

Recommendations

REQUIREMENT FOR SUPPORT PERSON TO BE PRESENT

1. Section 464E of the *Crimes Act 1958* (Vic) should be repealed and replaced by new provisions that deal with the matters set out in Recommendations 2–15.
2. The legislation should provide that an investigating official may only question or carry out an investigation concerning a person under the age of 18 years who is in custody if a parent, carer or support person is present during the questioning or investigation.
3. The legislation should provide that an investigating official is not obliged to arrange for the presence of a parent or carer during the questioning or investigation of a young person in custody if:
 - a. notification to a parent or carer may result in escape of an accomplice or fabrication of evidence, or
 - b. the questioning or investigation is so urgent having regard to the safety of other people that it should not be delayed.

However, the investigating official must arrange for the presence of a support person in either circumstance.

4. The legislation should provide that an investigating official who proposes to question or carry out an investigation concerning a young person in custody must:
 - a. make reasonable attempts to contact a parent or carer and invite that person to be present during the questioning or investigation, unless it is unsuitable for that particular parent or carer to be present
 - b. if the parent or carer is able to attend, inform them that they may request a support person to be present, as well as themselves, during the questioning or investigation
 - c. arrange for a support person to be present during the questioning or investigation if:
 - i) the parent or carer does not wish to attend
 - ii) the parent or carer is unable to attend the place identified by the investigating official within a reasonable period of time
 - iii) the parent or carer requests that a support person be present, or
 - iv) it is unsuitable for a particular parent or carer to be present.
5. The legislation should provide that when an investigating official who proposes to question or carry out an investigation concerning a young person in custody has reasonable grounds for believing that a parent or carer who proposes to attend the questioning or investigation is likely to experience difficulties in understanding any statements made because of that person's lack of proficiency with English, or for any other reason, the investigating official must arrange for a support person to be present during the questioning or investigation of the young person.

PROCESS FOR SECURING THE PRESENCE OF A SUPPORT PERSON

6. The legislation should provide that if it is necessary for an investigating official to arrange for a support person to be present during the questioning or investigation of a young person in custody, the investigating official should be required to draw, without preference, from a pool of trained support persons.
7. The legislation should provide that if it is necessary for an investigating official to arrange for a support person to be present during the questioning or investigation of a young person in custody, he or she must do so by complying with the procedures devised jointly by the Child Safety Commissioner and the Chief Commissioner of Police, unless exceptional circumstances render it impossible to comply with those procedures.

8. Those procedures should be published by the Chief Commissioner of Police in the Victoria Police Manual and by the Department of Justice and the Child Safety Commissioner on their websites.

CONSEQUENCES OF FAILING TO PROVIDE A SUPPORT PERSON

9. The legislation should provide that if an investigating official questions or carries out an investigation concerning a young person in custody without a parent, carer, or support person present, any admission made, or other evidence adverse to the young person's interests gathered, must not be admitted into evidence unless the court is satisfied that:
 - a. there were exceptional circumstances that justified the investigating official proceeding in the absence of a parent, carer or support person; and
 - b. it would not be unfair to the young person to admit the evidence.
10. This provision concerning the exclusion of evidence should prevail over the terms of the *Evidence Act 2008* (Vic) concerning the admissibility of evidence.

ROLE OF PARENT, CARER OR SUPPORT PERSON

11. The legislation should provide that the role of a parent, carer or support person who is present during the questioning or investigation of a young person in custody is to:
 - a. provide support to the young person generally and in relation to the specific matters that follow, and that in doing so the parent, carer or support person is permitted to speak during any questioning or investigation
 - b. inform the young person about and assist them to understand the following matters:
 - i) the right to seek legal advice before answering any questions or participating in any investigation
 - ii) the right to not say anything during police questioning and to not participate in investigations, and that anything said or done may be used in evidence
 - c. support the young person to exercise these rights, if they wish to do so
 - d. assist the young person to understand any question that is asked
 - e. advise the investigating official whenever the parent, carer or support person believes that the young person may need a break or some form of assistance.
12. The legislation should provide that before questioning or investigating a young person in custody, the investigating official must provide the young person and the parent, carer or support person with a document in English or other appropriate community language that clearly and simply explains the role of the parent, carer or support person. This document should be devised jointly by the Chief Commissioner of Police and the Child Safety Commissioner.
13. The legislation should provide that before questioning or investigating a young person in custody, the investigating official must make reasonable efforts to explain the role of the parent, carer or support person to the young person.
14. The legislation should provide that before questioning or investigating a young person in custody, an investigating official must allow a young person in custody to communicate privately with his or her parent, carer or support person in circumstances where, as far as is practicable, their conversation cannot be overheard.
15. If an investigating official prevents the parent, carer or support person from performing the role described in Recommendation 11, or if the support person fails to perform that role, the legislation should provide that any evidence obtained during the questioning or investigation is presumed to have been obtained improperly or illegally for the purposes of section 138 of the *Evidence Act 2008* (Vic).

Recommendations

DEVELOPING A FRAMEWORK FOR THE SCHEME

16. The Child Safety Commissioner should have the following functions:
 - a. The Child Safety Commissioner should work with the Chief Commissioner of Police to prepare procedures for the attendance of support persons during police questioning or investigation of young persons (as provided for in Recommendation 7).
 - b. The Child Safety Commissioner should monitor the operations of the scheme and provide an annual report to the Attorney-General.

ADMINISTRATION OF THE SCHEME

17. The Secretary of the Department of Justice should be responsible for administering a statewide scheme of trained volunteers to act as support persons during police questioning or investigation of young persons in custody.
18. The Secretary of the Department of Justice should devise and conduct training programs for support persons.
19. The Secretary of the Department of Justice should accredit people who have successfully completed a training program for support persons.
20. The Secretary of the Department of Justice should devise minimum standards for the selection and accreditation of the volunteer support person, which should include a Working with Children Check.
21. The Secretary of the Department of Justice should liaise with the Public Advocate to devise procedures to support young people in custody with a cognitive impairment as a result of a disability during police questioning and investigation.

REPORTING MISCONDUCT AND A CODE OF CONDUCT FOR SUPPORT PERSONS

22. The Child Safety Commissioner, in consultation with the Chief Commissioner of Police and the Office of Police Integrity, should:
 - a. devise a protocol for reporting allegations made by young people to support persons or made by support persons of police misconduct during questioning or investigation of a young person
 - b. periodically review and refine this protocol with a view to improving the scheme.
23. The Child Safety Commissioner, in consultation with the Chief Commissioner of Police, should devise a Code of Conduct for support persons and a protocol for reporting alleged misconduct by support persons.

OTHER MATTERS

24. The role of independent persons under section 346 of the *Children, Youth and Families Act 2005* (Vic) should be considered by the Secretary of the Department of Justice as part of the Bail Implementation Project.