

Factsheet No. 1

FAQs About Police Powers



This factsheet answers some frequently asked questions about Police Powers in NSW.

PART A – Sniffer Dogs

How can police use sniffer dogs?

If you are approached by a sniffer dog in a 'designated area' (see below), and the sniffer dog sits next to you, this may give police reasonable grounds to suspect that you have drugs in your possession. If this happens, Police are allowed to search you.

The police have to take all reasonable steps to make sure that the dog does not touch you and is kept under their control.

Where can police use sniffer dogs?

Police can only use sniffer dogs to randomly search you without a warrant, in the following designated areas:

- In pubs, clubs and bars where alcohol is served but not licensed restaurants;
- At public entertainment events, including festivals, sporting events, concerts and street parades;
- On public transport and at stations (only certain bus routes – speak to a lawyer);
- In tattoo parlours;
- In and around public places in Kings Cross (this may include residential areas if it falls within the demarcated area – speak to a lawyer).

If a police officer uses a sniffer dog on you outside these areas, you should seek legal advice.

If police have a warrant, they can use sniffer dogs to search you in any public place.

How should I respond if I am approached by a sniffer dog?

Here are some tips to help you respond if police ask to search you:

- Remain calm and be polite. Refrain from swearing or acting rudely, as this may give Police an excuse to fine or arrest you.
- Be cooperative but ask the police officer why they are searching you. It is also a good idea to ask the police officer for their name, rank and station.
- If police find any illegal drugs on you, you must provide your name and address to Police. Aside from giving your name and address, you have the right to silence and you do not have to answer questions asked by Police, if you wish.
- If police do not find any illegal drugs and police request your name and address, ask the police officer if it is an offence not to give the information. If Police say no, do not feel obliged to provide this information. If Police say yes, it is better to be cooperative and provide them with your name and address. You can consider making a complaint later.

PART B - Searches

When can a police officer search me?

A police officer may search you if they suspect on reasonable grounds that you are in possession of any:

- Stolen goods;
- Dangerous goods or weapons; or
- Illegal drugs.

What are police allowed to do when they search me?

When conducting a search, a police officer may normally:

- Quickly run their hands over your outer clothing;
- Ask you to remove your jacket or similar outer garments of clothing like shoes, socks or hat;
- Examine anything in your possession such as a bag;
- Ask you to open your mouth and to shake your hair.

Police can only 'strip search' you, (ask you to remove all or part of your underclothing) if the situation is serious and urgent. If Police wish to conduct a strip search they must:

- Tell you whether you will be required to remove clothing during the search;
- Tell you why it is necessary to conduct the search;
- Provide a private area for the search to be conducted; and
- Ensure an officer of the same sex conducts the search.

Can the police search my phone (i.e. recent calls)?

Unless you provide consent, police may only search your phone by first legally seizing and detaining your phone.

Police may only seize and detain your phone if they have a warrant or if they have reasonable grounds to suspect that the phone is stolen or contains evidence (e.g. video and audio recordings, photographs) of a serious offence that has taken place.

If police want to search your phone, you should ask them if it is an offence not to let them search your phone. If they say it is, ask for the reasons why they wish to search your phone.

If I am pulled over by police, can the police search my car or the items inside my car?

A police officer may search your car or items in the car if they suspect on reasonable grounds that:

- you are in possession of stolen goods or illegal drugs;
- your car or anything in your car was used in connection with a crime;
- something has happened near a public place or school and the search may lessen the risk.

How should I respond to police if they want to search me, my belongings or my vehicle?

- Remain calm and be polite. Do not swear or act in an aggressive manner, as this may give Police a reason to give you a fine or arrest you.
- Be cooperative but ask the police officer why they are searching you. You should also ask the police officer for their name, rank and station.
- If the police officer has reasonable grounds for searching you, you must comply with the search. Police may only use force if you refuse to cooperate with their search.

Do I have to give my name and address?

- If you are found to be in possession of any stolen or illegal goods or illegal drugs, you must give police your name and address. Aside from giving your name and address, you do not have to answer any other questions asked by police.
- If you are not in possession of any stolen or illegal goods or illegal drugs and police request your name and address, ask the police officer if it is an offence if you do not give your name and address. If police say no, you do not have to provide this information. If police say yes, it is better to be cooperative and provide them with your name and address. If you think that police may not have had a right to ask for your name and address, you can make a report or complaint later.

How should I respond if police suspect I am in possession of stolen goods (e.g. a phone)?

Police may only seize and detain any possessions that you have on you, if they have 'reasonable suspicion' that the item is stolen. Typically, police will ask a series of leading questions regarding where the item was obtained, whether a receipt was given and whether any suspicious activity took place. If the item is not stolen, then it is best to answer these

questions courteously and honestly but always remember you may exercise your right to silence.

PART C: BAIL CHECKS

What is bail?

If you have been charged with an offence, police or the courts will decide whether to hold you in custody or release you on 'bail'. If bail is granted, it means that police or the courts will release you so long as you comply with certain requirements, known as bail conditions.

What sorts of bail conditions can I expect?

Conduct requirements: Some bail conditions are about things that you can or cannot do while on bail. These are called 'conduct requirements'.

Examples of conduct requirements may include:

- Ensuring you are at court on a particular given date;
- Living at a particular address;
- Ensuring you are at a particular address during particular hours (curfew);
- Reporting to police on certain occasions;
- Not associating with certain people.

Security requirements: Sometimes you or another person (often a family member) may need to give money or in rare cases, property. The money will not be returned if you do not attend Court on the required day.

Character acknowledgements: A character acknowledgement is a reference statement from someone that says that you are a responsible person who is likely to comply with their bail conditions.

Enforcement conditions: Some bail conditions may require you to comply with a police direction.

Examples of enforcement conditions may include:

- Doing a random breath test
- Answering the door to a police officer to ensure you are at home when you are meant to be

If the police require you to comply with a direction that is not written down in your bail conditions, you should seek legal advice.

What happens if I breach my bail conditions?

If you are found to breach your bail conditions, police may arrest you and order you to appear before the court. The court then decides if your bail should be revoked. If your breach of bail is less serious (for example; arriving late to report to Police), police may decide to just give you a warning.

When are police allowed to do bail checks?

Bail checks may involve a police officer attending your house and asking you to open the door to prove that you are complying with your bail conditions. Police must have a Court order to undertake bail checks and there must be a reason given as to why the check is necessary.

Must I allow a police officer to enter my house to perform a bail check?

Police cannot enter inside your premises simply to check you are present.

Part D: POLICE HARASSMENT

What is police harassment?

Police harassment occurs when a police officer abuses his or her authority and may include the following:

- Continually or without good reason stopping you;
- Making inappropriate comments or questions;
- Conducting searches of you without a lawful or good reason.

Part E: DRUG PARAPHERNALIA

Is it illegal to be in possession of drugs equipment and paraphernalia?

Under NSW law, it is illegal to be in possession of any equipment that is used to take or manufacture drugs. It is not an offence to possess a hypodermic needle or hypodermic syringe. You may also be allowed to use the equipment if it is required for the use of prescribed medication.

Part F: POLICE COMPLAINTS

How do I make a complaint about police?

Complaints against police can be made in a number of different ways:

1. You can make an informal complaint at your local police station
2. You can make a formal complaint by writing to your local Police Station, by writing to the Law Enforcement Conduct Commission (when it begins operation) or online at:
https://www.police.nsw.gov.au/services/complain_about_a_police_officer/lodge_a_complaint

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 Police Powers Clinic.

*Produced by 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*

July 2017

