

Can Police Breathalyse You on Your Own Property?

Under the [Road Transport Act 2013 \(Schedule 3, Clause 2\(1\)\(e\)\)](#), it is illegal for a police officer to conduct a breath test on a person's own property.

If they do so, the illegally obtained evidence of the reading is liable for exclusion in court.

If police believe you were driving while drunk and don't test you, they will have to either:

1. Press no charges against you at all, or
2. Charge you with a different offence, such as 'driving under the influence' which can be difficult for police to prove.

What if I have been breath tested on my own property and charged with drink driving (P.C.A.)?

There is an increasing public awareness about the fact that drink driving is considered to be a serious crime.

More than half of all drivers who are guilty of drink driving end up with a criminal record and have their licences disqualified.

But fortunately, a good traffic lawyer will often be able to get your case dropped or thrown out of court if you have been illegally breath-tested.

Since it is unlawful for police to require a person to submit to a breath test on their own property, the evidence of the blood alcohol reading will be inadmissible in court.

And without that evidence, there won't be much of a case against you at all.

And it may even be possible to get the charges withdrawn before the matter gets to a defended hearing.

To that end, either you or your lawyer can send police what are known as 'representations', which are letters formally requesting that they drop the case against you.

This will save you the stress of going to a court hearing, as well as being a cheaper alternative to fighting the case in court.

What about a parking space in an apartment block?

A dedicated car space will normally be classified as your property.

And in these cases, it is not up to you to prove that the police breath tested you at your place of abode – it is the prosecution's job to prove that it was not.

If they can't prove this beyond reasonable doubt in court, then the breath test will have been unlawfully obtained.

In the 2002 case of [DPP v Skewes](#), the defendant Rohan Skewes was accused of low-range drink driving.

As he was driving along his street, police flashed their lights at him, signalling him to stop.

He turned into the driveway of his apartment building and stopped his car there.

Police approached him on foot and directed him to undergo a breath test.

But police could not prove beyond reasonable doubt that they had requested the breath test outside his place of abode.

This meant that the requirement to submit to a breath analysis could not apply.

The case went all the way to the NSW Supreme court where the judge found in favour of Skewes.

He was acquitted and the DPP was ordered to pay his legal costs.

If I haven't been drinking, why would I refuse a breath test?

It would be extremely unfair to imply that anyone who refuses to allow police to act illegally must be guilty of an offence.

Even if you are certain that your blood alcohol concentration would not be anywhere near the legal limit, you may still want to refuse a breath test in order to protect your legal rights and deter police from acting beyond the law.

Complying with police who are acting illegally only sets a precedent for them to do so again.

If you have been breathalysed on your own property, or have questions about what constitutes your property, it is best to [contact an experienced traffic lawyer](#) immediately.