

## **Police Interviews**

A Police interview is a broad term used for whenever the Police question you about a crime.

Sometimes this is informally - they may just ask questions and write the answers in a notebook, which they then may ask you to sign. More formal Police interviews are electronically recorded and conducted in a special interview room at the Police station.

Regardless of how the interview takes place, the purpose of Police interviews is to gather evidence about the case that can then be used to prosecute those involved in the crime.

The legal consequences of Police interviews can be serious and for that reason, you have a right to refuse to do one. This is part of your 'right to silence' (see Fact Sheet – *'The Right to Silence'*).

If you do *choose* to do an interview, there are lots of laws and special rules about how they are have to be run.

### **You have a right to refuse to do a Police interview – the Right to Silence**

You can tell Police at any stage that you do not want to be interviewed. This is part of your right to silence.

The right to silence applies whether you are in custody or not. It doesn't matter where the Police question you – on the street, at your house, or while you are under arrest or in custody – you are legally entitled to stay silent and refuse to answer questions.

### **Do I have to go into the interview room?**

You do not have to go into the interview room at the Police station if you have clearly told Police that you don't want to be interviewed.

Sometimes Police will ask you to go "on record" to electronically record your refusal to answer questions (ie- to get a recording of you saying that you decline to be interviewed). But this in itself is an interview and you do not have to do it.

You do not have to be recorded saying anything. If you do not wish to be interviewed, you should tell the Police that you do not wish to go into the interview room.

Whilst you need to stay calm in custody, you are not obliged to say anything or answer questions. You cannot get into trouble or be seen as uncooperative for not answering questions.

**What if the Police want me to look at photographs or CCTV footage, or ask me to confirm that the person in the picture is me? Do I have to do this? Is this part of identifying myself?**

No, you do not have to identify yourself in photographs. You should get legal advice before you decide to identify yourself as this can have serious legal consequences.

If Police show you a photo of yourself and ask if it is you, you may think it's so obvious that there is no point refusing to answer.

But confirming your identity to the Police in some situations can lead directly to a charge. It becomes part of the evidence they have against you. You should get legal advice about the consequences before you decide to confirm you were involved or present at the scene of a crime.

Once again, it is your right not to say anything about photographs or footage that the police show you, even if they ask you a direct question.

***Always* get legal advice before making a decision to do an interview**

Anyone in Police custody has the right to call a lawyer and get legal advice.

If you are under 18, the Police are required by law to make sure you get legal advice. You should be put through to the Legal Aid Youth Hotline, a free legal advice service for under 18's, to speak to a specialist Legal Aid children's solicitor. The Police should help you make the call.

See Fact Sheets – '*Getting Legal Advice*' and '*Legal Aid Services for Under 18's – Children's Legal Service*'.

**Are there situations where your lawyer will advise you to do an interview?**

Yes, there are some circumstances where you are far better off admitting the offence to the Police, but you need to speak to a first lawyer to make sure that this is the case.

For example, if you are under 18 and have committed a minor offence, Police can give you a warning, caution or recommend that you attend a youth justice conference if you admit to the offence in a Police interview. When you get legal advice, your lawyer will check with the Police that this option is available, and if it is, and you are guilty, we may tell you to go ahead with the interview.

The Police have to make sure you speak to a lawyer before you do an interview if they intend to give you a caution or conference.

**Will doing an interview, or being more "cooperative", help me get bail?**

Doing an interview *will not* help you get bail.

Being cooperative in other regards may assist with getting bail. For example, if you are aware that Police are looking for you and you take yourself in to the station, this is often regarded as a good reason to consider granting you bail because it shows that you are likely to attend court.

You cannot be refused bail simply for refusing to be interviewed. Refusing to be interviewed is not being uncooperative – it is your right to say no and you cannot be penalised for it.

### **Right to have a support person (ie 'independent adult') present**

If you are under 18, you have a right to have a **support person** with you when you are in custody. The law says the Police cannot conduct an interview without that support person being present.

The support person is a responsible adult who is independent of the case. This can be a lawyer or another adult. If you are 14 or older, you can choose who you want to call. If you are under 14, the Police will ask your parents or guardian to attend, unless your parents agree that someone else can take the role.

The role of a support person is to speak out for your rights and to make sure you understand what is going on and that you are treated fairly by the police.

*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.*



© 2008 State of New South Wales through Legal Aid NSW

This work may be reproduced and distributed for most purposes, however some restrictions apply.

Oct 2011