

# Show me the Proclamation Certificate!

In 2017, an extremely patient Queensland police officer was praised online for his tact, when dealing with [Christopher James David Summers](#), a man who insisted he could not legally be breathalysed until he was shown a 'proclamation certificate' signed by the Queen.

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## 'Has the Queen enacted it?': Queensland driver tests cop's patience, insists breath tests are illegal

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An extremely patient Queensland police officer has been praised online for his tact, when dealing with a man who insisted he could not legally be breathalysed until he was shown a 'proclamation certificate' signed by the Queen.

The driver recorded his tense conversation with the officer, the clip has since received millions of views online.

The conversation goes for about 10 minutes, and shows the driver testing the police officer's patience by demanding to know if he was under arrest while repeatedly refusing to blow into the breathalyser.

"You can be under arrest if you want," the officer informs the man, while explaining that drivers are legally required to provide samples for road side breath tests.



The officer informs the man the Transport Operations (Road Use Management) Act 1995 requires him to provide a breath sample. Photo: Facebook/Brett White

"Has it been through the upper house, the lower house, and she's (the Queen) enacted it?" The driver demands to know.

Queensland has a unicameral parliamentary system, meaning it only has one house. The Queen's representative, the governor, must sign off legislation passed in Queensland.

Eventually the officer appears to give up, but hinted that it may not be the end of the matter.

"We'll be seeing later on, Mr Summer," he said, after the driver refused to tell the police officer his full name, insisting: "I am a man and I'm called many things".

The officer kept his promise and the 33-year-old Sunshine Coast man was ordered to appear in a Noosa Court next month after police tracked him down four days later.

A police spokesman said the man, from Pomona, would be asked to answer to charges over his failure to provide a breath sample when he was stopped on Elm Street, Cooroy, on November 10.

He has been ordered to appear in court on December 13.

Refusing a roadside breath test in Queensland is punishable by 40 demerit points, a fine of \$4000 or six months in jail.

The exchange bears the hallmarks of the 'sovereign citizens' movement, a fringe political belief system which has been gathering pace around the world in recent years, and causing headaches for legal officers of all stripes.

Clips of people denying police authority have become increasingly popular online and frequently feature questions such as "Am I being detained" or "Am I under arrest" as police conduct routine duties.

Sovereign citizens are also known to refer to themselves as "free men on the land", and have taken particular offense at the world's traffic police, who they believe illegally impede their rights to travel freely.



Frustrated but unshaken, the officer tells the driver

Many supporters believe governments to be illegal conspiracies that use their citizens for financial leverage.

Last year, counter-terrorism police in Australia said they had identified about 300 sovereign citizens, with a confidential report uncovered by the ABC, suggesting police considered the movement a potential security risk.

The latest video was uploaded to Facebook by a user called Brett White, who told readers he did not film the conversation but had found it on another page.

It has been seen almost three million times since Monday.

The police officer was under no obligation to provide any evidence of a proclamation certificate, in fact neither does a court, or a respondent in a proceeding. The same exists regarding seals and signatures, and the Act as it appears in the Government Gazette.

### Judicial Notice

[Section 143 of the Evidence Act 1995](#) (Cth) provides:

*(1) Proof is not required about the provisions and coming into operation (in whole or in part) of:*

- (a) an Act, a State Act, an Act or Ordinance of a Territory or an Imperial Act in force in Australia; or*
- (b) a regulation, rule or by-law made, or purporting to be made, under such an Act or Ordinance; or*
- (c) a Proclamation or order of the Governor-General, the Governor of a State or the Administrator or Executive of a Territory made, or purporting to be made, under such an Act or Ordinance; or*
- (d) an instrument of a legislative character (for example, a rule of court) made, or purporting to be made, under such an Act or Ordinance, being an instrument that is required by or under a law to be published, or the making of which is required by or under a law to be notified, in any government or official gazette (by whatever name called).*

*(2) A judge may inform himself or herself about those matters in any way that the judge thinks fit.*

*(3) A reference in this section to an Act, being an Act of an Australian Parliament, includes a reference to a private Act passed by that Parliament.*

*Note: Section 5 extends the operation of this provision to proceedings in all Australian courts.*

### **150 Seals and signatures:**

*(1) If the imprint of a seal appears on a document and purports to be the imprint of:*

- (a) a Royal Great Seal; or*
- (b) the Great Seal of Australia; or*
- (c) another seal of the Commonwealth; or*
- (d) a seal of a State, a Territory or a foreign country; or*
- (e) the seal of a body (including a court or a tribunal), or a body corporate, established by a law of the Commonwealth, a Territory or a foreign country; or*
- (f) the seal of a court or tribunal established by a law of a State;*

*it is presumed, unless the contrary is proved, that the imprint is the imprint of that seal, and the document was duly sealed as it purports to have been sealed.*

*(2) If the imprint of a seal appears on a document and purports to be the imprint of the seal of an office holder, it is presumed, unless the contrary is proved, that:*

- (a) the imprint is the imprint of that seal; and*
- (b) the document was duly sealed by the office holder acting in his or her official capacity; and*
- (c) the office holder held the relevant office when the document was sealed.*

*(3) If a document purports to have been signed by an office holder in his or her official capacity, it is presumed, unless the contrary is proved, that:*

- (a) the document was signed by the office holder acting in that capacity; and
- (b) the office holder held the relevant office when the document was signed.

(4) In this section: "office holder" means:

- (a) the Sovereign; or
- (b) the Governor-General; or
- (c) the Governor of a State; or
- (d) the Administrator of a Territory; or
- (e) a person holding any other office under an Australian law or a law of a foreign country.

(5) This section extends to documents sealed, and documents signed, before the commencement of this section.

Note: Section 5 extends the operation of this provision to proceedings in all Australian courts.

**153 Gazettes and other official documents:**

(1) It is presumed, unless the contrary is proved, that a document purporting:

- (a) to be any government or official gazette (by whatever name called) of the Commonwealth, a State, a Territory or a foreign country; or
- (b) to have been printed by the Government Printer or by the government or official printer of a State or Territory; or
- (c) to have been printed by authority of the government or administration of the Commonwealth, a State, a Territory or a foreign country;

is what it purports to be and was published on the day on which it purports to have been published.

(2) If:

(a) there is produced to a court:

- (i) a copy of any government or official gazette (by whatever name called) of the Commonwealth, a State, a Territory or a foreign country; or
- (ii) a document that purports to have been printed by the Government Printer or by the government or official printer of a State or Territory; or
- (iii) a document that purports to have been printed by authority of the government or administration of the Commonwealth, a State, a Territory or a foreign country; and

(b) the doing of an act:

- (i) by the Governor-General or by the Governor of a State or the Administrator of a Territory; or

- (ii) by a person authorised or empowered to do the act by an Australian law or a law of a foreign country;

*is notified or published in the copy or document; it is presumed, unless the contrary is proved, that the act was duly done and, if the day on which the act was done appears in the copy or document, it was done on that day.*

*Note: Section 5 extends the operation of this provision to proceedings in all Australian courts.*

**Section 5 of the Evidence Act 1995 (Cth):**

*Extended application of certain provisions*

*The provisions of this Act referred to in the Table apply to all proceedings in an Australian court, including proceedings that:*

- (a) relate to bail; or
- (b) are interlocutory proceedings or proceedings of a similar kind; or
- (c) are heard in chambers; or
- (d) relate to sentencing.

TABLE	
Provisions of this Act	Subject matter
Subsection 70(2)	Evidence of tags and labels in Customs prosecutions and Excise prosecutions
Section 143	Matters of law
Section 150	Seals and signatures
Section 153	Gazettes and other official documents
Section 154	Documents published by authority of Parliaments etc.
Section 155	Official records
Section 155A	Commonwealth documents
Section 157	Public documents relating to court processes
Section 158	Evidence of certain public documents
Section 159	Official statistics
Section 163	Proof of letters having been sent by Commonwealth agencies
Section 182	Commonwealth records, postal articles sent by Commonwealth agencies and certain Commonwealth documents

*Note: Australian court is defined in the Dictionary to cover all courts in Australia. The definition extends to persons and bodies that take evidence or that are required to apply the laws of evidence.*

Provisions regarding judicial notice also exist in State legislation:

- [Victoria](#): Section 143 of the Evidence Act 2008 (Vic)
- [New South Wales](#): Section 143 of the Evidence Act 1995 (NSW)
- [Queensland](#): Section 123 of the Evidence Act 1977 (Qld)
- [South Australia](#): Section 35 of the Evidence Act 1929 (SA)
- [Western Australia](#): Section 53 of the Evidence Act 1906 (WA)
- [Northern Territory](#): Section 143 of the Evidence (National Uniform Legislation) Act 2011 (NT)
- [Tasmania](#): Section 143 of the Evidence Act 2001 (Tas)

Similar assertions have been made in many cases, such as in [Fekete v Child Support Registrar \[2016\] FamCAFC 14](#):

*The Applicant was not satisfied by this response and on 25 November 2015 served on the Respondent a further Notice to Produce, again using the heading relevant to r 20.31(1) of the Federal Court Rules. The Notice sought production of the following documents:*

- *A Certified Copy of the Proclamation certificate of the Child Support (Registration and Collection) Act 1988 as well as certified copies of all Proclamation certificates for any and all amendments made to the Child Support (Registration and Collection) Act 1988. The Respondent requires the certified copies to be certified by the Secretary of the State of New South Wales and the Secretary of the Commonwealth of Australia and requires those documents to be produced within 28 days from the date of this Notice.*
- *A Certified Copy of the Referendum results that granted the Parliament of the Commonwealth of Australia the authority to use the “Great seal of Australia” as opposed to the original seal of the Commonwealth of Australia, as was used on the Commonwealth of Australia Constitution Act 1900 (UK). The Respondent requires the certified copies to be certified by the Secretary of the State of New South Wales and the Secretary of the Commonwealth of Australia and requires those documents to be produced within 28 days from the date of this Notice.*
- *A Certified Copy of the Proclamation certificate of the Federal Court Act 1976 as well as certified copies of all Proclamation certificates for any and all amendments made to Federal Court Act 1976. The Respondent requires the certified copies to be certified by the Secretary of the State of New South Wales and the Secretary of the Commonwealth of Australia and requires those documents to be produced within 28 days from the date of this Notice.*

*The well-known proposition that the burden of proof falls on the person asserting the claim does not help the Applicant because that relates to the burden of proving the elements of the offence or the cause of action and not the law itself. Rule 15A.17 of the FCC Rules provides:*

*Notice to produce*

- 1. A party may, by notice in writing, require another party to produce, at the hearing of the proceeding, a specified document that is in the possession, custody or control of that other party.*
- 2. Unless the Court otherwise orders, the party given notice to produce must produce the document at the hearing.*

*As the Respondent correctly pointed out, there is no evidence that any of the documents were at any time in the possession, custody or control of the Respondent. The obligation to produce is limited to such documents. There is no evidence that the offices of "Secretary of the State of New South Wales" or the "Secretary of the Commonwealth of Australia" exist or that they have power to certify copies of proclamation certificates.*

*Essentially, the Applicant argues that the Notices to Produce were served on the Respondent because the Respondent has an obligation to prove that the Child Support (Registration and Collection) Act 1988 (Cth) is valid and was properly proclaimed. In support of that argument the Applicant relied on s. 6 of the Acts Interpretation Act 1901 (Cth) which provides:*

*6. Evidence of date of assent*

*"The date appearing on the copy of an Act printed by the Government Printer, and purporting to be the date on which the Governor-General assented thereto, or made known the Sovereign's assent, shall be evidence that such date was the date on which the Governor-General so assented or made known the Sovereign's assent, and shall be judicially noticed."*

*Section 6 does not require a person relying on an Act to prove its proclamation. Rather, the court is to take judicial notice that the date appearing on a copy of an Act printed on a Government printer is evidence that the date of assent on that copy is the date that the Governor-General so assented. It therefore does not assist the Applicant."*

**[Lade and Company Pty Ltd v Finlay & Anor; Lade v Franks & Anor \[2010\] QSC 382:](#)**

*"Secondly, I am required to take judicial notice of Acts of Parliament and assume the accuracy of copies of such Acts: s 43 and 46A of the Evidence Act 1977 (Qld). So, without evidence to the contrary, I am not concerned with the question of whether the constitutional requirements relating to the valid passing of any Act of Parliament have been complied with."*

**Postponed legislation**

Constitutional theorists like [Wayne Glew](#), [Sue Maynes](#), and most others have trouble with the changes in our constitutional relations with the UK, and still believe we are a colony of the British Empire. This leads to many different abstract speculations when applied to the current situation, like that the old procedures relating to the assent and proclamation of legislation are still in effect, hence the imagined requirement that the authorities show this proclamation certificate and prove its validity as a law.

The Governor-General possesses all the prerogatives of the Crown relating to the assent of bills of the Commonwealth Parliament. It is in his discretion under section 58 of the Constitution, whether he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure. A similar role exists with the State Governors and State legislation, except with the passing of the [Australia Act 1986](#), the State Governors were no longer required to reserve any bill for the monarchs pleasure, pursuant to section 9. Here is a complete list of Commonwealth bills since Federation that were [reserved for Her Majesty's pleasure](#).

For example, the [Royal titles and Styles Act 1973](#), was reserved for Her Majesty's pleasure, and the Proclamation was published in the Government [Gazette No 152](#), 19 October 1973

*"The Proclamation referred to in sub-section (1) shall be published in the Gazette and shall have effect on the date upon which it is so published."*

With Acts assented in the normal process by the Governor General or State Governors, the "commencement" section of every Act contains the details of the Proclamation. Mostly, it states it commences: "A single day to be fixed by Proclamation." but also states:

*"However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period."*

For example, we'll use the [Independent Parliamentary Expenses Authority Act 2017](#). The assent and accompanying publishing of it in the Gazette, is therefore considered sufficient for the Act to have effect, after a period of 12 months.

A similar contention was raised regarding the *Heavy Vehicle National Law (HVNL)* which was a Queensland Act later adopted by several other States, and hence becoming national. This is defined as "postponed" legislation. The Queensland Parliament passed the [Heavy Vehicle National Law \(HVNL\) Amendment Bill 2012](#) (Qld) on 10 February 2013. The date of assent was 3 June 2013, and ss 1–2 commenced on the date of assent in Queensland, but the remaining provisions commenced 10 February 2014 on the commencement of the provisions of the *Heavy Vehicle National Law Act 2012*, as the 12 month postponement ended on that day. (2014 SL No. 6) Likewise, the HVNL and regulations commenced in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria on 10 February 2014, bringing all the participating states in line with each other. If you note, the Act states under its "[Commencement](#)" section that: "(1) This Act commences on a day to be fixed by proclamation." But also states:

*(2) The Acts Interpretation Act 1954, section 15DA applies to the provisions of this Act as ifâ€*

*(a) the references in subsections (2) and (3) of that section to 1 year were a reference to 2 years; and (b) the reference in subsection (3) of that section to 2 years were a reference to 3 years.*

Turning to the [The Acts Interpretation Act 1954](#) for clarification. The one and two year postponement apply in this case, so no proclamation was necessary, in accordance with standard enactment procedures of postponed legislation.



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