

Australian Capital Territory

Children and Young People (Police Interviews) Policy and Procedures 2018 (No.1)

Notifiable instrument NI2018-442

made under the

***Children and Young People Act 2008*, section 143 youth detention policy and operating procedures**

1 Name of instrument

This instrument is the *Children and Young People (Police Interviews) Policy and Procedures 2018 (No.1)*.

2 Commencement

This instrument is to commence the day after notification.

3 Repeal

NI2015-391 is revoked.

4 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 people.

Bernadette Mitcherson
Director-General
Community Services Directorate
7 August 2018

Police Interviews Policy and Procedures

1. Introduction and Purpose

The purpose of this policy and procedure is to establish a consistent operational framework for interviews conducted of a young person by a police officer at a detention place. The parts of this policy and procedure relating to interview friends apply only to young people who are aged under 18 years, and not to young people who are aged 18 - 21 years.

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* (the Act) is the primary source of authority for the operations of a detention place. The provisions of the Act 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 Act and other relevant legislation, including the *Human Rights Act 2004*.
- 2.3 The legal authority for police interviews is contained in the Act and the *Crimes Act 1914 (Cwlth)* (Crimes Act). Section 252G of the Crimes Act specifies 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 person 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 person who witnessed an alleged criminal offence.
- 2.4 The policies and procedures provide specific directions to implement the provisions of the Act and other relevant legislation, including the *Human Rights Act 2004*.
- 2.5 Human rights that are protected by the *Human Rights Act 2004* and that are relevant to this policy and procedure are:

Section 19 Humane treatment when deprived of liberty

- (1) Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- (2) An accused person must be segregated from convicted people, except in exceptional circumstances.
- (3) An accused person must be treated in a way that is appropriate for a person who has not been convicted.

Section 20 Children in the criminal process

- (1) An accused child must be segregated from accused adults.
- (2) An accused child must be treated in a way that is appropriate for a person of the child's age who has not been convicted.
- (3) A child must be brought to trial as quickly as possible.

- | |
|--|
| (4) A convicted child must be treated in a way that is appropriate for a person of the child's age who has been convicted. |
|--|

- 2.6 The following international human rights standards apply in the ACT and are relevant to this policy and procedure:
- (a) United Nations Convention on the Rights of the Child
 - (b) United Nations Standard Minimum Rules for the Administration of Juvenile Justice
 - (c) United Nations Rules for the Protection of Juveniles Deprived of their Liberty
 - (d) Standard Minimum Rules for the Treatment of Prisoners
 - (e) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
 - (f) United Nations Declaration on the Rights of Indigenous People.

3. Authorisations and Delegations

- 3.1 All staff must apply this policy and procedure.
- 3.2 If a police interview of a young person is occurring for the purpose of a criminal investigation into an alleged offence committed by the young person 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 Policy and Procedures and/or the Discipline Policy and Procedures does not exercise functions under this policy and procedure.

4. Definitions

Aboriginal person is defined in the dictionary of the *Children and Young People Act 2008* as a person who is a descendant of the Indigenous inhabitants of Australia; who regards himself or herself as an Aboriginal or if the person is a child, is regarded as an Aboriginal by a parent or family member; and is accepted as an Aboriginal by an Aboriginal community.

Accredited person is defined in section 137 of the *Children and Young People Act 2008* and means the young person's Child and Youth Protection Services worker if the Director-General has parental responsibility for the young person, a representative approved by the Manager of an entity providing a service or program to the young person, a lawyer representing the young person, an Official Visitor, a Commissioner exercising functions under the *Human Rights Commission Act 2005*, the Public Advocate and the Ombudsman.

All staff refers to youth workers, authorised persons, other Directorate staff providing services at or visiting a detention place in a work-related capacity and staff of ACT Government agencies providing services to young people in a detention place.

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 that have delegations as authorised persons are: Executive Director, Senior Director (A), Director, Child and Youth Protection Services Operations (B), Director, Bimberi (B), Deputy Senior Manager (C), Operations Manager (D), Programs and Services Manager (D), Unit Managers (E), Team Leaders (F), Youth Workers (G), Family Engagement Officer (F), Sports and Recreation Officer.

Child means a person who is under 12 years of age (as defined under section 11 of the *Children and Young People Act 2008*).

Child and Youth Protection Service refers to the branch in the Community Services Directorate that is responsible for the Child Protection and Youth Justice functions of the *Children and Young People Act 2008* and related legislation.

Detention place means a declared detention place.

Direction means an instruction that may be given by a youth worker under section 146 of the *Children and Young People Act 2008* to a young person about anything related to the criminal matters chapters. A young person must comply with any direction given to the young person by the Director-General or delegate under section 184 of the *Children and Young People Act 2008*. Non-compliance by a young person with a direction is a behaviour breach and may be dealt with through the Behaviour Management Policy and Procedures or Discipline Policy and Procedures.

Director refers to the responsible senior executive in the Community Services Directorate.

Director-General means the Director-General of the Community Services Directorate with administrative responsibility for the *Children and Young People Act 2008*, unless otherwise specified in this policy and procedure.

Duty of care refers to the obligation by youth workers to take reasonable care to avoid injury or loss to a person whom it could be reasonably foreseen might be injured by an act or omission.

Family member is defined in section 13 of the *Children and Young People Act 2008* and means the child's or young person's parent, grandparent or step-parent; or son, daughter, stepson or stepdaughter; or sibling; or uncle or aunt; or nephew, niece or cousin. For an Aboriginal or Torres Strait Islander child or young person, a family member includes a person who has responsibility for the child or young person in accordance with the traditions and customs of the child's or young person's Aboriginal or Torres Strait Islander community.

Health professional is defined in the dictionary of the *Children and Young People Act 2008* and means a health professional registered under the *Health Professionals Act 2004* or someone who is a health professional registered under a corresponding law of a local jurisdiction within the meaning of that Act. A health professional may be a non-treating health professional who is

authorised to exercise non-treating functions or a treating health professional who is authorised to exercise treating or therapeutic functions.

Interview friend is defined at section 23K of the *Crimes Act 1914 (Cwlth)* 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
- (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)
- (d) if no person covered by paragraph (a), (b) or (c) is available, an independent person.

Manager refers to the Director of a detention place during normal business hours, or in the event this person is unavailable, the Deputy Senior Manager, or in the event this person is unavailable, the Operations Manager, or in the event this person is unavailable, a Unit Manager. Outside normal business hours, this refers to the On-call Manager.

Nominated person is a person nominated by a young person aged 18-21 years at the time of admission to whom the Director-General can give notifications under the *Children and Young People Act 2008*. The details of the nominated person must be entered in the Register of Young Detainees.

Parental responsibility is defined at section 15 of the *Children and Young People Act 2008* and means all the duties, powers, responsibilities and authority parents have by law in relation to their children, including daily care and long-term care responsibility for the child or young person. Each parent of a child or young person aged under 18 years has parental responsibility for the child or young person. A person may have or share parental responsibility for a child or young person under a court order under the *Children and Young People Act 2008* or another law or in the circumstances outlined at sections 17 and 18 of the Act.

Police refers to ACT Policing.

Significant person for a child or young person is defined in section 14 of the *Children and Young People Act 2008* and means a person (other than a family member) who the child or young person, a family member of the child or young person or the Manager considers is significant in the child or young person's life.

Special Management Direction is a specific instruction given by the Director, Bimberi relating to the need to implement or maintain special conditions for the management of a young person.

Staff refers to youth workers and other authorised persons.

Torres Strait Islander person is defined in the dictionary of the *Children and Young People Act 2008* as a person who is a descendant of the Indigenous inhabitants of the Torres Strait Islands; who regards himself or herself as a Torres Strait Islander or if the person is a child, is regarded as a Torres Strait Islander by a parent or family member; and is accepted as a Torres Strait Islander by a Torres Strait Islander community.

Young person is defined at section 12 of the *Children and Young People Act 2008* and means a person who is aged 12 years and older, but under 21 years, who is required to be held in the Director-General's custody. A young person who is 21 years or older cannot be detained at a detention place. Young person means the same thing as young detainee, and young person aged 18-21 years means the same things adult young detainee, in the *Children and Young People Act 2008*.

Youth worker is defined at section 96 of the *Children and Young People Act 2008* and means an authorised person to whom the Director-General has delegated functions of a youth worker under the criminal matters chapters. The positions that have delegation as a youth worker for the policies and procedures are: Director, Bimberi (B), Deputy Senior Manager (C), Operations Manager (D), Programs and Services Manager (D), Unit Managers (E), Team Leaders (F), Youth Workers (G), Family Engagement Officer (F), Sports and Recreation Officer. Youth worker means the same as youth detention officer in the *Children and Young People Act 2008*.

5. Principles

Legislative Principles

5.1 The Act sets out the principles that must be considered by all decision-makers making decisions under this policy and procedures.

Section 8 Best interests of children and young people paramount consideration

- (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.
- (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.

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 or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced
 - (b) the child or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption
 - (c) the child 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 principle

- (1) 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 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 Director-General 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 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 and young people 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 child or young person the opportunity to re-enter the community
 - (i) it is a high priority that intervention with children or young people must promote their rehabilitation, and must be balanced with the rights of any victim of the child or young person'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 (e.g. the *Convention on the Rights of the Child*).
 - (4) A reference in subsection (1) to a 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 following considerations inform this policy and procedures:

- (a) acknowledgement of the psychological and emotional vulnerability of young people at a detention place
- (b) that staff at a detention place will support and assist the police in interviewing young people by providing an appropriate environment for this to take place and in accordance with this policy and procedures
- (c) that staff at a detention place take all reasonable steps to provide necessary support and assistance, including culturally appropriate assistance, to allow young people to participate fully in an interview
- (d) that staff will respect and support young people's rights to make informed decisions about their participation in a police interview
- (e) that safety and security of a young person or other people at a detention place is given priority in operational terms.

6. Policy and Procedures

Police Interviews of a Young Person as a Suspect in a Criminal Investigation

- 6.1 Police may interview a young person at a detention place for the purpose of an investigation into a criminal offence where police suspect or believe that the young person may have committed or be implicated in the commission of an offence.
- 6.2 When seeking to conduct an interview of a young person 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 people 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 person remains in the custody of the Director-General during a police interview, unless a Court Order or Warrant authorises a police officer to have custody of the young person.
- 6.5 Police may only remove a young person 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 worker. The youth worker must request that the Manager sights the Court Order or Warrant and confirms the legal authority for the young person to be removed from a detention place. The Director, Bimberi must be notified before the young person 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 person is a suspect in a criminal investigation, staff must comply with Section 23K of the *Crimes Act 1914 (Cwlth)*.

Police Interviews of a Young Person as a Complainant or a Witness

- 6.7 Police may interview a young person 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 person who witnessed an alleged criminal offence.
- 6.8 Upon receiving a request from a young person 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 person'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 procedures and ensure, as far as practicable, that the young person is appropriately supported by a parent, person with parental responsibility for the young person, adult family member or independent person suitable to the young person, or legal representative suitable to the young person.
- 6.11 Any person attending as a support person under this section must act with the consent of the young person, be suitable to them and ensure they act in the best interests of the young person.

Rights of a Young Person

- 6.12 The Manager must ensure, as far as practicable, that a young person 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 person 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 person. A copy of this record must be placed on the young person's file.
- 6.14 If in the course of a police interview, a young person 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 person. If the young person 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 person's file.

Before Conducting an Interview

- 6.15 When seeking to conduct an interview of a young person 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 (e.g. staff, visitors etc.) from overhearing the interview.
- 6.17 The Manager must ensure arrangements are made so that the interview can occur without disruption (e.g. a young person will not be removed from an interview). However, the Manager must ensure a young person being interviewed receives appropriate breaks for food, rest etc (e.g. if the interview occurs during a mealtime, provisions may be made for the young person 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 person aged 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 2008* and Section 23K of the *Crimes Act 1914 (Cwlth)*, 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 person with parental responsibility for the young person
 - (b) an adult family member suitable to the young person
 - (c) a legal representative suitable to the young person
 - (d) if none of the above are available, an independent person, who is not a police officer, who is suitable to the young person.
- 6.20 If the young person is Aboriginal and/or Torres Strait Islander, the Manager will ensure the young person 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 person 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 person 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
 - (d) if the staff member's involvement has been approved by the Manager.
- 6.23 Staff must ensure that the young person 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 person'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 under 6.19, 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 person without the presence of an interview friend. On these occasions, the Manager must ensure that a staff member suitable to the young person is available to observe the interview and terminate the interview if requested to do so by the young person or the police officer or if in the opinion of the observing staff member it is necessary to ensure the safety of the young person, the police officer or any other person.
- 6.27 In the event that police seek to interview a young person in accordance with 6.26, the young person still retains his/her right to refuse to participate in an interview. If a young person 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 person. A copy of this record is to be placed on the young person'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 person experiences emotional distress and a request is made by the young person, interview friend or support person for the young person'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 person has access to appropriate supports following the completion of the interview.

Provision of Information, Review of Decisions and Complaints

- 6.34 Staff must ensure young people, people with parental responsibility, nominated persons, family and visitors are provided with information about matters that affect them in a timely manner and in a manner that is likely to be understood.

- 6.35 A young person, person with parental responsibility, nominated person, 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 a youth worker, Manager, the ACT Public Advocate, the Official Visitor, the Children, Youth and Families Complaints Unit, or the Supreme Court under the *Administrative Decisions (Judicial Review) Act 1989*.
- 6.36 Staff must ensure that the Complaints Management Policy and Procedures is followed.

Records and Reporting

- 6.37 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
- 6.38 All staff are mandated reporters under the *Children and Young People Act 2008*. A report must be made to Child and Youth Protection Services if a staff member reasonably believes that a young person who is aged under 18 years has experienced or is experiencing sexual abuse or non-accidental physical injury by any person.

7. Forms and Templates

NA.

8. Related Policies and Procedures

Policies and Procedures under the *Children and Young People Act 2008*
Complaints Management Policy and Procedures
Records and Reporting Policy and Procedures

Policies and Procedures in Child and youth Protection Services
Single Case Management Policy and Procedures

9. Further References

NA

10. Review

- 10.1 This policy and procedure will be reviewed at least once every two years.