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Drugs, the law and safer substance use

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Produced by Victoria Legal Aid

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For free information about the law and how we can help you:

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Disclaimer: The material in this publication is a general guide only. It is not legal advice. If you need to, please get legal advice about your own particular situation.

Changes to the law: The law changes all the time. To check for changes you can visit our website or call us.

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The background of the entire page is a bokeh effect of out-of-focus lights. There are several bright orange and yellow circular lights in the upper left, and two distinct purple circular lights in the lower center. The background is a mix of dark blue and black, with some lighter blue areas. An orange triangle is visible in the top right corner.

Victoria Legal Aid

Victoria Legal Aid is a government-funded agency set up to ensure that people who cannot afford to pay for a private lawyer can get help with their legal problems. We provide free information for all Victorians, family dispute resolution for disadvantaged families, provide lawyers on duty in most courts and tribunals in Victoria, and fund legal representation for people who meet our eligibility criteria. We help Victorian people with legal problems about criminal matters, family breakdown, child protection, family violence, child support, immigration, social security, mental health, discrimination, guardianship and administration, tenancy and debt.

ABOUT THIS BOOKLET

This booklet is a general guide to help you understand the law when it comes to drugs and dealing with the police. The booklet also includes information about safer substance use and what to do if someone overdoses.

For more information about police powers, you can also read our booklet *Police powers: your rights in Victoria* or visit the Victoria Legal Aid website.

Getting more help

This booklet gives general information, not legal advice. We have put the contact details of helpful organisations in the 'Where to get help' section on page 32.

Legal words

We have explained some words in 'What do these words mean?' on the next page. These words are also highlighted in **bold** the first time they appear in each section.

WHAT DO THESE WORDS MEAN?

charge – the offence that the police say you have committed

defence – a legal reason why a person is not guilty

evidence – information (documents or material) used by the court or tribunal to make a decision

Independent Person – an adult who must be with you during police questioning if you are under 18 and your parents or guardian cannot be there

Independent Third Person – a trained person who must be with you during police questioning if you have a cognitive impairment. They help you understand what is happening and what your rights are

offence – an action the law says is wrong (illegal). **See** also 'charge'

penalty – punishment for breaking the law

priors – any previous criminal record

reasonable – acting in a way that is appropriate (not excessive)

seize – when the police take items as evidence (from a home or car)

sentence – the punishment the court gives for the offence/s.

warrant – a court document saying what the police or sheriff can do, such as arrest someone or search property

ILLEGAL DRUGS AND OTHER SUBSTANCES

Illegal drugs include heroin, marijuana, ice, cocaine, ecstasy and other drugs.

Synthetic drugs

Synthetic drugs are also called new psychoactive substances.

Synthetic drugs produce the same effects that a particular illegal drug does but they are chemically different.

Many synthetic drugs are now illegal. The laws are updated as new types of these drugs are developed.

It is now illegal to supply, sell or advertise synthetic drugs.

Volatile substances and methylated spirits

Volatile substances include:

- adhesive cement
- cleaning agent
- gasoline
- glue
- lighter fluid
- nail polish remover
- plastic solvent
- any other volatile product derived from petroleum, paint thinner, lacquer thinner, aerosol propellant or anaesthetic gas.

It is against the law to sell a volatile substance or methylated spirits if the seller believes that the buyer will use the substance by drinking, inhaling or putting it into their body.

USING DRUGS

Charges

The police can **charge** you if they see you using or you admit to using:

- an illegal drug, or
- a drug you do not have a prescription for.

Using drugs includes smoking, inhaling fumes, injecting or consuming a drug.

Use of prescription drugs like methadone, steroids or benzodiazepines (like Valium) is okay if you have a prescription. The prescription must be up-to-date and made out to you. It is against the law to use someone else's prescription to get and use drugs. This includes takeaway methadone.

If you admit to injecting someone else with a drug, the police can charge you with 'introducing a drug into the body of another person'. If that person dies, you may be charged with a serious criminal **offence**.

Do not admit to using. Say 'No comment' until you speak with a lawyer.

Defences

Talk to a lawyer about possible **defences**. See 'Where to get help' on page 32.

Penalties

If a court finds you guilty of using drugs, you can be convicted and **sentenced** to up to one year in prison. However, for using cannabis the maximum **penalty** is a fine.

The penalty will depend on:

- your situation
- whether you have **priors**.

If you have not been in trouble before, the police or the magistrate might offer you a drug diversion. This is where you get some form of drug treatment and counselling. To get a drug diversion you have to admit to using.

For more information **see** 'Drug diversion' on page 24.



POSSESSION

Charges

The police can **charge** you with possession if you have a drug:

- on your body
- in your house
- in a car that you own or are driving.

Possession includes growing cannabis in or around your home.

Possession of prescription drugs like methadone, steroids or benzodiazepines is okay if you have a prescription. The prescription must be up-to-date and made out to you.

It is legal in Victoria to possess new or used syringes. Try not to carry drugs on you when you are carrying syringes.

Do not admit to possession. Say 'No comment' until you speak with a lawyer.

Testing

If the police charge you with possession but you do not agree that you had an illegal drug, the police can get the drug spot tested.

A spot test checks whether the drugs on you contain an illegal drug. This is a quick test. The police officer who charged you does this test.

Defences

At court, you may have a **defence** if you did not know that the drug was in your possession. For example, your housemate left a stash of drugs under their bed and you did not know about this.

You may also have a defence if the police **seized** a substance but it may not be an illegal drug.

If you think you have a defence or that you did not do anything wrong, say 'No comment' to the police and speak with a lawyer.

Penalties

If the court finds you guilty of possession, you can be convicted and **sentenced** to up to five years in prison. However, for possessing cannabis the maximum **penalty** is a fine.

The penalty will depend on:

- your situation
- whether you have **priors**.

If you have not been in trouble before, the police or the magistrate might offer you a drug diversion. This is where you will get some form of drug treatment and counselling.

For more information **see** 'Drug diversion' on page 24.

TRAFFICKING

Charges

The police can **charge** you with trafficking a drug if you are:

- selling or dealing a drug (this includes selling to a friend)
- buying drugs for someone else
- exchanging or agreeing to sell drugs, or providing drugs for sale
- selling or offering to sell a person a harmless substance that they believe is a drug.

Trafficking drugs to someone under 18 can attract bigger penalties than other trafficking **offences**.

If you tell the police that you have done any of the above things, they can charge you even if there is no other **evidence** of trafficking.

Do not admit to trafficking. Say 'No comment' until you speak with a lawyer.

Quantities

The trafficable quantities are:

- amphetamine, three grams
- cannabis, 250 grams or 10 plants
- cocaine, three grams
- ecstasy, three grams
- heroin, three grams
- methylamphetamine, three grams
- MDMA, three grams.

These quantities include the drug plus any mixer. These trafficable quantities can change if the law changes.

If you have less than a trafficable quantity of a drug, the police could still charge you with possession, or with trafficking if you were selling it.

Testing

If the police charge you with trafficking but you do not agree that you had the drug they say you did, the police can get the item tested. See 'Testing' on page 6.

Defences

If you agree that you possessed an illegal drug, but you disagree that you trafficked it, the police need evidence to support their charge of trafficking, such as:

- the weight of the drug
- any equipment used for measuring, cutting and distributing drugs
- if you had large amounts of money on you and you were unable to explain this
- if you had relevant contacts and phone calls or text messages on your phone.

Bail

If you are charged with trafficking drugs it can be harder to get bail than with other criminal charges. You do not have an automatic right to bail. You must prove there is a good reason ('show compelling reason') why you should be let out on bail.

Penalties

Trafficking is a very serious offence. If the court finds you guilty of trafficking, penalties can be very harsh. You can go to jail for trafficking drugs, even if it is your first offence.

Your **penalty** will depend on:

- your situation
- the amount of drugs trafficked
- whether you have trafficked before, how many times and the reasons why it happened this time. For example, you are dependent on drugs and need the money to keep using
- any **priors** you may have, especially if they are also drug related.



BEING HASSED

In public places

The police can direct you to move on from a public place if they suspect you are:

- disturbing the peace (or likely to do so)
- endangering the safety of another person (or likely to do so)
- likely to cause injury or damage to property.

Police may decide that you have to stay away from a public place for up to 24 hours. If you refuse to move on or stay away, police can give you an on-the-spot fine or arrest you.

Police can ban you from a public place for up to 12 months. If you enter a banned place, you could be jailed for up to two years.

Around the Needle and Syringe Program

Try not to carry drugs with you when you are visiting a Needle and Syringe Program (NSP).

Police cannot arrest you just because you are going to, or have been to, an NSP. They can arrest you in or near an NSP if they believe you have committed an **offence**.

Police do not have to stay away from an NSP. The relationship between the NSP and the local police station can change depending on what area you are in.

If the police are hassling you for coming in and out of an NSP, report it to the NSP worker.

Around the Medically Supervised Injecting Room

The Medically Supervised Injecting Room (MSIR) is a safe place for adults to inject drugs. The MSIR also helps drug users get medical care, counselling and other support.

Doctors, nurses and drug counsellors work at the MSIR.

At the MSIR police cannot **charge** you for using or possessing drugs as long as you have less than the trafficable amount on you (**see** page 9). The police can only arrest or search you near the MSIR if they believe you have committed an offence.

Complaints

You have a right to complain if you think a police officer treated you unfairly or may have done something illegal or unethical. For example, if they take money or drugs from you without giving you a receipt. You can ask the police officer for their name, rank and station.

You can still report a police officer if you don't want to give your name.

You can make a complaint at your local police station or you can email complaints@police.vic.gov.au. Your complaint will be sent to the Police Conduct Unit. You can also contact the Independent Broad-based Anti-Corruption Commission. **See** 'Where to get help' on page 32.

If you have been hurt by a police officer, see a doctor as soon as you can. Take photos of any bruises or injuries. It is very important you get this **evidence**. Photos from a personal camera might not be good enough. Ask your doctor about specialist doctors who can take high quality photos.

Get advice from a lawyer. **See** 'Where to get help' on page 32.

NAME AND ADDRESS

A police officer can only ask for your name and address if they reasonably believe:

- you have committed, or are about to commit, a crime
- you know about a crime.

Even if you do not agree with them, it is best to give the police officer your name and address.

You have the right to ask for the police officer's name, rank, station and what they suspect you did.

You must give your name and address when asked and you are:

- driving a motor vehicle
- on public transport or public transport property
- in a hotel or licensed premises.

In these cases, it is an **offence** to refuse to give your name and address or to lie.

SEARCHES

Warrants

Generally, a police officer needs a **warrant** to search you. They should tell you why they are searching you. A police officer can search you without a warrant if they:

- **reasonably** believe that they will find an illegal drug on you or in your car when in a public place
- believe **evidence** (like drugs) will be destroyed if they do not do a search.

Body searches

A police officer may want to check your arm for marks as evidence of using drugs. You do not have to show a police officer your arms but it may be simpler to do this and complain or report them later.

Pat-down search

This is when a police officer runs their hands along the outside of your clothing.

The police officer who does the search must:

- be the same sex as you (unless that is not reasonably possible)
- write a record of the search
- give you a receipt if they **seize** any of your things. For example, drugs.

Strip search

This is when a police officer removes your clothing and searches you. An officer will usually do a strip search when they are looking for something they could not find in a pat-down search.

A police officer can only do a strip search in a private place, usually at a police station.

The police officer must also make sure you have:

- a parent, guardian or **Independent Person** with you during the search if you are under 18
- an **Independent Third Person** with you if you are cognitively impaired.

The police do not have to do this in urgent or serious situations where they cannot get one of these people to be with you.

Searching your phone

A police officer can search you and seize your phone without a warrant if:

- you are in a public place, and
- they reasonably believe you have used it to sell drugs or commit a crime.

The police may want to search your phone to see if you have known dealers in your contacts or to see what phone calls or texts you have been making and getting. This could be used as evidence that you or someone else has committed a drug **offence**.

If your phone is protected by a passcode, you do not have to give police the code. The police will need to get a warrant from the Magistrates' Court for this. If you refuse after the police get a warrant you could be convicted of a serious offence.

Get advice from a lawyer if the police want to search your phone. See 'Where to get help' on page 32.

ARREST

Getting arrested

A police officer can arrest you when:

- they suspect you have broken a law, or
- they have a warrant.

If you are arrested, you are in custody and are not free to leave. You may be taken to a police station.

Letting someone know you have been arrested

You have the right to make two phone calls:

- one to a lawyer
- one to a friend or relative.

The police officer must give you a private space to use the phone. A private space is where the police officer cannot hear you.

They do not have to let you phone a friend or relative if they believe that during this time:

- someone else involved in the crime might get away
- **evidence** may be lost or tampered with
- other people may be in danger.

Being kept in custody

The police must **charge** you as soon as they can. The police can only keep you in custody for a **reasonable** time. A reasonable time depends on how serious the **offence** is. It also depends on how long it takes to interview you.

If you believe you have been held in custody for too long you can:

- ask the police officer if they are going to charge you or release you
- ask to phone a lawyer (even if you have already)
- complain later.

Being interviewed

The police may interview you as a suspect about the drug offence they have arrested you for. The police will record the interview.

Before any interview begins, the police officer must let you phone a lawyer from a private space.

Do not say anything to the police until you have spoken with a lawyer. If you do not know a lawyer, ask the police officer to help you find one. They may know the numbers of local lawyers or they can give you the Yellow Pages. Ring around until you find a lawyer who will give legal advice on the phone.

Under 18s – The police officer must not interview you unless your parent or a guardian is there. If this person cannot be there, the police officer must get an **Independent Person** to be in the room.

For people with a cognitive impairment – the police must get an **Independent Third Person** to be with you in an interview.

See ‘Where to get help’ on page 32.

Sometimes the police officer does not have to wait for someone to be with you. For example, if someone else involved in the crime might get away or a delay may cause danger to other people.

**Do not answer any questions until you speak to a lawyer.
Say ‘No comment’ while you wait.**

Medication

If you are on a prescribed medication and you are due to have your usual dose at the time of the interview, you should ask to have your medication before the interview starts. However, if you get arrested on a Friday night or on the weekend, it may be hard to get your medicine. Your pharmacist or doctor may not be at work.

While you are in custody, you can see a doctor. Ask the police officer to organise this. You can also get your prescription medicine. This includes methadone and buprenorphine (bupe).

You can complain later if the police do not let you see or talk to a doctor, or get your medicine.

Having your things taken

If the police take anything from you while you are in custody, they need to give you a receipt for it and record what they took. They should return your things when they release you from custody.

The police will usually keep things that they **seize** as part of their investigation. For example, **evidence** from your house or car. After your case ends the police should return your things. They will not do this if the police are applying to the court for the property not to be returned to you at all.

If the police seized an item that you need back before your case is over, you can apply to the court to have it returned.

If the police seized your things but they have not charged you, you can also apply to the court to have your things returned.

There are no time limits for how long the police can keep your things. The court will consider what is reasonable in each case.



IDENTIFICATION

Fingerprints

This is when someone takes prints of your fingers, palms, toes or soles of feet. In most cases you have to let the police officer take your fingerprints.

The police officer must tell you:

- why they are taking your fingerprints
- the **offence** they believe you committed
- that the prints can be used in **evidence** against you.

If you refuse to co-operate, the police officer can use **reasonable** force to get your fingerprints. If the police do not **charge** you within six months, or the court finds you not guilty, the police must destroy your fingerprints.

Under 18s

If you are aged 10 to 14, the police officer must get a parent or guardian to be with you when asking for your fingerprints. You and the parent or guardian must agree to the fingerprints before the police officer takes them.

If you are aged 15 to 17, the police officer must get a parent, guardian or **Independent Person** to be there when the police officer asks to take your fingerprints. **See** 'Where to get help' on page 32.

Photos

There are no laws to stop a police officer taking a photo of you in public. If this happens, try to get the name, rank and station of the police officer. You can report them or complain later.

There are also no laws to stop you from taking a photo of a police officer. However, the police officer may say that you taking photos of them is getting in their way. They might ask you to stop and say that you are 'hindering' them in their duties. Hindering police is an offence.

Identification parades

An identification parade is where police put you in a line-up of people. They ask a witness to look at the line-up to see if they can pick you out as the person who committed the offence.

The police cannot force you to take part in an identification parade. Say 'No' until you get legal advice.



BAIL

Bail means the police release you from custody if you promise to go to court later to face the **charges** against you.

You may have to agree to bail conditions, such as reporting to the police. A lawyer can help you work out fair conditions. For example, an unfair bail condition would be that you cannot go to a suburb where your pharmacy is.

How do I get bail?

Police can give you bail at the police station. You can also ask for bail. Police can do one of two things:

- take you to court within a **reasonable** time. The magistrate will decide if you get bail
- get a bail justice to come to the station if the court is closed. For example, if it is on a weekend. If the bail justice does not give you bail, you stay in custody until the police can take you to court.

If you are given bail, you must follow any conditions until you go to court. If you do not show up at court, the magistrate can issue a **warrant** for the police to arrest you. The police may charge you with failure to appear.

Can I get help?

Yes. You can get help at court. Ask to see a lawyer who can give you advice about your chances of getting bail. They may apply for bail or tell you if it is better to apply for bail yourself.



DRUG DIVERSION

The drug diversion program is a way to keep your matter out of the court system. It is usually for people who have no court record for drug **offences**.

In this program, you may need to do things like get drug counselling.

If you stick to the program, the police will not **charge** you and you will not have a criminal record for a use or possession drug offence. If you do not stick to the program, the police will charge you and you will go to court.

Getting a drug diversion

To get a drug diversion you have to admit that you used or possessed drugs. Ask your lawyer about this. They can advise you whether you should admit to the offence.

You can ask the police officer for drug diversion at the start of the police interview.

It is up to the police officer to offer you a drug diversion. They are more likely to do this if you have been co-operative and if you do not have previous charges for drugs or other crimes.

If the police do not offer you drug diversion, you can still talk to a lawyer about this. You might be able to get drug diversion through the court.

PROTECTIVE SERVICES OFFICERS (PSOs)

Protective Services Officers (PSOs) work in and around train stations, and at places like courts. They have similar powers to police officers.

PSOs can:

- ask for your name and address
- do searches
- tell you to leave the area
- arrest people at or around train stations for public transport **offences**.

PSOs can use **reasonable** force when doing their job.

If a PSO wants to talk with you, stay calm and go along with it. Complain later if you were treated unfairly.

ASSAULTS ON EMERGENCY WORKERS

Emergency workers include:

- police
- PSOs
- ambulance paramedics
- hospital staff
- firefighters.

It is against the law to assault, resist or obstruct an emergency worker on duty. If you cause injury to an emergency worker, you will be jailed.



OVERDOSE

If you suspect someone has overdosed, call 000 immediately.

It is important to tell the ambulance paramedic what drug that person took, if you know it. A paramedic cares most about making sure everyone is safe. Say 'No comment' to police.

Preventing overdose

Get naloxone: naloxone temporarily reverses the effects of opioid overdose. It can be prescribed by a doctor or is available directly from a pharmacist. **Always carry it with you.**

Try not to mix drugs: taking more than one drug can increase the risk of overdose.

Try a small amount first: if you have taken a break from using drugs for even a day or two, your tolerance can drop quickly.

Learn about half-life: this is the time it takes for the strength of a drug in your body to reduce by half. Some drugs like Valium have a long half-life and could cause you to overdose if you add another drug. **Think about what you have used and when.**

Be careful with pharmaceuticals: some are a lot stronger than illegal drugs. Try to use one drug at a time.

Try not to use alone or in an unfamiliar place: you are more likely to die of an overdose if no one knows where you are. Tell someone if you are about to use.

Other ways to use: injecting drugs increases your risk of overdose because less is needed to get the same effect. Consider smoking, snorting or shafting (in the rectum).

Look after your health: it is harder for your body to deal with drugs if you have problems with your heart, lungs, kidneys or liver, and especially if you have overdosed before.

Keep drugs out of the way of children: if a child accidentally takes pharmaceuticals or illegal opioids it can lead to serious harm or death. Make sure all drugs and medicines are kept away (for example, in an out-of-reach cupboard, drawer, cash box or safe).

Signs a person may have overdosed

- They are unresponsive
- Their body is limp and they have a heavy 'nod' of the head
- They are snoring or making gurgling noises
- Their breath is irregular, shallow or they are not breathing at all
- They have vomited
- If pale-skinned, their lips have turned blue
- If dark-skinned, they have a grey or pale look.

What to do if you think someone has overdosed

Follow DRSABCD:

- Check the area for **D**anger or hazards.
- Try to get a **R**esponse from the person by calling their name and shaking their shoulders.
- If no response, **S**end for help. Dial **000** and ask for an ambulance.
- Open their mouth and clear their **A**irway.
- **If you have naloxone, use it on the person and tell the paramedics you have used it.**
- Are they **B**reathing normally?
 - If yes, put them in the recovery position (see diagram on next page).
 - If not, start **C**PR. Give 30 chest compressions followed by two breaths. If you are not comfortable with breaths, give chest compressions only (100 per minute).
- **If the person does not start to breathe after two to three minutes (four minutes if pregnant) give a second dose of naloxone.**
- If there is no response, apply a **D**efibrillator as soon as available.
- Continue to give CPR until the person is responsive or breathing normally.

How to put someone in the recovery position



WHERE TO GET HELP

Victoria Legal Aid

Legal Help

For free information about the law and how we can help you:

- visit our website www.legalaid.vic.gov.au
- call 1300 792 387, Monday to Friday, 8 am to 6 pm, excluding public holidays.

Do you need help calling us?



Translating and Interpreting Service

Tel: 131 450



National Relay Service

TTY users: Call 133 677

Speak and Listen users: Call 1300 555 727

Internet relay users: www.relayservice.gov.au

Local offices

We have offices all over Victoria. Our offices are open Monday to Friday, 8.45 am to 5.15 pm.

See the back cover for office locations.

All offices are accessible to people with a disability.

Other services

Direct Line

Confidential and free drug counselling and referral

Tel: 1800 888 236, free call seven days a week, 24 hours

Website: www.directline.org.au

Harm Reduction Victoria

Peer-based organisation for past and current drug users and their family and friends

Tel: (03) 9329 1500

Website: www.hrvic.org.au

Independent Broad-based Anti-corruption Commission (IBAC)

IBAC investigates police misconduct. You can fill out a secure complaint form on their website or ask them to mail you a form.

IBAC can take four to six weeks to look into your complaint.

Tel: 1300 735 135

Website: www.ibac.vic.gov.au

Lifeline

Crisis support and suicide prevention

Tel: 131 114

Website: www.lifeline.org.au

Men's Referral Service

Referral and assistance to men who have experienced family violence

Tel: 1300 766 491

Website: www.ntv.org.au

Office of the Public Advocate

Call for an **Independent Third Person** in a police interview for people with a cognitive impairment.

Tel: 1300 309 337, 24-hour service

TTY: 1300 305 612

Police Conduct Unit

If you feel you have been treated unfairly by the police you can make a complaint

Tel: 1300 363 101

Email: complaints@police.vic.gov.au

Victorian Aboriginal Legal Service

Legal advice and representation for Aboriginal and Torres Strait Islander peoples

Tel: 1800 064 865

Website: www.vals.org.au

Women's Legal Service Victoria

Free and confidential legal information, advice, representation and referral to women experiencing family violence

Tel: 1800 133 302

Website: www.womenslegal.org.au

Youth Referral and Independent Persons Program (YRIPP)

Call for an **Independent Person** in a police interview for people under 18.

Tel: (03) 9340 3700

Useful Victoria Legal Aid resources

To order publications

We have free booklets about the law in English and other languages. Visit www.legalaid.vic.gov.au to order or download booklets. Call (03) 9269 0234 and ask for Publications to find out more.

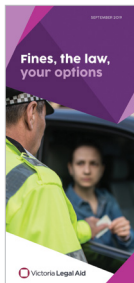
Our public law library

Open Monday to Friday, 9 am to 5 pm
570 Bourke Street, Melbourne



Police powers: your rights in Victoria

This booklet is a general guide to help you deal with police and Protective Services Officers.



Fines: the law, your options

This booklet is for anyone who has been fined in Victoria. It gives you options for dealing with your fines.

Watch me on **YouTube**

Watch our community legal education videos.

Drugs, the law and safer substance use

Victoria Legal Aid

For free information about the law and how we can help you, visit our website www.legalaid.vic.gov.au or call Legal Help on 1300 792 387.

For business queries, call (03) 9269 0234

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Bairnsdale

Ballarat

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