



Disclaimer: the material in this fact sheet is intended as a general guide only. You should not act on the basis of the information in this fact sheet without first getting legal advice about your own particular reason. The information is based on the laws in Victoria as of August 2020.

GRAFFITI

INCLUDED IN THIS FACT SHEET ARE:

When is it illegal to carry a spray can in public?

Do the Police and Protective Services Officers (PSOs) have the power to search me for spray cans?

Do PSOs have the same powers as police to search me for spray cans?

What are my rights if police or PSOs search me for a graffiti implement?

What if police or PSOs treat me unfairly?

Getting legal help

WHEN IS IT ILLEGAL TO CARRY A SPRAY CAN IN PUBLIC?

It is illegal to carry a spray can while you are:

- on public transport property (for example, bus shelters and trains);
- in a public place that is next to public transport property; or
- trespassing on private property.

You can be fined or charged for carrying a spray can in those situations, even if you had no intention of marking graffiti.

The only defence to carrying a spray can on public transport is if you need to carry the spray can for your trade or employment. It is NOT a defence if you carry a spray can for other reasons, such as education, training or a recreational art program.

DO THE POLICE AND PROTECTIVE SERVICES OFFICERS (PSOS) HAVE THE POWER TO SEARCH ME FOR SPRAY CANS?

Both police and PSOs have the power to search you on the spot for something that can be used to make graffiti (e.g. spray cans or permanent markers). They can only search you if they reasonably suspect you are 14 years old or over. The police may also search your car or anything you are carrying (e.g. your backpack).

Police and PSOs have the power to search you if they have reasonable grounds to suspect you are carrying a something that can be used to make graffiti. Even just being in a place where there is a lot of graffiti around can be enough for police or PSOs to have reasonable grounds to search you. They do not need a warrant to conduct these searches.

DO PSOS HAVE THE SAME POWERS AS POLICE TO SEARCH ME FOR SPRAY CANS?

PSOs can only search you if you are in a "designated place" such as a train station or near a train station. This includes roads, car parks, bus stops or taxi ranks connected with or leading into a train station.

For more information on PSOs, see Youthlaw's factsheet on PSOs.

WHAT ARE MY RIGHTS IF POLICE OR PSOS SEARCH ME FOR A GRAFFITI IMPLEMENT?

Before a police officer or a PSO searches you, they must show you their badge or ID if they are not in uniform. They must ask you to hand over any graffiti tools. They must also tell you their name, rank and place of duty and provide this information to you in writing if you request it.

If you are over 14 but under 18 years of age, police and PSO searches are limited to:

- inspecting your bag or anything you are carrying;
- asking you to remove your outer clothing e.g. your coat and hat, gloves and shoes; and
- doing a 'pat down' search.

If you are over 18, police and PSOs can go beyond pat-down searches (eg strip search you) but they must conduct searches as quickly as possible and in a way that respects your privacy.

You have a right to request a written record of the search.

WHAT IF POLICE OR PSOS TREAT ME UNFAIRLY?

If a police officer or a PSO treats you unfairly or you believe they did not have reasonable grounds to search you for a spray can it is important to remain calm. If you misjudge the situation and resist or refuse a lawful search, you can be charged with further offences.

It is better to take note of as much details as possible, such as the name, rank and station of the officer and request a written record of the search. Note down the names and contact details of any witnesses. You should then get legal advice about the best way to make a complaint.

GETTING LEGAL HELP

Youthlaw

If you are under 25, you can get free and confidential legal advice.

Phone(03) 9113 9500 (9am-5pm, Mon-Fri)

Website: <http://youthlaw.asn.au/>

Victoria Legal Aid – Legal Help

For legal information, referrals or appointments.

Phone: 1300 792 387

Website: www.legalaid.vic.gov.au – see particularly <https://www.legalaid.vic.gov.au/find-legal-answers/criminal-offences/graffiti-laws>

Visit our website: www.youthlaw.asn.au

Chat to us: 03 9113 9500

Email your questions: legal@youthlaw.asn.au

YOUTHLAW

Young Peoples Legal Rights Centre
Inc No A0041616E
ABN 12 794 935 230