

6.1 Attending a record of interview

What is a record of interview?

Police conduct a record of interview when they are formally questioning a suspect about an offence they are alleged to have committed. These records of interview are normally conducted at a police station where there are proper facilities, including sound and, possibly, video-recording equipment. Sometimes the record of interview includes a visit to the alleged crime scene or other locations associated with the offence.

Why do records of interview concern me as a JP?

Because you may be asked to attend such an interview, you need to understand what the law requires of you.

If the suspect is a child, the police may, if there is no other suitable person available, ask you to act as a support person at the interview. In this situation, you are under an obligation to comply.

If the suspect is an adult, however, the situation is less clear. Generally speaking, an adult suspect has the right to ask for someone to be present. The person asked to attend is referred to as an 'interview friend'.

You may also be asked to attend an interview of an adult suspect in another capacity—as a friend. Unlike 'interview friend', the word 'friend' is understood in its ordinary, everyday sense. Adult suspects have the right to have a friend present at the interview and, in this case, you are free to attend if you wish. If you do, it is as a private individual, not as a JP. There is no defined role for you in this situation and you are under no obligation to attend.

The *Police Powers and Responsibilities Act 2000* sets out the procedures to be adopted by the police when questioning suspects. The Act has different provisions for adult and juvenile suspects.

For adult suspects, the Act provides for:

- a 'support person' to attend records of interview where the suspect is an adult Aboriginal or Torres Strait Islander person
- a 'friend' to be present. (The law does not prohibit you from acting as a 'friend' at a record of interview, as long as you do not do so in your capacity as a JP but simply as a friend, relative or lawyer, as the case may be.)

For juvenile suspects, the Act requires the presence of a 'support person' during the questioning. 'Support person' is defined in schedule 6 of the Act as follows:

- (a) *for an Aborigine or Torres Strait Islander who is at least 17—*
 - (i) *an adult relative or another adult chosen by the person; or*
 - (ii) *a lawyer acting for the person; or*
 - (iii) *a representative of a legal aid organisation; or*
 - (iv) *a person whose name is included in a list of support persons and interpreters; or*

(b) *for a child—*

- (i) *a parent or guardian of the child; or*
- (ii) *a lawyer acting for the child; or*
- (iii) *a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or*
- (iv) *an adult relative or friend of the child who is acceptable to the child; or*
- (v) *if the child is an Aborigine or a Torres Strait Islander and no-one mentioned in subparagraphs (i) to (iv) is available—a person whose name is included in the list of support persons and interpreters; or*
- (vi) *if no-one mentioned in subparagraphs (i) to (v) is available—a justice of the peace, other than a justice of the peace who is a member of the Queensland Police Service or a justice of the peace (commissioner for declarations).*

For adult Aboriginal or Torres Strait Islander suspects, the Act provides for a ‘support person’ or an ‘interview friend’ to be present at the interview. As a JP, you cannot act as a support person or interview friend for an adult Aborigine or Torres Strait Islander. However, you can act as a support person for a juvenile Aborigine or Torres Strait Islander if other support people are not available.

How do I conduct myself at a record of interview?

There is a defined role for you as a support person at the interview of a juvenile suspect. The police will provide you with information in an approved form about your role as a support person during questioning. They will also ensure you understand your role and answer any questions relevant to your role. However, it is a role you will only rarely have to take on.

Before the interview

When you arrive at the police station:

1. Ask the duty officer to supply you with the following information:
 - a. the suspect’s name and age
 - b. how long the suspect has been in custody
 - c. if police have contacted any of the categories of support persons listed as (i) to (vi) of schedule 6 of the *Police Powers and Responsibilities Act 2000* and what the outcome was
 - d. if the suspect has asked for a solicitor
 - e. the reason for the interview (don’t worry about full details; a brief outline is sufficient).
2. Arrangements will be made for you to talk to the suspect in private. Under section 421(2) of the *Police Powers and Responsibilities Act 2000*, the police officer must allow the support person to talk to the suspect in private before the interview. At this time you should:
 - a. Introduce yourself.
 - b. Immediately warn the suspect they should not make any admissions to you, as you may be required to give evidence in court if the suspect does confide in you. This is not the role of a JP.
 - c. Explain that you are a JP and you are attending as a support person—an independent person whose role is to ensure correct procedures are followed.
 - d. Ask the suspect if they have been offered any of the support persons nominated in (i) to (vi) of schedule 6 of the *Police Powers and Responsibilities Act 2000* and, if not, if they would like any of them to be present.

- e. Emphasise to the suspect it would be in their interests to have legal representation at this time. If the suspect asks for one of the other support persons to be present, make arrangements for this person to attend the interview. You may leave when this person arrives. If the suspect does not want any of the other support persons to be present, ask if they want you to be present as a support person during the interview. You may only attend with the child's consent. If the child does not consent to your presence, and there is no other support person available, the police are unable to question the child.
- f. Try to determine the suspect's mental and physical condition at this time to decide if they are in a fit condition to be interviewed. Find out when they last had food and drink and whether they require anything, including access to toilet facilities. Determine if the child has been treated correctly, and that no threats were made before your arrival. It is your responsibility to ensure the interests of the suspect are looked after. If you are in doubt as to their mental or physical wellbeing, ask the officer in charge to arrange for the government medical officer to attend and examine the suspect.
- g. If the suspect requires the services of an interpreter, you should ensure an interpreter is made available. Contact the officer in charge so the necessary arrangements can be made.
- h. Explain to the suspect you are not there to give legal advice but they are entitled to ask you questions or request to speak to you in private at any time during the interview.
- i. You may tell the suspect they are under no obligation to answer the questions but they may answer some or all of the questions if they desire.
- j. Remind the suspect they may terminate the interview at any time.
- k. You should then restate the advisability of having legal representation.

During the interview

Your primary role during the interview is to ensure the rights of the suspect are protected. You do this by checking the correct procedure is followed.

1. Check the police officer cautions the suspect and that the caution is recorded electronically. This caution should substantially comply with the following:

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Do you understand you are not under arrest?

Do you understand you are free to leave at any time unless you are arrested?

Before I ask you any questions, I must tell you that you have the right to remain silent.

This means you do not have to say anything, or answer any questions, or make any statement, unless you wish to do so.

However, if you do say something or make any statement, it may later be used as evidence. Do you understand this warning?

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2. If, during the interview, the child asks how he or she should answer a question, you must explain you are unable to answer this for them and they should have a legal representative present.
3. Do not intervene unnecessarily. The police officer has the right to exclude you if he or she believes you are unreasonably interfering. However, do ensure the suspect understands the questions and is not having language problems.
4. Ensure the questioning by the police is not overbearing or intimidating. If you suspect the child's mental or physical wellbeing is deteriorating, suspend the interview and, if necessary, request the government medical officer to attend.

5. If at any time you are of the opinion the police are mistreating the suspect, suspend the interview immediately and report the matter to the officer in charge of the police station. The officer in charge has an obligation to take certain actions once a complaint is made, including reporting the complaint to the Crime and Corruption Commission. The interview should not be recommenced at this time.
6. If, at any time, you believe the suspect is not coping with the interview process, remind them they may have a legal representative present.

After the interview

Under the legislation, the police are required to ask the suspect certain questions at the end of the interview. This is to ensure both the questions and the answers are recorded. This precaution is intended to protect both the suspect and the police. The questions should substantially comply with the following:

- Is there anything further you wish to say relating to this matter?
- Did you take part in this interview of your own free will?
- Have you answered all questions truthfully?
- Do you have any complaints in relation to your treatment by the police?
- Was any threat or promise made to you to induce you to make this record of interview?
- Were you denied access to a support person or legal representation at any time?
- Did the police explain your rights to you at the beginning of the interview?
- Does anyone else present wish to say anything before the interview is concluded?

As the interview is recorded electronically, there is no requirement for you to certify the record at the time. The suspect will be supplied with a copy of the tape of the interview for their legal adviser.

Things to bear in mind

Caution

- Remember the *Police Powers and Responsibilities Act 2000* limits the role of the JP in attending police records of interview. The list of other support persons must be exhausted first.
- Remember you are there to protect the interests of the suspect. At all times, you should emphasise the importance of legal representation. You are not permitted to give legal advice to the suspect under any circumstances. The Queensland Court of Appeal determined a case where the role of the JP at the interview of a juvenile suspect was called into question. In this case, *R v C*, the court described the role of the JP as ‘obviously...intended to support the child’.

Frequently ask questions

May I take notes during the interview?

Yes, you are permitted to take notes for your own records. You should also record the relevant details in your logbook of your **attendance at the record of interview**.

What if the taped record of interview is challenged?

If the validity of the taped record of interview is questioned during the trial of the accused at a later date, you may be called to give evidence as to its accuracy. The tape will be replayed for you at the court and you may refer to any of the notes that you took at the time of the interview.

Should I keep a record of the interviews I attend?

You can include information in your logbook such as:

- date and time of the interview
- type of interview attended
- details of the officer requesting your attendance
- type of identification sighted
- location of interview
- questions you asked and answers given.

Where can I get more information?

Queensland Police Service
www.police.qld.gov.au

Queensland legislation
www.legislation.qld.gov.au

Quick guide

Follow these steps to attend a record of interview under the *Police Powers and Responsibilities Act 2000*

Your role is to help protect the suspect's rights by ensuring police follow the correct procedure.

Before the interview

Ask the duty officer:

- a. for the suspect's name, age and length of time in custody
- ① b. if police have contacted any of the support persons listed in the Act
- c. if the suspect has asked for a solicitor
- d. the reason for the interview.

Ask to speak to the suspect in private.

- a. Introduce yourself.
- b. Warn the suspect they should not make any admissions to you.
- c. Explain you're there as an independent support person to ensure correct procedures are followed.
- d. Ask if they have been offered or would like any of the support persons allowed under the Act.
- ② e. Emphasise they should have legal representation.
- f. Determine the suspect's physical and mental condition, including food, drink, access to toilet and threats. If you are in any doubt, ask the officer in charge to ask a government medical officer to visit.
- g. Arrange for an interpreter, if needed.
- h. Explain you cannot give legal advice but the suspect can ask you questions or ask to speak with you privately at any time.

During the interview

- ① You may take notes throughout the interview and enter these into your logbook—these notes may be questioned if the matter is brought before a court at a later date.
- ② Check the police cautions the suspect, and the caution is recorded electronically.
- ③ Do not answer a legal question from the suspect, and reinforce the need for legal representation.
- ④ Ensure the suspect understands the questions but do not intervene unnecessarily.
- ⑤ Ensure police are not overbearing or intimidating. If the suspect's wellbeing is deteriorating, suspend the interview and, if necessary, request medical help.
- ⑥ If you believe police are mistreating the suspect, suspend the interview immediately and report the matter to the officer in charge. Do not recommence the interview.
- ⑦ Reiterate the need for legal representation.

After the interview

- ① Ensure police ask set questions at the end of the interview e.g. *Is there anything more you wish to say? Was any threat made to you before this interview?*
- ② Update your logbook as needed.

