

LECC

Law Enforcement
Conduct Commission

Executive Summary

OPERATION MANTUS

A report under section 132 of *Law Enforcement Conduct Commission Act 2016* concerning alleged excessive use of force and issues concerning police interviews of young persons in custody

December 2023

Executive Summary

In September 2022, a community in Northern New South Wales was under great stress from the impact of record breaking floods which occurred earlier that year. There had been significant community disruption and local police had been relocated and redeployed. The social disruption had contributed to an increase in crime committed by young people, with elderly members of the community being particular targets. There was a public call for a police response.

On 11 September 2022, a small strike force of plain clothes police officers targeted one community. The aim was to identify, and if necessary, arrest young offenders. The police officers were not using body-worn video (BWV). During the patrol, a 14 year old Aboriginal young person was chased and tackled by a police officer. He was handcuffed. His head was bleeding and he said that he'd been punched. His family arrived, expressing their concern for his wellbeing. He was taken to hospital by ambulance and later taken to a police station after discharge from hospital.

The custody manager arranged for a telephone call with the Aboriginal Legal Service (NSW/ACT) Ltd (ALS) to give him legal advice about being interviewed by police. The ALS advised the young person about his right to silence. The young person said that he wanted to exercise his right to silence. The ALS lawyer informed the custody manager of these instructions in a conversation and in an email. Despite this, the young person was interviewed by two NSW Police officers later that morning.

Complaints

A complaint about the young person's treatment was made by his lawyer. Later, the NSW Director of Public Prosecutions (DPP) also made a complaint to the Commission. The DPP's complaint highlighted a number of cases where NSW Police officers had interviewed vulnerable people, even after those people had said, following legal advice, that they did not want to be interviewed.

Issues

The Commission's investigation explored a number of issues, including:

- Was the young person's arrest lawful?
- Was excessive force used during that arrest?
- Why was BWV not used on the night of the arrest?
- Should the young person have remained handcuffed?
- Was the police interview of a young person after they had received legal advice and declined an interview unique to this case, or was it a systemic issue?
- What were the arrangements for the custody manager to record a vulnerable person's wishes about being interviewed, and tell interviewing police what the person had decided?

The evidence

The Commission took evidence in public and private examinations, beginning in February 2023. All of the officers involved, the young person and the NSW Commissioner of Police were legally represented and made submissions to the Commission.

The Commission heard from the police officers who were part of the arrest on 11 September 2022. It also heard from senior police within that Command. The young person gave evidence about what had occurred and the Commission also received the account of a member of the community who was an eye witness to the arrest. The Commission also heard from 2 Assistant Commissioners who gave evidence about the use of BWV and police interviewing and custody management practices. Police who were involved in delivering training also gave evidence. Finally, the Commission heard evidence from solicitors from Legal Aid NSW and the ALS and received submissions from these agencies and the Justice Advocacy Service. This evidence and submissions addressed systemic issues which saw the rights of vulnerable persons in custody being compromised in various respects by police officers.

Findings

The Commission found that the young person's arrest was lawful and that the force used was not excessive. The young person was not punched but sustained injuries when he hit his head on the gravel while being tackled by the police. The Commission was

critical of the non-use of BWV by police officers, as this could have avoided the need for the investigation of this issue.

The Commission found that the officers should have considered removing the handcuffs, once the young person's identity had been established and the situation contained. The officers should have considered diversionary options under the *Young Offenders Act 1997*. Arrest for a young person should have been the last resort.

The Commission noted that the custody manager did not seem to be aware of some of her legal obligations, and nor were the two officers who interviewed the young person. However, the Commission concluded that the NSW Police Force had not provided sufficient guidance to these officers and that responsibility for these failures lay with the NSW Police Force and not the individual officers.

Systemic issues

The Commission found that there was a systemic problem of police officers interviewing vulnerable people (including Aboriginal people and young people) after they had received legal advice and said that they did not wish to be interviewed.

In 2004 and 2005, the then Commissioner of Police had approved directions that if a young person exercised their right to silence, the investigating officer and the custody manager should record that the young person had declined an interview and the person should not be interviewed.

These protocols seem to have been forgotten by the NSW Police Force. The Commission found that the current NSW Police practice was to ask the vulnerable person to confirm that they had declined an interview in an electronically recorded interview. Too often, this request turned into an interview despite the person invoking their right to silence.

There were systemic problems with custody managers not recording a person's decision to decline an interview, support persons not being told that a suspect had declined to be interviewed on legal advice, investigating officers not being told that vulnerable people had declined an interview and investigating officers proceeding to interview the person regardless.

Some investigating officers also discussed bail with young persons in a way that suggested that participating in an interview would lead to a grant of police bail.

These practices continued despite numerous court judgments over several years concluding that they were improper. The Commission found that the NSW Police Force do not have an effective mechanism for identifying court decisions that criticise police practices or for changing those practices as a result. This has contributed to ongoing systemic problems.

Despite undertaking to review the situation urgently in April 2023, no relevant action has been taken by the NSW Police Force.

Recommendations

The Commission made 19 recommendations, including that:

- The Standard Operating Procedures (SOPs) for BWV should also apply to plain clothes officers.
- 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.
- The custody management SOPs should be amended so that only custody managers, and not investigating officers, can discuss bail with a suspect in custody.
- The NSW Police Force should urgently develop a system so that Court decisions concerning policing are brought promptly to the attention of the Executive of the NSW Police Force to ensure appropriate steps are taken to assist operational police and for training purposes.
- Training for custody managers should be improved, and should cover the rights of suspects in custody to refuse an interview.
- Documents provided to support people for suspects in custody should be rewritten using plain English.
- The *Law Enforcement (Powers and Responsibilities) Regulation 2016* (LEPRA Regulation) should be amended so that the responsibilities of a custody manager are clear.