



# Just+++ Saying

## Your Rights When Being Apprehended Under the Mental Health Act

This resource sets out your rights if you are apprehended by a police officer or a protective services officer (PSO) because of their concerns about your mental health. Knowing your rights and where you can get help or make a complaint is important, especially if you are in a situation that is scary, overwhelming or confusing. If you are apprehended and something doesn't feel right, you can ask for an explanation or more information.

There are also some steps that the person apprehending you should follow. If you are concerned about how you were apprehended or the way you were treated, you have the right to make a complaint to one of the complaints bodies listed at the end of this resource to get more information or raise your concerns. You can also get legal advice from a lawyer.



## What is Apprehension?

'Apprehension' is when you are taken into custody because of a risk of 'serious and imminent harm' to you or somebody else due to your mental health. It is not the same as being arrested.

After you are apprehended, the police officer or PSO must arrange for you to be taken to a doctor, mental health practitioner or a public hospital to be assessed as soon as possible.


Police and PSOs also have other powers to apprehend you if you are a compulsory patient, however this resource focuses on being apprehended when you are not compulsory. If you want more information about being apprehended when you are compulsory, you can contact Victoria Legal Aid or Independent Mental Health Advocacy (IMHA) on these numbers:

- Victoria Legal Aid: 1300 792 387,  
or via their website <https://www.legalaid.vic.gov.au/contact-us>
- IMHA: 1300 947 820

## When Can I Be Apprehended by Police or a PSO?

You can only be apprehended under the Mental Health Act in certain circumstances.

A police officer or protective services officer (PSO) can apprehend you if they believe it is necessary to do so to prevent a risk of 'serious and imminent harm' to you or someone else because of your 'mental illness'. The police can't make a medical assessment, they only need to be satisfied you 'appear to have' a mental illness.





## Who is Allowed to Apprehend Me?

Only a police officer or protective services officer can apprehend you when you are not a compulsory consumer/patient. Protective services officers are only allowed to apprehend you in certain public places such as train stations or areas around train stations, and shopping centres.

A doctor or a mental health practitioner (eg. a psychologist, nurse, social worker or occupational therapist who work at a public mental health service) may be with the police when you are apprehended.

## What Other Powers Does a Police Officer or PSO Have When They Apprehend You?


PSOs are only permitted to apprehend you, and do not have any other powers under the Mental Health Act.

Police who apprehend you can transport you to hospital or a mental health service or doctor to be assessed or examined. PSOs aren't allowed to transport you, and should hand you over to police to arrange transport.

You should be transported in the least restrictive way possible that minimises interference with your rights, liberty, privacy and dignity. For example, considering whether you can be transported by mental health staff or an ambulance instead of in a police vehicle.

A police officer may restrain you (physically or by using restraints) if they believe it is necessary to prevent serious and imminent harm and they cannot stop this any other way.

Police are also allowed to enter a building or your home to apprehend you if they reasonably believe you are there. They may use reasonable force to enter if necessary. They are allowed to search you and to seize (take) things they find on you, for example if they believe the item would be dangerous to the health and safety of you or anyone else.





## Do I Have Any Rights When Being Apprehended?

Yes, you have a number of rights when being apprehended.


- You have the right to be treated fairly and in the least restrictive way possible
- bodily restraint should only be used if there is no other option and it is necessary to prevent serious and imminent harm;
- chemical restraint or sedation must only be administered by a medical practitioner, nurse or paramedic, and only when there is no other option to prevent serious and imminent harm to you or someone else;
- you should be taken to a mental health service or a doctor to be assessed 'as soon as practicable'. This means there should not be any unnecessary delays in taking you to a mental health service.

If a police officer needs to enter a building or premises to apprehend you, the police officer must:

- tell you that they have the authority to enter and why
- first give you the opportunity to let them in

If you do not let them in, they can use reasonable force to enter.

After they enter, the police officer should also:

- tell you who they are
  - explain why they are apprehending you
  - give you details of where you will be taken
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## When Can I Be Searched?

A police officer who apprehends you may search you:

- if they believe that you are carrying something that could be dangerous to you or another person; or
- if they believe that you are carrying something that could be used to help you escape

If a medical practitioner, mental health practitioner or paramedic are with the police when they apprehend you, they are also allowed to search you.


## What Are My Rights When Being Searched?


A search under the Mental Health Act should consist of no more than:

- Quickly running their hands over your outer clothing or passing an electronic metal detection device over or in close proximity to your outer clothing
- Requiring you to remove only your overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat; and / or
- An examination of those items of clothing
- Requiring you to empty your pockets or allowing your pockets to be searched

If you are aged under 16, you can only be searched in the presence of a parent, or if that is not possible, in the presence of an adult.

When a search is conducted, you also have the following rights:

- To be asked for your co-operation
  - To be searched in the least invasive and most private way possible
  - To have the purpose of the search explained to you
  - To be informed whether you will be required to remove clothing during the search, and the reason why
  - To have the search conducted as quickly as possible
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If the search involves running hands over your outer clothing, it is your right to have the search conducted by someone of the same sex as you. If there is no-one of the same sex as you who is legally allowed to search you, then the search may be conducted by someone of the same sex as you under the direction of the person who has legal authority to search you.

The Act does not refer to the needs of gender diverse, non-binary or transgender people. However, all people have the right to not be discriminated against on the basis of their gender. **If you feel like you have experienced discrimination or unfair treatment on the basis of your gender or gender identity, you have the right to make a complaint to any of the complaints bodies listed on the back page of this document.**


## What About My Human Rights?

Being apprehended could impact a number of your human rights if the police officer or PSO who is apprehending you does not follow the law. **When they are apprehending you, police and PSOs should act in ways that are compatible with your human rights, and they should consider your human rights when making any decisions about apprehending you.**

You have the following human rights, which may be relevant when you are being apprehended:

- Right to recognition and equality before the law – everyone is entitled to receive protection against discrimination;
- Right to protection from torture and cruel, inhuman or degrading treatment;
- Right to privacy and reputation – people should only have their decision-making autonomy, privacy and private information interfered with where permitted by law;
- Right to freedom of thought, conscience, religion and belief – people are free to think and believe what they want;
- Right to freedom of expression – people are free to say what they think and express what they believe;



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- Cultural rights – people are free to enjoy their culture, use their language and practice their religion, and Aboriginal and Torres Strait Islander people must have their distinct cultural rights recognised and protected;
  - Right to liberty and security – people must not be detained except in accordance with the law;
  - Right to humane treatment when detained – people who are detained must be treated with humanity and respect.

Sometimes it is legal to limit your human rights. For example, it is legal for a police officer or PSO to apprehend you, which limits a number of your human rights. However the limitation should be the minimum possible to achieve its purpose.

So, police officers and PSOs must follow the law when they apprehend you and you have the right to be treated in the least restrictive way possible with the least possible restriction on your rights when you are being apprehended. If you have questions about your human rights or want more information, you can contact the Victorian Equal Opportunity and Human Rights Commission.



## What Do I Do If My Rights Have Not Been Respected?

If you feel like your rights have not been respected or you have been treated unfairly, you can make a complaint to one of the following bodies:

- Complaints about how police have treated you can be made to Victoria Police or to the Independent Broad-based Anti-Corruption Commission (IBAC) on 1300 735 135.
- Complaints about bad treatment by paramedics can be made to Ambulance Victoria (1800 875 137) or the Victorian Ombudsman (1800 806 314);
- Complaints about medical staff can be directed to the service they work for, or the Health Complaints Commissioner (1300 582 113); or
- Complaints relating to the way a mental health service or mental health practitioner have treated you can be made to the Mental Health Complaints Commissioner (MHCC – 1800 246 054 or [www.mhcc.vic.gov.au](http://www.mhcc.vic.gov.au))
- For more information about human rights, you can contact the Victorian Equal Opportunity and Human Rights Commission on 1300 292 153.

You can also seek legal advice from a lawyer.

It is important to remember that even when you are being apprehended, you have rights and your rights must be respected. If you think that your rights aren't being upheld, you have the power to ask that they are. And there are always organisations there to help and support you if you find that you need it.

