



ATSILS
Aboriginal and
Torres Strait Islander
Legal Service (Qld) Ltd

Legal Fact Sheet

Police Interviews and Investigations



What are your options and legal rights in relation to police interviews and investigations?

IMPORTANT: Contact us before you make a statement or plead guilty (even if the police tell you to).

*Our organisation is available to provide **legal assistance and advice** 24 hours a day – 7 days a week.*

This fact sheet explains:

- Detention for Investigation or Questioning
- Police Interviews (Indictable Offences)
- Special requirements for questioning Aboriginal and Torres Strait Islanders
- Cautioning a person as to their rights
- Providing information to a lawyer, relative or friend
- How to obtain legal advice?

ATSILS is a non-profit, Aboriginal and Torres Strait Islander community-based organisation with 25 locations across Queensland. We provide innovative and professional legal services covering criminal, civil and family law areas.

Freecall 24/7  1800 012 255

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1. Introduction

In the event that you do come to the attention of the police, our Organisation is available to provide legal assistance and advice 24 hours a day – 7 days a week. We always recommend that prior to providing a formal statement to the police you should ask them to contact our Organisation on your behalf. We can then **advise you of your legal rights** in a way which will allow you to make an informed decision as to the option which is in your best interests.

Contacting Us

Aside from our regional office telephone numbers (which should be known to the local police) we can also be contacted **24 hours a day**, free call on **1800 012 255**.

2. Detention for Investigation or Questioning?

A police officer may detain a person (either an adult or a child) for a reasonable time to investigate or question that person about:

If the person is in custody following an arrest for an indictable offence – that offence;

In any other case – any indictable offence the person is suspected of having committed.

The *Police Powers and Responsibilities Act* outlines various things to be taken into account in determining what is a “reasonable” time to detain a person for questioning – including whether the person’s detention is necessary for the investigation of an indictable offence; the complexity of the case; and the health and mental capacity of the person.

If a person decides not to answer questions or not to continue answering questions, then continuing the detention period may not be reasonable unless it is necessary to carry out further investigations; or the person consents; or such is otherwise authorised (e.g. a court ordered medical examination).

However, a person must not be detained for this purpose for more than **8 hours**, unless the detention period is extended (see below). Further, during this 8 hour period, the person must not be actually questioned for more than **4 hours**.

When does the detention period start

- When arrested for the indictable offence; or
- When taken into custody under a removal order (e.g. a person who is a serving prisoner/detainee); or
- When taken from a watchhouse; or
- Otherwise in the company of a police officer at a watchhouse, prison, or detention centre for the purpose of questioning.

Note: for people **extradited** from another State, the detention period starts either when the officer commences questioning in the other State (where such is permitted by law); or when the person arrives in Queensland in the company of the officer for the purpose of being questioned.

Extending the 8-hour detention (for questioning) period

A police officer may apply for an order extending the detention period *before* the period expires. The application must be made to either a magistrate or a magistrate court justice of the peace. If neither is available – then another justice of the peace (other than a commissioner for declarations).

However, if the total questioning period since the detention began will, if extended, be more than 12 hours – the application must be made to a magistrate. The person (or their lawyer) may also make submissions to the magistrate or justice of the peace about the application.

Multiple arrests within 24 hours

It should be noted that if a person is detained for questioning more than once in any 24 hour period and questioned for a total of more than 4 hours in the 24 hours, a police officer must not continue to question the person unless the detention period is extended via an application.

3. Police Interviews (Indictable Offences)

Threats and Inducement

A police officer questioning a “relevant” person (i.e. a suspect for an *indictable* offence) must not obtain a confession by threat or inducement.

Other persons may be present during questioning:

Before a police officer starts questioning a person for an indictable offence, the police officer must inform the person that he or she may:

- Telephone or speak to a friend or relative and ask them to be present during questioning; and
- Telephone or speak to a lawyer of the person’s choice and arrange for the lawyer to be present during questioning.

Note: We strongly recommend that you should always insist upon speaking to one of our representatives prior to consenting to any police questioning process. As outlined above, we are available 24 hours a day to assist. The police officer will have our contact details.

The officer is obliged to delay the questioning for a reasonable time to allow us (or a parent etc.) to attend on your behalf. What is a reasonable time will depend upon such things as the distance required to travel. Unless special circumstances exist, the *PPRA* states that a delay of more than 2 hours may be unreasonable.

Special requirements for questioning Aboriginal and Torres Strait Islanders

If an officer wants to question a person that they reasonably suspect is an adult Indigenous Australian – then unless the officer is aware that the person has already arranged for a lawyer to be present – he or she must inform the person that a representative of a legal aid organisation (e.g. ATSILS) will be notified that the person is in custody.

However, this requirement does not apply, if having regard to the person’s level of education and understanding, a police officer reasonably suspects the person is not disadvantaged in comparison to members of the Australian community generally.

Note the Police Operational Procedures Manual states in relation to the issue of having an independent person present during the questioning of Indigenous Australians:

“Officers are to give preference to arranging for attendance of an independent person who is a legal practitioner or representative of the Queensland Aboriginal and Torres Strait Islander Legal Service. Where such a person is not available or is unable to be contacted, officers are to note this attempt in their notebook and on their station occurrence sheet”.

Prior to commencing the questioning, the police officer must allow the person to speak to the support person, if practicable, in circumstances where they will **not be overheard**; and then allow the support person to be present during the questioning itself. The support person can be excluded from the interview if that person is unreasonably interfering in the process.

What is unreasonable interference?

- Conduct which prevents or unreasonably obstructs
 - the proper questions being put to the relevant person; or
 - the person’s response to a question being recorded.
- Conduct such as answering the questions on behalf of the relevant person;
- Providing written replies during the questioning for the relevant person to quote.

However, it is just as important to appreciate (particularly for the support person) what is not unreasonable interference. It is not unreasonable interference to reasonably:

- Seek clarification of a question;
- Challenge an improper question put to the relevant person (e.g. cross examination style questioning);
- To challenge the way a question is put (e.g. to avoid gratuitous concurrence);
- For a lawyer (or we would contend, for a field officer also) to advise the relevant person not to answer any question or any further questions; or

- For a lawyer (or we would contend, for a field officer also) to state that they wish to give the relevant person further legal advice (i.e. in private).

Before a support person can be excluded – they must first be warned by the officer as to their alleged interference and given a further opportunity.

If the support person is excluded – the police officer must advise the relevant person that he or she may speak to another support person – and if relevant, delay questioning until their arrival.

The police are also required to exclude a support person if they consider they are unable to properly fulfil their role (e.g. if they are a witness to the alleged offence or the victim; or are intoxicated; or too tired; or an associate of the police officer). The reasons for any exclusion must be explained and recorded. Again, another support person should then be made available if required.

Questioning of intoxicated persons

If a person is apparently under the influence of alcohol or drugs – then a police officer must delay questioning until reasonably satisfied that the person is no longer affected (in terms of their ability to understand their rights and to decide whether or not to answer questions).

Questioning of a child

If an officer wishes to question a person reasonably suspected of being a child (aged 16 or under) for an indictable offence – the officer must not question the child unless:

- Before questioning starts, the police officer has, if practicable, allowed the child to speak to a support person chosen by the child in circumstances in which the conversation cannot be overheard; and
- A support person is present while the child is being questioned.

Note: the definition of “support person” in the *PPRA* Schedule – as it limits the options of the police (e.g. to use a JP as the support person in preference to one of our staff or a parent).

Note: the child may not choose the alleged victim as a support person.

Cautioning a person as to their rights

Before questioning a relevant person, a police officer must caution the person as to their rights (e.g. the right to remain silent). If necessary an interpreter should be used. If the officer reasonably suspects that the person does not understand the caution – he or she may ask the person to explain the meaning of the caution in their own words. Where practicable, the caution and response should be electronically recorded.

Providing information to a lawyer, relative or friend

If an officer is asked about the relevant person’s whereabouts by a relative, friend or lawyer – the officer must inform the relevant person of the request, and after so doing, give the information to the person who asked for it. However, such information must not be passed on if the relevant person requests same and such is recorded (in writing or electronically).

However, if the whereabouts of the relevant person are not actually known to the officer nor in a register that the officer is entitled to inspect – then such information is not required to be disclosed. Further, the officer is not required to inform the relevant person of the request if he or she reasonably suspects that the person asking is not a relative, friend or lawyer of the relevant person.

Recording of questioning – admissions

If practicable, the questioning of a relevant person must be electronically recorded. If the person makes a confession or admission to a police officer during the questioning, such is admissible in evidence against the person only if it is recorded (either electronically or as set out below).

Requirements for a written record of a confession or admission

If a record of confession or admission is written, then:

The officer must make the written record as soon as reasonably practicable after the questioning;

As soon as practicable after making the record – read it back to the person (using an interpreter if necessary) and give the person a copy of the record.

The person must be given the opportunity during and after the reading to draw attention to any error in or omission from the record he or she claims was made in the written record (and have this option explained). The last two dot points must be electronically recorded.

Copies of recordings

A police officer must without charge:

- If the recording is an audio recording only – make a copy available to the person or their lawyer within 7 days of the recording; or
- If a video recording only – within 14 days; or
- If both audio and video recording – provide an audio copy within 7 days and notify the person or their lawyer that if asked, an opportunity will be provided to view the video recording.

Further – if a transcript of an audio recording is made – upon request – provide to the person or their lawyer a copy of the transcript.

Court Rulings – special circumstances

A court may still admit into evidence a confession or admission even if the police officer did not comply with the requirements set out above. However, the court may only admit the record if having regard to the nature of and the reasons for the non-compliance (and any other relevant matters) the court is satisfied, in the special circumstances of the case, that admission of the evidence would be in the interests of justice. Such an exception would be very rare.

Accomplices or accessories etc.

A number of procedures set out above do not apply if an officer reasonably suspects (and continues to suspect) that compliance will result in an accomplice or accessory of the relevant person taking steps to avoid apprehension; or such a person being present during questioning; evidence being concealed, fabricated or destroyed; or a witness being intimidated.

4. Obtaining Legal Advice?

ATSILS provides innovative, professional and culturally competent legal service for Aboriginal and Torres Strait Islander people across Queensland.

Freecall 24/7  1800 012 255

We can be contacted toll free on **1800 012 255**, 24 hours a day, 7 days a week. We have 25 offices located across Queensland so you will be put in touch with the closest regional office that is able assist you with your legal needs. In some instances, ATSILS might have a conflict of interest and will not be able to provide you with legal advice. If this is the case, you may wish to try Legal Aid Queensland on their Indigenous Information line on **1300 65 01 43**.

This Factsheet is not intended to provide legal advice and has been provided for the purpose of providing information only. Whilst all reasonable care has been taken in the preparation of this information, no liability is assumed for any errors or omissions.