

Witness or Suspect? How to tell and what to do.

A Witness is someone that can provide information about an alleged offence with what they perceived with their senses (ie. what the person saw, heard, smelt, touched and tasted). For example:

- The neighbour that sees and smells dust and fumes coming from an industrial premises,
- The bushwalker that sees a person tipping a black liquid into a creek, and
- The taxi driver who sees a person dumping a broken lounge chair on the nature strip.

A Suspect is someone who can provide information about an alleged offence, similar to a witness, but has committed an act or omission that forms the alleged offence or was involved in the commission of the alleged offence. For example:

- The company operating an industrial premises, producing dust and fumes that is impacting neighbours,
- The mechanic disposing of used motor oil by tipping it into a creek, and
- The contractor hired to dispose of a broken lounge chair.

A suspect may also be:

- (a) a person who is not present when the alleged offence occurs but who otherwise assists another person/s to commit the alleged offence before or after the commission of the alleged offence;
- (b) a director or person concerned in the management of a corporation that is a suspect;
- (c) an employer who may be liable for offences committed by their employees or agents.

An investigator will have to use their judgement based on the information obtained to determine whether a person is a witness or a suspect. Sometimes, like in the examples above, this will be easy and other times, this may not become clear until some questions are answered. For example:

- An employee at the industrial premises responsible for the operation of the equipment,
- The owner of the car that was serviced by the mechanic, producing the used motor oil, and
- The person that hired the contractor to dispose of a broken lounge chair.

Where is the line between witness and suspect?

It is at the point where the investigator **forms a belief** that there is sufficient evidence to establish that the person has committed an offence.¹

What do you do when the witness becomes a suspect?

As soon as the investigator forms a belief that the person they are speaking to is a suspect, the investigator should consider:

1. Issuing them with a caution for voluntary answers, and
2. Proceeding as a voluntary record of interview (**ROI**).

If the person refuses to participate in a voluntary ROI, then the investigator may direct them to answer questions under s 203(1) of the *Protection of the Environment Operations Act 1997* (the **POEO Act**). However, any answers given by a person pursuant to a direction are not admissible in evidence against that person in criminal proceedings if they object to answering the questions.

A failure to do this, may mean that some, or all, of the information collected will be inadmissible as evidence against the person being interviewed.

¹ s. 139(2) of the *Evidence Act 1995*

There may be situations where the investigator is still unsure if the person they are speaking to is a witness or a suspect. In these cases, it is appropriate to seek legal advice. If the investigator cannot get advice immediately and wishes to continue speaking to the person, then the person should be cautioned (or directed if they refused to participate in a voluntary ROI). This minimises the risk of valuable information being ruled inadmissible as evidence later.

