
# Arrest and Interrogation

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# Introduction

The outcome of people's dealings with police is very variable, and it is impossible to embrace all of the issues that arise when people, who are accused or suspected of offences, deal with police, nor is it possible to provide 'one size fits all' guidance for people dealing with police. In a general sense, the outcome of people's dealings with police in this context often depends on:

- the seriousness of the charge being investigated
- the personal circumstances of the person who is approached by police, including their age, educational and intellectual capacity and socio-economic circumstances
- the relevance and extent of the person's remorse for the offence.

The information in this chapter is of a general nature and does not replace the need for specific legal advice in relation to the specific circumstances.

# Police Powers

The three major areas of police powers are:

- questioning of suspects
- search and seizure of property
- arrest.

These powers are primarily found in the *Police Powers and Responsibilities Act 2000* (Qld) (PPR Act) and the *Police Powers and Responsibilities Regulation 2012* (Qld) (PPR Regulation). Additional specific police powers are outlined in other chapters (e.g. police 'move on' powers are dealt with in *Street Offences*, and powers attending to breath and blood testing for driving offences are dealt with in *Traffic Offences*).

# Questioning of Suspects by Police

## Right to silence

Under the PPR Act, a person who is suspected by police of committing an offence is entitled to remain silent when questioned about it by the authorities. This is recognised in Australia as a fundamental rule of common law and has commonly been referred to as the right to silence (s 397 PPR Act). The rationale lies in the principle that it is for the Crown to prove a case beyond reasonable doubt, and an accused should not be compelled to incriminate themselves. The effect is that at a trial, a judge must direct a jury (or a magistrate must apply the principle) that no adverse inference should be drawn against an accused for not giving an account to police (*Petty & Maiden v The Queen* (1991) 173 CLR 95). However, this may be somewhat qualified when there is an agreement to answer some questions and a refusal to answer others. In relation to more serious offences, sometimes an adverse inference will be drawn if a person does not explain matters that are solely within their knowledge.

In recognising the right to silence, s 431 of the PPR Act provides that a person sought to be questioned in respect of an indictable offence must be cautioned by police that anything they say may

be used as evidence against them. The police officer must be positively satisfied that the person understands that warning (sch 9 reg 26 PPR Regulation), and in the case of questioning indigenous people, they must ask questions to ascertain the person's level of education or understanding (sch 9 reg 25). The warning should be repeated if there is a delay or suspension of questioning (sch 9 reg 26(4)).

## Supplying name and address

People may be required to give their names and addresses to police, and sometimes provide evidence of the same (e.g. showing photo identification) if asked by a police officer to do so. The supply of a person's name and address is an exception to the general right to remain silent, and failure to provide these details is an offence in certain circumstances. Legislation that prescribes these circumstances includes the PPR Act and the PPR Regulation, the *Drugs Misuse Act 1986* (Qld), the *Liquor Act 1992* (Qld) and the *Transport Operations (Road Use Management) Act 1995* (Qld) (TORUM Act). Section 41 of the PPR Act sets out the prescribed circumstances for requiring a person to state their name and address.

If requested by a police officer to supply a name and address, a person may request an officer to explain the authority relied upon to make the request.

## Access to legal and other advice

The more serious the offence, the more necessary it is to have a well-calculated and informed approach to whether an interview should be undertaken at all and if so, the framework within which it is undertaken. Particularly in relation to serious offences, these decisions should only be made following a considered and informed discussion with an experienced lawyer. Section 418 of the PPR Act obliges a police officer to inform a person suspected of committing an indictable offence that they may telephone or speak with a lawyer. Police must also provide a reasonable opportunity for that to occur, usually by allowing them access to a phone book and a telephone. However, no common law right to legal advice exists, and there are statutory limitations on when such an obligation on the part of police arises. For instance, it does not apply to summary offences, nor does it apply when a police officer is exercising powers to detain for search purposes.

Some suggestions for the accused in this context include the following:

- Politely assert a desire to obtain legal advice before any discussions with police commence. The opportunity to obtain legal advice only arises if the person requests it. A lawyer cannot compel police to grant him contact with the accused person if this has not been requested by the accused. Many criminal defence firms operate a 24-hour service whereby a lawyer can be contacted at any time.
- If this request is declined or there is a delay, do not speak to police at all.
- Do not speak to police if they offer you an inducement for your participation in the interview (i.e. they will give you bail).
- If a lawyer cannot be contacted, contact a trusted family member or friend. Police are also required to permit this upon request. That person should be told where the accused is, the names

of the relevant police officers and asked to urgently engage a lawyer to assist. Legal Aid Queensland do not fund this level of representation, however, minor expenditure on legal advice at this stage can have a dramatic effect on the entire matter.

- If and when there is access to legal advice, it should preferably be in person and in private before any final decision by the accused about what to do is made. All matters within the accused's knowledge should be fully disclosed to the lawyer. Those discussions are subject to solicitor/client privilege and cannot be published by the lawyer to anyone else without the consent of the client. The more comprehensive the information provided, the more able a lawyer is to formulate the correct advice.

Additional safeguards (e.g. the presence of support people) are included in the PPR Act to regulate police questioning of indigenous people (s 420), children (s 421), people with impaired capacity (s 422) or intoxicated persons (s 423).

# Answering Police Questions

There has historically been a rule of thumb that a suspect or accused should not speak to police about the offence under any circumstances. As a general rule, a person should not answer any police questions unless they have first received proper legal advice.

Police may ask a person to attend voluntarily by arrangement. Before attending a police station, you should seek legal advice. You should not speak with police about any matter that police are investigating without legal advice.

An accused who, after legal advice, wants to surrender to police, plead guilty to a charge or provide details of a legal defence (e.g. self-defence) may wish to make a statement to police. The statement can record the exact extent of the accused's involvement in the offence and any remorse felt by the accused. If this position is taken, the account should be truthful. If an accused does not wish to accept liability or disclose any further details in the absence of careful legal advice, it is prudent to refrain from answering any questions. In general, it is of more benefit to the accused to adopt a blanket position of 'yes' or 'no'. There is almost no benefit to an accused in partial participation. It is always unwise for an accused to tell police lies in an interview. These lies could later be used against the accused to demonstrate an inconsistent version and to attack their credit.

Disputes often arise between police and the accused as to what conversations took place. It must be remembered that no conversations with police or with others while in police custody (other than with a lawyer) are 'off the record'. An accused or suspect should ask that any conversations be recorded. If this is not possible, the accused should try to remember the names of all persons spoken to and the times of conversations or events, preferably by taking notes at the time or as soon as possible afterwards. Police regularly record all interactions electronically, often covertly, even in cars or watch-house cells. Section 436 of the PPR Act requires police questioning to be electronically recorded if practicable. If electronic recording is not practicable, police must arrange for any confession or admission of guilt to be recorded in writing (s 437 PPR Act).

Where an accused or suspect has social, intellectual or other disadvantages in dealing with police, the power imbalance makes legal advice a practical necessity as mistakes made in an interview could

have an unfair and devastating impact in front of a jury. Making a statement in the absence of legal advice may also prejudice a person's defence.

Time and lateness of the hour should not affect the making of this important decision. It is better to wait overnight in custody than give an ill-informed response. Police may make inducements (e.g. 'if you tell us what happened, we won't oppose bail'). If any such inducements are given, an accused should request that police record such matters. Any deal offered by police in exchange for a statement should only be negotiated through a lawyer. Police may also attempt to gain admissions from a suspect by showing them that another person has made a statement. Any response to these types of questions can also be used as evidence.

However, some protective measures in the statutory framework now underpin the criminal justice system and the realities associated with the trial process. Given these protections and realities, an honest account in a recorded police interview, where a positive defence or explanation will be advanced at a trial, might in some circumstances be the most compelling evidence heard by a jury. An honest and candid account may also have a bearing on police response regarding bail and the charge to be preferred (if lesser alternatives are available). In addition, if a person is convicted of, or pleads guilty to, an offence, this cooperation may well have some bearing on the penalty that is imposed by a court.

# Declining to Speak to Police

When a person does not want to say anything to police, that attitude should be made clear and should not change regardless of what police may say. While remaining polite, it is best to severely limit any further conversations with police.

The accused or suspect should state their name and address, and state words to the effect of:

> *I am happy to cooperate with police. However, my lawyer has previously told me not to be interviewed or answer any questions until I have consulted with them.*

By saying this, police should appreciate that you are not being deliberately uncooperative but rather acting on advice.

The accused should continue to make this answer to every question. There should be no change in the response, even if a question is asked about the reason for declining an interview or the topic is changed to something irrelevant and seemingly harmless. It must be remembered that police are trained and skilled at questioning people and may use those skills in an attempt to make a suspect talk when that person has already declined to be interviewed. Once an accused person refuses to answer questions (either before or during questioning), police must not continue to ask questions; police can, of course, clarify whether the refusal relates to all questions or only questions about a particular topic (sch 9 reg 24(2) PPR Regulation).

# Detention for Police Questioning

Police may detain a person suspected of or charged with having committed an indictable offence for a reasonable time, but not for more than eight hours for the purposes of investigation or questioning (s

403 PPR Act). The eight-hour detention period must not involve more than four hours of actual police questioning, with the remainder of the time being for 'time out' (s 403(4) PPR Act), which is defined in sch 6 of the PPR Act to include the reasonable time taken to contact a relative, friend or lawyer, and the reasonable time taken for that person to travel to the police station.

Police may apply to a magistrate or in certain circumstances a justice of the peace for the detention period to be extended (s 405 PPR Act). Before doing so, the magistrate must be satisfied that further detention is necessary:

- due to the nature and seriousness of the offence
- to preserve or obtain evidence
- to continue questioning or to complete the investigation (s 406 PPR Act).

In addition, the magistrate must be satisfied that the investigation is being properly conducted without unreasonable delay, and that the detained person or their lawyer has had an opportunity to make submissions regarding the application for the extension.

### False imprisonment

To detain a person other than by lawful arrest or detention may amount to false imprisonment. A person who has been falsely imprisoned may be able to sue for damages.

## Search of Property and People and Seizure of Property

### Entry onto private property

At common law, all people, including police, have the tacit consent of the lawful occupier of a property to enter and proceed to the common entry point of a building or residence (i.e. the front door). This consent can be withdrawn by the lawful occupier placing a notice at the gate, installing a locked gate (in which case no person is lawfully entitled to enter the dwelling or land without permission of an occupier) or by requiring any person, including police, to leave the property. Once a person is required to leave or if consent is withdrawn, the person becomes a trespasser and can be removed from the property with force by an occupier, provided the force used is reasonable and does not cause grievous bodily harm (s 277 *Criminal Code Act 1899* (Qld) (Criminal Code)).

If a police officer is refused entry to a property or is asked to leave, the officer must leave unless there is some specific legal right that allows the officer to enter and/or remain. Under the PPR Act, police officers are empowered to enter private property without the consent of the occupier in specific instances including to:

- investigate or inquire into a matter or serve documents (unless a warrant is required by law in the circumstances) (s 19)
- arrest or detain a person where empowered to do so under an Act, and it is reasonably suspected that the person is in the dwelling (s 21)
- search the place pursuant to a search warrant and to the extent permitted by the warrant
- search the place to prevent the loss of evidence

- prevent the occurrence or continuation of injury to a person, damage to property or domestic violence (ss 609–611)
- ensure compliance with other relevant laws (s 22)
- stop excessive noise (s 581).

## Searching places

Police officers are entitled to search a person's premises by invitation or consent, on production of a search warrant or to prevent loss of evidence. These powers are very broad, so it is unwise to rudely demand that police leave your property. You could face a charge of obstructing police.

If police arrive at a person's door without invitation, the basis for their presence should be ascertained. If a person does not wish to provide consent for the entry, this should be made clear, and police should not be invited inside the front door. It is important that a person be assertive in such a situation and not be persuaded to allow police inside unless they wish for the search to occur.

If faced with a warrant, a person should attempt to cooperate. However, if consent would not otherwise be given, it should be made clear to police and recorded (e.g. on tape) if possible, that the warrant is the basis for entry and not any consent. Any challenge to the validity of a warrant produced (and therefore the lawfulness of the search) occurs at a later stage before a court. Consent to entry negates the need for a valid warrant.

Police will often carry tape recorders covertly or openly when executing search warrants. That should be borne in mind in any interactions with police. Any answers to questions asked by police can be used as evidence (see Questioning of Suspects by Police).

It is becoming increasingly common for police to seize mobile telephones during searches. A large amount of personal data is contained on mobile phones. If a search warrant has been obtained, the mobile phone is seized pursuant to that search warrant. According to the PPR Act, it is an offence to refuse to give police the password/PIN code to your mobile device or other storage device if they have a search warrant. This includes the passwords to relevant applications such as Facebook and WhatsApp. If you have concerns about the warrant, you should seek legal advice.

If a personal search is undertaken, you should not consent to police taking or having a look at your mobile telephone unless there is a provision in the warrant that requires you to submit those devices.

Any items seized should be the subject of a property receipt.

## Search warrants

In most situations, police must apply for a search warrant to a justice of the peace (JP) (s 150 PPR Act). Warrants are fairly easily obtained, especially in urban centres where JPs are available even throughout the evening. Where the evidence sought relates to a confiscation or forfeiture proceeding, or where structural damage is likely to occur, the application must be made to a Supreme Court judge (ss 150(3)–150(4) PPR Act). The JP or judge must be satisfied that there are reasonable grounds for suspecting that there either is or will be, within the next 72 hours, evidence of the commission of an offence on the premises to be searched (s 151 PPR Act).

A search warrant issued on the basis of a suspicion that there is such evidence will end seven days after it is issued. A warrant issued on the basis of a suspicion that there will be such evidence within 72 hours ends at the end of the 72 hours (s 155 PPR Act).

If a warrant is sought to be executed at night, it must specify the hours within which the place may be entered (s 156(1)(d) PPR Act).

Police may enter premises to the extent permitted by the warrant and use all powers necessary to execute it, including reasonable force (s 615 PPR Act). Any evidence then found by a police officer during a search may be seized (s 157 PPR Act).

### Searching premises without a warrant

If consent is absent, police can only search premises without a warrant if it is reasonably suspected that evidence of an indictable offence (or a limited number of other offences) is at the place, and that the evidence may be concealed or destroyed unless the place is immediately entered and searched (ss 159–160 PPR Act). Police must then obtain post-search approval for that search from a magistrate as soon as reasonably practicable (s 161 PPR Act).

## Searching people

In many prescribed circumstances, police are not required to obtain a warrant in order to stop, detain and search a person. These wide powers and circumstances are provided for in ss 29 and 30 of the PPR Act and apply where a police officer reasonably suspects the person is contravening certain other Acts (e.g. *Corrective Services Act 2006* (Qld)) or has in their possession:

- an unlawful weapon or knife
- an unlawful drug
- stolen or tainted property
- evidence of the commission of an offence punishable by at least seven years imprisonment
- something that may be used or is being used as an implement for housebreaking, unlawful use or theft of a vehicle, or the administration of a dangerous drug
- something intended to be used to cause harm (to themselves or others).

In these circumstances, a police officer may conduct a frisk search of the person by running their hands over the outside of the person's clothes or examine clothes removed with the consent of the person. A search of a person without authorisation by an Act is unlawful and would constitute an assault. However, the powers are very broad and depend upon police having evidence of their reasonable suspicion. It is possible to ask police what the basis of their reasonable suspicion is. Police must have a suspicion that is reasonable, as opposed to a desire to search just in case something illegal is found.

## Searching vehicles

Police have power to stop a vehicle, detain that vehicle and any occupants, as well as search the vehicle without a warrant in the circumstances provided for in ss 31 and 32 of the PPR Act and ss 31

to 35 of the TORUM Act. These circumstances include where the police officer suspects that the vehicle may contain:

- a weapon or explosive that a person may not lawfully possess
- an implement that could be used for housebreaking, stealing a vehicle or administrating a dangerous drug
- tainted property
- evidence that a serious offence has been committed
- something the person intends to use to harm themselves or someone else
- an unlawful dangerous drug.

Warrants may be obtained for searches of vehicles in the same way as for searches of premises, since the definition of 'place' in those sections includes a vehicle.

## Federal offences

Further powers of search and seizure held by customs officials apply in respect of boats and aircrafts (see pt XII div 1 of the *Customs Act 1901* (Cth) (Customs Act)). For federal offences, pt IAA div 11 of the *Crimes Act 1914* (Cth) (Crimes Act) provides the basis for federal police search powers. Additional powers for search of persons apply to customs officials in ports and airports (see pt XII div 1 subdiv B of the Customs Act).

# Arrest by Police

Arrest is the process of a person being required to be taken into police custody. Because it encroaches upon the liberty of citizens, this power can only be exercised to the extent permitted by parliaments through the PPR Act and other legislation. An unlawful arrest can give rise to a civil and criminal action in relation to an assault and false imprisonment.

## Arrest with a warrant

A warrant is a written authority from a justice of the peace, magistrate or judge for the arrest of a named person. For non-indictable offences, the person issuing the warrant must be satisfied that proceedings by way of complaint and summons or notice to appear would be ineffective (s 371 PPR Act). An arrest warrant can be issued on the basis of sworn evidence from a police officer about a suspected offence for the failure to pay a fine, for a failure to appear in court or for a breach of parole. A warrant authorises any police officer to arrest the person named, wherever and whenever that person is found (see the *Court Processes* chapter).

## Arrest without a warrant

Warrants are rarely necessary for the arrest of people suspected of crimes. Section 365 of the PPR Act specifies a range of circumstances where a police officer can arrest a person without a warrant, including where the officer reasonably suspects the person has committed or is committing an offence, and the arrest is reasonably necessary:

- to prevent the continuation or repetition of an offence or commission of another offence
- to establish the person's identity
- to ensure the person appears in court
- to obtain or preserve evidence
- to prevent harassment of, or interference with, a person who may give evidence relating to the offence
- to prevent fabrication of evidence
- to preserve the safety or welfare of any person (including the person arrested)
- to prevent a person from fleeing a police officer or the location of an offence
- because the offence is a breach of a domestic violence order under ss 177 to 179 of the *Domestic and Family Violence Protection Act 2012* (Qld)
- because the offence is assaulting or obstructing a police officer
- for questioning
- because of the nature and seriousness of the offence
- because the person is committing a security offence in or near a corrective services facility (ss 135(4), 136 *Corrective Services Act 2006* (Qld)).

An escapee may also be arrested without a warrant (s 366 PPR Act).

Alternatives to arrest that do not involve taking the person into police custody include issuing a notice to appear or a summons. In this regard, people can ask police to use their discretion to issue a notice to appear at the time of arrest (s 382 PPR Act). Notices to appear are generally issued for minor offences, or in situations where police do not consider the person charged to be any risk of failing to appear or of interfering with witnesses. A person being charged should always ask police to issue a notice to appear, as this will avoid them being formally processed and detained in a watch-house sometimes overnight.

Under the PPR Act, police can detain a person for a number of reasons, including:

- if the person is under arrest for an offence or pursuant to a warrant
- under a court order to provide particulars (ss 471–472) for a forensic procedure (ss 464, 515) or to provide a DNA sample (ss 486, 488)
- to search the person (ss 29–30) or a vehicle (ss 31–32), or to execute a search warrant of a place (s 157)
- to deal with a breach of the peace (s 260 Criminal Code)
- if the person is at a crime scene (s 177)
- to test the person's blood alcohol content in relation to driving offences (s 80 TORUM Act)

- to prevent injury or domestic violence (ss 609–611)
- to question the person in relation to an indictable offence they are charged with or are suspected of having committed (s 403).

There are safeguard provisions in the legislation that limit the length of time a person can be detained depending upon the circumstances.

### Federal offences

Federal police powers of arrest in respect to federal crimes can be found in pt IAA div 4 of the Crimes Act. Powers of arrest without a warrant are largely the same as those in the state jurisdiction.

## Citizen's Arrest

The power of a person to perform a citizen's arrest is limited to the circumstances prescribed by ch 58 of the Criminal Code including where a person:

- is called upon by a police officer to assist in the arrest of another person, unless the person called upon knows that there is no reasonable ground for the suspicion (s 546(b))
- finds someone committing an offence for which an arrest may be made by police without a warrant (s 546(c))
- believes on reasonable grounds that the person has committed an offence for which an arrest may be made by police without a warrant, whether that person has committed the offence or not (s 546(d))
- finds another person by night and believes on reasonable grounds that that other person is committing an offence (s 546(e))
- believes on reasonable grounds that the property another person offers to sell, pawn or deliver to them has been acquired by means of an offence for which a person may be arrested without a warrant (s 551)
- is in command of an aircraft, is on board the aircraft, and persons acting with that person's authority, find someone committing an offence on the aircraft or believe on reasonable grounds that the person has committed, has attempted to commit or intends to commit an offence in relation to, or affecting the use of, the aircraft (s 547A)
- finds someone committing an indictable offence at night (s 549)
- finds someone who they believe on reasonable grounds to have committed an offence escaping from another person who they believe on reasonable grounds has the authority to arrest that other person for that offence (s 550).

Any person who witnesses a breach of the peace may intervene to prevent its continuance or renewal. That person may detain any offender and use such force as is reasonably necessary to take them into police custody (s 260 Criminal Code).

A person exercising a power of arrest must be careful not to exceed their limited authority, or the person arrested may sue for wrongful arrest, false imprisonment and assault. Once a citizen's arrest has been made, the person arrested should, without delay, be handed over to police or a justice of the peace (s 552 Criminal Code) with a full explanation of the reasons for the arrest. A person who makes a citizen's arrest should be willing to speak to police.

# Mode of Arrest

What is required for a valid arrest will depend on the circumstances of the particular situation. However, a police officer must, in any circumstances, inform the person that they are under arrest and indicate the nature of the offence for which they are under arrest (s 391 PPR Act). It is not necessary to specify precisely the charge as long as the person knows why they are being arrested. If it is obvious from the facts or if the conduct of the person makes it difficult to communicate, then it is not necessary to formally tell the person the reason for the arrest.

## Using force to make an arrest

A police officer may use as much force as is reasonably necessary to arrest a person, but not such force as would result in grievous bodily harm or death (s 615 PPR Act), unless there is a critical situation in prescribed circumstances (s 616 PPR Act). The reasonableness of force is to be tested objectively in all circumstances.

A police officer who is lawfully arresting a person may call upon members of the public for assistance (s 612 PPR Act).

A police officer (or any person assisting police to make an arrest) bears no criminal responsibility for using reasonable force in making an arrest, even if a warrant is invalid or a mistaken identity results in the arrest of the wrong person, so long as the police officer is acting in good faith and on reasonable grounds.

## Discontinuing an arrest

A person's arrest can be discontinued in certain circumstances including where the reasonable suspicion that justifies the arrest is no longer present or after an interview with police (s 376 PPR Act). Where someone is arrested for being drunk in a public place, the arrest can be discontinued once they are taken to a hospital or safe place (s 378 PPR Act). For drug matters, discontinuance can occur once a person is referred to drug diversion (s 379 PPR Act).

# What to do if Arrested

The arrested person should, if possible, tell an independent person that they have been arrested and make a request to speak to a lawyer.

It is unwise to physically resist arrest, since a further charge of resisting arrest or obstruction of police may be laid. Oral resistance to an arrest that is thought to be unlawful should be politely and appropriately made in front of an independent person, keeping in mind the possible offences.

Polite conduct towards police may prevent minor charges being laid. Police have discretion to decide whether a suspect is to be arrested or given a notice to appear and released without entering into a bail

undertaking. The conduct of a person will often influence which course police adopt. In all situations, a person should ask for a notice to appear.

## After detention or arrest

### Watch-house procedure

When a person has been arrested, they will be taken to a police station. The charge will be entered in a charge book. Under the PPR Act, police have the power to search a person and seize anything found that:

- may provide evidence of the commission of an offence
- is unsafe
- may assist in an escape
- should be kept in safe custody while the person is in custody (s 443).

Police will often search a person immediately after arrest. Details of items found during the search are usually recorded in the charge book, and these items must be returned when the arrested person is released unless they are to be used as evidence (ss 691–692 PPR Act). The issue of bail will be considered by the watch-house keeper (see the Bail chapter).

## Identifying particulars and DNA samples

In most cases when a person has been arrested or detained, police are permitted to take identifying particulars of the person (s 467 PPR Act). Identifying particulars include photographs of the person and their identifying features (e.g. scars and tattoos), fingerprints, palm prints, footprints, voiceprints and handwriting (sch 6 PPR Act).

A police officer may also take a DNA sample from a person charged with an indictable offence by detaining the person for that purpose or issuing a notice to attend to provide the same. A court may enforce those powers (ch 17 PPR Act).

For certain sex offences and serious assault offences, an order can be obtained from a Magistrates Court to permit the taking of blood and urine tests (ch 18 PPR Act).

If the person is issued with a notice to appear for offending, they will ordinarily be issued with an identifying particulars notice or DNA notice. The person must comply within seven days. Failure to do so results in an offence.

## Destruction of records of identifying particulars and DNA samples

If a person is found not guilty or the charge is later withdrawn, any identifying particulars or DNA sample must be destroyed and deleted from any records within a reasonable time, unless the person is suspected of, charged with or has been found guilty of another indictable offence for which those particulars are permitted to be obtained (ss 474, 490 PPR Act).

## Other forensic procedures

Where a person is suspected of having committed an indictable offence, police can arrange for other forensic intimate or non-intimate procedures (e.g. medical or dental tests) to be performed on a person in custody. However, this can only occur if the person consents or where a magistrate has ordered that the procedures be carried out (s 447 PPR Act). Where the procedure is carried out with consent, it must stop if consent is withdrawn at any time (s 520 PPR Act).

A magistrate ordering the procedure must be satisfied that the procedure may provide evidence of an indictable offence, and the carrying out of the procedure is justified in all the circumstances. The magistrate must balance the rights and liberties of the person and the public interest, considering amongst other things such factors as the seriousness of the circumstances surrounding the commission of the suspected offence, the degree of the person's alleged participation in it, whether there is a less intrusive way to obtain the evidence, the reasons for the person's refusal to give consent and the period of detention of the person for the procedure (s 461 PPR Act).

The definitions of intimate or non-intimate forensic procedures are contained in sch 6 of the PPR Act and include:

- examination of the person's body, including orifices
- taking blood, saliva, urine or hair samples
- taking dental impressions.

Police must advise the person of the basis of the authority for the procedure if it is a court order, and that they have the right to have two people of their choice present when the procedure is done (s 503 PPR Act). The person may phone a friend or a lawyer for this purpose. Where a person gives police the name of a person they want to have present as an independent person, police must take reasonable steps to advise the person named of this wish. No medical or dental procedure can be performed unless a reasonable time has been allowed for the independent person to arrive at the place where the procedure is to be conducted (s 504 PPR Act).

Further legislative safeguards apply in respect to children under 14 years and persons with impaired capacity.

## Identification parades

A police officer may ask a person whether they are willing to take part in an identification parade. An identification parade is where several people line up, and a witness to an offence attempts to pick out the perpetrator. Police have no power to compel a person to participate in an identification parade (s 617 PPR Act). In general there is little, if any, benefit to an accused or suspect to do so.

Procedures for the conduct of identification parades and the construction of photo boards (a board containing photos of at least 12 people of similar appearance, including the suspect, which may be shown to witnesses) are specified in sch 9 regs 36-43 of the PPR Regulation.

# Legal Notices

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