# Advising adult suspects before a police interview

## Legislation and procedures regulating interviews with suspects.

* sections 464 – 464J of the *Crimes Act 1958 (Vic).*
* Victoria Police Manual, Operating Procedures (see: Operations 112-3 ‘Interviewees and offenders: interviews and statements). These are administrative guidelines set out by the Chief Commissioner of Police and do not have the same effect as statutory laws.

### The right to communicate with a lawyer

Section 464C of the *Crimes Act 1958* gives a suspect in custody of an investigating official the right to communicate with a legal practitioner before being questioned. The communication must be in private, where possible (s. 464(C)(2)(b)).

Failure to allow communication may result in the interview being excluded on the grounds that it was illegally or improperly obtained. (see: s.138 Evidence Act 2008, s. 464J(d) *Crimes Act 1958*).

## Deciding what advice to give

Whether you advise a suspect to answer questions or remain silent will depend a number of factors including:

* the nature and seriousness of the allegations
* the strength of the prosecution evidence
* the person’s instructions about the allegations
* how the person is likely to react during the interview.

Many things will influence how a person handles the interview process including:

* their previous experiences with the police and being interviewed
* their mental health, physical health and any substance addictions they have
* their cognitive functioning, level of education and language abilities
* their cultural background and attitude towards police
* the trauma they feel as a result of their arrest and possible remand.

## The standard advice – answer no comment

A suspect has a right to silence and no adverse inference can be drawn from the exercise of that right. (s. 89 *Evidence Act 2008*).

The safest advice to give to a person about to be interviewed is to exercise that right and answer ‘no comment’ in the interview. This is particularly important in serious cases. This limits the chance they will say something which damages their case, limits their options or that they will resort to selective answering.

A person should be advised to answer ‘no comment’ if you believe they will:

* might become confused and not be able to express themselves clearly or unambiguously
* will have trouble understanding the questions and the implications of their answers
* might be vulnerable to police pressure and susceptible to having words put into their mouth.
* might be unable to think clearly in the interview because they are mentally ill, stressed, affected by drugs or alcohol, or are taken by surprise by the allegations.

## When answering questions might be considered

In some cases, discussed below, there may be advantages to answering questions. It is important to consider all the circumstances of the case and the characteristics of the suspect, before giving that advice.

If the suspect denies the charges, gives their version of events or raises a viable defence, this could positively effect on how the case proceeds. For example, the police may decide not to lay charges, diversion may be offered, or the person may not have to give evidence at the hearing.

These potential advantages need to be weighed against the risk that the suspect will admit matters that the police could not otherwise prove, give a version of events that is later proven false or untenable or make statements which affect their credibility. It also gives the prosecution the chance to investigate their version of events and compare it with the other evidence.

### Viable defences

You might consider advising a suspect to answer questions in the interview if, based on their instructions and the evidence, they could have a viable defence. The person will be more credible where they spontaneously raise a defence in the interview, rather than waiting until they are in the witness box. It counters a suggestion of recent invention.

Circumstances where a suspect might raise their defence in the interview include where they:

* claim they acted in self defence
* rely on consent in sex offence cases
* claim they had or did not have a particular, intention, belief or factual knowledge.

It will be difficult to assess the viability of the defence as there may be other independent evidence which might refute their account and affect their credibility. For example:

* in assault cases there may be CCTV footage or medical evidence of the complainant’s injuries
* in a sex case a denial that sexual activity took place might be refuted by DNA evidence.

### Responding to allegations to avoid charges

Sometimes the police will not lay charges where the suspect makes a plausible denial of the allegations. A common example is neighbourhood disputes, where each party gives a different version of events and there are no independent witnesses.

### Admitting guilt where there is overwhelming evidence

If there seems to be overwhelming evidence implicating the suspect and no viable defence, they may want to admit the allegations in the interview. The benefits of this include:

* the person will be able to express remorse and give an explanation for their conduct
* their co-operation and expression of guilt at the first opportunity will carry weight on a plea
* the police may agree to diversion or lay fewer charges or provide a favorable summary.