

## FACT SHEET

### Police Powers - Searches

#### Searching a Person without a warrant

The police are empowered to search someone without a warrant in a number of situations (“prescribed circumstances”). When a police officer has a “reasonable suspicion” that one of these situations exists, they may stop and detain a person in order to carry out the search – as well as seize any relevant items.

Generally speaking, the police can search someone without a warrant where they have a reasonable suspicion that someone is in possession of an item which may:

- provide evidence that an offence has been committed; or
- be used to cause self-harm or to harm someone else; or
- be an antique firearm and that person is not a fit and proper person to be in possession of such (due to: mental or physical fitness; because of a Domestic Violence Order; or because the person has been found guilty of an offence involving a weapon).

#### Prescribed Circumstances

The “prescribed circumstances” for searching a person without a warrant include where the person has something that may be:

- A weapon, knife or explosive the person may not lawfully possess;
- An unlawful dangerous drug;
- Stolen property; unlawfully obtained property or tainted property;
- Evidence of the commission of a seven-year imprisonment offence that may be concealed on the person or destroyed;
- Evidence of a Wilful Damage offence;
- Evidence of the commission of a Graffiti or Spray Paint Sale offence (*Summary Offences Act*);
- Evidence of the commission of an offence against the *Liquor Act* for prohibited possession of liquor in a regulated area (more than prescribed quantity); or of attempting to take liquor into such an area;
- An implement used (or is intended to be used) for housebreaking; or the stealing or unlawful use of a motor vehicle; or for the administration of a dangerous drug;
- Intended to be used for self-harm (or to harm another); or
- A contravention of various sections of the *Casino Control Act*, the *Racing Act*, or the *Corrective Services Act*.

## Method of Searching a person

A police officer who searches a person must ensure as far as is reasonably practicable that the method of search causes minimal embarrassment to the person and that reasonable care is taken to protect the dignity of that person.

Unless an immediate and more thorough search is necessary – then the search of a person in a public place should be restricted to an examination of outer clothing. An example of where a more thorough and immediate search may be justified is where the police officer has a reasonable suspicion that a person may be concealing a weapon.

Unless an immediate search is necessary, the police officer conducting the search should be of the same gender as the person to be searched. If no officer of the same sex is available – then the search may be conducted by another person (of the same sex as the person to be searched) at the direction of the police officer. A search may also be conducted by a doctor at the direction of a police officer.

If it is impracticable to conduct a search at the initial location – the police officer may take the person somewhere else to be searched. For example, into a private room to minimize embarrassment. A police officer who detains a person (or vehicle) for a search, must not do so for any longer than is reasonably necessary for that purpose.

If a person obstructs a police officer from conducting a lawful search – they may be arrested and charged accordingly.

## Searches involving the removal of clothing

A police officer conducting a lawful search of a person may require the removal of all items of clothing or all items of outer clothing from:

- if the person is a female – the upper or lower part of the body; or
- if the person is a male – the lower part of the body.

If reasonably practicable, the police officer must, before conducting such a search:

- tell the person they will be required to remove clothing; and
- tell the person why it is necessary; and
- ask the person to cooperate. Further,
- allow the person to remain partly clothed during the search (eg by allowing the person to dress their upper body before requiring them to remove items from their lower body).

The search must be conducted in a way which provides reasonable privacy for the person. For example, by seeking to ensure that the person is not viewed by anyone of the opposite sex or by anyone who does not need to be present.

All searches must be conducted as quickly as reasonably practicable and the person be allowed to dress as soon as the search is finished. Further, the police officer conducting the search must not make any physical contact with the genital areas of the person being searched – although they can require them to bend over etc and conduct a visual examination.

If the police seize clothing as a result of the search, they must ensure that the person is left with or given reasonably appropriate clothing.

Searches involving children and people of impaired capacity:

- If the person to be searched is a child or a person with impaired capacity, who may not be able to understand the purpose of the search – the police officer must conduct the search in the presence of a **support person**.

However, the search may be conducted in the absence of a support person if the officer reasonably suspects:

- delaying the search is likely to result in evidence being concealed or destroyed; or
- an immediate search is necessary to protect the safety of the person.

## Video cameras monitoring the place where a person is searched

In such circumstances, unless the police officer monitoring the camera is of the same sex as the person being searched, the police officer must:

- ensure the camera is turned off; or
- conduct the search out of view of the camera.

Any recording of the search must not be shown to anyone other than some nominated individuals (e.g. the person's lawyer; treating doctor; investigating officer etc)

## Searching a Vehicle

The police are also empowered to search a vehicle without a warrant in a number of prescribed circumstances. These "circumstances" are very similar to those that relate to "searching a person" (outlined above). Importantly however, the police must have a "reasonable suspicion" that one of these prescribed circumstances exist. That is, they cannot simply search someone or their vehicle whenever they feel like it – it must be justified. The police are also empowered to stop and detain a vehicle (and the occupants) in order to carry out such a search.

## Searching a Public Place

The police are empowered to enter a public place without a warrant in the following situations:

- to search for anything that may be evidence of the commission of an offence;
- to seize a thing or person that a police officer "reasonably suspects" may be evidence of the commission of an offence;
- to photograph anything the police officer "reasonably suspects" may provide evidence of the commission of an offence;
- to dig up land;
- to open anything that is locked.

**However:** if this power applies to a place because it is a public place while it is "ordinarily open to the public", the police officer may only search the place:

- with the **consent** of the **occupier** of the place; or
- under a **search warrant**; or

- to prevent the loss of evidence for prescribed offences (which includes indictable offences; an offence involving gaming or betting and *Weapons Act* offences).

**Note:** where the last mentioned exception applies – the police are required to obtain a **post-search approval** from a magistrate justifying the search.

## Searching a Residence

Generally, the police require a **search warrant** to enter someone’s private dwelling. Otherwise, they should only enter a dwelling with the **consent** of the **occupier**. There are some exceptions to this rule however.

The police may enter a “place” to **arrest a person** without a warrant or to arrest someone named in a warrant. However, if the place in question is a **dwelling**, the police may only enter (without the consent of the occupier or a search warrant) if there is a “reasonable suspicion” that the person to be arrested is at the dwelling. For example, if the police were chasing someone and saw them enter the house.

The police may also enter a dwelling without a search warrant:

- in a situation where there is a reasonable suspicion of an incidence of **Domestic Violence** or there is an imminent risk of **personal injury** to a person or the commission of a **property damage** offence.
- in order to give a **noise abatement** direction. For example, where they attend a residence after complaints from neighbours about loud music.
- to investigate an offence under the *Traffic Act* – for example, to administer a breathalyser.
- where they are empowered to lawfully assist a landlord or agent remove a tenant or the tenant’s property from rental premises.

There are other exceptions, for example: the police may also enter a “movable dwelling” in a “moveable dwelling park” (e.g. a caravan park) without a search warrant if they have a reasonable suspicion that a person in the dwelling is committing or has committed a serious nuisance. In such instances the police may enter in order to provide a direction to stop etc.

## Return of Items Seized by Police

The police are required to return seized items to the owner or person who was in lawful possession in certain circumstances – for example, where the item is not required as evidence. The police are also required to take reasonable steps to minimize the period that an item may be required to be seized – for example by organising required testing to be carried out or for photographs to be taken as soon as reasonably practicable. It is also possible to bring an application before a magistrate for the return of an item which has been in the possession of the police for more than 30 days. Obviously, the court will not order the return of such an item where for example, it is required for evidence and proceedings have commenced. A magistrate can also order an item be returned subject to various conditions.

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