Disclaimer: The material in this fact sheet is intended as a general guide only. You should not act on the basis of this information in this fact sheet without first getting legal advice about your own particular situation. This fact sheet is based on the law in Victoria as at November 2017.

Is it illegal to carry a kitchen knife in public?

It can be illegal to carry any knife in public, including a kitchen knife, a Stanley knife or a pocket knife, if you do not have a lawful excuse. You can be fined or even charged with carrying a 'controlled weapon' in court.

What is a lawful excuse for carrying a knife?

A lawful excuse for carrying a knife in public can include situations where you need to carry a knife for sport, recreation or for work. You may need to show proof, for example, a letter from your employer to show police or to show the court if you needed to carry the knife for your job.

What about carrying a knife for self defence?

Carrying a knife for self defence is NOT a lawful excuse. If you tell police self defence is the reason why you are carrying a weapon in public then police may use that as evidence against you in court.

Besides knives, what else can I get in trouble for carrying around in public?

Weapons like daggers, flick-knives and crossbows are prohibited weapons and it is generally an offence to carry them around in public without permission from the police or from the government. It is also illegal to carry an imitation firearm in public without permission from the police or from the government. It can even be illegal to carry an object like a baseball bat in public if it has been modified to be used as a weapon or if police can prove you intended to use it as a weapon.

Do police have the power to search me for a weapon on the street without a warrant?

Yes. Police have the power to stop and search you, your bags or your vehicle without a warrant if you are in a public place and they have reasonable grounds to suspect you are carrying a weapon or explosives. Just being in an area where there is a lot of violent crime can be reasonable grounds to search you.

Police may also declare some areas, such as train stations, to be a 'designated area' for up to 12 hours. If you are in a designated area police do not need a reason to search you, your bags or your vehicle.

What are my rights if police search me for weapons on the street?

If police search you for weapons in a public place, they must inform you of the reason why they suspect you are carrying a weapon or they must give you a written

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notice if you are in a ‘designated area’. Before police conduct a search, they must tell you they intend to search you for weapons and that they have the power to do so under the Control of Weapons Act. Police must tell you their name, rank and station and they must put their details in writing for you if you ask them. If police are in in plain clothes, they must show you identification.

Are there any limits on what police can do if they search me for weapons on the street?

Police must perform weapons searches in a way that invades your privacy as little as possible. If you are in a public place, police can only do pat-down searches. This means police can feel over or outside your clothes, ask you to empty your pockets or remove outer clothing, use a metal detector or ask you to show them any weapons they believe you are carrying. If possible, police should make sure the officer who performs the pat-down search is the same sex as you.

What about strip searches?

Police can only strip search you for weapons if they have a reason to believe you are concealing a weapon and they have already performed a pat-down search or a search of your bags and/or pockets. Police can only strip search you if they have reason to believe it is necessary and the situation is serious and urgent enough to justify a strip search.

If police perform a strip search, they must take you to a private area and conduct the search as quickly as possible. Police must inform a person they are about to conduct a strip search on them and ask for their cooperation first. The officer who performs the strip search must be the same sex or gender as the person. Police must then conduct the strip search in the least invasive way possible and in a way that respects the person’s dignity as much as possible.

Can police detain me for a weapons search?

Police may detain you for as long as it is reasonably necessary to conduct a search.

What if I am under 18 or I have an intellectual disability?

If you are under 18 or you have an intellectual disability, police should only perform a pat-down search or a strip search if it is in the presence of your parent or guardian. If it is not practical or possible for police to have a parent or guardian present, they must have a person there with you who is independent from police.

What about Protective Services Officers?

Protective Services Officers (PSOs) cannot strip-search you but they otherwise have much the same powers as police to search you for weapons if you are on or near public transport property. You also have much the same rights as you do when police search you. For example, you can ask the PSO for their details and the PSO must put their details in writing for you if you ask them.

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Do police and PSOs have to make a written record of the search?

Police and PSOs must make a written record if they do a regular weapons search (ie you are not in a declared 'designated area'). You have a right to request a copy of the record without charge if you make the request within a year of the date of the search.

What if I refuse or resist a weapons search?

If you refuse or resist a lawful search for weapons, you may be charged with a criminal offence. Police or PSOs can use reasonable force to search you if you resist or refuse a lawful search.

What if police or PSOs do not have a lawful reason to search me or treat me unfairly during a search?

The laws on weapons searches are complicated and it can be difficult to know, in that moment, if police or PSOs have a lawful reason to search you. If you assess the situation wrong and you resist or refuse a search that a court finds to be lawful, you may be charged with a criminal offence.

If you believe police or PSOs did not have a lawful reason to search you or you are treated unfairly during a search, it is best to take as much note of the incident as possible and make a complaint about it later.

As outlined above, you have a right to ask for the police or PSOs details and they must put their details in writing if you ask. Get the contact details of any witnesses and note down the time, place and date of the search because those details can help you make a complaint about it later.

How can I get help making a complaint?

If you want to make a complaint about a police or PSO search you should seek legal advice first. If you are under 25, you can contact Youthlaw for free information and legal advice.

Can police or PSOs search me for other things besides weapons?

Police and PSOs also have powers to search you without warrant for graffiti implements if you are 14 and over and for volatile substances if you are under 18s and they suspect you are chroming. Police also have powers to search you without warrant for carrying illegal drugs. For more information, check out our other fact sheets.

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