

Youth Justice

Your Guide to Cops and Court in NSW

4th Edition

Macquarie Legal Centre

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Dealing with police on the street

Police powers and safeguards

The police have many powers, including powers that ordinary citizens do not have. For example, in some situations, they have the power to tell you to stop doing something or to move on. Sometimes they can search or even arrest you.

But when can the police tell you to move on? When can they search or arrest you? Do they have to follow any special rules? What sort of trouble can you get into if you do not cooperate with the police?

Since the introduction of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) in late 2005, most NSW police powers have been brought together in a single Act. Most of the previous police powers remain unchanged but some important new powers and safeguards have been introduced.

It's important to know what your rights are when dealing with police on the street. This chapter is about the powers the police have and the rules they need to follow. It includes powers to give directions, to demand name and address, and other powers. Searches, arrest and traffic-related powers are covered in separate chapters.

Police ask your name and address

Police often ask for people's names and addresses and sometimes ask for ID as well. In some (but not all!) situations it can be an offence not to comply with their request or to give a false name and address.

When must you give your name and address?

You are legally required to give the police your name and address in a range of situations, including:

Vehicles

You *must* give police your name and address if:

- you are driving a vehicle or are accompanying a learner driver in a vehicle
- you refuse a breath test while driving or sitting in the driver's seat (unless you have a medical condition which would make it dangerous for you to undertake a breath test)
- you are the owner, driver or passenger of a vehicle and police reasonably suspect that the vehicle was involved in an accident.

In most of these situations you must also show your driver's licence if asked.

For more information on police powers and drivers see *Driving: rules and traffic offences* chapter.

Near the scene of a crime

You must give your name and address if police reasonably believe that you might be able to help them investigate a serious crime (called an *indictable offence*), because you were in the area around the time of the crime.

Failure to provide your correct name and address in this situation is an offence, but only if the police have given you certain information and warned you that failure to comply is an offence (see *Safeguards relating to police powers* on page 107).

Large-scale public disorder

Police may request you to disclose your identity, and to provide proof of your identity, under their large-scale public disorder powers (see *Special police powers and large-scale public disorder* on page 99) if:

- police have been authorised to use special public disorder powers (eg roadblocks, lockdowns of suburbs), and
- you are in a 'target area' or in a vehicle on a 'target' road, and
- the police officer suspects on reasonable grounds that you have been involved or are likely to be involved in large-scale public disorder, and
- the police officer does not already know who you are.

Failure to provide your name and address, or providing false information, is an offence, but only if the police have given you certain information and warned you that failure to comply is an offence (see *Safeguards relating to police powers* on page 107).

Public transport

You must give your name and address to police or rail safety officers (transit officers) who reasonably suspect that you have committed an offence against the *Rail Safety Act 2008* or Regulations.

Authorised officers on buses and ferries have similar powers.

Failure to provide your correct name and address is an offence, but only if the officers have first identified themselves and warned you that failure to comply may be an offence.

For more details see *Public transport and transit officers* chapter.

Unpaid fines

You *must* give your name and address if you have unpaid fines (or are reasonably suspected of having unpaid fines) and:

- police arrest you for failing to do community service for the unpaid fines
- a sheriff or other person serves an order (gives you a legal document) about your unpaid fines
- a sheriff or other person executes a *property seizure order* (takes your things) for the unpaid fines.

Failure to provide your correct name and address in this situation is an offence, but only if the police or sheriffs have first warned you this is an offence.

For more details see *Unpaid fines* chapter.

Searching 'drug premises'

If police have a warrant to search a place that they think might be involved in the selling or making of drugs, and you are in that place when it is searched, you must give your name and address on request. Failure to do this is an offence.

For more information see *Drug premises* on page 122.

Drinking alcohol in public

You must give your full name and address to the police if the police suspect you are under 18 and you are carrying or drinking alcohol in public without a reasonable excuse or without the supervision of a responsible adult.

If the police ask you for something that verifies your identity and age (such as a driver's licence or proof of age card) you must also provide this to the police within a reasonable time after being asked. If you can't produce ID on the spot, you might have to attend the police station with ID later.

The maximum penalty for not giving your name and address or your ID is a \$20 fine.

If you are aged under 16 in certain public places

You must give your full name and address to the police if you are aged 15 or under and are in an area where the *Children (Protection and Parental Responsibility) Act 1997* is operational (see *Children (Protection and Parental Responsibility) Act* on page 103).

Most places in NSW are *not* operational areas. At the time of writing, the only operational area in NSW was Orange.

Terrorism

You must give your full name and address to the police if you are in an area or a vehicle which is the target of an authorisation under the *Terrorism (Police Powers) Act 2002*.

Do you have to provide ID?

Police can ask you for documentary identification (eg driver's licence or proof of age card) but in most situations you don't have to provide it. In democratic countries, such as Australia, you normally have the right to remain silent when questioned, and you don't have to carry ID with you all the time.

It is also important to know that the police do not have the power to search you for ID. See *When can the police search you in a public place* on page 109.

There are a few situations where you must provide documentary ID if asked. For example, you must provide:

- your driver's licence if you are driving or involved in traffic matters (eg a car accident)
- proof of your age and identity, if you are suspected of being under 18 and drinking alcohol in a public place without a reasonable excuse and without the supervision of a responsible adult.

When you do not need to provide your name and address?

If you are not in any of the situations listed above, the police may still ask for your name and address and/or some ID, but you don't have to give it.

Sometimes, if you refuse to give your name and address to police, they might hassle you more, or think of a reason to search or arrest you. Then things could end up worse than if you had given them your name and address straight away.

If police suspect you have committed an offence

You do not have to give your name and address if police suspect that you have committed an offence. However, if you don't tell the police your correct name and address it can create a lot of hassles.

For a minor offence like offensive language or travelling on the train without a valid ticket, the police may sometimes issue a warning, caution, or court attendance notice or penalty notice instead of arresting you. Police need your correct name and address before they can do this. If you refuse to give it to them, they might arrest

you so that they can take you to the police station and detain you while they verify your identity. You might end up with a worse outcome (eg being charged and taken to court). If police have no idea who you are or where you live, you may not get bail.

Chances are, sooner or later the police will figure out who you are (eg if they take your fingerprints and match them up with prints which they have taken from you before) so it is usually better for you if you reveal your identity up front.

Police question you on the street or at home

Police often stop people in public places, or come to their house, to ask them questions. This section explains your rights when the police question you.

Do you have to answer questions?

The police have the right to ask you questions, *but* you don't have to answer them, except:

- Sometimes you have to give your name, address and age (see *Police ask your name and address* on page 87).
- If you are driving a vehicle, you also have to show your licence when asked (see *Driving: rules and traffic offences* chapter).
- After a traffic accident: if the accident has injured anyone or damaged property, the drivers, passengers and witnesses must answer police questions about the accident (see *Driving: rules and traffic offences* chapter).
- In some other situations involving motor vehicles, you may be required to name the driver or passenger(s) in your car (see *Driving: rules and traffic offences* chapter).
- If you know someone has committed a serious crime (eg stealing, drug dealing, robbery or sexual assault) and have information that would assist the police, it is an offence for you to conceal this information from the police, unless you have a reasonable excuse for not telling them (see *Appearing in court as a witness* chapter).

Should you answer questions?

If police suspect you of a crime, it is usually *not* in your interests to answer police questions, at least before you get legal advice.

Police may use your answers against you in court. If you have information which clearly proves your innocence, it might be helpful for you to tell police, but you should try to get legal advice before you do this.

You don't have to sign a statement or record of interview. Never sign a statement unless you are sure that it is correct and there are no blank spaces in it (see *Your rights in police custody* on page 136 and *Police questioning* chapter).

Can you have someone with you when police question you?

Generally, everyone has the right to have a lawyer with them when they are questioned by the police. In some situations you can also have a support person present.

See *Police questioning* chapter for more details.

Police tell you to stop doing something or to move on

THE WHITE STREET GANG

The group were hanging out on the corner of White Street. Dave was sparring with Spiro. Jana and Mel were having hysterics about a picture of Justin Timberlake.

A cop car arrived. 'I'm going to have to get you to move on', said the cop. 'I have reason to believe that you would be likely to cause fear to someone'.

'That's rubbish constable', said Spiro. 'There is no one else here, and none of us are feeling fearful, are we guys?'

'Naah', said everyone.

'I'm still going to ask you to move on. I'm able to do so, it's the law'.

The young people laughed out loud. 'No way!' said Mel. 'You can't be serious ...'

Unfortunately for Dave, Spiro, Jana and Mel, the cop was serious. The law relating to move-on powers is extremely broad and has a significant impact on the civil liberties of young people (and other marginalised groups such as drug users and Indigenous people) in public places.

Police often move young people on because their mere presence, especially if they are together in groups, is thought to be intimidating, even if no one has actually complained about their conduct.

In some areas, police have used the power systematically to get rid of particular types of people (for example, young Kooris in country towns, particularly in western and north western NSW, street sex workers, and drug users in Cabramatta).

However, police must have a good reason for telling you to move on, and there are certain procedures they must follow.

So exactly what powers do police have to tell you to stop doing things or to move you on? Just to make the law complicated, it all depends on where you are at the time.

Police directions in public places and schools

Police powers are different in different types of places. Police have more powers in *public places* and schools than other places.

What does the law mean by a ‘public place’?

Public place can include all sorts of places, such as:

- roads, footpaths and car parks – including car parks at a block of flats
- shopping centres, cinema complexes and other entertainment venues
- trains and railway stations
- parks, bushland reserves and beaches
- libraries, swimming pools and youth centres.

Public place does not include people’s own homes and yards (except for the common areas in blocks of flats, townhouses etc).

When can the police give you a direction?

In public places and schools, police can give you a *reasonable direction* if they have reasonable grounds to believe that your *conduct* or *presence* is:

- obstructing people or traffic
- harassing or intimidating other people
- causing fear (or is likely to cause fear) to other people
- for the purpose of supplying or obtaining illegal drugs.

So if you are blocking a doorway, path or road, harassing or scaring someone or trying to score drugs, police can tell you to stop the behaviour or to move on. They can’t give you a direction to move on just because you’re hanging around. Everyone has the right to use public space.

Causing fear to other people

The law says that police can ask you to move on if you are ‘causing or are likely to cause fear to another person’. Your conduct must be of the sort that would cause

fear to a ‘person of reasonable firmness’ – meaning, someone that is not a ‘shrinking violet’!

Police may claim that you are likely to cause fear to another person, even when nobody else is present at that time. However, if you were given a move-on direction in such circumstances, a magistrate might decide this direction was unreasonable.

What is a reasonable direction?

The police direction must be *reasonable in the circumstances* for the purpose of reducing or eliminating the ‘relevant conduct’ (the problem behaviour).

The direction must not be too broad, restrictive or arbitrary – for example, a direction to leave town and not come back for seven days would be unreasonable. So the police mustn’t just order you around for a power kick (in fact, matters get thrown out of court for this reason).

What the police must do

Information

The police must:

- provide evidence that they are police officers (unless they are in uniform)
- give their names and place of duty, and
- tell you the reason they are giving you a direction.

If you are an individual (not part of a larger group), the police must give you the following warnings and information *before* they tell you to stop doing something or to move on.

If the police are giving a direction to a group, if it is not reasonably practicable to give this information before or during the issuing of the direction, it must be given as soon as practicable afterwards.

Warnings

As soon as reasonably practicable after issuing a direction, the police must warn you that you are required by law to comply with the direction, unless you have already complied or in the process of complying.

After the first warning, if you do not comply, then police must give a warning that failure to comply with the direction is an offence.

Disobeying a direction

Disobeying a police direction is an offence, but only if:

- the direction is reasonable in the circumstances
- the police have given you the required information and warnings

- you have persisted in the ‘relevant conduct’ (eg harassing, intimidating, hanging around to buy/sell drugs) after the direction was given.
- The maximum penalty is a fine of \$220.

ABUSE OF POWER?

The police in some areas give out standard directions to certain classes of people, such as people suspected of being sex workers or illicit drug users. Police have been known to tell these people to leave an entire area (such as a 2 kilometre radius of a certain railway station) for a specified period, for example, 24 hours or seven days.

Magistrate Brydon in *Police v Saysouthinh* (Liverpool Local Court, 24 May 2002) expressed the view that the practice of issuing the same standard direction to everyone, regardless of their circumstances, is arbitrary and is therefore unreasonable. That is, unless the police can demonstrate reasonable grounds for issuing the particular direction to the particular person in the particular circumstances, the direction is not valid.

Another reason why this type of direction might be unreasonable is because it is not what Parliament intended when they gave the police move-on powers. When the Act was being debated in Parliament, the Attorney-General, Mr Shaw, said ‘The key purpose of this provision (the move-on powers) is to enable police to disperse persons acting in a disruptive manner before a situation gets out of hand’.* This makes it clear that Parliament did not intend to give police the power to impose long-term bans.

* from the second reading speech to the *Crimes Amendment (Police and Public Safety) Act 1998*, Hansard, Legislative Council, p 4277, 5 May 1998

Other powers to give directions

Police can also give directions in the following situations:

- Where a group of three or more intoxicated persons are in a public place, where the persons’ behaviour as a result of the intoxication is likely to cause injury to other people or other people’s property (see *Directions to groups of intoxicated persons* on page 98).
- Where police are authorised to use special public disorder powers to disperse groups in a ‘target area’ (see *Special police powers and large-scale public disorder* on page 99).
- When exercising their powers at a crime scene (see *Crime scene powers* on page 102).
- In connection with their roadblock powers or their powers to stop and search vehicles (see *Driving: rules and traffic offences* chapter).

- For the safe and efficient regulation of traffic (see *Driving: rules and traffic offences* chapter).

In some cases the penalties for disobeying these special police powers are much more serious than disobeying the usual move-on directions. For example, the maximum penalty for disobeying a direction issued under the special public disorder powers is \$5500.

Protests

Usually, police are not allowed to give directions in relation to an industrial dispute, an apparently genuine demonstration or protest, a procession, or an organised assembly.

However, special laws have been passed for special events such as the visit of the Pope and a meeting of APEC ministers in Sydney in 2007. On these occasions, police were temporarily provided with extra powers to deal with large assemblies, including extra powers to order people to move on.

While these laws have lapsed, the ‘large-scale public disorder’ powers, which emerged from the Cronulla Riots in 2005, are still in force (see *Special police powers and large-scale public disorder* on page 99).

In theory, police would be able to exercise special powers to lock down ‘target areas’ for two days, without court approval. If police decided that a demonstration or protest was likely to amount to a large-scale public disorder, they could potentially lock down a whole suburb or town as a ‘target area’ and exercise special move-on powers, amongst a whole host of other special powers.

If you think a police direction is unfair

If you think a police direction is unfair or unreasonable, or the police don’t follow the rules, you have two options:

- you can obey the direction, but complain about the police later (see *Complaints and cooperation: working to improve police practices* chapter)
- you can refuse to obey.

If you refuse, the police may deal with you for disobeying a reasonable direction. The police have a few options:

- an on-the-spot fine
- a warning (under the *Young Offenders Act 1997*) if you are under 18
- a formal caution if you are under 18 – but only if you admit your guilt
- court proceedings (with or without arresting you).

Defending a charge in court

If the police fine you or take you to court, you can defend it (plead not guilty) in court. The magistrate may find you not guilty if they decide that:

- you weren't obstructing, harassing or intimidating anyone or hanging around to buy or sell drugs, and your presence wasn't likely to cause fear to people of 'reasonable firmness'
- the direction was not reasonable
- the police didn't carry out the direction according to the rules
- you didn't keep on with the 'relevant conduct' after the direction was given
- you had a reasonable excuse for disobeying.

Many young people who have defended these matters at court have been found not guilty.

You can complain about the police as well as defending the fine or charge. Either way, you have much more chance of succeeding if you have witnesses (especially if they are respectable people, in the eyes of the magistrate) to give evidence for you.

If you have been fined for failing to obey a police direction, do not ignore it! (see *Unpaid fines* chapter). Failure to pay fines can have all sorts of nasty consequences, including being hassled by the State Debt Recovery Office and being unable to get a driver's licence.

You can choose to defend the case in court. To do this you must first send off the court election notice that is in the fine document, before the deadline (usually 21 days). You should get legal advice if you are considering this.

If you go to court and lose, the worst penalty you can get is the same fine that the police gave you. You might also be asked to pay court costs of around \$70 on top of your fine.

Alcohol and intoxication

Intoxicated in public

If you are intoxicated (drunk or under the influence of a drug) in a public place and:

- you behave in a disorderly way (eg shouting, harassing people)
- you are likely to cause injury to yourself or someone else or damage to property
- you need physical protection because you are incapacitated by alcohol or another drug

then the police can detain you until they can find a responsible person who is willing to take care of you while you are intoxicated.

The police must release you immediately if a responsible person is available to look after you. They must give you a reasonable chance to contact someone to do this. They should also take you home if this is practicable (eg you do not live far away and your parents are at home).

If neither of these options is possible, they can detain you for up to eight hours or until the effect of the alcohol or drugs wear off – whichever comes first. You should not be detained in a cell, unless nothing else is available. If you are under 18, the police must detain you separately from people over 18.

If the police detain you, they may also search you. When they release you, they must give you back all of your belongings (except anything that it is unlawful for you to possess, eg drugs).

Being intoxicated is not a criminal offence, so police won't charge you unless you have committed an offence (eg assault or offensive behaviour) as well. But note – if police think you are under the influence of an illegal drug and they think they have evidence to show what drug you have taken and when you have taken it (eg because they saw you using it or you admit using it to them) they might charge you with self-administration of a prohibited drug.

Directions to groups of intoxicated persons

A police officer has the power to give a direction to a person who is:

- an intoxicated person (defined as a person who appears to be seriously affected by alcohol or any drug)
- in a group of three or more intoxicated persons, and
- in a public place.

A direction may be given if the police officer believes on reasonable grounds that the person's behaviour in the place as a result of the intoxication is likely to cause injury to any other person or persons or damage to property, or otherwise gives rise to a risk to public safety.

Failing to comply with a direction is an offence, but only if police have given you certain information and warned you that failure to comply is an offence (see *Safe-guards relating to police powers* on page 107).

Alcohol-free zones

Local councils can declare certain roads as alcohol-free zones.

Signs on the street show where the zone is. Police can warn you that drinking alcohol is banned in the zone. If they warn you but you keep drinking in the zone on that day, they can fine you and take away your alcohol.

Many parks are also alcohol-free zones.

Alcohol and under 18s

In public

If you are under 18, it is an offence to possess or drink alcohol in public, unless you are with a responsible adult or you have a reasonable excuse.

The law doesn't say what a *reasonable excuse* is – it is up to you to convince the magistrate in court that you had one.

Police may fine you \$20 and/or take your alcohol. They must *not* arrest you for possessing alcohol, except for the purpose of giving you a caution.

Police can also require you to provide your name, address and some ID showing your age.

Pubs and clubs

If you are under 18, it is an offence:

- to drink alcohol on licensed premises
- to be in a restricted area of licensed premises (most parts of pubs and clubs), and
- to use false ID on licensed premises.

Police usually give you an infringement notice (an on-the-spot fine) for these offences. You can choose to pay the fine or contest it in court. You should get legal advice if you have a fine which is unfair or which you cannot pay – doing nothing will not make the fine go away and may have serious consequences (see *Unpaid fines* chapter).

Special police powers and large-scale public disorder

After the 'Cronulla Riots' in 2005, Parliament brought in new police powers, which came into force on 15 December 2005. These special powers are in the *Law Enforcement (Powers and Responsibilities) Act 2002 (LEPRA)* Part 6A. The powers were intended to last for only 2 years, but are now in force indefinitely.

These special powers are intended to deal with 'large-scale public disorder'. *Public disorder* means 'a riot or other civil disturbance that gives rise to a serious risk to public safety, whether at a single location or resulting from a series of incidents in the same or different location'. There is no definition of 'large-scale'.

Authorisation to use special powers

To use the emergency powers, the Commissioner of Police (or a Deputy or Assistant Commissioner) must issue an *authorisation* for a certain *target area*. The authorisation can only last for 48 hours unless it is extended by the Supreme Court.

Police may use the special powers *without authorisation* if they suspect on reasonable grounds that the occupants of a vehicle are (or are about to be) involved in a large-scale public disorder, and they are satisfied that the situation is urgent enough to require the special powers to be used without authorisation.

What is a target area or target road?

A *target area* could consist of a few blocks, a whole suburb or maybe an even larger area.

A *target road* means a road where special powers have been authorised to be used for the purpose of preventing people travelling by a road to create or participate in a public disorder. The target road doesn't necessarily have to be within the target area, as long as it leads to the target area.

What are some of the special powers?

The special powers range from restricting movement through an area, to giving directions to search and seizure powers. The following are examples of special police powers which are authorised in times of large-scale public disorder:

Roadblocks etc

The police can cordon off a target area or any part of it, or establish a roadblock on a target road.

Police have the power to stop you and your vehicle entering a target area, but they cannot prevent you from leaving the area unless it is reasonably necessary to do so to avoid a risk to public safety or to your personal safety.

Stop and search

If you are in a target area or on a target road, police can stop and search you (and anything in your possession or control) as well as detaining you for as long as is reasonably necessary to conduct a search. *No warrant or reasonable suspicion* is required. Police are not allowed to do a strip search under this section.

The police can also stop and search your vehicle (and anything in or on the vehicle) if you are travelling within a target area or on a target road. The police have the power to detain your vehicle for as long as is reasonably necessary to conduct a search. *No warrant or reasonable suspicion* is required.

For rules that police must follow when conducting a search, see *Police searches* chapter.

Seizure and detention of property

If the police believe that the seizure of your mobile phone or any other thing will assist in preventing or controlling a public disorder, they may seize and detain it.

Police may also seize and detain anything, including your vehicle, if they reasonably suspect that it may provide evidence of a serious indictable offence (whether or not related to a public disorder).

Items seized may be detained for up to 7 days (the Local Court can extend this for another 14 days, and can extend the time limit more than once).

Power to require disclosure of identity

If you are within a target area or in a vehicle travelling on a target road, the police can request you to disclose your identity – but only if your identity is unknown to the police and only if the police officer reasonably suspects that you are involved in or are likely to be involved in a public disorder.

Failure to disclose your identity, or providing false details, is an offence.

The police may ask you to provide documentary ID, but you don't have to provide it.

Power to break up groups

If you are within a target area as part of a group of people, the police have the power to direct you and the group to disperse.

Failing to do so without a reasonable excuse is an offence. Police must give information and warnings similar to those required for ordinary move-on directions.

However keep in mind that the maximum penalty for disobeying these move-on directions is 50 penalty units (\$5500) which is 25 times the maximum penalty for disobeying an ordinary move-on direction!

Alcohol restrictions

A senior police officer (rank of superintendent or above) can also authorise the closure of any licensed premises or establish an emergency alcohol-free zone for up to 48 hours, if he or she:

- has reasonable grounds for believing that there is a large-scale public disorder occurring in the vicinity (or there is a threat of such a disorder occurring in the near future), and
- is satisfied that the closure or prohibition (or creation of an alcohol-free zone) will reasonably assist in preventing or controlling the public disorder.

Police have the power to give directions to people in charge of licensed venues, and to people who are drinking or in possession of alcohol in alcohol-free zones. Failure to comply with these directions is an offence.

The police also have the power to confiscate alcohol if you do not remove it from the area when asked.

Crime scene powers

Police may establish a crime scene in a public place, and exercise *crime scene powers* without a crime scene warrant.

Public place is defined very broadly and could very easily include a range of privately-owned premises including businesses and common areas of blocks of flats.

When can a crime scene be established?

In a public place without a warrant

A crime scene can be established without a warrant in a public place if a police officer suspects on reasonable grounds that:

- an offence is being (or was, or may have been) committed in the place in connection with a traffic accident that resulted in death or serious injury to a person
- a *serious indictable offence* is being (or was, or may have been) committed in the place, or
- there may be evidence of a serious indictable offence that may have been committed elsewhere

and that it is reasonably necessary to establish a crime scene to preserve (or search for and gather) evidence of the commission of that offence.

When do the police need a crime scene warrant?

The police will require a crime scene warrant to enter a private place and create a crime scene (unless they already have a lawful power of entry, for example, if the owner has invited them in).

Sometimes police will need a warrant to establish a crime scene in a public place, for example, in order to establish a crime scene more than once in a 24-hour period.

What are 'crime scene powers'?

Within a crime scene, the police have very broad powers, for example:

- to direct you to leave the crime scene, or forcibly remove you if you do not leave
- to prevent you from entering the crime scene

- to prevent you from removing evidence from the crime scene, and to detain and search you if they suspect you of removing evidence or otherwise interfering with the crime scene
- to search the crime scene
- to seize and detain anything that might provide evidence of an offence
- to remove floors, dig things up, etc
- to open anything that is locked.

Other police powers in public places

Special laws for children and young people at risk

Police have other special powers to deal with young people in public places.

Children and Young Persons (Care and Protection) Act

The *Children and Young Persons (Care and Protection) Act 1998* allows police or officers from the Department of Human Services – Community Services (DoCS) to remove a child under the age of 16 from a public place if they suspect on reasonable grounds that:

- the child is in need of care and protection
- is not under the supervision of a responsible adult, and
- is habitually frequenting a public place.

Police and DoCS also have power to remove children and young people under 18 years old from any place (public or private) if they believe on reasonable grounds that the child or young person is at immediate risk of serious harm, or is in a place used for child prostitution or pornographic purposes.

Children (Protection and Parental Responsibility) Act

The *Children (Protection and Parental Responsibility) Act 1997* gives police the power to escort young people home or to another safe place. It only applies in certain parts of NSW which have been declared *operational areas* by the Attorney-General. The Attorney-General must not declare an area operational unless satisfied that adequate crime prevention or youth support initiatives will be available in the area before the order takes effect.

At the time of writing, the only operational area is Orange.

In areas where the Act applies, police have the power to safely escort a young person from a public place if police reasonably believe the young person is:

- under the age of 16, and
- not supervised by a responsible adult, and
- in danger of being abused or injured, or about to break the law.

Police can then take the young person home or to the home of a relative. If this is not possible, police may place the young person into the care of the Department of Human Services – Community Services (DoCS), or an *approved person*, for up to 24 hours.

Many youth and legal groups have criticised this law for being a breach of international law and for unfairly impacting on the freedom of Aboriginal children in rural areas, without addressing the broader social problems which continue to exist in some communities. As a result of this criticism, the law has been watered down and no longer operates in most parts of NSW.

Can police and security guards take your photo?

Sometimes police take people's photos in the street. They may do this:

- to see who is hanging around a high crime area, or
- to put together a set of photos to help crime victims and witnesses identify suspects.

Anyone, including police officers, can take your photo on the street. However, you certainly don't have to cooperate: you can hide your face or walk away. If you want to complain about police taking your photo, talk to a lawyer (see *Getting legal advice and assistance* chapter or see *Complaints and cooperation: working to improve police practices* chapter).

In some situations, police are lawfully allowed to take your photo and you do have to cooperate, for example if you are under arrest they have the power to take your photo and prints for identification purposes (but if you are under 14, they need a court order to do this).

They may also get an order under the *Crimes (Forensic Procedures) Act 2000* to take your photo (see *At the police station* chapter).

Security guards

There is no law stopping security guards taking your photo, but once again, you don't have to cooperate (see *Security guards: what powers do they really have?* chapter).

'Street' offences

Apart from disobeying a direction (see *Police tell you to stop doing something or to move on* on page 92) or failing to give your name and address, police can charge you with a range of other offences in public places.

Most of these are in the *Summary Offences Act 1988*. These include things like:

- offensive language, such as swearing at someone in an abusive way
- offensive conduct such as making obscene gestures
- obstructing (blocking) the movement of traffic or people
- putting up posters or stickers
- graffiti
- having spray paint in your possession
- climbing, jumping, parachuting or abseiling off buildings or other structures
- soliciting for prostitution in certain places
- exposing your genitals (other than at a legally nude beach) – this means no peeing in the street!

OFFENSIVE LANGUAGE?

David was walking home late one Saturday night with a friend. His friend was rolling a beer keg down the road and a police officer driving past stopped to question his friend. David being drunk, said, 'Leave him alone'. The officer asked him to 'move on'. David again said, 'Leave him alone, he has done nothing wrong'. Again, the police officer asked him to 'move on'. David walked up the road, turned around and said, 'Youse don't know what you are doing, this is corrupt and you're going to be in trouble'. The officer again directed him to move on. David kept walking but turned around and said, 'I don't have to go fucking anywhere'.

David was charged with offensive language and failure to obey a police direction. With help from a lawyer, he successfully defended both charges. The court found that the police direction was issued unreasonably, as David had moved away and was not obstructing, harassing, intimidating or causing fear to anyone. He was just asking questions. Furthermore, the police officer did not provide David with any reasons for the direction. David was also found not guilty of offensive language, on the grounds that the word 'fucking' was not offensive in the context in which it was used.

Police powers when you are on private property

What is private property?

Just to confuse you, *private property* includes some *public places*!

Private property includes any land owned or occupied by a person or a company, and sometimes by the council or government. The owner or occupier has a right to decide who comes on to their property and when.

So private property can include places like:

- private homes and yards
- most shops, fast food outlets and shopping centres
- cinemas, entertainment venues and their car parks
- parts of railway stations
- schools.

Police powers on private property

If you are on private property, such as a shop or business, or in someone's own home, the owner or occupier can tell you to leave. Employees of agents of the owner, such as security guards, can exercise this power on their behalf (see *Security guards: what powers do they really have?* chapter).

If you don't leave when asked, or if you come back after being told not to, police can charge you with *entering or remaining on inclosed lands* (sometimes called *trespassing*).

You are *on inclosed lands* if you are:

- inside a building, or
- inside the boundary of a property, or
- on part of a building or structure, such as the steps, fence or wall.

If the place is private property and a public place, for example, a shopping complex, the police have the power to charge you with entering inclosed lands as well as using the public places powers described earlier. Of course, if the police suspect you of committing some other crime (eg stealing, assault or offensive behaviour) they also have the power to deal with you for that crime.

Owners of private property, their staff or security guards can also make a citizen's arrest in some situations. For more information, see *Citizen's arrests* on page 187.

Safeguards relating to police powers

Before the police can exercise certain powers, they have to follow some basic rules and provide you with certain information and warnings. These are set out in section 201 of LEPR.

What kind of police powers require the police to provide information or warnings?

Police must give certain information or warnings when exercising the following powers:

- search
- arrest
- search of vehicle
- entry of premises that is not a public place
- search of premises that is not a public place
- seizure of property
- stop or detention of a person or a vehicle
- requesting disclosure of identity
- establishing a crime scene
- giving a direction
- requesting you to open your mouth or shake or move your hair
- requesting you to submit to a frisk search or produce a dangerous implement or metallic object.

Situations where information and warnings are not required

These requirements do *not* apply to powers under some other Acts, eg the *Bail Act 1978*, the *Children and Young Persons (Care and Protection) Act 1998*.

So, for example, if the police are arresting you for breach of bail, or removing you because you are a child at risk, they do not have to give you the information and warnings. However, if police are arresting you for breach of bail, they must still tell you that you are under arrest and why.

What sort of information and warnings must the police give?

A police officer exercising one of the above powers must:

- provide evidence that they are a police officer (unless they are in uniform)
- give their name and place of duty
- tell you the reason they are exercising the power, and
- if the power involves a request or direction, warn you that failure to comply may be an offence (unless you have already complied or are complying).

When must the police give you the information or warning?

Police must give you the information and warnings *before* they exercise the following powers:

- requesting disclosure of identity
- giving a direction to an individual
- requesting you to open your mouth or shake or move your hair.

For all other powers, the police must provide the information and warnings *before or at the time of exercising the power*, if it is reasonably practicable to do so. Otherwise, the police can provide the information and warnings *after* the exercise of power, so long as it is within a reasonable time.

What if police don't provide the required information or warning?

If the police don't give you the above information (and, in some cases, warning), the exercise of the power may be unlawful.

For example, if police arrest you without telling you why, and you are later charged with resisting police, you may be found not guilty because the police were not acting lawfully in the exercise of their duty.

Or if plainclothes police search you without telling you their name or showing you their ID, you could argue that anything found during the search was unlawfully obtained and should not be used as evidence in court.