

## Do police have special powers to arrest people based on their assumptions?

### CRIMES ACT 1958 - SECT 456AA

#### Requirement to give name and address

(1) A police officer or a protective services officer on duty at a designated place may request a person to state his or her name and address if the police officer or the protective services officer believes on reasonable grounds that the person—

- (a) has committed or is about to commit an offence, whether indictable or summary
- **Myth: Police and Protective Services can arrest you for failure to give them your details when requested.**
- **Fact: There are *certain* provisions in section 456AA that the police are frequently ignore. It is in your best interests to learn these provisions if you want to defend yourself.**

(2) A police officer or a protective services officer who makes a request under subsection (1) must inform the person of the grounds for his or her belief in sufficient detail to allow the person to understand the nature of the offence or suspected offence.

- **When an officer requests your name and address, always ask them what offence they believe you have committed. They must be able to reasonably explain the facts that form their belief or suspicion.**
- **When Police or Protective Services request your name and address, always ask them to identify themselves in writing, so you can identify them at a latter date. Police and PSO's are often ignorant of their obligation to identify themselves in writing when requested. If they refuse to identify themselves, inform them that they are committing an offence under section 456AA subsection (5) of the 1958 Crimes Act.**

(4) A person who is requested by a police officer or a protective services officer under subsection (1) to state his or her name and address may request the officer to state, orally or in writing, his or her name, rank and place of duty.

(5) A police officer or a protective services officer who, in response to a request under subsection (4)—

- (a) refuses or fails to comply with the request; or
- (d) refuses to comply with the request in writing if requested to do so—

is guilty of a summary offence punishable on conviction by a level 11 fine (5 penalty units maximum).

- **Now that the Police and PSO's have special powers under the Public Health and Wellbeing Act 2008 (PHWA), they may use section 190 of this act as a way to trick you into contract.**
- **If an officer says you must state your name and address under section 190 of the PHWA, then ask them for proof that your actions or conduct are a risk to public health. If they cannot answer your question directly, then you are not obliged to provide your information to them.**

### PUBLIC HEALTH AND WELLBEING ACT 2008 - SECT 190

#### Public health risk powers

(1) The public health risk powers are—

(e) require a person to provide their name and address for the purpose of investigating, eliminating or reducing the risk to public health;

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- You are only required to give your name and address “for the purpose of investigating, eliminating or reducing the risk to public health;”. Your Common Law right to remain silent still exists irrespective of what Police or PSO’s may believe.

### PUBLIC HEALTH AND WELLBEING ACT 2008 - SECT 212

#### Protection against self-incrimination

- (1) A natural **person** may refuse or fail to give **information** or do any other thing that the **person** is required to do by or under this Act or the **regulations** if giving the **information** or doing the other thing would tend to incriminate the **person**.
- Remember that you are not guilty until proven innocent. If police or PSO’s cannot inform you of any facts that form their belief or suspicion, then you are under no obligation to speak to them or give them your personal info.
  - Ask them if you are innocent until proven guilty?
  - Ask them if you are under any obligation to speak to them?
  - If the police arrest you based on the assumption you have committed an offence, but cannot reasonably explain the facts which form their belief in sufficient detail, then the arrest is unlawful. The police cannot just arrest people based on assumptions without a factual basis.

Here are some relevant cases:

Your Common Law right to remain silent was upheld in the Victorian Supreme Court: DPP (Vict) V Hamilton - Nov 2011 – No duty or obligation to speak with a police officer unless you are *already under arrest*. (This case is taught in the police academy)

“The corollary of that principle is that, at common law, the police do not have the power to detain a suspect, in order to question the suspect, with a view to determining whether or not the suspect should be arrested.”

“The critical question, then, is whether, in light of the above principles, the provisions of subdivision 30A of the Crimes Act, to which Mr Gyorffy referred, had the effect that the respondent was obliged to remain and speak to the police, when they requested him to do so. In my view, the clear answer to that question is that those provisions did not have such an effect.”

George v Rockett [1990] HCA 26; (1990) 170 CLR 104 (20 June 1990)

“When a statute prescribes that there must be "reasonable grounds" for a state of mind - including suspicion and belief - it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person.”