

Identifying drivers with face coverings

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Policy statement & principles

What

With an increasingly diverse society and increases in the number of motorcycles/mopeds in the New Zealand vehicle fleet, you are more likely to stop a driver with a face covering that will hinder confirming their identity. Confirming a driver's identity is critical to upholding the law – getting it right can also save you time.

Legislative authority in sections 113(2)(a) and 114(3) of the Land Transport Act 1998 provides Police with particular provisions to confirm a driver's identity.

This chapter applies to all Constables and Authorised Officers (authorised under the Land Transport Act 1998), hereafter referred to as 'Police', who may need to identify a driver (which could include a passenger), and should be read in conjunction with the 'Policing Outlaw Motorcycle Gang Runs' Police Manual chapter.

Why

Confirming a drivers identify ensures the effective maintenance of the law.

How

- Police will ensure where possible that all drivers stopped are accurately identified.
- Police will provide drivers with clear and precise instructions when asking a driver to remove a face covering to confirm their identity.
- Police will balance the need to immediately identify a driver while respecting individuals' religious or cultural beliefs.

Note: Officers must balance respect for the individual against upholding the law where face coverings are worn for cultural or religious beliefs.

Introduction

When enforcing transport law, Police must identify stopped drivers (which can include passengers). A driver's identity may be confirmed by checking their appearance against their driver licence or a photo held in NIA. Driver's face coverings (sunglasses, hats, burqas, helmets, etc.) may inhibit their identification.

Identifying the particulars of a driver

A driver can be required to remove face coverings for the purposes of confirming identity.

Section 114(3) of the Land Transport Act 1998 (LTA) allows an enforcement officer to require the driver to:

- give their full name, address, date of birth, occupation, telephone number and such particulars that they specify, and
- state whether or not they are the vehicle's owner, and

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- if they are not the owner, give the owner's name and address or any information to help identify the owner.

In *Cunnard v Auckland CC* (1987) 2 CRNZ 459, photographs of the driver were deemed to be another "particular" for the purposes of section 114 (LTA).

Enforcement powers

Enforcement powers available to Police to determine a driver's identity are detailed in the 'Policing Outlaw Motorcycle Gangs (OMCG)' chapter of the Police Manual.

Summary

Under section 114(3), officers may stop a driver for the purpose of determining his/her identity. If seeking a driver's identity is the only reason for the stop, it may not last beyond 15 minutes. The 15 minute period begins when the driver is stopped, not when spoken to.

It is not permissible to use land transport powers to stop a driver when the true purpose of the stop is to gather intelligence for collateral (non-transport related) purposes.

Under section 113(2)(a), an enforcement officer (for the purpose of enforcing specified transport related statutes) may require a person on a road to provide the person's:

- full name
- full address
- date of birth
- occupation
- telephone number or such of those particulars specified by the officer.

Unless the person spoken to has been arrested or detained, the enforcement officer may also require a road user to provide information in the road user's knowledge as to the identity of a driver or person in charge of a vehicle. In *Cunnard v Auckland CC* (1987) 2 CRNZ 459, the photographs taken of the driver were deemed to be another particular.

Motorcycle helmets

Police may require a motorcyclist to remove their helmet for the purposes of identification. Helmets may also be removed for the purpose of helmet safety checks.

Refer to the OMCG chapter of the Police Manual for further details including offences.

Process to follow for religious or cultural face coverings

In situations where a face covering is worn due to cultural or religious beliefs, officers need to balance respect of the individual against upholding the law. Officers should take due care when confirming identity in these circumstances. Cultural or religious beliefs do not override upholding the law.

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When enforcing the LTA and a person's face is obscured by a cultural or religious covering, follow these steps.

Step	Action
1	Ask the driver wearing the face covering if they consent to removing it to confirm identity. Some women may consent to the temporary removal of their face covering when requested for law enforcement purposes. Consent however, may be accompanied by a sense of shame or embarrassment, so any request to remove the covering should be made courteously and respectfully.
2	If the woman declines this request, Police should, where practicable, arrange for a female Police constable to come to the location to confirm the identity, by viewing her face. Note: A common example of this situation is Muslim women who wear face coverings because they believe it is not acceptable to disclose their face to men, other than their husbands or close family members. There is no cultural basis in Islam to refuse to unveil the face to another woman.
3	If no female Police constable is available and identity remains an issue, the enforcement options under section <u>113</u> of the Land Transport Act 1988 apply. Note: A request by Police to unveil should only be made where it is reasonable to identify the woman, and where other reasonable avenues of enquiry have been exhausted.

