

YOUR RIGHTS - A SHORT GUIDE FOR ACTIVISTS IN NSW

RIGHT TO PROTEST

Our rights to protest, demonstrate and take part in political activities are recognised by the International Declaration of Human Rights (1948) as well as the International Covenant on Civil and Political Rights (1966) and other covenants. There is a common law right to peaceful assembly in NSW.

This does not mean, however, that the police can't stop you if they believe you have broken the law while carrying out protest activities.

There is a range of activities that you can participate in lawfully, and some that may be considered "civil disobedience" - ie, breaking a law non-violently, for a moral or ethical purpose.

This short guide is designed to help you understand your rights, your responsibilities and police powers. If you get in trouble and you need legal advice you should contact the Environmental Defenders Office in NSW.

There are also various ways protestors can cooperate with police if they wish. Section 23 of the *Summary Offences Act* allows for organisers to lodge a form (commonly called a Form One), and notify police of their intention to hold a "public assembly" in cooperation with police.¹ This does not mean that any conduct that takes place will be lawful, but it provides a legal framework in which protests can take place.

YOUR RIGHTS

Remain silent	Get medical treatment
Have an adult present if you are under 18	Call a lawyer, friend or relative
Know the reason why you are under arrest	Have access to an interpreter

DO I HAVE TO TELL THE POLICE MY NAME / ADDRESS?

The police can require you to identify yourself if they believe you could assist with their investigation into a serious offence.² They can also require you to identify yourself if they intend to give you a direction to leave a particular place.

You should give the police your name and address in the circumstances above. It is an offence

¹ *Summary Offences Act 1988* (NSW) S23

² LEPRA, s11

not to do so, or to give police false details.³ If they do not appear to have a legitimate reason, you can politely ask, “on what basis are you asking me?”

DO I HAVE TO ANSWER POLICE QUESTIONS?

Generally speaking you have the right to remain silent, and anything you do say can be used by police against you. If you decide to exercise your right to silence it is important you tell the police this clearly and then do *not* answer any further questions. It is important not to answer some questions and not others.

The big exception to this rule is if the police ask for your name and address in the circumstances above, or if you are under arrest.

CAN THEY TELL ME TO ‘MOVE ON’?

Yes. In NSW the police have broad ‘move on’ powers.⁴ This means that police can direct you to leave a public place if they believe you are obstructing people or traffic, likely to cause fear to others, harassing or intimidating others, or carrying out a drug related offence. This direction can be given to you as an individual, or a direction can be given to an entire group.⁵

In the past in NSW these laws were not allowed to be used by police at protests.

There are still some protections in place,⁶ however the police *can use these powers at a protest* if the officer reasonably believes there’s a risk to someone’s safety. They can also use their move on powers to direct people to stop obstructing traffic at a protest that has not been authorised by the Commissioner of Police.⁷

If you are directed to move on (and you are not participating in an authorised protest in a public place) then the police can direct you to leave the area, in a particular way, for a specified period of time. They must identify themselves, explain the reason for the direction and warn you that not complying with the direction is an offence⁸ You can be fined up to \$220 if you do not comply.⁹

CAN THEY STOP AND SEARCH ME?

In a number of circumstances the police can stop and search you. Police are allowed to search you if they have a search warrant or if you agree to be searched (**Note:** you should always ask

³ LEPR, s12 and s13

⁴ LEPR, s197(1)

⁵ LEPR, s198A

⁶ LEPR, s200(2)

⁷ LEPR, s200(4)

⁸ LEPR, s197 and s198

⁹ LEPR, s199, s202 and s203

police whether they are directing you to participate in a search, or whether it is voluntary. If it is voluntary you do not have to participate).

They are also allowed to search you *without your consent* if you if they believe you have an object on you that is dangerous, connected with an offence, stolen goods¹⁰ or - importantly - if they believe you have “lock on” equipment on you *and* they believe that equipment could present a serious safety risk.¹¹ They can then confiscate and destroy any equipment they find.

WHAT TYPES OF SEARCHES ARE THERE?

Police are required to conduct all searches in the least invasive way possible. However, we unfortunately know that police do not always comply with this requirement. If you think you have been searched unlawfully, or in a way that was undignified or humiliating, contact one of the legal services at the end of this guide to make a complaint.

You should only be searched by a police officer of the same gender as you.¹² It is important not to resist or try to obstruct a search or you could be charged with obstructing or hindering police. If you believe you have been unlawfully subjected to a search you can contact Legal Aid (or any of the services at the end of this guide) afterwards and seek legal advice.

CAN I FILM POLICE?

Yes, if you are in a public place you are allowed to film or photograph events.

ARREST PROCESS

You have the right to know why you are being arrested and the arresting officer’s name and place of duty. Police are not required to give you a warning prior to arresting you, but often they will.

Police must formally tell you they are arresting you. You should always ask the police officer, “Am I under arrest?” and “What for?” Remember what they say. Police are obliged to inform you of the reason for the arrest.

Security guards

Security guards have no more powers than ordinary citizens. They have no power to search or question you. They can detain you using reasonable force if they see you committing an offence until police arrive.

¹⁰ LEPR, s27

¹¹ LEPR, s45A and s45B

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 if you are under 18.

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.

POSSIBLE CHARGES

Trespassing – Entering or remaining on inclosed lands without a lawful excuse

'Inclosed lands' means any land, either public or private that is surrounded by a fence, wall or other erection, or partly by a fence and partly by a natural feature (like a river or cliff) that makes the land's boundaries recognisable. Inclosed lands also include certain premises (such as schools, hospital and nursing homes).

You will be trespassing on inclosed lands if you:

(a) enter onto inclosed lands without the consent of the owner, occupier or person apparently in charge of those lands

AND/OR

(b) remain on inclosed lands without the consent of the owner, occupier or person apparently in charge of those lands after they have asked you to leave

AND

(c) do not have a lawful excuse.

This means that even if you have permission to enter a particular place, such as the foyer of a bank, and you are asked to leave by security or the manager of the bank or a person apparently in charge, and you do not, you may be committing the offence of remaining on inclosed lands.

****This is an interim document and further detail on other common charges will be added in the next edition****

WHO SHOULD I CALL?

- Environmental Defenders Office
- LawAccess NSW between 9am-5pm Monday to Friday 1300 888 529
- Aboriginal Legal Service if you are Aboriginal or a Torres Strait Islander (visit their [website](#) to find your local service).
- Youth Hotline if you are under 18 on 1800 10 18 10

This document has been prepared by CounterAct with the assistance of Sophie and other lawyers. It is based on information from Legal Aid, LEPR, and other source material. It is an interim version in progress, as of November 2019. Please check back for further information, or contact our website with queries.

It is not legal advice and you should contact a lawyer if you have further questions.