

The interaction between the  
Australian Federal Police and  
Youth in the A.C.T.

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**Own Motion investigation**

Report pursuant to section 41A of the  
*Complaints (AFP) Act 1981*

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May 1997

**COMBRIDSMAN**

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## SUMMARY AND OVERVIEW

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The procedures for dealing with children involved with the criminal law in the Australian Capital Territory require special care which take into account their lack of maturity and the fact that they do not, and cannot, always act in a fully responsible manner. Sometimes children act in an unreflective way and without completely comprehending the consequences of their actions. Because of their youth they are likely to have difficulties withstanding pressure from adults in authority and are relatively powerless and vulnerable. Children are more likely than adults to have difficulty in understanding legal procedures.

Because of these concerns, certain protections have been developed and legislated for. These include legislation and guidelines relating to police procedures by the AFP in its ACT community policing function.

Despite the existence of these protections and guidelines the Ombudsman's office has received numerous complaints about the conduct of AFP officers when dealing with children. A range of recurring themes and issues were raised in these complaints. They are listed below.

Because of the importance of these allegations, the Ombudsman's office undertook an 'own motion' investigation into the complaints and the surrounding practices and procedures of the AFP.

### Issues Arising

Our investigation has highlighted a range of serious concerns relating to:

- breaches of law concerning
  - the interviewing of children in the absence of a parent (or other specified adults) and the failure to contact parents;
  - the practice of 'informal' questioning to eliminate suspicions;
  - the detention of children (without notification); and
  - the searching of children and/or their possessions;
- inappropriate care, for example, in the release of children (in the early hours of the morning without notification to parents);

- unnecessary use of handcuffs on children;
- allegations of unnecessary force;
- unlawful taking of photographs;
- failure to follow special guidelines related to the custody of aboriginals;
- allegations of assault;
- the manner and attitude shown towards children including swearing at them; and
- inappropriate actions of off-duty members.

Our investigation identified that there is a very limited operational understanding of the AFP's legal obligations towards children or of the reasons for these obligations. The responses given in the investigation of specific complaints indicated that there is widespread ignorance and/or abuse of the provisions.

The importance of such breaches was also frequently dismissed by members (and on occasions by their supervisors) as being of little consequence because they were 'very busy' or 'too busy' to comply with the law. Such an attitude ignores the fact that the provisions of law and guidelines protecting children have been enacted for particular reasons. It is not for an individual officer to ignore or change such laws. The community is also entitled to expect that the police will work within the parameters of the law.

Nor do I accept that there are real or practical problems in requiring officers to obey the law as it is now. Further, in some cases the failure to follow the correct and lawful procedures means that the information could not be used if criminal prosecution was to be contemplated.

Our investigations did, however, highlight not only widespread ignorance and misunderstanding of these provisions, but a culture which means that these provisions are routinely ignored or flouted.

I note that the recently introduced procedures in the new Magistrates Court cells should help obviate the possibility of and/or allegation of physical violence in the cells.

The other issues highlighted in this report relate to the procedures for interviewing, search and detention of children. The correct procedures need to be reinforced through both training and supervision.

I welcome the fact that AFP guidelines are currently being revised. However, if there is no provision for their promulgation except through computer access and no supervisory procedure to ensure that they are properly understood, they are likely to be ineffectual in regulating and changing police behaviour.

There appeared to be no structured, regular, on-going and monitored training process, particularly for local procedures training, to take into account changes in the law and/or to learn from the recommendations from Internal Investigations and/or Ombudsman investigations.

I am of the view that promulgation and explanation of such advice would be beneficial to prevent repeat misinterpretations or inappropriate behaviour.

Senior members and internal investigators in some cases appeared to have failed to have understood the legal requirements relating to the actions they have been asked to investigate or to conciliate. The opinions or conclusions of some investigating officers have been incorrect.

In my opinion, the complaints reviewed in this report were all preventable by:

- a knowledge of and an adherence to the law and police procedure; and

- a consideration and an acceptance by members of the AFP of the requirement for protection of children.

This investigation however, highlights that there is currently a widespread misapplication and misunderstanding of the law as it relates to children.

The specific cases of unlawful or inappropriate action profiled in this report are being followed through on a case by case basis.

I made the following recommendations to improve the current practices and procedures more generally:

### **Recommendation 1**

- That best practice guides be developed which cover all aspects of police practices concerning children. I consider that these should include not only a reference to the applicable law, but also a series of prompts to alert an officer to consider that a situation involving a child requires a response which is different from the norm. Guidelines could require a series of action steps, rather than be rigid rule books.
- The guidelines should expressly discourage police from eliciting information from children about an offence they are suspected of being involved in, in the absence of a person described in section 30(1)(d) of the Children's Services Act. They should refer to the need to take reasonable steps to notify a parent immediately a child is in detention and by the fastest way possible. The guidelines need to make clear that the requirements of any law pertaining specifically to children set a standard for police conduct and are not to be treated as mere rules of inadmissibility.

### **Recommendation 2**

- That consideration should be given to requiring operational officers to note the observance of the legal requirements in their notebooks or on checklists.

### **Recommendation 3**

- That changes in the law, new guidelines, policy statements, legal advice obtained during the course of an investigation, and matters which come to the attention of Internal Investigations, Employment Standards or management as having been misunderstood or ignored by members should be profiled more generally and used to reinforce correct procedures by the provision of guidelines for appropriate behaviour for all AFP members, not just for the members involved in a particular complaint. I consider that this should be done as a matter of AFP policy. It should not be left to the individual initiative of station superintendents.

**Recommendation 4**

- That the dissemination of matters listed in Recommendation 3 be monitored closely. Complaints made after education should be noted and regular reports detailing these should be prepared for the Commissioner and for the Ombudsman.

**Recommendation 5**

- That there should be continuing education and training for all operational officers in the laws relating to juveniles. This should be regular, monitored, structured and incorporated into the routine of police life.
- The content should give consideration to helping officers to deal philosophically and practically with what they see as the restraints of the law.

**AFP RESPONSE**

*I am pleased to say that the AFP supports my recommendations and is taking action to implement them, including:*

- *reviewing ACT Regional Guidelines;*
- *developing a first response handbook;*
- *incorporating ACT training into the National Education and Training program; and*

*AFP Education and Training are also looking at strategies to more regularly update members on changes in legislation and problem areas as the need arises.*



## INTRODUCTION

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In this investigation, the Ombudsman's office has examined the interaction between members of the Australian Federal Police (AFP) and children between the ages of 8 and 18 in the Australian Capital Territory. The definition of children comes from sections 27(1) & (2) of the Australian Capital Territory's Children's Services Act 1986.

To examine the interaction, the Ombudsman's office has reviewed some of the complaints the Ombudsman has received since 1994 (of which all but three were received after July 1995) and their resolutions, recommendations and further actions taken by the AFP in light of those recommendations. The Ombudsman's office has also consulted extensively with both federal and territorial government agencies and local community groups which deal with children who have come into contact with the AFP. It has referred to legislation providing for the protection of children when in contact with the police and it has sought specialist advice on some of that legislation. The Ombudsman's office has interviewed and been present at internal investigations interviews of members of the AFP, both in the course of investigating individual complaints and as part of this investigation.

## BACKGROUND

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### Number of recent complaints

The investigation was prompted by a number of complaints with recurring themes about the conduct of members of the AFP when dealing with children. Between 1 July 1995 and 30 June 1996, I received 24 complaints made by, or on behalf of, children out of a total of 794 complaints about the actions of members of the AFP. Between 1 July 1996 and 7 November 1996 I received 15 complaints concerning children and members of the AFP out of a total of 234 complaints about the AFP. Of these 39 complaints, I have made recommendations in 23 cases, and seven are still under investigation. Four were not followed up by the complainants, one was incapable of determination, two were unsubstantiated and two were resolved by conciliation.

In the same period members of the AFP in the ACT Region dealt with 2972 offences involving 2269 children, some of whom may

have been repeat offenders. This does not include contacts with children where charges were not preferred.

A range of issues and themes have been raised through these complaints.

Complaints have been about:

- the manner in which members of the AFP have dealt with children;
- the attitude shown by members to children;
- the appropriateness of members' actions in particular circumstances;
- allegations of assault by members on children in police custody;
- breaches of the law concerning interviewing, searching, detaining and photographing children;
- swearing at children by members;
- unnecessary use of handcuffs on children by the AFP;
- actions of off-duty members; and
- breaches of General Instructions and Regional Guidelines.

### **Children as a vulnerable group**

Legislation concerning the investigation of criminal offences involving children as suspects is different from legislation for the same purpose involving adults. This has arisen from a consideration and a commitment to various United Nations' conventions concerning the treatment and the rights of children.

The preamble to the United Nations Convention on the Rights of the Child (CROC) states that 'children, because of their vulnerability, need special care and protection'.

Article 40 of CROC asks governments to 'seek to promote the establishment of laws, procedures, authorities and institutions, specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law'. This is in recognition of the vulnerability of children (referred to in the preamble) by reason of their lack of experience and potential difficulties in withstanding pressure from adults in authority.

While CROC has not been incorporated into Australian law, it was ratified by the Australian Federal Government in December

1990. It provides a standard for the federal, state and territory governments in fulfilling their obligations to children. By ratification, Australia has recognised it has a commitment to action to ensure compliance with its provisions.

Added to the United Nations' concern for children as a vulnerable group there is a widely accepted body of publications and research pointing up this disadvantage because of immaturity, inexperience and relative powerlessness. Commentators have suggested that police may take advantage of these vulnerabilities to secure a successful prosecution (Blagg & Wilkie *Young People and Police Powers* Australian Youth Foundation Sydney 1995, 115ff.)

All Australian states and territories have specialist legislation for children regulating their contact with the police. The provisions relating to the AFP in the ACT are outlined in the following section<sup>1</sup>.

The United Nations Declaration of the Rights of the Child, incorporated into the federal Human Rights and Equal Opportunities Commission Act 1986 as Schedule 3, also specifies the need for the protection of children as a vulnerable group by reason of their immaturity. In the preamble it states that 'the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'.

The 18th report of the Australian Law Reform Commission (ALRC) entitled *Child Welfare* concerning the welfare of children in the ACT, in discussing the procedures for dealing with children involved with the criminal law, calls for 'special procedures which take into account their lack of maturity and the fact that they do not, and cannot, always act in a fully responsible manner. Sometimes children act in an unreflective way, without completely comprehending the consequences.' It goes on to state that '[B]ecause of their youth, they are usually dependent, malleable and vulnerable.' And that '[F]inally, children are more likely than adults, to have difficulty understanding legal procedures.'

It is my view that we also have to be particularly protective about a section of the community which, it is recognised, traditionally does not complain about its treatment at the hands of authority.

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<sup>1</sup> See pages 13 & 14

**Public perception**

I took into consideration the views of members of the community and officers of agencies which deal with young people who have been in contact with the AFP, members of the AFP itself, barristers and solicitors and children who were interviewed as part of the investigation. While I was pleased that there were some interviewees who thought the police were 'doing a good job' there is also a clearly-stated community concern from the majority of those interviewed about the interaction between members of the AFP and the youth of the ACT region.

A recurring theme related to the disparate attitudes shown by members and their lack of appreciation of how to deal with children. It is perhaps significant that the majority of community representatives interviewed did not wish to be identified, because of their need for ongoing cooperation with the police.

## **REGULATIONS REGARDING POLICE CONDUCT WHEN DEALING WITH CHILDREN**

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When dealing with children the AFP are expected to operate within the following internal guidelines and legislated protections.

### **Training for ACT members**

The AFP training centre at Weston conducts Local Procedures courses for new recruits after they have completed their general training at the AFP College, and before they work in the ACT Region. Also, ACT Familiarisation Courses are offered to members who have been non-operational for a period of time and who need to be provided with up-to-date training on changes in the law which have occurred since they were last operational. In January 1995, after the considerable changes to police powers in the amendments to the ACT Crimes Act 1900 and the Crimes Act 1914 (Cth), the Training division of the AFP produced comprehensive documentation of those changes and each of the approximately 400 operational officers received a copy. This guide also appears on the AFP mainframe data base which may be accessed by any officer at any time. The guide was updated in October 1996. No other training was provided to operational members concerning the changes in the law.

There is no training module specifically designed to take into account the different requirements of the law in respect of children.

### **Legislation**

That children who come into contact with the police have separate and different requirements of the legal process from adults and should be treated differently by it is recognised by the separate and different legislation in criminal law providing for them.

In the ACT, the Children's Services Act 1986, the ACT Crimes Act 1900 and the Crimes Act (Cth) 1914 regulate the taking of evidence, including interviewing, searching, and identification procedures, from children suspected of having committed an offence - whether investigated by state, territory or federal police agencies. The protections for children provided by the relevant legislation can be summarised as follows:

**i Section 30 Children's Services Act 1986**

Section 30 of the Children's Services Act 1986 states that, (except in emergencies to avoid danger of the death of, or serious injury to, any person or serious damage to property), if a child is suspected of committing or being implicated in the commission of a serious offence against persons or property, or if a child is under restraint, *a child shall not be questioned<sup>2</sup> or interviewed* or caused by a police officer to do anything in connection with the investigation of an offence, *except in the presence of another person* specified in the section (specifically, a parent, a relative, if acceptable to the child, a lawyer or some other appropriate person acceptable to the child.) If reasonable steps have been taken to secure the presence of such a person and they cannot be present within 2 hours of being requested to be present, then a police officer not involved with the case may be present.

**ii Section 32 Children's Services Act**

If a child is placed under restraint by a police officer, that officer is required forthwith to take reasonable steps to cause a parent of the child to be notified.

**iii Section 35 Children's Services Act**

If a child is charged at a police station, the person who so charged the child shall forthwith take all reasonable steps to cause a parent of the child to be notified of the charge.

**iv Section 36 Children's Services Act, sections 349ZP ~ 349ZQ ACT Crimes Act 1900 and 3ZJ & 3ZK Crimes Act (Cth).**

A child may not be photographed nor fingerprinted unless a magistrate has approved the taking of photographs or fingerprints. With some variations, the Crimes Act (Cth) also provides for the taking of identification material. The Children's Services Act provides that all reasonable steps must be taken by a police officer to cause parents to be notified of any identification action taken. Generally, both Crimes acts provide for the destruction of identification material within a certain period if there has been no prosecution, or conviction in respect of the offence in relation to which the material was obtained. The Children's Services Act does not provide for the destruction of photographs taken pursuant to its provisions.

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<sup>2</sup> Section 29 Children's Services Act 1986 states that 'to interview' includes to ask questions.'

**v Sections 349ZH - 349ZM ACT Crimes Act and sections 3ZF - 3ZI Crimes Act (Cth)**

These sections give the power and list the rules to frisk, ordinary and strip-search any person; they also impose restrictions on any searching of children.

**vi Section 23Q Crimes Act (Cth) 1914**

A person who is under arrest must be treated with humanity and with respect for human dignity and must not be subjected to cruel, inhuman or degrading treatment. In my view, this legislative requirement should apply equally to any person, including any child who is in contact with the police.

**vii Section 349V ACT Crimes Act 1900**

A police officer may require a juvenile to give his name and address if the officer suspects that the child can give information regarding an offence. The officer should tell the child the reason for the request.

**ACT Regional Guidelines**

As well as legislation, the AFP has its own guidelines concerning issues which could arise when dealing with children. There are also Standing Orders and General Instructions for the aid of AFP members dealing with Territory offences. The guidelines are being reviewed by the AFP.

## ISSUES

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As a result of the investigation of complaints and my own motion investigation, I have identified significant deficiencies in AFP practices in dealing with juveniles. The following case studies illustrate them.

### INTERVIEWING

#### **Questioning 13 year-old in the absence of parents: case study 1**

A 13 year-old boy was questioned at his home by two members of the AFP in relation to a burglary at a nearby house because he had been named as a suspect by a member of the public. The members justified their interview because they said a member of the public named the boy as a suspect and not a police officer as specified in the Children's Services Act. Therefore, they argued, they had not breached its provisions when they questioned the boy.

The sergeant who investigated the complaint accepted this explanation. He told the members that should similar circumstances arise in future, it would be advisable out of courtesy to contact parents and notify them that their 'child has been spoken to and reason'.

#### *Comment*

I advised the Commissioner that in my view a valid distinction could not be made between a person named by a member of the public and a police suspect, when that person was being questioned by the police. I said I was of the opinion that the officers had breached section 30 by asking the child questions in the absence of a person described in paragraph (d) of section 30(1). I have received a response from the AFP advising me that the officers involved have been spoken to about to the requirements of the section.

#### **Questioning to eliminate from suspicion: case study 2**

A 15 year-old girl and a female friend of the same age, were seen by two officers with property which the officers suspected might have been stolen. The girls told the officers they had found it and were taking it to the police station. They voluntarily accompanied the officers to the police station. They were not under arrest. One later complained that at the station she was



frisk-searched and questioned about her possession of the property. She was released after the police eliminated her from suspicion.

After her parents complained about this treatment, a sergeant wrote to the girl and apologised if she felt she was mistreated. The letter explained why the police suspected her and said that she was 'searched cursorily' as a matter of 'normal procedure' along set guidelines. (I have been advised that this is a reference to the procedure of a female police officer conducting the search). The letter went on to say that 'parents are required to be contacted and be present where a formal interview is to be conducted. In your case this was not required due to the officers discounting you as suspects after hearing all the facts.' The officer concluded that he believed the members acted reasonably in the circumstances.

Whilst the complaint was resolved by Workplace Resolution I am satisfied that the sergeant clearly misstated the law relating to the treatment of children.

#### *Comment*

There is no distinction between a formal interview and an informal interview in the Children's Services Act; no provision for questioning to eliminate a child from suspicion; and no provision empowering the police to routinely search a person coming to a police station. Therefore, in measuring the action against the requirements of the law, I do not consider that the officers' actions were either reasonable or lawful. I emphasise that the provisions of the Children's Services Act do not limit a police officer's common law right to question any person. Rather, the Act defines the circumstances in which it is necessary to notify a parent and to have them present. In this case the law was not followed.

### **Interview without parents present - police station: case study 3**

Mr E complained that his sons, one of whom was 15, had been taken to a police station and interviewed by the AFP about their involvement in a criminal offence before he arrived at the police station. The 15 year-old said that he had been asked questions about the offence being investigated, searched when he was first spoken to by the police and that at the station he was told to write out what had happened concerning the offence.

During the Internal Investigations' interview one of the officers agreed that he had made notes of the boys' responses prior to the parents arrival which 'mainly' went into 'the events of the

evening, the information that they provided' and that he had given them to the senior officer. It was not put to him in the investigation that he had asked the child to write out what had happened. The senior officer said that he recalled the notes but they have not been produced. One of the officers also stated that he might have asked questions to get their details 'and just perhaps their involvement'. He also stated that he had not discussed the offences with the boys. As well, he said that before his parents arrived, one of the boys had told him about a knife and that it had been used in the offence.

The parents themselves were convinced that the boys had been questioned before their arrival because when they were at the station one of the officers referred to the boys telling him a different story earlier.

*Comment*

In light of the evidence of the members involved and a number of other corroborating statements, I consider that the boys were questioned about an offence the police suspected they were involved in before their parents arrived and therefore were in breach of section 30 of the Children's Services Act. The evidence suggested but was not determinative that the senior officer was not present while this was done.

The internal investigator found that the police had acted reasonably. He said that in the circumstances of this case, as the police knew they were not going to be able to prosecute, their questioning was for the purposes of submitting a report they were required to write and as such, was merely a search for information to be put in their report. If that was the case, I do not understand why the police required the boys to attend the police station nor why they notified their parents. Certainly, neither of the officers stated that the reason they wanted to interview the boys was to gather information for a report.

In spite of the clear words of section 30, the internal investigator sought to differentiate between a suspicion an officer might hold that a child had committed a serious offence (and therefore the officer would follow the provisions of the Children's Services Act) and evidence that a child was 'merely involved' in an incident the police were investigating. It appears that the member considered that evidence of mere involvement entitled an officer to ask questions until he had formed a suspicion about the involvement, at which time he should comply with the provisions of the section. In my view, this distinction cannot be founded on the words of section 30 of the Children's Services Act. I have asked that the investigator be advised of my conclusion.

**Questioning by off-duty officer - work place: case study 4**

A 16 year-old boy on work experience was questioned by an off-duty officer who was requested by another agency to help it with its enquiries into the possible theft of a \$50 note. Although the officer was off-duty, he was in uniform and on his way to the agency anyway to 'have a friendly chat' when he was contacted by the agency to assist. He was not assigned to the job by Police Operations and he did not make a Computerised Online Police System (COPS) entry. The officer said he knew the provisions of the Children's Services Act and that he was just questioning the boy to see whether an offence had been committed as the person who reported the loss of the \$50 was 'pretty sure' it had been in his bag. He said he did not consider that he was interviewing the boy and that he was not a suspect, but he stated that somebody else considered the boy was a suspect. He said it was his intention to establish whether something had occurred 'to save wasting time'. He said if he did establish if something had occurred he would 'go through the proper channels at that stage'. He said he did not search the boy nor did he ask him to turn his pockets out, 'just if [he] would mind showing me what [he] had in [his] pockets' - and also would he mind if he looked into his bag or wallet. The boy showed him. Two other 16 year-olds were also questioned separately in the same way.

*Comment*

Internal Investigations considered ( and I agreed) that the officer had breached sections 30 and 32 of the Children's Services Act by interviewing the boy without a person described in section 30 present and by not taking steps to notify his parents as soon as he was detained. The AFP has reminded the officer of his responsibilities under the Act.

**Allegations of excessive force: case study 5**

One of the most recent complaints I have been notified of alleged that police used excessive force in arresting a 16 year-old girl for shop stealing. The girl and a friend the same age were detained at the shop involved and when the police arrived one of them demanded to be released if she was not under arrest. One of the attending officers said she made as if to walk out the door. The other officer had left the room. The first officer said he thought the situation was becoming uncontrollable and that the girl or someone in the room where he was with her may have been hurt by her actions. He said he put his arm across the door and the girl stopped but she challenged him to handcuff her. He said he handcuffed her with the assistance of the other officer, who had

returned, to try to calm her down. Her head was bumped by accident against a wall and she was left with a large bruise on her forehead. The internal investigators found that handcuffs had been used inappropriately on the girl. AFP guidelines restrict the use of handcuffs on children to situations where the officer involved believes that circumstances exist which make their use essential. The officer said the handcuffs were on for only about two minutes and the girl did calm down.

*Comment*

I acknowledge that this was a difficult situation for a young officer to deal with. However, I consider that the use of handcuffs was not essential in these circumstances.

**Further issues relating to interviewing and detention in this case**

The internal investigators also concluded (and I agreed) that one of the officers involved had interviewed the other girl at length before either attempting to contact her parents in accordance with section 32 of the Children's Services Act and before he sought the presence of a prescribed person at the interview pursuant to section 30. The officer said he was interviewing the girl before he knew that she was suspected of an offence. He accepted that she was under restraint as defined by the Children's Services Act but he said he did not realise that the provisions of section 30 would apply. He said that he would not have attempted to place in evidence any answers he had obtained before the formal interview as he knew they would be inadmissible.

Both officers requested details from the girls in order to comply with the provisions of section 32. One girl asked that she be allowed to tell her guardian herself as she thought she would be shocked if she was contacted by the police from the police station. The officer said that he agreed with the girl that he would not contact her guardian. The girl and her guardian did contact him the following day. However, the officer was clearly in breach of his statutory obligation. He has accepted that he could have accompanied the girl to talk to her guardian.

The other girl stated that her parents would not be contactable for another few hours. This officer said he tried to contact her parents by telephone but there was no reply. Then, he said he went off duty and he was not able to contact the parents until some days later.

The last issue in this case was that both officers interviewed the girls without a female officer present. Regional Guidelines require a female to be present if at all practicable when interviewing a female under the age of 18.

*Comment*

In my view, the provisions of the law relate to the legality of police actions and must be followed for the protection of children, not just for the purposes of the admissibility of evidence.

Also, I was particularly concerned about this complaint because I had been advised that members of the police station where this took place had taken part in a 'squad day' (a gathering of members from the one station for training purposes) before the incident and that the requirements of the Children's Services Act had been outlined at that meeting. However, I have been advised by the two officers involved in this case that they had not attended that squad day and that they had received no training on the requirements of the Children's Services Act.

**The operational police point of view**

Many officers interviewed expressed frustration and dissatisfaction about the legal requirement that children cannot be asked questions to eliminate them from suspicion without the presence of a person described in section 30.

They stated that they were unable to see how it could be reasonable to take a child to the police station for questioning in the presence of a person nominated in section 30 only to eliminate that child from suspicion. They also stated that they would much rather ask the child on the spot if they were involved and to be able to ask questions to eliminate the child if possible. Their view is that it should only be necessary to require the presence of the parents at a formal interview recording admissions or a confession by the child.

*Comment*

Such an approach may be easier from a police officer's perspective but certain protections for juveniles have been set out by legislation. It is not open to individual police officers to ignore those protections.

I also note that the practice of questioning to eliminate a person from suspicion will only be useful if as a result of the questioning the police can discount a person's involvement. If a child admits facts which tend to confirm a suspicion, and the provisions of section 30 of the Children's Services Act were not complied with, it is unlikely that such admissions would be admitted in evidence against the young person.

## DETENTION WITHOUT NOTIFICATION

The Australian Law Reform Commission<sup>3</sup> in discussing the reasons a parent or guardian should be present at the interview of a child under 16 stated that 'It has always been accepted that children need special protection in their dealings with the criminal law.' It said '...juveniles are under the guardianship of some adult or adults, usually the parents; thus police interrogation of juveniles involves other people to an extent that interrogation of adults does not. Secondly, and more important, it appears well accepted that children are, for the most part, less able to handle police interrogation than adults.'

It goes on to quote a leading United States case<sup>4</sup>, where the Supreme Court held that:

'...a fourteen-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police, that is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to protect his own interest or how to get the benefit of his constitutional rights.' The Commission went on to recommend that a parent be immediately notified when a child is under police restraint.<sup>5</sup>

### Parent not informed of son's arrest or detention: case study 6

A 16 year-old boy was arrested, interviewed, breath-tested, and charged with a breach of his bail conditions, without his parents being notified. The boy's parents were informed by a friend of their son's arrest approximately 5 hours after his detention. These allegations were not disputed by the sergeant who arrested the boy. He said, in effect, that he was too busy to contact the parents and he thought in any event that other officers were going to attend to it, and in respect of the breath-testing, he said it was not improper because the evidence gathered was not going to be used in court.

In his interview with Internal Investigations, the arresting sergeant said that the complaint was '...a nonsense...' and '...a waste of my time and your time for me to be here...'. He said '...to find myself here before the [sic] these nonsense complaints is something that I find deeply annoying'.

The sergeant said it was standard procedure to 'breathalyse when dealing with children' in regards to underage drinking. He saw

<sup>3</sup> ALRC 2 Criminal Investigation para 265

<sup>4</sup> Gallegos v Colorado, 370 U.S. 49(1962)

<sup>5</sup> ibid para. 267

'nothing wrong with asking him to blow in an alcometer.' He said it was acceptable because he was not going to use that information in court.

The sergeant's argument that he was not going to use the information in court was, in my opinion, contradictory with other information that he thought the juvenile *was* to be brought before the court because he had breached his bail conditions, one of which, according to the sergeant, was that he was not to drink alcohol, so the information about alcohol was to be used in court. In fact, it was not a bail condition.

When questioned about beginning an investigation, evidence gathering and information gathering from a suspect, the officer differentiated between them. He said that, 'The evidence I believe is for court. Information is something that everyone seeks with regards to any matter that they're dealing in.' He said that breath-testing the boy was '...obtaining the overall picture...'. He also said, '...we can't ring up a parent and say your son's here. They want to know why, what they've done, what they've been involved in...'. He said, 'We can't just hold someone and have no information...' and '...if you take, take it in the absolute strict meaning of that, (asking questions in the absence of a parent for example) if you will take the ridiculous idea that you can't obtain any information then the situation would occur where you have a juvenile and you would ring up the parents and say we've got your son here, what for...well nothing...because we're not allowed to obtain any information or anything, of course you're allowed to obtain information, evidence is a totally different matter...'. The sergeant, (now promoted to superintendent) also stated that he had contacted the parents from his home as well as talking to them for 45 minutes at the police station to explain the course of action taken by the police. He said he contacted the parents because he had been informed by a member at the police station that the boy's mother had been making further enquiries relating to her son being required to blow into a breath testing device.

#### *Comment*

I have quoted the sergeant in detail because I consider that his response shows a lack of knowledge or misunderstanding of the laws the ACT legislature has passed in respect of the treatment juveniles should receive from the AFP.

The internal investigator concluded that the complaints that the member had failed to advise the parents of the arrest and charging were substantiated and that he had caused the complainant's son and another boy to undergo breath-screening

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tests contrary to AFP Regional Instructions and provisions of the Children's Services Act. I agreed with these conclusions.

### **12 year old detained and questioned: case study 7**

A 12 year old boy alleged he was detained at the flat of an older acquaintance when it was searched under a search warrant issued pursuant to the Crimes Act 1900 in respect of stolen goods. The boy said he, his school bag, and two other juveniles were searched. He said he was taken back to the Watch House, put into a cell, where he yelled and made a noise and shouted that he wanted to make a phone call to his mother. He said he was told by a member of the AFP that his mother was at the Watch House and that when he left the cell he was shoved into a padded cell. Then, he said he was taken upstairs, asked questions about his involvement in the matters being investigated and was threatened with reincarceration when he denied any. As a result of the threat he said he made up a story about being present at a burglary, at which stage he said the police officer phoned his mother.

Earlier his mother, not knowing of the search, telephoned the flat to speak to her son. She said she was told by someone present that the boy was not there. The boy's older brother said he also tried to contact him and said he was given the same response. Listeners (civilians and police officers) in the room where the phone was answered suggested that conversations consistent with those allegations took place, but the police officer answering the phone said that when he asked the caller to give his name, that person hung up. He said he only had calls from a person asking to speak to the owner of the premises.

The officer in charge of the search and another senior officer stated that the boy was free to go at any stage until the police found some money, believed to have been stolen, in his school bag. There is also evidence available to suggest that the boy was searched (asked to turn out his pockets) as soon as the search of the flat began.

Another officer agreed with the internal interviewer that the boy was not allowed to leave the flat. He said that during the search the complainant had to be told to 'be still because he kept getting up and moving around the room'.

The police agreed that after ascertaining that a certain bag belonged to the 12 year-old, they searched it. They alleged that they found coins that they believed had been stolen in the bag. The boy was not under arrest but he was taken to the police station. The police stated that they could not leave him at the flat



as it was not his home. Later, at interview, two officers stated that he had been smoking marijuana and that it would have been dangerous to leave him at the flat. The boy's mother was not told this when she picked him up later at the police station, something which the officer in charge of the search said in submissions that he found 'absolutely incredible' and that the mother was '...either mistaken or being misleading in her recollection of events'.

The officer in charge said that the boy was at no time under restraint until the end of the search and until then he was free to go if he had asked to. Other police officers stated that they were of the view that the boy was under restraint according to the terms of the Children's Services Act, but that it was not reasonable that the boy's parent should have been contacted forthwith pursuant to section 32.

The AFP agreed that the boy was taken to the Watch House and put into a cell for juveniles. The internal investigator did not cover the issue of whether he was transferred to the padded cell because he was yelling and making a lot of noise but records indicated that he was at the Watch House for about an hour and a quarter before his mother was contacted and in the padded cell for about 30 minutes.

The officer who the boy identified as being the one who questioned him denied he questioned him. The investigator found the complaint about being detained without parents being notified forthwith was substantiated, and the complaint about the questioning was incapable of determination. I advised the AFP that in my view there was evidence to show that the boy had been interviewed in light of the Watch House tape (which I note with concern that the internal investigator told my officer was not of any help) which shows the Watch House sergeant stating in the presence of the boy and the identified officer that the boy was taken 'upstairs for interview' with that officer. There was also other evidence to which the video added weight.

In submissions the officer who was on the video agreed that the Watch House video recorded that he was taking the boy 'upstairs for questioning' but he denied it was for that reason.

#### *Comment*

In my view this case highlights a breach of the provisions of legislation particularly passed for the protection of children and again, a widespread lack of knowledge and understanding of the provisions. I consider that the police should have given consideration to notifying the boy's parents of his detention while they were still at the flat. The police officers all stated that it was not practical to do that and that they were busy. While the officer

in charge of the search stated that he thought he and his officers could not have done any better, I do not accept that is correct. There are no conditions attached to the requirement to attempt to notify a parent forthwith in the Children's Services Act if a child is under restraint, nor were any of the exemption conditions for interviewing a child without a described adult present applicable.

Further, I consider that the detention was exacerbated because the boy was locked in a padded cell. In my view, the fact that there was no attempt to notify the parents even after the boy was put into the padded cell, makes the detention more serious.

Although the internal investigator concluded that the officers had breached section 32 of the Children's Services Act, he also stated that the officers had been diligent, and that what they had done should not mean that any criticism should be levelled against them.

I disagree and consider that a serious breach of the Children's Services Act occurred in this case. I have recommended that the AFP consider paying compensation to the boy for his detention. I have also recommended that all of the officers present at the search should be reminded of their responsibilities in respect of the requirements of the Children's Services Act and the treatment of children, and that the internal investigator be reminded of the law relating to the treatment of children.

#### **Youths detained and questioned at night: case study 8**

Mr & Mrs X and Mrs Y complained that their sons aged 15 and 17 were detained at a local police station for four hours without them being notified, that they were questioned without the presence of an adult and that they were released at about 12.30 am without any effort being made to ascertain that they would be able to safely find their way home to a town in nearby New South Wales.

The boys said they had been picked up by two police officers and questioned about breaking into parked cars and attempting to siphon petrol from cars. They stated that they were taken to the police station where they were put into separate rooms and questioned there as well.

The COPS entry shows that they arrived at the station at approximately 9.40 pm. The boys and one officer stated that one boy was locked in a holding room. The senior officer was certain that this did not happen although he stated that the door of the room may have been unintentionally closed. It was also agreed by all except the senior officer that the boys were questioned about whether they were in the car park and what they did there.

The senior officer stated that the only reason the boys were taken to the police station was so that the identity of one of them could be checked in order to be able to issue traffic infringement notices (TINs) correctly. The boys left the police station at approximately 12.30 am after waiting for 7 TINs to be issued.

*Comment*

The complaints about breaches of section 32 (non-notification) and section 30 (interviewing without a parent present) were found substantiated. The actions were therefore in breach of sections 30 and 32 of the Children's Services Act. After hearing submissions from the senior officer I consider that he may not have intended to have questioned the boys about the car park offences. I accept that it may well have been the junior officer only as he admitted.

**Further issues**

Further issues arose from a consideration of the evidence of this complaint. The first is whether there is any power for the police to require a person to accompany them to the police station in order to check their identity; and secondly is whether the police should have any concern about the safety of children after release from their custody.

There are various acts which give the police the power to request the name and details of a person - adult or child. There is as far as I am aware nothing empowering the police to require a person to attend at the police station solely for the purpose of *verifying or checking* his identity, unless the person has been arrested for an offence. I have been advised by the internal investigator dealing with this case that a person may be arrested and taken to the police station if a person does not have their driver's licence with him. In this case, the boy had given the police his correct name, but he had no supporting documents and he was the driver of the motor vehicle. It also appeared that he had the same name as a person who had a criminal record in South Australia which the officers involved had been told about. It was not clear to me why the other boy should have been interviewed in a separate interview room to ascertain the older boy's identity. It is also not clear why the officer did not consider contacting the boy's family as the best identifiers. (I note that the New South Wales Ombudsman has found that it was unreasonable to arrest a driver for questioning to establish identity<sup>6</sup> and I am most concerned by the internal investigator's advice that a person may be arrested for not having his driver's licence with him.)

<sup>6</sup> Annual Report New South Wales Ombudsman 1995/6 p39.

In his submissions the senior officer said that the boys were not really arrested to check their identity but he accepted that they were detained for the purposes of the Children's Services Act. He said they were taken to the station when he would not let them leave in their car which he said was unsafe to drive.

He informed me that they were put into two different rooms because it was not clear who had driven the car and as it turned out they had lied to him, according to him. He said the delay in issuing the TINs was because a TIN cannot be issued without certain details and because the boy who was driving did not have his licence with him, he had to wait until details were forwarded to him from South Australia. The information was forwarded to Communications and by the time he tracked it down, it was 11.40 pm. The first TIN was issued at 11.50 pm. He said he realised now that the better course would have been to have mailed the TINs.

Also, he said he realised the internal investigator's and the Ombudsman's concerns and in hindsight would probably conduct himself differently and that he has learned from having his behaviour scrutinised.

While the boys were released from the interview and holding rooms at 10.40 pm, they said they were made to wait until about 12.30 am to receive 7 Traffic Infringement Notices (TINs). Although there is some doubt as to whether the boys should have considered that they were under detention while waiting for the TINs, they did remain at the station until the last one was issued at 12.24 am. The boys stated that one of the police officers at the front desk told them to ring their parents to collect them. The boys said that the phone was out of order. They said they were not told they could use another phone and one of them said he "had the shits" about everything and would not have asked anyway. In the end they left the station and found another phone booth and were able to contact family members. When the mother of one of the boys telephoned the station to complain, she said she was told that it was not the concern of the officers to see how the boys got home. The police officers said the boys had been offered the use of the phone but they declined and that also they had been asked if they wanted the police to contact their parents, but this offer was declined also.

#### *Comment*

It is my view that there was a duty of care for the police themselves to contact the parents prior to releasing the boys to ensure their safety at that time of night bearing in mind their age and where they lived. Staff of AFP Training have advised my

officers that members are taught that the welfare of the child is paramount. I also note that this situation would not have occurred if the police had abided by their obligations in the first place and had notified the parents as soon as the boys were under restraint.

In my opinion the case also illustrates the need for special protections for children: the fact that the 15 year-old said he would not have asked to have used the phone anyway is a clear example of how a young person may not look after his or her best interests when in police custody. I was pleased to note that the senior officer stated that if he was in that situation again he would have made sure that the boys had contacted their parents.

### **Aboriginal youths held without notification of parents or Aboriginal Liaison Officer: case study 9**

Mrs Z and Mrs W complained that their sons aged 15 and 16 had been taken to the City Watch House, locked in a holding cell for more than an hour and then released. The police agreed that this occurred. The police also agreed that they did not try to contact the parents of the boys. In a letter referring to the preliminary enquiries made, Internal Investigations stated that 'Due to the number of persons involved and the need to wait whilst an ambulance attended one of the victims of the assault, it took approximately one hour to attend to the persons in custody.'

#### *Comment*

There is an implication in the above quote that the police were too busy to notify the parents upon arrival at the police station. The failure to provide such notification is, however, in breach of the Children's Services Act.

A further issue arose: both boys were Aboriginal. The AFP has in place guidelines stating that a member taking an Aboriginal person (juvenile or not) into custody is to notify a representative of the Aboriginal Legal Aid organisation. The police agreed that this had not been done in this case. I asked that the members involved be reminded of their responsibilities under that procedure and under the Children's Services Act.

I have received a response from the investigator which stated that there has been some concern in the senior management of the AFP about both the issues of notification of parents and the Watch House procedures for Aboriginals and that all members will be reminded of their responsibilities in both these areas.

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**PHOTOGRAPHING YOUTHS IN CUSTODY:****Photographs taken without a court order: case study 10**

In February 1994, I received notification from Internal Investigations that a complaint had been made to the AFP on behalf of five Aboriginal boys who alleged they had been photographed when they were interviewed concerning an allegation of assault occasioning grievous bodily harm. They were in custody but not under arrest and they were photographed in an interview room in the police station. They did not object to the photographs being taken. The AFP did not obtain a magistrate's order pursuant to section 36 of the Children's Services Act but agreed that they did take photographs of four of the boys for the purpose of compiling a photoboard to show to witnesses.

Subsequently the complainant decided that the matter was not to be treated as a complaint but as a request for the return of the photographs. Internal Investigations requested another division of the AFP to return the photographs but the matter was referred to the AFP Legal Branch who in turn sought advice from the Australian Government Solicitor.

In the meantime, the AFP had already received advice from the Director of Public Prosecutions (DPP) dated 25 February 1994 which said that it would be lawful for the police to use a photograph taken without a suspect's knowledge in a photoboard, but it would be necessary to demonstrate that using such a photograph was not unfair. The advising also refers to the provisions of section 36 of the Children's Services Act and the need for a magistrate's order to take photographs of children.

An AFP minute written by a superintendent dated 21 April 1994 stated that advice had been received from the DPP that police were entitled to take covert photographs for identification purposes and to show to witnesses. The minute stated that none of the boys objected and that if they had, photographs of them would have been taken covertly. The minute stated that the photographs would not be given to the boys nor to anyone acting on their behalf. It said, 'They will continue to be used for identification purposes should these persons become suspects for further offences'. In a further minute written by the same superintendent on 28 June 1994, he gave advice that there were 'no legal ramifications and that the police involved had acted quite properly and commendably under difficult circumstances.' It said that the writer did not believe that the AFP should contemplate handing any of the photographs back as they were

the property of the AFP and that the boys had no legal right to demand their return. This recommendation was supported by a commander who said he saw no reason to criticise police action. The Assistant Commissioner receiving this advice noted that he was satisfied that the photographs were taken in quite proper circumstances and that he was not prepared to return them.

#### *Comment*

In my opinion the actions of the AFP were unreasonable. I am unable to see how the AFP could have arrived at this conclusion given the advice from the DPP referring to the provisions of section 36 of the Children's Services Act which had been breached and the photographs were not taken by the order of a magistrate. They were eventually returned to the children's lawyer following my further intervention and request for further advice to be taken on the matter. Even if the photographs had been lawfully obtained, I consider that it would be appropriate for the Children's Services Act to be amended to provide for the destruction of photographs taken pursuant to section 36.

In recent months, I have requested confirmation that the AFP takes photographs of juveniles only in accordance with section 36 of the Children's Services Act.

### **ALLEGATIONS OF ASSAULT**

I have received many complaints concerning allegations of assault on children by members of the AFP. I have included here some examples. The most unsatisfactory aspect of this type of complaint investigation is the fact that in many cases there are no independent witnesses or the witnesses all give different versions and there is no basis for choosing one version over the other.

#### **Assault or reasonable force?: case study 11**

A complaint was made by a 16 year-old that he was struck across the face by the driver of a police car after he complained that his handcuffs were tight. He said he was sitting in the back of the car with another police officer. He said that after he was hit, he kicked the driver's shoulder. The officer said after the boy kicked him, he swerved and stopped the car. He said the officer in the back seat was struggling to subdue him. He said he was not having any success so he 'leaned over and 'hit the boy in the face with an open hand' to push his head up against the side of the car door to 'get in control of him.' He also said he 'shoved' the boy in the face and held him back and he calmed down.

The officer who was in the rear of the car with the boy said that he was the one who subdued the boy and that the driver had no part in subduing him except for grabbing his legs.

The internal investigator found that the complaint was unsubstantiated. However, I disagreed because there are three different versions of what happened in the car and there is no basis for accepting one over the others.

#### **Assault or legitimate use of baton?: case study 12**

Another example arose after I received a complaint that a police officer had used excessive force or assaulted a boy when he was apprehended.

The boy said he was sitting in a car and a couple of mates were outside. He said two police officers arrived and his two friends ran away, chased by one of the officers. He said the other officer told him to get out of the car and lie on the ground which he did. He said he lifted his head to put his arm under it as he was lying on gravel. Then, he said, the officer struck him across the back with his baton or torch.

The officer said he told the boy to get out of the car. I accept he had lawful reason to do so. The boy did so and then tried to run away. He said he was able to grab him, but the boy struggled. The officer said he was in fear of being hit or the boy escaping. He said he swung with his baton, trying to hit the boy across the buttocks or legs.

The police doctor noted that the boy had a mark across his back consistent with a baton strike and said that such a mark could have been made if the boy was lying down and the striker was kneeling or if both the striker and boy had been upright. The internal investigator has concluded that the complaint was incapable of substantiation. I agree with this conclusion.

#### **15 year old punched in face when hand-cuffed: case study 13**

A 15 year old complained that a police officer had punched him in the face when he was handcuffed. The officer admitted doing this, but said that it was done 'on the spur of the moment' and in self-defence as he felt threatened because the boy attempted to head-butt him. He said he did not realise it was the boy he was punching as he struck out first before seeing who it was. He said he had received a hard head-butt to the cheek (the boy was 5'6" and the officer was 6'), and that he had acted instinctively and in self-defence. Other witnesses said that the boy did not connect with the officer's cheek. This case is still under investigation.



### **Alleged assault in Children's Court cells: case study 14**

In September 1994 I received a complaint from a 16 year old who alleged he had been assaulted by the informant in his case, in the Children's Court cells, just before he was appear to defend criminal charges.

The officer gave evidence to the court on a voir dire (and also to the internal investigator) that he required to speak to the child, but that he did not wish to interview him. He said that he did not assault the boy. Other evidence was consistent with the boy's allegation that he had been assaulted and the magistrate concluded that he had been. As a result evidence gained from the boy on another occasion by the officer (when the boy alleged he had been assaulted also) was not admitted at the hearing and charges were dismissed. The magistrate expressed concern because the officer had visited the boy before the hearing.

#### *Comment*

On the evidence available in the investigation process, (which was more than the Court had access to), Internal Investigations found, and I agreed, that the complaint relating to the assault was incapable of determination.

The internal investigator concluded that there were no guidelines nor policy concerning AFP members visiting prisoners in the cells before a hearing outside the interview situation. He recommended that consideration be given to developing a policy and issuing an instruction requiring police connected with a child's case to do so only in the presence of a parent, guardian or solicitor. I strongly support this conclusion. The recent provision of video recording facilities should contribute to preventing allegations of assault being made and should provide protection against allegations for both the police and the child.

The investigator suggested that the officer showed an error of judgment which left him open to the allegation of assault which resulted in doubt being cast on the evidence and serious charges being dismissed in court. I agreed. I have been advised that he has been counselled by his supervisor to remind him of his responsibilities.

#### **Further discussions with the AFP on this topic**

In March 1995 I endorsed the investigator's recommendation that the AFP should consider a review of regional policy for circumstances where a police officer requires to speak to a young person in the court cells, but where an interview is not to be conducted in the cells. In the same month I was advised by

Internal Investigations that they had referred the recommendation to the Assistant Commissioner ACT Region for advice regarding the review. I was told that I would be advised of the outcome of the recommendation and I received a follow-up letter in May 1995 from Internal Investigations stating that a further request would be made concerning the review.

At the end of 1995 my officers became aware that the guidelines concerning the Watch House and concerning children were to be amended, and sought a meeting with the officer in charge of redrafting the guidelines. In January 1996 my officers drew our recommendation in the above case to the attention of that officer, who agreed to include a clause to take account of the issue arising out of it. The officer said he had not been advised of our recommendation which we had made 8 months previously.

The revised Watch House guideline came into force on 1 April 1996. It states that '...a member other than a member performing duties in the Watch House is not to speak with a person placed in the police cells without the approval of the OIC of the Watch House. Where a person, other than a member performing duties in a Watch House, speaks with a person in police cells, the OIC of the Watch House is to note such an incident.' The guideline it replaced was similar.

A further guideline refers specifically to prisoners (children and adult) in Court cells. It states that members should avoid unnecessary contact with a person being held in any Court cells. It states that any members other than a member performing cell duties should ensure that surveillance equipment is working before entering the cell and if there is no electronic equipment to attempt to have an independent member present or have a handheld tape of any conversation or where practicable to have another officer not involved in the arrest of the person present during any conversation.

The children's guideline has not yet been reviewed.

In my view this does not address the policy review I sought and the prohibition is not strong enough. However, because of the procedures<sup>7</sup> put in place in the new Children's Court cells, I hope not to receive another complaint about this issue.

The Commissioner has since advised me that Act Regional Guidelines are being reviewed and will take account of my 'recommendations in respect of [police] dealings with children and the Watch House.'

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<sup>7</sup> See page 37

**Further complaint of assault in the Children's Court cells: case study 15**

On 10 April 1996, I received another complaint on behalf of a juvenile who alleged he was sworn at and assaulted in the Children's Court cells on 13 March 1996, by an officer who had arrested him the previous day. The officer (who was not the informant) stated that he had to ascertain the boy's identity as he had a number of aliases and that he had given him a false name the day before. In fact, the officer had already spoken to two women the boy was living with, also to his aunt and had charged him under his correct name and an "also known as". He also said he was bringing a message to the boy that one of the women who he lived with was there to see him.

He said that the boy became unruly and unbalanced and swore at him. The officer said he told him to get back in his cell and when the boy continued to yell at him grabbed him and pushed him inside his cell. He said he had serious fears for his, the boy's and anyone else's safety and that he had to get him into the cell. He said he swore at him to 'bring him down', because he was 'on the edge'. In submissions he said his primary objective was to calm him down (although he said at the interview that the boy swore about his wife and that he was 'not going to put up with that'). He said (in submissions) that he wanted to get him into his cell to discuss bail issues and to tell him he had visitors. The boy agreed he swore at the officer and said the officer swore back and held him around the neck. Another police officer who was present and close by did not hear the officer swearing nor did he see an assault on the boy, but the boy's solicitor who was just entering the area, said she heard the officer swearing and saying that if the boy did not do the right thing, he would make life hard for him. The officer denied saying this. The solicitor did not see an assault upon the boy.

*Comment*

In my opinion, these cases highlight the importance of procedures restricting the access of police in non-interview situations to children in the cells. It appears that had my earlier recommendation been promulgated promptly, this incident may not have happened. In my view, no officer should seek to speak to a juvenile in the court cells at all. I consider that strict interview procedures should be adhered to at all times.

As well, I do not consider that there are any circumstances where it would be appropriate or professional for any police officer to swear at a juvenile or any other person.

### **Procedure in the new Magistrates Court cells**

The new Magistrates' Court has been in use from July 1996. There is an officer in charge of the cells and full surveillance runs continually. There have been no complaints to the Ombudsman since the new cells have been in use and, it appears to me, little opportunity for complaints to arise.

I have been advised that no member may interview or speak to a detainee face to face, but must use an interview room in which the officer and detainee are physically separated. This obviates the possibility of allegations of physical violence. The officer in charge of setting up the procedures for the new cells has also directed that members on cell duty should not, if at all possible, enter or remain in the cells with a detainee.

Arrangements have been put in place to ensure that detainees and in particular juveniles spend as little time as possible in the cells, agreements having been reached with the appropriate agencies to transport the detainees regularly during the day rather than having one late pick-up time.

Surveillance tapes are kept for approximately 90 days. They are then reused. Each tape is numbered and listed in a register. This is not a formal arrangement and I am concerned that the opportunity may exist for the tapes to be wiped or reused within the 90 day period. A consideration of this point arose in case study 15 detailed above on page 34. The tape running at that time had been reused the day after the alleged assault; the officer who made that decision said there was no incident, therefore it was in order to do so. No complaint had been made at this time.

### **Training for cell duty**

Officers do not receive specific training for cell duty. They are expected to 'pick it up' from the supervisor they are working with. This leaves open the possibility of a situation when, for some reason, a supervisor or experienced officer was not on duty and a person with little experience is left in charge.

## **ALLEGATIONS OF INAPPROPRIATE MANNER IN DEALING WITH CHILDREN**

### **Manner of questioning: case study 16**

I have received complaints about the manner in which police officers have investigated matters involving children. One concerned the way in which a police officer dealt with an investigation of abusive telephone calls. The police had been investigating what they described as a series of particularly nasty harassing phone calls. A trace was put on the line of the recipient

and a call requesting takeaway food was intercepted. This particular call was not abusive. Investigations suggested to the police that a 15 year old boy might be able to help them with their enquiries. The police spoke to his parents, who were cooperative and brought the boy home from a friend's for questioning. The police said the interview was friendly and amicable. The parents, however, said they thought that the officer 'verbally threatened and abused' their son and that he 'simply would not accept that it was clear that the boy was not involved'. They said that the questioning of their son was 'like an interrogation' and that the officer 'repeatedly accused [their son] of lying'. Also, they said they separated the officer from their son for a while because of this. The officer in charge of the police station where the investigating officer worked, stated that while others would not go about their job in the same way, he felt the officer was effective.

The boy said he felt as if he was being made to admit to something he did not do and that the officer would not listen to him. As well, the boy's parents reported that the boy said he 'hate[d] the police' because of the way he had been treated. In my view, a policeman who leaves this impression should reassess the effectiveness of his manner in dealing with children.

#### **Unnecessary actions by the police: case study 17**

Mr O complained that police had been unduly forceful with his 16 year-old daughter when they placed her into the caged part of a police wagon in front of a bus full of her friends (his daughter thought they could have put her into the back seat of the vehicle with the police woman); had searched her and her property at a police station; had prevented her from leaving when they had obtained her name and had been rude and abrupt in their manner because she had no identification as required by the ACTION bus regulations to verify that she was correctly entitled to a discounted fare under her prepurchased ticket for travel on a bus.

The girl had been asked to leave the bus when she could not produce the necessary identification. She refused. The driver called the police. The police told the girl to get off the bus. She did so and went to walk away. The officer in charge asked for her name (as he was entitled to do under the Motor Omnibus Services (Amendment) Act 1994). The girl swore at him and following further bad language he grabbed her arm and put her in the rear of a caged police vehicle. They were a short way from Tuggeranong police station to where the officers then drove.

The officer in charge of the case, when he was interviewed, stated that the only reason the girl was taken to the station was to verify her identity. He said it was clear that she had not committed any criminal offence but she would not speak to the officers who attended the bus incident. He said he did not intend to arrest the girl for the bus offence, nor for her offensive behaviour. He, and the other officer who attended the scene, said that all they wanted was a name and that if she had given them a name, they would have let her go or driven to her to school or home.

That officer also said he was taking the girl into protective custody as he believed she was suffering from substance abuse (smoking marijuana) because of her mood swings. He did not document this, did not discuss it with the female officer with him and did not advise the adult who was contacted to fetch the child from the station that that was why he had taken her there. While he said he had advised the father that he thought the girl had been smoking marijuana, the father denied that was said in his conversation with the police. The other police officer did not corroborate her colleague's statement. For these and other reasons I am concerned about the reference by the officer about the possibility of substance abuse. I do not consider that there was any evidence to show that the girl should have been taken into protective custody.

The officers denied being forceful and stated that the search at the police station was routine. They said the girl's bag was also searched mainly in order to gain clues as to her identity. They also said it was for her safety.

#### *Comment*

I concluded that refusing to let her leave the police station was substantiated.

Even though the officers attempted to contact her father and then released the girl into the care of her deputy head teacher, it is not clear to me why they required the girl to accompany them for the purposes of verification of identity if she was not under arrest or was not going to be arrested. In my opinion it was inappropriate to put a 16 year-old girl in the rear of a caged police van in these circumstances. I consider that the actions of the AFP on this occasion were also unlawful when they refused to let her leave the police station after they had obtained her name.

Whilst I recognise that the officers could have exercised discretion appropriately and not taken any action against the girl, their conduct in unlawfully detaining her at the police station was imprudent.

**Forgotten and locked in police van: case study 18**

I received a complaint that a youth had been assaulted in the police cells, when he was being searched after having been brought to court by the AFP from Quamby. That complaint was found to be incapable of determination, but in the course of the investigation I found that he had been put into a police van in the cell area, said to be in view of the members on duty, because he had been yelling and kicking the walls and the police had to keep him quiet so as not to disturb the magistrate. The member who had placed him in the van, later took the van to a local shop to buy his own lunch. He locked the van and left it unattended with the child in it in a public area. He said he forgot that he had locked the child in the van.

*Comment*

The internal investigator did not consider that there was a breach of the AFP's duty of care, because regular checks had been carried out on the child, (even though the officer said he had forgotten the boy was in the van when he took it!). I disagreed and I recommended that the officer be reminded of his responsibilities in respect of children.

**Off-duty police officer arresting child: case study 19**

I have been notified of a complaint recently concerning a boy aged 13 being apprehended by an off-duty police officer. The boy said he was physically seized by a person (who later was identified as a police officer) and taken to the nearest police station. He said he struggled when the officer grabbed his shirt and fell and hurt himself. The officer said he was 'pretty sure' the boy had thrown a small hard lolly which had hit his wife on the cheek but he did not see the boy actually throw the lolly. No charges were preferred against the boy.

*Comment*

The officer was advised by the AFP investigator that 'he may have over-reacted in relation to the matter and that his actions may have been inappropriate under the circumstances.' I agreed with that assessment.

**Off-duty police officer arresting two girls: case study 20**

In another case, a girl aged 15 complained that she and a friend were physically seized when the daughter of the arresting off-duty police officer involved identified the girl and/or a person she was with as having assaulted her and her two friends. The girl was taken to a nearby police station where she was released

after the victims stated that she was not involved in the assault. I do not believe the officer identified himself, nor was he in uniform. He purported to make a citizen's arrest.

*Comment*

The internal investigator dealing with the case advised me that a citizen's arrest may be made validly when an offence is continuing and serious with an immediate threat to either persons or property. That did not apply in this case. In my view the offence was not continuing nor was there an immediate threat to persons or property. I have also been advised that an off-duty officer retains his police powers and may take action in respect of an offence at any time as a police officer. Also, he must identify himself as a police officer. Internal Investigations concluded that the officer used excessive force as he could have acted without the use of physical force. I agreed. In my view, the officer showed poor judgment in physically seizing the girls when he had the option of involving other police before he arrested them.

The issue of parading the two girls seized by the officer in front of the victims was not canvassed in the investigation. However, my view is that this action was in breach of section 30 which provides that an officer shall not cause the child to do anything in respect of the investigation of a complaint. I consider that such an informal identification, if positive, would have jeopardised any prosecution of the girls as that evidence, obtained in breach of the act, could have been inadmissible.



## **OTHER AFP CONTACTS WITH JUVENILES**

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Despite the problems shown in the above case studies, I am aware that the AFP has made efforts to foster a good relationship between children and officers in other areas.

Before July 1995 a specialist Juvenile Aid Bureau (JAB) existed to deal with any matter concerning children. In this way, the group of officers attached to the Bureau built up an expertise in the legal requirements for dealing with children, knowledge of the repeat offenders and their family circumstances and a method of dealing with the children. It also meant that officers who are now involved with the procedure of dealing with children from beginning to end were free to stay on the road and to deal with more cases.

Since it was disbanded, there is no specialist juvenile training nor section in the AFP to deal with issues involving the young people of the ACT.

### **School Liaison Officers**

Tuggeranong Police Station has organised a liaison scheme with every high school in its area, where an officer is attached to a school to make him or herself known to the pupils and staff, to speak to classes or the whole school, to be available for individual students who may request advice or counselling and to generally show a different face of the police to students who may have only associated the police with one role. This is a positive step. Although financial and staffing constraints have prevented primary schools from having their own individual officer, members do attend on an ad hoc basis as invited or required for some particular reason.

I have been advised that all the stations are now in the process of setting up a similar sort of arrangement with schools in their areas. The liaison function is not something which the individual stations are required to carry out as a matter of official policy but rather have been developed as an individual initiative by a station officer-in-charge.

### **Project Saul**

Project Saul started after the JAB disbanded as a result of one officer's frustration at seeing the children in his area on the streets with nothing to do, having parents asking for help with their child, after having tried all other available options and because

the JAB was shut down. The primary aim of the project is 'to foster and develop a better relationship between the youth and police'.

During school holidays the project runs a 5 day camp for boys and girls between the ages of 12 and 16 who have in some way or another come to police notice. During term time, it runs school camps where the participants are children who are nominated by their schools as having the potential to benefit from a character development or behaviour modification program such as the project runs.

The holiday camps are solely funded by sponsorship sought by the two officers who operate the camps, each child on a school camp pays \$30. The AFP provides funding and support by paying each officer participating a basic 8 hour shift wage and by agreeing it will release those officers wishing to participate from station duties for the period of the camp.

### **Police and Citizens' Youth Clubs**

There are two full-time (Turner and Tuggeranong) and one part-time (Narrabundah) Police and Citizens' Youth Clubs (PCYC) in the ACT with approximately 1000 members. They are run by 3 members of the AFP with ancillary help. The clubs aim to provide low cost sporting and recreational activities for young people. While catering for all ages, the clubs have other special programs directed at the young people of the ACT. For example one of the constables attends the Juvenile Justice Centre at Quamby each week to give the detainees fitness instruction and detainees nearing release date participate in club activities at the club. I was interested to hear that the detainees who have participated in this way have stayed with the club. The PCYC has initiated the attendance of a youth worker each Friday evening at the Drop-in centre at Narrabundah and it also shared the cost of funding the local youth team in the Touch Rugby competition last year in conjunction with other youth centres. The PCYC arranges and supports financially outings for groups of children to the coast or Wonderland for example, and the clubs are made available free of charge to children who may not be able to afford the usual fees (of \$25 a quarter to participate in any activity) and for children in such groups as the Adolescent Day Program. Last year the PCYC ran about 25 Blue Light discos with an average attendance of 200 young people.

The club management has been attempting to open a club in Belconnen for some years but has been constrained by lack of financial means. The members spoken to consider that the role

the clubs play in the community is beneficial for the community and that youth programs are helpful in fostering good relations between those involved and the AFP.

I acknowledge that these initiatives are producing positive results and reflect great credit on the AFP, on the individual officers who have instigated such programs and those who volunteer their time and skills, and on the management in approving and developing the policies which support these efforts.

I also note that individual officers consider that children who have been in contact with in these programs are much less likely to offend or reoffend.

### **Victim Liaison Officers**

The AFP has recently appointed two Victim Liaison Officers to assist victims of crime. Their role also includes assisting young victims. I endorse this initiative.

### **Aboriginal Liaison Officer**

Since my draft report was forwarded to the Commissioner, I have been advised that an Aboriginal Liaison Officer was appointed in March 1997. The function of this officer is to liaise with the indigenous community in attempting to reduce crime in general and juvenile crime in particular as well as to provide support to Aboriginal people in custody. The officer also provides assistance to officers in fulfilling the requirements of the AFP guidelines and the recommendations in the Aboriginal Deaths in Custody Report.