

POLICE POWERS

"(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."

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

"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."

Justice Stephen Kaye - Melbourne Supreme Court ruling - 25 November 2011

"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."

Magistrate Duncan Reynolds - Melbourne - July 2013

NOTE: None of the above precedents have been overturned on appeal or in the High Court

RECORDING IN PUBLIC

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.

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.

THE RIGHT TO REFUSE TO INCRIMINATE ONESELF

The Australian Government Law Reform Commission states the following:

15.89 The common law privilege against self-incrimination entitles a person to refuse to answer any question, or produce any document, if the answer or the production would tend to incriminate that person.[123] Although broadly referred to as the privilege against self-incrimination, the concept encompasses three distinct privileges: a privilege against self-incrimination in criminal matters; a privilege against self-exposure to a civil or administrative penalty (including any monetary penalty which might be imposed by a court or an administrative authority, but excluding private civil proceedings for damages); and a privilege against self-exposure to the forfeiture of an existing right (which is less commonly invoked).

There are many more references to an Australian citizen's right to not incriminate himself or produce any document that may tend to incriminate him and this is where motorists should stand up for their rights in this regard.

ANALYSIS

As proven by the precedents set by various judges, common law supersedes statutory law. Therefore, whether there are statutory laws compelling a person to submit to providing anything that may tend to incriminate him, the fact remains that a person has the legal right to not provide any material, whether verbal or tangible, if the production of that material would tend to incriminate that person.

That material can be any or all of the following:

- Verbal statements
- Documents
- Data such as computer files
- Breath alcohol samples
- Blood alcohol samples
- DNA samples

CONCLUSION

No person should ever succumb to any demand to produce anything that may tend to incriminate him, no matter what police or other officials say or threaten. Every citizen has the common law right to refuse to incriminate himself in any way.

Obviously any attempt to coerce or forcibly take any material from a person against his will that may tend to incriminate him should not only make that material completely inadmissible as evidence in any prosecution, but will possibly render the person who has coercively or forcibly obtained that material to prosecution for violating a person's common law rights.