

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 “Police Searches”, pages 88-99.

Police searches

Searching you, your bag and your car

Police search powers have been transferred from various other Acts to the *Law Enforcement (Powers and Responsibilities) Act 2002* (“LEPRA”), but have not changed.

Police have the power to stop and search you if:

- you consent;
- they suspect on reasonable grounds that you have stolen property, illegal drugs or anything that you are about to use to commit an indictable offence (LEPRA section 21);
- they suspect on reasonable grounds that you have a knife or dangerous implement (LEPRA section 26); or
- you are under arrest or in lawful custody (LEPRA sections 23, 24).

Police also have the power to search vehicles if:

- you consent;
- they suspect on reasonable grounds that the car contains stolen property, illegal drugs or anything that you are about to use to commit an indictable offence (LEPRA section 36);
- the vehicle (or a vehicle of the specified class) is being (or was or may have been) used in connection with the commission of a relevant offence (LEPRA section 36); or
- they suspect on reasonable grounds that circumstances exist in a public place or school that are likely to give rise to a serious risk to public safety and that the exercise of the powers may lessen the risk (LEPRA section 36).

Police are authorised to stop a vehicle in order to search it (LEPRA section 36A).

Police also have the power to stop and search people or vehicles in “target areas” or on “target roads” (without any reasonable suspicion) if an authorisation has been given for emergency public disorder powers (LEPRA sections 87J, 87K). For more information see “Special police powers to deal with large-scale public disorder” below.

Types of search

Under the *Law Enforcement (Powers and Responsibilities) Act* there are now three different types of search.

- A **frisk search** includes a pat-down search, running a metal detector over you, or examining anything worn or carried by you that is conveniently and voluntarily removed by you.

- An **ordinary search** means a search of you or things in your possession. You may be required to remove your shoes, socks, coat, jacket, gloves or hat.
- A **strip search** means that you are required to remove more than just your outer clothing, and in some cases all of your clothes. The police may examine your clothes and your body, but they are not allowed to search your body cavities and they are not allowed to touch you.

When searching for knives or dangerous implements police may request a person to submit to a frisk search only, or a search of the person's bag or school locker (section 26).

In all other situations, police may carry out a frisk search or an ordinary search (section 30). Since the amendments which commenced on 12 December 2006, police may also ask you to shake or move your hair, or to open your mouth. Failure to comply with such a request is an offence (section 21A).

Police may conduct a strip search only if they suspect on reasonable grounds that a strip search is necessary, and that the seriousness and urgency of the circumstances require it (section 31).

A body cavity search (or any search involving examining the person's body by touch) may only be performed by a medical practitioner (section 138).

Rules for searches

There are rules for the conduct of searches. For example, the police must ask for your co-operation, and they must search as quickly as possible in the least invasive way possible, ensuring reasonable privacy. They must not search you and question you at the same time. Where reasonably practicable in the circumstances, the search must be carried out by a person of the same sex (section 32).

There are extra rules for strip searches. First, a strip search must not be conducted on a person under 10 (section 34). If the person being strip-searched is under 18 or has an intellectual disability, they are entitled to a support person if reasonably practicable. Police must not touch your body cavities or examine your body by touch, and must not remove more clothes than they believe is reasonably necessary. This includes conducting a strip search in a private area, out of view of a person of the opposite sex and out of view of anyone whose presence is not necessary for the purpose of the search (section 33).

What the police must tell you

When police search you, they must provide evidence that they are a police officer (unless the police officer is in uniform), and provide their name and place of duty. They must tell you the reason for the search and warn you that failure to submit to the search may be an offence (LEPRA, section 201). As of 12 December 2006, the warning about failure to comply need not be given if you are already complying with the search.

When requesting you to undergo a search for knives or dangerous implements, the police must give you this information before asking to search you. In other situations they must do it before or during the search (if this is reasonably practicable), or as soon as possible afterwards.

Searching for knives and weapons

The rules about searching for a knife or dangerous implement are basically the same. They have been transferred from the *Summary Offences Act* to LEPRA (sections 25-28). As of 12 December 2006, the police no longer have to ask you to give them the knife, but may instead seize it from you.

Police drug sniffer dogs

The *Police Powers (Drug Detection Dogs) Act* has now been transferred to LEPRA (Part 11 Division 2, sections 145-150). The law about sniffer dogs has not changed, although the NSW Ombudsman has recently recommended that the police stop using drug sniffer dogs.

Searching houses and buildings

The law on entering and searching premises remains basically the same, but has been transferred to LEPRA.

When can the police enter a building?

Police may enter private premises in the following situations:

- to stop a breach of the peace or to prevent significant physical injury to a person (LEPRA section 9);
- to arrest or detain someone. Police must have lawful grounds to arrest or detain the person in the first place, and must have reasonable grounds to believe the person is on the premises (LEPRA section 10);
- if they have a valid search warrant (LEPRA Part 5, sections 46-80);
- in certain urgent and serious domestic violence situations (LEPRA Part 6, sections 81-87);
- with the consent of the occupier (the owner, tenant or person in charge).

When can the police search a building?

Police may search private premises in the following situations:

- with a valid search warrant (LEPRA Part 5, sections 46-80);
- to search for firearms in domestic violence situations (LEPRA, sections 85 & 86);
- if they are entering to arrest a person who they reasonably believe is on the premises, they may search the premises for the person (LEPRA, section 10);
- if they have arrested a person on the premises, they may search that person and their immediate possessions (LEPRA section 23);
- with the consent of the occupier (the owner, tenant or person in charge).

Drug houses

The police powers in the *Police Powers (Drug Premises) Act* have now been transferred to LEPRA (Part 11, Division 1, sections 139-144). The powers of police are basically the same as before.