

Police powers

Your rights and responsibilities



Legal Aid 
NEW SOUTH WALES

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Police have a lot of powers to help them carry out their work. Most of these powers are set out in legislation.

The following information may help you to understand these powers and what rights and responsibilities you have in different situations.

Contents

Arrest **4**

**Arrest—at the police station
(includes right to silence, ‘special
cautions’)** **6**

**Searching people and
their property** **9**

Public disorder **12**

Move along directions **13**

Detention of intoxicated persons **14**

Identification **15**

Questioning **15**

Seizing goods **18**

The law (legislation) **19**

Complaints **19**

Contacts **20**

Arrest

Who can arrest me and why?

A police officer can arrest you if, for example:

- You are committing an offence
- You have, or he/she has reasonable grounds to suspect that you have, committed an offence
- You are breaching the peace
- You have breached your bail conditions
- A warrant (written authority) has been issued for your arrest
- He/she needs to serve an Apprehended Violence Order (AVO) on you or has a warrant for your arrest for serving an application for an AVO on you
- He/she wishes to apply for a provisional (urgent) AVO against you.

A private citizen can arrest you (citizen's arrest) if:

- You are committing an offence
- You have committed an offence.

How should they arrest me?

The person arresting you should:

- Tell you that you are under arrest
- Tell you why you are being arrested
- A police officer should also tell you his/her name and place of duty.

If the person arresting you does not give you these details, DO NOT get into a dispute with them. You can lodge a complaint later—see page 18.

Can they use force to arrest me?

A police officer may use as much force as is necessary to arrest you. Unreasonable force is an assault. After arrest, a police officer may handcuff you if for example you attempt to escape or the police officer thinks that you may escape.

What happens if I resist arrest?

Even if you don't think that you are guilty of an offence or should be arrested it is wise to submit to the arrest. If you are charged with an offence you will have a chance at court to explain your case. Even if you are innocent, the police may arrest you if they have reasonable grounds to suspect that you have committed an offence. It is an offence to resist arrest. If you use violence you may be charged with assaulting police.

Do I have to submit to a search if I am arrested?

Police can search you when you have been arrested and again later at the police station.

Arrest—at the police station

When you are taken to a police station you will be given a document which sets out your rights.

If police want you to take part in their investigations, for example by questioning you, you have a right to contact a lawyer or other person. Legal Aid lawyers do not attend police stations to advise arrested people and they do not provide telephone advice (except to young people under 18 on the Youth Hotline.) If you know a private lawyer you may contact that person and ask them to attend. The police only have to wait for two hours for your lawyer, or other person, to attend. It is likely that you will have to pay for a private lawyer to attend the police station.

If you don't have a lawyer you may wish to phone:

- LawAccess NSW between 9am-5pm Monday to Friday **1300 888 529**
- Aboriginal Legal Service if you are Aboriginal or a Torres Strait Islander (to find your local service, visit www.alsnswact.org.au) The police will be able to give you the telephone numbers.
- Youth Hotline if you are under 18 on **1800 10 18 10.**

Do I have to answer questions if I am under arrest?

In general you have a right to silence. However in some circumstances you do have to give police some information and in some circumstances exercising your right to silence may be used against you in court. (See pages 15-16 for more detail about the types of information police may require you to disclose.)

If you have been arrested in relation to a particular offence, you do not have to take part in an interview to answer questions about that offence (or anything else). You should be advised of this by police, who should also warn you that anything you say to them may be used as evidence against you. It is up to you to decide whether or not to answer their questions. If you are unsure, you should wait until you have received legal advice before giving an interview.

In addition, for most offences, police can administer a 'special caution' but only if (1) you have had an opportunity to obtain legal advice from your lawyer and (2) then you are given the 'special caution' in the presence of your lawyer. The effect of the 'special caution' is that if you then fail or refuse to tell police a fact that is later relied on in your defence in court, it may permit the court to use your silence against you. If you are not represented by a lawyer or if your lawyer is not present when police speak to you, this provision does not apply.

If your arrest relates to a serious offence you may be asked if you want to take part in an interview which will be recorded on both audio and video. If you do you will be given a copy of the audio (sound) recording.

Do I have to submit to being fingerprinted or photographed?

The police may take photographs, fingerprints and palm prints for identification.

Do I have to take part in an identification parade?

No, but the police may ask witnesses whether they can identify you from photographs.

What is bail?

If the police charge you with an offence they will need to decide whether to release you on bail or to keep you in custody. After the police decide whether or not to release you on bail they are required to allow you to contact a lawyer. If the police refuse to grant you bail they are required to take you to court as soon as practicable so that you may make an application for bail to the court

There are Legal Aid lawyers available at all local courts to represent people who have been refused bail by the police. You may also use your own lawyer.

If you are refused bail on a weekend or public holiday, you may appear in court by Audio Visual Link. A Legal Aid lawyer will contact you by audio visual link before you appear in court.

Searching people and their property

If I'm not under arrest can I be searched?

Police can also search you (and your car, boat or other vehicle and possessions) if they have reasonable grounds to suspect that you are carrying:

- stolen goods or goods unlawfully obtained, for example from the sale of drugs
- prohibited drugs
- an item that has been, or may be, used in a serious crime, for example, tools to break into a car or house
- knives, weapons or 'dangerous implements'
- a laser pointer

Police can also search you and your car if they have reasonable grounds to suspect that:

- it may have been used in connection with a serious offence
- it contains stolen goods or unlawfully obtained goods
- it contains prohibited drugs
- it contains items used for the commission of an offence
- there are circumstances in a public place or school likely to give rise to a serious risk to public safety
- they suspect that someone in the car is wanted for arrest.

During periods when police are given special public disorder powers they may search you or your car if you/it are on a 'target road or area'.

What does a search involve?

Police can pat you down, ask you to remove your outer clothing and shoes, look into your clothing and belongings and use an electronic metal detection device. They can also ask you to shake your hair and open your mouth.

Police can only perform a strip search if they have reasonable grounds to suspect that it is necessary and the circumstances are serious and urgent. They must provide you with as much privacy as possible.

As far as is practicable, the search must be carried out by a police officer of the same gender as the person being searched.

In the case of a strip search it should be, as far as practicable, in a private area, out of sight of people of the opposite gender to you, out of sight of other people not involved in the search.

A strip search must not involve a search of a person's body cavities or an examination of the body by touch.

Special provisions apply if the person being searched is aged between 10 and 17 years or intellectually impaired.

The police must provide the name and place of duty of the officer performing the search. They must also tell you the reason for the search. If you do not comply with the search you may be committing an offence.

Drug dogs

The police have dogs which have been trained to detect prohibited drugs. They often use these dogs at places like gaols, railway stations and in public areas.

If a dog indicates that you may have drugs then the police may have a 'reasonable suspicion' which allows them to search you.

Search warrants

Police may obtain a search warrant to search your home or other premises. They may also search any person at those premises. Police may use reasonable force to enter premises if they have a search warrant. It is an offence to obstruct or hinder a person carrying out a search under a warrant.

Domestic violence

If police enter a home in relation to an alleged domestic violence offence they have obligations to inquire about possession of firearms and to search for and take any firearms. If they suspect that there are firearms that they have not been told about they can apply for a search warrant. They can also search for and take any dangerous article or dangerous implement including knives.

Public disorder

Emergency powers may be authorised by the Commissioner of Police if there is a large-scale public disorder, or threat of a large-scale public disorder in the near future.

These powers include:

- cordoning off areas
- setting up road blocks
- requesting identification
- issuing directions
- searching people and vehicles
- seizing and detaining things including vehicles and mobile phones
- declaring alcohol-free zones
- prohibiting the sale or supply of alcohol
- dispersing people

This means that the police can stop and search people, their belongings and vehicles in the 'target' area even if they have not done anything wrong and without having to have any grounds for a suspicion that they may have done something wrong.

These special powers can also be provided by the government for situations such as global forums or visits by overseas dignitaries.

Move along directions

Can the police tell me to 'move along'?

Police can give you directions if you are in a public place and they believe on reasonable grounds that you are:

- obstructing another person
- obstructing traffic
- harassing or intimidating another person or persons
- causing, or likely to cause, fear to another person or persons
- unlawfully supplying, or intending to unlawfully supply, or soliciting another person or persons to unlawfully supply, any prohibited drug
- attempting to obtain prohibited drugs

If you are intoxicated (affected by alcohol or drugs) in a public place police may tell you to leave an area for up to 6 hours if the police believe on reasonable grounds that your behaviour:

- is likely to cause injury to any other person or persons or damage to property; or
- otherwise gives rise to a risk to public safety; or
- is disorderly.

If it is practicable, the police must tell you their name and place of duty and the reason for the direction.

It is an offence not to comply with the direction. It is also an offence to be intoxicated in the same or another public place within 6 hours of being given a move on direction for being intoxicated and disorderly in a public place.

Detention of intoxicated persons

A police officer may detain you if you are an intoxicated person (who is seriously affected by alcohol or drugs) in a public place and found to be:

- behaving in a disorderly manner; or
- behaving in a manner likely to cause injury to yourself, another person or damage to property; or
- are in need of physical protection because you are intoxicated.

If you are detained as an intoxicated person Police may release you immediately into the care of a responsible person who is willing to take immediate care of you.

If the police cannot find such a responsible person, or you are behaving so violently that a responsible person may not be able to control you, the police may take you to an authorised place of detention (such as a police station or juvenile justice centre).

When you are detained as an intoxicated person you must be allowed to contact a responsible person, be kept separately from people detained for the commission of offences and be provided with food, drink, bedding and blankets.

Police are able to search you and take possession of any belongings found in your possession if you are detained as an intoxicated person.

You must be released and your personal belongings returned as soon as you are no longer an intoxicated person.

Identification

Can police demand identification?

See below about questioning. In some situations you are required to provide your name and address and provide identification.

If the police lawfully require you to provide photographic identification they also have the power to ask you to remove any face covering to allow the police officer to see your face. They must ask for your permission first and conduct the viewing in a way that provides reasonable privacy as quickly as possible.

If you do not remove your face covering without special justification you may be committing an offence.

Questioning

Can I be arrested for questioning?

No. Police can ask you to accompany them to a police station for questioning, but you are not required to go unless you have been arrested for an offence. You should speak to a lawyer before you speak to the police. You may arrange for a lawyer or other person to be present during questioning. Legal Aid NSW does not provide lawyers for this purpose.

Are there any questions I do have to answer? Yes.

Traffic:

- You have to give police your name and address (and provide your licence) if you are driving or accompanying a learner driver.

- If you were involved in a traffic accident you have to give your name and address to the other driver involved. You also have to give that information and other details about the accident to the police.
- If you own, or are responsible for a vehicle, you have to give police the name and address of the driver of a vehicle if it is alleged that he/she committed a traffic offence.
- If a vehicle is suspected of being used for a serious offence the owner, driver and passengers must provide their names and addresses (and those of each other) to the police. If the full names and addresses are not known you are required to give as much information about the person's identity as you know.

Other circumstances when you have to give your name and address:

- If you are suspected of committing an offence on a train or railway property
- If police suspect that you are under 18 and

you are carrying or consuming alcohol in a public place— they may also require you to provide proof of age (if you are under 18 they may take your alcohol)

- If police suspect that you were at or near the scene of a serious offence and that you may have information that would assist them
- If police are trying to serve a fine default warrant
- If police have emergency public disorder powers and you are in a target area, and the police suspect that you have been or may become involved in a large-scale public disorder
- If police suspect that an Apprehended Violence Order has been made against you they can request you to disclose your identity.
- When the police give you a 'move on direction' if your identity is unknown to the police.

Generally, it is an offence not to answer these questions. The penalties are different for each situation.

If I am arrested, do I have to answer their questions? See page 6.

Seizing goods

Can police take things from me?

If police are executing a search warrant they can take things they find. This includes taking things not mentioned in the warrant if they reasonably suspect that they are connected with an offence.

If you are in a public place police can take:

- Knives (including blades)
- Firearms
- Any other weapons or things that can be used as weapons
- Drugs
- Anything which they reasonably suspect was stolen or unlawfully obtained
- Anything which they reasonably suspect may be evidence of the commission of an offence.

If any of these things are taken from you it is likely that you will be charged with a criminal offence. If you can show that you have a lawful reason for having these things you can apply to get them back. If the police don't give them back, you may have to ask for them when your case goes to court.

If you are under 18 police can take:

- Alcohol
- Spray paint, unless you can satisfy them that you have a lawful purpose for having it.

These are also offences, but the police may just give you a caution, at least the first time.

The law (legislation)

The main police powers are found in the following laws:

- *Law Enforcement (Powers and Responsibilities) Act 2002* known as LEPPRA or LEPPAR
- *Bail Act 2013*
- *Crimes (Domestic and Family Violence) Act 2007*

These acts set out the circumstances when police can exercise their powers and the responsibilities they have in exercising their powers. You can find them on this website: www.legislation.nsw.gov.au

Complaints

If you think that the police have misused their powers you can make a complaint.

You can complain by:

- Going to the local police station and asking to see the duty officer or Local Area Commander
- Contacting the Commissioner of Police
- Contacting the Ombudsman's office (toll free) **1800 451 524**.

Other helpful information

The interactive website www.burn-movie.com.au includes a film about young people involved in criminal activities.

Contacts

If you are under 18: Legal Aid Youth Hotline 1800 10 18 10

Other help

Many libraries have Legal Information Access Centres (LIACs) that provide free information about the law. Visit the State Library of NSW's *Find Legal Answers* website www.legalanswers.sl.nsw.gov.au/network/liacnsw.cfm to find your closest LIAC.

Legal Aid NSW has other brochures including:

Appealing to the District Court

Are you applying for Supreme Court bail?

Are you facing a committal?

Character references

Children's legal service

Domestic violence offences—information for defendants

Drink driving charges and you

Drugs, driving and you

Going to court (local court)

Have you breached your parole?

Is someone asking the court to make an AVO against you?

Reviewing Local Court decisions

Prisoners Legal Service

Understanding bail

Visa cancellation kit for prisoners

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This publication is intended as a general guide to the law. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation.

At the time of printing, the information shown is correct but may be subject to change.

For more information contact LawAccess NSW on 1300 888 529.



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