

Answering questions from the police



This information sheet deals with the general powers of police in Western Australia to question and interview you.

For information about police powers to arrest, search and obtain identifying information, such as DNA, please refer to the below heading 'Where can I get more information?'

If you need more information about police powers to question, or want to know whether police have exercised their powers appropriately in a particular situation, you should get legal advice.

What are police powers?

Police have powers that enable them to keep the peace, prevent crime and protect property from criminal damage. These powers include the power to arrest and detain people, obtain information, carry out searches of people and places, seize things and obtain identifying information such as DNA. It is important to understand your legal rights and obligations in these circumstances.

What must police do if they arrest me?

As soon as possible after you are arrested, the officer in charge of the investigation must tell you what your rights are. Your rights are different depending on whether you have been arrested as a suspect or not.

In **every case** when you are arrested by police you have the right to:

- any necessary medical treatment
- a reasonable amount of privacy from the mass media
- a reasonable chance to communicate with or try to communicate with a relative or friend to tell them where you are, and
- assistance from an interpreter or other qualified person if you are unable to understand or communicate well enough in spoken English.

If you are **arrested as a suspect**, you have the right to:

- be told what offence you have been arrested for and any other offences police suspect you have committed
- be given a reasonable chance to communicate with or try to communicate with a lawyer
- if an interpreter is needed, wait for the interpreter to be available before police interview you, and
- be cautioned before you are interviewed as a suspect.

The police can refuse to let you contact a person if they reasonably suspect the contact will mean an accomplice will get away from police, evidence will be destroyed or hidden or someone will be put in danger.

If you are a **young person** (less than 18 years old), before you are asked any questions about an offence, the police must make sure that a responsible adult has been told that you will be questioned.

Do I have to answer police questions?

Generally, the police have the right to ask you questions at any time, whether or not you have been arrested, although you cannot be questioned about any offence while you are being searched.

Although police are allowed to ask you questions, this does not mean you always

have to answer them. In Western Australia there is a general right to silence, which means in many cases you do not have to answer questions from police.

There are some questions you must answer, for example, your name, address and date of birth. If police tell you that you must answer a question then you should do so – you may be charged with an offence if you do not.

Police must **caution** you before interviewing you as a suspect so that you are aware of your right to silence and so you know what will happen if you do speak to them. The **caution** should sound something like this:

“You are not obliged to say anything unless you wish to do so, but whatever you do say will be recorded and may later be given in evidence”.

If you do not want to answer any questions, you should tell the police this. They may still require you to be present for an interview and ask you questions anyway. You can repeat that you do not want to answer any questions or say “no comment”.

The police are not allowed to threaten you to make you answer questions or offer you any bribe or encouragement to answer questions. For example, they are not allowed to say they will grant you bail and release you if you answer their questions.

What questions do I have to answer?

There are some **exceptions to the right to silence**, when the law says you must answer questions or provide information to police. The police should make it clear to you when you must provide an answer. In this case you can choose to answer just those questions that you have to answer and no others.

The following are some common circumstances when you **must** answer questions or provide information to police.

Name, address and date of birth

If the police do not know who you are and they reasonably suspect you:

- have committed, are committing or are about to commit an offence, or

- may be able to assist in the investigation of an offence or suspected offence,

they can require you to provide your personal details. Personal details are your name, your current address or address where you usually live and your date of birth.

Police can also require you to remove or adjust any face covering to enable them to see your face and check whether the personal details you have given are correct.

If the police reasonably suspect that you have given false personal details, they can request you to produce evidence to show that the details are correct.

If, without a reasonable excuse, you fail to provide your personal details or fail to provide evidence to show that your personal details are correct, you are committing an **offence**.

If you provide details that are false, you are committing an **offence**.

Driving

If the police pull you over when you are driving, you **must** do the following if asked to:

- stop the vehicle
- give your name and address
- give the name and address of the person responsible for the vehicle
- show your driver’s licence or, if you don’t have it on you, take it to a police station within a reasonable time
- take a breath test, provide a sample of blood or oral fluid or participate in a driver assessment.

If you are in an accident and a person is injured or property is damaged to a value of more than \$3000, you must report the accident to the officer in charge of a police station.

Drugs

If police ask you about the manufacture, sale or supply of illegal drugs and plants, you must answer their questions. You must also answer questions about property that is connected to manufacture, sale or supply of prohibited drugs and plants.

If, without a reasonable excuse, you do not answer these questions or you give false or misleading information, you are committing an **offence**.

Customs

If a customs officer questions you about the import or export of goods, you must answer their questions. This might occur before you get on a ship or plane, while you are on board or after you have got off. It is an **offence** to fail to answer the questions.

You are also required to provide your name and address and certain other information if requested by a customs officer, in a range of circumstances, for example, when under arrest, when a search warrant is being executed and they believe you can assist with the execution of it, where you are found in a restricted area or where you are claiming a package.

Firearms

You must answer questions where police reasonably suspect you are able to provide information or evidence relating to an offence or suspected offence under the *Firearms Act 1973* (WA). It is an offence to refuse or fail to answer such questions without a lawful excuse.

Licensed premises

If you are on licensed premises where alcohol is served, police officers and hotel staff have the right to ask you for proof of your age.

Prostitution

You must answer any question and provide any information requested where the police are investigating a prostitution offence involving a child or an offence of inducing someone to act as a prostitute.

Other situations

The above examples do not cover every situation when you must answer police questions. If you find yourself in a situation not dealt with here, and

the police tell you that you must answer their questions, you may ask police whether the law says that you have to answer. If they tell you that the **law requires you to answer**, you should answer these questions. Make a note of the law they say they are relying on for future reference, in case you need to challenge this.

How do I exercise my right to silence?

Although there are times when you must answer police questions, there are still times when you are entitled to exercise your right to silence and not answer their questions.

During an interview, police may ask you a mixture of questions, some which you have to answer and some that you can choose not to answer.

Before you start an interview with police, you should decide whether you are going to answer all questions or whether you will only answer those questions that you are required by law to answer.

If you decide to only answer those questions that you have to answer by law, you should tell police this at the start of the interview. You should ask them to tell you when they are asking questions that you don't have to answer, so you can stop answering at the appropriate time.

If you are later in any doubt about the questions you were asked and whether you were required by law to answer them, you should get legal advice. You should do this as soon as possible after your interview.

What happens if I answer police questions?

Anything you say to police or provide to them in writing may be used against you in court. For this reason, you should always try to get legal advice before you speak to police or provide them with any written information.

Information you provide may be recorded in the form of a video or audio tape, a written record of interview, a written statement or notes of verbal comments made by you before or after you are formally interviewed.

Videotaped, audiotaped or written records of interview

Police will usually carry out a formal interview with you if they have arrested you as a suspect.

Most interviews with police are videotaped, however, sometimes an interview is audiotaped or recorded in writing. If you are under arrest for a serious charge, the police should videotape your interview.

If your interview is written down instead of taped, you do not have to sign it but if you do, you should first read the document very carefully and correct any mistakes. You should ask for a copy of it whether you sign it or not.

If you are under arrest as a suspect, the police must **caution** you before conducting an interview with you. This means they must explain that you have a right to remain silent and that if you do speak, what you say will be recorded and may be used against you in court. If you are charged, the police must make a copy of the interview available to you.

The video or audio tape may be played in court, or the written record may be read out in court and what you have said in the interview may be used as evidence against you.

It is an offence to copy or broadcast a videotaped record of interview.

Written statements

If you give police a written statement explaining your version of events, this may be used against you in court. You should get legal advice before providing a statement to police.

Verbal statements

Things you say to police other than as part of a formal interview may also be used in evidence against you in court. You should get legal advice if you have said something to police and you want to know if it can be used against you.

What if police obtain information from me unlawfully?

If police obtain information from you unlawfully, for example, if they say you are required by law to answer certain questions when that is not the case, and they then try to use the information against you in court, the court may refuse to let the information be used.

The court's decision will be based on a range of different factors. If you believe that information may have been obtained from you unlawfully, get legal advice.

Can I complain about the conduct of police?

Yes, if you feel that the police have not behaved properly towards you or have abused their powers, you can make a complaint about them.

If you have been charged with an offence and you are facing court, you should get legal advice before making a complaint.

For more information on how to make a complaint, see the web page and information sheet **Complaints about the police**.

Where can I get more information?

See the following **webpages** under Information about the law on the **Legal Aid WA website**: www.legalaid.wa.gov.au:

- **Police powers to arrest and detain**
- **Police powers to search**
- **DNA samples and identifying information**
- **Complaints about the police**
- **Duty Lawyer Service.**

See the following **information sheets**, available from any **Legal Aid WA office** or by contacting the **Legal Aid WA Infoline** on **1300 650 579**:

- **Police powers to arrest and detain**
- **Police powers to search**
- **DNA testing by police**
- **Complaints about the police.**

Contact the **Legal Aid WA Infoline** on **1300 650 579** for information and referral.

Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)
Infoline open Monday to Friday 9.00 am to 4.00 pm
(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

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(08) 9261 6222

Southwest Regional Office

7th Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230
(08) 9721 2277

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330
(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430
(08) 9025 1300

Midwest & Gascoyne Regional Office

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530
(08) 9921 0200

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722
(08) 9172 3733

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725
(08) 9195 5888

East Kimberley Regional Office

98 Konkerberry Drive, Kununurra, WA 6743
(08) 9166 5800

Indian Ocean Office

Administration Building, 20 Jalan Pantai
Christmas Island, Indian Ocean, WA 6798
(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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