

Police Powers & Drug Searches

If you have attended Mardi Gras or a music festival in recent years, you have probably noticed a significant police presence, often accompanied by sniffer dogs looking for people carrying drugs. If you are stopped and searched by police, it is important to know your rights and what police can and cannot do. The following fact sheet outlines police powers regarding stopping you, searching you, and suing sniffer dogs.

1. Reasonable grounds for being searched

Power to search

Police have a general power of search and seizure which is broadly defined with few safeguards. A police officer has the power to stop, search, and detain anyone reasonably suspected of having drugs or anything dangerous or unlawful on their person. A warrant is not required and is almost never used in practice. The only basis required for a search is a reasonable suspicion held by the police officer.

What are "reasonable grounds to suspect"?

There must be a factual basis for the suspicion. Police guidelines direct police to consider things like the time and location, your behaviour, and "antecedents" (whether you have a criminal record or other information known to police). Simply being present at an event such as the Mardi Gras party or a music festival is not a reasonable ground to suspect you are carrying drugs or something illegal.

If the police do not have these "reasonable grounds to suspect", the search is illegal and any force used will be an assault by the police officer. This would need to be established in court, but you would not succeed if the police officer did find drugs or other illegal items when they searched you. Another option to consider is a complaint against the police officer.

Using sniffer dogs to establish "reasonable grounds to suspect"

Police use sniffer dogs in order to form the basis of a legal police search. This part of the law does not give police the power to detain, so they cannot force a person to stay in an area while the dog sniffs that area. However, if a person does leave the area, police can use that as a basis for "reasonable grounds to suspect".

If a dog gives an indication of finding drugs, this gives the police reasonable grounds to suspect you have drugs, and they will be entitled to search you and detain you. The police must ensure that the sniffer dog is under control and that the dog does not unnecessarily touch you during the search. Please note that it is not necessary for the dog to give an indication for the police to have "reasonable grounds" and for a search to be lawful.

Where can sniffer dogs be used?

The police have the power to search for drugs using sniffer dogs in or around an area where alcohol is sold; where patrons enter or exit a public event e.g., a sporting event, concert, dance party, or parade; on public transport, in a station, or at a bus stop; and at any public place in the Kings Cross precinct.

2. Being searched: your rights and safeguards

The police powers law sets out how police can conduct a search. There are some safeguards in place which police *must* comply with if they do decide to search you, particularly regarding strip-searches. However, some rules are guidelines which the police only have to comply with so far as it is reasonably practicable to do so.

Initiating the search

When initiating a search, a police officer *must*:

- provide evidence that they are a police officer, such as their warrant card, if they are not in uniform;
- tell you their name and station;
- tell you the reason for the search.

Conducting the search

The following applies to all searches. If the police are going to search you, they have to:

- ask for your cooperation;
- tell you if you will have to take an item of your clothing off before the search; and
- tell you why you need to take clothes off for the search.

During the search:

- the police must conduct the least invasive kind of search practicable in the circumstances, i.e., no strip searches unless it is actually necessary;
- the police must conduct the search in a way that provides you with reasonable privacy and as quickly as is reasonably practicable;
- unless it is reasonably necessary, no search of the genital area or breasts (for female or female identifying trans and intersex people) is permitted;
- you should be searched by an officer of the same sex;
- you cannot be questioned while being searched; and
- the police must allow you to dress as soon as the search is finished.

Strip searches

If the police require you to remove your clothes, other than just outer clothing, you are being strip-searched. There are further safeguards and restrictions on police actions for strip searches.

The police cannot strip search as a matter of policy, or use these powers as a matter of course. The police must believe on reasonable grounds that a strip search is necessary, and that the seriousness and urgency of the circumstances require it.

A strip search is only a visual search of your body, and during the search the police are NOT allowed to:

- ask you to remove any clothing that is not necessary;
- touch your body;
- search any body cavities; or
- search by touching your genitals or breasts.

The police must comply with these rules. They are mandatory. However, there can be disagreement over what clothes are necessary to remove.

There are further rules which are not mandatory and only need to be complied with as far as is reasonably practicable, including:

- only police necessary for the search are allowed to be present or able to see you;
- you must be allowed to dress as soon as the search is finished;
- the search must be conducted in a private place where no one of the opposite sex can see you; and
- only an officer of the same sex as you is allowed to conduct the search.

If a police officer believes that you may have drugs, anything dangerous or illegal in your mouth or hair, they are allowed to ask you to open your mouth or move your hair. For any other search of a body cavity, the police need to have your consent or a court order.

This information is current to 22 September 2021 and reflects the law as it applies in the State of New South Wales, Australia. It is general information and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on 9332 1966.