

Our rights

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.

In Australia, these international human rights are seldom enforceable in the face of the state.

Victoria's *Charter of Human Rights and Responsibilities 2006* codifies in legislation various rights. Part 2 of the *Charter* guarantees certain rights to all Victorians (section 8- 27) including peaceful assembly and freedom of association.

We do have these rights and we can assert them as citizens and activists, but we shouldn't expect them to be respected without question.

Being arrested

Police are not required to give you a warning prior to arresting you, but sometimes they will.

Police must formally tell you they are arresting you. Usually, the police will also touch you on the arm or shoulder to arrest you. However, should you (the arrestee) submit to the authority of the arrester (the police), words alone can be sufficient for an arrest.

You should always ask the police officer; "Am I under arrest?" and "What for? Remember what they say. In most cases, it is necessary for police to inform you of the reason for the arrest.

You should not participate in any further conversations with police (except to provide your name and address) until you have spoken to a lawyer.

Hindering or resisting arrest

It is an offence to actively resist or hinder a legal arrest (yours or another's).

It is not *necessarily* an offence to not co-operate, for instance by lying down, going limp or refusing to move, but police may then use "reasonable force" to pick you up, carry you and take you into custody. It is often in these circumstances that police could use threats, force, dragging, pressure-point holds, or other tactics to move you.

If an arrest proves to be unlawful, or if "unreasonable" or "excessive" force was used, civil actions against the police for assault or false imprisonment may be possible.

There is no power for police, or anyone else, to "detain a person for questioning". Unless you are under arrest as above, you are not obliged to go anywhere with the police.

Name and address

Police have the right to ask for your name and address if they reasonably believe that you have committed, or are about to commit any offence, or you may be able to assist in the investigation of an indictable (serious) offence.

Refusing to give a name and address once under arrest is an offence and you can be charged. Police can arrest and detain you to verify your name and address, if they suspect that you are not telling the truth.

If you are arrested you can ask the police officer for their name, rank and station for use in court later. They are legally obliged to tell you.

Answering police questions

You have the right to remain silent. Anything you do say to the police can be used as evidence against you in court, or in the police decision whether or not to charge you.

You should refuse to answer any questions, apart from your name and address, until you have had an opportunity to speak to a lawyer.

If the police question you before you have received legal advice, you should answer "no comment" to all questions. Do **NOT** answer some questions and not others - this may be used in court as evidence that you had something to hide regarding the questions that you did not answer.

There are no "off the record" conversations with police and many people are convicted on statements that they made to the police.

If you are under 18 years of age: The police **MUST NOT** formally question you unless your parents, a guardian or an independent person is present during questioning.

Contacting legal advice and support

You have the right to make a private telephone call to a friend and a lawyer or legal support before the police question you. Ask for this if police do not offer.

Aboriginal people should also contact the Victorian Aboriginal Legal Service (Free call 1800 064 865).

Photographs and ID line-ups

The police cannot force you to have your photo taken. It is your right to refuse any request from the police for a photo. You should refuse to participate in any police identification line-ups.

Fingerprints

If you are 15 or older the police can demand your fingerprints and can use "reasonable force" to take them.

If you are between 15 and 17 years of age your parents, guardian or an independent person must be with you when the police ask to take, and take, your fingerprints. If you are between 10 and 14 years of age, the police must get your consent and the consent of your parents and guardian before your fingerprints are taken. You do NOT have to consent.

Searches

Generally, the police can only search you if you agree or if they have a warrant.

The police can search you, your possessions and your car without consent or a warrant if you are in a public place and they believe you are carrying illegal drugs, volatile substances, weapons, graffiti implements, or firearms. If you are within a “designated area” the police do not need to have a reasonable suspicion that you are actually in possession of or intend to use a weapon in order to search you.

Police may conduct a “pat-down search” of the outside of your clothes and ask you to empty your pockets.

If you are in custody or under arrest you can be searched for things that could be used as evidence for the offence you have been arrested for. Police may conduct either a “pat-down search” or a “strip search” in a private place.

Police must not undertake an internal search without first obtaining a court order.

Searches are required to be conducted, so far as is reasonably practicable, by police officers of the same sex as the person to be searched.

Where possible, refuse to be searched, but if police insist then closely monitor them. Try to have as many witnesses as possible to follow and observe each police officer (there will usually be several). Use cameras and tape recorders, if you have them.

Body Samples

For police to obtain a forensic sample (blood, hair, mouth swabs etc) they require your consent or a court order. You should refuse to consent to providing a forensic sample, and ask to speak with a lawyer.

Getting out of custody

Just because you have been arrested does not mean that you will necessarily be charged. You may be:

- Released without charge
- Released and charged at a later date
- Charged and released on bail
- Charged and brought before a bail justice

If you are being released, you will be asked to confirm that:

- The police have not taken anything from you
- You have been treated reasonably
- You have received your police charge sheets

You can raise any issues with your treatment at this point. You do not have to sign or confirm anything if you do not want to.

Bail

Bail is simply an undertaking (promise) that you will appear in court on the day your charge is listed. The undertaking is recorded in a form that you will have to sign before you are released. The form has standard conditions on it that you will go to court, tell the police officer who charged you if you change residential address etc. The police can add special conditions such as an undertaking not to return to the place of arrest or the entire area where the action took place. You do not have to agree to these special conditions. The police often use these special conditions as a way of preventing further protest and restricting your movements after you are released.

If the bail undertaking does not have any special conditions you can sign it and leave.

If the bail does include special conditions and you do not agree with them, you can:

- Ask the police to contact your lawyer or legal support and put you on the phone to speak to them.
- Refuse to sign the bail form. This means that you may be kept in custody until the police change the conditions or take you before a magistrate. You or your legal representative can ask for the conditions to be removed. You can sign the bail form at any time - despite what police may tell you.
- Sign the bail form with the special conditions and leave. If you then breach the conditions, such as returning to the protest site, it may be grounds for the police to re-arrest you. A court order can alter these special conditions at a later date.

Keeping records

If you are arrested, or you have been a witness to arrests or police violence involving other activists, keep a record of every detail: what, when, where etc. Write everything down as soon as possible. This information can be of critical importance in subsequent legal proceedings, either against you (for example, when you are charged with an offence), or against the police (for example, when you are complaining against them or suing them for injuring you or unlawfully arresting you).

There is no law that prevents you from video-taping or taking photographs while protesting if these events are taking place outdoors.

Complaints against the police

If you have been injured:

- see a doctor immediately, and ensure that they provide you with a written medical report describing your injuries,
- get someone to photograph any injuries,
- write down as much information as you can about the person or people who injured you including name, rank, police station, etc.
- write down the name of the last person to see you before you were injured and the first person to see you afterwards,
- contact the *Legal Support Team* or lawyer who will help you make a formal complaint.

Police are under instructions to wear their identity badges at all times, but commonly do not do so during confrontations at demonstrations. You can make complaints about this, seeking the introduction of immovable numbers on police uniforms.

Where excessive force has been used, civil legal proceedings can help make police accountable for their actions. Civil legal proceedings may be expensive and can take a long time to complete. Seek specialist legal advice before taking such action.