

Police powers to search



This information sheet provides information about the general powers that police in Western Australia have to carry out searches.

If you need information about the exercise of any powers that are not referred to here, or you want to know whether police have exercised their powers appropriately in a particular situation, you should get legal advice.

What are police powers?

Police have powers that enable them to keep the peace, prevent crime and protect property from criminal damage. These powers are greater than the powers of an ordinary citizen and include the power to arrest and detain people, obtain information, carry out searches, seize things and obtain identifying information such as DNA. It is important that you understand your legal rights and obligations in these circumstances.

This information sheet provides information about the general powers that police in Western Australia have to carry out searches.

There are other Legal Aid WA information sheets that deal with the power to arrest and detain, the power to ask questions and the power to obtain identifying information, such as DNA. These are noted under the heading **Where can I get more information?**

If you need information about the exercise of any search powers that are not referred to here, or you want to know whether police have exercised their search powers appropriately in a particular situation, you should get legal advice.

When can police search me, my place or my vehicle?

Police can carry out a search of your person and property, your place or your vehicle at any time with your **consent**.

However, police also have wide powers to carry out a search without your consent and with or without a warrant.

A **search warrant** may be issued by a justice of the peace, a magistrate or a judge giving police the authority to search a particular place or vehicle. A search warrant may include an authority to look for and seize a particular thing or look for a particular person.

In certain circumstances, the police have the power to carry out a search without your consent, without arresting you and without a search warrant. The various situations you may find yourself in and the powers the police have in each case are dealt with in this information sheet.

What should I do if police want to carry out any search?

You can choose whether to consent to any type of search. If you do consent, you can change your mind and withdraw your consent at any time before the search is completed.

If you are not sure, you should ask the police what legal power they are relying on to do the search and then decide whether to consent or not.

If you do not reply when the police ask if they can carry out a search, or you consent but then resist the carrying out of the search, police will assume that you do not consent to the search.

If you do not consent but the search nevertheless continues, you should:

- stay calm
- make a note of the legal power they say they are relying on to carry out the search
- not be abusive or resist the search, as you may be charged with an offence of obstructing police.

If you are concerned about whether a search should have been conducted or how the search has been conducted, you should get legal advice.

What force can police use during a search?

Police may use reasonable force against any person or any thing in order to carry out a search. This may include causing damage to property where it is reasonable in order to carry out the search.

If you think police have used **unreasonable force** to carry out a search of you, your property, your premises or your vehicle, as soon as possible you should:

- write down as much as you can about what happened, including the name, rank and badge number of the police officers who conducted the search.
- take photographs of any damage to property and record the date the photographs were taken.
- ask a doctor to examine and document any injuries you suffered. If possible have photographs taken of your injuries and record the date the photographs were taken.
- if there is someone who saw you or your property before and after the search and can confirm that there was no injury or damage before the search, then note this person's name and ask them to write down what they saw before and after the search.
- record the name of any person who witnessed the search and ask them to write down what they observed.
- get legal advice about your situation, especially if you have been charged with an offence and you are facing court.

If police have used unreasonable force, you can make a complaint about their conduct. You may

also be able to take legal action against them. If you have been charged with an offence and you are facing court, you should get legal advice before making a complaint or taking legal action. For more information see the Legal Aid WA information sheet **Complaints about the police**.

What happens when police want to search my body?

As for any type of search, police can search you **if you consent**.

If you do not consent, police can still search you if you are in a place that they are authorised by a **warrant** to search, or they can search you **without a warrant** in certain circumstances.

Before considering the situations when police may search you with or without a warrant, it is useful to consider the different ways in which you may be searched by police.

How can the police search me?

In certain circumstances police may be authorised to do a basic search or a strip search of your body.

If the law does not specify what type of search police may conduct in the particular circumstances, then it is up to police to decide what type of search is reasonably necessary. A strip search might be considered reasonably necessary where you are suspected of a drug offence or a weapons offence, you are known to be suicidal, you are charged with a very serious offence, or police believe it is in the interests of safety to strip search you.

What are the general rules for police when doing a basic search or a strip search?

Before a basic search or a strip search is carried out, the person searching you must, if possible:

- identify themselves
- tell you the reason for the search
- ask you whether you agree to the search
- advise you that the search can still be carried out even if you do not agree; and

- advise you that it is an offence to try to stop the search being done.

Other points to note in relation to a basic search or a strip search are:

- while they are searching you, **police must not question you** about any offence that you are suspected of committing.
- any search must be done as quickly as possible.
- if the searcher wants to remove any of your clothing, they must tell you why this is necessary. You should be allowed to dress again as soon as possible after the search is finished.
- if any clothing or shoes are taken as a result of the search, you must be given a reasonably adequate replacement for them.
- in relation to a suspected **drug offence**, the search must always be carried out by someone of the same sex as you, or by a doctor.
- police may also search anything you are carrying or that is in your control (such as a bag or suitcase) and can require you to do anything that is reasonable to enable them to carry out the search.

What special rules are there for basic searches?

A basic search allows police to:

- use a scanner on your body
- remove and search any hat, gloves, shoes or outer clothes you are wearing, and
- do a frisk search by running their hands over the outside of your clothes.

If possible, a basic search should be done by a person who is the **same sex** as you, unless the searcher is a doctor or nurse. In relation to a suspected **drug offence**, the search must always be carried out by someone of the same sex as you, or by a doctor.

Police may also photograph or video all or part of a basic search while it is being done.

What special rules are there for strip searches?

A strip search allows police to:

- remove your clothing (but not more clothing than is reasonably necessary)
- search your clothes or anything else you are wearing
- search the outside of your body, and
- search the inside of your mouth.

If a strip search involves the removal of your clothing or a search of your private parts, it must be done by a person of the **same sex** as you, unless the searcher is a doctor or nurse. If police are not sure of your sex, they must ask you whether a male or female should search you and the search must be done according to your answer. If you do not answer, police may carry out the search according to the sex you appear to be to them.

Any person present during the search must also, if possible, be the same sex as you. The number of people present should be limited to the number reasonably necessary to ensure the search is carried out safely and effectively.

Strip searches must be carried out in private. In order to conduct a strip search, police can require you to go to a place where the search can be done.

If the location for the strip search may be monitored by cameras, the cameras should not be used at the time of the search. However, police can photograph or video anything that they find during the strip search, in the location where they find it.

When can police search me with a warrant?

If police have a **search warrant** for a place that authorises them to enter that place and search it for a particular thing or a particular person, then when they are in that place they can do a **basic search or a strip search** of you or anyone who is there, whether or not you consent.

When can police search me without a warrant?

Police can search you without your consent and without a warrant in certain circumstances. Some of those circumstances are referred to here. If you have been searched without a warrant in circumstances not mentioned here and you are concerned the search may have been unlawful, get legal advice.

When you are committing an offence

Police can stop and search you, without arresting you and without requiring a warrant, if they reasonably suspect that you are committing an offence.

Under the *Prostitution Act 2000* (WA), if police suspect that a prostitution offence involving a child or an offence of inducing a person to act as a prostitute, is being or may be committed in a place, they can enter that place without a warrant and search anyone who is there.

While you are under arrest or in police custody

If you are **under arrest**, or you are accompanying a police officer to a police station to **provide a sample for analysis** to see if you have committed a drink driving offence, or you are otherwise in **police custody**, the police can carry out a **basic or strip search** to look for items that may be a risk to security, including things that may be used to harm you or others, or things that may assist you to escape from custody.

It is not necessary for police to have a reasonable suspicion that you have a security risk item in your possession before they search you. If police find something that is a risk to security, or is relevant to an offence, they can seize it. Security risk items that are not relevant to an offence must be made available for you to collect once you are released from custody.

To look for something relevant to an offence

Generally, a police officer can search you without a warrant if they reasonably suspect that you have

in your possession or control, a **thing relevant to an offence**. It is a “thing relevant to an offence” if the police officer reasonably suspects that:

- it has been, is being, or will be used to commit an offence
- it has been obtained as a result of an offence
- an offence has been, is being, or may be committed because of it
- it may prove that an offence has been committed
- it may prove who committed an offence, or
- it may prove that an alibi is false.

The power to stop and search you for a thing relevant to an offence applies to a range of offences, including offences related to prohibited drugs, weapons and prostitution.

In order to search you for a thing relevant to an offence, police may enter a **place** where they suspect you are, in order to look for you and search you. However, there are some limitations to the exercise of this power by police if you are in your own house or in the house of someone who has given you permission to be there. If you are searched in this situation and you want to know whether the search was lawful, get legal advice.

To enforce a prohibited behaviour order

This power arises if you are under a prohibited behaviour order and you are in a public place. In these circumstances, if a police officer reasonably suspects that it is a term of your order that you must not carry certain things when in public, they may conduct a **basic search** to see if you are carrying anything that you are not supposed to be carrying. They do not have to have a reasonable suspicion that you are carrying such a thing in order to search you. They only need to suspect that it is a term of your order that you must not carry such things.

To ensure the security of a public place

Police have special powers to search you when in a public place, for security reasons. To exercise these powers, police must reasonably suspect that searching you is necessary to keep the place

safe. The police may then conduct a **basic search** to look for anything that does or may endanger the place or people in it and may seize any such item that is found. If it is not against the law to possess the item, it must be returned to you when you leave the place or as soon as possible afterwards.

To protect intoxicated or young people

Under the *Protective Custody Act 2000* (WA), police and appointed community officers have the power to stop and detain you if you are intoxicated in a public place or on private property without permission, and you need to be apprehended to ensure you or any other person is kept safe, or to stop you from causing serious damage to property.

A railway security officer may exercise these same powers, but only on railway property.

Once you are stopped, you may be searched by an officer of the same sex as you. If the officer finds any intoxicant, such as alcohol, drugs or inhalants, they may seize them and in certain circumstances, destroy them. The officer may destroy any other intoxicant that they reasonably suspect you will use to become intoxicated, if it is returned to you. The officer may also seize anything that could endanger your or anyone else's health or safety, including prescription medication.

If you are **under 18 years old**, police and appointed community officers have the power to seize drugs, alcohol and inhalants from you if you are in a public place and you are using or are about to use one of these intoxicants. You do not have to be intoxicated for the officers to have these powers. They can then destroy the intoxicants they have seized from you. A railway security officer may exercise these same powers, but only on railway property.

To look for proceeds of crime

Under the *Criminal Property Confiscation Act 2000* (WA), police may search you for property that may be confiscated because it has been obtained as a result of a crime. The search must be conducted by someone of the same sex or by a doctor.

They can also search your vehicle and any bag, package or anything else that appears to be in your possession or under your control.

What happens when police want to search my place?

A "place" includes any land, building, structure, tent or mobile home. It includes backyard areas, garages, sheds and business offices.

Police have wide powers to enter places to keep the peace, prevent violence, attend to dead, ill or injured people, investigate serious events such as fires and prevent or break up out of control gatherings.

Generally the police may also search your place if you **consent** or if they have a **search warrant**. In certain circumstances police may enter and search your place **without a warrant**.

What must police do before they enter my place?

Whether or not police have a search warrant to enter your place, if you are present they must, before they enter or as soon as possible after they enter:

- Identify themselves to you (give you their name and rank)
- Tell you they are intending to enter your place
- If there is a warrant, give you a copy of it
- If there is no warrant and the police are relying on a different legal authority to enter your place, tell you what that authority is, and
- Give you an opportunity to provide your consent if you wish to do so.

Police are not required to do these things if they reasonably suspect that to do so will endanger any person or jeopardise the purpose of the entry to the place or the effectiveness of the search.

If there is no-one there when police come to search your place, police must either leave a notice stating the officer's details and the fact that your place has been entered, or leave a copy of the search warrant or other authority for entry.

When can police search my place with a warrant?

Police may obtain a **search warrant** to allow them to enter a certain place and carry out a search. The search warrant may allow police to search for a certain thing, or a certain person, in that place.

When can police search my place without a warrant?

Police can enter and search your place without your consent and without a warrant in certain circumstances. Some of those circumstances are referred to here. If your place has been searched without a warrant in circumstances not mentioned here and you are concerned the search may have been unlawful, get legal advice.

To look for a suspect

Police can enter and search your place **without a warrant** if they reasonably suspect you or someone who is in your place:

- has an arrest warrant out against them; or
- is reasonably suspected of committing a serious offence (an offence that has a maximum penalty that includes imprisonment of five years or more),

but they can only use this power to search for that person and cannot carry out a general search of your place. However, if, while looking for the person, police find a thing relevant to any offence, they can seize it as evidence.

To look for a person who has a thing relevant to an offence

If police reasonably suspect that a person has in their possession a “thing relevant to an offence”, they can enter any place **other than a dwelling** (a place where people live) without a warrant to look for that person.

If the place is a dwelling, these particular powers do not apply, however, police could use other powers of search without a warrant that arise when someone is under arrest for a serious

offence (see below), or they could obtain a search warrant to search the dwelling.

While you are under arrest for a serious offence

While you are under arrest for a “serious offence” (an offence that has a maximum penalty that includes imprisonment of five years or more), if police have a reasonable suspicion that they will find any thing or any person relevant to the serious offence in any place that you occupy, control or manage, then as long as they have written approval from a senior officer not involved in the investigation, they can conduct a search there without a warrant.

However, while you are under arrest for a serious offence, police may enter the place where you were when you were arrested, or the place that you ran away from just before being arrested, without the need for a reasonable suspicion or the need for approval from a senior officer. They may search this place for anything relevant to the offence, or for a person against whom the offence was committed.

When a search is carried out in either of these circumstances and something relevant to a different offence is found, it may be seized.

The police can only use these particular search powers while you are under arrest and cannot use them after you have been charged.

Where domestic violence is suspected

Under the *Restraining Orders Act 1997* (WA), with the approval of a senior officer, police can enter a place without a warrant if they reasonably suspect a person is committing or has committed an act of family and domestic violence in that place. While there they can search the place to see if any person is in need of assistance, look for any weapon and look for anyone they think may be in possession of a weapon. If they find a weapon they can seize it.

Where certain prostitution offences suspected

If police suspect that a prostitution offence involving a child or an offence of inducing a person

to act as a prostitute, is being or may be committed in a place, they can enter and search that place without a warrant and seize anything that they reasonably suspect is evidence of an offence.

What happens when police want to search my vehicle?

A “vehicle” is anything capable of transporting things or people by air, road, rail or water, even if it is permanently in one place.

Generally the police may search your vehicle if you **consent** or if they have a **search warrant**. In certain circumstances police may search your vehicle **without a warrant**.

When can police search my vehicle with a warrant?

Police may obtain a **search warrant** to allow them to search a particular vehicle for something relevant to a drug offence or weapons offence or to look for the proceeds of a crime. However, there are a wide range of circumstances when police do not require a warrant to be able to search your vehicle and it is therefore most common for vehicles to be searched without a warrant.

When can police search my vehicle without a warrant?

Police can stop and search your vehicle without your consent and without a warrant in a wide range of circumstances. Some of those circumstances are referred to here. If your vehicle has been searched without a warrant in circumstances not mentioned here and you are concerned the search may have been unlawful, get legal advice.

Police can stop and search your vehicle without a warrant if they reasonably suspect that:

- your vehicle is carrying a **thing relevant to an offence**, for example stolen goods, drugs or a weapon;
- a person in your vehicle has a thing relevant to an offence in their possession or under

their control, in which case police can search your vehicle for that person;

- your vehicle is itself relevant to an offence;
- an **offence has been, is being, or is about to be committed** in your vehicle; or
- your vehicle is carrying someone against whom an offence is being or may be committed.

Police can stop and search your vehicle without a warrant if they reasonably believe it is necessary to:

- prevent your vehicle being used for an offence;
- prevent your vehicle being used to get away after an offence has been committed;
- prevent damage to your vehicle or another vehicle;
- protect the safety of anyone in or near your vehicle.

Police can also stop and search your vehicle without a warrant in the following circumstances.

To look for a suspect

Police can stop and search your vehicle without a warrant if they reasonably suspect a person is in the vehicle who may be arrested because:

- there is a warrant out against them; or
- they are reasonably suspected of committing a serious offence (an offence that includes a maximum penalty of five years imprisonment or more).

This power only applies to allow police to search the vehicle for this person, although in the course of the search for the person, if they find anything relevant to an offence, they can seize it as evidence.

While under arrest for a serious offence

If you are under arrest for a serious offence (an offence that includes a maximum penalty of five years imprisonment or more), police may stop and search any vehicle you were in immediately before you were arrested, or any vehicle that you control or manage. They may search the vehicle

for a thing relevant to the offence, or for a person against whom the offence was committed.

To ensure the security of a public place

Police have special powers to search your vehicle when in a public place, for security reasons. To exercise these powers, the public area must either be designated as a special security area, or police must reasonably suspect that searching your vehicle is necessary to keep the public place safe.

To look for proceeds of crime

Under the *Criminal Property Confiscation Act 2000 (WA)*, police may search you for property that may be confiscated because it has been obtained as a result of a crime. In order to search you, police may stop and detain your vehicle. They can also search your vehicle and any bag, package or anything else that appears to be in your possession or under your control.

Can police use information obtained from an unlawful search?

If you are charged with an offence and police have obtained information as a result of a search but that search was not done according to the law, they can still try to use the information against you when you go to court. However, the court may decide not to let the police use the information. In making this decision, the court may take into account things such as:

- how seriously the police breached the law when conducting the search;
- whether the police deliberately breached the law when conducting the search;
- how serious the offence is that you are alleged to have committed;
- how important the information is to the case against you.

If you are facing court and you think police are relying on information obtained as a result of an unlawful search, you should get legal advice.

Can I complain about the conduct of police?

Yes, if you feel that the police have not behaved properly towards you or have abused their powers, you can make a complaint about them.

If you have been charged with an offence and you are facing court, you should get legal advice before making a complaint.

For more information on how to make a complaint, see the Legal Aid WA information sheet **Complaints about the police**.

Where can I get more information?

Information sheets and pamphlets, available from any Legal Aid WA office (locations on back page) or by contacting the **Legal Aid WA Infoline** on **1300 650 579**:

- **Police powers to arrest and detain**
- **Answering questions from the police**
- **DNA testing by police**
- **Complaints about the police**

Web pages under Information about the law on the **Legal Aid WA website** www.legalaid.wa.gov.au:

- **Police powers to arrest and detain**
- **Police powers to search**
- **Answering questions from the police**
- **DNA samples and identifying information**
- **Complaints about the police**

Legal Aid WA Infoline on **1300 650 579** for information and referral.

Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)
Infoline open Monday to Friday 9.00 am to 4.00 pm
(Australian Western Standard Time) except public holidays

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Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330
(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430
(08) 9025 1300

Midwest & Gascoyne Regional Office

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530
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Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722
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West Kimberley Regional Office

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East Kimberley Regional Office

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Indian Ocean Office

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