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Police powers: Your rights in Victoria

This booklet is a general guide
to help you deal with police and
Protective Services Officers



 **Flemington &
Kensington
Community
Legal Centre**

 **Victoria Legal Aid**

Do you need this booklet in a different format?

Please ring us on (03) 9269 0234 and ask for Publications so we can talk with you about what you need.

Produced by Victoria Legal Aid

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For help with legal problems, call Legal Help on 1300 792 387

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Disclaimer: The material in this publication is a general guide only. It is not legal advice. If you need to, please get legal advice about your own particular situation.

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

- call the Victoria Legal Aid Legal Help phone-line on 1300 792 387
- visit Victoria Legal Aid's website at www.legalaid.vic.gov.au.

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Victoria Legal Aid

Victoria Legal Aid is a government funded agency set up to ensure that people who cannot afford to pay for a private lawyer can get help with their legal problems. We provide free information for all Victorians, family dispute resolution for disadvantaged families, provide lawyers on duty in most courts and tribunals in Victoria, and fund legal representation for people who meet our eligibility criteria. We help Victorian people with legal problems about criminal matters, family breakdown, child protection, family violence, child support, migration, social security, mental health, discrimination, guardianship and administration, tenancy and debt.

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 on a free and confidential basis to people in the Flemington and Kensington area. It also runs a state-wide, specialist police complaints clinic. 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 focuses on what police can and cannot do. The booklet covers things like arrest, being held in custody and searches. It also includes information about Protective Services Officers.

When dealing with the police and Protective Services Officers, it is important to remember that you have rights under the *Victorian Charter of Human Rights and Responsibilities Act 2006*. See 'Human rights' on page 36.

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' section on page 37.

What do these words mean?

In every section of this booklet we highlight legal words in bold when they first appear. The definitions for these words are below.

appeal – an application to a higher court, tribunal or government department for a decision to be reversed

apprehend – when the police hold you (you are not free to leave)

arrest – when the police hold you in custody because they think you have broken the law

bail – a promise to go to court to face charges on a certain date. Bail may have conditions, like reporting to the police or living at a certain place

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

breach – to break a law or court order

breach of peace – to cause a disturbance to the public

charge – the offence the police say you have committed

charge sheet – a document that lists all the offences a person is charged with.

consent – when you willingly agree to something

court order – where the court tells you to do something (like come to court again or write an apology). It can also be a document that sets out the penalty if you are found guilty of breaking the law

criminal record – a record of the crimes a person has been previously found guilty of and the punishment they received

custody – under arrest (not free to leave)

evidence – information (documents or witnesses) used by the court or tribunal to make a decision

Independent Person – an adult who must be with you during police questioning if you are under 18 and your parents or guardian can't be there

Independent Third Person – a trained person who must be with you during police questioning if you have an intellectual disability or mental illness, to help you understand what's happening

indictable offence – a serious offence which may be heard in the County or Supreme Court. Many indictable offences can be heard in the Magistrates' Court if you and the magistrate agree to this

magistrate – a person in the Magistrates' or Children's Court who hears cases and decides whether someone is guilty or not, and what sentence they get

notice to appear – a document that tells you to go to court on a certain date when the police suspect you of breaking the law

offence – an action the law says is wrong (illegal). See charge

penalty – a punishment for breaking the law

penalty unit – used to calculate the amount of a fine

reasonable – acting in a way which is appropriate (not excessive)

seize – when the police take items as evidence (from a home or car)

sentence – the punishment the court gives for the offence/s

serve – the legal delivery of a document

statement – a signed document of what you say happened, which can be used in court

subpoena – a document that says you must go to court or give the court documents on a certain date

summary offence – a less serious offence which is usually heard in the Magistrates' or Children's Court

summons – a document that says when and where to go to court

surety – a person who promises money or property to the court to make sure you attend court. If you do not, that person will usually lose their money or property

suspect – a person thought to be guilty of a crime or offence

undertaking – a promise to the court to do or not do certain things

warrant – a court document authorising what the police or sheriff can do, such as to arrest someone or search property

witness – a person who gives evidence in writing or in person at the court. Also a person who is present when someone signs a document and confirms that the signature is genuine by adding their own signature

Name and address

Do I have to give my name and address?

You must give your name and address in all of the circumstances below. It is an **offence** to give a false 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 age, 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.

Can I get the name of the police officer?

Yes. The police officer must give you their details 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 about making a complaint, [see](#) 'Making a complaint' on page 34.

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 must tell you if they think you are a suspect in a criminal offence. They must tell you your rights before they ask you questions. See 'Interviews and statements' on page 14.

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 vehicle and the police officer asks you for that person's name, you have to give it. If you don't, the police could **charge** you with a **summary offence**. If the **magistrate** finds you guilty at court, you could lose your licence for two years or more.

The police officer may use anything you say to them to **arrest** or charge you. There is no such thing as speaking 'off the record'. The police could use what you say as **evidence** in court to show that you broke the law.

Can a police officer ask for my phone number and do I have to give it?

Yes, they can ask. You do not have to give it to them.

Searches

Can a police officer search me?

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

- a **warrant**
- **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 a '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 'Making a complaint' on page 34.

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, a gouging tool or even a texta.

A public place includes:

- a shop
- in or around a train station, or on public transport (buses, trams or trains)
- a school
- a church
- a hospital or welfare centre, like the Salvation Army
- an open space, like Federation Square.

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 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 are 'designated areas'. Protective Services Officers may be able to search you too. See 'Protective Services Officers' on page 32.

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 in the city
- has had events or demonstrations that have been violent.

Police have a lot of search powers within the designated 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 or your car for weapons
- they can do searches in these areas for up to 12 hours.

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 written search notice. This will say that:

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

If a police officer asks to search you because you are in a designated area, you must let them. It is an offence to resist. You can contact Victoria Legal Aid or a community legal centre if you need help afterwards, whether or not the police found a weapon on you.

See 'Where to get help' on page 37.

Searches on private property

A police officer usually needs a warrant to enter and search private property such as your home.

The police officer may enter your property without a warrant when:

- you agree to let the police officer in
- the police officer has a reasonable belief that someone will commit 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 peace**, for example, a fight
- someone inside the property has **breached** an intervention order or a family violence safety notice
- someone has not followed a direction given by the police for a family violence matter
- 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**

If the police show up at my house, what should I say to them?

You can ask to see a warrant.

If they do not have one, you can let them search your house if you give them permission. Remember, there are times when the police can search without a warrant. See the previous section.

Under 18s

Graffiti – the police officer can only give you a pat-down search if they are searching you for a graffiti offence. Police cannot search someone under 14.

Alcohol – a police officer cannot search you for alcohol without your permission but if they see you with alcohol they can take it from you.

Chroming – a police officer can search you if they suspect you are chroming (sniffing things like spray paint or glue). 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.

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 on 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 who does the search must:

- be the same sex as you (unless this is not reasonably possible to arrange)
- make a written record of the search
- give you a receipt if they **seize** any of your things, including drugs. See page 10 for more information about having your things seized.

Strip search

This is when the police officer removes all of your clothing and searches you. 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 same rules as for a pat-down search. The police officer must also make sure you have a parent or guardian with you during the search, if you are under 18 or have a cognitive disability.

The police officer will not have to do this if it is not 'practicable' to get one of these people to be with you. In this case, they can get someone else to watch over the search, including 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 or guardian to get there.

Also, if the search is in a designated area and there are serious circumstances that mean a police officer cannot wait for a parent, guardian or **Independent Person**, police may use another person to watch the search.

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 'Photos, ID parades, 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 you can if you are not happy with how the search was done. See 'Where to get help' on page 37.

What should I do if a police officer searches me?

Before the search begins

Ask the police officer why they want to search you – they must give you a reason. Do this even if the police officer has a warrant or the authority 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 tried 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 co-operating with the search. You can make a complaint if you feel that the police officer was too rough. See 'Making a complaint' on page 34.

What if the police officer seizes my things in a search?

A police officer can seize items they find on you if these things are:

- illegal to have
- **evidence** in relation to a crime.

The police officer must give you a written list of what they have taken. You must both sign this list.

How do I get my things back?

The easiest way to get your things back is to talk with the police conducting the investigation.

The police must give you back your things when the items are not:

- potential evidence of an offence
- proceeds of crime, for example, money made from selling illegal drugs
- illegal things, like weapons.

If the police do not return your things, get legal help. See 'Where to get help' on page 37. You may also want to make a complaint to the Independent Broad-based Anti-corruption Commission. See 'Making a complaint' on page 34.

Arrest and being held in custody

What does arrest mean?

When you are under **arrest**, the police officer holds you in **custody** 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
- the reason they are arresting you.

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
- reasonably believe 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?'

Note, children under the age of 10 cannot be **charged** with a criminal **offence**.

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 'Making a complaint' on page 34.

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 arresting you.

The police officer can also use reasonable force to arrest you if you refuse to accept your arrest. 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 unreasonable force. See 'Making a complaint' on page 34.

Can a police officer arrest me if he or she is off duty?

Yes.

Should I go to the station if a police officer wants to give me a breath test or drug test there?

You are not under arrest, but if you don't go the police officer will charge you with the offence of refusing to undergo the test. You will lose your licence for two years or more.

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 officer may:

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

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 officer must give you a private space to use the phone. A private space is where the police officer 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.

If 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 'Making a complaint' on page 34.

What happens to my things 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 show that you agree with them about what property has been taken.

The police must return your property when they release you from custody. They do not have to do this if they are keeping your property as evidence or destroyed it because it was illegal for you to have, for example, drugs or weapons. See page 10 for **seizing** rights.

The police have a warrant out for me. When they execute it can they take me to jail?

The police execute it by arresting you. They can keep you in custody until you go to court, or they can grant you bail from the police station.

Getting help when in custody

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.

Aboriginal and Torres Strait Islander Australians

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 and offer support and advice. You can choose what parts of the 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 Aboriginal and Torres Strait Islander people are looked after properly when dealing with the police, 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 help before an interview starts. You might need this to get through the interview.

Interviews and statements

Interviews

Do I give the interview straight after I am arrested?

The police can force you to sit in an interview with them but you do not have to answer any questions other than giving your name and address.

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 is a good idea to use them. For example, tell the police officer if you want to call a friend, relative or lawyer. Do this as soon as the police officer cautions you and don't start talking to the police until you've made the call.

Ask the police officer to explain your rights in more detail if you don't understand what they are saying.

Are the caution and interview recorded?

Yes. Police must record the caution and interview. Tell them if you don't want to be filmed during the interview. They can turn the camera away to record your voice only.

If the police are questioning you, and they want to use this information as evidence against you in court, the police officer must record any questions they ask you as well as your answers.

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 things such as 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 do not have to answer any questions in the interview, and can say, 'No comment' or stay silent after the caution. If you do answer some questions, you can always go back to answering, 'No comment' at any time.

Do not lie in an interview. The police can use any lies you tell to try to prove that you are lying about other things as well.

Sometimes if you tell the police things to show your innocence, this may make a difference as to whether the police decide to charge you. This may be a risky option, as police are unlikely to tell you the full story about what they think you did until the end of the interview. The police will ask you questions from their angle. They might not recognise your point of view. That is why the police have to caution you.

Get legal advice and explain your side of the story to a lawyer before giving an interview.

If you are in **custody**, always get legal advice before giving an interview.

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. Keep it safe.

Do the police know what penalties I will get if I go to court?

It is the **magistrate** or judge who decides what your **penalty** is.

It is best to talk to a lawyer about penalties.

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** your charges through a **summons**
- release you from custody and give you a **notice to appear**. You will have to go to court within 14 days
- charge you but release you on **bail**
- charge you and keep you in custody until the court is open for a magistrate to decide if you will be released on bail. See 'Being released from custody' on page 22.

I have been interviewed. The police said they would charge me but I have not received anything in the mail. What do I do now?

If you are wanting an update on the investigation, it is best to call Victoria Legal Aid or your lawyer to discuss this before you call the police.

The police want to interview me. If I refuse to go in for an interview can they come around to my house and arrest me?

They will not **arrest** you as a standard procedure, but they do have the right to arrest you to do the interview.

Statements

What is a statement?

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

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

No. Remember, the only questions you have to answer are your name and address. If you do make a statement, the police may charge you based on what you say in it. Police will charge someone 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.

If you want to make a statement, get legal advice first.

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

No. The police cannot force anyone to make a statement.

Do I have to sign the statement?

If you 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 change the statement before you sign it.

Can I make a statement that I do not want the police to investigate?

Yes. If you do not want the police to lay charges based on what you say, you can make a statement of 'no complaint'. However, the police may still use this statement to go after the person who broke the law if they think doing so is in the public interest. They will do this based on:

- the seriousness of the offence
- whether the offence is one of a series (for example, committed by a 'serial' offender)
- whether the case is easy to solve
- how busy the police are.

Can I take back my statement to the police?

You cannot take back a statement. You can make a statement of no complaint to begin with, but police can use your original statement as evidence.

Getting help when being interviewed or making a statement

Interpreters

You can get an interpreter if you do not understand English very well. The interpreter may come to the police 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** with you if you are under 18
- an **Independent Third Person** with you if you have a cognitive disability or a mental illness. See 'Cognitive disability and mental illness' on page 24.

Photos, ID parades, fingerprints and body samples

Photos

Will the police officer take my photo?

The police may want to 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**, with conditions that you report back to a police station.

Do I have to have my photo taken?

No. You can refuse to have a photo taken of your face or any other part of you. For example, you can refuse to let the police officer take photos of your injuries (like bites) or special features (like tattoos). The photo might end up being used as **evidence** and remain on the police database permanently.

The police officer cannot use any force to take your photo. You can complain if the police officer takes your photo without your permission. See 'Making a complaint' on page 34.

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

ID parades

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. You should not agree to an ID parade without speaking to a lawyer first.

Fingerprints

What is fingerprinting?

It includes taking prints of fingers, palms, toes and soles of feet.

The police may take fingerprints:

- by covering the surface of the fingertips with ink and pressing them onto paper; or
- by using a finger scan device.

Do I have to give my fingerprints?

The rules depend on your age:

- **10 to 14** – the police officer must get a parent or guardian to be with you when asking to get your fingerprints, and when taking your fingerprints. You must both agree to fingerprints being taken before the police officer takes them. The police officer can ask the Children’s Court for permission if you refuse.
- **15 to 17** – the police officer must get a parent, guardian or an **Independent Person** to be with you when asking to get your fingerprints, and when taking your fingerprints. They can use reasonable force if you refuse to give them.
- **18 and over** – the police officer can take your fingerprints and, if you refuse, they can use reasonable force to get them. No witnesses are required.

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

The police officer cannot take your fingerprints for minor **summary offences** such as littering.

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 ‘Cognitive disability and mental illness’ on page 24.

Who takes the fingerprints?

The police officer does, after you have been **arrested**. They can use reasonable force if you refuse to give them.

Get legal advice if you are not happy with the way the police officer has treated you. See ‘Where to get help’ on page 37.

How long can the police keep my fingerprints for?

The police must usually destroy your fingerprints after six months if they 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 have destroyed your fingerprints.

Body samples

What is a body sample?

This is a sample of body cells taken 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?

The police can request body samples if they reasonably believe that the samples would confirm or disprove your involvement in a serious offence.

There are different rules depending on your age:

- 10 to 17 – the police must always get a court order for a body sample. A parent, guardian or Independent Person must be with you if the police take a body sample.
- 18 and over – you can always say no to a request for body samples. However, the police may get a court order for a body sample if you refuse.

In certain circumstances, a senior police officer can approve a non-intimate body sample without your permission, or having to ask the court (for example, nail scrapings).

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 a body sample. See 'Cognitive disability and mental illness' on page 24.

Driving and body samples

You may have to give a blood sample if you have been in a vehicle accident. The police may also direct you to give a mouth swab. These are tests to see if a driver has illegal drugs in their system.

Who takes the body sample?

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

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 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 they 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

Release

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 answer 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 don't want to.

Bail

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

It is very important that you follow your bail conditions. It is an **offence to breach** any bail condition without a reasonable excuse.

The maximum **penalty** for breach is 30 **penalty units** or three months 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. 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.

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 37 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 'Cognitive disability and mental illness' on page 24.

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.

If you break any condition of bail without a reasonable excuse, you will face a penalty. If you can no longer meet any of the conditions of your bail, get advice from a lawyer as soon as you can. See 'Where to get help' on page 37.

What if I commit an offence on bail?

You will be charged with the new offence, plus a separate charge of 'offending on bail'.

You might not be granted bail for the new offence.

Being charged

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**. These 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 copy of our free booklet *Your day in court* or visit our website www.legalaid.vic.gov.au. See the back of this booklet for information about ordering publications.

Cognitive disability and mental illness

What is a cognitive disability?

A cognitive disability includes:

- intellectual disability
- acquired brain injury
- dementia
- autism spectrum disorder.

What is a mental illness?

A mental illness includes:

- depression
- schizophrenia
- bi-polar disorder
- personality disorder.

Who is an Independent Third Person?

This is someone who is specially trained to help you deal with and talk to the police if you have a cognitive disability or mental illness.

An **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.

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 if they know you have a cognitive disability or mental illness and the police want to interview you either as a **suspect**, victim or **witness**.

If you have a cognitive disability or a mental illness, you can also have an Independent Third Person when the police:

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

The police can get an Independent Third Person from the Office of the Public Advocate. They must arrange this by calling the 24-hour Independent Third Person call centre.

For more information and contact details for Independent Third Persons, see 'Where to get help' on page 37.

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

The police officer can't use the information you gave them as **evidence** in court. However, the judge or **magistrate** may let the police officer use the information if they didn't know you had a mental illness or disability.

Mental health laws

When can a police officer 'apprehend' me?

Under mental health laws, a police officer can **apprehend** you if they believe you have a mental illness and need to be apprehended to stop serious harm to yourself or others.

The police officer does not have to check with a doctor or psychologist about whether you have a mental illness. They can apprehend you based on their own judgement about how you look and how you are behaving.

The police officer may enter a property you are in to apprehend you, and use **reasonable** force to physically restrain you, to transport you to a designated mental health service. They can also pick you up off the street.

A police officer can also apprehend you if you have left a designated mental health service without permission. They can take you back there. They can use reasonable force to do so.

Can the police officer touch me?

The police officer can physically restrain you (for example, hold you down) if they have:

- tried all other reasonable and less restrictive options and these are not suitable
- to do this to stop serious harm to yourself or another person.

What happens after they apprehend me?

As soon as they can, the police must take you to a registered medical practitioner or mental health practitioner to be examined for a mental illness.

This person will decide if you should be on an assessment order. This may mean being admitted into a hospital without your **consent** to get treatment for a mental illness.

What if I am made a compulsory patient?

This will mean staying in a hospital or community mental health clinic to get treatment. You may want to **appeal** to the Mental Health Tribunal. Contact Victoria Legal Aid. See 'Where to get help' on page 37.

Can the police search me before I go to hospital?

The police may search you if they think you are carrying:

- something that is a danger to the health and safety of you or another person
- something that could help you escape.

Before they search you, the police must explain why they are doing this and why it is reasonable.

The police must tell you if they are going to remove clothing when you are searched and why they are going to do this.

The police must ask for your co-operation with the search and do the search in a way that:

- provides reasonable privacy
- is as quick as it can be.

If you are 16 years or younger, a parent or another adult must be there when the search happens.

A pat-down search must be conducted by a person of the same sex. [See](#) 'Pat-down search' on page 9.

Can the police seize my things?

If the police **seize** anything, they must make a written report that includes:

- your name and the date
- what has been taken and kept.

These items may be given to the mental health service for them to keep safe. [See](#) seizing rights on page 10.

Move on powers

When can police ask me to move on?

The police can direct you to move on from a public place if they suspect on **reasonable** grounds that you are:

- **breaching the peace** (or likely to do so)
- endangering the safety of another person (or likely to do so)
- likely to cause injury or damage to property, or to be a risk to public safety.

Police may decide that you have to stay away from the public place for up to 24 hours. If you refuse to move on or stay away, police can issue an on-the-spot fine or **arrest** you.

Note, Protective Services Officers (PSOs) also have powers to move people on from certain designated public places (railway stations and adjoining carparks and roads). They can issue on-the-spot fines for failure to do so. [See](#) page 32 for further information about PSOs.

Police and PSOs cannot issue on-the-spot fines for failure to move on if you are under 18.

Can a police officer ask me to move on because I am protesting?

The police cannot ask you to move on if you are:

- picketing a job site
- protesting about a particular issue
- in a group with a sign or behaving in a way to advertise your view about an issue.

However, a police officer can tell you to move on if you are protesting and endangering the safety of another person (or likely to do so), or doing something that is likely to injure a person or cause damage to property.

Traffic offences

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

When can police pull me over?

The police have the right to stop a vehicle:

- to request the driver's name, address and driver's licence (at random)
- to give the driver a random preliminary breath test
- to give the driver a drug test, if they believe the driver's behaviour or appearance indicates they may be drug impaired
- if they suspect the driver may have broken the law, for example, going over the speed limit.

The police officer must stop the vehicle in a safe manner.

You must do breath and drug tests otherwise the police officer can **charge** you for refusing to take the test.

The police officer can only search your car if they have **reasonable** grounds of suspecting they will find illegal drugs, weapons or stolen goods, or if they need to keep **evidence**. For any other reasons, they will need a **warrant**.

You can always ask the police officer why they have pulled you over. If you are not happy with their explanation, make a complaint to the Independent Broad-based Anti-corruption Commission or the Police Conduct Unit. See 'Making a complaint' on page 34.

It is illegal for police to racially profile in making policing decisions. This means they cannot use race, colour, ethnicity, ancestry or religion as the primary reason to stop someone.

What sort of traffic offences can police give me a fine for?

Police can fine you for:

- careless driving (for example, running into the back of someone else)
- drink driving
- speeding (see below)
- running a red light
- not wearing a seat belt
- driving without a licence
- driving an unregistered vehicle
- holding a mobile phone while driving.

Speeding is a common offence. **Penalties** can include fines of up to 20 **penalty units** and having demerit points added to your licence. For more information, you can go to the

Victoria Legal Aid website www.legalaid.vic.gov.au and search for 'traffic offences'. Instead of fining you, the police can also choose to charge you and then give you a **summons** or **notice to appear** to go to court.

For more information about fines, [see](#) page 30.

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 to the police 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. For example, police can suspend your licence for high-level speeding (over the speed limit by 25km/h), for drink driving or for refusing to be tested.

Police can issue a fine and then give you an immediate suspension notice. This means that you cannot drive from the time you get the notice until you go to court.

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 mean a large fine or even going to jail.

Can a police officer impound or immobilise a car?

A police officer can impound a 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.

If you are found guilty of these offences repeatedly, the police may apply to the court to permanently take the vehicle.

Fines

What is a fine?

This is a punishment for breaking certain types of laws. Fines are made up of **penalty units**, which go up every year.

A fine is also called an 'infringement notice'.

When can the police fine me?

We have outlined some of the **offences** that a police officer can give you a fine for.

Fines for disorderly conduct

Police can give on-the-spot fines to any person they think is behaving in a disorderly manner in a public place. This 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, and it is up to the **magistrate** to decide what this is if you **appeal** in court.

Fines for public drunkenness

Police can fine you for being drunk in public. They may also take you into **custody** for your own safety.

Fines for failing to move on

Police and Protective Services Officers can tell you to move on and stay away from a public place in certain situations. See 'Move on powers' on page 27.

Traffic fines

See 'Traffic offences' on page 28.

Weapons fines

If you carry a knife, gun or other weapon, you could be fined thousands of dollars and go to jail for up to two years.

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. You can choose to pay the fine and you might ask to do it over time (by 'instalments'). There will be instructions on the fine about how to pay it.

In some cases you may not want to pay the fine because you believe you did not break the law in the first place. You will have 28 days to appeal the fine to the Magistrates' Court. In other cases, you may accept you broke the law but there may have been 'special circumstances' that led to you breaking the law.

It can be hard to argue you did not break the law or to show you have special circumstances. Speak with a lawyer. See 'Where to get help' on page 37.

Read our free booklet *Fines* for more information. See the back of this booklet for help ordering publications. There is also information about fines on the Victoria Legal Aid website www.legalaid.vic.gov.au and the Victoria Government's fines website www.fines.vic.gov.au.

Protective Services Officers

What is a Protective Services Officer?

Protective Services Officers (PSOs) work at train stations in the evenings, from 6 pm to 3 am, and work at places like courts and Parliament House. PSOs at train stations have similar powers to police officers when they are working within a 'designated place'.

What is a designated place?

- railway premises (including all train stations)
- car parks on the railway premises
- any road or other thoroughfare (tunnel, footpath or bike path) that leads to the railway premises
- any area on, or connected to, the railway premises that is used by other forms of transport (including bus stops or taxi ranks)
- any car park run by a local council that connects to or is in the area of the railway premises.

What powers do PSOs have?

At a designated place, PSOs can:

- **arrest** a person if they **reasonably** believe that the person:
 - has committed an **indictable offence**
 - is drunk and disorderly
 - has committed a public transport **offence**
 - is under 18 years old, has consumed or is about to consume alcohol and refuses to give their name and address
 - is a danger or annoyance to the public, or is getting in the way of a police officer, PSO or transport employee
- execute **warrants** to arrest
- ask for a person's name, age and address if they reasonably believe the person is under 18 and has drunk, is drinking or is about to drink alcohol. The PSO can caution (officially warn) the person if they refuse to give this information. The PSO can also take the alcohol from the person
- search a person 14 and over and/or their car if they reasonably believe that person is carrying graffiti implements. Before conducting a search, the PSO must first request that you produce any implements
- stop a person under 18 from going anywhere else if they believe that person has been chroming and might cause serious harm to themselves or others
- **apprehend** a person under the Mental Health Act if they believe the person has a mental illness and is at risk of serious harm to themselves or others

- direct a person to move on if they are **breaching the peace**, making others unsafe, or if their behaviour is likely to cause damage to property
- search a person and/or their car for weapons if they reasonably suspect the person is 18 and over and is carrying a weapon. A PSO can detain you for as long as they think is reasonable to do the search
- give out fines for a range of offences.

Before conducting a search, the PSO must give you their name, rank and place of duty. After the search, a record must be made and provided to you if you request it.

A PSO can use reasonable force. PSOs do not have any powers outside of their working hours or outside the designated areas.

What if a PSO has treated me unfairly?

You can make a complaint the same way you would about a police officer. See 'Making a complaint' on page 34.

You can get more information about PSOs from Your Rights on Track, a community law group at www.fclc.org.au/ (search for 'your rights on track with PSOs').

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. You have a right to be treated fairly.

People under 18 and adults can complain about the police.

When should I make the complaint?

Do this as soon as you can. 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 37.

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 when the incident happens.

If you have been physically hurt:

- see a doctor straight away
- get someone to take a photo of your injuries. Photos taken on your phone might not be good enough. Ask your doctor 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 they can
- contact a lawyer who can help you make a complaint. See 'Where to get help' on page 37.

Where or how should I make my complaint?

Police Conduct Unit

All complaints about Victorian police can be made to the Police Conduct Unit. This is part of Victoria Police. The unit has a complaint form you can fill out on the Victoria Police website. You can also contact them to discuss your complaint.

Police Conduct Unit

GPO Box 913 Melbourne VIC 3001

Tel: 1300 363 101

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

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

Independent Broad-based Anti-corruption Commission

You can complain to the Independent Broad-based Anti-corruption Commission (IBAC). IBAC is not part of Victoria Police.

IBAC investigates serious corruption and police misconduct. They do not investigate everything and will refer most complaints to the Police Conduct Unit. They can also refer complaints to other places.

You can make a complaint by using the online complaint form on the IBAC website. You can also call IBAC and ask them to send you a complaint form.

You can make a complaint without giving your name.

Independent Broad-based Anti-corruption Commission

GPO Box 24234 Melbourne VIC 3001

Tel: 1300 735 135

Go to www.ibac.vic.gov.au and follow the 'How to make a complaint' link under the 'Reporting corruption' header.

Commonwealth Ombudsman

You can make a complaint about the Australian Federal Police through the Commonwealth Ombudsman. They have a complaint form on their website.

Commonwealth Ombudsman

GPO Box 442 Canberra ACT 2601

Tel: 1300 362 072

Email: ombudsman@ombudsman.gov.au

Go to www.ombudsman.gov.au and follow the 'Making a complaints' link.

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 you can after the incident. In general, you must take action within three years of the incident.

Help making a 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' on page 38.

Aboriginal and Torres Strait Islander Australians

The Victorian Aboriginal Legal Service (VALS) can help if you want to complain about the police. Contact VALS to get information, support and free legal advice about your options. See 'Other services' on page 38.

Lesbian, gay, bisexual, trans and/or intersex (LGBTI)

Contact a Victoria Police LGBTI Liaison Officer (GLLO) if you are worried about dealing with police officers or aren't happy with how the police handled your complaint.

See 'Other services' on page 38.

For assistance in making a complaint

The Police Complaints Advice Clinic at the Flemington and Kensington Community Legal Centre may be able to assist you in making a complaint. Contact the clinic on 0401 090 833, or visit www.policeaccountability.org.au and select the link under 'Police complaints'.

Racial discrimination

If you believe that a police officer treated you badly because of your race or religious background, you may be able to complain to the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission. See 'Other services' on page 38.

Human rights

You have rights, freedoms and responsibilities under the *Victorian Charter of Human Rights and Responsibilities Act 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 1300 292 153 (free call).

If you believe your existing rights have been **breached**, contact Victoria Legal Aid or a lawyer. See 'Where to get help' on page 37.

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

Where to get help

Victoria Legal Aid

Legal Help

For free information about the law and how we can help you call Legal Help.

Tel: 1300 792 387

Monday to Friday, 8.45 am to 5.15 pm

More information is on our website at www.legalaid.vic.gov.au

Do you need help calling us?



Translating and Interpreting Service (usually free)

Tel: 131 450



National Relay Service (free)

TTY users: call 133 677

Speak and Listen users: call 1300 555 727

Internet relay users: See www.relayservice.gov.au

Local offices

We have offices all over Victoria. Our offices are open Monday to Friday, 8.45 am to 5.15 pm.

See the back cover for office locations.

All offices are accessible to people with a disability.

More legal help

Federation of Community Legal Centres

Call to find your nearest community legal centre.

Tel: (03) 9652 1500

www.communitylaw.org.au

Other services

Australian Human Rights Commission

Tel: 1300 656 419

www.humanrights.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: 13 11 14 (local call cost)

www.lifeline.org.au

Mental Health Tribunal

Tel: 1800 242 703

www.mht.vic.gov.au

Office of the Public Advocate – Independent Third Person

Tel: 24-hour service 1300 309 337 (all callers) or 1300 305 612 (TTY)

Police Complaints Advice Clinic – Flemington and Kensington Community Legal Centre

Tel: 0401 090 833

Go to www.policeaccountability.org.au and select the link under 'Police complaints'.

Victoria Police, Custodial Risk Management Unit

Tel: (03) 9247 6988

Victoria Police GLO Program – lesbian, gay, bisexual, trans and/or intersex (LGBTI) Liaison Officers

Tel: (03) 9247 6944

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

Victorian Aboriginal Legal Service

Tel: 1800 064 865

www.vals.org.au

Victorian Equal Opportunity and Human Rights Commission

Tel: 1300 292 153

TTY: 1300 289 621

Email: enquiries@veohrc.vic.gov.au

www.humanrightscommission.vic.gov.au

Youth Referral and Independent Person Program

Tel: (03) 9340 3777

www.cmy.net.au/yripp

Useful Victoria Legal Aid resources

To order publications

We have free booklets about the law in English and other languages. Visit www.legalaid.vic.gov.au to order or download booklets. Call (03) 9269 0234 and ask for Publications to find out more.

Our public law library

Open Monday to Friday, 9 am to 5 pm
570 Bourke Street, Melbourne



Fines

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



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.

Watch me on 

Watch our community legal education videos.

Police powers: Your rights in Victoria

Flemington Kensington Community Legal Centre

Tel: (03) 9376 4355

Victoria Legal Aid

For help with legal problems, call Legal Help on 1300 792 387

For business queries, call (03) 9269 0234

Offices

Melbourne

Suburban offices

Broadmeadows

Dandenong

Frankston

Ringwood

Sunshine

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Bairnsdale

Ballarat

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Horsham

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Morwell

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