

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 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. 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.

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" (except for the power contained in the *Australian Security Intelligence Organisation Act 1979 (Cth)* as amended by the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003 (Cth)*).

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

Apart from name and address, you have the right to refuse to answer any other questions.

You can say "no comment" or "on legal advice I have no comment to make". Practise this and be prepared to be repetitive.

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 16 or under police cannot question you without an independent person present. Aboriginal people can also contact the Victorian Aboriginal Legal Service.

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.

Photographs and ID line ups

Police have no right to demand that you are photographed but will do it as routine. If you choose you can cover your face with your hands, turn around or move your head.

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 under 15 police can only take your fingerprints if both you and your parent or guardian agree or if a court orders it.

Searches

Police do not have an automatic right to search you unless they reasonably believe that you are carrying a weapon, illegal drugs or stolen property. Always ask police why they want to search you.

Police can do a "strip search" if they have reasonable grounds for believing that you are carrying a weapon, illegal drugs or stolen property. It

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should not be conducted in a public space and should be done by a police officer of the same gender as you. Police cannot touch you improperly or conduct an external or internal physical examination without a court order or your consent.

If you are arrested, police will routinely do a “pat-down” search and may remove items of property such as belts, earrings, piercings, necklaces and the contents of your pockets. Make sure that they list all of these items so that you can get them back later.

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

Police have two choices if they have arrested you. They can:

- Release you without charging you. You may get a summons later.
- Charge you and release you on bail.

Before you leave the police station you will be asked whether your treatment was reasonable and may be asked to sign a document verifying this. You *do not* have to sign this. Before you leave the police station you should get your property back and be given a charge sheet (if you are charged and released on bail).

Police can only hold you for a “reasonable” time, so keep asking to be released. If the police don’t release you on bail, then demand that you are brought before a court, where you can apply for bail.

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 they’ll let you go. 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).

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,
- 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 to the Ombudsman about this, seeking the introduction of immovable numbers on police uniforms.

Where excessive force has been used, civil legal proceedings can 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.