

**OPERATION MANTUS – CONFIDENTIAL DECISION CONCERNING  
PUBLIC AND PRIVATE EXAMINATIONS IN AID OF THE INVESTIGATION  
(MADE PUBLIC IN AN AMENDED FORM ON 3 APRIL 2023)**

1. This Confidential Decision is to be read together with the Public Decision, dated 3 March 2023 concerning the use of public and private examinations in Operation Mantus.
2. Pursuant to s 176 of the *Law Enforcement Conduct Commission Act 2016* (LECC Act), the Commission directs that the Confidential Decision is to be provided only to legal representatives who have been, or will be, granted leave to appear at examinations for the purpose of Operation Mantus. Its contents must not be used or disclosed to any person except for the purpose of instructions being taken by the legal representatives from their clients.<sup>1</sup>
3. There are a range of factors under s 63 LECC Act which call for the holding of private examinations in Operation Mantus. The Commission has already held private examinations of Officers MTS1, MTS2, MTS3 and MTS5 on 9 and 10 February 2023.
4. The factors which called for, and continue to call for the use of private examinations concerning the specific facts of Operation Mantus are the following:
  - (a) the arrest of YPM1 occurred in a small rural community in Northern NSW where there is a significant First Nations population;
  - (b) the allegation of excessive use of force by police is extremely serious with a head injury being sustained by YPM1 which is capable of constituting actual bodily harm;
  - (c) there is a factual dispute as to the circumstances in which YPM1 sustained injuries during his apprehension by police;
  - (d) it is not expected that YPM1 will give evidence as part of the investigation;<sup>2</sup>
  - (e) on the current state of the investigation, the alleged excessive use of force on YPM1 involves an individual and isolated case and does not appear to be

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<sup>1</sup> The s 176 direction was varied on 3 April 2023 to allow unrestricted publication of the Confidential Decision in an amended form.

<sup>2</sup> On 9 March 2023, the legal representative for YPM1 informed the Commission that he was prepared to give evidence as part of the investigation and legal representatives for other interests were informed on 10 March 2023 that YPM1 would give evidence at a private examination on 15 March 2023.

representative of a systemic issue involving excessive use of force by police officers in the geographical area;

- (f) public examinations of witnesses, including police officers, will likely have a significant adverse effect on the local communities, including the First Nations community and their relationships with police in circumstances where it appears that significant steps have been taken to improve the relationships between the First Nations community and police;
- (g) there is a need to protect the privacy and safety of YPM1 and the family of YPM1;
- (h) [REDACTED]
- (i) there is a need to protect the safety and privacy of the police officers who have been called and will be called, as well as those of their families, who live in the local community;
- (j) the [REDACTED] [relevant] regions were stricken by severe floods in early 2022 and those floods have had a devastating and ongoing effect on the entire community with consequential adverse effects on all members of the community, police and non-police – the holding of public examinations will be likely to magnify the adverse consequences of the floods on the local community;
- (k) there is a need at this stage to protect the reputations of police involved relating to the alleged excessive use of force;
- (l) in regard to the issues of use by police of body worn video, custody management and the interviewing of suspects in custody, it may be less likely that reputational damage will be caused to police officers;
- (m) the use of body worn video, custody management and interviewing suspects in custody are issues of broader significance and appear to raise systemic issues of concern;
- (n) the use of public examinations concerning the use of body worn video, custody management and the interviewing of suspects in custody may encourage members of the community to come forward with relevant information to assist the Commission.

5. Having regard to these factors, private examinations will be used with respect to all witnesses (including police officers and civilians) giving evidence about the factual

circumstances concerning the arrest of YPM1 on 11 September 2022 and his detention and interviewing in custody on 12 September 2022.

6. In light of that evidence, the Commission will hear legal representatives on any application that a witness or witnesses should give evidence at a public examination.
7. In particular, the Commission will consider the use of public examinations on apparently systemic issues including use of body worn video, custody management and the role of custody managers and the interviewing of suspects (in particular vulnerable persons) who have received legal advice concerning proposed questioning by police. Public examinations on these issues are likely to involve senior police officers giving evidence on the present practice of the NSW Police Force in these areas and consideration of reform in light of evidence to be given at private and public examinations as part of Operation Mantus.
8. In considering the issue concerning the interviewing of suspects who have received legal advice, the Commission has taken into account decisions of Courts including *R v FE* [2013] NSWSC 1692, *R v Taleb* [2019] NSWSC 241, *R v Archer (No 1)* [2021] NSWSC 569 and *R v Nean* [2023] NSWDC 34 together with other unreported decisions of the Children's Court (in 2021 and 2022) and the District Court (in 2022).
9. At any public examinations, the Commission will continue to utilise pseudonyms already given, and additional pseudonyms to protect the identity of individuals, as well as the location where relevant events took place. The factors referred to in paragraph 4 of this decision serve to explain as well why the Commission continues to take this course.
10. In reaching this decision, I confirm that I have consulted with Commissioner Anina Johnson for the purpose of s 19(2)(a), (b) and (c) LECC Act.

The Hon Peter Johnson SC  
Chief Commissioner  
3 March 2023