



NSW Police Force

OFFICE OF THE COMMISSIONER

Mr Geoff Provest MP
Legislative Assembly
Committee on Law Safety
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Provest,

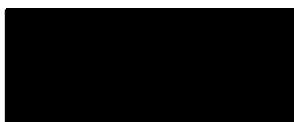
I refer to your letter dated 1 June 2018, addressed to Assistant Commissioner Joseph Cassar, Commander, Capability, Performance and Youth Command, regarding the Inquiry into the Adequacy of Youth Diversionary Programs.

Assistant Commissioner Cassar appeared as a witness at the Inquiry on 8 May 2018 and agreed to answer additional questions in writing.

Please find attached the responses of Assistant Commissioner Cassar.

Thank you for the opportunity to contribute to this Inquiry.

Your sincerely,



for **M J Fuller APM**
Commissioner of Police

21.6.18



Additional Questions for NSW Police Force

1. A young person must admit an offence to receive a caution from police under the *Young Offenders Act*. The Committee has heard that some police require the admission to be made on an Electronic Recording of Interview of Suspected Persons (ERISP).
 - Should the *Young Offenders Act* be amended to provide it is not necessary to use an ERISP or any other form of interview to record a child's admission?

Answer –

There is no need to amend the *Young Offenders Act* (YOA).

Section 8 of the YOA defines what offences are covered by the Act; they include summary offences and offences that can be dealt with under Chapter 5 of the Criminal Procedure Act (CPA).

Chapter 5 of the CPA applies to the offences listed in Tables 1 and 2.

Section 281 of the CPA only requires that Police electronically record admissions for Table 1 or Strictly Indictable offences in order for those admissions to be admissible. There is no legislative requirement to record admissions for Table 2 or Summary offences.

Likewise, there is nothing in the YOA that requires that Police electronically record an admission (referred to in 19(b)). The only requirement that comes close is in s.29(4) YOA, which provides that the person who gives a caution to a child may request the child being cautioned to provide a written apology to any victim of the alleged offence.

Police are not required to electronically record admissions for Summary or Table 2 offences under the CPA or the YOA. However, if police are recording admissions to Table 1 offences then the admission must comply with the CPA.

From an operational policing perspective, it may be that the OIC decides to record an interview with a Young Person - that decision may occur well before the OIC is in a position to make a determination under s.20(2) YOA, which might explain why police are deciding to record interviews with the Young Person.

2. The NSW Government submission to the inquiry mentions the Protected Admissions Scheme and the Cautioning Aboriginal Young People Protocol.

- Could you provide more detail about these? How do they operate?

Answer –

The following summaries are extracted from Police policy documents and provide more information regarding the Protected Admissions Standard Operating Procedures and the Cautioning Aboriginal Young People Protocol:

"A primary objective of the Young Offenders Act 1997 is to divert young offenders from the court system, where appropriate, through youth justice conferences; cautions; and warnings.

An impediment to police being able to give cautions or arranging a youth justice conference was found to be the reluctance of young offenders to make admissions to the offence, which is a precondition for police giving a caution or arranging a youth justice conference.

These procedures for the administration of Protected Admissions are designed to enable young offenders to make admissions to an offence whilst preserving their right not to provide self-incriminating evidence.

Where a young person does not admit an offence for which they would otherwise be considered for a Caution or youth justice conference, the police officer should:

- *In the presence of a person responsible for the young person or an adult who is present with the consent of a person responsible for the young person (under 14 years of age), or an adult chosen by the young person (14 - 17 years of age), provide the young person with a Protected Admission Information Sheet*
- *Alternatively, the Protected Admission Information Sheet can be given to the young person's legal representative for consideration*
- *If the Young person is immediately agreeable to making a Protected Admission, fill in the relevant parts of the Protected Admission Form and have the young person and their adult support person sign it*
- *If at a later time the young person's legal representative or adult support person requests that the young person now wishes to make a Protected Admission, arrange to meet with the young person, in company with their adult support person and/or legal representative to sign the Protected Admission Form. "*

Cautioning Aboriginal Young People Protocol

NSW Police Force developed a protocol to support and encourage the use of Aboriginal community members to assist in the cautioning of Aboriginal youth. The protocol provided a framework for Youth Liaison Officers to engage with and train respected Aboriginal community members to assist in the cautioning process the benefits are:

- *"A caution in which an Aboriginal community member takes a significant role, will have greater credibility with some young people and their parents. This is likely to lead to a lesser probability of repeat offending and it is likely to improve compliance through attendance at cautions in areas where non- attendance is problematic.*
- *It will enhance communication between police officers and members of the local Aboriginal community about juvenile justice issues and it empowers Aboriginal communities to take a role in responding to these issues.*
- *It helps to identify local services and individuals to support the young person who has committed the offence.*
- *It increases awareness by police officers and the local Aboriginal community about the Young Offenders Act, particularly with regard to the diversion of young people.*
- *It creates more time for those police officers that currently give cautions to attend to other tasks. This is especially significant in remoter areas where police officers have to travel great distances to deliver a caution."*

3. The Committee has heard complaints about excessive bail checks being conducted on young people.

- **Does the NSW Police Force have a policy about how bail checks are carried out?**
- **What safeguards does the NSW Police Force have in place to ensure bail checks are not excessive or unnecessarily intrusive?**

Answer –

NSWPF does not have a bail check or compliance policy. Section 20(A)(2)(d) of the *Bail Act 2013* stipulates that a bail condition cannot be more onerous than necessary to address the bail concern to which it relates.

Juveniles and adults who are subject to bail compliance checks are discussed at Tasking and Deployment meetings which are held on a regular basis in Police Area Commands and Police Districts.

There is a field on the NSWPF COPS database to record bail compliance checks, under Incident Type, Further Classification, Bail Compliance Checks, and a narrative is created outlining the details of the bail compliance check conducted. These COPS records are monitored by the Crime Coordinator, Supervisors and the Crime Manager, daily. This information is also presented/discussed at morning and evening briefings.

Additionally, safeguards for Bail Compliance checks are built into the legislation as Enforcement Orders. Enforcement Orders are an additional bail condition the court can make such as a curfew condition. Section 30(4) requires that an enforcement condition is to specify the underlying condition (e.g. curfew), the kind of directions police can make (ss (4)(a)) and the circumstances in which each kind of direction may be given (in a manner that ensures that compliance with the condition is not unduly onerous).

If there is an enforcement order in place and Police are not entitled to do any more checks under s 30, where Police still have a reasonable suspicion then they can do a check under s 81. The Reasonable Suspicion is another safeguard.

The bail condition is only to be imposed by the bail authority/court according to the safeguards in s 20A. Breaching of bail conditions is dealt with under s77.

4. The committee has been told there have been instances where Police, and Out of Home Care (OOHC) caseworkers, have either not been aware of the Joint Protocol to Reduce the Contact of Young People in Residential OOHC with the Criminal Justice System, or lacked an understanding of its operation.

- **What is the NSW Police Force doing to ensure that all Police are trained on the protocol?**

Answer –

A communication strategy was designed to mark the launch of the Joint Protocol (JP) in August 2016. The communication strategy included:

1. A state-wide (Nemesis) message from the then Corporate Sponsor for Youth, Mr Loy, informing all personnel of the JP taking effect;
2. A Police Monthly article (September), including case studies that were developed in consultation with FaCS.

In addition, the NSWPF developed a SMIT (Six Minute Intensive Training module) about the application of the JP. This training is available on-line to all NSWPF staff. Commanders, Senior Management Teams, and Police Education staff regularly rely on SMIT modules to relay brief education packages to staff during daily briefings and structured training.

The SMIT has been recently reviewed by the DV Team and will be modified and rolled out soon. The NSWPF are working with FaCS to establish the Operational Implementation Group which will deal with day to day local implementation issues as they arise. The JP is often a topic of discussion at NSWPF Youth Advisory Group meetings chaired by Assistant Commissioner Cassar. These meetings involve all region/command sponsors at the rank of Superintendent.

The DV Team has cross-referenced the JP in the Code of Practice for the NSWPF Response to Domestic and Family Violence and clearly articulated the distinction between the offences and related legislation. Police have reported on carers' lack of understanding of the application of the protocol. On multiple occasions, officers have had to explain to carers Police powers, diversion options and limitations regarding DV offences.

5. The Committee has heard that greater cultural competence is needed in the juvenile justice sector, as many clients are from an Aboriginal background.

- **What is the NSW Police Force doing to promote cultural competence amongst its officers?**

Answer –

Training about Working with Aboriginal communities is delivered on a cyclical basis to all levels of staff within NSW Police Force including Police and public servants.

The training delivers information and strategies to develop skills and knowledge to enable officers to engage in an effective and sensitive manner with Aboriginal people. The training discusses Aboriginal health issues such as otitis media and diabetes, Aboriginal cultural behaviours, interviewing strategies and language differences.

The focal point of the training is a DVD that was developed following a parliamentary inquiry into the Bowraville murders. The DVD follows the investigation into the Bowraville murders and examines the mistakes and misconceptions made by police. Scenarios and worksheets are used to measure the effectiveness of the training. From the large amount of positive feedback received from across the state, this training is assisting officers in NSW Police Force to better understand cultural differences of Aboriginal communities.

6. The NSW Bar Association has called for an expanded national network of Police Indigenous Liaison Officers and incentives to increase the employment of Indigenous Police Officer.

- **What is your response?**

Answer –

NSW Police Force does not offer incentives to Aboriginal people to join NSWPF.

However, NSWPF has committed to employ Aboriginal people through our current Aboriginal Employment Strategy (AES) 2015 – 2019. The AES seeks a minimum 4% representation of Aboriginal or Torres Strait Islander people in its workforce.

NSWPF currently employs 625 Aboriginal people or 3.5% of our workforce. NSWPF markets employment opportunities through various media, career days, information days etc. and has developed a range of promotional materials including brochures featuring current NSWPF Aboriginal employees.

In partnership with TAFENSW, NSWPF offers pre-recruitment programs to attract Aboriginal people and/or prepare them to study as student police at the NSW Police Academy. There are two main programs these are The Indigenous Police Recruitment Our Way Delivery Program. This Program is marketed specifically to adults considering employment with NSWPF. Over 100 IPROWD graduates have joined NSWPF since its first trial program at Dubbo in 2007. IPROWD classes are currently being delivered at Dubbo, Mt. Druitt and Nowra. A class at Tamworth is proposed to commence in July.

We also have the Miimi-djuul Program. This program is targeted at Year 10 Aboriginal High School students prior to their commencement of Years 11 and 12. 44 Aboriginal students are currently enrolled in the Miimi-djuul program across NSW. This program commenced in 2013 and take up by schools has been minimal.

7. Some stakeholders have told the inquiry that the age of criminal responsibility in NSW should be increased from 10 years to at least 12 years.

- **What is your response?**

Answer –

The age of criminal responsibility is the age at which Parliament has determined that a child is not capable of forming criminal intent. So, if anyone is below that age they are deemed, by law, of not being capable of criminal responsibility. But that does not mean that everyone over the age is deemed capable of forming criminal intent. If a child is between the ages of 10 and 14 years of age then they are presumed not to be capable of forming criminal intent and the prosecution are required to rebut that presumption. If the aim of changing the age of criminal responsibility is to provide protections for children who are not capable of forming criminal intent, the protections are already in place.

8. Some stakeholders have argued that children under the age of 14 years should only be able to be ordered to serve a term of imprisonment in exceptional circumstances.

- What is your response?

Answer –

Sentencing is a matter for the judiciary and not the NSWPF. However, as a general observation we note that Children's Court Magistrates (or District and Supreme Courts for serious matters) are extremely experienced and focus on the welfare of the child. However, when sentencing they must consider many things, including the safety of the community. By placing further restrictions on when they can sentence children to imprisonment (control orders) it could lead to situations where the safety of the community is placed at risk.