

Inquiry into NSW Police Force strip search practices Fact Sheet 3: Legal thresholds for strip searching under the *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)*

Legal circumstance of person and relevant search power	<u>Threshold 1</u> - requirements to conduct a person search (of any type)	<u>Threshold 2</u> - requirements to conduct a strip search	<u>Threshold 3</u> - requirement to search the person's genital area or breasts
Person is not under arrest – s 21 (and s 21A)	Police officer must suspect on reasonable grounds the person has in their possession or control certain types of items (eg something stolen, or used to commit an indictable offence, or a prohibited plant or drug – see ss 20-21)	If search is to be carried out in a police station or place of detention – police officer must suspect on reasonable grounds that the strip search is necessary for the purposes of the search (s 31(a))	Police officer must suspect on reasonable grounds that it is necessary for the purposes of the search to search the genital area of the person, or in the case of a female or a transgender person who identifies as female, the person's breasts (s 32(6)).
Person is not under arrest but is in a public place or school – s 23	Police officer must suspect on reasonable grounds the person has a dangerous implement unlawfully in their possession/control ('dangerous implement' is defined in s 3(1) and includes a firearm, prohibited weapon, knife or laser pointer)		
Person is under arrest (for an offence or under a warrant)– s 27(1) (and s 28)	Police officer must suspect on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying anything that would present a danger, could assist a person to escape from custody, or relates to the commission of an offence (eg evidence)	If search is to be carried out in any other place - police officer must suspect on reasonable grounds:	
Person is under arrest (for purpose of being taken into lawful custody) – s 27(2) (and s 28)	Police officer must suspect on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying anything that would present a danger, or could assist a person to escape from custody	(1) that the strip search is necessary for the purposes of the search and (2) that the seriousness and urgency of the circumstances make the strip search necessary (s 31(b))	
Person is in lawful custody after having been arrested – s 28A	Person must be in lawful custody after arrest (no requirement regarding state of mind of searching officer)		