

# Factsheet

## Strip searches and your rights



### What is the legislation that provides police with the power to conduct a strip search?

In NSW the law governing the use of strip searches is the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (LEPRA) sections: 31, 32, 33, 34, 34A & Part 15.

### When can police conduct a strip search?

A strip search must only be conducted when a police officer suspects on **reasonable grounds** a strip search is **necessary** for the purposes of the search and that the **seriousness** and **urgency** of the **circumstances** make the **strip search necessary** (LEPRA, s.31(b)); or

In case of a strip search conducted at a police station or place of detention, a police officer may only conduct a strip search if the officer suspects on **reasonable grounds** that the strip search is **necessary** for the **purposes of the search** (LEPRA, s.31(a)).

The legislation does not define 'reasonable grounds', 'necessary' or 'seriousness and urgency in the circumstances'.

A strip search should be a last resort and not the first port of call. There are less invasive searches available. A general search police allows police to quickly run their hands over your outer clothing, require you to remove outer clothing (e.g. shoes, hat, gloves, jacket and socks).

### What constitutes reasonable suspicion?

Reasonable suspicion is not defined in the legislation. It has been defined by case law. **A reasonable suspicion is less than a belief but more than a possibility.** Reasonable suspicion is usually based on a number of factors. Just waiting in a line at a music festival with your hands in your pockets should not be enough to meet reasonable suspicion. But, if police see you handing a small package to another person and you move away quickly when police begin to approach this may constitute reasonable suspicion.

### What the police must tell you before conducting a strip search

Under Part 15 of LEPRA police must provide the following information:

- evidence they are a police officer (being in police uniform is sufficient evidence)
- their name and place of duty
- the reason for conducting a strip search (e.g. suspect you have drugs or weapons)

If police fail to provide the above information (except for failure to tell name and place of duty) this may make the conduct unlawful.

### How should police conduct a strip search?

When conducting a strip search the police must preserve privacy and dignity as much as possible in the circumstances (*LEPRA*, s.32 & s.33). A police officer must:

- inform the person if they will be required to take off their clothes
- inform why it is necessary to take off their clothes
- ask the person being searched for their cooperation
- conduct the search in a private area (as far as reasonably practicable in the circumstances)
- conduct the search as quickly as possible
- the police officer conducting the search must be of the same sex as the person searched
- not conduct the search in the presence of a person of opposite sex to the person being searched
- only conduct the search in the presence or view of a person who is necessary for the purpose of the search

See below for further safeguards.

### What clothing can police ask you to take off?

Under s.33 of *LEPRA* police must not remove any more clothes than necessary for the purpose of the search.

Police must conduct the search in the least invasive way (s.32 *LEPRA*) and allow the person to dress as soon as the search is finished. If clothes are seized, police must ensure the person is left with reasonable and appropriate clothing.

### Can I be questioned while I am being strip searched?

No. Under s.32(8) of *LEPRA* police are not allowed to continue questioning a person while they are being strip searched.

### Can I ask a friend to be present during the search?

Yes. Under s.33(2) of *LEPRA* it allows for a parent, guardian or personal representative to be present if requested and reasonably practicable.

### Can police search my genitals or breasts?

Generally no. But police may visually search genitals or breasts if police suspect on reasonable grounds it is **necessary** to search this part of the body (s.32(6)).

### Can police search my body cavities?

No. Police may ask you to open your mouth, but are not allowed to search your body cavities (*LEPRA*, s.33(4)). If police ask you to squat and cough this may constitute a search of a body cavity.

### Can police touch my body?

No. Police must not touch your body. Police are only allowed to **visually inspect** your body and only as much as **reasonably necessary** (*LEPRA*, s.33(4) & s.33(6)).

### At what age can a person be strip searched?

Police may conduct a strip search on a child who is aged between **10 and 18 years** (*LEPRA*, s.33(3)).

Police are not allowed to conduct a strip search on a person **under 10 years of age** (*LEPRA*, s.34).

When conducting a strip search on a child aged between **10 and 18 years**, the search **must** be conducted in the presence of a parent or guardian. If none available, then another person who is not a police officer who represents the interests of person being searched.

But police can override the above requirement if police **suspect on reasonable grounds** that a **delay** with the search would **conceal or destroy evidence**, or an immediate search is **necessary** to **protect the safety** of a person (*LEPRA*, s.33(3A)).

Police must make a record of such a decision to proceed without parent or guardian present (*LEPRA*, 33(3A)).

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