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No	Final recommendations	NSWPF s146 response
1	<p>The NSW Police Force is to urgently advise all police officers that the procedures agreed to by the Commissioner of Police in the Protocol established in 2004 between Legal Aid NSW and the Commissioner of Police continue to operate (taking into account the current but effectively identical statutory scheme) pending any considered response of the NSW Police Force to recommendations made in this Report concerning the questioning of young persons. The practical effect of this recommendation is that custody managers should record in the custody management record 'Interview declined' where the young person declines to be interviewed either directly or through the lawyer communicating their client's instructions to that effect.</p>	<p><b>Supported</b></p> <p>The NSW Police Force (NSWPF) supported the proposed recommendation 1 made by the Commission during the Operation Mantus hearings and on 10 December 2023, issued communication via the NEMESIS system to all NSWPF sworn officers. That communication was replicated by the Commission in Appendix 5 of the Operation Mantus Report.</p> <p>This communication outlined instructions in the following areas:</p> <ul style="list-style-type: none"> <li>• Legislative requirements</li> <li>• Procedure to be followed when a young person is arrested</li> <li>• Role of the support person</li> <li>• Doli incapax</li> </ul> <p>Prior to the release of the Commission's Operation Mantus report, the NSWPF commenced scoping a review of the Charge Room &amp; Custody Management Standard Operating Procedures (SOPs). This review will incorporate the instruction issued on 10 December 2023.</p> <p>Given the size and scope of the review, we will advise the Commission at a later date when this will be completed, subject to approval by the Commissioner's Executive Team.</p>
2	<p>The NSW Police Force is to urgently advise all police that the procedures laid down in the 2005 Circular continue to operate (taking into account the current but effectively identical statutory scheme) pending any considered response of the NSW Police Force to recommendations made in this Report concerning the questioning of young persons. The practical effect of this recommendation is that a young person who declines to be interviewed either directly, or through their lawyer communicating on their behalf, is not to be asked to confirm this electronically. Should a young person indicate that they have changed their mind about being interviewed, police should arrange for the young person to speak to a solicitor again. The young person should be directed to the ALS or Legal Aid NSW</p>	<p><b>Under consideration</b></p> <p>The NSWPF respects the rights of vulnerable people/young people. Members of the NSWPF always go through the process of introducing the person in custody to the Custody Manager, affording them the opportunity to speak to legal counsel, and exercise their legal right to silence.</p> <p>The NSWPF notes that, as reflected in our response to recommendation 1, direction was issued on 10 December 2023 which states that <i>...If the young person indicates they do not want to participate in an ERISP, they are not to be taken to the interview room for an interview. The Custody Manager is to ensure a record of the refusal is made on the custody records.</i></p>

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	<p>telephone advice system by which the young person received their original advice. Police should only interview the young person after they have received further advice and confirmed that they wish to be interviewed.</p>	<p>The NSWPF sees it as appropriate for legal advice to be sought and provided once to a suspect. If the person in custody changes their mind regarding exercising their right to silence, the NSWPF considers it appropriate for this to be documented by the Custody Manager and during any subsequent interview.</p> <p>The NSWPF is willing to explore further opportunities for consultation with the Commission on this matter.</p>
<p><b>3</b></p>	<p>Any parts of the NSW Police Force Handbook concerning the questioning of witnesses which is or are inconsistent with the 2005 Circular concerning the questioning of young persons should be deleted. In particular, that part of the NSW Police Handbook under the heading 'Questioning Suspects' has no application to the questioning of children and young persons.</p>	<p><b>Supported in principle</b>                      The NSWPF notes that, as reflected in our response to recommendation 1, direction was issued on 10 December 2023, and states the process that is to be followed when interviewing young people.</p> <p>Whilst this direction is effective from the date it was issued, the relevant sections of the NSWPF Police Handbook will be updated to reflect the instructions provided.</p>
<p><b>4</b></p>	<p>The Standard Operating Procedures regarding charge room and custody management of the NSW Police Force should be amended to include the procedures adopted by the Commissioner of Police in the 2004 Protocol and 2005 Circular concerning telephone legal advice being given to young persons, by Legal Aid NSW, the ALS or otherwise, with appropriate modifications being made to refer to contemporary legislative provisions in place of the equivalent provisions which operated at that time.</p>	<p><b>Supported in principle</b>                      The NSWPF notes that, as reflected in our response to recommendation 1, direction was issued on 10 December 2023, and states the procedure that is to be followed when a young person enters custody, including but not limited to contact with Legal Aid Youth Hotline/the Aboriginal Legal Service.</p> <p>Whilst this direction is effective from the date it was issued, this will be incorporated into the Charge Room &amp; Custody Management SOPs review, mentioned in our response to recommendation 1.</p>
<p><b>5</b></p>	<p>If, in what ought be exceptional circumstances, police do proceed to interview a person suspected of criminal offences after the person has received legal advice and has indicated he or she does not wish to be interviewed, a statement should be included in the police facts explaining how this came about including whether an opportunity had been provided to the suspect to receive further legal advice before proceeding with an interview.</p>	<p><b>Under consideration</b>                      The NSWPF submits that there are several areas where interaction with the suspect is recorded and does not believe a further requirement to prescribe documenting how the interview came about is needed.</p> <p>However, the NSWPF is willing to explore further opportunities for consultation with the Commission on this matter.</p>
<p><b>6</b></p>	<p>The BWV Standard Operating Procedures should be amended to make clear that they apply to police conducting operational duties in plain clothes.</p>	<p><b>Supported in principle</b>                      The NSWPF is currently undertaking a review of the Body Worn Video (BWV) SOPs and will consider the substance of this recommendation as part of this review.</p>

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7	<p>The BWV Standard Operating Procedures of the NSW Police Force should be amended to provide that where a suspect has informed investigating police (through a lawyer or otherwise) that the suspect does not wish to be interviewed by police, the police should not proceed to informally interview the suspect including the use of BWV to record such a conversation</p>	<p><b>Supported in principle</b>                      The NSWPF agrees that an interview with a suspect should not be undertaken if they have exercised their right to silence.</p> <p>As referred to in the NSWPF response to recommendation 6 and recommendation 1, the NSWPF is currently undertaking reviews of the BWV SOPs and the Charge Room &amp; Custody Management SOPs respectively.</p> <p>These reviews will consider the Commission’s recommendation and whether any specific guidance will be included in either SOPs.</p>
8	<p>People suspected of criminal offences should not be interviewed by informal means, such as when they are in a dock area of a police station, unless there are strong reasons to do so.</p>	<p><b>Not supported</b>                      The NSWPF refers to our submissions to the Commission during the Operation Mantus hearings regarding the term “interviewed by informal means”.</p> <p>There are times when NSWPF officers speak to people who are suspected of committing criminal offences who are never taken to a police station. They are likely to be issued cautions or Field CANs, which are recorded in Police Notebooks, and may be captured on BWV/Mobipol.</p> <p>Regarding cautions, training is provided to all NSWPF officers, commencing at the NSW Police Academy, as well as guidance provided in the NSWPF Police Handbook. This includes the fact that if they fail to caution at the appropriate time, if the suspect does not fully understand it, or the interview is not recorded in the required manner, that any subsequent conversation or admission might be ruled to be improperly obtained and inadmissible.</p> <p>The NSWPF asserts that many discussions are conducted in what the Commission refers to as informal means, even though there is formality to the process. This is part of basic policing and instruction in this commences at the Police Academy.</p> <p>It is the responsibility of a NSWPF officer investigating a crime to ask questions and record the answers. This responsibility commences from the moment they engage with a suspect. The interaction can be recorded in documentation such as a Police Notebook, as well as on BWV.</p>

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		<p>The NSWPF's BWV SOPs provide guidance to NSWPF officers regarding the use of BWV when interacting with vulnerable people.</p> <p>The review of the BWV SOPs noted in our response to recommendation 6 will include consideration of the use of BWV when engaging in discussions with suspects.</p>
9	<p>The NSW Police Force should make express provision in the NSW Police Force Handbook and relevant SOPs that only the custody manager, and not investigating police, should discuss bail with a suspect in custody. Investigating police should not indicate that a person will be more likely to be given bail if the person takes part in a recorded interview with police.</p>	<p><b>Supported in principle</b></p> <p>The NSWPF complies with the provisions of the <i>Bail Act 2013</i> and has sufficient processes in place regarding assessing and determining the merits of bail. It is not the role of arresting police to be engaged in bail discussions with the suspect.</p> <p>The NSWPF does recognise that there are instances, particularly in rural and remote areas, where resource limitations direct and allow for the arresting officer to be appointed as Custody Manager and, once this appointment occurs, to assess and determine the appropriateness of bail.</p> <p>The NSWPF's view is that the Charge Room &amp; Custody Management SOPs, and related chapters of the NSWPF Police Handbook, cover this sufficiently.</p>
10	<p>A system should be set up as a matter of urgency within the NSW Police Force to enable decisions of Courts in areas concerning policing to be brought promptly to the attention of the Executive of the NSW Police Force and all operational police officers.</p>	<p><b>Supported in principle</b></p> <p>The NSWPF supports the need for a system to enable decisions of Courts in relevant areas to be brought to the attention of the NSWPF Executive and operational NSWPF officers.</p> <p>Advice from the Operational Legal Advice Unit (OLAU) within the Police Prosecutions &amp; Licensing Enforcement Command (PPLEC) is constantly reviewing decisions of the Courts for cases of significance to operational policing. Once identified, the OLAU provides a briefing to the NSWPF Executive, and publishes Law Notes for the information of all members of the NSWPF.</p> <p>Recent examples include: <i>Kvelde v State of New South Wales</i> [2023] NSWSC 1560 and <i>BA v The King</i> [2023] HCA 14. Relevantly, OLAU is preparing a Law Notes publication re <i>Mann v R</i> [2023] NSWCCA 256.</p>

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11	The NSW Police Force should take urgent action to implement a system to enable Police Prosecutors to advise the NSW Police Force Executive about recurring or systemic issues in prosecutions so that the Police Executive may take timely and effective action to assist police officers for operational and training purposes.	<p><b>Supported</b></p> <p>The NSWPF supports the current regime of reporting. There are two avenues for this to occur. Failed prosecutions are recorded on the Court Matter File Management System (CMFMS) and reviewed to identify trends, including recurring and systemic issues. Any issues identified are brought to the attention of the Police Powers Committee which is chaired by a member of the Police Executive. Also, failed prosecutions are reviewed at a local level, with matters of concern raised through the PPLEC and thereafter, if required, to the NSWPF Executive.</p>
12	Amendments should be made to NSW Police Force training and ongoing education materials with respect to use of force to include specific content and guidance concerning the handcuffing of persons, and in particular children and young persons, with the need for ongoing assessment as to whether it is appropriate to leave the person handcuffed after the arrest.	<p><b>Not supported</b></p> <p>The NSWPF notes, as per our submission during the Operation Mantus hearings, in each and every situation where any police power (including handcuffs) is used, the involved officer must justify the use of that power (as required under the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (LEPRA)).</p> <p>Given the obligations under LEPRA of each NSWPF officer to justify use of a police power (including handcuffs) on each occasion, it is not appropriate to impose a prescriptive approach as to when or who should or might be handcuffed. Any such approach overlooks the obligation of the individual police officer to justify the use of handcuffs on each occasion. In addition, the NSWPF has developed, and will continue to develop, training for NSWPF officers following other investigations and inquiries such as inquests.</p> <p>It is the position of the NSWPF that the Police Handbook and Use of Force Manual provide clear and sufficient guidance about the use of police powers, and the considerations a NSWPF officer is required to make before and during the use of a police power.</p>
13	Police should be made aware that they have a power to postpone the making of a <i>Young Offenders Act 1997</i> determination for up to 14 days pursuant to s 9(2B) of the Act. Police should be made aware that this power is still available after arrest. This information should be included in any relevant Standard Operating Procedures and Police Guideline relating to the custody management of children and diversion under the <i>Young Offenders Act 1997</i> .	<p><b>Supported</b></p> <p>The Young Offenders chapter of the NSWPF handbook is currently being updated to reflect this.</p>

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14	<p>Specific training should be provided by the NSW Police Force to custody managers:</p> <p>(a) about their role in relation to people who have been arrested;</p> <p>(b) that arrests which result in injury and/or which could be understood as indicating excessive use of force should be noted in the custody management records;</p> <p>(c) that they must speak to investigating police before any interview takes place with the person in custody;</p> <p>(d) that any refusal by a person to be interviewed (whether communicated directly or through a lawyer) must be clearly communicated to investigating police;</p> <p>(e) that any refusal to be interviewed must be recorded in custody management records;</p> <p>(f) that if a person changes their mind in relation to being interviewed, the custody manager should allow the person to receive further legal advice before any interview goes ahead;</p> <p>(g) that the custody manager has a legal responsibility to take steps to protect vulnerable persons in custody with training to address expressly the need to guard against any police practice of proceeding to interview children and other vulnerable persons following refusal to participate in an interview on legal advice (whether communicated directly or through a person's lawyer);</p> <p>(h) by way of cultural competency training in relation to cross cultural communication styles, training about the risk of unreliability of admissions by children and other vulnerable people in police custody and disability awareness training.</p>	<p><b>Supported in principle</b></p> <p>The NSWPF supports the Commission's recommendation regarding (a), (b), (c), (d), (e), and (h).</p> <p>In relation to these parts of the recommendation:</p> <ul style="list-style-type: none"> <li>(a) The role of Custody Managers in relation to people who have been arrested is currently included in the Advanced Custody Course, Custody Fundamentals, and Custody Awareness. No further changes are proposed.</li> <li>(b) The recording of injuries (pre-existing or during arrest) is covered in the Advanced Custody Course. However, the custody management records are not the appropriate location to record alleged use of force. Should a suspect allege, or a member of the NSWPF form an opinion, that there has been an inappropriate/excessive use of force, all members of the NSWPF have an obligation under s211F of the <i>Police Act</i> 1990 to lodge a misconduct matter report. No further changes are proposed.</li> <li>(c) The NSWPF agrees with the Commission and will update the Advance Custody Course and Custody Fundamentals to include this content.</li> <li>(d) The NSWPF agrees with the Commission and will update the Advance Custody Course and Custody Fundamentals to include this content.</li> <li>(e) The NSWPF agrees with the Commission and will update the Advance Custody Course and Custody Fundamentals to include this content.</li> <li>(h) Training regarding the risk of unreliability of admissions by children and other vulnerable people in police custody, and disability awareness, is included in the Advanced Custody Course, Fundamentals Course, and Custody Awareness Package. No further changes are proposed.</li> </ul> <p>Regarding (f), the NSWPF position (as per our response to recommendation 2) is that it is sufficient for a suspect to receive legal advice once, and that any change of mind to exercise the right to silence by a suspect will be recorded appropriately.</p>

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		<p>The following direction was provided in the NEMESIS communication issued on 10 December 2023:</p> <p><i>If a young person initially indicates they do not wish to be interviewed, they can change their mind and be interviewed.</i></p> <p><i>At the commencement of the interview police should ensure they adopt all conversations had with the young person after they received the legal advice. This is important to show police did not make any threat, promise or inducement to the young person to persuade them to participate in the interview. In the case of a young person who initially indicated they did not wish to be interviewed and then changed their mind, police should ask them to clarify why they changed their mind.</i></p> <p>Regarding (g), as stated in our response to recommendation 1, direction has been given on 10 December 2023 to all NSWPF police officers that no interview is to be conducted if a young person has received and accepted legal advice to exercise their right to silence.</p>
15	<p>Urgent steps should be taken by the Attorney General and the Commissioner of Police to revise the documents under Part 9 of LEPR to ensure they are written in plain English and in a form which will permit fair and effective implementation of the protective procedures and practices under LEPR and the LEPR Regulation.</p>	<p><b>Supported in principle</b> The NSWPF supports this recommendation, noting that it is addressed to the Attorney General.</p>
16	<p>The Commission recommends that clause 29 of the LEPR Regulation be amended so as to provide:</p> <p>(3) If a detained person or protected suspect in police custody who is a vulnerable person</p> <p>(a) has declined to participate in an interview following legal advice, and</p> <p>(b) purportedly changes their mind about participating in an interview during the same period of detention, the custody manager for that person must notify the legal representative who provided the advice and allow the person in custody to confirm their legal advice and their position prior to any interview taking place.</p>	<p><b>Under consideration</b> The NSWPF notes this recommendation is to be directed to the Attorney General.</p> <p>As stated in our response to recommendation 2, the NSWPF is willing to explore further opportunities for consultation with the Commission on this matter.</p> <p>If the LEPR Regulation is amended to reflect the Commission's recommendation, then the NSWPF will make the appropriate changes to our guidance to reflect these requirements.</p>

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17	<p>The Commission recommends to the Attorney General that clause 29 of the LEPRA Regulation should be amended to include a provision to the following effect:</p> <p>If there has been a purported change of mind by a vulnerable person in relation to participating in an interview, and the person has been allowed the opportunity to obtain further legal advice prior to any interview taking place (whether or not an interview does subsequently take place) this must be stated in the police facts.</p>	<p><b>Under consideration</b></p> <p>The NSWPF notes this recommendation is directed to the Attorney General.</p> <p>As stated in our response to recommendation 5, the NSWPF submits that there are a number of areas where interaction with the suspect is recorded and does not believe a further requirement to prescribe documenting how the interview came about is needed.</p> <p>However, the NSWPF is willing to explore further opportunities for consultation with the Commission on this matter.</p> <p>If the LEPRA Regulation is amended to reflect the Commission’s recommendation, then the NSWPF will make the appropriate changes to our guidance to reflect these requirements.</p>
18	<p>The Commission recommends that the NSW Police Force have regard to the ‘Use of Force Overview’ of the New Zealand Police in expanding its Use of Force Manual to provide more detailed guidance concerning possible use of force on vulnerable persons.</p>	<p><b>Not supported</b></p> <p>It is the position of the NSWPF that the Use of Force Manual provides sufficient guidance regarding use of force.</p>
19	<p>It is recommended that a review of NSW Police Force policies and procedures be undertaken to emphasise the need for police officers to obtain prompt medical attention for people who have sustained injuries following the use of force by police officers.</p>	<p><b>Not supported</b></p> <p>All injuries sustained by a person in custody including but not limited to those self-inflicted, their mental, physical, and medical health are assessed as one of the first steps when they enter custody.</p> <p>Whilst the NSWPF supports the need to ensure prompt medical attention for people who have sustained injuries following the use of force by NSWPF officers, the NSWPF asserts that sufficient guidance is already provided regarding this requirement in the Use of Force Manual, NSWPF Handbook, and the Charge Room &amp; Custody Management SOPs.</p>