

Youth Justice: your guide to cops and court in New South Wales

Supplement – February 2007 by Jane Sanders

The following sections are a supplement to the Chapter “Dealing with Police on the Street”, pages 55-85.

Police powers

A significant change to the law on police powers came into effect on 1 December 2005, with the commencement of the *Law Enforcement (Powers and Responsibilities) Act 2002* (“LEPRA”). Previously, NSW police powers were scattered throughout several different Acts; LEPRA has brought most of these powers together into a single Act.

Under LEPRA, most police powers are still the same; they have just been re-organised so they are easier to find and to understand. However, LEPRA has introduced some important new powers and safeguards.

New powers include:

- Use of in-car video systems to record roadside conversations with drivers (Part 8A, which commenced on 23 December 2004, before the rest of LEPRA)
- Crime scene powers (Part 7)
- Special powers to deal with public disorder (Part 6A, which commenced on 15 December 2005).

New safeguards include:

- Rules for conducting searches (Part 4 Division 4)
- A restriction on the use of arrest (which should be a last resort) (section 99(3))
- A requirement for police to give information and warnings when exercising their powers (section 201)

Some new amendments to LEPRA came into force in December 2006. These amendments were brought in by the *Crimes Legislation Amendment (Gangs) Act 2006* and the *Police Powers Legislation Amendment Act 2006*. These amendments relate mainly to searches, move-on directions and the kind of information that police have to provide.

Dealing with police on the street

Police ask your name and address

Police powers to demand a person’s name and address have not changed, except there are now some extra powers relating to vehicles and public disorder.

Police already have the power to demand your identity if you are driving a motor vehicle. In some situations they can also require you to disclose the identity of the vehicle’s owner or of any passenger. A driver or passenger can now be required to tell the police who was driving the vehicle a short time before, if police suspect on reasonable grounds that the vehicle is being (or may have been) used in connection with an indictable offence (LEPRA sections 14, 15).

Police now have extra powers in relation to large-scale public disorder (for more information, see “Special powers to deal with large-scale public disorder” below). Police may request you to disclose your identity, and to provide proof of your identity, if:

- police have been authorised to use special public disorder powers (eg road-blocks, lockdowns of suburbs); and
- you are in a “target area” or in a vehicle on a “target” road; and
- the police officer suspects on reasonable grounds that you have been involved or are likely to be involved in large-scale public disorder; and
- the police officer does not already know who you are.

Failure to provide ID, or giving false information, is an offence (LEPRA section 87L).

Police question you on the street or at home

The law about questioning has not changed. In most situations you do not have to answer any police questions.

Police tell you to stop doing something or to move on

The power of police to give directions to people in public places was moved from the *Summary Offences Act* into LEPRA (Part 14, sections 197-200).

The amendments that came into force on 12 December 2006 mean that, if you are already complying with the direction, police no longer need to warn you that failure to comply is an offence. More importantly, police no longer have to give you a second chance to comply with the direction.

Police can also give directions in the following situations:

- When exercising their powers at a crime scene (LEPRA section 95)
- In connection with their roadblock powers or their powers to stop and search vehicles (LEPRA sections 38, 39).
- For the safe and efficient regulation of traffic (LEPRA section 185); they may also close roads (section 186).

Refusing or failing to obey these directions is an offence.

New amendments introduced by the *Crimes Legislation Amendment (Gangs) Act 2006* (which commenced on 15 December 2006) also give police the power to disperse groups in a “target area” where police are authorised to use special public disorder powers. For more information see “Special police powers to deal with large-scale public disorder” below.

Other police powers in public places

Alcohol and intoxication

The law allowing police to pick you up if you are intoxicated in a public place is still the same. It has been transferred from the *Intoxicated Persons Act* to LEPRA (Part 16).

Arrest and going to the police station

When can police arrest you?

The power to arrest a person is now in the *Law Enforcement (Powers and Responsibilities) Act 2002* (section 99).

Police may arrest a person who has committed an offence, or who they suspect on reasonable grounds has committed an offence. This is the same as the old power of arrest in the *Crimes Act*, except that police no longer have the power to arrest someone who is loitering at night and who they suspect may be about to commit an offence.

It is worth remembering that police also have power under the *Bail Act* to arrest you if they suspect on reasonable grounds that you have breached your bail. And, of course, they also have the power to arrest you if there is a warrant out for your arrest.

Police can also detain you if they think it is necessary to prevent a breach of the peace (eg a fight breaking out) or to prevent you from causing harm to yourself.

Are you under arrest?

Police must tell you why they are arresting you. They must also tell you their name and place of duty. They must also warn you that failure to comply may be an offence (as of 12 December 2006, the warning about failure to comply need not be given if you are already complying). They should give you this information before or during the arrest, unless it's not reasonably practicable to do this. In this case, they must tell you as soon as possible after they arrest you (LEPRA section 201).

When should police not arrest you?

For many years the courts have said that arrest should be a last resort. Where possible, police should use alternatives such as a summons, court attendance notice, *Young Offenders Act* caution or youth justice conference, without the need to arrest the person.

The *Law Enforcement (Powers and Responsibilities) Act* (section 99(3)) says that police must not arrest a person for an offence unless they suspect on reasonable grounds that arrest is necessary to achieve one of the following purposes:

- to ensure the appearance of someone before court;
- to prevent repetition or continuation of the offence or the commission of another offence;
- to prevent the concealment, loss or destruction of evidence;
- to prevent harassment of, or interference with, any potential witness;
- to prevent the fabrication of evidence; or
- to preserve the safety or welfare of the person.

This means that an arrest like the one discussed in the case of *DPP v Lance Carr* would probably be *unlawful* and, not just improper, under LEPRA.

LEPRA also makes it clear that there are alternatives to arrest (section 107, 108) and that an arrest may be discontinued at any time if it is no longer necessary for the person to be under arrest (section 105).

Security guards and arrests

The law about making a citizen's arrest is still the same, but it is now part of LEPRA (section 100).

The cops have impounded my car!

The police still have power to impound cars which have been used to do wheelies, burnouts, doughnuts or street racing. These powers (and the procedure to get your car back) remain the same, except that you must apply to the Local Court and not to the Administrative Decisions Tribunal.

Police can also confiscate cars in other situations including:

- if they are authorised to use special public disorder powers and confiscating the car would assist in preventing or controlling the public disorder (LEPRA, section 87M). For more information see "Special police powers to deal with large-scale public disorder" below;
- to stop you drink driving (LEPRA, section 189; *Road Transport (Safety & Traffic Management) Act 1999*, section 31);
- if your car has been abandoned in a tow-away area (*Road Transport (Safety & Traffic Management) (Road Rules) Regulation 1999*, clause 145);
- if you are using an unregistered vehicle on a road (*Road Transport (Vehicle Registration) Act 1999*, section 27).