

Hearing: Operation Mantus

Before the Hon P Johnson SC, Chief Commissioner

Held at Level 3, St James Centre,  
Elizabeth Street, Sydney

On Wednesday, 14 December 2022 at 10.12am

**(Directions hearing)**

1 THE CHIEF COMMISSIONER: This is a public directions  
2 hearing by the Commission as part of an investigation  
3 entitled "Operation Mantus".  
4

5 At the outset, I should indicate that the Commission  
6 has made an order under section 176 of the Law Enforcement  
7 Conduct Commission Act directing that there be no  
8 publication of the name or image of persons who will be  
9 referred to today by codenames, unless and until the  
10 Commission varies such orders at some future time.  
11

12 As a result, there will be mention of persons today  
13 using those codenames. Certain police officers will be  
14 referred to as Officer [MTS1] through to [MTS5], the "MTS"  
15 being a short form for Mantus. A young person will be  
16 referred to as [YPM1] - "YP" for young person, "M" for  
17 Mantus. Those terms will be used throughout today's  
18 hearing and will be used in future examinations unless the  
19 Commission determines to vary the order made in some  
20 respects.  
21

22 In addition, an order has been made under section 176  
23 of the Act prohibiting publication of the name of the town  
24 where events under investigation are said to have occurred.  
25

26 The scope and purpose of the Commission's examination  
27 and hearing is to investigate allegations that excessive  
28 force was used by a member or members of the NSW Police  
29 Force at a location in northern New South Wales on  
30 11 September 2022 during the apprehension and arrest of  
31 [YPM1], a 14-year-old person, together with other issues  
32 arising from the detention of that young person in custody  
33 following his arrest.  
34

35 The purpose of today's direction hearing is to receive  
36 applications for leave to appear and to be represented  
37 either generally or for a limited purpose of making  
38 submissions on procedural issues including: the use of  
39 public and/or private examination as part of the hearing in  
40 Operation Mantus; the use of codenames for persons, with  
41 the question of identification of any person to be  
42 considered at a later time after hearing interested parties  
43 in that respect - I have already noted that codenames will  
44 be used today, and that will be the position unless the  
45 Commission forms a view that that order should be varied;  
46 next, the possible venue or venues for the taking of  
47 evidence and examinations and the making of submissions at

1 a later point in the process of Operation Mantus; next, any  
2 other procedural issues which are considered appropriate to  
3 be raised at this time.

4  
5 There will be no evidence taken today from any person.  
6 It is expected that the hearing and examination of  
7 witnesses will take place on dates to be fixed in February  
8 and March of 2023.

9  
10 Pursuant to section 64 of the Law Enforcement  
11 Conduct Commission Act, the Commission has appointed  
12 Mr Lester Fernandez of counsel to act as counsel assisting  
13 the Commission for the purpose of Operation Mantus, and  
14 shortly I will call on counsel assisting to address  
15 a number of matters.

16  
17 It is now appropriate to move to take applications  
18 under section 66 of the Act for persons to be represented  
19 for the purpose of today's direction hearing, which relates  
20 to procedural matters, or generally for the purpose of  
21 Operation Mantus.

22  
23 I should indicate that the Commission has informed  
24 a number of parties who may have an interest in today's  
25 direction hearing or generally for the purpose of Operation  
26 Mantus so that applications for leave may be made.

27  
28 At this point, I will call upon those appearing today  
29 to make an application for leave using, where applicable,  
30 the codename referred to in the list of names and codenames  
31 which I trust has been provided to the legal practitioners.  
32 So if we could commence, who would like to go first?

33  
34 MR T JONES: Chief Commissioner, my name is Jones and  
35 I seek leave to appear for Officer [MTS2].

36  
37 THE CHIEF COMMISSIONER: Yes, I grant leave to Mr Jones of  
38 counsel to appear on behalf of Officer [MTS2] for the  
39 purpose of Operation Mantus.

40  
41 MR M TAYLOR: Commissioner, Taylor, solicitor, I seek your  
42 authorisation to appear on behalf of Officer [MTS3].

43  
44 THE CHIEF COMMISSIONER: Yes, I grant leave to Mr Taylor,  
45 solicitor, to appear on behalf of Officer [MTS3] for the  
46 purpose of Operation Mantus.

1 MR R COFFEY: Chief Commissioner, my name is Coffey, I am  
2 instructed by Mr Condren, I seek your leave, Commissioner,  
3 to appear on behalf of the Commissioner of Police for  
4 today's directions hearing.

5  
6 THE CHIEF COMMISSIONER: Yes. I grant leave to Mr Coffey  
7 of counsel to appear on behalf of the Commissioner of  
8 Police for the purpose of today's direction hearing.

9  
10 MS S LEE: Chief Commissioner, my name is Samantha Lee,  
11 I am appearing for YPM1, seeking leave to appear for  
12 [YPM1].

13  
14 THE CHIEF COMMISSIONER: Thank you. I grant leave to  
15 Ms Lee, solicitor, to represent [YPM1] for the purpose of  
16 Operation Mantus.

17  
18 MR B HALL: Chief Commissioner, Hall, I seek authorisation  
19 to appear for [MTS1].

20  
21 THE CHIEF COMMISSIONER: Yes. I grant leave to Mr Hall,  
22 solicitor, to appear on behalf of Officer [MTS1] for the  
23 purpose of Operation Mantus.

24  
25 MR H WHITE: Commissioner, my name's White and I seek  
26 leave to appear on behalf of Officer [MTS4].

27  
28 THE CHIEF COMMISSIONER: I grant leave to Mr White of  
29 counsel to appear on behalf of Officer [MTS4] for the  
30 purpose of Operation Mantus.

31  
32 MR D NAGLE: Thank you, Chief Commissioner. My name is  
33 Nagle. I seek leave to appear today on behalf of the  
34 Police Association of NSW for the limited purpose of this  
35 directions hearing in relation to assisting in relation to  
36 issues under section 63.

37  
38 THE CHIEF COMMISSIONER: Thank you. I grant leave to  
39 Mr Nagle of counsel to appear on behalf of the Police  
40 Association of NSW for the purpose of making submissions at  
41 today's procedural directions hearing.

42  
43 MR G WILLIS: Chief Commissioner, my name is Willis.  
44 I seek leave to appear for Officer [MTS5].

45  
46 THE CHIEF COMMISSIONER: Yes. I grant leave to Mr Willis,  
47 solicitor, to appear on behalf of Officer [MTS5] for the

1 purpose of Operation Mantus.

2

3 Does that now complete the appearances? Thank you.

4

5 It is appropriate at this stage to request counsel  
6 assisting to provide a short opening concerning  
7 Operation Mantus. This is for the purpose of identifying  
8 a number of the issues expected to arise in the hearing and  
9 examinations which will proceed in the early months of  
10 2023.

11

12 In addition, counsel assisting will also refer to  
13 a number of factors which may bear upon procedural issues,  
14 including the use of public or private examinations as part  
15 of the hearing in Operation Mantus.

16

17 So I now call upon counsel assisting. Thank you,  
18 Mr Fernandez.

19

20 MR L FERNANDEZ: Chief Commissioner, Operation Mantus  
21 arises out of an incident which occurred in September 2022  
22 in northern New South Wales. The incident involved a young  
23 person who sustained injuries during the course of being  
24 apprehended by police and after which he was arrested. The  
25 young person was treated by ambulance and in hospital for  
26 a short period.

27

28 The incident took place at night. The young person  
29 was with other young people. Police were conducting  
30 proactive policing activities and they were in plain  
31 clothes. Police did not wear body worn video at the time.  
32 As a consequence, if there is any dispute about what took  
33 place when police apprehended and then arrested the young  
34 person, that dispute will not be assisted by electronic  
35 evidence, and one of the issues which it is expected will  
36 be examined at this hearing and in examinations is why  
37 police were not wearing body worn video at the time of the  
38 incident.

39

40 After being treated in hospital, the young person was  
41 taken to a police station. Police wished to interview him.  
42 He contacted a solicitor. His solicitor advised police in  
43 writing that the young person did not wish to be  
44 interviewed. However, police did interview the young  
45 person. An adult was present during the interview.

46

47 This second period of time in the chronology leads to

1 other issues which may be expected to be examined during  
2 the course of this hearing, including: what procedures  
3 were followed or were not followed in the conducting of the  
4 interview by police; and the young person's management in  
5 custody.

6  
7 I understand the Commission will seek submissions  
8 shortly about whether the hearing should be held in public  
9 or private or some combination of each, and I will shortly  
10 turn to the matters that may assist the Commission in its  
11 determination.

12  
13 The Commission will also be seeking submissions about  
14 the location of the hearing or examinations or part of the  
15 hearing and part of the examinations, as well as other  
16 procedural matters as they arise.

17  
18 The Commission has already made a number of pseudonym  
19 and suppression orders, and their continuing force will  
20 also be the subject of submissions in due course.

21  
22 It is anticipated that evidence will be taken at this  
23 hearing in February to March of next year. As indicated,  
24 the location and venue of the hearing is still to be  
25 determined.

26  
27 I'll now turn, then, to a procedural issue which  
28 arises at the outset, and that is whether the hearing, or  
29 part of the hearing, is to be held in public and private.

30  
31 By way of assistance to the Commission, I will turn to  
32 the objects of the Act as well as to a specific provision  
33 in the Act, section 63, which assists the Commission in  
34 determining whether a public or private hearing or public  
35 or private examinations should be conducted. I will also  
36 turn to some of the applicable principles.

37  
38 So I will start, then, with section 3 of the Law  
39 Enforcement Conduct Commission Act and I will ask for that  
40 provision to be placed up on the screen.

41  
42 Section 3 sets out the objects of the Act, and there  
43 are a number of objects. I will refer to three in  
44 particular. The objects of the Act include the following,  
45 subsection (b):

46  
47 *To provide for the independent detection,*

1           *investigation and exposure of serious*  
2           *misconduct and serious maladministration*  
3           *within the NSW Police Force and the Crime*  
4           *Commission that may have occurred, be*  
5           *occurring, be about to occur or that is*  
6           *likely to occur.*

7  
8           Subsection (d):

9  
10           *To prevent officer misconduct and officer*  
11           *maladministration and agency*  
12           *maladministration within the NSW Police*  
13           *Force and the Crime Commission by -*

14  
15           *(i) providing for the identification of*  
16           *systemic issues that are likely to be*  
17           *conducive to the occurrence of officer*  
18           *misconduct, officer maladministration and*  
19           *agency maladministration; and*

20  
21           *(ii) assessing the effectiveness and*  
22           *appropriateness of their procedures*  
23           *relating to the legality and propriety of*  
24           *activities of their members and officers;*  
25           *and*

26  
27           *(iii) encouraging collaborative evaluation*  
28           *of opportunities for, and implementation*  
29           *of, desirable changes in such procedures;*  
30           *and*

31  
32           *(iv) making recommendations with respect*  
33           *to education and training about prevention*  
34           *of officer misconduct, officer*  
35           *maladministration and agency*  
36           *maladministration.*

37  
38           The third object I will refer to is in subsection (g),  
39           which is:

40  
41           *To foster an atmosphere in which*  
42           *complaints, provision of other information*  
43           *about misconduct and independent oversight*  
44           *are viewed positively as ways of preventing*  
45           *officer misconduct, officer*  
46           *maladministration and agency*  
47           *maladministration.*

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In order for the objects of the Act to be achieved, there needs to be a substantial degree of public confidence in the work of the Commission. One way in which this public confidence is achieved is by the work of the Commission, when possible, being done in public. Public confidence is also served when the work of the Commission, when necessary, is done in private.

I will turn very shortly to deal with the specific provisions in section 63 of the Act, but I note that those considerations must be understood in the context of the Act as a whole, giving attention to the functions of the Commission in the ways by which the Act provides it is to, or may, undertake its tasks.

I will turn, then, to section 63 of the Act. I will firstly refer to subsections (1) through to (4). Section 63 deals with the holding of public and private examinations.

Subsection 63(1) states:

*An examination (or part of an examination) may, subject to subsection (2), be held in public or in private.*

Subsection (2) states:

*An examination (or part of an examination) may only be held in public if the Commission decides that it is appropriate.*

There is a note to subsection (2) and the note deals with authorisation by the Chief Commissioner in consultation with the other Commissioner about this particular issue, public and private examinations.

Subsection (3) states as follows:

*Despite the Commission deciding to hold an examination (or part of an examination) in public, the examining Commissioner may decide to hear closing submissions or any other part of a hearing in private.*

Subsection (4) states:



1  
2           Subsection (3) extends to a closing  
3           submission by a person appearing before the  
4           examining Commissioner or an Australian  
5           legal practitioner representing such  
6           a person, as well as to a closing  
7           submission by an Australian legal  
8           practitioner assisting the Commission as  
9           counsel.

10  
11           I pause there to note that what is reposed in this  
12           Commission is a statutory discretion, and it is  
13           a discretion with considerable flexibility.

14  
15           Subsection (5) sets out a non-exhaustive list of  
16           factors that the Commission may take into account in  
17           determining whether or not to hold an examination, or part  
18           of an examination, in public, and it requires the  
19           Commission to consider the following:

20  
21           (a) the benefit of exposing to the public,  
22           and making it aware of, serious misconduct;

23  
24           (b) the seriousness of the allegation or  
25           misconduct matter being investigated;

26  
27           (c) any risk of undue prejudice to  
28           a person's reputation (including by not  
29           holding the examination in public);

30  
31           (d) whether the public interest in exposing  
32           the matter is outweighed by the public  
33           interest in preserving the privacy of the  
34           persons concerned;

35  
36           (e) whether holding the examination (or  
37           part of the examination) in public may  
38           encourage a person with information  
39           relevant to the investigation concerned to  
40           appear before the examining Commissioner or  
41           to otherwise assist the Commission's  
42           investigation.

43  
44           The factors to be considered and the nature of the  
45           discretion that is to be exercised have been considered in  
46           a number of cases, and I will take the Commission to two  
47           cases in particular.

1  
2           The first is the *Independent Commission Against*  
3 *Corruption v Chaffey*. The citation is (1993) 30 NSWLR 21.  
4 This was a judgment of the Chief Justice, Chief Justice  
5 Gleeson, as he then was, the President of the Court of  
6 Appeal, as his Honour then was, President Kirby, and  
7 Justice Mahoney.

8  
9           The Chief Justice at page 29 of the report noted -  
10 although dealing there with a different Commission, the  
11 Independent Commission Against Corruption - as follows:

12  
13           *The Commission was entitled and, indeed*  
14 *obliged, to take into account the public*  
15 *interest in deciding whether, and to what*  
16 *extent, the hearing would be in public.*

17  
18 That is the same exercise that this Commission will  
19 determine. The Chief Justice referred to that statutory  
20 discretion being one reposed in the Commission.

21  
22           At page 30, the Chief Justice went on to say this:

23  
24           *Considerations of public interest which*  
25 *support an open hearing, and which were*  
26 *taken into account by the Commissioner,*  
27 *include the need for public confidence in*  
28 *the operations of the Commission, and the*  
29 *assistance to the investigative process*  
30 *which might be gained from the giving of*  
31 *wide publicity to the allegations being*  
32 *investigated. It was for the Commission to*  
33 *determine the weight to be given to such*  
34 *considerations.*

35  
36           *The Commissioner also had regard to the*  
37 *private interests involved, including those*  
38 *of the respondents. It is important to*  
39 *note that those interests are not*  
40 *necessarily and in all respects best served*  
41 *by hearing the evidence of [a particular*  
42 *witness in that case] in private.*

43  
44           The Chief Justice then went on to refer to the  
45 importance of public confidence by reference to what had  
46 taken place in the United Kingdom and a report in relation  
47 to the Royal Commission on Tribunals of Inquiry in 1966.

1 The Chief Justice referred to the following from that  
2 report:

3  
4 *... that it is "of the greatest importance*  
5 *that hearings before a Tribunal of Inquiry*  
6 *should be held in public. It is only when*  
7 *the public is present that the public will*  
8 *have complete confidence that everything*  
9 *possible has been done for the purpose of*  
10 *arriving at the truth" ...*

11  
12 Justice Mahoney, in a separate judgment, referred to  
13 the principles by reference to the formation of the  
14 Independent Commission Against Corruption. His Honour  
15 referred to a serious evil that parliament had determined  
16 existed, which was corrupt conduct in the public life of  
17 New South Wales, and the particular remedy, which was the  
18 granting to an independent executive body of a wide power  
19 to investigate and make reports in respect of that conduct  
20 suggested as corrupt.

21  
22 Once again, making due allowance for the different  
23 purposes of the Independent Commission Against Corruption  
24 and this Commission, his Honour made the following  
25 statement:

26  
27 *The remedy which the Parliament has chosen*  
28 *involves, inter alia, four things: the*  
29 *Parliament authorised a public*  
30 *investigation of conduct impugned as*  
31 *corrupt conduct; it recognised that public*  
32 *investigation could cause harm to those*  
33 *investigated; as a means of balancing the*  
34 *good of public investigation against the*  
35 *good of private rights, it provided*  
36 *a discretion to hold the investigation*  
37 *wholly or in part in private; and it gave*  
38 *that discretion to an administrative body,*  
39 *the Independent Commission Against*  
40 *Corruption ...*

41  
42 *In this case, the Commission did what the*  
43 *Parliament required of it. It weighed the*  
44 *good of public investigation against the*  
45 *good of the private right not to be damaged*  
46 *by it.*

1 His Honour then went on to say in particular, the  
2 following:

3  
4 *The scrutiny of impugned conduct in public*  
5 *has a disinfectant effect: reference has*  
6 *often been made to "the disinfectant effect*  
7 *of sunlight". And scrutiny in public*  
8 *rather than behind closed doors is*  
9 *a traditional check upon abuse of both*  
10 *administrative and judicial power ...*

11  
12 Further statements of principle were made in the  
13 decision of the Court of Appeal in the *Independent*  
14 *Commission Against Corruption v Cunneen* [2014] NSWCA 421,  
15 which was a judgment of the Chief Justice, Chief Justice  
16 Bathurst, as his Honour then was, Justice Basten and  
17 Justice Ward.

18  
19 Justice Basten referred, in addressing principles  
20 relating to hearings in public and private, to the  
21 applicable provision in the Independent Commission Against  
22 Corruption Act, that being section 31.

23  
24 The same considerations or factors to be determined or  
25 considered are present, with one addition, in the Law  
26 Enforcement Conduct Commission Act.

27  
28 Justice Basten referred to the following matters being  
29 required to be taken into account. These matters reflect  
30 what is contained in section 63. The matters were as  
31 follows:

32  
33 *(a) the benefit of exposing to the public,*  
34 *and making it aware, of corrupt conduct;*

35  
36 *(b) the seriousness of the allegation or*  
37 *complaint being investigated;*

38  
39 *(c) any risk of undue prejudice to*  
40 *a person's reputation (including prejudice*  
41 *that might arise from not holding an*  
42 *inquiry); and*

43  
44 *(d) whether the public interest in exposing*  
45 *the matter is outweighed by the public*  
46 *interest in preserving the privacy of the*  
47 *persons concerned.*

1  
2 In paragraphs 100 to 106, his Honour made a number of  
3 references to the factors and how they operated. At  
4 paragraph 100 Justice Basten, referring to the benefit of  
5 exposing to the public and making it aware of corrupt  
6 conduct, referred to this first mandatory consideration as  
7 being one which "must be read within the broad ambit of the  
8 ICAC Act":

9  
10 *Thus the objects of the Act include*  
11 *exposing and educating public authorities,*  
12 *public officials and members of the public*  
13 *about corruption and its detrimental*  
14 *effects on public administration and the*  
15 *community.*

16  
17 His Honour went on to say:

18  
19 *At one level, those factors will usually*  
20 *militate in favour of a public inquiry. On*  
21 *the other hand, the Commission has power to*  
22 *report in relation to any matter that has*  
23 *been the subject of an investigation, and*  
24 *shall furnish such reports [as are*  
25 *required].*

26  
27 His Honour referred to consideration being given as to  
28 whether to conduct a public inquiry where there were  
29 potential adverse effects on individuals whose conduct was  
30 under investigation.

31  
32 Justice Basten, in referring to the second of the  
33 applicable considerations - that is, the seriousness of the  
34 allegation or complaint being investigated - referred to  
35 this consideration having a number of facets:

36  
37 *An allegation is to be treated seriously*  
38 *because of its source, because of its*  
39 *subject matter or because of the potential*  
40 *consequences of the conduct complained. In*  
41 *some circumstances, the seriousness of the*  
42 *allegation may militate in favour of*  
43 *a public inquiry.*

44  
45 Sometimes they may not. Where the allegations of serious  
46 misconduct are of a highly contestable kind, that factor  
47 may militate against the taking of that step - that is,

1 holding a public inquiry.

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1 short opening of counsel assisting will be admitted and  
2 marked exhibit MTS1.

3  
4 **EXHIBIT #MTS1 EXTRACTS FROM THE LAW ENFORCEMENT CONDUCT**  
5 **COMMISSION ACT DISPLAYED DURING THE SHORT OPENING OF**  
6 **COUNSEL, BARCODED 8456560-8456562**

7  
8 MR HALL: Chief Commissioner, I think there will be an  
9 overlap with my codename.

10  
11 MR FERNANDEZ: That's Officer [MTS1]. There shouldn't be  
12 any confusion about the tender.

13  
14 THE CHIEF COMMISSIONER: Yes. If you have a copy of the  
15 section 176 order which I made - I hope all lawyers have  
16 a copy --

17  
18 MR HALL: Yes, Chief Commissioner.

19  
20 THE CHIEF COMMISSIONER: -- and if you look at the second  
21 page, the term "officer" is used, so I hope that that  
22 minimises the risk of confusion.

23  
24 MR HALL: Thank you, Chief Commissioner.

25  
26 THE CHIEF COMMISSIONER: The thinking was the use of the  
27 "Officer" clearly indicates it is a police officer, whereas  
28 for non-police officers, different terminology is being  
29 used up to this point, [YPM1], being the young person. So  
30 I certainly want to minimise the risk of any confusion.

31  
32 Any further items that become exhibits today will just  
33 be marked serially with the number after MTS1. We won't  
34 use MFIs, of course. There is no use in that. This is not  
35 a trial or a court where any distinction is appropriately  
36 drawn between exhibits and MFIs. So it will be  
37 exhibit MTS2 and 3, et cetera, if there are further  
38 exhibits. But thank you for raising that with me to  
39 emphasise the need for care in the terminology used during  
40 today.

41  
42 Well, counsel assisting has delivered a short opening  
43 and touched upon some issues that address the question of  
44 public and private hearing. I am conscious that those who  
45 are here today appearing for particular interests have had  
46 only some general notice as to what was to be addressed  
47 today. I will invite submissions to be made on these

1 matters.

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Perhaps I should note at the outset that counsel for the Commissioner of Police, Mr Coffey, has prepared a written submission. As to the order in which people speak, I don't know if there has been any consideration at the Bar table of that, but as you have a document, Mr Coffey, do you want to go first?

MR COFFEY: Certainly I can assist in going first, if that's --

THE CHIEF COMMISSIONER: All right. I mention that essentially because you have provided what is a helpful written submission.

Do others who have been granted leave to appear have copies of Mr Coffey's submissions?

MR COFFEY: No, not yet, your Honour.

THE CHIEF COMMISSIONER: We have taken the liberty of making half a dozen copies. I take it you don't have a problem with others having a copy of your submission?

MR COFFEY: No.

THE CHIEF COMMISSIONER: I think it would be very helpful for everyone. Some of your submissions have touched upon similar topics to counsel assisting.

MR COFFEY: Yes.

THE CHIEF COMMISSIONER: What I will do is note that the outline of submissions by the Commissioner of Police in respect of the proposed examinations dated 14 December 2022 will be admitted and marked exhibit MTS2.

**EXHIBIT #MTS2 OUTLINE OF SUBMISSIONS BY THE COMMISSIONER OF POLICE IN RESPECT OF THE PROPOSED EXAMINATIONS, DATED 14 DECEMBER 2022, BARCODED 8456563-8456574**

THE CHIEF COMMISSIONER: I note that copies of exhibit MTS2 are being made available to those with leave to appear who don't have a copy of it at present.

Could I just check whether everyone has a copy now?



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MR COFFEY: I have some spares, if that assists.

THE CHIEF COMMISSIONER: All right. Now, as I made clear at the outset, there are orders in place with respect to the names of persons and the location, and those orders will remain in place unless and until the Commission is satisfied they should be varied in some respects. So insofar as some of the matters in your written submission touched on that, you can take as a starting point that that is the approach of the Commission, but having said that, I would invite you to address on this question, thank you, Mr Coffey.

MR COFFEY: Thank you, Chief Commissioner, I'm grateful. My written submissions are somewhat lengthy, but I don't propose in these circumstances, particularly in view of the learned counsel assisting's submissions, to go through all of them.

THE CHIEF COMMISSIONER: Perhaps I should note one thing. In paragraph 3 of the written submissions there is understandably a reference to the scope and purpose, which identifies the name of the young person and the location, so if anyone, apart from those appearing as legal representatives for interested persons, wanted to look at these submissions, that would need to be struck out. And if there is any other reference - I think they may be the only ones.

MR COFFEY: I think that's the only one, Chief Commissioner. If it assists, I can always provide an amended version that redacts that.

THE CHIEF COMMISSIONER: If that could be done, it would be helpful. It could be that someone would like an opportunity to look at the submissions and I see no reason why they shouldn't be available if persons interested wish to see them.

MR COFFEY: I would be grateful, to also deal with my OCD, the fact the subparagraph repeats paragraph (b) and (b) again, so I would be grateful to be able to provide you a corrected version of that.

THE CHIEF COMMISSIONER: That's fine. Let me say at the outset I am grateful for these submissions, conscious that

1 everyone has had limited time in advance of today. One of  
2 my principal wishes today is to obtain some assistance in  
3 this general area.  
4

5 I understand that it is not something that can be  
6 discussed to reach absolutely concrete outcomes based upon  
7 some abstract discussion, because one has to say something,  
8 or think about, the circumstances under consideration as  
9 well, but it is sometimes the practice of investigatory  
10 commissions to effectively determine, before any hearing  
11 commences, whether it will be in public or in private, but  
12 the Commission has taken the view that it would be helpful  
13 and in the public interest that this discussion take place  
14 in open hearing. It is a public hearing. There are  
15 representatives of the media present. I hope that this  
16 discussion will assist both the interested persons but also  
17 the broader community to understand some of the issues that  
18 need to be considered when a commission has to make  
19 a decision about whether something takes place in public or  
20 in private.  
21

22 So that is part of the rationale for today, in  
23 circumstances where, as you point out in your submissions,  
24 there is no decision of a court, at least as I understand  
25 it, that has looked at the particular section in the Law  
26 Enforcement Conduct Commission Act, although there is, as  
27 both you and counsel assisting point out, the *Cunneen*  
28 decision concerning a very similar provision in the  
29 Independent Commission Against Corruption Act. So I will  
30 stop talking and let you commence.  
31

32 MR COFFEY: Thank you, Chief Commissioner.  
33

34 The starting point for those who are at the Bar table  
35 and listening is that the Commissioner of Police's position  
36 is that the hearings should be held in private. However,  
37 as an alternative, if the proceedings, the examination, is  
38 to be conducted in public, as is the case today, those  
39 persons who are called upon to give evidence and be  
40 examined, being the officers set out within the section 176  
41 order, should receive the benefit of pseudonyms.  
42

43 That is not to say that more senior officers, such as,  
44 say, an assistant commissioner of police who may be called  
45 to give more strategic evidence or more policy position  
46 evidence - they would not require such a pseudonym.  
47

1           Could I briefly address you, Chief Commissioner, in  
2 relation to the objects set out on page 2 of paragraph 6 of  
3 the written submissions in very short compass.  
4

5           It is contended on behalf of the Commissioner of  
6 Police that section 3(b) is relevant in respect of the  
7 direction to "serious misconduct" as opposed to what is set  
8 out in paragraph (f) under section 3, where it is:  
9

10           *to recognise the primary responsibilities*  
11           *of the NSW Police Force and Crime*  
12           *Commission to investigate and prevent*  
13           *officer misconduct and officer*  
14           *maladministration within those agencies and*  
15           *agency maladministration while providing*  
16           *for oversight of those functions.*  
17

18 I will make good the purpose of directing your attention to  
19 the difference between "serious misconduct" and  
20 "misconduct" in a moment.  
21

22           It is also relevant to have regard, Chief  
23 Commissioner, to section 26 of the LECC Act, specifically,  
24 subparagraph (b)(i) - that is, that the functions of the  
25 Commission with respect to misconduct matters include the  
26 following:  
27

28           *(b) in accordance with misconduct*  
29           *management guidelines --*  
30           *(i) to detect, investigate, (including by*  
31           *carrying out examinations in appropriate*  
32           *cases) and expose conduct that is (or could*  
33           *be) serious misconduct or serious*  
34           *maladministration ...*  
35

36 Chief Commissioner, the emphasis being on "serious  
37 misconduct".  
38

39           In respect of the difference between "misconduct" and  
40 "serious misconduct", it must be understood, Chief  
41 Commissioner, in respect of the objects of the Act and the  
42 functions of the Commission, although section 4 of the Act  
43 provides general definitions, within Division 2 entitled  
44 "Key Concepts", of Part 2, entitled "Interpretation and key  
45 concepts of the Act", there is assistance in respect to  
46 what is the meaning of "serious misconduct".  
47

1 For the purposes of the LECC Act, section 10 of the  
2 Act provides the meaning of "serious misconduct". I will  
3 only take you, Chief Commissioner, to paragraph 1(a) and  
4 that is because, in my respectful submission, (b) and (c),  
5 as I understand it, don't arise, therefore, in respect of  
6 paragraph (a), it is:

7  
8 *conduct of a police officer, administrative*  
9 *employee or Crime Commission officer that*  
10 *could result in prosecution of the officer*  
11 *or employee for a serious offence or*  
12 *serious disciplinary action against the*  
13 *officer or employee for a disciplinary*  
14 *infringement ...*

15  
16 I direct the Chief Commissioner's attention, with respect,  
17 to "serious offence", again.

18  
19 It is important having regard to section 10(2), which  
20 is set out on page 4, the definition of "serious offence",  
21 and that is:

22  
23 *serious offence means a serious indictable*  
24 *offence and includes an offence committed*  
25 *elsewhere than in New South Wales that, if*  
26 *committed in New South Wales, would be*  
27 *a serious indictable offence.*

28  
29 Chief Commissioner, it is also relevant to have  
30 regard to section 9 of the LECC Act with respect to  
31 misconduct - if I could call it "misconduct simpliciter"  
32 for the purposes of this exchange, that is not "serious  
33 misconduct" - this is done by section 9 providing the  
34 definitions of "police misconduct", and also  
35 "administrative" or "Crime Commission officer misconduct".  
36

37 When, Chief Commissioner, you turn to section 9(4) of  
38 the LECC Act, there is a non-exhaustive list of examples of  
39 what is called "misconduct", and in my words, misconduct  
40 simpliciter, and those are set out in paragraphs (a)  
41 through (d).  
42

43 It is important, Chief Commissioner, to recognise that  
44 in paragraph (a) of subsection (4), conduct of an officer  
45 or employee that constitutes a criminal offence is still  
46 considered to be misconduct. The delineation is provided  
47 by the definition within section 10(2), being that serious

1 offence, to give rise to serious misconduct, requires the  
2 offence to be a serious indictable offence - that is, an  
3 offence that carries a term of imprisonment of five years  
4 or more.

5  
6 Chief Commissioner, set out at paragraph 15 and  
7 further is the acknowledgment that this Commission has  
8 a wide range of investigative powers, set out and provided  
9 within Part 6 of the Act.

10  
11 Relevantly, section 51(1) enables the Commission to  
12 exercise its investigative powers in respect of those  
13 matters set out in subparagraphs (a) through (e), and for  
14 the present circumstances, the relevant matter arises in  
15 respect of subparagraph (a), and that is:

16  
17 *(a) if the conduct concerned involves*  
18 *a police officer, administrative employee*  
19 *or Crime Commission officer and the*  
20 *Commission has decided that the conduct*  
21 *concerned is (or could be) serious*  
22 *misconduct or officer maladministration*  
23 *that is serious maladministration and*  
24 *should be investigated ...*

25  
26 It is important to note for the purposes of  
27 paragraph (a) parliament has included a note that requires  
28 reflection on section 19(2) of the Act in making a decision  
29 under that paragraph.

30  
31 It is important to recognise that there is a broad  
32 ambit within section 51 and the powers available to this  
33 Commission, and in doing so, I make four points.

34  
35 The first is that subsection (2) enables the  
36 investigation powers to be exercised for two reasons or on  
37 two occasions. The first is (a) following a complaint  
38 being made or referred to this Commission; or,  
39 alternatively, (b) on the Commission's own initiative.

40  
41 The second point to be made is that subsection (3)  
42 provides a wide discretion for the Commission to exercise  
43 powers, that is:

44  
45 *(a) even in circumstances that the conduct*  
46 *could be, but is not, the subject of*  
47 *a complaint; or*

1  
2           ***(b) to investigate the actions of another***  
3           ***person or body in relation to the conduct***  
4           ***concerned ...***  
5

6 I think put differently, with respect, that could be  
7 described as investigating the conduct of a third party who  
8 is not a police officer in order to exercise the relevant  
9 functions of this Commission.

10  
11           Chief Commissioner, the third point to be made is that  
12 subsection (4) expressly removes any limitation on the  
13 scope available in subsection (3), where the misconduct  
14 matter or conduct is, or could be, indicative of systemic  
15 problems involving the NSW Police Force generally,  
16 a particular area - and that must be understood as  
17 a particular geographical area in New South Wales or  
18 particularly a squad or command within the police force -  
19 and the Commission considers that it is in the public  
20 interests to do so, that the investigation extend beyond  
21 any police or administrative employee to other misconduct  
22 matters or conduct that relates.  
23

24           The fourth point to be made, Chief Commissioner, is  
25 that subsection (6) provides that, for the purposes of  
26 subsection (1), conduct that is or could be indicative of  
27 both officer misconduct and a series of other matters that  
28 are set out is to be treated as officer misconduct.  
29

30           Briefly touching on what also learned counsel  
31 assisting dealt with in terms of the examination and this  
32 question of private versus public, it is clear that the  
33 Commission is provided power to hold an examination  
34 pursuant to section 61 and that the question and  
35 jurisdictional point in terms of whether the examination is  
36 to be held in public or in private is set out in section 63  
37 of the Act.  
38

39           In my respectful submission, it is contended that when  
40 regard is had to subsection (2), the starting point is that  
41 examinations are to be conducted in private. Of course,  
42 subsection (1) plainly makes available a discretion that  
43 they may be held in public or private, but the important  
44 point is that they should be held in private and that there  
45 is a relevant test provided about whether or not they  
46 should be held in public.  
47

1 At paragraph 30, Chief Commissioner, I set out in  
2 respect of this question of "if the Commission decides that  
3 it is appropriate" to hold an examination or part of an  
4 examination in public, as learned counsel assisting  
5 directed your attention to, subsection (5) provides some  
6 non-exhaustive guidance about the matters that ought to be  
7 considered.

8  
9 THE CHIEF COMMISSIONER: Just before you go there, could  
10 I just ask you a couple of things and we will come back to  
11 that.

12  
13 The *Cunneen* decision to which you refer as well, being  
14 the decision of the Court of Appeal in 2014, looked at  
15 section 31 of the Independent Commission Against Corruption  
16 Act, and at paragraph 98 of the judgment, Justice Basten's  
17 judgment, he set out section 31. There is some difference,  
18 I think, between section 31 of that Act and section 63 of  
19 this Commission's Act. Subsection (1) of the ICAC Act:

20  
21 *For the purposes of an investigation the*  
22 *Commission may, if it is satisfied that it*  
23 *is in the public interest to do so, conduct*  
24 *a public inquiry ...*

25  
26 And then it goes on to identify a non-exhaustive list of  
27 factors.

28  
29 In section 63 of the Law Enforcement Conduct  
30 Commission Act, subsection (1):

31  
32 *An examination (or part of an examination)*  
33 *may, subject to subsection (2), be held in*  
34 *public or in private.*

35  
36 Subsection (2):

37  
38 *An examination (or part of an examination)*  
39 *may only be held in public if the*  
40 *Commission decides that it is appropriate.*

41  
42 And you submit that that means that that suggests that the  
43 Commission has to determine whether it is appropriate  
44 before it could move to a public examination.

45  
46 MR COFFEY: Yes, Commissioner.

1 THE CHIEF COMMISSIONER: The word "appropriate" doesn't  
2 seem to be a word used in the ICAC Act. It is, on one view  
3 of it, a word that is not overly demanding. The Macquarie  
4 dictionary says, amongst the meanings of the word  
5 "appropriate" is "suitable or fitting for a particular  
6 purpose, person, occasion, etc". So it is not, by way of  
7 contrast, what appears in the Independent Broad-based  
8 Anti-corruption Commission legislation in Victoria where  
9 there is an exceptional circumstances test, with such  
10 a test to be introduced, as I understand it, in the  
11 National Anti-Corruption Commission Act which has now  
12 passed through the federal parliament.  
13

14 So the word "appropriate" is there, and I don't know  
15 if such a word existed in the Police Integrity Commission  
16 Act, or in any other Act that may be exercising similar  
17 powers, and I'm not sure if anything in any extrinsic  
18 material explains why the word "appropriate" is used, but  
19 I merely point that out because it is what the statute says  
20 is the test.  
21

22 Perhaps the other thing that should be noted is that  
23 when the *Cunneen* judgment is read, what Justice Basten, and  
24 to an extent Justice Ward, said about the public interest  
25 must be read in the context where section 31(1) of the  
26 Independent Commission Against Corruption Act actually says  
27 that the Commission may conduct a public inquiry if it is  
28 satisfied it is in the public interests to do so. So there  
29 is a direct public interest test.  
30

31 That's not to say that the public interest is  
32 irrelevant for section 63 of this Act, because it is  
33 mentioned at least in subsection (5)(d) and must, one would  
34 think, be a foundational concept in legislation of this  
35 sort in any event, where the Commission is expected to be  
36 operating in the public interest generally.  
37

38 I just make those points. The word "appropriate" -  
39 I've mentioned a dictionary definition, I don't know if  
40 there is any other helpful use of the term that may be  
41 found; probably not.  
42

43 MR COFFEY: Chief Commissioner, just responding to  
44 a number of things that you have observed, I accept for the  
45 purposes of the ICAC Act that subsection (1) is a different  
46 starting position.  
47



1 THE CHIEF COMMISSIONER: Yes.

2

3 MR COFFEY: That is, it is not, as I contend for the  
4 purposes of this legislation, a starting point that the  
5 hearing should be held in private. Clearly subsection (1)  
6 of section 31 is a different position and does not include  
7 the word "appropriate" or any similar terminology.

8

9 Just directing your attention back, Chief  
10 Commissioner, to the former repealed Act of the Police  
11 Integrity Commission, it was dealt with under section 33.  
12 Having a review of that now at the Bar table, it is not  
13 drafted in the same terms as the current section 63 of this  
14 Act is done, it starts with subsection (1):

15

16 *A hearing may be held in public or in*  
17 *private, or partly in public and partly in*  
18 *private, as decided by the Commission.*

19

20 Then subsection (3A) sets out, without limiting the  
21 factors, it provides (a) through (d), which I would say are  
22 similar to what is available now. Obviously we have (e)  
23 within section 63, but ultimately, it does not consider the  
24 word "appropriate".

25

26 THE CHIEF COMMISSIONER: No. The Second Reading Speech is  
27 probably not likely to say anything --

28

29 MR COFFEY: No, I can confirm that neither Second Reading  
30 Speech provides any assistance, other than the fact --

31

32 THE CHIEF COMMISSIONER: It is a negative search, which is  
33 the more common experience.

34

35 MR COFFEY: Yes.

36

37 THE CHIEF COMMISSIONER: In any event, that's the word  
38 this Act uses, and it is to be given its ordinary meaning,  
39 understood in its statutory context, though. Obviously  
40 subsection (5) sheds light on what is relevant to the  
41 question of "appropriate", but it is not a substantial  
42 hurdle as it is sometimes said, for example, an exceptional  
43 circumstances test would be.

44

45 MR COFFEY: Yes.

46

47 THE CHIEF COMMISSIONER: Anyway, I have taken you away -

1 oh, there is perhaps one other thing I should mention  
2 before inviting you to continue.

3

4 Counsel assisting referred to the *Chaffey* decision.  
5 It is an important decision in this state, although it is  
6 nearly 30 years old, because it dates to a time when the  
7 Independent Commission Against Corruption was dealing with  
8 complaints against police - that is, Chaffey and others  
9 were in fact police officers.

10

11 MR COFFEY: Yes.

12

13 THE CHIEF COMMISSIONER: However, at that time, the test  
14 for public or private hearing in the relevant ICAC  
15 legislation I think involved a simple proposition, that if  
16 the Commission formed the view it was in the public  
17 interest to do so, it could proceed with a public hearing  
18 and therefore the court in the *Chaffey* case concentrated on  
19 the term "public interest", because there were no factors  
20 identified of the type which have been introduced since  
21 then in the ICAC Act and, in turn, in the Law Enforcement  
22 Conduct Commission Act.

23

24 MR COFFEY: Yes.

25

26 THE CHIEF COMMISSIONER: As I understand it, the origin  
27 for section 31 of the ICAC Act in its present form was  
28 a report in 2005 by Mr McClintock SC, who then was  
29 requested to report on aspects of the ICAC Act, and  
30 section 31 reflects what he recommended, at least in  
31 general terms, and so that may explain where that section  
32 came from. As to whether that is of any assistance in  
33 looking at this Commission's Act is another question.

34

35 MR COFFEY: Yes.

36

37 THE CHIEF COMMISSIONER: Anyway, back to you, Mr Coffey.

38

39 MR COFFEY: Chief Commissioner, just two points about  
40 that. It is important to recognise that in the current  
41 form of the LECC Act, there is not any assistance in  
42 respect of what is the public interest or what matters  
43 ought to be considered as in the public interest.

44

45 As you observed, Chief Commissioner, in respect of my  
46 written submissions, at 33 and onwards I identified the  
47 *Cunneen* decision. That must be understood, with respect,

1 certainly not in terms of noting what I've earlier accepted  
2 about the difference between section 31 and section 63 of  
3 this Act; the appropriateness or the relevance of taking  
4 you, Chief Commissioner, to that decision was really about  
5 the obiter comments made by his Honour Justice Basten about  
6 when weighing up all of the factors, not so much just the  
7 different tests when a public hearing would occur.

8  
9 THE CHIEF COMMISSIONER: Yes, and it is helpful.  
10 Justice Basten, in his usual helpful way, has looked at  
11 these aspects, and I note, although this part of the  
12 judgment is obiter dicta, the Chief Justice, Chief Justice  
13 Bathurst, who dissented on the jurisdictional issue,  
14 observed at paragraph 28 that he agreed with Justice Basten  
15 and Justice Ward on the other issues, including the public  
16 hearing aspect. So this is strong obiter dicta, of course  
17 dealing with a different Act, but with some of the concepts  
18 in the list of factors bearing a considerable similarity to  
19 the Law Enforcement Conduct Commission Act.

20  
21 MR COFFEY: Yes.

22  
23 THE CHIEF COMMISSIONER: The decision of the Court of  
24 Appeal, of course, went on appeal to the High Court of  
25 Australia where that court dismissed the appeal of the  
26 Independent Commission Against Corruption, and on my  
27 reading of the High Court's judgment, nothing was said by  
28 the High Court that touches on this, because it simply  
29 didn't arise.

30  
31 MR COFFEY: Yes, that's as I understand it.

32  
33 I won't take you through that decision. Learned  
34 counsel assisting has taken you through it and I have  
35 emphasised in the extract in the submissions the points  
36 that ought to be made.

37  
38 If I could turn now very briefly to firstly the  
39 question of "serious misconduct". As you acknowledged,  
40 Chief Commissioner, in your opening observations, the  
41 parties have had - and I don't say this with any criticism  
42 or disrespect - limited time to understand the entirety of  
43 the scope of what this inquiry is likely to consider, so  
44 I respectfully contend that on in respect of the conduct  
45 with the young person, it is unambiguous or - the  
46 definition of "serious misconduct" needs some attention in  
47 respect of whether or not the alleged conduct of a police

1 officer or police officers could or would result in a  
2 prosecution for a serious offence, serious disciplinary  
3 action or some sort of disciplinary infringement. But in  
4 making that submission I must make two concessions, to be  
5 appropriate. The first is, an allegation of excessive  
6 force could involve a prosecution for an offence of at  
7 least assault occasioning actual bodily harm, contrary to  
8 section 59(1) of the Crimes Act. As, Commissioner, you  
9 would be familiar, this offence carries a maximum penalty  
10 of up to five years' imprisonment, and that, of course,  
11 makes it serious offence, not only because it is a serious  
12 indictable offence but it also satisfies section 10  
13 subsection (2) and the relevant definition there.

14  
15 It is understood that the involved young person did  
16 suffer an injury to his head which caused bleeding and  
17 required treatment by paramedics, and I say in my written  
18 submissions "possibly more", I acknowledge that. It has  
19 been indicated this morning that he also received treatment  
20 at a hospital. Such an injury could, of course, satisfy  
21 actual bodily harm.

22  
23 Secondly, Chief Commissioner, the Commission plainly  
24 has the power to investigate, including the conducting of  
25 examinations, so as to determine whether or not the alleged  
26 conduct amounts to serious misconduct.

27  
28 For the avoidance of doubt, as I said earlier,  
29 section 10(1)(b) about a pattern of misconduct that  
30 involves either more than one participant or is indicative  
31 of systemic issues, in my respectful submission, doesn't  
32 appear to arise, and section 10(1)(c) doesn't appear that  
33 it involves corrupt conduct.

34  
35 It is, with respect, open in these circumstances that  
36 it is possible that it is not serious misconduct for the  
37 Commission to exercise powers and refer the matter back to  
38 the Commissioner of Police for investigation.

39  
40 Turning more importantly to this question of private  
41 versus public examinations, the legislation, as I have  
42 indicated, evinces a clear intention that examinations  
43 should be held in private unless it is in the public  
44 interest to do so. And as I indicated earlier, there is  
45 simply no guidance about what "public interest" is.

46  
47 THE CHIEF COMMISSIONER: I suppose the strictly accurate

1 statement would be "unless the Commission is of the view  
2 that it is appropriate to do so", because that is what this  
3 Commission's Act says.

4  
5 MR COFFEY: Yes.

6  
7 THE CHIEF COMMISSIONER: The ICAC Act speaks of the public  
8 interest, but there must be a close interrelationship  
9 between those terms, one would think.

10  
11 MR COFFEY: I would think so, yes, Chief Commissioner.

12  
13 With respect, Chief Commissioner, as you observed,  
14 these allegations are unproven. There is a strong and  
15 clear potential that the allegations at this point in time  
16 will cause irreparable damage to the reputation of the  
17 police officers involved. It is also, with respect,  
18 a substantial intrusion into their privacy and their  
19 private lives. This must also be understood as an  
20 intrusion into the lives of their family, which include  
21 their spouses and their children.

22  
23 If I could ask you, Chief Commissioner, at a later  
24 point to have regard to the final sentence in paragraph 95  
25 of the *Cunneen* decision where, in my submission,  
26 Justice Basten makes a critical point, which is:

27  
28 *Particularly is that so where the potential*  
29 *damage to reputation (and intrusions on*  
30 *personal privacy) result not from the*  
31 *considered assessment and reporting of an*  
32 *investigation but from public examination,*  
33 *often involving questions put in colourful*  
34 *terms and denials which are disregarded.*

35  
36 In my respectful submission, unpacking that particular  
37 observation by his Honour, you, Commissioner, would have  
38 regard to the considered assessment that must be understood  
39 as an assessment undertaken by the examining Commissioner  
40 of this investigation, who will subsequently furnish  
41 a report to parliament, as opposed to public reporting  
42 which may be done by the mainstream media or community  
43 members who follow by way of social media.

44  
45 With respect, it is common knowledge that it's plainly  
46 demonstrated through history that what is often actually  
47 reported is often, with respect, misunderstood, taken out

1 of context, inflammatory, prejudicial and overall unfair.

2  
3 By making these submissions, it should not be  
4 understood that the Commissioner of Police at any step  
5 suggests the media should not be entitled to be involved  
6 and report on the facts, the fact that an investigation is  
7 being conducted or the general subject matter. But until  
8 a report is published, in the circumstances of this instant  
9 matter, it could not be said that the community at large  
10 would be harmed or the integrity of the Commission's  
11 processes would be undermined by conducting the  
12 examinations in private.  
13

14 With respect, in anticipation of any submission to the  
15 contrary, being that hearings should be held in public,  
16 this must be rejected as falling foul of the statutory  
17 provision, being 63(2), and the starting point that  
18 examinations be held in private.  
19

20 A private hearing will not prevent the statutory  
21 functions of this Commission being achieved once a report  
22 is published - that is, the functions of exposing but also  
23 providing education about corruption, serious misconduct  
24 and serious maladministration.  
25

26 Chief Commissioner, if, in the instant matter, the  
27 conduct of the public examinations and the ultimate  
28 findings are such that the involved officers are cleared of  
29 the allegations, it is probable, if not certain, that it  
30 will be too late and the reputational damage and the  
31 privacy intrusions cannot be remedied. To put it another  
32 way or colloquially, the horse will have bolted if the  
33 hearing is in public and there are no pseudonyms. The  
34 reputational damage and/or intrusion on privacy to both the  
35 officers and their families cannot be remedied.  
36

37 As commented by Justice Basten, at paragraph 105 of  
38 *Cunneen*, the preferable course would be to expose to the  
39 public by publishing a report and, if appropriate, a  
40 recommendation that the Director of Public Prosecutions  
41 takes whatever action is appropriate, if that so arises  
42 as a result of this investigation.  
43

44 Could I make some more general observations about  
45 policing more generally. With respect, policing is  
46 a difficult occupation. Police officers must, however, be  
47 held to a high standard in the discharge of their oath of

1 office. Police officers, as is the case in this instant  
2 matter, are required to be involved in policing a broad  
3 range of different community groups within our community.  
4 Many of the communities within New South Wales are  
5 considered to be vulnerable, which presents additional  
6 challenges to policing, both at building but also at  
7 maintaining relationships.

8  
9 It is a very real concern, Chief Commissioner, that if  
10 a public examination in this particular matter was to  
11 occur, which would, with respect, permit realtime  
12 reporting, it has the strong potential to strain or damage  
13 the relationship between the local police officers and the  
14 community.

15  
16 It is conceded that in this particular matter, as  
17 a result of the incident, the relationship may already be  
18 suffering or strained, but a public examination has the  
19 real risk of irreparably harming relations to a further  
20 extent. This particular geographical location, it is  
21 important to understand, Chief Commissioner, involves  
22 police officers and their families who live in a small  
23 regional community. The police officers and their families  
24 are neighbours to the community members that they police.

25  
26 It is also very important to understand that these  
27 police officers' spouses and children work and attend  
28 schools and participate in sporting activities with the  
29 very same local community that these police officers must  
30 engage and police in the discharge of their duties.

31  
32 Chief Commissioner, it is also true, with respect,  
33 I submit, that this particular community, like other  
34 New South Wales citizens and those across Australia, have  
35 suffered greatly in the past three years, but more  
36 specifically this community.

37  
38 In addition to the impacts of the COVID 19 pandemic  
39 with the restrictions and the associated social impacts  
40 which are, with respect, long lasting, this particular  
41 community has been the subject of substantial and harmful  
42 flooding. This has also impacted the police officers and  
43 their families. The police officers continue to provide  
44 services and leadership to their local community, trying to  
45 keep things back on track in the community, but also back  
46 in their own home. It is important to understand that the  
47 police officers involved in this local community and the

1 broader police district, their family homes were also  
2 harmed.

3  
4 These more specific personal matters are raised  
5 because the instant matter is different, say, to the  
6 Commission investigating allegations of serious misconduct  
7 involving police officers maybe in a metropolitan region  
8 where, on that particular occasion, it might be more easy  
9 for the Commissioner of Police to direct or transfer on  
10 a temporary basis those officers to another location until  
11 an investigation is finalised. On this particular  
12 occasion, in my respectful submission, that's just simply  
13 not an available option in circumstances where the police  
14 force has police officers who move from the city to the  
15 country to be part of the local community.

16  
17 In this particular geographical location,  
18 Commissioner, the police officers are embedded in the  
19 community. It is plain that relations are already  
20 strained. If there has been serious misconduct, that will  
21 be established at the end of the Commission's investigation  
22 and the Commissioner of Police and her officers can take  
23 appropriate steps to respond to the police officers  
24 involved but also, more importantly, to respond to the  
25 community and begin repairing the relationship that is  
26 necessary.

27  
28 Until such time as the Commission's investigation is  
29 finalised, which, with respect, will involve oral  
30 examinations along with affording procedural fairness  
31 through the provision of submissions - and that is often  
32 oral and written submissions or a combination of both - the  
33 Commission should weigh in favour of private examinations.

34  
35 Returning to the non-exhaustive list, Chief  
36 Commissioner, set out in section 63(5) of the Act, the  
37 present matter does not involve a conduct of behaviour;  
38 rather, it is a single incident.

39  
40 The relevance of this point is that it is unlikely  
41 that a private hearing will prevent or have the effect of  
42 discouraging persons to make complaints to the Commission  
43 or to the Commissioner of Police about alleged adverse  
44 behaviour or conduct of police officers or police  
45 employees. In the circumstances, it is my respectful  
46 submission on behalf of the Commissioner of Police that you  
47 would make a decision to hold these examinations in



1 private.

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1 evidence is still being put together.

2

3 THE CHIEF COMMISSIONER: So proceedings before the  
4 Children's Court are still on foot?

5

6 MR HALL: Yes, Chief Commissioner.

7

8 THE CHIEF COMMISSIONER: And although those proceedings  
9 would take place in a closed court, as one would expect,  
10 the existence of parallel criminal proceedings, albeit in  
11 the Children's Court, is something which you submit is  
12 relevant to the question of whether it is a public or  
13 private examination?

14

15 MR HALL: And we would ask for a private examination.

16

17 THE CHIEF COMMISSIONER: Yes. Do you seek to adopt the  
18 submissions made by Mr Coffey on behalf of the Commissioner  
19 of Police?

20

21 MR HALL: Certainly, Chief Commissioner.

22

23 THE CHIEF COMMISSIONER: Thank you, Mr Hall.

24

25 MS LEE: Chief Commissioner, if I could first seek  
26 permission to tender some written submissions at a later  
27 date, at the convenience of the Commission - I was only  
28 made aware of this directions hearing on 5 December and  
29 Redfern Legal Centre has minimal resources, compared to  
30 some other counsel before the Commission today.

31

32 THE CHIEF COMMISSIONER: So you would like a chance to  
33 have some time to put something in writing?

34

35 MS LEE: Yes.

36

37 THE CHIEF COMMISSIONER: Having regard to what has been  
38 said by both counsel assisting, but also Mr Coffey and  
39 Mr Hall so far?

40

41 MS LEE: Yes, Chief Commissioner.

42

43 THE CHIEF COMMISSIONER: How long would you be wanting to  
44 do that?

45

46 MS LEE: Even two weeks would be sufficient, Chief  
47 Commissioner.

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THE CHIEF COMMISSIONER: Would it be possible to do it a little earlier? I'm just conscious of the time of year. I understand you want some time to absorb and respond to what has been said this morning, and this hearing has been scheduled with relatively short notice, but I would be grateful if it was possible to do something by perhaps the middle of next week, being a week.

If more time was needed - I suppose, part of this is the practical future course, namely, if we're looking at hearings in February/March, and we're not going to be fixing any dates today for anything, having some clarity and a resolution on this issue as soon as reasonably practicable is desirable. At the same time, I want to give you a fair opportunity to put something in writing. Would it be possible to make it seven days and see how we go with that?

MS LEE: Yes, thank you, Chief Commissioner.

THE CHIEF COMMISSIONER: All right. Was there anything that you did want to say today while we are all here, apart from having an opportunity to put something in writing?

MS LEE: Yes, thank you. I have instructions from my client, [YPM1], to seek a public hearing in regards to this incident, Chief Commissioner. My client is a 14-year-old boy, indigenous. He lives in a rural regional area. He is of low socio-economic background. He is a vulnerable person under the Crimes Procedure Act, section 306, and is subject to the Young Offenders Act.

He is not here today, and, as you can see, he is outnumbered today, of the people before the Commission, out-counselled, but not out-motivated to seek a public hearing in regards to this incident.

Commissioner, I put to you that it is serious misconduct in regard to section 3 of the LECC Act. I also turn, Chief Commissioner, your mind to section 10(1)(a) of the Act which says the words "could result in a prosecution". It's not the words "will", or "may", but it is a lower bar that "could result in a prosecution."

My friend has suggested it could be, if a misconduct is found, looking at assault occasioning, but I submit to

1 you, Chief Commissioner, that we don't have the evidence  
2 before the Commission as yet as to the actual injury that  
3 was caused and we could potentially be looking at reckless  
4 grievous bodily harm. At this stage, we don't know - and  
5 that is a 10-year gaol term offence.  
6

7 In terms of section 63, Chief Commissioner, I turn to  
8 the benefit of a public hearing in regards to benefit to  
9 the public.  
10

11 Excessive force is something that is on the public  
12 agenda right now. I raise the recent incident of  
13 Danny Lim, a very public matter that has had a lot of  
14 public exposure. I can only say that the public interest  
15 in that use of force has been extensive. It has  
16 infiltrated the community.  
17

18 Excessive force is a big issue within my practice at  
19 the Redfern Legal Centre. I am of the view it is  
20 a systemic issue. We're not talking about force against an  
21 adult; we're talking about potentially quite serious force  
22 against a young indigenous young man. He was, again, in a  
23 regional area, late at night. We don't know all the  
24 specific details yet in regards to that night, but the  
25 videos from that night that have been posted on social  
26 media are extremely distressing. The videos show a young  
27 14-year-old boy with blood bleeding from his head and he  
28 appears to be going in and out of consciousness.  
29

30 In terms of risk, Chief Commissioner, of undue  
31 prejudice, I submit that the risk of undue prejudice, if it  
32 doesn't go to a public hearing, is to my client. There is  
33 no body worn video - none. No body worn video footage.  
34 That does disadvantage the Commission in being aware of  
35 what actually went on at the time. Video footage speaks  
36 louder than words and we don't have the benefit of that  
37 before the Commission.  
38

39 The risk is that a voice of a 14-year-old boy will not  
40 be heard. Again, he is outnumbered by the number of police  
41 officers who are represented here at the Commission. His  
42 voice needs to be heard in public. Public hearings shed  
43 light on police behaviour.  
44

45 As you mentioned, the word "appropriate" is a much  
46 lower bar than in regards to a public hearing under the  
47 ICAC Act. I submit, Chief Commissioner, that it is

1 appropriate to air this issue in the public. A public  
2 hearing educates the public about police behaviour and  
3 potentially deters police from further misconduct. Public  
4 hearings provide knowledge also about the LECC's function  
5 and provide knowledge about the transparency of the  
6 process. It also improves integrity in regards to the LECC  
7 and also informs people about the police force and looks at  
8 integrity, transparency and accountability in regards to  
9 NSW Police.

10  
11 Chief Commissioner, I won't go into all the case work.  
12 I can see that it has already been submitted. My  
13 submission is that my client wants a public hearing. He  
14 doesn't have a voice at the moment in regards to this  
15 matter, except what has been shown on social media. He  
16 would like to have a voice and he would like some  
17 transparency in regards to not only himself but the way  
18 indigenous First Nations people are treated, particularly  
19 in regional and rural areas, thank you.  
20

21 THE CHIEF COMMISSIONER: What I will do before we conclude  
22 today is ask if you to provide any additional written  
23 submissions to the solicitor assisting the Commission by  
24 1pm next Wednesday, 21 December, and if there is some  
25 insuperable difficulty with that, if you could indicate  
26 that, but you have helpfully outlined the argument that you  
27 would put, and to make sure that there is a proper  
28 opportunity to address anything else in particular by  
29 reference to what you have heard and seen today, I would  
30 hope that may be sufficient time. So I will make an order  
31 to that effect before we finish today.  
32

33 MS LEE: Thank you, Chief Commissioner.  
34

35 THE CHIEF COMMISSIONER: Thank you, Ms Lee. Yes, who  
36 would like to go next?  
37

38 MR NAGLE: Thank you, Chief Commissioner. Given that the  
39 Police Association received notice yesterday afternoon of  
40 the matters that were to be canvassed today, we seek that  
41 we have until 1pm next Wednesday as well to give you  
42 something in writing.  
43

44 THE CHIEF COMMISSIONER: Yes, I am conscious - I am sorry  
45 the notice has been that late, there has been a range of  
46 work done with respect to this matter and some other  
47 matters in the Commission in recent times. I had

1 overlooked, and I apologise for it, the fact that the  
2 Police Association would have an interest in this. It is  
3 a general topic. It is of importance to the members of the  
4 Police Association, so I wanted to ensure that there was an  
5 opportunity for participation today, but hopefully with the  
6 benefit of what you've heard and the written submissions on  
7 behalf of the Commissioner of Police, that will assist. So  
8 I'll make sure that you have until 1pm next Wednesday,  
9 21 December, as well.

10  
11 MR NAGLE: Thank you. We appreciate the opportunity to  
12 make submissions and to assist you in understanding the  
13 scope of the power, given that the LECC Act is six years  
14 old but before that there were things like the Tink review  
15 of the previous PIC Act, and the differences in the  
16 language. So we will try to give you some of the  
17 historical significance of that.

18  
19 Whilst on the Second Reading Speech, the explanatory  
20 memorandum does deal with this matter as well, so we will  
21 send that through.

22  
23 THE CHIEF COMMISSIONER: That would be helpful. I should  
24 indicate, too, that as Justice Basten observed in the  
25 *Cunneen* decision, it is often helpful to have guidelines  
26 generated by the particular Commission in this area, and he  
27 noted that there weren't any which the ICAC had at that  
28 time.

29  
30 I can't speak for the ICAC now, but there are no  
31 guidelines of the Law Enforcement Conduct Commission in  
32 this area, certainly at present. At earlier times, and  
33 perhaps in the days of the Police Integrity Commission,  
34 there may have been something. I frankly cannot recall at  
35 this point.

36  
37 MR NAGLE: We would welcome the opportunity to assist with  
38 formulating those guidelines and being heard in relation to  
39 them, should general guidelines be something that the  
40 Commission thinks is appropriate.

41  
42 THE CHIEF COMMISSIONER: What we are heading towards when  
43 we end today is I will adjourn and reserve a decision on  
44 this topic where I will, in due course, give a decision  
45 that will be circulated to everyone, and I think made  
46 public, with no identifiers in it.

47

1 I'm not a judge anymore so I can't make decisions of  
2 the type that were possible in the past, and this is  
3 a matter where there would be consultation as well with the  
4 Commissioner of this Commission. We bear joint  
5 responsibility in that, in the operation of the Commission,  
6 and it may be that this decision will, insofar as it speaks  
7 generally, fulfil the type of function of guidelines,  
8 without necessarily calling them guidelines.  
9

10 But we have to start somewhere, and that's what's  
11 happening today, and the submissions being made are of  
12 assistance and will continue to be of assistance. There  
13 will be a written decision which will be available, and  
14 hopefully the end product will be of assistance to everyone  
15 who has matters before this Commission in the future.  
16

17 MR NAGLE: Yes, thank you.

18  
19 THE CHIEF COMMISSIONER: Thank you for that, and I'll make  
20 sure that there is that opportunity for submissions to be  
21 made in that way. Thank you.  
22

23 MR TAYLOR: Commissioner, Taylor, solicitor on behalf of  
24 Officer [MTS3]. Firstly, can I thank Mr Coffey for his  
25 detailed written and oral submissions today.  
26

27 Given my lack of knowledge of the particulars that the  
28 Commissioner will be investigating in the matter, I don't  
29 think there is anything I can say which would assist the  
30 Commission in coming to a determination in respect of this  
31 issue, so I wouldn't seek to file any submissions or make  
32 any submissions today, but I would seek to adopt the  
33 conclusions Mr Coffey came to in his written submissions in  
34 relation to whether the Commission should hold a public or  
35 private hearing and if it is to be a public hearing, then  
36 we wish for there to be pseudonyms in accordance with the  
37 previous practice.  
38

39 THE CHIEF COMMISSIONER: But you don't seek an opportunity  
40 to put anything in writing?  
41

42 MR TAYLOR: I don't think there is anything I could put to  
43 you in seven days which would assist you further.  
44

45 THE CHIEF COMMISSIONER: Thank you.

46  
47 MR WILLIS: Chief Commissioner, on behalf of

1 Officer [MTS5], we adopt the submissions made by Mr Coffey  
2 and support the contentions advocated by him under the  
3 heading "Conclusion". There is nothing that I can usefully  
4 add to those.

5

6 THE CHIEF COMMISSIONER: All right. So you don't seek an  
7 opportunity to put anything in writing, having heard what  
8 you have heard so far today?

9

10 MR WILLIS: No, Commissioner.

11

12 THE CHIEF COMMISSIONER: Thank you, Mr Willis.

13

14 MR JONES: Chief Commissioner, on behalf of  
15 Officer [MTS2], I would also gratefully and respectfully  
16 adopt the submissions of my learned friend Mr Coffey and  
17 I don't seek to provide any written submissions.

18

19 THE CHIEF COMMISSIONER: All right. Thank you, Mr Jones.

20

21 MR WHITE: Chief Commissioner, on behalf of  
22 Officer [MTS4], I also adopt the submissions of Mr Coffey.  
23 If I could just add one matter, though, Commissioner.

24

25 In relation to section 63(5)(b) concerning the  
26 seriousness of the allegation, I have instructions in  
27 relation to this matter. My instructions do not go to the  
28 issue of the subject incident. At this point in time, I'm  
29 not aware of what the allegations are in relation to  
30 excessive force. I'm not aware how many police officers  
31 are alleged to be involved and I'm not sure - well, I'm not  
32 aware - of any of the circumstances relating to the subject  
33 incident. So it is difficult for me to make submissions in  
34 relation to 63(5)(b) in relation to seriousness of the  
35 allegations.

36

37 Nothing has been said by counsel assisting today in  
38 relation to those particular issues. All I'm aware of is  
39 excessive force, which could, of course, be serious or it  
40 could be minor. I would have thought that issue is  
41 relevant to that particular factor, but I'm just not aware  
42 of that, so I'm limited in terms of what I can submit about  
43 that.

44

45 I certainly adopt what Mr Coffey has said in relation  
46 to the section generally.

47



1 I also raise, particularly, based on the instructions  
2 of my client, the issue concerning risk of undue prejudice  
3 to a person's reputation. I don't think I can add anything  
4 to what Mr Coffey helpfully said to the Commission today  
5 about that issue. It is a matter of concern to my client,  
6 and particularly because of the geographical location, and  
7 I adopt what has been said by Mr Coffey in terms of the  
8 difference or the different issues that would arise, for  
9 example, in the Sydney metropolitan area as opposed to the  
10 geographical area where this occurred, where my client has  
11 family, has children, who would all be affected by a public  
12 hearing.

13  
14 That's all I wish to say, thank you, Commissioner.

15  
16 THE CHIEF COMMISSIONER: All right. And you don't seek to  
17 put anything in writing, Mr White?

18  
19 MR WHITE: I would like to see what has been said.  
20 I would like to reserve my position, subject to whatever  
21 submissions are made by other parties, but I would expect  
22 I wouldn't, Commissioner.

23  
24 THE CHIEF COMMISSIONER: All right.

25  
26 MS LEE: Chief Commissioner, if I could just mention, my  
27 friend mentioned the risk to these officers. These issues  
28 were raised in the other public hearing that LECC held,  
29 which was the strip search public hearing. As far as  
30 I know, those matters have been dealt with and I can't see  
31 how this potential public hearing may be any different to  
32 that public hearing.

33  
34 Also, there is a risk to my client, who lives in a  
35 regional area, in terms of potential impact on him in terms  
36 of his relationship with police, and he is still willing to  
37 have a public hearing. Thank you.

38  
39 THE CHIEF COMMISSIONER: Thank you.

40  
41 I should just indicate, turning to counsel assisting,  
42 I am aware that there is a report of this Commission in  
43 Operation Tabora of September 2018. It is not presently  
44 on the Commission website, because there are outstanding  
45 criminal proceedings arising from it, but in the context of  
46 that operation, the Commission took submissions on the  
47 question of a public examination or private examination.

1 The decision of the Commission in that respect, which was  
2 in fact issued under the hand of the then Chief  
3 Commissioner, the Hon Michael Adams QC, as he then was, the  
4 Hon Lea Drake and Mr Patrick Saidi, is annexure 1 to the  
5 Operation Tabora report.

6  
7 I mention that because, as far as I understand it,  
8 this is the only time where the Commission, in the context  
9 of that operation and investigation, looked at section 63.  
10 The decision, which is at appendix 1 to that report,  
11 summarises submissions made and the conclusions reached by  
12 reference to the statutory factors in section 63. It does  
13 not, as I understand it, extend to referring to decisions  
14 such as *Chaffey* or *Cunneen*, but it deals with section 63  
15 issues.

16  
17 If any party who has been granted leave would like  
18 access to that report and doesn't have it because it is not  
19 physically available on the website, given the current  
20 criminal proceedings, the solicitor assisting the  
21 Commission can make that available electronically to anyone  
22 who would like it.

23  
24 I mention this for completeness, because I am  
25 conscious that the decision made in that matter was made in  
26 the context of that matter, but it's the closest that I am  
27 aware of where the Commission has considered section 63,  
28 its operation, and has published a decision. So I just  
29 mention that, and if anyone would like that, please raise  
30 that with counsel and solicitor assisting and it can be  
31 made available. It may be of assistance to those who wish  
32 to put anything in writing.

33  
34 Is there anything would you like to say at this stage,  
35 Mr Fernandez, in light of what has been said?

36  
37 MR FERNANDEZ: No, thank you, Chief Commissioner.

38  
39 THE CHIEF COMMISSIONER: The way forward, then: any  
40 written submissions to be made - at this stage Ms Lee and  
41 counsel for the Police Association have identified the  
42 position - what do you suggest is the best way of dealing  
43 that, Mr Fernandez?

44  
45 We are closing in on Christmas. Those submissions  
46 will come in on 21 December. A question arises as to  
47 whether those submissions should be circulated to others

1 who have been granted leave for the purpose of today and  
2 who have an interest in this, which may itself raise the  
3 possibility of someone wanting to put something else in  
4 writing, perhaps including yourself.

5  
6 MR FERNANDEZ: Yes.

7  
8 THE CHIEF COMMISSIONER: At the risk of having cascading  
9 submissions, I'm not sure there is any way of minimising  
10 that risk. The purpose of today was to allow the  
11 Commission to be assisted and fully informed, and if it  
12 takes us into the new year, it takes us into the new year.

13  
14 The reality is that some decision ought be made known,  
15 certainly by early February at the latest, and that doesn't  
16 stand in the way, I suppose, of making some arrangements,  
17 but it may be that any arrangements are looking at the  
18 latter part of February and into March rather than anything  
19 in the early part of February. I just say that as a matter  
20 of practical reality of where we're up to.

21  
22 What would you submit is appropriate, on the basis  
23 that any submissions that come in by 21 December will be  
24 electronically circulated to those who have leave today,  
25 they have an opportunity to put something in by - what  
26 would you suggest?

27  
28 MR FERNANDEZ: I'm just mindful that because of the time  
29 of year, realistically --

30  
31 THE CHIEF COMMISSIONER: Well, all of that, I am not  
32 suggesting it has to be a week later on 28 December.

33  
34 MR FERNANDEZ: In deference to all concerned and the time  
35 of year, we're looking at January.

36  
37 THE CHIEF COMMISSIONER: Yes.

38  
39 MR FERNANDEZ: Chief Commissioner, I wonder if 20 January  
40 gives everyone sufficient time?

41  
42 THE CHIEF COMMISSIONER: Yes. I don't have a difficulty  
43 with that.

44  
45 I am just speaking generally to the Bar table. On the  
46 basis that these further submissions are circulated on  
47 21 December, an opportunity for anything to be put in

1 response by 20 January - is that an invitation that people  
2 would want to take up?

3

4 MR COFFEY: Yes, thank you, Commissioner.

5

6 MR WHITE: Yes.

7

8 THE CHIEF COMMISSIONER: For you, Mr Fernandez, do you  
9 want anything beyond 20 January?

10

11 MR FERNANDEZ: I would ask perhaps for Wednesday,  
12 25 January, your Honour.

13

14 THE CHIEF COMMISSIONER: Yes. And the next step would not  
15 involve, as I see it now, a resumed public directions  
16 hearing but, rather, having regard to all the submissions  
17 that will have passed, a decision.

18

19 MR FERNANDEZ: Yes.

20

21 THE CHIEF COMMISSIONER: In circumstances, of course,  
22 where the decision to be made, given its very nature, which  
23 is interlocutory, that circumstances may change and what  
24 the decision would be would be based upon the issues of law  
25 which have been advanced and the nature of the  
26 investigation, the position as the Commission sees it at  
27 that time - so it's a process which is capable of being  
28 revisited if circumstances warrant it.

29

30 MR FERNANDEZ: Yes, that's so.

31

32 THE CHIEF COMMISSIONER: That has to be the position.

33

34 MR FERNANDEZ: Yes.

35

36 THE CHIEF COMMISSIONER: Does anyone want to say anything  
37 against - and just thinking of it, I'm prepared to make  
38 21 December, 22 December, which is one extra day, Ms Lee -  
39 bearing in mind 22 December for the submissions on behalf  
40 of the Police Association and [YPM1]; and 21 January for  
41 submissions from anyone else; and 25 January for counsel  
42 assisting, does anyone want to say anything further about  
43 those dates before I formally make an order to that effect?  
44 All right.

45

46 The Commission has received helpful written and oral  
47 submissions today on issues of a procedural type which were

1 identified for consideration today and, in particular, the  
2 use of public or private hearings for examination of  
3 witnesses. To allow interested persons who have been  
4 granted leave to appear today an opportunity to consider  
5 and respond to submissions that have been made so far,  
6 I make the following further directions:  
7

8 The Police Association of NSW and [YPM1] should  
9 furnish any written submissions by email to the solicitor  
10 for the Commission, Mr Huen, by 1pm on Thursday,  
11 22 December 2022. Those submissions will then be  
12 circulated by email to each of the legal representatives  
13 who has been granted leave to appear today.  
14

15 Any of the interested persons who have been granted  
16 leave to appear today who wish to respond to the  
17 submissions made on behalf of the Police Association or  
18 [YPM1] should email those submissions to the solicitor for  
19 the Commission by 1pm on 20 January 2023. Those  
20 submissions will be circulated by email to the legal  
21 representatives who have been granted leave to appear  
22 today.  
23

24 Finally, counsel assisting is to furnish any written  
25 response to submissions made, by email, sent by 1pm on  
26 25 January 2023 to all legal representatives who have been  
27 granted leave to appear today.  
28

29 The Commission will give a decision on the procedural  
30 issues, essentially the public/private hearing issue,  
31 thereafter, and that decision will be furnished to the  
32 legal representatives granted leave by email at a date  
33 after 25 January 2023.  
34

35 What course do you propose, Mr Fernandez, as to  
36 procedural arrangements for next year? Is it best, rather  
37 than having a discussion that may not take it very far in  
38 public, to leave it to communications --  
39

40 MR FERNANDEZ: Yes.

41  
42 THE CHIEF COMMISSIONER: -- between yourself, the  
43 solicitor assisting and the affected parties, as to  
44 possible available dates?  
45

46 The question of venue and location has not been  
47 discussed. In some respects, that perhaps is best not

1 discussed publicly because it does involve a process of  
2 identification more specifically of the location in  
3 question and the location of persons who may be likely  
4 witnesses. So I think that is probably best not addressed  
5 publicly, but there clearly should be an open line of  
6 communication with the legal representatives in question  
7 now that we've got to the point of leave having been  
8 granted and the process is under way at least for  
9 procedural purposes.

10  
11 MR FERNANDEZ: Yes.

12  
13 THE CHIEF COMMISSIONER: The availability of legal  
14 representatives will be taken into account in any fixing of  
15 dates as part of that process. I will leave it to you and  
16 the solicitor assisting to speak to them in that respect.

17  
18 MR FERNANDEZ: We will do that very quickly.

19  
20 THE CHIEF COMMISSIONER: All right. Does that, then,  
21 complete everything that was sought to be achieved today?

22  
23 MR FERNANDEZ: There is nothing further for me to raise,  
24 Chief Commissioner.

25  
26 THE CHIEF COMMISSIONER: Well, could I thank everyone who  
27 has appeared today at short notice to assist the  
28 Commission.

29  
30 The Commission is conscious that the matters under  
31 investigation occurred only three months ago. It is  
32 important that the matter be progressed, as it has been so  
33 far today. It is also important that examinations take  
34 place in the early months of next year and in due course,  
35 without any delay, a report be issued by the Commission.  
36 It is in the public interest that this process, once the  
37 Commission has engaged in an investigation, proceed as soon  
38 as reasonably practicable and that the report issue  
39 thereafter as soon as reasonably practicable.

40  
41 So this has been the first step, today, in that  
42 process, and I once again thank all legal representatives  
43 who have attended today for their assistance. So the  
44 Commission will now adjourn.

45  
46 **AT 12.04PM THE COMMISSION WAS ADJOURNED ACCORDINGLY**  
47