

Legal Aid  
NEW SOUTH WALES

# under 18?

know your legal rights



GET  
STREET  
SMART

# UNDER 18?

**Rights are important but they only work if you know what they are.**

**This pocket book tells you what your rights are when you're dealing with police on the streets in NSW.**

If you think the police are not respecting your rights, you should speak to a lawyer or make a complaint. If you are in trouble with police and before you have an interview with the police, or give them a statement, tell them you want to call the Legal Aid Youth Hotline on

**1800 10 18 10**

Legal Aid NSW copyright  
11th Edition Nov 2011  
ISBN 0-7313-9334-1

**Legal Aid**  
NEW SOUTH WALES

# WHAT'S IN HERE?

WHAT IF THE POLICE APPROACH ME ?	2
YOUR RIGHTS IN PUBLIC PLACES	3
WHAT IF THE POLICE ASK FOR ID?	6
POLICE QUESTIONING	7
SEARCHES	9
STRIP SEARCHES	12
IDENTIFICATION LINE-UPS	14
SEARCHES BY SNIFFER DOGS	15
COMPLAINTS ABOUT SEARCHES	16
FINES	17
PHOTOS, FINGERPRINTS, DNA	21
SECURITY GUARDS	24
HOW TO MAKE A COMPLAINT	26
<b>HOTLINE CARD AT THE BACK</b>	

## What if police approach me?

**Always find out why the police want to talk to you. Police can't take you anywhere unless they arrest you or you agree to go.**

If police arrest you, they must tell you:

- you are under arrest;
- why you are being arrested;
- the officer's name or badge number;
- the station they are from.

If you struggle with or run from the police once they have arrested you, you risk being charged with resist arrest or escape lawful custody.

## In public places, on the streets, at the shopping centre, etc.

You have a right to hang out where you like, with anyone you like, as long as you're not harming other people or damaging property.

If you are in a public place, police have no right to move you on unless they reasonably believe you are causing, or likely to cause, harm to others. Causing harm means 'threatening', 'intimidating' 'obstructing' or 'being offensive'.

Police can also give you a direction to move on if they believe you are buying or selling illegal drugs.



The police can also give you a direction to move on if they believe that you are intoxicated in a public place and are misbehaving in a disorderly manner or posing a risk to public safety or property.

A move on direction for being intoxicated can be for up to 6 hours. If you are found to be intoxicated in the place where the direction was given, or any other public place during the period of the direction, you can be guilty of an offence.

### **You have the right to know:**

- why police are giving you a direction or making a request and
- what the direction or request means you have to do, or not do.

If police make a direction or request, you can simply agree to it, and avoid more hassles. Remember, it is an offence not to obey a lawful police direction.

**If you think the request or direction is unfair, be sensible and stay calm. Don't swear or use violence—if you do, police will then have the power to arrest and charge you.**

If you believe police have acted unfairly, you can make a complaint. (See p26).



## What if the police ask for identification?

If police ask you for identification, generally you don't have to give them your details—

**however, it is usually a good idea to do so.**

Not using your real name however can cause problems. It won't work against you to give police your real name. In fact, sometimes it may be a real advantage - eg, when trying to get bail.

You **MUST** give your real name to police if you are:

- driving a car;
- under 18 and drinking alcohol in a public place;
- suspected of being involved in or witnessing a serious crime;
- on public transport;
- involved in a car accident.



## Police interviews and questioning

**You do not have to answer police questions even if they:**

- ask you to go to the station;
- question you on the spot;
- arrest you or not.

If police ask you to go to the police station to answer questions, you don't have to go unless you are arrested.

Police must tell you that you don't need to answer their questions. Always get legal advice before taking part in a police interview or giving a formal statement.

**You can ask to call the Legal Aid Youth HotLine on 1800 10 18 10 (free call).**

Open 9 am to midnight weekdays and 24 hours Friday to Sunday and public holidays.

**If you are under 14**, a parent or guardian should be present for police questioning. Otherwise a parent or guardian can give permission for another person to be there.

**If you are 14 to 17 years old**, and police want to question you, they need your agreement on which independent adult should be present during the interview.

**Make sure it is someone you trust.**

If you are uncertain about this, do not agree to that person and ask for someone else.

The independent adult cannot be a police officer.

The independent adult might be a lawyer, family member, youth worker, or a friend who is over 18.

Ask to call the **Legal Aid Youth HotLine** on **1800 10 18 10** before the interview.

## Searches



Police must base their searches on "reasonable suspicion".

**Police should tell you why they want to search you. If they don't, make sure you ask.** You should ask for the officer's name, badge number and station.

Police can stop, search and detain you if they believe you are carrying:

- ❑ stolen or illegally obtained items;
- ❑ things police believe may be used illegally (eg. tools that can be used to break into houses); or
- ❑ drugs, knives or weapons.

**Searches for drugs, stolen items, other things obtained illegally, or things police believe may be used for crime.**

Police can pat you down, look in your pockets and bags and search your car.

**Police are not allowed to strip search you in public.**

If you refuse to be searched, the police may arrest you and use force to search you. Ask for someone to be present during the search.

It helps if there is someone around to witness your contact with the police. If police use excessive force in searching you, the witness will be able to say what happened.

## Searches for knives and weapons



Police can use a metal detector, pat you down and look in your pockets and bags.

**It is illegal for them to ask you to take off your clothes, except for your outer clothing.**

Police must:

- show you their police ID if they are not in uniform;
- give their name and station;
- tell you why they are searching you;
- warn you that if you don't let them search, you'll be committing an offence.

If you refuse to be searched after you've been asked twice, you can be fined or ordered to appear at court. It is more than likely police will search you anyway.

If you refuse, police may use force in searching you.

## **Strip searches**

**Strip searches are a major invasion of your privacy.**

Police can strip search you after you are arrested, if they have reason to suspect you are:

- hiding important evidence of a crime;
- hiding something dangerous; or
- hiding drugs or weapons.

When police conduct a strip search, they can ask you to take off all your clothes.

## **Police should tell you why you are being strip searched.**

If you are female you should be searched by a female officer. If you are male you should be searched by a male officer.

## **Police are not allowed to touch your body during a search.**

Police are not allowed to search inside your body. If this happens, you should make a complaint straight away. (See p26)

You should be strip searched in a private place.

Let your lawyer know about any strip searches. If you don't have a lawyer contact our **Legal Aid Youth HotLine** on **1800 10 18 10**.

## Remember—a strip search is an invasion of your privacy.

It is a power which police must exercise very carefully and responsibly.

### Identification line-ups

Before you agree to an identification line-up seek legal advice or contact the

**Legal Aid Youth HotLine** on **1800 10 18 10**.





## **Searches by sniffer dogs**

In NSW, police can use sniffer dogs to search people for illegal drugs at pubs and clubs that serve alcohol, at sporting events, concerts and parades, and on public transport.

Police do not need a warrant to do these searches. Police can also use sniffer dogs to search people who they reasonably suspect of committing drug offences without a warrant.

But, if police want to use sniffer dogs to do general searches for illegal drugs at public places other than those mentioned above, they do need a warrant.

**Police must take all reasonable precautions to prevent sniffer dogs from touching the people they search.**

If you have any concerns or questions about the use of police sniffer dogs you should contact the **Legal Aid Youth HotLine** on **1800 10 18 10**.

**Complaints about searches**

If you believe police haven't used their search powers properly or followed the correct search procedures, you can make a complaint.  
(See p26)



## Fines

Police can issue on-the-spot fines (called penalty notices or infringement notices) for some types of offences. Examples are carrying knives, disobeying move-on directions, railway offences, bicycle and traffic offences.

You get 21 days to pay the fine, and another 28 days after the Infringement Processing Bureau sends you a reminder notice. If you don't pay the fine by this time, it will go to the State Debt Recovery Office (SDRO).

If you receive a fine and you think you are not guilty of the offence, you can choose to take the matter to court.

You can also take it to court if you think the fine is unfair or you don't have the money to pay for it. The court might reduce the fine,

get rid of it completely, or give you time to pay by instalments.

The Infringement Processing Bureau does not allow time to pay by instalments. If you need time to pay, but don't want to go to court, you will have to wait until the fine goes to the SDRO (and you will have to pay an extra \$50!).

### **If you want to go to court...**

On the back of the piece of paper with the fine (infringement notice), you need to fill in your name and address and then mail the notice to the Infringement Processing Bureau. Once this is done, you will get a letter telling you which court to go to. You must attend court on that day.

Legal Aid can provide a lawyer to represent you at court for all matters except for driving matters where you are over 16.

If you are taking the fine to court because you can't afford to pay it, you should bring any evidence you have about your financial situation (especially any proof that you cannot pay the fine). The court may reduce the fine or give you another penalty such as a bond or caution.

It is important that you do not ignore the fine. Unpaid fines are referred to the State Debt Recovery Office (SDRO).

You can arrange time to pay with the SDRO but, if you don't, the SDRO will contact Roads and Maritime Services (RMS). The RMS can suspend or cancel your licence (unless you were under 18 and had never had a licence when you got the fine) or stop you from applying for one.

You won't be able to get your licence until the fines are paid in full or you make a special arrangement with the SDRO.

The SDRO also has the power to send a sheriff to your house to collect your personal belongings to pay for the fine. In some circumstances, you can apply to the SDRO for a Work and Development Order, where you need to do one, or a combination of the following, to pay off your fine:

- unpaid work;
- receive medical/mental health treatment;
- participate in education/courses;
- attend counselling;
- get drug/alcohol treatment; or
- be involved in a mentoring program.

Your application must be supported by an approved organisation. As a last resort, the SDRO can have you locked up (but only if you were over 18 when you got the fine).

## Photos, fingerprints and DNA

If you are over 14 and you have been charged with a criminal offence, the police can take your fingerprints or a photograph of your face while you are in custody but only if this is necessary to work out your identity. If you are under 14, police need to apply for a court order to do this.

**If police want to take your fingerprints or photograph and you are not in police custody, they must apply for a court order no matter how old you are.**

Police must also apply to a court if they want to take a sample of your DNA. This is usually done by asking for a hair sample or a saliva sample. Saliva samples



are collected by swabbing the inside of the cheek.

**Police can only apply for an order to take your fingerprints, photo or DNA if they suspect you of committing a crime or have charged you already.**

If you are summonsed to court about a police application to take a sample from you, you should see the duty solicitor at court who will give you legal advice and represent you.



If the court orders you to give a sample, you must go to the police station by the date you are given. If you don't go, the police can use "reasonable force" to get the sample.

If you are 18 or over, different rules apply to you even if the offence being investigated happened when you were a child. If the police ask you for a sample, you should get legal advice before you agree to the sample being taken.



## Security guards

**Security guards have no more powers than ordinary citizens. They have no power to search or question you.**

A security guard cannot:

- search you unless you agree (even when it is a condition of entry to a shop, etc);
- arrest you unless they see you commit a crime;
- detain you unless they see you commit a crime;
- force you to sign anything;
- force you to go anywhere unless they are detaining you until police arrive;
- force you to be photographed; or
- use excessive force.

In some places, especially shopping centres, a security guard might ban you from coming in. They do this by giving you a "Termination of Licence" notice. If you get one of these notices it means you can be charged with trespassing the next time you go there.

Usually, you would be asked to sign it. You cannot be forced to sign it. You should get legal advice.

If you want to complain about a security guard's

behaviour or about being banned by the shopping centre call the **Legal Aid Youth HotLine** on **1800 10 18 10** and speak to a lawyer.



## How do I make a complaint?

**We know it's hard to make a complaint, but it means an independent person will hear your story.**

If you're having trouble with it, get help from a youth worker at your local youth centre or council, or an adult you trust, or a children's lawyer at a community legal centre. When you make a complaint about a police officer, be sure to include as much information as possible:

- your name;
- your phone number;
- your address;
- where you were when you say the police treated you badly;
- what time it was;

- the names or badge numbers of the police involved or a description of what they look like;
- the station that they were from;
- what happened;
- names of any witnesses; and
- sign it and put the date on it.

If you don't have all the information, just include what you do know. Even if you're not sure about some things, call the NSW Ombudsman's Office to discuss it.

Make the complaint as soon as possible after the incident. Send your complaint to:

**NSW Ombudsman's Office**  
**HSBC Centre, Level 24, 580 George St.,**  
**Sydney 2000**

**Tel: 9286 1000**

**Free call: 1800 451 524** (country areas)

[nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)

**Here's your Hotline card.  
Make sure you carry it in  
your wallet. Ask to speak to  
a lawyer before you talk to  
police. Call 1800 10 18 10.**

Produced by the Publications Unit, Legal Aid NSW

Copies can be ordered at  
[www.legalaid.nsw.gov.au/pubsonline](http://www.legalaid.nsw.gov.au/pubsonline) or by  
emailing [publications@legalaid.nsw.gov.au](mailto:publications@legalaid.nsw.gov.au) or  
by calling 9219 5028.

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.

If you need more help, contact  
**1800 10 18 10.**

# CONTACTS

## \* COMMUNITY LEGAL CENTRES

Centres with special children's lawyers:

Inner City Legal Centre: 9332 1966

Macquarie Legal Centre: 8833 0911

Marrickville Legal Centre: 9559 2899

National Children's and Youth Law Centre: 9385 9588

[HTTP://www.lawstuff.org.au](http://www.lawstuff.org.au)

Centres with general lawyers can also help you. Call 1300 888 529 to find out the centre nearest you.

\* Shopfront Youth Legal Centre  
Darlinghurst: 9360 1847

\* Youth Workers call your local council.

\* NSW Police Service Customer Assistance Unit: 1800 622 571

\* NSW Commission For Children and Young People: 9286 7276

# CONTACTS

If you believe you have been mistreated you can complain to the Ombudsman

\* **Legal Aid HOTLINE 1800 10 18 10**

\* **Youth Drug and Alcohol Court**  
To talk to a lawyer about the Youth Drug and Alcohol Court call  
**0418 663 574.**

\* **Aboriginal Contacts**  
All Aboriginal people who are taken into police custody are legally entitled to speak immediately to a lawyer from the Aboriginal Legal Service. All police stations have been supplied with the number which can be called 24 hours a day, 7 days a week. If you are under 18 and cannot contact the Aboriginal Legal Service you can ring the Legal Aid Youth Hotline on **1800 10 18 10.**

\* **NSW Ombudsman's Office**  
**9286 1000** or a free call **1800 451 524**  
if you live in the country.