

Practice Note on Police Questioning (s30(6) Evidence Act 2006)

The courts will continue to apply judicially-developed guidelines for police questioning. The former Judges' Rules are (with some developments) restated here for the purposes of s 30(6) of the Evidence Act 2006. The obligation to advise that legal advice may be available without charge under the Police Detention Legal Assistance Scheme is new. As well the advice requirements under s 23 of the New Zealand Bill of Rights Act 1990 are brought into the required caution. Giving such advice prior to a suspect being arrested or detained does not obviate the necessity to repeat the advice upon arrest or detention. The practice note also favours the use of video recording of statements. In other respects, the practice note is not intended to change existing case law on application of the Judges' Rules in New Zealand and does not preclude further judicial development. The guidelines in this practice note supplement enactments relevant to police questioning and must be read consistently with those enactments. In particular they do not affect the rights and obligations under the New Zealand Bill of Rights Act 1990. The practice note takes effect on the commencement of section 30 of the Evidence Act 2006.

1. A member of the police investigating an offence may ask questions of any person from whom it is thought that useful information may be obtained, whether or not that person is a suspect, but must not suggest that it is compulsory for the person questioned to answer.
2. Whenever a member of the police has sufficient evidence to charge a person with an offence or whenever a member of the police seeks to question a person in custody, the person must be cautioned before being invited to make a statement or answer questions. The caution to be given is:
 - (a) that the person has the right to refrain from making any statement and to remain silent

(b) that the person has the right to consult and instruct a lawyer without delay and in private before deciding whether to answer questions and that such right may be exercised without charge under the Police Detention Legal Assistance Scheme.

(c) that anything said by the person will be recorded and may be given in evidence.

3. Questions of a person in custody or in respect of whom there is sufficient evidence to lay a charge must not amount to cross-examination.
4. Whenever a person is questioned about statements made by others or about other evidence, the substance of the statements or the nature of the evidence must be fairly explained.
5. Any statement made by a person in custody or in respect of whom there is sufficient evidence to charge should preferably be recorded by video recording unless that is impractical or unless the person declines to be recorded by video. Where the statement is not recorded by video, it must be recorded permanently on audio tape or in writing. The person making the statement must be given an opportunity to review the tape or written statement or to have the written statement read over, and must be given an opportunity to correct any errors or add anything further. Where the statement is recorded in writing, the person must be asked if he or she wishes to confirm the written record as correct by signing it.

Sian Elias
Chief Justice
16 July 2007