

Australian Capital Territory

## **Children and Young People (Police Interviews) Policy and Procedures 2008 (No 1)**

Notifiable instrument NI2008–399

made under the

*Children and Young People Act 2008*, Section 143 Youth detention policies and operating procedures

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**1 Name of instrument**

This instrument is the *Children and Young People (Police Interviews) Policy and Procedures 2008 (No 1)*.

**2 Commencement**

This instrument is to commence on 9 September 2008.

**3 Policies and operating procedures**

Under section 143 of the *Children and Young People Act 2008*, I make the attached Police Interviews Policy and Procedures to facilitate the effective and efficient management of detention services for young detainees.

Martin Hehir  
Chief Executive

8 September 2008

# Police Interviews Policy and Procedures

## 1. Introduction and Purpose

The *Children and Young People Act 1999* and Division 3 of the *Crimes Act 1914 (Cth)* specify requirements for the interviewing of a child or young person by a police officer in circumstances where a police officer suspects or believes that the child or young person may have committed or be implicated in the commission of an offence.

Police may also interview a young detainee at a detention place for the purpose of receiving a complaint from a victim of an alleged criminal offence or take a witness statement from a young detainee who witnessed an alleged criminal offence.

The purpose of this policy and procedure is to establish a consistent operational framework for interviews conducted of a young detainee by a police officer at a detention place. The parts of this policy and procedure relating to interview friends apply only to young detainees who are under 18 years, and not adult young detainees.

The functions of staff under this policy and procedure are to assist in the facilitation of police interviews.

## 2. Legal Authority and Obligations

- 2.1 The *Children and Young People Act 2008* is the primary source of authority for the operations at a detention place. The provisions of the *Children and Young People Act 2008* must be complied with at all times by staff exercising functions at a detention place.
- 2.2 The policies and procedures provide specific directions to implement the provisions of the *Children and Young People Act 2008* and other relevant legislation, including the *Human Rights Act 2004*.
- 2.3 The legal authority for police interviews is contained in the *Children and Young People Act 1999* and the *Crimes Act 1914 (Cth)*.

## 3. Authorisations and Delegations

- 3.1 Staff must apply this policy and procedure.
- 3.2 If a police interview of a young detainee is occurring for the purpose of a criminal investigation into an alleged offence committed by the young detainee at or in relation to their custody at a detention place, the Senior Manager must ensure that a staff member reporting or investigating the alleged offence under the behaviour management and discipline policies does not exercise functions under this policy and procedure.

## 4. Definitions

**Interview Friend** is defined at section 23K of the *Crimes Act 1914* (Cth) and means, for a person under 18 years,

- (a) a parent or guardian of the person or a legal practitioner acting for the person;
- (b) if none of the previously mentioned persons is available—a relative or friend of the person who is acceptable to the person; or
- (c) if the person is an Aboriginal person or a Torres Strait Islander and none of the previously mentioned persons is available—a person whose name is included in the relevant list maintained under subsection 23J(1); or
- (d) if no person covered by paragraph (a), (b) or (c) is available—an independent person.

**Manager** refers to the Senior Manager at a detention place during normal business hours, or in the event this person is unavailable, the Operations Manager at a detention place, or in the event this person is unavailable, a Unit Manager or in the event a Unit Manager is unavailable, the Programs and Services Manager. Outside normal business hours, this refers to the on-call manager.

**Staff** refers to youth detention officers and other authorised persons. An authorised person is a person who has been delegated a power under the *Children and Young People Act 2008* or another Territory law and is exercising a function under the criminal matters chapters of the *Children and Young People Act 2008*. The positions which have delegations as authorised persons for the policies and procedures are: Executive Director (A), Director (B), Senior Manager (C/3), Acting Senior Manager (C/4), Operations Manager (E/7), Programs and Services Manager (E/8), Unit Managers (F/7), Team Leaders (G/6), Youth Workers (I/4), Casual Youth Workers (J/3), Case Managers (F/8), Aboriginal Liaison Officer (G/5).

## 5. Principles

### Legislative Principles

- 5.1 The *Children and Young People Act 2008* sets out the principles that must be considered by all decision-makers making decisions under the Act and this policy.

Section 8, Best interests of children and young people paramount consideration

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| <ol style="list-style-type: none"><li>(1) In making a decision under this Act in relation to a particular child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration.</li><li>(2) In making a decision under this Act otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people.</li></ol> |
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## Section 9, Principles applying to Act

(1) In making a decision under this Act in relation to a child or young person, a decision-maker must have regard to the following principles where relevant, except when it is, or would be, contrary to the best interests of a child or young person:

- (a) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced;
- (b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption;
- (c) the child's or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics should be considered;
- (d) delay in decision-making processes under the Act should be avoided because delay is likely to prejudice the child's or young person's wellbeing.

(2) A decision-maker exercising a function under this Act must, where practicable and appropriate, have qualifications, experience or skills suitable to apply the principles in subsection (1) in making decisions under the Act in relation to children and young people.

## Section 10, Aboriginal and Torres Strait Islander children and young people principle

In making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, in addition to the matters in section 8 and section 9, the decision-maker must take into account the following:

- (a) the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community;
- (b) submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the chief executive as providing ongoing support services to the child or young person or the child's or young person's family;
- (c) Aboriginal and Torres Strait Islander traditions and cultural values (including kinship rules) as identified by reference to the child's or young person's family and kinship relationships and the community with which the child or young person has the strongest affiliation.

## Section 94, Youth justice principles

(1) For the criminal matters chapters, in deciding what is in the best interests of a child or young person, a decision-maker must consider each of the following matters that is relevant:

- (a) if a child or young person does something that is contrary to law, he or she should be encouraged to accept responsibility for the behaviour and be held accountable;
- (b) a child or young person should be dealt with in a way that acknowledges his or her needs and that will provide the opportunity to develop in socially responsible ways;

- (c) a child or young person should be consulted about, and be given the opportunity to take part in making, decisions that affect the child or young person, to the maximum extent possible taking into consideration their age, maturity and developmental capacity;
  - (d) if practicable and appropriate, decisions about an Aboriginal and Torres Strait Islander child or young person should be made in a way that involves their community;
  - (e) if a child or young person is charged with an offence, he or she should have prompt access to legal assistance, and any legal proceeding relating to the offence should begin as soon as possible;
  - (f) a child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort and for the minimum time necessary;
  - (g) children, young people and other young offenders should be dealt with in the criminal law system in a way consistent with their age, maturity and developmental capacity and have at least the same rights and protection before the law as would adults in similar circumstances;
  - (h) on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community;
  - (i) it is a high priority that intervention with young offenders must promote their rehabilitation, and must be balanced with the rights of any victim of the young offender's offence and the interests of the community.
- (2) The decision-maker may also consider any other relevant matter.
- (3) The youth justice principles are intended to be interpreted consistently with relevant human rights instruments and jurisprudence.
- Example**  
Convention on the Rights of the Child
- (4) A reference in subsection (1) to a child or young person includes a reference to a person who is at least 18 years old but is being dealt with in relation to an offence committed, or alleged to have been committed, when he or she was under 18 years old.

### Operational principles

- 5.2 The operational principles underpinning this policy and procedure are:
- (a) acknowledgement of the psychological and emotional vulnerability of young detainees at a detention place;
  - (b) that staff at a detention place will support and assist the police in interviewing young detainees by providing an appropriate environment for this to take place and in accordance with this policy and procedure;
  - (c) that staff at a detention place take all reasonable steps to provide necessary support and assistance, including culturally appropriate assistance, to allow young detainees to participate fully in an interview;
  - (d) that staff will respect and support young detainees' rights to make informed decisions about their participation in a police interview; and

- (e) that security and good order at a detention place is given priority in operational terms.

## 6. Policy and Procedures

### Police Interviews of a Young Detainee at a Detention Place—as a suspect in a Criminal Investigation

- 6.1 Police may interview a young detainee at a detention place for the purpose of an investigation into a criminal offence where Police suspect or believe that the young detainee may have committed or be implicated in the commission of an offence.
- 6.2 When seeking to conduct an interview of a young detainee at a detention place, Police must contact the detention place as soon as possible to make this request.
- 6.3 Where possible, Police Interviews of young detainees at a detention place will be conducted between the hours of 9am and 5pm Monday to Friday, unless otherwise approved by the Manager.
- 6.4 A young detainee remains in the custody of the Chief Executive during a police interview, unless a Court Order or Warrant authorises a police officer to have custody of the young detainee.
- 6.5 Police may only remove a young detainee from a detention place for the purpose of conducting an interview in accordance with an authorising Court Order or Warrant. In this circumstance, an authorised copy of the Court Order or Warrant must be provided by the police officer to a youth detention officer. The youth detention officer must request that the Manager sights the Court Order or Warrant and confirms the legal authority for the young detainee to be removed from a detention place. The Senior Manager must be notified before the young detainee is removed from a detention place in accordance with the Court Order or Warrant.
- 6.6 For the purposes of police interviews, where a young detainee is a suspect in a criminal investigation, staff must comply with the *Children and Young People Act 1999* and Section 23K of the *Crimes Act 1914 (Cth)*.

### Police Interviews of a Young Detainee at a Detention Place—as a complainant or a witness

- 6.7 Police may interview a young detainee at a detention place for the purpose of receiving a complaint from a victim of an alleged criminal offence (e.g. assault) or take a witness statement from a young detainee who witnessed an alleged criminal offence.

- 6.8 Upon receiving a request from a young detainee to contact the Police, the Manager will ensure that this request is forwarded as soon as practicable to the Police to attend the detention place.
- 6.9 The Manager will provide any available information to the Police in relation to a young detainee's complaint (e.g. video surveillance, staff witness reports).
- 6.10 The Manager will make all reasonable efforts to arrange this interview in accordance with all sections of this Policy and Procedure and ensure, as far as practicable, that the young detainee is appropriately supported by a parent, person with parental responsibility for the young detainee, adult family member or independent person suitable to the young detainee, or legal representative suitable to the young detainee.
- 6.11 Any person attending as a support person under this section must act with the consent of the young detainee, be suitable to them and ensure they act in the best interests of the young detainee.

#### Rights of a Young Detainee

- 6.12 The Manager must ensure, as far as practicable, that a young detainee who requires support and/or assistance in order to fully participate in a Police Interview will receive the required support or assistance. This may include access to communication devices, interpreter services, sign language, appropriate information materials, translated information materials and/or a person of religious or cultural significance.
- 6.13 A young detainee has the right to refuse a Police Interview. The Manager must ensure that a written record of the refusal is documented and signed by the young detainee. A copy of this record must be placed on the young detainee's file.
- 6.14 If in the course of a Police Interview, a young detainee expresses their wish to refuse to participate any further in the interview, staff must immediately stop the interview. Staff must ensure that a written record of the refusal is documented and signed by the young detainee. If the young detainee does not agree to sign, the staff member must make a written record of this. A copy of this record must be placed on the young detainee's file.

#### Before Conducting an Interview

- 6.15 When seeking to conduct an interview of a young detainee at a detention place, Police must contact a detention place as soon as possible to make the request. During this contact the Manager must ask the Police to give maximum notice of the date and time of the interview.

- 6.16 The Manager must ensure an appropriate room is provided for the interview. The interview room should be private and prevent others (staff, visitors etc.) from overhearing the interview.
- 6.17 The Manager must ensure arrangements are made so that the interview can occur without disruption (for example, a young detainee will not be removed from an interview for the purpose of a routine lockdown period). However, the Manager must ensure a young detainee being interviewed receives appropriate breaks for food, rest etc. For example, if the interview occurs during a mealtime, provisions may be made for the young detainee to have a break from the interview to attend scheduled meal times.

#### Use of an Interview Friend

- 6.18 Staff must ensure that a young detainee (under 18 years) to be interviewed by Police is aware of the obligation for an Interview Friend to be present during the interview.
- 6.19 In compliance with the *Children and Young People Act 1999* and Section 23K of the *Crimes Act 1914 (Cth)*, staff must ensure that prior to an interview by Police, the Police have arranged for one of the following people to be present during the interview as an interview friend:
- (a) a parent or person with parental responsibility for the young detainee;
  - (b) an adult family member suitable to the young detainee;
  - (c) a legal representative suitable to the young detainee; or
  - (d) if none of the above are available, an independent person, who is not a Police Officer, who is suitable to the young detainee.
- 6.20 If the young detainee is Aboriginal and/or Torres Strait Islander, the Manager will ensure the young detainee is aware of their rights for the Interview Friend to be an Aboriginal and/or Torres Strait Islander legal representative or member of the Aboriginal and/or Torres Strait Islander community.
- 6.21 The Manager must ensure the requests of a young detainee regarding an Interview Friend or support person are conveyed to the Police to allow the appropriate arrangements to be made.
- 6.22 If a young detainee requests the involvement of a staff member as an independent Interview Friend, this must only occur:
- (a) as a last resort;
  - (b) if the staff member has consented to be involved;
  - (c) if the staff member has had no involvement in an investigation of the offence and/or reporting, investigation or decision-making regarding the alleged behaviour breach; and
  - (d) if their involvement has been approved by the Manager.



- 6.23 Staff must ensure that the young detainee is permitted to talk with their Interview Friend in private prior to the commencement of the Police Interview.
- 6.24 If a staff member attends a police interview as an independent Interview Friend under 6.22, the staff member's role and responsibility is to ensure the young detainee's welfare and rights are protected during the interview. The staff member must ensure that any information they obtain as a result of attending the police interview is not disclosed to any other person without lawful authority.
- 6.25 The Manager must ensure that interested staff have access to training on the role of an Interview Friend.

#### Interviews Without the Presence of an Interview Friend

- 6.26 Despite the conditions outlined in section 6.6, where there is an imminent risk of death or serious injury to a person, or serious damage to property, Police may conduct an interview of a young detainee without the presence of an Interview Friend. On these occasions, the Manager must ensure that a staff member suitable to the young detainee is available to observe the interview and terminate the interview if requested to do so by the young detainee or the Police Officer or if in the opinion of the observing staff member it is necessary to ensure the safety of the young detainee, the police officer or any other person.
- 6.27 In the event that Police seek to interview a young detainee in accordance with section 6.26 above, the young detainee still retains his/her right to refuse to participate in an interview. If a young detainee refuses to participate in an interview under these circumstances, the Manager must ensure that a written record of the refusal is documented and signed by the young detainee. A copy of this record is to be placed on the young detainee's file.

#### Police Firearms at a Detention Place

- 6.28 Police attending a detention place for the purpose of an interview must store their firearm upon entry in an approved weapons safe. The key to the safe will remain with the Police officer until the firearm is retrieved.
- 6.29 Under no circumstances are staff to handle a Police firearm.
- 6.30 Where a Police Officer refuses to store his/her firearm, the Manager must be immediately advised. The Police Officer is to be refused entry unless otherwise approved by the Manager.

### Counselling and Support

- 6.31 If during the course of a Police Interview a young detainee experiences emotional distress and a request is made by the young detainee, Interview Friend or support person for the young detainee's support, staff must make all reasonable attempts to arrange for support from an appropriate health professional or other suitable person.
- 6.32 In the event that support is unavailable, and considered appropriate, the Manager may stop or postpone the interview until support becomes available.
- 6.33 The Manager must ensure that the young detainee has access to appropriate supports following the completion of the interview.

### Records and Reporting

- 6.34 Any actions taken under this Policy and Procedure must be recorded according to the requirements set out in the Records and Reporting Policy and Procedures.
- 6.35 All required reports are the responsibility of staff and are to be fully completed before staff members complete their shift, unless otherwise approved by the Manager.

### Provision of Information, Review of Decisions and Complaints

- 6.36 Staff must ensure young detainees, their parents and all those with parental responsibility, family and visitors are provided with information about things that affect them in a timely manner and in a manner that is likely to be understood.
- 6.37 A young detainee, their parents and all those with parental responsibility, family and visitors are able to request a review of a decision or make a complaint about something that happens at a detention place, to detention place staff, the Public Advocate or the Official Visitor.
- 6.38 Staff must ensure that the Provision of Information, Review of Decisions and Complaints Policy and Procedures is followed in relation to the above.
- 6.39 Staff must engage with the person seeking a review of a decision or making a complaint in a respectful manner and ensure sufficient information is provided on the process of review or investigation. Staff must assist fully in any complaint or review process.

## **7. Forms and Templates**

Not applicable

## **8. Related Policies and Procedures**

Policies and Procedures under the *Children and Young People Act 2008*

Records and Reporting Policy and Procedures

Provision of Information, Review of Decisions and Complaints Policy and Procedures

## **9. Further References**

Dictionary for Policies and Procedures