Aboriginal Engagement

OFFICIAL: Sensitive

Corporate Sponsor: Aboriginal Engagement

Stakeholder: Capability Performance & Youth Command - Crime Prevention Command

Chapter content suitable for public release T1(f) T2(b)

(Chapter reviewed March 2026 [Mandatory Review - D/2026/175785 & D/2026/205328 relate] Page updated 5 March 2026)

Disclaimer: In the context of the following information, the word 'Aboriginal' refers to 'Aboriginal and Torres Strait Islander' inclusively.

The Aboriginal Strategic Direction (ASD) is an important part of broader government policy initiatives aimed at requiring all service providers to foster consultative, outcome driven approaches to engaging local communities and involving all government agencies in Aboriginal justice initiatives.

The Aboriginal Strategic Direction aims to improve the lives of Aboriginal people through the four key priority areas including:

1. Community Safety - Communication and Understanding
2. Partnerships - Collaborate & Influence
3. Safety & Well-being of Young People
4. Family Safety & Domestic Violence

This framework identifies strategies, training and support to assist Police Area Commands and Districts to enhance the knowledge and capability of NSW Police Force staff in working effectively with Aboriginal people and Aboriginal communities. The framework promotes engagement with Aboriginal communities through crime prevention initiatives and grants that align with the four ASD priorities

Interpretation

According to LEPRA Part 1 section 3, an Aboriginal person means a person who:

a) is a member of the Aboriginal race of Australia

b) identifies as an Aboriginal person, and

c) is accepted by the Aboriginal community as an Aboriginal person.

According to LEPRA Part 1 section 3, a Torres Strait Island person means a person who:

a) is a member of the Torres Strait Island race

b) identifies as a Torres Strait Islander, and

c) is accepted by the Torres Strait Island community as a Torres Strait Islander person.

When addressing or speaking to an Aboriginal or Torres Strait Islander person, you do so as you would any member of the community. Never use names, words or terms which are derogatory or offensive.

Aboriginal Strategic Direction

Commanders

For strategic and local objectives and strategies which you need to address in relation to Aboriginal issues refer to the ***Aboriginal Strategic Direction***. This policy document can be found on the Intranet through the Aboriginal Issues Knowledge Map.

Acknowledgement of Country

At functions, meetings, forums where a local custodian is not available, the facilitator should proceed with an Acknowledgement of the traditional custodians. An Acknowledgement can be delivered by an Aboriginal or non-Aboriginal person. The following is an example of an Acknowledgement:

"I wish to Acknowledge the traditional custodians of the land where this (event) is held, and I pay respects to Elders past and present"

Aboriginal Community Liaison Officers (ACLOs)

ACLOs are a valuable resource for Police Area Command/Police Districts. Their role is to:

- Liaise, develop and maintain open communication with Aboriginal or Torres Strait Island people and organisations within your command / district to assist in engaging and working with the Aboriginal community. Through strong community relationships, the ACLO is critical to a successful police and community partnership in crime prevention.
- Assist an Aboriginal person who may be in Custody or a Victim of crime
- Assist in the establishment of Aboriginal Custody and Victim Support group.
- Assist in the establishment of Police Aboriginal Advisory Committees and development of other crime prevention initiatives within their community.

See: Aboriginal Engagement Knowledge Map (NSWPF Intranet) for further information under Key Stakeholders.

Aboriginal Cultural Awareness Training

Aboriginal cultural awareness training resources are available to NSW Police Force staff. Please consult the Aboriginal Strategic Direction or contact the Aboriginal Strategy & Coordination Team on #CPSUASCT for further information and support.

See: Aboriginal Engagement Knowledge Map

Entering Aboriginal Land

Consult the Local Aboriginal Land Council prior to accessing a site. Following negotiations, the Police Area Command/Police District (PAC/PD) Commander enters into a written agreement with the Council. A copy of the agreement is kept at the command and region office.

Once right of access has been negotiated and authorized, it may be revoked only by that Land Council at a further meeting properly convened. A Deed of Access may be entered into between a Land Council and the Commissioner (signed by the PAC/PD Commander).

If you enter Aboriginal lands without authority, you are trespassing. The relevant Land Council can act accordingly.

Aboriginal skeletal remains

See: Chapter I [Identification of Deceased Bodies and Skeletal Remains]

See also: "**Manual for the Identification of Aboriginal Remains**" produced in co-operations with the NSW Department of Environment and Conservation in 2006 (now the **NSW Dept of Planning and Environment**).

Custody Notification Service and Aboriginal Legal Aid Officers

The Aboriginal Legal Services (NSW/ACT) operates a 24 hour per day/7 day per week Custody Notification Service (CNS). The contact number is **1800 765 767**

An Aboriginal person coming into police custody is entitled to speak to the Aboriginal Legal Service on the phone number provided.

An Aboriginal Person in Custody

See above for the Custody Notification Service (CNS) operated by Aboriginal Legal Service (NSW/ACT).

Inform the ACLO or notify an Aboriginal Custody and Victim Support person (volunteer) Aboriginal Custody and Victim Support training resource is available in folder:

Not related

Alternatively, contact the Aboriginal Strategy & Co-ordination Team at Crime Prevention Command for more information.

Recording Aboriginal and Torres Strait Islander status in NSW Police Force systems

All victims of crime, offenders, and persons of interest, including where police powers are used, must be asked if they identify as Aboriginal and/or Torres Strait Islander. The answers must be recorded under 'Person Attributes' in an associated WebCOPS event.

All persons in custody are asked if they identify as Aboriginal and/or Torres Strait Islander. This is recorded in the Safe Custody system.

If the person is unable to be asked because they are not present, deceased, intoxicated, or incapacitated, choose 'Unable to Ask' and select the reason.

People have the right to refuse to answer. If they refuse, record it as such in WebCOPS and the Safe Custody system.

Do not ask about Aboriginal/Torres Strait Islander status for transport (including maritime) or traffic incidents where only an infringement or warning is issued.

Do not guess if a person is Aboriginal or Torres Strait Islander.

Do not use the acronym 'ATSI' when asking these questions or recording in WebCOPS, as this term is considered offensive.

For more information, see Recording of Aboriginal/Torres Strait Islander status on WebCOPS (COPS) on the intranet.

Alternatively, contact the Aboriginal Strategy & Co-ordination Team, Crime Prevention Command.

Aboriginal Person Death in Custody and Critical Incidents involving an Aboriginal person

See: **Guidelines for The Management of Critical Incidents - Commander Checklist**.

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Arrests

OFFICIAL: Sensitive

Chapter Owner: Deputy Commissioner Metropolitan Field Operations Command

Chapter content suitable for public release - check each linked item for its status.

Chapter updated 27 June 2025 [Review following NExUS-FR Implementation] D/2025/681712

Chapter updated 16 July 2025 - D/2025/415097

Chapter updated 22 October 2025 - D/2025/1124401

(New Section Arrest for Additional Offences when New Bail is Desirable added April 2018 as per D/2017/638969 LEX 1713)

LEPRA section 99

Refer to section 99 of LEPRA for your statutory powers to arrest without a warrant.
You may arrest a person for an offence, without a warrant, if:

- you suspect on reasonable grounds that the person is committing or has committed an offence, and
- you are satisfied that the arrest is reasonably necessary for any one or more of the following reasons:
    - to stop the person committing or repeating the offence or committing another offence
    - to stop the person fleeing from a police officer or from the location of the offence
    - to enable enquiries to be made to establish the person's identity if it cannot be readily established or if the police officer suspects on reasonable grounds that identity information provided is false
    - to ensure that the person appears before a court in relation to the offence
    - to obtain property in the possession of the person that is connected with the offence
    - to preserve evidence of the offence or prevent the fabrication of evidence
    - to prevent the harassment of, or interference with, any person who may give evidence in relation to the offence
    - to protect the safety or welfare of any person (including the person arrested)
    - because of the nature and seriousness of the offence
- and you intend, at the time of arrest, that the person will be charged and put before the court.

You may also arrest a person without a warrant if directed to do so by another police officer. The other police officer is not to give such a direction unless the other officer may lawfully arrest the person without a warrant.
As soon as is reasonably practicable, you or another police officer must take a person arrested under section 99 before an authorised officer to be dealt with according to law.

However, you may discontinue the arrest at any time and without taking the arrested person before an authorised officer - see section 105 of LEPRA.

A person who has been lawfully arrested under section 99 may be detained by any police officer under Part 9 for the purpose of investigating whether the person committed the offence for which the person has been arrested and for any other purpose authorised by Part 9.

Always record the reason for the arrest in your notebook, any statement you prepare for court, and the relevant COPS entry.

<u>Alternatives</u>

Arrest is reasonably necessary if you are satisfied that one or more of the reasons under s99(1)(b) are met. In some cases it may be so clear that an alternative should be pursued, for example, for an offence of littering or negligent driving where a ticket would suffice. Other alternatives include:

- warning
- caution
- penalty notice
- Field or Future CAN, or
- in the case of a child, dealing with the matter under the Young Offenders Act 1997.

When exercising a power to arrest, you must comply with Part 15 of LEPRA (safeguards). Among other things, this will require you to tell the person the reason for the arrest.

When an arrested person is also the subject of a police circulation, immediately inform the officer who initiated the circulation.

If you execute an Arrest Warrant, immediately notify the officer who took it out. If you cannot contact them, immediately notify their commander.

See: [Additional Resources on Arrests]

Arrest on parole

When you arrest someone on parole, contact the New South Wales State Parole Authority and supply the name and date of birth of the person arrested, details of the offence committed, as well as the name of the officer in charge of the case and the command to which they are attached.

When preparing a fact sheet for the matter, include in the offender's antecedents the fact that they were on parole at the time.

Establishing identity of suspect

When arresting a suspect by warrant or otherwise, be certain of identity. Do a search of all available information and intelligence systems.

If a person arrested pursuant to a warrant denies they are the person named in the warrant, make every attempt to establish the identity of the person.

If the warrant has been issued in respect of an offence, you have a power under section 133 of LEPRA to take all particulars that are necessary to identify the person. If the person is over the age of 14 years, the particulars may include the person’s photograph, fingerprints and palm-prints. (Section 136 applies to the taking of identification particulars from children under 14).

No such power exists where the person has been arrested pursuant to a warrant that does not relate to an offence. Examples include warrants issued in respect of a revocation of parole or to bring a witness before the court. However, you may take the person’s fingerprints and palm-prints with their informed consent.

In either case, conduct a CNI check (compare physical descriptors such as scars, tattoos etc.) and pursue any other avenues available to establish identity.

When you arrest someone for an offence involving violence, firearms, or narcotics, see also the section on 'Firearms, prohibited weapons and security'.

Fingerprinting a person in lawful custody for an offence

When a person is in lawful custody for an offence, it is the responsibility of the officer in charge of the investigation to ensure fingerprints are obtained on each lawful occasion, unless there is a compelling reason not to do so.

If a person aged 14 years or over is in lawful custody for an offence, whether in a police station or in the field, section 133 of LEPRA allows you to take all identification particulars necessary to identify the person. This may include the person's photograph, fingerprints or palm prints. You can use a Livescan device or Field Identification device to take the prints. (Section 136 applies to the taking of identification particulars from children under 14).

A person is in lawful custody for an offence if they are under arrest for the offence.

Fingerprinting a person who is not in lawful custody for an offence

You can require a person who is not in lawful custody to provide their prints if:

- you have served the person with a Criminal Infringement Notice (i.e., a penalty notice under the Criminal Procedure Act 1986) , or
- you have served a Court Attendance Notice personally on the person.

The person must be over 18 years of age, and the prints can only be taken with the person's consent. You must also comply with the safeguards in section 138C of LEPRA.

Arresting Members of Parliament (MPs)

You should always confer with the Presiding Officers before exercising any police function within the Parliamentary Precincts or the Parliamentary Zone. A Presiding Officer is the President of the Legislative Council and the Speaker of the Legislative Assembly acting together or individually.

See also: Parliamentary Precincts Act 1998 No 66

Memorandum of Agreement - Parliament of NSW and NSW Police - 1 January 2020

During a 'call out' by the Presiding Officers or their delegates

You may only pursue a person into the Parliamentary Precincts to effect an arrest if that person has fled into the Parliamentary Precincts whilst trying to avoid being arrested.

You are not to enter the Parliamentary Precincts for the purpose of conducting any police function unless requested ('called out') by the Presiding Officers or their delegates.

During a call out, the senior police officer will receive direction from the Presiding Officers or their delegates as to the needs of Parliament. They will then, by all lawful means, assist the Presiding Officers or the delegates to maintain operational control of any situation. This includes, but is not limited to, directing a person to leave or not enter the Parliamentary Precincts, arresting (or removing) a person in (or from) the Parliamentary Precincts, and preventing a person from entering the Parliamentary Precincts.

During your attendance in the Parliamentary Precincts or the Parliamentary Zone, (whether as the result of a 'call out' or on any routine business), you must not, without prior authorisation from the Presiding Officers:
a) conduct any investigation
b) execute any process (e.g., search warrants or ADVOs),
c) interview, hold in custody or arrest any Member of Parliament or any Parliamentary employee.

This does not prevent you from conducting an investigation, within the limited confines of the Parliamentary Zone, with respect to any crash or incident that does not involve a Member of Parliament or the Parliamentary buildings or structures.

If possible, report to your Region Commander beforehand.

If an MP is arrested (in either case), notify the Region Commander, and the following people, as soon as possible:

Federal

- a member of the Senate - Office of the President of the Senate, Canberra
- a member of the House of Representatives - Office of the Speaker, Canberra.

State

- a member of the NSW Legislative Assembly - Office of the Speaker, Sydney
- a member of the NSW Legislative Council - Office of the President, Sydney.

Supply the following information:

- name of the member
- type of action
- details of the circumstances giving rise to the arrest.

The Region Commander will then provide formal written notification.

Arrest by warrant

Try to arrest a person named in a warrant as soon as practicable after the warrant has been issued. A person who is arrested under a warrant must be brought before a Judge, a Magistrate, or an authorised officer (as specified in the warrant) as soon as practicable.

When executing the warrant, state your authority and, if requested to do so, produce a copy of the warrant when it is available.

For further information, see the chapter on Warrants in the Police Handbook.

Power to stop, search and detain

See Section 21 of the Law Enforcement (Powers & Responsibilities) Act 2002 for requirements with respect to stop, search and detain powers.

Multiple charges

Do not lay multiple charges against an offender when it is unlikely the lesser charges will be pursued. While secondary charges are often desirable as an alternative to a substantive charge, before laying them you should consider whether they are appropriate and can be established to a prima facie degree.

Interstate offences and arrests

See: **Extraditions** for the arrest of offenders outside NSW.

Reference should also be made to section 104 of LEPRA that provides for a power to arrest for interstate offences, and *section 82 of the Service and Execution of Process Act 1992* (Commonwealth) that provides for a person named in a warrant issued in a State to be apprehended in another State.

Arrest for Additional Offences when New Bail is Desirable

(Section added April 2018 as per D/2017/638969 LEX 1713)

Adding additional offences to an existing charge

If you have charged a person and later wish to add additional offences to the charge, consider the following options.

There are 2 ways to add additional offences:

1. Issue a 'Future CAN' and make a detention application
2. Arrest, issue a CAN and make a police bail decision.

The most appropriate way to proceed depends on the assessment of the bail risks involved. The additional offences may change your assessment of the overall bail concerns and risks, which often overlap with some of the reasons for which you can arrest.

Option 1 is appropriate if the additional offences do not pose new bail concerns that would require new or amended bail conditions, or the refusal of bail.

Options 2 is appropriate if the additional offences raise new bail concerns that require additional bail conditions, or the refusal of bail.

Before looking at each of the options, it is important to understand that a new bail decision must be made in relation to the additional offences.

New bail needed for the additional offences

Under the **Bail Act 2013**, bail is applied to each separate offence. The bail applied to the original offences will not apply to any new offences. No bail will apply to the new offences until a bail decision is made specifically in relation to them.

This means you need to ensure appropriate bail conditions are attached to ALL offences. If bail conditions are not added to the new offences and the old offences are withdrawn or finalised, the person will have no bail conditions at all. This problem can arise when offences attached to a single charge number are split up and dealt with separately. For example, where offences involving co-offenders are heard together with the remaining offences heard at another date, or where the DPP takes carriage of indictable offences leaving the remaining offences in the Local Court.

Option 1: Issue a Future CAN and make a detention application at Court

Exercise this option if the additional offences do not pose new bail concerns that would require new or amended conditions or the refusal of bail.

Under the Bail Act, the prosecution may apply to a court for bail conditions to be imposed, or for bail to be revoked or refused, in relation to an offence. This is referred to as a detention application.

You can issue a Future CAN and apply to the court to impose bail conditions. To do this, you should serve the Future CANs along with a notice of intention to make a detention application. If you need assistance to do this, contact your local prosecutors. The detention application is to be made by the prosecutor at the first court mention date.

Because there are no new bail concerns, the prosecutor would ask the court to apply the existing bail to all offences, including the new offences. Until this is done, the bail conditions will apply only to the original offences.

The Bail Act requires that the accused person be given notice of the detention application the prosecution proposes to make. However, the court can still hear the application even if police are unable to serve the notice. The court can do away with the giving of notice if it is satisfied that the accused person is evading service or cannot be contacted, or if the interests of justice so demand.

If you consider that additional bail conditions are required or that bail should be refused in relation to the new offences, option 2 may be more appropriate.

Option 2: Arrest, issue a CAN and make a police bail decision

Where the arrest of the person is reasonably necessary for one of the reasons set out in 99(1)(b) of LEPRA, the person can be arrested and taken to a police station.

At the police station the new offences must be considered in light of the criminal history as a whole. If there are bail concerns, then consideration must be given to applicable conditions on the new offences that could be imposed to address the bail concerns. If there are no conditions that could be imposed to sufficiently address the risk, and unacceptable risks remain, then the person must be refused bail.

Adding sequences to the existing charge (H number) versus creating a new charge (H number)

The correct process depends on whether the original offences have been before the court.
If they have, you will need to create a new H number for the new offences so that the new bail conditions are applied only to the new offences. An authorised police officer has no power to make any bail decision in relation to offences that have been before a court.

If the original offences have not been before the court, the best option is to add the new offences to the existing H number. Any bail conditions imposed on the new offences will automatically apply to the previous offences. As such, an authorised officer who is more senior than the authorised officer who determined the original bail decisions must conduct the bail determination in relation to the new offences.

What to include in the fact sheet

In the fact sheet for the new offences, clearly state that the new H number is related to the original offences under the old H number. This will enable the prosecutor to ensure all the matters are dealt with together, either by re-listing the original maters or adjourning the new matters to the same date for which the original matters are listed. The court can then make a bail decision in relation to all the offences at that time.

Care when stopping/arresting motorists

When stopping and arresting motorists do not put the public, other police, or yourself at unnecessary risk. Call for help to reduce the risks, particularly when a dangerous criminal is involved.

Arrest teams

A police officer may arrest a person without a warrant if directed to do so by another police officer. The other police officer is not to give such a direction unless they may lawfully arrest the person without warrant. Briefing notes and operational orders may contain such directions. The officer making the direction must be satisfied that the arrest is reasonably necessary for one or more of the reasons set out in section 99 (1) (b) (listed above).

Operations commander

When you use arrest teams, establish a system that will:

- ensure a common informant for charges, who is not part of the arrest team (to allow charges to be processed without delay)
- enable the common informant to identify which police officers witnessed the offence, which officers made the arrest, and establish the brief facts of the offence (consider using a field arrest form and photographing the offender with the arrest team before transporting to the station).

Detained Persons' Property - bulky items

When taken into custody, a person may have property of substantial bulk (e.g., a vehicle, television, radio, or animals) in their immediate charge.

Where practicable, help the person make reasonable arrangements for security, safekeeping, or disposal of the property. This may include, for example, locking vehicles, engaging security systems, or allowing the person to contact a third party to arrange safekeeping. Record these actions in your notebook.

If an arrested person is bail refused and transferred to Corrective Services, remember that there are limits on the amount of personal property that can be received (no more than property equivalent to carry-on luggage for air travel. If there is no alternative manner to dispose of the property, additional property will need to be recorded in NExUS, the NSWPF exhibit system and retained by Police.

Arresting for a breach of Recognisance or breach of bond.

You only have the authority to arrest for a breach of recognisance or breach of bond if an arrest warrant is in existence. You do not have the authority to arrest otherwise.

OFFICIAL: Sensitive

Breath Testing and Analysis

OFFICIAL: Sensitive

Chapter Owner: Traffic & Highway Patrol Command

Chapter content NOT for public release - check each linked item for its status.

(Chapter reviewed 08/06/2023 [Mandatory review] D/2023/987384)

This content has been split from the former "Breath & Drug Testing & Analysis" chapter for clarity. For 'Drug and Alcohol Sampling' see HERE.

Breath testing

Breath testing procedure

Use plastic gloves. Inspect the driver's licence and ask about recent alcohol consumed, and, if necessary, seek to delay the test for 15 minutes, until mouth alcohol is eliminated. If the person objects to waiting, you have no power to detain, and will conduct the test.

Form of Demand

There is no legislated form of demand regarding breath testing, however, Police are required to use a modified version of the breath analysis form of demand:

"My name is ... from .... You have been stopped for a breath test. In accordance with New South Wales law, I require you to undergo a breath test for the purpose of indicating the concentration of alcohol present in your blood and I direct you to exhale air from your lungs, in one continuous breath, directly into this approved device until I direct you to stop."

This form of demand applies when conducting 'standard testing' with the roadside screener (i.e. when a driver provides a sample of breath by blowing air into the tube attached to the screener). Refer to the **Drug Driving Card** for further instructions.

There are 2 types of breath testing procedures:

Standard testing

Using the Alcolizer, affix a mouthpiece and subject the driver to a **direct test** to determine if they are under or over the prescribed limit.

Disposing of mouthpieces

Use appropriate containers to dispose of mouthpieces and wrappers. Ensure the location is free from your rubbish.

Passive testing

In '**passive mode**' the screener detects the presence of alcohol (i.e. the tube is not used) but does not indicate the concentration of alcohol.

The driver is to be informed of their requirement to provide a sample, and given instructions on how to provide it (i.e. by counting out loud). If simple instructions are unable to be followed, police should fall back on the full form of demand.

Prior to the test, ask the test subject to take a deep breath. The Breath Analysis & Research Unit suggests counting begins from 20 (rather than 1) due to increased breath volume required for the former.

Instruct the driver to speak into the device so that a sample of their breath can be obtained.

If a passive test shows the presence of alcohol, place the Form of Demand on the driver, affix a mouthpiece and subject the driver to a direct test to determine if they are under or over the prescribed limit.

Advise the driver that they are either under or over the prescribed limit or whether there is alcohol present or not.

When the test is positive, or there has been a refusal to undergo the test, or the driver fails to provide enough sample, tell them:

"You are under arrest for the purpose of a breath analysis."

Note: Your breath testing and breath analysis powers are in *Schedule 3, Road Transport Act 2013*.

See: **Help/Guidelines/SOPs** - Drugs and Alcohol on the **Traffic & Highway Patrol** Intranet site.

Breath test all drivers:

- During RBT and RDT operations
- Involved in crashes, unless exempted by the *Road Transport Act 2013* – **Standard Test ONLY**
- Detected for offences attracting demerit points
- Where the manner of driving warrants such test.
- Drive under the Influence (DUI) - **Standard Test ONLY**

See: Random Breath Testing SOPs.

See: Subsection '**Three Easy Steps for Breath Testing PRIOR to Blood & Urine Taking**' in Chapter M - '**Motor Vehicle Crashes**'

Informal Breath Testing requests from the Public

Members of the public may approach Police on their night out and request a Breath Test for their own information.

In view of the potential ramifications or the continuance of the practice of informal breath testing, no such request from the public is to be facilitated.

It should be noted that this does not impinge on approved community education programs conducted by the Police Command/District or specialist units within licensed premises.

Using the Alcolizer LE 5 Series in Passive Mode and Standard Testing

When utilising the Alcolizer LE 5 Series, be aware that when in **passive mode** the device will only indicate the *presence* of alcohol - not the concentration.

Whilst the use of the Alcolizer 5 Series in passive mode allows for the faster processing of motorists when conducting random breath testing, police should be aware of the limitations of the device when used in this mode.

Situations when a passive test should **not** be conducted, and a standard breath test is required include when:

- The officer suspects that the person has been consuming alcohol
- The person admits to consuming alcohol
- There are windy conditions in the area the test is being conducted
- There are other people in the motor vehicle who have consumed alcohol – regardless of whether the driver has consumed any
- The person was the driver of a vehicle involved in motor vehicle collision
- The test is conducted in relation to a critical incident
- The person is the rider of a motorcycle
- The test is conducted in relation to drug driving assessment procedures. (DUI)

Instructing Drivers (Learner Supervisors)

Instructing drivers may also be subject to roadside breath testing, breath analysis and blood sampling requirements, provided certain conditions exist.

See: Schedule 3 *Road Transport Act 2013* for details.

Stationary Random Breath Testing & Drug Testing

Planned RBT/RDT sites (Minor and Major):

See: Traffic & Highway Patrol Command - **Stationary Traffic Enforcement SOPs**.

Combined RBT and radar operations

In addition to the practice for stationary RBT/RDT and radar operations, strictly observe the following:

- Do not attach or operate radar units from RBT/RDT buses
- When a vehicle is stopped, immediately tell the driver why i.e. RBT/RDT, exceeding the speed limit etc.

Checking licences/registrations at RBT/MDT sites

You will:

- Inspect the driver's licence and check the expiry date. Randomly check licence status via radio
- Check the registration details of vehicles stopped

Notebook Entries

When breath testing drivers involved in crashes, establish the time as precisely as possible.

Record in your notebook, in full, the driver's details, all conversations and drinking history. Have the driver sign the entry, if possible. Include any corroboration of time in the brief of evidence.

People not to be tested

Do not request a breath test or analysis from a driver:

- Who is admitted to or treated at a hospital, where a compulsory blood sample will be taken;
- Who appears due to injury or illness that it would be dangerous to their condition if subjected to a breath test or analysis;
- Two or more hours after the crash or incident;
- Who is at their home or usual place of abode;
- Who has a surgically created laryngeal stoma ("neck breather") - consider proceeding under DUI provisions if the circumstances exist.

Notifying need for breath analysis

When you arrest someone for a breath analysis, ask Radio Operations Group (VKG) to arrange for access to an instrument and operator if needed.

Caution the person, removing reference that they are not required to '*do anything*', as a person **is** required to undergo a breath analysis. Record in your notebook the physical symptoms and any conversation between you and the person which might be part of the evidence.

If a breath analysis instrument is not available, the offence of driving under the influence of intoxicating liquor might apply if you have enough evidence.

Occupants' welfare and vehicle security

Do not allow drivers to move their vehicles after positive tests.

When you take someone to a station for a breath analysis, secure the vehicle and consider the welfare of the occupants. If children are present or the other occupants are unable to drive, act appropriately on security and welfare.

Form of Demand - Breath Analysis

The form of demand is best practice policy and exists to eliminate any inappropriate actions or inactions of the subject of the test by providing clear and exact instructions. Always consider that:

a. The subject must be made aware that they are required to undergo the analysis, and
b. Instructions must be given as to how to fulfil that task.

Read the following demand to the person to undergo analysis:

"My name is ... from .... As a result of your breath test / attempted breath test / refusal to undergo a breath test you are now obliged under New South Wales law to provide a sample of your breath that is sufficient for an analysis. You are directed to submit to a breath analysis by blowing air from your lungs, in one continuous breath, into this evidential breath analysing instrument until I direct you to stop. Failure to comply with this direction is an offence."

Breath analysis certificate

Certificates are produced at the end of the analysis. Hand one to the arresting police with an instrument printout to attach to the fact sheet. Hand the other and an instrument printout to the driver.

Breath analysis not conducted

When an analysis is not conducted, for reasons other than the subject failing or refusing to provide a sufficient sample or where the subject is no longer obliged to provide a sample due to being outside the two-hour limit, make a WebCOPS 'occurrence only' entry, setting out full details. Include it on the station summary. If a technical issue arises, immediately contact the on-call Breath Analysis and Research Officer on T1(f) not to be given to members of the public) and notify them of the circumstances. If contact is unable to be made with the on-call officer, contact the State Co-Ordinator (State Co-ordination Unit) and they will contact the officer on your behalf.

Return of driver to arrest location

If a breath analysis is negative and the driver wants transport back to their car, use a police vehicle.

Confiscating and suspending licences

Unless extenuating circumstances exist, police shall serve a notice of suspension on the licence holder within 48 hours of the driver being served with a penalty notice or being charged with the offence concerned, and attach the licence to the court papers. Do not issue a notice to anyone who does not hold a current licence.

Do not confiscate the licence of a disqualified or suspended or overseas/interstate driver, but issue them with the part C of a *Notice of Suspension*. An overseas or interstate driver will have their authority to drive within New South Wales suspended.

Confiscating car keys

Refer to the *Road Transport Act 2013* Part 5.4, Division 3 – Powers to prevent intoxicated drivers from driving Section 148E - **Power to prevent driving by persons who are under the influence of alcohol or other drugs**.

Consider confiscating car keys when:

- An alcohol/drug affected person is bailed or released from police custody
- An alcohol/drug affected person indicates they intend to drive a motor vehicle
- A person suspected of being under the influence of a drug has had blood/urine samples taken at a hospital and there is a likelihood the person might continue to drive.
- Book keys up as an exhibit as per normal exhibit protocols
- Inform driver keys may be returned 24 hours after coming under Police notice

You may also direct the driver not to drive a motor vehicle within 48 hours, and record the direction in your notebook including response/signature of driver. Do NOT issue a prohibition notice, the Prohibition Notice is only applicable to Random Oral Fluid Testing.

Defended PCA court matters

Notify the Breath Analysis Research Unit, at the earliest opportunity when you have a defended PCA charge and the defence relates to:

- Reading obtained, and/or
- The operation/accuracy of the equipment used.

Willfully alter blood alcohol concentration

When you attend a collision and suspect the driver has consumed alcohol between the incident and your arrival, ask the following:

- Have you had anything to drink since the collision? If Yes:
    -
        - Type of liquor consumed
        - How much?
        - Time of first drink
        - Time of last drink
        - Any other relevant questions (e.g. Was consumption deliberate?)

Conduct a breath test and breath analysis, and instigate PCA proceedings as appropriate, plus an offence of '**willfully alter prescribed concentration**'. Remember, however, you must prove the person's intention to alter their blood alcohol concentration, not that they simply consumed alcohol.

Rail and Passanger Transport Employees

Certificates issued under Rail Safety and Passenger Transport Regulations

A person authorised under either the *Rail Safety (Adoption of National Law) Act 2012* or the *Passenger Transport (General) Regulation 2017* may contact police or attends a Police Station with a railway employee who has provided a positive sample to a breath test, or has failed an assessment, or has refused to submit to a breath test or assessment. The authorised person will provide police with a document setting out the circumstances under which the railway employee came to notice.

Police generally

The authorised officer must provide police with evidence of their authority to conduct the breath test or assessment prior to any breath analysis being conducted.

Breath Analysis Operator

Upon completion of the breath analysis, two certificates are produced. Hand one to the authorised officer with an instrument printout. Hand the other and an instrument printout to the railway employee.

Ensure the analysis is carried out using the correct Act.

If there is no police involvement in the matter, select ***No*** when asked if information is to be forwarded to WebCOPS.

Testing During COVID Periods

For periods when COVID provisions are in operation or when officers are operating under COVID conditions please refer to Schedule 5 of the **Stationary Traffic Enforcement SOPS V4.1**, for further information.

Contact details for the Breath Analysis Research Unit T1(f) or email T1(f)

OFFICIAL: Sensitive

Children

OFFICIAL: Sensitive

Chapter Owner: Technology & Communication Services Command

Content suitable for public release - check each linked item for its status.

(Chapter reviewed and updated 7 April 2021 [Mandatory Review])

Caring for a child where the parent/guardian has been hospitalised, arrested or deceased

Where police are caring for a child as a result of the parent/guardian being hospitalised, arrested or deceased, police must make all reasonable attempts to transfer the child into the custody of another parent, guardian, relative, or other approved person. In the absence of another caregiver, police are to contact the **Department of Communities & Justice** to take custody of the child.

Whilst awaiting the arrival of alternative care, police are responsible for the child's safety and wellbeing. To ensure the safety of the child, police should supervise the child at all times and take the following into consideration:

- Does the child require medical attention? (if medical attention is required, seek permission from a parent or medical practitioner)
- Does the child require special attention? (i.e., mental health, medications, allergies, asthma)
- Are there protective orders or custody orders in place restricting a parent/guardian from having custody of the child?
- Does the child require basic needs? (i.e. food, clothing, water...)
- Does the child require the services of another agency? (i.e., counselling, in the event of witnessing a traumatic event)

Provide reasonable safe facilitates for the child to use the toilet.

Record the actions taken with the child or young person, including who has assumed care giver responsibilities, in your Event under the Incident type **Child at Risk**.

OFFICIAL: Sensitive

Court Matters

OFFICIAL: Sensitive

Chapter Owner: Police Prosecutions & Licensing Enforcement Command

Chapter content not suitable for public release - check any linked item for its status.

(Chapter reviewed 30/06/2023 [D/2023/501126] Mandatory review)

Chapter Updated 23 April 2023 - Approved by CET and PPLEC via email & OGC Endorsed
Chapter Updated 16 July 2025 - D/2025/415097

Advice and information which police should not offer:

Police generally

Do not advise or suggest how a person should plead.

Do not recommend the services of any particular legal representatives.

Do not predict a court's determination to an offender.

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Affidavits of Assistance:

Comply with this practice where a defendant in a criminal prosecution has helped you with your duties or has provided valuable information and you wish to advise the court before sentencing, under section 23 of the *Crimes (Sentencing Procedure) Act 1999*.

NOTE: You will need to consider that the defence are entitled to have access to the Affidavit of Assistance.

This should be taken into account when determining on whether to provide an Affidavit of Assistance, and the impact of the defence having access to it.

T1(f) T2(b)

OIC of case

Prepare and sign a comprehensive report, numbering each page and paragraph, setting out accurate details of the help provided, its value and consequences, and any recognition provided by the NSW Police Force. Attach all relevant documents (court transcripts, copies of charge sheets and court results etc.). Have your supervisor countersign your report.

Send your report to your Commander or equivalent who is a line commander of Superintendent or above.

If your commander provides you with a sworn Affidavit of Assistance attach it to your report and

1. advise the DPP or Police Prosecutor as appropriate

2. deliver all the material in a sealed envelope to the DPP or Police Prosecutor seven working days before sentencing. T1(f) T2(b)
T1(f) T2(b)

3. contact the DPP or Police Prosecutor three working days before sentencing to find out if any inquiries need to be made about the Affidavit or your report.

4. be present when the Affidavit is tendered to the court.

If your commander does not give you an Affidavit, you may have the matter reviewed by your region commander or equivalent.

If you have provided a prosecution witness with an Affidavit of Assistance, inform the DPP or Police Prosecutor of its existence. Tell the Prosecutor if you have promised or offered to provide a prosecution witness with an Affidavit. In appropriate circumstances, ask the Prosecutor to seek a suppression order from the court to prohibit the publication of any specific sensitive information or material.

Also disclose to the DPP if you have promised or offered to provide a Crown witness with an Affidavit of Assistance at a later date, as it is relevant to the prosecution and the defence.

Your Duty of Disclosure to the prosecution (Police Prosecutor or DPP lawyer) regarding the existence of an affidavit is a continuing duty until the accused is found guilty, is acquitted or the prosecution is terminated. It equally applies when you are seeking advice from the DPP as to the sufficiency of evidence to prefer charges and/or whether the charges are appropriate in matters prosecuted by the DPP.

Commander

Confirm the information in the report is accurate. Examine supporting documents. If satisfied it is appropriate to provide an Affidavit of Assistance, having regard to the seriousness of the offence(s) and the level of assistance provided, prepare the Affidavit by:

- stating you are the case officer’s senior supervisor
- including a paragraph with words to the effect, “Annexed to this Affidavit and marked with the letter ‘A’ is a report by (case officer’s name), dated (date signed). I have conducted appropriate inquiries and I am satisfied the contents of the annexure(s) are true and accurate”
- marking the case officer’s report with ‘A’, fastening it to the affidavit and signing it as the senior supervisor
- swearing and signing the Affidavit before a JP who is not associated with the investigation.

File a copy of the report and Affidavit. Hand the originals to the case officer. If you refuse to provide an Affidavit and the case officer requests the matter be reviewed, make the necessary arrangements with your commander.

Prosecutor

- Make appropriate arrangements with the court to prevent the public disclosure of a person's assistance to police
- This may involve closing the court or handing the document up without reference to its content

Make prior arrangements with the court where possible.

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Applications – Other court processes

Common applications in the Local Court are:

- forensic procedures under the *Crimes (Forensic Procedures) Act 2000*
- apprehended violence orders under the *Crimes (Domestic and Personal Violence) Act 2007*
- destruction of drugs under the *Drug Misuse & Trafficking Act 1985*
- disposal of property in police custody under LEPRA
- disposal of property seized pursuant to search warrant under LEPRA
- sale of livestock at public auction under LEPRA, and licensing matters.

Interlocutory applications include:

- review of bail
- substituted service of documents
- application for warrant
- setting aside a subpoena, and
- review of a decision of a registrar.

When to list an application

For non-urgent applications, select a date, approximately six weeks in advance. Speak to the prosecutors at the court where your application will be listed, to confirm the day on which that Court deals with such applications.

Process for making an application

Applications can be found located in the Police & Courts System (PACS).

Ensure that the application includes:

- the type of order sought
- the grounds for the application and what is sought
- the name of the applicant and respondent, and
- that the respondent is to appear before the local court or a judge at a specified date, time, and place.

If you will be relying on affidavits, attach these to the application along with any other supporting material as appropriate. These attached documents will be treated as part of the application.

Provide a copy of the application and any other associated documents to the Police Prosecutor's office and the Court Process officer.

Serving an application

An application is served in the same way as a CAN for an indictable offence, either personally or on the legal practitioner.

Generally, an application notice issued by a police officer must be served by a police officer. However, an application notice may be served by the Registrar where the respondent is a police officer.

Time allowed to serve an application

Service should be affected as early as possible and for non-urgent applications, where possible at least 21 days before the listing of the application.

Procedures following service of an application

After serving the application, as soon as practicable, complete a statement of service. Ensure a copy of the statement of service is filed with the Court Registry.

Filing an application

Electronic filing with the courts is not available for applications, with the exception of electronic applications for AVOs.

The application can be filed with the Court by:

- delivering it by hand,
- post, fax, or email.

What you should do if you cannot serve an application

If you are unable to serve the application on the respondent, after making all reasonable attempts to do so, you can

- apply for an adjournment;
- apply for substituted service, or
- apply for an arrest warrant if appropriate.

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Brief of evidence:

Domestic Violence Mini Brief

The Local Court has several Practice Notes that give directions in relation to the case management of proceedings of matters heard in the Local Court. In relation to Domestic Violence related matters this includes an obligation to serve a DV Mini Brief.

See: DV Insights for more information on what to include in a DV Mini Brief. A DV Mini Brief should be served on or before the first mention of the matter at Court.

Managerial responsibility regarding Briefs of evidence

Police Area Command/Police District Commanders and equivalent within specialist commands

You have a responsibility through your Crime Manager to ensure that all Briefs of evidence (summary, indictable and coronial) within your command:

- display a high standard of professionalism to reflect the integrity of police investigations and Brief preparation;
- are complete and timely within the time standards of the court;
- are handled under the quality assurance and continuous improvement process; and that appropriate:
    -
        - supervision and support for the management of this function is in place,
        - systems, and processes are in place to maintain these standards,
        - educative action (see Failed Prosecution Guidelines), managerial and/or disciplinary action is taken when a matter is dismissed due to non-compliance, poor performance and/or a system failure, and
        - security, storage and archiving of Briefs of Evidence in accordance with the Archives and Disposal Manual and Schedule and the up-loading of all Brief of Evidence and associate material to VIEWIMS.

Notification of Brief orders

Shift Supervisors or equivalent

Ensure supervision and guidance are given to police and that all police are aware of their duty to fulfil their obligations and commitments in a timely manner during the prosecution process and that they are available to give their evidence at Court in a professional manner.

Ensure that no police officer becomes the informant/prosecutor of any court proceedings in which they are also the victim unless it cannot be avoided. It may be appropriate to release the offender and proceed by a Future CAN, thereby allowing time for an independent officer to fully investigate the matter and commence proceedings if appropriate.

Preparing a Brief

OIC of case

Start preparing the evidence as an investigative Brief during the initial stage of your investigation of a summary or indictable offence or a coronial matter, and in particular in strictly indictable offences.

When the court orders the service of a Brief of evidence, arrange it into the original Brief of evidence, known as the `master Brief' and prepare three copies.

Upload the Brief onto VIEWIMS and submit to Team Leader for verification.

Complete the Brief actions on COPS.

Shift Supervisors or equivalent

Ensure police officers are uploading Briefs onto VIEWIMS. Ensure police officers are submitting Briefs to Team Leaders for review and endorsement. Team Leaders are to review the brief and complete the verification action on COPS.

Refer to the 'Brief checking procedures' Memorandum (issued by then DCoP Kaldas in 2014).

Format of a Brief for summary or indictable offence.

Procedures for serving Briefs of evidence

Briefs of Evidence ("Brief") can be served:

- personally;
- by post to the person's residential or business address;
- by leaving a copy of the Brief, addressed to the person, at the person's address for service with a person who is apparently of or above the age of 16 and apparently employed or residing at that address;
- by fax addressed to the person to their fax number or email sent to their, if they consent to that method of service; a Brief can also be served by fax or email without consent if the court orders;
- by transmitting an electronic copy of the document, addressed to the person, to the person's electronic service address (if that method of service has been consented to by the person); or
- on the person's legal practitioner, if the person has engaged a legal practitioner, and the legal practitioner has agreed to accept service, or the practitioner has filed a notice of appearance that includes an address for service.

To indicate that the Brief has been served, compile a receipt listing the matters which are being served and ask for the receipt to be completed to acknowledge the receipt of the Brief.

Time for service

The Brief of Evidence should be served on the Prosecutor and defence on the dates nominated in the Brief orders.

All evidence to be relied upon must have been served at least 14 days before the hearing date.

Certain notices and evidence must be served 21 days before the hearing date.

There are a number of offences for which a Brief is not required to be served on the defence (Clause 24 – *Criminal Procedure Regulation 2017*), notwithstanding that you are still required to prepare your Brief of Evidence for court. .

These offences are :

- an offence for which a penalty notice may be issued (excludes offences listed in Schedule 4 of the *Criminal Procedure Regulation 2017*),
- an offence of offensive conduct in section 4 *Summary Offences Act 1988*,
- an offence under sections 53(3), 54(1)(a), (3)(a), (4)(a), (5)(a)(i), 5(b)(i), 110, 111A or 112 of the *Road Transport Act 2013*,
- a summary offence for which there is a monetary penalty only,
- an offence of possession of prohibited drugs under section 10 of the *Drugs Misuse and Trafficking Act 1985*,
- an offence of possession of prescribed restricted substances under section 16(1) of the *Poisons and Therapeutic Goods Act 1966*.

Service by post

If the Brief is sent by post, it is recommended that police use Australia Post. When serving a brief by post, ensure that it is posted no later than **seven working days** before the date set by the magistrate for service of the Brief. The Brief is deemed to have been served on the fourth working day after it was posted.

Proof of service

Make a record of the details of the service, best practice is to prepare a receipt and request that the recipient completes the receipt with a signature and date and returns the receipt to you. When serving a Brief also consider making a record of the service in your police notebook. When recording the service, include the following:

- a list of the items of the Brief which were served
- the date service was effected
- the method of service
- the name, address and occupation of the person serving the document
- if the document was served personally, the person to whom it was delivered
- any relevant conversation that took place (especially if service of the Brief is refused)
- if the document was served by post:
    -
    - the information (and the source of such information) the person relied on in obtaining the address to which it was posted, and
    - the time and place of posting;
- if the document was served by fax or email:
    -
    - the information (and the source of such information) the person relied on in obtaining the fax number or email address to which it was sent, and
    - the date on which advice confirming successful transmission of the document was received or the date on which the email was sent (a copy of the transmission confirmation or email should be kept for production in court).

After having served the Brief and prepared some form of proof of service, ensure that COPS is updated with the accurate service details and that the information is forwarded to the relevant CPO.

Commonwealth DPP Brief:

Separate guidelines for the preparation of Briefs of Evidence for Commonwealth offences prosecuted by the Commonwealth DPP including the Prosecution Policy of the Commonwealth DPP and completion of a different Disclosure Certificate are on the Law intranet site under Law News and Law Notes for investigators and under the heading “Commonwealth Offence”.

Also refer to Law Notes 03/24 concerning statements from witnesses and the accused in their own language when an interpreter is used, and an English translation annexed to it in the Brief of Evidence.

Partially completed Brief

OIC of the case

If you are encountering a delay in obtaining a statement, an analyst certificate, or any other evidentiary material to complete the full Brief of Evidence and the delay may affect the service of that Brief on or before the service date ordered by the court, prepare a partially completed master Brief and a defence copy. Upload the partial Brief to VIEWIMS and submit the partial Brief to your Team Leader for verification. Complete a report outlining the delay and send them to the Command's Prosecuting Team Leader. Immediately submit, serve, and upload to VIEWIMS, the remaining evidentiary material when available.

Do not serve partial briefs of evidence on the ODPP in EAGP matters.

Refer to the Standard Operating Procedures for Committal Matters (Early Appropriate Guilty Plea Reforms) for information on the preparation and service of EAGP Briefs.

OIC responsibilities for court matters:

Collect the master Brief when it is required for court and monitor all your court matters through until they are concluded. Return the master Brief and any copies after all proceedings are finalised, including matters that are adjourned or part heard for any long period for filing. Do so after informing the victim of all court results and action the 'investigation case' in COPS with the court outcome and change the status of the case e.g., 'finalised'. You may, after these proceedings, personally secure a copy of the Brief and relevant documents (copies only) that were acquired during the investigation for future reference. However, you must surrender, without exception, all of these copies when no longer required.

Brief management systems

Commander PAC/Police District or other:

All Briefs are to be uploaded onto VIEWIMS.

Non-service of Brief

OIC of the case

If for any reason, you are unable to serve the Brief or partially completed Brief upon the accused within the prescribed time, immediately notify your relevant Prosecutor Team Leader, the Police Prosecutor or other prosecuting authority of the difficulties and keep them informed of your efforts to effect service. Record all `reasonable' efforts to serve the Brief in your notebook (methods, dates, times, place, persons spoken to and keep any electronic transmissions) to justify your obligation.

WORKOFF:

Complete the 'WORKOFF' action on COPS to acquit the service of the Brief and ensure you submit the Brief as 'Submitted'.

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Complaints about Legal Practitioners, Crown Prosecutors or ODPP officers.

Crown Prosecutors or ODDP officers:

If you have concerns about the actions or procedures adopted by a Crown Prosecutor or an officer from the Office of the Director of Public Prosecutions, which you cannot resolve locally through consultation (or that course is inappropriate), consult the Office of the General Counsel.

If you have a formal complaint refer it under confidential cover to the Office of General Counsel (through your commander and your region commander or equivalent). Do not use defamatory remarks in your report or make any public criticism.

Legal Practitioners:

Duties of Legal Practitioners

Legal practitioners have a positive duty to be courteous and uphold the integrity of the legal profession. This includes professional interactions and relationships with other practitioners, such as Police Prosecutors and third parties like witnesses and members of the NSWPF. Behaviour by a legal practitioner that may be inappropriate includes:

- Being rude or abrupt
- Using inappropriate language
- Acting in an intimidating, threatening or offensive manner, or
- Having a physical interaction resulting in an assault

An established pattern of inappropriate behaviour is more likely to result in a finding of unsatisfactory professional conduct or professional misconduct. Isolated incidents are less likely to be investigated. Accordingly, document all incidents and interactions that you think may be inappropriate.

Making a complaint

If you have a formal complaint, refer it under confidential cover to the Office of the General Counsel, by way of report through your commander and your region commander or equivalent.

Do not use defamatory remarks in your report or make any public criticism.

The General Counsel will assess the evidence you provide and if appropriate make the complaint on your behalf.

Information to be included in the complaint

For the General Counsel to make the complaint on your behalf, such complaint must include:

- The name and contact details of the complainant
- Details of the legal practitioner about whom the complaint is about (name, address, firm, any other relevant information) and
- Description of the alleged conduct

The General Counsel will also need to provide evidence of the alleged conduct, so evidence of the conduct is essential. This includes date, time, location, names, and details of any witnesses, whether CTTV is available and any other information you think will assist the Legal Services Commissioner to determine whether the alleged conduct constitutes unsatisfactory professional conduct or professional misconduct.

Further Information

Further information on complaints about legal representatives can be found on the **Office of the Legal Services Commissioner** website.

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Court attendance Notice (CAN):

Commencing proceedings

In such matters where sufficient evidence exists, the accused should be charged without delay and put before the court, subject to whatever bail is appropriate.

If you detect a criminal offence (or one is reported to you) and:

- after appropriate investigation you are satisfied that there is a reasonable prospect that a court will find the offence proved, and
- you are satisfied that it is not appropriate in the circumstances to issue a warning or a caution and

- you are satisfied that it is in the public interest to commence proceedings against the suspect for the offence,

commence proceedings issuing, a penalty notice or a CAN.

All criminal proceedings before the Local Court are started by way of CAN. A CAN may be issued for any offence for which proceedings may be taken in NSW, including an offence committed outside NSW.

Issuing of a CAN

Field CAN

No bail conditions are necessary.

Before you issue a Field CAN, you must ensure that you have satisfied the following criteria:

- Identification:- do not issue a Field CAN if there is any doubt about the person's identity.
- Sufficient Evidence:- you may only issue a Field CAN, if satisfied that there is sufficient evidence to establish that the person has committed an offence.).
- Bail:- you may issue a Field CAN if you are satisfied that bail conditions are not necessary.
- Notice of Pleading- ensure the defendant is handed a 'Notice of Pleading' at the time of serving the Field CAN.
- Facts:- Ensure the defendant is provided with a copy of the facts (in person, post, electronically) before the date set for the defendant's first court appearance.

You cannot issue a Field CAN in the following circumstances:

- Strictly Indictable;
- Domestic Violence Offences;
- Offences involving juveniles (except traffic offences where the juvenile is of licensable age.
- The defendant/s is significantly affected by alcohol and/or drugs.

Bail CAN

Where bail conditions are deemed appropriate, or the accused is to be refused Bail**.**

No-Bail CAN

No Bail is necessary.

Future Service CAN

No Bail is necessary.

Time Limits

Proceedings are taken to have been commenced when the CAN has been filed with the court registry (electronically or in person).

There are no time limits in relation to indictable offences.

Proceedings for a summary offence must be commenced no later than **six** months from when the offence was alleged to have been committed. Exceptions to six months are:

- If an Act or law specifies some other period for that offence;
- If the offence involves the death of a person and is subject to a coronial inquest – in which case, the time limit is not later than six months after the conclusion of the inquest or 2 years from when the offence is alleged to have been committed, whichever occurs first.

Service of a CAN

A CAN commencing proceedings for an **indictable** offence must be served personally (see below).

If the accused has engaged a legal practitioner in the proceedings and instructed that legal practitioner to accept service, the CAN may be served on that legal practitioner in any manner agreed between the parties to the proceedings, or as permitted by the *Local Court Rules* 2009.

A CAN commencing proceedings for a **summary** offence can be served:

- personally,
- by post to the accused person's residential address,
- by fax or email (if the person consents to this method of service), or
- on a legal practitioner engaged by the accused (if the accused has instructed that legal practitioner to accept service).

Who can serve a CAN?

A CAN issued by a police officer may be served by a police officer.

If the proceedings are under the *Crimes (Domestic and Personal Violence) Act* 2007 the CAN may only be served by a police officer or a person nominated by the court or a registrar.

Personal service

A CAN is able to be served personally

- by handing the defendant copy to the accused. You can do this anywhere (at the accused person's home or work premises, or some other place), but do so as discreetly as possible so as to minimise any embarrassment it may cause the accused. If it is a field CAN, also tear out from the back of the field CAN book, a written notice of pleading and hand it to the accused
- if the accused will not accept the copy, by putting it down in the accused person's presence and telling them the nature of the document (for example, "this is a court attendance notice requiring you to attend the … Local/Children's Court at (time) on (date) in relation to the offence(s) of ….."), or
- if service on the accused cannot be effected because they are being violent or threatening violence, by leaving the copy of the CAN as near as possible to the accused.

For Field CAN's, sign the service details on the back of the service copy as to the time, date, and location of service (sign and print your name and then have someone witness your signature and sign and print his or her name).

At the time of service, you should make a record in your notebook of the details of service, including the time, date and place you handed the accused the document and anything the accused said so that you may later record this in COPS.

If the defendant copy had to be put down in the accused's presence, ensure that you record, in your notebook, all relevant details in relation to your attempt to hand the document to the accused, including what you and the accused said.

Service by post

If the CAN is sent by post, it is recommended that police use Australia Post. You should record in your notebook the time, date, and place you posted the CAN, to what address it was posted, and how you obtained that address (e.g., from Roads and Maritime Services (RMS) records). It is taken to be served on an address within Australia on the 7th (seventh) working day after posting.

Service by fax or email

Confirm with the recipient the correct fax number or correct email address.

If the CAN is sent by fax, retain a copy of the fax journal confirming transmission, as it may later be required as proof of service. It is taken to be served at the end of the first day following the day on which it is faxed.

If the CAN is sent by email, print a copy of the message showing the time and date the message was sent and the email address to which it was sent.

Record all relevant details in your notebook, including the time and date you faxed or emailed the CAN, the location from which you faxed or emailed it, the number or address to which you faxed or emailed it, how you obtained that number or address, and the person's consent to be served by fax or email.

Request that the recipient sends a reply to indicate that CAN was received.

Service on a legal practitioner

The CAN may be served on a legal practitioner engaged by the accused who has been instructed to accept service by one of the following methods:

- personally on that legal practitioner
- in any other manner agreed between the parties to the proceedings, which could be
    - by post to the legal practitioner's business address, addressed to him or her
    - by fax or email to the legal practitioner's fax number, or email address providing the notice of appearance includes a fax number or email address, it is taken to be served at the end of the first day following the day on which it is faxed.

Service on an inmate of a correctional centre

A CAN can be served on an inmate of a correctional centre by

- leaving a copy of the document with the governor of the correctional centre where the accused is an inmate;
- faxing a copy of the document, addressed to the inmate, to the centre's fax number or
- emailing an electronic copy of the document, addressed to the inmate, to the centre's email address.

Service on a detainee of a detention centre

Personal service of a document on a detainee is effected by leaving a copy of the document with the centre manager of the detention centre where the accused is a detainee.

Service on a corporation

Personal service of a document on a corporation is effected by personally serving the document on a principal officer of the corporation (or as otherwise provided by law).

Time allowed to serve a CAN

Ensure the accused is served with the CAN as soon as possible after it is created.

If the CAN is served by post, fax, or email, it must be posted or transmitted not less than 21 days before the first listing of the offence.

Proving service of a CAN

You must complete a statement as to service of the CAN and attach a copy of the CAN. The statement must include:

- the date service was effected
- the method of service
- the name, address and occupation of the person serving the document
- if the document was served personally, the person to whom it was delivered
- if the CAN was served by post the information (and the source of such information) the person relied on in obtaining the address to which it was posted, and
    - the time and place of posting

- if the CAN was served by fax or email
  -
    - the information (and the source of such information) the person relied on in obtaining the fax number or email address to which it was sent, and
    - the date on which advice confirming successful transmission of the CAN was received or the date on which the email was sent (a copy of the transmission confirmation or email should be kept to be produced in court).

As a Police officer, you do not need to sign the statement of service.

Service by post is taken to have been effected if evidence of any of the following is produced:

- an acknowledgement of receipt by the person to whom it was directed;
- that the address appearing on the CAN is the address provided by the person served for service of documents in the proceedings; or
- that the address appearing on the CAN is the address on the accused's current driver licence or the address recorded for the accused in relation to the current registration of a motor vehicle or trailer.

Procedure after CAN is served

After the defendant copy is served and as soon as practicable;

Accurately complete the service details in COPS: time, date and place the CAN was served, whether the accused refused service etc.

Print from COPS:

- court copy;
- prosecutor copy, and
- service copy

Forward these documents, together with all other relevant court papers, to the Court Process Officer.

Filing a CAN

Electronic filing from COPS to 'Justice Link' (the court computer system) occurs automatically when you originally create a CAN and print the CAN in COPS.

Fresh Sequences

If you wish to lay fresh sequences within the same charge number, you must link the court date of the fresh sequence to the filed charges so that they are returnable to court on the same day. Again, the initial printing of the court copy of the new sequence will cause COPS to automatically file the sequence with the court. As the OIC, you are required to serve, or cause to be served, the fresh sequences that you have laid and provide the fresh sequence to the Police Prosecutors and Court Process officer.

As the OIC, filing the CAN with the court is still your responsibility.

Ensure that filing is effected before any time limits set by the statute of limitations causes the charges to become statute barred.

Ensure that printed copies of each new sequence are provided to the court process officer.

Checking to see if a CAN has been filed with the Court.

To check if the CAN has been successfully electronically filed, do a charge enquiry on COPS, and select offence details. From here select the sequence that you wish to check. The screen that follows will inform you of the court file number as well as the filing date and time. If this is not present, ensure that you seek advice from a Police Prosecutors, and have the papers filed.

What should you do if you cannot serve a CAN?

If you are unable to serve the defendant copy after making all reasonable attempts to do so, undertake one of the options below:

- **Assign a new court date.** If you are confident that you will be able to serve the CAN on the accused if given more time to do so, update the CAN in COPS with a new, later court date, print a new defendant copy from COPS and make further attempts to serve the CAN.
- **Apply for substituted service**. If you have not been able to serve the defendant copy by the usual means (personally, by post, fax, or email etc), but you believe service may be possible using some other means, you can make an application to the court registrar for "substituted service". Refer to the Application to the Local Court (For leave to file an Unserved Court Attendance Notice and seek an order for substituted service) on the Police and Court System (PAC) forms site which is located on the police intranet and contact your local prosecutor for advice on how to make such an application.
- **Apply for an arrest warrant**. Complete the Arrest Warrant - Application to the Local Court (Word 2003) which is available on the Police and Court System (PAC) site.

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Compensation:

Property or Injury:

When compensation is sought by a victim due to damage/loss to property or injuries received, include this information in the fact sheet. Obtain the following:

1. Quote of damage/loss;
2. Name for compensation to be awarded to;
3. The amount sought for damage/loss.

Provide this information as soon as possible to the Police Prosecutor or the ODDP and ensure that the Police Prosecutor is aware that compensation is being sought. If you are required to complete a Brief of evidence, ensure to include this information in the Brief.

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Coronial Briefs:

File at the Coroner's office. Also see Coroner's matters in Police Handbook.

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Court Process duties responsibilities of PAC/PD Commanders:

Police Area Command/Police District Commander

If you have a Local Court in your command, ensure adequate and trained staff are rostered for ancillary court duties including:

- Deployment and appointment of staff with demonstrated skills as Court Process Officers including relieving arrangements when those officers are unavailable;
- Where necessary, escorting prisoners to and from court and the office the Local Court when the accused enters on bail or recognizance, and
- Court security, on request by the local magistrate, where Sheriff's Officers are unavailable.

Also ensure that:

- Reasonable facilities (office, furniture, computer, and other telecommunication equipment) and sufficient stores are provided to Court Process Officers and Police Prosecutors to allow them to perform their tasks.

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Court Security:

CCTV Footage – Police access:

All requests by police for access to particular court security CCTV footage and if required, the down loading of the relevant material for collection, must be for a law enforcement purpose or a related court security issue.

All requests should be authorised by a police officer of or above the rank of inspector before formal request is directed to the Sheriff of NSW, Level 2, Downing Centre, 141 - 143 Liverpool Street, Sydney 2000, or fax (02) 9287 7033. Allowance should be made for the time-consuming task of scanning all court security CCTV footage by Sheriff's officers.

The Sheriff will consider each request based on the reason provided and all relevant information should be supplied to assist in the identification of the specific footage.

Court security responsibility:

The Sheriff remains responsible for Court Security in accordance with the provisions of the *Court Security Act 2005*.

The Protocols DO NOT abrogate or circumvent the inherent powers of a Judicial Officer or Presiding Officer to control proceedings in their Court room. They are Protocols that provide measures to recognise the threat to Police Officers whilst on duty.

NSW Police Officers and NSW Special Constables entering Courthouses with perimeter screening, will still be required to place any bags or other carried items through x-ray machines.

OIC of the case

Alert the prosecuting authority (Police Prosecutor/ODPP lawyer) of any known high-risk cases or persons at risk during the proceedings as well as the NSW Sheriff to ensure that appropriate security arrangements are in place to minimise that risk or any attempt to compromise the proceedings including special arrangements for prosecution witnesses. If the risk involves the transporting and escorting of an accused in custody at a correctional centre contact the Court Escort Unit, Department of Corrective Services (92895135, Fax 92895452). In the case of juveniles in custody contact the Department of Juvenile Justice.

Contact the relevant custodial service if special safeguard arrangements to and from the court as well as at court are required.

Generally:

All armed police officers upon entering a courthouse are required to produce an official police identification badge with current photograph. If an officer is unable to produce this level of identification, an endorsement from a colleague with appropriate identification, or from their current station/workplace will be required.

T1(f) T2(b)

Note: While this position generally applies, it does not abrogate or circumvent the inherent powers of a Judicial Officer or Presiding Officer to control proceedings in their Court room, including directing police not to wear their firearms while in a court room.

Local and District Court

- Upon entering a Courthouse every police officer wearing arms and appointments is required to produce an official police identification badge with a current official photograph. If an Officer is unable to produce this level of identification, an endorsement from a colleague with appropriate identification or their current station/workplace is required.

T1(f) T2(b)

- Where facilities exist and the presiding Judicial Officer considers it appropriate, the Police Officer may give his or her evidence from the protected witness suite within a Courthouse or remotely via authorised video link technology. T1(f) T2(b)

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Supreme Court

The Supreme Court protocol has been agreed to by the Chief Justice of NSW. If Police Officers are required to give evidence in the course of their duties in the Law Courts Building, unless the presiding Judicial Officers considers it inappropriate, Officers will give their evidence in the protected witness suite located on the ground floor of the building.

All police officers wearing arms and appointments, upon entering a Courthouse, are required to produce to a Sheriff's officer an official police identification badge with a current photograph. If an Officer is unable to produce this level of identification, an endorsement from a colleague with appropriate identification or their current station/workplace will be required.

T1(f) T2(b)

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Court transcripts

NSW Police is liable for the payment of a fee, as outlined in Schedule 2 of the *Criminal Procedure Regulation 2017*, for court transcripts in all criminal matters.

If you require a court transcript of a criminal matter, seek approval from your commander/manager who has the financial delegated authority to incur that expenditure. If approved, make application on the prescribed form, and follow the guidelines as outlined in the Lawlink website under "Court Transcripts" on the Law intranet site to the registrar of the court where the matter was heard.

SOPs have been issued separately regarding applications by police prosecutors.

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Death of defendant/accused:

If you are told a defendant has died, verify the information, and where possible, get documentary evidence. If the matter is a reportable death to the Coroner, contact the Coronial Advocates, State Coroners Court, for documentation.

Advise the Prosecutors as soon as possible.

If there is sufficient documentation to verify the death of the accused, prepare a report to withdraw the proceedings and submit through your chain of command.

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Disclosure:

OIC

You have a duty to tell the Police Prosecutor or DPP about any relevant information, documents or other things obtained during an investigation, or which come into your possession, that are not contained in the Brief of Evidence and that might reasonably be expected to assist the case for the prosecution or the case for the accused.

The Duty of Disclosure applies in all criminal courts (Local through to Supreme Courts).

The Duty of Disclosure is an ongoing duty, in that, for long as the prosecution runs, police have an obligation to assess what we know and whether the material should be disclosed.

The following is a list of what material must be disclosed, this list is not exhaustive:

- statements of witnesses proposed to be called;
- advanced notice of discrepancies between a statement and the evidence proposed to be led;
- statements of witnesses not proposed to be called;
- prior convictions of prosecution witnesses and other material relevant to credit, where the credit of the individual witness is directly in question (i.e.: where the defence has brought your attention to a specific issue);
- other material which could reasonably be seen as capable of assisting the defence case;
- all material relevant to mitigation of sentence.

It is important to note, that Disclosure means to disclose the existence of material, it does not automatically mean to provide material.

Material should only be provided if there is no privilege or Public Interest Immunity attached to the material.

In the event of a Public Interest Immunity or privilege claim, the defence should be made aware (disclosed) that we are in possession of relevant information but are advised that privilege or public interest immunity attaches, and the material will not be provided as part of the Brief.

If you are unsure of whether Public Interest Immunity or privilege attaches to material, contact either the Operational Legal Advice Unit or the Office of General Counsel for further advice.

Matters prosecuted by the ODPP

You must complete a P516 disclosure certificate. There are two parts to the disclosure certificate. The first part requires you to acknowledge your Duty of Disclosure, certify the accuracy of what you are disclosing, and undertake to disclose any additional relevant material you become aware of.

The second part of the form contains 3 Schedules. In the Schedules, you are required to list any relevant material not included in the Brief of Evidence and describe what the material actually is.

If the material is subject to a claim of privilege or immunity, you must also identify the nature of the privilege or immunity. Be aware that special rules and procedures apply to documents and material that are subject to a claim of privilege or immunity.

The following are examples of things that may be subject to a claim of privilege or immunity:

- Material that reveals, or may tend to reveal, either directly or indirectly, the identity of an undercover police officer, the existence or identity of a human source, or police methodology (Public Interest Immunity)
- Legal advice obtained from the Office of the General Counsel, Operational Legal Services Command or Police Prosecutions (Legal Professional Privilege)
- Material that reveals communication between a sexual assault victim and their doctor, psychologist, or counsellor, (Statutory Immunity)

(**See**: '**Subpoenas**' chapter of the NSWPF Handbook for further examples.)

You must also disclose any relevant material that is not subject to a claim of privilege or immunity, nor the subject of a statutory publication restriction. For example, you may have information relevant to the reliability or credibility of any material witness (such as a criminal history).

List the relevant information on the Schedule and attach that information to the Schedule (this may include a full computer printout of the relevant criminal history including convictions and non-convictions, excluding 'spent convictions').

Send the Brief of Evidence and the certificate to the DPP.

Do not serve a copy of the certificate or the material on the accused or their legal representative. (Be aware that the DPP is likely to reveal the completed disclosure certificate (P516) to the defence.)

Notify the DPP (in writing) as soon as you become aware of any new relevant material that has not been previously disclosed.

Matters prosecuted by Police Prosecutions:

Although you have a Duty to Disclose in summary matters, you do not have to complete the P516. Otherwise, the procedure is the same as if you were dealing with an indictable offence.

Emails between Police and Police Prosecutors:

Emails between OIC's and Police Prosecutors fall within Legal Professional privilege.

If a situation arises in relation to whether or not emails between OIC's and Police Prosecutor's should be disclosed, before responding seek advice from your PAC/PD team Prosecutor.

Likewise, if you receive a subpoena seeking production of documents that might include correspondence with Police Prosecutirs (emails, Withdrawal Reps, Failed Prosecution Reports etc), seek advice of how to claim privilege over those documents.

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DPP matters:

Referral of matters to the DPP:

Factors to considering in referring a matter to the DPP:

(1) The accused person's criminality and seriousness of the offence could not be adequately addressed within the sentencing limits available in a summary hearing of the Local Court;

(2) Criminal antecedents of the accused;

For some other reason, consistent with the DPP Prosecution Guidelines, it is not in the interests of justice that the matter is with summarily e.g., a co-offender is to be dealt with on indictment; the accused is also charged with a strictly indictable offence arising from the same criminal enterprise, though not where the Table offence is only a backup or there are specific aspects of the particular case justifying an election.

How to make a referral to the DPP:

Assess the facts and features of each case and if appropriate, recommend an election to the ODPP using the Electronic Referral of Indictable Charges (ERIC) Election Notification in the Charge Management System in COPS.

The ultimate decision on whether to elect or not rests with the ODPP.

Strictly Indictable Matters:

On charging a person with a strictly indictable offence, COPS will electronically notify the DPP and provide details of the charge(s), facts sheet, antecedents of the accused, custody management summary and bail forms.

EAGP Briefs for DPP matters:

Refer to EAGP SOPs.

Advice of trial matters

Police Area/Police District Commander or equivalent

Promptly record the receipt of Trial hearing notices and subpoenas and direct them to the officer/s concerned.

OIC of the case

Advise the DPP of officers who have resigned, by endorsing the back and returning both copies.

Acknowledge receipt of the notice by endorsing the duplicate and returning it to the DPP through your commander.

Promptly advise all witnesses of the Hearing date. Additionally, check whether the witnesses have received a subpoena in the post from the DPP. If not, arrange for a subpoena to be served. Advise the DPP officer in charge of the case.

Serve subpoenas without delay. Return subpoenas and affidavit of service to the DPP through your commander.

If you cannot find a witness and you are not the OIC of the case, contact that officer to determine the witness' whereabouts. Return any unserved subpoenas to the DPP.

Police responsibilities for witnesses

- When the DPP dispenses with the attendance of Crown witnesses before the trial, advise them in writing.
- When, in the opinion of the Crown Prosecutor, Crown witnesses are no longer needed at court, immediately tell them. Collect their notices, fill in the necessary particulars and see their expenses are paid without delay.

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Exhibits

OIC of the case

When a documentary exhibit can be copied, do so and retain the original on the master Brief. Record the document as an exhibit in EFIMS and store. Include evidentiary copies in the Brief for service on the defence and the prosecuting authority (police or DPP).

If you cannot copy the exhibit, serve a notice on the accused specifying a convenient date, time, and place where the exhibit(s) may be inspected by arrangement.

Record the exhibit movement (check out) in EFIMS.

Use exhibit bags issued by Sheriff's officers or security officers on entry to the court premises where full perimeter security is operational to carry a 'restricted item' i.e., weapon, firearm, or knife, while in the court premises.

Refer to the '**Exhibits**' 16181 chapter in the Police Handbook regarding the retention and disposal of exhibits.

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Expert witnesses/statements:

Expert witness report or Certificate of Expert Evidence in District and Supreme Court prosecutions

If you propose to obtain a report or a Certificate of Expert Evidence from an expert in a particular field of expertise which states his/her opinion, give that person a copy of the Expert Witness Code of Conduct in Schedule 7 of the NSW Uniform *Civil Procedure Rules 2005* to read and retain. A copy of the Code may be downloaded from the NSW Legislation website.

If the expert agrees to be bound by the Code, the report or Certificate of Expert Evidence must contain the following acknowledgment:

"I acknowledge that I have read the Expert Witness Code of Conduct in Schedule 7 of the NSW Uniform Procedure Rules 2005 and agree to be bound by the Code".

Failure to include this acknowledgment in expert reports or Certificates of Expert Statement in matters heard by the District or Supreme Court may result in the report or certificate being ruled inadmissible and the court refusing to receive oral opinion evidence from the proposed expert witness.

There is no legislative requirement regarding the Code in similar reports and Certificate of Expert Statements in summary matters finalised in the Local Court. However, all expert witnesses have a general overriding duty to assist the court impartially on matters relevant to the expert's area of expertise, as set out in the Expert Witness Code of Conduct.

The matter of any fee or charge for a report from an expert is the same as outlined above regarding a Certificate of Expert Statement or statement from an expert witness.

Certificate of Expert Statement

S.177 of the Evidence Act provides for the use of these certificates to avoid, where possible, the unnecessary attendance of expert witnesses at court where their evidence is not contested by the defence. The OIC of the case, should assist the expert in preparing the certificate in the required format. The Certificate and a notice that it is to be tendered in evidence must be served by police on the accused or legal representative at least 21 days before the court hearing.

If, however, the defence serves written notice that the expert is required to give evidence at that hearing, the prepared certificate is then inadmissible as evidence and the expert is required to attend court. If the expert witness is reluctant to attend there may be no alternative other than to subpoena the expert and any relevant documentary evidence. If in the opinion of the court the expert was called by the defence without reasonable cause, the court may make an order for costs to be awarded against the accused.

There is no legal obligation upon an expert to provide the certificate and generally, NSW Police does not pay for the preparation of the certificate as it is in the interest of the expert to provide it and possibly avoid attending court. However, there may be an occasion where an expert witness declines to provide a Certificate of Expert Evidence or statement, without being paid for that service, and the evidence is crucial to the investigation as to whether any charge should or should not be preferred and/or whether the charge is appropriate. In such circumstances and if no other expert witness is available to provide that evidence, it may be necessary to negotiate a reasonable fee for that service. The fee is a charge against investigative expenses, subject to prior approval by an officer who is authorised to incur that expenditure. Refer also to the "Evidence from Experts" in the Procedures for the Evidence Act on the Law intranet site.

Special service requirements apply to Certificates of Expert Statements, hearsay, tendency and coincidence, affidavit evidence etc. You may be required to serve the evidence, in some cases, at least 28 days prior to the hearing. Consult your Police Prosecutor for advice. Refer to the 'Evidence from Experts' in the on the Police intranet, Tendency & Coincidence Evidence Lecture Note and Law Notes 02/34 on Law intranet site.

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Immune material

Immune material is any material that is subject to a claim of

- privilege,
- public interest immunity, or
- statutory immunity.

It also includes material that is the subject of a statutory publication restriction.

OIC of the case

You must comply with any request from the DPP for material that is subject to a claim of privilege or immunity. However, seek advice from your Crime Manager and/or Investigations Coordinator before you do so. (You must also allow the DPP access to all non-sensitive information, documents, or other things, if it was not practical to send copies of those things with the disclosure certificate.)

If asked to provide material to the DPP, provide copies. In the case of material that is subject to a claim of privilege or immunity, make a record in your notebook of what you have provided, when you provided it, and the person to whom it was provided. Make sure you get a receipt from the relevant DPP lawyer. You should also record the return of the copies in your notebook. Shred the copies when they are no longer required.

The DPP may reveal the Disclosure Certificate (P516) to the defence. If you disagree with the disclosure of immune material to the defence, advise the relevant lawyer that you will seek legal advice urgently. For example, you may have concerns about disclosure because you think that the information or material could be the subject of a bona fide claim of privilege, public interest immunity or statutory immunity. Seek advice by urgently submitting a confidential report to your commander.

You should also seek advice if you are claiming legal professional privilege over immune material that contains legal advice given to you by a lawyer from the Office of the General Counsel, Operational Legal Services Command or Police Prosecutions.

The DPP will allow you time to seek advice (refer to the ODPP Prosecution Policy and Guidelines Consultation with police prior to disclosure).

Even if the immune material does not attract a claim of public interest immunity or legal professional privilege, you may still have concerns about it being disclosed to the defence. If that is the case, you can request to have the matter determined at a higher level within the DPP.

If you have concerns about document security within the DPP, refer to the ODPP Prosecution Guidelines.

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Jurors

Contact with jurors

Do not speak to jurors about any aspect of a trial, before, during or after the trial.

If you realise you have had a conversation with a juror, regardless of its subject or timing, immediately report the circumstances and text to the commander of the area in which the court is sitting. Include the identity of the juror and nature of the trial.

Commander

Ensure the incident is immediately brought to the attention of the appropriate instructing officer.

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Media access to Briefs and Fact Sheets:

Access to Briefs of Evidence and Facts Sheets by the media

Section 4.2.6 of the Media Policy deals with the release of Briefs of Evidence and Fact Sheets to the media. Fact Sheets are supplied to defendants and when tendered to the court, they can be accessed by the media. You must, therefore, be careful that they do not contain victim and witness details such as dates of birth, addresses, phone numbers, email addresses or other identifying particulars, confidential information about police methodology or an ongoing investigation, or any other information that would be subject to a claim of public interest immunity. If there is other information relevant to bail that is not appropriate to record in a Fact Sheet, you should consult with the Prosecutor as to whether that information can be used.

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Mentally ill defendants

When someone charged appears to be mentally ill, make a notation within the fact sheet.

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Non-publication/Suppression orders:

Order by the court to suppress or prohibit the publication of proceedings

It is your responsibility to instruct the prosecuting authority (Police Prosecutor or ODPP lawyer) to apply for an order by the court to suppress or prohibit the publication of such proceedings before they are heard.

Police Prosecutor

Where an order is made by the court, ask the presiding magistrate to arrange for a Sheriff's officer or officer of the court to sign post the entrance to the court during that part of the proceedings, which are subject of the suppression order to ensure persons and in particular the media who enter during those proceedings, are aware of that order. If those proceedings are part heard, endorse your papers and on the next hearing date seek a continuation of that suppression order from the magistrate. Seek similar sign posting when proceedings are conducted in closed court.

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OIC Responsibilities for CAN's and Briefs

Officer in charge:

Monitor COPS Charge system to keep abreast of adjourned mention dates, hearing dates, Brief order dates, election of matters by DPP and sentencing dates. It is your responsibility to monitor your matters from commencement until the final conclusion of the matter.

Whilst an informant/prosecutor is not required to believe that the accused is guilty of the offence charged, you must however, honestly and reasonably believe that, upon the available admissible evidence there is a reasonable prospect of a conviction to justify the commencement of proceedings.

Proceedings, which you initiate, are solely your responsibility. Promptly attend to your court matters and follow through to completion. Be in court for all defended Hearings unless you have been excused by the Police Prosecutor or DPP lawyer, or the court.

Immediately notify the prosecuting authority (DPP lawyer or Police Prosecutor) handling the matter of any change in your duty location, unavailable dates, and the reason(s) why.

Provide the prosecuting authority with full and proper instructions. Where the matter is being dealt with at the Local Court by a Police Prosecutor, report to the Prosecutor's office at least one hour before the start of the court sitting.

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OIC's (Retired, suspended, or discharged officers):

Police Area/Police District Commander or equivalent

If you have a retired, suspended, or discharged police officer with court commitments outstanding, reassign those matters to another officer who will assume responsibility for the carriage of the case/s. Remind suspended officers they are still obliged to attend court even though they are suspended.

The retired, suspended, or discharged officer will assume the status of a witness in the proceedings.

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ODPP Liaison Groups:

These groups, which generally follow region boundaries, comprise representatives of the region, each police area command/police district in the region and senior DPP staff and are to improve service delivery between the NSW Police Force and the DPP.

Police Area Command/Police District Commander

You or senior members of your command are to remain a constant member, and attend each meeting, of the group for your area.

Region commanders

Attend at least one meeting of your group annually.

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Perjury:

Perjury prosecutions

When seeking permission to prosecute for perjury, ensure all papers are in order and the following documents are attached to the application before sending it to the Operational Legal Advice Unit via your command:

- a copy of the depositions or transcript of the hearing if the complaint relates to evidence given in court proceedings,
- a copy of the affidavit if the complaint relates to a statement contained in it,

- statements from people who have information suggesting the evidence is false. NB: except by admission, no one can be convicted unless falsity of evidence is proved by independent evidence,
- in the case of an alleged false affidavit, a statement from the JP, whose signature appears on the document, to establish the testimony was lawfully sworn.

The Operational Legal Advice Unit will review the papers and may refer them to the ODPP for consideration regarding whether the DPP will authorise commencement of proceedings.

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Police as victims – Assault police/resist arrest/larceny/malicious damage etc.

If you are the victim of a crime, for example 'assault police', 'resist police', or 'larceny' you should not be the investigating officer or the informant prosecutor of any subsequent court action against the alleged offender.

Wherever possible, the investigation and charging process should be carried out by another officer who is independent of the events that lead to the proposed charges. You should also be mindful of the limitations imposed by section 99 of the *Law Enforcement (Powers and Responsibilities) Act* [LEPRA] relating to your powers of arrest. Consider whether the commencement of court proceedings can be delayed until an independent officer is available to investigate the crime.

Only in those circumstances where an independent officer is not available, for example in smaller stations, and it is reasonably necessary to arrest and commence court proceedings immediately, should you as the victim also become the informant/prosecutor for that charge.

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Police statements:

The preparation of statements is assisted greatly by accurate, objective records made in your police notebook and/or Body Worn Video recording.

You should make your own detailed notes at the time of, or shortly after an incident. The sooner this occurs the more accurate the notes are likely to be because the event is fresh in your memory.

You are permitted to adopt another officer's notebook entry while the matter is still fresh in your memory. But remember that if you adopt the notes of another officer, you are in effect certifying that they are correct.

You must never adopt a notebook entry that you do not witness yourself and that does not accurately accord with your own memory.

For example, if you did not hear an entire conversation between the other officer and a suspect, clearly indicate in the margin which parts of the conversation you are adopting. You should make an entry in your own notebook if you disagree with what the other officer has recorded, or there are further details which you remember.

If you had no memory of something, but during discussions with another officer you recollect something you had forgotten, you should record the details in your own notebook and disclose that you remembered the details following a conversation with the other officer.

When you are asked to prepare a statement for court, the information contained in your statement is expected to be your own independent account of the evidence you can give.

The expectation that a police officer's statement is their own account of the events is no different to the expectation of statements obtained from any witness. You may encounter significant difficulties in court if you have accessed your partner's statement before writing your own. It may be suggested that you have no independent recollection of events and are only repeating your partner's statement. The weight given to your evidence will be minimal if the court accepts that you are simply repeating someone else's evidence.

Your statement must be in your own words and you must not copy another officer's statement.

You should prepare your statement from your own notes or from the notes you adopted in another officer's notebook or other secondary material such as FACT sheet, CCTV, BWV, COPS events, statements etc. You must reference all material you have relied upon to refresh your memory for the purposes of completing your statement.

You must not include a fact in your statement if you do not independently recollect it.

Reading police statements in court

In criminal proceedings, as per section 33 of the *Evidence Act 1995*, the Magistrate may, on the application of the Police Prosecutor, give you permission to read or be led through a written statement which you made previously, provided:

- you made the statement at the time of, or soon after, the event
- you signed the statement at the time you made it
- a copy of the statements has been given to the person charged, or their legal representative, within a reasonable time not less than seven days before the hearing.

If you are allowed to read your statement in the District or Supreme Court, provide a copy to the court reporter.

Always, be in a position to give your evidence without the use of your statements, notwithstanding the above.

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Public interest immunity or privilege

OIC of the case

See: '**Witnesses** - Subpoena to produce documents' in the NSWPF Handbook for guidance on claims of public interest immunity.

If you are still in doubt contact the Operational Legal Advice Unit or Office of the General Counsel.

When you consider the disclosure of the relevant material in a prosecution would attract a bona fide claim of public interest immunity or privilege, promptly submit an application with that confidential material through your commander to the Office of the General Counsel.

It is important to tell the Police Prosecutor or the DPP, who are appearing at Court on the day that the subpoena is returnable to the Court, that you have sought OGC assistance regarding the public interest immunity claim.

Do not provide or disclose the material which is the subject of a claim to the DPP, unless otherwise directed by the Office of the General Counsel. You cannot substantiate such a claim to the DPP without making a formal application.

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Representations:

Refer to NSWPF Withdrawal Policy.

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Requisitions:

Promptly attend to any deficiencies/requisitions in the Brief of Evidence that are identified by the Police Prosecutor as well as any ODPP requisitions by the due date.

PAC/PD Commander or equivalent

Acknowledge and record receipt of all DPP requisitions and send them to the investigating officer through that officer's supervisor. If you receive information about overdue requisitions, start immediate follow up action, as you are responsible for ensuring compliance.

Police Prosecutor requisitions:

Ensure you respond and address in a timely manner, any requisition sent to you by a Police Prosecutor.

Supervisors

If the investigator is absent from duty, ensure another officer attends to the requisition immediately.

OIC of case

Communicate with DPP officers whenever difficulties arise with your Brief of Evidence.

If contact or a resolution is not achieved, a report will be forwarded to your commander.

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Retraction statements:

For all matters (except sexual assault), once a person has been charged or summonsed, do not obtain a retraction statement. If the victim, requests proceedings be discontinued, advise them to write a letter of representation to your Commander.

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Section 257 certificates - Road Transport Act 2013

OIC of case

Obtain the appropriate certificate for all defended matters involving licence and registration offences and place the certificate with the brief of evidence.

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Statements:

Signing and witnessing

When you sign or witness a statement, include under this your name, rank, station, date, and time you witnessed it.

NEVER sign a statement, witness a statement or any other document on behalf of any other person including another police officer.

Only show the institutional address for statements from a prison or Community Services' officer for a work-related matter.

Have the person making the statement initial any alterations.

Endorsement by a witness who is an adult

A statement which may lead to summary or indictable proceedings must begin with the following endorsement:

"This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I will be liable to prosecution if I have wilfully stated in it anything that I know to be false or do not believe to be true.

I am (age)."

Endorsement by a witness who is a child under 18 years of age or an adult who suffers from appreciably below average general intelligence

A statement which may lead to summary or indictable proceedings is to be a form that includes words to the effect that the statement is true or that the statement contains no lies. There is no prescribed wording, and the endorsement is flexible. For example, the child or an adult who suffers from appreciably below average general intelligence may understand the difference between truth and a lie but may not be familiar with those words. In that case the endorsement could perhaps be along these lines, "Everything I have said in this statement really did happen". It may be appropriate to use the witness' own words that convey the same effect.

Also specify the age of the person who made the statement.

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Subpoenas

Issuing a subpoena

A subpoena can be issued for any non-police witness you require to give evidence. If a witness fails to attend Court, you cannot apply for a warrant if the witness does not appear, unless they have been subpoenaed.

The subpoena template is on the intranet, ensure you correctly complete all sections. The following subpoena templates are available:

- Subpoena to Give Evidence (Form P 703)

- Subpoena for Production (Form P 699), or

- Subpoena for Production and to Give Evidence (Form P702).

  - **Subpoena for Production** – ensure the date on which the person is required to file the documents with the court is either on the date the matter is next listed or another date, which is no more than 21 days prior to the next listing date.
  - **Subpoena to Give Evidence** - requires you to complete this sentence: "You need not comply with this subpoena if it is served on you after [date]". The date you fill in will be a date less than five working days before the witness is required to attend court.
  - Print and sign two copies of the completed subpoena:
    -
    - serve one copy on the witness/person to whom the subpoena is directed (Witness copy).
    - complete the "Statement for Service of Subpoena" on the second copy and provide it to the Police Prosecutors (retain a copy of this in your case file).

Serving a subpoena

A subpoena can be served by:

- handing it to the person. If the person refuses to accept it, it may be served by putting it down in the person's presence and telling them the nature of the notice.
- If an inmate of a correctional centre, by handing it to the officer in charge of the correctional centre or by sending it by post or facsimile or other electronic transmission to the officer in charge at the correctional centre.
- if a police officer or a public officer, by post or fax to the person's business address, or by email to the person's business email address.
- by sending it by post or fax to the person's residential address, or by email to the person's email address;
- With the consent of the relevant legal practitioner for the person, by leaving it at the legal practitioner's address for service or by sending it to that address by post or fax, or by emailing it to the legal practitioner's email address given for service.

A Subpoena to Give Evidence must be served within a reasonable time and at least **five** days before the day on which it must be complied with.

After a subpoena is served

- Complete the "statement for service of subpoena" section of the subpoena.
- Provide a copy of the subpoena and the "statement of service" to the Police Prosecutor.

If a person fails to comply with the subpoena

An application may be made to the court for an arrest warrant to be issued. See "Warrants" below.

Interstate subpoenas

Procedures for serving interstate subpoenas can be found on the P703A Interstate Subpoena to Give Evidence.

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Unavailability of OIC to attend court:

PAC/PD Commander / equivalent

If one of your staff involved in a court case is unable to attend due to illness, immediately contact the relevant prosecuting authority.

If, the Prosecutor believes the matter should be adjourned and if time allows advise the clerk of the court, the defendant, and police witnesses in writing that an adjournment will be sought.

If time does not allow the clerk and the defendant to be advised in writing, inform them by phone or in person and record your actions.

Follow this by writing to the defendant and their legal representative, if known, as soon as possible.

Tell other prosecution witnesses of the proposed adjournment.

When granted, send a further notification to the police concerned.

OIC:

If you are unavailable due to other reasons (e.g.: annual leave, courses, conflicting court commitments etc.) contact the prosecuting authority and seek advice.

If an adjournment is recommended, advise the parties in writing, and apply to the court for a fresh court date.

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Victim Impact Statements:

In appropriate matters pursuant to the *Crimes (Sentencing Procedure) Act 1999* and *Regulations*, refer the victim or family member/representative to the Victims' Services if assistance is required in the preparation of the statement. Do not assist in the actual preparation of the statement. Refer to the Guidelines for the NSW Police Force Response to Victims of Crime on the Police intranet, Law Notes 1/2003 (Assisting Victims of Crime) on the Law intranet site, concerning assisting victims of crime and the various services available to them. Be aware of the Charter of Victims' Rights in the *Victims' Rights and Support Act 2013*.

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Warrants:

Warrants in proceedings commenced by CAN

If you are unable to serve the CAN on the person, after taking all reasonable steps to do so and all alternatives have been considered (i.e., substituted service, revised court date), you should apply for an arrest warrant for the person's arrest

- Update the CAN in COPS to WANTED CAN.
- Make an application for the issue of an arrest warrant to the registrar of the court using the "Arrest Warrant Application to the Local Court (Form P 709C) on the intranet.
- In the application for an arrest warrant, address the following:
    -
        - **Seriousness of offence** - whether the offence is serious enough to justify the issue of a warrant, having regard to whether it is punishable by imprisonment and the nature of the case against the person
        - **Risks** - whether there is any risk to the safety of any victim, witness, or other person if the accused person is not arrested, and if so the nature of that risk, and
        - **Other warrants** - whether the person is the subject of any other warrant in respect of any other offences.
        - **Attempts at service** – outline the attempts you have made to serve the CAN.

If your application is successful, the registrar will issue a warrant and advise you accordingly. If your application is unsuccessful, the CAN will be listed before the court and the registrar will advise you of the date of the listing. Forward all relevant documents to the Prosecutor via the CPO.

If service has not been achieved by the court date, the Prosecutor may make further application before the magistrate for the issue of a warrant.

Procedure after arrest

- Create a charge on COPS for the warrant.
- Print from COPS the CAN (defendant copy and prosecutor copy), Facts Sheet, including details of the original offence and the arrest details, and Bail Forms.
- Provide to the Prosecutors
    -
        - a copy of the warrant
        - a statement of service
        - a bench cover sheet, and
        - bail forms (as applicable).

Where an accused fails to appear

If an accused fails to appear at court on the appointed date, or if they abscond from court during proceedings, the Magistrate may issue a warrant to arrest the accused if they are satisfied that there are substantial reasons to do so; that it is in the interests of justice; and the accused was aware of the proceedings. In that case, there will normally be no need for you to apply for an arrest warrant in respect of the accused, as a warrant will normally be issued in these circumstances by the Magistrate on the day.

Similarly, a Magistrate may, at any time in proceedings for an application, issue a warrant to arrest the respondent to the application if they fail to appear (personally or by legal representation) and the Magistrate is satisfied that the respondent had notice of the date, time, and place of the proceedings.

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Withdrawing proceedings:

Refer to NSWPF Withdrawal Policy.

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Witnesses:

Confidentiality of witness particulars

OIC of case

Personal particulars of witnesses (victims and witnesses) are confidential. DO NOT include the private, business, or official address or phone number (residential or work) of a witness/victim on any statement in the Brief that is served on the accused or legal representative unless it is materially relevant evidence, or a justice orders that it be disclosed.

Only release these particulars to the ODPP, a member of NSW Police who has a legitimate police purpose or at the direction of your PAC or a court. With the exception of the ODPP, the court or for a lawful police purpose, consider whether consent from that witness is required for any other purpose having regard to the *Privacy and Personal Protection Information Act 1998*.

T1(f) T2(b)

Calling witnesses

Officer in charge of case

Arrange for all witnesses to give evidence in Hearings at a Local Court unless otherwise instructed by the prosecuting authority.

Keep a record of notifications. If witnesses are reluctant or unwilling to go to court, get a suitable process e.g.: subpoena, summons, or warrant. However, seek advice from the prosecuting authority before acting.

Give timely warning to police and civilian witnesses to attend court hearings.

If you are going on leave or will be absent from your duties and you have court matters which require attention, inform your commander so matters can be dealt with.

Witnesses who have died:

Arresting officer

If you are told a prosecution witness has died, verify the information, and where possible, get documentary evidence.

Talk to the relevant prosecuting authority as to the future disposal of the matter.

Judicial Criticism

Police actions, both on and off duty, may be subject to adverse comments in jurisdictions outside of criminal courts. Those jurisdictions include Family Court, Industrial Relations Commission, NSW Civil and Administrative Tribunal and any civil proceedings. If any member of the NSW Police Force becomes aware of any adverse comments made by judicial officers in any court proceedings, they must report these comments by manuscript report through their chain of command. Their Commander will forward through RMS to the Commander Delegate of the involved officer for assessment within the relevant CMT. A copy of the report is to be forwarded to the Commander PPLEC for analysis of any identifiable trends.

Recognisance and Bonds:

Bonds are ordinarily imposed for State offences.

Recogs and bonds now come in the form of Conditional Release Orders, Community Corrections Orders and Intensive Correction Orders. Each of these orders may have conditions that require an offender to perform some community service or refrain from partaking in a particular activity (e.g. taking drugs).

Recogs and bonds are managed by the Community Corrections Offices (Also known as Probation and Parole) in supervising the offender.

If you suspect a potential breach, you should report it to the nearest Community Corrections Office in writing (by email). Include all the relevant information, time, date, place and nature of the breach as well as the COPS event number you create.

Domestic and Family Violence

OFFICIAL: Sensitive

CET Sponsor: Deputy Commissioner, Metropolitan Field Operations

Corporate Sponsor: Assistant Commissioner, Central Metropolitan Region

Supporting Unit: Domestic & Family Violence Command, Capability, Performance & Youth Command

Chapter content NOT suitable for public release - check each linked item for its status

(Chapter reviewed March 2026 [Mandatory Review D/2026/175795 & D/2026/312248 relate] updated 26 March 2026)

Consistent approach to DFV investigations

There are a number of actions and considerations that must be undertaken to ensure a consistent approach to DFV investigations statewide.

See the T1(f) T2(b)

Links to other DFV policies

T1(f) T2(b)

Initial procedures and response

You should, unless clear evidence exists to the contrary, accept any information provided as genuine. Where a report relates to DFV, you should attend and talk to the alleged victim personally unless there are exceptional reasons not to do so.

If language or communication barriers are identified, **you must** engage a certified interpreter and seek assistance from specialist support officers.

Conduct a check and obtain any domestic violence related holdings including existing ADVOs, supervision orders and interstate holdings via NCIS.

When a victim attends the police station to report a domestic violence incident, you should speak to them away from the counter area and in an interview room to allow for privacy where possible. You must advise your Supervisor of the domestic violence incident.

You must also follow the adult T1(f) T2(b) and T1(f) T2(b) policies and procedures if a victim discloses a sexual assault. When DFV-related sexual violence is reported via the Sexual Assault Reporting Option (SARO), the T1(f) T2(b)

When children under 18 years are present, a witness to, or residing with a party involved in the domestic violence incident you must create a "Child at Risk" incident. If there is a pregnant female complete a "Pre-Natal Child" at risk incident.

Investigation of coercive control

Coercive control involves any abusive behaviour intended to cause a person fear that violence will be used against them or has a serious adverse impact on their capacity to engage in some or all of the persons ordinary day-to-day activities. It can include physical violence and sexual abuse.

Behaviours may include but are not limited to:

- Shaming, degrading and humiliating a person.
- Isolating a person from their support networks.
- Denying changing or manipulating the truth.
- Hurting or threatening to hurt a pet.
- Denying access to basic needs; food, clothes, sleep, toilet, medical care.
- Controlling communication by taking away or monitoring use of phone and/or internet.
- Belittling spiritual or cultural beliefs or practices.
- Pressuring or forcing sexual activity.
- Using a parent or caregivers' bond with a child to control or intimidate a person.
- Making false reports to authorities to threaten, manipulate or control a person.
- Cultural beliefs and practices that harm safety and wellbeing.
- Using grand gestures, excessive gifts, compliments and affection to manipulate or trap a person.
- Coercive control is a criminal offence under S54D Crimes Act 1900 and is a "domestic violence offence" per S11 Crimes (Domestic and Personal Violence) Act 2007.

Officer in Charge

T1(f) T2(b)

Supervisor

T1(f) T2(b)

Crime Coordinator/DV Sergeant

T1(f) T2(b)

Investigator

T1(f) T2(b)

Crime Manager

T1(f) T2(b)

Region Operations Manager

T1(f) T2(b)

Investigation of strangulation

Strangulation, suffocation and choking can cause potential long-term health consequences for a victim. Signs and symptoms reported that police should be aware of:

- Redness, abrasions, bruising on chin from lowering chin to protect neck
- Amnesia or memory loss, confusion, restlessness or agitation.
- Loss of or near loss of consciousness
- Raspy or hoarse voice
- Tiny red spots (petechiae) on the face and neck or under the eye lids and around the eyes.
- Difficulty breathing and/or shortness of breath
- Conjunctival haemorrhage (eyes are blood red)
- Impressions on the skin that may indicate a ligature or object
- S37 of the Crimes Act 1900 covers the offence of choking, suffocation and strangulation. The section applies a tiered approach to reflect the escalating seriousness of offending.
- S37(1A) - intentionally chokes, suffocates or strangles another person without the other person's consent.
- S37(1) – intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and is reckless as to rendering the other person unconscious, insensible or incapable of resistance.
- S37(2) - chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and does so with the intention of enabling himself or herself to commit, or assisting any other person to commit, another indictable offence.
- The Domestic Violence Safety Assessment Tool (DVSAT) is a risk assessment tool developed for police to identify the threat of future harm to domestic violence victims. It is made up of two parts and is applied to both 'intimate' and 'non-intimate' partner domestic violence incidents.

Threat Level

T1(f) T2(b)

Professional judgement

T1(f) T2(b)

Decision to charge a complainant who admits to lying to police

T1(f) T2(b)

Powers to enter and remain

Entry by invitation

Refer to S82 LEPRA 2002 for the statutory power to enter and remain in a dwelling. S82(1) LEPRA 2002 gives police the power to execute the following if invited by a person who apparently resides in the dwelling:

a) Investigate whether a domestic violence offence has been committed.

b) Take action to prevent the commission or further commission of a domestic violence offence.

Police must not enter and must leave if the invitation is refused or revoked by another occupier of the premises.

Police may enter and remain in a dwelling by invitation of a person who apparently resides in the dwelling, even against the wishes of another occupier, if invited in by a person apparently residing in the premises if the police officer believes them to be the victim of a domestic violence offence.

Under S82(3A) LEPRA 2002 police who have entered a dwelling in accordance with this section can remain in the dwelling and exercise any of the following powers until a warrant is issued under S83 LEPRA 2002.

a) Direct a person to leave, or not to enter, the dwelling,

b) Remove from the dwelling a person who fails to comply with a direction to leave the dwelling.

c) Prevent a person from entering the dwelling.

d) Prevent a person from removing evidence from or otherwise interfering with the dwelling or anything in it and, for that purpose, detain and search the person.

These powers can be executed even though an occupier of the dwelling expressly refuses authority to police officer to remain in the dwelling (S82(3C) LEPRA 2002).

Entry by warrant where entry denied or authority to remain refused

Under S83 LEPRA 2002, police may apply to an authorised officer for a warrant if they:

a) Have been denied entry to a specific dwelling.

b) Have been expressly refused authority to remain in a specific dwelling by an occupier of that dwelling.

c) They suspect a domestic violence offence is being, or may have been committed recently, committed, or is imminent, or is likely to be committed in the dwelling, and

d) It is necessary for police to enter the dwelling to investigate whether a domestic violence offence has been committed or to take action to prevent the commission or further commission of a domestic violence offence.

If a warrant is required during business hours police should complete a Form 5 and forward this to their local Registry.

Powers that may be exercised on entry to a dwelling

S85 LEPRA 2002 provides police additional powers upon entry to a dwelling, if they have lawfully entered the dwelling under Part 6 Law Enforcement Powers and Responsibilities Act (LEPRA) 2002, including:

a) to investigate whether a domestic violence offence has been committed, and

b) to render aid to any person who appears to be injured, and

c) to exercise any lawful power to arrest a person, and

d) to prevent the commission or further commission of a domestic violence offence.

Firearms and weapons

Under S85(2) LEPRA 2002, police who have entered a dwelling to investigate a domestic violence incident must inquire as to the presence of any firearms in the dwelling. This may include but is not limited to POI, victim, anyone who resides at the location and witnesses.

If police are informed firearms are present, police must take all such action as is reasonably practicable to search for and to seize and detain the firearm(s).

S85(2) LEPRA 2002 is only enlivened to firearms present at the dwelling the domestic violence is being, or may have been recently, committed, or is imminent, or is likely to be committed in the dwelling police have lawfully entered.

This power applies regardless of whether an actual offence has been committed or not. Police must seize all firearms located at the dwelling regardless of who owns the firearms, whether they were present or involved in the incident.

Police must serve a notice of Domestic Violence Powers - Seizure of Firearms - Section 85 of LEPRA and Information Form to the owner of the firearm(s). Police can only remain in the dwelling for as long as is necessary to take the actions listed above (S85(3) LEPRA 2002).

Search warrants - S86(1) LEPRA 2002

If a police officer conducts an inquiry under S85 LEPRA 2002 and is told there are no firearms in a dwelling, but the officer reasonably believes that firearms are present, they must apply to an authorised officer for a search warrant to enter and search the dwelling for firearms.

Search warrants - S86(2) LEPRA 2002

A police officer who reasonably believes that:

- A domestic violence offence is being committed, has recently been committed, is imminent, or is likely to be committed otherwise than in a dwelling, and
- any person involved may have a firearm in a dwelling, must apply for a search warrant to enter and search that dwelling for firearms.
- As the threshold for S86(2) LEPRA 2002 requires that a domestic violence offence is, has or is likely to be committed, a verbal argument would not be sufficient to enact this requirement.

Where no legislative power exists

If police have concerns that a person may have access to a firearm after the report is made and there is no legislative power to apply for a search warrant to search for or seize firearms, police can ask the person to surrender the firearm. If the person does not consent, then consideration should be made to suspend or place special conditions on the person's firearms licence.

Apprehended Domestic Violence Orders (ADVOs)

S27 of the Crimes (Domestic and Personal Violence) Act 2007 provide the circumstances in which a police officer, investigating an incident **must** apply for an AVO. The difference being whether the circumstances require an urgent application or non-urgent application.

S27 of the Crimes (Domestic and Personal Violence) Act 2007 stipulates NSWPF officers must apply for a provisional ADVO if they suspect or believe that:

A domestic violence offence, stalking, or intimidation, or a child abuse offence has been or is being committed, or is imminent, or is likely to be committed against the person whose protection an order would be made; or a person has been charged with the above listed matters.

First Response Officer or Officer in Charge

You must thoroughly investigate the matter before determining whether to proceed with making an ADVO application, regardless of whether charges are likely. To make an application of an ADVO, use the fastpath 'AVOAPCRE' on the WebCOPS system. The domestic violence event must be completed first as information on the event is automatically populated into the application. You should choose conditions relevant to the circumstances of the domestic violence incident and level of threat to the victims.

Senior Police Officer (of or above rank of Sergeant including a relieving Sergeant)

As a Senior Police Officer, you must determine whether there are reasonable grounds for making a provisional ADVO based on:

T1(f) T2(b)

Serving an ADVO

ADVOs, interim orders, variations or revocation of orders are not validly served unless they were served on the accused by a police officer or such other person as the registrar sees fit or served in another manner such as by the court directly. A provisional order must be served on the defendant and a copy provided to the protected person by a police officer as soon as practicable after it is made.

To personally serve an ADVO, police must leave a copy of the document with the person. If the person refused to accept the copy of the ADVO, police may leave a copy in the presence of the person i.e., placing the ADVO on the ground in front of the defendant.

At the time of service, police should explain the conditions of the order, consequences of breaching the order, and the rights of the defendant or PINOP.

Provisional orders can be served electronically. Electronic serve must be done in person. Before the provisional order can be served electronically:

- The defendant must consent to the order being served electronically.
- Police must personally explain the provisional order.

T1(f) T2(b)

Mentally Ill People

OFFICIAL: Sensitive

Corporate Sponsor: Mental Health

Chapter Owner: State Operations & Emergency Management Command

Stakeholder: Capability, Performance & Youth Command - Mental Health Command

Chapter content suitable for public release – check each linked item for its status

(Chapter reviewed March 2026 [Mandatory Review D/2026/175797 & D/2026/351472 relate] No Updates)

Police and other emergency services are often called upon to respond to situations involving persons suffering from a mental illness.

The Mental Health Act (2007) and the current Memorandum of Understanding (MoU) between NSW Police Force, NSW Health and NSW Ambulance govern the police responses to these types of incidents.

Memorandum of Understanding (MoU)

This revised Memorandum of Understanding (MoU) is entered into by NSW Health (including NSW Ambulance) and NSW Police Force. It sets out the principles which guide how agencies will work together when delivering services to people with mental illnesses.

The MOU can be accessed via : NSW Health – NSW Police Force MoU

Least Restrictive Actions

Police attending an incident involving a person with a mental illness should firstly assess the situation for risks. See Section 3.2 in the MoU.

In all circumstances apply the least restrictive actions possible upon a person suffering from a mental health crisis. The use of force, while justifiable in appropriate circumstances, should be utilised as a last resort. De-escalation should be the initial strategy, ensuring time, safe distance, and effective communication with the person. Effective communication skills and other tools should be utilised to de-escalate potentially violent situations, where possible.

Alternative Options for Mental Health Intervention

Where concerns are held by police about a person's mental state that has not met the criteria for the person detained and taken for assessment under Section 22 of the *Mental Health Act (2007)*, the NSWPF promote the use of alternate means of intervention which could include:

- Referral to a PACER Clinician (if one is available)
- Referral to a Community Mental Health Team.
- Contacting the 'Mental Health Line' on 1800 011 511. This is an NSW Ministry of Health service that is available 24 hours a day/ 7 days a week. The service provides police or the

person who is living with a mental illness, next of kin, carer or other involved party, immediate access to advice from a mental health professional.
- Engaging with a member of the person's family or a primary carer to take responsibility for the welfare of the person.
- Where possible, attempt to contact the person's treating clinician, or care coordinator.
- Engaging the services of NSW Ambulance, who may detain and take for assessment the person, they believe, on reasonable grounds, is mentally ill or mentally disturbed and that it would be beneficial to the person's welfare to be dealt with in accordance with Section 20 of the *Mental Health Act 2007*. Ambulance officers may request police to assist in situations where in the opinion of the ambulance officer that there are serious concerns relating to safety of the person or other persons.

It is up to the individual attending officer to make the decision as to the most appropriate course of action dependent upon the prevailing circumstances at the time. If unsure as to the best course of action, advice should be sought from the mental health contact officer (MHCO), command / district inspector, or supervisor. All actions taken and referrals made should be clearly documented in attending police's official police notebook and the creation of a subsequent COPS entry.

22 Detention after apprehension by Police.

If a person who is mentally ill or appears to be mentally disturbed and:

(a) They are committing or have recently committed an offence, or

(b) They recently attempted to kill themselves or that it is probable that the person will attempt to kill themselves or any other person, or

(c) They have attempted to cause serious physical harm to himself or herself or any other person, and

(d) It would be beneficial to the person's welfare to be dealt with in accordance with this Act, rather than otherwise in accordance with law, take them to a hospital for assessment.

(Probable means likely to happen or be the case. An officer's subjective belief backed by objective evidence that would be considered reasonable by others).

If the threshold **IS NOT** met, alternative options for mental health intervention are outlined in the Police Handbook.

If the threshold **IS** met, a Section 22 form is to be completed, including all relevant information with as much detail as possible. A verbal hand over to the triage nurse or assessment clinician is to be completed. The person is to remain at the hospital for assessment by a qualified medical practitioner. All details are to be recorded in attending police's official police notebook.

Searching of Mentally Ill Persons

Section 81(4) of the *Mental Health Act (2007)* provides police (and others who detain mentally ill persons) with the power to search such persons. A thorough search should be conducted, particularly for items that may be utilised to harm the person or others. All actions should be recorded in attending police's official police notebook relating to the search and any items seized.

COPS Entries

When police attend a mental health incident, an event of mental health is to be created on COPS. Times spent in attending the scene, transporting the person, and waiting time at the hospital should be accurately recorded. Details regarding the particular illness and/or symptoms shown by the person should also be recorded   Critical information should be added as warning. If a PACER clinician is in attendance, they should be utilised, with any advice or action to documented within the COPS entry.

Mentally Ill Persons Detained for Criminal Offences

When a person is detected committing a criminal offence and they appear to have a mental illness or appears to be mentally disturbed, the following should be considered:

1. Table 1 Indictable Offence or Strictly Indictable Offence – persons detected committing offences in this category should be charged and brought before a court as soon as possible.
2. Table 2 Indictable Offence or Summary Offence – should be dealt with under the *Mental Health Act (2007).*

Discretion can be utilised in assessment/admission under the Mental Health Act (2007) as an alternative, or prior to charging a person, particularly relating to Table 2 Indictable and Summary Offences. When determining whether to charge a person who has committed an offence that is not a domestic violence offence, the nature of the charge, the criminal record and antecedents of the person and the circumstances of the offence alleged to have been committed should be considered.

The person's care and treatment should be of primary concern in accordance with the MoU with the consideration of prioritisation of assessment and treatment. Further advice can be obtained from the command or district inspector.

Mentally Ill Persons Detained for Domestic Violence Offences

Domestic violence offenders are exempt from this consideration and persons detected committing domestic violence offences should be charged and brought before a court as soon as possible. Having a domestic violence offender assessed under Section 22 of the Mental Health Act 2007, does not limit police taking appropriate action including applying for and serving ADVO/s and laying appropriate charges following the persons' release. Where evidence of domestic violence offence exists, police should notify staff at the DMHF that they intend to take action on the domestic violence offence. Any further considerations regarding the persons' mental health should then be left to the determination of the court.

Transporting Mentally Ill Persons

The MoU outlines the police role in the transportation of persons who are mentally ill. It states that transportation should:

(a) reflect the person's rights and dignity

(b) be the least restrictive under the circumstances

(c) not be dependent upon expediency

(d) be appropriate for risk factors and

(e) be provided as promptly as practicable.

Utilise family, Community Mental Health, PACER (if applicable) and ambulance vehicles as a matter of course. Police vehicles should only be used where there is a demonstrated significant risk to the mentally ill person or others. Police may also escort persons transported in ambulance vehicles. The safety of your appointments must be considered when in the confined space of an ambulance vehicle. See "Arms and Appointments" Section of this handbook for instructions in this regard.

Ambulance officers have similar powers under Section 20 of the *Mental Health Act (2007)* to detain, search and transport mentally ill persons from the community to a health facility.

Section 22 and charging a person

If the person is taken to hospital under Section 22 and police still intend to charge the person with an offence, police should continue to liaise with the hospital regarding the person's status and condition, whether the person will be admitted, and if they are not to be admitted, details of their impending release. Following a mental health assessment, a person may either be detained for further treatment or released as they are not mentally ill or disordered. In either case, a person may be detained for a period of two hours for the purpose of having the police attend the facility to arrest the person or to have other action taken against them, including the serving of legal paperwork. Section 22 of the *Mental Health Act (2007)*allows for a person to be lawfully detained for up to 12 hours for the purpose of assessment under Section 27 of the *Mental Health Act (2007)*.

Inter-Hospital Transfers

On occasion, mentally ill persons are transported from one hospital to another. Police are no longer routinely involved in such transfers. There may be a rare occasion where police assistance is requested. In such circumstances, the NSW Ambulance will contact the command / district inspector and provide an Inter-hospital Transfer Form requesting assistance. Upon receipt of a request for police assistance with an inter-hospital transfer, the command / district inspector managing that request should assess and agree upon the demonstrated level of risk. This may include questions posed to NSW Health regarding the need for police involvement above and beyond existing management strategies such as sedation and mechanical restraint.

If agreed, police will assist in the transport. Police will be required to accompany the person in the ambulance to the appropriate hospital. Under no circumstances will police vehicles be utilised for inter-hospital transfers.

Mental Health Contact Officers

A command / district inspector at each police area command / police district (PAC/PD) is appointed by the commander to be a mental health contact officer (MHCO). MHCOs are the primary contact and advocates for mental health issues within the command. They are expected to attend local MoU committee meetings, liaise with other relevant mental health stakeholders, and resolve issues that arise within the boundaries of the command.

Inspector Responsibilities

Command / district inspectors are to ensure staff and resources are appropriately deployed and utilised when a mental health incident arises. Command / district inspectors are to ensure staff have completed all relevant online mental health training and ensure compliance with the principles of the MoU by officers. Command / district inspectors should report any adverse dealings between agencies through the MHCO to the local MoU committee.

Dispute Resolution

The command / district inspector will liaise with the Ambulance Operations Centre supervisor or Mental Health service manager or emergency department manager or equivalent supervisor. If the command / district inspector feels the dispute was not adequately resolved or that it was sufficiently serious to warrant further attention, they should complete a Dispute Resolution Form (Appendix E, page 40 of the MoU) and submit it to the PAC / PD mental health contact officer.

Advice received regarding a MH Patient with Access to Firearms –

Health practitioners have been advised to contact the local NSWPF command / district inspector if a high-risk mental health patient may have access to firearms. Command / district inspectors should obtain all relevant details and obtain a faxed notification from the health practitioner (Section 5.9, page 27 MoU). Command / district inspectors should, if necessary, make arrangements for suspension of the mental health patient's firearms licence and confiscate their firearms. It would also be prudent for the officer completing the COPS event to conduct appropriate checks as to the patient's firearm status. (Appendix D, page 39 of the MoU - Notification to Firearms Registry)

Security in Health Facilities –

The Mental Health Act 2007 MoU does not provide for police having an ongoing security role in a health facility. The police role in a hospital setting is no different to what it is in relation to other public facilities. The primary responsibility and power for security and detention of a patient while in the hospital lies with the management of the hospital (Section 5.7, page 26 MoU).

Absconded MH Patients –

The command / district inspector / team leader should ensure an Absconded Patient Form is received from the hospital / MHU / ED (Appendix A, page 34 of MoU). A CAD message and COPS event may be created where a risk is identified. The command / district inspector should discuss with the reporting agency the risk posed by the absconded person, including what action has already been taken by the hospital to locate the person and information about the person's legal status. The command / district inspector should subsequently consider the nature and extent of the police response required, which may include police assistance in the apprehension and transport of absconded mental health patients where there is a serious risk of harm established. Other agencies (ambulance, Community Mental Health Service etc) should be utilised where appropriate

Assisting Health Care Workers with Sedation

The decision to sedate a mental health patient is made by the treating clinician. It is a clinical decision. If police are to be involved in assisting the treating clinician to sedate a mental health patient, police will be acting at the request of and under the direction and supervision of that treating clinician.

Police Assisting with the Detaining of Mentally Ill Persons

Under Section 19 of the *Mental Health Act (2007)*, police may be requested by a medical practitioner or accredited person (Acute Mental Health Team, PACER clinician etc) to assist in detaining a person if, in their opinion, there are serious concerns relating to their safety or the safety of others. Liaison should occur with the issuer of the certificate or delegate. A mutually agreeable time should be arranged to attend with the issuer or delegate. Appropriate checks on COPS are to be completed prior to attendance (person and location checks).

Police should not use police vehicles to transport the person unless there is a demonstrated serious risk.

Police may also be requested to assist other agencies. Requests may include assisting with breaches of Community Treatment Orders (CTOs), forensic patients and patients managed under the Mental Health Review Tribunal., Refer to the tri-agency MoU.

Consumers who have absconded from mental health facilities

Officers are to adhere to the Absconders_Best_Practice_Guidelines.pdf (nsw.gov.au)

Reports of absconders from declared mental health facilities are to be directed to a command / district inspector (or their delegate). The command / district inspector will make a determination as to whether a police response is required. Should a police response be deemed necessary, the designated responding police will speak with the authorised medical officer (mental health clinician) and follow the procedures outlined in the Best Practice Guidelines- Absconders. Officers will always ensure compliance with the Missing Persons, Unidentified Bodies & Human Remains SOPS 2026

Further information

Contact the Mental Health Command via T1(f)

Mental health contact officers in each PAC/PD can also be a source of information and assistance.

Notebooks

OFFICIAL: Sensitive

Chapter Owner: Technology and Communication Services Command

Chapter content suitable for public release – check each linked item for its status

(Reviewed June 2023 - Mandatory Review [D/2023/608964 relates])

(Reviewed 08/05/2024 - D/2024/412949)

(Endorsed by CET - D/2023/1304921)

All police **irrespective of rank or duty type** will be issued with an official Police Notebook.

Complete the details inside your notebook when issued to you. Use it to record particulars of incidents for future reference. Your notebook should be carried with you whilst on duty, unless the nature of your duties makes this impractical. After an incident, all particulars should be recorded as soon as practical. Any issue of a serious or contentious nature must be recorded in a notebook or duty book, as soon as practical.

Keep your notebooks with you until full. Administrative officers may be issued with a notebook to record computer access.

Notebook entries

- Record the action you take for each entry in the margin.
- Make entries in chronological order and start each with the date and time.
- Rule a line after each entry and leave a line before starting the next.

Complete entries in pen by writing neatly and underline surnames. If you use shorthand, record names and addresses in longhand.

Remember, making notes at the time of an incident is a professional approach to policing, providing a valuable tool for you in many ways. Not only can you refer to the notes during evidence, but they also help you recall incidents and might help if you have to justify your actions. Ensure entries about people are not frivolous or vexatious.

Do not abbreviate statements from witnesses, victims or suspects. Record all conversations from the time someone becomes a suspect. For interviews recorded in your notebook, have a corroborating and adoption officer sign the entry. If the suspect refuses to sign, note this against the entry.

One officer is to make an entry about an incident where two or more officers attended. The remaining officer counter signs the entry and makes a brief cross reference in their notebook.

Ensure addresses include the state, postcode and phone number.

As a minimum, record the matters listed below, and where possible, have the affected person sign it. Where you can, record conversations about these incidents as spoken.

Record:

- The exercise of a power (eg: arrest, handcuffing, searching), including why you exercised it (eg: searched because you saw money and foil change hands – suspected drug deal), the person's demeanour, clothing worn and anything found as a result

- The time and date you take a statement (unless otherwise identifiable)
- Warnings given, including the offence
- Execution of formal process (warrants, summonses)
- A matter which needs a COPS entry but cannot be immediately placed on the system – remember to include driver's licence numbers of all parties (if possible)
- Access to the NSWPF computer system (not able to be justified by other means)
- Incidents where action will be taken later (summons, breach reports)
- Escapees, missing people or others of special interest
- Details of property handed to you while away from your station, including name and address of the finder and person handing you it
- Material which might exonerate a suspect
- Complaints
- Property damaged in the course of your duties
- Entry to premises by consent (including the signature of the person authorising entry).
- Any issue you determine to be of a serious or contentious nature.
- Ceasing recording on a BWV when there are compelling reasons for doing so, if the reasons cannot be recorded on BWV.

In accordance with the Body Worn Video SOPS, BWV will not replace the need to make a written record in an officer's official police notebook.

Digital Duty Book

If you are on criminal investigation or specialist duties, you must utilise the Digital Dutybook System (**DDS**). You can make entries into the DDS using Mobipol IOS.

- Record each phase of duty with time commenced and completed, including meal-times, times in and out of your location, etc.
- Include places visited, people spoken to and action taken (record detailed information in your notebook).
- Keep it up to date and address outstanding items and updates ASAP.
- Record rest days and leave after the last working day's entry.

Alterations

If the digital record has not been submitted for vetting by a supervisor, updates can be made. If an alteration is required to an entry that has been vetted, you will need a supervisor to unlock the entry with a reason recorded for access. All changes made in DDS are auditable.

Checking

Supervisors

It is recommended supervisors vet subordinates entries weekly. However, a Commander has the authority to vary the interval between checking, where appropriate, but it should not be more than one month in between checks. Supervisors should check for:

- Entries are appropriate and suitable for presentation, if necessary.

Managers

It is recommended managers conduct DIP sampling of supervisor checks every month, where appropriate, but it should not be more than three months.

Commanders

Check DDS as required (refer to the CMF below).

Book accountability

DDS is an ongoing record:

- If you receive a transfer, the digital duty book is linked to your registered number and remains accessible to your previous command. Any new entries will be visible to your new command.
- If you are on secondment and require a different supervisor from outside your command to vet your entries, seek command approval for an alternate command/supervisor to vet your entries. Ensure the entry is endorsed with the approval.

Record of books

Police Area Command/Police District Commander

A digital record of all duty books is available through the system for Commanders.

Book security

Commander

Ensure the contents of DDS remain confidential.

Give approval only for legitimate police purposes (eg Court, help in investigation, etc)

CMF

Check all digital duty book entries in current by utilising HOW TO: Check the following is recorded: Record each mandatory field entry with time commenced and completed, including meal times:

- Times in and out of location. Places visited, people spoken to and any action taken.
- Places visited, people spoken to and any action taken.
- Ensure all alterations in the digital duty book are authorised by a supervisor with a reason for unlocking it.
- Managers to conduct dip sampling of supervisor checks every month, where appropriate, but it should not be more than three months in between checks.

Duty Books - Physical

If you are issued with a physical duty book, make your entries neatly in pen and:

- Record each phase of duty with time commenced and completed, including meal-times, times in and out of your location, etc.
- Include places visited, people spoken to and action taken (record detailed information in your notebook).
- Keep it up to date, signing and recording the time of starting and finishing duty, and address outstanding items and updates ASAP.
- Record rest days and leave after the last working day’s entry.

Alterations

If you must make an alteration, rule a line through the original material, leaving it legible. Do not erase material. Show significant alterations to your supervisor.

Do not tear out any part of the book or erase any entry.

Checking

Supervisors

It is recommended supervisors check subordinates' duty books weekly. However, a Commander has the authority to vary the interval between checking, where appropriate, but it should not be more than one month in between checks. Supervisors should check for:

- Supervisors are to ensure that all entries comply with the requirements as listed in this chapter

- Page numbers are sequential
- Entries are legible and suitable for presentation if necessary
- No large spaces are left in between entries to allow for later additions
- Each entry has a corresponding action recorded in the left-hand column such as : an Event Number, "Record Only", Infringement Number, etc.
- Check that the reference number is legitimate

Managers

It is recommended managers conduct DIP sampling of supervisor checks every month, where appropriate, but it should not be more than three months.

Commanders

Check notebooks during regular inspections (refer to CMF).

Book accountability

Books are to be filed at the location from where they were issued.

File your notebook or duty book with your administration area:

- As soon as it is completed (do not keep it for ongoing investigations - photocopy relevant pages)
- If you receive a transfer, before taking up that transfer (after your last entry write 'Book finished - transferred to...'. Have a new book issued at your new work location.
- If you are seconded to work in a specialist area outside your normal command (e.g. you are seconded from a PAC to work with Professional Standards Command), before taking up that secondment (after your last entry write 'Book finished - seconded to...'). Have a new book issued at your new location. On completing your secondment, file your duty book or notebook at that location (after your last entry write 'Book finished - secondment finished return to...'). Have a new book issued on return to your original location.

Record of books

Police Area Command/Police District Commander

Maintain a record of notebooks and duty books and include:

- The number of the book issued, cross referenced with the number of the book returned
- The date issued
- Name and signature of officer issuing the new book and receiving the old book

- The date returned
- Name and signature of officer receiving the new book and returning the old book
- The re-issue and movement of filed books (in red pen)

Book security

Commanders

Ensure the contents of filed books remain confidential.

Nominate an officer at each location to ensure new and completed books are kept secure.

Books are recorded/managed in the corporate records system RMS and may be easily retrieved to meet business needs.

Give approval only for legitimate police purposes (e.g. Court, help in investigation, etc) . When the original is supplied, have it photocopied first and ensure it is returned intact as soon as possible.

Ensure movement of books is by hand, if possible, otherwise use the government courier or registered mail.

Administration officer

Do not re-issue a filed book without written request, and subsequent written approval of the commander where it is stored. Where possible, use a photocopy. The request is to explain why the original is needed and provide an undertaking to maintain the book's integrity and return it as soon as possible.

Personal Matters to be Reported

OFFICIAL: Sensitive

Chapter Owner: Finance & Business Services Command

Contact the Chapter Owner for a redacted copy of the chapter

(*Chapter reviewed 26/09/2023 [Mandatory Review] no changes)*

Changes in domestic circumstances

If you are in receipt of the Remote Areas Living Allowance or occupy NSWPF accommodation, report details of any alteration to your domestic circumstances, including notification when the age of a child means they no longer qualify as a dependent child for the purpose of an Award.

When relationship circumstances change, such as an officer in receipt of individual Remote Living Allowance forms a spousal relationship (including a de facto spousal relationship) with another officer in receipt of individual Remote Living Allowance, one officer no longer qualifies for such allowance. Officers should notify their command in writing of any such changes to domestic circumstances to enable verification and approval of adjustment to allowance payment.

Officers should be aware that changed domestic circumstances may have an impact upon workers compensation and/or income protection benefits and should communicate any changes immediately to their command and any relevant body managing their claim(s). This may include but not limited to changes in dependants where a new dependent declaration is to be completed and submitted by the Officer to their Command for processing.

Contact Details (Address, Email and Phone Number)

Your current residential address, personal email and phone number details must be recorded in the NSWPF SAP system as the primary location for such records. Some commands retain address cards as a secondary record.

Advise your commander/manager of your residential address and contact details, such as your residential telephone number, mobile telephone number and personal e-mail address. This information should be updated directly into SAP by completing the updating function within the address details option in the Employee Self-Service (ESS) facility.

Your personal e-mail address should be recorded in SAP as this will now be the primary mailing address for communications from Shared Services. Enter your personal email through ESS (ESS:

Personal Details: Email Accounts) then add your details using the “New” icon and save the entry at completion.

Updates to all your contact details should occur within 48-hours of any change.

Next of kin and/or Dependants

Provide details of your next of kin, partner, nominated emergency contact and/or dependents by completing the relevant sections of SAP. This information should be updated directly into SAP using the Employee Self-Service facility (ESS: Personal Details: Family Related Details) and then add the information using the “New” icon and save the entry at completion.

You are encouraged to provide alternate means of contact in the Emergency Contact option to enable communication during a critical disruption or emergency.

As your circumstances change regarding next of kin, partner, nominated emergency contact and/or dependents you are encouraged to update these details in SAP as a priority to avoid disappointment or embarrassment at a later date.
If you have current workers compensation claim/s, complete a new "Dependent Declaration" when there are changes in your dependents and provide to your command. This will ensure correct payment of workers compensation benefits.

Note if you are a member of the Provident Fund the beneficiary should be recorded separately and may differ from the next of kin.

OFFICIAL: Sensitive

Social Media

OFFICIAL: Sensitive

Chapter Owner: Public Affairs Branch

Chapter content suitable for public release – check each linked item for its status

(Chapter reviewed 10 July 2023 [Mandatory Review] D/2023/749231)

The NSW Police Force has two separate policies to assist in harnessing the benefits of social media, while minimising the risks associated with the official and personal use of social media.

Personal Use of Social Media

Whether on or off duty a police employee's conduct reflects on the NSW Police Force. All employees **MUST** protect the reputation of the NSW Police Force by behaving in a lawful and appropriate manner.

The ***Personal Use of Social Media Policy and Guidelines*** sets standards that **MUST** be followed when NSW Police Force employees use social media in a private capacity, especially if they identify themselves as NSW Police Force employees either directly or as part of a user profile, or if they can be identified as working for the NSW Police Force by the content of their postings.

The policy also identifies the key dangers involved in the personal use of social media by police employees and provides recommendations to help staff protect their privacy and career, as well as the safety of themselves, their family and colleagues.

Official Use of Social Media

The ***Official use of Social Media Policy and Guidelines*** applies to:

- The official and overt use of social media sites by NSW Police Force employees to engage with the public or communicate internally to achieve work related goals
- All official NSW Police Force social media sites created to engage with the public.

The document sets policy on:

- The creation, management, assessment and decommissioning of official NSW Police Force social media pages and accounts
- The standards required of employees authorised to officially represent the NSW Police Force on both official police and non-police social media
- The standards required of members of the public who wish to contribute to official NSW Police Force social media pages and accounts.

These two policies do not apply to the use or creation of social media sites for other police or law enforcement purposes (for example investigative or intelligence purposes).

Guidelines or standard operating procedures for the operation of Eyewatch pages also exist.

Contact the Corporate Communications Unit, Public Affairs Branch, for inquiries regarding social media policy as well as police corporate and Eyewatch social media pages and accounts.

OFFICIAL: Sensitive

Use of Force

OFFICIAL: Sensitive

Contact Chapter Owner for a redacted copy of the Chapter for Public Release

Chapter Owner: Police Prosecutions & Licensing Enforcement Command (PPLEC)

Stakeholder: Deputy Commissioner Metropolitan Field Operations (Corporate Sponsor Police Powers)

(Chapter reviewed 15 June 2023 [Mandatory Review - D/2023/669505])

The goal of promoting a safe and secure community necessitates the application of force by police officers on a daily basis, at a range of levels. One of the challenges you will face lies in balancing the need to bring situations to a safe and effective conclusion by using reasonable force.

When faced with a situation where force is required to be used, such force must be considered reasonable and appropriate based upon the level of resistance met or the threat presented. You should consider the guidance provided by the NSWPF Tactical Options Model and the various tactical options available to you.

The power to use force is provided in Sections 230 and 231 of *Law Enforcement (Powers and Responsibilities) Act 2002* No 103 (*LEPRA*), which state:

s230 Use of force generally by police officers

It is lawful for a police officer exercising a function under this Act or any other Act or law in relation to an individual or a thing, and anyone helping the police officer, to use such force as is reasonably necessary to exercise the function.

s231 Use of force in making an arrest

A police officer or other person who exercises a power to arrest another person may use such force as is reasonably necessary to make the arrest or to prevent the escape of the person after arrest.

As detailed in the **Australia and New Zealand Police Advisory Agency's** Use of Force Guiding Principles **2018**, you are required to record details of instances where force/Tactical Options are used by a police officer, or against a police officer, or in other situations (as appropriate).

In these circumstances complete the **USE OF FORCE** fields in the Event General Details screen in the Computerised Operational Policing System (COPS). It should be noted that the **USE OF FORCE** field is **MANDATORY** for all Events where a POI is listed. In the case where a suspect is listed but not yet arrested or spoken to by police, or unknown at the time the Event is created, the question "Was force used?" will still appear. If no interactions have occurred at this time, "No" should be tagged.

Record all officers involved in the **USE OF FORCE** field and each officer's actions or responses for each Incident.

OFFICIAL: Sensitive

Vehicle Search Powers

OFFICIAL: Sensitive

Chapter Owner: Deputy Commissioner Metropolitan Field Operations

Stakeholder: Police Prosecutions & Licensing Enforcement Command

Chapter content NOT suitable for public release – check each linked item for its status

(Chapter Reviewed 30/06/2023 [Mandatory review] [D/2023/907673)

Overview

Part 3, Division 2 of the *Law Enforcement (Powers & Responsibilities) Act 2002* (LEPRA) authorises a Police officer who suspects on reasonable grounds that a vehicle is being, or was, or may have been used in or in connection with an indictable offence to require:

- That the driver of the vehicle disclose his or her identity and the identity of any driver of, or passenger in or on, the vehicle at or about the time the vehicle was or may have been so used or at or about the time the vehicle last stopped before the requirement was made or a direction was given under Division 5 of Part 4 of LEPRA to stop the vehicle,
- That any passenger in or on the vehicle disclose his or her identity and the identity of the driver of, or any other passenger in or on, the vehicle at or about the time the vehicle was or may have been so used or at or about the time the vehicle last stopped before the requirement was made or a direction was given under Division 5 of Part 4 of LEPRA to stop the vehicle,
- That any owner of the vehicle (who was or was not the driver or a passenger) disclose the identity of the driver of, and any passenger in or on, the vehicle at or about the time the vehicle was or may have been so used or at or about the time the vehicle last stopped before the requirement was made or a direction was given under Division 5 of Part 4 of LEPRA to stop the vehicle.

A police officer may, without a warrant, stop, search and detain a vehicle if the police officer suspects on reasonable grounds that any of the following circumstances exists:

- The vehicle contains, or a person in the vehicle has in his or her possession or under his or her control, anything stolen or otherwise unlawfully obtained,
- The vehicle is being, or was, or may have been, used in or in connection with the commission of a relevant offence,
- The vehicle contains anything used or intended to be used in or in connection with the commission of a relevant offence,
- The vehicle is in a public place or school and contains a dangerous article that is being, or was, or may have been, used in or in connection with the commission of a relevant offence,
- The vehicle contains, or a person in the vehicle has in his or her possession or under his or her control, a prohibited plant or prohibited drug in contravention of the Drug Misuse and Trafficking Act 1985,
- Circumstances exist on or in the vicinity of a public place or school that are likely to give rise to a serious risk to public safety and that the exercise of the powers to stop, search and detain the vehicle may lessen the risk.

“Relevant offences” for the purposes of this power are defined in section 35 of LEPRA.
A police officer may, without a warrant, stop, search and detain a class of vehicles on a road, road related area or other public place or school if the police officer suspects on reasonable grounds that any of the following circumstances exist:

- A vehicle of the specified class of vehicles is being, or was, or may have been, used in or in connection with the commission of an indictable offence and the exercise of the powers to stop, search and detain may provide evidence of the commission of the offence,

- Circumstances exist on or in the vicinity of a public place or school that are likely to give rise to a serious risk to public safety and that the exercise of the powers to stop, search and detain may lessen the risk.

Power to stop vehicles

A police officer may stop a vehicle if the police officer suspects on reasonable grounds that the driver of, or a passenger in or on, the vehicle is a person in respect of whom the police officer has grounds to exercise a power of arrest or detention or a search power under LEPRA or any other law.

Powers to stop vehicles and erect roadblocks

A senior police officer (an officer of or above the rank of inspector, a Police Area Command/Police District Commander, or a Duty Officer for a police station) may authorise another police officer to exercise any or all of the vehicle roadblock powers in respect of any specified vehicle (or class of vehicles) on a road, road related area or other public place or school if the senior police officer suspects on reasonable grounds that:

- The vehicle (or a vehicle of the specified class of vehicles) is being, or was, or may have been, used in or in connection with the commission of an indictable offence and the exercise of the powers may provide evidence of the commission of the offence, or
- Circumstances exist on or in the vicinity of that road, road related area, place or school that are likely to give rise to a serious risk to public safety and the exercise of the powers may lessen the risk.

A police officer may exercise vehicle roadblock powers without obtaining an authorisation by a senior police officer if the police officer suspects on reasonable grounds that it is necessary to exercise the powers and that the seriousness and urgency of the circumstances require the powers to be exercised without obtaining the authorisation.

A police officer who exercises vehicle roadblock powers without previously obtaining authorisation from a senior police officer must notify a senior police officer as soon as practicable and obtain an authorisation for any ongoing action.

Vehicle search powers

If you use your vehicle search powers, record the vehicle's registration number and the identity of the people spoken to and what, if anything you located and seized. Create a COPS entry under the incident category 'Powers - Vehicle Search' and list the location of where you used the powers, why you used them, the number of vehicles checked and the number of people spoken to.

Vehicle road block powers

If you want to use vehicle road block powers under LEPRA seek permission from a senior police officer.

Senior Police officer

T1(f) T2(b)

T1(f) T2(b)

When authorising the use of these powers make a record of your authorisation (notebook if in field) including:

- Time and date of making it
- The powers conferred by the authorisation and the indictable offence or serious risk to public safety in respect of which they were given
- The road/s, road related area/s or other public place/s to which the authorisation applies
- The vehicle or class to which it applies
- The period of the authorisation (if less than six hours)
- The name of the officer you nominate as the site commander of a roadblock site
- In urgent circumstances, if a verbal authorisation is given make a written record as soon as reasonably practicable of the authorisation

Note: each site requires a separate authorisation.

Create a COPS event, select the incident type 'Powers - Vehicle Search' and make it a significant event. Select the further classification 'Vehicle search powers' and record your authorisation, including the above details. For each authorisation on the one event create a separate incident. Verify the event and transfer it to the site commander's work priority.

If you do not authorise use of vehicle search powers create the COPS event and select the further classification of 'Refused vehicle search powers'. Include in the narrative the reasons why you refused the request.

Site commander

Record and confirm the nature of the authority given by the authorising officer.

The final decision to establish a road block rests with you. You are accountable for your actions and should bear in mind the potential consequences. The type of road block should be proportional to the offence or risk. Remember, blocking a road by using vehicles or objects has the potential to create major traffic chaos and can increase the risk of injury through the offender attempting to avoid it or crashing through.

In establishing your site refer to the 'Site selection criteria' below.

Remember to ask for a further authorisation, if you require one, before the end of your current one (authorisations last six hours unless otherwise stated).

After the incident conduct a debrief and take any necessary action. Update the COPS entry started by the authorising officer and include the number of vehicles stopped, number of people identified, how you set up the roadblock (type, location etc) or why you didn't use the powers and link the event to any event when charges arise from the initial incident. Ensure the event has been flagged as a significant event.

Audit requirements

Duty officer (or specialist equivalent) at site commander's Police Area Command/Police District (PAC/PD)

Review the event to ensure the site commander did not exceed the authorisation. Record this in the actions of the event. Report any deviation from the authority to your commander.

Site selection criteria

T1(f) T2(b)

T1(f) T2(b)

General procedures

Site commander

T1(f) T2(b)

Duties

Site commander

T1(f) T2(b)

T1(f) T2(b)

T1(f) T2(b)

Witnesses

OFFICIAL: Sensitive

Chapter Owner: Police Prosecutions & Licensing Enforcement Command

Chapter content NOT suitable for public release – check each linked item for its status

(Chapter reviewed 23/06/2023 [Mandatory Review] D/2023/501126)

Witnesses' address, date of birth and telephone number on written statements

The ***Local Court Rules 2009*** direct that:

3.12 Addresses, dates of birth and phone numbers not be disclosed

(1) A copy of a brief of evidence served on an accused person under the 1986 Act must not include any written statement that discloses the address, date of birth or telephone number of the person who made the statement or any other living person unless -

(a) the address, date of birth of telephone number is a materially relevant part of the evidence, or

(b) a Magistrate makes an order permitting the disclosure in the statement.

See: ***Local Court Rules 2009***.

Witnesses' expenses

Complete a Claim for Payment of Witness Expenses form (P559) for Crown witnesses giving evidence at Local, Children's, District, Supreme and Coroner's courts. Follow the instructions on the form, as incomplete forms will not be processed. Either you, as the OIC of the case, or the instructing ODPP solicitor must certify the court attendance and recommend payment.

The officer in charge of the case will lodge the P559 with the court registry where the matter was heard. Where possible you should seek the bank-account details of the witness, for inclusion on the form to enable electronic funds transfer. Where the witness requires urgent payment in cash a cheque is to be drawn. Court registrars are to ensure their staff are aware of the correct procedure and that “Open Cheque Register” is maintained in accordance with Treasurer’s Direction 216.01.

Send claims which cannot be paid at the court to:

Attorney General's Department,
GPO Box 6
Sydney 2001

for payment as an agent for the NSW Police. In the case of Supreme or District Courts send the claim to the Budget and Finance Branch, Office of the DPP. Do not make representations to these agents seeking a review of the payments.

Former police subpoenaed to give evidence in connection with their previous duties are only entitled to claim ordinary witness expenses at the scale approved by the Attorney General.

NB: There is no provision to claim above the prescribed amounts. Rates are not intended to fully compensate losses and expenses, but to minimise hardship. The use of Certificates of Expert Evidence might avoid unnecessary attendance of expert witnesses.

Travelling expenses witnesses living a long way from court

A Crown witness, other than a serving member of the Australian Military Forces or current serving NSW police officer, who lives far from the court, is entitled to claim the cost of their fare (with the exception of air travel) from the registrar of the court.

If the witness insists they cannot pay for travel, seek an advance witness expense payment through the Witness Liaison Unit, provided a minimum 7 days notice is available. If the notice is within 7 days of the court hearing, provide it through the case officer's command.

Coordinator, Witness Liaison Unit

Ensure the OIC of the case is told of the cost of travel.

Officer in charge

Ensure the witness includes the amount in the P559 form.

Costs for Interstate and intrastate witnesses

When an interstate civilian is needed as a Crown witness in a matter conducted by a Police Prosecutor at a Local, Children's Licensing or Coroners' court, the NSW Police meets the cost of the airfare.

JusticeLink under the Department of Police and Justice is an agent for NSW Police for the payment of claims made by witnesses for the loss of wages, sustenance, accommodation and incidentals at scale rates. However, it will not reimburse Crown witnesses the cost of airfares. Do not, under any circumstances, request the witness to pay for their own fare. The witness should be advised that NSW Police will arrange and pay for their air travel.

If the Office of the DPP has carriage of the prosecution, a travel approval number is to be obtained from the instructing solicitor, authorising travel assistance for the witness. Travel will not be organised without this travel approval number.

Travel arrangements (and costs thereof) for interstate police witnesses are the responsibility of NSW Police. Allowances, such as travelling allowances, meals and incidentals are to be met by their home jurisdiction.

If travel assistance is required for a witness, complete a ‘Witness Request Form - P736’. Contact the Witness Liaison Unit, Police Prosecutions & Licensing Enforcement Command to confirm travel arrangements.

Coordinator, Witness Liaison Unit

When you are advised of an intrastate or interstate Crown witness requiring travel assistance, ensure a ‘Witness Request Form - P736’ has been received with appropriate authorisation. Confirm return, economy class travel, liaise with the OIC when these arrangements have been confirmed. It is the OIC's responsibility to inform the witness of travel arrangements.

Officer in Charge

If requested, arrange to meet and assist an interstate Crown witness on arrival.

Accommodation expenses for Crown witnesses

It is customary for Crown witnesses to organise their own accommodation. However, if you have to arrange it, ensure the witness and proprietor clearly understand the witness pays. The witness is entitled to claim reimbursement from the court office in accordance with the current rate for subsistence.

Depart from this procedure only when witnesses insist they cannot pay. In these circumstances, in Local, Coroners' and Children's Courts:

- prepare a Purchase Order for cost of accommodation only
- ensure the witness includes the amount of the Purchase Order in the P559 form.

In the Supreme Court and District Court:

- an advance on the witness' entitlement for sustenance can be obtained from the Registrar of the court (through the instructing solicitor).

NB: **Do not**, under any circumstances, book accommodation in the name of a police officer, NSW Police, or Office of the DPP.

Witnesses in Domestic Violence Matters

Witnesses in domestic violence matters may have the right to appear via Audio-Visual Link (AVL) or give their evidence from behind a screen. The OIC must enquire with the witness whether they wish to use either of those options prior to the day of hearing. See the **Domestic and Family Violence** Infohub for more information.

See also: Chapter D – **Domestic & Family Violence**

Bank officers as witnesses

A bank officer attending a Local Court as a Crown witness is not entitled to expenses when the interests of the bank are involved.

When such an officer has to go to a distant court as a Crown witness, give as much notice as possible to allow the bank to arrange relief.

Government analysts as witnesses

When a government analyst is needed to testify, advise the hearing date as soon as possible. Arrange, as far as possible, for their evidence to be taken that day or as early as possible in the proceedings, and for the witness to be excused.

Subpoena for interstate witnesses to attend lower Courts

If you require an interstate witness to attend the Local or Children's Court, arrange for the issue of an interstate subpoena (P703A). Ensure a Form 2 is also issued under the Commonwealth Service and Execution of Process Regulations.

Before a subpoena is issued, contact the witness and ascertain the best address for service.

The subpoena, Form 2, witnesses' phone number/s and witness' statement (if appropriate) should then be forwarded to the Witness Liaison Unit at least 30 days prior to the hearing. Contact the Witness Liaison Unit where the hearing is within 30 days. Do not post the interstate subpoena directly to the witness as this renders it unenforceable and could result in travel not being organised for the witness. All interstate subpoenas must be served by the local interstate police with a minimum of 14 days prior to the hearing date. NB: Overseas witnesses cannot be subpoenaed.

If you believe the witness may be hostile towards police or may attempt to avoid service, inform the Witness Liaison Unit by way of report.

For Coroner's matters, the Coroner will issue his/her own subpoena. Follow the above procedure when you come into possession of a subpoena issued by the Coroner.

Specialist and/or support services - ODPP

See: **Victims - Specialist and/or support services - ODPP**

Overseas witnesses

When a witness living overseas is needed in a matter being prosecuted by a Police Prosecutor, send a report, via your chain of command, to the Prosecutor's office of the court of hearing seeking a recommendation as to whether the witness will be required. Include in your report the evidence the witness is able to give and attach a copy of the court brief.

Contact the Witness Liaison Unit for assistance. Along with the P736, prepare a covering report highlighting the fact that a witness resides overseas and that you are seeking a recommendation as to whether the witness is essential to the prosecution Brief and therefore required to attend court and give evidence. A copy of the Brief should be attached to the report. Bearing in mind time constraints, it is essential that action be instigated as soon as possible to avoid excess air travel costs when confirming travel at short notice. The preference is to allow 30 days plus, to set up an itinerary. The report should be walked through the line of command being the OIC's Commander, Team Leader for the Police Prosecutor team servicing the cluster of courts in that jurisdiction. If the recommendation is that the witness will be required to give evidence, the reason for this is to be set out in writing on the file, then directed to the Coordinator, Witness Liaison Unit – Police Prosecutions & Licensing Enforcement Command, to set up suitable travel.

If the Office of DPP has carriage of the matter, get a travel approval number from the instructing solicitor, prepare a 'Witness Request Form - P736' from the police intranet and contact the Witness Liaison Unit to arrange travel.

If requested by the witness, meet/assist the witness from the airport. Organise accommodation (the costs of which are to be met by the witness).

Coordinator, Witness Liaison Unit

When advised of the need to organise travel for an overseas witness by way of report, ensure a 'Witness Request Form - P736' is included with appropriate authorisation and recommendation by the Police Prosecutor. This report is to be approved by the Team Leader for the Police Prosecutor Team servicing the cluster of courts in that jurisdiction.

If the Office of the DPP has carriage of the prosecution, ensure the OIC submits a 'Witness Request Form - P736' from the police intranet with the appropriate travel approval number. Liaise with the nominated instructing solicitor to obtain confirmation of their request in writing from the Group Managing Lawyer from the Office of the DPP.

The OIC is to liaise with the witness to obtain information required for bookings and to relay information of the finalised booking.

In due course, subject to approval by the Team Leader for the Police Prosecutor Team servicing the cluster of courts in that jusirdiction or the DPP, organise air travel for the witness. Inform the witness and the OIC of the case of the flight details.

NSW resident needed as an interstate witness

Serve subpoenas and warn witnesses to attend interstate courts on behalf of other interstate police and justice departments, as requested.

Police Area Command/Police District Commander

When someone living in your area or an officer is asked to give evidence for the Crown interstate, that State/Territory will be responsible for the travelling arrangements and costs.

Certifying witness attendance at District and Supreme Courts

For matters at the Supreme or District Courts, have the instructing solicitor certify the completed P 599 form for Crown witnesses.

Warning witnesses not to attend court

Notify witnesses when they are no longer needed. If the witness has had their travel confirmed ensure the Witness Liaison Unit, Police Prosecution & licensing Enforcement Command is informed as soon as practicable.

Approval for travel

As soon as you become aware a witness will need travel assistance to attend a Local, Children's or Coroners' Court and the proceedings are being conducted by a Police Prosecutor, seek initial approval by contacting the Witness Liaison Unit, Police Prosecutions & Licensing Enforcement Command.

A 'Witness Request Form - P736' should be prepared by the OIC**.** This form and a copy of the Brief of evidence is to then be given to the Police Prosecutor requesting a recommendation to authorise travel assistance.

Police Prosecutor

After ensuring the evidence of the witness is essential, endorse the recommendation on the 'Witness Request Form - P736' and email it to the Witness Liaison Unit on #LSWL.

Coordinator, Witness Liaison Unit

If approval is granted confirm travel assistance as follows: refer to `Interstate and intrastate witnesses' and `Overseas witnesses' whichever is relevant.

Urgent air travel

Police Area Command/Police District Commander

Issue enough purchase orders to your nominated supervisor for urgent air travel for police under your command.

For all Crown witnesses, make contact with the Witness Liaison Unit, Police Prosecutions & Licensing Enforcement Command. Outside business hours, do this via the DOI.

Coordinator, Witness Liaison Unit

If approval is granted make arrangements to organise the travel.

Cancelling reservations or tickets

OIC of case

Contact the witness as soon as the need for travel is no longer required. Also contact the Witness Liaison Unit and advise that the travel confirmed for the witness is no longer required. Advise that the witness has been notified not to travel. Failure to notify accordingly may result in costs for the travel being forfeited for the travel sectors

Coordinator, Witness Liaison Unit

Cancel the reservation for witness air travel and endorse the voucher accordingly.

Application to the court to recover costs

When advising the court of witness expenses, tell the Police Prosecutor when payment has been met by or charged to a government department. Ask that the court award expenses to the department.

Witnesses from Department of Transport (DT), Roads and Maritime Service (RMS), State Rail Authority (SRA) and State Transit Authority

When such officers need to attend a court or inquiry as a police witness, phone:

- DT - Office of Director, Regional Transport Operations
- RMS - Prosecution Services
- SRA and STA - Division Revenue Protection Managers.

When employees of these Authorities attend a court or inquiry as witnesses on behalf of each other in an official capacity, the employing Authority arranges attendance and pays expenses.

An officer attending during normal hours of duty, whether in an official or private capacity, tells you of the wages and out of pocket expenses incurred. Advise the Prosecutor to ask the court to award these to the officer's employer.

Employees attending in an unofficial capacity, and in their own time, inform you of the costs. Apply for the court to reimburse the witness.

Police as witnesses

For Commonwealth departments

If you are a witness for any Australian Government department, you are regarded as on duty. If applicable, claim travelling allowance.

The witness' Commander sends a report to Financial Services to recover any costs from the Department concerned.

For SRA and STA etc

When in court in your official capacity as a witness for one of the above Authorities, NSW Police meets your out of pocket expenses, sustenance or fares. The Authority applies to the court to award any expenses incurred to NSW Police.

Giving evidence in private capacity

If you are to give evidence in a private capacity, which does not relate to your official duties, attend in your own time. Do not wear uniform and tell the court you are giving evidence in a private capacity. If asked to state your occupation you may do so.

Examples of where you are giving evidence in a private capacity where you are to give evidence:

- in support of a person who is being prosecuted by the NSW Police Force,
- in support of a person whose licence or application is being opposed by the NSW Police Force,
- of character on behalf of an accused, and in particular, if that person is a known criminal,
- in support of a police officer or unsworn officer subject to management or disciplinary action, or under consideration of such action,
- of matters relating to a plaintiff claiming negligence by the NSWPF,

which is not compatible with the interests of the NSW Police Force, report it to your Commander.

Include in your report:

- the name of the party you are to give evidence for,
- your relationship to the party you are to give evidence for,
- your own knowledge of the facts relevant to the case,

- the person’s antecedents (where relevant).

When preparing your report, you should not include in it the terms of any conversations between you and the other party’s lawyers, or any information which you only became aware of by reason of discussions with them.

Discussions at a conference with legal representatives in relation to Court proceedings are ordinarily confidential unless that confidentiality is waived.

Such communications should be considered and treated by you as confidential unless the confidentiality is waived by the other party’s lawyers.

If you are given a copy of any statement that you have made to the other party’s lawyers, you are at liberty to provide that statement to the NSW Police Force unless the other party's lawyer has told you that it is subject to a claim for Legal Professional Privilege. In those circumstances that statement is confidential.

Legal representatives acting on behalf of the NSW Police Force may contact you as part of normal case preparation procedures and ask if you wish to confer with them about the evidence you can give and provide a statement.

Remember: as a witness, you may be cross examined in relation to your own character record as well as on the evidence you have provided, and any reference or evidence content may be subject to review by the NSW Police Force for any breach of the Code of Conduct, or other internal policies. For guidance on providing character references and related evidence, see 'Character References' Chapter of the Handbook.

Collecting expenses

Remember expenses you incur are to be resolved with the party requiring your attendance or in accordance with the rules of the court.

Travel allowances/incidentals

This relates to payment of travel allowances/incidentals to former NSW Police who are now employed interstate as a Police Officer including Australian Federal Police.

Police Circular 05/06 states in part, "*In situations where an interstate police officer, who was formerly a member of the NSW Police, is required to give evidence in a matter prosecuted by NSW Police arising from that officer’s former employment, it will be incumbent upon the Police Area Command/Police District (PAC/PD) responsible for conducting the Court matter to provide for all meals, accommodation and incidental entitlements*".

PAC/PD Managers

Prepare and submit a ‘Vendor Creation Form’.

Evidence relating to official duties

Evidence for party other than the NSW Police Force

Report any request, or the receipt of a summons/subpoena issued by a defendant or a party other than the NSW Police to your commander. Set out your knowledge of the case and the person's antecedents.

Commander

Notify the DPP solicitor or the Police Prosecutor that a police officer will be a witness for the opposing party. If a matter is being prosecuted by police and there is potential for a conflict of interest to arise it might be desirable to arrange for the prosecution to be conducted by the ODPP. Consult with the Commander, Police Prosecutions Command when this arises.

Interstate matters

If you are required to give evidence interstate, the requesting jurisdiction will be responsible for the travel arrangements (and the cost thereof). Incidental expenses such as travelling allowances and meals will be met by the NSW Police.

Reporting at end of case

When the case ends, report any relevant issues arising, to your Commander. Set out the amounts received for expenses etc, the number of hours spent at court, travelling to and from court and what period was in NSW Police time.

Commander

Validate the expenses collected and decide whether the officer concerned retains the whole or any portion of the amount collected and direct accordingly. If you authorise the officer to retain the whole amount, file the papers in your office after the miscellaneous receipt book is acquitted.

When all or a portion of the expenses collected are due to the NSWPF, attach the amount involved to the file and send it to the Accounts Branch.

Civil matters

Conflicts of interest

If you consider a conflict of interest might arise consult your Commander.

Collecting expenses

When you receive a subpoena/summons in a civil matter and you are required to give evidence in an official capacity as a sworn officer, collect expenses in advance for four hours or part thereof, claim the equivalent of four hours salary, calculated at an hourly rate based on a 38-hour week. If more than eight hours, claim a day's salary for each 24-hour period. Payment is claimed and payable to the command where the officer is attached.

Use public transport whenever possible. If you use a motor vehicle solely for convenience, limit your claim to the cost of the journey by public transport, or the casual rate prescribed for private motor vehicle use.

Claim meal costs, if expenses are incurred, when the case is finished in one day. Claim accommodation expenses when the case extends beyond one day and you are away from home.

Do not collect/be credited with overtime/ travelling time when at court in civil proceedings.

You are regarded as attending in NSWPF time when giving evidence in an official capacity. Remember the Command claims and is paid, not the officer.

If subpoenaed/summonsed by both parties, collect expenses from one only. It is your responsibility to collect expenses at the conclusion of the case.

Refusal to pay expenses

If the party requiring your attendance in a civil matter refuses to pay expenses, you do not have to attend. If this arises, seek advice from your Commander in the first instance. If considered necessary, your Commander might consult with the Office of the General Counsel. Remember, this does not apply to criminal cases. When the only expenses are fares, the court can compel you to give evidence.

Attending civil cases when sick

Unless your medical condition prevents you, attend the hearing in plain clothes when on sick leave. You are regarded as attending in NSW Police time. If you are unable to attend, notify the solicitors who served the subpoena /summons as soon as possible (before the proceedings).

Legal Aid/Crown Solicitor

If you are subpoenaed/summonsed by Legal Aid when it is acting in a civil case for the litigant, or by the Crown Solicitor (or other solicitor representing the State), attend in NSW Police time and do not collect expenses. Send a report, through your Commander, to Accounts Branch setting out the result of the case and the expenses involved.

Attending conferences before Hearing

When you are a witness on behalf of the NSWPF you may be required to attend conferences with the Crown Solicitor (or other solicitor representing the State). In these circumstances you are to attend in NSW Police time. Do not collect expenses. Send a report through your Commander to the Accounts Branch setting out your attendance and the expenses involved.

Reporting at end of case

Report to your Commander in line with the practice for Evidence for party other than NSW Police.

Reporting non-attendance of prosecution witness

Police Prosecutor

Where the prosecution is successful, advise an informant's Commander, in writing, if a prosecution witness fails to attend a local court hearing, including any explanation given.

When the prosecution fails dues to a police officer or a prosecution witness failing to attend Court, record this in the "Failed Prosecution" report form.

Officer in Charge

Notify your Commander in writing when one of your witnesses fails to attend a hearing, including any explanation for the non-attendance.

Commander

On being notified (by either the DPP, Police Prosecutor or informant) of the failure to appear, satisfy yourself the informant made all reasonable efforts to secure attendance.

If you are not satisfied or believe non-appearance was due to action or inaction by the informant, take appropriate action.

Specialist and/or support services - ODPP

See: Victims - Specialist and/or support services - ODPP

Young Offenders

OFFICIAL: Sensitive

Corporate Sponsor: Youth

Chapter Owner: Capability, Performance & Youth Command

Chapter content NOT suitable for public release – check each linked item for its status

(Chapter updated 2 July 2025 [Review following NExUS-FR Implementation] D/2025/681712)

Starting proceedings against children and young people

Before commencing criminalproceedings against a young person consider the provisions of the Young Offenders Act 1997 (YOA). Where a young person is suspected of committing an offence covered by the YOA (see s.8), the young person is entitled to receive the least restrictive sanction (a warning, a caution, a youth justice conference). The provisions of the YOA do not apply to offences committedunder the Graffiti Control Act 2008 (NSW).

Where it is not appropriate to impose one of the sanctions you may commence proceedings in accordance with the Children (Criminal Proceedings) Act 1987.

If you deem thematter not appropriate for a warning or caution you must refer the person to the SpecialistYouth Officer (SYO) whether or not the person has admitted the offence. A referral to court or youth justice conference can only be made by the SYO. Police have a power to postpone the making of a Young Offenders Act 1997 determination for up to 14 days pursuantto s 9(2B) of the Act. Policeshould be aware that this power is still available after arrest.

A young person can potentially be dealt with under the **YOA** for a Table 1 Aggravated Break and Enter offence (that is, where the only circumstance of aggravation is that the offence was committed in company, and the serious indictable offence alleged is stealing or damaging property, and the value of that property does not exceed $60,000). This is because break and enter offences are not specifically excluded by **s.8(2)** of the **YOA**.

However, **all other types of Aggravated Break and Enter offences**remain strictly indictable, and cannot be dealt with under the YOA.

Note: A Specialist Youth Officer is a police officer appointed to this role by the Commissioner of Police for the purposes of making determinations under the **YOA**.

Warnings

Refer to the **Young Offenders Act, 1997** for your obligations.

Investigating officer

Remember, a **young offender** is entitled to a warning for summary offences, unless:

- The offence is excluded by s.8 YOA
- The offence involves violence, and
- You believe it is not in the interests of justice to give one.

When you give the warning, ensure the young person understands its purpose, nature and effect.

Recording warnings

When you give a warning, record the offence details on COPS, including:

- Time, date and place of incident,
- Name, age, gender of the young person, and whether they identify as Aboriginal and/or Torres Strait Islander.

Cautions

Refer to the Young Offenders Act, 1997 regarding your obligations.

Do not cautiona young person unless you have been authorised by the Commissioner to give cautions under the **YOA**.

If you, as an authorised officer, believe a respected member of the community should give a caution, necessary arrangements should be made for this to be done.

Investigating officer

If the young person has admitted an offence covered under the **YOA** (in accordance with s.10) you may issue a formal caution. The young person must be eligible to receive a caution, and must give consent.

To be eligible for a caution,the young person must admit to the offence.

If the young person has not admitted to the offence, consider offering a 'Protected Admission' as defined in the 'Protected Admissions Scheme'. The Standard Operating Procedures for the Protected Admission Scheme can be found on the following link:

Protected Admission Scheme SOPs

When deciding whether to cautiona young person, consider the following criteria:

- The offence is one which is able to be dealt with by way of caution (s.8 YOA),
- The seriousness of the offence,
- The degree of violenceinvolved in the offence,
- The harm caused to any victim,
- The number and nature of any offences committed by the young person, and the number of times the young person has been dealt with under the **YOA**, and
- Any other matters you believe are appropriate.

Limits to cautions

Under the YOA the number of occasions where a young person can be dealt with for an offence by way of caution is limited to three. Refer to **s.20(7) of the YOA** for details.

Notice of intention to caution

When you decide to cautiona young person:

- Record the full detailsof the young person, and the incident, on COPS.
- Generate a **notice of intention to caution**,
- Give the notice to the young person, explaining what it is, and providingdetails about the offence and caution process. Refer to s.24 for details.

Right not to proceed with caution

If you decide it is not in the interests of justice for the young person to be cautioned:

- Record full details of the young person, and the incident,on COPS
- Refer the matter to the Specialist Youth Officer (SYO), and
- Inform the young person that the matter will be referredto a SYO.

Specialist Youth Officer

Review allmatters referred to you, and make a determination of the most appropriate way to proceed. Remember to update COPS with your decision.

If you decide acaution is the most appropriate intervention and the young person agrees to it, proceed according to this section on *Cautions*.

If you do not consider a caution sufficient, or the young person does not agree to a caution, refer to a youth justice conference, or court.

Youth justice conferences

The Youth Justice Conferencing Directorate, of Juvenile Justice, is responsible for conducting youth justice conferences in NSW. Refer to the Young Offenders Act, 1997 for your obligations.

A young person may have a matter dealt with by aYouth Justice Conference if:

- It is not appropriate to **caution,**
- The offence is one for which a youth justice conference may be held **(s.8 YOA),**
- The young person:
  -
    - Admits the offence,(refer to the **Protected Admission Scheme SOPs**)
    - Consents to the holding of the conference, and
    - Is entitledto be dealt with by holding a conference.

When deciding if a young person is entitled to be dealt with by way of a youth justice conference, the SYO must consider **s.37** of the **YOA:**

- In the interests of justice, it is more appropriate to deal with the matter by commencing proceedings against the child, and
- The onus is on you to justify your belief.

When deciding whether to refer the young person to a youth justice conference, considerations for the interests of justice include:

- The seriousness of the offence,
- The degree of violenceinvolved in theoffence,
- The harm caused to any victim,
- The number, and nature, of any offences committed by the young person,
- The number of times theyoung person has been dealt with under the **YOA,** and
- Any other matters you deem appropriate.

If you decideto refer the young person to a Youth Justice Conference:

- Explain your decision to the young person,
- Tell the young person that they are entitledto have the matter dealt with at court if they wish,
- Complete a **Conference Referral Form** for the young person and Juvenile Justice, printed from COPS (ensure the investigating police have included full details of the young person and incident, including the young person's carer/responsible person and victim's details),
- Give the young person a youth justice conferencereferral notice, and

- Send the conference referral form to the JuvenileJustice's appointed conference administrator for your PAC/PD.

If you decide to refer the young person to a youth justice conference, you are responsible for liaising with the conference administrator/convener about conferencing arrangements.

T1(f) T2(b)

Intoxicated children or young people

Refer to the NSWPF Handbook chapter, Intoxicated People.

A child who is detained as an intoxicated person under Part 16 - ***Law Enforcement (Powers and Responsibilities) Act 2002*** (LEPRA) is to be taken to, and released into the care of, a responsible person who is willing to immediately take care of them.

A responsible person includes any person who is capable of taking care of the child, including:

- A friend or family member,or
- An official or member of staff of a government or non-government organisation, or facility providing welfare or alcohol or other drug rehabilitation services.

Detaining a child at an authorised place of detention (such as a police station) is a **last resort.** The child may be detained in an authorised place of detention if:

- It is necessary to do so, temporarily, for the purposeof finding a responsible person who is willing to take care of the child,
- A responsible person cannot befound to take care of the child, or the child is not willing to be released into the care of a responsible person, and it is impractical to take the intoxicated person home, or
- The child is behaving, or is likely to behave, so violently that a responsible person would be incapable of taking care of, and controlling, the child.

A child who is detained in an authorised place of detention, under **Part 16 of LEPRA**, may be detained there by any detention officer, and:

- Must be given a reasonable opportunity by the person in charge of that place to contacta responsible person,
- Must, as far is as reasonably practicable, be kept separately from any person detained in connection with the commission, or alleged commission, of an offence,
- Must not be detained in a cell unless it is necessary to do so, or unless itis impracticable to detain the child elsewhere at that place,
- Must be providedwith necessary food, drink, bedding, and blankets appropriate to the child’s needs, and

- Must be released as soon as the child ceases to be an intoxicated person.

An intoxicated person, who is apparently under the age of 18 years, must, as far as is reasonably practicable, be kept separately from any person over that age who is detained at that place.

Always consider the need for medical treatment.

Record all steps taken to contact a responsible person. Also, **s.209 of LEPRA** requires a record, containing the particulars prescribed by **cl.52 of the *Law Enforcement (Powers and Responsibilities) Regulations 2016,*** to be made whenever a person is detained as an intoxicated person.

T1(f) T2(b)

T1(f) T2(b)

Court issues

Required dress

Dress in plain clothes when attending a children's court.

Court action by citation notice, charge or summons

If court action is taken via a citation notice, charge or summons, enter details on COPS.

Warrants of commitment - young fine-defaulters

Do not execute warrants of commitment on young fine-defaulters unless immediate access to, and placement of them in, a detention centre has been guaranteed by the superintendent.

Refer to the NSWPF Handbook chapter, '**Warrants**' - executing warrants on children.

Traffic penalty notices to children

You may issue penalty notices to children, aged 16 years and over, for traffic and parking offences, as outlined in the **Fixed Penalties Handbook**. Before issuing, however, you must establish their identity and address.

Underage Drinking

Powers

Police generally

Under ***s11 of the Summary OffencesAct 1988***, you have the power to deal with underage drinking in public places, including the confiscation of liquor, via the issue of cautions and penalty notices.

A young person may not be arrested for an offence of underage drinking in apublic place, except as may be necessary for the purposes of the administration of a caution by a police officer in relation to such an offence.

You may seize any liquor, in the possession of a personin a public place, if you suspect,on reasonable grounds,that the person:

- Is under the age of 18 years,
- Is not under the supervision of a responsible adult, and
- Does not have a reasonable excuse for possessingthe liquor.

Responsible adult

The words "responsible adult" are not defined under the Act. You are required to make a subjective analysis of all the facts at the time. An adult who is affected by alcohol is not a responsible adult.

Demanding name and place of abode

You may require a person, who you reasonably suspect has committed an offence under **s.11 (1),** to:

- State his, or her, full name and residential address, and
- Produce, then, or at a police station within a reasonable time, documentary evidence that might reasonably be accepted as applying to the person, and as proving that the person is at least 18 years of age.

It is an offence for the person to:

- Refuse to state his, or her, full name and residential address, or
- State a false name or residential address, or
- Without reasonable excuse, refuse or fail to produce evidence of age, as described in the previous paragraph.

Confiscating liquor

Cl.4 of the **SummaryOffences Regulation 2010** requires you to give reasons to a child for confiscating the liquor. **Cl.5 empowers you to disposeof confiscated liquor at the time of seizure if it is either:**

- In a container which is unsealed, or from which part of the contents have been removed, or
- Likely soon to become unfit for human consumption.

Do not dispose of any liquor which, in the circumstances, makes the disposal unreasonable or undesirable. As a general rule, keep bottles which can be sealed by a cork orscrew-top lid. Dispose of unsealed cans or bottles which cannot be sealed, at the time of seizure.

Ensure that any liquor, disposed of, does not remain or become available for consumption by any person. When liquor is not disposed-of at the time of seizure, inform the child of the following:

- The name of the police station where the liquor will be held
- That the liquor will be kept for at least 24 hours
- That a claim may be made for return of the liquor at the police station.

Record the liquor as miscellaneous property in NExUS, the NSWPF exhibit system, and issue a receipt to the person from whom the liquor is seized. A receipt, specifying details of the seized liquor, must be issued to that person:

- At the time of seizure, by the police officer concerned or,
- At the time the liquor is taken to a police station, by any officer there.

Returning confiscated liquor

Station officer

If a claim is made for the return of seized liquor, it must be returnedto the person from whom it was seized if:

- The person establishes that he/she was at least 18 years of age at the time of the seizure, or
- The person establishes that he/she had a reasonable excuse for possessing the liquor, or
- The return of the liquor is justified in all the circumstances.

You may refuse to return the liquor to a person under the age of 18 years, if the person is not accompanied by a responsible adult.

Before seized liquor is returned, satisfactory proof of entitlement to the liquor may be required, including the production of the receipt issued for the seized liquor. Record the disposal details**.**

Disposal of seized liquor forfeited to the Crown

When it is no longer intended to keep seized liquor at a police station, dispose of it in the manner as for liquor forfeited to the Crown. Record the disposal details in NExUS, the NSWPF exhibit system.

Refer to the NSWPF Handbook chapter, **Exhibits** - refer to *Liquor Exhibits*.

Young Offenders (Transport Warning's)

Recording sanctions against children and young people

The *YoungOffenders Act 1997 (YOA)* prevails as the standardoperating procedure for commencing criminal proceedings against a young person, aged 10 to 18 years.

mNotices, via MobiPOL devices, provides officerswith the capability to issue and immediately record a *Warnings for minor offences*.

If an officer deems a matter appropriate for a warning, they are not required to seek the sanction of a Specialist Youth Officer (SYO)for those categories of offences. Rather, officers may proceed to commence the recording of the warning on a MobiPOL device, in accordance with the Young Offenders Act, section 15, and:

- It may be given at any place,
- No conditions or additional sanctions must be placed upon the warning.

The importance of recording warnings under the YOA 1997, and particularly under Transport Warning via mNotices, is both legislated and statistically important for early intervention and diversionary strategies.

The issuing of a warning should be accompanied by an explanation, to the young person, of the purpose and effect, as stated in Section 16 of the Young Offenders Act 1997.

Providing a young person with a warning, in these circumstances, may require an officer to inform the parents of the young person that a Warning has been issued. Section 16A of theYoung Offenders Act 1997 prescribes:

- That an officer may notify parents, verbally or in writing, that a warning has been given to a child
- An officer may not notify a parent if, in the opinion of the officer, it would pose an unacceptable risk to the child.

Transport Warnings, via mNotices, should not be issued to children between 10 and 14 years of age.

Section 17, of the Young Offenders Act 1997, prescribes the circumstances when such information, regarding warnings issued, must be recorded:

- An officer must make a record of any warning given under this part.

When you give a warning,record the offence detailson mNotices/COPS, including:

- time, date and place of incident,
- name, age, gender of the young person, and whether they identify as Aboriginal and/or Torres Strait Islander.

(Refer to mNotices for instructions on how to recorda warning on WebCOPS/mNotices).

OFFICIAL: Sensitive