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# Melbourne Squatters Guide

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Bendigo to facilitate direct access by clients and to provide a service that works closely and collaboratively with other homeless service providers. [www.pilch.org.au](http://www.pilch.org.au) (03) 8636 4408(FREECALL) 1800 606 313

Federation of Community Legal Centres (Victoria) Inc: For information on where you can obtain legal aid and advice call (03) 9652 1500 or visit [www.communitylaw.org.au](http://www.communitylaw.org.au) You can also call Legal Aid directly on (03) 9629 0120 or visit [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

Tenants Union of Victoria: For advice on housing rights call (03) 9416 2577 or visit [www.tuv.org.au](http://www.tuv.org.au)

**Social Security Rights Victoria:** For advice on Centrelink matters call 03 9416 1111 or visit [ssrv.org.au](http://ssrv.org.au)

**Squatspace:** For stories and information about squatters' campaigns in NSW or to read the Sydney Squatter's Handbook visit [squatspace.com](http://squatspace.com)

**Squat.net:** International squatting news can be found at [squat.net](http://squat.net)

**This guide has mainly been put together from information that has previously appeared in the 1993 and 2001 Melbourne Squatters Handbooks, Squat Why Not? and the Sydney Squatters Handbook. Thanks to all who we cadged information from or who helped to update information.**

## What Is Squatting?

Squatting is the act of making use of disused and abandoned property. It allows people who cannot otherwise afford to rent or purchase a house or building to put an empty one to productive use.

## Why Squat?

Because it is wasteful and obscene for thousands of properties to lie empty when there are people homeless or struggling to pay rent. Because Office of Housing waiting lists are too long. Because you are sick of dealing with nosy landlords who always hassle you when you are late with rent, but have no problem taking weeks or months or years to do simple repairs. Because no one should get rich by forcing others to pay for the simple necessity of shelter. Because you want some control over your living and working space. Because housing is a basic human right and sometimes you have to take action to assert your rights.

## Finding an empty property

Melbourne has a variety of empty properties ranging from totally destroyed shells to perfectly liveable places that have nothing wrong with them. The best way to find a squat is to simply walk or ride around the streets and look for the obvious signs. Is there mail overflowing from the letterbox? An overgrown garden? Broken/and or boarded up windows and doors? Is the power off? Does anyone answer when you knock on the door?

If unsure, you might want to ask a neighbour, a postie or a local shop owner if anyone is living in or using the property. It may help if you make out that you're looking to rent the place, or acquire it for use by a housing co-op- be inventive and plausible. Being hon-

est with the neighbours and local residents about your intentions can also be successful, although you should be prepared to deal with people's prejudices. If you decide to be straight up then explain your case to them. Tell them how you came to be in the situation you are in. If needs be quote some figures on homelessness and the waiting list for public housing. The housing crisis means that thousands of people are unable to find affordable housing in the private rental market. Explain that you will look after the property and protect it from vandals.

## **Finding out who owns it**

Most people will find out this information before moving in, but you may choose to squat first and find out who the owner is later. This information can be obtained by talking to the neighbours or checking the mail for rates notices. Failing this you can call up or go to the rates department of your local council. Many councils will only give you information about a property if you say you are a neighbour so you may need the name of the person next door. A story explaining why you want the owners name and details will also be useful. This could include claiming that the fence is falling down, trees are causing damage, etc.

If there are plans for the house to be demolished or renovated then these plans will bear the owners name and address and will have been submitted for approval at the Town Planning Department of the local council. Anyone can go there and ask to see them.

Another way of finding out the owner's details and information about any mortgages, covenants, caveats regarding the property is to apply for information on the land title. You can visit the Land Information Centre at Level 10, 570 Bourke Street, Melbourne (open from 8.30am to 4pm, Monday to Friday). They require you to produced photo ID and fill out a small form, including your basic details and the property's address. Then they will provide you with

by "enclosing" or fencing the property. You cannot gain adverse possession of government land.

You can prove your date of possession through bills, post-marked letters, etc. Another way is to lodge a caveat on the certificate of the title. A caveat is an order preventing the property from being sold, mortgaged, given away, etc unless the "caveator" is given 30 days notification. It costs \$79 to lodge a caveat with Land Victoria and can be done either online or at their offices. You will firstly need to get the volume and folio number of the property's tile via a title search and will need to provide information as to the reason why you are taking out the caveat. In the section that reads "Estate or Interest claimed" write "An estate in fee simple." In the section reading "Grounds of claim" write "Adverse possession. Possessory interest in above named land." In the section reading "Extent of prohibition" write "Absolutely." All the people who are on the title will be informed so to avoid alerting an owner or bank to your presence only lodge a caveat if there is no mortgage and the address of the owner is the same as the squat. Lodging a caveat also has an advantage in helping you out when dealing with the police. If they come to evict you then you can show them the caveat and tell them you are engaged in a civil dispute over the ownership of the property.

## **LINKS AND FURTHER INFORMATION**

Squatters and Unwaged Airwaves (SUWA Show): Direct action news and advice every Friday between 5.30 and 6.30pm on Community Radio 3CR at 855AM. [www.3cr.org.au/suwa](http://www.3cr.org.au/suwa)

Homeless Persons Legal Clinic (HPLC): a specialist legal service that provides free legal assistance and advocacy to people who are homeless or at risk of homelessness within a human rights framework. Legal assistance is provided by pro bono lawyers at 13 homelessness assistance services around metropolitan Melbourne and in

nalists, have their numbers handy so you can call them when you need them.

Press releases are an important first step in generating media interest. There are various internet sites that can tell you how to write a good press release and have ideas on how to best distribute your press release once you have written it. Also, get in contact with activists or organisations that have used the media effectively and ask for their media contacts and tips.

Getting in touch with sympathetic politicians may or may not be useful as well. While they will ultimately try to use the exposure you generate for their own political ends, they generally have a good media network of journalists and reporters you may be able to use to get your messages/images across.

#### *Internet*

The internet can be one of the most useful tools in generating support for your squat. Making your own website or blog can be a good way of getting exposure, sharing information and generating support for your squat.

Be aware that police intelligence units routinely monitor email communications with known activist groups for 'security' and 'counter-terrorist' surveillance purposes. But don't let that stop you from using the internet as a communicative tool. Just make sure you give a false name and details when signing up for any free web-based email address.

## **SQUATTERS TITLE**

If you are lucky enough to occupy a property for 15 years and can prove it then you are entitled to have your name entered on the title certificate and take ownership. This is called "adverse possession." Possession is where you occupy property with the intent to exclude everyone, including the owner, from the land. This is usually done by changing the locks. On vacant open land it is done

information on the owner's name, address, phone number, and details relating to the title. You can also conduct a search online with a credit card at [www.landata.vic.gov.au](http://www.landata.vic.gov.au) You will need to register and give some details such as an email address, postal address, etc. Depending on how much information you need and whether you search online or not this process will generally cost \$15 to \$25.

Knowing who owns the property might help you determine how you proceed with squatting it and what your chances are of staying on. If the owner's only address is the one you are in or if they registered as living overseas then they are less likely to turn up soon. Knowing their details also allows you to prevent anyone except the owner from evicting you (see legal section). On rare occasions the police may come off their own bat and try to throw you out. If you can quote the owner's name you can claim that you are in negotiations with them or have permission to be where you are.

Deceased estates don't really belong to anyone as they are being looked after by public trustee until a relative or a private trustee can be found. Trustees often take little notice of the property and aren't likely to find you until they are ready to sell it or unless you inform them of your presence. Similarly government properties and bankrupt properties can often be left empty for years, although you will generally be evicted immediately should they discover you.

If a house is privately owned you may have the option to negotiate. You can contact the owner before you move in to explain that you are on a low (or no) income and offer to take care of the property in order to maintain it and protect it from vandals. You may want to offer to pay the rates or a nominal amount of rent as well. In the majority of cases you will be turned down so it may be better just to move in and wait until the owners find you before attempting to negotiate. By then you may find yourself in a stronger position as you will be able to point to the various work you have done around the property. If you do wind up paying some form of

rent then try and get a receipt or agreement as once you are renting you will be subject to the usual rules regarding tenancies.

## Getting inside

Often this will be the easiest part. Most places have been left empty for some time and there may be broken or unlocked windows and doors. Check all the obvious access points such as doors, windows, skylights, holes covered by boards or tin, etc.

## Securing Your Squat

When opening your squat you should bring along new barrels for locks, slide bolts, a torch or candles and some basic tools. Once inside your new home you will firstly need to change all the locks so that you can feel safe and secure.

Most houses are fitted with the standard Lockwood barrel lock. You will need a Phillips head screwdriver to remove the three screws from the back section. Two long screws secure the backing plate and the barrel/cylinder to the door. Remove these and the barrel will be released. The barrel should be the only part of the lock that needs replacing. These can be purchased at any hardware store. The replacement process is pretty straightforward. Most of the problems associated with the process concern the proper fitting of the tongue inside the lock. Sometimes the tongue is too long and will need trimming to suit the thickness of the door. You can tell if the tongue is too long by sliding the barrel into position with the tongue fitted into the slot provided. To shorten the tongue and properly fit the lock to the door you will need a hacksaw and something to hold it (pliers or vice) while you cut it to the proper length.

If there is a deadlock in place then you will need to jemmy the door from the doorway and use screwdrivers to force the lock

will benefit from making it all very visible. Tactical and well-timed use of the media can go a long way toward prolonging your stay in your squat come eviction time. Some squatters are completely opposed to media coverage and believe that media coverage of any squat, jeopardises the long term safety and security of other squats because the State have been known to respond with the creation of “Squatters Taskforces”. This is why media coverage of squatting needs to be carried out in a careful and thoughtful way.

Public image is extremely important to governments and private companies, so organise events or stunts to get media exposure (and public support) for your squat and to highlight the nasty plans that the government or private owner has for it. The threat of media exposure can work to your advantage against an owner desperate to avoid tarnishing its public profile.

It’s worth having a camera in your squat, ready for use at any time. Whenever there is heated dialogue with the owners or police, having a camera – and the threat of exposure it carries – can go some way toward defusing a potentially violent situation. An audio recorder can also be useful. Pictures of angry and violent police can go down well in the visual media; sound recordings may work well on radio.

Squatters are usually represented in Australia as drug-addicted bludgers who make life difficult for everyone in the area except themselves. There are, however, a whole range of different images you can generate instead. Try to find some sympathetic journalists or freelance reporters in both the mainstream and alternative press, as well as radio or even television stations. Tell them you’re squatting and ask if they would like to run a story or cover the eviction. Be careful you do not disclose the location of your squat. Try to get a feel for the reporter’s personal view – meet with them and have a look at past articles he or she has written. Remember that many reporters are just interested in a sensational story and may try to ‘trick’ you into giving away information that they use for a story against you. Once you have found some trustworthy jour-



12. If you are not bailed then you must be brought before a magistrate within a “reasonable” period of time. This should not be more than 24 hours. If you are arrested on the weekend you are entitled to be brought before a bail justice.

## RESISTING AND DELAYING EVICTION

Although the law doesn’t grant squatters legal rights, there is still plenty of ways to fight for the right to a roof over your head. These usually involve organising collectively. Although relatively rare there are a number of cases in Australian history where squatters have joined up with others to successfully pressure the owners into delaying or calling off an eviction or to force government authorities to provide them with alternative accommodation. The following tactics can help generate such pressure.

### *Barricading*

If a date has been set for eviction then barricading yourself in and refusing to leave is a tactic you can adopt. Physical resistance is common practice in countries that have large and defiant squatting movements, and is often used to stall eviction for some time. In Australia, you will usually get thrown out after trying to resist. Physical resistance will generally attract a lot of attention, which can be a good thing, and give you a chance to voice your opinion in the media.

Waiting for eviction in these cases can be stressful, so be organised and prepared. Have a supply of food and water stored (in case you succeed) and an escape route planned so you don’t get caught. Good luck if you try but be well aware of the risks: almost certain arrest.

### *Media — Print/Television/Radio*

One of the most important tools in avoiding or resisting eviction is the media. While discretion and invisibility can be the most useful tactics of successful squatting, there may come a time when you

tongue and the deadlock button back into the lock. The door should then be able to be opened. Once it is open remove the screws from the side to take the back off and replace the lock mechanism. With some deadlocks the back section is all one part so you will have to remove it and get a new one.

Mortise locks are easy to replace if the door is not locked. If it is and there is enough room then you can try to cut through the bolt in between the door and the frame. An easier, but more destructive method is to cut a section out of the door frame. Using a hammer and chisel cut around where the lock goes into the frame until it opens. You can then remove and replace the lock before nailing a plank onto the door frame to give it back its strength. If it is a back or side door then you may just want to a plank on and then nail on one or two sliding locks.

There are many different types of locks. If you encounter difficulties then talking to the staff at a hardware store may be the best option as they should know what to do or at least have some diagrams. Lockwood’s website has a number of instructional videos and documents at [www.lockweb.com.au/en/site/lockweb/training-and-support](http://www.lockweb.com.au/en/site/lockweb/training-and-support) Another useful site is [www.wikihow.com/Change-a-Lock](http://www.wikihow.com/Change-a-Lock)

## MOVING IN

The first few days and weeks after opening your squat are critical so make sure that no one is left alone and that the property is left empty as little as possible during this time. There will probably be quite a few things that need repairing and cleaning up anyway. Ask friends to come over to help, and just to be there. Cleaning up any rubbish that has been left outside, putting up curtain, etc will send a clear message to the neighbours that you are not going to trash the place.

Most empty houses are old and their essential facilities need repair. In most cases the problems aren't big and you'll find you can do them yourself without having to hire tradespeople. Here are some suggestions about doing basic repairs:

#### *Broken Copper Pipes*

Make sure the water mains are turned off. Broken or cracked water piping (most houses have copper) can be cut and repaired. First, cut out the cracked section with a hacksaw. Then get a piece of garden hose and two hose-clips, which must be the right size to fit the hose to the pipe. Put the clips in the centre of the hose piece, then slip the copper pipe into one end and out the other. To finish up, place the clips on either side of the hose and tighten the clips with the right screwdriver.

#### *Cracked PVC Pipes*

Cracked and/or leaking pipes are very easy to repair. If you have cracks in bends — such as traps under sinks or basins — take to it with leak sealant. When using a sealant, ensure that the surface is dry for better and longer sealing. If it is a straight section of pipe, get some duct tape and secure it tightly around the pipe so that there are no air bubbles. Again, there has to be a dry surface for better sealing.

#### *Leaking Taps*

Before you repair anything, make sure the water is turned off at the mains. If the tap is leaking at the joining of the lever then simply unscrew the lever anti-clockwise with a wrench or shifting spanner, wrap some Teflon tape tightly around the worn thread a number of times and screw the lever back on clockwise. If the tap is leaking while it is off, then the problem is in the spindle, and the cause is probably an old or deteriorated washer. Usually you will need just a shifting spanner and, for old, badly corroded taps, some kind of spray lubricant. To change the washer:

- Make sure the water is turned off at the mains. Remove the tap handle. Sometimes there is a 'button' on the handle that

take a forensic sample (blood, hair, mouth swab etc) without a court order or your consent. You are entitled to call a friend, relative or lawyer before being questioned. Do not let the police select a lawyer for you. Insist on calling a lawyer you know or one from the Homeless Persons Legal Centre, or Legal Aid.

10. If arrested then you do not have to answer any questions at all. You must be informed of your right to silence before you are interrogated. Once you have spoken you cannot go back to being silent as it will go against you in court. Nothing can go against you for remaining silent in the face of every question, however you must still provide your name and the address for bail. Sometimes it can pay to answer questions, but until you have gained legal advice it is wisest not to do so. It can be difficult to remain silent during police questioning, so try as hard as you can to keep a poker face, and simply reply "no comment", even when the police are trying their hardest to antagonise you.
11. If you are arrested then following questioning the police will decide whether to bail you or remand you to custody. You should be allowed bail if the police are fairly certain as to your identity and if you have no prior convictions for failing to turn up to court. If you don't have any ID then you will probably need to verify your identity in some other way. The police may hold you if they think you may reoffend and although squatting is not illegal this may happen to squatters who are unable to prove they have alternative means of accommodation. In practice most squatters are released fairly quickly. If you are offered bail and the bail undertaking does not require special conditions then sign it and leave. If it does include special conditions and you do not like them then gain legal advice before signing anything.

resist the eviction by refusing to leave or begin negotiating for a reasonable period in which to vacate. If you have taken out a caveat on the property (see section on Squatter's Title) then show them the documentation and inform them that you are involved in a civil dispute which does not concern them.

4. If they ask you how you got into the property then tell them that the door was unlocked or a window was open to avoid the possibility of being charged with forced entry, wilful damage or burglary. Unless they catch you in the act you are unlikely to be convicted of such charges.
5. Remind them that squatting is a civil, not a criminal matter, and that you have received legal advice stating you should only speak to the owner.
6. Be polite and confident in asking them to leave. Do your best to avoid antagonising them.
7. You do not have to go to a police station unless you are arrested for a crime. If arrested you must be told what crime you are being arrested for, unless you resist arrest. If you are not told this information then the arrest is illegal, and you can claim compensation for false arrest and illegal imprisonment.
8. The police cannot search you before an arrest unless they believe you are carrying drugs or offensive weapons. In practice this means that they can search you any time they want.
9. If you are arrested for an indictable offence then the police are able to do a number of things. If you are over 15 then they can fingerprint you. They do not have the right to force you to have your fingerprints taken, but there is no power to stop them from taking a photo without force. They cannot

conceals a screw. If so, prise off the 'button', unscrew the screw and pull off the handle.

- Next remove the spindle. Once you remove the handle you'll see the end of the spindle surrounded by a flange, which will be sitting flat against the tiles or the basin. Remove the flange by unscrewing it anti-clockwise. With the flange removed, you will be able to see the spindle better. It then can be removed by securing and turning the shifting spanner around the spindle's hexagonal base.
- Replace the tap washer, which is located inside the spindle. It will have been pushed against a 'seat' in order to make a water-tight seal. Using your finger, feel the 'seat' for grooves or nicks that could cause a leak. Put in a new washer, making sure the spindle is turned open so as not to squash the washer. When screwing the spindle back into the tap, reverse the procedure described in the previous step.

### *Toilets*

For everything you ever wanted to know about fixing a toilet see [www.toiletology.com](http://www.toiletology.com)

### *Roof Leaks*

You can fix many roof leaks with tube silicone in a gun.

For more information on doing repairs visit: [www.wannalearn.com/Home\\_and\\_Garden/Home\\_Repair/](http://www.wannalearn.com/Home_and_Garden/Home_Repair/)  
[www.doityourself.com](http://www.doityourself.com)

## **GETTING ESSENTIAL SERVICES CONNECTED**

Electricity, water and gas legally cannot be denied to you as long as the wiring and plumbing is still intact. To get these services connected all that is usually required is a phone call to the

appropriate company, when you may need to provide a work or real estate agent phone number as a character reference or information about your Centrelink status.

Nevertheless, corporate service providers sometimes make it difficult for squatters to have access to these services so, again, be assertive and demand access if need be. If they are being difficult, an assertive reminder of department policy will often help. Try not to tell them you are squatting and always check (and, where possible, repair) plumbing and wiring before applying for connection.

If you cannot repair the parts, and services are unavailable until repairs are made, you may need the services of a tradesperson. Again, try not to let tradespeople know you're squatting because they may refuse you service on the assumption you're not going to pay them.

#### *Water*

The water is usually connected. If it isn't, find the mains/water meter tap (usually at the front or back of the building) and turn the tap on. If this doesn't work, call the corporate water provider in your area, open an account and get the mains turned back on. This means every three months or so you will receive a bill for water consumption.

The owner should be paying water rates on the premises, but some owners who leave buildings empty also neglect to pay rates. Failure to pay rates will often result in the water being turned off at the mains. If this is the case, the corporate water provider will usually reconnect it if you agree to pay off some of the outstanding bill – sometimes even as little as \$10.

Alternatively, you may be able to negotiate to pay rates just for the time you're there. This will probably mean explaining you are squatting and have no contact with the owner.

If you are in contact with the owner and he/she won't pay the rates, then you may be able to negotiate to pay them – perhaps on the assurance that you can stay there for a certain period of time. If an agreement to stay and pay some rates is made between you

Should they want you out you will basically have to go, but you can ask for a reasonable amount of time to vacate your belonging and find another home. If the police are called in to assist with the eviction they will sometimes suggest that the owners give you at least 24 hours to move as they generally want as little hassle as possible. This is not always the case though so it is wisest to try and have some form of plan for transport, accommodation and a new squat in case of sudden eviction.

## **WHAT TO DO IF THE POLICE COME**

1. Do not open the door. Speak to them from behind it or through a window or send someone out to see them via another exit.
2. If they attempt to enter ask to see their search warrants and identification. If possible write down their names, ID badge numbers, licence plate numbers, which station they are from, etc. Ask them whose orders they are acting on (the neighbours, owners, etc). If they request your name and address you must give it to them if they suspect you have committed an offence, or if they believe you have information that may assist them in the investigation of an indictable offence. You should ask them what offence they suspect you of or are investigating.
3. If they are attempting to evict you without orders from the owner then you can try to stall them by claiming you are in negotiations with the owner or have permission to be there. Remind them that they have no right to break into the house without a warrant of possession or a search warrant. If they claim they are there at the owner's request then make sure that they know the owner's name. If they are not lying and are there on behalf of the owner then you will either have to

The cost and time delay involved with a court hearing means that the owners generally evict by using the Wilful Trespass laws. In this case you will be told by the owner, or the police acting on the owner's instructions, to leave or face arrest. If you leave then nothing will happen. If you don't then you will be arrested.

A third, and relatively rare, avenue for eviction opens up if the property was under a tenancy agreement with the previous occupant within 12 months of the owner trying to evict you. In this case the owner can go to the Residential Tenancies Tribunal for an order of possession. This doesn't cost much and is a fairly quick procedure. Once s/he have their order the police can carry out an eviction. At the hearing the squatters can attempt to force the owner to adopt the same tenancy agreement as the previous occupants on the grounds that they would suffer greater hardship by having to leave than the hardship suffered by the owner if the squatters were to stay. In order to get this outcome, you will need as much evidence as possible. Usually there must be some connection between the squatters and the previous tenants. This is worth a try if you are willing to pay rent, but rarely works. You can also try and convince the Tribunal member to give you extra time before the Possession Order and the Warrant for Possession come into effect.

A final avenue for eviction involves the owner physically evicting you themselves. If you are not at home and they put your stuff in the street then there is little you can do about it. However if you are home then they risk committing unlawful assault.

## **WHAT TO DO IF THE OWNERS COME**

If you haven't already contacted them and come to an agreement then do your best to politely negotiate. In many cases they will be shocked and want you out immediately, but sometimes they will be reasonable from the outset or can be brought around by you explaining your situation and the advantages of having you there.

and the owner, try and get it confirmed in writing as it could be used as evidence of an implied license for you to stay until the end of the agreed period.

### *Electricity and Gas*

If the wiring is ok then you have a legal right to electricity. Sometimes you will have to provide I.D and something to prove you are a legitimate resident (such as a lease). Here, a good story will often go a long way and get you connected without I.D. For example, you could say you're busy moving in and need the electricity on A.S.A.P to warm the baby's bottle. Or, that your flatmate who has the lease is away for the weekend, but you'll definitely be able to send in a copy next week...

Getting electricity connected will vary from corporate provider to corporate provider. First, call them up anonymously with a hypothetical example: "I'm about to move in to a place that needs the power put on. What will I need to do and what kind of I.D will I need to provide?"

If it turns out the electricity cannot be turned on — for example, due to an irreparably damaged main fuse box — then don't despair. Solar cells, car batteries, candles and kerosene heaters (used responsibly) can all go some way to making life very possible without mains electricity. Be creative!

### *Telephone*

If all the lines are still intact, an account can be organised over the phone. Otherwise, you'll need to make a time for company employees to come and reinstall the line. Again, it helps to make a hypothetical call to sound out what the particular corporate provider will require in terms of I.D, address details and deposit.

## **Offences To Be Aware Of Whilst Attempting To Squat or Squatting.**

The following information is only intended to provide a general outline of some of the main offences people can be charged with whilst attempting to squat. This is no substitute for specific legal advice. If you are charged with any offence or if you encounter any specific problems contact your local Community Legal Centre ([www.communitylaw.org.au](http://www.communitylaw.org.au)) or friendly lawyer for specific legal advice.

It is easy to squat and avoid doing anything that will lead to criminal charges provided that you know the kind of criminal offences that the police may try and charge you with. Arrests of squatters are uncommon as most owners and police will just want you off the property. It is only in the case of resistance or when you come across real pigs that you might be arrested.

## **YOUR RIGHTS IF YOU ARE ARRESTED**

In general, police do not need to give you a formal warning before arresting you, however they often will. They need to tell you that you are under arrest. Ask a police officer; “Am I under arrest? What for?” Police must always inform you why you are under arrest. If you are arrested you can ask the Police Officer for their name, rank and station for use in court later. They are legally obliged to tell you. Police have the right to ask for your name and address if they reasonably believe that you have committed, or are about to commit any offence, or you may be able to assist in the investigation of an indictable (serious) offence.

However, apart from your name and address you have the right to refuse to answer any other questions. 90% of convictions for crimes are the results of confessions, so unless the police actually caught you in the act of committing an offence, exercising your

to prove that you entered the property. However, once you are actually squatting a property and have taken possession by securing the property these offences are much harder to prove because once you are squatting you are now the occupant and residing on a property is arguably an excuse for being there. Similarly, you may be able to argue that you do not need the occupiers’ permission as you are the occupier! If you have taken a caveat out on the property (see “Squatters Title” section) then this argument has additional strength as you have legally registered yourself as the occupier.

Under the old trespass law someone was entitled to a reasonable time to leave, which includes having enough time to remove your vehicle and goods from the premises. This is something you should always attempt to negotiate with the police or owner.

## **WAYS IN WHICH YOU CAN BE EVICTED**

The correct legal method for an owner to evict involves them applying to the Supreme or County Court for a writ of possession. This rarely happens nowadays, but if they do follow this path the application is called a *Summons and Origination Motion for Summary Possession of Land*, and is issued with an affidavit (a written, sworn document) verifying the ownership of the property and the fact you it is now in the unlawful possession of others (namely you). A copy of the Motion and Affidavit are attached to a conspicuous part of the property within 21 days of the Court Hearing. You do not have to attend and it is usually useless to do so. Unless you can establish a legal right to possession of the property the Court will make an order for the owner to take back possession. The owner can then register this order with the Sheriff who enforces it by breaking in and evicting you. Legally there is nothing you can do unless the Sheriff uses unreasonable force, but at least this procedure gives you 21 days to find a new home.

Wilful trespass. This is a common charge used to evict squatters. The law was changed in 1998 and a number of aspects are yet to be tested in court.

(s 9(f) Summary Offences Act) You can be charged with this if you are in a private place and refuse or fail to leave after being asked to leave by the owner or occupier or someone authorised by the owner to ask you to leave, unless you have a lawful excuse for being there. Note, the police do not have the power to ask you to leave unless the owner of the property has authorised them to do so. It has not been tested in court what a “legal excuse” would be, and whether attempting to squat a house for emergency accommodation would fit this definition. However, remember it’s their law, not ours, and it’s designed to protect property rights.

(s 9(e) Summary Offences Act) You can be charged with this if you wilfully enter a private place unless you have express or implied authorisation from the owner or the owner’s agent to enter the property or some other legal excuse for entering the property, unless you have entered the property for a legitimate purpose. Therefore if you have a legal excuse for entering without the owner’s consent this is a defence against the charge. Again, exactly what would constitute “legitimate purpose” or “lawful excuse” in the context of squatting has not been determined. The legislation states that you do not have implied or expressed authorisation if you have been previously warned by the owner (or someone authorised by them) not to enter the property, if you are warned by the owner (or someone authorised by them) not to enter whilst you are entering the property, if there is a sign saying you cannot enter,

(s 9(g) Summary Offences Act) You can be charged with this if you enter a public or private place in a way which likely to cause a breach of the peace or likely to cause an apprehension of a breach of the peace, unless you have a lawful excuse.

For all these trespass charges the police do not need to prove that you intended to take possession of the property, they just need

right to remain silent is the best way to protect yourself from being found guilty of an offence. Remember, no conversation with the police is ever off the record, so be wary about answering any questions or giving them any information – even during ‘casual’ conversation.

You have the right to make a private telephone call to a friend and a lawyer or legal support before the police question you. Ask for this if police do not offer. If you are under 16 and being questioned by police an independent person must be present. Indigenous people in police custody can contact the Victorian Aboriginal Legal Service and foreign nationals can contact the embassy of their country.

For more information see [www.activistrights.org.au](http://www.activistrights.org.au).

## LEGAL INFORMATION

Squatting is NOT illegal. It is not a criminal offence to occupy a house without the owners consent. Legally squatting should be a civil dispute between you and the owner. The owner can take civil action against you for eviction and compensation. The police should not be involved unless there is the threat of violence or a breach of the peace. However in practice the police often involve themselves as squatting, taking direct action over homelessness, challenges the notion of property ownership and the restricted use of land- notions the police are employed to uphold. Also, it is easier for the owner to use the police to evict squatters than to take you to court to evict you.

The following section discusses offences relevant to squatting. Remember, the onus is on the police to prove beyond reasonable doubt that you committed an offence. To do so they need evidence, generally either that a police or other witness caught you in the act or that you made admissions to the police. For minor infringements in situations of homelessness and squatting the fines are low and

the court can impose bonds, community based orders, suspended sentences, etc. Still remember that it is their law and their courts not ours.

Criminal offences are divided, according to seriousness, into two main classes: indictable offences, which are serious common law or statutory crimes, and summary offences of a more minor nature.

Criminal Damage (s 197(1) Crimes Act): The police need to demonstrate that you intentionally and without lawful excuse damaged another person's (or your own) property. Unless caught in the act, or unless you admit to it, it is difficult to prove that any damage was done by you, especially if the property was empty as others may have entered and vandalised the place before you squatted it. To be safe it is best to repair any damage caused (whether by you or by others) as soon as possible. If you are taking possession of a house which is obviously damaged prior to you moving in, it may be useful to take photos of this damage. Such evidence may be able to assist you in demonstrating that the damage was caused before you entered the property. Criminal damage could range from breaking a window to burning down a house and the penalty is imposed accordingly.

Criminal offences are divided, according to seriousness, into two main classes: indictable offences, which are serious common law or statutory crimes, and summary offences of a more minor nature. In Victoria, an indictable offence is one which is ordinarily prosecuted upon indictment or presentment before a judge and jury. In some circumstances, offences declared to be indictable may be tried summarily in a Magistrates' Court with the consent of the accused and the court.

Wilful Damage (s 9(c) Summary Offences Act): This is an alternative to criminal damage and is a summary offence. This is the appropriate charge if the value of the damage caused is less than \$5000. The police need to demonstrate that you deliberately did the act which damaged the property, whether public or private,

however they do not need to show that you intended to cause the damage.

Possessing anything with intent to destroy or damage property (s 199 Crimes Act). This is where you are found with tools, but there has been no burglary or damage caused (or the police cannot prove that there has been). The police need to prove that you had possession of a tool and that you had that tool in your possession because you intended to use it or allow someone else to use it to destroy or damage property. With this offence the police need to prove that you were intending to commit criminal damage", technically intending to squat does not involve an intention to damage property, but police may try and charge you with this nonetheless, especially if the property is well secured. This is an indictable offence. The main way to avoid being found guilty of this charge is to admit to nothing.

Possession of house breaking implements: (s 49D Summary Offences Act) This is an alternative to the charge above. It is a summary offence. It is easier for the police to prove as they don't have to show any "intent". Once they have proven you were in possession of the "implements" then you have to prove that you had a reasonable excuse for possessing that tool. Although the onus is on you to prove that you had a lawful excuse for having the tool in your possession, it may be tricky to convince the police of this on the spot, because once you start answering some questions it may be hard to avoid answering others. Remember, at the end of the day it is the court, not the police, you need to convince that you had a lawful excuse and it may be best to save your explanation for the court.

Burglary (s 76 Crimes Act) This is a more serious version of a trespass charge. The police need to show that you entered a building as a trespasser AND that you entered with the intent to steal something in the building or intending to assault someone in the building or damage property in the building. This is an indictable offence.