NSW POLICE FORCE

Code of Practice for CRIME
(Custody, Rights, Investigation, Management and Evidence)

Version as at January 2012
Subject: Procedures associated with arrest, detention and investigation

Command responsible: Performance Improvement and Planning

Available to: Unrestricted

Publication date: February 1998

Version no: Ten

Review date: Ongoing

Publication no: 0000002

ISBN: 0 730588 39 4

Last updated: January 2012

Copyright of this document is vested in the Commissioner of Police 2012
# Table of contents

## Foreword

## Introduction

## Safeguards and police powers

- Giving directions to groups of people
- Warnings required for powers involving a request or direction

## Powers of arrest

- General
- Safeguards
- Suspects on reasonable grounds
- Exercising the power to arrest
- Cautioning
- Reasonable force
- Alternatives to arrest
- Discontinuing an arrest
- Searching a person on arrest
- Detention for investigation
- Arrest of children

## Custody

- Overview
- Accountability
- Usual procedure
- Law Enforcement (Powers and Responsibilities) Act 2002 - Part 9 requirements
- Restrictions on custody manager functions
- Assessment of detained person
- Searching
- Conditions of detention
- Inspecting people in custody and cells
- Medical matters
- Commencing criminal proceedings
- Fingerprinting and photographing
- People at police station voluntarily
- Transferring people in custody
- Releasing people from custody

## Questioning suspects

- General
- Cautioning
- Interpreters
- Legal access
- Admissibility of interview evidence
- Types of questions
- Preliminary interviews
- Formal interviews
- Interviewing children
Annexure D - Concluding typed or written record of interview .......... 158
Annexure E - Adoption of statements ............................................. 160
Annexure F - Some of the more commonly used Table 1 offences .. 161
Annexure G - Legislation containing investigative powers ............. 163
Annexure H - Custody records ......................................................... 166
Annexure I - Sample questions .......................................................... 168
Annexure J - Initial interview questioning ....................................... 175
Annexure K - Interview plan ............................................................. 177
Annexure L - Interview account ......................................................... 178
Annexure M – Owner/Occupier’s Consent to Crime Scene Examination ........................................................................................................... 179
Annexure N - Identification Parade – One-Way Mirror ................. 180
Foreword

The Code of Practice for CRIME (Custody, Rights, Investigation, Management and Evidence) represents a major step towards improving the accountability of NSW Police to the community it serves. It provides members of the community as well as members of NSW Police with a succinct reference to the powers of police when investigating offences. Most importantly, for the first time in the history of NSW Police, the Code provides members of the community with advice on their rights in dealing with police.

To make the Code as accessible as possible to the diverse communities of NSW, it sets out in a user friendly format:

- police powers to stop, search and detain people,
- police powers to enter and search premises and seize property,
- police powers to arrest, detain and question suspects,
- the way in which suspects and others are to be treated by police.

The Code is not, however, a comprehensive set of the requirements which must be followed by police in exercising the powers of their office. In exercising these powers and in their treatment of suspects and members of the public, police must be aware of the obligations and responsibilities imposed on them by legislation, NSW Police policies, procedures and other documents such as the Aboriginal Strategic Direction and Aboriginal Statement of Reconciliation and the Youth Policy Statement and Action Plan.

The Code of Practice for CRIME complements the NSW Police Code of Conduct and Ethics by providing an ethical framework for police in dealing with suspects, by reinforcing the need for all officers to act with honesty and integrity when investigating offences, and by protecting officers against false allegations of corruption. Both Codes are based on each member of NSW Police acting in accordance with the following values:
• integrity is placed above all
• the rule of law is upheld
• the rights and freedoms of individuals are preserved
• quality of life is improved by community involvement in policing
• citizen and police personal satisfaction
• the wealth of human resources is capitalised on
• public resources are used efficiently and economically
• authority is exercised responsibly.

Through this Code, NSW Police has articulated the professional and ethical behaviour it requires of all officers when they exercise their powers of arrest and detention and when they deal with members of the community while investigating offences.

A P Scipione APM
Commissioner
Introduction

People have a right to consult this Code and it will be available at all police stations for the public to read.

Consulting this Code does not entitle someone to delay unreasonably any necessary investigative or administrative action. Procedures requiring the provision of breath, blood or urine samples under the terms of various Acts are not to be delayed.

This Code does not prevent police from doing something which they are authorised by law to do. For example, waiting for a friend or relative to attend the police station is not to prevent someone being required to submit to a breath analysis.

Merely because a police officer exercises a power under the law to detain and search someone or to require them to answer questions or provide information does not mean the person is under arrest. For example, exercising a power under section 21 of the Law Enforcement (Powers and Responsibilities) Act 2002 (LEPRA) to stop search and detain, or exercising random breath testing powers under the Road Transport (Safety and Traffic Management) Act 1999 does not mean the person is under arrest.

All people in custody must be dealt with expeditiously and released as soon as the need for detention ceases.

If an officer has a suspicion someone might be a vulnerable person they will be treated as such for the purposes of this Code. Reference is to be made to the list of indicators found in the definition of impaired intellectual functioning when attempting to decide if someone is so impaired.

In the absence of evidence to the contrary anyone appearing to be visually impaired, unable to read, hearing impaired or who has difficulty speaking will be treated as
such for the purposes of this Code.

Where this Code requires someone to be given information it does not have to be given if the person is at the time incapable of understanding it, is violent, likely to become violent or is in need of urgent medical attention. The information must, however, be given as soon as possible thereafter.

For detailed procedures in relation to the admissibility of evidence connected with the requirements of this Code (identification parades etc) refer to the NSW Police Procedures for the Evidence Act.

For a list of legislation containing investigative powers refer to Annexure G.
Safeguards and police powers

(Chapter updated 17 January 2012 [D/2011/208631])

Section 201 of LEPRA provides that certain things must be done when police are exercising powers.

Section 201 (1) requires you to provide the person subject to the exercise of the power with the following:
1. evidence that you are a police officer (unless you are in uniform)
2. your name and place of duty
3. the reason for the exercise of the power

If you are exercising more than one power on a single occasion, and in relation to the same person, you are only required to identify yourself (that is, comply with 1 and 2 above) once on that occasion.

You must comply with section 201 (1) before exercising a power to:
- request a person to disclose his/her identity or the identity of another person,
- give a direction to a person, or
- request a person to open his/her mouth or shake or move his or her hair, pursuant to section 21A of LEPRA.

Giving directions to groups of people
If exercising a power to give a direction to a person by giving the direction to a group of two or more persons, you must do this before or at the time of exercising the power, if it is practicable to do so or, if not, as soon as is reasonably practicable after exercising the power.

When giving a direction to people in a group, you are not required to repeat the direction or the information and warning referred to in section 201 to each person in the group. However, the fact that you are not required to do this does not, of itself,
give rise to any presumption that each person in the group has received the direction information or warning.
You must comply with the safeguards in section 201 (1) before or at the time of exercising any of the following powers if it is practicable to do so or, if it is not practicable to do so, as soon as is reasonably practicable after exercising the power:

- a power to search or arrest a person
- a power to search a vehicle, vessel or aircraft
- a power to enter premises (not being a public place)
- a power to search premises (not being a public place)
- a power to seize any property
- a power to stop or detain a person (other than a power to detain a person under Part 16 of LEPRA), or a vehicle, vessel or aircraft
- a power to establish a crime scene at a premises (not being a public place)
- a power under section 26 of LEPRA to request a person to submit to a frisk search or produce a dangerous implement or metallic object.

Warnings required for powers involving a request or direction
You are required to issue a warning when exercising a power that involves the making of a request or direction that a person is required to comply with by law. The following are some examples of such powers:

(a) Under section 11 of LEPRA, you may request a person to disclose his/her identity in certain circumstances. It is an offence under section 12 for a person not to comply with your request.

(b) Under section 26 of LEPRA, you may request a person to submit to a frisk search in certain circumstances. It is an offence under section 27 for a person to not comply with your request.

(c) Under section 197 of LEPRA, you have the power to give a direction to a person in a public place in certain circumstances. Similarly, under section 198, you may give a direction to an intoxicated person in a public
place if certain circumstances exist. It is an offence under section 199 for a person not to comply with these directions.

If the person complies with the request or direction, or is in the process of complying, there is no need to warn them that they are required by law to comply. If they do not comply, issue a warning in the following manner:

There are two steps

1. When you exercise a power that involves the making of a request or giving of a direction, you must, as soon as is reasonably practicable after making the request or direction, warn the person that they are required by law to comply with the request or direction (unless they have already complied or are in the process of complying).

2. If the person does not comply with the request or direction after being given that warning and you believe that their failure to comply is an offence, you must give another warning that the failure to comply with the request or direction is an offence.

NB: Additional warning required for move on directions to intoxicated people

In addition, if you exercise a power that involves the making of a direction under section 198 of LEPRA on the grounds that a person is intoxicated and disorderly in a public place, you must warn the person the subject of the direction that it is an offence to be intoxicated and disorderly in that or any other public place at any time within 6 hours after the direction is given.

A separate warning should be given in each occasion on which you exercise a power that involves the making of a request or the giving of a direction.

If two or more police officers are exercising a power to which section 201 applies, only one of the officers present is required to comply the requirements of the section. However, if a person asks another police officer present for his/her name and place of duty, the other officer must give that information to the person.
Powers of arrest

General

You cannot arrest a person solely for questioning. The only purpose for which you can arrest a person without a warrant is for the purpose of taking the suspect before a justice to be dealt with according to law. However, once the person is lawfully arrested, you may detain a person for a reasonable period for the purpose of investigating whether the person committed the offence for which the person is arrested – see Custody and Questioning suspects in this document.

Part 8 of LEPRA sets out your basic powers of arrest. These powers must be exercised in accordance with the safeguards including the requirement to state the reason for the arrest in Part 15 of LEPRA. Refer to section 99 of LEPRA for your general power to arrest without a warrant.

You may arrest by touching, or by words and consent. Refer to the dictionary for a definition of arrest for this Code.

When you arrest, comply with the safeguards set out in section 201 of LEPRA. Comply with the safeguards before or at the time of the arrest, or, if it cannot be done at either of those times, as soon as it is reasonably practicable to do so after having made the arrest.

When you arrest, unless it is not reasonably practical to do so, take the person to a designated police station (or designated place of detention if appropriate) where a custody manager is available. If you cannot do this, take the person to a designated police station (or designated place of detention) where another officer can act as custody manager. If you cannot do either of the above take the person to a police station where another officer can act as custody manager. See also Restrictions on custody manager functions in this document.
Safeguards

Before or at the time of making an arrest provide the arrested person with the following:

- Evidence you are a police officer (unless in uniform)
- Your name and place of duty
- The reason for the arrest
- A warning that failure or refusal to comply with a request you make during the arrest may be an offence.

Suspects on reasonable grounds

In the absence of a warrant you can arrest a person who:

(a) is in the act of committing any statutory offence, or
(b) has just committed a statutory offence, or
(c) has committed a serious indictable offence for which the person has not been tried.

You can also arrest a person in the absence of a warrant if you suspect on reasonable grounds that the person has committed a statutory offence.

Exercising the power to arrest

Always consider if there is an alternative to arrest (see Alternatives to Arrest in this document).

Under section 99(3) of LEPRA, you must not arrest a person for the purpose of taking proceedings against them unless you suspect on reasonable grounds that it is necessary to arrest them to achieve one or more of the following purposes:

- to ensure the person’s appearance at court in respect of the offence
- to prevent a repetition or continuation of the offence or the commission of another offence
- to prevent the concealment, loss or destruction of evidence relating to the offence
• to prevent harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence
• to prevent fabrication of evidence in respect of the offence
• to preserve the safety or welfare of the arrested person.

When you **arrest** ensure:

• there are reasonable grounds for your suspicion that an offence has been committed by the person
• the arrest is executed with minimum force - if you need to use force, you may only use such as is reasonably necessary in the circumstances
• you comply with the safeguards in section 201 of LEPRA
• the person is taken to the nearest designated police station, or if this is not possible to a non designated station
• every effort is made to charge people using their true names.

**Cautioning**

It might be necessary to caution before **arrest** (see ‘Cautioning’ in **Questioning Suspects** later in this document). However, when you make an **arrest**, and after complying with section 201 of LEPRA, give an oral caution as soon as possible.

**Reasonable force**

The amount of force you may use will vary according to the resistance to the **arrest**. You can only use such force as is reasonably necessary to make the arrest or to prevent the escape of the person after arrest. You will be judged on the reasonableness of your actions on the basis of the circumstances at the time.

**Alternatives to arrest**

Be mindful of competing requirements between the rights of individuals to be free and the need to use the extreme action of **arrest** so you can commence proceedings
against people who break the law. You must not arrest unless it is necessary to achieve one or more of the purposes set out in section 99(3) of LEPRA (see *Exercising the power to arrest*). The alternatives to arrest include the following:

- caution
- warning
- infringement notice
- penalty notice
- court attendance notice (eg ‘field’ or ‘future’ CAN)
- youth justice conference.

**Discontinuing an arrest**

You may discontinue an arrest at any time. Examples of when you may do so include:

- if the arrested person is no longer a suspect
- the reason for the arrest no longer exists
- it is more appropriate to deal with the matter in some other way such as a warning or caution, infringement notice or field court attendance notice, or in the case of a child, dealing with the matter under the Young Offenders Act 1997.

When you decide to discontinue an arrest, make a notebook entry and tell the person the reason why. Tell the custody manager if the person is at a police station or other place of detention. If they require, return them to:

- the place of arrest; or
- another place (if within reasonable distance).

**Searching a person on arrest**

When you arrest a person for an offence or under a warrant you may search the person at or after the time of arrest if you suspect on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying anything that:
- would present a danger to a person, or
- could be used to assist the person to escape, or
- may provide evidence of an offence.

If you suspect on reasonable grounds one of these things may be concealed in the person's mouth or hair, your search may include requesting the person to open their mouth or shake their hair. However, you may not forcibly open a person's mouth.

When you arrest a person other than for an offence (for example, to undergo a breath analysis) you may search the person at or after the time of arrest if you suspect on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying anything:
- that would present a danger to a person, or
- that could be used to assist the person escape.

Again, your search may include requesting a person to open their mouth or shake their hair if you suspect on reasonable grounds one of these things is concealed in their mouth or hair. You cannot, however, forcibly open a person's mouth.

**NB**: Remember that if you exercise your power to search a person on arrest, you must comply with both the safeguards in section 201 of LEPRA and the general rules relating to personal searches (see Annexure A).

**Detention for investigation**

You may detain someone you have arrested, for the purpose of investigating whether they have committed the offence. The investigation period begins when the person is arrested and ends at a time that is reasonable in all the circumstances, but in any case must not exceed 4 hours (refer to section 114 of LEPRA). The circumstances that must be taken into account in determining a reasonable period are set out in section 116 of LEPRA and include:
• whether the presence of the person is necessary for the investigation
• the person’s age, physical capacity and condition and mental capacity and condition,
• the number, seriousness and complexity of the offences under investigation.

You may apply to an authorised officer (e.g., a magistrate) to extend the investigation period by up to eight hours (refer to section 118 of LEPRA). The maximum investigation period cannot be extended more than once.

**Times out**

The following times (during which any investigative procedure which is to involve the detained person is reasonably suspended or deferred) are not to be taken into account when determining how much of an investigation period has expired:

• reasonable time taken to take the arrested person from the place of arrest to the nearest premises where investigative procedures can be conducted
• reasonable time spent waiting for the arrival of police or prescribed people who have particular knowledge or skills which are necessary for the investigation
• reasonable time waiting for electronic recording facilities to become available
• time taken to communicate with, and/or to await the arrival of, a friend, relative, guardian, independent person, legal practitioner or consular official
• time taken to consult with a friend, relative, guardian, independent person, legal practitioner or consular official at the place of detention
• time required to arrange for and to allow the person to receive medical treatment
• time to arrange an interpreter and allow that person to attend (or to be available on the phone)
• reasonable time required to arrange and conduct an identification parade
• time required for the person to rest, receive refreshment, and to access toilet and other facilities (such as showers).
• time to allow the person to recover from the effects of alcohol and/or drugs
• reasonable time to prepare, make and dispose of an application for a detention warrant or search warrant relating to the investigation
- reasonable time to carry out charging procedures relating to the person
- time required to allow a vulnerable person (or someone else on their behalf) to arrange for a support person to attend
- time required to allow a support person to attend.

**Request to extend time**
A detention warrant extends the 4 hour maximum investigation period by up to a further 8 hours. See section 118 of LEPRA.

Make your application for a detention warrant in person to an authorised officer using the appropriate form before the four hour period expires. If the warrant is required urgently and it is not practicable for the application to be made in person, the application may be made by fax. If fax facilities are not available, the application may be made orally (by telephone).

If an authorised officer grants you a detention warrant following an application by telephone (either by facsimile or orally over the telephone), you **must**, within one day after the day on which the warrant is issued, give or transmit to the authorised officer an affidavit setting out the information on which your application was based and that you gave to the authorised officer when you made the application: section 119 LEPRA.

The detained person or their legal representative has a right to make representations to the authorised officer about the application.

**Arrest of children**
As well as the general restrictions on making arrests under section 99(3) of LEPRA (see *Exercising the power to arrest*), you must also consider the requirements of section 8 of the *Children (Criminal Proceedings) Act 1987* that criminal proceedings against children should be commenced by court attendance notice unless the exceptions in that section apply.
Before arresting a child, consider the procedures available under the *Young Offenders Act 1997* to deal with a child by way of a warning, caution or youth justice conference. Also consider the child’s:

- age
- antecedents
- welfare.

When you **arrest** a child take reasonable steps to tell the parents or guardian immediately.
Custody

Overview

These guidelines focus on people who are under arrest at a police station. However, you are accountable for your duty of care towards people under arrest and others in your custody at any time.

The rights and responsibilities in Part 9 of LEPRA apply to both a person who is under arrest AND a person who is in the company of a police officer for the purpose of participating in an investigative procedure if:

(a) you believe that there is sufficient evidence to establish that the person has committed an offence that is or is to be the subject of the investigation, or

(b) you would arrest the person if they attempted to leave, or

(c) you have given the person reasonable grounds for believing they would not be allowed to leave if they wished to do so.

You are expected to reasonably foresee what might happen when certain signs and symptoms exist. Accordingly, as soon as someone comes into your custody you should assess them and make decisions about the need and justification to search them.

All people brought into a police station in custody must be entered into the custody system on COPS. If the person is being detained under Part 9 of LEPRA, entries must be made by the custody manager. If the person is not being detained under Part 9 of LEPRA this may be done by the arresting/escorting police, custody assistant or custody manager depending on local arrangements.

While parts of these guidelines address the requirements of Part 9 of LEPRA those requirements should also be applied, where practical, to anyone else being kept in police custody. For example, when a child is brought to a police station the child’s parents, guardian or support person should be notified that the child is at the station
and for what purpose.

Screening people in custody on admission is the most important step in assessing their health or potential for suicide. Alertness and awareness of these custody procedures helps you detect potentially suicidal behaviour and other serious medical problems.

You have a duty of care to use the supportive resources provided by mental/medical health professionals to deter and prevent self destructive behaviour or an escalation of medical problems.

There are some fairly obvious warning signs for potential suicide. These might include direct statements of intent while others can be more subtle. They might be made to police, relatives, friends or other people. People in custody planning suicide often speak about their intentions and feelings. Do not ignore these indicators. In particular, the screening process makes reference to people in custody who:

- have medical problems
- are severely agitated or aggressive
- are under the influence of drugs or alcohol
- are excessively despondent or display feelings of guilt
- have neck or wrist scars, suggesting previous self inflicted injury
- threaten to inflict self injury
- are irrational or mentally ill
- have a history of suicidal behaviour
- are arrested and placed in a cell for the first time.

The first step in preventing suicide in custody or illness is identifying the risk. No single sign will necessarily indicate a person is contemplating suicide, however a combination of factors might indicate a greater potential.

A person in custody might show several warning signs. Familiarity with these indicators will help you recognise the risk. The confinement of a person combined with other factors should increase your concern (eg: you should rate as a high risk a
person who is excessively despondent, arrested for the first time and under the influence of drugs or alcohol).

Some signs and clues will only be detected with careful observation and questioning. You should take the time necessary to make a proper assessment. Remember, if you recognise any of the signs, take steps to reduce the opportunity for self injury and arrange for any illness to be treated. Continue to assess the person throughout the custody period.

While people might become suicidal at any point during their custody, the risk is highest during the first hours of custody. Consider the person’s behaviour, comments and general state. The person’s personal problems and background information, if available, can be a valuable contribution to the assessment.

Your awareness and intuition are crucial in suicide prevention. Base your assessment of potential self harm on the general pattern which develops after making observations, questioning the person and asking the arresting police for background information.

Accountability

It is not possible to identify all contingencies regarding people in custody. It is also recognised that due to the differing needs and structures within Local Area Commands distinct role clarification between custody managers and custody assistants is not always possible. On occasion the custody manager functions and custody assistant functions will be performed by the one officer. Of prime importance is ensuring the legal rights of people being held in custody are protected and an appropriate level of care is maintained. If you are performing duties in a custody area and are not sure of your responsibilities immediately consult the custody manager, or if a custody manager is not available, a duty officer or supervisor.

Arresting/escorting police

You are accountable for people in your custody until you hand them over to another
officer or authority (eg: custody manager, Corrective Services).

**Local area commander**

You have overall accountability for people in custody at your command. Ensure the officers you place in custody areas are suitably qualified for those duties. Do not use probationary constables as custody managers.

Have in place a system to ensure a custody manager and/or a custody assistant is nominated for people in custody and that officers in the custody area know what their role is. Ensure:

- you provide a custodial environment which is safe for both people under arrest and police, and complies with NSW Police’s Building Code
- you provide appropriate facilities and resources to allow police to manage people in custody (which might include tea, coffee and disposable cups etc)
- officers under your command carry out the correct custody policies and procedures
- officers under your command are trained and supervised to prevent any pattern of neglect or deliberate indifference towards people in custody.

Remember, Part 9 of LEPRA requires people under arrest who are being detained to investigate their involvement in an offence to be taken to an appointed custody manager. Refer to *Restriction on custody manager functions* in this document.

**Custody manager**

You are accountable for ensuring the rights of people in custody are protected (particularly those detained under Part 9 of LEPRA), their health and safety is maintained and proper records are kept. You are also responsible for supervising staff in the custody area.

**Custody assistant**

You are responsible for providing the face to face care of people in custody at the direction of the custody manager, and for keeping records in appropriate cases.
Usual procedure

Arresting/escorting police
When you take an arrested person or a person in custody to a police station or you arrest someone at the police station immediately place them before the custody manager (or the officer in charge of the custody area if no custody manager is available). Tell the custody manager/assistant the time of arrest, the details of the arresting police and about any injuries received by the person either before or during the arrest.

Custody manager
Determine whether the person falls within Part 9 of LEPRA. If appropriate, hand those who do not fall within Part 9 over to the custody assistant to process and to start a custody record, including a note about any injuries present.

Have the arresting/escorting police answer the brief assessment questions.

For those who fall within Part 9 start a custody record and:
- read and hand to them the Caution and summary of Part 9 form and tell them their rights can be exercised at any time while in custody
- tell them, as soon as possible, why they have been detained (before any investigation takes place)
- find out if the person has been arrested, or released from custody, within the last 48 hours and determine whether the investigation period is affected
- determine if the person falls into the category of a vulnerable person and take appropriate action regarding their vulnerability
- determine if the person requires an interpreter and arrange one where necessary
- ask them if they want legal advice (at their own cost) before being questioned and attempt to obtain this if required
- conduct a thorough and professional check of the treatment they received by
police before being placed into your custody, but do not ask questions about
the offence
• assess the validity of the arrest.

**Custody assistant**

Ensure the brief assessment questions are answered and enter the person into the
custody system (include a note about any injuries present).

**Custody manager/assistant**

Ensure the person in custody (even if they are in a dock) is kept under constant face
to face observation by yourself or another officer until either:

• the person is released, or
• you have conducted your assessment of the detained person, identified the
  level of risk, nominated an inspection frequency and placed the person into
  the observation cell (or other suitable cell).

**Law Enforcement (Powers and Responsibilities) Act 2002 - Part 9 requirements**

**Custody records**

**Custody manager**

Start a separate custody record as soon as possible for each person who is under
arrest at a police station. You are responsible for the accuracy and completeness of
the custody record. Record all information under this Code as soon as possible, in
the custody record unless otherwise specified. For a checklist of matters which are
required to be recorded in the custody record refer to Annexure H.

When someone is asked to sign the record and they refuse, note it in the record.
When an action requires the authority of an officer of a specified rank or position,
record the officer’s name and rank or position.

Ensure a copy of the record accompanies a detained person when they are transferred to another police station or place of detention and ensure it shows the time and reason for the transfer and the time of release.

All written entries must include the time they were made and be signed by the person making them. All computer records are to be timed and made only by the person who opened it to make the entry.

If asked, show detained people their custody record (unless it is an unreasonable request or it cannot be reasonably complied with). Show a legal representative, consular official or support person a detained person’s custody record as soon as possible after their arrival at the station, provided the detained person consents.

**Vulnerable persons**

Clause 24 of the *Law Enforcement (Powers and Responsibilities) Regulation 2005* provides that a person who falls within one or more of the following categories is a ‘vulnerable person’:

(a) children

(b) people who have impaired intellectual functioning

(c) people who have impaired physical functioning

(d) people who are Aboriginal or Torres Strait Islanders

(c) people who are of non-English speaking background

but does not include a person whom the custody manager reasonably believes is not a person falling within any of these categories.
**Custody manager**

If you suspect the person is a vulnerable person take immediate steps to contact a support person. A support person must be aged 18 years or over and meet the requirements of clause 26 of the *Law Enforcement (Powers and Responsibilities) Regulation 2005*. In addition, you must ensure that the support person understands their role with respect to the vulnerable person and the functions the legislation intends them to perform.

If a vulnerable person falls into more than one category all requirements regarding the categories into which the person falls must be met. If reasonably practicable, provide any physical needs for someone with impaired physical functioning.

If the vulnerable person has impaired physical functioning which is so minor that the person will not be disadvantaged to any significant extent in comparison with other members of the community generally the requirements regarding vulnerable persons do not apply.

If you caution a vulnerable person in the absence of their support person repeat it in front of the support person. Give a copy of the *Caution and Summary* form to the support person and any interpreter who attends.

Refer also to *Interpreters* later in this document.

In the case of a child, tell the child’s parent or guardian, as soon as possible of the arrest, the reason for it and where the child is. If the child is subject to a supervision or care order take reasonable steps to notify the nearest Juvenile Justice Office or Community Services Office.

**NB:** A child cannot waive their right to have a support person present.

In the case of other vulnerable persons you must, as soon as possible, attempt to contact someone responsible for the person’s welfare and tell them of the arrest, the
reason for it and where the person is.

If the vulnerable person is an Aboriginal or Torres Strait Islander you will inquire whether a representative from an Aboriginal legal aid organisation has been notified. If a legal aid representative has not been contacted, take immediate steps to do so and tell the person of the steps taken.

When a support person arrives tell them they are there to assist and support the person during an interview; observe whether the interview is being conducted properly and fairly; and to identify any communication problems. Where possible allow the support person and person in custody to consult privately at any time, but within view of police.

If someone is visually impaired or unable to read, ensure their legal representative, relative or support person is available to help check documentation. Where the detained person is required to give written consent or a signature ask the support person to sign instead, provided the detained person agrees.

Ensure the support person or legal representative present during any interview is given the opportunity to read and sign it. Record any refusal.

**NB:** The requirement for a support person to be present does not have to be complied with if Annexure B applies. If the child objects to an estranged parent being the support person, find someone else.

**Documentation**

Record all attempts to contact support persons.
Right to communicate

Action
People in custody at a police station or other premises have a right to communicate with a legal representative, friend, relative, guardian, support person or independent person, unless Annexure B applies.

Custody manager
Provide reasonable facilities for this to happen so the communication cannot be overheard while keeping the people in view.

If the person contacted wants to come to the station (or other place of detention) defer any investigation until the person arrives. You do not, however, have to defer the investigation for more than two hours.

Where a friend, relative or someone with an interest in their welfare, enquires about the whereabouts of a person in custody answer the enquiry, unless you reasonably believe the person is not who they say they are. Remember, before releasing this information the detained person must agree to it. If Annexure B applies do not release the information.

If a legal representative, claiming to represent someone in custody, asks about the person’s whereabouts, tell them unless the person in custody does not agree or you have reasonable grounds to believe the legal representative is not who they claim to be.

Where the person is not an Australian citizen, if a consular official from the person’s country asks about the person’s whereabouts, tell them, unless the person in custody does not agree or you have reasonable grounds to believe the official is not who they claim to be.
**Documentation**

Keep a record of:

- requests for, and refusals to, disclose information about the person’s whereabouts
- requests by the person to communicate and the action taken
- messages or phone calls made or received.

**Notes for guidance**

*Custody manager*

If the person does not know anyone to contact or cannot reach a relative or friend, consider using any local voluntary bodies or organisations which might offer help.

*Legal advice*

Someone in custody may at any time consult and communicate privately with a legal representative, but within view of police, whether in person or on the phone. Provide reasonable facilities for this to happen without the communication being overheard.

A poster advertising the right to obtain legal advice must be prominently displayed in the charging area of every police station.

Do not attempt to dissuade someone from getting legal advice.

*Investigating police*

Do not interview or continue to question someone who has asked for legal advice until it has been received, unless:

- the legal representative contacted has not arrived at the station (or other place of detention) within two hours of being contacted (on arrival, however, the representative must be allowed to be present)
- the legal representative nominated by the person:
  - cannot be contacted
• will not come
and the person declined to contact another, or the other legal representative
is unavailable. (In these circumstances you may start or continue the interview
provided the custody manager or more senior officer agrees)
• the person who asked for legal advice changes their mind. In these cases you
may start or continue the interview provided they agree in writing or on tape,
and a custody manager or more senior officer has agreed.

A legal representative can be present during the interview.

Documentation

*Custody manager*
Record any request for legal advice and the action taken to obtain it.

*Investigating police*
If someone has asked for legal advice and an interview is commenced without a
legal representative make a note in the interview record.

Notes for guidance

*Custody manager*
Give people who ask for legal advice an opportunity to choose a legal representative
at their own cost. If their first choice is unavailable allow further reasonable contact
attempts until one agrees to provide legal advice.

Where you have a child in custody, advise the child of the availability of the Legal Aid
Hotline, which has been set up by the Legal Aid Commission to provide legal advice
to children, in particular to explain the *Young Offenders Act 1997*. Contact can be
made on 1800 10 18 10 between 9am to midnight Monday to Friday and 24 hours a
day on weekends (9am Friday to midnight Sunday night).

If the person is an Aboriginal person, someone from the local Aboriginal Legal
Service should be available 24 hours a day 7 days a week. Aboriginal Legal Services (NSW / ACT) Ltd can be contacted on their custody notification number of (02) 8842 8080.

If you reach voice mail, please leave your name, station and telephone number and the name of the person in custody and they will return your call.

Note this number is only for advising of an Aboriginal / Torres Strait Islander person in custody. The telephone number is not a general advice or general enquiry number for the Aboriginal Legal Service. General enquiries and all other police correspondence should be directed to your local Aboriginal Legal Service office.

A legal representative may advise more than one client in an investigation. Conflict of interest is for the legal representative to determine. Do not allow an interview of a detained person to be unreasonably delayed while a legal representative gives advice to another client.

(Updated 25 February 2008)

**Detention of Foreign Nationals**

Police are reminded of their obligation to advise foreign nationals under arrest, of their rights to have the local consular post informed of their detention and to have access to consular assistance. When so requested by the foreign national, police must, without delay, inform the local consulate of the foreign national’s situation. This would normally be a consular representative in Sydney or embassy representative in Canberra.

**Documentation**

A note of your actions and the person’s response is to be made in the custody record, in accordance with the CRIME Code of Practice.
Where a detained foreign national does not request that the local consulate be informed of his or her situation, there is no obligation to do so. Any refusal should be recorded in case the embassy enquires about the matter at a later date. It is advised that the foreign national be requested to sign any such record, certifying the refusal.

In the case of nationals of the Peoples Republic of China and the Socialist republic of Vietnam, police should notify, unless the Chinese or Vietnamese national requests otherwise, the local Consulate or Embassy within three calendar days in the case of the Peoples Republic of China and three working days in the case of the Socialist Republic of Vietnam, of any other form of detention and advise the local Consulate or Embassy of any charges against the detainee.

(Updated 21 May 2010 [D/2010/41056])

Restrictions on custody manager functions

Where the person being detained falls within Part 9 of LEPRA the following provisions apply to custody manager functions. The functions of the custody manager are not to be performed by a police officer who at the time is involved in investigating the offence for which the person is in custody (except as a last resort).

Where someone is taken to a designated police station (or designated place of detention) at which a custody manager is not readily available, the functions of a custody manager are to be performed by a sergeant or above or an officer for the time being in charge of the station. If the person is taken to a non-designated station a sergeant or above or the officer in charge will act as custody manager. If none of the above are available any other officer may act as custody manager.

As a last resort the arresting or investigating officer may act as custody manager.

Where the arresting or investigating officer is to perform custody manager functions the officer will, as soon as practical and before any interview, ask a duty officer at a designated police station for permission to do so. The request and reply will be
confirmed in writing (by fax if required).
Assessment of detained person

Custody manager
Anyone held at a police station might present a risk of self harm. Assess the person in a comprehensive manner before allowing them to be interviewed or further involved in the investigation. Remember, the person might be left unattended or not properly supervised when they leave your presence. Consider whether:

- a search of the person is appropriate
- there any medical problems that need immediate attention
- inquiries be made concerning disclosures by the person (eg: medication, drugs taken before arrest etc).

Where a person is to remain in police custody and placed in an area such as a police cell (eg: bail refused, bail not met) the following procedures will apply.

Background information

Arresting/escorting officer
To assist the assessment of detained people, check COPS for information such as warnings and tell the custody manager/assistant if you are aware that the person has:

- no prior arrests
- suicidal thoughts
- a history of psychiatric illness
- a history of suicidal behaviour
- a history of drug or alcohol abuse
- experienced a significant emotional loss recently
- no close family or friends in the community
- family or friend who has attempted/committed suicide
- rejected or been rejected by close friends (especially relevant to child
offenders)

- major problems or worries other than the arrest
- a position of respect in community and/or the alleged offence might cause public outcry
- feelings of loneliness, worthlessness, helplessness or hopelessness eg: nothing to look forward to (a stronger indicator of suicidal intent than depression alone).

## Warnings

**Arresting/escorting officer**
Tell the custody manager/assistant of any warnings, particularly those about self harm, on the computer system. Search the National Names Index if appropriate. Remember to check each CNI if the person has more than one and arrange to link them (through your intelligence officer or level one supervisor). Include your assessment of the potential for self harm as a ‘warning’ on COPS, if you believe the person is at risk.

**Custody manager/assistant**
Conduct your own COPS check for warnings. If the prisoner is brought from a gaol, you are responsible for the inquiry.

## Post arrest trauma
Prisoners with a potential for self harm can be influenced by the actions of officers.

Be sensitive (particularly with a child offender or a person in custody for the first time) to the following factors of post arrest trauma:

- indignity and shame of arrest
- imagined police harassment
- fear of the legal process
- social and employment consequences
- fear of confinement.
**Custody manager**
Assess the person’s reaction to arrest. Consider the factors outlined in these procedures and if any are present assume there is potential for self harm and maintain close observation.

People placed in a cell or dock can experience post arrest trauma, particularly if it is their first time in custody. Traumatic factors include the physically depressing nature of confinement, loss of contact with family and friends and loss of personal effects.

Any detained person might be a target for same sex assault. Ensure close supervision and give special consideration to this potential.

**Self harm intent**

**Custody manager**
Consider the person’s comments, gestures or actions which might indicate self harm intent. Such signs are:

- weeping
- fear
- wringing of hands
- agitation or anger
- staring into space
- screaming
- emotionally out of control
- despairing or suicidal statements
- acting and/or talking in a strange manner
- appearing unusually embarrassed or ashamed
- intoxication (alcohol or drugs), incoherence, signs of withdrawal.
**Previous self harm**

**Custody manager**

Tactfully discuss the possibility of suicide, showing an interest in the person’s welfare. This does not make them suicidal. It is one way to help determine tendencies.

Your first priority is to ask appropriate questions and follow up any problems you identify. Do not hurry your assessment because of work demands. If the person admits to previously attempting suicide, try to obtain information and note this in the custody record. Be especially alert if a prior attempt at self harm was made, as it is highly predictive of future attempts.

If the person refuses to respond or is evasive be patient and provide the opportunity for them to talk. Remember, assessment is an ongoing process and you might have to continue to engage the person and encourage them to talk. If you have concerns about the person’s mental state arrange an assessment by a mental health team.

**Preventing self harm**

Use reasonable force to prevent suicide or any act which you believe will result in self harm. Do not place yourself at unnecessary risk. Do not enter a cell without another officer being present.

Communication (not physical force) is the key to suicide intervention.

Your initial responses are to:

- observe and decide the safest distance/position to adopt eg: out of stabbing/grabbing range
- try to communicate with the person from a protected position
- analyse the situation and treat each case individually
- be prepared for any type of violence.
**Attempted self harm**

* Custody manager
  When anyone attempts suicide or attempts to harm themselves in police custody, immediately arrange appropriate treatment, if necessary. Also update the custody record and create an event on COPS.

Keep objects/exhibits used in attempted suicides until inquiries have ended.

For further information refer to the *Guidelines for the Management and Investigation of Critical Incidents* (Professional Standards Command).

**Custody questionnaire**

* Custody manager
  The foundation of the screening process is a successful interview. When questioning the person, show due respect. This attitude helps the gathering of accurate information, maximises personal safety and makes your task easier.

  After the trauma of arrest, a properly conducted screening of the detained person should settle the person and relieve any concerns they might have. You cannot force the person to respond to questions, but encourage communication by showing respect and a genuine concern for welfare.

  Explain in simple terms, the rationale for the process, eg: 'I'm going to ask you some questions about your health which we ask all people in custody - we are interested in your health and welfare. Should you wish to answer, I will record any reply. This information may then be given to other police, departments, organisations or agencies to ensure your safe custody'.

  Information provided by a detained person is voluntary. They have the right to refuse
to answer. Do not coerce them. Conduct questionnaires as privately as possible. If you are not understood, repeat questions slowly and clearly and consider the need for an interpreter.

**NB:** the initial decision as to frequency of inspection is not the final assessment. Every time you inspect a person reassess them and record any change in the inspection frequency. Do not allocate a generic inspection frequency. Determine frequency on the individual’s need. Every five minutes or constant observation might be necessary.

### Summary assessment and general comments

**Custody manager**
Record details of high risk people and those needing particular procedures. Maintain frequent inspections/assessments for such detained people.

Also record:
- any other pertinent matter relating to the person
- any complaints made by the person.

### Searching

**Custody manager**
You may search or authorise the search of detained people. The search carried out should be the least invasive kind of search practicable in the circumstances.

**NB:** When you search you must comply with the safeguards in section 201 of LEPRA.

LEPRA defines three types of personal searches:
Frisk search

(a) a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or in close proximity to the person's outer clothing, and

(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person, including an examination conducted by passing an electronic metal detection device over or in close proximity to that thing.

Ordinary search

means a search of a person or of articles in the possession of a person that may include:

(a) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat, and

(b) an examination of those items.

Strip search

means a search of a person or of articles in the possession of a person that may include:

(a) requiring the person to remove all of his or her clothes, and

(b) an examination of the person's body (but not of the person's body cavities) and of those clothes.

Any personal search must be carried out in a manner that preserves the privacy and dignity of the person being searched, as far as is reasonably practicable. Section 32 of LEPRA sets out the general requirements for conducting personal searches – see Annexure A.

Any search that involves the removal of more than outer clothing should be treated
as a ‘strip search’ and carried out in accordance with Annexure A. A strip search should only be carried out if you suspect on reasonable grounds that it is necessary to conduct a strip search of the person for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out.

Have the search carried out by an officer of the same sex, or someone else of the same sex acting under the lawful direction of a police officer and where possible in the presence of a senior officer (custody manager, duty officer, supervisor) not connected with the investigation. Only in exceptional cases will a search be carried out by someone of the opposite sex.

Detained people may retain clothing and personal effects at their own risk unless you consider the items might be used to cause harm, interfere with evidence, damage property, effect an escape or they are needed for evidence. If these items are removed tell the person why. If it is necessary to remove someone’s clothes, arrange replacement clothing of a reasonable standard (usually arranged through family or friends). Do not allow an interview unless adequate replacement clothing has been offered.

When you take property from a person, immediately record its removal and place it in a suitable property envelope.

Include the duplicate copy of the property docket with the envelope.

In the case of bulky items such as suitcases etc, attach identifying labels to each one and make a suitable reference on the docket.

**Documentation**

Record all property (except clothing being worn) brought to the police station with a detained person, including those articles allowed to be kept. Ask the person to check and sign the record.
Where clothing or personal effects are taken from the person record the reason. You do not have to record the reason if the items taken are ties, belts, laces, socks or other items capable of being used as a ligature, cash, or valuables.

If a search is conducted by someone of the opposite sex record this fact along with the reason/s.

Where a strip search is conducted record the reason/s.

**Notes for guidance**
Detained people should be searched where the custody manager will have continuing duties with them or where their behaviour or the offence makes it appropriate. Where you remove money from the person count it in front of both the person and arresting/escorting police. Where, for example, it is clear someone will be kept in custody only for a brief period and will not be placed in a cell, the custody manager may decide not to search them. Endorse the custody record ‘not searched’. Ask the person to sign the entry.

Do not give inmates you receive from gaols any property before they return to gaol.

**Searching officer**
Remember to comply with the safeguards in section 201 of LEPRA.

Remember to practice officer safety when searching. Generally, search from the rear with a bladed body stance.

Start your search at the top of the head using the crush method. Move down through the collar, back, chest and belt areas. After the belt area search the groin and backside by using the hand as a knife edge and adopting a triangular pattern for the upper legs and groin and between the cheeks for the rear. You must not search the genital area, or females’ or transgender persons’ breasts, unless you believe on
reasonable grounds it is necessary to do so. Finish the search by returning to the crush method working down to the feet. Beware of syringe needles etc which might be secreted in clothing.

**Violent people**

If a detained person is violent and objects to being searched, you may use reasonable force. Do not, however, use restraints which constrict air supply or arteries/veins, such as ‘choke holds’, neck restraints or pressure point holds applied above the neck. Use restraint in the most humane way possible.
Conditions of detention

Deaths in custody
Refer to the *NSW Police Handbook* and the *Guidelines for the Management and Investigation of Critical Incidents* (Professional Standards Command).

Controlling people in custody
If there is a need to use force you may only use force which is reasonably necessary in the circumstances. You may use force if necessary to:

- secure compliance with lawful and reasonable instructions
- prevent escape, injury, damage to property or destruction of evidence.

Where you have someone in custody at a station and you cannot or are not allowed to put them in a cell, do not handcuff them except in exceptional circumstances, and then at the discretion of the custody officer/manager.

Where there are insufficient custody staff to supervise the person in custody, consider using other personnel. Under no circumstances are you to handcuff someone to an object or fixture and leave them alone.

Generally, place people awaiting charging and bail under guard and confine them in a secure location other than a cell, preferably within the general station complex. Remember, constant face to face observation is to be maintained. Do not place or hold a child in a charge room dock unless it is unavoidable.

Placing a person in a cell before charging and bail determination is an extreme action, taken only as a last resort. In exceptional circumstances, where you feel placement in a cell is warranted, consult the custody manager. Before placement in cells, ensure appropriate checks, risk assessments, searches and monitoring are carried out, as for any detained person.
If you are going to remove someone who is in custody at a station from that station tell the custody manager.

**Placement in cells**

**Custody manager**

Place all detained people you decide to keep in custody in an observation cell for at least the first six hours, unless there is a good reason not to. This cell is the most suitable for supervising those people assessed as either potential suicide victims or ill.

**NB:** keep males and females in separate cells.

Where you fear for the person’s safety, make every effort to have them transferred to police cells with better observation capacity, or to appropriate medical or psychiatric facilities.

Where electronic surveillance is installed, do not rely on it as the sole means of inspecting people in custody. Continue to visit detained people regularly, or have them visited by the custody assistant at regular intervals. Do not allow more than one hour between visits. Record the results of each visit.

Do not detain an Aboriginal or Torres Strait Islander person in a cell unless no reasonably practical alternative is available. Where an Aboriginal or Torres Strait Islander person is to be so detained attempt to place them with another Aboriginal or Torres Strait Islander person. Having a number of people in the same cell may alleviate boredom and depressive thoughts. It does not, however, remove the need for regular inspections.

You may hold a child on remand in custody between charging and first appearing at court or in connection with proceedings for an offence, but only if it is impractical for the child to be detained at a juvenile justice centre during that period. After charging,
only hold the child for the shortest possible time (18 hours would ordinarily be the maximum) and attempt a transfer to the Department of Juvenile Justice as soon as possible.

Do not place an Aboriginal or Torres Strait Islander child in a cell, except in rare circumstances where it is necessary for the well being of the child. In this case, if overnight detention is likely attempt to arrange for a support person to remain with the child.

Do not place a child in a cell unless no other secure accommodation is available and it is not practical to otherwise supervise the child, or the cell provides more comfortable accommodation. Do not place a child in a cell with an adult, except in rare circumstances where it is necessary for the well being of the child.

Unless it is absolutely necessary do not use additional restraints on someone placed in a cell. If necessary use only suitable handcuffs.

Ensure cells are cleaned and inspected regularly.

Ensure blankets and bedding are of a reasonable standard, and in a clean and sanitary condition.

**Hygiene, meals etc**

**Custody manager**

If reasonably practical, and provided it will not hinder an investigation, allow someone in custody to shower and shave. In particular, allow someone who has been in custody overnight to shower before a court appearance. When you allow them to shave have them kept under close observation until the razor is returned. When it is returned, immediately wash it and check the blade is intact.

Provide at least two light meals and one main meal in any 24 hour period. Provide
drinks at meal times and when they are requested (if reasonable). Contact the Clinical Forensic Medicine Unit for advice on medical and dietary matters. As far as possible, offer a varied diet and meet special dietary or religious needs. Do not accept food and drink from family or friends, unless special circumstances exist.

Where possible allow a person who has been in police custody for longer than 24 hours supervised access to the exercise yard for one hour or two 30 minutes periods each day.

**Documentation**

Record:
- the frequency of visits required
- visits and reassessments made
- replacement clothing given to the person
- meals offered, and whether accepted/eaten
- when you place a child in a cell and the reason
- when the risk category is changed and the reason for it
- adjustments to the visit frequency.

**Female prisoners**

Use female officers to attend to the personal needs of female prisoners.

**Transgender people**

Do not confuse transgender people with transvestite people. Transvestites wish to adopt the appearance of the opposite gender but do not consider themselves to be that gender. Transgender people consider themselves to be the opposite gender and might have undergone hormone therapy or surgery for this purpose.

**Custody manager**

Where circumstances suggest someone in custody might be transgender, discreetly inquire whether that is the case. If so, deal with them accordingly, if possible.
Consider transgender people in custody as people at risk. As such, do not place them in cells or any area with other people in custody not of the same disposition. Where separation is not possible, take all necessary steps to have them transferred to other cells where appropriate facilities are available pending their court appearance.

Transgender people who have had sex reassignment surgery have genuine special medical needs eg: prescribed medications and/or a dilator. They are likely to have such items. Use your discretion and whenever reasonable grant access to them.

**Reading material, etc**

*Custody manager*

You are encouraged to provide reading material to people in police custody, particularly juveniles. Make appropriate material available on request, unless there is good reason not to.

Use your discretion to allow a person in custody access to tobacco or cigarettes. Consider possible risks of self harm, noxious fumes if cell mattresses or blankets catch fire etc. If the person is affected by liquor, take their level of intoxication into account. If the person is withdrawing from the effects of alcohol and/or tobacco, it might be beneficial to allow smoking (under supervision). The stress caused by not having access to tobacco might add to the harmful effects of the alcohol withdrawal, which can be life threatening.

There is no objection to religious groups distributing reading material to stations. If supplied, make it available.

**Phone calls**

Allow reasonable access to a telephone so that a person can telephone one of the following:
- a relative
- a solicitor of their choice
- someone to arrange bail
- if necessary, a doctor of their choice.

Dial the number and speak to the nominated person before handing the phone to the person in custody.

Remember, if Annexure B applies you do not have to allow phone calls.

**Documentation**
Record all phone calls, including the number and who was contacted.

**Visits**

**Custody manager**
Make every effort to advise relatives, friends or Aboriginal Legal Aid of Aborigines or Torres Strait Islanders in custody, and encourage them to visit.

Where practical arrange visits by relatives, friends, Aboriginal community liaison officers or representatives of community groups.

Cooperate with all solicitors whenever possible.
Limit visits by legal aid field officers to when:
- their help is sought by the prisoner
- there is an officer available to supervise the visit.

Ensure no physical contact occurs between the person in custody and their visitor.
Corrective Services' visiting people in custody

Custody manager
You may grant visits to gaol and remand inmates by Corrective Services' personnel provided:

- you check their official identification
- their access is to execute official duties.

MPs visiting people in custody
Allow State and Federal MPs to visit people in police custody, provided prior application is made to, and authorised by, the local area commander or custody manager.

Consular officers visiting people in custody
Consular officers may visit non citizens in police custody, including those who are inmates within the meaning of the Crimes (Administration of Sentences) Act 1999. These visits are to converse, correspond and arrange legal representation for the non citizen and then only if the non citizen agrees.

Local area commander/custody manager
You may authorise visits.

If you refuse a visit (which must only be under special circumstances), report the reasons immediately to your commander.

Lay visitors scheme
Allow duly appointed visitors to observe, comment and report on conditions for people in custody at stations, and the operation of procedures and processes governing their care and welfare.
Documentation
Record all visits.

People in custody working at stations

_Custody manager/assistant_
Except where a court has made an order under the *Crimes (Administration of Sentences) Act 1999*, do not ask people in custody to perform work of any kind, either within the precincts of the station, lockup or elsewhere.

You may ask a person to remove food scraps from, or sweep, their cell, however, they can refuse any such request.

Complaints about treatment

_Custody manager/assistant_
Report a complaint about the treatment of someone in custody as soon as possible to a duty officer or other senior officer, not connected with the investigation. If it concerns a possible assault, or the unnecessary or unreasonable use of force, have them examined by a doctor promptly.

Inspecting people in custody and cells

Give priority to checking detained people and cells over money or property matters at shift changeover.

_Custody manager/assistant_
Ensure you always practise the following procedure:

- when starting duty, with the custody manager, custody assistant or station officer going off duty, immediately inspect all people in custody to ensure they are secure and not suffering any apparent illness
- closely inspect all cells and exercise yards
- search every cell before and after use for anything which might be used to inflict harm or cause damage
- ensure the resuscitation mask and safety knife are in place and readily available
- if you consider the cells insecure or hazardous in any way, promptly report any deficiency to the duty officer or your commander
- when completing your shift, brief your relieving officer about any detained people and go with them to inspect all people in custody
- familiarise yourself with the details of any person’s admission
- check the condition and review the risk assessment of each person at least every hour or more frequently if needed. Risk assessment of people in custody is an ongoing process - the higher the risk, the more frequent the inspection and assessment should be
- wake, speak to and assess the sobriety of people intoxicated by drugs or alcohol at least every 30 minutes (or more frequently if your assessment indicates it is necessary) during the first two to three hours of detention. Where you cannot rouse a person or their level of intoxication or consciousness has not changed or is of concern, get urgent medical help.

Do all assessments in person, not by video.

**Sleeping person in custody**

*Custody manager/assistant*

Check sleeping prisoners as often as possible, in accordance with the custody assessment. If satisfied the person is sleeping and breathing normally, without apparent distress, do not disturb them. Snoring is a danger sign of respiratory distress. Never ignore it, particularly when the person is affected by alcohol or drugs. In this situation, rouse them and observe their condition.
Unconscious person in custody

**Custody manager/assistant**
Check the person’s condition and be alert to the following signs:
- cannot be roused
- no verbal response; incomprehensible response
- moaning but not speaking
- no eye opening in response to your requests
- no response to speech and simple requests.

Head injury/stroke symptoms include:
- unequal pupil dilation
- unusual breathing pattern
- weakness, stiffness or shaking in arms and legs
- weakness in one side of the body.

Immediately arrange emergency treatment for any unconscious person or any person displaying one or more of these symptoms.

**Documentation**
Record all inspections/assessments. Indicate whether you had to wake the person.

**Medical matters**

**Identifying illness etc**
Examine the wrists and necks of people arrested, or detained as intoxicated and those involved in accidents or subject to collapse etc for medical bracelets or badges. Take appropriate action if someone is wearing a Medic Alert or Diabetic badge or has a personal identification folder and is in distress.

When you take such a person to hospital, immediately bring the badge etc to the
notice of staff.

When an arrested person is wearing a warning badge, keep them under close observation in custody and get medical care if necessary.

Be alert to the possibility of people, although not having such badges, suffering serious medical problems.

**NB:** People taking insulin might not always wear an identifying bracelet or necklet.

**Medical treatment**

**Custody manager**

Immediately call for medical assistance (in urgent cases send the person to hospital), if someone in custody:

- appears to be ill
- is injured
- does not show signs of sensibility and awareness; is unconscious
- fails to respond normally to questions or conversation
- is severely affected by alcohol or other drugs (eg: incapable of standing from a sitting position unassisted, seen to be lapsing in and out of consciousness)
- requests medical attention and the grounds on which the request is made appear reasonable
- otherwise appears to be in need of attention.

These guidelines apply even if they do not request medical attention and whether it has recently been received elsewhere (unless they were brought to the police station directly from hospital, psychiatric centre etc). In all other cases if a detained person asks for a medical examination, comply and tell them it is at their own expense. Isolate anyone in custody who you believe to have an infectious condition and get advice on what to do with them and officers who have had contact with or are likely to have contact with the person.
If someone has medication when brought into custody and needs it, check with the prescribing doctor (or Clinical Forensic Medicine Unit, hospital doctor or other doctor if the prescribing doctor is unavailable) that the medication is what it is supposed to be and it is for the condition the person purports to have. This does not apply to medication accompanying a prisoner from a prison which has been prescribed by the Corrections Health Clinic. Keep the medication safe and allow the person to take it as prescribed.

**NB:** Ensure police do not administer medication, particularly controlled drugs like methadone. This must be done by someone lawfully allowed to.

If a detained person has or claims to need medication for a heart condition, diabetes, epilepsy, schizophrenia or a comparative condition get a doctor's advice.

**Documentation**

Make a record of:

- enquiries about medication (who was spoken to and advice received)
- arrangements for medical examinations
- complaints about treatment
- requests for medical examinations and action taken
- medical directions to police
- medication the person possesses on arrival at the station
- requests for medication
- medication given to the person and who gave it.

**Notes for guidance**

Remember someone who appears to be drunk or is behaving abnormally might be ill, affected by drugs or injured (particularly head injuries). Someone needing or addicted to drugs might experience harmful effects within a short time. Always call a doctor when in doubt.
Medical assessments of severely intoxicated people are to be conducted by a doctor or a registered nurse at a public hospital. Do not seek or trust assessments of ambulance officers.

If the person admits to having been treated for an illness or if you have any doubts about required medication or their health, seek medical advice as soon as possible. Maintain maximum observation of people who:

- have a history of heart disease
- are intoxicated and recognised as a diabetic who is dependent on insulin or tablets
- are epileptic needing prescribed medication
- are asthmatic with one or more other risk factors eg: intoxicated.

In particular, get medical attention for an intoxicated diabetic.

**Detained person injured - COPS entry**

Record full particulars on COPS (occurrence only) if a person is injured in police custody.

**Detained person to be hospitalised**

When a person in custody is to be hospitalised, investigate the background of the person and urgently supply the following to the local area commander where the hospital is situated:

- particulars of the offence
- potential for violence or escape
- possibility of outside help or interference to the person
- any other relevant material.
Responsibility to provide guards

Region commanders
Ensure there is a guard/custody protocol in place at each Local Area Command in which a hospital is situated.

Local area commander
Ensure the guard consists of two police, at least one of whom is an experienced officer. Only depart from this in exceptional circumstances eg: person with a broken limb and unable to walk, in coma etc.

NB: Never leave a probationary constable alone as a guard.

Consider escape attempts, rescue bids and recent convictions.

Medical aspects
Senior medical and nursing staff can discuss matters which arise from their duties with the local area commander.

Normal considerations about consent for treatment apply to the treatment of guarded patients with the following exceptions:

- blood sampling in cases related to the provisions of the Road Transport (Safety and Traffic Management) Act 1999
- medical examinations for evidence under LEPRA (section 138).
- medical examinations of children under the Children and Young Persons (Care and Protection) Act 1998.

Duties of supervising and guarding police
Prepare a document setting out:

- particulars of the patient
- the full circumstances of the arrest, including names and station of the police in charge
- the names and stations of police performing guard duties.
- the brief criminal record and whether the patient is considered dangerous or is a drug addict
- whether the patient has a history of mental illness, violent crime or assaulting police.

Ensure the document is properly prepared and keep it up to date as to state of health and any other relevant matter. Hand it to your relief guard.

Familiarise yourself with ward routines and the location of facilities. Encourage hospital staff to cooperate with you, but refer any police request which might compromise patient care to a senior nursing or medical officer without delay so appropriate action can be taken.

Do not perform nursing duties eg: administer medication.

Do not leave the patient. If you are asked to leave the patient, find out why and consider the necessity. Always keep the patient in view and maintain security.

If you need information from the patient, which includes determining the appropriate level of security or their availability for interview, only question them with the consent of the medical superintendent or designated senior medical officer.

**OIC of case**
Bear in mind the need for an early transfer of custody to Corrective Services. Make arrangements for the patient’s appearance before a bedside court as soon as possible.

If a warrant of remand exists, arrange transfer to a Corrective Services’ establishment as soon as their medical condition will allow.
Commencing criminal proceedings

Action

**Investigating officer**

When you consider there is sufficient evidence to prosecute a detained person, and they have said all they want to about the offence, you will without delay (and subject to the following qualifications) take the person to the custody manager. If someone is detained for more than one offence you can delay bringing them to the custody manager until the above condition is satisfied in respect of each offence.

Ensure you caution the person when they are charged or when you tell them they will be.

**Custody manager**

Consider whether action should be taken against the person and by which method (caution or court attendance notice with or without bail or a future court attendance notice). Remember, charging by way of a court attendance notice with bail is the last resort in most cases for child offenders (refer to the *Young Offenders Act 1997* and ‘Young offenders’ in the *NSW Police Handbook*). Take any resulting action in the presence of the support person if the person is a child or does not understand the process (eg: vulnerable person).

When people are charged tell them what the charges are and give them copies of the court attendance notices (if they are a vulnerable person give the notices to the support person).

Where a child is charged and bail is refused or the bail conditions cannot be met immediately, place them before a court or transfer them to the custody of Juvenile Justice at the earliest opportunity.
Documentation
Make a record of anything a detained person says when charged.

If a child is not placed before a court or transferred at the earliest opportunity record the reason.

Notes for guidance
Issuing a Traffic Infringement Notice does not amount to telling someone they will be prosecuted.

Where there is disagreement between the custody manager and the investigating officer over the charging decision the matter will be referred to the duty officer or next most senior officer not connected with the investigation who will resolve it. Tell the local area commander of a decision to refuse a charge.

Fingerprinting and photographing

Taking prints from a person of or over 14
When a person of or over the age of 14 is in lawful custody for an offence, section 133 of LEPRA allows a police officer to take fingerprints and photographs for the purpose of identifying the person to a court. The power is not limited to cases where you may suspect identification will be in dispute because at such an early stage you may not be able to forecast this with any certainty. You are given a very wide discretion as to when fingerprints and photographs can be taken. Case law has held the power is available where you consider it to be necessary for the identification of the person in court in whatever circumstances that may arise.

Take prints as soon as possible after returning the arrested person to the station for charging and send them to the Fingerprint Branch daily.

Before taking the prints clean all equipment and have the accused wash and dry their hands.
Do not wear your appointments when taking prints and where possible have a second officer present. Stand alongside the hand being printed. Do not reach across the front of the accused or let them stand behind you.

Take two sets of prints, except if the person has been printed before. Take rolled prints first, followed by plain prints, with palm prints last. If you cannot take a print note why in the space where the print should appear. Legibly print any particulars you have to write on the form and ask the accused to sign it.

Ask the accused to complete a P59B handwriting form in their own handwriting, however, caution them first. Take a print of their right index finger on the back of the form (or other finger if the right index finger is not available provided you note which finger it is). Attach the P59B to the fingerprint form. Do not, however, staple it to the form. If you know any information on the form is not correct attach a report advising this.

**Fingerprinting and photographing children under the age of 14**

Refer to section 136 of LEPRA for your power to fingerprint children under the age of 14.

You cannot take prints or photos of a child under 14 unless, on the application of a sergeant or above, a Children’s Court or an authorised court officer (if the application cannot be made to a Children’s Court within 72 hours of taking the child into custody) gives you authority. If authorised, take prints and photos in the normal manner.

The child must not be held in custody solely for an application to be made.

*Updated 19 February 2010*

**People at police station voluntarily**

Treat people who are voluntarily at a station to help with an investigation with no less consideration than those in custody (eg: offer refreshments at appropriate times). They are entitled to obtain legal advice, communicate with anyone outside the
station or leave at any time.

**Investigating officer**
Where someone, either in your company or by themselves, attends a station voluntarily to help you with inquiries, consider the nature of your inquiries and the likelihood that the person will be arrested. Where this is a possibility, albeit remote, take the person to the custody manager.

**Custody manager**
Inform the person:
- why they are at the station and they are not under arrest and free to leave
- they may seek legal assistance and can notify someone else they are at the station
- that if the investigating police decide the person is no longer free to leave the investigating police are required to take the person back to the custody manager and advise that officer of the situation.

**Documentation**
Record the name of the person, the names of investigating police and the time the person arrived at the station.

**Transferring people in custody**

**Custody manager/assistant**
Prepare a transfer note and give the escorting officers the acknowledgment and advice copies and any property of the person.

**Escorting police**
Take the person and any property and deliver them to the receiving location. (For guidelines on escorting people in custody refer to the *NSW Police Handbook*).
Receiving officer

Sign the acknowledgment copy and return it to the transferring station.

Releasing people from custody

Custody manager

Ensure the correct time of release is entered into the custody record.

Do not hurry when releasing people and do not release people until you are satisfied with their identity.

When a person who has an assessed potential for self harm, or who is ill, is to be released, take reasonable steps to ensure they get appropriate treatment or support by notifying a doctor, relative or friend. Notify the appropriate people of any action being taken including:

- any bail conditions
- the approximate time of release
- any detention details if bail is refused or the conditions of bail are not met.

Encourage people with identified mental health problems to seek help or continue appropriate treatment after release. Ensure a listing of community health centres is compiled, displayed in the custody area and periodically updated.

Remember, your duty of care requires reasonable steps be taken to ensure the ongoing safety and welfare of a person released from custody. The person must be capable of caring for themselves or arrangements made for someone to care for them.

Make a note of any person who wishes to stay in custody to wait the arrival of friends, relatives etc.

When you release people who have been detained under Part 9 of LEPRA give them
a copy of their custody record and ask them to acknowledge:

- they were given a caution and a copy of the summary of Part 9 form
- they declined to make representations about a detention warrant (if that is the case).

After release, show the person, their legal representative or a support person the original custody record, provided they give reasonable notice. Make a note of the inspection in the custody record.
Questioning suspects

General

You do not have any power to detain or arrest someone merely to question them.

All people have the Common Law right to silence, except where the law requires them to provide information.

Under Part 9 of LEPRA, people have a right to ask for someone else to be present during your questioning. There are some limited exceptions to this general rule. If the observer interferes (eg: answers or suggests answers) stop and explain the observer’s role to them. You should only remove an observer in exceptional circumstances. Remember, if the person you are interviewing is a child or vulnerable person you must still ensure an appropriate support person is present before continuing your questioning. See The role of the legal representative for information about the role of observers. See Interviewing children for information about who must be present when interviewing a child offender.

Defer questioning suspects affected by alcohol or drugs until they are no longer affected.

Before questioning suspects be satisfied they understand the caution and implications of actions following it.

Where you feel they do not understand the caution, ask clarifying questions and record the answers in full:

eg: What do you understand by what I have just said?

Do not presume people understand even the most simple questions. If you believe suspects do not understand your questions ask them what they understand by them.
Ensure each question is clearly understood by the suspect.

Refer to the guidelines titled ‘Disability issues’ in the *NSW Police Handbook* if you suspect the person you are interviewing has a disability.

Listen to what people say and don’t interrupt.

Record all admissions and statements in the exact words used by the people making them. Do not paraphrase.

Once a suspect makes it clear that they will not answer anymore questions, as a matter of fairness to them, put the details of the allegations to them (eg: In fairness to you I am going to put the allegation to you. Do you understand that?). If the suspect comments and answers the allegations you may continue to ask questions until the suspect objects. However, once you put the allegation/s in full don’t continue questioning suspects if they make it clear they are not prepared answer your questions.

**Cautioning**

Caution someone once you:

- arrest them, or
- believe there is sufficient evidence to establish they have committed the offence which is the subject of the questioning, or
- would not allow them to leave if they wanted to, or
- have given them reasonable grounds to believe they would not be allowed to leave if they wanted.

If you fail to caution at the appropriate time, or if the suspect does not fully understand it, any subsequent conversation or admission might be ruled to be improperly obtained and inadmissible. Particular care should be taken in relation to vulnerable persons.
Have the caution given in, or translated into, a language in which the recipient is able to communicate with reasonable fluency. You do not have to give the caution in writing unless the recipient cannot hear adequately.

You do not have to caution where the law requires people to answer questions put by, or to do things required by, the investigating official eg: Road Transport & Customs Acts.

The initial caution is:

I am going to ask you some questions. You do not have to say or do anything if you do not want to. Do you understand that?

We will record what you say or do. We can use this recording in court. Do you understand that?

When you are about to conduct a record of interview, either electronically or manually, give the caution again as follows:

I am going to ask you more questions. You do not have to say or do anything if you do not want to. Do you understand that?

We will video tape/tape record/type up our questions, your answers and what you do. We can use this recording in court. Do you understand?

You do not have to follow the caution as a formal script, however, record what you say. It is essential you communicate to people they do not have to say or do anything in response to your questions and that anything they say or do may be used in evidence. Take into account their apparent intellectual capacity, age, background, level of intoxication, language skills etc when cautioning.
**Interpreters**

It is policy to provide people who have inadequate language skills or physical disabilities which impede communication with access to accredited interpreters.

Use an interpreter if the person (suspect or witness) you are interviewing:

- is unable to communicate in English
- has a limited understanding of English
- is more comfortable communicating in their own language
- is deaf, hearing impaired or speaking impaired
- is a child and the appropriate adult or support person requires one wants one.

NB: Just because someone can speak English to do everyday tasks does not mean they can cope with the added stress of a police interview. If in doubt, get an interpreter.

For someone in custody, defer any investigation until an interpreter arrives. If it is not reasonably practical to obtain an interpreter, or the urgency of the investigation (having regard to the safety of others) makes it unreasonable to defer it the custody manager will arrange for a telephone interpreter (see *Telephone interpreters* below) and defer any investigation until it is arranged. If this, however, is not reasonably practical, or the urgency of the investigation (having regard to the safety of others) makes it unreasonable to defer it the investigation does not have to be deferred.

Use properly accredited professionals. Do not use someone known to the suspect or a member of the suspect’s family to interpret during an interview.

If you require an on site (face to face) interpreter contact the Community Relations Commission (CRC) on phone: 1300 651 500 (24 hours a day).

Advise if the case is of a sensitive nature (eg. a sexual assault or incest), to ensure an interpreter of appropriate sex, culture or religious background is provided.
If someone is hearing or speech impaired do not interview them without an interpreter unless they agree in writing. Conduct the interview by showing them written or typed questions and allowing them to write or type their answers.

Many countries have more than one official language, eg: in Czechoslovakia, both Czech and Slovak are spoken. Accordingly, when requesting an interpreter, ask for one who can speak the dialect of the person needing one.

**Interviews with interpreter**

Ask for the interpreter's identification card or letter of authority issued by the CRC unless the CRC advised you at the time of the booking the interpreter would not have identification.

Conduct a pre-interview session with the interpreter and:
- brief them about the case
- tell them the objectives of the interview
- find out cultural background information from them
- decide the method of interpreting, eg: simultaneous or consecutive.

In the interview:
- introduce yourself and establish roles (including that of the interpreter)
- seat the interpreter to one side (in view if using ERISP)
- explain how the interview will be done (eg: interpreter is to use precise words used by both police and suspect, if suspect asks a question the interpreter is to repeat that to police and not answer it, no advice is to be given to suspect by interpreter)
- maintain eye contact with the person, if culturally appropriate
- speak in the ‘first person’
- speak slowly, naturally, using short sentences, and avoid using jargon
- if control slips in the interview, stop it immediately and re-state the ground rules
- summarise periodically to ensure you and the person share the same
understanding

- have the interpreter read the record of the interview to the person and sign it (if not on ERISP).

The following opening questions and format are suggested as a guideline:

This is ..., an interpreter in the ... language from the Community Relations Commission. Do you understand that? During this interview ...will translate my questions from the English language into the... language and your answers from the ... language into the English language. Do you understand that? When you answer and your answer may be lengthy please pause every now and then so ... can fully translate into English what you have said. When he has translated what you have said to that point, would you then continue with your answer?

[If applicable] I understand that you understand some English, however, to ensure both you and I understand fully everything that is said please allow ... to translate my questions from English into the.... language before you answer. Do you understand that?

After the interview, debrief the interpreter and ask if they have anything to say. Confirm the interpreter’s attendance by checking and signing their attendance book. Keep the original.

Report complaints you have about an interpreter to the CRC, through Legal Services.

**Telephone Interpreters**

Do not use this service for court or lengthy interviews, particularly if important or delicate issues are being discussed. Use it for:

- providing interpreting in emergencies, developing crisis situations or situations which cannot reasonably be deferred
- finding out someone's language to arrange a suitable interpreter
• helping with simple inquiries from non-English speaking people.

Consider using either a dual handset or a conference phone facility if you regularly use this service. The Telephone Interpreter Service contact number is 131 450.

**Language identification card**
Use the ‘Language Identification Card’ to identify the language of someone who doesn’t speak English.

**Interpreters in emergencies**
Do not use an unofficial interpreter except in an emergency. Record who you use so you can bring them to court if required.

**Interpreter for court**
For Local Court matters, for the first appearance only, arrange an interpreter, if needed. After this, make the booking through the clerk of the local court and give as much notice as possible.

For District or Supreme Court, contact the Criminal Listing Directorate to arrange the booking.

**Legal access**

**General**
Remain within sight and hearing while preliminary eligibility interviews are conducted. Remove yourself from hearing while instructions are being given.

Do not do or say anything to dissuade someone in police custody from obtaining legal advice.
The role of the legal representative

The legal representative’s role in the police station is to protect and advance the legal rights of their clients. The legal representative may intervene in the interview:

- to seek clarification or to challenge an improper question or object to the manner in which the question is asked
- to give legal advice.

A legal representative may only be required to leave the interview if their conduct prevents or unreasonably obstructs proper questions being asked or responses being recorded. Such behaviour includes:

- answering questions on behalf of the suspect
- providing written replies for the suspect to quote.

If you consider a legal representative is acting in such a way, stop the interview and consult a duty officer (or more senior officer) not connected with the investigation.

Where you decide to take the extreme action to exclude a legal representative from an interview you must be in a position to satisfy the court your decision was proper.

The duty officer, after speaking to the legal representative, will decide whether the interview should continue in the presence of that legal representative.

If the duty officer decides the interview should not continue the suspect is to be given the opportunity to consult another legal representative before the interview continues and that legal representative may be present during the interview.

If a legal representative is removed the Deputy Director, Criminal Law Division, Legal Services will be informed and decide whether the matter is to be reported to the Office of the Legal Services Commission.
Documentation
Record the exclusion of a legal representative and the reasons why.

Admissibility of interview evidence
Do not behave in a manner which could be regarded as being violent, unfair, oppressive, inhuman, degrading or improper towards the suspect. Be fair at all times.

Unless you have a reasonable excuse, record admissions relating to strictly indictable offences or indictable offences which may be dealt with summarily with the consent of the accused (see Annexure F) on tape. Use ERISP for this.

A reasonable excuse not to electronically record an interview includes:
- a mechanical failure (consider going to another station to electronically record the interview and if you don’t go make a record of your reasons. Report the mechanical failure)
- the refusal of someone being questioned to have the questioning electronically recorded
- the recording equipment being unavailable within a period during which it would be reasonable to detain the person being questioned.

You should, if possible, electronically record a refusal to consent to the recording of an interview connected to an offence the person is suspected of having committed. You do not need their permission to record their refusal.

However; you do not have the power to compel or intimate to the suspect that they must participate in an electronic recorded interview for the purpose of recording their refusal. Record the refusal in your notebook and if appropriate on the facts sheet.

There are Acts of Parliament that may impose an obligation on a person to give certain information to police.

The right to silence is only lost to the extent that the person is obliged to give certain
information. For example, under Road Transport legislation a driver is required to
give their name and place of abode etc; the owner is to give information about a
person in charge of their vehicle; any person is to give information as to the identity
of the driver alleged to have committed an offence and a driver is to give their
version of an accident etc.

The particular Act may provide for the information to be given orally or in writing.
However; no Act imposes an obligation on that person to provide that information in
an electronic interview.

Further guidelines to police may be found in Law Notes 5, 6 and 26 of 2000 -DI and
Law News 63 (last revised and updated in 2003) on the Legal Services intranet,

**Types of questions**

Generally avoid questions which suggest an answer (leading questions) and those
which can be answered by a yes or a no (closed questions). Your most important
form of question should be the open question, one which encourages the suspect to
answer (eg: What did you do after you left the shop?, What happened then?, What
can you tell me about that?). These should be the feature of your interview. These
generally start with either what, where, when, who, why or how.

Avoid the use of multiple questions - those using the word ‘and’. For example, ‘Did
you pick up the knife AND run away?’ Is a yes answer yes to picking up the knife,
yes to running away or yes to both? Ask two questions instead.

Avoid asking ‘Is that correct’. Not only is it a closed question but often it seeks a
response to a multiple question.

Remember, the use of silence (or pregnant pause) after the suspect has answered
often causes the suspect to start talking again and it gives you time to frame your
next question or consider tactics.
Refer to Annexure I for some sample questions for some of the more common offences you will deal with. Remember, however, these are samples only and you need to consider the specific circumstances of your case in developing your questions.

**Preliminary interviews**

Do not conduct lengthy preliminary interviews with a suspect before a formal, electronically recorded interview at a recognised interviewing facility.

Preliminary questioning, other than at a recognised interviewing facility, should be conducted only for the purposes of clearing up any doubt and/or ambiguity, unless delay would be likely to:

- interfere with or physically harm other people
- lead to interference with evidence connected with an offence
- lead to the alerting of other people suspected of having committed an offence but not yet arrested
- hinder the recovery of property.

Once the risk has been averted or questions have been put to attempt to avert the risk stop interviewing.

Where a confession, admission or statement has been made during preliminary questioning before arriving at a recognised interviewing facility record it in full in your notebook. Ask the suspect to sign it.

Where you make contemporaneous notes of any admissions or statement have other police present at the time sign it and compile a complete typewritten statement of it.
Formal interviews

Permission to formally interview a suspect can only be granted by the custody manager. Where possible conduct formal interviews at a recognised interviewing facility.

In remote locations or other places (hospitals, prisons, interstate or overseas) it might not be possible to comply the above requirement. When equipment is available, however, and when circumstances call for the recording of interviews the use of triple deck audio recording equipment is urged. The procedures to be applied to remote interviews are to be identical with those used in station interviews.

Registration of master tapes and acquittal of tape stock will be carried out as soon as practical and in any case without delay on return to the station.

Do not leave suspects alone while in police custody (eg. when suspending interviews).

Conduct the interview as per the formal PEACE interview model.

If you cannot record the interview on tape, record it on a word processor, typewriter or in your notebook.

Formal PEACE interview model

Before starting your interview plan and prepare for it by completing a plan as set out in Annexure K. After you have completed the plan, explain the interview process to the suspect (Refer to Annexure J for this information and the initial questions to be asked). Remember to adopt any earlier confession, admission or statement.

After completing these steps you need to establish the account (the body of the interview) by, in the following order (refer also to Annexure L):

- inviting the suspect to give their version of events
• if the suspect replies, asking pertinent questions to develop anything raised which confirms or dispels the suspicion on which the arrest was made
• where necessary, ensuring you and the suspect share the same understanding by summarising their answers
• in fairness to the suspect and if appropriate, disclosing any relevant facts your are aware of, (ie. witnesses evidence, exhibits) and asking for a reply
• ensuring you have the necessary evidentiary points to lay the appropriate charge
• clarifying aspects of the suspect’ version which do not match evidence available to you. Base your clarification on evidence, eg: witness statements, physical evidence. Do not, however, cross examine the suspect.

When you ask questions, anticipate defences which might be raised.

Be conscious to obtain evidence which might negate any proofs, eg: evidence to rebut an alibi or evidence of similar facts.

If possible, when interviewing, confine your questioning to one offence at a time.

At appropriate points during the interview ask your corroborator to clear up anything which might have been overlooked.

Once you have completed questioning close the interview by having a senior officer adopt it. For procedures and questions see Annexure C.

At the end of the interview label and store the tapes as set out below.

Typed or written records of interview will follow a similar format to the ERISP model. The procedures and questions are in Annexure D.

After the interview evaluate your performance and also consider any new lines of
Showing documents to suspect

If showing a document or exhibit to a suspect, consider the possibility they might damage, destroy or alter the document or exhibit. If the document/exhibit is to be fingerprinted, do not allow the suspect to handle it and give them instructions to that effect. You might prefer to show the suspect a photocopy. If showing something to the suspect during the interview get the suspect to adopt the object being shown.

I show you a (description of exhibit or document). Do you agree that the top of that document has on it the numbers 1234? or Do you agree there are numbers at the top of the document? What are those numbers? What can you tell me about this document?

Ask the suspect to place the time and date on the document and then sign it. Remember, do not do this on originals - use a copy. You should then sign the document.

Evidence of co-suspect

It is quite proper during the interview to put to the suspect things said by a co-suspect (or anyone else) and ask the suspect to comment. It is also quite proper to show the suspect a hand written statement, record of interview of a co-suspect and ask for comment. Caution the suspect before showing it to them or playing the tape. As with the formal interview model, develop any event which might confirm or dispel the suspicion on which the arrest was made.

The best time to introduce the co-suspect’s statement is after you have obtained the suspect's version and as much information as you can. Exercise caution when showing documents/exhibits to a suspect to avoid:

- the suspect damaging, destroying or altering the document
- disclosing an address or phone number of the co-suspect (or witness for that matter).
The following are sample questions which may help you in this procedure.

Do you know (name of co-suspect)? (Co-suspect) has been interviewed about this matter. Do you understand that? (Co-suspect) has made a handwritten statement about this matter. Do you understand that? I show you a two page document dated ... being a statement made by (co-suspect)? I am going to ask you questions about this statement. However, I want you to understand that you do not have to say or do anything unless you wish to do so but whatever you say or do will be recorded and may be used in evidence. Do you understand that?

If the suspect is unable or unwilling to read the document, then you can read the document to the suspect. I am going to read this document to you. Do you understand that? As I read it to you, will you follow where I am pointing on the document?

After the suspect has read aloud the document, or you have read it aloud, ask for comment about the allegations in it. What do you have to say about what (co-suspect) told us?

It might be necessary to break the co-suspect’s statement down into specific allegations and then inviting the suspect’s comment. If the suspect denies the version as alleged by the co-suspect consider asking:

Do you know of any reason why (co-suspect) would say that you have done these things? Do you know if (co-suspect) would have anything to gain by telling police these things?

If the co-suspect has made an admission or confession on video, there is nothing prohibiting the showing of that admission to the suspect, albeit with an appropriate caution. Consider putting a television/video recorder above the electronic recording device and play the relevant parts of the co-suspect’s admission to the suspect...
during your interview. This might result in some significant body language from the suspect. Alternatively, suspend your interview, play the co-suspect’s admissions and then re-commence the interview with a series of ‘Do you agree’ adoption questions.

**Fingerprint evidence**

If the suspect admits the offence after the allegation is put then proceed with normal questioning. However, if the suspect denies the offence do not introduce the fingerprint allegation ‘upfront’ as it gives the suspect opportunity to offer an explanation as to why their prints are where they are.

I am investigating a (break, enter and steal, assault) offence at ... Do you know anything about this (offence)? If ‘Yes’, EXPLORE.

If the suspect claims to know nothing about it continue with questioning (the following are some sample questions to guide you).

Do you know where ... is located? If the suspect claims not to know where the premises are then show the suspect a photograph of the premises. I show you a photograph of... . Do you recognise the house (shop etc) in the photograph? Have you ever been to that house (shop etc)? If ‘yes’, EXPLORE - when, where, did you go inside, what rooms did you go in, what did you do in them? Do you know the occupants? How do you know the occupants? Please sign, date and place the time on the rear of the photograph. What is your current occupation? On the (date of offence) were you employed? Do you know the occupants of ...? Do you know anybody by the name of (name of victims)? Do you have any knowledge of this break, enter and steal offence? Did you commit this break and enter? Do you know who did? Once the suspect’s denials are complete then it is time to introduce the questions about the fingerprint evidence.

When you wish to introduce fingerprint evidence against a suspect in an interview adopt the following:

- tell the suspect fingerprints were found at (place) on (date) by police regarding
an offence which occurred at/between (time and date)

- tell the suspect whether or not the fingerprints have been identified as matching theirs (do not tell the suspect they have been identified from their fingerprints from a previous offence)
- ensure the suspect understands what you have said (ask questions)
- ask the suspect to comment on the information.

Some sample questions are:

Police fingerprint experts have found fingerprint impressions on (state where and on what fingerprints found). Do you understand that? I believe those fingerprint impressions match your fingerprints. Do you understand that? Can you explain to me how fingerprint impressions, which I believe match your fingerprints, came to be on that property at that house (shop etc)?

If the suspect you are interviewing is not on fingerprint records, and the latent prints from the crime have not been matched, ask a suspect who is not under arrest to consent to a set of fingerprints being taken under the Crimes (Forensic Procedures) Act 2000. If the suspect consents to supply a set, suspend the interview and have a set of comparison fingerprints taken in accordance with the Crimes (Forensic Procedures) Act 2000. If the suspect does not consent, a court order under the Crimes (Forensic Procedures) Act 2000 will have to be obtained. If the suspect is under arrest for the offence, a set of fingerprints may be obtained under section 133 of LEPRA. Alternatively, a request under the Crimes (Forensic Procedures) Act 2000 could be made. In this case, if the person consents, take a set of fingerprints in accordance with the Crimes (Forensic Procedures) Act 2000. If the person does not consent, consider seeking a senior police officer’s order. Bear in mind that if the person is under arrest, the taking of fingerprints as a forensic procedure does not act as a time out for the purposes of Part 9 of LEPRA. Attempt to have the fingerprints compared by experts from Fingerprint Specialist Support/Fingerprint Crime Scene Unit immediately.
If you cannot have the comparison done immediately, resume the interview. If the comparison can be done immediately, resume the interview afterwards, however, always keep in mind the time remaining during which you can lawfully conduct your investigation.

**Identification evidence**

If you have visual identification evidence you wish to introduce during the interview adopt the following:

- tell the suspect someone fitting their description was seen by (witness, security camera, etc) leaving the scene of the (offence) which happened (time, date & place). Ensure the suspect understands.
- ask the suspect if they want to be in an identification parade for elimination purposes. Caution the suspect they don’t have to participate, unless they want to. If the suspect agrees suspend the interview and contact the duty officer to arrange an identification parade.
- once the identification parade has been conducted resume the interview.

Ask the suspect if they have anything to say about the identification parade. Develop any issues which arise.

Decide whether to continue or conclude the interview and tell the suspect.

Remember, if you cannot organise an identification parade at the time, make every effort to conduct one before the commencement of any prosecution.

Refer also to ‘Identification evidence’ in the *Procedures for the Evidence Act*.

**Sketch maps (mud maps)**

During an interview it is sometimes valuable to ask the suspect do a sketch map of the area where the offence took place.

In as much detail as you can, could you draw the (street, place) where this incident
happened?
Have the suspect label relevant points. Could you mark with an X where you were standing when you first saw the person you stabbed? Could you mark with a V where the person you stabbed was standing when you first saw him? Could you mark with an A where the person you stabbed was standing when you stabbed him?

Don’t forget to get the suspect to sign, time and date any sketch maps drawn. If the suspect is unwilling or unable to draw a mud map then you could draw an outline of the premises or location and have the suspect adopt the outline before the suspect marks the drawing as above.

**Interviewing children**

**General**
Do not question a child you suspect of committing a criminal offence unless a support person is present. Do not use a NSW Police employee for this. Refer to section 13 of the *Children (Criminal Proceedings) Act 1987*. This does not stop you from speaking to a child.

**Doli incapax**
Remember, when interviewing children aged between 10 and 14 you need to obtain evidence that they knew what they were doing was wrong (as opposed to mischievous or naughty). Try to establish whether they knew it was seriously wrong and punishment would be more than just punishment by their parents (eg: they knew they would get into trouble with police). Ask questions to determine the child’s understanding of right, wrong and what a crime is. For example, Did you know that it is wrong to (allegation)? What made you think it was wrong? When you (allegation) did you think something would happen to you if you were seen? (If the answer to this question is ‘nothing’ ask Why do you say that?) What do you think would happen? Who did you think you would be in trouble with? Do you know what a crime is? What is a crime? When you (allegation) did you think it was a crime? What do you think
happens to people who commit crimes?

If the child denies the offence, put the allegation to them and invite comment. For example, Do you think it would be wrong to (allegation)? Do you think something would happen to you if you (allegation)? What do you think would happen?

If the person you are interviewing was a child aged between 10 and 14 at the time of the offence but is now over 14 you are still required to prove that at the time the person knew what they were doing was wrong.

**Statements, confessions and admissions**

The senior officer adopting the interview conducts questioning in front of the support person and checks the statement or record for a statement indicating the support person was present during the interview. Also ask the support person whether the statement has been recorded accurately and whether it was made voluntarily. Ask the support person to witness the statement or record. If the support person refuses make a note in your notebook and ask the person to witness that note.

Where a witness statement is made by a child under 18 check the following endorsement has been included:

"I have not told any lies in this statement."

If you cannot comply with any of the above procedures immediately report why to your supervisor.

Where a child does not want to answer questions in the presence of a support person, does not want one present or evidence might be lost by advising one, tell the custody manager.

**Interviewing at school**

Avoid interviewing a child at school. Where possible, interview the child at home.
If it is necessary to interview a child at school tell the child’s parents or carers, remembering the rules governing the admissibility of statements taken from children.

Do not allow a school staff member to sit in on an interview where the incident under investigation involves the school.

Refer to the *Schools and NSW Police Information Exchange Memorandum of Understanding*.

**Statements**

**General**

If someone wants to make a statement of their own choosing give them the opportunity, after cautioning them. Ensure statements are freely and voluntarily made. Supply appropriate writing materials. If someone wants to hand you a prepared statement, either from themselves or their legal representative, accept it.

If they do not want to write the statement, accurately record what they say.

When the statement is completed hand it to them and ask them to read it aloud. If they decline refer the matter to a senior officer.

If they read the statement:

- do not question further but you may draw attention to matters in the statement which are not clear
- ask them if they want to say anything further
- ask them to make any correction and initial them
- ask them to sign each page of the document
- witness the document, ensuring you write your name, rank, station and the date and time at which you witnessed it under your signature.
Adopt the statement in the manner set out in Annexure E.

**Supplying copies of transcripts, interviews and statements**
Supply the suspect or legal representative with a copy of the transcript (if available), statement or interview and ask them to sign a receipt.

If they decline have the adopting officer sign in lieu.

Supply witnesses with copies of their statements.

If you consider a copy of the document should not be released (to the suspect, legal representative or witness), because of security or to maintain confidentiality of inquiries, you may decline to release the document.

You do not have to supply a copy, if you believe on reasonable grounds, it is necessary to prevent the:
- suspect’s escape
- escape of an accomplice
- loss of evidence
- interference with witnesses.

In these circumstances, tell the suspect a copy will not be supplied until a direction has been obtained. Submit a comprehensive report, with a copy of the document to the Deputy Director, Criminal Law Division, Legal Services for a direction. Consider allowing the suspect and/or legal representative to view the statement or interview by arrangement at a convenient time until it is released.

See *Labelling, supply and storage of tapes* for information about supplying copies of ERISP tapes to suspects.
Inducements

Definitions

Induced statement
Is one taken from a person who is:

- a person who may or may not be a suspect who is prepared to supply information (including a witness or potential witness) relevant to the investigation
- an offender who has been charged who may be in a position to supply further relevant information and who seeks immunity from prosecution;

and who is otherwise not prepared to supply the information. It includes statements recorded electronically or in writing.

The effect of an inducement is that any admission, made subsequent to the inducement and prior to its withdrawal or expiration, will not be admissible against the witness in any criminal proceedings where the witness is a defendant. An induced statement is not an indemnity from prosecution. Indemnity from prosecution can only be authorised by the Attorney General. In matters being prosecuted by the DPP any application for indemnity must be made through that office. Refer to the interagency protocol regarding applications by government agencies for immunities from prosecution and undertakings on the “Law” Intranet.

(Updated 24 August 2007 [EDMS/2006/4385])

Authorising officer
Is a local area commander or above or a police officer of equivalent rank (Superintendent and above) who is in line command of the officer making the application. If a matter is already with the DPP for prosecution purposes (not simply to provide advice as to sufficiency of evidence to support charges) and it is intended to take an induced statement from the defendant, accused or appellant, witness or
potential witness in the proceedings and the statement relates to that matter, the
authorising officer is the DPP.

**Authority to take an induced statement**

*Investigating officer*
Before taking an induced statement, make a confidential application in writing to the
relevant authorising officer. In your application summarise the current circumstances
of the investigation and address the issues listed hereunder and any other relevant
matter to permit full consideration in authorising or declining the application. In
extremely urgent cases, you may apply within NSW Police by telephone or by
arrangement in person. These requests or applications are to be supported in writing
to the authorising officer as soon as possible or at least within 24 hours.

If you need legal advice or guidance, contact the Deputy Director, Criminal Law
Division, Legal Services. If you are from State Crime Command you may use the
Operational Legal Support Unit within that command. If urgent and outside officer
hours, contact the DOI or State Crime Command (Operational Legal Support Unit)
on call number respectively. Include in your application to the authorising Officer the
advice you were given. Do not fax your application or request for advice.

*Authorising officer*
You may authorise an investigator to take an induced statement in appropriate
circumstances and only as a last resort where other alternatives have been carefully
considered including conventional investigation approaches. You have no such
authority if you are the OIC of the case or are directly engaged in the actual
investigation. You should be the closest in the line of command to the investigation.
If not, record on the application the reasons why you considered the matter.

You should take into account:

- the seriousness of the offence(s) being investigated and in particular the
potential for further serious offences being committed if an investigation result is not achieved

- the extent of the likely involvement by the witness in the criminal activity under investigation
- the likely culpability of the witness in the criminal activity under investigation compared to others who are involved in this activity
- the significance of the information that is likely to be provided by the witness to the investigation
- the likelihood of evidence being obtained to achieve the same or a similar investigative result through other means
- the attitude of the witness and the likelihood of the witness being persuaded to provide the information in a conventional manner
- the perceived reliability of the witness and the evidence that the witness is likely to provide if an inducement is given.

If you need legal advice or guidance contact the Deputy Director, Criminal Law Division, Legal Services or the Operational Legal Support Unit, State Crime Command respectively as outlined above.

**Recording of telephone applications or requests in person**

**Authorising officer**

Pending receipt of formal documentation make an appropriate record of:

- brief details of the application provided by the investigator
- reasons why the application required immediate authorisation
- the decision and if the application was declined, the reasons.
Applications for indemnity from prosecution

Investigating officer

Refer these applications to the Office of the Director of Public Prosecutions in writing under confidential cover supported by copies of all relevant documents. Do not send requests by fax. In extremely urgent cases contact the Deputy Director, Criminal Law Division, Legal Services or the Operational Legal Support Unit respectively.

Indemnities from prosecution and undertakings/inducements given in connection with an induced statement

In consideration of such matters under these guidelines, the NSW Attorney General has stated that persons facing criminal charges should not be under any expectation that an indemnity is an available reward for providing assistance to police. Such expectations are contrary to the indemnity process. Indemnities are a last resort and it is desirable that the criminal justice system operate without the need to grant concessions to persons who have participated in the commission of offences. Generally, an accomplice should be prosecuted whether or not he or she is to be called as a witness and the extent of any co-operation with authorities may be taken into account as a mitigating factor at the time of his or her sentence. The principle also extends to a potential witness’ participation in criminal activity unrelated to that being prosecuted.

(Updated 24 August 2007 [EDMS/2006/4385])

Wording of induced statement

At the start of an induced statement, record the following:

I am making this statement after a promise held out to me by......(full name & rank of the relevant police officer)..... that no information given in it will be used in any criminal proceedings against me in any court in New South Wales, except in respect of the falsity of my statement or for the purpose of establishing the falsity of evidence
given by me as a witness.

**Inducement when using ERISP**

When using ERISP equipment to take an induced statement the following wording should be used as a preamble:

In a short time I will ask you some questions about... . Before I start, I wish to say this. I have been authorised to offer you the following inducement for the purposes of this interview only. Nothing you say and no information you give in this interview will be used in any criminal proceedings against you in any court in New South Wales, except in certain circumstances. These circumstances are as follows. Firstly, when there are proceedings which arise from the falsity of anything you say in this interview. Secondly, when there is a need to use this material to establish the falsity of evidence you might give as a witness. Do you understand this?

At the end of the interview you should conclude with the following:

I told you at the start of this interview that nothing you say and no information you give in this interview will be used in any criminal proceedings against you in any court in New South Wales except in certain circumstances. I told you this inducement operated for the purposes of this interview only. For the purpose of that inducement, this interview is now ended. Anything you say to (names of police present) or me, or any other police officer from now can be used in evidence against you without restriction. Do you understand this?

**Removal of an inducement**

The effect of an inducement might be negated before the court proceedings by a person in authority (duty officer or above) adopting the procedure below.

Re interview by way of a statement or interview and include in detail:

- the full circumstances of the previous statement(s) and the inducement
(date/place made and to who)

- how the inducement operated on the witness'/defendant's mind
- the identities of everyone involved
- what was done and by who to withdraw the inducement
- anything said or done previously which does not now operate on the witness'/defendant's mind
- any further statement(s) are voluntary
- the signature or adoption of the witness/defendant
- the signature or adoption of the police officer witnessing the statement or record.

NB: These guidelines do not apply to NSW police carrying out investigations pursuant to the Australian Crime Commission, Independent Commission Against Corruption or NSW Crime Commission references. However, these officers are to comply with the relevant procedures of the respective agency in the performance of their duties.

**Questioning members of NSW Police**

If you become aware someone you are interviewing as a suspect is a police officer, immediately tell the custody manager. Remember the high standards of behaviour expected of you as a police officer and do not show favouritism when interviewing another officer.

In accordance with section 148 of the *Police Act 1990* do not charge a police officer without obtaining permission from the Commissioner's delegate.

**Labelling, supplying and storing tapes**

At the end of the interview eject the tapes and:

- complete proper labelling
- attach security seals to the master audio tape/s
- invite the suspect to sign/initial the seal or the interview (if the suspect
declines have the senior officer complete the relevant section in lieu of their signature)

- remove ‘record enable’ tab from the spine of the video master tape.

Supply a copy of the tape/s to the suspect or legal representative and ask them to sign a receipt. If they decline have the senior officer complete the relevant part on the label.

As soon as practicable, place the security master tapes in secure storage.

If you consider a copy of the tapes should not be released, follow procedures regarding not releasing statements - see *Supplying copies of statements*. 
Entering and searching premises and the seizure of property

General

You have no general power to enter and search premises without the owner’s or occupier’s consent.

The invasion of privacy must be justified.

This part of the Code applies to your powers to:

- enter premises to arrest and search without a warrant
- execute search warrants
- seize property from premises.

Power of entry

Be conversant with exceptions to the general rule that it is unlawful for police to enter and remain on private premises without the consent of the lawful occupier.

The following are a list of circumstances where you can enter premises without the consent of the occupier:

- to arrest someone you believe on reasonable grounds to be on the premises and, except where the seriousness and urgency of the circumstances dictate otherwise, you have asked the occupier to let you in and they have refused
- to prevent an imminent or actual breach of the peace
- to prevent a serious indictable offence about to take place
- to execute a search warrant.

NB: Be aware there are other legislative provisions which give you powers of entry.

Whenever you exercise any power of entry (under any law) you must comply with
the safeguards in Part 15 of LEPRA.

Search warrants

The issue of search warrants under New South Wales law is authorised and regulated by Part 5 of LEPRA.

Applying for a search warrant

Ensure you can substantiate the grounds on which you are basing your application.

If a magistrate refuses your application, do not make a further one unless it is supported by additional grounds.

Telephone Warrants - telephone an on duty magistrate for the issue of a search warrant in circumstances of urgency and where it is not practicable for the application to be made in person.

Executing search warrants

The application for, and execution of, a search warrant must be carried out in accordance with the NSW Police Search Warrant Standing Operating Procedures and the applicable law.

Ensure occupiers understand why you are entering and if they want someone else to witness the search allow it, unless you have reasonable grounds for believing it will hinder the investigation or endanger police or others.

Leaving premises

If premises have been entered by force you will, before leaving them, satisfy yourself they are secure by arranging for the occupier or agent to be present or by any other appropriate means.
Wrong premises searched
If the wrong premises are searched do everything possible at the earliest opportunity to allay any sense of grievance.

Advise people to seek legal advice about claims for ex gratia compensation. Do not undertake to pay any compensation.

Legal privilege
Where legal privilege is claimed conduct the search in accordance with Guidelines as to the Execution of Search Warrants agreed to by the NSW Law Society and the Commissioner of Police (NSW) (dated 3 May 1995).

The effect of the guidelines is that where a lawyer or the NSW Law Society is prepared to cooperate with the police search team, no member of the team will inspect any document identified as potentially within the warrant until the lawyer or the Law Society has been given the opportunity to claim legal professional privilege.

Search with consent - no warrant
You may where a search warrant has not been issued, search premises with the consent of someone entitled to grant entry to the premises.

The consent must, if practicable be in writing in your notebook and signed by the occupier or the person granting entry.

Search register
Make a COPS entry (incident) for all search warrants you execute and for all searches of premises you conduct by consent.
Stop search and detain

General

Refer to sections 201, 21 21A and 36 of LEPRA.

This part of the Code governs your statutory powers to stop and search people or to stop and search a vehicle without an arrest.

Before exercising your powers you must have reasonable grounds to suspect the person or vehicle is carrying any article as set out in the sections referred to above.

In determining whether you have reasonable grounds to suspect consider all the circumstances of each situation including:

- the nature of the article
- the time and location
- the behaviour and actions of who you want to search
- antecedents - if known (do not use this as the sole grounds)

Some factual basis for your suspicion must be shown. It may be based on hearsay material or materials that may be inadmissible in evidence, but the material must have some probative value.

Do not detain someone using these powers for the purpose of questioning. Do not detain anyone or vehicle for longer than is reasonably necessary to conduct your search.

If you do not find anything or you are not going to arrest let the people or vehicle go.

Do not stop or detain someone against their will to find grounds on which to base your suspicion. You must have the suspicion beforehand.
Before searching you may question someone about what gave rise to your suspicion. However, they do not have to answer.

If at any time something happens to remove your suspicion do not continue with or conduct the search.

Before searching comply with the safeguards in section 201 of LEPRA. Tell the person to be searched, or in charge of the vehicle to be searched, your name and place of duty and the reason for the exercise of the power. If you are not in uniform produce your identification.

If you are exercising a power that involves the making of a request or giving of a direction (such as a power under section 36) you must warn the person that he/she is required by law to comply with the request or direction (unless he/she has already complied or is in the process of complying). If the person does not comply with the request or direction after being given that warning, and you believe that his/her failure to comply is an offence, you must give another warning that the failure to comply with the request or direction is an offence.

Ensure people understand why they have been detained.

If it appears someone does not understand (language, disability etc) take reasonable steps to have the information understood. If someone accompanying can interpret, this will suffice.

Tell people searched a copy of the record of the search can be obtained through a freedom of information application.

Where possible avoid a forced search - obtain people’s cooperation. If you use force it must be reasonable in all of the circumstances. The force used is not to be more than is reasonably necessary to allow the search to be conducted. Force is to be...
used as a last resort. If you suspect on reasonable grounds one of the things for which you are searching may be concealed in the person's mouth or hair, your search may include requesting the person to open their mouth or shake their hair. However, you may not forcibly open a person's mouth.

When searching a person you must comply, as far as is reasonably practicable, with the requirements of section 32 of LEPRA. Refer to Annexure A.

When searching make a reasonable effort to reduce embarrassment and loss of dignity to those being searched. Conduct the search at or nearby the place where the person or vehicle was stopped.

Generally, conduct a frisk search only. A strip search cannot be conducted unless clearly justified under section 31 of LEPRA, taking into account the object you are searching for. If you are considering a strip search refer to Annexure A.

Record all searches, those present, the reasons for your suspicion, all conversations and actions in your notebook. Ask the person to sign your entry.
Identification

General

When investigating a criminal offence, always have regard to the following matters:

- identification of the defendant is an issue which must be proved beyond reasonable doubt
- visual identification evidence in any form is considered by the courts to be notoriously unreliable
- the best form of visual identification evidence is an identification parade.

When to use an identification parade

If you suspect someone whose identity is known to you has committed an offence and identity is an issue conduct an identification parade. Refer to ‘Identification evidence’ in the Procedures for the Evidence Act.

Ask suspects whether they are willing to take part in an identification parade. Explain they do not have to take part unless they wish to. Do not conduct an identification parade if the suspect does not consent.

You do not have to arrest the suspect for the purpose of conducting an identification parade. You may invite the suspect to take part. If the suspect agrees make every effort to conduct an identification parade up until the time any proceedings are commenced against that person.

Who may conduct the identification parade

Tell the duty officer of the station at which the identification parade is to be conducted that you want to conduct one and ask that officer to conduct it.

Do not conduct the identification parade if you are connected to the investigation.
When not to conduct an identification parade

Do not conduct an identification parade if:

- the suspect refuses to take part
- at the time of the parade, the suspect's appearance is significantly different from what it was when the witness had allegedly seen the suspect
- the suspect’s appearance or manner is so unique it would be unfair to the suspect to conduct an identification parade.

When an identification parade need not be conducted

You need not conduct an identification parade if:

- the offence is of a very minor nature
- the offence is of a minor nature and there is an abundance of other evidence identifying the suspect
- one or more witnesses identified the suspect at or about the time of the offence
- the suspect is personally known to the witness
- the witness does not wish to identify the suspect in an identification parade.

If you decide not to conduct an identification parade record your reasons in your notebook.

Using photographs for identification

You are entitled to show photographs of a suspected person to others to obtain information as part of the detection process - that is, to determine who to arrest. Do not show photographs to a witness which suggest they are photographs of people in police custody (eg: photos with blank spaces at the bottom from which names and numbers have been deleted).

If the suspect refuses to take part in an identification parade or you do not conduct an identification parade for reasons outlined previously, you may use another form of identification evidence, such as photographs.
Identification from crowd scene

If the suspect refuses to take part in an identification parade or you do not conduct an identification parade you may ask a witness to identify a suspect from a crowd scene.

Guidelines for Conducting an Identification Parade

Using Portable One-Way Mirror Facilities

Introduction

These guidelines are for use by police at police stations where portable one-way mirror facilities have been established.

1. Preface

1.1. A witness/victim should be given the option of viewing an ID parade through a one-way mirror after he or she has declined to view an ID parade ‘face to face’. This applies where ‘face to face’ identification is unsuitable eg, trauma to victim, potential for violence by suspect towards the victim, witness does not wish to be identified etc.

1.2. Initial reference should be made to the following documents

1.2.1. Procedures for the Evidence Act, Identification evidence

1.2.2. Code of Practice for CRIME, Identification

1.3. The circumstances will vary for the running of identification parades and each case may require different organisation and consideration. For example:

1.3.1. There is only one witness/victim and he/she is only willing to view a parade through a one-way mirror;

1.3.2. There are two or more witnesses and some are willing to view a parade ‘face to face’, while others are only willing to view a parade through a one-way mirror. It may be sufficient to only request the suspect to undergo a ‘face to face’ parade if adequate identification is made by that method;

1.3.3. The time taken to run an identification parade is difficult to estimate. It will depend on the number of witnesses and the time each witness takes to view the parade. However, it is necessary to estimate the possible time the parade will take to inform the parade participants how long they will be required and to organise the witness
list. The last witness may be several hours after the first witness. Consider such things as travel arrangements and the provision of meals.

1.4. An identification parade utilising a one-way mirror will only be necessary where other identification evidence is insufficient.

2. **Procedure by investigators when arranging an identification parade through a one-way mirror**

2.1. The witness should be first asked to view an identification parade ‘face to face’ ie the witness will be in the same room as the parade participants. Should the witness decline, the reason/s should be noted.

2.2. If the witness declines because he or she do not wish to be identified to the suspect or does not want to be in the same room as the suspect, the witness may be given the option of viewing an identification parade (line-up room) through a one-way mirror from a separate room (viewing room). The witness would not be seen by the suspect.

2.3. The following procedure must be explained to the witness and then the suspect:

   2.3.1. The identification parade will be run by a police officer not involved in the investigation (an independent officer) and the entire proceedings will be video recorded.

   2.3.2. The witness will view the parade from the viewing room, through a one-way mirror and will not be able to be seen by the parade participants at any time;

   2.3.3. In the event that only one video camera is available, ensure the camera records the full identification process by the witness/s.

   2.3.4. The suspect will be able to hear any instructions and comments made in the viewing room. If the witness objects to the suspect hearing his/her voice, the independent officer will repeat what the witness is saying to the line-up parade participants.

   2.3.5. The suspect may have their legal representative present in the viewing room as an observer. If present, the representative is not to play any part in the parade.

   2.3.6. If the identity of the witness must be kept confidential, the legal representative should be present in the line-up room as an observer.

   2.3.7. If the witness needs to hear the suspect’s voice or to say particular words, the witness should be positioned behind a partition to hear the suspect’s voice.
2.3.8. The videotapes of the identification parade will be available for viewing by the defence. This is subject to any objections made by the prosecution in regard to the identification of the witness.

2.3.9. Should the conduct of the suspect, at any time during the identification process become unreasonable, the identification parade will be suspended and reassessed. If appropriate, the identification parade should be terminated and the reasons for termination documented. The accused and their legal representative should be informed of the reasons for termination.

2.4. The entire procedure is to be recorded on video and audio. If available, use two digital cameras to record the parade from the:
   a. Line-up room;
   b. Viewing room.

2.5. In the event that only one video camera is available ensure that the camera records the identification process by the witness.

2.6. Arrange at least seven other persons of similar age, height and appearance as the suspect. DO NOT use police officers.

3. Conduct of witnesses before the parade

3.1. Do not allow any communication between witnesses. If possible, keep all witnesses separated before and after the parade.

3.2. If many witnesses are involved, have them wait in a room with a police officer present at all times.

3.3. Ensure a statement has been taken from each witness describing any suspects prior to the parade. A further statement should be taken from each witness immediately after viewing the parade, regardless of whether they have identified anybody.

3.4. Each witness participating in the parade should be taken individually to the parade and line-up. Reassure each witness that the participants cannot see him or her through the mirror. Explain to each witness the procedure to be used during the entire identification process.

3.5. Inform the witness that the suspect has the right to change position in the parade after each witness.
3.6. Ensure that witnesses do not see any of the parade participants, including the suspect, prior to taking part in the formal identification parade process.

3.7. If requested, the witness should be afforded the opportunity of having a support person present during the identification process. This is particularly relevant if the witness is aged or a juvenile. The support person must not:
   a. Be another witness; and
   b. Participate or interfere with the identification parade

4. Video recording the parade. (One-way mirror)

4.1. The independent officer should complete and comply with the guideline set out in annexure A.

4.2. During the parade the only persons allowed to be present in the:
   4.2.1. Parade room other than the parade participants are:
      4.2.1.1. The independent police officer;
      4.2.1.2. The video recording officer;
      4.2.1.3. The suspect’s legal representative (to observe only – must not interfere) and
      4.2.1.4. Sufficient police (not involved in the investigation) or Corrective Services officers deemed necessary to secure the room if the suspect is in custody.
   4.2.2. Viewing room are:
      a. The independent police officer;
      b. The video recording operator;
      c. The witness;
      d. Witness support person, if applicable and;
      e. The suspect’s legal representative, if the identity of the witness is not confidential.

4.3. No police officer involved in the investigation should be able to see the parade or know what position the suspect is taking during the parade.

4.4. The video recording will commence when the parade participants are congregated in the parade room. The independent officer should read from the procedural form and demonstrate what is required from the parade participants.
4.5. Turn off all lights and block all lighting from windows in the viewing room. (This ensures that the one-way mirror does not become transparent) If there is a curtain over the one-way mirror, this should be drawn over the mirror until the witness is participating in the identification process.

4.6. The independent officer should call for the first witness to attend the viewing room and read from the procedural form to instruct the witness. Place the witness directly in front of the one-way mirror. Do not let anyone stand between the witness and the video camera.

4.7. When the witness has finished viewing the parade they should leave the witness viewing room.

4.8. The suspect should be given the opportunity to change position in the parade before the next witness enters the viewing room.

4.9. Should the video recording be suspended for any reason, upon the recommencement of recording, the suspect should be given the opportunity to change position in the parade before the next witness enters the viewing room.
5. **After the identification parade**

5.1. Regardless of whether the witness has identified somebody, once the witness has taken part in the identification parade have the witness taken to an area where he or she will not encounter any other witness or other parade participants. Obtain a statement from them in relation to his/her participation in the process.

5.2. In the absence of the accused, the independent officer then gives the A4 envelope in paragraph “o” of annexure A to investigating police. The independent officer is also to inform investigating police of the number of the suspect during that particular identification.

5.3. Consideration must be given as to whether the identity of the witness needs to be protected. If so, it may be necessary to obscure the face of the witness before any copy of the video is provided to the prosecution and/or the defence. In such circumstances when the defence seeks access to the unobscured video recording, the matter should be raised with Legal Services.

6. **Further considerations**

6.1. Admissibility of any identification evidence may be excluded by a court in the exercise of its discretion pursuant to section 138 of the Evidence Act. Even if admitted, the jury, who will receive a warning from the trial judge about the inherent dangers in too readily accepting identification evidence, may place little weight on the evidence, especially if there are particular reasons in the circumstances to be wary of it.

6.2. Conduct the procedure in a way that will maximise the confidence the jury (or magistrate, if the proceedings are dealt with summarily) will be able to have in the reliability of the evidence. In that respect, the following features will be regarded as important:

6.2.1. The witness’s selection ought to be made from a reasonable number of other subjects - at least 8, but preferably 20 or more.

6.2.2. Of those 8 to 20 or more persons, their appearance ought to be consistent with the description given by the victim of the offender.

6.2.3. The suspect ought not stand out as unusually different from the other subjects.

6.2.4. The witness must not be influenced to pick a particular person.

6.2.5. The witness ought to be told the offender may not be one of the people viewed.

6.2.6. The witness ought to be told that the investigation will continue regardless of whether or not a person is selected.
6.2.7. If possible, the persons ought to be brought into the witness's view sequentially rather than simultaneously.

6.2.8. The witness ought to be instructed to indicate immediately when each person comes into view whether the person is or is not recognised by the witness as the offender.

6.2.9. The procedure should be conducted as far as possible by a police officer who does not know the identity of the suspect.

6.2.10 The conduct of the procedure ought to be video recorded so that the suspect and the court can view it at a later time to assess any prejudicial features.

See “Annexure N” for Identification Parade – One-Way Mirror Form
Forensic Procedures

Forensic procedures on adult suspect

(NB: These do not refer to a child, incapable person, Aboriginal or Torres Strait Islander - refer to the relevant SOPs for those people)

Before you request a person to consent to a forensic procedure you must be satisfied:

a. the person is a suspect, and
b. the person is not a child or incapable person (these people cannot consent), and
c. if the procedure is a buccal swab, or taking a sample of hair (other than pubic hair) or is an intimate forensic procedure there are reasonable grounds to believe the procedure might produce evidence tending to confirm or disprove the suspect committed:
   i. a prescribed offence, or
   ii. another prescribed offence arising out of the same circumstances as that offence, or
   iii. another prescribed offence in respect of which evidence is likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value,
d. if the procedure is a non intimate other than taking a sample of hair (other than pubic hair) there are reasonable grounds to believe the procedure might produce evidence tending to confirm or disprove the suspect committed:
   i. an indictable or summary offence, or
   ii. another indictable or summary offence arising out of the same circumstances as that offence, or
   iii. another prescribed offence in respect of which evidence is likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value,
and
e. your request for consent is justified in all the circumstances
Give the person a copy of the `Forensic Procedures Information Sheet - Suspect' and:

- read it to them
- ask them if they understand it
- ask them if they wish to exercise any of their rights and provide them the opportunity to exercise them
- ask them if they want to seek legal advice. If yes, provide them with the opportunity to do so.
- ask them to consent to the forensic procedure.

Remember to electronically record the giving of the information and any response by the person. If it is not practicable for you to record this electronically record it in writing.

If the person consents, carry out the procedure as per the `Carrying out forensic procedure SOP’. If the person does not consent refer to the ‘Suspect Non-Consent SOP’.

Provide the person or their legal representative or interview friend with a copy of the information sheet and obtain a receipt.

If at any stage the suspect withdraws consent, proceed as if the suspect has not given consent (See `Suspect Non-Consent’ SOP).

**Forensic procedures child/incapable person - suspect**

If your suspect is a child/incapable person you must follow the procedures herein.

Remember, a child/incapable person who is a suspect cannot consent to a forensic procedure - you must make an application to a court for an order to conduct a procedure.

Before considering applying for a court order you must be satisfied of the following:

- if the procedure is a buccal swab, or taking a sample of hair (other than pubic hair) or is an intimate forensic procedure there are reasonable grounds to believe the child/incapable person committed:
i) a prescribed offence, or

ii) another prescribed offence arising out of the same circumstances as that offence, or

iii) another prescribed offence in respect of which evidence is likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value,

- if the procedure is a non intimate other than taking a sample of hair (other than pubic hair) there are reasonable grounds to believe the child/incapable person suspect committed

  i) an indictable or summary offence, or

  ii) another indictable or summary offence arising out of the same circumstances as that offence, or

  iii) another indictable or summary offence in respect of which evidence is likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value,

and

there are reasonable grounds to believe the forensic procedure might produce evidence tending to confirm or disprove that the child/incapable person suspect committed the offence,

and,

the carrying out of the forensic procedure is justified in all the circumstances.

If you are satisfied of the above complete a court order application form and refer to the ‘Court Order SOPs’.
Forensic procedures on suspect - (Aboriginal or Torres Strait Islander)

Before you request a person to consent to a forensic procedure following these SOPs you must be satisfied:

a. the person is a suspect, and you believe on reasonable grounds the person is an Aboriginal person or a Torres Strait Islander, and
b. the person is not a child or incapable person (these people cannot consent), and
c. if the procedure is a buccal swab, or taking a sample of hair (other than pubic hair) or is an intimate forensic procedure there are reasonable grounds to believe the procedure might produce evidence tending to confirm or disprove the suspect committed:
   i. a prescribed offence, or
   ii. another prescribed offence arising out of the same circumstances as that offence, or
   iii. another prescribed offence in respect of which evidence is likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value,
d. if the procedure is a non intimate other than taking a sample of hair (other than pubic hair) there are reasonable grounds to believe the procedure might produce evidence tending to confirm or disprove the suspect committed:
   i. an indictable or summary offence, or
   ii. another indictable or summary offence arising out of the same circumstances as that offence, or
   iii. another indictable or summary offence in respect of which evidence is likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value,
   and

e. your request for consent is justified in all the circumstances

Do not ask the person to consent until an interview friend is present (unless the person has expressly and voluntarily waived the right to have one present). Make and record
arrangements to have one present.

Notify an Aboriginal legal aid organisation that the person is to be asked to consent to a forensic procedure (unless you are aware that the person has already arranged for a legal practitioner to be present or has waived the right to have an interview friend present).

Give the person a copy of the `Forensic Procedures Information Sheet - Suspect' (in the presence of the interview friend and/or legal representative) and:

- read it to them
- ask them if they understand it
- ask them if they wish to exercise any of their rights and provide them the opportunity to exercise them
- ask them to consent to the forensic procedure.

Remember to electronically record the giving of the information and any response by the person. If it is not practicable for you to record this electronically record it in writing. Remember, it is particularly important to record the waiving of any rights.

If the person waived their right to have an interview present give the person a reasonable opportunity to communicate, or attempt to communicate, with a legal practitioner of their choice (in private) after you have asked for consent.

If the person did not waive their right to have an interview friend present give the person a reasonable opportunity to communicate with the interview friend and the legal practitioner (in private) after you have asked for consent.

Remember, if the person is under arrest and you reasonably suspect the person might destroy or contaminate the evidence you do not have to allow any communication in private.

You may, at your discretion, exclude the interview friend (not the legal practitioner) if that person unreasonably interferes with you giving and reading the information sheet or when
asking for consent.

If the person consents, carry out the procedure as per the ‘Carrying out forensic procedure SOP’. If the person does not consent refer to the ‘Suspect Non-Consent SOP’.

Provide the person or their legal representative or interview friend with a copy of the information sheet and obtain a receipt.

If at any stage the suspect withdraws consent, proceed as if the suspect has not given consent (See ‘Suspect Non-Consent’ SOP).

**Suspect non-consent**

Where your suspect has not consented to a forensic procedure identify the category below into which your suspect falls and apply for the appropriate order.

**Non consent to buccal swab - suspect under arrest for prescribed offence**

i. a senior police officer may order the taking of a sample of hair other than pubic hair, or

ii. an application may be made to an authorised justice for an order (interim or final) authorising the taking of a sample by buccal swab or some other forensic procedure

**Non consent to non-intimate forensic procedure - suspect under arrest**

i. a senior police officer may order the carrying out of the non-intimate forensic procedure

**Non consent to intimate forensic procedure - suspect under arrest for prescribed offence**

i. an application may be made to an Authorised justice for an order (interim or final) authorising the carrying out of the procedure
Non consent to buccal swab for prescribed offence - suspect not under arrest

i an application may be made to an Authorised justice for an order (interim or final) authorising the taking of a sample by buccal swab or some other forensic procedure

Non consent to intimate or non-intimate - suspect not under arrest

i an application may be made to an Authorised justice for an order (interim or final) authorising the carrying out of the procedure

If the order is granted take the sample - refer to the ‘Carrying out forensic procedure SOP’.

If the order is not granted by the senior police officer you may in exceptional cases apply for a court order. If an authorised justice declines to grant a court order you may only make an application for a further court order if additional evidence is available.

NB: If at any stage the suspect consent, record the consent and proceed as per the ‘Carrying out forensic procedure SOP’.
Senior police officer orders - suspects under arrest

(These orders are for adult suspects under arrest, you are not authorised to order a procedure on a child or incapable person. You must be of or above the rank of Sergeant to make an order)

Before making an order for the carrying out of a non-intimate forensic procedure satisfy yourself:

- the suspect is under arrest and is not a child or incapable person
- the suspect has been asked to consent to the carrying out of a forensic procedure
- the suspect has not consented
- there are reasonable grounds to believe the suspect committed:
  i an offence, or
  ii another offence arising out of the same circumstances as that offence, or
  iii another offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and there are reasonable grounds to believe the forensic procedure might produce evidence tending to confirm or disprove the suspect committed such and offence the carrying out of the procedure without consent is justified in all the circumstances.

If the initial request for consent was for a buccal swab and was made in relation to a prescribed offence you may only order the taking of a hair sample if satisfied of the above.

If the initial request was for any other forensic procedure you may only order the carrying out of a non intimate forensic procedure.

Ensure the suspect or their legal representative or interview friend are given an opportunity to speak to you, or if this is not possible, to make a written submission to you, before determining whether to make the order.

If you make an order record, at the time or as soon as practicable after making it:
• the order made
• the time and date it was made
• your reasons for making it.

Sign the order and ensure a copy is made available to the suspect.

Where practicable make your order in person. You may also make it by telephone, radio, telex, facsimile or other means of transmission.

**Interim court order for forensic procedure**

Before your application for an interim order is determined you may use reasonable force to prevent the suspect from destroying or contaminating any evidence that might be obtained by carrying out the forensic procedure. Do not, however, carry out the forensic procedure until the court order is given.

Before applying for an interim order satisfy yourself:

• the person is a suspect who has not consented to the forensic procedure or is a suspect who cannot consent (child/incapable person), and
• the probative value of the evidence obtained from the forensic procedure is likely to be lost or destroyed if there is a delay in carrying out the procedure, and
• you are likely to get a final order in due course, and

if the procedure is an intimate forensic procedure, the taking of a sample of hair (other than pubic hair) or a buccal swab there are reasonable grounds to believe the person committed:

i a prescribed offence, or
ii another prescribed offence arising out of the same circumstances as that offence, or
iii another prescribed offence in respect of which evidence is likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, if the procedure is a non intimate forensic procedure, other than the taking of a sample of hair other
than pubic hair, there are reasonable grounds to believe the suspect committed:

i an indictable or summary offence, or
ii another indictable or summary offence arising out of the same circumstances as that offence, or
iii another indictable or summary offence in respect of which evidence is likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value,

and

there are reasonable grounds to believe the forensic procedure might produce evidence tending to confirm or disprove that the person suspect committed the offence,

and,

the carrying out of the forensic procedure is justified in all the circumstances.

If you are satisfied an application is warranted complete the Interim order application form and the accompanying affidavit. Make your application in person, if possible, or by telephone, fax or radio to an authorised justice. For after hours applications contact the DOI to identify the on call authorised justice.

When you make the application ensure, if it is reasonably practicable, that the suspect’s interview friend or legal representative, if the suspect is a child, incapable person, Aboriginal person or Torres Strait Islander is also present or in any other case the suspect’s legal representative is also present.

Allow the suspect’s interview friend and legal representative to speak to the authorised justice. If this is not possible allow them to make written submissions to accompany your
At your discretion, you may exclude an interview friend who unreasonably interferes with or obstructs the application or hearing of the application.

If an order is made complete, and sign, the relevant section on the application form with the terms of the order, the date and time it was made and the authorised justice’s name. Remember, these details must accord with the authorised justice’s record of the order. Check that the date, time and place at which the application will finally be determined are included.

Send a copy of the completed form to the authorised justice immediately.

On receipt of the authorised justice’s copy of the order ensure that it and your form accord in all material respects. If it does not, contact the authorised justice to rectify the discrepancy.

Once you are satisfied the two records accord in all material respects make a copy of each available to the suspect as soon as practicable.

Carry out the forensic procedure as quickly as reasonably possible, but in any case within two hours (where the person is not under arrest).

If the person is under arrest at the time the order is made carry out the procedure in a reasonable time which is no more than two hours after the end of the investigation period as provided for in Part 9 of LEPRA.

Also remember, each of the two hour periods do not include those times identified as time out for the purpose of the legislation allowing forensic procedures.

Do not have the sample analysed unless the final order has been made or it is likely to perish before the final order is made. Attend the hearing where the application will finally
be determined.

Refer to the ‘Carrying out forensic procedure’ SOP for guidance on how to take sample.

**Final court order for forensic procedure**

Before applying for a final court order satisfy yourself:

- the person is a suspect who has not consented to the forensic procedure or is a suspect who cannot consent (child/incapable person), and
- if the procedure is a buccal swab, or taking a sample of hair (other than pubic hair) or is an intimate forensic procedure there are reasonable grounds to believe the person committed:
  
  i. a prescribed offence, or  
  ii. another prescribed offence arising out of the same circumstances as that offence, or  
  iii. another prescribed offence in respect of which evidence is likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value,

- if the procedure is a non intimate forensic procedure other than taking a sample of hair (other than pubic hair) there are reasonable grounds to believe the person committed:
  
  i. an indictable or summary offence, or  
  ii. another indictable or summary offence arising out of the same circumstances as that offence, or  
  iii. another indictable or summary offence in respect of which evidence is likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value,

and

there are reasonable grounds to believe the forensic procedure might produce evidence tending to confirm or disprove that the person suspect committed the offence,
and,

the carrying out of the forensic procedure is justified in all the circumstances.

If you are satisfied an application is warranted complete the ‘Final order application form’ and the accompanying affidavit. Make your application in person to an authorised justice. Remember, the suspect must be present when the application is made and is entitled to be legally represented. Additionally, if the person is a child or incapable person an interview friend must also be present. If the person is an Aboriginal person or Torres Strait Islander an interview friend must also be present, unless this right has been expressly and voluntarily waived by the person.

If your suspect is not under arrest and will not appear at the hearing of the application consider obtaining a summons or where you can justify the need, a warrant. Complete the relevant affidavit to accompany your application for the summons or warrant.

If your suspect is under arrest and in the custody of other police consider applying to an authorised justice for a warrant to deliver the suspect to the hearing (only use this in exceptional cases).

If your application is refused do not make a further application unless you can provide further information which justifies the making of a further application.

If an order is granted consider the following:

If your suspect is not under arrest and presents to you to undergo the procedure carry out the forensic procedure as quickly as reasonably possible, but in any case within two hours.

If your suspect does not, in accordance with the terms of the order, present to you to carry out the forensic procedure consider obtaining a warrant to arrest the suspect solely for the purpose of carrying out the forensic procedure. Complete the relevant affidavit to
accompany your application for the warrant. Once arrested on this warrant detain the person for a period reasonably necessary to carry out the procedure but no longer than two hours.

Remember, if the person is under arrest at the time the order is made the procedure may be carried out in a reasonable time which is no more than two hours after the end of the investigation period as provided for in Part 9 of LEPRA.

Also remember, each of the two hour periods do not include those times identified as time out for the purpose of the legislation allowing forensic procedures.

Refer to the ‘Carrying out forensic procedure SOP’ for guidance on how to take the sample.
Carrying out forensic procedures

(NB: These procedures relate to all forensic procedures, including the taking of prints and photographs, except those taken in accordance with sections 136 (suspect under 14 in custody), 133 (suspect over 14 in custody) of LEPRA or section 63 of the Crimes (Sentencing Procedure) Act 1999)

Electronically record the carrying out of the forensic procedure (other than the taking of a hand print, finger print, foot print or toe print) unless:

a. the suspect objects, or
b. the recording is not practicable

Before carrying out the procedure:

a. inform the person the procedure is being recorded to:
   i. comply with the legislation,
   ii. provide them protection by ensuring the procedure is carried out correctly, and
b. inform the person they may object to the recording of the procedure, however, if they do then the procedure must be carried out in the presence of an independent person who is not a police officer, and

c. inform the person they may waive their right to have the independent person present, and

d. caution the person that they do not have to say anything while the procedure is carried out but that anything they say may be used in evidence, and

e. if your suspect is a child or incapable person ensure an interview friend and/or a legal representative will be present, if reasonably practicable, and

f. if your suspect is an Aboriginal person or Torres Strait Islander ensure an interview friend and/or a legal representative will be present, if reasonably practicable (the suspect can waive their right to have an interview friend present, and

g. any expert the person is entitled, and has requested, to have present during the procedure has been contacted is present or has been allowed a reasonable time
to attend (refer to the table in s50 of the Act for a list of persons).

If the person objects to the electronic recording arrange for an independent person to be present, unless the person has waived this right.

Remember, record any waiving of rights.

Do not question the person about any offence during the procedure. Suspend any incomplete questioning if you have to carry out the procedure during your investigation period.

If the person is under arrest under Part 9 of LEPRA it is recommended you carry out the forensic procedures after you have completed all your investigations in the time permitted under Part 9.

When carrying out the procedure afford the person reasonable privacy. Do not:

a. carry out the procedure in the presence or view of:
   i. a person who is of the opposite sex (unless the procedure is a non intimate procedure which does not require the removal of more than outer clothing, is a buccal swab or the suspect is a child and chooses otherwise), or
   ii. a person whose presence is not necessary for the purposes of the procedure, or required or permitted by another provision of the legislation (if the person is a child, incapable, Aboriginal or Torres Strait Islander a legal representative and interview friend are permitted to be present. In any other case exclude a legal representative), and

b. remove more clothing than is necessary for the carrying out of the procedure, and
c. involve more visual inspection than is necessary for the carrying out of the procedure.

Ensure no more police than are reasonably necessary to ensure the procedure is effectively carried out are present and, as far as is reasonably practicable, they are of the
same sex as the suspect (unless in the case of a child suspect the child chooses otherwise).

Use only reasonable force:

- to enable the procedure to be carried out, or
- to prevent the loss, destruction or contamination of any sample.

If at any stage during the procedure the person withdraws consent, proceed as if the suspect has not given consent (see `Without Consent SOP`).

If the interview friend unreasonably interferes with or obstructs the procedure remove them from the place where it is being carried out.

Ensure the procedure is carried out in a manner consistent with appropriate medical or other relevant professional standards and that it is not cruel, inhuman or degrading.

When carrying out either a Buccal swab (mouth swab) or taking a hair sample follow the instruction contained in the relevant sampling kit.

Enter any samples taken during the procedure as exhibits. Keep in mind the requirements for storing exhibits such as blood (refrigerate or store in cool ventilated room).

In the metropolitan area convey the sample to DAL within 72 hours of it being taken. In country areas immediately contact TNT Failsafe Courier on 1800 819 561 and arrange for the sample to be picked up at the nearest 24 hour station to be forwarded to DAL.

**Senior Investigating Officer**

Ensure you record the taking of a sample on COPS by selecting the relevant incident category (Forensic procedure - for suspect, Offender forensic procedure - for prisoners) and recording the sample’s bar code number as the external reference number.

Allow the person, their legal representative and their interview friend the opportunity to
view and/or listen to any recording made of the giving of consent or the conducting of a procedure.

If, you have a transcript made of a recording of consent or conducting of a procedure, ensure a copy is made available to the suspect.

If sufficient material to be analysed both for the investigation and for the suspect is available:

- make available to the suspect a part of the material sufficient for analysis as soon as practicable after the procedure, and
- take reasonable care to ensure the suspect’s part of the material is protected and preserved until the suspect receives it, and
- provide reasonable assistance to the suspect to ensure the material is protected and preserved until it can be analysed.

If the procedure involved photographing part of the suspect’s body ensure a copy of the photograph is made available to the suspect.

**Forensic procedures information sheet - suspects**

For the purposes of the forensic procedures legislation you are informed of the following:

- the giving of this information and your consent (if given) is being or will be recorded electronically, or in writing. You have a right to hear and/or view the recording.
- the procedure is needed for ......
- the offence the procedure relates to is ......
- the procedure will be carried out by an appropriately qualified police officer or person in the following manner....
- the procedure might produce evidence which may be used against you in court
- you may refuse to consent to the procedure
- you may have a legal practitioner of your choice present before deciding to consent
• the carrying out of the procedure (other than a hand, finger, foot or toe print) will be recorded electronically and you and/or your legal representative have the right to view the recording. If you object to the video recording of the procedure, the procedure must be carried out in the presence of an independent person unless you expressly and voluntarily waive your right to have an independent person present.

• (police to cross out paragraph if not applicable) as it is believed on reasonable grounds you are an Aboriginal Person or Torres Strait Islander, you have the right to have an interview friend present whilst the procedure is being carried out. This is in addition to your right to have a legal representative present.

• (police to cross out paragraph if not applicable) as it is believed on reasonable grounds you are an Aboriginal person or Torres Strait Islander, an Aboriginal legal aid organisation will be notified that you are to be asked to consent to a forensic procedure.

• you have the right to have a medical practitioner or dentist present of your choice while the procedure is being carried out, unless the procedure is the:
  1. taking a handprint, fingerprint, footprint or toe print, or
  2. taking a sample of saliva or by buccal swab, or
  3. taking a sample of hair other than pubic hair, or
  4. external examination of a part of the body other than the:
     i. genital or anal area or the buttocks, or
     ii. breasts of a female or a transgender person who identifies as a female that requires the touching of the body or removal of clothing, or
  5. the taking of a sample from a nail or under the nail
  6. taking a sample by:
     a. swab or washing, or
     b. vacuum suction, scraping or lifting by tape, or
     c. photograph of an external part of the body, or
     d. physical measurements (whether or not involving marking) for biochemical analysis of an external part of the body other than the:
i. genital or anal area or the buttocks, or
ii. breasts of a female or a transgender person who identifies as a female.

(Police to cross out if not applicable)

- the forensic material obtained from the procedure is to be used to derive your DNA profile and
- information obtained from analysis of the forensic material may be placed on the DNA database system,
- only a person authorised may access information on the DNA database system for one or more of the following purposes:
  a. forensic matching,
  b. making information available to you,
  c. administering the DNA database system
  d. under arrangements between NSW and another State or Territory or the Commonwealth to provide access to other law enforcement officers or other prescribed persons
  e. for and in accordance with the Mutual Assistance in Criminal Matters Act 1987 or Extradition Act 1988
  f. review of, or inquiry into, a conviction or sentence under Part 13A of the Crimes Act 1900
  g. investigating complaints about police conduct under Part 8A of the Police Act 1990
  h. a coronial inquest or inquiry
  i. investigation of a complaint by the Privacy Commissioner
  j. or any other purpose which has been prescribed by the regulations

a person may only disclose information stored on a DNA database for one or more of the following purposes:
  a. forensic comparison in the course of a criminal investigation by a police officer or other person prescribed by the regulations
  b. to make it available to you
c. to administer the DNA database system
d. under arrangements between NSW and another State or Territory or the Commonwealth to provide access to other law enforcement officers or other prescribed persons
e. review of, or inquiry into, a conviction or sentence under Part 13A of the Crimes Act 1900
f. investigation of a complaint by the Privacy Commissioner
g. any other purpose which has been prescribed by the regulations

a person may only disclose information revealed by the carrying out of the procedure on you:

a. to you
b. the information is already publicly known
c. in accordance with any other provision of the Act
d. in accordance with the Mutual Assistance in Criminal Matters Act 1987 and the Extradition Act 1988
e. to investigate any offence or offences generally
f. to decide to institute proceedings for an offence
g. for proceedings for any offence
h. for a coronial inquest or inquiry
i. for civil proceedings relating to the way a procedure was carried out (including Part 9 of the Police Act 1990)
j. for your medical treatment
k. for medical treatment of a victim of an offence that there are reasonable grounds to believe was committed by you
l. if you consent in writing to the disclosure
m. investigating complaints about the conduct of police officers under Part 8A, Police Act 1990
n. for scrutiny by the Ombudsman under section 121 of the Act
o. any other purpose which has been prescribed by the regulations.

If you do not consent to the procedure the consequences will be (police officer to cross
out those which are not applicable):

**Non consent to buccal swab - suspect under arrest for prescribed offence**

i a senior police officer may order the taking of a sample of hair other than pubic hair

ii an application may be made to an Authorised justice for an order authorising the taking of a sample by buccal swab or some other forensic procedure

**Non consent to non-intimate forensic procedure - suspect under arrest**

i a senior police officer may order the carrying out of the non-intimate forensic procedure

**Non consent to intimate forensic procedure - suspect under arrest for prescribed offence**

i an application may be made to an Authorised justice for an order authorising the carrying out of the forensic procedure

**Non consent to buccal swab for prescribed offence - suspect not under arrest**

i an application may be made to an Authorised justice for an order authorising the taking of a sample by buccal swab or some other forensic procedure

**Non consent to intimate or non-intimate - suspect not under arrest**

i an application may be made to an Authorised justice for an order authorising the carrying out of the forensic procedure.
Assisting medical practitioners

If you are required to assist the medical practitioner wear personal protection against infectious diseases by using surgical goggles and gloves. Avoid contact with body tissue and fluids. Guard against needle stick injuries. If you sustain such an injury bleed it, wash it, and report it immediately.

Documentation

A record is to be made of the reason for taking the sample, the circumstances under which it was taken and who was present when it was taken.

Fingerprinting and photographing

Fingerprinting dead bodies

Get approval from the Forensic Pathologist to take prints from dead bodies. Contact the nearest Fingerprint Crime Scene Section to have the prints taken.

Fingerprinting crime scenes

Carefully inspect the scene to identify anything which might have a fingerprint on it. Be careful not to interfere with the object so as to leave your prints on it or obliterate prints already on it. Stop others from handling the object until necessary examinations are finished. Do not return objects to stations or sections until fingerprinting officers have finished their examination, except where evidence might be lost, eg: due to inclement weather.

For major crimes, eg: murder, arrange for fingerprinting to be done before anything is disturbed. For less serious matters arrange for it to be done as soon as possible, preferably during office hours.

Taking offender photos

Refer to section 133 of LEPRA for your powers to take photos of adults in custody for
offences for identification purposes. Refer to section 136 of LEPRA for your power to photograph children (under 14). When a person is charged you should take a photograph for identification purposes. These must be consistent, high quality and clearly show the brooch details with the face of the person, facing square on to the camera.

The Offender Photograph System is only for taking offender photographs at the time of charging. The only exception is when a court order has been issued to have a photograph taken for identification purposes. The court order details must be displayed on a computer generated identification brooch or hand written brooch in a format similar to a standard identification brooch. Do not use the offender camera for any purpose other than offender photos.

**Taking the photograph**

Prepare and print an A4 size identification brooch (from COPS Charge Management). It must include:

- Surname and initials
- Date of birth
- Height
- Date the photo is taken
- Offender photo number (computer generated)
- Police station where charged
- COPS event number
- Criminal Names Index (CNI) number.

If COPS is down, prepare a hand written identification brooch, using a thick black marker, including as many details as you can. Once the system is back up, complete the covering sheet with the photo reference number.

When the identification brooch details are being prepared in COPS, ensure the 'charge station' is correct. This field may have defaulted to the police officer's actual work station and should be amended accordingly (ie. ensure that the identification brooch details indicate the actual charge station and NOT the charging officer's work station).
Place the identification brooch on the plastic brooch holder.

Place the charged person on the red square of the offender photograph mat.

Check that the details on the identification brooch relate to the charged person, hand it to them to hold by the plastic spine against their chest with the top about 100mm below the chin.

Ensure the identification brooch is held straight with details clearly visible and that fingers are not obstructing the writing.

Ensure the background is blank and of a mid grey colour (no signs, doors, cupboards etc in the frame), otherwise the photo could be defective.

Stand on the blue square of the offender photograph mat, facing the charged person. Using only the authorised camera, take the photo using horizontal format (where the long side of the image is on the top and bottom of the frame). Ensure you keep the camera vertically in line with your feet and do not lean forward or backward.

Before taking the photo ensure the person and the identification brooch details are fully within the highlighted frame in the viewfinder and no details have been cropped. Also ensure any date facility on the camera is turned off. Generally, take one photo only. However, if the person wears glasses or does not face the camera directly, or if a malfunction of the camera occurs, a second photo might be necessary.

Ensure the Offender Photograph Covering Sheet is completed and all details are supplied.

**Forwarding offender film for processing**

Complete the Offender Photograph Covering Sheet for each person, ensuring all details match the identification brooch. When the film is finished or at the end of each month...
(whichever is sooner), the officer nominated by the commander will remove the film, ensuring the Offender Photograph Covering Sheet has been completed correctly. Do not keep offender films at the station beyond this period.

If a computer generated offender photo number has been issued, but no photo has been taken, record it on the covering sheet as "photo not taken" or "no photo taken" in the column labelled 'Photographer's Name'. Do not duplicate offender photograph numbers.

When all documents are complete, send the film and the first three sections of the Offender Photograph Covering Sheet together in the special Offender Film Bag to Offender Photograph Coordinator, Forensic Imaging Section, Level 5, Sydney Police Centre. Leave the fourth copy at the Station for filing. Only one film and covering sheet in each bag. (Ensure the station name is written on the Offender Film Bag before sending)

**Urgent photograph required**

If you require a photo of a charged person, immediately remove the film from the camera (taking care to rewind it first) and take it to a local mini lab for processing. You must follow these procedures:

- present the film to a reliable local mini lab, ensuring that it remains under your immediate control at all times
- tell the operator that the film is not to be cut at any stage
- wait for the film to be processed
- select the frames required for printing and have them printed (remembering the film is not to be cut)
- ensure that all test prints are destroyed

When printing is complete, carefully roll the negative inside the film canister and forward it in the normal manner to the Offender Photograph Coordinator, Forensic Imaging Section, Level 5, Sydney Police Centre.

**Stores items**

To order film, Offender Photograph Covering Sheets, Offender Film Bags, Brooch Holders
& Offender Photograph Mats, contact Forensic Services Group Stores, Level 1, Sydney Police Centre.
For further information about any of these guidelines, contact the Offender Photograph Coordinator, Forensic Imaging Section, Forensic Services Group.
Crime scenes

General

Part 7 of LEPRA deals with the exercise of crime scene powers. If you are lawfully on premises (whether by virtue of a crime scene warrant or any other lawful reason) you may:

- Establish a crime scene, and
- Exercise crime scene powers as allowed by Part 7 (there are differences depending on whether you have a crime scene warrant or not), and
- Stay on the premises for those purposes.
- To establish a crime scene you must suspect on reasonable grounds that:
  - an offence committed in connection with a traffic accident that has resulted in the death or serious injury of a person is being, or was, or may have been, committed on the premises, or
  - a serious indictable offence (that is, an offence punishable by imprisonment for life or for a term of 5 years or more) is being, or was, or may have been, committed on the premises, or
  - there may be in or on the premises evidence of the commission of a serious indictable offence that may have been committed elsewhere,

and in each of these cases it is reasonably necessary to establish a crime scene in or on the premises to preserve, or search for and gather, evidence of the commission of that offence.

Crime scene powers

The crime scene powers that may be exercised (depending on whether or not you have a warrant) are:

a. direct a person to leave the crime scene or remove a vehicle, vessel or aircraft from the crime scene,

b. remove from the crime scene a person who fails to comply with a direction to leave the crime scene or a vehicle, vessel or aircraft a person fails to remove from the
crime scene,
c. direct a person not to enter the crime scene,
d. prevent a person from entering the crime scene,
e. prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it and, for that purpose, detain and search the person,
f. remove or cause to be removed an obstruction from the crime scene,
g. perform any necessary investigation, including, for example, search the crime scene and inspect anything in it to obtain evidence of the commission of an offence,
h. for the purpose of performing any necessary investigation, conduct any examination or process,
i. open anything at the crime scene that is locked,
j. take electricity, gas or any other utility, for use at the crime scene,
k. direct the occupier of the premises or a person apparently involved in the management or control of the premises to maintain a continuous supply of electricity at the premises,
l. photograph or otherwise record the crime scene and anything in it,
m. seize and detain all or part of a thing that might provide evidence of the commission of an offence,
n. dig up anything at the crime scene,
o. remove wall or ceiling linings or floors of a building, or panels of a vehicle,
p. any other function reasonably necessary or incidental to a function conferred by this subsection.
Crime scene powers that may be exercised without a warrant

If you are lawfully on premises and have established a crime scene you may exercise the crime scene powers set out above in paragraphs (a) to (f) if you suspect on reasonable grounds that it is necessary to do so to preserve evidence of the commission of the offence. These powers can be summarised as powers to preserve the scene and keep it intact. You may not exercise the other crime scene powers in paragraphs (g) to (p) without a crime scene warrant. The powers in paragraphs (g) to (p) can be categorised as being the real investigative powers.

You may only exercise the powers for a maximum of 3 hours before obtaining a crime scene warrant. The crime scene warrant must be obtained before the expiration of the 3 hour period, not simply applied for.

The only exception to exercising, without a warrant, the crime scene powers in paragraphs (g) to (p) is when you suspect on reasonable grounds it is necessary to immediately exercise the power to preserve evidence of the commission of the offence. An example of this could be when a trace of petrol is evaporating at the scene of an arson and it is necessary to immediately take steps to preserve or it will be lost.

You cannot establish a crime scene in the same premises more than once in any 24 hour period unless a crime scene warrant is obtained in respect of the second or any subsequent occasion.

If a crime scene is established for less than 3 hours, you must notify a senior police officer* of that fact.

*NB: A ‘senior police officer’ for the purposes of LEPRA means a Local Area Commander, a Duty Officer or a police officer of the rank of Inspector or above.
Crime scene warrants

You must obtain a crime scene warrant in the following circumstances:

- you are not already lawfully on the premises and need power to enter them
- you need to exercise any of the crime scene powers in paragraphs (g) to (p)
- you have established a crime scene while you were lawfully on premises but the 3 hour period is running out and you need to remain on the premises.

You may apply to an authorised officer for a crime scene warrant if you suspect on reasonable grounds that it is necessary to exercise crime scene powers at a crime scene for the purpose of preserving, or searching for and gathering, evidence of the commission of:

- a serious indictable offence, or
- an offence that is being, or was, or may have been, committed in connection with a traffic accident that has resulted in a person’s death or serious injury.

Once granted, the crime scene warrant authorises you to enter the premises and exercise all reasonably necessary crime scene powers (that is, any of the powers in paragraphs (a) to (p)).

Exercising crime scene powers with the occupier’s consent

If you are on premises and conducting investigations with the occupier’s consent, there is no need to apply the provisions of Part 7. You should consider obtaining written consent from the occupier in these circumstances, particularly if any examination is likely to result in damage. A suggested consent form is at Annexure M. When the occupier is not also the owner of the premises, the occupier’s consent should not be relied on to permit damage to the premises. In this case you should obtain a crime scene warrant. Similarly, an owner who is not the occupier cannot consent to you entering and remaining on the premises against the wishes of the occupier. Again, in these circumstances, obtain a crime scene warrant.

It is strongly urged that you consider obtaining a crime scene warrant in all cases when
significant examinations are likely to occur.

**Interaction with search warrants**

Part 7 does not interfere with your ability to apply for a search warrant in respect of the premises. You may use Part 7, or apply for a search warrant, whichever best suits your particular circumstances.

**Part 7 does not confer additional entry powers**

Unless you have obtained a crime scene warrant, Part 7 does not give you any powers of entry. To exercise crime scene powers on premises without having obtained a crime scene warrant, you must already be on the premises lawfully.

**The definition of premises**

Part 7 applies to premises of any kind, whether or not a public place. The definition of premises includes any building, structure, vehicle, vessel or aircraft and any place, whether built on or not.

**Crime scenes in public places**

You may exercise any crime scene powers at a crime scene in a public place without obtaining a crime scene warrant.

**Establishing a crime scene**

You may establish a crime scene on premises in any way that is reasonably appropriate in the circumstances. You must, if reasonably appropriate, give the public notice that the premises are a crime scene.

**Applying for a crime scene warrant**

An application for a crime scene warrant is made in the same way as an application for a search warrant (see Part 5 of LEPRA). The use of assistants, execution by night and other portions of Part 5 also apply to crime scene warrants in the same way as they do to search
warrants.
Dictionary

 Arrest
For the purpose of Part 9 of LEPRA, arrest includes when a person is in the company of a police officer for the purpose of participating in investigative procedures if:

- the police officer believes there is sufficient evidence to establish the person has committed an offence that is or is to be the subject of the investigation, or
- the officer would arrest the person if they attempted to leave, or
- the officer gives the person reasonable grounds for believing the person would not be allowed to leave if they wished to do so.

Arresting officer
The officer who makes the arrest.

Authorised officer (for LEPRA)
- a Magistrate or a Children’s Magistrate, or
- a Clerk of a Local Court, or
- an employee of the Attorney General’s Department authorised by the Attorney General as an authorised officer for the purposes of LEPRA.

Child
Anyone under 18.

Custody manager
Anyone appointed to the role by the Commissioner of Police (or delegate), or anyone acting in the role in accordance with this Code.

Designated station and place of detention
A designated police station or place of detention is one declared by the Commissioner of Police (or delegate) to be used for detaining people under arrest and
will have:

- an approved custody manager, available at the substantive rank of sergeant
- a duty officer available.

**Impaired intellectual functioning**

- Total or partial loss of a person’s mental functions.
- A disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction.
- A disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgement, or that results in disturbed behaviour.

In considering whether someone is intellectually impaired the following indicators are to be considered.

Whether the person appears to:

- have difficulty understanding questions and instructions
- respond inappropriately or inconsistently to questions
- have a short attention span
- receive a disability support pension
- reside at a group home or institution, or be employed at a sheltered workshop
- be undertaking education, or to have been educated at a special school or in special education classes at a mainstream school
- have an inability to understand the caution.

Other indicators are when:

- the person identifies themselves as someone with impaired intellectual functioning
- someone else (carer, family member or friend) tells you the person is or may be someone with impaired intellectual functioning
• the person exhibits inappropriate social distance, such as being overly friendly and anxious to please
• the person acts much younger than their age group
• the person is dressed inappropriately for the season or occasion
• the person has difficulty reading and writing
• the person has difficulty identifying money values or calculating change
• the person has difficulty finding their telephone number in a directory
• the person displays problems with memory or concentration.

Impaired physical functioning
• Total or partial loss of a person’s bodily functions or part of a person’s body.
• The presence in the person’s body of organisms causing or capable of causing disease or illness.
• The malfunction, malformation or disfigurement of part of a person’s body.

Intimate forensic procedure
The:
• external examination; taking of a sample by swab, washing from, by vacuum suction, by scraping or by lifting by tape; taking a photograph of; and/or the taking of an impression or cast of a wound:
  • of the genital or anal area, or
  • the breasts of a female or transgender person who identifies as a female
• taking of a sample of blood
• the taking of a sample of saliva (other than be buccal swab)
• the taking of a sample of pubic hair.

Investigating officer
The officer, whether or not the arresting officer, having immediate custody of arrested people for any purpose during the investigation of any of the circumstances which led to the arrest (eg: crime scene examination, conduct of identification parades, participating
in recorded interviews).

**LEPRA**

The *Law Enforcement (Powers and Responsibilities) Act 2002*.

**Non intimate forensic procedure**

The:

- external examination of a part of the body that requires touching the body or the removal of clothing; taking of a sample by swab, washing from, by vacuum suction, by scraping or by lifting by tape from the external part of the body; taking a photograph of; taking of an impression or cast of a wound from a part of the body; and or the taking of physical measurements (whether or not involving marking) for biomechanical analysis of an external part of the body, other than:
  - of the genital or anal area, or
  - the breasts of a female or transgender person who identifies as a female
  - taking of a sample of hair other than pubic hair
  - taking of a sample of nail or under a nail
  - taking of a hand print, finger print, foot print or toe print.

**Personal effects**

Those items which people may lawfully need or use or refer to while in detention but do not include cash and other items of value.

**Reasonable force**

Such force as is reasonably necessary to make the arrest or to prevent the escape of the person after arrest.

**Reasonable grounds to suspect**

A reasonable suspicion involves less than a reasonable belief but more than a possibility. There must be some grounds which would create in the mind of a reasonable person an apprehension or fear that the person has committed an offence.
Some factual basis for the suspicion must be shown. A suspicion may be based on hearsay material or materials that may be inadmissible in evidence. What is important is the information in the mind of the police officer making the arrest at the time the officer did so. Having ascertained that information, the question for a court is whether that information afforded reasonable grounds for the suspicion which the police officer formed.

**Support person means:**

In the case of a child, someone who is 18 or over and is:

- the child’s parent or guardian, or a person who has the lawful custody of the child, but not the father or mother if they have neither guardianship nor custody
- someone who has the care of the child
- an adult (who is not a police officer) who is present with the consent of one of the people mentioned above
- if the child is 14 or over, an adult (who is not a police officer) who is present with the consent of the child
- a legal representative of the child’s choice.

In the case of a vulnerable person who is not a child, someone who is 18 or over and is:

- a guardian or someone else who is responsible for the care of the detained person
- a relative, friend or anyone else (who is not a police officer) who is acceptable to the detained person
- if none of the above is available/aplicable - someone (who is not a police officer) who has expertise in dealing with people of the category, or a category, to which the detained person belongs.

**Suspect (for forensic procedures)**

A person:

- whom a police officer suspects on reasonable grounds has committed an offence
- charged with an offence
- who has been summoned to court for an offence alleged to have been committed
by the person
• who has been served with an attendance notice under section 100AB of the Justices Act 1902.

Vulnerable person
• A child.
• A person who has impaired intellectual functioning.
• A person who has impaired physical functioning.
• An Aboriginal or Torres Strait Islander.
• A person of a non English speaking background.
Annexures

Annexure A – Rules for conducting personal searches

General rules for conducting all searches
Before searching, comply with the safeguards in section 201 of LEPRA.

Section 32 of LEPRA – Preservation of privacy and dignity during search
1. A police officer or other person who searches a person must, as far as is reasonably practicable in the circumstances, comply with this section.
2. The police officer or other person must inform the person to be searched of the following matters:
   a. whether the person will be required to remove clothing during the search,
   b. why it is necessary to remove the clothing.
3. The police officer or other person must ask for the person's co-operation.
4. The police officer or other person must conduct the search:
   a. in a way that provides reasonable privacy for the person searched, and
   b. as quickly as is reasonably practicable
5. The police officer or other person must conduct the least invasive kind of search practicable in the circumstances.
6. The police officer or other person must not search the genital area of the person searched, or in the case of female or a transgender person who identifies as a female, the person's breasts unless the police officer or person suspects on reasonable grounds that it is necessary to do so for the purposes of the search.
7. A search must be conducted by a police officer or other person of the same sex as the person searched or by a person of the same sex under the direction of the police officer or other person concerned.
8. A search of a person must not be carried out while the person is being questioned. If questioning has not been completed before a search is carried out, it must be suspended while the search is carried out.
9. A person must be allowed to dress as soon as a search is finished.
10. If clothing is seized because of the search, the police officer or other person must ensure the person searched is left with or given reasonably appropriate clothing.
11. In this section:

**questioning** of a person means questioning the person, or carrying out an investigation (in which the person participates).

**transgender person** means a person, whether or not the person is a recognised transgender person:

a. who identifies as a member of the opposite sex, by living, or seeking to live, as a member of the opposite sex, or
b. who has identified as a member of the opposite sex by living as a member of the opposite sex, or
c. who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex, and includes a reference to the person being thought of as a transgender person, whether or not the person is, or was, in fact a transgender person.

**Strip searches**
A strip search means a search of a person or of articles in the possession of a person that may include:

- requiring the person to remove all of his or her clothes, and
- an examination of the person's body (but not of the person's body cavities) and of those clothes.

While a strip search, when necessary in the circumstances, may go as far as the removal of all clothing, any search requiring a person to remove clothing (other than overcoats, coats, jackets or similar items of clothing, gloves, shoes or hats) from the top or bottom of the body is regarded as a strip search under LEPRA.

Section 31 of LEPRA limits the occasions on which a strip search can be conducted.
You must suspect on reasonable grounds that it is necessary to conduct a strip search of the person for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out.

You may not strip search as a matter of policy. You must be able to justify your decision in each case.

You have no power to strip search a person who is under the age of 10.

A strip search is justified only when you suspect on reasonable grounds that it is necessary to conduct a strip search for any of the purposes indicated in the dot points above and that the seriousness and urgency of the circumstances require the strip search to be carried out.

In addition to complying with the safeguards in section 201 of LEPRA, and the general rules for preserving a person’s privacy and dignity during searches in section 32 of LEPRA, section 33 of LEPRA sets out specific rules for conducting strip searches.

You must, as far as is reasonably practicable in the circumstances, comply with the following:

- the person must be informed that they will be required to remove clothes and the reason why
- the person’s co-operation must be asked for
- the strip search must be conducted in a private area and as quickly as is reasonably practicable
- the search must be of the least invasive kind that is practicable in the circumstances
- you must not search the genital area of a person, or the breasts of a female or transgender person, unless you suspect on reasonable grounds that it is necessary to do so
- the search must be conducted by a police officer of the same sex or by a person of the same sex under your direction
• the search must not be carried out while the person is being questioned
• the person must be allowed to dress as soon as the search is finished
• if clothing is seized, you must ensure the person is left with or given reasonably appropriate clothing
• the strip search must not be conducted in the presence or view of a person of the opposite sex
• the strip search must not be conducted in the presence or view of a person who does need to be there
• a parent, guardian or personal representative of the person may, if it is reasonably practicable in the circumstances, be at the search with the person’s consent
• a strip search of a person aged at least 10 years, but less than 18 years, or of a person who has impaired intellectual functioning, must, unless it is not reasonably practicable in the circumstances, be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the child or person, some other person (not being a police officer) who is capable of representing the interests of the person and who is acceptable to the person
• a strip search must not involve a search of the person’s body cavities or an examination of the body by touch
• a strip search must not involve the removal of more clothes than you believe on reasonable grounds to be necessary to be reasonably necessary for the purposes of the search.
• a strip search must not involve more visual inspection than you believe on reasonable grounds to be reasonably necessary for the purposes of the search.
• A strip search may be conducted in the presence of a medical practitioner of the opposite sex if the person being searched has no objection.

Remember, if your search is being conducted on a child and is an investigative procedure under Part 9 of LEPRA the child cannot waive their right to have a support person present.

Remember, it is always open to you to consult a senior officer (supervisor, duty officer, custody manager) before undertaking a strip search. Always create a record of your
search, either in your notebook (if in the field) or in the custody record (if at a police station) and include your reasons for conducting it, conversations and those present.

**Documentation**

In the case of a strip search, the custody manager will record the reasons and the result on the custody record.
Annexure B - Delaying rights

The rights set out in the Code may be delayed for someone in police custody where the custody manager reasonably believes:

- an accomplice of the person will avoid arrest
- evidence will be concealed, fabricated, destroyed or lost, or witnesses will be intimidated
- the recovery of a person or property concerned in the offence will be hindered
- bodily injury will be caused to another person.

Do not delay access to a legal representative on the grounds the person might be advised not to answer questions or the representative was initially asked to attend the station by someone else, provided the person wishes to see them. In the latter case tell the detained person the legal representative is at the station, and ask whether they wish to see them.

Only delay the exercise of rights for as long as reasonably necessary. As soon as the grounds to delay cease ask the person if they want to exercise their rights.

Note the custody record to ensure the person is able to exercise their rights.

Do not read anything in this section as justifying any unnecessary delay in placing a charged person before the first available court.

**Documentation**

Note the grounds for action under this annexure on the custody record and tell the person of them as soon as possible. Record any reply.

**Notes for guidance**

Even if Annexure B applies in the case of a child, or other vulnerable person, you must still tell the support person (and the person responsible for the child’s welfare, if
someone different).

Grounds for delaying notifying an arrest does not automatically satisfy the grounds for delaying access to legal advice.
Annexure C - Concluding an ERISP interview

The interviewing officer closes the interview by asking:
   a. Is there anything else you want to say about this matter?
   b. Do you want to write down anything about it?
   c. I am going to get an independent officer to ask you some question about our
      interview. Do you understand?
   d. While I am gone the audio tape will not be recording, only the video tape will stay
      on. Do you understand?

Press the orange button on the ERISP machine once.

Suspend the interview and get a duty officer (custody manager or other senior officer if
duty officer unavailable) to adopt it. Return to the interview room, push the green button
on the ERISP machine once, introduce the officer and leave.

The adopting officer conducts a thorough and professional check of the person’s
treatment by police and asks:
   a. Are you ...?
   b. Have you taken part in this recorded interview of your own free will?
   c. Was any promise made to you to make you take part in the interview?
   d. Was any threat made to you to take part in this interview?
   e. Were you induced to take part in this interview?
   f. Were you offered anything to take part in this interview?
   g. Have you any complaint about the way in which you were interviewed?

State ‘Interview with (officer’s name) concluded (time)’ and then tell the investigating
officers you have finished.

Investigating officers return to the interview room, state the time and end the interview by
ejecting the tapes.
NB: Unlike a written or typed record of interview, an ERISP interview does not require the interviewee to adopt it as being accurate. The only issues to be addressed are voluntariness and fairness.
Annexure D - Concluding typed or written record of interview

The interviewing officer closes by asking:
   a. Is there anything else you want to say about this matter?
   b. Do you want to write down anything about it?
   c. Will you now read aloud each page of this ... page record of interview?

Hand the interview to the suspect. If the suspect declines to read the statement refer this to a duty officer (custody manager or other senior officer if duty officer unavailable).

Have the suspect adopt the interview by asking:
   a. Have you read this record of interview?
   b. Do you want to make any changes?
   c. Do you want to initial those changes?
   d. Do you want to initial any typing or spelling errors?

Suspend the interview and get a duty officer (custody manager or other senior officer if duty officer unavailable) to adopt it.

Introduce the officer to the suspect and leave the room (both investigating officers).

The adopting officer conducts thorough and professional check of the person’s treatment by police and also asks:
   a. Are you ...
   b. Is this a true record of the interview in which you have you have just taken part?
   c. Did you answer these questions of your own free will?
   d. Was any promise made to you to make you answer these questions?
   e. Was any threat made to you to make you answer these questions?
   f. Were you induced to answer these questions?
   g. Were you offered anything to answer these questions?
h. Have you any complaint about the way in which you were interviewed?

Ask the person to sign the interview, then witness it (including your name, rank, date and time witnessed).

If a support person is present ask the support person to sign the interview. If the person declines note this in your notebook and ask the person to sign your notebook.

If the person has declined to read the interview inquire as to why and record the reason in your notebook. Read the interview to the person and then continue as outlined above.

Tell the investigating officers when you are finished.
Annexure E - Adoption of statements

Where a statement has been taken ask a duty officer (custody manager or other senior officer if duty officer unavailable) to adopt it.

Adopt the statement by conducting a thorough and professional check of the person’s treatment by police, having the person read the statement and asking the following:

a. Are you ...?

b. Have you made this statement of your own free will?

c. Has any promise been made to you to make this statement?

d. Has any threat been made to you to make this statement?

e. Have you been induced to make this statement?

f. Has anything been offered to you to make this statement?

g. Have you any complaints about the way in which you were interviewed here today?

h. Were you told before you made this statement you did not have to unless you wanted to?

i. Were you also told that it may be used in evidence?

Ask the suspect to sign the statement. Witness the statement (including your name, rank, date and time you witnessed it).

If a support person is present ask the support person to sign the statement. If the person declines note this in your notebook and ask the person to sign your notebook.

If the person declines to read the statement inquire discretely as to why they declined and record the reason in your notebook. Read the document to the person and then continue as outlined above.
Annexure F - Some of the more commonly used Table 1 offences

**Crimes Act 1900**

Offences against the person:
31, 31C, 35, 35A(1), 39, 41, 41A, 43, 44, 49, 52A & 52B (but not where death is occasioned), 53, 54, 55, 57, 61E, 66C(1), 66D, 71, 72, 76, 76A, 81 (where victim at time of offence was above 14 years), 61M, 61O(2), 78Q, 80, 81A, 81B, 81C, 82, 83, 84, 85 (mother alone charged), 90, 91, 91A, 91B, 92, 93, 93B, 93C.

Property offences (involving value exceeding $5000):
117 (Larceny), 94 (Steal from person), 3B, 125, 126, 131, 132, 133, 139, 140, 144, 148, 150, 151, 152, 156, 157, 158, 159, 160, 178A, 178B, 178BA, 178BB, 178C, 179, 184, 185, 185A, 186, 188, 189, 189A, 190, 192, 195.

Property and other offences (involving any value):

Corrupt commissions or rewards (benefit over $5000):
249B, 249C, 249D, 249E, 249F.

Housebreaking offences:
109(1) (where the felony intended is stealing property worth less than $15 000);
111(1) & 113(1) (where the felony is stealing);
112(1) (where the felony is stealing property worth less than $15 000).
Drug Misuse and Trafficking Act 1985

Section 31(1) (where the drug is more than the small quantity but less than the indictable quantity);

Section 32(a)-(f)(where the substance is cannabis plant or leaf and the quantity is more than the indictable quantity but less than the commercial quantity; i.e. 51-249 plants or 1.01kg-24.99kg of leaf).
Annexure G - Legislation containing investigative powers

Remember, you must comply with the safeguards in section 201 (1) of LEPRA (by identifying yourself and giving the reason for the exercise of the power) before exercising a power to:

- request a person to disclose his or her identity or the identity of another person
- give a direction to a person
- request a person to open his/her mouth or shake his/her hair, pursuant to section 21A of LEPRA.

However, if exercising a power to give a direction to a person by giving the direction to a group of 2 or more persons, you much do this before or at the time of exercising the power, if it is practicable to do so or, if not, as soon as is reasonably practicable after exercising the power.

You must comply with the safeguards in section 201 (1) before or at the time of exercising any of the following powers if it is practicable to do so or, if it is not practicable to do so, as soon as is reasonably practicable after exercising the power:

- a power to search or arrest a person
- a power to search a vehicle, vessel or aircraft
- a power to enter premises (not being a public place)
- a power to search premises (not being a public place)
- a power to seize any property
- a power to stop or detain a person (other than a power to detain a person under Part 16 of LEPRA), or a vehicle, vessel or aircraft
- a power to establish a crime scene at a premises (not being a public place)
- a power under section 26 of LEPRA to request a person to submit to a frisk search or produce a dangerous implement or metallic object.

Power to stop, search and detain
- *Law Enforcement (Powers and Responsibilities) Act 2002*: s 21 (people), s 36 (vehicles)
- *Law Enforcement (Powers and Responsibilities) Act 2002*: s 42 (vessels and aircraft)

**Search warrants for indictable, firearms, prohibited weapons, narcotics and child pornography offences, and stolen property etc.**
- *Law Enforcement (Powers and Responsibilities) Act 2002*: Part 5, Division 2

**Search warrants under specific Acts**
For a complete list of Acts which authorise the issuing of search warrants see Schedule 2 of the *Law Enforcement (Powers and Responsibilities) Act 2002*. These include:
- *Children and Young Persons (Care and Protection) Act 1998*: s 233
- *Unlawful Gambling Act 1998*: s 40

**Searching for and seizing prohibited drugs, firearms, prohibited weapons and dangerous articles etc.**
- *Law Enforcement (Powers and Responsibilities) Act 2002*: s 21

**Searching for and seizing firearms in connection with domestic violence offences**
- *Law Enforcement (Powers and Responsibilities) Act 2002*: s 85, 87

**Powers of arrest**

**Search persons on arrest**
• *Law Enforcement (Powers and Responsibilities) Act 2002*: s 23

**Search person in lawful custody (after arrest)**
• *Law Enforcement (Powers and Responsibilities) Act 2002*: s 24

**Medical examinations, fingerprints and photographs**
• *Law Enforcement (Powers and Responsibilities) Act 2002*: ss 138 and 133 respectively

**Photographing and finger printing children under 14**
• *Law Enforcement (Powers and Responsibilities) Act 2002*: s 136
Annexure H - Custody records

For people detained under the provisions of Part 9 of LEPRA the following must be recorded in the custody record by the custody manager:

- date, time and place of arrest
- date and time person comes into custody manager’s custody
- name and rank of arresting officers (and any accompanying officers)
- the grounds (the offences) for the person’s detention
- details of any property taken from the person
- any denial of rights under Part 9, the reason why and the time of the denial
- date, time and reason for transfer of the person to custody of another officer
- details of the application for a detention warrant and the result
- the fact the person declines to make representations to the justice about the application for the detention warrant
- date and time a copy of the detention warrant is given to and explained to the person
- date and time the person is released from detention
- where the person was arrested during the last 48 hours, the offences for the previous arrest and the investigation period remaining
- the time of any request to communicate with a friend, relative, lawyer etc
- the time of any communication with a friend, relative, lawyer etc
- the time of a request made by a friend, relative, lawyer for information about the whereabouts of the detained person, the nature of any information provided and the time it was provided
- a request for an interpreter
- a request for medical treatment
- a request for toilet, shower facilities etc
- where clothing is removed from the detained person, the reason
- where Part 9 requires an officer of a particular rank or position to do something the officer’s name, rank and position
• the date and time of an inspection of the custody record by the person or their legal practitioner after the detained person has been released from custody
• the reasonable times which do not count towards the investigation period which are:
  ▪ time taken to convey the arrested person from the place of arrest to the nearest premises which has facilities to conduct the investigative procedures
  ▪ time waiting for the arrival of police with specialist skills or particular knowledge necessary for the investigation
  ▪ time waiting for facilities to permit compliance with section 281 of the Criminal Procedure Act 1986
  ▪ time to allow the detained person (or someone else on their behalf) to communicate with a friend, relative, guardian, independent person, legal practitioner or consular official
  ▪ time required to allow any of the above to arrive at the place where the person is being detained
  ▪ time required to allow the detained person to consult with any of the above
  ▪ time required to arrange for and receive medical attention
  ▪ time required to arrange for an interpreter and to allow them to attend the place where the person is being detained or to become available by telephone
  ▪ time to arrange and conduct an identification parade
  ▪ time required to allow the person to rest, receive refreshments, to access toilet and other facilities
  ▪ time to recover from the effects of intoxication due to alcohol, drugs or both
  ▪ time to prepare, make and dispose of an application for a detention warrant or a search warrant that relates to the investigation
  ▪ time for charging procedures
  ▪ time to arrange for a support person to attend
  ▪ time to allow a support person to attend.
Annexure I - Sample questions

Drugs/alcohol/mental illness

In many offences the suspect's drug or alcohol dependency or mental illness might become an issue in court proceedings. For example, the suspect might claim in mitigation their dependency on heroin as a reason why they committed the offence. It might be appropriate for you to ask the suspect questions about drug/alcohol use or mental illness.

Do you use drugs (prohibited or prescribed)? If yes, EXPLORE. What type, Last time used, How much used, Where used, Where did you get it, How often used, How much used daily, How much do you spend on your drug habit, Do you consider you have a drug dependency, Have you done anything about your drug dependency? How do you feel now? Do you feel affected by drugs/alcohol now? Do you understand my questions?

Have you had any alcohol today? If yes, EXPLORE. What did you drink? What time was your first drink? What time was your last drink? What size drinks did you have? How many did you have? Where were you drinking? Who were you drinking with? Did you have anything to eat today? How were you affected by this drink?

Do you have any mental illness? If yes, EXPLORE. What is your condition? Are you receiving medical treatment? If yes, EXPLORE.

Are you taking medication? If yes, EXPLORE. Who is your doctor? How long have you been receiving treatment? When was the last time you had any kind of treatment for your condition?

Assault

How did you hit him? What did you hit him with? Where did you get it? Where is it now? Why did you have it with you? Which hand did you hit him with? Open or closed hand? What did (victim) do after you hit him? What did you do after you hit him? Did you notice
any injuries on the victim? (explore further if yes - what, where, when noticed) What did you think would happen when you hit him? Why did you hit him? What made you think you had to (whatever the suspect did)? Do you think you could have done something else instead of hitting him? (If yes, explore). Did anything stop you from leaving before this incident happened? Is there any reason why you did not (suggest an act that was less hostile)? Did you receive any injuries from this incident? (If yes explore - how, what, describe them) Did you receive any treatment for your injuries? (What, when, where, why not?)? If the suspect denies the allegation ask: Do you know of any reason why (victim) would say these things about you?

**Assault (non battery)**

When you (whatever the suspect did), how did you think (victim) would feel? Did it occur to you that (victim) might feel that (he/she) might be harmed?

**Break & enter**

How did you get into ...? Where did you get into ...? What did you use to get into ...? Where did you get the (object used to get in)? Where is it? Can you show us where it is? I show you (object used). What can you tell me about it? Was anybody with you? What are their names? (explore - if offender claims not to know his co offenders ask questions about how he came to know them, does he know where they live, can he direct you to their houses). What did they do? What did you do once you were inside the (house, shop etc)? Whose idea was it to break into the (house, shop etc)? How did it come up in conversation that you were going to break into the (house, shop etc)? What was taken from the (house, shop etc)? What did you take? What happened to that property? (If property recovered show each piece of property individually to the suspect and invite comment)

I show you a (property). Do you agree that it is (fully describe property with markings such as serial and model number)? What can you tell me about this property? Where is the ... now? What were you going to do with the ...? What did you do with the money you got from selling the ...?

Did you talk to (co suspect) about splitting up the (property)? What was said? Do you
know the people who live at ...? Did you have permission to take any property from the
(house, shop etc)?
Why did you choose this (house, shop etc)? Did you have permission to enter the
(house, shop etc)?
Why did you break into the (house, shop etc)?

**Goods in custody**

How did you get this .....? How much did you pay for it? Who did you buy it from? Name,
details. Had you ever seen this person before you bought it? Have you seen this person
since you bought the property? Did you get a receipt? If "Yes" or "No" EXPLORE Why
not or where is it? What did you say to this person? What did this person say to you?
Where were you when this person offered you this property for sale? Did the person who
sold this item to you say where they got it from? Did this person say why they were
selling it? How much does a new one of these cost? How do you know if you were
paying a fair price for this item? Did you consider the circumstances in which you bought
this were suspicious? If "Yes" EXPLORE. Why did you buy it then?

If "No" EXPLORE. Why didn't you think it was suspicious? Did you inspect the property
before you bought it? Did you see if the property was working before you bought it?

Check for obliterated markings on the property, eg, serial numbers removed or scratched
out and bring to suspect's notice through "Do you agree . . . ?" questions. If serial
numbers removed, then canvass that issue in conjunction with 'suspicions'. Did you
notice that the serial number was removed? Did you ask the seller why the serial number
was not on it? What did he say? Did you consider that the serial number being removed/
scratched out was suspicious? If 'Yes' EXPLORE. Why did you buy it then?

(Make a list of all the grounds a reasonable person might suspect the goods were stolen
or otherwise unlawfully obtained). Were you aware (suggest, one at a time, each of the
grounds above)? eg. Were you aware that thieves sometimes sell stolen property? Were
you aware that stolen property is often sold cheaply? Were you aware that stolen
property was sold in places other than retail shops, such as pubs? Were you aware that
strangers who sell stolen property may not tell you their full names and address? Were you aware that thieves are unlikely to give a receipt for stolen property? Were you aware that the identifying marks on stolen property are often removed? Explore each answer, asking questions such as, How do you know that?

**Receiving**

Many of the questions for the offence of 'goods in custody' are relevant to this offence such as how, when, where, why the property came into the suspect's possession and will not be repeated here.

Did you believe the property was stolen when you bought it? If "Yes" EXPLORE. Why did you buy it then?

The prosecution must prove that the property was stolen. My inquiries have revealed that the (property) was stolen during a break and enter offence (or whatever) at (location) on (date). Do you understand that? Do you have any knowledge of the theft of that property? How do you account for this property being in your possession so soon after the break and enter? Even though the suspect may deny receiving the stolen property, the whole of the circumstances of him getting or having custody of the property may support the charge of receiving.

**Prohibited drug use**

Describe substance as green vegetable matter (not cannabis) or white powder (not amphetamine) or whatever it looks like, not its official name.

I show you a resealable plastic bag containing green vegetable matter. Could you tell me what that matter is? If suspect states that the substance is 'pot' (for example) then clarification questions are required to show that 'pot' is cannabis? When you call it 'pot', what do you mean by that? OR When you call it 'pot', do you know it by any other name? What were you going to do with it? How were you going to use it? When did you get it? Who did you get it from? Why did you buy it? How much did you pay for it? How do you know it was (type of drug) when you bought it? What did you intend to do with it after you
bought it? Have you used any of this lot that you bought? How did you use it? How much did you use? What effect did it have on you? How do you know (cannabis) has that effect?

**Cultivate/possess prohibited plant**

Do you agree ... ? (questions re site of cultivation such as peculiarities as plant/s, hidden by mesh, among tomato plants etc) Example, Do you agree that these three plants were located by Police in a crop of tomato plants? Why did you plant them among the tomato plants? When did you plant the seeds? Why did you plant it/them? Where did you get the seeds? How did you get the seeds? How many seeds did you plant? How many of the seeds produced plants? How did you know they were cannabis seeds? Have you watered or tended these plants in any way? If 'Yes' EXPLORE Did you use fertiliser for these plants? If "Yes" EXPLORE. When did you expect to harvest these plants? What were you going to do with the plants? How did you know about growing plants hydroponically? Where did you get the equipment? When did you get the equipment?

**Robbery**

What happened then? questions are particularly useful in interviewing suspects for this type of offence.

What can you tell me about this incident? Why did you select that particular (person / business)? What did you say to (victim)? What did (victim) do? Did (victim) say or do anything then? Was there any conversation between you and (victim)? What was that conversation? What did (victim) do when you told him to hand over (property)? Where did you go after you left the (location)?

What was your intention when you went into the store? How did (victim) react when you demanded the money? Did you think about what this would do to (victim)?

If "Yes" EXPLORE. What effect did you think it would have? Why did you do it then?

What was (victim) doing when you left the (location of offence)? What did you do with (proceeds of offence)? What were you going to do with (proceeds of offence)?

Did you have any weapons or implements with you? If "Yes" EXPLORE. What, Where did you get it, Why take it, Where is it, How often do you carry a weapon? What did
you do with the (weapon) while you were with (victim)?

Was anybody with you? If "Yes" EXPLORE. Did any of these people have weapons with them? What were they, When did you know they had a weapon, Where did they get it, Why did you go with them if you knew they had a weapon, Where is the weapon now, What did they do with the weapon when you were with (victim), Did you say anything to (co-suspect) about him having the weapon? Did you talk to (co suspect) before you went into (location) as to who would do what? What was said? Whose idea was it to do this? How did it come up in conversation? What did (co-suspects) do while you were in the shop? Was there any talk between you and (co-suspects) about splitting up the proceeds? What was said?

**Stealing**

Have you been to this store before? If "Yes" EXPLORE -Where, when, how often? Did anyone tell you you could take the (property) without paying for it? Why did you take (property) from the store without paying for it? The store security officer has told me that you walked past a number of registers before you left the store without paying for the (property). What do you say about that? How much do you earn each week? How much money do you have with you? Do you have any credit or debit cards with you? If "Yes" - EXPLORE - eg What are they? How much in those accounts? When did you decide to take this (property) from the store without paying for it? What were you going to do with this (property)? Why did you put the (property) in your handbag before going to the cash register?

Put allegations as to what the store security said s/he saw the suspect do and ask for comment on each part of the allegation through "What do you say about that? The David Jones security officer has told me that she saw you take the (property) from the shelf in the electrical department. What do you say about that? The security officer has told me that she saw you put the (property) down the front of your pants. What do you say about that? If the suspect denies the allegation ask: Do you know of any reason why the security officer would say these things about you? Show the suspect the allegedly stolen property (or Polaroid photographs) through a series of "Do you agree ... ?" questions. I
show you (property) the security officer took off you. Do you agree this property has on it the price tag of $?

Where the suspect alleges they forgot to pay consider the following types of questions.
"The store security have told me you left the store within 2 minutes after selecting the goods. What do you say about that? Can you explain how you forgot to pay within such a short time? Are you taking any medication which might cause you to forget to pay? What is it? When last taken? How does it affect you? Are you suffering from any physical or mental illness which might cause you to forget to pay?

**Steal motor vehicle**

*Driver*
How did you get into the (car, truck etc)? What did you use to get into the (car etc)?
If object used EXPLORE -Where did you get the (object)? Where is (object) now?
Why did you use (object)? How did you use it? What happened after you got in the vehicle?
Why did you choose that (car etc)? The vehicle ABC-123 has damage to the ignition.
What can you tell me about that? How did you start the (car etc) ABC-123? EXPLORE Where is (object) now? How did you know that using (object) would start the (car etc)? What did you do after you started the (car etc) ABC-123? Do you know the owner of the (car etc) ABC-123? Do you know anyone by the name of (victim's name)? What were you going to do with the (car etc) when you first got in to it? Where did you drive the (car etc) after you started it? Was any one else with you when you got into this (car etc)? If "Yes" EXPLORE. Did you have permission to take the (car etc) from (scene)?
Why did you take it? There is damage to the driver's door lock. What can you tell me about that?

*Passenger*
Did you know the (car, truck etc) was stolen? How did you know that? Why did you get in the (car etc) if you knew it was stolen? Who was driving the (car etc)? When did you get in the (car etc)? Where were you when you got in the (car etc)? Was anybody else in the car at that time? What did you say to the driver? Do you know (driver)? How long have
you known (driver)? How do you know him?

How old is (driver)? Have you seen him with this (car etc) before? What did (driver) say to you when you first saw him in this (car etc)? What did (driver) say to you about him having this (car etc)?

Did he say where he got the (car etc) from? If "Yes" EXPLORE. Before the police stopped you at (location) where did you go in this (car etc)? Did you drive the (car etc)? If "Yes" EXPLORE

Who owns the (car etc)? Did you have permission from the owner to go in this (car etc)? Why did you run from the (car etc) when the police stopped it?

**Background and financial issues**


**Other issues**

Consider:

Photographing suspect to record injuries or lack of them. If suspect claims they got injuries elsewhere other than during incident with victim, then canvass alibi.

The integrity of the exhibit, particularly pertaining to fingerprinting of materials containing a drug.

Recent possession. Exclusive possession.

**Annexure J - Initial interview questioning**
Turn on the recorder.

1. The time is ... am/pm and this is an electronically recorded interview between ... and ... at ...

2. I/we are going to ask you questions about ... My/our questions and any answers you give will be recorded on this machine (indicate ERISP). Do you understand?

3. Your rights were explained to you by the custody manager and you were given a copy of them. Do you want to exercise any of your rights now?

4. Will you please state your name and spell your family name (have each person in the room to do this). Do you agree the only people in this room are you, ..., ... and ...

5. At the end of the interview I will seal a tape of the interview in front of you. Do you understand?

6. Do you agree to be interviewed on audio and video tape? (If the answer is no go to 6b)

6b. Do you agree to be interviewed on audio tape only? (If no, go to 6c)

6c. Do you agree to take part in a typed record of interview? (If no, go to 6d)

6d. Do you wish to make a handwritten statement?

7. As I said earlier, ... and I are investigating ......... Do you understand?

8. I/we are going to ask you more questions. You do not have to say or do anything if you do not want to. Do you understand?

9. I/we will record on (video and audio, audio, paper) our questions, you answers and what you do. We can use this recording in court. Do you understand?

Adopt any relevant conversation and commence interview.
Annexure K - Interview plan

Lead interviewer: Corroborator: Suspect/POI:

Allegation (draft indictment):
............................................................................................................................................
............................................................................................................................................
............................................................................................................................................
............................................................................................................................................

Proofs of offence:
1. .... 2. .... 3. .... 4. .... 5. .... 6. ....

Defences/alibis
1. .... 2. .... 3. .... 4. ....

What I already know (facts/evidence I have from victim, witnesses, police physical evidence, previous admissions etc).
............................................................................................................................................
............................................................................................................................................
............................................................................................................................................
............................................................................................................................................

What do I need to know (facts/evidence suspect may know or be able to corroborate, confirm previous admissions etc).
............................................................................................................................................
............................................................................................................................................
............................................................................................................................................
............................................................................................................................................

What do I want to take into the interview:
Exhibits/photos Pen/paper Notebooks Statements Plans/sketches
Sample question guide Synopsis forms Interpreter - support or independent person
Adopting officer Other.

How corroborator’s questions will be communicated to you: ...........................................

Aim/s of interview: ..........................................................
## Annexure L - Interview account

| Suspect agenda | 1. Lead interviewer explains allegation and provides suspect with the opportunity to volunteer their version.  
| | 2. Write down critical points.  
| | 3. Ask open questions about each point  
| | 5WH (what, when, where, who, why, how).  
| | 4. Invite the corroborator to address any point not fully developed.  
| | 5. Cross off points in the ‘what we know’ & ‘what we need to know’ part of the plan as they are covered.  
| Police agenda | 6. Lead interviewer questions on the remaining points in the ‘what we know’ & ‘what we need to know’ part of the plan, crossing off each as you go.  
| | 7. Invite the corroborator to address any points not fully covered.  
| Proofs/clarification | 8. Lead interviewer questions regards any proofs not fully satisfied.  
| | 9. Ask the suspect to comment on the differences between ‘what we know’ and what they said.  
| | 10. Clarify any points of the suspect's agenda which conflict with the police agenda and have not been fully canvassed.  
| | 11. Invite the corroborator to address any proofs not fully satisfied or conflicts between the suspect’s and police agenda.  

NB: Before closing ensure all points in the ‘proofs’, ‘what we know’ and the ‘what we need to know’ have been addressed and crossed off.
Annexure M – Owner/Occupier's Consent to Crime Scene Examination
Owner/Occupier’s Consent to Crime Scene Examination

I ………………………………………………………………………………………….. (name), am the lawful occupier and/or owner (delete whichever is inapplicable) of premises at …………………………………
……………………………………………………………………………………………………………………………………………………………………………………….. (full address including State and postcode)

……………………………………………………………………………………………………………………………………………………………………………………….. (rank and name of police officer) has explained to me the nature of the proposed inquiries and examinations police wish to make on the premises.

I have been told and understand the following examinations may result in damage to the premises.

……………………………………………………………………………………………………………………………………………………………………………………….. (delete this portion if it is inapplicable)

I give my consent to members of NSW Police and any other necessary assistant to enter and remain on the premises to make inquiries, conduct the examinations listed above (delete if inapplicable), and for general crime scene examination.

I realise that I may withdraw this consent at any time. It has also been explained to me that under the Law Enforcement (Powers and Responsibilities) Act 2002, police may obtain a crime scene warrant or search warrant to continue examinations on the premises.

Signed……………………………
Name of occupier and/or owner (delete whichever is inapplicable)
Time
Date
Witness
Name of police officer
Annexure N - Identification Parade – One-Way Mirror

Note: A separate set of forms is to be used for each witness called. The forms are only to be handed to the police officer escorting the witness and care should be taken that the witness does not read the suspect’s name.

<table>
<thead>
<tr>
<th>Day</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parade conducted by:</td>
<td></td>
</tr>
<tr>
<td>Persons present in parade room (other than parade participants):</td>
<td></td>
</tr>
<tr>
<td>Number of persons in parade: (Including suspect)</td>
<td>Time Commenced</td>
</tr>
</tbody>
</table>

**SUSPECT**

a. Activate the video camera(s) and begin recording

My name is (rank and name),

_I want you to understand that I am not involved in this investigation. I am here as an independent police officer to conduct this identification parade._

Q1  (Suspect’s name)

You do not have to say or do anything, as anything you say or do will be video and audio recorded and may later be used in evidence. Do you understand that?

A1

You have consented to taking part in this identification parade for possible identification in connection with

Q2

Today there will be (No.) Witnesses who will view the parade through that one-way mirror. You will be told when the witness is viewing the parade and you be able to hear what is being said in the witness viewing room. Both this room and the witness viewing room (if 2 video cameras are to be used) are being video and audio recorded. Do you understand that?

A2

Q3

I want you to look along this line of people participating in this identification parade. Have you any objections to the persons in this parade?

A3

Q4

Have you any objections to the arrangements made for this identification parade?

A4

Q5

Please choose a temporary position in the parade. You will be given the opportunity to change position in the parade when I go to the viewing room and before each witness enters the viewing room. Do you understand that?

A5

b. Address all line-up participants - _When the witness is viewing the line-up, I will ask each of you in turn to step forward of the line and face the mirror. You will then be asked to turn to your right and face each wall until you end up facing the mirror again. You will then be asked to return to the line-up. For recording purposes, starting on my right, please step forward to that line and then return to the line-up._

c. Have each participant step forward to the line and return to the line-up.

d. To the suspect, _Before I call the witness please choose a position in the parade._

Position number chosen by suspect:
e. The independent officer gives each line-up participant and the suspect a numbered card to wear. The numbers are to run consecutively from left to right.
f. In the viewing room the curtain covering the one-way mirror should be closed until procedures are explained to the witness.
g. The independent officer should not leave the witness viewing room once the suspect has chosen a position in the line-up.
h. The independent officer announces, *I will arrange for the witness to attend the viewing room.*
i. Arrange for the witness (and a support person if appropriate) to attend the viewing room.
WITNESS NO.  

<table>
<thead>
<tr>
<th>Witness my name is</th>
<th>(rank and name)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I want you to understand that I am not involved in this investigation. I am here as an independent police officer to conduct this identification parade.</td>
<td></td>
</tr>
<tr>
<td>This is</td>
<td>(rank and name)</td>
</tr>
<tr>
<td>Who will be recording the identification parade.</td>
<td></td>
</tr>
<tr>
<td>(Name and reasons any other person present)</td>
<td></td>
</tr>
</tbody>
</table>

j. Do you agree that other than the persons I have mentioned, there are no other persons present in this room? 

Answer

I want you to understand that the persons in this identification parade may not have been involved in the matter that is being investigated by police. When I draw the curtain you will see a number of persons standing in a line and identified by carrying a number. I will ask each person to step forward and face each wall so you can see each side of them. I want you to look at them carefully and see if you can identify the person who:

k. Ask each person in the line up, Number (Number of person in the line up) step forward to the line … turn to your right … keep turning to your right until you face the mirror … please return to the line-up …

l. After each person steps forward or comes into view ask the witness, Do you want to make any comment about the person who has just stepped forward (or comes into view as the case maybe)

m. After the last person has stepped forward ask the witness, Would you like to see any of the persons again?

Answers:

n. Can you identify anyone in the line-up?

Answer: To be recorded in full

o. If the answer is yes then ask, Will you please write the number of that person down on this piece of paper? Provide a blank piece of A4 paper, and have the witness write the number down, then sign and date that piece of paper. The independent police officer should also witness the signature, including full name, rank and date. Place this piece of paper in an envelope marked with the witness’s number. After the parade this envelope is to be handed to investigating police.

p. Thankyou for taking part in this process. I will now have you escorted from this room.
q. When the witness has completed viewing the line-up, the curtain should be closed and the witness removed from the room.

<table>
<thead>
<tr>
<th>Q7</th>
<th>Have you participated in this line-up of your own free will? (To the accused)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A7</td>
<td></td>
</tr>
<tr>
<td>Q8</td>
<td>Has any threat, promise or offer of advantage been held out to you to participate in this line-up?</td>
</tr>
<tr>
<td>A8</td>
<td></td>
</tr>
<tr>
<td>Q9</td>
<td>Have you any complaints to make about the manner in which this line up has been conducted?</td>
</tr>
<tr>
<td>A9</td>
<td></td>
</tr>
</tbody>
</table>

r. If there are more witnesses the suspect should be given the opportunity to change position in the line-up. To the suspect, Before I call next the witness please choose a position in the parade.

s. If applicable the procedure in paragraph “e” is to be followed again.

t. Turn off the video camera(s) at the conclusion of the line up

<table>
<thead>
<tr>
<th>Signature:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name and Rank</td>
<td></td>
</tr>
<tr>
<td>Station</td>
<td></td>
</tr>
<tr>
<td>Time completed</td>
<td></td>
</tr>
</tbody>
</table>