

## **When the cops come knocking: Warrants, raids and your rights.**

A body or property search is a serious invasion of privacy and can be used by police to try and implicate you in an offence.

To enter and search your home or private property, police usually need a search warrant issued by a court. In some circumstances police are entitled to enter premises without a warrant, such as:

- If you agree to the police entering,
- If the police have a reasonable belief that a serious offence will be or has been committed and entry is necessary to make an arrest,
- If entry is necessary to stop a breach of the peace,
- If there has been a breach of an intervention order,
- If the police are chasing someone who has escaped from custody,
- If the police have a warrant for arrest, or
- If the police have a reasonable belief that illegal drugs are on the premises.
- The police are also authorised to enter and search under some of the new ASIO law provision.

If police do not have a warrant, and you believe none of the above circumstances apply, you can refuse entry to police to your property. If you feel that a search is unreasonable and you want to refuse try to make sure that you have friends and witnesses with you.

To get a warrant to search a property, police must apply to a magistrate and provide sworn evidence, either in person or by affidavit. Although warrants give police wide-ranging powers, this power is confined to the exact terms of the warrant.

### **Generally, a search warrant must state:**

1. That a police officer may enter the place and exercise search warrant powers at the place; and
2. If the warrant is issued in relation to an offence, a forfeiture proceeding or a confiscation related activity; and include brief particulars of the reason for which the warrant is issued;
3. Any evidence that may be seized under the warrant; and
4. If the warrant is to be executed at night, the hours when the place may be entered; and
5. The day and time the warrant ends.

### **What a warrant authorise the police to do:**

Once they have a warrant, police are only authorised to search a particular premises for items specified on the warrant. When the police officer is executing a search warrant the officer must give you a copy of the warrant: read it carefully and be aware of what it authorises. There will also be an expiry date on the warrant. If this date is expired the warrant is no longer current and therefore does not authorise the police enter or search the premises.

If the warrant is to search for a thing, it authorises the police to break, enter and search any place named or described in the warrant; to search for any article, thing or material of the kind described in the warrant; and to bring objects of interest before the court. In some circumstances they may also arrest any person apparently having possession, custody or control of the thing.

If the warrant is for the arrest of a person, it gives police the authority to break, enter and search any place where the person named or described in the warrant is suspected to be.

A search warrant grants police power to detain anyone at the property for the time reasonably

necessary if police reasonably suspect a person has been involved in the commission of the offence, or to find out if the person has anything sought under the warrant.

A search warrant gives police the power to stay on the property for the time reasonably necessary to exercise powers authorised under the warrant. It also gives police power to open anything in the relevant place that is locked, and power to photograph anything the police officer reasonably suspects may provide evidence of the commission of an offence or confiscation related evidence to which the warrant relates.

For example, police cannot legally come to your house with a warrant for stolen electrical goods, and then attempt to take your address book. However, if they come across evidence of an offence (for instance, illegal drugs) while searching, they are entitled to take that and arrest you.

If police are searching your house or seizing items beyond the scope of the warrant, you can challenge their actions. For example, if term of the warrant is to seize photographs, and police attempt to seize items such as clothes, this police action would be outside power granted by the warrant and illegitimate. You can question police before they search each part of a room / item on if and how their actions fit into the search terms of the warrant. After the police leave, and you believe police acted outside the terms of the warrant or in any way that was inappropriate you can also lodge complaints with the Office of Police Integrity (Victoria)

If the police seize any items, either because they are suspected to be illegal or because they may be used as evidence in a criminal trial they must also have an adult occupier of the house to sign a statement certifying that they have taken these items.

Before the police leave the premises, they are required to ask an adult occupier of the house to sign a statement that they did not cause any damage or break anything on the premises. If the police did cause some sort of damage, you are entitled to not sign this and put in a complaint to the officers present at the time or to the Office of Police Integrity or the Police Ombudsman. This complaint would be assessment on the basis of whether the police actions were 'reasonable' in the circumstances.

### **Do I have to go with Police if they ask me?**

You must go with police to the Police Station if you are under arrest. The police do not need a warrant to arrest you.

If you are subject to a search warrant relating to G20 protests and unsure of your rights and Police powers, call Fitzroy Legal Centre on 03 9419 3744 or your local Legal Aid office (Victoria on 03 9269 023 may be contacted on 9269 023, and contact us: Ongoing G20 Arrestee Solidarity Network on 0408 307 722 or email [afterg20@gmail.com](mailto:afterg20@gmail.com)

For further information see [www.activistrights.org.au](http://www.activistrights.org.au), especially <http://www.activistrights.org.au/PolicePowersdetails.asp#BeingSearched> and <http://www.activistrights.org.au/PolicePowersdetails.asp#IfApproachedbyPolice>