

# Police powers

Years 7-12

NSW

Module [1/1]

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# Discussion

What police powers have you heard of



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# Police identification

If a police officer is exercising their powers, they must:

- Provide evidence that they are a police officer (unless they are in uniform);
- State their name and place of duty; and
- State the reason they are exercising their powers.

*E.g. my name is Constable John Williams and I am issuing you with a move along order as members of the public have reported that you are damaging property.*

# Right to silence

- All people have a general right to silence when interacting with the police. This means that they can refuse to answer questions or make a response.
- Silence cannot be used to provide someone is guilty of a crime.
- There is an exception to this – a person is required to provide a police officer with their full name, address (and sometimes their ID) if asked for these details.

# Right to silence

Examples of when a person might be asked for their name, address or ID include:

- the police think they're under 18 and are drinking or have alcohol in a public place;
- the police think they were near where a serious crime happened and they think the person can help them;
- They think the person can assist with investigating an indictable offence;
- they are driving a car or riding a motorbike (in this case they could also be asked for their license); or
- they are involved in a car accident.



# Move on order

- In NSW, a police officer may give a person a direction to move on from a public place.
- A police officer may ask a person to move on if they believe the person's behaviours is:
  - drunk in public and acting in a way that puts people's safety at risk;
  - drunk in public and acting in a way that could damage property;
  - getting in the way of other people or traffic;
  - harassing or annoying other people;
  - causing fear to other people;
  - giving out illegal drugs. This includes if the police have a reason to believe you will be giving out drugs in the future; or
  - planning to buy illegal drugs.

# Searches

- Police searches occur when police have the power to see if certain items are being held in a place or by a person, if they believe the item might relate to a crime or potential crime.
- Generally, police can't search someone without a warrant (a warrant is a written order from the Court giving the police permission to do something).
- The police can search a person without a warrant if they think they have:
  - stolen goods;
  - weapons, like guns or knives;
  - illegal drugs;
  - anything dangerous; or
  - something that you will use to commit a crime.

# Frisk searches

- A frisk search is where a police officer quickly runs their hands or a metal detector over a person's clothing to feel for guns, knives, drugs or other items.
- The police may also check their outer clothes for these items (whilst they are worn, or after they have been taken off) and any pockets. They may also ask a person to shake their hair or open their mouths if they think they are hiding something.
- A police officer cannot search a person's private areas unless its necessary.

# Strip searches

- A strip search is a search where a person's clothes are removed so that their body can be examined, but without touching.
- During a strip search, a police officer must attempt to preserve the privacy and dignity of the person being searched and must conduct the least invasive kind of search.
- If a young person is between the ages of 10 and 18, that person has the right to have a parent, guardian or other appropriate adult present during the strip search unless the police officer suspects that delaying the search will result in a loss of evidence, or an immediate search is necessary for the safety of the young person (children under 10 cannot be strip searched).
- A police officer can only conduct a strip search if it is urgent and serious.

# Scenario

Hi Youth Law Australia! My name is Agatha and I am 14 years old. I was in the park with some friends. We were mucking around and I had a scarf wrapped all the way around my face. Some police officers approached me and told me to take off my scarf and give to them. Then they searched me and asked me a bunch of questions about who I was and why I was in the park. After that I ran off without giving them my name. Can I get in trouble for this?

# Scenario

Hi Agatha

Thanks for your question. The law says a police officer is allowed to search a person if they have a reason to suspect they have stolen something, have something that could be used in a crime, have illegal drugs, a dangerous implement or a laser pointer on them. If you refuse to be searched you could be committing a crime. Also, the police are allowed to ask you questions. However, you have a legal right to silence. This means that apart from giving them your full name, address and age you don't need to answer their other questions and you can politely decline to answer. Without knowing how they searched you, why they searched you or exactly what happened we can't say for sure what trouble you could get into. Technically if the police contact you about this and decide to investigate this, you could be charged and go to Court. If the Court finds you guilty of refusing to be searched or not answering the polices' questions you could get into trouble. We think it would be a good idea for you to get further legal advice if the police contact you and not to use your right to silence until you have spoken to a lawyer. We hope this helps!

From the team at Youth Law Australia

# Confiscations

- A confiscation is where the police take something away from a person that they reasonably suspect is connected with a crime.
- A police officer can also take and keep anything that belongs to a person if they think:
  - it's stolen;
  - it can be used to prove someone committed a crime;
  - it's something dangerous, like a weapon; or
  - it's an illegal drug.
- For children and young people under the age of 18, the police can also confiscate:
  - alcohol that they've been drinking in public
  - cigarettes; or
  - spray paint cans.

# Police interviews

- A person can't be forced to attend a police interview unless they are under arrest.
- For children under the age of 18, someone over 18 must be present with them during the interview e.g. a parent, friend, carer, or counsellor.
- The police must wait a reasonable time for the support person to be present before they begin the interviewing.
- The right to silence continues to apply during a police interview.



# Making a complaint

- If you are ever unsure if the police have acted within their powers, the best thing to do is respectfully cooperate and ask for their name, station and badge number in writing and to keep a written record of what happened in case you would like to make a complaint in the future.
- You can lodge a complaint to the NSW Police Force on 1800 622 571. If you are not happy with the results, you can call the Law Enforcement Conduct Commission (LECC) on 9321 6700 to make a further complaint.

# Support services

- For free and confidential legal help, you can contact **Youth Law Australia**. They have free legal information at [yla.org.au](http://yla.org.au) through their factsheets and personalised legal advice at [lawmail.org.au](http://lawmail.org.au).
- The **LegalAid Youth Hotline** provides legal advice and information to people under the age of 18. Its business hours are 9:00 am - 12:00 am weekdays, with a 24 - hour service from Friday 9:00 am to Sunday 12:00 am. Call them on 1800 10 18 10.
- **LawAccess** provides free information, advice and referrals on 1300 888 529, Monday to Friday from 9am to 5pm.

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# Class Activity

Roleplay





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# Summary

- Police are required to identify themselves in specific ways when exercising their powers
- All people have a general right to silence. This means they do not have to answer a police's questions apart from providing their name and address.
- Police have lots of different powers e.g. move along, search or confiscation powers.
- Young people have additional protections due to their age e.g. having a support person present during police interviews.
- If a police officer does something outside of their powers, or treats someone unfairly, they have the right to make a complaint.

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