully obtained
- Anything used or intended to be used in connection with a serious offence (defined in s 20)
- A dangerous article – including a gun, a detonator or other prohibited weapon – that is being, was used in, or in connection with a serious offence
- A prohibited plant or drug

Police may *seize and detain* certain items found as a result of a search.

Ancillary Power to Search Persons (s21A)

If Police, when conducting a search under section 21, believe on reasonable grounds that something is concealed in a person's hair or mouth can require the person to:

- To open his or her mouth to enable it to be searched, or
- To shake, or otherwise move, his or her hair.

Power to search for knives and other dangerous implements (s24)

Police may require an individual who is in a public place or a school to submit to a search if a police officer suspects *on reasonable grounds* that a person has a dangerous implement on them.

Further if the individual is in a school setting or a student the police may require:

- To submit to a search of any bag or other personal effect that is on or with the person
- To submit to a search of the persons locker at the school and examination of anything within the locker

Power to carry out search on arrest (s27)

Police may, if suspected on reasonable grounds after arrest for an offence or warrant, search a person in order to ascertain if they are carrying anything:

- That would present a danger to a person
- That could be used to assist a person to escape from lawful custody
- That is a thing with respect to which an offence has been committed
- A thing that will provide evidence of the commission of an offence
- That was used, or is intended to be used, in or in connection with the commission of an offence

Power to carry out search of a person in lawful custody after arrest (s28A)

Police officers may search a person who is in lawful custody after an arrest and seize or detain anything found on during that search.

Searches Generally (s30)

Police officers when conducting a search of an individual may:

- Quickly run his or hands over the person's outer clothing
- Require the person to remove his or her coat or jacket or similar articles of clothing and any gloves, shoes, socks and hat (but not all of the persons clothes except if it is a strip search)
- Examine anything in the possession of the person
- Pass an electronic metal detection device over or in close proximity to the person's outer clothing or anything removed from the person
- Do any other thing authorized by the Act for the purpose of the search

Strip Searches (s31)

A *strip search* means a search of a person or of articles in the possession of a person that may include:

- Requiring the person to remove all of his or her clothes; and
- An examination of the person's body (but not of the person's body cavities) and of those clothes

Preservation of privacy and dignity during search (s32)

A member of the police who searches a person must, as far as is reasonably

practicable in the circumstances, comply with the following:

Informing the individual

- Whether they will be required to remove their clothes during the search
- Why it is necessary to remove the clothing

Conduct the search

- In a way that provides reasonable privacy for the person searched
- As quickly as reasonably possible

The police officer must also ask for the persons co-operation. Further, the search must be conducted by a police officer of the same sex as the person searched unless not immediately available, in which a police officer may delegate the power to search to another person.

Rules of conduct of strip searches (s33)

A police officer who strip searches a person must, as far as reasonably practicable in the circumstances, comply with the following:

- The strip search must be conducted in a private area
- The strip search must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched
- Not conduct the strip search in front of unnecessary people

No strip searches of children (s34)

A strip search must not be conducted on a person who is under the age of 10 years.

Searches carried out with consent (s34A)

Police may search a person with the person's consent but only if the police officer has sought the person's consent before carrying out the search.

The police officer must provide the person with the following before conducting the search:

- Evidence that the police officer is a police officer unless in uniform
- The name of the police officer and his or her place of duty

Vehicle Stop and Search (s 36)

Police may *stop, search and detain* a vehicle if they suspect on reasonable grounds that the vehicle:

- Contains anything stolen or unlawfully obtained
- Is being, or was, used in connection with a serious offence (defined in s 35)
- Contains anything used (or intended to be used) in connection with a serious offence
- Is in a public place and contains a dangerous article used in connection with a serious offence
- Contains a prohibited drug or plant
- Poses a safety risk to a public place

Police may *seize and detain* certain items found as a result of a vehicle search

Power to search for and seize things without warrant (s45B)

A police officer may, without warrant, stop, search and detain a person, vehicle, vessel or aircraft if the police suspects on reasonable grounds that the person has in their

possession or under their control anything which inters with the following:

- 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 or undertaking
- Likely to be used in a manner that will give rise to a serious risk to the safety of any person

Drug Dogs (Pt 11 Div 2)

Police may use a drug detection dog if they have the power to conduct a search. The indication of the presence of drugs by a drug detection dog is not enough to give police the power to search, but can form part of their reasonable suspicion that a person has prohibited drugs on their person.

Drug detection dogs may be used for general drug detection at licenced premises (except restaurants), sporting and other public events, on public transport (only certain routes), and in the Kings Cross precinct.

Use of Force (Pt 18)

Police may use such force as is *reasonably necessary* to exercise their functions. This includes using force in making an arrest or preventing the escape of a person after arrest.

If you would like advice about making a police complaint or to talk about how the police treated you, you can contact Redfern Legal Centre on **(02) 9698 7277** to book an appointment with the Policing Clinic.

Produced by the UNSW Policing Practice at Redfern Legal Centre.

*This factsheet is no substitute for legal advice.
If you have a problem please seek legal advice
from your local community legal centre*

