

Hearing: Operation Mantus

Before the Hon P Johnson SC, Chief Commissioner

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

On Thursday, 25 May 2023 at 10.10am  
(Day 6)

**WITNESS INDEX**

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1 THE CHIEF COMMISSIONER: This is the continuation of  
2 a public hearing by the Law Enforcement Conduct Commission  
3 in Operation Mantus. There will be witnesses examined  
4 today for the purpose of that investigation.  
5

6 Section 62 of the Law Enforcement Conduct Commission  
7 Act 2016 requires the Commission to announce the general  
8 scope and purpose of the examination as part of the  
9 hearing. The scope and purpose has been announced before  
10 and remains the same.  
11

12 The general scope and purpose is to investigate  
13 allegations that excessive force was used by a member or  
14 members of the NSW Police Force at a location in northern  
15 New South Wales in September 2022 during the apprehension  
16 and arrest of a young person, described as [YPM1], and  
17 other issues arising from his detention in custody  
18 following that arrest.  
19

20 I will now invite counsel assisting to indicate the  
21 way forward in this investigation today.  
22

23 Thank you, Mr Fernandez.  
24

25 MR FERNANDEZ: Chief Commissioner, I provide an update on  
26 this investigation as well as foreshadow the evidence to be  
27 taken over the course of this stage of the public hearings.  
28

29 This is the third set of hearing dates in the  
30 investigation known as Operation Mantus. Private hearings  
31 were held in the week of 13 March this year. During those  
32 private hearings, [YPM1] gave evidence, as did a number of  
33 other witnesses, including officers [MTS1] and [MTS2]. At  
34 the public hearings, which were held from 3 to 6 April this  
35 year, I summarised the essential evidence given by those  
36 three witnesses.  
37

38 The evidence given at the public hearings from 3 to  
39 6 April addressed systemic issues. Two issues in  
40 particular were examined: the use of body-worn video  
41 equipment by police, as well as an issue relating to the  
42 interviewing of children by police when those children have  
43 already received legal advice that they did not wish to be  
44 interviewed and that legal advice had been communicated to  
45 police.  
46

47 In relation to the issue of body-worn video use,

1 Assistant Commissioner Anthony Crandell gave evidence. In  
2 relation to the interviewing of children, Mr Frankham from  
3 Legal Aid NSW, Ms Hoggood from the Aboriginal Legal Service  
4 and Assistant Commissioner Peter Cotter and Sergeant Stuart  
5 Edgell gave evidence on different aspects of that issue.  
6

7 At the end of the public hearings, the investigation  
8 was adjourned for further evidence and the Commission was  
9 advised at the end of the public hearings that the issue of  
10 interviewing of children by police in the circumstances  
11 I have described was to be taken up at a senior level at  
12 the NSW Police Force, in particular with determining an  
13 approach to the issue.  
14

15 Since the time of the public hearings, the Commission  
16 has continued its investigation. Further information has  
17 been provided from NSW Police in relation to the use of  
18 body-worn video equipment.  
19

20 It was anticipated, as I indicated, that at this  
21 resumed public hearing, the Commission would hear evidence  
22 about the issue of interviewing children and what steps  
23 have been taken at a high level of NSW Police concerning  
24 that issue.  
25

26 By way of a letter to the Commission dated 19 April  
27 [sic] 2023, the Commission was advised that the NSW Police  
28 Force would not be making any witness available to this  
29 investigation to speak to that issue of the interviewing of  
30 children, following legal advice.  
31

32 THE CHIEF COMMISSIONER: I think that was a letter of  
33 19 May, not April, Mr Fernandez.  
34

35 MR FERNANDEZ: I'm sorry, 19 May. I do apologise, yes.  
36

37 The Commission has continued its investigation on that  
38 very issue and has spoken to a person by the name of  
39 Ms Judy Harper, who works for the Justice Advocacy Service,  
40 who has provided a submission particularly in relation to  
41 her service, which supports people with cognitive  
42 impairments and interviewing by police.  
43

44 At this resumed hearing, witnesses will be called to  
45 give evidence on the following issues: powers of arrest,  
46 alternatives to arrest; discontinuation of arrest; and use  
47 of force by police.

1  
2 Three witnesses will be called, and their evidence is  
3 going to be taken concurrently - that is, at the same time.  
4 Each is from the NSW Police Force and each is responsible  
5 for aspects of training of police. The witnesses who will  
6 be called today are: Senior Sergeant Leanne Weston, who is  
7 the coordinator of education and operational skills; Senior  
8 Sergeant Andrew Pocock, who is the coordinator of the  
9 Associate Degree in Policing Practice; and Senior Sergeant  
10 Phillip Clarke, who is the coordinator of learning,  
11 development and delivery.  
12

13 I will tender some documents now and then, after the  
14 Commission has dealt with any appropriate matters, I will  
15 seek a short adjournment, after which I will call those  
16 three witnesses.  
17

18 I then turn to the tender of the following documents.  
19 I tender a response from Chief Inspector Steven Fishpool  
20 dated 12 May 2023 providing information to this  
21 investigation in relation to the use of body-worn video and  
22 other issues. The barcodes for this document are  
23 8532997-8532999.  
24

25 **EXHIBIT #MTS101 RESPONSE FROM CHIEF INSPECTOR STEVEN**  
26 **FISHPOOL DATED 12 MAY 2023 WITH RESPECT TO A SECTION 54**  
27 **NOTICE, BARCODED 8532997-8532999**  
28

29 MR FERNANDEZ: I tender a letter from the Commission to  
30 the NSW Police general counsel dated 21 April 2023. This  
31 letter sought information in relation to issues raised at  
32 the previous hearing in public about interviewing of  
33 children. The barcode for this letter is 8520872.  
34

35 **EXHIBIT #MTS102 LETTER DATED 21 APRIL 2023 FROM THE**  
36 **COMMISSION TO THE OFFICE OF GENERAL COUNSEL OF THE**  
37 **NSW POLICE FORCE WITH RESPECT TO INTERVIEWING OF CHILDREN,**  
38 **BARCODED 8520872**  
39

40 MR FERNANDEZ: I tender a letter dated 19 May 2023 by  
41 Mr Andrew Reid, acting general counsel from the Office of  
42 the General Counsel for the NSW Police Force. This is  
43 a letter which explained what had taken place since the  
44 time of the previous public hearings and what further  
45 information would be provided to the Commission. The  
46 barcodes for this letter are 8520865-8520866.  
47

1 EXHIBIT #MTS103 LETTER DATED 19 MAY 2023 FROM ANDREW REID,  
2 ACTING GENERAL COUNSEL, OFFICE OF THE GENERAL COUNSEL OF  
3 THE NSW POLICE FORCE, TO THE COMMISSION, BARCODED  
4 8520865-8520866  
5

6 MR FERNANDEZ: I tender a submission to the Commission  
7 dated 24 May 2023 by the Justice Advocacy Service relating  
8 to issues dealt with at this investigation. The barcodes  
9 for this submission are 8520873 to 8520877.

10  
11 EXHIBIT #MTS104 SUBMISSION DATED 24 MAY 2023 FROM MS JUDY  
12 HARPER OF THE JUSTICE ADVOCACY SERVICE, BARCODED  
13 8520873-8520877  
14

15 MR FERNANDEZ: That is the evidence at this stage.

16  
17 THE CHIEF COMMISSIONER: All right.  
18

19 Could I just raise with you some aspects of the letter  
20 from Mr Reid, Mr Coffey? I'm conscious that the line of  
21 correspondence, of which this was the latest, arose from  
22 some questions and answers of Assistant Commissioner Cotter  
23 at the April public hearing. I'm also conscious that there  
24 are ongoing issues to be considered with respect to the  
25 issue of interviewing of children.  
26

27 The particular topic that was raised with Mr Cotter,  
28 and was going to be the subject of prompt consideration at  
29 a senior level within the NSW Police Force, was whether,  
30 whilst there was consideration of the broader and varied  
31 topics relating to interviewing of children, there might be  
32 put back in place an arrangement that had been agreed to in  
33 a protocol between the then Commissioner of Police,  
34 Mr Moroney, and Legal Aid back in about 2005 and in a  
35 police circular that followed the next year, and that that  
36 may be the status quo pending any further reforms.  
37

38 Assistant Commissioner Cotter agreed in general terms  
39 that that could be a type of carve-out to allow some clear  
40 identification of the status quo pending further  
41 developments. Is that a fair summary of what happened at  
42 the public hearing?  
43

44 MR COFFEY: That's a fair summary, yes, Chief  
45 Commissioner.  
46

47 THE CHIEF COMMISSIONER: The concern that the Commission

1 had was that the evidence from Legal Aid witnesses and  
2 ALS witnesses and their written submissions was of a range  
3 of events occurring on a regular basis, in different parts  
4 of the state, which, it was said, tended to compromise the  
5 right to silence of the clients in different ways. The  
6 idea of the proposal of restoring the 2005 arrangement as  
7 the status quo was to provide certainty for police  
8 throughout New South Wales, at least for the time being.  
9 Has anything been communicated to the members of the  
10 NSW Police Force throughout the state about this issue  
11 since the last public hearing?

12  
13 MR COFFEY: Not in response to the way in which - no, the  
14 short answer is no.

15  
16 THE CHIEF COMMISSIONER: So is the position, then, that  
17 the police in the field throughout the state - and that's  
18 both metropolitan, regional and rural - are effectively  
19 left in the same position as to what guidance they have or  
20 don't have on this topic?

21  
22 MR COFFEY: Yes, Chief Commissioner.

23  
24 THE CHIEF COMMISSIONER: Could I just ask you a couple of  
25 things about the letter, and I'm conscious that it isn't  
26 a letter that you wrote, but the Commission would take it  
27 as a considered response on this issue.

28  
29 The letter sets out in the third paragraph what is  
30 said to be the Legal Aid and Aboriginal Legal Service's  
31 position, and the next paragraph says, "Respectfully, this  
32 position is not contained in legislation".

33  
34 Then, in the next paragraph, it says the statute  
35 doesn't require the police officers to provide a child or  
36 young person with an opportunity to obtain further legal  
37 advice, if legal advice may have been given and accepted in  
38 circumstances where there is the possibility of a change of  
39 mind by the young person.

40  
41 Section 90, dealing with fairness of interviewing, and  
42 section 138 of the Evidence Act, which deals with  
43 improperly obtained evidence - aren't they the statutory  
44 provisions that are key to this area, and perhaps I should  
45 add, and which have been referred to fairly constantly in  
46 the decisions of courts which are already in evidence in  
47 this investigation?

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MR COFFEY: Yes, to some degree, but no, also in response, with respect, Chief Commissioner.

Could I address firstly section 138 of the Evidence Act?

THE CHIEF COMMISSIONER: Yes.

MR COFFEY: Section 138 of the Evidence Act would arise where there has been non-compliance, whether intentional or reckless, with, for this purpose, statutory safeguards. What I understand the letter to be saying is there is no express obligation to provide repeat legal advice on every occasion. Of course, as a matter of practice and fairness, that would seem an appropriate thing to do. Just excuse me one moment. I just want to re-read that paragraph.

Section 90, yes, I agree with the observations that you make, Chief Commissioner, that section 90 of the Evidence Act is very much based about the admission of admissions or, alternatively, the exclusion of admissions within proceedings having regard to whether or not they have been obtained fairly.

Of course, where a police officer was to decline or refuse a young person or child to have access to speak to a lawyer on a subsequent occasion, then of course, that would arise. But as I understand the letter, what the letter is suggesting is there is no express requirement to provide a further opportunity to a young person to have access to a lawyer in circumstances where they change their mind.

So just to put that very succinctly and very clearly: a young person or child is arrested and detained and taken to the police station. As a matter of law, they are required to have access to speak to a lawyer via the Legal Aid hotline or potentially a lawyer at the station if someone was to turn up and be available.

At that point, following their legal advice, if they make a decision - that is, the young person - not to participate in an interview, as I understand it, the position diverges between what's advanced by the Aboriginal Legal Service and Legal Aid and the police force about what steps go further.

1  
2           The police force position is that young person can  
3 change their mind. An example of that may be when their  
4 support person, a parent or guardian turns up,  
5 a ministerial appointee turns up, or someone else turns up  
6 and has a conversation with them in private, away from the  
7 police force, and as a result of that conversation, they  
8 decide - that is, the young person or child - wishes to  
9 participate in an interview. That is a decision that can  
10 be made by the young person or child.

11  
12           What this letter is suggesting is that there is no  
13 obligation within the legislation to provide them an  
14 opportunity. As a matter of fairness and a matter of going  
15 forward, I see there is benefit, and I think the police  
16 force will accept at some time, recognising a further  
17 opportunity to speak to a lawyer, but as the law currently  
18 states, there is no obligation to provide that.

19  
20 THE CHIEF COMMISSIONER: That's probably right. But  
21 statutes don't cover the field in every eventuality, of  
22 course.

23  
24           Could I just raise this with you: as I understand the  
25 Legal Aid and ALS evidence here - and there's an example of  
26 it in the circumstances of the case we're looking at right  
27 now - legal advice offered, accepted by the young person.  
28 An email went from the ALS lawyer to the custody manager  
29 saying, "Doesn't wish to be interviewed", and inviting  
30 contact back with the lawyer if there was any issue that  
31 may give rise to a change in circumstances, something along  
32 those lines. So there was an email address, a contact  
33 point, and there was no communication back with the lawyer.  
34 I think that's the case.

35  
36 MR COFFEY: Yes.

37  
38 THE CHIEF COMMISSIONER: A support person turned up. The  
39 position, I think, is that the support person made no  
40 material contribution on this issue, and when the young  
41 person came to be interviewed and he was asked initially if  
42 he was prepared to be interviewed he said, "No", and then  
43 he was asked again and he said, "Yes".

44  
45           Now, that scenario illustrates part of the problem.  
46 Our system of justice in New South Wales accommodates the  
47 size of the state and the distance of these locations,

1 where police are operating in often far-flung locations, by  
2 having telephone advice systems with Legal Aid and ALS -  
3 it's a fundamental part of the criminal justice system in  
4 the state, and with young persons, of course, the  
5 legislation refers to it directly.  
6

7 So to have the young person given an opportunity to  
8 receive legal advice and accept that legal advice and, with  
9 that being communicated to the police, on one view of it,  
10 that would be the end of the line and the position would be  
11 note the interview declined.  
12

13 If there was some development, such as a parent coming  
14 on the scene, then what both Legal Aid and ALS say, as  
15 I understand it, is, "Please get back in touch with us as  
16 a continuation of the fairness being extended to the young  
17 person to have an opportunity to take advice." That's my  
18 understanding of the Legal Aid and ALS evidence. Is that  
19 a fair summary of it as you understand it too?  
20

21 MR COFFEY: I had understood that the position from ALS  
22 and Legal Aid was that, in short terms - and I don't wish  
23 to be heard as quoting from their submission in any sense -  
24 that once that advice has been provided, ultimately, the  
25 position doesn't change. Once they have provided advice,  
26 the decision has been made, therefore, there can be no  
27 interview. There's not really a contemplation also of the  
28 fact that a child or young person, upon attendance of the  
29 parent or some sort of support person, may decide not to  
30 speak to a lawyer again.  
31

32 I think it is very hard to cover all the field, Chief  
33 Commissioner, as you say. As a matter of fairness, there  
34 would be - it's very unclear why someone wouldn't be  
35 provided a further opportunity and multiple opportunities,  
36 if required.  
37

38 THE CHIEF COMMISSIONER: And that's what's accommodated,  
39 as I understand it. And we've got very detailed protocols  
40 and a detailed explanation from Legal Aid and ALS and none  
41 of their evidence was subject to any cross-examination on  
42 behalf of the Commissioner of Police - it's unchallenged -  
43 which showed that there was a system which said, in effect,  
44 an invitation for further contact.  
45

46 MR COFFEY: Yes.  
47

1 THE CHIEF COMMISSIONER: Perhaps just moving away from  
2 that for a moment, at least one of the decisions which is  
3 in evidence in this investigation involves a case where  
4 a District Court judge rejected the evidence because, when  
5 the mother arrived, the police officer spoke to the mother  
6 and said something along the lines of, "It would be very  
7 much in his interest if he gives an interview", and the  
8 mother was affected by that.

9  
10 Then the mother talked to the child and there was no  
11 going back to the lawyer, and the judge, in the end,  
12 thought that process involved an element of unfairness and  
13 impropriety because the parent, of course, is not a lawyer,  
14 has no knowledge of what the rights and obligations are,  
15 and so I'm setting these things out, I suppose, to try and  
16 get a clearer understanding of what the Commissioner's  
17 position is as per this letter.

18  
19 It is the case that 10 years ago Justice Adamson in  
20 the Supreme Court of this state in *R v FE [2013] NSWSC*  
21 *1692*, in a case that is not too far removed from the  
22 Operation Mantus circumstances, rejected an interview and  
23 made findings applying sections 90 and 138 of the  
24 Evidence Act, as I recall. So this is not a new  
25 development.

26  
27 Could I just ask this, too - the next paragraph refers  
28 to:

29  
30 *NSW Police Force is concerned that the*  
31 *Commission has not undertaken the inquiries*  
32 *to identify the circumstances where*  
33 *interviews have been admitted into evidence*  
34 *unchallenged.*

35  
36 Well, we haven't been offered any by the Commissioner of  
37 Police. What exactly are we asked to investigate, in that  
38 sentence?

39  
40 MR COFFEY: As you identified, Chief Commissioner, there  
41 were a number of decisions that were brought to the  
42 attention, as I understand it, throughout the course of  
43 this investigation conducted by the Commission, whether  
44 that was by the referral of the Director of Public  
45 Prosecutions or other interested parties who have made  
46 representations in various times.

1           Those have all been concerned with the exclusion of  
2 interviews, and one might suggest or appreciate that much  
3 of the time that a court issues a judgment it is often to  
4 exclude evidence, sometimes as a matter of practice where,  
5 even if there's a challenge but it's ultimately admitted,  
6 a discretion is exercised by the judicial officer, there  
7 may not be a reported decision.  
8

9           The difficulty that is attempted to be advanced on  
10 behalf of the Commissioner of Police is that every day  
11 there is a challenge, particularly in the Children's Court,  
12 for example, in respect of admissions, challenges pursuant  
13 to section 90 and 138 of the Evidence Act, where Children's  
14 Court magistrates determine to admit the evidence, and  
15 those are not publicly reported. So is there a balanced  
16 and fair reporting module or approach being provided here?  
17 That's, with respect, not a criticism of this Commission by  
18 any stretch, it's a practical reality of the way in which  
19 certain decisions happen and the way in which courts record  
20 this information.  
21

22 THE CHIEF COMMISSIONER: Yes. Well, I'm conscious of  
23 a number of things. Firstly, the events in Operation  
24 Mantus occurred in September 2022. This issue has been  
25 raised with the Commission from a number of sources.  
26

27           As you've noted, there was a complaint by the Director  
28 of Public Prosecutions of New South Wales, who was  
29 sufficiently concerned about this practice manifesting  
30 itself in a number of cases, reported and unreported, that  
31 the Director brought the matter to the attention of the  
32 Commission.  
33

34           In addition, Legal Aid NSW and the Aboriginal Legal  
35 Service did, and there have been assembled a number of  
36 decisions, both reported and unreported, of courts -  
37 Supreme Court, District Court, Children's Court - and as  
38 the submissions of Legal Aid and the ALS said, they only  
39 find out that this has happened, sometimes, that someone is  
40 interviewed, despite the person having accepted advice that  
41 they didn't want to be interviewed, down the track. They  
42 may not always find out. So if the police force wishes to  
43 advance some pool of decisions that shed more light on all  
44 of this, then it's open to the Commissioner to do so. But  
45 what is said to be a systemic issue has been illustrated in  
46 the manner identified in the evidence.  
47

1           The door is not closed, this inquiry is ongoing, but  
2 we are about to finish the evidence tomorrow and move into  
3 submissions. Does the Commissioner propose to provide  
4 anything more of an evidentiary type beyond what is in this  
5 letter or will it be effectively submissions?  
6

7 MR COFFEY: At the present time that I stand before you  
8 I don't have those instructions, but during the anticipated  
9 break in a moment could I get some instructions?  
10

11 THE CHIEF COMMISSIONER: Yes.  
12

13 I should make it clear too that I'm conscious this is  
14 an ongoing process. We have not finished the evidence.  
15

16 This was raised as an issue and the Commission has  
17 taken a significant proactive approach on this, partly  
18 because Assistant Commissioner Cotter seemed to accept the  
19 proposal. He, of course, was speaking for himself at the  
20 time.  
21

22 MR COFFEY: Yes.  
23

24 THE CHIEF COMMISSIONER: And the Commission has continued  
25 to correspond with you, or with the NSW Police Force, on  
26 the question.  
27

28 The concern that exists is that conduct of this type  
29 or related to this seems to be not uncommon, ongoing, and  
30 we now have the submission of Ms Harper from the Justice  
31 Advocacy Service which raises some other aspects.  
32

33 On one view of it, this aspect is a quite urgent one  
34 for the police force to consider identifying for the  
35 benefit of police officers a position to be followed  
36 consistently throughout the state pending further  
37 consideration, so I am having this discussion with you  
38 partly just to bring to a head again where we were up to  
39 in April when we last had a discussion along these lines.  
40

41 Is there anything further you wanted to say at the  
42 moment about this?  
43

44 MR COFFEY: No, thank you, Chief Commissioner.  
45

46 THE CHIEF COMMISSIONER: I'm grateful for your involvement  
47 in this matter and what your involvement was on the last

1 occasion, but this is a matter of real significance to the  
2 administration of justice. It goes to the exercise of the  
3 right to silence by young persons, using the only practical  
4 scheme of getting legal advice, which is by telephone, and  
5 in circumstances where the young person is in the custody  
6 of the police and, therefore, it is very important for the  
7 police to have a clear understanding of what they should be  
8 doing and not doing in the circumstances. The Commission  
9 has ongoing concerns on this issue.

10  
11 Having said that, the hearing is not over and there  
12 will be an opportunity for submissions.  
13

14 I would invite you to make sure that those instructing  
15 you have access to both the transcript of this discussion  
16 and, in due course, the recording of it, which will be  
17 available on the Commission website. This is a matter of  
18 ongoing importance.  
19

20 MR COFFEY: I'm grateful. Thank you, yes, Chief  
21 Commissioner.  
22

23 THE CHIEF COMMISSIONER: Thank you, Mr Coffey, for your  
24 assistance.  
25

26 Now, the next phase will be the evidentiary phase  
27 where there will be the three police officers. There has  
28 been some discussion about the best way of taking the  
29 evidence from those witnesses. The Commission did use  
30 concurrent evidence from some of the witnesses, I think,  
31 from Legal Aid and ALS.  
32

33 MR FERNANDEZ: Yes.  
34

35 THE CHIEF COMMISSIONER: Although some of them were giving  
36 evidence virtually with one witness here, we will now have  
37 three witnesses in a hearing room, which, a little like  
38 old-fashioned courts, has a witness box largely designed  
39 for one person and lots of fixed carpentry. So I will  
40 shortly take a break to allow arrangements to be put in  
41 place for that evidence to commence. As I understand it,  
42 it will involve a combination of a witness in the witness  
43 box and other witnesses at the table closest to the Bench.  
44

45 MR FERNANDEZ: Yes, that's so.  
46

47 THE CHIEF COMMISSIONER: We want to make sure everyone in

1 the hearing room can hear what's being said, so we just  
2 want to take a break to put those practical matters into  
3 place.  
4

5 Of course, the Commission is not a court and it may  
6 take evidence in such way as it sees fit, and the use of  
7 concurrent evidence, effectively a panel of witnesses,  
8 seems especially useful in this area. It may be that one  
9 witness knows more or is able to say more on one topic than  
10 others. Rather than having the witnesses coming through  
11 one after the other, having the witnesses as a panel is  
12 likely to be of the greatest assistance to the Commission  
13 and to the public who may have an interest in following  
14 these proceedings.  
15

16 Have we now reached a point where you would ask me to  
17 adjourn for a period, Mr Fernandez?  
18

19 MR FERNANDEZ: We have, Chief Commissioner. Could we  
20 please return at 11.15?  
21

22 THE CHIEF COMMISSIONER: All right. Yes, the hearing is  
23 adjourned until 11.15.  
24

25 **SHORT ADJOURNMENT**  
26

27 THE CHIEF COMMISSIONER: Yes.  
28

29 MR FERNANDEZ: Chief Commissioner, I call the following  
30 witnesses and I will just indicate where they are seated  
31 within the hearing room. Senior Sergeant Phillip Clarke is  
32 seated in the witness box. Senior Sergeant Leanne Weston  
33 is seated in the front row to your right, Chief  
34 Commissioner. Senior Sergeant Andrew Pocock is seated next  
35 to Senior Sergeant Weston.  
36

37 THE CHIEF COMMISSIONER: Thank you.  
38

39 MR COFFEY: Could I assist, that none of the witnesses  
40 require an objection or declaration.  
41

42 THE CHIEF COMMISSIONER: Yes, thank you. All right.  
43

44 Now, there are three of you, it's probably a little  
45 unusual for you, but it's an efficient way of taking  
46 evidence, so we'll just have each of you sworn, I think, or  
47 affirmed. One after the other, I think, rather than all at

1 once.  
2  
3 <PHILLIP JOSEPH CLARKE, sworn: [11.25am]  
4  
5 THE CHIEF COMMISSIONER: Thank you, have a seat.  
6  
7 <LEANNE FRANCES WESTON, sworn: [11.25am]  
8  
9 THE CHIEF COMMISSIONER: Thank you.  
10  
11 <ANDREW POCOCK, sworn: [11.25am]  
12  
13 THE CHIEF COMMISSIONER: Thank you. All right.  
14  
15 Yes, Mr Fernandez.  
16  
17 <EXAMINATION BY MR FERNANDEZ:  
18  
19 MR FERNANDEZ: Senior Sergeant Pocock, could you please  
20 state your full name.  
21  
22 SR SGT POCOCK: Andrew Pocock.  
23  
24 MR FERNANDEZ: Senior Sergeant Weston, could you please  
25 state your full name.  
26  
27 SR SGT WESTON: Yes, Leanne Frances Weston.  
28  
29 MR FERNANDEZ: Senior Sergeant Clarke, could you please  
30 state your full name.  
31  
32 SR SGT CLARKE: Phillip Joseph Clarke.  
33  
34 MR FERNANDEZ: I'm going to introduce you in what might be  
35 considered the logical order, because, Senior Sergeant  
36 Pocock, you are very much responsible for the training of  
37 police; is that correct?  
38  
39 SR SGT POCOCK: Yes, that's correct.  
40  
41 MR FERNANDEZ: Senior Sergeant Weston, you are involved  
42 with training of police both at the academy and on an  
43 ongoing basis; is that right?  
44  
45 SR SGT WESTON: Yes.  
46  
47 MR FERNANDEZ: And Senior Sergeant Clarke you are involved

1 in continuing training of police including once they are  
2 operationally instilled; is that correct?  
3  
4 SR SGT CLARKE: That's correct.  
5  
6 MR FERNANDEZ: Senior Sergeant Pocock, are you the  
7 coordinator of the Associate Degree in Policing Practice?  
8  
9 SR SGT POCOCK: Yes, I am.  
10  
11 MR FERNANDEZ: Just explain what that associate degree is  
12 about.  
13  
14 SR SGT POCOCK: Okay, we have an - the academy of  
15 NSW Police has a constable education program. The  
16 constable education program is responsible for taking  
17 someone from the community and taking them to the point of  
18 being a confirmed constable of police.  
19  
20 A lot of the content in the constable education  
21 program is things like typing and running fitness and our  
22 COPS systems, and then there's - the primary component is  
23 academic, which is their academic learning. To do that,  
24 that component of the CEP is - we work in partnership with  
25 Charles Sturt University and we --  
26  
27 MR FERNANDEZ: You said "CEP"; what's that?  
28  
29 SR SGT POCOCK: That's the constable education program,  
30 sorry. That's the overarching program.  
31  
32 THE CHIEF COMMISSIONER: Could I just get you to pause for  
33 one moment.  
34  
35 Could I check that everyone in the room can hear?  
36  
37 MR COFFEY: It is a bit faint, Chief Commissioner.  
38 I wonder whether --  
39  
40 THE CHIEF COMMISSIONER: There is a microphone there.  
41  
42 SR SGT POCOCK: Is that better?  
43  
44 THE CHIEF COMMISSIONER: That is certainly better. I can  
45 hear you, but it is those behind you, I think, who are --  
46  
47 MR COFFEY: I'm grateful, thank you.

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THE CHIEF COMMISSIONER: Having the microphone handy will assist for everyone in the room. That would be good. Thank you.

If you would like to carry on, yes, Mr Fernandez

MR FERNANDEZ: You've just explained that the CEP is the constable education program?

SR SGT POCOCK: Correct. And the primary component of the constable education program is the Associate Degree in Policing Practice, the ADPP, in which NSW Police partners with Charles Sturt University to deliver that.

I am the coordinator for that ADPP from the police perspective.

MR FERNANDEZ: There's also someone from the university; is that correct?

SR SGT POCOCK: Yes, the curriculum manager, they're called the curriculum manager and I'm his counterpart, I suppose.

MR FERNANDEZ: The academy is at Goulburn; is that correct?

SR SGT POCOCK: Correct.

MR FERNANDEZ: Is that where the learning in terms of the associate degree takes place in terms of in-person, face-to-face learning?

SR SGT POCOCK: Yes.

MR FERNANDEZ: What length of time do police officers in training spend in person at Goulburn?

SR SGT POCOCK: Sixteen weeks.

MR FERNANDEZ: Is there also a component of training which is online?

SR SGT POCOCK: Yes, there is. There is session 1, which is 16 weeks online, yes.

1 MR FERNANDEZ: After the completion of the associate  
2 degree, a person becomes a probationary constable for  
3 a period of a year; is that correct?  
4

5 SR SGT POCOCK: Not quite. What happens after session 1,  
6 which is the 16-week online; session 2, 16 weeks at the  
7 police academy. That's when they become attested as  
8 a probationary constable. They're on probation for a year.  
9 In that year, they do three further academic - sessions of  
10 academic study. They also obviously do on-the-job learning  
11 for that year, and there is an operational portfolio which  
12 they have to complete as part of the academic side of it as  
13 well. Then, if they complete all that, they're confirmed  
14 as a constable of police.  
15

16 MR FERNANDEZ: You described the associate degree as  
17 involving more mundane tasks like typing, but in terms of  
18 substantive content, what are police officers in training  
19 taught?  
20

21 SR SGT POCOCK: Okay, the ADPP is an integrated  
22 curriculum. There's four subjects that we teach. Law,  
23 policy and procedures; investigations; and ethics and  
24 communication - they are three subjects that I primarily  
25 deal with. There's a weapons subject, which my  
26 counterpart, Senior Sergeant Weston, would be able to speak  
27 to.  
28

29 Within those subjects we teach - well, I'll tell you,  
30 I suppose. We start off with six core policing capability  
31 mini modules. Those core policing capability mini modules  
32 deal with issues that are core to policing. So there is  
33 the introduction to policing, there is decision-making and  
34 problem-solving, communications, ethics, victims of crime,  
35 customer service, and then the final - this is what I call  
36 CPCs or what we call CPCs, core policing capabilities, is  
37 the introduction to law and investigations.  
38

39 After that we have, in session 1, I think it's  
40 10 modules or topics; then in session 2 we have a further  
41 seven; and then we have numerous in year 2, which is then  
42 that probation year. The topics start with communities at  
43 risk. We deliberately put communities at risk as the first  
44 topic we do because we think it's an important way to ask  
45 our training after the students have learnt the core  
46 policing capability around ethics. So we start with that  
47 topic. And then we move on to crime-related topics or

1 issue-related topics, such as young people. We've got  
2 a whole topic that deals with young people. We have topics  
3 on youth - sorry, larceny, domestic violence, assaults,  
4 things like that.

5  
6 MR FERNANDEZ: Have you just described very much the  
7 theoretical training or the substance --

8  
9 SR SGT POCOCK: Yes.

10  
11 MR FERNANDEZ: -- of substantial training, whereas Senior  
12 Sergeant Weston deals with more practical aspects; is that  
13 correct?

14  
15 SR SGT POCOCK: Yes, especially from the perspective of  
16 the weapons side of it, yes.

17  
18 MR FERNANDEZ: Senior Sergeant Pocock, when you described  
19 an "integrated curriculum", what do you mean?

20  
21 SR SGT POCOCK: Okay, so people might understand that at  
22 a university you might be - you might be in a particular  
23 subject and that subject might be law, so you might attend  
24 a law lecture followed by law tutorials. Then you might go  
25 to, you know, a different subject lecture on, you know -  
26 I don't know, any sort of - you know, geology or something  
27 like that. Our curriculum's integrated in the sense that  
28 all subject content or any subject content may be taught in  
29 any particular lesson rather than specific siloed lessons  
30 that deal with that particular issue.

31  
32 MR FERNANDEZ: How is the curriculum put together? Who  
33 makes decisions on topics and content?

34  
35 SR SGT POCOCK: Okay, there's numerous ways in which that  
36 occurs. We, my team - my team, environmentally scans, so  
37 we're constantly looking at the environment to see what  
38 issues are topical. We actually do have a master plan  
39 that's signed off at DCOP level, which is a two-year plan  
40 which provides some sort of direction on where we're  
41 heading.

42  
43 THE CHIEF COMMISSIONER: When you say "at DCOP level",  
44 that's Deputy Commissioner of Police?

45  
46 SR SGT POCOCK: Sorry, Commissioner.

47

1 THE CHIEF COMMISSIONER: That's all right. As I've  
2 discovered, there are many shorthand terms.

3

4 SR SGT POCOCK: Yes, at deputy commissioner level, it was  
5 approved at that level for us to go down that path. We get  
6 regular requests from our command, our commander, assistant  
7 commissioner level, deputy commissioner level to look at  
8 what we teach in relation to particular areas and asking us  
9 to do sometimes a report up to those - to that level as -  
10 to provide information on what we teach. That will  
11 sometimes come back with a request for us to enhance  
12 certain content - a coroner's recommendations, LECC  
13 recommendations. Yes. So - and there is a committee that  
14 exists that any substantial change to our curriculum goes  
15 through a courses committee, I think it's called, which is  
16 a combination of Charles Sturt University hierarchy and  
17 NSW Police hierarchy, and when I say that, it would be at  
18 the principal of the academy level.

19

20 MR FERNANDEZ: Thank you. I think you have explained  
21 that.

22

23 SR SGT POCOCK: Sorry.

24

25 MR FERNANDEZ: No apology is necessary.

26

27 One of the systemic issues that this investigation has  
28 dealt with is an issue that has been before the courts for  
29 many years, at least 15 years, and there are cases which  
30 are in evidence in this investigation dealing with  
31 potential exclusion of interviews given by children after  
32 they've been given legal advice, and a number of different  
33 varied situations relating to the giving of legal advice.

34

35 Can you just explain how do the latest developments in  
36 the law - how courts talk about police powers, for  
37 example - how do they find their way into the curriculum?

38

39 SR SGT POCOCK: We will have a look - sometimes that  
40 information will come down via our commander with advice  
41 that it should be put in. It should be looked at and put  
42 into our curriculum in a way that our students will  
43 understand. In other instances, we will hear of matters  
44 that have been - findings or matters that have been  
45 finalised and we will look at our content and ensure that  
46 our content accurately reflects. I think some time ago -  
47 an example, maybe?

1  
2 MR FERNANDEZ: No, what you've just described is either  
3 you yourselves as putting together the curriculum or being  
4 advised by others about input components?  
5  
6 SR SGT POCOCK: Yes.  
7  
8 MR FERNANDEZ: I will come back later to talk about some  
9 specific aspects.  
10  
11 Senior Sergeant Weston, I'm now going to turn to you.  
12 Is your role the coordinator of education and operational  
13 skills?  
14  
15 SR SGT WESTON: Yes, that's correct.  
16  
17 MR FERNANDEZ: Are you based at the academy at Goulburn?  
18  
19 SR SGT WESTON: Yes.  
20  
21 MR FERNANDEZ: What is it that you do in that role?  
22  
23 SR SGT WESTON: I act as a conduit between our business  
24 managers of our five business units and the commander of  
25 the command. I'm also a senior operational safety  
26 instructor, so I do deliver operational safety training to  
27 both the students at the academy and ongoing training to  
28 our sworn officers.  
29  
30 MR FERNANDEZ: What is operational safety?  
31  
32 SR SGT WESTON: Operational safety - that relates to our  
33 policing and maintaining your own safety, dependent on the  
34 environment that you face.  
35  
36 MR FERNANDEZ: Does that include such things as tactical  
37 options available to police in situations where they're  
38 dealing with members of the public?  
39  
40 SR SGT WESTON: Absolutely. The tactical options model  
41 does guide our interactions with the public.  
42  
43 MR FERNANDEZ: Part of what you train police in is use of  
44 force; is that correct?  
45  
46 SR SGT WESTON: Correct.  
47

1 MR FERNANDEZ: Including the different types of use of  
2 force?  
3  
4 SR SGT WESTON: Correct.  
5  
6 MR FERNANDEZ: As well as different options, including  
7 manual use of force as well as use of weapons; would that  
8 be correct?  
9  
10 SR SGT WESTON: Yes, that is correct. When you say  
11 "manual use of force", that is referred to as "weaponless  
12 control" and that does form a part of the tactical options  
13 model.  
14  
15 MR FERNANDEZ: In addition to teaching students in the  
16 associate degree, are you also responsible for ongoing  
17 training of police once they have been commissioned?  
18  
19 SR SGT WESTON: Yes.  
20  
21 MR FERNANDEZ: Is there a mandatory training program  
22 required of all police?  
23  
24 SR SGT WESTON: Yes.  
25  
26 MR FERNANDEZ: Is that in the form of continuing  
27 education?  
28  
29 SR SGT WESTON: Continuing education. You have your  
30 mandatory training directive for our operational police.  
31  
32 MR FERNANDEZ: That means that police every year are  
33 required to do ongoing training and study; is that correct?  
34  
35 SR SGT WESTON: Correct, for a training period, it's  
36 referred to.  
37  
38 MR FERNANDEZ: Is there some practical training such as  
39 use of weapons, firing and what have you?  
40  
41 SR SGT WESTON: Yes.  
42  
43 MR FERNANDEZ: Is there also a more theoretical component  
44 or substance?  
45  
46 SR SGT WESTON: Yes.  
47

1 MR FERNANDEZ: Are you responsible for both - are you  
2 involved in both types of training?  
3  
4 SR SGT WESTON: In relation to operational safety,  
5 physical and technical, yes.  
6  
7 MR FERNANDEZ: In terms of operational safety, let's say  
8 a police officer in general duties, how much training per  
9 year would a police officer get in operational safety?  
10  
11 SR SGT WESTON: Two days specifically.  
12  
13 MR FERNANDEZ: Are there also opportunities for other  
14 training that police can seek during the course of their  
15 duties?  
16  
17 SR SGT WESTON: Yes.  
18  
19 MR FERNANDEZ: I'm now going to turn to you, then, Senior  
20 Sergeant Clarke.  
21  
22 THE CHIEF COMMISSIONER: Just before you do that, just so  
23 I can understand this: with respect to the two days per  
24 year, do the police coming back for that continuing  
25 training all go to Goulburn for it or is it done in  
26 regions?  
27  
28 SR SGT WESTON: We have - it's region based. So if you  
29 are at Goulburn, for example, you'll be trained by our  
30 southern region team. We have metro teams, so if you're  
31 stationed Sydney-wise - and that's across the state.  
32  
33 THE CHIEF COMMISSIONER: So if you're in the northern,  
34 southern, western, metropolitan region, it is region based?  
35  
36 SR SGT WESTON: Correct.  
37  
38 THE CHIEF COMMISSIONER: Thank you.  
39  
40 MR FERNANDEZ: Is the nature of your training that it is  
41 very much face to face; it's practical training,  
42 particularly in terms of use of weapons?  
43  
44 SR SGT WESTON: Yes.  
45  
46 MR FERNANDEZ: Senior Sergeant Clarke, are you the  
47 coordinator of learning development and delivery?

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SR SGT CLARKE: I'm the coordinator of the field development unit which sits within the - that command, the learning development and delivery command.

MR FERNANDEZ: What is it that you do? What are your responsibilities?

SR SGT CLARKE: Within the field development unit our responsibilities include the - we create the mandatory learning components for each year as requested; we facilitate the delivery of those through - we have some - we provide information to the education and development officers who provide the mandatory training through what's called the PETE system, which is our online and other training system.

MR FERNANDEZ: Can you spell that? The what system?

SR SGT CLARKE: PETE, P-E-T-E, and it's a platform for delivery of training which - it includes a lot of online training and resources for face-to-face and blended training as well.

We will facilitate the development of those mandatory training components. We look after - we have some involvement in the CDP, which is the constable development program, which is a program post CEP, where constables are looking towards promotion to senior constables, where we have mandatory training that they need to complete for that as well. Whereas we don't necessarily - we can't possibly deliver all this training ourselves. We have some oversight and a role in creating and facilitating the delivery of those programs and packages.

MR FERNANDEZ: Are you also responsible for specialist courses such as the detective training unit and courses for specialist officers?

SR SGT CLARKE: The learning development and design command includes a number of sections. I have mentioned the field development unit that I am part of. There's also a detectives training unit, which looks after the training of detectives and the development of detectives, and there's the CPTU, the crime prevention training unit, as well, which has a lot of specialist training units, including specialist youth officer training, domestic

1 violence officer training.

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1 being accessed through these portals?

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3 SR SGT CLARKE: There is - for each of those resources,  
4 I think there's - if the course is run generally an  
5 attendance is taken and there may be a proficiency attached  
6 to the course where the person can, or the EDO can, or the  
7 lead educator for that course can sign that person off as  
8 having attended that course. Even for some of the smaller  
9 pieces like the SMITs that I mentioned, the six-minute  
10 intensive training, they can indicate that they have  
11 completed that course - read that material and completed  
12 that course.

13

14 MR FERNANDEZ: By way of background Senior Sergeant  
15 Clarke, you actually have a degree in law; is that correct?

16

17 SR SGT CLARKE: That's correct.

18

19 THE CHIEF COMMISSIONER: And science; is that right?

20

21 SR SGT CLARKE: That's correct, sir.

22

23 MR FERNANDEZ: In your time in police after working in  
24 general duties, did you work as a police prosecutor for  
25 a number of years?

26

27 SR SGT CLARKE: I spent a number of - about three years in  
28 front of the court and then I went to the training unit  
29 after that.

30

31 MR FERNANDEZ: You were a trainer for about six years; is  
32 that right - between 2012 and 2018?

33

34 SR SGT CLARKE: Yes, I continued training - I took on  
35 a coordinator role or a legal advocate role but I kept  
36 training right through to 2022, with the training unit.

37

38 MR FERNANDEZ: What did that coordinator or legal advocate  
39 role involve? How was that different to what a police  
40 prosecutor might normally do?

41

42 SR SGT CLARKE: I didn't attend court that often and my  
43 job was developing materials and delivering classes to  
44 trainee prosecutors.

45

46 MR FERNANDEZ: In relation to that matter, can I ask you  
47 whether, in that role, was there ever any communication

1 with the training of police through the associate degree  
2 course to raise frequent legal issues that were arising?  
3 Was that something that you were involved in?

4  
5 SR SGT CLARKE: The frequent - we would - in training, as  
6 in from the training unit back to the academy is the  
7 question?

8  
9 MR FERNANDEZ: So, for example, Senior Sergeant Pocock  
10 described how the curriculum is developed, both through  
11 looking himself, as well as getting feedback from coronial  
12 recommendations or others, commanders. Was there ever any  
13 component or aspect of your work, being a police prosecutor  
14 and then training police prosecutors, to say, "This is  
15 a recurring legal issue. Police should be trained in  
16 that"? Was that ever something that you did?

17  
18 SR SGT CLARKE: Recurring issues in courts would be dealt  
19 with through the normal channels. There's a failed  
20 prosecution process, where, if a prosecution doesn't  
21 succeed, there is a review process for those prosecutions  
22 and if there are any patterns - there are people within the  
23 prosecutions command who do look for that information, and  
24 even within local areas, they will review failed  
25 prosecutions within a command to see if there are recurrent  
26 problems.

27  
28 MR FERNANDEZ: When you say "within a command", is that  
29 very much on a regional basis that you're describing?

30  
31 SR SGT CLARKE: Yeah, within a local area or a district.

32  
33 MR FERNANDEZ: One of the systemic issues that this  
34 investigation is looking at is about after children give  
35 interviews, if there's a question about admissibility,  
36 about how those admissibility questions are determined by  
37 courts. There are judgments of the Supreme Court, District  
38 Court and Children's Court that are in evidence before this  
39 investigation.

40  
41 Is there a way that those judgments, those  
42 determinations by the courts, are provided to police  
43 prosecutors to say, "These are the - this is the latest  
44 law. This is what you need to be aware of"?

45  
46 SR SGT CLARKE: I can't speak for the prosecutors now,  
47 because I'm not part of --

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MR FERNANDEZ: In terms of your training, when you were a trainer?

SR SGT CLARKE: In my role, it was for each of the - we would have responsibility or there would be areas that we would train on, and specialist areas, and we would each individually keep an eye on the relevant changes to the law. Whether it be legislative or case-based or policy driven changes, it was the responsibility of each of the trainers. But it was a reasonably collegiate environment in that we would work with each other or we have multiple resources to identify changes in law, not least of which is the internal processes of the police where they will issue from the Office of the General Counsel or otherwise - they would often issue emails and notices of changes to the law as well.

In addition, things like - we have feeds of current awareness from Westlaw, from Lexis. I would regularly deliver to all prosecutors, and not just the trainees, copies of the Criminal Law News and other products that would alert prosecutors to - and trainees to any developments in the law.

MR FERNANDEZ: Just lastly on this line of questioning, you've just described how you, as police prosecutors, would receive that information and that legal information.

SR SGT CLARKE: Yes.

MR FERNANDEZ: What about sharing that information? Was there a process by which police in training could be provided with that information, so someone like Sergeant Pocock could be made aware of, "This is a frequent issue. Police need to be taught about that"?

SR SGT CLARKE: I don't think it was the mandate of the prosecutor training unit to necessarily inform. However, depending on the relationship with the trainer and the information needed - yes, I didn't have a regular conduit with the academy that I recall. But, yes, we wouldn't withhold information.

MR FERNANDEZ: It was about the sharing of information, not the withholding. It was about the sharing of information.

1  
2 SR SGT CLARKE: Yes, sorry.  
3  
4 MR FERNANDEZ: Was there any process for that to take  
5 place?  
6  
7 SR SGT CLARKE: Again, I am not aware of that process,  
8 although it's usually information - we were taking  
9 information that was available to all police or, you know,  
10 disseminated through what we called Nemesis messages or -  
11 I can't recall specifically --  
12  
13 MR FERNANDEZ: I think you've answered that.  
14  
15 SR SGT CLARKE: -- providing information to Goulburn  
16 directly.  
17  
18 MR FERNANDEZ: I'm going to turn to the first topic that  
19 I'm going to raise with each of you and, firstly, with you,  
20 Senior Sergeant Pocock. That's about what training is  
21 provided both to officers in training and then afterwards  
22 about alternatives to arrest.  
23  
24 Senior Sergeant Pocock, you referred in your evidence  
25 earlier to "communication". What is taught as part of the  
26 associate degree to police officers in training about  
27 alternatives to arrest?  
28  
29 SR SGT POCOCK: It's probably important to point out to  
30 start with that we would - on a lot of these issues that  
31 are very important, what we will do is we will address the  
32 issue numerous times throughout the curriculum. So  
33 probably the easiest way is for me to - it's just - it's  
34 addressed numerous times. I can give you examples, if you  
35 like, of --  
36  
37 MR FERNANDEZ: Could you summarise what is taught? What  
38 are police taught about when to arrest someone and when -  
39 what the alternatives are to arrest?  
40  
41 SR SGT POCOCK: We're taught a lot - we teach a lot in  
42 relation to arrest. We teach what an arrest is. We teach  
43 when - can I start with - do you want arrest or do you want  
44 alternatives to arrest?  
45  
46 MR FERNANDEZ: Let's start with the alternatives.  
47

1 SR SGT POCOCK: Yeah, okay. So we start - lesson one, we  
2 start with Peel's principles. Very quickly, Sir Robert  
3 Peel's nine principles. This is in our first lesson. His  
4 first principle of law enforcement, the basic commission  
5 for which police exist is to prevent crime and disorder as  
6 an alternative to the repression of crime and disorder by  
7 military force or severity of legal punishment. So right  
8 from lesson 1, we're starting to lay the foundations of  
9 what policing is, and it's not military force or legal  
10 punishment.

11  
12 There's another legal principle in here which talks  
13 about, in Peel's, where police should use physical force to  
14 the extent necessary. So we start with Peel's principles.  
15 A couple of lessons later we talk about police discretion,  
16 and in the police discretion lesson we talk about an  
17 acronym STOPAR, which is in our decision-making and  
18 problem-solving. STOPAR is our decision-making and problem  
19 solving --

20  
21 MR FERNANDEZ: Is that S-T-O-P-A-R?

22  
23 SR SGT POCOCK: Yeah, so --

24  
25 MR FERNANDEZ: Does that stand for "Stop, think, observe,  
26 plan, act, review"?

27  
28 SR SGT POCOCK: Yes, and it's in the plan - for example,  
29 this is the first - one of the early lessons, the plan  
30 stage refers to what action police are going to take with  
31 this decision based on the least restrictive form of  
32 sanction. So we talk about the least restrictive form of  
33 sanction, such as no action; issuing a warning; move on  
34 direction; fixed penalty notice; field court attendance  
35 notice; future service court attendance notice; or arrest.  
36 So that's in probably, I'd say, the - that's the seventh  
37 lesson that these students learn.

38  
39 We provide - in that same lesson we give that view  
40 examples. We talk about section 99(1)(a), we highlight the  
41 point that in section 99(1)(a) or section 99 --

42  
43 MR FERNANDEZ: I'll come to that very shortly because  
44 section 99 deals with the powers of police to arrest  
45 without a warrant, and I'll turn to that very directly.  
46 Are you saying that's part and parcel of consideration of  
47 alternatives to --

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SR SGT POCOCK: Yes.

MR FERNANDEZ: Could you explain that?

SR SGT POCOCK: Because we say the use of the word "may" as opposed to "will" or "must" or "shall" --

MR FERNANDEZ: What we might do is put section 99 up on the screen.

(Microphone feedback)

THE CHIEF COMMISSIONER: We can put that up on the screen. If there is some way of reducing the static --

MR FERNANDEZ: We might just focus in on section 99(1)(a) and (b).

SR SGT POCOCK: Yes, particularly what our lesson highlights is "a police officer may arrest". So in this stage, we're not actually dealing with arrests; we're dealing with discretion, but what we bring to their attention is the fact that they may arrest. It doesn't say "you shall arrest", it doesn't say "you must arrest", it doesn't say "you will arrest". It clearly denotes that "you may arrest", and we highlight the fact that that - well, I'll just say what it says, it is easier:

*The legislation allows for police to exercise their discretion on how to lawfully proceed. In future lessons you will learn what the alternatives to arrest are --*

notwithstanding that we've just highlighted them --

*and how they are applied using appropriate police discretion.*

Then we, in the same lesson, go on to section 231, which again indicates that you may - the word "may" in section 231 implies that police do not have to use force in every arrest situation: "while the term 'reasonably necessary' allows for police to use their discretion to determine when use of force is justified and the level of

1 force that is needed."

2

3 So whilst these issues are use of force related and  
4 arrest related, we don't silo things like that. They need  
5 to understand them in context and so, therefore,  
6 alternatives to arrest - sort of the discussion with  
7 alternatives to arrest interrelates really with our  
8 discussions on arrest and when to discontinue an arrest  
9 because, you know, you may have arrested somebody and then  
10 situations may change because it leads to an alternative to  
11 the arrest situation of taking someone back to the police  
12 station, and then also, you know, even in 231.

13

14 MR FERNANDEZ: I appreciate you've described an integrated  
15 curriculum --

16

17 SR SGT CLARKE: Yes.

18

19 MR FERNANDEZ: -- where topics aren't siloed.

20

21 SR SGT CLARKE: That's right.

22

23 MR FERNANDEZ: But nevertheless there is some discussion  
24 amongst all of those different powers.

25

26 SR SGT CLARKE: Yes.

27

28 MR FERNANDEZ: So in terms of the powers of arrest, it  
29 requires an understanding of the alternatives to arrest; is  
30 that right?

31

32 SR SGT CLARKE: Yes.

33

34 MR FERNANDEZ: Is there any training on what can assist  
35 a police officer in his or her discretion on whether to  
36 arrest a person or to use an alternative to an arrest? How  
37 is that discretion guided?

38

39 SR SGT CLARKE: Yes, if you give me a moment, I'll - it's  
40 a big beast, so - our curriculum. Alternatives to arrest  
41 is in a subsequent lesson again, but it's still in our core  
42 policing capability part of the curriculum, and --

43

44 MR FERNANDEZ: Perhaps I'll come back to that if I can ask  
45 you just to consider if there's any guidance on discretion,  
46 because in many police powers there is a discretion; would  
47 that be correct to say?

1  
2 SR SGT POCOCK: Yes. Okay. So what we teach is that you  
3 should take the least restrictive form of sanction. We  
4 teach that numerous times throughout the curriculum. We  
5 start with Peel's principles to indicate that, you know,  
6 we're not above the law, we work for the community, and  
7 through their whole learning, the emphasis is how can we do  
8 whatever business we need, policing business we need to do  
9 with the least impact on all people involved, to be honest.

10  
11 MR FERNANDEZ: Is there anything else you wish to say  
12 about training in the associate degree program about  
13 alternatives to arrest?

14  
15 SR SGT POCOCK: Not other than we cover it quite  
16 extensively, I would suggest, and - yes.

17  
18 MR FERNANDEZ: Senior Sergeant Weston, is this issue of  
19 alternatives to arrest something that you have any  
20 involvement in in terms of training or ongoing training?

21  
22 SR SGT WESTON: Not specifically. We focus more on the  
23 physical aspect of an arrest or control methods.

24  
25 MR FERNANDEZ: Senior Sergeant Clarke, in terms of this  
26 particular issue that I've just highlighted, alternatives  
27 to arrest, what materials are available on this topic, what  
28 training materials are available, what training is  
29 provided?

30  
31 SR SGT CLARKE: I can't, off the top of my head, think of  
32 any particular piece that relates only to alternatives of  
33 arrest and it's something that'll be in the context of the  
34 arrest situation, in terms of how a matter is dealt with,  
35 in particular.

36  
37 MR FERNANDEZ: Are there some resources available or is  
38 that something --

39  
40 SR SGT CLARKE: Nothing specifically comes to mind, but  
41 I haven't reviewed all the documents that have been  
42 provided with that particular idea in mind. I imagine, you  
43 know, if you look to the specialist youth officers - it's  
44 not alternatives to arrest, but the way - the matter of  
45 dealing - the way of dealing with a matter rather than  
46 charge, whether you consider that as an alternative to  
47 arrest or when a matter is discontinued, how the matter

1 may - or an arrest is discontinued, how it might be dealt  
2 with subsequent to that, whether that's regarded as an  
3 alternative to arrest, or if you are just thinking  
4 pre-arrest considerations.

5  
6 MR FERNANDEZ: Pre-arrest considerations was what I was  
7 drawing your attention to. It may be something that  
8 Sergeant Pocock really has --

9  
10 SR SGT CLARKE: I would have to look at the documents with  
11 that in mind.

12  
13 MR FERNANDEZ: I'll turn then to the powers of arrest.  
14 I think section 99 is up on the screen, and I'll return to  
15 you Senior Sergeant Pocock.

16  
17 Section 99 of the Law Enforcement (Powers and  
18 Responsibilities) Act sets out the power of police officers  
19 to arrest without warrant. Those powers to arrest are  
20 based on two matters: firstly, whether the police officer  
21 suspects on reasonable grounds that a person is committing  
22 or has committed an offence; and the police officer is  
23 satisfied that the arrest is reasonably necessary for  
24 a number of reasons which are set out in 99(1)(b).

25  
26 I'm going to take you, firstly, to the reasonable  
27 grounds for suspecting that a person has committed or is  
28 committing an offence. What training, what guidance, is  
29 provided to police officers about reasonable grounds and  
30 what that actually means?

31  
32 SR SGT POCOCK: We have quite a bit, quite a number of  
33 lessons which in part address this issue. I guess, bearing  
34 in mind that our students are - it's a 101 level, it's low  
35 level. They're only students.

36  
37 So we talk about, realistically, when they address  
38 a situation, where there is a possibility that somebody may  
39 be arrested, they must suspect on reasonable grounds, and  
40 we talk about suspicion. We talk about suspicion - we talk  
41 about the objective/subjective test. So you may believe or  
42 you may have a suspicion that you think that the person may  
43 have committed an offence, but that needs to be an  
44 objective - sorry, an objective test to that as well.  
45 Because we - the reason we teach that is reasonable grounds  
46 relates not only to arrest, it relates to searching, which  
47 is a big-ticket item for us as well. So we try not to

1 confuse them. We just - whenever you come to suspect on  
2 reasonable grounds, you've got to have a subjective test,  
3 an objective test, and then the information that you have  
4 must be - needs to be reasonable.  
5

6 So one of the things we use, if you like, is a - we  
7 talk about a glass cylinder, a glass cup, and every piece  
8 of information that goes into that glass cup is your is  
9 grounds towards your suspicion. The more information that  
10 you have going into that glass cup, to reach the top of  
11 that glass cup - and arguably the top of that glass cup is  
12 when you reach a reasonable suspicion. So we use  
13 techniques like that to try and encourage students to look  
14 at information and determine whether that information is  
15 going to lead you to a point of suspecting on reasonable  
16 grounds that someone is required for arrest, or you have  
17 reasonable grounds to suspect.  
18

19 MR FERNANDEZ: Is there any training about what needs to  
20 be considered to decide whether a person has committed an  
21 offence? Because offences can either be observed by people  
22 or police, or they might be not observed.  
23

24 SR SGT POCOCK: Yes, there's training that you - you know,  
25 because most or very often, the offences that are committed  
26 are not witnessed by police, so police are required then to  
27 go and investigate a matter and take statements from  
28 witnesses and there's a lot of training that we deliver in  
29 relation to how to take those - how to gather that evidence  
30 and then make an assessment on whether or not they're going  
31 to proceed, and then, whether it's an arrest situation or  
32 not an arrest situation.  
33

34 So we teach a lot - a lot of our curriculum deals with  
35 offence categories. So we teach, for example, a whole  
36 topic on street offences, offensive conduct, offensive  
37 language, knife offences, things like that, and so we teach  
38 crime, and then we teach, well, what are you going to do  
39 about that, if you see - in this scenario, you see that  
40 crime committed, okay, is it an arrest situation or what  
41 are you going to do about that? What power are you going  
42 to use in the dealing with that situation?  
43

44 MR FERNANDEZ: I'm going to take you very shortly to  
45 subsection (1)(b) about satisfaction that arrest is  
46 reasonably necessary.  
47

1 SR SGT POCOCK: Yes.  
2  
3 MR FERNANDEZ: Those terms "reasonable grounds" and  
4 "reasonably necessary", they're terms that are considered -  
5 they're legal terms --  
6  
7 ST SGT POCOCK: Yes.  
8  
9 MR FERNANDEZ: -- and they've been considered by courts.  
10 What training is given to police officers specifically  
11 about what that means? What level of satisfaction has to  
12 be held before a person is satisfied that an arrest is  
13 necessary?  
14  
15 SR SGT POCOCK: I would have to go through and have a look  
16 specifically. I can't, right at this moment, put my finger  
17 on where in our curriculum we would address the issue of  
18 "reasonable". I would probably suggest, to be honest, that  
19 it would be addressed in the searching area more so.  
20  
21 MR FERNANDEZ: We might come back to that after lunch to  
22 give you that opportunity. But could I ask you this  
23 question, Senior Sergeant Pocock: you said teaching at the  
24 academy and the associate degree program was a 101, so it  
25 was an introduction --  
26  
27 SR SGT POCOCK: Yes.  
28  
29 MR FERNANDEZ: -- for police in training? After the  
30 academy, what other opportunities are there for police to  
31 be given training in these very matters - when arrest  
32 should be utilised and when it shouldn't?  
33  
34 SR SGT POCOCK: Do you mean during their probationary year  
35 or --  
36  
37 MR FERNANDEZ: Any time after their time --  
38  
39 SR SGT POCOCK: Well, during their probationary year, they  
40 work with a senior officer and they do on-the-job learning,  
41 so there is that component of it, and then, during that  
42 year and subsequent to that year, there's numerous PETE  
43 courses which you can access at any time and go and have  
44 a look at that.  
45  
46 MR FERNANDEZ: Is it contained in course materials as part  
47 of the associate degree program what these terms mean? Is

1 there some discussion or teaching of what they mean within  
2 the course materials?

3

4 SR SGT POCOCK: There is. I'd have to go to find exactly,  
5 particularly around the word "reasonable", as to what we  
6 teach specifically around that. So there is, but, yes, I'd  
7 have to find it.

8

9 MR FERNANDEZ: Are there case studies used as part of the  
10 teaching?

11

12 SR SGT POCOCK: Yes, case studies and scenarios and some  
13 references to case law also.

14

15 MR FERNANDEZ: Those case studies are used to assist or to  
16 discuss the different ways that police powers can be used;  
17 is that right?

18

19 SR SGT POCOCK: Yes, yes.

20

21 MR FERNANDEZ: Is there anything else involved in training  
22 in terms of - at the academy as part of the associate  
23 degree course in terms of powers of arrest that you haven't  
24 referred to already that's taught as part of powers of  
25 arrest to police in training?

26

27 SR SGT POCOCK: Yes. We also talk about 99(3) as  
28 a particularly relevant component of your power to arrest.

29

30 MR FERNANDEZ: Perhaps we can just bring that up. That  
31 section refers to taking a person as soon as reasonably  
32 practicable before an authorised officer.

33

34 SR SGT POCOCK: And the way we primarily teach that,  
35 I guess, to bring it down to basics, would be: we don't  
36 arrest to interview people. You can't arrest somebody to  
37 interview somebody. Your intention at the time of arrest  
38 is to put that person before the court. That's the way we  
39 deliver that information. And if you don't have that  
40 intention, then you cannot arrest.

41

42 MR FERNANDEZ: Do you deal specifically with arresting  
43 a person for the purpose of identifying them?

44

45 SR SGT POCOCK: Yes, in the sense that some of our  
46 scenarios will have situations where an offence has been  
47 committed, and I think one of our scenarios is they walk up

1 to the person, the person is complying in the sense of  
2 willing to talk to them, and they desire to - they're  
3 investigating the matter and they ask the person's name,  
4 because their intention is to probably give them a CIN,  
5 a criminal infringement notice, or a field CAN, and the  
6 person says, "Yeah, my name is Donald Duck and I live on  
7 the moon." So therefore what we teach essentially is: you  
8 want to use your communication skills to try and work with  
9 that person in order to avoid the arrest and taking them  
10 back, placing them in custody to issue a CAN. But  
11 realistically, if the situation is that that person is not  
12 going to provide their details, then you may need to arrest  
13 them under - that would be a 99(1)(b) reason to arrest that  
14 person.

15  
16 MR FERNANDEZ: Senior Sergeant Clarke, can I turn to you.  
17 Senior Sergeant Pocock has talked about the associate  
18 degree and what's taught there. In terms of your areas of  
19 responsibility, what materials or training is provided on  
20 an ongoing basis in terms of powers of arrest?

21  
22 SR SGT CLARKE: I'm just thinking. The material  
23 referenced from the portal site includes a number of what  
24 we call "law on" articles, in particular an article from  
25 the Police Gazette regarding arrest; there's reference and  
26 a link to the material in the handbook on arrests. So  
27 there's a lot of information available. I don't think  
28 there's a specific course on arrest that we reference, in  
29 that it's dealt with in other contexts, but, yeah, there is  
30 a lot of other information available about arrest that is  
31 updated and available to police.

32  
33 MR FERNANDEZ: And does that also specifically include the  
34 power to arrest?

35  
36 SR SGT CLARKE: There is a lot of - the power to arrest  
37 under section 99 or otherwise?

38  
39 MR FERNANDEZ: Yes.

40  
41 SR SGT CLARKE: Yeah, those articles do address that, and,  
42 yeah, the handbook and other pieces do address that.

43  
44 MR FERNANDEZ: Senior Sergeant Pocock, I'm going to return  
45 to you and I'm going to ask you specifically, before I turn  
46 to section 8 of the Children (Criminal Proceedings) Act, to  
47 what is taught as part of the associate degree in terms of

1 children and the law and children relating to their contact  
2 with police. What are police officers doing the associate  
3 degree taught in terms of children and the law?

4  
5 SR SGT POCOCK: We have a complete topic devoted to  
6 interacting with young people, which is nine lessons.  
7 Those lessons are one hour and 50 minutes each, and in  
8 those lessons we deal with - those lessons are interaction  
9 with youth, so it's an introduction lesson which just sets  
10 the scene of the fact that police will interact with youth  
11 more because youth are on the street more and they hang  
12 around more. And so that doesn't necessarily mean that  
13 young people are doing the wrong thing, it's just a social  
14 environment issue, so that we start with that.

15  
16 Then in the second lesson we have another lesson, risk  
17 factors for youth as victims and offenders, so we address  
18 the issues that young people face which are going to  
19 increase the risk of them being involved, interacting with  
20 police as either a victim or an offender.

21  
22 Then we have a lesson on youth development and we talk  
23 particularly about brain development and the fact that, in  
24 young people, the brain, particular elements of the brain,  
25 develop later and therefore they're not so adept at  
26 understanding risk and repercussions for actions and things  
27 like that. So as part of that and in that lesson we  
28 introduce court diversions and we talk about the standard -  
29 the New South Wales - or no, I suppose the whole legal  
30 community takes in regards to trying to divert young people  
31 out of the court system.

32  
33 A big part of - before I go on, a big part of that  
34 area of the curriculum is we do introduce the Young  
35 Offenders Act at this point, and a point we make is we  
36 don't treat children different or young people different  
37 because of the Young Offenders Act; the Young Offenders Act  
38 exists because children need to be treated differently. So  
39 that's a core fundamental concept that is part of the  
40 training.

41  
42 We then deal with the Young Offenders Act. We then  
43 give a whole lesson --

44  
45 MR FERNANDEZ: I'm sorry to stop you but in dealing with  
46 the Young Offenders Act, are you teaching police officers  
47 in training alternatives which are available through the

1 Young Offenders Act?  
2  
3 SR SGT POCOCK: Yes, yes, warnings, cautions --  
4  
5 MR FERNANDEZ: Warnings, cautions --  
6  
7 SR SGT POCOCK: -- juvenile justice, yeah.  
8  
9 MR FERNANDEZ: -- conferences?  
10  
11 SR SGT POCOCK: Yes, so we address those - the parameters  
12 in which they can be or they are to be diverted, young  
13 people are to be diverted to those options.  
14  
15 We then have a lesson where the students are given  
16 a series of scenarios and they have to determine what is  
17 the appropriate course of action - a warning, a caution,  
18 juvenile justice or an arrest, possibly.  
19  
20 We then have a lesson on doli incapax, and then we  
21 have another lesson in which they apply again the Young  
22 Offenders Act with some integrated concepts, so some  
23 ethical issues they have to consider, some communications  
24 issues they have to consider. And then the final lesson in  
25 that module is about the youth support networks like the  
26 Rise Up program.  
27  
28 MR FERNANDEZ: In terms of support for young people, is  
29 there any mention about young people at police stations?  
30 I know we're jumping forward a bit, but --  
31  
32 SR SGT POCOCK: Yes, there is --  
33  
34 MR FERNANDEZ: -- what is taught about how young people  
35 should be managed if in custody?  
36  
37 SR SGT POCOCK: They're taught if they're in custody -  
38 well, we don't necessarily distinguish - well, no, we do.  
39 There is some lessons where we talk about vulnerable  
40 people. In the lesson on vulnerable people, we articulate  
41 that generally, vulnerable people are vulnerable for  
42 a reason and you need to be - you know, there are certain  
43 policies and procedures in place to ensure that they are  
44 dealt with appropriately. One of those is a support  
45 person, things like that, legal advice. So that's -  
46 they're told about that. That's in regards to young  
47 people. They're also taught that they're not to be

1 interviewed without a support person present and they're  
2 also told that - oh, sorry, on a bigger scale in relation  
3 to interviewing - sorry, what was --

4  
5 (Microphone static interference)

6  
7 MR FERNANDEZ: Sorry, there is some static.

8  
9 SR SGT POCOCK: That's young people, but you were talking  
10 about --

11  
12 MR FERNANDEZ: I was talking about young people at police  
13 stations but I'll come back to that.

14  
15 SR SGT POCOCK: Sorry, the custody manager - sorry, the  
16 other thing we tell in relation to any person that comes  
17 into custody, into a police station, is that, "You will  
18 take them to the custody manager, they must be taken to the  
19 custody manager, given to the custody manager. You are  
20 responsible and have a duty of care for that person until  
21 they are delivered to the custody manager, and then you  
22 will not do anything with that person until you've spoken  
23 to the custody manager and informed the custody manager."  
24 That's the other matter.

25  
26 MR FERNANDEZ: I will return to that in more detail a  
27 little bit later on. But what I'm going to have put up on  
28 to the screen now is section 8 of the Children (Criminal  
29 Proceedings) Act. Perhaps we can focus on section 8(1) and  
30 the top part of (2).

31  
32 Can you see there, Senior Sergeant Pocock, what  
33 section 8 sets out is that criminal proceedings should not  
34 be commenced against a child otherwise than by way of court  
35 attendance notice, and then (2) goes on to state the  
36 situations where it would be appropriate to commence  
37 proceedings by way of an alternative to a court attendance  
38 notice. Can you see that?

39  
40 SR SGT POCOCK: Yes.

41  
42 MR FERNANDEZ: What training is provided to police as part  
43 of the associate degree course on the substance of  
44 section 8, commencing proceedings against children by way  
45 of court attendance notices as opposed to other  
46 alternatives, namely, arrest?

47

1 SR SGT POCOCK: We don't deal with section 8 explicitly,  
2 or implicitly, sorry, in and of itself, because we find for  
3 our students it may be a bit confusing with the  
4 interpretation of what the court attendance notice is.  
5 Because we teach field court attendance notices and we  
6 teach, you know, there's a court attendance notice which is  
7 issued by arresting someone and taking them back to the  
8 police station, which, for an untrained person, they would  
9 see subsection (1) of 8 and understand that by way of if  
10 I arrest someone, I'm take them back to the police station  
11 and they are issued a court attendance notice, then - so we  
12 don't teach that --

13  
14 MR FERNANDEZ: What do you teach about --

15  
16 SR SGT POCOCK: What we teach is, generally, for all  
17 people, we always go for the least restrictive form of  
18 sanction. Arrest is a last resort and you will not arrest  
19 someone if there's another way of dealing with the matter.  
20 And for young people - specifically, I'll have to look at  
21 the nine lessons in relation to what we teach about  
22 arresting them - I'd say we would rely on the general  
23 principle that it's the last resort always, the least  
24 restrictive form of sanction.

25  
26 With the young offender, you've even got further  
27 opportunities to divert them away from via the Young  
28 Offenders Act. We teach PAS as well, which is the  
29 protected admissions scheme, which I failed to --

30  
31 MR FERNANDEZ: The protected admissions scheme, which is a  
32 scheme which allows for certain admissions for the purpose  
33 of being eligible for youth justice?

34  
35 SR SGT POCOCK: Allows them to - and we explain how, yes.  
36 So, for example, they might say, "I'm not saying anything",  
37 and we would say - you know, we would teach that under the  
38 protected admissions scheme, if you explain to them the  
39 circumstances, that would avoid us having to maybe arrest  
40 the person.

41  
42 There is some specific examples and scenarios that we  
43 do in relation to arrest.

44  
45 MR FERNANDEZ: Senior Sergeant Weston, I haven't forgotten  
46 about you. You've got some particular expertise in terms  
47 of use of force, which we'll come to later.

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Senior Sergeant Clarke, was there anything that you can add in terms of specific training modules about alternatives to arrest for children?

SR SGT CLARKE: I had a quick look at the specialist youth officers course and I couldn't find anything in relation specifically to section 8, but the principles that Senior Sergeant Pocock has expressed in terms of dealing with things in the least restrictive manner, and as that feeds into section 99 in particular, would have some implication here, before we would even get to the section 8 issue.

MR FERNANDEZ: Is there some emphasis about children and specific legislative provisions for children, meaning that the first course should always be an alternative to an arrest that may mean a court attendance notice?

SR SGT CLARKE: If there is - in the context of section 99, if there's no reason for arrest, and if you can't justify an arrest under 99(1)(b), really, whether that be an adult or child or otherwise, it would be not necessary or justified.

MR FERNANDEZ: I was just wondering whether there was some particular information about children and the specific legislative provision that I have just taken you to.

SR SGT CLARKE: I haven't found any reference to section 8 in our materials. I may be wrong, and I haven't spent - I searched the material but couldn't find anything in the time I had.

MR FERNANDEZ: I'm going to turn now to --

THE CHIEF COMMISSIONER: Just before we move away from section 8, and I hope I'm not cutting across what you plan to come to, Mr Fernandez, but just while it's in my mind, section 8 of the Children (Criminal Proceedings) Act, as we've been discussing, says:

*Criminal proceedings should not be commenced against a child other than by way of a court attendance notice.*

At earlier times there was the distinction between charging someone and summoning someone and therefore, usually,

1 there was an arrest or there would be a charge, a charge  
2 sheet, or a summons where there would be the word of the  
3 charge contained in it, and the distinction was a little  
4 clearer.

5

6 Section 8 just talks about a court attendance notice  
7 but, as I understand it, every criminal proceeding has to  
8 be commenced by a court attendance notice. When one looks  
9 at the Criminal Procedure Act, section 47, for example,  
10 "Commencement of committal proceedings by court attendance  
11 notice", and then section 172, "For summary offences,  
12 commencement of proceedings is by a court attendance  
13 notice." So there needs to be a court attendance notice or  
14 CAN in every case. Now, is that the position as each of  
15 you understand it?

16

17 SR SGT CLARKE: I'm not aware whether summonses are still  
18 available, but that's my understanding as well. I think I  
19 read section 8 in that context.

20

21 THE CHIEF COMMISSIONER: They might have passed into  
22 history. Is there such a thing as a future court  
23 attendance notice?

24

25 SR SGT POCOCK: Yes.

26

27 THE CHIEF COMMISSIONER: Is that the modern-day equivalent  
28 of the old summons, effectively?

29

30 SR SGT CLARKE: I think they all count as court attendance  
31 notices, it's just the way that they are delivered,  
32 usually, or - the options are a CAN delivered potentially  
33 in the custody room or the station; a bail CAN; a field  
34 CAN. But I don't think the law distinguishes between  
35 these - or a field CAN or a future CAN, but they're all  
36 just CANs, I believe, your Honour.

37

38 THE CHIEF COMMISSIONER: But there is a distinction in  
39 practice, for example: a decision may be made to charge or  
40 to prosecute someone, so a charge is formulated.

41

42 SR SGT CLARKE: Yes.

43

44 THE CHIEF COMMISSIONER: A court attendance notice is  
45 created with a future court date and that may merely be  
46 served on the person. A future CAN or --

47

1 SR SGT POCOCK: Future service CAN, yes.

2

3 THE CHIEF COMMISSIONER: A future service CAN - a longer  
4 word than "summons" but perhaps the same meaning.

5

6 SR SGT POCOCK: Same.

7

8 THE CHIEF COMMISSIONER: That usually doesn't arise after  
9 an arrest; it usually arises after there has been a  
10 consideration of a prosecution, a decision to prosecute and  
11 there's the future service CAN. That's one species.

12

13 If someone is arrested, goes to the police station and  
14 there's a decision to prosecute, then there'll be a CAN  
15 which may involve a bail determination as well. That's  
16 a different form of CAN.

17

18 When you look at section 8, it just talks about "CAN",  
19 and "criminal proceedings should not be commenced against  
20 a child other than by way of a court attendance notice"  
21 doesn't make a lot of sense, because every proceeding has  
22 to be commenced with it. But when you look at  
23 subsection (2), it seems to be talking about things that  
24 relate to the seriousness of the charge or whether the  
25 person's not likely to comply with a court attendance  
26 notice - that is, turning up at court - or may be likely to  
27 commit further offences, or you look at the violent nature  
28 of the child or violent nature of the offence, things  
29 indicating whether the child should not be allowed to  
30 remain at liberty. They seem to be relating to whether  
31 there should be, effectively, a future court attendance  
32 notice used or something else because of those factors. Is  
33 that the way this section is understood by those of you who  
34 have to teach this in practice?

35

36 SR SGT POCOCK: Chief Commissioner, that's why we avoid  
37 it. That's why we don't include section 8 at our level.  
38 We think it's easier for our students to understand that  
39 they're to always apply the least restrictive, and so  
40 that's why we avoid that section.

41

42 THE CHIEF COMMISSIONER: I can understand the caution  
43 there, because section 8(1) is a little ambiguous, as we  
44 have discussed, but it is still in an Act of parliament and  
45 has an effect which applies particularly to young persons.  
46 So it arises and has to be considered and applied even  
47 though it's not without its complications. But what you're

1 saying is that the training to take the least restrictive  
2 option effectively would encompass the considerations in  
3 section 8, certainly with respect to young persons?  
4

5 SR SGT POCOCK: Yes. We think we cover that with our  
6 curriculum.  
7

8 My understanding is you can't issue a field CAN to  
9 a juvenile either. So that's another restriction that  
10 impacts it.  
11

12 THE CHIEF COMMISSIONER: Where does that come from?  
13

14 SR SGT POCOCK: I would have to find the particular --  
15

16 THE CHIEF COMMISSIONER: Don't worry about it right now,  
17 but - anyway, thank you.  
18

19 Back to you, Mr Fernandez. I hope I didn't cut across  
20 you.  
21

22 MR FERNANDEZ: Not at all.  
23

24 THE CHIEF COMMISSIONER: Yes?  
25

26 MR COFFEY: Commissioner, can I just say, in the Children  
27 (Criminal Proceedings) Act as it was in 1987, the heading  
28 for this section was "Commencement of proceedings by  
29 summons or citation", so if you replace what is currently  
30 there as "summons or citation", so it seems they have  
31 amended the legislative provision to be a court attendance  
32 notice but have maybe not had regard to the fact that there  
33 is a number of different versions of a court attendance  
34 notice.  
35

36 THE CHIEF COMMISSIONER: That can happen where a separate  
37 piece of legislation such as this is not perhaps looked at  
38 with the same degree of scrutiny as the primary Acts.  
39

40 MR COFFEY: Yes.  
41

42 THE CHIEF COMMISSIONER: Which doesn't assist police and  
43 those training police and may not assist courts greatly  
44 either, in the end. It would be appropriate, I think, that  
45 there be some clarification of this section, whatever else  
46 is done.  
47

1 MR COFFEY: Yes.

2

3 THE CHIEF COMMISSIONER: Because lawyers and courts will  
4 look at this section, quite apart from police. Thank you,  
5 Mr Coffey.

6

7 Yes, Mr Fernandez.

8

9 MR FERNANDEZ: Senior Sergeant Clarke, part of your  
10 responsibility is specialist training. So does that  
11 include police specialist youth officers?

12

13 SR SGT CLARKE: It's not my responsibility. The  
14 responsibility of the command includes specialist training  
15 and it's, in particular, the crime prevention training  
16 unit, which includes the specialist youth officers course,  
17 yes.

18

19 MR FERNANDEZ: I'm going to turn now, then, to  
20 section 105, which is about discontinuation of arrest.  
21 This is section 105 of the Law Enforcement (Powers and  
22 Responsibilities) Act. The section is now up on the  
23 screen.

24

25 Senior Sergeant Pocock, the legislation there is  
26 before you. I'm going to ask you what is taught as part of  
27 the associate degree in terms of what situations are  
28 appropriate for discontinuance beyond what is contained  
29 there in subsection (2), and what factors would guide  
30 a decision as to discontinue arrest?

31

32 SR SGT POCOCK: We teach that if at any time you arrest  
33 a person - and to arrest a person you need a 99(1)(a),  
34 a 99(1)(b) and 99(3) - that if the situation or conditions  
35 or circumstances change that might alter particularly the  
36 99 - well, any of those, really, probably more likely to  
37 affect your 99(1)(b) reasons, but arguably you could get  
38 some information that alters your position on 99(1)(a),  
39 then you will - then you are to discontinue that arrest.

40

41 MR FERNANDEZ: Do you use case studies, discussions?

42

43 SR SGT POCOCK: Yes, we do do some scenarios in relation  
44 to that. There is also - it's a little bit of a "How long  
45 is a piece of string", because at what point - if you have  
46 arrested a person, placed - searched them, placed them into  
47 the back of the police vehicle, taken them into custody,

1 given them to the custody manager and then the circumstance  
2 changes but you're still going to issue them with a court  
3 attendance notice, so, for example, let's say they haven't  
4 given you their name, and to ensure their appearance at  
5 court, then you need to arrest that person because you  
6 don't know who they are, you have to take them back to the  
7 police station - there's some variable there and we have  
8 a discussion, I suppose, around if the person, I'll call  
9 it, say, the offender, decides to give you their name and  
10 address and details, and you're convinced that that  
11 information is accurate, then you're probably more likely  
12 to discontinue the arrest early on in the interaction.  
13

14 But the further you go down that line, arguably, if  
15 they're already in custody, you're halfway through, you  
16 know, you can't charge them but let's say something  
17 changes, but all I'm indicating is that we do have  
18 a discussion around at what point in time they would  
19 discontinue that arrest. So that's a discussion point we  
20 have with them as well. Because it's a difficult --  
21

22 MR FERNANDEZ: Just as there's the discretion to arrest,  
23 there's also the discretion to discontinue arrest. If  
24 appropriate?  
25

26 SR SGT POCOCK: Yes, and it says "may". We highlight the  
27 fact that it does say "may"; it doesn't say "must".  
28

29 MR FERNANDEZ: And it also refers to "at any time".  
30

31 SR SGT POCOCK: Yes.  
32

33 MR FERNANDEZ: So it includes those different  
34 circumstances that you've just described.  
35

36 SR SGT POCOCK: Yes.  
37

38 MR FERNANDEZ: Senior Sergeant Clarke, is there anything  
39 you wish to say about section 105 in terms of your levels  
40 of responsibility and training?  
41

42 SR SGT CLARKE: I looked at the police handbook on arrests  
43 and I think it specifically mentions section 105 there.  
44 I looked at an article called "Law on arrests under LEPR",  
45 or - I've got it in front of me, "Arrests under LEPR",  
46 which talks specifically about 105 and in particular about  
47 the alternatives or processes under the Youth Offenders Act

1 as well and how it may affect the continuation of the  
2 arrest, which very much reflects 105(2)(b) in particular.  
3 So that is covered in those articles that are available  
4 through that portal.

5

6 MR FERNANDEZ: We've just talked about alternatives to  
7 arrest, arrest and discontinuation. I'm now going to turn  
8 to another aspect, which is the use of force, in terms of  
9 the use of force generally by police and the use of force  
10 in making an arrest.

11

12 Just by way of introduction, can I indicate to each of  
13 you that there are documents in evidence in this  
14 investigation and I'm going to take you to each of those  
15 documents.

16

17 Before I take you to those documents, including  
18 documents from the police force handbook on use of force  
19 and the use of force principles, can I start with you,  
20 Senior Sergeant Pocock: what is taught about use of force  
21 at a more theoretical level? And I will turn then to you.  
22 Senior Sergeant Weston, in terms of an operational level.  
23 Can you assist us with that?

24

25 SR SGT POCOCK: Yes, I can. We have a particular lesson  
26 on de-escalation and justifiable use of force and  
27 de-escalation and its relationship to justifiable use of  
28 force. We introduce the tactical options model that my  
29 colleague mentioned but we don't teach it. We mention it  
30 but we don't particularly - we're not the subject matter  
31 experts on that.

32

33 So we talk about de-escalation techniques. We talk  
34 about general rules for use of force being that we use a  
35 minimal force operational environment; use of force is  
36 considered as a last resort control option where  
37 a negotiated solution is not possible or has failed.

38

39 With use of force we teach generally that the use of  
40 force is driven by the offender, not the police officer, in  
41 the sense that we encourage that we will react to - we  
42 won't proactively go in to using force if we can always  
43 avoid it. We only step up into that use of force if  
44 necessary based on the action of the offender.

45

46 We then introduce the ANZPAA use of force principles,  
47 so we tie into what ANZPAA -- the Australian New Zealand

1 Policing --

2

3 MR FERNANDEZ: We'll come to that very shortly.

4

5 SR SGT POCOCK: Yes. And we also teach that the purpose  
6 of the using of force is to gain compliance of a resistive  
7 combative person of interest, and once compliance is  
8 gained, the justification for the use of force no longer  
9 exists. So that's an overview of what we --

10

11 MR FERNANDEZ: When you say you teach that the use of  
12 force is driven by the offender, you've referred to some of  
13 the actions of the offender.

14

15 SR SGT POCOCK: Yes.

16

17 MR FERNANDEZ: What about the qualities of the offender,  
18 and what I mean by that is the attributes or the physical  
19 circumstances of an offender. And can I just indicate that  
20 this investigation is dealing with a 14-year-old Indigenous  
21 boy who was very small --

22

23 SR SGT POCOCK: Yes.

24

25 MR FERNANDEZ: -- was sizably smaller than two  
26 apprehending police. What is taught about that in terms of  
27 what is to be taken into account in terms of that  
28 reasonable use of force?

29

30 SR SGT POCOCK: Okay. In essence, we look at the  
31 intention of the offender and the capability of the  
32 offender. So we teach, based on your assessment of the  
33 situation, what can you see in relation to the intention of  
34 the offender, what have you been told, what have you  
35 observed, what is the offender saying, and then we look at  
36 the capability. So we would use examples of if a  
37 120 kilogram football player, you know, says he is going to  
38 do certain things, he might have a cracking capability of  
39 doing that, compared to someone who is a lot smaller with  
40 less skills. But possibly, not always the case. But we  
41 teach our students to consider the capability of the  
42 person, look at the situation, look at the circumstances  
43 and make an assessment as best you can in that situation to  
44 determine what capability this person might have.

45

46 MR FERNANDEZ: Is there anything more specific? Is there  
47 a discussion of case studies, matters to be taken into

1 account?  
2  
3 SR SGT POCOCK: I'm not certain. I'm not certain.  
4  
5 MR FERNANDEZ: You have referred to case studies in terms  
6 of other aspects of training.  
7  
8 SR SGT POCOCK: Yes.  
9  
10 MR FERNANDEZ: Does that exist here in teaching police  
11 about use of force in itself?  
12  
13 SR SGT POCOCK: We have our own case studies as opposed -  
14 we have our own scenarios in respect to case studies which  
15 are factual case studies. I'm not certain, I would have to  
16 go and look, but we certainly have scenarios which provide  
17 contextual situations where the students observe something,  
18 watch a video, and then they discuss that video in relation  
19 to what they might have done.  
20  
21 We have one video where we played it out and we  
22 deliberately displayed some excessive force and we wanted  
23 the students to identify that that force was excessive. So  
24 that's part of our curriculum.  
25  
26 MR FERNANDEZ: There are many, many situations that occur  
27 in the field, and you are doing your best to train police  
28 as to what those situations are.  
29  
30 SR SGT POCOCK: Yes.  
31  
32 MR FERNANDEZ: I'm going to ask about a particular  
33 situation, because you stressed the importance of working  
34 out the intention of the offender or the intention of the  
35 person.  
36  
37 SR SGT POCOCK: Yes.  
38  
39 MR FERNANDEZ: In the particular investigation that is  
40 being looked at here a young person was chased by police,  
41 and it may very well have been, because the police were  
42 undercover, the young person didn't realise it was a police  
43 officer who was chasing after him. In that kind of  
44 circumstance, what do you train police? How can a police  
45 officer know what to do and what level of force to use in  
46 that kind of situation, in effecting an arrest?  
47

1 SR SGT POCOCK: Well, it would be difficult. You have to  
2 consider things like even time of day, geographical and the  
3 environment, what other resources were available, whether  
4 you knew the person. That would be a very important  
5 factor, if you knew the person, because that might change  
6 the circumstances. And obviously we talk about age, size  
7 of the offender and what the original offence was that they  
8 are chasing the person for. But we don't go into the  
9 practical application component of how to limit hurting  
10 someone, I suppose, other than to say the academic  
11 understanding that we are there to achieve control of that  
12 person and then that we have achieved our --  
13

14 MR FERNANDEZ: The use of force involves the use of  
15 weapons, and I will ask Senior Sergeant Weston specifically  
16 some questions about that, and any consideration of use of  
17 force not involving weapons might also involve  
18 a consideration of use of weapons, but can I just ask you  
19 this, Senior Sergeant Pocock: assuming a weapon was not to  
20 be used, is there any training or discussion about how or  
21 what types of force might be appropriate in a  
22 circumstance - tackling, for example, or use of shoulders  
23 or anything else? Is there any discussion of that level of  
24 detail.  
25

26 SR SGT POCOCK: No. We sort of try and stay out of that  
27 area because we might impact the students' learning in  
28 regards to what they learn in the practical component with  
29 my colleague here, Senior Sergeant Weston. They have  
30 particular techniques that they train. It's never  
31 a perfect environment, so often those techniques, you know,  
32 are impacted by certain things which I'm sure she will be  
33 able to speak to. But we try to avoid crossing the line in  
34 relation to that.  
35

36 MR FERNANDEZ: Let me turn directly then to you, Senior  
37 Sergeant Weston. I will bring the STOPAR up very shortly,  
38 but before I do, just in terms of general principles,  
39 appreciating that you are involved in practical training of  
40 police, what is it that you are teaching police about use  
41 of force, whether by use of weapons or use of hands or  
42 something else?  
43

44 SR SGT WESTON: Yes. Well, our component of the ADPP  
45 works in cohesion with the academic side, so when we are  
46 breaking down into a physical component, it's also critical  
47 that our students understand concepts that are just as

1 critical as the physical aspect. So, for example - and  
2 I know we will speak to STOPAR shortly - we talk about risk  
3 and threat assessments, which are our decision-making  
4 models to determine the use of force or the need for force.  
5 We talk about what is a reasonable level of force. We talk  
6 about excessive force and the four definitions of what  
7 would equate to excessive force; a person using force when  
8 no force is required; using more force than is necessary;  
9 continuing to use a level of force once the need no longer  
10 exists. So we're talking about our excessive force, a  
11 knowingly wilful wrong use of force and - sorry,  
12 a well-intentioned accidental use of force resulting in an  
13 undesired use of force. So before we get into our physical  
14 aspects, we also have to --

15  
16 (Microphone feedback)

17  
18 MR FERNANDEZ: I wonder, Chief Commissioner, because it  
19 seems like the microphone is getting in the way of the  
20 giving of evidence, whether we might just break now --

21  
22 THE CHIEF COMMISSIONER: Take an early break for lunch?

23  
24 MR FERNANDEZ: We will see if we can work that microphone  
25 out.

26  
27 THE CHIEF COMMISSIONER: Certainly. It has been mainly  
28 good with some occasional fluctuations, so I think the best  
29 thing is to take a break now and see if we can overcome the  
30 imperfections.

31  
32 Is 10 to 2 and appropriate time to resume?

33  
34 MR FERNANDEZ: Yes, thank you.

35  
36 THE CHIEF COMMISSIONER: If you wouldn't all mind stepping  
37 down or stepping up for the purpose of the break, and the  
38 evidence and the hearing will continue in an hour. So the  
39 Commission will adjourn until 10 to 2.

40  
41 **LUNCHEON ADJOURNMENT**

42  
43 THE CHIEF COMMISSIONER: Sorry for the delay.

44  
45 Yes, Mr Fernandez.

46  
47 MR FERNANDEZ: Senior Sergeant Weston, I'm going to return

1 to you. What I'm going to do is turn now in more detail to  
2 the use of force. There has already been mention of some  
3 principles relating to use of force. I'm going to have  
4 a document placed up on the screen. This is - oh,  
5 I understand the screens are not working at the Bar table.  
6

7 MR COFFEY: No, it has asked to be reconnected to the  
8 server for all of them. I think there might be an issue  
9 with the live transcript.

10  
11 THE CHIEF COMMISSIONER: All right. Now, should I adjourn  
12 or do we just pause for a moment to get it working?  
13

14 MR FERNANDEZ: We will need to adjourn, please,  
15 Commissioner.  
16

17 THE CHIEF COMMISSIONER: All right. I will just take a  
18 short adjournment and we'll sort out the problem.  
19

20 **SHORT ADJOURNMENT**  
21

22 THE CHIEF COMMISSIONER: Yes, Mr Fernandez.  
23

24 MR FERNANDEZ: I'm going to ask for MTS83 to be placed up  
25 on the screen. This is the Australian and New Zealand  
26 Policing Advisory Agency use of force principles. The  
27 barcode is 8620200.  
28

29 Senior Sergeant Weston, there has been mention  
30 previously about the ANZPAA principles, and can you see  
31 them up on the screen before you?  
32

33 SR SGT WESTON: Yes.  
34

35 MR FERNANDEZ: These are principles that guide NSW Police  
36 as well as other Australian and New Zealand police forces;  
37 is that correct?  
38

39 SR SGT WESTON: Correct.  
40

41 MR FERNANDEZ: The purpose of the principles is to provide  
42 guidance for jurisdictions in the application of policies  
43 and development, policies and procedures in relation to  
44 cooperation in terms of operational safety, namely, the use  
45 of force; is that right?  
46

47 SR SGT WESTON: Yes.

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MR FERNANDEZ: The principles define the use of force as including any situation where police use physical force or other techniques, including a weapon, instrument or implement, in the lawful execution of their duty; is that right?

SR SGT WESTON: Yes.

MR FERNANDEZ: In another document that I'm going to take you to, the NSW Police Force manual, there is actually specific mention of what other - there is a specific discrimination of weapons, instruments and implements; is that right?

SR SGT WESTON: Yes.

MR FERNANDEZ: Looking at the key principles set out there, what you can see is police should only use force that is reasonable, necessary, proportionate and appropriate to the circumstances; police should use no more force than is reasonably necessary for the safe and effective performance of their duties, and individual police are accountable and responsible for their use of force and must be able to justify their actions at law. Can you see that?

SR SGT WESTON: Yes, I can.

MR FERNANDEZ: Each of those principles are taught in terms of initial training to police as part of the associate degree; is that correct?

SR SGT WESTON: Yes, that's correct.

MR FERNANDEZ: As well as ongoing training of police in terms of use of force; is that right?

SR SGT WESTON: Yes.

MR FERNANDEZ: And that's what you have specific responsibility for, that ongoing training?

SR SGT WESTON: Yes.

MR FERNANDEZ: As well as, of course, initial training for police at the academy; is that right?

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SR SGT WESTON: Yes, that's correct.

MR FERNANDEZ: There are a number of underpinning principles. I just want to ask you about one. It's about the use of a situational model to guide police in the use of force. What does "a situational model" mean?

SR SGT WESTON: A situation model that we have in the NSW Police Force is referred to as "the tactical options model", and that will outline what we refer to as the tactical options available to police to assist them in the environment and the situation they face.

MR FERNANDEZ: Are there a number of different models or approaches that police can take?

SR SGT WESTON: There certainly are. The tactical options model that the NSW Police Force use is non-linear, which means you don't - it's not a building block, like a triangle, that other jurisdictions have used to suggest that you have to use weaponless control before you can get to OC spray and before you can get to firearm. It's about using your decision-making and using the appropriate option depending on the situation that you face at the time. It also allows for rapid escalation and de-escalation and assessment and reassessment.

MR FERNANDEZ: I'm going to turn to the New South Wales Office of General Counsel use of force manual. Chief Commissioner, I tender the use of force manual. You should have it before you.

THE CHIEF COMMISSIONER: Yes, I do.

MR FERNANDEZ: The barcodes for this document are 8620262 through to 8620273.

MR COFFEY: Chief Commissioner, I'm not against the tender of it. I did have a brief discussion with my learned friend prior to you sitting, after the break. Could you please tender it, but I ask if you could pause on any access application in relation to this document. I just need to get one further instruction about that if that was to arise.

THE CHIEF COMMISSIONER: Well, is it about to be placed on

1 the screen for the purpose of questions?

2

3 MR FERNANDEZ: Yes, it is. Perhaps I can, just by way of  
4 assistance for Mr Coffey, indicate what pages will be  
5 placed on the screen by way of barcodes - page 1, 8620263,  
6 then page 5, 8620266, and page 6, 8620267.

7

8 MR COFFEY: Generally speaking, Chief Commissioner, I'm  
9 content with that, and wouldn't want to hold this process  
10 up. If that evidence could be adduced, and whilst that's  
11 happening, if I could make some inquiries. The reason I'm  
12 adopting this approach is that under the GIPA Act, for FOI  
13 type legislation, there is a certain approach taken with  
14 this kind of material and I want to make sure I'm not  
15 traversing in doing something different here than we do  
16 elsewhere.

17

18 THE CHIEF COMMISSIONER: I understand that. There is an  
19 interest, subject to any specific issues, in material of  
20 this sort being publicly available, I think. Obviously if  
21 there are particular applications, then they can be made.  
22 But in some other jurisdictions, material of this sort  
23 seems to be often available.

24

25 MR COFFEY: Yes.

26

27 THE CHIEF COMMISSIONER: Perhaps I just make that comment  
28 at this stage.

29

30 MR COFFEY: Of course.

31

32 THE CHIEF COMMISSIONER: What I will do is mark this as an  
33 exhibit and counsel assisting can proceed to use it in the  
34 way he has foreshadowed, and if there is any particular  
35 aspect or application you want to raise, you can do so.

36

37 MR COFFEY: I'm grateful, thank you, Chief Commissioner.

38

39 THE CHIEF COMMISSIONER: All right. The use of force  
40 manual of the Office of the General Counsel of the  
41 NSW Police Force with an effective date of 1 August 2022  
42 will be marked exhibit MTS105.

43

44 **EXHIBIT #MTS105 USE OF FORCE MANUAL OF THE OFFICE OF**  
45 **GENERAL COUNSEL OF THE NSW POLICE FORCE, WITH AN EFFECTIVE**  
46 **DATE OF 1 AUGUST 2022, BARCODED 8620262 TO 8620273**

47

1 MR FERNANDEZ: Can I ask for this page to be placed up on  
2 the screen, please, it's 8620263.

3

4 Senior Sergeant Weston, you also have a hard copy of  
5 the same manual in front of you.

6

7 SR SGT WESTON: Yes.

8

9 MR FERNANDEZ: By way of introduction, this document is  
10 the principal document for the use of force within the  
11 NSW Police Force; is that right?

12

13 SR SGT WESTON: Yes, that's correct.

14

15 MR FERNANDEZ: The introduction notes that it provides  
16 instruction on when police may use force and the level of  
17 force police may use, based on the legislation and the  
18 common law; is that right?

19

20 SR SGT WESTON: Yes.

21

22 MR FERNANDEZ: All training done for NSW Police on the use  
23 of force is done in accordance with what's set out in this  
24 document; would that be correct to say?

25

26 SR SGT WESTON: That is correct.

27

28 MR FERNANDEZ: By way of an essential summary, the  
29 document sets out that police may use force in five  
30 nominated circumstances - namely, to arrest a person; to  
31 detain a person not under arrest in certain circumstances;  
32 to prevent a breach of the peace; in self-defence; or for  
33 the protection of property - is that right?

34

35 SR SGT WESTON: Yes.

36

37 MR FERNANDEZ: It goes on to state that force should be  
38 used which is no more force than is reasonably necessary to  
39 exercise policing functions; is that correct?

40

41 SR SGT WESTON: Yes.

42

43 MR FERNANDEZ: There's further explanation of these and  
44 other principles, and I'll take you to those in the  
45 document.

46

47 Can I ask for page 8620266 to be turned up, please.

1           Could we zoom in, please, on part 2, "What is force?"

2

3           Senior Sergeant Weston, I took you to the definition  
4 in the ANZPAA use of force principles. The force is  
5 defined in the use of force manual as follows:

6

7           *Force includes, but is not limited to,*  
8           *firearms (including draw and cover),*  
9           *handcuffs (during a detention or arrest),*  
10          *taser (including draw and cover), OC spray*  
11          *(including draw and cover), baton,*  
12          *weaponless control.*

13

14          Can you see that?

15

16          SR SGT WESTON:    Yes, I can.

17

18          MR FERNANDEZ:    There's also mention about the use of  
19 handcuffs in certain circumstances, namely, the transport  
20 of a prisoner is not considered a use of force; is that  
21 right?

22

23          SR SGT WESTON:    Yes.

24

25          MR FERNANDEZ:    Just for clarity, what does "draw and  
26 cover" mean?

27

28          SR SGT WESTON:    "Draw and cover" in relation to both the  
29 firearm and the taser, or the CEW, involves drawing that -  
30 the firearm or the taser - from the holster and bringing it  
31 to a cover position, which is on the person that is  
32 presenting the threat, towards the centre mass, centre of  
33 seen mass, so if you're standing with no points of cover  
34 concealing any part of your body, generally the centre of  
35 your seen mass would be around the middle of your torso.

36

37          MR FERNANDEZ:    Does that mean "force" includes the  
38 production of one of these implements or weapons without  
39 necessarily activation?

40

41          SR SGT WESTON:    Yes, that's correct.

42

43          MR FERNANDEZ:    What training is provided to police as part  
44 of the associate degree in terms of each of those items,  
45 firstly, and then I will ask you about the circumstances in  
46 which they should be used?

47

1 SR SGT WESTON: Yes, so collectively within the ADPP we  
2 have 14 hours of lectures, so that will - I'll go through  
3 the contents list in a moment, but that will include  
4 information on those appointments. Then we have 114 hours  
5 of defensive tactics, which again includes the physical  
6 application of those appointments, however --

7  
8 MR FERNANDEZ: Can I just pause you - when you say  
9 "defensive tactics", what do you mean?

10  
11 SR SGT WESTON: So defensive tactics will include  
12 weaponless control, weaponless control of physical  
13 skill-sets involving the body without the use of  
14 a mechanical device such as an appointment. Also involved  
15 in the defensive tactics will be ground defence, again,  
16 weaponless control. Firearms is stand-alone in the  
17 60 hours. Handcuffs will be included in the 114 hours, as  
18 too, baton and OC spray

19  
20 MR FERNANDEZ: So does this take place within the second  
21 schedule of the course - there's an online part and then  
22 there's the actual part of face-to-face training at  
23 Goulburn; is that correct?

24  
25 SR SGT WESTON: Correct.

26  
27 MR FERNANDEZ: And is this training that you've just  
28 described during schedule 2, the face-to-face training?

29  
30 SR SGT WESTON: Absolutely, session 2.

31  
32 MR FERNANDEZ: In terms of a situational model which  
33 I previously took you to in the ANZPAA principles, is the  
34 situational model used by NSW Police the tactical options  
35 model?

36  
37 SR SGT WESTON: Yes.

38  
39 MR FERNANDEZ: If we just scroll down on the same  
40 page that we're at, 2.2 refers to the tactical options  
41 model, which is described as providing:

42  
43 *... a series of options to consider when*  
44 *presented with a situation where police*  
45 *will contemplate using force.*

46  
47 Is that right?

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SR SGT WESTON: Yes.

MR FERNANDEZ: I'll ask for the next page to be turned up - page 8620267. Perhaps I'll just focus in on the actual model there. Can you see there what's set out as the tactical options model?

SR SGT WESTON: Yes.

MR FERNANDEZ: You described it as a model which is not linear - that is, it doesn't follow a triangle, but it's dynamic, it's continual, is it?

SR SGT WESTON: Correct.

MR FERNANDEZ: Just before I take you to the detail of what's contained there, what does the tactical options model provide to police?

SR SGT WESTON: The tactical options model provides to police what we refer to as our tactical options that are going to be best placed to deal with a situation that you're confronted with. You will see that we have 10 tactical options, they're outside of the wheel.

Within that, we have "Communication" - communication rightfully falls as a component of each tactical option that we use. Just as importantly, we have "Assess and reassess", which acknowledges the dynamic nature of policing. We will have to assess and reassess situations as they're unfolding and this model itself lends us the ability to escalate, as required, or deescalate as a situation calls for.

You'll notice around the edges, we have "Risk assessment" and "Action plan". That also forms a central component of the police decision-making, when we break down, we look at officer safety threat assessments and risk assessments and the identifying of what a threat is, what a risk is, and what a hazard is, and that formulates a part of our plan.

MR FERNANDEZ: Where does the options model begin? Is it at the safety-first point of communication?

SR SGT WESTON: You could have that as your starting

1 point. When I'm explaining this, as my colleague has said,  
2 when we're at the academy, sometimes to sort of best  
3 describe it, we would suggest that the police officer  
4 themselves are in the middle as the safety first, and  
5 that's where it begins, from there.

6

7 MR FERNANDEZ: Where does the police officer go to from  
8 that starting point?

9

10 SR SGT WESTON: Yeah, it will be dependent on the  
11 situation that they are faced. It could quite dynamically  
12 escalate all the way up to, like, a weaponless control  
13 situation, it might just simply be an officer presence.  
14 Someone might be attending job, so I've gone to use my  
15 first tactical option, I'm attending a job, that's my  
16 officer presence. From there, I may very well just  
17 communicate with a number of people and my tactical options  
18 might end there and the job may be resolved.

19

20 MR FERNANDEZ: Can you explain what's in the middle part  
21 of the wheel, in between "Communication" and the outer part  
22 of the wheel that refers to "Risk assessment", "Taking  
23 charge", et cetera? There are a number of different  
24 options, I think there are 10 different.

25

26 SR SGT WESTON: Yes, 10.

27

28 MR FERNANDEZ: Can you explain how they work?

29

30 SR SGT WESTON: Absolutely. So they are the 10 tactical  
31 options that we have in the NSW Police Force. "OC spray"  
32 the will be using or the drawing and covering of the OC  
33 spray. "Baton" is our accoutrement, of the baton.  
34 "Communication" can be a simple everyday communication,  
35 I might delve into a tactical communication or  
36 a negotiation as such, so communication has many forms.

37

38 "Tactical disengagement", depending upon the nature of  
39 the situation, I might be facing a high-risk situation and  
40 my best tactical option is to tactically disengage.  
41 "Weaponless control", as explained just prior, that is  
42 physical techniques involving the body without the use of  
43 any external mechanisms. "Conducted electrical weapon" is  
44 also known as the taser. We have the X26P currently with  
45 an introduction of an updated model of the T7. "Firearm",  
46 again, you have the Glock. "Active armed offender  
47 tactics", they are different tactics that are employed if

1 a situation that I face is deemed an active armed offender  
2 situation.

3

4 "Contain and negotiate", that may simply, again, be  
5 a high-risk situation where I may have employed tactical  
6 disengagement and I still need to contain the situation,  
7 so, you know, we move into taking command posts or areas  
8 where I can contain the situation to a point and enter into  
9 a negotiation. Then we're back at "Officer presence".

10

11 MR FERNANDEZ: Does this tactical options model require or  
12 encourage a police officer to consider all of those  
13 different options within any situation?

14

15 SR SGT WESTON: Yes.

16

17 THE CHIEF COMMISSIONER: Could I just ask you this: just  
18 looking at the wheel, in the centre, as you say, "Safety  
19 first", "Assess and reassess". Then there's a black circle  
20 with "Communication" written, and then, when you get to the  
21 10 items, one of the 10 items is "Communication". Is that  
22 intended to specify that the first thing to do is verbal  
23 communication, and that's why that's in the black circle  
24 immediately above the words "Safety first"?

25

26 SR SGT WESTON: My understanding is communication plays  
27 a part in every tactical option, so it's - yes, it forms  
28 a part of every - touching each single option.

29

30 THE CHIEF COMMISSIONER: So the fact that it's there in  
31 the dark circle emphasises the importance of communication?

32

33 SR SGT WESTON: Correct.

34

35 THE CHIEF COMMISSIONER: As a constant, really?

36

37 SR SGT WESTON: Yes.

38

39 THE CHIEF COMMISSIONER: Thank you.

40

41 MR FERNANDEZ: During the course of dealing with members  
42 of the public, police have to communicate with people from  
43 all sorts of different types of communication ability --

44

45 SR SGT WESTON: Yes.

46

47 MR FERNANDEZ: -- including different language

1 backgrounds, children, people who might not be mentally  
2 well or people who might have intellectual disabilities.  
3 What sort of training is there for police in terms of  
4 communication with each of those different types of groups?  
5

6 SR SGT WESTON: Yes, we - as we work in conjunction with  
7 the academic side, I'm not overly familiar with the entire  
8 communication in the curriculum there, but as far as  
9 a tactical communication aspect, I can speak to. We talk  
10 about, you know, clear, concise directions, building  
11 reports. We sort of go through the whole gamut, you know,  
12 understanding another person, breaking down barriers.  
13

14 We talk about - sorry, I'm just sort of trying to  
15 think what else we talk about - understanding and making  
16 sure that the message is being conveyed and received,  
17 because, especially in high-stress situations, I need to  
18 look for precursors or acknowledgments that that person is  
19 understanding my command, for example, and recognise myself  
20 that there is really no point escalating my level of  
21 communication following the same pattern if I'm not getting  
22 a response, and then, you know, altering my behaviours as  
23 a result.  
24

25 MR FERNANDEZ: The tactical options model sits beside  
26 something called the STOPAR; is that right?  
27

28 SR SGT WESTON: Yes.  
29

30 MR FERNANDEZ: Is that an approach in terms of options to  
31 take?  
32

33 SR SGT WESTON: Absolutely.  
34

35 MR FERNANDEZ: In terms of use of force?  
36

37 SR SGT WESTON: Yes, that's our critical thinking  
38 decision-making model and --  
39

40 MR FERNANDEZ: If I could ask you to pause there, because  
41 we'll bring it up.  
42

43 SR SGT WESTON: Oh, sorry.  
44

45 MR FERNANDEZ: If the rest of the page can be scrolled up,  
46 please, that very same page. If we can try and get - yes,  
47 you can now see on the page before you, 8620267,

1 a description of STOPAR. Can you just explain what STOPAR  
2 involves?

3

4 SR SGT WESTON: Yes, so STOPAR is our critical thinking  
5 decision-making model. Working our way through this, I'll  
6 go through and explain the six stages that are within  
7 STOPAR, but when I do, it might come across that it's  
8 actually quite stagnant. This is actually quite a dynamic  
9 model where I can move through and conduct a great deal of  
10 this almost on a subconscious level, but it's to help me  
11 identify risks, respond accordingly, formulate a plan to  
12 deal with something, act, and then conduct a review.

13

14 So from the very start, what's referred to as "Stop",  
15 I know that it says, "Apply some critical thinking", from  
16 an operational perspective, that would be myself, if I'm  
17 the police officer, turning my attention to the incoming  
18 information, so that's stop and apply some critical  
19 thinking. I've noticed something that's occurring here,  
20 I'm now turning my mind to that incoming information.

21

22 "Think" - how do you approach the problem without  
23 escalating the risk to self or others? Also on an  
24 operational perspective, this is conducting an immediate  
25 assessment on the urgency of the incoming information to  
26 determine a response priority, whether or not it's urgent  
27 and I need to deal with it immediately, hence reducing the  
28 risk to self or others.

29

30 "Observe" - your priority is public safety and the  
31 safety of self. This is actually a component where our  
32 threat and our risk assessments come in. I'm going to  
33 conduct an assessment on the immediate situation-based on  
34 behavioural threat and risk assessments.

35

36 "Plan" - gather all available information, plan your  
37 approach, communicate with your partner, advise police  
38 radio of the situation. So the "Plan" phase is  
39 a consolidation of the information I've gained from  
40 "Observe", and I'm going to formulate my strategic outcome,  
41 what I want to achieve.

42

43 When I move into "Act", adapt your approach based on  
44 the risks and components observed, I'm going to identify  
45 what actions are required to achieve that strategic outcome  
46 based on legislation, policy and ethical behaves.

47

1           Then I'm going to move into my "Review". I'm going to  
2 continually review the plan. This is still doing what you  
3 want - is it effective? Are there any other strategies you  
4 can use? This component is actually twofold, so I'm not  
5 going to only review the job itself - and this is where our  
6 assess and reassess comes in: is what I'm doing still  
7 effective, do I need to reassess my tactical option or am  
8 I continuing to achieve my strategic outcome? I'm also  
9 going to conduct a self-review, as such, to determine what  
10 jobs I did well and perhaps what areas I can improve on  
11 moving forward. So that's our STOPAR.

12  
13 MR FERNANDEZ: How is the tactical options model taught?  
14 There must be a theoretical part of it --

15  
16 SR SGT WESTON: Yes.

17  
18 MR FERNANDEZ: -- which involves the actual model. Is  
19 there use of case discussions, scenarios, videos, anything  
20 else to assist in the teaching?

21  
22 SR SGT WESTON: Yes. Our curriculum is quite diverse.  
23 When I gave you the hour breakdown, you know, we have to  
24 cover the physical component of each of our skill-sets, so  
25 as far as that, we will teach by demonstrate, explain and  
26 practice, and we'll move through stages until our students  
27 are technically proficient in a static environment with  
28 a skill-set.

29  
30           At the start and partway through lessons, we will  
31 reinforce learning, we will touch upon legislation or  
32 justifications for uses of appointments, justified use  
33 of force and so forth. And then we will continue to  
34 build through, and once our students have achieved  
35 competency in the static environment with the technical  
36 aspects of our tactical options, we then move into a  
37 scenario-based/reality-based training aspect, and that  
38 gives the students the opportunity to pull everything  
39 together, so our theory components, our decision-making,  
40 our ability to conduct risk and threat assessments quite  
41 dynamically.

42  
43           It also gives our students the opportunity to actually  
44 identify, you know, what violent resistance looks like when  
45 an actual physical role play is displaying that, and then  
46 they have to move through the decision-making process quite  
47 dynamically and make that decision to perhaps use an

1 appropriate appointment, go into weaponless control, any of  
2 the tactical options.

3

4 MR FERNANDEZ: When you used the term, in terms of  
5 scenario-based or reality-based training, what does that  
6 actually mean? Does that mean acting out a particular  
7 situation.

8

9 SR SGT WESTON: Absolutely. It's actually quite - it's  
10 quite a massive part of our student learning. Once our  
11 students are competent with the static use of appointments  
12 or their tactical options, we will - people such as myself,  
13 an operational safety instructor, will put on some safety  
14 gear, because it is actually full contact, you know,  
15 obviously in a controlled environment, and we will - the  
16 instructors, will have a scenario and essentially, you  
17 know, what outcome we want to achieve or what we're going  
18 to do. So it'll be a job, for example.

19

20 You know, we have one where our two students might  
21 attend a public park and the instructor is the role player,  
22 and I might be exhibiting, you know, drunk - exhibiting  
23 some behaviours that look like I might be intoxicated, for  
24 example. Then our students have to start from the start  
25 and work their way through until finale of the job and  
26 getting to the review phase.

27

28 MR FERNANDEZ: I'm going to ask for the next page to be  
29 brought up on the screen, please, 8620268. Can we go to  
30 the very bottom of the page, please, or to point 4 on that  
31 page, number 4.

32

33 I was asking questions of Senior Sergeant Pocock  
34 previously about use of force being reasonable and the  
35 guidance given on that in terms of training. The manual,  
36 in terms of use of force, also sets out some guidance; is  
37 that right, Senior Sergeant Weston?

38

39 SR SGT WESTON: Yes, that's correct.

40

41 MR FERNANDEZ: What can be seen is that police are  
42 required to exercise judgment every time they use force and  
43 in choosing the level of force that is appropriate, what  
44 should be considered are all of the circumstances,  
45 including - and I will just touch on these - the threat the  
46 officer is facing; the age of the person; the number of  
47 people the officer is dealing with; the number of other

1 officers present; whether the person is affected by alcohol  
2 or drugs - and if we can just go to the top of the next  
3 page, please - whether the person is suffering mental  
4 illness; gender; and size. Those are all matters that are  
5 to be considered; is that correct?

6

7 SR SGT WESTON: Yes.

8

9 MR FERNANDEZ: There's a further explanation in the  
10 document about the meaning of the term "reasonable". The  
11 document is now in evidence before the Commission so  
12 I won't take you to that.

13

14 That can be removed from the screen, thank you.

15

16 Senior Sergeant Weston, I've asked you a number of  
17 questions about your involvement in terms of the use of  
18 force - the training in the use of force. Is there any  
19 other aspect of training or ongoing training that you're  
20 involved in that hasn't already been touched on?

21

22 SR SGT WESTON: Perhaps the - I noticed you were asking  
23 before about decision-making in relation to our ongoing  
24 training and how that's defined or determined, and I can  
25 answer that.

26

27 MR FERNANDEZ: Yes, please.

28

29 SR SGT WESTON: I just have to refer to my list, that  
30 I didn't print out, I do apologise. So we actually have  
31 a 13-point decision-making framework, and as we spoke  
32 before, critical incident analysis; internal investigation  
33 outcomes; national and international research; emerging  
34 trends in operational safety instruction; Commissioner's  
35 and corporate directions; coronial findings and  
36 recommendations; Law Enforcement Conduct Commission  
37 recommendations; feedback from operational safety  
38 instructors and operational police; injury management  
39 statistics; environmental scanning; corporate reports;  
40 legislative requirements; and also the data obtained from  
41 COPS.

42

43 MR FERNANDEZ: What is that a decision-making framework in  
44 relation to?

45

46 SR SGT WESTON: That's in relation to our ongoing  
47 mandatory training, those that the operational police

1 undertake in a training period.

2

3 MR FERNANDEZ: What you've just described is very much the  
4 practical aspects of the training.

5

6 I'm going to turn to Senior Sergeant Pocock to ask  
7 whether there is anything you wished to add to the evidence  
8 given by Senior Sergeant Weston about training as part of  
9 the associate degree in terms of force and use of force?

10

11 SR SGT POCOCK: The only thing I would say is that it's  
12 covered quite extensively.

13

14 MR FERNANDEZ: Can I turn to you, Senior Sergeant Clarke.  
15 What we've heard of is what is taught at the academy both  
16 for officers in training and then afterwards. Do you have,  
17 in terms of training, in your role, any involvement with  
18 use of force or any provision of information or training?

19

20 SR SGT CLARKE: Yes, we provide - most recent years, the  
21 mandatory training that we provide, which is separate to  
22 what Leanne's group does, has been powers related, and as  
23 soon as you've got powers, use of force becomes  
24 a consideration, and almost - I reviewed a couple of those  
25 packages. There's regularly reference to section 230 of  
26 LEPR and use of force principles in relation to the use of  
27 powers and all of that training. For example, this year's  
28 package on search does talk, briefly at least, about  
29 section 230 and the use of force in relation to searching.

30

31 At the moment, in terms of use of force - I'll carry  
32 on, is that all right?

33

34 MR FERNANDEZ: Yes, please continue.

35

36 SR SGT CLARKE: The use of force manual which became  
37 available in August last year, that was made available on  
38 the intranet originally and I think under the Professional  
39 Standards Command's website. Part of our group's mandate  
40 was to promote that manual as well and the corporate  
41 sponsor, Assistant Commissioner Whyte, asked us to provide  
42 an introduction and a platform for the presentation of that  
43 manual, which we did on the PETE platform I've mentioned  
44 previously, which included a video-recorded introduction to  
45 the manual by Assistant Commissioner Whyte and the  
46 presentation of the manual with that. That was in  
47 anticipation also of next year's MCPE, which relates to use

1 of force.

2

3 MR FERNANDEZ: When you say "next year's MCPE", are you  
4 saying there's specific training next year on use of force?

5

6 SR SGT CLARKE: That's correct. That's still being  
7 developed. That'll be for the 2023/24 year, the training  
8 year. We usually start in July.

9

10 MR FERNANDEZ: Are there a series of topics that are  
11 brought up for specific training year by year? Is that how  
12 that came about?

13

14 SR SGT CLARKE: Every year - the practices from the LDDC,  
15 that group that I work for, usually we have - we usually  
16 have about two training packages that we provide. Like,  
17 for example, this year we did police powers of search and  
18 we did a victims package as well, which was a blended  
19 online and face to face, and next year we have the two  
20 packages that I'm aware of, at least so far, that we will  
21 be producing.

22

23 MR FERNANDEZ: You've referred to section 230. I'll just  
24 ask for section 230 and 231 to be placed up on the screen,  
25 please.

26

27 Senior Sergeant Weston, you talked about  
28 decision-making having to be in accordance with  
29 legislation, and what have you. These are the particular  
30 provisions that relate to use of force both generally by  
31 police and then specifically in terms of making an arrest.  
32 What sort of training is there in terms of the practical  
33 scenarios or the reality-based training about use of force  
34 which is reasonably necessary? How is that actually  
35 taught?

36

37 SR SGT WESTON: Yes, so that does play in - well, that is  
38 included in our scenario-based training, including the  
39 reasonable use of force of acting within a lawful function.  
40 So even though the scenario itself is going to be quite  
41 dynamic, the student police officer has to identify that an  
42 offence has been committed, for example, and then,  
43 dependent upon the decision-making, as a result of, you  
44 know, the threat assessment conducted by the student,  
45 determining which appointment, perhaps, if any, they are  
46 going to use. They will have to be justified in their  
47 actions - for example, there might be a discharge of OC

1 spray, so the student will have to be able to justify, in  
2 accordance with the justifications for OC spray, that that  
3 was done lawfully, and - yes, moving through to - obviously  
4 the scenarios go all the way through to control, so the  
5 scenario won't just stop with, as the one I have just  
6 mentioned, discharging OC spray. Obviously the goal is  
7 control of the situation, to gain control, so the student  
8 will then move back to their communication, et cetera, and  
9 to gain control of the situation.

10  
11 MR FERNANDEZ: Just on that point, one means of gaining  
12 and then maintaining control is through use of handcuffs;  
13 would that be correct?

14  
15 SR SGT WESTON: It would depend on my understanding of  
16 that question.

17  
18 MR FERNANDEZ: The particular case that this Commission is  
19 investigating involves a young person who was apprehended  
20 by police. After his apprehension, there's evidence that  
21 he was held in handcuffs whilst sitting on the ground and  
22 with some blood coming from his head.

23  
24 SR SGT WESTON: Yes.

25  
26 MR FERNANDEZ: He was, in fact, handcuffed behind his back  
27 at a certain point in time.

28  
29 SR SGT WESTON: Yes.

30  
31 MR FERNANDEZ: What training is there, guidance or  
32 anything else, about the use of handcuffs, when it should  
33 be used, when it should stop being used, any other  
34 situations in which it might be used?

35  
36 SR SGT WESTON: Yes, so our handcuffing - do you mind if  
37 I just break down our content list for you --

38  
39 MR FERNANDEZ: Yes, please.

40  
41 SR SGT WESTON: -- just so I can give you an exact  
42 overview, if you don't mind? Okay, so our handcuffing, we  
43 have a four-hour lesson at the - sort of towards the start  
44 of our training, and that will cover justification for use  
45 of handcuffs. It will also include nomenclature, so we  
46 have two different types of handcuffs, so we'll go through  
47 and define both. We'll talk about theoretical components,

1 mainly focusing on the justification, the decision-making  
2 to handcuff, before we move into the physical skill-sets.  
3

4 Then we have a second four-hour lesson. But in  
5 relation to the physical skill-sets in handcuffing,  
6 a student will be taught to become competent in what we  
7 will refer to as compliant handcuffing, so handcuffing to  
8 the front. And when we talk about a compliant person and  
9 determining whether or not I will handcuff a person to the  
10 front, again, I'm having to conduct a behavioural or  
11 a threat assessment and I'll determine whether or not they  
12 are resistive or resistant. If they're resisting, then if  
13 they're passively resistant or if they're aggressively  
14 resistant will determine whether or not I'm going to be  
15 able to handcuff to the front or to the rear. So that  
16 plays a fair part in that.  
17

18 MR FERNANDEZ: Is the rear an escalation of handcuffing?  
19

20 SR SGT WESTON: Not necessarily. Again, there's a number  
21 of parts to it. I might end up getting to a handcuffing to  
22 the rear situation by an arm-bar takedown, which is  
23 a weaponless control technique, and I will move into  
24 handcuffing to the rear.  
25

26 But I will also, upon assessment, depending upon my  
27 transport of my person in custody - if I'm transporting in  
28 a sedan, I have to handcuff to the rear for officer safety.  
29 Generally with a compliant individual, if I'm transporting  
30 with a caged truck, they'll be handcuffed to the front. So  
31 it's not always depending upon the behaviours of the  
32 person; it might also be transport and officer safety.  
33

34 MR FERNANDEZ: Is there any training about situations  
35 where it's not necessary to either use handcuffs or not  
36 necessary to continue with the use of handcuffs?  
37

38 SR SGT WESTON: Well, the decision with handcuffs rests  
39 with you. That's a part of our justification, and by the  
40 word "you", that is the person that's making the decision  
41 to handcuff. So the decision to handcuff rests with you.  
42 Generally you're justified in handcuffing prisoners when  
43 they've tried to escape, to prevent escape or injuries to  
44 themselves or others.  
45

46 MR FERNANDEZ: Is there anything you can add to that,  
47 Senior Sergeant Pocock, in terms of training in terms of

1 use of handcuffs?

2

3 SR SGT POCOCK: Generally more now in relation to use of  
4 force, we do have a couple of scenarios that we use. We do  
5 have numerous scenarios that we have within our curriculum.  
6 We also have a dedicated Avalias lesson. An Avalias lesson  
7 is --

8

9 MR FERNANDEZ: Could you spell that, please.

10

11 SR SGT POCOCK: A-V-A-L-I-A-S. An Avalias lesson is  
12 a lesson like a tutorial where students come into the room  
13 and are put into groups. There's a facilitator who  
14 facilitates the lesson. They watch a series of videos.  
15 The videos that we use are actually body-worn video  
16 examples of real circumstances, and then they make an  
17 adjudication on, like, what they would do, whether they  
18 would use force, what sort of force they're going to use,  
19 then there's a discussion around that, their decisions. So  
20 that's one thing that is also in the academic component.

21

22 MR FERNANDEZ: You refer to body-worn video.

23

24 SR SGT POCOCK: Yes.

25

26 MR FERNANDEZ: You have just given an example of the  
27 benefit of body-worn video --

28

29 SR SGT POCOCK: Yes.

30

31 MR FERNANDEZ: -- in terms of training. What training is  
32 there about use of body-worn video at all?

33

34 SR SGT POCOCK: There's a couple of references to it in  
35 our academic lessons - the need to give a warning - no,  
36 I'll --

37

38 MR FERNANDEZ: Perhaps I'll just rephrase that to be a bit  
39 more specific. Is there specific training on the  
40 circumstances in which body-worn video should be used?

41

42 SR SGT POCOCK: Yes. There's a master lecture that's  
43 delivered in relation to body-worn video and it articulates  
44 that you should use body-worn video, and there's a list,  
45 I don't have the list with me, but it will be, you know,  
46 whenever you're using a power, whenever it's dealing with  
47 some sort of situation that might be of interest, if you're

1 going to - yeah, so that power would include searching,  
2 arrests, all those sorts of powers.

3  
4 There is a list, but I'm not particularly - don't have  
5 that to hand at the moment, but there is a specific lesson  
6 around the body-worn video, and then the students do  
7 a series of practical lessons which are part of the  
8 academic component and, in all those lessons they use the  
9 body-worn video and they - you know, they actually turn the  
10 body-worn video on and they record and they give the  
11 warning, the body-worn video warning, to the people  
12 involved and they have to go and then download that  
13 content.

14  
15 MR FERNANDEZ: Senior Sergeant Weston, does your training  
16 involve any aspect of talking about body-worn video and the  
17 circumstances in which it should be used?

18  
19 SR SGT WESTON: The body-worn is a part of training during  
20 the T7, so the taser training. As far as when  
21 operationally carrying a T7, you'll also wear a body-worn.

22  
23 MR FERNANDEZ: What about other situations, potentially  
24 any situation where a police officer uses force, is it  
25 taught that body-worn video should be used in that  
26 situation?

27  
28 SR SGT WESTON: No.

29  
30 MR FERNANDEZ: Do you know why it's limited to the use of  
31 tasers as opposed to all the other types of force that are  
32 available to a police officer?

33  
34 SR SGT WESTON: Yes, absolutely. That's a good question,  
35 actually, that needs an explanation. It's in relation to  
36 the T7 taser, which is a new taser that is coming in to the  
37 NSW Police Force. The previous taser, the X26P, had  
38 a camera built in to the taser itself, where the T7 doesn't  
39 have that capability. Therefore, as a part of our  
40 training, from the onset, it's a part of our structured  
41 lesson plan. We also go over the fact that operationally,  
42 when carrying the T7, you will also wear the body-worn.

43  
44 MR FERNANDEZ: Do you involve in your training that  
45 operationally when using firearms, handcuffs, OC spray,  
46 a baton or weaponless control, that body-worn video should  
47 also be used?

1  
2 SR SGT WESTON: I'm familiar with - as undertaking  
3 body-worn training, I'm familiar that, you know, when  
4 operationally practicable to activate the body-worn.  
5 I know operationally things occur, can occur quite  
6 dynamically and, you know, if officer safety or the safety  
7 of somebody else is compromised as a part of my assessment,  
8 then I have to - I will attend to that and I perhaps won't  
9 be able to get to my body-worn in time. So I believe that  
10 those considerations should also be taken into  
11 consideration in an operational environment.

12  
13 MR FERNANDEZ: Wouldn't the situation that you've just  
14 described be exactly the type of situation where you would  
15 turn on body-worn video?

16  
17 SR SGT WESTON: Yeah, look, in an ideal world, I would be  
18 able to identify your precursors, for example, from there  
19 in a standing position, although, you know - and I can  
20 think, "Okay, I'll turn on my body-worn", but it could also  
21 be exceptionally dynamic; you know, you could all of  
22 a sudden be ready to shoot a firearm at me, for example,  
23 and I may have to react to that. So when safe to do or  
24 operational practicable or safe to do so, yes, I believe  
25 that is a part of the body-worn SOPs.

26  
27 MR FERNANDEZ: We talked about the tactical options model.

28  
29 SR SGT WESTON: Yes.

30  
31 MR FERNANDEZ: And all those options open to a police  
32 officer.

33  
34 SR SGT WESTON: Yes.

35  
36 MR FERNANDEZ: What role does the use of body-worn video  
37 play in any of those options?

38  
39 SR SGT WESTON: Specifically as a part of our training,  
40 outside of the T7, it doesn't.

41  
42 THE CHIEF COMMISSIONER: Could I just ask you this, and  
43 it's possible it's been covered in one way or another, but  
44 in your scenarios training, these are largely young men and  
45 women coming in to the police, often without any background  
46 in - no military background, some might, some don't.  
47 Usually young, younger, on the younger end, 20, 21,

1 thereabouts. Do you use real-life cases of body-worn  
2 videos to illustrate good examples of how things can be  
3 done and perhaps also bad examples of how things shouldn't  
4 be done, being real-life scenarios which are a by-product  
5 of the availability of body-worn video? Is that used as  
6 part of the training of young police?  
7

8 SR SGT WESTON: In our physical training component it is  
9 not. However, in relation to video, we do video some of  
10 our reality-based scenarios and go through a debrief with  
11 our students, and that is for exactly what you just raised  
12 there. They can actually physically see, you know, we  
13 might talk about a triangle of safety, bladed stance,  
14 reactionary gap, and, you know, there might have been three  
15 or four students that have done exceptionally well in that  
16 area and collectively we get to review that, step through  
17 the process of what worked well, what didn't, as a learning  
18 tool itself in a training aspect, but we haven't used  
19 body-worn.  
20

21 THE CHIEF COMMISSIONER: In some circumstances, and as an  
22 agency with access to body-worn video one tends to see  
23 quite a bit of it, you can see examples of situations where  
24 an otherwise tense circumstance may be deescalated by  
25 a calm, verbal approach being taken, and sometimes the  
26 opposite: if the officer is forceful, loud, directive,  
27 then a tense situation may become even tenser. Isn't the  
28 real-life situations like that a good way of showing police  
29 officers what can happen and how to deal with it?  
30

31 SR SGT POCOCK: Yes, Chief Commissioner, in the Avalias  
32 lesson, we do use real-life examples of taser footage, some  
33 that depict excessive use of force or inappropriate use of  
34 force, some that - what we would call textbook, if you  
35 like, an appropriate use of force is provided. We also  
36 have a particular scenario which is video-recorded, which  
37 is the removal of some intoxicated person from a licensed  
38 premises, and it demonstrates the person is passively  
39 aggressive in the sense that he's not a direct threat,  
40 however, he's objecting to the removal, and we demonstrate  
41 how we might talk to that person and take a little bit  
42 longer to achieve the aim of removing the person from the  
43 hotel without having to go hands on, with a weaponless  
44 control, just demonstrating really the communication  
45 aspect. So there's specific video lessons in our  
46 curriculum that address that.  
47

1 THE CHIEF COMMISSIONER: Yes, and apart from body-worn,  
2 there's also CCTV that's everywhere and there's hardly  
3 a criminal case that doesn't have some in it, which can  
4 pick up incidents involving police and members of the  
5 community apart from body-worn. Is product of that sort  
6 used in training, namely, CCTV of a non-body-worn type?  
7  
8 SR SGT POCOCK: Yes.  
9  
10 THE CHIEF COMMISSIONER: In the same way as you've just  
11 described --  
12  
13 SR SGT POCOCK: Yes.  
14  
15 THE CHIEF COMMISSIONER: -- it's capable of giving  
16 a real-life illustration of situations?  
17  
18 SR SGT POCOCK: Yes.  
19  
20 THE CHIEF COMMISSIONER: Thank you. Yes, Mr Fernandez.  
21  
22 MR FERNANDEZ: Senior Sergeant Clarke, from your  
23 perspective, is there anything available to police about  
24 use of body-worn video, perhaps leaving aside the standard  
25 operating procedures, but is there anything else available  
26 in terms of the circumstances in which body-worn video  
27 should be used?  
28  
29 SR SGT CLARKE: I don't provide or we don't provide  
30 anything on the use of body-worn in the packages that I'm  
31 aware of.  
32  
33 MR FERNANDEZ: I'm going to turn to a different topic now  
34 and start with you, Senior Sergeant Pocock. I'm going to  
35 ask you about policing in plain clothes, so this is not  
36 undercover policing but general duties policing in plain  
37 clothes.  
38  
39 THE CHIEF COMMISSIONER: Could I just ask one thing before  
40 move into a new topic, Mr Fernandez?  
41  
42 MR FERNANDEZ: Of course.  
43  
44 THE CHIEF COMMISSIONER: Coming back to handcuffs, is  
45 there any training of police about the use or non-use of  
46 handcuffs with young persons or any different approaches  
47 that may be taken in the use of handcuffs if it's a young

1 person? That's an open question to all three of you.

2

3 SR SGT WESTON: For a physical application of handcuffs,  
4 we'll still go through the exact same officer safety  
5 procedures, talking about our stance, application, applying  
6 front or rear. There is reference to hand sizes, because  
7 of the actual fixed and swinging arm on both handcuffs, if  
8 you have a very small person, it could be an adult even,  
9 and both - and even with the handcuffs on as tight as  
10 possible, before moving through to full ratchet, we don't  
11 have security of the wrist, there is a technique where we  
12 can apply both hands together with the two handcuffs over  
13 the top, which alleviates that problem. But that's not  
14 directly in reference to a small child, it can also be to  
15 an adult.

16

17 SR SGT POCOCK: In our academic component we don't have,  
18 specific to young persons, we just teach them that it needs  
19 to be reasonable, necessary, proportionate and appropriate,  
20 and we go through those four points and if it doesn't meet  
21 any one of those, then it's an incorrect use of force.

22

23 SR SGT CLARKE: Just to finish off, the use of force  
24 manual refers to that in all the circumstances - and we've  
25 already looked at part 4 of that which talks about the  
26 circumstances including the age and the size of the person  
27 as well, which is a consideration for what force and what  
28 level of force is used.

29

30 THE CHIEF COMMISSIONER: Thank you, yes.

31

32 Thank you, Mr Fernandez.

33

34 MR FERNANDEZ: Senior Sergeant Pocock, is there any  
35 training as part of the associate degree about policing in  
36 plain clothes, so general duties policing? Is there  
37 anything covered on that?

38

39 SR SGT POCOCK: The only thing that we cover is in  
40 relation to 201 of LEPR, which provides that if you are in  
41 plain clothes you must provide evidence of being a police  
42 officer. That's the only real context that we would, yes.

43

44 MR FERNANDEZ: Senior Sergeant Weston, is there anything,  
45 any part of your training that you provide about policing  
46 in plain clothes?

47

1 SR SGT WESTON: In the ADPP perspective, no. In our  
2 ongoing training in relation to physical use of  
3 appointments, we might be using different holsters,  
4 OC spray cannisters, et cetera, but again, there's a  
5 physical application of training.

6  
7 MR FERNANDEZ: What about body-worn video in plain clothes  
8 and operational ability; is that discussed at all?

9  
10 SR SGT WESTON: Not with us, no.

11  
12 MR FERNANDEZ: Senior Sergeant Clarke?

13  
14 SR SGT CLARKE: In our materials I think, as Senior  
15 Sergeant Pocock has indicated, the safeguards are where  
16 this seems most relevant where our obligation under part 15  
17 of LEPRA is to inform, let the person know that we are  
18 police officers and who we are and the reason for arrest,  
19 et cetera, before use of power, and that it seems obvious  
20 and more incumbent on those officers to make it known that  
21 they are police officers, usually, you know, calling out,  
22 "Stop. Police", and identifying yourself as a police  
23 officer. Whether or not you've got time to pull out your  
24 badge is a consideration for the circumstances of the use  
25 of power.

26  
27 MR FERNANDEZ: Senior Sergeant Clarke, I'm going to start  
28 with you in terms of this next question. I've asked you  
29 questions previously about cases and law and your  
30 experience as a police prosecutor and how information might  
31 or might not be shared within the organisation.

32  
33 I'm going to ask for an exhibit to be placed up on the  
34 screen. It's MTS70. I'm going to ask for page 8543630 to  
35 be placed up on the screen, please.

36  
37 Senior Sergeant Clarke, this is a judgment of the  
38 Supreme Court by Justice Adamson back in 2013. We actually  
39 have the solicitor who was responsible, who acted for the  
40 young person in this case, give evidence at this  
41 investigation. I just wonder if we could focus on the  
42 catchwords, please. So without really going to the details  
43 of the case, I just want to show you these catch words. It  
44 refers to sections 138 and 139 of the Evidence Act - that  
45 is, impropriety and cautioning of witnesses. Then it  
46 refers to:

47

1 *Improperly obtained evidence - failure to*  
2 *caution the accused - interview conducted*  
3 *notwithstanding the initial refusal to*  
4 *answer questions - section 90 of the*  
5 *Evidence Act - unfair deprivation of right*  
6 *to silence - advantage taken of vulnerable*  
7 *person - 15-year-old girl.*

8  
9 Just looking at the catchwords and nothing else, that's  
10 quite remarkable in terms of what that case was about. How  
11 would something like this case - how would that be dealt  
12 with within, firstly, the police prosecutors? Is there  
13 sharing of information about cases and the latest law  
14 relating to admissibility, for example?

15  
16 SR SGT CLARKE: I mean, obviously admissibility is an  
17 issue, 138 and 139 are within the purview of the  
18 discretions of the court. I do not know what the  
19 considerations in that case were and as, you know, 138 has  
20 a long list of considerations and issues, section 90 as  
21 well, issues of fairness - look, it would raise a flag.  
22 I'd be interested to know what was in that, but, yeah, to  
23 be honest, I don't know the case.

24  
25 The issue seems to be around the questioning, unfair  
26 deprivation of right to silence. Yeah, it may be  
27 interesting, and I would probably seek to refer it to the  
28 appropriate person dealing with issues of admissibility or  
29 impropriety, and also, I think - personally, if I see  
30 interesting cases relevant to a particular group, I'll  
31 forward it to them and something like the detectives  
32 training unit might have been interested in something like  
33 this. That was something I regularly did; even when I was  
34 working with the prosecutors, I would email interesting  
35 case law to the appropriate person in the detectives  
36 training unit.

37  
38 MR FERNANDEZ: This was a decision in 2013, in  
39 about November of 2013. I understand between 2012 and  
40 2018, you were actually a trainer in the police prosecution  
41 command; is that right?

42  
43 SR SGT CLARKE: Yes, that's correct.

44  
45 MR FERNANDEZ: If you read this case or another case like  
46 it, in addition to raising it with prosecutors or the  
47 interested person, would you realise that something like

1 this would relate to police practice more generally? Would  
2 this be something that you'd want to be telling the  
3 trainers at the academy about so officers in training can  
4 be taught about issues such as this?  
5

6 SR SGT CLARKE: My main concern with the prosecutors was  
7 providing information and training material for the  
8 prosecutors. That material generally would be made  
9 available to police generally, and so they'd have access to  
10 that information.  
11

12 MR FERNANDEZ: How would that happen?  
13

14 SR SGT CLARKE: Honestly, it used to be - we used to post  
15 all our material on the intranet, so it would be available.  
16 But it would be up to the trainer dealing with that area of  
17 law as to what they did with that. You know, I haven't  
18 read this case so I can't comment on the - how it might  
19 have affected anything that I dealt with or wrote. But  
20 there would be - if there was a need for the escalation,  
21 given it's a Supreme Court decision, you'd hope that police  
22 were paying attention to it and it would have been  
23 escalated through the appropriate channels to be dealt with  
24 appropriately.  
25

26 MR FERNANDEZ: Senior Sergeant Pocock, how would a case  
27 like this come to the attention of you as being a person  
28 coordinating the training for the police?  
29

30 SR SGT POCOCK: We do, again, do environmental scans, so  
31 sometimes we'll pick up on particular cases, they can be  
32 from just our own research, it can come down via some  
33 external body through to the police, such as, you know,  
34 Coroners Court or - not this one specifically, but this  
35 specific case, I suppose.  
36

37 I think there was a discussion earlier about whether  
38 the work that Mr Clarke does - how it might go to us.  
39 I think if it was a significant issue, and there have been  
40 some significant issues, it would go up to our - to  
41 a certain level of maybe assistant commissioner, across and  
42 down. I'm not particularly aware of the specific process  
43 because I'll get files from my commander saying, "Have  
44 a look at this. Do we cover this appropriately?" And  
45 I won't interrogate that as to where it came from, so much  
46 as I will just look at our content to see - I'll go through  
47 these points, we'll read it, given that we've got some -

1 even in my unit I think there's three solicitors, previous  
2 solicitors, working for the Charles Sturt University that  
3 are in my direct unit which we'll give to and we'll say,  
4 "Let's tease out the issues here that are going to affect  
5 firstly, our students, and is it at their level; and, two,  
6 then do we address it and do we address it sufficiently?"  
7 Then we'll make a determination and then we'll modify or  
8 enhance our curriculum according to that determination.  
9

10 MR FERNANDEZ: What training is provided as part of the  
11 associate degree in relation to interviewing children  
12 specifically?  
13

14 SR SGT POCOCK: In relation to interviewing children  
15 specifically, of course, we teach that least restrictive  
16 actions. We specifically --  
17

18 MR FERNANDEZ: This is interviewing, though.  
19

20 SR SGT POCOCK: Yes, yes. But what we teach is - I won't  
21 go - well, I don't - I don't know that we teach specific to  
22 children, because what we'll teach is, or what we do teach,  
23 is that if a person is back at a police station in custody  
24 you'll give them to the custody sergeant, you will ask the  
25 custody sergeant if you can interview that person. The  
26 custody sergeant will make a determination - or custody  
27 officer, sorry, will tell you whether or not - this is what  
28 we teach, whether or not you can take that person for an  
29 interview.  
30

31 And then we teach that body-worn video shouldn't - is  
32 not a - no, it can't be just - it's not a replacement for  
33 ERISP. However, you'll find yourself in situations,  
34 students will find themselves in situations, or police  
35 officers do, where you don't have an appropriate arrest  
36 situation yet you may want to interview the person. So in  
37 those circumstances, you would offer the option of them to  
38 come back to the police station. In some circumstances,  
39 it'll be, "I'm happy to be interviewed but I'm not coming  
40 back to the police station". So in that circumstance, it's  
41 a notebook interview using your body-worn video. We also  
42 teach that they're not to interview or ask questions of  
43 a young person without a support person. So we would -  
44 there's one particular scenario where it's a graffiti  
45 situation and graffiti doesn't fit under the Young  
46 Offenders Act. They're held by security. Police arrive.  
47 They don't want to give their details, so we take them back

1 to the police station - because of their age there's a duty  
2 of care as well, it's the middle of the night - and then we  
3 teach that you have to bring the parents in or arrange for  
4 that person to go home and then an interview to occur  
5 later.

6  
7 MR FERNANDEZ: Are you saying that police are taught to  
8 place that young person under arrest for a graffiti offence  
9 to get them back to the police station?

10  
11 SR SGT POCOCK: No. No, in the - circumstances may arise  
12 where, if you've got a 99(1)(a), 99(1)(b), 99(3), you may  
13 need to arrest. So they're not specifically told they have  
14 to arrest in the graffiti situation, because the  
15 overarching, least restrictive form of sanction applies  
16 still; it's just that we're trying to teach students to  
17 think critically, look at the situation and bring all the  
18 information in, such as duty of care, and how we then  
19 proceed from there.

20  
21 MR FERNANDEZ: Is there any training or giving of  
22 information about people in custody, specifically  
23 Aboriginal people, having the right to legal advice before  
24 speaking to police?

25  
26 SR SGT POCOCK: Yes, yes.

27  
28 MR FERNANDEZ: What's the training there?

29  
30 SR SGT POCOCK: Numerous times they're told that they must  
31 be given - well, we teach them that the custody manager is  
32 the one who will do this, however, all vulnerable people -  
33 all vulnerable people - which Aboriginal Torres Strait  
34 Islander children are, must have the right to legal advice.

35  
36 MR FERNANDEZ: Is there any training about what the  
37 consequence is of getting that legal advice? So in a  
38 situation where a person gets legal advice and does not  
39 wish to take part in an interview, what are police trained,  
40 then, as to what they can do with that person?

41  
42 SR SGT POCOCK: They're trained to take the advice of the  
43 custody sergeant. So in that situation, the custody -  
44 that's why we teach our students that they are to go to the  
45 custody manager and ask the custody manager if they can -  
46 if they're permitted to take the person in for an  
47 interview.

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MR FERNANDEZ: Is there any training available as part of the associate degree about protocols agreed to by the Commissioner of Police with Legal Aid and more generally about interviewing of people in custody including young people?

SR SGT POCOCK: No, no.

THE CHIEF COMMISSIONER: Is there training about the right to silence?

SR SGT POCOCK: I don't think specifically, sir. I don't. We teach - the general principle there would be, yes, the general principle. But I don't think we explore that specifically or give scenarios where that might occur, other than in the Young Offenders Act in relation to the PAS, the protected admissions scheme, we talk to - specifically to the fact that if the person - if a young person decides they're not - they don't want to say anything because they believe they could - you know, there could be repercussions for them, then we teach how the protected admissions scheme is there to assist that young person to, I suppose, go down the path of being able to be dealt with under the Young Offenders Act, as opposed to if they didn't say anything.

THE CHIEF COMMISSIONER: The right to silence as a proposition is implicit in a caution, I suppose.

SR SGT POCOCK: Yes, we teach the caution significantly so, yes, I guess in that sense we do.

MR FERNANDEZ: Senior Sergeant Pocock, if a person says "I don't wish to have an interview --

SR SGT POCOCK: Yes.

MR FERNANDEZ: -- doesn't that involve the exercise of the right to silence?

SR SGT POCOCK: Yes.

MR FERNANDEZ: I wonder what do you train police in training about that, about a person saying, "I don't wish to give an interview"? Is anything further taught to police about that situation?

1  
2 SR SGT POCOCK: The only reference that we have really is  
3 that one example of the reason why a custody sergeant might  
4 say "You can't take the person for an interview" is that  
5 they've received legal advice. That's written in the -  
6 that's in the training.

7  
8 MR FERNANDEZ: Are you saying that very much what is being  
9 taught is that the arresting officer really is having  
10 significant regard to what the custody manager is advising  
11 them?

12  
13 SR SGT POCOCK: Yes, and we've got to remember, we're  
14 talking with students, yes, so we're not talking with  
15 experienced constables or senior constables or detectives.  
16 Our training is for, you know, students who don't  
17 understand necessarily all the implications.

18  
19 MR FERNANDEZ: At some point in time, those students do  
20 become senior officers.

21  
22 SR SGT POCOCK: They do, yes.

23  
24 MR FERNANDEZ: Experienced constables or senior  
25 constables. How do they then get that training?

26  
27 SR SGT POCOCK: Not - well, one way is in their  
28 probationary year, they do 100 shifts of policing and  
29 they've got a field training officer who is their  
30 on-the-job trainer, if you like, and supervisors in the  
31 field and custody managers who all steer that student  
32 towards the skills, the requisite skills necessary to be  
33 a confirmed constable

34  
35 MR FERNANDEZ: Senior Sergeant Clarke, can I ask you, in  
36 terms of your levels of responsibility, what material is  
37 made available to all police about interviewing suspects  
38 and specifically about interviewing children?

39  
40 SR SGT CLARKE: I honestly can't comment on interviewing.  
41 That would be something that the investigators courses and  
42 the detectives training courses would have.

43  
44 MR COFFEY: Can I take that question on notice because  
45 I know the answers to that question and it may be that we  
46 have had other witnesses giving evidence, but there is  
47 certainly the investigators course that a constable does

1 within their first two to three years that deals with these  
2 exact issues, plus there are different grades as you move  
3 up into detectives. So it may be that I can provide  
4 a written note or something about that.

5  
6 THE CHIEF COMMISSIONER: All right. Thank you, Mr Coffey.

7  
8 MR FERNANDEZ: Bearing in mind there might be some more  
9 information, in terms of material being available on  
10 intranet or through portals, to your knowledge, is there  
11 anything, any resources available on that very issue?

12  
13 SR SGT CLARKE: Again, I really haven't interrogated the  
14 detectives training materials in relation to that so  
15 I really can't answer that question. My apologies.

16  
17 MR FERNANDEZ: Chief Commissioner, I note the time. Could  
18 I have a very short adjournment, please, just for five  
19 minutes?

20  
21 THE CHIEF COMMISSIONER: Yes.

22  
23 Could I just ask one thing before we do adjourn. Just  
24 using the FE decision, which has been the subject of some  
25 questioning, the catchwords on the front page, could we go  
26 through to paragraph 113, the page with the barcode ending  
27 654. Can we bring that up on screen, thanks. It's the top  
28 of the page. Could we zero in - now, Justice Adamson said:

29  
30 *I regard these improprieties as very grave.*  
31 *The accused's right to remain silent and*  
32 *not be compelled to answer questions that*  
33 *might tend to incriminate her in the*  
34 *commission of the crime or murder has been*  
35 *described as a fundamental bulwark of*  
36 *liberty which is not merely a rule of*  
37 *evidence but a basic and substantive common*  
38 *law right.*

39  
40 With a reference to the High Court decision in *Reid v*  
41 *Howard*.

42  
43 Then going to the bottom of that page, paragraph 117:

44  
45 *Had the accused been advised of her legal*  
46 *rights, then it is in my view highly*  
47 *unlikely that she would have answered any*

1           *questions at all. Her avowed wish to tell*  
2           *her story was born of her naivete and her*  
3           *ignorance, both of her right to silence and*  
4           *the potential consequences of*  
5           *self-incrimination. There is no reason to*  
6           *suppose that she would not have accepted*  
7           *the advice that would almost inevitably*  
8           *have been given to her had she received*  
9           *legal advice, namely, to refuse to be*  
10           *interviewed.*

11  
12           And then finally, the next paragraph:

13  
14           *To adapt the language of the plurality in*  
15           *the King v Lee in the judgment of*  
16           *Latham CJ, McTiernan, Webb, Fullagar and*  
17           *Kitto JJ --*

18  
19           a High Court case --

20  
21           *a 15-year-old girl whose command of English*  
22           *is not sophisticated and who is suspected*  
23           *of a serious criminal offence may be*  
24           *practically helpless in the hands of an*  
25           *over-zealous police officer whose position*  
26           *of superiority is so great and so*  
27           *overpowering that admissions may be made*  
28           *which, if the girl knew her legal rights,*  
29           *would not be made.*

30  
31           I have just gone to those quotes because isn't this a very  
32           good case to emphasise the importance of the right to  
33           silence applying to young persons, in demonstrating the  
34           bedrock principles, and some of the particular difficulties  
35           that can occur with young people who are less developed,  
36           more susceptible to naivety and thus, in a police station  
37           perhaps more vulnerable, which is why they are classified  
38           as vulnerable persons. I just raise with each of you the  
39           utility of this decision to demonstrate to trainee police  
40           officers the importance of these principles. Would anyone  
41           like to comment on what I've just said?

42  
43           SR SGT POCOCK:   Yes, Chief Commissioner, I think that's  
44           a good case that - I agree, it is a good case that we could  
45           use in our curriculum, yes.

46  
47           THE CHIEF COMMISSIONER:   Senior Sergeant Clarke?

1  
2 SR SGT CLARKE: Without having read the case, Chief  
3 Commissioner, I find it hard to comment. And given that  
4 this is, you know - the impropriety that the court has  
5 found or the improper use as the court has found is subject  
6 to many factors, and I'd have to look at the case in terms  
7 of how - what is demonstrated there in terms of the ability  
8 of the girl, the age of the girl, the circumstances of the  
9 matter.

10  
11 THE CHIEF COMMISSIONER: I can understand that one needs  
12 to read the whole case, but that's one of the reasons for  
13 using case studies, isn't it? This is a publicly available  
14 decision of the Supreme Court of New South Wales, placed on  
15 case law so it was available to the whole world in 2013.

16  
17  
18 It includes the basic principles and some of the  
19 circumstances which a Supreme Court judge found warranted  
20 the exclusion of an interview in a murder case nearly  
21 10 years ago. It seems to me to be a very vivid and living  
22 example of problems that occur in interviewing of young  
23 persons and, I say, regrettably, on the evidence before  
24 this inquiry, persists in different forms merely 10 years  
25 later. So that's why I'm raising it.

26  
27 It's necessary to read the case but in the end, it's  
28 powerful and effective reading to assist young police  
29 officers and old police officers and experienced police  
30 officers to understand the challenges and pitfalls and the  
31 responsibilities which they have as police officers in  
32 dealing with young persons.

33  
34 That's perhaps my answer to your question, Senior  
35 Sergeant Clarke. This seems to me to be a very good  
36 example of how cases should be captured by the police force  
37 and utilised in training and continuing training.

38  
39 Would anyone like to comment on that observation that  
40 I've just made?

41  
42 SR SGT CLARKE: I'd have to recommend it to the  
43 appropriate people to consider in terms of the training,  
44 especially for the investigators, your Honour.

45  
46 SR SGT POCOCK: We do, Chief Commissioner, indicate  
47 several times where, before any interview, you've got to

1 consider legal parameters, and one of those is the age.  
2 That's in our investigations lesson, which is early on. We  
3 are always looking for good examples which demonstrate what  
4 can come from that, so, you know, on the viewing of this,  
5 it would seem that they would be good little snippets to  
6 use, especially in our situation.

7  
8 THE CHIEF COMMISSIONER: This isn't an abstract example  
9 out of a university exam paper. It's a real life example  
10 our of a Supreme Court judgment in a case where the judge  
11 took the very substantial step of excluding an interview  
12 that apparently contained admissions. That's why I've  
13 raised it, but anyway.

14  
15 Yes, Mr Fernandez.

16  
17 MR FERNANDEZ: Could we just take a very short  
18 adjournment, just five minutes?

19  
20 THE CHIEF COMMISSIONER: I'll adjourn for about five  
21 minutes. Feel free to stand up and move around, as long as  
22 we're ready to resume in five minutes.

23  
24 **SHORT ADJOURNMENT.**

25  
26 THE CHIEF COMMISSIONER: Yes, Mr Fernandez?

27  
28 MR FERNANDEZ: That completes my questions.

29  
30 THE CHIEF COMMISSIONER: All right. Does anyone else wish  
31 to ask questions?

32  
33 MS LEE: Yes.

34  
35 THE CHIEF COMMISSIONER: Yes, Ms Lee.

36  
37 **<EXAMINATION BY MS LEE:**

38  
39 MS LEE: Hello, my name is Samantha Lee, I represent  
40 [YPM1] and I'm from Redfern Legal Centre. I just had some  
41 further questions to ask particularly around the use of  
42 force and training materials. Having listened to the  
43 information you have presented today, it does beg the  
44 question, "Well, what's going wrong?"

45  
46 In the case of my client, he, at the time, was a young  
47 Indigenous boy, 13 years of age. It's still up in the air

1 whether there was any reasonable suspicion as to whether he  
2 committed an offence. He was then chased by police and  
3 tackled and allegedly punched and had a horrible injury to  
4 his head.

5  
6 The training provided does seem to cover a fair bit,  
7 including the use of force, body-worn video footage,  
8 communication. So every time something goes wrong in terms  
9 of the use of force, the issue of training is inevitably  
10 raised, and I guess I'd like to ask you the question: do  
11 you think there is too much emphasis on training and too  
12 little emphasis on other areas such as the need to reform  
13 culture, look at monitoring and accountability in terms of  
14 the NSW Police?

15  
16 MR COFFEY: I object. With respect, these witnesses are  
17 subject matter experts which have come from the police  
18 force education command, for want of a better word, because  
19 the name has changed. I'm just not sure how these subject  
20 matter experts can give an opinion in relation to policing  
21 and whether it is appropriate that these officers even be  
22 required, in the forum. With respect, although they are  
23 senior police officers, they are not members of the senior  
24 executive of the police force and I'm just conscious in  
25 terms of what use their opinion could be to the purposes of  
26 this investigation.

27  
28 THE CHIEF COMMISSIONER: Do you want to say something,  
29 Mr Fernandez?

30  
31 MR FERNANDEZ: On consideration, I support the objection  
32 made by Mr Coffey.

33  
34 THE CHIEF COMMISSIONER: There is a lengthy preamble to  
35 set the scene, Ms Lee, and then I'm just looking to see  
36 what the question itself was. "Do you think there is too  
37 much emphasis on training and too little emphasis" --

38  
39 MS LEE: Maybe I could put it a different way.

40  
41 THE CHIEF COMMISSIONER: I think the position is that  
42 I won't allow that last question. You can put another  
43 question and we'll see if it draws an objection.

44  
45 MS LEE: Who else do you think should be here present  
46 today giving evidence about the use of force? Is it just  
47 education and training?

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MR COFFEY: I object. The whole point is that these are not the officers who should be answering that question.

THE CHIEF COMMISSIONER: Ms Lee, if that's a question I suppose it can be directed to the Commissioner, not the witnesses. You ask questions by leave, as you understand. That's not a question I think these witnesses can fairly answer. Please put a further question.

MS LEE: Yes, Chief Commissioner.

You talk about training. Well, let's just start first with the name of police, which is the "Police Force", which was changed back from its name "Police Service" back in 2006. Do you talk about that change of name in your training?

SR SGT POCOCK: No.

SR SGT CLARKE: No.

MS LEE: Do you think that the use of the term "Force" is different to the use of the term "Service"?

SR SGT POCOCK: Yes.

MS LEE: In what way?

SR SGT POCOCK: In relation to the initial training, students enter into an environment where there's seniority and that seniority isn't necessarily something that they're used to, and they have to understand that when they come into something like the police, that there are certain obligations on them in relation to being given directions to do things or having to comply with a senior officer. I think primarily that's the environment that we try to demonstrate to our students, that they're accountable to someone higher up the line.

MS LEE: Thank you. Anyone else?

SR SGT WESTON: I don't hold the opinion that there is a difference between "Force" and "Service".

SR SGT CLARKE: I acknowledge they're different words but I honestly haven't contemplated why they're using those

1 different words.

2

3 MS LEE: All right. Thank you. Just in terms of going to  
4 the training manual, we have been given in evidence today  
5 the use of force manual. Is that the only use of force  
6 manual available to constables or the police force?

7

8 SR SGT WESTON: In relation to operational safety  
9 instructors, we do have some content which we rely upon as  
10 in a lesson plan that will be related to operational  
11 safety. But for a constable, for constables' access, they  
12 don't have that.

13

14 MS LEE: Are there any standard operating procedures  
15 around the use of force?

16

17 SR SGT CLARKE: I'm not aware of any operating procedures.  
18 There are other materials. We have, like, our SMIT as well  
19 about reasonable use of force. There are other materials  
20 available but the principal document, as is indicated at  
21 the beginning of the manual, is this document.

22

23 MS LEE: Thank you. I see in the document there are no  
24 specific chapters in regards to children. Do you think  
25 there should be a chapter specific about children and the  
26 use of force?

27

28 THE CHIEF COMMISSIONER: This is in the use of force  
29 manual, exhibit MTS105?

30

31 MS LEE: That's right, yes.

32

33 MR COFFEY: I guess that question needs to be prefaced  
34 against the fact that in evidence the Commission is aware  
35 of other documents. This document isn't read in isolation.  
36 Do we include in this particular document vulnerable  
37 people, different sexes of people? This document is  
38 supposed to be a high-level document read in conjunction  
39 with such things such as the police handbook that relates  
40 to children and young people. So I'm just not sure what  
41 the utility of adding additional material to this would be.

42

43 THE CHIEF COMMISSIONER: I'm just looking at paragraph 4  
44 which identifies a number of factors, including age -  
45 that's a general statement, I know, but when one looks at  
46 this document, it is one expressed in relatively general  
47 terms. You are asking whether there is utility in having,

1 in a document such as this, a particular part that deals  
2 with young persons?

3

4 MS LEE: That's correct.

5

6 THE CHIEF COMMISSIONER: All right. Now, would anyone  
7 like to express an answer to that question?

8

9 SR SGT WESTON: When use of force in an operational  
10 context, as an operational police officer, I'm not simply  
11 relying on that document alone, I'm also taking on  
12 legislation, powers, et cetera, so I believe that I gather  
13 that information in conjunction with the materials there.

14

15 MS LEE: Thank you. That's not the question. Do you  
16 think there should be a specific chapter or part within  
17 this manual that actually draws out the issue of use of  
18 force against children?

19

20 SR SGT WESTON: I think I would have trouble answering  
21 that, wanting to know - figuring out what would the purpose  
22 of - what would it be specifically added for. In the  
23 instance of using force against a young person, I do have  
24 the factors that age, gender, size, skill and fitness level  
25 is a factor and that is referenced in there.

26

27 MS LEE: What about the Young Offenders Act, though?

28

29 SR SGT WESTON: That's not my area of expertise. I'm only  
30 use of force.

31

32 MS LEE: So you don't look at the use of force in  
33 conjunction with the Young Offenders Act?

34

35 SR SGT WESTON: I look at use of force in conjunction with  
36 risk and threat assessment in the dynamic environment  
37 operationally and that is basically what it does come down  
38 to, is threat assessments, risk assessments, not just  
39 operationally for police but members of the public as well.

40

41 MS LEE: Thank you.

42

43 SR SGT CLARKE: The Chief Commissioner referred to part 4  
44 of the manual which already references the considerations.  
45 I think there's a complex matrix of considerations that  
46 you'd have to consider and the potential of numerous  
47 chapters, you know, I'd find difficult, given the amount of

1 policy documents police already are expected to absorb.  
2 There are already other documents that relate to the Young  
3 Offenders Act and processes in relation to children as well  
4 that cover a lot of those issues as well, I think.

5

6 MS LEE: Recently, obviously we have seen the unfortunate  
7 use of force against a very old woman, and in the case of  
8 my client, a very young, not so big and lightweight young  
9 boy. Does the police force teach - sorry, does the police  
10 teach its force about physicality and the impact of force  
11 on different physical or elderly or young people, like the  
12 impact of using handcuffs on such groups of people, in  
13 terms of injury?

14

15 SR SGT WESTON: In terms of injury, we have to evaluate  
16 the risk of injury versus gaining control of a situation,  
17 for example, and the control would be the reason why I'm  
18 using the force. We do consider the risk of injury in that  
19 respect, that does form a part of our assessment as  
20 a consideration, the minimal injury possible.

21

22 MS LEE: How is that taught? How do they learn about  
23 that?

24

25 SR SGT WESTON: That would be - you know, I could perhaps  
26 go through, in our physical aspect, we talk about control,  
27 pain compliance, that forms part of our weaponless control  
28 and how it's achieved with pressure and counterpressure and  
29 the techniques that are designed to gain control of  
30 a person which the least - how will I say it, apologies -  
31 designed to produce the least injury to a person,  
32 the minimal injury, as a result of applying downward  
33 pressure, pressure and counterpressure on fulcrum points.

34

35 SR SGT CLARKE: Then there are considerations under part 4  
36 as well as the four things that ANZPAA principles tell us  
37 and that are reflected in the manual as well in relation  
38 to: is it reasonable, is it necessary, is it  
39 proportionate, is it appropriate. You have to make those  
40 considerations in all the circumstances, because  
41 vulnerability, size, age are obviously factors that should  
42 be considered in relation to all of those issues. So that  
43 is taught, that is in the manual, that's highlighted in the  
44 manual and we do highlight some of those things in the  
45 use-of-force training that we are presenting with some  
46 scenario-based training as well, getting people to  
47 recognise those issues when they are making decisions.

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MS LEE: Thank you. In terms of training, does anyone provide training to higher up the ranks, to the superintendents, local area commanders, commissioners, or is the emphasis on training just on the constables?

SR SGT WESTON: I've been a part of mandatory training for assistant commissioners, deputy commissioners. I haven't personally been involved in training of the Commissioner, but certainly at that executive level I have actually managed the training on multiple occasions.

SR SGT CLARKE: The mandatory training that we provide is - well, it's for all sworn staff, it doesn't distinguish with rank and I think all are required. I've had the pleasant experience of providing the training to many ranks up to deputy commissioner.

MS LEE: Do you provide training - you said, maybe I've got it wrong, someone was providing training on the COPS system.

SR SGT POCOCK: Yes.

MS LEE: Do you provide training on importing data into the COPS system?

SR SGT POCOCK: Yes, information into COPS, yes.

MS LEE: Are you aware on the COPS system of the use of force input?

SR SGT POCOCK: Yes.

MS LEE: Are you aware of LECC's recent report on the use of force?

THE CHIEF COMMISSIONER: Use of force reporting.

MS LEE: Use of force reporting?

SR SGT POCOCK: Yes, I am aware of it, yes.

MS LEE: In that report, it found that there was - sorry, what was the wording exactly? Well, there was an overwhelming, I think it was called, under-reporting of the use of force, of people using this actual COPS system.

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SR SGT POCOCK: Yes.

MS LEE: Is that something you would take note of in your training?

SR SGT POCOCK: We've already amended our training to - in COPS and also it's in our academic training, which indicates that whenever use of force is used, you must update COPS to indicate the use of force and you also must indicate if any person involved in that altercation was injured.

THE CHIEF COMMISSIONER: Just looking at paragraphs 9 and 10 of the use of force manual, exhibit MTS105, they deal with those topics, 9, "Every use of force must be recorded in COPS at a minimum"; 10, "If any person is injured during the course of a police operation, whether from the use of force or otherwise, it must be reported to a supervisor immediately and must be reported on COPS".

SR SGT POCOCK: Chief Commissioner, we had a reference, however, we thought that due to the LECC inquiry, we thought it was appropriate to, I suppose, boost or enhance that learning for our students.

THE CHIEF COMMISSIONER: Well, that's highly desirable because experience has shown there's something of a gap between having a rule like that here and what actually happens in practice. Do each of you accept that it's of fundamental importance that any use of force, particularly use of force causing injury, must be reported in COPS?

SR SGT CLARKE: That is the requirement.

SR SGT WESTON: Yes.

SR SGT POCOCK: Yes.

THE CHIEF COMMISSIONER: And the reason for that, is it not, of course, it's necessary there be an accurate picture as to what force is being used and with what consequences to allow an accurate understanding within the police force as to the position?

SR SGT POCOCK: Yes.

1 SR SGT WESTON: Yes.  
2  
3 SR SGT CLARKE: Yes. That training - that is reflected in  
4 the manual and in the training that we provide - that we  
5 are providing next year, we're highlighting the need for  
6 the recording of use of powers, use of force - not just use  
7 of force but the nature and circumstances of the use of  
8 force and the use of power.  
9  
10 MS LEE: Can I ask you in conjunction to that, was there  
11 any monitoring of this database system in terms of the use  
12 of force before the LECC report?  
13  
14 SR SGT CLARKE: I don't have that information, I'm sorry.  
15  
16 MS LEE: So how do you know your training and education is  
17 doing what it's meant to do? Is there any evaluation or  
18 monitoring of how it's working on the ground?  
19  
20 SR SGT WESTON: There are quarterly use of force reporting  
21 that does occur.  
22  
23 MS LEE: What does that report?  
24  
25 SR SGT WESTON: That reports state-wide and does break  
26 down via region any use of force arising - highlighting any  
27 trends, et cetera.  
28  
29 MS LEE: And do you get that database from the COPS  
30 system?  
31  
32 SR SGT WESTON: It's drawn from a number of systems  
33 including COPS.  
34  
35 MS LEE: What would be another system?  
36  
37 SR SGT WESTON: Unfortunately I'm not familiar with the  
38 PowerBI reporting system. I know that is what it's called,  
39 but I'm not 100 per cent certain of the data that it  
40 comprises.  
41  
42 MS LEE: So there might be another system in which force  
43 is being recorded?  
44  
45 MR COFFEY: Can I object? Can I just inquire how this  
46 relates to the terms of reference in respect of this  
47 particular young person?

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MS LEE: We're talking about systemic issues here. We need to know how it's operating at all levels, not just in education.

THE CHIEF COMMISSIONER: There is a broader context here, but these are three training witnesses and there may be an outer limit to their capacity to answer these questions.

MR COFFEY: Sorry, I should be clear. That's what the objection is directed at - these officers in terms of these officers are training officers who are not involved in that type of area.

THE CHIEF COMMISSIONER: What I'll do is allow the question to the extent that the witnesses recall it, and we can go back to it, based upon their own area of expertise and if they can answer it, they can answer it. If they can't, they can't.

So the question was - I'll just go back to it and look at it. Senior Sergeant Weston said she was unfortunately not familiar with the PowerBI reporting system. "I know that is what it's called, but I'm not 100 per cent certain of the data that it comprises." Ms Lee asked, "So there might be another system in which force is being recorded?" Are any of the present witnesses able to answer that?

SR SGT WESTON: I'm unable to.

SR SGT CLARKE: I think PowerBI draws from COPS and other systems, so I suspect it's all drawing from the same data source.

MS LEE: What are the other systems, though?

SR SGT CLARKE: I don't know, to be honest. There are multiple systems, not just COPS. I couldn't enumerate them I apologise.

SR SGT POCOCK: I think PowerBI relates to HR issues as well. So a lot of the information comes not just from the operational side of the equation but HR issues such as - it even includes sick leave and things like that, so maybe - that's my understanding of PowerBI.

MS LEE: Thank you. Just wanting to touch on the police

1 accountability system called COMPASS. Are you aware of  
2 this system?  
3  
4 SR SGT WESTON: I don't have any operations with COMPASS.  
5  
6 SR SGT POCOCK: I'm aware of the system but I have no  
7 involvement in or --  
8  
9 SR SGT CLARKE: I've heard of it but again I don't have  
10 any access or --  
11  
12 MS LEE: In terms of your training, I think it has been  
13 drawn upon a bit here, but how much is your training  
14 inputted by analysis and data - for example, you mentioned  
15 the use of force. So do you get external input that drives  
16 your training in terms of data analysis of what is  
17 happening on the ground?  
18  
19 SR SGT WESTON: I made reference to a 13-point  
20 decision-making framework. I can go through that again.  
21 It does involve areas where we obtain data from. Would you  
22 like me to go through that again?  
23  
24 MS LEE: So can I ask you: it includes the use of force  
25 and does it include any information about young people?  
26  
27 SR SGT WESTON: If we're talking itemised use of force -  
28 sorry, I'm trying to find the best way to define this.  
29 Because there's a number of different factors with the  
30 decision framework, my use of force reporting which  
31 suggests that northern region have drawn and covered the  
32 taser 17 times in a month will not suggest that it was  
33 three times with a young person involved, but additional  
34 data that I might be drawing from from a critical incident,  
35 for example, might identify that that person was a young  
36 person. So perhaps with all information combined I might  
37 be able to get a direct overview. Naturally again in that  
38 13-point decision-making framework, coronial findings, LECC  
39 recommendations, et cetera, they may define a young person  
40 being involved.  
41  
42 SR SGT POCOCK: We, in the academic component, do at times  
43 liaise with external agencies and bodies; for example, two  
44 years ago we reviewed our topic or module relating to young  
45 people. We worked closely, or - yes, we worked with the  
46 president of the Children's Court at the time,  
47 Mr Johnstone, Chief Justice, and also Magistrate Skinner.

1 We worked closely with them to ensure that the curriculum  
2 that we delivered was appropriate from the perspective of  
3 the courts. So they had a big actual input into that  
4 curriculum.

5

6 MS LEE: Thank you. Just a couple more questions. You  
7 mentioned training around First Nations issues. Do you  
8 cover the deaths in custody Royal Commission  
9 recommendations?

10

11 SR SGT POCOCK: We have two lessons on First Nations. I'd  
12 have to go and have a look. We've got over 100 and  
13 something lessons. So I'm not exactly sure the content of  
14 those lessons, however, those lessons have been - were  
15 actually recently reviewed by one of our sergeants from the  
16 police academy who is a First Nations person and is trained  
17 in that area as well.

18

19 MS LEE: When you say "two lessons", how long are they?  
20 How long are the lessons?

21

22 SR SGT POCOCK: One hour and 50 minutes each.

23

24 MS LEE: So you have about four hours of training around  
25 Aboriginal deaths in custody?

26

27 SR SGT POCOCK: No, I wouldn't say we have four hours  
28 around Aboriginal deaths in custody because for our  
29 students, custody issues are probably not the primary  
30 point, for our students at their level of learning. We  
31 have a whole module on communities at risk, so we talk  
32 about - there's an introduction, then there's vulnerable  
33 persons, of which Aboriginal and Torres Strait Islanders  
34 are included in that lesson. There are three lessons on  
35 mental health, two lessons on Aboriginal or Torres Strait  
36 Islander, and some other lessons, and that's deliberately  
37 placed at the start of our curriculum to emphasise the  
38 importance of those communities and the way we police those  
39 communities in a fair and professional manner. So that's  
40 a decision to put that module at the start of our content.

41

42 THE CHIEF COMMISSIONER: Could I just ask, just to  
43 clarify, Sergeant Edgell gave evidence about training in  
44 the custody management area, and it was my recollection  
45 that he referred to some coronial recommendations, and it  
46 may well have been the deaths in custody Royal Commission  
47 too. His area is separate to your three areas; is that --

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SR SGT CLARKE: He comes within the LDDC.

THE CHIEF COMMISSIONER: Yes, Ms Lee.

MS LEE: Thank you.

Just in terms of body-worn video footage, there was some discussion about that. Do you think it would just be easier for it to be mandatory?

MR COFFEY: Sorry, I object. What is the actual question?

MS LEE: For body-worn video footage to --

THE CHIEF COMMISSIONER: That's a submission you could make to me ultimately, Ms Lee. I think asking these three training officers - I don't think that advances this inquiry so I don't allow that. There's an argument about this. You've read the reports of this Commission at times. There's a lively discussion about it. But asking these three witnesses that question I don't think advances it, so next question, please.

MS LEE: Well, your Honour, in my case, with my client, there were four officers and none of them had body-worn video.

THE CHIEF COMMISSIONER: I understand that. That's why it's an issue about which we will be getting submissions.

MS LEE: Wouldn't it make the training just easier to say "Wear it"?

THE CHIEF COMMISSIONER: That's an argument you can put to me ultimately, Ms Lee. Next question, please. We're in the evidentiary phase.

MS LEE: Just one last question.

What you've been providing today, it's very interesting and it seems like you're covering a lot of ground, and really it's a lot of training in a lot of areas. I guess, to sum it up, though, in the heat of the moment, when all that training is at the background and you've got an officer in a situation, what do you think can help that officer at that moment to ensure that they're

1 being able to draw upon that knowledge?

2

3 MR COFFEY: Sorry, your Honour, but that question, with  
4 respect, is too vague in terms of the circumstances. I'm  
5 not sure how that can assist.

6

7 THE CHIEF COMMISSIONER: As I understand it, the question  
8 is this: you can have the training and the training covers  
9 many things, but police officers are in the field in a  
10 variety of circumstances, often confronted with things at  
11 short notice, sudden challenges. Is there anything further  
12 that can be done to assist them in practice at the training  
13 level to deal with what may be the unexpected challenges of  
14 daily policing? I understand that is it, putting it  
15 another way.

16

17 SR SGT POCOCK: What I can say is at the academy we're  
18 always looking at ways in which we can make our learning  
19 more effective. Outside of the influence that I have,  
20 which is in that scope, I can't comment. But we try and  
21 look - we look at our learning and we see if we can create  
22 efficiencies and create linkages so that the learning and  
23 the memory of our students is, I suppose - or assists the  
24 students in the uptake of the information and the learning,  
25 to put them in the best position they can to draw on that  
26 information later.

27

28 SR SGT WESTON: By design, our training is quite similar  
29 as well. Obviously through repetition of physical  
30 skill-sets we become more proficient with the skill-set  
31 itself. Without the actual need to stop and give deep,  
32 detailed thinking, I can move through all four stages of  
33 the draw quite proficiently and, you know, within a split  
34 second, once I've practised that skill-set a number of  
35 times. So, you know, by design, that is the aim and the  
36 intention of our physical training that, you know, in an  
37 unfamiliar or in an environment in a high-stress situation  
38 where, you know, I will lose certain dexterity, my fine  
39 motor skills, perhaps, I have sensory exclusion; by sheer  
40 repetition of a physical skill-set, I'm competent enough to  
41 be able to continue through that and complete that to the  
42 same degree as I would have in a static environment.

43

44 THE CHIEF COMMISSIONER: When officers come back for  
45 annual refreshers, it's the situation that clearly they've  
46 acquired some experience in the past year and that becomes  
47 accumulative process - is that a fair statement?

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SR SGT WESTON: Yes.

THE CHIEF COMMISSIONER: Do the updates involve any process, if I could put it this way, of trying to get rid of any bad habits as well as encouraging good practices? Is that --

SR SGT WESTON: Yes.

THE CHIEF COMMISSIONER: How is that done in practice?

SR SGT WESTON: So when we're coming back and we move into the skill-set again, we'll start with a revision component and the physical skill-sets are - the lessons are constructed by way of demonstration, explanation and practice. So we'll give a dynamic demonstration, we'll break down the technique itself into steps, and then we will go through each step, building up the repetitions through to completion.

But you are correct, sir, we do start with a revision component, just to make sure there's no degradation of skill-sets and what skill-set is retained is technically proficient, and then we build up again from that.

SR SGT CLARKE: Within the limitations of what we - the parameters of the training that we have available to us, and we've sort of explained a little bit of the management of training and other frameworks that we've got, I think we're getting better, and I think we're cooperating more with the units, the other training units, as well, in that we're looking for consistent messaging and things like the use of force manual and that there are steps along the way to getting overall policy and direction with everyone getting on the same page. So, you know, acknowledging that we can always do better and that we need to look at ourselves all the time, I think we are getting better.

We talked about the repeated, consistent messaging that needs to come from the college all the way up and have that - like, the powers training that we do deliver at the moment every year, we're trying to put a powers package together and we're looking at that same sort of messaging and building the messaging.

We've got the search manual, we've got the use of

1 force manual, we're developing better policy, I think, and  
2 we've got things like one of the initiatives in the  
3 constable development program is that they're not only  
4 required to do a mandatory set of courses but they're also  
5 meant to go and review the courses from the last three  
6 years I think as well of the mandatory training so that  
7 they are not just falling behind. So I think we're on the  
8 right track but I think we - that repetition and  
9 consistency we will keep learning from these experiences  
10 that we've got.

11  
12 MS LEE: Thank you. Just one final question, Chief  
13 Commissioner.

14  
15 Does your training take in the issue of police  
16 culture, like the culture of the workforce and how that  
17 impacts on all of this good work that you've been doing?  
18

19 SR SGT CLARKE: I don't deliver training on culture  
20 per se.

21  
22 SR SGT WESTON: Culture doesn't play a part in the  
23 physical training that we develop and teach.  
24

25 MS LEE: It does or does not?  
26

27 SR SGT WESTON: Sorry, it does not.  
28

29 SR SGT POCOCK: I think my response to that would be we  
30 try. We try to instill into our students the culture  
31 aspects and the professionalism that our hierarchy or  
32 senior detectives team promote through various policy and  
33 procedures and things like that. Yes. So we don't deal  
34 with - we don't go and address what the culture is out  
35 there; we establish - try and establish a culture in that  
36 student that will move forward.  
37

38 And if I can, we do address the Royal Commission into  
39 Aboriginal Deaths in Custody.  
40

41 SR SGT CLARKE: We mentioned previously the Peel's nine  
42 principles. I think one of the documents we provided was  
43 the statement of values as a key document for the police.  
44 That's very much our starting point and in terms of  
45 culture, hopefully we're guided by these many high-level  
46 documents and ideas that we strive towards.  
47

1 SR SGT POCOCK: The code of conduct and ethics, statement  
2 of values, Peel's nine principles, they're the - that's  
3 the way in which we would influence the culture through our  
4 students.  
5  
6 MS LEE: Thank you. Thanks for your time.  
7  
8 THE CHIEF COMMISSIONER: By the "statement of values" or  
9 by that term, does that encompass that section 6, 7 or 8 of  
10 the Police Act which sets out the mission?  
11  
12 SR SGT POCOCK: Yes.  
13  
14 THE CHIEF COMMISSIONER: The values which are fundamental  
15 to policing?  
16  
17 SR SGT POCOCK: Yes. That starts from lesson 1.  
18  
19 THE CHIEF COMMISSIONER: Yes. All right.  
20  
21 Thank you, Ms Lee.  
22  
23 Are there any other questions?  
24  
25 MR COFFEY: No, thank you.  
26  
27 MR HALL: No, thank you.  
28  
29 THE CHIEF COMMISSIONER: Mr Fernandez?  
30  
31 MR FERNANDEZ: No questions arising.  
32  
33 THE CHIEF COMMISSIONER: All right. Could I thank each of  
34 you for participating today. I think the process of it  
35 being done as a type of panel discussion has been the best  
36 way of obtaining the benefit of your evidence.  
37  
38 As has been obvious, some areas are more within one of  
39 your areas of expertise than others, but at the end of the  
40 day, by hearing from each of you, we have covered a range  
41 of topics. So the Commission is grateful for your  
42 attendance today and if you would like to step down in a  
43 moment when we adjourn.  
44  
45 Mr Fernandez, adjourning until tomorrow?  
46  
47 MR FERNANDEZ: Yes, but that - yes, Chief Commissioner.

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THE CHIEF COMMISSIONER: All right. There's nothing else anyone wishes to raise? I will adjourn until 10 o'clock in the morning.

<THE WITNESSES WITHDREW

AT 4.08PM THE COMMISSION WAS ADJOURNED ACCORDINGLY