

## **The Right to Silence**

If you are a suspect for a criminal offence, or are being investigated for a crime, the Police may want to ask you questions. You have a right to silence – this means that you do not have to answer Police questions, you do not have to make a statement and you do not have to do an interview - unless you choose to.

### **What is the “Right to Silence”?**

The right to silence is literally the right to remain silent – the right to not say anything, give information or answer questions. Even if the Police ask you a direct question, you have a right to not answer it. You are not obliged to say anything. If you do not want to answer questions, you should tell the Police outright that you do not wish to be interviewed at all.

The police cannot say that you are guilty because you will not talk to them. They are not even allowed to think that you are more likely to have done something wrong because you will not answer their questions. The police need to prove that you are guilty; you do not need to prove that you are innocent.

It is not a good idea to sit through an interview and refuse to answer some questions, but answer others. This can make your situation worse, not better. Similarly, it is not necessary to be interviewed to deny the offence or your involvement – the police are the ones who need to prove your involvement. If you do not want to speak or be interviewed, just say to the Police “I do not want to be interviewed” rather than sitting through an interview saying “no comment” or “no” to each question. You do not have to go into the interview room to record your refusal. See Fact Sheet on *Police Interviews* for further information.

### **What sorts of questions may Police want to ask me?**

Police may want to question you to find out what happened, confirm whether you were involved or find out who else was involved. They may want to show you evidence, like images of the offence, or CCTV footage, to confirm the identity of the offenders. This is part of their job and they have a right to ask those questions, but you do not have to answer them, or give information, unless you want to. It is always your choice.

Any comments that you make, or actions that you do (including identifying yourself or others on CCTV) can be used against you or others in court.

### **Identification – what if Police are just asking me to give my name and address?**

The request for your identification should be treated a little bit differently to other sorts of Police questions. It is generally one of the only exceptions to the Right to Silence.

In many situations, Police *do* have a power to demand identification – this means your name and address.

In many circumstances, failing to give those details is an offence. If you are asked for your identification and want to know whether you need to give them to the police then call the Legal Aid Hotline 1800 10 18 10 for free and get some advice from a lawyer..

### **Other exceptions**

If your vehicle is involved in a serious crime, you have a duty to disclose to Police the details of the driver and any passengers at the time of the offence - see Fact Sheet - '*Loaning your Car*' for more information.

### **If I chose to answer questions about a crime, what will the Police do with that information?**

If you are charged, the Police can use the things you say as evidence in later court proceedings. This may include court proceedings against you, or proceedings against other people. Information will also be used for ongoing Police investigations.

### **Should I do an interview or not?**

You should always get legal advice before you decide whether to answer Police questions or do an interview.

Sometimes it is in your interests to do an interview, and your lawyer may advise you to do one – but they need to fully assess the situation first. Sometimes doing an interview will directly lead to you being charged and make it very difficult for you to defend a charge later on in court. It is certainly possible to make your situation worse in a legal sense by doing interviews.

For this reason, you should always talk to a lawyer and get advice *before* doing an interview.

If you can't get in touch with a lawyer, and the Police want to interview you, you should remain silent until you have had a chance to get legal advice. You should tell the Police that you do not wish to be interviewed until you have spoken to a lawyer.

See Fact Sheet – '*Getting Legal Advice*' and '*Legal Aid NSW Services for Under 18's – Children's Legal Service*' for information about where to get advice and why it is so important.

### **Does it make any difference whether Police question me on the street or in a formal interview?**

As a general rule, if you are under 18, information obtained in a formal Police interview, which abides by all of the legal requirements, including the presence of an 'independent adult', can be used against you in court (see Fact Sheet – 'Police Interviews').

However information given to Police at any stage, even just informally or on the street, may be used to further police investigations and may end up being used against you in court.

If you are over 18, anything you say to a Police Officer can be recorded in a statement by that Officer and may be used against you later in court.

### **What if I am a witness to a crime, do I have to answer questions or give Police information?**

Generally, no, you do not have to. There is no *legal* obligation to report crime or provide information to the Police, unless it is in relation to a very serious offence. In relation to very serious offences, you can be prosecuted for *Concealing* if you do not assist Police with investigations. For further advice, call the Legal Aid Youth Hotline 1800 10 18 10.

If you do report a crime to the Police, or provide a statement as a witness, you need to be aware that this means you can be asked to give evidence in court against the offender, you can be subpoenaed (or legally required) to attend, and arrested if you fail to do so.

### **What if I was present when a crime occurred and the Police want to question me? How do I know if I am a suspect, what do I do?**

This is tricky. If you were present while a crime was committed by people you were with, even if you were not actively involved, you will likely be a suspect (See Fact Sheet – *Joint Criminal Enterprise*). You should take this situation seriously, and assume that you are being investigated. That means staying silent until you have received legal advice.

If you were present or witnessed a crime being committed by people you have never met and were not with at the time, the Police are likely to want to speak with you as a witness.

*This Fact Sheet is designed to give you a very basic understanding of how the law works. If you have a legal problem, or want to know how these laws apply to a specific situation, you should speak to a lawyer. If you are under 18, you can call the Legal Aid Youth Hotline 1800 10 18 10.*