

## What is Operation Mantus?

The Commission investigated issues arising from a complaint about the arrest of a 14-year-old Aboriginal boy in Northern New South Wales. The investigation, called Operation Mantus, considered alleged use of excessive force by police, handcuffing, the absence of body worn video of the incident, and the way police interviewed the young person while in custody. The Commission held private and public examinations in February – May 2023 under Operation Mantus.

This fact sheet looks at the systemic issues addressed in Operation Mantus relating to the way police interview vulnerable people.

## What is a vulnerable person?

The Law in NSW says that a vulnerable person includes:

- a child under 18 years
- people with impaired intellectual functioning
- people with impaired physical functioning
- Aboriginal and Torres Strait Islander people
- people who are of a non-English speaking background.

## Right to silence

When police bring an arrested person into custody, the custody manager must tell the detained person that they do not have to say or do anything but that anything the person does say or do may be used in evidence. This is called ‘cautioning’.

Police may want to ask the detained person questions about the alleged offence. The detained person is not required to answer these questions. They may choose not to be interviewed by police at all.

## Extra protections for vulnerable people in custody

Custody managers must caution any person brought into police custody and give them a summary of the law in relation to investigation and questioning by police. This includes telling the detained person they may contact a lawyer.

The custody manager must give extra help to vulnerable people in police custody, by:

- helping them call a lawyer or support person
- making sure they understand the caution
- giving the support person information about their role in helping the vulnerable person
- if the vulnerable person is an Aboriginal or Torres Strait Islander person, the custody manager must immediately let the Aboriginal Legal Service know the person has been detained.

A vulnerable person’s lawyer may help them by telling police the person does not want to be interviewed. If this happens, police should record the refusal in their written records, and not ask questions about the alleged offence.

## Legal advice for vulnerable persons in custody

The Aboriginal Legal Service (ALS) runs a 24-hour telephone legal advice service. Aboriginal people in custody can use this service to speak to a lawyer.

Legal Aid runs a Youth Hotline to give free telephone legal advice to young people in police custody.

The Justice Advocacy Service runs a support service for people who may have cognitive impairment. This service is available to people in police custody.

These services can help young people when they are questioned by police in custody.

## What did we see in Operation Mantus?

Police interviewed the 14-year-old boy, even though a lawyer from the ALS had told the custody manager that the boy did not want to be interviewed.

We also received complaints from the Director of Public Prosecutions about similar matters in which police had interviewed vulnerable people, even after the lawyers for these people said their clients did not want to be interviewed.

Lawyers from ALS and Legal Aid also gave evidence about police practices for interviewing young people in custody.

The investigation also looked at many court decisions that identified problematic practices which have been occurring across NSW over the past 20 years.

We heard evidence about police:

- asking vulnerable people to confirm in an electronically recorded interview that they did not want to be interviewed - and then asking them questions about the alleged offence
- questioning young people 'informally' and recording this on body worn video or other recording devices
- suggesting to young people they could not get bail unless they are interviewed
- proceeding with interviews after custody managers failed to record that a young person had declined an interview and had also failed to tell support persons or investigating police.

While in most cases police adhere to the law and appropriately manage a person's choice to exercise their right to silence, we saw that these problematic practices took place across the state over many years.

In 2004 and 2005 the NSW Police Force issued protocols instructing police how to

properly deal with a young person who declines an interview. These protocols appear to have been forgotten and are no longer in use.

## Why are protections for vulnerable people in custody so important?

Young people are particularly vulnerable when in custody. Their psychological and emotional development is generally less mature than in adults. Research indicates they are more likely to confess, even falsely, than adults.

There is a framework of protections established in legislation and court decisions which recognises this vulnerability and creates special protections for young people.

As well as being unfair to the vulnerable person, evidence obtained in improper interviews may be inadmissible. This means it cannot be tested in court, investigations may be compromised, prosecutions may fail, and police may have to pay out legal costs.

## Our recommendations

We made 19 recommendations. In relation to interviewing, we recommended that police should:

- urgently advise custody managers to make a record in the custody management record when a young person declines to be interviewed either directly or through the lawyer. A young person should not be asked to confirm this decision in an interview. If the young person says that they have changed their mind about the interview, they should be offered further legal advice before any interview proceeds.
- improve training for custody managers
- create clear and easy to understand information for support people.

We also recommended amending the law so that the responsibilities of a custody manager are clearer.