



Protesting in Victoria

A guide for visa holders and people who are not citizens



Human
Rights
Law
Centre

Produced by Melbourne Activist Legal Support
in collaboration with Human Rights Law Centre

Contents

Your right to protest on a visa in Victoria – summary	2
The right to protest in Victoria	3
Rights that are good to know	4
Risks when protesting on a visa	5
If you hold a temporary or bridging visa	8
Checking your visa conditions	9
International students and protests	10
Power to cancel visas	10
Key takeaways	13
List of immigration and refugee law contacts	13
More information	14

Produced by Melbourne Activist Legal Support with assistance from Human Rights Law Centre.

About Melbourne Activist Legal Support

Melbourne Activist Legal Support (MALS) is an independent volunteer group of lawyers, human rights advocates, law students, and paralegals. MALS trains and fields legal observer teams at protest events, monitors and reports on public order policing, provides training and information to activist groups on legal support structures, and develops and distributes legal information resources for protest movements. MALS works in conjunction with law firms, community legal centres, and a range of local, national, and international human rights agencies.

Acknowledgement

MALS acknowledges the centuries of Aboriginal resistance against genocide and colonisation. We acknowledge that police and the legal system in this country remains a core component of colonisation which continues to disproportionately target and incarcerate Aboriginal people. We owe a huge debt to Aboriginal activists today and throughout our history who fought for basic human rights, social, legal and political change.

Credits

Special thanks to Sandrine Persaud for researching and writing this guide, and Josephine Langbien and Sanmati Verma from Human Rights Law Centre for reviewing it. Text is © Creative Commons BY-NC-ND 2025, Melbourne Activist Legal Support. All images used throughout this guide are copyrighted by Melbourne Activist Legal Support and cannot be used in any derivative work.

Disclaimer

This is legal information only and should not be taken as legal advice. Up to date as of March 2025. For Victoria, Australia only.



Your right to protest on a visa in Victoria

Everyone in Victoria has the right to protest, regardless of citizenship or visa status. However, considering the ever-changing political climate, visa holders or people who are not citizens may face additional risks when participating in demonstrations and protests. This guide provides an overview of those risks.



■ Summary

1. Visa holders and people who are not citizens have the same right to participate in protests, rallies, vigils or marches as any other person in the Australian community, and there are no specific visa conditions that restrict the right to protest.
2. Protests, rallies and vigils that do not involve disruption usually do not involve confrontation with police and accordingly, participation involves little risk to your visa.
3. Before joining a protest, you should check the conditions of your visa and speak to others about whether they anticipate any disruption or confrontation with the police so that you can consider how to limit your involvement or keep yourself safe.
4. If you are at a protest, you should try to avoid contact with the police, and being either arrested or charged. If you are living in the community without a visa, any contact with the police presents a serious risk of being taken to immigration detention.
5. If you are arrested, charged, or convicted of an offence — or if you believe the Department of Home Affairs has been notified of your protest activity and you are concerned about your visa — then you should contact an immigration lawyer right away.



■ The right to protest in Victoria

In Australia, freedom of assembly is regarded as a fundamental common law right.

The International Covenant on Civil and Political Rights (ICCPR) provides that everyone has the right to peaceful assembly: citizens and non-citizens alike.¹² It may be exercised by foreign nationals,³ migrants (documented or undocumented),⁴ asylum seekers, refugees,⁵ and stateless persons.

The Victorian *Charter of Human Rights and Responsibilities Act (2006)*⁶ (the Charter) enshrines civil, political, and cultural rights into Victorian law. Public authorities, such as the police, must observe these rights. The Charter outlines the right to political expression,⁷ the right to peaceful assembly, and the right to freedom of association.⁸



DID YOU KNOW?

Many refugees, asylum seekers and migrants have played important roles in the struggle for civil and political rights in Australia. Struggles for justice and human rights in Australia and around the world often rely upon people from newly arrived communities standing up in protest.

¹ *International Covenant on Civil and Political Rights*, open for signature 18 December 1972, 999 UNTS 171 (entered into force 13 November 1980), art 21

² Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, UN Doc CCPR/C/GC/37 (17 September 2020), para 5.

³ Human Rights Committee, *General Comment No. 15 (1986) on the position of aliens under the Covenant*, 27th sess, UN Doc HRI/GEN/1/Rev.1 at 18 (1994), paras. 1–2.

⁴ Human Rights Committee, *Concluding Observations on the sixth periodic report of the Dominican Republic*, UN Doc CCPR/C/DOM/CO/6 (27 November 2017), para. 32.

⁵ Human Rights Committee, *Concluding observations on the second periodic report of Nepal*, UN Doc CCPR/C/NPL/CO/2 (15 April 2014), para. 14.

⁶ Victorian Charter. See Victorian Equal Opportunity & Human Rights Commission, <https://www.humanrights.vic.gov.au/legal-and-policy/victorias-human-rights-laws/the-charter/>

⁷ Victorian Charter s 15. See also Victorian Equal Opportunity & Human Rights Commission. *Right to Freedom of Expression*, <https://www.humanrights.vic.gov.au/for-individuals/right-to-freedom-of-expression/>

⁸ Victorian Charter s 16. See also Victorian Equal Opportunity & Human Rights Commission. *Right to peaceful assembly and freedom of association*, <https://www.humanrights.vic.gov.au/for-individuals/right-to-peaceful-assembly-and-association/>



■ Rights that are good to know

If you are a refugee, asylum seeker, visa holder, or not yet a permanent Australian resident or citizen, you have the following rights:

- **The right to express opinions and seek and receive information.**

You have the right to express your opinions orally, in writing, in print, or through other forms of artistic expression.

- **The right to peaceful assembly and freedom of association.**

You have the right to gather with other people for a common purpose or goal, such as protesting, holding meetings in public or private, or meeting with other people to protect your common interests (e.g. to form a trade union or similar group).

- **The right not to be 'moved on' for protesting.**

Police in Victoria cannot order you to 'move on' for protesting or if you are taking part in an industrial action.⁹

- **The right to remain silent.**¹⁰

If you are questioned or arrested by police you have the right to remain silent. Sometimes it is an offence to refuse to provide your name and address, such as if the police believe you have or are about to commit a crime. Apart from your name and address, you can say 'no comment' to any other questions. **The police can only ask you to provide evidence of your visa status or identity documents (such as your passport) if they know or reasonably suspect that you are an 'unlawful non-citizen' (i.e. they think you do not have a visa).**¹¹ Although there is no criminal or civil penalty for refusing to provide evidence of your identity or visa status,¹² if you do not comply, a police officer may form a reasonable suspicion that you do not hold a visa and you may be detained.¹³

- **The right to contact a consular office.**

If you are arrested in Victoria, you have the right to contact the consular office of the country where you are a citizen¹⁴ if you choose. **Note:** this may result in the police becoming aware of your visa status.

⁹ *Summary Offences Act 1966* (Vic) s 6(5)

¹⁰ *Crimes Act 1958* (Vic), s 464J.

¹¹ *Migration Act 1958* (Cth) (**Migration Act**), s 188(1).

¹² *Migration Act*, s 188(2).

¹³ *Migration Act*, s 189.

¹⁴ *Crimes Act 1958* (Vic), s 464F.



- **Identity rights.**

There are no laws in Victoria that require you to carry an identification document (ID). If police ask you to provide evidence of your identity but you do not have an ID or a fixed address, you can:

- provide details of a friend or relative who can confirm your identity; or
- provide bank cards with your name on them.

If you do not provide an ID, police may detain or keep you in custody until they verify your identity. Given broad information sharing powers and increasing cooperation between State and Territory police with the Department of Home Affairs, it is also possible that, if you do not provide your ID, police may contact the Australian Border Force to verify your visa status to confirm that you are not an 'unlawful non-citizen'¹⁵ who is liable to be detained.

■ Risks when protesting on a visa

Despite these rights, there are some risks involved when protesting on a visa, or if you do not hold any visa at all. These risks vary depending on the type of visa you hold and the nature of your protest activity. Risks can also be heightened by xenophobic political calls to repress protests by particular community groups.

Before you attend a protest:

- speak with organisers or other people involved in the protest about what is planned and whether there is a possibility of police arresting people at the protest
- make preparations to stay safe at the protest and when travelling to and from the protest
- plan ahead what you will do if a protest escalates
- have the phone number of a lawyer or law firm ready
- find out more about your legal rights

When you are at a protest:

- attend with a friend or family member so you are not alone and to support each other
- look for areas where you are less likely to be in contact with police, such as away from police lines
- think carefully before taking any actions at a protest that may be unlawful or put you at risk of arrest
- stay in touch with other people in case the situation escalates and you need to change your plans

¹⁵ Within the meaning of s 14 of the Migration Act



Getting detained, arrested, or charged at a protest

Most protests in Australia, such as rallies, marches and vigils, take place without any problems. However, police are often present and their behaviour is unpredictable. Police are known to intervene during a protest if they believe something unlawful is happening or about to happen, if they are trying to keep groups of people apart, or if they are no longer tolerating people occupying a space.

Although you have a right to peaceful assembly, police do not always respect or understand the correct application of this right and may arrest and charge people when they are lawfully exercising their right to protest.

It's also important to note that while displaying flags, images or materials associated with a protest movement does not in itself present any risk, if the material relates to an organisation that the Australian government has designated as a terrorist organisation, this could result in your image being captured and made public by the media and/or police; being questioned, arrested or charged by police; or, ultimately, cancellation of your visa.

Information about organisations currently listed as terrorist organisations can be found here

www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations

If you are charged with an offence following a protest, you should assume that the police will communicate that fact to the Department of Home Affairs. If you are charged, you should **seek advice from an immigration lawyer immediately** and ensure that your contact details held by the Department of Home Affairs are up-to-date. If you do not receive letters that the Department tries to send to you, you may miss important deadlines for action to protect your visa.

IMPORTANT!

Make sure that your contact details held by the Department of Home Affairs are always up-to-date.
You can update your details in your ImmiAccount:

<https://immi.homeaffairs.gov.au/change-in-situation/contact-details>



Being arrested or charged at a protest **does not necessarily mean** that your visa will be cancelled, or that you will have trouble applying for a visa in future. The risk to you depends on several factors, including:

- the seriousness of the alleged offence;
- whether you are convicted and the nature of any sentence you receive;
- the nature of the visa you hold (i.e. whether it is a permanent, temporary or bridging visa); and/or
- whether the Department of Home Affairs considers the charge or conviction to be a reason to cancel your visa on character grounds or otherwise considers your protest actions to be a breach of your visa conditions (see *Powers to Cancel Visas* section).

Most charges relating to protests are **summary offences**. For some people, a summary offence may not pose a risk to their visa; for others, particularly temporary or bridging visa holders or people with prior convictions, being charged with a summary offence may pose a greater risk to their visa (see *Powers to Cancel Visas* section).

If you are not an Australian citizen and you are facing a criminal sentence, make sure that your lawyer is aware of your immigration status so that they may seek advice from an experienced immigration lawyer about managing any impacts on your visa.

If you are living in the community without any visa and you are arrested or charged by police, police will likely communicate with the Department of Home Affairs and you will be taken into immigration detention.¹⁶ If you are detained, officers are required to allow you to contact a lawyer,¹⁷ and you should call a migration lawyer immediately.

Potential charges associated with protests

- obstruction
- trespass
- anti-mask laws
- property damage
- offensive behaviour
- violent disorder
- affray
- unlawful assembly

Familiarise yourself with these and other common charges associated with protests:

www.fls.org.au/law-handbook-temp/rights-activism-and-fair-treatment-at-work/community-activism/common-charges-associated-with-protests

¹⁶ Migration Act s 189.

¹⁷ Migration Act s 256.



Being reported to the Department of Home Affairs or threatened with deportation

Be mindful of the fact that political opponents or anyone hostile to a particular cause may threaten people attending a protest based on their visa status. For example, if you are seen at a protest by someone aware of your immigration status, they may attempt to report or threaten to report you to the Department of Home Affairs to be deported.

Someone may be more likely to threaten you in this way if you hold a prominent or high-profile role in a protest, for example, by being a spokesperson, appearing in the media, or being named as a protest organiser.

It is important to note that, as outlined above, there is nothing inherently wrong or unlawful about participating in a protest. This means many attempted “reports” to the Department of Home Affairs are baseless. The power to cancel someone’s visa or deport them is not in the hands of individuals such as political figures or employers. If your employer threatens to report you to the Department of Home Affairs, threatens to cancel your visa or deport you, or otherwise tries to coerce or intimidate you based on your protest activity, they may be **committing a criminal offence**.¹⁸

■ If you hold a temporary or bridging visa

The Migration Act provides authorities with specific powers to cancel visas. If the visa you hold is cancelled you can be removed from Australia (also known as ‘deportation’).

Visa cancellation powers are particularly broad concerning temporary and bridging visas (see *Powers to Cancel Visas* section).

If you hold a temporary or bridging visa, you should take particular care at protests to avoid contact with the police. You should also try to find out before the protest whether the organisers or others involved plan to use intentionally confrontational or disruptive tactics and carefully consider the extent to which you want to be involved in these activities. This advice also applies to people living in the community without any visa.

Visa cancellations and deportations cannot happen automatically or immediately. If the Department of Home Affairs considers your protest activity to be grounds for the cancellation of your visa, they will communicate with you before commencing the cancellation process and provide you with an opportunity to respond (see *Powers to Cancel Visas* section).

¹⁸ Under s 245AAC of the *Migration Act*.



If you have been reported to the Department of Home Affairs, or you are being threatened by someone in relation to your visa status, you should:

- seek advice from an immigration lawyer to confirm whether you need to take any proactive action, for example, contacting the Department of Home Affairs yourself; and
- inform others involved in the protest so they can support you or act as a witness if necessary.

■ Checking your visa conditions

You should be aware of your visa conditions before you engage in any protest activities as breaching one or more of your visa conditions may provide grounds for the cancellation of your visa (see *Power to Cancel Visas* section).

You can check your visa conditions by:

- reading the visa grant notice sent to you by the Department of Home Affairs
- creating an **ImmiAccount** and checking your visa status online using your passport details: <https://online.immi.gov.au>

In particular, you should be aware of the following conditions that apply to certain temporary and bridging visas.

Condition	Explanation ¹⁹
8303	Visa holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community, e.g.: engaging or promoting extremist views and interrupting the operation of the Australian community.
8564	Visa holder must not engage in criminal conduct.
8566 NB: This condition usually applies to Bridging visa E (BVA) ²⁰ .	<p>Visa holder must not breach any code of behaviour they have signed in relation to the visa.</p> <p>A code of behaviour requires visa holders to (among other things):</p> <ul style="list-style-type: none"> ● not disobey Australian laws ● not take part in criminal behaviour (including violence against any person or government officials) or deliberately damage property ● not harass, intimidate or bully any other person or group of people or engage in any anti-social or disruptive activities that are inconsiderate, disrespectful, or threaten the peaceful enjoyment of other members of the community

¹⁹ Department of Home Affairs. *Check visa details and conditions*, <https://immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/conditions-list>

²⁰ Department of Home Affairs, *Subclass 050 and 051 Bridging visa E (BVE)*, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/bridging-visa-e-050-051>



■ International students and protests

Student visa holders are not subject to any general conditions preventing them from engaging in protest; they have the same right to engage in protest as any other citizen or non-citizen.

However, specific risks might arise if the protest activity takes place on a university campus or other premises where you are enrolled as a student. One of the main conditions of student visas requires visa holders to maintain enrolment in a registered course.²¹ Depending on the nature of the protest you engage in, and whether it constitutes a breach of university by-laws, your university might seek to exclude you from campus or prevent you from completing your course, which could have adverse consequences for your visa status.

Before a university or course provider can exclude you or cancel your enrolment in a course, they must first give you notice of their intentions and allow you the opportunity to respond. If you are excluded from your university or prevented from continuing your course **and you do not enrol in another registered course** you may be in breach of your visa conditions, which might result in your visa being cancelled. If you believe that your university or course provider might be planning to take adverse action against you because of your protest activities, you should contact a lawyer or your university's student legal service.²²

■ Power to cancel visas

The *Migration Act* gives the Minister and officers of the Department of Home Affairs the power to cancel visas in a range of circumstances. Some powers are available only in relation to temporary and bridging visa holders (under s 116 of the *Migration Act*). Other 'character' based powers (under s 501 of the *Migration Act*) are available in relation to all visa holders, including permanent residents.

The visa cancellation process differs, depending on whether the power under s 116 or 501 is used. Generally, the s 116 process involves less time for response, while the s 501 process is slower and more formal. We have set out both processes below.

IMPORTANT!

It is important to remember that visa cancellation does not happen automatically and you will be given an opportunity to say why your visa should not be cancelled.

²¹ *Migration Regulations 1994* (Cth) (Regulations), Schedule 8, Condition 8202

²² A list of some of those services can be found here:

<https://fls.org.au/law-handbook-temp/getting-help/legal-services-that-can-help/legal-services-for-university-students/>



Cancellation powers applicable to temporary and bridging visa holders

– s 116 of the Act

Temporary and bridging visa holders are more vulnerable to visa cancellation than permanent residents. This is because these visa holders are subject to a greater number of visa conditions than other visa holders, and there is a greater range of cancellation powers available in relation to these types of visas.

A temporary or bridging visa can be cancelled if the Department of Home Affairs considers that:

- the visa holder has not complied with the conditions of their visa (see *Checking your visa conditions* section)
- the visa holder has been convicted of a criminal offence²³ (regardless of the sentence imposed for the offence), or, in the case of Bridging E (BVE) visas, the visa holder has been charged with an offence²⁴ (irrespective of whether they are later acquitted of that offence, or the charge is withdrawn)
- the visa holder's presence in Australia might be 'a risk to the health, safety or good order of the Australian community or a segment of the Australian community; or the health or safety of an individual or individuals.'²⁵ This cancellation ground might arise even if the visa holder has not been charged with a criminal offence.²⁶

Visa cancellation does not happen automatically. You will be given notice and a chance to argue why your visa should not be cancelled.

You will be given a Notice of Intention to Consider Cancellation (NOICC) if your visa was granted under s 116 of the *Migration Act*. The NOICC may be given to you in person (i.e. if you go to the office of the Department of Home Affairs) or in writing (i.e. by post or email).

If a NOICC is given to you in person, then you will have a **very limited time**²⁷ (perhaps less than an hour) to provide reasons why your visa should not be cancelled. You should **contact an immigration lawyer immediately** if you are asked to come to an interview at the Department of Home Affairs offices.

The usual way for notice to be given is in writing by post or email. If the NOICC comes to you by post, you will have 12 working days to respond to it.²⁸ If it comes to you by email, you will only have five working days to respond.²⁹ If you receive a NOICC you should **contact an immigration lawyer immediately** to assist you to respond.

²³ *Migration Act* s 116(1)(g) and r 2.43(1)(oa).

²⁴ *Migration Act* s 116(1)(g) and r 2.43(1)(p)(i)

²⁵ *Migration Act*, s 116.

²⁶ See *Gong v Minister for Immigration and Border Protection*[2016] FCCA 561 at [41]

²⁷ *Migration Act* s 121(3) specifies that a response must be provided at an interview to take place within a 'reasonable period' after notice is given.

²⁸ *Migration Act* s 121(2); Regulations r 2.44(2)(a); *Migration Act* s 494C(4).

²⁹ Correspondence sent by email is taken to have been received at the end of the day on which it was sent; *Migration Act* s 494C(5).



Character cancellation powers applicable to all visa holders – permanent, temporary, and bridging visas

The Minister and officers of the Department of Home Affairs can refuse or cancel a visa if a person is found to not meet **character requirements**,³⁰ also called the ‘character test’.

In most cases, the Department of Home Affairs has the discretion to decide whether or not to cancel the visa of someone who does not meet the character requirements.³¹ However, in some cases of serious criminal offending, visa cancellation is mandatory and automatically applied.³²

Character assessments involve consideration of both criminal and serious non-criminal conduct. Section 501(6) of the *Migration Act* lists a variety of reasons why someone may not pass the character test such as:

- the person has a substantial criminal record (sentenced to a cumulative 12 months in prison or more);
- the person may represent a danger to the Australian community or may incite discord in the Australian community;
- the person is a member of a group or association involved in criminal conduct; or
- the Minister is satisfied the person is not of good character due to their past or present criminal or general conduct.

If the Department of Home Affairs intends to cancel your visa for this reason, they will issue you with a Notice of Intention to Consider Cancellation (NOICC) under s 501 of the *Migration Act* and you will have an opportunity to argue why your visa should not be cancelled. You will usually have 28 days in which to respond, but it is important to **contact a migration lawyer as soon as you receive the NOICC**.

If your visa is cancelled despite your response, you will usually have the right to seek a review by the Administrative Review Tribunal (ART).³³ There are **strict timelines to apply to the ART so it is important to consult an immigration lawyer as soon as possible**.

DID YOU KNOW?

Ministerial Direction No. 110³⁴ strongly prioritises ‘protecting the Australian community’ in decisions about visa cancellations.

³⁰ *Migration Act* s 501.

³¹ *Migration Act* s 501(2).

³² *Migration Act* s 501(3A).

³³ Administrative Review Tribunal. <https://www.aat.gov.au>

³⁴ The Hon Andrew Giles MP. 7 June 2024. *Ministerial Direction No.110 Signed Today*, <https://minister.homeaffairs.gov.au/AndrewGiles/Pages/ministerial-direction-110-signed-07062024.aspx>



■ Key takeaways

- Visa holders have the same right to participate in protests, rallies, vigils or marches as any other person in the Australian community, and there are no specific visa conditions that restrict the right to protest.
- Protests, rallies and vigils that do not involve disruption or confrontation with the police involve little risk to your visa.
- Before joining a protest, you should check the conditions of your visa and speak to others about whether they anticipate any disruption or confrontation with the police so that you can consider how to limit your involvement or keep yourself safe.
- If you are at a protest you should try to avoid contact with the police and being either arrested or charged — especially if you are a temporary or bridging visa holder, or if you do not hold any visa.
- If you are arrested, charged, or convicted of an offence, or if you are threatened or believe you have been reported to the Department of Home Affairs as a result of your protest activity, then you should contact an immigration lawyer right away.

■ List of immigration and refugee law contacts

- Asylum Seeker Resource Centre: www.asrc.org.au
- Deakin University Legal Service (enrolled Deakin students only):
www.dusa.org.au/get-help/deakin-student-legal-service
- Federation of Community Legal Centres – find a community legal centre:
www.fclc.org.au/find_a_community_legal_centre
- Fitzroy Legal Service: www.flc.org.au
- Law Institute Victoria (LIV) – ‘Find Your Lawyer Referral Service’ offers assistance in finding a lawyer and accessing a free 30-minute consultation with an LIV member.
 - *telephone*: 03 9607 9550 (9am to 5pm Monday to Friday)
 - *online*:
www.liv.asn.au/web/for_the_public/find_a_lawyer_referral_service/web/content/for_the_public/referral/referral_search.aspx
- Refugee Legal: www.refugeelegal.org.au
- Victoria Legal Aid: www.legalaid.vic.gov.au/immigration-and-migration



These organisations do not provide immigration law services, but they may be able to assist with other matters:

- Monash University Legal Service: www.monash.edu/students/support/legal
- RMIT Legal Service:
www.rmit.edu.au/students/support-services/financial-legal-support/legal-service
- University of Melbourne Legal Service: umsu.unimelb.edu.au/support/legal
- Human Rights Law Centre: www.hrlc.org.au

■ More information

- For more information about your rights when protesting:
www.mals.au/resources/rights
- For legal advice if you are arrested or charged by police:
www.mals.au/contact/legal

DISCLAIMER

This is legal information only and should not be taken as legal advice.

Up to date as of March 2025.

For Victoria, Australia only.

