



**NSW
Police Force**

Guidelines for NSW Police Force employees providing support during police misconduct investigations

Professional Standards Command

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Essential Summary

The purpose of these guidelines is to provide you with direction when you are assisting subject officers or police witnesses who are to be interviewed during a police misconduct investigation.

The guidelines are predominantly designed for investigations where an officer is interviewed, however information contained in this package may be applied to misconduct investigations dealt with by resolution.

The aim is to minimise the chance that you may become a witness in proceedings by acting as a support person and to optimise the benefits you provide to colleagues requiring support.

Relevant legislation

- Section 211F of the Police Act 1990 – police officer's obligation to report misconduct
- Clause 8(1) of the Police Regulation – police officer to comply with a lawful direction

Relevant documents

- *Code of Conduct and Ethics*
- *Support package for police officers interviewed in relation to a misconduct investigation.*

Document Control Sheet

Document Properties

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2	November 2015	Professional Standards Command	<ul style="list-style-type: none"> Changes to Police Regulation 2008 to reflect updated to Police Regulation 2015 Transfer to corporate template
3	July 2017	Professional Standards Command	<ul style="list-style-type: none"> Implementation of the LECC Act 2016 and amendments to the Police Act 1990 and the Police Regulations 2015.
4	January 2017	Professional Standards Command	<ul style="list-style-type: none"> Biannual review and security classification update
5	August 2020	Professional Standards Command	<ul style="list-style-type: none"> Remove reference to Complaint Handling Guidelines Remove reference to CPN 13/02
	8 January 2021	Professional Standards Command	<ul style="list-style-type: none"> Update security classification
6	21 July 2022	Professional Standards Command	<ul style="list-style-type: none"> Remove reference to section 6 of the Police Act (see D/2022/508570) Add peer support officers
7	1 September 2022	Professional Standards Command	<ul style="list-style-type: none"> Replace 'complaint' with "misconduct/ investigation" except where legislation is quoted Change title of document to Guidelines for NSW Police Force employees providing support during police misconduct investigations

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1. Your role as a support person

The role of the support person is to provide assistance and act as a referral agent for colleagues in regard to contacting the Police Association, Employee Assistance Program, police chaplains and any other person to whom the police officer wishes to speak. Any police officer or administrative personnel can be a support person.

1.1 Setting boundaries

You should advise the employee you are supporting, that you are there to offer support and provide help regarding referrals for welfare and legal assistance.

Your role is **not** to provide legal advice or gather information that may exonerate the employee you are supporting. In most cases these issues will **not** arise, however, it is very important that you know the boundaries of your role so as not to put yourself in a position where your role as a support person is compromised.

You can seek advice and guidance from your professional standards duty officer (PSDO), professional standards manager (PSM) or equivalent and / or the Professional Standards Command (PSC).

1.2 Support services

Legal advice, medical assistance and welfare support is available to all NSW Police Force employees. The *Support package for police officers interviewed in relation to a misconduct investigation* lists the support services available.

You should ensure that employees who are to be interviewed have received a copy of the support package. It is available on the PSC intranet site.

1.3 Confidentiality

When providing support, you need to be aware that not all conversations can remain private. Section 211F of the Police Act 1990 places a duty on all NSWPF employees to report in writing to a sergeant or above, if they have reasonable grounds to suspect a police officer has engaged in misconduct or serious maladministration. Further, you may be subpoenaed to give evidence against a police officer to whom you provide support if the officer discloses to you information regarding the incident.

1.4 Conflicting duties

You should be aware that there is a potential for a conflict of duties to occur while providing support to employees during criminal and non-criminal investigations. A conflict of duties may occur where you are providing support to more than one employee involved in the same investigation. Unless it is completely unavoidable, you should not act as a support person for more than one person in the same misconduct investigation.

1.5 Conflict of interest

If you become aware of a conflict of interest (actual, potential or perceived) in your support role, report it to your commander or manager. Once disclosed the most appropriate type of management approach can be determined which may include the use of another support person. You are entitled to decline to act as a support person.

1.6 Support during a criminal interview

As a general rule police officers are **not** prohibited from being a support person during a criminal interview. However, if an interview is clearly criminal it is preferable that the support person is not a police officer due to the potential for a conflict of interest to arise. You would **not**, however, be prevented from acting as a support person in any subsequent related complaint interview once the criminal interview has been finalised.

2. During a misconduct investigation interview

2.1 A support person can

It is recommended that a misconduct investigator, upon request, permit the presence of a support person during misconduct related interviews provided that they do not interfere with the interview process (for example, acting outside of their role by answering or suggesting answers to questions, or continually interrupting without proper cause). If you as a support person interfere, the investigator may stop and re-explain your role as an observer but should only remove you in exceptional circumstances.

During an interview, you should satisfy yourself of the fitness of the employee to participate in the interview. Where need be, particularly when the interview is long, you should request a break on behalf of the employee being interviewed. If the employee is too tired to participate, for example, they have just finished night work or overtime, you should request that the interview be postponed. If the request to have a break or to postpone the interview is declined, ensure that both the request and refusal is recorded.

You should also ensure that the employee has been provided with an opportunity to obtain legal advice. You can liaise on behalf of the employee in order to address any other needs or concerns. If a legal practitioner is present, there is nothing to prevent them providing the employee with legal advice while acting as a support person, however, they cannot interrupt or interfere with the interview to do so. Any legal advice should be provided during breaks.

2.2 A support person cannot

During an interview you should **not** interrupt or become abusive towards investigators. This type of behaviour can hinder the investigation and creates a danger that the employee being interviewed may be left without support if you are evicted from the interview. This sort of behaviour may also aggravate the condition of the employee you are supporting.

You cannot be involved in the inquiry or provide any input during it. You should exclude yourself from the support officer role if you are too emotionally involved in the matter. If you exclude yourself, you should assist the employee to find an alternative person to provide support.

An investigator may prevent you from performing the role of a support person in the case where you are actually involved in the investigation, for example, as a witness or as a co-subject officer.

3. Relevant legislation

When providing support, you should be aware of the following legislation and rights.

3.1 Complying with a lawful direction

Clause 8(1) of the Police Regulation states that *“police officers are to promptly obey all lawful orders from those in authority over them”*. This allows police senior to the officer being interviewed to give lawful directions, for example: to answer questions via a directed interview and respond to a directive memorandum.

3.2 Privilege against self incrimination (PASI)

However, an order to direct a police officer to answer a question or provide a version of events during a departmental investigation will not be lawful if the police officer believes they will incriminate themselves criminally in responding to the question.

Police officers have the right to claim privilege against criminal self-incrimination and in this situation, they should seek legal advice (*clause 8 of the Police Regulation 2015 in departmental investigations*).

3.3 Direction not to disclose

At the conclusion of a misconduct investigation interview NSW Police Force employees are routinely provided with the following direction pursuant to clause 8(1) of the Police Regulation:

“You are directed not to disclose any information in respect of this interview to any person including any person you have reasonable cause to believe could be a subject officer or witness or otherwise involved in this investigation without my authority or the authority of a member of the CMT. Do you understand that?”

I would like to advise you of the services of the Workforce Safety Command which includes the Psychology Section. The police chaplaincy, peer support officers and external services such as the Employee Assistance Program are also available if you feel that you may require any advice or assistance. Do you understand that?”

The above direction does not prevent an employee who is interviewed from seeking support or speaking to somebody if they require advice or assistance as long as it does not interfere with the integrity of the investigation. If you require advice regarding

police officers' rights in relation to this direction, contact the Legal Division of the NSW Police Association or a legal representative of your choice.

As a support officer, you may also be issued a direction by the investigator **not** to discuss the interview or any other aspect of the investigation with any person where it may interfere with the integrity of that investigation.

4 Contacts

- PSC Helpdesk, E/N 48370 or email #PSCHELP
- Human Resources Command
- PSDO, PSM or equivalent
- NSW Police Association (Legal Division)
- A legal practitioner