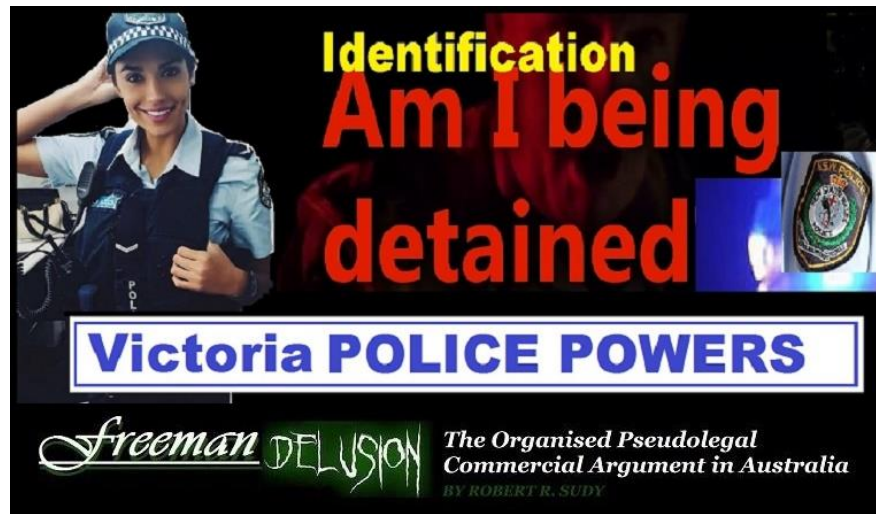


ID: Police Powers in Victoria



Justice Stephen Kaye

A common OPCA argument in Victoria is that police have no power to ask for identification. The argument seems to be based around [DPP v Hamilton \[2011\] VSC 598](#) where the Supreme Court ruled that police have no unfettered right to stop a person arbitrarily.

One often sees this case erroneously cited online in the following form:

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."

Firstly, it must be pointed out that first part of the passage above attributed to Kaye J. does not appear in the case at all, and the passage beginning with "The conferring of such a power ..." (at 36) is paraphrased:

"In effect, Mr Gyorffy's submissions were based on the implication, from s 464(1)(c), and from other provisions in subdivision 30A, of a power to detain a suspect for questioning. The conferring of such a power, on a police officer, would be a substantial, and indeed a radical, detraction from the fundamental freedoms which have been guaranteed to the citizen by the common law for centuries. As a matter of first principle, a court would not construe a statute as having the effect contended for by Mr Gyorffy, unless such an effect, at the very least, could be demonstrated to be the necessary implication of the provisions of the statute. In the present instance, Mr Gyorffy has not demonstrated that the implied conferral of such a radical power is a necessary implication from the provisions of Division 30A."

In the case, Leading Senior Constable Hemingway was on patrol in the Melbourne CBD, and was flagged down by an employee of Taco Bill. The employee informed Hemingway that two men had left the restaurant without paying, and indicated one of them was Hamilton. When Hemingway approached Hamilton, he fled on foot. Hemingway pursued Hamilton in his police car and finally arrested and charged him with resisting arrest.

The court was asked if police had a right to stop a person on a mere suspicion. The case circulated around the common law powers of arrest. A common law arrest requires a belief an offense had been committed, informing the person they are under arrest, why they are under arrest, physical contact and the person understanding why they are under arrest: (see eg [George v Rockett \(1990\) 170 CLR 104](#); [Collins v Wilcock \[1984\] 1 WLR 1172](#))

Even though Hemingway had been given indication that Hamilton may have committed an offense, only one element of the 5 needed to complete an arrest were fulfilled before the chase began.

The Magistrate struck the charge out for three reasons:

- The arrest occurred after the chase had finished, not before it started. He cannot have been resisting arrest if the arrest had not been completed in the first place.
- Police were relying on information from the Taco Bill employee and not their own investigation, this does not satisfy 'belief'.
- While a person *on foot* has a moral obligation to stop when asked (and not under arrest), they do not have a legal obligation.

OPCA theorists argue this case provides a blanket immunity from being stopped by police for identification, even when driving, but miss two crucial elements:

Hamilton was on foot, not in a car, and Police didn't have sufficient grounds for 'belief'.

<https://freemandelusion.com/wp-content/uploads/2018/07/dpp-v-hamilton-2011-vsc-598.pdf>

Magistrate Duncan Reynolds

A similar argument in Victoria centres around *Kaba v DPP*, in which the magistrate ruled that police do not have an unfettered right to stop a vehicle. One often sees this case erroneously cited online in the following form:

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."

While this is true to a certain extent, OPCA theorists seem to disregard the fact that Kaba was not the driver, and also that the decision was overturned on appeal regarding [section 59\(1\) of the Road Safety Act](#). As affirmed in the Victorian Supreme Court decision of [DPP v Kaba \[2014\] VSC 52](#) (at 486):

"For the reasons given in this judgment, the ruling of the magistrate will be quashed because his Honour committed an error of law upon the face of the record in relation to the interpretation of s 59(1) of the Road Safety Act. Contrary to his Honour's interpretation, police do have a power of random stop and check under that provision."

<https://freemandelusion.com/wp-content/uploads/2018/07/dpp-v-kaba-2014-vsc-52.pdf>

Where Police can stop a person and/or ask for ID.

Crimes Act 1958 (Vic) [section 456AA](#): Police may request ID of people: Believed to have committed an offense. Believed to be about to commit an offense. Believed to know something about an *indictable* offense (serious offense).

Note: 'Belief' is an 'assentation of mind' and different to 'suspicion': See [George v Rockett, Slaveski v State of Victoria \[2010\] VSC 441](#). An indictable offense is something like burglary or murder, not a traffic offense.

Road Safety Act 1986 (Vic) [section 59 \(1\)](#): A person must pull over when signaled by police. This includes a PSO in their designated area. They must provide a name and address when asked.

Note: This is 'name AND address', not 'driver's licence'. You do not have to have your driver's licence on you if you're over 26 and not on your L's or P's (See [section 19\(8\)](#)), but need to provide your name and address in some way. This can be your rego number if you are driving your own car.

Control of Weapons Act (Vic) [section 10G](#): Police can stop and search anyone in a "designated search area" without a warrant.

Police power to arrest

Road Safety Act 1986 (Vic) [section 76](#): Police may arrest a person for driving offense *if* they refuse to give a name AND address, or there is reason to believe they have given false information.

Crimes Act 1958 (Vic) [section 458](#): Any person may arrest any other person found committing any offense, where necessary. This does mean literally *any* person. You do not have to be a police officer to arrest someone, but you do have to *find* a person committing an offense, not suspect they might have.

Crimes Act 1958 (Vic) [section 459](#): A police officer or PSO may apprehend any person they *believe* has committed an indictable offense.

Bail Act 1977 (Vic) [section 24](#): Police may arrest person breaching, or likely to breach, bail conditions.

Family Violence Protection Act 2008 (Vic) [section 38](#): Police may arrest a person contravening an intervention order.

Can police stop a person at any time and ask for ID?

Generally speaking NO. Unless you are driving a car, in a designated search area, believed to have committed an offense or know something about a serious offense police have no legal grounds to ask for ID. However, this is not a blanket protection and does not prevent police from pulling you over. Driving a car is a potentially dangerous task. This is why it is regulated; cars are big metal things full of explosive liquid traveling at speed, it's a good idea to check if the person is allowed to do it.



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