

August 2011

Police powers: Your rights in Victoria

This booklet is a general
guide to help you when
you deal with the police

Upholding your
right to justice
for **30** years

 **Flemington &
Kensington
Community
Legal Centre** inc.

 **Victoria
Legal Aid**
Lawyers And
Legal Services

Police powers: Your rights in Victoria

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Please ring us on 9269 0223 so we can talk with you about what you need.

Produced by Victoria Legal Aid and Flemington and Kensington Community Legal Centre

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Changes to the law

The law changes all the time. To check for changes you can:

- call the Victoria Legal Aid Legal Help on 9269 0120 or 1800 677 402 (country callers)
- read the 'new law' section on the Victoria Legal Aid website at www.legalaid.vic.gov.au
- contact a community legal centre. Call the Federation of Community Legal Centres on 9652 1500 to find your nearest community legal centre.

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Victoria Legal Aid

We are a state-wide organisation that helps people with their legal problems. We focus on helping and protecting the rights of socially and economically disadvantaged Victorians.

We have lawyers in offices in most major metropolitan and country regions. We also fund private lawyers to provide legal services to the public.

We can help you with your legal problems about criminal matters, family breakdown, family violence, child support, immigration, social security, mental health, debt and traffic offences.

Call us to find out how we can help you on 9269 0120 or 1800 677 402 (country callers).

Flemington and Kensington Community Legal Centre (FKCLC)

FKCLC is one of more than 50 community legal centres in Victoria. The FKCLC provides generalist legal advice. Its purpose is to provide free and confidential legal advice to people in the Flemington and Kensington area. As part of the overall philosophy of community legal centres, FKCLC delivers community legal education and conducts law reform and social justice campaigns. FKCLC is committed to the principles of human rights, social justice, equity and community participation.

The FKCLC works to achieve the following outcomes:

- that people in the local community have equal access to justice
- that people are aware of, and can assert, their legal rights
- that the process of changing laws is responsive to changes in the community
- that any given laws have the same impact on people regardless of their income or power
- that people understand and respect the rights and responsibilities of others in the community.

About this booklet

What this booklet covers

This booklet is a general guide to help you when you deal with the police. It includes information about arrest, being held in custody and searches.

When dealing with the police, it is important to remember that you have rights under Victoria's *Charter of Human Rights and Responsibilities Act 2006*. See 'Human rights' in 'Making a complaint' on page 35.

Getting more help

This booklet gives general information, not legal advice. We have put the contact details of helpful organisations in the 'Where to get help' on page 36.

Legal words

To help you, we have explained some words in 'What do these words mean?' in the next section. These words are also highlighted in **bold** the first time they appear in each section.

What do these words mean?

appeal - a procedure that allows a party to challenge the decision made by a court

apprehend - under mental health laws, a police officer can 'apprehend' a person that they believe has a mental illness and has broken the law. This means they can detain you and you are not free to go

arrest - when the police detain you because they believe you have broken the law. You are not free to go

bail - a promise that you will go to court to face charges on a certain day

bail justice - a person who comes to the police station and can give or refuse to give you bail

breach - to break a law or court order. This is the same thing as contravening a court order

charge - when the police believe you have broken the law (committed an offence), they need to outline what they think you did and when and where you did it. This outline is called a charge

charge sheet - a sheet of paper that lists the charges (offences) that the police say you have committed

consent - when you agree to something

court order - a court document that orders you to do something. It is also a document that will set out your penalty if the court finds you guilty of breaking the law

custody - when you have been arrested and are not free to leave

evidence - information (documents or material) used in court to prove something

Fines for disorderly conduct - Police can give on-the-spot fines to any person who behaves in a disorderly manner in a public place. This includes swearing. But it does not include someone who is demonstrating, protesting, or picketing about a political issue or expressing their point of view. Otherwise the law does not say what 'disorderly conduct' is exactly. It is up to police to decide this

indictable offence - a serious offence that the court deals with in a particular way. The Magistrates' Court deals with some indictable offences. Others can only be dealt with in the County Court or Supreme Court

magistrate - a judicial officer in the Magistrates' Court or the Children's Court who decides if you are guilty or not and what the punishment is

notice to appear - a document you may get when the police believe you have broken the law. It tells you to go to court on a certain date. The police will usually give this to you rather than sending it to you

offence - something the law says is wrong. You can be punished for breaking the law. The punishment depends on what law you broke

penalty - this is a punishment for breaking the law

reasonable - police can only do something, such as using force, if it is reasonable. The police may have to explain to a court why it was reasonable. You may also have a reasonable belief that you did not know you were doing something wrong. You may need to explain why this is a reasonable belief

serve - the legal delivery of a document

statement - a written document of what you say happened

subpoena - a document that says you must go to court or give certain documents to the court

summary offence - an offence less serious than an indictable offence. The Magistrates' Court or the Children's Court usually deals with summary offences

summons - a document that tells you when you must go to court

surety - a person who promises money or property if you do not meet your bail conditions

warrant - a court document that says what the police can do, such as arrest you or search your house

witness - a person who gives evidence in writing or in person at the court

Speaking to police

Do I have to give my name and address?

In general

A police officer can only ask you to give your name and address if they have a **reasonable** belief you:

- have committed an **offence**
- are about to commit an offence.

For example, a police officer can ask you for your name and address if they have a reasonable belief that you bought alcohol and you are under 18.

The police officer must tell you what offence they think you have committed.

Driving

The police officer may signal for you to stop driving. You must stop and show the police officer your licence.

Helping with an investigation

The police officer may believe you have information that could help them investigate an **indictable offence**. You must give the police officer your name and address if asked.

The police officer must tell you what offence they think you will be able to help them investigate.

You must give your name and address in all of these circumstances. It is an offence to give a false name and address.

Can I get the name of the police officer?

Yes. The police officer does not have to give you their details automatically. They will if you ask. Ask for their name, their rank and the police station where they work. You can also ask for these details in writing.

This information may be useful later. For example, you may want to complain about the police officer or report them.

The police officer can be fined for not giving you their name, rank and police station. You need to complain for this to happen. A lawyer can help you do this. For more information on making a complaint, [see page 32](#).

Do I have to answer any other questions?

Police may want to ask you more questions. They may start by questioning you as a **witness**. Then they may question you as a suspect. The police should tell you if they think you are a suspect in a criminal offence. They will tell you your rights before they ask you questions. [See 'Interviews' on page 16](#).

In either case, you do not have to answer any other questions. If the police officer tells you that you are breaking the law by refusing them information, ask to speak with a lawyer.

However, if someone was using your car or motorbike and the police officer asks you for that person's name, you have to give it. If you do not, the police could **charge** you with a **summary offence**.

Anything you say to a police officer may be used by them to **arrest** or charge you. There is no such thing as speaking 'off the record'. The police could use the things you said as **evidence** in court to show that you broke the law.

What is a statement?

A **statement** is a written document to the police. It is your version of events. You may be asked to make a statement as a witness or a suspect.

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Do I have to make a statement if I am a suspect of a crime?

No. If you do, the police may charge you on the basis of what you say in a statement. Police will charge people when they believe there is evidence to show that the person broke the law. Sometimes the only evidence against you is what you said in your statement or in the record of your interview.

You do not have to make a statement. If you want to, get legal advice.

Do I have to make a statement if I witness a crime?

The police cannot force anyone to make a statement. However, the police may get a **subpoena** to make you go to court to give evidence.

Do I have to sign the statement?

If you do decide to make a statement, the police will ask you to sign it. Read the statement carefully. The police can charge you with signing a false statement so do not sign it unless you agree with everything in it. You can also change the statement before you sign it.

Searches

Can a police officer search me?

In general, a police officer can search you if they:

- have a **warrant**
- have **arrested** you.

If a police officer searches you, they must make a written record that they did the search. You can ask for a copy of the record at the time or later. This is free if you ask for the record within one year of the search.

When can a police officer search me without a warrant?

Searches by consent

If the police officer does not have a warrant or the authority to search you, they might ask you if you will let them search you. This is called 'search by **consent**'. You can say no.

If you say yes, the police officer should get your agreement in writing. You can complain if this does not happen. [See page 32.](#)

Searches in a 'public place'

The police officer does not need a warrant to search you in a public place if they **reasonably** suspect you:

- have illegal drugs
- have things that can explode or ignite
- have guns or weapons like knives, imitation guns, knuckle-dusters or nunchakus
- are in an area where a lot of violent crime happens (they can use this fact to show they have reasonable grounds to search you)
- have something that could be used to make graffiti, for example, spray paint, gouging tool or even a texta.

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A public place includes:

- a shop
- the train station
- public transport (buses, trams or trains)
- school
- a hospital or welfare centre like the Salvation Army.

The police officer can search anything you are carrying and the car you are in. They can search your car even if you are not in it.

Note: to search you for a graffiti offence, the police officer must reasonably believe you are 14 years or older. You must also be on or near public transport property or trespassing on someone else's property.

Searches in public 'designated areas'

The police can search people for weapons in public areas which have become 'designated areas'. They have a lot of search powers within these areas:

- they do not need a warrant
- they do not need to have any reasonable grounds to suspect you are carrying a weapon
- they can search you, your bags and your car for weapons
- they can do searches for up to 12 hours.

A senior police officer can make a public area into a designated area if the area:

- has had two or more events of violence or disorder in the last 12 months
- is a regular trouble spot such as King Street, Melbourne
- has had events or demonstrations that have been violent.

The police should tell people that the public area has become a designated area. They should publish this in a local newspaper. They do not have to do this if they have made a public area into a designated area at short notice.

Before searching anyone, the police officer must give the person a search notice.

This will say:

- that the area has become a designated area
- you or your motor vehicle are in that designated area
- the police have the power to search you
- it is an offence to stop the police searching you.

The government knows that these police powers **breach** the Victorian *Charter of Human Rights and Responsibilities 2006*. This is because the police can search you without any reasonable suspicion that you have done anything wrong.

However, if a police officer asks to search you, go along with it. It is an offence to resist. You can contact Victoria Legal Aid if you need help afterwards. You can contact us whether or not the police found a weapon on you. See 'Where to get help' on page 36.

Searches on private property

A police officer usually needs a warrant to enter and search private property (for example, your home).

The police officer may do a search without a warrant when:

- you let the police officer in
- the police officer has a reasonable belief that someone will or has committed a serious offence and the police officer needs to go into the property to arrest that person
- the police officer needs to stop a 'breach of the peace', for example, a fight
- someone inside the property has breached an intervention order or breached a family violence safety notice
- someone has not followed a direction given by the police for family violence matters
- the police officer has a reasonable belief that someone has assaulted or threatened to assault a family member
- the police officer is chasing someone who has escaped from prison or **custody**
- the police officer has a warrant to arrest someone on the property.

Under 18s

Graffiti – The police officer can only give you a pat-down search if they are searching you for a graffiti offence. There is definition of a pat-down search below.

Alcohol – A police officer cannot search you for alcohol but they can take the alcohol off you if they see you with it.

Chroming – A police officer can search you if they suspect you are going to sniff things like spray paint and glue. This is called chroming. It is not a crime to chrome but the police officer can stop you. They may take you somewhere safe if they think you will hurt yourself.

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What sort of searches can a police officer do?

Pat-down search

This is when the police officer uses their hands to feel over the outside of your clothes.

The police officer can:

- search you in public or inside a private property
- ask you to empty your pockets or remove your jacket or jumper
- ask you to show them something they believe is a weapon. The police can **charge** you and fine you if you refuse
- use a metal detector to look for something they reasonably suspect is a weapon.

The police officer that does the search must:

- be the same sex as you (unless this is not reasonably possible)
- make a written record of the search
- give you a receipt when they take anything away from you, including drugs.

Strip search

This is when the police officer removes and searches all of your clothing. The police officer will usually do a strip search when they are looking for something they could not find in a pat-down search.

The police officer can only do a strip search in a private place. This is usually at a police station.

The police officer must follow the rules for a pat-down search. The police officer must also make sure you have someone with you:

- a parent, guardian or Independent Person (an adult) if you are under 18
- Independent Third Person if you have a cognitive disability or a mental illness.
See page 25 for more information.

The police officer will not have to do this if there are urgent or serious circumstances that mean they cannot get one of these people to be with you.

If the search is in a designated area and it is not 'practicable' for police to have a parent, guardian or Independent Person, police may use another person to watch the search. That other person could be another police officer. The law does not say what 'practicable' means. It could mean the police officer believes it would take too long for the parent, guardian or Independent Person to get there.

Internal body search

This means searching inside your body. If you agree to it, only a doctor can do the search. The doctor must be the same sex as you.

Having an internal body search means you are having a forensic procedure done – see 'What is a body sample?' in 'Fingerprints and body samples' on page 20.

You do not have to agree to an internal body search. The police must get a **court order** to do the search if you refuse.

In all cases: Talk to a lawyer as soon as possible if you are not happy with how the search was done. See 'Where to get help' on page 36.

What should I do if I am searched by a police officer?

Before the search begins

Ask the police officer why they want to search you. Do this even if the police officer has a warrant or the authority to search you. The police officer must tell you why they want to search you.

While the search happens

Stay calm. Searches can be fast and confusing. If the police officer has the right to search you, you must let them do their job. The police can charge you with 'hindering' police if the officer is allowed to search you and you try to stop it happening.

What if the police officer hurts me?

The police officer can only use reasonable force when they search you. For example, the police officer should not be rough with you if you are going along with the search. You can make a complaint if you feel that the police officer was too rough. See page 32.

Arrest and being held in custody

What does arrest mean?

When you are under **arrest**, the police officer detains you because they believe you have broken the law. You are not free to leave.

The police officer must tell you that you are under arrest. They do not have to do this if it is too hard for them to tell you, for example, you are running away from them.

When can I be arrested?

A police officer can arrest you when they:

- **reasonably** believe you have broken a law
- have a **warrant** for your arrest
- know you are a risk to a family member.

You should always ask the police officer 'Am I under arrest?' and 'Why am I under arrest?'

Do I have to go with the police officer?

You must go with the police officer if you are under arrest or **apprehended**.

If a police officer asks you to go with them without arresting you, you do not have to go. You can complain if the police officer tries to arrest you without a reason. [See page 32.](#)

Should I go to the station for a breath test or drug test?

You are not actually under arrest but it may be better if you go. If you refuse, the police could **charge** you with the **offence** of refusing to undergo the test. You could lose your licence for two years or more.

If I am under arrest, what will happen if I do not go with the police officer?

The police can charge you with 'resisting arrest' if you try to stop them from arresting you.

The police officer can also use reasonable force to arrest you if you refuse to accept your arrest. Reasonable force means using enough physical force to arrest you, and no more. The police officer can only do this if they had the right to arrest you in the first place.

You can complain if the police officer uses too much force. [See page 32.](#)

What does 'being held in custody' mean?

After arrest, the police will take you into **custody**. This means the police officer will take you to a police station, custody centre or the police cells at court. You may have to travel in a police vehicle to get there. The police officer may handcuff you.

What happens when I am in custody?

The police may:

- ask you for your name and address
- ask you to give a **statement**
- interview you
- fingerprint you
- search you
- ask to photograph you
- charge you
- charge you and give you **bail**.

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Can I tell someone I am in custody?

You have the right to make two phone calls:

- one to a lawyer
- one to a friend or relative.

The police must give you a private space to use the phone. A private space is where the police cannot hear you.

The police officer might not let you call anyone if:

- they brought you into custody for a drink or drug driving matter
- the police officer reasonably believes the phone call may:
 - help another person involved in the offence get away
 - lose, change or destroy **evidence**
 - put other people in danger.

How long can the police keep me in custody?

The police can only keep you in custody for a reasonable time before they charge you.

The law does not say what a reasonable time is. This depends on the seriousness of the offence and how long it takes the police to interview you.

When you think the police have kept you in custody for too long:

- ask when they are going to charge you or release you
- ask to phone a lawyer
- make a complaint later. [See page 32.](#)

What happens to things I have when I go into custody?

The police will take your things (personal property) if the police are holding you in a police cell. They must list all property on a 'property sheet'. They will then ask you to sign the sheet to agree with them about what property has been taken.

The police must give your property back to you when they release you from custody. They do not have to do this if they have kept your property as evidence or destroyed it.

Interpreters, help for Indigenous people and health needs

Interpreters

If you do not understand English very well, you can ask the police officer for an interpreter to help explain things. The interpreter must be qualified (not just a relative). You do not have to pay for this. The police will pay.

Indigenous people

The police must tell the Victorian Aboriginal Legal Service (VALS) that they are holding you in custody. A 'client services officer' from VALS will speak to you. They will offer support and advice. You can choose what advice you want to follow.

The police must also contact an Aboriginal Community Justice Panel (if there is one nearby). The Aboriginal Community Justice Panel works with government agencies and police officers to make sure Indigenous people are looked after properly when dealing with the police, the courts or prisons. A panel member can give you support and advice. The police may release you into the panel member's care if the case is not too serious.

Health needs and drug addiction

You can see a doctor if you need to. Ask the police officer to organise this. The police officer can call the Custodial Risk Management Unit. A nurse from the unit may be able to help you with medicine or treatment.

The police should help you get your medicine if you have a prescription. This includes prescriptions for methadone and buprenorphine (bupe).

Ask for your medication or medical attention before an interview starts. You might need help to get through the interview.

Interviews

The police may interview you as a possible suspect about the **offence** they have **arrested** you for.

What is the police 'caution'?

The police officer must read out your rights before they begin the interview. This is called a 'caution'.

The caution used by the police officer is:

'I must inform you that you do not have to say or do anything but anything you say or do may be given in **evidence**.

Do you understand that?

I must also inform you of the following rights.

You may communicate with or attempt to communicate with a friend or a relative to inform that person of your whereabouts.

You may communicate with or attempt to communicate with a legal practitioner.'

These rights are for your protection. It will benefit you to use them. For example, tell the police officer you want to call a friend, relative or lawyer. Do this as soon as the police officer cautions you. Do not wait.

Ask the police officer to explain your rights in more detail if you do not understand what they are saying.

Are the caution and interview recorded?

Yes if the police have **charged** you with or are questioning you about an **indictable offence**. If they want to use this information as evidence in court, the police officer must also record any questions they ask you and your answers.

Police usually tape-record the caution and the interview. The police also use video-recorders.

You can ask for a tape-recorded interview if you do not want to be video-recorded. You may not want your face to be recorded.

Note: for a **summary offence**, the police officer does not have to record what you say for it to be used as evidence. Summary offences include minor driving offences, begging, offensive behaviour or being drunk in a public place. The police officer can write down questions they ask you and your answers. They can use this information as evidence against you in court.

Should I answer the questions in the interview?

You must give your name and address but otherwise you have the right to silence. This means you do not need to answer any other questions and can make a 'no comment' interview. The police cannot use this against you.

You can remain silent or say 'no comment' even if you spoke to the police officer before the interview. It will not help your case when you answer some questions but not others. When you stay silent or say 'no comment', do that for every question.

If you do say anything, be very careful when answering questions in a recorded interview. Whatever you say can be used against you later. The police will ask you questions from their angle. Your point of view might not be recognised. That is why the police have to caution you. You can always tell your side of the story at a later date, preferably through your lawyer.

Always get legal advice if you are in custody and the police are about to interview you.

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Do I get a copy of the interview?

Yes. The police officer must give you a copy of the interview. This copy is important for your lawyer. Try not to lose it.

What happens after the police have interviewed me?

The police may:

- release you from **custody** without charging you
- release you from custody but charge you later. The police will **serve** you charges later on through a **summons**
- release you from custody and give you a **notice to appear**. You will have to go to court if the police charge you within 14 days
- charge you but release you on **bail**
- charge you and have a **bail justice** release you on bail
- charge you and keep you in custody until you go to court for a **magistrate** to release you on bail. For example, if the police arrest you on Friday night, you cannot go to court until Monday morning when the court is open again.

See 'Being released from custody' on page 23.

Interpreters and help for people under 18 and people with a cognitive disability or mental illness

Interpreters

You can get an interpreter if you do not understand English very well. The interpreter may come to the station or talk with you and the police officer by phone. The interpreter must be qualified (not just a relative). You do not have to pay for this. The police will pay.

The information you give the police officer can only be used as evidence in court when an interpreter is with you during questioning. However, police do not have to get an interpreter for drink or drug driving matters.

Under 18s and people who have a cognitive disability or a mental illness

To be interviewed, the police officer must make sure you have:

- a parent, guardian or an Independent Person (an adult) with you if you are under 18
- an Independent Third Person with you if you have a cognitive disability or a mental illness. See page 25.

Photos and ID parades

Will the police officer take my photo?

The police may take a photo of your face so they can tell who you are:

- in a police cell
- if you are released from **custody on bail** but with conditions that you report back to a police station.

If you agree to let the police take your photo, the police officer usually takes it after the interview and before they take your fingerprints (if they need them and are allowed to take them).

Do I have to have my photo taken?

You can refuse to have a photo taken of your face or any other part of you. It might end up being used as **evidence**. For example, you can refuse to let the police officer take photos of your injuries (like bites) or special features (like tattoos).

The police officer cannot use any force to make you have a photo. You can complain if the police officer takes your photo without your permission. See page 32.

In some cases the police may get a **court order** so they can photograph you.

What is an ID parade?

This is where the police put you in a line-up of people. They ask a **witness** to look at the line-up to see if they can pick you out as the person who committed the **offence**.

Do I have to be in an ID parade?

No. The witness could make a mistake and pick you when you did not commit the offence.

Fingerprints and body samples

Do I have to give my fingerprints?

You must give your fingerprints

If you are 15 or older, the police officer can get your fingerprints if they believe on **reasonable** grounds that you committed an **indictable offence**, for example, theft or shoplifting.

You can give your fingerprints if you want

There are different rules depending on how old you are:

- **15 to 17** – the police officer must get a parent, guardian or an Independent Person (an adult) to be with you when asking to get your fingerprints. This person must also be there if the police officer takes your fingerprints
- **10 to 14** – the police officer must get a parent or guardian to be with you when asking to get your fingerprints. This person must also be there if the police officer takes your fingerprints. You and a parent or guardian must agree to fingerprints before the police officer takes them. The police officer can ask the Children's Court for permission if you or a parent or guardian said no.

The police must tape-record or video-record the fingerprinting if you are 17 or younger.

You do not have to give your fingerprints

The police officer cannot take your fingerprints for minor **summary offences** such as jaywalking or littering. Jaywalking means walking on the road without following traffic rules.

If you are under 10, the police officer is not allowed to ask to get your fingerprints at all and is not allowed to take your fingerprints.

If you have a cognitive disability or mental illness

The police officer must get an Independent Third Person to be with you when asking for or taking your fingerprints. For more information about Independent Third Persons, see page 25.

Who takes the fingerprints?

The police officer does. If they are allowed to take your fingerprints, they can touch you and use reasonable force if you refuse to give them. Any force the police officer uses must be reasonable. It must not be too rough.

Get legal advice if you are not happy with the way the police officer has treated you. See 'Where to get help' on page 36.

How long can the police keep my fingerprints for?

The police must usually destroy your fingerprints after six months if the police have not **charged** you with an **offence** in that time or if a court has found you not guilty of the offence. You can ask the police if they destroyed your fingerprints.

What is a body sample?

This is sample from your body.

Intimate body samples are taken from private or sensitive parts of your body. They can include:

- blood, saliva or pubic hair
- anal, genital or breast swabs
- mouth or dental impressions.

Non-intimate body samples can include:

- samples of hair
- fingernail or toenail scrapings
- some external body swabs.

Body samples are taken by a forensic procedure. 'Forensic' means doing a procedure to get **evidence** for use in court.

Do I have to give a body sample?

You may have to give a body sample

For all body samples, you can always say no. However, the police may get a **court order** to get a body sample if you refuse.

If you are 10 to 17, the police must always get a court order. A parent, guardian or Independent Person (an adult) must be with you if the police take a body sample.

Also, a senior police officer can approve a non-intimate body sample without having to ask the court.

Police powers: Your rights in Victoria

You do not have to give a body sample

If you are under 10, the police cannot get body samples from you at all.

If you have a cognitive disability or mental illness

The police officer must get an Independent Third Person to be with you when asking for or getting a body sample. For more information about Independent Third Persons, see page 25.

Driving and body samples

You may have to give a blood sample if you have been in a motor vehicle accident. The police may also ask the driver (if it was not you) to give a mouth swab. These are tests to see if you have illegal drugs in your system.

In all cases get legal advice before you agree to give body samples.

Who takes the body sample?

A qualified doctor, nurse or dentist must take intimate body samples, not the police officer.

Where possible, the doctor or nurse must be the same sex as you if they are taking an intimate sample (other than a dental impression) or examining an intimate part of your body.

The police officer must tell you that you do not have to answer any questions asked by the doctor, nurse or dentist. They must tell you this before the body sample is taken.

The police officer, however, can take non-intimate body samples from you.

How long can the police keep my body sample for?

The police must usually destroy forensic samples after 12 months if the police have not charged you with an offence in that time or if a court has found you not guilty of the offence.

Being released from custody

What happens when I am released?

The police will ask you 'Are you satisfied with your treatment by police here today?' and 'Has all your property been returned to you?'

If you say 'yes' to the questions, you agree that the police have:

- not taken anything from you
- treated you **reasonably**.

You do not have to agree if you do not want to.

What is bail?

Bail means the police release you from **custody** if you promise to go to court later to face the **charges** against you. To get bail, you may have to agree to conditions such as:

- reporting to the police station
- living at a certain place
- having someone act as a **surety** for you.

You must follow your bail conditions. If you do not, the police may get a **court order** to have you stay in jail.

How do I get bail?

You can get bail in several ways:

- the police can give you bail at the police station
- you can ask for bail and the police must take you to court, within a reasonable time, where you can apply to the magistrate for bail. The **magistrate** will decide if you get bail
- you can ask for bail and the police can get a **bail justice** to come to the station if the court is closed, for example, over the weekend. However, if the bail justice refuses you bail, you stay in custody until the police can take you to court.

Police powers: Your rights in Victoria

Can I get help applying for bail?

You can get help at court. Ask to see a lawyer. They can give you advice about your chances of getting bail. They may apply for bail for you or let you know if it is better to do the bail application yourself.

A lawyer can also help you apply for bail later on if the magistrate does not give you bail the first time. You will stay in custody until the next date. See 'Where to get help' on page 36 for contact details of lawyers.

If you have a cognitive disability or mental illness, the police officer must get an Independent Third Person to be with you if a bail justice comes to the police station to do the bail hearing. For more information about Independent Third Persons, see page 25.

What is an 'undertaking of bail'?

When the police charge and release you on bail, you must sign a form called an 'undertaking of bail' before you can go. By signing this form, you promise to go to court on a certain date and you agree with any other bail conditions.

What happens if the police charge me?

The police may charge you with the **offence** they **arrested** you for. Being charged means you will have to go to court.

The police will **serve** you with a **summons** and **charge sheet** or they can give you a **notice to appear**. Both documents describe the offence the police believe you have committed. The documents tell you when you have to go to court. There will be different steps to take depending on what type of document the police give you. As soon as you get a summons or a notice to appear, get legal advice.

Going to court can be a hard thing to go through. Read a free copy of our booklet *Your day in court* for more information about going to court. See the back of this booklet for information about ordering.

Cognitive disability and mental illness

What is a cognitive disability?

A cognitive disability includes:

- intellectual disability
- acquired brain injury
- dementia
- autism
- Asperger's syndrome.

What is a mental illness?

A mental illness includes:

- depression
- schizophrenia
- bi-polar (mood) disorder
- personality disorder.

What is an Independent Third Person?

An **Independent Third Person** is someone who can help you deal with and talk to the police if you have a cognitive disability or mental illness.

The Independent Third Person can help you understand your rights and explain information to you. However, they do not make decisions for you and cannot give legal advice.

Police powers: Your rights in Victoria

When will the police get an Independent Third Person to be with me?

The police must get an Independent Third Person to be with you when the police:

- interview you either as a suspect, victim or **witness**
- do a strip search.

You can also have an Independent Third Person when the police:

- ask you for or take your fingerprints
- ask you for or take a body sample
- do a **bail** hearing at a police station with a **bail justice**.

The police officer does not need to get the Independent Third Person when:

- another person involved in an **offence** may get away
- waiting can cause danger to other people
- the questioning or investigation has to do with drink or drug driving.

What happens if the police do not get an Independent Third Person?

The police officer should not use the information you gave them as **evidence** in court. However, sometimes the judge or **magistrate** may let the police officer use the information.

Can I choose the Independent Third Person?

It is best to have an Independent Third Person who is not involved in your situation with the police. However, you can ask for a family member or a friend to be the Independent Third Person as long as they are 18 or over.

The police can also get a trained Independent Third Person from the Office of the Public Advocate. See 'Where to get help' on page 36 for the contact details.

What powers do police officers have in relation to people with a mental illness?

A police officer can **apprehend** you if:

- they believe you appear to have a mental illness
- you recently tried to hurt yourself seriously or someone else, or
- the police officer believes you may try to do one of these things.

The police officer can use **reasonable** force to go into a property you are in. They can also pick you up off the street. Then the police officer must get a doctor to examine you or a mental health worker to assess you. The police officer can use reasonable force to help a doctor examine you if a magistrate gives the police officer a special **warrant**.

The doctor might recommend that you be made an involuntary patient. This means you can be put into a hospital without your **consent**. The police officer might take you to hospital if no one else can or if the police officer believes you might harm yourself or others.

The police officer must let you go if the mental health worker tells them to unless:

- you are under **arrest** for other offences
- the mental health worker gets a doctor to examine you.

A police officer can also apprehend you if you have left hospital or a mental health service without permission. The police can take you back to the hospital or mental health service. They can use reasonable force if they have to.

What if I am made an involuntary patient?

This can be complicated. It will mean staying in a hospital and could involve making an appeal to the Mental Health Review Board to get out. Contact Victoria Legal Aid or the Mental Health Legal Centre for help. See 'Where to get help' on page 36.

Traffic offences

The police have certain powers and authority with traffic **offences**.

What sort of traffic offences will I get a fine for?

Police can give you a fine for careless driving offences. However, the police can also choose to **charge** you and then give you a **summons** or **notice to appear** to go to court. If you are a learner or P-plate driver or under 18, the police must give you a summons or notice to appear.

What is a warning?

A warning means the police do not fine or charge you and you do not have to go to court. The police officer can let you off with a warning for minor traffic offences.

You can apply for a warning if:

- you have a current driver licence (including a probationary licence but not a learner permit)
- you have not been given a speeding fine, other traffic fine or official warning within the last two years
- the police caught you doing less than 10 km/h over the speed limit and you agree that you were speeding.

The police officer decides if you get a warning. The court does not have the power to decide this.

Can a police officer suspend my licence?

Usually, the court and VicRoads have the power to suspend your licence. In some cases, police can suspend your licence too.

Having your licence suspended means you are not allowed to drive for a period of time. If you do, you could get serious **penalties**. This could be a large fine or even going to jail.

Do I have to do a drink or drug driving test?

You can refuse to do a drink or driving test but you will get a penalty for refusing.

Can a police officer impound or immobilise my car?

A police officer can impound your car (store it in a secure lock-up for a set amount of time) or immobilise your car (wheel-clamp it) if the police have caught you:

- speeding over the limit by 45 km/h or more
- driving at 145 km/h or more
- being involved in a speed trial or road race.

Note: Since 1 July 2011, police have gotten more powers to impound or immobilise vehicles for other offences.

Read our free booklet *Road to court* for more information about traffic offences. See the back of this booklet for help ordering publications.

Fines

When can the police fine me?

The police can give you fines or 'on-the-spot' fines for some **offences**:

- graffiti
- shoplifting
- talking or texting on your mobile phone while driving
- careless driving (see the previous section)
- being drunk or being disorderly in public (see below for more information)
- not moving on from a public place when you have been asked to move on (see below for more information).

The police officer can also choose not to fine you but to **serve** you a **summons** or a **notice to appear**. You will need to go to court.

Fines for disorderly conduct

Police can give on-the-spot fines to any person who behaves in a disorderly manner in a public place. It does not apply to anyone who is demonstrating, protesting, or picketing about a political issue or to express their point of view. The law does not say what 'disorderly conduct' is exactly. Otherwise it is up to the police to decide this.

Fines for public drunkenness

Police can fine you for being drunk in public. They may also put you somewhere safe.

Fines for failing to move on

Police can tell you to move on and stay away from a public place if they think you are:

- disturbing or likely to disturb the peace
- behaving in a way that may be dangerous to public safety
- behaving in a way that is likely to cause injury or damage to property.

Police may direct you to move away from a public place for up to 24 hours. If you refuse to move on or stay away, the police may fine you or **charge** you.

What will the fine look like?

Fines or on-the-spot fines will come as a piece of paper called an 'infringement notice'.

What do I need to do with the fine?

If you get a fine, you are being asked to pay money instead of going to court. The amount of money is usually written as **penalty** units. Read our free booklet *Fines* for more information. See the back of this booklet for help ordering publications.

Can I argue against paying the fine?

If you get a fine but believe you did not commit the offence, you have 28 days to **appeal** this matter to the Magistrates' Court. Get legal advice before doing this.

See 'Where to get help' on page 36.

Making a complaint

Do I have a right to complain about the police?

Yes. A police officer's job is to enforce the law but there are limits on their authority and how they should behave when doing their job. This means you have a right to be treated fairly.

Under 18s – you can complain about the police even though you are not an adult.

Where or how should I make my complaint?

Victoria Police Ethical Standards Department

All complaints about police can be made to Victoria Police Ethical Standards Department (ESD). ESD is a part of Victoria Police.

You can also complain directly to the officer-in-charge at the station if you feel comfortable and safe doing so.

ESD has a complaint form you can fill out on their website. You can also contact them to discuss your complaint.

Victoria Police Ethical Standards Department

Level 2, Flinders Tower, 637 Flinders St Melbourne 3005

Tel: 1300 363 101, Monday to Friday from 8 am to 4 pm (phone messaging system operates 24 hours a day, seven days a week)

www.police.vic.gov.au – follow the 'Compliments and complaints' link

Office of Police Integrity

You can also complain to the Office of Police Integrity (OPI). The OPI does not work for Victoria Police. The OPI can investigate things like serious corruption but cannot investigate all complaints. The OPI may have to give your complaint to ESD to handle.

You can still report the police officer without giving your name if you are worried that the police officer will know who you are.

OPI have a complaint form for you to fill out. You can contact them to discuss your complaint and get the complaint form.

Office of Police Integrity

Level 3, South Tower, 459 Collins St Melbourne 3000

Tel: 8635 6188 or 1800 818 387 (country callers)

www.opi.vic.gov.au – follow 'Complaints' link to 'How to make a complaint'

Commonwealth Ombudsman

To make a complaint about the Australian Federal Police you can contact the Commonwealth Ombudsman. They have a complaint form on their website.

Commonwealth Ombudsman

Level 10, 2 Lonsdale St Melbourne 3000

Tel: 1300 362 072

www.ombudsman.gov.au – follow 'Complaints' link

When should I make the complaint?

Do this as soon as possible. Talk to a lawyer, especially if the police have **charged** you with an **offence**. You can get free legal advice from Victoria Legal Aid or a community legal centre. See 'Where to get help' on page 36.

What do I put in my complaint?

Write down everything that happened. Include:

- what happened to you
- the date and time it happened
- the names of the police involved, their rank and station. Try to get these details at the time that the incident happened.

Police powers: Your rights in Victoria

If you have been physically hurt:

- see a doctor straight away
- get someone to take a photo of your injuries. Photos from a personal camera might not be good enough. Ask your GP about specialist doctors who can take proper photos
- write down as much as you can about who hurt you. Include their name, rank and the police station where they work
- write down what happened, who said what and the names and contact details of any **witnesses**
- write down the name of the last person to see you before you were hurt and the first person to see you afterwards. Ask them to write their own notes as soon as possible
- contact a lawyer who can help you make a complaint. See 'Where to get help' on page 36.

Can I take the police to court?

You may be able to sue Victoria Police for compensation and damages if you believe you suffered a genuine wrong by the police officer. You will need evidence of your suffering and loss. These cases are usually very serious. Get legal advice as soon as possible after the incident.

Can I get extra help throughout my complaint?

Stress and emotional health

A bad experience with a police officer can be stressful and may affect your health and relationships. You can get free support and help to deal with this. See 'Other services' in 'Where to get help' on page 37.

Indigenous people

The Victorian Aboriginal Legal Service (VALS) can help Indigenous people who want to complain about the police. Contact VALS to get information, support and free legal advice about your options. See 'More legal help' in 'Where to get help' on page 37.

Gay and lesbian people

Contact the Victoria Police Gay and Lesbian Advisory Unit if you are worried about dealing with police officers or are not happy with how the police handled your complaint. See 'Where to get help' on page 36.

Racial discrimination

You can complain to the Victorian Human Rights & Equal Opportunity Commission or the Australian Human Rights Commission. You may believe that a police officer did not help you because of your race or religious background, or that a police officer treated you badly because of your race or religious background. See 'Where to get help' on page 37.

Human rights

You have rights, freedoms and responsibilities under the Victorian *Charter of Human Rights and Responsibilities 2006*. The Victorian Government and its agencies must consider these rights and freedoms when they make laws and provide services to the public. Victoria Police is part of the Victorian Government.

For more information about the charter, visit www.humanrightscommission.vic.gov.au or call 9281 7111 or 1800 134 142 (toll free).

If you believe your existing rights have been **breached**, contact Victoria Legal Aid or a lawyer. See 'Where to get help' on page 36.

Note: international human rights law requires that an independent body has to investigate complaints of torture and ill-treatment by police.

Police powers: Your rights in Victoria

Where to get help



If you need an interpreter:

Call the Translating and Interpreting Service for an interpreter to help you speak to any of the agencies in this section. Ask the interpreter to put you through to the agency you need. This is usually free.

Tel: 131 450



If you are deaf or have a hearing or speech impairment:

Use the National Relay Service to phone any of the agencies (including Victoria Legal Aid) in this section. This is free. For more information about the NRS visit www.relayservice.com.au

TTY users: Call 133 677 and then ask for the phone number you need. Include the area code.

Speak and Listen users: Call 1300 555 727 and then ask for the phone number you need. Include the area code.

Internet relay users: Connect to www.iprelay.com.au/call/index.aspx and then ask for the phone number you need. Include the area code.

Victoria Legal Aid

Legal Help

Tel: 9269 0120 or 1800 677 402 (country callers)

Arabic	9269 0127	Persian (Farsi)	9269 0123
Croatian	9269 0164	Polish	9269 0228
Greek	9269 0167	Serbian	9269 0332
Italian	9269 0202	Ukrainian	9269 0390

Monday to Friday, 8.45 am to 5.15 pm

You can also get an interpreter from the Translating and Interpreting Service if you speak another language. Call 13 14 50 and ask to be put through to Victoria Legal Aid.

Local offices

We have offices all over Victoria. See the back cover for office locations and phone numbers.

www.legalaid.vic.gov.au

More legal help

Federation of Community Legal Centres

Call to find out your nearest community legal centre.

Tel: 9652 1500

www.communitylaw.org.au

Other services

Australian Human Rights Commission

Complaints Infoline: 1300 656 419

Email: complaintsinfo@humanrights.gov.au

www.hreoc.gov.au

Kids Help Line

Free, confidential and anonymous 24-hour telephone and online counselling service for young people.

Tel: 1800 551 800 (free call)

www.kidshelp.com.au

Lifeline

Free, confidential and anonymous 24-hour telephone counselling service for adults.

Tel: 131 114 (local call cost)

Mental Health Legal Centre

Tel: 9629 4422 or 1800 555 887

Office of the Public Advocate – Independent Third Person

Tel: 24-hour service 9603 9500, 9603 9529 (TTY) or 1300 309 337 (all callers)

Victoria Police, Custodial Risk Management Unit

Tel: 9247 6988

Victoria Police, Gay and Lesbian Advisory Unit

Tel: 9247 6944 or 0409 534 154

Email: melbourne.gllo@police.vic.gov.au

Police powers: Your rights in Victoria

Victorian Equal Opportunity & Human Rights Commission

Tel: 1300 891 848

TTY: 1300 289 621

Email: information@veohrc.vic.gov.au

www.humanrightscommission.vic.gov.au

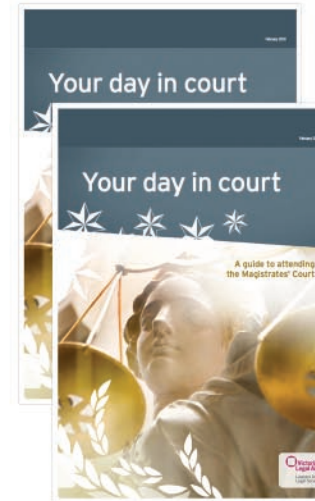
Youth Referral and Independent Person Program (YRIPP)

Tel: 9340 3777

www.cmy.net.au/YRIPP/YRIPPHome

Useful Victoria Legal Aid resources

Victoria Legal Aid has free booklets with legal information on topics such as going to court and dealing with fines. Visit www.legalaid.vic.gov.au to order or download or phone 9269 0223 to find out more.



Your day in court

This booklet is for anyone who has to go to the Magistrates' Court because they have been charged with a criminal offence.



Road to court

This booklet is for anyone who has to go to the Magistrates' Court for a traffic offence. You may also go to court because you have been fined but are choosing to contest the fine through the court.



Fines

This booklet is for anyone who has been fined in Victoria. It gives you options for dealing with your fines.

Police powers: Your rights in Victoria

Flemington and Kensington Community Legal Centre

Tel: 9376 4355

Victoria Legal Aid

Legal Help

Tel: 9269 0120

Country callers: 1800 677 402

Offices

MELBOURNE

350 Queen St

Melbourne VIC 3000

Tel: 9269 0120

Country callers: 1800 677 402

Suburban offices

BROADMEADOWS

North western suburbs

Level 1, Building 1

Broadmeadows Station Centre

1100 Pascoe Vale Rd

Broadmeadows VIC 3047

Tel: 9302 8777

DANDENONG

Westernport region

Level 1, 9-15 Pultney St

Dandenong VIC 3175

Tel: 9767 7111

FRANKSTON

Peninsula region

Cnr O'Grady Ave & Dandenong Rd

Frankston VIC 3199

Tel: 9784 5222

PRESTON

North eastern suburbs

42 Mary St

Preston VIC 3072

Tel: 9416 6444

RINGWOOD

Outer eastern suburbs

23 Ringwood St

Ringwood VIC 3134

Tel: 9259 5444

SUNSHINE

Western suburbs

1/474 Ballarat Rd

Sunshine VIC 3020

Tel: 9300 5333

Regional offices

BALLARAT

Central Highlands region

Area A, Level 1

75 Victoria St

Ballarat VIC 3350

Tel: 5329 6222

Toll free: 1800 081 719

BENDIGO

Loddon–Campaspe region

424 Hargreaves St

Bendigo VIC 3550

Tel: 5448 2333

Toll free: 1800 254 500

GEELONG

Barwon region

Level 2, 199 Moorabool St

Geelong VIC 3220

Tel: 5226 5666

Toll free: 1800 196 200

HORSHAM

Wimmera region

29 Darlot St

Horsham VIC 3400

Tel: 5381 6000

Toll free: 1800 177 638

MORWELL

Gippsland region

Cnr Chapel & George St

Morwell VIC 3840

Tel: 5134 8055

BAIRNSDALE

Gippsland region (branch office)

101A Main St

Bairnsdale VIC 3875

Tel: 5153 1975

SHEPPARTON

Goulburn region

36-42 High St

Shepparton VIC 3630

Tel: 5823 6200

Toll free: 1800 119 918

WARRNAMBOOL

South Coast region

185 Fairy St

Warrnambool VIC 3280

Tel: 5559 7222

Toll free: 1800 651 022

Publication orders

To download or order our publications in English or other languages go to www.legalaid.vic.gov.au

If you need help ordering online please call Victoria Legal Aid on 9269 0223