

The Rights of the People when dealing with the Police

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.