

Police Powers & You

This document is also available for anyone to print out from:

<https://www.cirnow.com.au/your-rights-and-the-police/>

Print out and always keep a copy of the *Police Powers & You*, and *Photographing or Filming Police* documents with you in your car. Whenever you are stopped by the police when you are traveling or driving, your first step should always be to wind up all windows except for a small space on the driver's side so that you can talk to the police and hand documents through it.

Lock your car doors. The police have no right to demand that you wind down your windows, open your car door, or conduct a search of your car without your permission. This document explains your rights and the laws the police must act under.

Print out the information below this line:

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The Commonwealth of Australia Constitution Act 1901, Section 109 states... ***When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.***

Common Law and the Commonwealth of Australia Act 1901 Constitution guarantee the right of citizens to go about their lawful business unhindered by the police *or anyone else* as long as you are not suspected of committing a crime. Common Law is the highest law in the land and therefore all State laws must be consistent with Common Law.

The State Acts that the police rely on to justify stopping drivers for a Random Breath Test (RBT) are inconsistent with the law of the Commonwealth and Common law, and that makes them invalid.

Being pulled over for a Random Breath Test does not constitute a crime. Therefore, the police have no right to pull you over without due cause, or to make any demands on a citizen, as confirmed in these court decisions. We repeat: The following judgments make it very clear that the police do not have the power or authority to stop you for any reason unless they suspect you have committed a crime.

1. Regina v Banner (1970) VR 240 at p 249 - the Full Bench of the Northern Territory Supreme Court

In this judgement, the NT Supreme Court handed down a ruling that, "*(Police officers) have no power whatever to arrest or detain a citizen for the purpose of questioning him or of facilitating their investigations. It matters not at all whether the questioning or the investigation is for the purpose of enabling them to ascertain whether he is the person guilty of a crime known to have been committed or is for the purpose of enabling them to discover whether a crime has or has not been committed. If the police do so act in*

purported exercise of such a power, their conduct is not only destructive of civil liberties but it is unlawful."

2. Andrew Hamilton Vs Director of Public Prosecutions - Justice Stephen Kaye - Melbourne Supreme Court ruling - 25 November 2011

"It is an ancient principle of the Common Law that a person not under arrest has no obligation to stop for police or answer their questions. And there is no statute that removes that right. The conferring of such a power on a police officer would be a substantial detraction from the fundamental freedoms which have been guaranteed to the citizen by the Common Law for centuries."

3. Magistrate Duncan Reynolds - Melbourne - July 2013

"There is no common law power vested in police giving them the unfettered right to stop or detain a person and seek identification details. Nor, is s.59 of the (Road Safety) Act a statutory source of such power."

NOTE: None of the above precedents have been overturned on appeal or in the High Court. They still stand today and you can point out to the police that they are acting unlawfully if they continue to detain you without due cause to believe you have committed a crime.

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You should also know what the Criminal Code states so that you can inform the police if they are acting illegally.

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OUR RIGHTS UNDER THE LAW

We, the People of the Commonwealth of Australia, have the right to move about freely without let or hindrance of anyone... including the police. If you are told to "move on", stop talking public, stop for an RBT, or any other reason when you have not committed a crime, you have the right to tell them to bugger off!

CRIMINAL CODE 1899 - SECT 546

Arrest without warrant generally

http://www5.austlii.edu.au/au/legis/qld/consol_act/cc189994/s546.html

546 ARREST WITHOUT WARRANT GENERALLY

When an offence is such that the offender may be arrested without warrant generally—

(b) it is lawful for any person who is called upon to assist a police officer in the arrest

of a person suspected of having committed the offence, and who knows that the person calling upon the person to assist is a police officer, to assist the officer, unless the person knows that there is no reasonable ground for the suspicion; and
(c) it is lawful for any person who finds another committing the offence to arrest the other person without warrant; and
(d) if the offence has been actually committed—it is lawful for any person who believes on reasonable ground that another person has committed the offence to arrest that person without warrant, whether that other person has committed the offence or not; and
(e) it is lawful for any person who finds another by night, under such circumstances as to afford reasonable grounds for believing that the other person is committing the offence, and who does in fact so believe, to arrest the other person without warrant.

This is the law on Preventing a Breach of the Peace

http://www5.austlii.edu.au/au/legis/qld/consol_act/cc189994/s260.html

CRIMINAL CODE 1899 - SECT 260

260 PREVENTING A BREACH OF THE PEACE

It is lawful for any person who witnesses a breach of the peace to interfere to prevent the continuance or renewal of it, and to use such force as is reasonably necessary for such prevention and is reasonably proportioned to the danger to be apprehended from such continuance or renewal, and to detain any person who is committing or who is about to join in or to renew the breach of the peace for such time as may be reasonably necessary in order to give the person into the custody of a police officer.

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The rest of this document is for your information so that you know your rights when dealing with the police.

Photographing or Filming Police

Do Australians have the right to record police officers while they are doing their jobs?

Yes, private citizens do have the legal right to film the police if it is in a public place and as long as it does not interfere with the performance of the police officer's duties. What many people do not realize is that they have the right to photograph the police even when the police tell them not to record them.

Intentional interference by the police of peaceful recording such as blocking the camera or

demanding that someone stop videotaping constitutes censorship.

However, police could arrest someone through the **Law Enforcement (Powers and Responsibilities) Act 2002** for such misdemeanours as obstruction type criminal offences or disorderly conduct.

In the case of **“Move Along”** (see: **The Police Powers and Responsibilities Act 2000 (Qld)**) police officers can tell you to move along if “they believe on reasonable grounds that you are:

- obstructing another person
- obstructing traffic
- harassing or intimidating another person or persons
- causing, or likely to cause, fear to another person or persons.”

Recording Police in Public is a Citizen’s Right

Surveillance Devices Act 2007 - Section 7 - Prohibition on installation, use and maintenance of listening devices

(1) A person must not knowingly install, use or cause to be used or maintain a listening device:

- (a) To overhear, record, monitor or listen to a private conversation to which the person is not a party, or
- (b) To record a private conversation to which the person is a party

ANALYSIS of 1(a)	The person recording is a party to the conversation.
ANALYSIS of 1(b)	A conversation on the roadside between a person and a policeman is not a private conversation.
CONCLUSION	A person video recording an encounter between himself and police is doing so legally.

(3) Subsection (1) (b) does not apply to the use of a listening device by a party to a private conversation if:

- a. All of the principal parties to the conversation consent, expressly or impliedly, to the listening device being so used, or
- b. A principal party to the conversation consents to the listening device being so used and the recording of the conversation:
 - i. Is reasonably necessary for the protection of the lawful interests of that principal party, or
 - ii. Is not made for the purpose of communicating or publishing the conversation,

or a report of the conversation, to persons who are not parties to the conversation

ANALYSIS of 3	A conversation on the roadside between a person and a policeman is not a private conversation.
ANALYSIS of 3(b)(i)	A recording made to protect the lawful interests of the person recording is legal.
ANALYSIS of 3(b)(ii)	Such a conversation is not private, therefore can be published.
CONCLUSION	A person recording an encounter between himself and police is doing so legally. That person is also legally entitled to publish the recording to the public, such as on Youtube or other websites.

In other words, when the police pull you over for an RBT they are holding a conversation with you in a public place. Therefore, under the law you are legally entitled to film the conversation.

News media do this every day, recording people and events without requiring the consent of those being recorded. The media is not subject to any special dispensation by law to do this,

Therefore, members of the public have the same rights to record their encounters with police.

Any policeman who tries to prevent a member of the public doing this is acting illegally and can and should be prosecuted.