

Powers of the Police – Questioning - [PPRA](#) - Chapter 15 & [PPRR](#)

If police are inviting a person to be questioned without being arrested they must comply with the *Police Powers and Responsibilities Regulation* - “Code” scripting in s 22 as well the rights to friend, family, lawyer,¹ and rights to silence.² Interaction to be recorded.³ Noting the a refusal before or during questioning also require the police to clarify the extent of the refusal,⁴ a change of mind to then answer questions requires the police to ask why the change of mind and if an officer or person in authority has told the person to answer.⁵

Chapter 15 only applies to those in lawful custody (aka being arrested).⁶ Noting the detention must be for a reasonable time under s 403, reasonable time is through the lens of 404.⁷

If there has been a refusal, the detention period may not be reasonable unless there the further investigations or investigation procedure (such as a medical examination).⁸ The detention for the questioning after the arrest can go for no more than 8 hours,⁹ time starts to run under s 403(5):

- (a) Arrested for the indictable offence;
- (b) Taken into custody under a removal order;¹⁰
- (c) Taken from the watch house;
- (d) Otherwise in the company of the police at a watch-house, prison, detention centre for the purpose of questioning the person.

The person cannot be questioned for more than 4 hours,¹¹ but time can be extended on application to a magistrate or JP(Mag). Application has rules.¹² The total period of questioning in 24 hours cannot exceed the 4 hours unless extended by a Magistrate.¹³ The Extension must be made before the detention period ends,¹⁴ but if the total time since the start will be more than 12 hours, the application must be to a Magistrate¹⁵ a lawyer can make submission too.¹⁶

For the extension of the detention period, the Magistrate or Justice must consider, s406:

- (a) Nature and seriousness of the offence
- (b) Detention to (i) obtain or preserve evidence (ii) complete the investigation (iii) to keep asking the questions.
- (c) If the investigation is being done properly and without unreasonable delay;
- (d) If the persons law has been given an opportunity to be heard.

¹ Code s 23.

² Code s 26.

³ Code s 30.

⁴ Code s 24(2)(a)&(b).

⁵ Code s 24(4)(a)&(b)

⁶ PPRA s 398(a), arrested under s 365(2).

⁷ PPRA s 404(1) (a) Necessary for the investigation? (b) Number of offences? (c) Seriousness and complexity of the offences (d) Willingness of the suspect? (e) Age, physical & mental condition and capacity (f) Time spent being questioned before the arrest (g) Need for suspending the questioning for time out.

⁸ PPRA s 404(2).

⁹ PPRA s 403(2).

¹⁰ PPRA s 399-402

¹¹ PPRA s 403(4).

¹² Code s 32.

¹³ PPRA s 410.

¹⁴ PPRA s 405(1).

¹⁵ PPRA s 405(3).

¹⁶ PPRA s 495(5).

Questioning – from community (under arrest)	Questioning – remand/prison/in custody
Write to communicate with friend or lawyer — s 418	Application for removal order from custody into police custody for questioning or investigation about an offence be made by a Magistrate under section 399 – may include an application for extension even though time has not begun to run.
Questioning indigenous people s 420	Maximum of eight hours unless extended, section 403.
Questioning of children s 421 - must advise of the legal aid youth Justice facilities, notify youth Justice of legal aid, must not question the child unless the child has spoken to a support person or a support person is present.	May be questioned for not more than four hours s 403(4).
Questioning of people with impaired capacity — 422 police officers must not question unless the person has spoken to or is with a support person.	Detention. May be extended section 406, questioning may not exceed eight hours and include the time the Magistrate considers reasonable time out
Questioning of intoxicated peoples — 423, police officer must delay questioning until reasonably satisfy the influence of the drug or substance no longer affects the capacity of the persons ability to understand their rights.	The order must state how much time is allowed as timeout, the time for which the person should be questioned which would amount to the total. The defendant can be detained for
	If a person is detained more than once within a 24-hour period, the total questioning. Is the aggregate total of the time questioned.