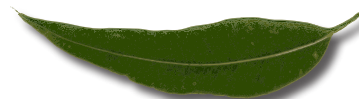

GUIDELINE

RECORDED INTERVIEWING



HCCREMS
HUNTER & CENTRAL COAST REGIONAL
ENVIRONMENTAL MANAGEMENT STRATEGY

A project delivered by the Hunter and Central Coast Regional Environmental Management Strategy (HCCREMS); a program of the Environment Division of Hunter Councils Inc.



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FOREWORD

The Recorded Interview Guideline is provided as supporting guidance to the HCCREMS model Compliance Assurance Policy and is designed to provide a consistent approach to the environmental regulatory framework implemented throughout the fourteen member councils of HCCREMS.

The model Compliance Assurance Policy provides councils with a position on the use of both proactive and reactive compliance assurance activities to manage compliance of the regulated community. **Figure 1** (below) displays the relationship of this guideline to the Regional Compliance Assurance Policy and other guidance documents.

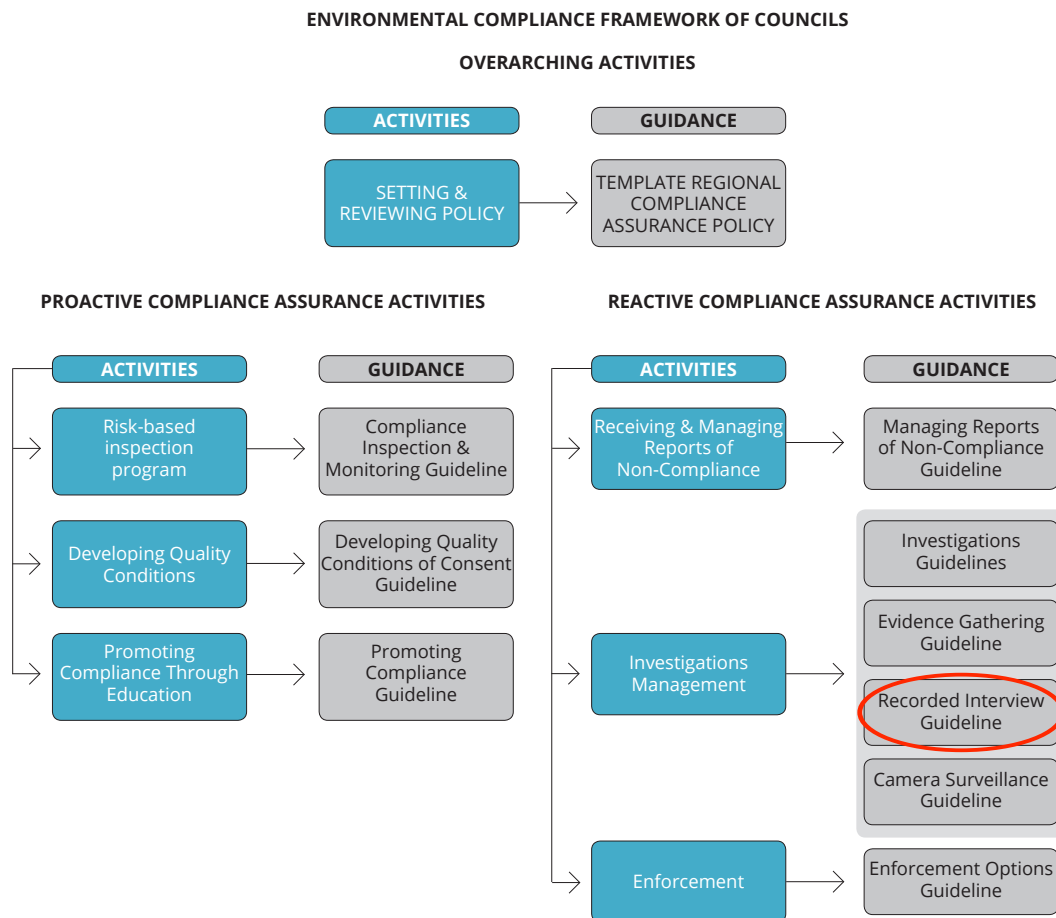


Figure 1:
Regional Compliance Assurance Framework

1. INTRODUCTION

This Recorded Interview Guideline provides guidance for council officers to undertake formal recorded interviews as part of an investigation. This guideline should be read and used in conjunction with the HCCREMS Evidence Gathering Guideline and the HCCREMS Investigations Guideline, which provide broader information about the investigative processes required prior to, and following, recorded interviews.

The Recorded Interview Guideline seeks to reduce the risk of enforcement action failing due to either incomplete interview evidence or interviews that have not been conducted in accordance with the necessary evidentiary standard for use in criminal or civil proceedings. The principal statutes considered in the development of the Recorded Interview Guideline are:

- Environmental Planning and Assessment Act 1979 & Regulation (EP&A Act).
- Protection of the Environment Operations Act 1997 & Regulations (POEO Act).

The Evidence Act 1995 and Interpretations Act 1987 are also important statutes in determining the admissibility of evidence and interpreting documents or provisions which are to be relied upon in any court proceedings. The Recorded Interview Guideline does not address:

- The much broader issues of evidence gathering and investigations. These issues are covered by the Evidence Gathering Guideline and Investigations Guideline.
- Advice on questioning or taking statements in official notebooks (these are covered in the Evidence Gathering Guideline).

Figure 2 is a summary of the Recorded Interview Guideline. It shows the steps in the process and what sections of this document include further detail about each step.

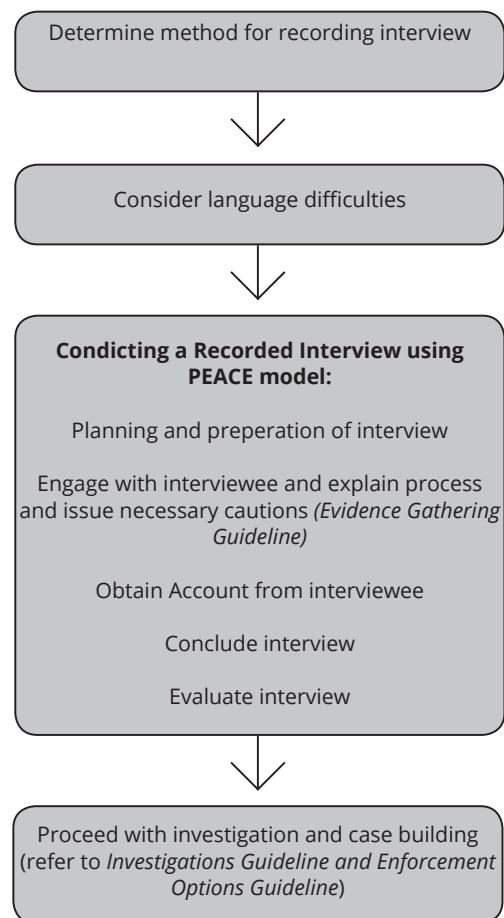


Figure 2:
Summary of the
Recorded Interview Guideline

2. CONDUCTING RECORDED INTERVIEWS

Where Council is considering a criminal prosecution, it is prudent for formal, recorded interviews to be carried out, in addition to any interviews which may have already been conducted on-site. This is particularly important if the offence is considered serious and/or Council's legal advisers consider that further evidence is required.

AUDIO RECORDINGS OF INTERVIEWS

Councils are empowered to conduct recorded interviews through both the EP&A Act and POEO Act (Section 118BA of the EP&A Act and section 203A of the POEO Act). Both Acts specify the following in relation to recording of interviews:

- An authorised officer may cause any questions and answers to questions given under this section/part to be recorded if the authorised person has informed the person who is to be questioned that the record is to be made (s118BA(5) EP&A Act and s203A(1) POEO Act).
- A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the authorised person (s118BA(6) EP&A Act and s203A(2) POEO Act).
- A copy of any such record must be provided by the authorised person to the person who is questioned as soon as practicable after it is made (s118BA(7) EP&A Act and s203A(3) POEO Act).
- A record may be made under this section despite the provisions of any other law (s118BA(8) EP&A Act and s203A(4) POEO Act).

It is recommended that audio recordings be conducted using one of the two following technologies.

Triple deck recording devices

A triple deck recording device (as opposed to a digital cd/dvd recorder) will record three identical original tapes of the interview simultaneously. The following procedures are recommended for handling the tapes at the conclusion of the interview:

- *Master copy* – is sealed in the presence of the suspect and signed. It should be secured back at the office so that it can be produced in evidence if necessary.
- *Working copy* – is retained by the investigator and used to make other copies for transcriptions services.
- *Interviewee copy* – is given to the interviewee (suspect or witness interviewed) immediately after the conclusion of the interview and a signed receipt is obtained

Digital recording devices

More commonly, officers will use a digital recording device that records the conversation in a digital format (i.e. an electronic file) for playback. A copy of the recorded interview should be made on a CD/disk and provided to the person interviewed as soon as is practicable after the interview.

It may be advantageous to have the person interviewed sign (e.g. in an official notebook) to acknowledge receipt of their copy. It is recommended practice that a *Master Copy* of the interview recording be generated and saved in the Council Evidence Management System. A *Working Copy* of the interview can be kept by the investigator and used to make other copies for transcription services.

TIPS FOR USING INTERPRETERS

In the interview the officer should:

- Introduce themselves and establish roles (including that of the interpreter).
- Seat the interpreter to one side.
- Explain how the interview will be done (e.g. interpreter is to use precise words used by both Council officer and suspect, if suspect asks a question the interpreter is to repeat that to the Council officer and not answer it. No advice is to be given to suspect by interpreter).
- Maintain eye contact with the person, if culturally appropriate.
- Speak in the 'first person'.
- Speak slowly and naturally, use short sentences and avoid using jargon.
- If control slips in the interview, stop it immediately and re-state the ground rules.
- Summarise periodically to ensure you and the person share the same understanding.
- Have the interpreter read the record of the interview to the person and sign it.

MANAGING LANGUAGE AND DISABILITIES ISSUES

When planning a formal interview, consider if there are likely to be language and disability issues. The assistance of an accredited and professional interpreter is suggested if the person (suspect or witness) who is being interviewed:

- Is unable to communicate in English.
- Has a limited understanding of English.
- Is more comfortable communicating in a language other than English.
- Is deaf, hearing impaired or speaking impaired.

To avoid bias and false evidence, do not use someone known to the suspect or a member of the suspect's family to interpret during an interview.

If someone is hearing or speech impaired do not interview them without an interpreter unless they agree in writing. Conduct the interview by showing them written or typed questions and allowing them to write or type their answers.

Using interpreters

Interpreters can be arranged through the Community Relations Commission (CRC) on phone: 1300 651 500 (24 hours a day). Ask for the interpreter's identification card or letter of authority issued by the CRC unless the CRC advised you at the time of the booking the interpreter would not have identification.

Conduct a pre-interview session with the interpreter and:

- Brief them about the matter being investigated.
- Tell them the objectives of the interview.
- Find out any cultural background information from them that would be relevant to the interview and how the interviewee should be addressed.
- Decide the method of interpreting, e.g. simultaneous or consecutive.

FORMAL INTERVIEW PROCESS

The PEACE (Plan, Engage, Account, Conclude and Evaluate) model is a commonly used approach to investigative interviewing and outlines the important stages of an interview.

Plan

Planning and preparation are essential to maximising the effectiveness of an interview. A template interview plan is provided in **Appendix 1**. Planning considerations include:

- Identifying an appropriate location – with access to facilities and resources, able to provide privacy and minimise distractions.
- Obtaining necessary equipment.
- Providing the interviewee with necessary information e.g. time, location, expected duration of interview, ability to bring legal representation or a support person (who is not connected to the investigation in any way).
- Developing a list of questions to cover.
- Organising any necessary exhibits and having facts of the case, lists of elements, proofs and defences on hand.
- Organising a corroborating officer to be present – to control equipment, take own notes, record times (e.g. of commencement), describe exhibits etc.
- Considering risks (such as personal safety) and risk management strategies.
- Determining the need for special assistance e.g. interpreter.

Engage and explain

Engaging with the interviewee and explaining the process of the interview will assist in preparing the interviewee and opening a dialogue.

The engagement phase is also the time to ask introductory questions and provide necessary warnings or cautions. Admissions made by the suspect will not be admissible as evidence against them in criminal proceedings unless the applicable warning or caution was given at the commencement of the interview. An appropriate warning script for interviews conducted under section 203 of the POEO Act or section 118BA of the EP&A Act is provided in **Appendix 1**. Please refer to the HCCREMS Evidence Gathering Guideline for specific details on when and which type of warnings and cautions are required.

The following matters should be told to the interviewee prior to commencing the interview. That is, prior to turning on any equipment to record the interview.

- “I am making inquiries in relation to (outline the allegation).”
- “I intend to ask you further questions about this matter.”
- “Issue applicable warnings or caution (i.e. applicable to legislation under which investigation is occurring).”
- “My questions and any answers given by you will be audio recorded as the interview takes place. Do you understand that?”
- “At the conclusion of the interview (or within “X” days of this interview) you will be given a complete copy of the audio recording.”
- “At the conclusion of the interview the copies of the audio recording will be signed in your presence. Do you understand?”

“**ADMISSIONS MADE BY THE SUSPECT WILL NOT BE ADMISSIBLE AS EVIDENCE AGAINST THEM IN CRIMINAL PROCEEDINGS UNLESS THE APPLICABLE WARNING OR CAUTION WAS GIVEN AT THE COMMENCEMENT OF THE INTERVIEW.**”

“

Account

At this point, recording equipment is turned on to allow the account of the interviewee to be recorded. Prior to asking questions to obtain the account, a number of statements and questions need to be covered for the purpose of the recording. These are:

- "This is an audio recorded interview between [your name] and [interviewees name] at [location] on [date]."
- "The time is now [state the time]."
- "For the purpose of voice identification I'll get each person present to state their full name."
- "Mr/Mrs/Ms [interviewee's name] Do you agree that apart from those persons who have just identified themselves, there are no other persons present in this room?"
- "As I have already explained to you we are making inquiries into [outline allegation very briefly]."
- "Do you agree that I also told you that my questions and any answers that you gave would be audio recorded as the interview takes place?"
- "Do you agree that I also told you that at the conclusion of the interview all copies of the audio recording would be signed in your presence?"
- "Do you agree that I also told you that you would be given a complete copy of the audio recording of the interview?"
- "For the purpose of this record of interview what is your full name, date of birth and address?"
- Re-issue any warnings or cautions (this could be done by saying Do you agree that I told you [warning or caution] and asked if you understand and do you agree that you said Yes [or whatever interviewee said].

The interviewee should then be asked for their account of what happened (e.g. In your own words, can you outline to me your version of what took place?). The interviewer should listen and record information provided on the 'who', 'when', 'where', 'what', 'why' and 'how'. If information on any of these aspects is not provided, open questions should be used to draw out further information. Open questions require more than a single (closed) answer such as 'yes' or 'no' and usually start with 'who', 'when', 'where' 'what' or 'why'. Importantly, open questions do not assume or lead the interviewee into providing a particular answer but allow an unrestricted and open response.

Reflecting and paraphrasing of interviewee answers and account can be used to encourage clarification of answers or to prompt elaboration. It is important to clarify the connections between events and asking for a recount of events in non-sequential order may assist with obtaining a true account.

Once the interviewer (and corroborating officer, if applicable) is sure that a complete account has been obtained, challenging can be used if necessary. Challenging involves presenting contradictory evidence or facts to the interviewee and asking them to explain the contradiction. Challenging can fulfil a natural justice requirement by allowing the interviewee the chance to explain the facts against them. It may be helpful to let the interviewee know this reason for challenging (i.e. for fairness and justice) prior to commencing this technique.

SUSPENDING THE INTERVIEW

IF YOU NEED TO SUSPEND THE INTERVIEW AT ANY TIME:

- SAY THAT YOU ARE SUSPENDING THE INTERVIEW AND STATE THE TIME
- STATE THE REASON FOR THE BREAK
- ASK FOR THE AGREEMENT OF THE INTERVIEWEE PRIOR TO SUSPENDING
- RECOMMENCE BY STATING THE TIME THE INTERVIEW RESUMED AND BY ASKING THE INTERVIEWEE TO AGREE THAT THE BREAK OCCURRED AS STATED.
- THERE IS NO NEED TO RE-CAUTION

Conclude

Conclude the interview once all lines of questioning have been covered.

Provide a summary of the interview using language such as “you have said...” and “it seems from your perspective...” in order to avoid incorrect endorsements of the interviewees account. This also allows the interviewee a final chance to disagree with how you have interpreted their account.

The following questions should be asked at the end of the interview just before you turn the recording device off.

- “Is there anything further that you wish to say about this matter?”
- “Are the answers you have given as recorded in this interview true and correct?”
- “Has any threat, promise or inducement been held out to you to give answers as recorded in this interview, other than the requirement for you to answer questions in accordance with the [insert EP&A or POEO Act if relevant]?”
- “The time is now [state time] INTERVIEW CONCLUDED.”

Evaluate

A brief evaluation of the interview by investigators involved should occur to assist in determining the next steps in the investigation and to reflect on skills and processes of those involved.

Consider:

- Did all equipment and recordings work as required?
- Was the location suitable?
- Was anything overlooked that should be attended to next time?
- What techniques or questions assisted with engaging the interviewee/building rapport? What didn't work?
- Was a complete account provided easily? Why, why not?
- Was the interview concluded satisfactorily?

3. REFERENCES AND FURTHER INFORMATION

NSW Ombudsman, 2004, Investigating Complaints, Available at:

NSW Police Force Code of Practice for CRIME, 2010, Available at: http://www.police.nsw.gov.au/about_us/policies_and_procedures/legislation_list/code_of_practice_for_crime

NSW Services Technology & Administration, 2009, Procedures Manual for the Mediation Services and Compliance Division, Available at: http://www.services.nsw.gov.au/sites/default/files/files/policy_docs/Energy%20&%20Utilities%20Procedures%20Manual%202009.pdf

HCCREMS, 2010, Cert IV Local Government Investigations training materials by ICETS, Available to HCCREMS members at <http://www.hccrems.com.au/Partners/Login.aspx?ReturnUrl=%2fPrograms%2fEnvironmental-Compliance%2fRegional-Compliance-Network%2fMembers-Only-Resources.aspx>

HCCREMS 2009, Workshop training materials by Russell Harrison, Available to HCCREMS members at <http://www.hccrems.com.au/Partners/Login.aspx?ReturnUrl=%2fPrograms%2fEnvironmental-Compliance%2fRegional-Compliance-Network%2fMembers-Only-Resources.aspx>