

Arrest without a Warrant

Introduction - by ANY person

WRITE: Generally, no person shall be arrested without warrant unless there is legislation (all of those are listed below) that explicitly provides otherwise (s 457 CA).

Section 457 Crimes Act 1958 (Vic)

No person to be arrested without warrant except under this Act

After the commencement of the Crimes (Powers of Arrest) Act 1972 no person shall be arrested without warrant except pursuant to the provisions of—

- (a) this Act; or
- (b) some other Act expressly giving power to arrest without warrant.

WRITE: A person may be arrested without a warrant by any person pursuant to the principles under s 458(1) CA, where he finds committing an offence where he believes on reasonable grounds that the apprehension of the person is necessary for [X reason under s 458(1)(a)(i)-(iv) CA]

- Not necessarily about how/how seriously the offence was committed, but about whether an offence has been committed.
- Must have FOUND them committing

The purpose must be to take the offender to a court to be dealt with according to law, or to deliver them to a police officer.

Private citizens must take the person to bail justice or police within a 'reasonable time': s 464A.

➤ citizen's arrest

Arrest without warrant (s 458(1) CA) - Legislative provision:

S 458 - Person found committing offences may be arrested without warrant by any person

(1) Any person, whether a police officer or not, may at any time without warrant apprehend and take before a bail justice or the Magistrates' Court to be dealt with according to law or deliver to a police officer to be so taken, any person—

(a) he finds committing any offence (whether an indictable offence or an offence punishable on summary conviction) where he believes on reasonable grounds that the apprehension of the person is necessary for any one or more of the following reasons, namely—

- i. to ensure the attendance of the offender before a court of competent jurisdiction;
- ii. to preserve public order;
- iii. to prevent the continuation or repetition of the offence or the commission of a further offence; or
- iv. for the safety or welfare of members of the public or of the offender;

(b) when instructed so to do by any police officer having power under this Act to apprehend that person; or
(c) he believes on reasonable grounds is escaping from legal custody or aiding or abetting another person to escape from legal custody or avoiding apprehension by some person having authority to apprehend that person in the circumstances of the case.

Definition of 'finds committing' for the purposes of this section

Section 462 of the *Crimes Act 1958* (Vic) - Definition of finds committing

In this Act the expression finds committing and any derivative thereof extends to the case of a **person found doing any act or so behaving or conducting himself or in such circumstances that the person finding him believes on reasonable grounds that the person so found is guilty of an offence.**

WRITE: [The person] must find D committing an offence. Therefore, they must have found [the person] doing any act or so behaving or conducting himself or in such circumstances that [the person finding him] believes on reasonable grounds that the person so found is guilty of an offence (s462 CA).

The act of D [___] would likely give a reasonable person finding D reasonable believe that D was committing an offence - [despite not being caught in the act itself]

- Important to note that there is no need to catch D 'in the act'. There just needs to be need to be **reasonable grounds for believing** that D has committed an offence.

Policy: designed to discourage vigilante behavior

Exception to when the this principle is not allowed

Note: A member of the police force is not bound to take a person found committing an offence into custody, if he or she believes on reasonable grounds that proceedings can effectively be brought by summons or notice to appear: s 461 CA.

Level of force allowed

s 462A CA

The issue here is what level of force is permitted to prevent the commission of an indictable offence?

WRITE: A person may use such force not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence (s 462A CA).

Section 462A of the *Crimes Act 1958* (Vic)

Use of force to prevent the commission of an indictable offence

A person may use such force not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence.

- Just apply common sense to whether the level of force was proportionate to the level of threat.
- Keep in mind that the objective here refers to the particular reason of why you are arresting in the first place, under which subsection.

[go below to executing an arrest]

Introduction - Police/PSO

WRITE: OTF, [x] is a [Police Officer / Protective Services Officer] and may arrest without a warrant pursuant to s 459 if they believe on reasonable grounds that D has committed an indictable offence in Victoria (s459(1)(a)).

Legislative provision

S 459 - Powers of police officer or protective services officer to apprehend offenders

1. In addition to exercising any of the powers conferred by section 458 or by or under any other Act a police officer, or a protective services officer on duty at a designated place, may at any time without warrant apprehend any person—
 1. he believes on reasonable grounds has committed an indictable offence in Victoria (including any indictable offence which may be heard and determined summarily); or
 2. he believes on reasonable grounds has committed an offence elsewhere which if committed in Victoria would be an indictable offence against the law of Victoria (including any indictable offence which may be heard and determined summarily).
2. If a protective services officer arrests a person under subsection (1), the protective services officer must hand the person into the custody of a police officer as soon as practicable after the person is arrested.

(2A) A protective services officer may only exercise the power to apprehend without warrant under this section in relation to a person who is at, or in the vicinity of, a designated place.

3. In this section, designated place has the same meaning as it has in the Victoria Police Act 2013.

When can police/PSO arrest without warrant

Police or PSO may also arrest without warrant if they believe, on reasonable grounds, that:

- D has committed an IO in Victoria; or
- D has committed an offence elsewhere, which would be an IO in Victoria.

Must be an INDICTABLE OFFENCE.

- Eg. Theft, robbery, drug possession per CA

NOTE - The PSO must hand D into the custody of a police officer as soon as practicable after the person is arrested (s459(2)).

➤ Note: a member of the public is not authorised under this provision.

Difference between s 458 and s 459

The police are given a broader power under s 459 compared to what everyone (including the public) is given under s 458.

The requirement under s 458 was find someone committing in the present tense, whereas here it is 'has committed' which means the police can arrest you even if you committed the offence in the past.

- Eg. Fitting the description of someone they're trying to find who has committed an offence in the past
- S 459 is INDICTABLE ONLY vs 458 which is summary or indictable offence

PSO designated area

A PSO can only exercise these powers in relation to a person who is at, or in the vicinity of, a **designated place** (s459(2A)). This just generally means PSO's can only arrest in their proper areas, which is generally around train stations.

S459 - (2A) A protective services officer may only exercise the power to apprehend without warrant under this section in relation to a person who is at, or in the vicinity of, a designated place.

(3) In this section, designated place has the same meaning as it has in the Victoria Police Act 2013.

Level of force allowed

A person may use such force **not disproportionate to the objective** as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence (**s 462A CA**).

The issue here is what level of force is permitted to prevent the commission of an indictable offence?

Section 462A of the *Crimes Act 1958* (Vic)

Use of force to prevent the commission of an indictable offence

A person may use such force not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence.

- Just apply common sense to whether the level of force was proportionate to the level of threat.
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[go below to executing an arrest]

Arrest with a Warrant

Introduction

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Issuing a Warrant

WRITE: An application for a warrant to arrest in the first instance must be supported by evidence on oath or affirmation or by affidavit **s 61(2) Magistrates Court Act**

S61 Issue of warrant to arrest

(1) A warrant to arrest in the first instance may be issued—

...

(c) as authorised by any other Act.

(2) An application for a warrant to arrest in the first instance must be supported by evidence on oath or affirmation or by affidavit.

(3) An affidavit supporting an application for a warrant to arrest in the first instance may be a copy of an affidavit transmitted by facsimile machine or other means of electronic communication.

(5) A warrant to arrest other than in the first instance may be issued —

...

(d) as authorised by this or any other Act.

(6) A warrant to arrest other than in the first instance must include a statement of the reason for issuing the warrant.